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**FILED ELECTRONICALLY AND VIA COURIER**

August 31, 2011

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
PO Box 2319, 27th Floor  
Toronto, ON  
M4P 1E4

**Helen T Newland**

Helen.Newland@FMC-law.com

DIRECT 416-863-4471

Dear Ms. Walli:

**RE:           Application by Canadian Distributed  
              Antenna Systems Coalition ("CANDAS");  
              Board File No.: EB-2011-0120**

We represent CANDAS in connection with its application to the Board regarding access to the power poles of licensed electricity distributors for the purpose of attaching wireless telecommunications equipment.

Please find attached copies of the pole attachment agreements that DAScom entered into with THESL and THESI, respectively, who have now consented to the filing of those documents.

Please consider these as updated Responses to Staff 8 and CCC 9, respectively.

CANDAS will file two paper copies of the above-noted evidence tomorrow.

Yours very truly,

*(signed) H.T. Newland*

HTN/ko

cc:       Mr. George Vinyard  
          ExteNet Systems, Inc.  
          All Intervenors

**AGREEMENT**  
**FOR LICENCED OCCUPANCY**  
**of**  
**POWER UTILITY DISTRIBUTION POLES**  
**between**  
**TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**  
**and**  
**DAScom Inc.**

Pole Attachment Agreement: Revision Date November 20, 2006

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**AGREEMENT FOR LICENSED OCCUPANCY  
OF POWER UTILITY DISTRIBUTION POLES**

This Agreement is made effective as of August 1, 2009 (the "Effective Date")

between **TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**  
hereinafter called "the Owner"  
of the First Part

and **DAScom Inc.**  
hereinafter called "the Licensee"  
of the Second Part

(The Owner and the Licensee are each individually referred to herein as a "Party" and collectively as the "Parties")

Whereas the Licensee wishes to Affix and maintain its material, apparatus, equipment or facilities to poles of the Owner or In-Span and the Owner is agreeable thereto upon the terms and conditions contained herein.

Now therefore this Agreement witnesses that in consideration of the premises herein and the agreements and covenants entered into by each Party with the other, and other good and valuable consideration, the receipt and sufficiency of which are 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. Grammatical variations of any terms defined in this Agreement shall have similar meanings to such defined terms.

"Affiliate" has the meaning ascribed to it in the *Business Corporations Act* (Ontario).

"Affix" or "Affixing" means to fasten, by the Licensee, any material, apparatus, equipment or other facility owned, in full or in part, by the Licensee to the poles of the Owner, or In-span, or to Overlash any of the foregoing. "Affixed" has a corresponding meaning.

**“Annual Pole Rental Fee”** is defined in Section 11.02.

**“Applicable Laws”** is defined in Section 6.01.

**“Application”** means a written application submitted to the Owner by the Licensee requesting permission from the Owner to Affix its Proposed Attachments in accordance with the terms of this Agreement, in particular Section 7.07.

**“Approval”** means the written permission granted by the Owner, to the Licensee, for the Licensee to Affix its Proposed Attachments, as specified in the Permit.

**“Attachment”** means any material, apparatus, equipment or facility owned, in full or in part, or controlled and maintained by the Licensee that is Affixed to the poles of the Owner or In-span, including, without limitation:

- (i) Overlashed Cable;
- (ii) Service Drops Affixed directly to the Owner’s poles;
- (iii) Service Drops Affixed In-span to a Strand or Messenger supported by poles of the Owner;
- (iv) Attachments owned by the Licensee that emanate from a cable not owned by the Licensee;
- (v) Messenger or Strand;
- (vi) Cable Riser/Dips; and
- (vii) Power Supply/Rectifiers; and
- (viii) other equipment as may be approved in writing by Owner, in its sole discretion.

**“Bonding”** means the permanent connection of the Licensee’s Messenger or Strand and metallic cable sheaths to the Owner’s power system neutral.

**“Business Day”** means any day other than a Saturday or Sunday or a civic or statutory holiday in the Province of Ontario.

**“Cable”** means fiber optic cable, coaxial cable, or any other cable owned by the Licensee, in whole or in part, used to provide Telecommunications Services or to support cable used to provide Telecommunications Services.

**“Cable Riser/Dip”** means a Cable owned by the Licensee, in whole or in part, attached along the vertical position of the pole to allow the Cable to change its vertical position from/to an underground route to/from an overhead route.

**“Clearance Pole”** means a single pole of the Owner used by the Licensee solely to establish and maintain clearance for Service Drops.

**“Communications Space”** means a vertical space on the pole, usually zero point six (0.6) metres, within which communications attachments are made.

**“Consumer Price Index”** means the Consumer Price Index for Ontario (all items), or any index for Ontario published in substitution thereof (if such index is no longer published) or any other replacement index designated by the Owner and acceptable to the Licensee, published by Statistics Canada (or by any successor thereof or any other governmental authority) from time to time.

**“Effective Date”** means the date first written above.

**“Escalation Rate”** is defined in Section 11.06.

**“Force Majeure”** means any act, event, cause or condition that is beyond the reasonable control of the Party affected, including, without limitation, an act of God, fire, explosions, earthquakes, floods, ice, lighting or other storms, epidemics, acts of war or conditions arising out of or attributable to war (whether declared or undeclared), terrorism, riots, sabotage, any act of any federal, provincial, municipal or governmental or regulatory authority, civil commotions, and strikes, lockouts and other labour disputes. In no event shall lack of finances be considered as a Force Majeure.

**“Initial Term”** is defined in Section 15.01.

**“In-span”** means a position between poles owned by the Owner.

**“Joint Anchorage”** means a common anchor system and 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 the Owner’s pole.

**“Make-Ready Work”** means any changes, alternations, Rearrangements, or repairs of the attachments or poles and other plant of the Owner, or any other pole user, to accommodate the Attachments of the Licensee.

**“Master database”** means a computer database file on the Owner’s Local Area Network (“LAN”) system containing relevant plant information for all of the Licensee’s Attachments.

**“Messenger”** or **“Strand”** means a bare cable, made of aluminium and/or steel strands, whose main purpose is to support telecommunications and/or secondary voltage wires.

**“Minor Relocation”** means relocating an Attachment up to one (1) metre in a vertical or horizontal direction. This type of relocation is normally associated with pole changes.

**“Municipal Access Fees”** is defined in Section 11.05.

**“Overlash”** means to Affix a Cable(s) to an existing cable, Messenger or Strand or other equipment of the Licensee, the Owner or a third party on a pole of the Owner or In-span. Overlashed has a corresponding meaning.

**"Permit"** means an approved Application evidenced by the signature of a duly authorized employee of the Owner in accordance with the terms of this Agreement.

**"Person"** means a natural person, corporation, firm, partnership, limited liability company, joint venture, governmental authority or other form of association or entity;

**"Pole in Use"** means any pole of the Owner, other than Clearance Poles, to which Attachments are Affixed or for which Licensee has been issued a Permit(s) to Affix its Attachments, whether or not Licensee's cable or other equipment designated in such Permit has been Affixed, and whether or not any such Attachments are being used to provide any Telecommunication Services.

**"Pole Rental Fees"** is defined in Section 11.01.

**"Pole Rental Rate"** at any time shall be the amount then in effect as determined pursuant to Section 11.03.

**"Power Space"** means a vertical space at the top of a pole of the Owner within which electrical power attachments are made.

**"Power Supply/Rectifier"** means an enclosure owned by the Licensee and used to contain the Licensee's power supply and electronic equipment.

**"Proposed Attachment"** means any material, apparatus, equipment or facility owned, in whole or in part, or controlled and maintained]by the Licensee that Licensee is requesting permission from the Owner to Affix, including, without limitation:

- (i) Overlashed Cable;
- (ii) Service Drops Affixed directly to the Owner's poles;
- (iii) Service Drops Affixed In-span to a Strand or Messenger supported by poles of the Owner;
- (vi) Attachments owned by the Licensee that emanate from a cable not owned by the Licensee;
- (v) Messenger or Strand;
- (vi) Cable Riser/Dips; and
- (vii) Power Supply/Rectifiers; and
- (viii) other equipment as may be approved in writing by Owner, in its sole discretion.

**"Quarterly Pole Rental Fee"** is defined in Section 11.04.

**"Rearranging" or "Rearrangements"** 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.

**"Renewal Term"** is defined in Section 15.02.



**"Representatives"** means the directors, officers, employees, contractors, subcontractors, agents, advisors, counsel or other representatives of either Party, as applicable.

**"Separation"** means the vertical or horizontal distance between power and communication systems including conductors and other related equipment.

**"Service Drop(s)"** means telecommunications cables or wires, whether affixed In-Span or to a pole, owned by the Licensee and connected to a telecommunications cable, whether owned or not owned by the Licensee, that are used to supply Telecommunications Services to one or more customers of the Licensee.

**"Standards"** means all applicable standards of the Canadian Standards Association ("CSA"), including, without limitation, CSA Standard C22.3 No. 1-M87 "Overhead Systems", the Owner's Health and Safety Rule Book, and all applicable standards of the Electrical Safety Authority ("ESA"), the safety requirements of Ontario Regulation 22/04 "Electrical Distribution Safety", made under the *Electricity Act, 1998*, ("Ontario Regulation 22/04"), and the Owner's Construction Standards, together with any amendments to the foregoing from time to time hereafter, each of which are incorporated by reference herein.

**"Telecommunications Services"** is as defined in the *Telecommunications Act* (Canada).

**"Term"** is defined in Section 15.02.

**"Transfer"** or **"Transferring"** means the removal of Attachments from one pole and the placing of the same Attachments on another pole.

## **ARTICLE 2 - TERRITORY**

- 2.01 This Agreement shall cover the Affixing, operating on and maintaining of the Attachments of the Licensee to the poles or other equipment of the Owner, or Overlashing thereon, or In-span (and the removal of Licensee's Attachments therefrom), within the area of Ontario where their respective service territories overlap.

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

- 3.01 The Licensee shall be responsible for obtaining, and satisfying the Owner that it has obtained, any and all easements, rights of way, authorizations or permissions from others, including authorization or permission to locate on municipal or provincial road allowances or public highways or any other applicable authorization or permission required from any municipal, provincial or federal government or any agency, body or board having jurisdiction with respect to the Affixing, operating and maintaining of the Attachments provided for in a Permit.

- 3.02 Proposed Attachments shall not be Affixed by the Licensee In-span, or to the poles or other equipment of the Owner or Overlashed thereon when such poles or other equipment are located on private property, until the written consent of the registered owner of the property upon which such poles or equipment are located has been obtained by the Licensee and delivered to the Owner, and the Licensee has obtained a Permit to install Licensee's Proposed Attachments in question in accordance with the terms of this Agreement.
- 3.03 Licensee represents and warrants that all Attachments are owned by or controlled and maintained by Licensee.

#### **ARTICLE 4 -TAXES**

- 4.01 The Licensee agrees that it shall pay, and indemnify and save harmless the Owner and its directors and officers against all taxes, rates, assessments, or fees of every nature and kind that are assessed against or as a result of the Attachments or privileges granted to the Licensee by this Agreement.

#### **ARTICLE 5 - PERFORMANCE GUARANTEE**

- 5.01 The Owner, in its reasonable discretion, at any time, may require that the Licensee deposit with the Owner security in an amount and in a form satisfactory to the Owner, securing the due performance of the obligations of the Licensee as provided for in this Agreement. The security shall be delivered within five (5) Business Days of the request, and shall be maintained in good standing by the Licensee during the Term of this Agreement or for such other term agreed to in writing by the Owner and the Licensee shall execute all documents reasonably requested by the Owner to obtain and maintain a first priority security interest in and to such security. The security will be in favour of the Owner and shall be an irrevocable bank letter of credit issued by an entity satisfactory to the Owner and in a form acceptable to the Owner.
- 5.02 The amount of the security to be placed with the Owner shall be determined by the Owner and may include amounts for:
- (i) the estimated cost from time to time for removing the Licensee's Attachments;
  - (ii) potential damage to the Owner's equipment attributed to the activity of the Licensee and/or any of its Representatives; and
  - (iii) and potential claims of third parties attributed to the activity of the Licensee and/or any of its Representatives.

The security payable by the Licensee may be increased from time to time in the sole discretion of the Owner. Factors such as additional Attachments approved by a Permit or an increase in the estimated cost to remove the same may warrant an increase in the security.

## **ARTICLE 6 - COMPLIANCE WITH STATUTES**

- 6.01 This Agreement is subject to all applicable laws, by-laws, regulations, rules, and codes and all orders and decisions of any court of competent jurisdiction or lawful authorities acting within their powers and all applicable Standards, as amended from time to time (collectively, "Applicable Laws").
  
- 6.02 The Licensee and its Representatives shall be responsible for complying with all Applicable Laws with respect to the Affixing, maintaining, inspecting, operating, and Rearranging of its Attachments (and removal of the Licensee's Attachments), and Licensee otherwise exercising its rights and obligations under this Agreement. Without limiting the foregoing, the Licensee shall be responsible for ensuring that it and all of its Representatives, at all times, comply with the *Workplace Safety and Insurance Act, 1997*, the *Occupational Health and Safety Act*, Ontario Regulation 22/04 and the *Canada Labour Code Part II* as they apply to the Licensee and its Representatives, or any amendments or additions thereto, and all Applicable Laws that apply to performance of work on public highways or private property that relate to the safety of workers and the public when performing work related to this Agreement.
  
- 6.03 If there is a conflict between the Owner's Health & Safety Rule Book and the Owner's Construction Standards and any other Applicable Laws, the Applicable Laws with the most stringent requirements shall apply. The Licensee shall notify and consult with the Owner with respect to any such conflicts before proceeding with any work under this Agreement.
  
- 6.04 The Owner shall provide the Licensee with a reasonable number of copies of the Owner's Health & Safety Rule Book and the Owner's Construction Standards, and shall promptly advise the Licensee of any amendments to the foregoing.

## **ARTICLE 7 - APPROVAL OF PERMITS**

- 7.01 The Licensee shall contact the Owner, and inform the Owner that the Licensee will seek permission to Affix, operate and maintain its Proposed Attachments, excluding Service Drops, except as required by Section 9.03, and provide such preliminary information as may be requested by the Owner.
  
- 7.02 For each new request by the Licensee to Affix, operate and maintain its Proposed Attachments, the Licensee will be assessed an administration fee in accordance with Sections 9.13 and 11.06.
  
- 7.03 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 the Proposed Attachments by the Licensee. The Owner's costs of such site inspection shall be included in the administrative fee under Sections 9.13 and 11.06.

- 7.04 Subsequent to the joint field visit, if any, the Owner, in its sole discretion, shall form a preliminary opinion as to the feasibility and desirability of the proposed Affixing of the Proposed Attachments by the Licensee, which opinion the Owner will communicate to the Licensee.
- 7.05 If the Owner, in its sole discretion, determines that the proposed installation of Licensee's Proposed Attachments is not feasible or desirable, the Owner shall advise the Licensee that such proposed installation has been rejected and the Owner shall have no liability or further obligations to the Licensee with respect to such proposed installation.
- 7.06 If the Owner, in its sole discretion forms a preliminary opinion in favour of the proposed Affixing of the Proposed Attachments of the Licensee, the Owner will prepare a preliminary estimate of any costs for Make-Ready Work that may be incurred to accommodate the Proposed Attachments of the Licensee.
- 7.07 After the estimate has been received and accepted by the Licensee, an Application, in duplicate, shall be prepared, signed and delivered by the Licensee to the Owner. Each Application shall be accompanied by:
- (i) a plan (11" x 17"), prepared and approved in accordance with Section 7 of Ontario Regulation 22/04, showing pole locations, pole numbers, addresses, size and type of strand, size and number of Cables to be lashed or Overlashed, outside diameter of existing Cables, guys, anchors, grounding requirements, attachment heights & weights, Separation from the Owner's attachments and Separation from third party attachments. (These requirements may be subject to change based on any legal requirements by any regulatory agency with jurisdiction over the subject matter of this Agreement.) The plan for each Application shall include no more than one continuous Cable and/or Messenger or Strand route. The plan must be submitted in both paper and electronic form on floppy disk or other electronic format acceptable to the Owner. The plan must be compressed using WinZip, or another software program acceptable to the Owner; and
  - (ii) a table in MS Excel, or other software program acceptable to the Owner, identifying street name, pole number and GPS (Global Positioning System) location, submitted in both paper and electronic form on floppy disk or other electronic format acceptable to the Owner; and
  - (iii) a purchase order authorizing the Owner to complete the Make-Ready Work on the Owner's facilities or facilities of third parties pertaining to the applicable Application; and
  - (iv) anything else the Owner may require pursuant to the terms of this Agreement, such as a security deposit.

- 7.08 (i) The Owner will receive and consider each Application submitted by the Licensee, and, at the sole discretion of the Owner, acting reasonably, will make a preliminary determination as to whether to reject such submitted Application, or proceed with the Make-ready Work related to that Application, and will advise the Licensee of such determination. Such consideration will be with regard to compliance with this Agreement and the Owner's requirements with respect to, but not limited to, issues such as:
- (a) operations of the Owner;
  - (b) the effect Licensee's Proposed Attachments, if Affixed, may have on the Owner's electricity distribution service or the Owner's use of its poles or other plant;
  - (c) the effect Licensee's Proposed Attachments, if Affixed, may have on the Owner's equipment or equipment of other parties using the Owner's poles or other plant;
  - (d) planning;
  - (e) safety;
  - (f) aesthetics;
  - (g) diameter of any Attachment (which shall not exceed the maximum diameter specified in the Owner's Construction Standards as revised from time to time, pursuant to Section 9.04;
  - (h) the proposed Affixing of Licensee's Proposed Attachments complying with all Applicable Laws;
  - (i) road authority and property owner requirements;
  - (j) whether granting a Permit to Licensee to Affix its Proposed Attachments would be inconsistent in any fashion with any obligations of the Owner to third parties; and
  - (k) any other matters that the Owner may deem relevant.
- (ii) Notwithstanding the foregoing, the Licensee acknowledges and agrees that if the Licensee is in breach of any of the terms of this Agreement, the Owner, in its sole discretion, may refuse to consider any new Applications or process any previously submitted Applications until such time as such breach has been remedied to the Owner's satisfaction. Licensee further acknowledges and agrees that any Application will be denied, if in the sole judgement of the Owner, the proposed

installation, operation or maintenance of the Licensee's Attachments, or use derived therefrom, could:

- (a) be detrimental to the Owner's electricity distribution service; or
- (b) be detrimental to the Owner's use of its poles or other plant; or
- (c) threaten the health or safety of the Owner's employees or contractors, or others permitted occupants of the Owner's poles or other plant; or
- (d) be inconsistent with any Applicable Laws; or
- (e) interfere physically or electronically with the Owner's equipment or equipment of other parties using the Owner's poles or other plant; or
- (f) be inconsistent in any fashion with any obligations of the Owner to third parties.

The Parties agree that the foregoing does not constitute a complete list of reasons why the Owner may reject an Application.

7.09 If the Owner rejects the Licensee's Application under Section 7.08, the Owner shall advise the Licensee accordingly and the Owner shall have no liability or further obligations to the Licensee with respect thereto.

7.10 (i) If the Owner's preliminary determination under Section 7.08 is to proceed with the Make-ready Work, the Owner shall advise the Licensee accordingly, and the Owner will proceed with the Make-Ready Work.

(ii) Upon completion of any Make-ready Work the Owner shall review the Application and if the proposed installation of the Proposed Attachments as set forth in the Application is still satisfactory to the Owner, as determined by the Owner in its sole discretion, acting reasonably, as set forth in Section 7.08, the Owner will approve the Application in writing and return one copy of the approved Application to the Licensee's representative, thus authorizing the Affixing of the Proposed Attachments by the Licensee. Such approved Application shall thereupon constitute a Permit hereunder. Such Permit shall be effective as of the date of the Approval of the Application for such Permit by the Owner. At any time after the Approval of an Application, the Owner shall provide the Licensee with an invoice for all costs incurred in completing the Make-Ready Work.

(iii) In the event that, after completion of the Make-Ready Work, the Owner, in its sole discretion, acting reasonably, determines that the proposed installation of Licensee's Proposed Attachments as set forth in the Application is no longer satisfactory, the Owner shall advise the Licensee that the Application has been rejected and the

Owner shall have no liability or further obligation to the Licensee with respect to such Application; provided that the costs of such Make-Ready Work shall be the responsibility of the Owner and shall not be charged to the Licensee.

- (iv) For greater certainty, the Parties agree that, after completion of the Make-Ready Work, the Owner has the right to re-consider the Application in its entirety in light of all of the circumstances existing at that time and no decision or action taken by the Owner prior to such re-consideration, including the decision to proceed with, or the completion of, the Make-Ready Work, shall be construed or interpreted as evidence of the reasonableness of approving the Application at the time of re-consideration.
- 7.11 At the Owner's sole discretion, the Owner may change the order in which any of the requirements in this Article 7 are to be met.

## **ARTICLE 8 - PERMITS**

- 8.01 For each Application approved pursuant to Article 7, the Owner hereby grants to the Licensee the privilege to Affix, operate on and maintain such of its Attachments to such poles or other equipment of the Owner, or In-span, or Overlashed as may be designated on each Permit during the Term, and to remove and replace such Attachments for maintenance purposes, subject to the terms of this Agreement. The Licensee acknowledges and agrees that the Owner makes no representations or warranties with respect to the condition of the Owner's poles or other plant or its suitability for Licensee's purposes. Notwithstanding the issuance of a Permit, the Licensee acknowledges and agrees that if, at the time of installation, there are any conditions on the Owner's poles or other plant where the Licensee's Proposed Attachments are to be installed that would prevent such installation for safety or other reasons, as determined by the Owner in its sole discretion, the Owner may revoke the applicable Permit and require the Licensee to submit a new Application for approval, or the Owner may amend such Permit as it deems necessary.
- 8.02 Each Permit shall be deemed to have been issued pursuant to this Agreement and shall be read and construed in accordance with this Agreement.
- 8.03 The permission to Affix and maintain Attachments as described in a Permit shall be effective as of the date of the Approval of the Application for such Permit by the Owner. The Licensee must exercise this permission within one hundred eighty (180) days of the date of Approval of the Application, failing which the Permit is of no force and effect and the Licensee must submit a new Application requesting permission to Affix its Proposed Attachments.
- 8.04 (i) Except as required to maintain and repair Licensee's Attachments Affixed to the Owner's poles or In-Span or Overlashed in accordance with a Permit or as otherwise permitted herein, under no circumstances shall any changes be made to the type or amount of equipment installed by the Licensee on the Owner's poles or In-Span or Overlashed or the location of Licensee's Attachments as designated in a Permit

without the Owner's prior written consent for such change, which may be withheld by the Owner in its sole discretion. In the case of emergencies, the Licensee shall contact a designated representative of the Owner to request the Owner's consent to make any of the foregoing changes.

- (ii) Notwithstanding Section 8.04(i), if the Owner verbally approves any of such proposed changes, the Licensee may change the location or configuration of the Licensee's Attachments as approved by the Owner and subject to any of the Owner's instructions. The Licensee acknowledges and agrees that any such approval shall only apply to the particular case at hand and any such approved change shall not become a standard form of installation. In addition, within five (5) Business Days of any such approval, the Licensee must submit an Application as set out in Article 7 to obtain a Permit for Licensee's Attachments as relocated or reconfigured. In the event that any such Application is not approved in accordance with the terms of Article 7, the Licensee shall forthwith remedy such relocation or reconfiguration to the state of affairs prior to such relocation or reconfiguration or such other state as may be approved in writing by the Owner, in its sole discretion.

8.05 In addition to the Owner's other rights of termination under this Agreement, the Licensee agrees that any Approval to Affix, operate and maintain its Attachments, previously granted by the Owner in any Permit, may be revoked or amended, in the sole discretion of the Owner, for the following reasons:

- (i) In the sole judgment of the Owner, the installation, operation or maintenance of Licensee's Attachments Affixed pursuant to the approved Permit could:
  - (a) be detrimental to the Owner's electricity distribution service; or
  - (b) be detrimental to the Owner's use of its poles or other plant; or
  - (c) threaten the health or safety of the Owner's employees or contractors, or other permitted occupants of the Owner's poles or other plant; or
  - (d) be inconsistent with any Applicable Laws; or
  - (e) interfere physically or electronically with the Owner's equipment or equipment of other parties using the Owner's poles or other plant; or
  - (f) be inconsistent in any fashion with any pre-existing obligations of the Owner to third parties.
- (ii) If the Owner requires the space occupied by the Licensee's Attachments for its own use; or



- (iii) If the Owner is required by a governmental or regulatory authority with jurisdiction over the subject matter of this Agreement or otherwise by law to terminate or amend the Permit; or
- (iv) If the Owner decides or is required by lawful authority to remove or relocate any of its poles or other plant, where the installation, operation or maintenance of the Licensee's Attachments interferes with such relocation or replacement of such poles or other plant; or
- (v) If a pole or other plant of the Owner occupied by the Licensee's Attachments is abandoned by the Owner.

Any such revocation or amendment as it relates to the Attachments of the Licensee or Proposed Attachments of the Licensee to be Affixed shall be communicated to the Licensee by notice in accordance with Articles 16 and 19. The Owner will endeavour to provide the Licensee with at least ninety (90) days prior written notice of any revocation or amendment to a Permit under this Section 8.05. Such written notice will include the reasons for such terminations or amendments. The Licensee shall forthwith comply with such terminations or amendments by removing Licensee's Attachments in accordance with Section 16.11 or changing the location of Licensee's Attachments in accordance with directions of the Owner.

- 8.06 The Licensee is responsible for all of its own costs regarding any aspect of this Agreement.

#### **ARTICLE 9 - INSTALLATION AND MAINTENANCE**

- 9.01 Subject to Section 8.04, the Licensee agrees that it will not Affix any of its Proposed Attachments, except Service Drops for which no Permit is required, subject to Section 9.03, to a pole of the Owner or In-span or Overlash any Proposed Attachments until the Owner approves an Application and issues a Permit designating such Proposed Attachment. Subject to Section 9.03, if the Licensee Affixes any Attachment without a Permit, the Owner may order the removal of Licensee's Attachments in question in accordance with Section 16.07 or terminate this Agreement immediately, in which event the provisions in Sections 16.07, 16.11 and 16.12 shall apply.
- 9.02 The Licensee agrees that it is solely responsible for Affixing, operating and maintaining its Attachments. Notwithstanding the foregoing, the Licensee agrees that in the event of an emergency the Owner may, but is not obligated to, take any steps it deems necessary to temporarily secure Licensee's Attachments in a safe manner without prior notice to the Licensee. The Licensee shall reimburse the Owner for any costs incurred by the Owner so doing. Upon notice by the Owner, the Licensee shall immediately re-Affix and/or repair such Attachments to the Owner's satisfaction.
- 9.03 Service Drops may be Affixed or altered by the Licensee when Affixed to a pole for which a Permit has been issued, or Affixed In-span between poles where a Permit has been issued for

the nearest pole. If the pole to which the Service Drop is Affixed, or the nearest pole to the Service Drop, is not included in an existing Permit issued to Licensee hereunder, the Service Drop must be reported to the Owner and an Application for the use of a Clearance Pole must be filed within thirty (30) days of the installation of the Service Drop. If the Application is subsequently refused, the Licensee must remove the Service Drop within thirty (30) days of the Owner notifying the Licensee of the refusal. If the Licensee fails to notify the Owner within thirty (30) days of the installation of the Service Drop, the Owner may remove the Service Drop at the expense of the Licensee and the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Service Drop for any damage to such Service Drop as a result of such removal.

- 9.04 Overlashing by the Licensee will be permitted provided that: (i) the maximum allowable diameter of any Attachment (either single or multi-lashed cables) shall be in accordance with the Owner's Construction Standards as revised from time to time and (ii) Applications for Overlashing must be submitted and approved using the same procedure set out in this Agreement for obtaining Approval to Affix new Proposed Attachments.
- 9.05 In conjunction with the Licensee's system rebuild plans, the Licensee shall make best efforts to consolidate its multiple parallel Strands on a pole line 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 third party. Any such transfer of the Licensee's Strands to a third party shall be subject to the conditions in Sections 20.01, 20.02 and 20.03.
- 9.06 The Licensee covenants and agrees with the Owner to Affix, operate and maintain its Attachments, at its sole expense and at all times, in a safe and serviceable manner satisfactory to the Owner and in accordance with the Standards and the terms herein, and in such a way as not to interfere with:
  - (i) the lines, attachments, works or equipment of the Owner or other permitted users of the Owner's poles or other plant; or
  - (ii) the electrical supply carried by the cables and equipment of the Owner or other permitted users of the Owner's poles or other plant; or
  - (iii) the Telecommunications Services provided by other permitted users of the Owner's poles or other plant.
- 9.07 Without restricting the generality of the foregoing, the Licensee covenants and agrees not to relocate, alter, remove or otherwise interfere with the attachments of other permitted users of the poles and other plant of the Owner without the prior written approval of the Owner and the applicable third party.

- 9.08 Notwithstanding anything in this Agreement to the contrary, and except as provided for in Article 14, the Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Licensee's Attachments, or the data, signals or supply carried by the Attachments, which may arise from the Owner's equipment or the supply carried by its equipment.
- 9.09 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, operating and maintaining of Attachments of the Licensee in accordance with the Standards.
- 9.10 The Owner and Licensee recognize that 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. Where either Party feels it has been substantially prejudiced by any such amendment or enactment, it will advise the other Party. The Parties will engage in discussions with a view to addressing the alleged prejudice. During these discussions, this Agreement will continue in full force and effect. Notwithstanding the foregoing, the Owner shall determine, in its sole discretion, what changes, if any, are required to be made to the Licensee's Attachments or the Licensee's operations and procedures in order to comply with such standards. The Licensee shall make any such changes within such time period as may be requested by the Owner, acting reasonably. The Parties further agree that no changes to Attachments constructed in accordance with a Permit shall be required unless such changes are required by any Applicable Laws or for safety purposes, as determined by the Owner in its sole discretion. The Owner shall provide the Licensee with a reasonable number of copies of any amendments to the Owner's Health & Safety Rule Book and the Owner's Construction Standards, and with any new standards of the Owner related to work on its poles or other plant.
- 9.11 Subject to Section 8.04, the Licensee agrees that upon the Attachments being made in accordance with the provisions of this Agreement, it will not alter the Affixing of such Attachments, except Service Drops, unless:
- (i) such alteration is approved by the Owner using the same procedure as for a new Proposed Attachment as described in this Agreement; and
  - (ii) such alteration is carried out in accordance with the Standards and in such a way as not to interfere with the lines, attachments, works or equipment of the Owner or of other permitted users of the pole or other plant of the Owner.
- 9.12 The installation, operation, Rearrangement and maintenance of Licensee's Attachments Affixed to the Owner's poles or other plant or Overlashed thereon (including modifications to the Owner's poles or other plant to accommodate Licensee's Attachments, and removal of Licensee's Attachments therefrom) shall be done by employees, contractors, subcontractors or agents of the Licensee who are "competent persons", as defined under the *Occupational Health and Safety Act*, and who are qualified because of knowledge, training and experience to perform the work in question, each of whom shall at all times comply with all Applicable

**Laws.** The Licensee shall ensure its employees, contractors, subcontractors and agents have such qualifications and comply with all Applicable Laws in performing the work. In addition to any other rights the Owner may have hereunder, if the Owner, acting reasonably, determines that any of the Licensee's employees, contractors, subcontractors or agents are engaging in unsafe work practices when performing work on the Owner's poles or other plant, the Owner may order such work to stop, and the Licensee shall not proceed with such work until such time as the Owner is satisfied that the work will be conducted in accordance with safe work practices, including, without limitation, all Applicable Laws and the Owner's safety standards and provides a written notice to the Licensee that it may resume work. Notwithstanding any instructions provided by the Owner hereunder or any term in this Agreement, the Licensee shall be solely responsible for the safety of the Licensee's employees, contractors, subcontractors and agents when performing work on the Owner's poles or other plant. The Licensee shall provide the Owner with a list of all employees, contractors, subcontractors or agents who may perform work on the poles or other plant of the Owner on behalf of the Licensee. The Owner, acting reasonably, reserves the right at anytime to require that the Licensee obtain its prior approval of the use of any employee, contractor, subcontractor or agent of the Licensee to perform work on the poles or other plant of the Owner. Notwithstanding the foregoing, the Owner may require that any or all work on the Owner's poles or other plant be performed by employees, contractors, subcontractors or agents of the Owner at the Licensee's expense. If, the Licensee receives notice that (i) any employee, contractor, subcontractor or agent must be approved by the Owner prior to performing work on the Owner's poles or other plant, or (ii) the Owner requires that any work on the Owner's poles or other plant be performed by employees, contractors, subcontractors or agents of the Owner at the Licensee's expense, or (iii) the Owner requires that any work on the Owner's poles or other plant be stopped as a consequence of unsafe work practices and, at any time thereafter, any work is performed on the Licensee's behalf on the Owner's poles or other plant by an unapproved employee, contractor, subcontractor or agent, or by any Person who is not an employee, contractor, subcontractor or agent of the Owner, or prior to receipt of written notice to resume work, as applicable, the Owner may terminate this Agreement immediately, in which event the provisions in Sections 16.11 and 16.12 shall apply.

- 9.13 The Licensee shall pay the Owner an administrative fee as specified in Section 11.06 for each Application submitted by the Licensee to the Owner to cover the Owner's costs associated with the review and processing of such Applications, whether or not the Application is approved or denied by the Owner. This administrative fee will cover:
- (i) the cost of having an employee or contractor of the Owner attend at the location of the Owner's poles designated in the Application submitted for Approval to determine what, if any, Make-Ready Work may be required to the Owner's poles or equipment to accommodate the Proposed Attachment; and
  - (ii) the cost of reviewing and processing the Application.

- 9.14 In addition to the other fees payable hereunder, the Licensee is solely responsible for all of the costs associated with Affixing, operating and maintaining the Attachments of the Licensee (and the removal of Licensee's Attachments). Without limiting the generality of the foregoing, the Licensee is responsible for:
- (i) the cost of preparing an estimate for any Make-Ready Work to the Owner's poles or equipment that may be required to accommodate the Attachments of the Licensee;
  - (ii) the cost of acquiring easements, if applicable;
  - (iii) the cost of effecting such Make-Ready Work to the Owner's poles or equipment subject to Section 7.10(iii);
  - (iv) the cost of Affixing, operating and maintaining its Attachments;
  - (v) the cost of cleaning up the site around each pole where the Licensee has Affixed its Attachments and thereafter ensuring safe disposition of all materials;
  - (vi) the cost for data entry of field Attachments into the Owner's Master database based on the joint field inspections specified in Section 9.19, which shall be shared proportionately among the licensees participating in the joint field inspections based on the number of attachments of each licensee;
  - (vii) the cost of any inspector appointed by the Owner to supervise the Licensee's work on the Owner's poles or other plant;
  - (viii) the cost of conducting an inspection and certification of the completed work in accordance with Section 8 of Ontario Regulation 22/04; and
  - (ix) the cost of any other reasonable expenses associated with this Agreement.
- 9.15 The Owner may, at its discretion, require that an employee or contractor of the Owner be present when the Licensee is Affixing, Rearranging, maintaining 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 seven (7) days written notice prior to the start of any such work and to advise the Owner of the expected completion date for such work, and agrees to pay to the Owner the costs of such employee or contractor that may be reasonably necessary for the carrying out of the provisions of this Article, and shall comply in a timely fashion with all directions or instructions received from the Owner's employee or contractor.
- 9.16 The Licensee shall notify the Owner within seven (7) days when the Affixing, Rearranging, maintaining or removal of its Attachments is complete so that the Owner may conduct an inspection and certification of the completed work related to such Attachments in accordance with Section 8 of Ontario Regulation 22/04, and verify that such work has been completed in accordance with all Applicable Laws. The Licensee agrees to pay to the Owner the costs of

such employee or contractor of the Owner that may be reasonably necessary for the carrying out of the provisions of this Article, and shall comply in a timely fashion with all directions or instructions received from the Owner's employee or contractor.

- 9.17 The Licensee agrees to provide the Owner with "as constructed" drawings of the Attachments within thirty (30) days of the completion of the Affixing, Rearranging, or maintaining of Licensee's Attachments or removal thereof.
- 9.18 The Owner shall submit an invoice or invoices to the Licensee for the costs provided for in this Article and the Licensee shall pay the amount thereof within thirty (30) days of the date of such invoice or invoices. If the Licensee fails to pay any invoice within thirty (30) days of the invoice date, the provisions of Article 13 apply and the Owner may exercise any or all of its rights in Article 13.
- 9.19 In order to ensure the accuracy and completeness of existing Permits and the Owner's Master database, each Party shall participate in a joint field inspection at intervals mutually agreed upon, but at least once each five years at their expense. The field inspection cycles are to be conducted based on the boundaries of the former utilities for Scarborough, North York, Etobicoke, York, East York and the former City of Toronto. Any discrepancies between the field conditions found and the Permits will be corrected and a new Application to reflect the actual field conditions will be submitted by the Licensee for Approval, subject to the terms of this Agreement, in particular Article 7. If the new Application 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, at the Owner's option, remove the Attachments in question in accordance with Section 16.07.
- 9.20 During the Term, the Licensee agrees to provide the Owner with a report, on December 31 of each year for which it has Attachments Affixed to the Owner's poles or In-Span, describing in detail all of the Owner's poles supporting the Licensee's Attachments as well as a description of Licensee's Attachments that have been removed and the date of such removal (the "Statement of Annual License Fees List"). The Licensee agrees that the Owner may revise the Statement of Annual License Fees List based on the Owner's records of Permits issued to the Licensee. Every reasonable effort shall be made by the Owner to ensure its Master database is current and that the "Statement of Annual License Fees List" with regards to the fees payable by the Licensee hereunder based on the Licensee's Attachments is accurate. The totals shown on the "Statement of Annual License Fees List" shall be accepted by the Licensee in good faith. Any dispute on the numbers shall be settled later between the engineering staff of the Licensee and the Owner, with all modifications (if any) reflected on the next year's "Statement of Annual License Fees List". If any inaccuracies in the "Statement of Annual License Fees List" results in an underpayment of fees hereunder by Licensee, the amount owing by the Licensee to the Owner shall be due upon invoicing therefor by the Owner. If any inaccuracies in the "Statement of Annual License Fee List" results in an overpayment of fees hereunder by Licensee, the Owner shall provide the

Licensee with a credit for the amount of the overpayment on the next year's "Statement of Annual License Fees List".

- 9.21 The Licensee agrees to place markers on its Cables that are Affixed to poles of the Owner following the execution of this Agreement in a manner acceptable to the Owner to assist in field identification of ownership of attachments made by various permitted users of the Owner's poles. As a minimum, these markers shall be placed on the Cable at all Cable Risers/Dips and at every second pole. The Licensee agrees to identify existing Cables that were attached to the poles of the Owner before the execution of this Agreement with markers as required above during the Licensee's routine network service, maintenance, rebuild and/or audit activities, and shall complete such identification by the end of the Initial Term of this Agreement.
- 9.22 At all times the Attachments shall remain the property of the Licensee, and the poles to which such Attachments are Affixed shall remain the property of the Owner, unless such Attachments are sold by the Licensee or such poles are sold by the Owner.
- 9.23 On all new or reconstructed pole lines, Joint Anchorage shall be discontinued regardless of who owns the pole line. Each Party shall be responsible to install and maintain its own separate anchoring system, as may be required, in accordance with the Standards. 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. No liability may be placed on the other Party for a Party's failure to verify the adequacy of such anchorage.

#### **ARTICLE 10 - LINE CLEARING**

- 10.01 The trimming or removing of trees, underbrush or any other items as required to establish clearance for the Licensee's Attachments shall be the sole responsibility of the Licensee. However, the Licensee and Owner may, by mutual consent, make arrangements regarding provision of tree trimming or line clearing services. 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, at the expense of the Licensee and the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments for any damages to Licensee's Attachments as a result thereof. The Owner shall submit an invoice to the Licensee for these expenses and the Licensee shall pay such amount within thirty (30) days of the date of the invoice. If the Licensee fails to pay any invoice within thirty (30) days of the invoice date, the provisions of Article 13 apply and the Owner may exercise any or all of its rights in Article 13.

#### **ARTICLE 11 - FEES**

- 11.01 During the Term, the Licensee shall pay to the Owner pole rental fees equal to the sum of the Annual Pole Rental Fee and the Quarterly Pole Rental Fee (collectively, the "Pole Rental Fees") in accordance with Sections 11.02, 11.03, and 11.04.
- 11.02 During the Term, the Licensee shall pay to the Owner an annual pole rental fee ("Annual Pole Rental Fee") determined by multiplying the total number of Poles in Use as at December 31 of the calendar year immediately prior to the calendar year in respect of which the fee is being paid ("Pole Billing Year") times the Pole Rental Rate in effect as at January 1 of the Pole Billing Year. The Owner shall provide the Licensee with an invoice for the amount owing for the Annual Pole Rental Fee in January of each Pole Billing Year.
- 11.03 The "Pole Rental Rate" shall be \$22.35 per Pole in Use per calendar year or such higher amount approved or set from time to time by the Ontario Energy Board ("OEB") or another authority with jurisdiction over the Owner to set pole rental rates. If the OEB or such other authority approves or sets a new Pole Rental Rate, such new Pole Rental Rate shall be effective as at the effective date specified by the OEB or other authority, or if no such effective date is specified, shall be effective as of the first of the month immediately following the approval or setting of a new Pole Rental Rate.
- 11.04 In addition to the Annual Pole Rental Fee payable pursuant to Section 11.02, during the Term the Licensee shall pay to the Owner, in accordance with this Section 11.04, a pole rental fee for the Pole Billing Year determined by multiplying the total number of Poles in Use for which the Licensee has been issued a Permit(s) to Affix its Proposed Attachments during each calendar quarter of such Pole Billing Year times the Pole Rental Rate then in effect (the "Quarterly Pole Rental Fee"). For greater certainty, the Quarterly Pole Rental Fee shall only apply to poles of the Owner, other than Clearance Poles, to which the Licensee had not Affixed any Attachments in accordance with a Permit(s) or for which Licensee had not been issued any Permits to Affix Proposed Attachments thereon prior to the relevant calendar quarter. The Owner shall provide the Licensee with an invoice for the Quarterly Pole Rental Fees for each calendar quarter in the month immediately after the calendar quarter in which the Permits in question were issued.
- 11.05 In the event the Owner is required to pay any fees to any municipality for use of municipal rights-of-way, the Owner may recover such fees from the Licensee in proportion to Licensee's use of the Owner's poles based on the number of Poles in Use in such municipal rights-of-way, as determined by the Owner in its sole discretion ("Municipal Access Fees"). The Licensee shall pay the Owner for the Municipal Access Fees within thirty (30) days of the date of the invoice issued by the Owner to the Licensee therefor.
- 11.06 In addition to the Pole Rental Fees and, if applicable, Municipal Access Fees, under this Article 11, the Licensee shall pay to the Owner a one-time, non-refundable administrative fee per Application submitted by the Licensee to the Owner in accordance with Article 7. This current administrative fee shall be \$200.00 per Application, and may be increased annually thereafter by the higher of (i) two percent (2%) and (ii) the Consumer Price Index (the "Escalation Rate"). The Owner shall provide the Licensee with a separate invoice for



the administrative fees incurred in each calendar quarter in the month after the calendar quarter to which such administrative fees apply.

- 11.07 The Licensee shall also pay the Owner for any costs incurred by the Owner in performing any Bonding for the Licensee at the Licensee's request. On or about January 1 of each year of the Term, the Licensee shall submit to the Owner a purchase order in an amount acceptable to the Owner to cover the costs of any Bonding that may be performed by the Owner for the Licensee in that year. The Owner will invoice against such purchase order as such Bonding is performed by the Owner for the Licensee, and the Licensee shall pay such invoice within thirty (30) days of the invoice date.
- 11.08 All amounts owing under this Agreement shall be due within thirty (30) days of the invoice date. All amounts on invoices rendered by the Owner hereunder that are outstanding for longer than 30 days from the invoice date will be subject to interest at one and one-half percent (1½%) compounded monthly (19.56% annually). The interest shall run from the due date of payment of the invoice until the date payment is received by the Owner. If the Licensee fails to pay any invoice within thirty (30) days of the due date, the provisions of Article 13 apply and the Owner may exercise any or all of its rights in Article 13.

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

- 12.01 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 in a Permit to which the Attachments of the Licensee are Affixed, the Owner shall notify the Licensee of the requirement to remove or relocate designated Attachments, whereupon the Licensee, at the time specified in the notice, shall, at the sole cost and expense of the Licensee, remove its Attachments and, except when the notice specifies to the contrary, the Licensee may transfer the Attachments to a new location on the applicable pole or to a new pole, as the case may be, as approved by the Owner 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 and the termination provisions of this Agreement as related to the Applicable Permit would apply. The Owner will endeavour to give the Licensee at least ninety (90) days prior written notice of any such removal, replacement or change in location of a pole, but in case of emergency, as defined by the Owner, the Owner may give no notice, or such shorter notice as the Owner deems expedient and 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 Attachments after being notified by the Owner, the Owner, or its designate, may remove or relocate the Attachments at the Licensee's expense, and, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments for any damage caused to the Licensee's Attachments as a result thereof.

- 12.02 The Licensee agrees that it will Rearrange or remove temporarily any of its Attachments whenever notified so to do by the Owner, so as to accommodate the use of the pole(s) by the Owner or by another Person licensed by the Owner to Affix its equipment to the Owner's poles. Such Rearrangement or temporary removal of the Licensee's Attachments is to be carried out within ninety (90) days of the date of the notice from the Owner, provided, however, that in case of an emergency, as defined by the Owner, the Owner may give such shorter notice as the Owner deems expedient and the notice, if any, may be given verbally. Where the Licensee fails to remove or Rearrange Licensee's Attachments within ninety (90) days of the date of notice from the Owner, or in emergency situations, where less than ninety (90) days notice is given, fails to remove or Rearrange Licensee's Attachments within such period as may be specified in the notice, the Owner, or its designate, may remove or relocate Licensee's Attachments at the expense of the Licensee, and, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments for any damage caused to Licensee's Attachments as a result thereof.
- 12.03 All temporary Rearrangements, relocations or Minor Relocations of Attachments for the benefit of the Owner shall be performed at Licensee's expense, and all temporary Rearrangements, relocations or Minor Relocations of Attachments by the Licensee for the benefit of another Person licensed by the Owner shall be at the expense of such other licensee.
- 12.04 To expedite its own work, the Owner may perform Minor Relocations with at least thirty (30) days notice to the Licensee, or no notice in the event of an emergency, provided that the Attachment to be relocated is not on a pole supporting a CableRiser/Dip of the Licensee, Standards and safety are maintained, the Attachment is not relocated to a pole on private property for which Licensee would require an easement or third party permit and the Attachment is attached to the new location on a pole of the Owner in a manner similar to how the Attachment was attached in its original location. If the Owner relocates any of the Licensee's Attachments, the Owner will notify the Licensee of the Minor Relocation after such Minor Relocation. Such Minor Relocations shall be performed at the Licensee's expense.
- 12.05 If the Licensee fails to comply with a notice given pursuant to either Section 12.01 or Section 12.02, 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 per month where there are Attachments that have not been removed or relocated as required under Section 12.01 or Section 12.02 until such time as the Licensee has fully complied with the Owner's notice. The Licensee acknowledges and agrees that such removal charge of \$100.00 per pole per month is a genuine estimate of the damages the Owner would suffer as a result of such delayed removal or relocation and therefore constitutes liquidated damages and not a penalty. In addition to the foregoing and any other rights of the Owner hereunder, the Owner may carry out the work with respect to the Licensee's Attachments, as specified in the notice, at the expense of the Licensee, and,

notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damage to Licensee's Attachments as a result of the Owner performing such work.

- 12.06 Where the space occupied by the Attachments of the Licensee causes the Owner to replace an existing pole with a higher pole to accommodate additional equipment or attachments of the Owner, then the Licensee shall pay the Owner a sum equal to all of the costs associated with the replacement (as determined by the Owner), less the value in place of the removed pole, together with the cost of transferring the existing attachments of the Owner and other permitted users of the pole to the new pole.
- 12.07 Where the presence of the Attachments of the Licensee causes the Owner to relocate or modify its plant for its own purposes, then the Licensee shall pay the Owner the cost of such relocation or modification.
- 12.08 The Owner may, in its discretion, require that an employee or contractor of the Owner be present when the Licensee is removing, replacing or relocating Licensee's Attachments on the Owner's poles or other plant or Overlashed thereon so as to ensure that the work is carried out in accordance with the terms of this Agreement.
- 12.09 All costs charged to the Licensee for carrying out the work referenced in this Article 12 shall be as determined by the Owner and payable by the Licensee in accordance with Article 13 of this Agreement.

### **ARTICLE 13 - PAYMENT FOR WORK**

- 13.01 Upon completion of the work provided for in Articles 9 and 12 or other work as may be required by the Owner and contemplated by this Agreement, the Owner will render an invoice or invoices to the Licensee for the cost of performing such work and the Licensee shall pay the amount of the invoice within thirty (30) days of the date of the invoice.
- 13.02 All invoices that are outstanding for longer than thirty (30) days from the invoice date will be subject to interest at the rate of one and one-half percent (1 ½% ) compounded monthly (19.56% annually). The interest shall run from the due date for payment of the invoice until the date the Owner receives payment.
- 13.03 In addition to any other rights the Owner may have hereunder, if the Licensee fails to pay any amount hereunder within thirty (30) days of receipt of notice that the amount owing is overdue, the Licensee shall forthwith, at the request of the Owner, but at the expense of the Licensee, remove its Attachments covered by the invoice. If the Licensee fails to remove the designated Attachments as required by the Owner within thirty (30) days of the Owner's request to do so, or within such other time period as agreed between the Parties, the Owner may, at the expense of the Licensee, sell, remove or dispose of Licensee's Attachments specified in the notice, provided, however, that the Owner shall give the Licensee at least

sixty (60) days prior written notice of its intention to sell or dispose of Licensee's Attachments. If the Owner sells or disposes of any of the Licensee's Attachments as permitted herein, the Owner may apply the amount received therefor against any costs and expenses incurred by the Owner in removing Licensee's Attachments, if applicable, and any other amounts owing by the Licensee to the Owner, and the Owner shall pay the balance of the proceeds, if any, to the Licensee. In addition, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments for any damage caused to Licensee's Attachments as a result thereof. The Owner may also pursue any and all remedies it deems appropriate to recover the outstanding amounts owed to it by the Licensee.

- 13.04 All amounts properly payable by the Licensee to the Owner pursuant to this Agreement shall be non-refundable, regardless of whether the Licensee's Attachments remain Affixed to the Owner's poles, or In-span, or Overlashed thereon.

#### **ARTICLE 14 -LIABILITY, DAMAGE AND INSURANCE**

- 14.01 The Licensee does hereby assume all risk of loss or damage suffered by: (i) Licensee or any of its Representatives, (ii) by any Person to which Licensee has leased, sold or otherwise permitted the use of any portion of the Attachments or (iii) by any Person having an interest or claim in the Attachments, arising from any acts or omissions of the Owner or any of its Representatives, or any Person to which Licensee has leased, sold or otherwise permitted the use of any portion of the Attachments, howsoever caused, including damage to or loss of:

- (i) Licensee's Attachments; or,
- (ii) Licensee's services or those of any third party; or,
- (iii) the plant of any third party;

save and except for such loss or damage to the extent caused directly by the gross negligence or willful misconduct of the Owner or any of its Representatives, and, except as aforesaid, does hereby release the Owner and its Affiliates and their respective Representatives from all claims, demands, actions, penalties, damages, losses, judgements and settlements, costs and expenses or any other remedy brought by any Person (collectively "Claims") with respect thereto.

The Licensee does hereby indemnify and save harmless the Owner and its Affiliates and their respective Representatives from all Claims arising out of, or attributable to, any act or omission of Licensee or any of its Representatives, or of any Person to which Licensee has leased, sold or otherwise permitted the use of any portion of the Attachments, or of any Person having an interest or claim in the Attachments, the exercise by the Licensee or any of its Representatives of the permission herein granted or any breach of this Agreement by Licensee or any of its Representatives, including, without limitation, Claims for or in respect of any loss, damage, or injury (including loss of life) to property or persons, including a third party, any Claims against the Owner and/or any of its Affiliates by any Person to whom

Licensee has leased, sold or otherwise permitted the use of any portion of its Attachments, and Claims by customers of Licensee including, without limitation, Claims with respect to the quality or integrity of data, signals or supply transmitted through the Attachments or any interruption or loss of service to customers, save and except for any loss or damage or injury to property or persons to the extent caused directly by the gross negligence or willful misconduct of the Owner or any of its Representatives. Such indemnification shall include, but is not limited to, compensation to the Owner for time required to prepare for and attend hearings, for all legal fees and costs on a substantial indemnity costs basis, and for fees and costs of expert witnesses incurred and for the financial ramifications of any decision made by a court, tribunal or decision maker. If the Owner assumes the defence of any Claim under this Agreement, the Licensee shall make available, at Licensee's cost, to the Owner (i) those of its Representatives whose assistance, testimony or presence is necessary to assist the Owner in evaluating and defending any such Claims; and (ii) all documents, records and other materials in the possession of the Licensee required by the Owner for its use in defending any such Claim; and (iii) will otherwise co-operate on a timely basis with the Owner in the defence of such Claim. The Licensee shall be bound by any determination made with regards to any Claim or any compromise or settlement effected by the Owner under this Agreement. The Licensee shall have the right to assume the defence of any Claim, provided that it provides notice of its intention to do so in a timely manner having regard to all relevant factors including time required to file a defence to the Claim. If the Licensee assumes the defence of a Claim under this Agreement, no compromise or settlement of any such Claim may be made by the Licensee without the Owner's prior written consent.

14.02 Notwithstanding anything to the contrary in this Agreement, neither the Owner nor any of its Affiliates nor any of their respective Representatives shall be liable to the Licensee or to any Person having an interest or claim in the Attachments in connection with this Agreement for loss of use or loss of profits or revenues or business interruption losses or loss of contract or loss of good will or loss of other economic benefits or any other indirect, incidental, special or consequential damages or damages for economic loss whatsoever, including punitive or exemplary damages, arising from any breach of this Agreement, fundamental or otherwise, or from any tortious acts, including the negligence or wilful misconduct of the Owner or any of its Affiliates or any of their respective Representatives.

14.03 The Licensee shall, at all times during the Term, maintain and pay for an insurance policy or policies covering all of its undertakings and, in particular, the following insurance:

- (i) comprehensive general liability insurance and property damage liability insurance coverage on an occurrence basis in an amount of Ten Million Dollars (\$10,000,000.00) for each occurrence involving:
  - a. Bodily Injury Liability
  - b. Broad Form Property Damage Liability
  - c. Personal Injury Liability
  - d. Products and Completed Operations

- e. Blanket Contractual Liability
  - f. Contingent Employer's Liability
  - g. Non-Owned Automobile, including:  
    - Additional Insureds under S.P.F No. 6 (Non-Owned Auto) and S.E.F. No. 96
    - Contractual Liability Endorsement under the S.P.F No. 6 (Non-Owned Auto)
  - h. Legal Liability for Damage to Hired Automobiles Endorsement; and
- (ii) Automobile liability insurance on all owned and non-owned vehicles used in connection with this Agreement and such insurance coverage shall have a limit of not less than Two Million Dollars (\$2,000,000.00) per vehicle, in respect of bodily injury (including passenger hazard) and property damage inclusive of any one accident and mandatory Accident Benefits.

The Licensee's comprehensive general liability insurance and property damage liability insurance shall add the Owner and its Affiliates as additional insureds, and shall contain a severability of interests and cross liability clause. The Licensee shall require the insurers providing the insurance described in this Article to waive any right of subrogation by the insurers against the Owner. The Licensee shall require its insurer to provide the Owner with thirty (30) days advance written notice of any adverse change to, cancellation or termination of Licensee's insurance policy or policies. The Licensee shall furnish to the Owner a certificate of such insurance upon execution of this Agreement, and annually thereafter during the Term or upon renewal of its insurance policies. The Owner shall not be responsible for the payment of any premiums with respect to any such insurance, which shall be the sole responsibility of the Licensee.

- 14.04 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.
- 14.05 During the Term, the Licensee shall promptly notify the Owner of any damage whatsoever to the equipment of the Owner or any third party arising as a result of the Licensee or its employees or contractors Affixing, inspecting, maintaining, changing, repairing or removing any of its Attachments. The Licensee shall be responsible for repairing any such damage at its expense to the satisfaction of the Owner or the third party and in accordance with the instructions of the Owner or the third party, as the case may be, or reimbursing the Owner or the third party, as the case may be, for any costs the Owner or the third party incurs to repair such damage upon receipt of an invoice therefor. The Licensee will also immediately notify the Owner of any claims or notices of claim received by the Licensee related in any way to its Attachments.
- 14.06 During the Term, the Owner shall promptly notify the Licensee of any damage whatsoever to the Licensee's Attachments arising as a result of the Owner or its employees or contractors performing work on a pole to which Licensee's Attachments are Affixed.
- 14.07 Except as otherwise expressly stated herein, any work undertaken by the Owner as a result of this Agreement shall be at the expense of the Licensee, and the Owner shall not be liable to

the Licensee or to any Person having an interest or claim in the Attachments for any damages in connection with such work.

- 14.08 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. The Owner will make reasonable efforts to provide to the Licensee written notice of its intention to significantly change the foregoing when the Owner has reason to believe that such change would have adverse effects on the Licensee's approved Attachments or the services carried by such approved Attachments or place the Licensee in non-compliance with any Standards. Notwithstanding anything to the contrary in this Agreement, the Owner is not responsible for any adverse affects on the Licensee's Attachments, or the services carried by such Attachments, as a result of any such changes made by the Owner.
- 14.09 The indemnity and limitation of liability provisions under this Article 14 shall survive the termination of this Agreement.

#### **ARTICLE 15 - TERM OF AGREEMENT**

- 15.01 Subject to earlier termination as provided by Article 16 and subject to Section 15.02, the term of this Agreement shall commence on the Effective Date and shall continue through until midnight on December 31, 2014 (the "Initial Term").
- 15.02 After the Initial Term, this Agreement shall be renewed automatically from year to year (each one-year period referred to herein as a "Renewal Term") on the same terms and conditions unless either Party provides the other with written notice as follows: either Party may terminate this Agreement at the end of the Initial Term by providing the other Party with at least three (3) months prior written notice and thereafter with at least three (3) months prior written notice at any time during the applicable Renewal Term. Where such notice is given less than three (3) months before the end of the Initial Term or a Renewal Term, as the case may be, this Agreement shall remain in effect until the end of the three (3) month notice period. The Initial Term and any Renewal Terms hereunder are collectively referred to herein as the "Term".
- 15.03 Each Permit approved by the Owner pursuant to the provisions of this Agreement shall remain in full force from the date of the Approval of the Application for the Permit until the termination of this Agreement or the applicable Permit in accordance with the terms of this Agreement.

#### **ARTICLE 16 - TERMINATION**

- 16.01 In addition to other rights the Owner has to terminate any Permit hereunder, any Permit may be terminated by either Party at any time upon one hundred eighty (180) days notice served in writing upon the other.
- 16.02 In addition to other rights the Owner has under this Agreement to terminate any Permit hereunder, any Permit hereunder may be terminated by the Owner if the pole designated in such Permit is abandoned by the Owner.
- 16.03 The Owner and Licensee may negotiate terms of sale, from the Owner to the Licensee, of a pole abandoned or to be abandoned and no longer used by the Owner. Such a sale will be:
- (i) subject to any existing obligations of the Owner to any Person; and
  - (ii) subject to the consent of the property owner or municipal, regional, provincial or federal government or agency having jurisdiction over said lands.

However, if the pole designated by such Permit is intended to be sold to another Person, the Owner will endeavour to secure the agreement of the purchaser that the Attachments be allowed to continue to be Affixed thereon.

- 16.04 If the condition of sale of any pole pursuant to Section 16.03 cannot be satisfactorily arranged, the Owner may then, by notice in writing at any time, require the Licensee to remove its Attachments Affixed on the poles involved, and the Licensee shall, within ninety (90) days after receipt of said notice, remove such Attachments, at its own expense. The Owner will endeavour to give notice pursuant to this Article no less than 90 days prior to the date upon which the sale or abandonment is to occur. If the Licensee fails to remove the subject Attachments within ninety (90) days of receipt of notice the Owner may, at the expense of the Licensee, sell, remove or dispose of Licensee's Attachments specified in the notice, provided, however, that the Owner shall give the Licensee at least sixty (60) days prior written notice of its intention to sell or dispose of Licensee's Attachments. If the Owner sells or disposes of any of the Licensee's Attachments herein, the Owner may apply the amount received therefor against any costs and expenses incurred by the Owner in removing Licensee's Attachments, if applicable, and any other amounts owing by the Licensee to the Owner, and the Owner shall pay the balance of the proceeds, if any, to the Licensee. In addition, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments for any damage caused to Licensee's Attachments as a result thereof. The Owner may also pursue any and all remedies it deems appropriate to recover the outstanding amounts owed to it by the Licensee.
- 16.05 In addition to other rights the Owner has under this Agreement to terminate any Permit hereunder, any Permit governed by this Agreement may be terminated or amended by the Owner in accordance with Section 8.05.



- 16.06 If the Licensee fails or neglects at any time to fully perform, observe and keep all the covenants, terms and conditions herein contained, including, without limitation, a default at any time in the payment of fees referred to in this Agreement or a failure to deliver or maintain security in strict accordance with Article 5, then the Owner will notify the Licensee in writing of such default and the Licensee shall correct such default within (i) thirty (30) days of receipt of such notice or such period of time otherwise required under this Agreement, or (ii) sooner in the event of an emergency, as determined by the Owner, or (iii) within such period of time as agreed to in writing by the Owner and the Licensee, failing which the Owner may forthwith terminate this Agreement, the privileges hereby granted and any Permit governed by this Agreement by notice to the Licensee.
- 16.07 In addition to the Owner's termination rights hereunder, the Owner may order the removal of any of the Licensee's Attachments that have been installed without a Permit or not in compliance with the applicable Permit. In such circumstances, the Licensee shall remove Licensee's Attachments in accordance with the notice or order of the Owner. If the Licensee fails to comply promptly with any such notice or order, the Owner may sell, remove or dispose of Licensee's Attachments specified in the notice or order at the expense of the Licensee, provided, however, that the Owner shall give the Licensee at least sixty (60) days prior written notice of its intention to sell or dispose of Licensee's Attachments. If the Owner sells or disposes of any of the Licensee's Attachments as permitted herein, the Owner may apply the amount received therefor against any costs and expenses incurred by the Owner in removing Licensee's Attachments, if applicable, and any other amounts owing by the Licensee to the Owner, and the Owner shall pay the balance of the proceeds, if any, to the Licensee. In addition, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments for any damage caused to Licensee's Attachments as a result thereof.
- 16.08 The Owner may forthwith terminate this Agreement if:
- (i) the Licensee Affixes Attachments, except Service Drops for which a Permit is not required under this Agreement, without a Permit issued in accordance with the terms of this Agreement;
  - (ii) the Licensee Affixes Attachments, except Service Drops for which a Permit is not required under this Agreement, in a manner that does not comply with the terms in the Permit(s) issued for such Attachments;
  - (iii) a resolution is passed, or an order is made or documents are filed at an office of public record for the dissolution, termination of existence, or liquidation or winding-up of the Licensee;
  - (iv) in the reasonable opinion of the Owner, a material change has occurred in the creditworthiness, financial condition or ongoing business of the Licensee that may adversely affect its ability to fulfil its financial obligations hereunder, unless security

satisfactory to the Owner has been or is posted by the Licensee in accordance with Article 5;

- (v) a receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Licensee or any of its property is appointed by any government authority, and such receiver, manager, receiver-manager, liquidator, monitor or trustee is not discharged within thirty (30) days of such appointment; or, if by decree of any government authority, the Licensee is adjudicated bankrupt or insolvent, or any substantial part of its property is taken, and such decree is not discharged within thirty (30) days after the entry thereof; or a petition to declare bankruptcy or to reorganize the Licensee pursuant to any applicable law is filed against the Licensee and is not dismissed within thirty (30) days of such filing; or
- (vi) the Licensee files, or consents to the filing of, a petition in bankruptcy or seeks, or consents to, an order or other protection under any provision of any legislation relating to insolvency or bankruptcy ("Insolvency Legislation"); or, files, or consents to the filing of, a petition, application, answer or consent seeking relief or assistance in respect of itself under any provision of any Insolvency Legislation; or files, consents to the filing of, an answer admitting the material allegations of a petition filed against it in any proceeding described herein; or makes an assignment for the benefit of its creditors; or admits in writing its inability to pay its debts generally as they become due; or consents to the appointment of a receiver, trustee, or liquidator over any, or all, of its property.

- 16.09 In addition to the Owner's right to terminate this Agreement or any Permit hereunder, if the Licensee fails to pay any fees under this Agreement in accordance with Section 16.06, the Owner may draw on any letter of credit then held by or for the benefit of the Owner as a security deposit pursuant to Article 5 an amount equal to the Pole Rental Fees or other charges in default or other expenses owing to the Owner.
- 16.10 The Licensee acknowledges and agrees that if the Owner or the Licensee terminates this Agreement or any Permit in accordance with the terms of this Agreement, any fees paid by the Licensee hereunder in respect of any terminated Permit shall be non-refundable. The termination of a Permit pursuant to this Agreement shall not be deemed a termination of this Agreement unless such Permit is the last remaining or only Permit issued under or governed by this Agreement, in which case the termination of the Permit will be deemed a termination of this Agreement, subject to the Licensee fulfilling all of its outstanding obligations. If the Owner terminates a Permit hereunder, the Owner shall provide the Licensee with written notice of such termination and the reasons therefor.
- 16.11 Upon the termination, for any reason, of this Agreement or of a Permit pursuant to this Agreement, the Licensee, at its expense, shall forthwith remove Licensee's Attachments covered by this Agreement, or the terminated Permit, as the case may be, and ensure that the site where the removal occurred is restored to its original condition, save for ordinary wear and tear, that it was in before the Attachment was made, and any damage caused by Licensee

or any of its Representatives is repaired forthwith to the Owner's satisfaction. If the Licensee fails to remove Licensee's Attachments as required by the Owner within sixty (60) days of receipt of such notice, the termination of this Agreement or of a Permit, as the case may be, or within a shorter period of time in the event of an emergency, as determined by the Owner, the Owner may, at the expense of the Licensee, sell, remove or dispose of Licensee's Attachments specified in the notice, provided, however, that the Owner shall give the Licensee at least sixty (60) days prior written notice of its intention to sell or dispose of Licensee's Attachments. If the Owner sells or disposes of any of the Licensee's Attachments as permitted herein, the Owner may apply the amount received therefor against any costs and expenses incurred by the Owner in removing Licensee's Equipment, if applicable, and any other amounts owing by the Licensee to the Owner, and the Owner shall pay the balance of the proceeds, if any, to the Licensee. In addition, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments for any damage caused to Licensee's Attachments as a result thereof. The Owner may also pursue any and all remedies it deems appropriate to recover the outstanding amounts owed to it by the Licensee.

- 16.12 The Parties agree that all obligations flowing from this Agreement or a Permit governed by this Agreement, including, without limitation, the indemnities and releases provided by the Licensee to the Owner, will continue beyond the date of termination of this Agreement or any Permit, until the obligations are satisfied in full. Any rights that a Party may have arising out of either the termination of this Agreement or any Permit or the event giving rise to the termination of this Agreement or any Permit shall survive the termination of this Agreement or any Permit.

#### **ARTICLE 17 - EXISTING RIGHTS OF OTHER PARTIES**

- 17.01 If the Owner has previously granted permission to others, not Parties to this Agreement, by contract or otherwise, to use any poles owned by it and not covered by this Agreement, then nothing herein contained shall be construed as affecting such permission, if and when this Agreement is made applicable to such poles. The Owner hereto shall have the right, by contract or otherwise, to continue and extend such existing permission.
- 17.02 Subject to the rights conveyed herein, the Licensee agrees that this Agreement shall not prevent or limit the right of the Owner to grant to others, not Parties to this Agreement, the right to occupy its poles.

#### **ARTICLE 18 - VESTED RIGHTS**

- 18.01 It is understood and agreed that neither this Agreement, nor the Approval granted by the Owner to use its poles or other plant, shall confer upon the Licensee any vested rights, or franchise, by implication or otherwise, to use the said poles or plant and no further or additional privileges, or rights, if any, than are expressly provided for by this Agreement shall be acquired and all such privileges and rights, if any, shall come to an end if and when

a notice to terminate this Agreement has been given or served by the Owner. However, the obligations of the Licensee will continue until completed to the satisfaction of the Owner.

- 18.02 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 Licensee's Attachments, other than as provided for in this Agreement.

#### **ARTICLE 19 - NOTICES**

- 19.01 Unless otherwise provided herein, any notice or other communication to a Party under this Agreement shall be in writing and given or served by personal delivery or courier or by registered mail, postage prepaid, or by facsimile addressed as follows:

TO: TORONTO HYDRO-ELECTRIC SYSTEM LIMITED  
500 Commissioners Street, 3<sup>rd</sup> Floor  
Toronto, Ontario  
M4M 3N7  
Attn: Manager, Investment Delivery

Fax No: (416) 542-2650

With a copy to:

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED  
14 Carlton Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5B 1K5  
Attn: Lawrence Wilde  
Vice-President, General Counsel & Corporate Secretary

Fax No: (416) 542-2540

**TO: DAScom Inc.  
27 Fima Crescent  
Toronto, Ontario M8W 3R1  
Attn: President**

**Fax No: (416) 752-4243**

**With a copy to:**

**Fraser Milner Casgrain  
Suite 1240 99 Bank Street  
Ottawa, Ontario K1P 1H4  
Attn: Kirsten Embree**

**Fax No: (613) 799-1209**

Any notice or other communication so mailed shall be deemed to have been given or served on the fifth Business Day after it is deposited in any post office in Canada. Any notice or other communication transmitted by facsimile shall be deemed to have been given or served on the first Business Day after transmission (provided the transmission is evidenced by documented proof of proper fax transmittal). In the event that mail delivery is impeded for any reason, notice shall be given by personal delivery or courier or by facsimile. Any such notice or other communication to a Party may also be served in person by delivering the same to a responsible person in the offices of the Parties to be served at the above address, and such delivery by hand shall be deemed received on the date delivered. Either Party may change its address and/or contact for service at any time by giving written notice to the other as set forth herein.

#### **ARTICLE 20 - ASSIGNMENT**

- 20.01 The Licensee agrees that it will not assign its interests in this Agreement, the privileges herein granted, or any Permit, or sell any Attachments, without the prior written consent of the Owner, not to be unreasonably withheld. Any such approved assignment or sale shall only take effect once the assignee or purchaser, as the case may be, has entered in an agreement directly with the Owner on terms and conditions satisfactory to the Owner, including covenants by the assignee or purchaser to the Owner to perform, observe and keep every covenant, provision and condition of this Agreement to be performed, observed and kept by the Licensee.
- 20.02 Licensee shall include as a condition of any agreement for the sale any of Licensee's Attachments, if Licensee's Attachments are to remain installed on the Owner's poles or other plant or Overlashed thereon, a requirement that the sale is subject to the Owner's prior written approval, and will not be effective until the purchaser has entered into an agreement

directly with the Owner on terms and conditions satisfactory to the Owner governing the terms on which such cables and equipment of the purchaser may be installed on the Owner's poles or other plant, or overlashed to existing cable, Messenger or Strand, or other equipment of the Purchaser, the Licensee, the Owner or a third party on a pole of the Owner or In-Span.

- 20.03 Notwithstanding Sections 20.01 and 20.02, the Licensee may sell or lease individual strands of fibre in cable Affixed to the Owner's poles or other plant or Overlashed thereon provided that the Licensee shall advise the purchaser or lessee of such strands that the underlying rights granted hereunder are for a fixed term, and provided that the Licensee does not confer any rights to the use of the underlying rights contrary to the terms of this Agreement or beyond the Initial Term, subject to extension or renewal as provided for hereunder, and provided that such strands shall continue to be subject to all of the terms and conditions of this Agreement and shall be maintained and repaired by the Licensee and the Representatives of the purchaser or lessee shall not have access to the Owner's poles or other plant.
- 20.04 The Owner may assign this Agreement at any time and its rights and obligations thereunder to any Person without Licensee's consent provided that the assignee agrees to be bound by the obligations of the Owner in this Agreement and the Owner notifies the Licensee in writing of any such assignment. Upon any assignment of this Agreement by the Owner, the Owner shall be released of all of its obligations under this Agreement except for any obligations of the Owner outstanding as of the effective date of such assignment.
- 20.05 The Owner may grant or permit to exist security interests in its rights under this Agreement and its poles and other supporting structures and equipment of the Owner without the Licensee's consent and without notice to the Licensee.
- 20.06 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 and permitted assigns.

#### **ARTICLE 21 - INTERPRETATION**

- 21.01 The terms of this Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. In the event that any court or other authority with jurisdiction over the subject matter hereof declares any portion of this Agreement invalid, illegal or unenforceable, to the extent permitted by law, the remainder of this Agreement shall remain in full force and effect.

#### **ARTICLE 22 - ENTIRE AGREEMENT**

- 22.01 This Agreement and any permits issued hereunder or governed by this Agreement, as may be amended from time to time, constitute the entire agreement between the Parties relating to the Affixing of the Licensee's Attachments, and supersedes all previous agreements and understandings, oral and written, with regards to the subject matter herein.. All previous pole

attachment agreements between the Parties or predecessor entities thereto are, notwithstanding the provisions thereof, hereby terminated as of the Effective Date. Notwithstanding the foregoing, any permit issued under any prior agreement between the Parties, or predecessor entities thereto, which permit has not been terminated by the Owner, or predecessor entity of the Owner, shall, notwithstanding anything contained in such prior agreement, remain in force and effect as if such permit had been issued pursuant to this Agreement, on the express condition that the Licensee satisfies all of the terms of this Agreement. This Agreement and any permit governed by this Agreement may only be amended by written agreement signed by the authorized representatives of the Parties.

#### **ARTICLE 23 - HEADINGS**

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

#### **ARTICLE 24 - LEGISLATIVE REFERENCES**

- 24.01 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 25 - WAIVER**

- 25.01 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 such terms or conditions, but the same shall be and remain at all times in full force and effect. No waiver of any provision of this Agreement shall be valid unless in writing and signed by an authorized officer or employee of the Party waiving the protection of the provision in question, and such waiver shall not extend to any provision, matter or occurrence not specified by such Party.

#### **ARTICLE 26 - ENVIRONMENTAL OBLIGATIONS**

- 26.01 The Licensee hereby accepts land and plant of the Owner on an "as is" basis and hereby waives against the Owner and its Affiliates and their respective Representatives, all rights and recourse of any nature whatsoever in respect of any defects therein. The Owner makes no representation or warranty with respect to the condition, nature, composition, use (past, present or future) of such land or plant.

- 26.02 The Licensee shall comply with the provisions of any federal, provincial or municipal environmental laws that during the Term shall become applicable to the land, plant or Attachments pertaining to 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 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.
- 26.03 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. In the event that the Licensee fails to comply with the above to the satisfaction of the Owner, the Owner may undertake any such work that it considers necessary to correct any environmental contamination that may have resulted from the Licensee's Attachment and all expenses incurred by the Owner, either directly or indirectly, shall be payable by the Licensee upon receipt of the Owner's invoice therefor.
- 26.04 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 the termination of this Agreement.

#### **ARTICLE 27 - DISPUTE RESOLUTION**

- 27.01 Except for disputes related to Article 28, all disputes between the Parties arising out of or related to this Agreement shall be resolved in accordance with this Article 27. The Parties shall attempt in good faith to resolve any dispute between the Parties arising under this Agreement. If the Parties are unable to resolve the dispute within thirty (30) days of the date the dispute arose, either Party may submit the dispute to binding arbitration as set forth below. The Parties shall submit any arbitration under this Article 27 to a single arbitrator agreed upon by both Parties. If the Parties cannot agree upon a single arbitrator within ten (10) days after the dispute is referred to arbitration, each Party shall within ten (10) more days choose one individual who shall sit on a three-member arbitration panel. The two arbitrators appointed shall name the third arbitrator within ten (10) days or, if they fail to do so within that time period, either Party may make application to a court of competent jurisdiction for appointment of the third arbitrator. Any arbitrator selected to act under this Agreement shall be qualified by education, training and experience to pass on the particular question in dispute and shall have no connection to either of the Parties other than acting in previous arbitrations. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The arbitration shall be conducted in the City of Toronto, Ontario unless the Parties agree otherwise. The decisions of the arbitration tribunal shall be made in writing and shall be final and binding on the Parties as to the questions submitted and the Parties shall have no right of appeal therefrom. All costs and expenses relating to a dispute which is finally determined or settled by arbitration, including reasonable legal fees, will be borne by the Party determined to be liable in respect of such



dispute; provided, however, that if complete liability is not assessed against only one Party, the Parties will share the total costs in proportion to their respective amounts of liability so determined. The Parties agree to keep all details of the arbitration proceeding and the arbitral award strictly confidential. Notwithstanding the provisions to arbitrate any dispute hereunder, either Party may seek from a court any equitable relief (including, without limitation, injunctive relief) that may be necessary to protect such Party's rights. This Article 27 shall survive the termination of this Agreement.

## **ARTICLE 28 -CONFIDENTIALITY**

- 28.01 Except as permitted herein, each Party shall keep in strict confidence and not disclose any of the terms of this Agreement or any information or data in any form disclosed to or obtained by one Party (the "Receiving Party") in connection with this Agreement (collectively, "Confidential Information") from the other Party (the "Disclosing Party") to any Person without the Disclosing Party's prior written consent. Notwithstanding the foregoing Confidential Information shall not include any information or data that
- (a) is in the public domain at the time of its disclosure to the Receiving Party or which thereafter enters the public domain otherwise than by any breach of this Agreement;
  - (b) is already known to or in the possession of the Receiving Party at the time of its disclosure by the Disclosing Party as evidenced by the Receiving Party's records; or
  - (c) is lawfully acquired at any time by the Receiving Party without restrictions from a third party without breach of confidentiality by such third party.
- 28.02 The Receiving Party may disclose such Confidential Information to any of the Representatives of the Receiving Party or any of its Affiliates who agree to be bound by the obligations of confidentiality herein and who have a reasonable need to know such Confidential Information in the course of their duties for the Receiving Party but only for the purposes of the Receiving Party exercising its rights and obligations under this Agreement. Notwithstanding the foregoing, if the Receiving Party is required by law to disclose any Confidential Information to a court, government department or agency or regulatory body, or any other Person, the Receiving Party may so disclose; provided that it shall, to the extent permitted by law, first inform the Disclosing Party of the request or requirement for disclosure to allow an opportunity for the Disclosing Party to apply for an order to prohibit or restrict such disclosure.
- 28.03 The Receiving Party shall be responsible for any breach of the obligations of confidentiality under this Agreement by it and by any Person to whom it discloses any Confidential Information. The Receiving Party agrees that the Disclosing Party would be irreparably injured by a breach of the obligations of confidentiality under this Agreement by the Receiving Party, or by any Person to whom it discloses any Confidential Information, and that monetary damages would not be a sufficient remedy. Therefore, in such event, the

Disclosing Party shall be entitled to all available equitable relief, including injunctive relief without proof of actual damages, as well as specific performance. Such remedies shall not be deemed to be exclusive remedies for a breach of the obligations of confidentiality under this Agreement but shall be in addition to all other remedies available at law or equity. The obligations of confidentiality under this Agreement shall survive the termination of this Agreement.

#### **ARTICLE 29 - RELATIONSHIP OF THE PARTIES**

- 29.01 Nothing in this Agreement creates the relationship of principal and agent, employer and employee, partnership or joint venture between the Parties. The Parties agree that they are and will at all times remain independent and are not and shall not represent themselves to be the agent, employee or partner or joint venturer of the other.

#### **ARTICLE 30 - FORCE MAJEURE**

- 30.01 Except for the payment of any monies or the provision of any security as required hereunder, if either Party fails to perform or is delayed in performing any of its obligations hereunder as a result of Force Majeure, the Party affected by Force Majeure (the "Frustrated Party") shall not be deemed to be in breach of this Agreement and shall be relieved of liability with respect to such delay or failure to perform during the continuance of Force Majeure provided that the Frustrated Party shall, as soon as reasonably practicable, give the other Party prompt written notice thereof stating the date and extent of the Force Majeure and the cause thereof, an estimate as to when the Frustrated Party expects to be able to perform its obligations, and, upon cessation of the Force Majeure, takes all reasonable steps to resume the performance of its obligations hereunder. Notwithstanding the foregoing, the settlement of strikes, lockouts or other labour disputes shall be within the discretion of the Frustrated Party. Notwithstanding the terms herein, if a delay or failure to perform as a result of Force Majeure extends beyond ninety (90) days, then either Party may, by written notice to the other Party, terminate any Permit(s) governed by this Agreement affected by Force Majeure, or if the Force Majeure materially affects the Frustrated Party's ability to perform its obligations hereunder, then either Party may terminate this Agreement and any Permit(s) governed by this Agreement.

#### **ARTICLE 31 - TIME OF ESSENCE**

- 31.01 Time shall be of the essence of this Agreement.

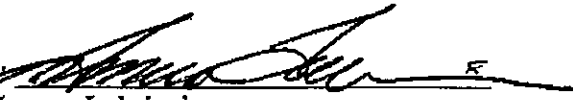
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## ARTICLE 32 - COUNTERPARTS

32.01 This Agreement may be executed in counterparts and delivered by facsimile, each of which shall be deemed an original and all of which, together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed by their duly authorized signing officers.

**For: TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**

Signature:   
Ivano Labricciosa  
Vice-President, Asset Management

I have authority to bind the Corporation.

**For: DASCOM INC.**

Signature:   
Name: Ken Clarke  
Title: President & CEO

I have authority to bind the Corporation.

Y:\THC\Corporate\Legal Svcs\Commercial\Solicitor Commercial\A.Joshi\Active Files\THESLA\Pole & Duct Agreements\Dascom Inc\Pole Agreement\TH Pole Attachment Agrmt.v.02.July24.2009.docx

**AGREEMENT**  
**FOR LICENCED OCCUPANCY**  
**of**  
**SUPPORT STRUCTURES**  
**between**  
**TORONTO HYDRO ENERGY SERVICES INC.**  
**and**  
**DAScom Inc.**

**Pole Attachment Agreement: Revision Date [September 4, 2009]**

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## AGREEMENT FOR LICENSED OCCUPANCY OF SUPPORT STRUCTURES

**“Annual Support Structures Rental Fee”** is defined in Section 11.02.

**“Applicable Laws”** is defined in Section 6.01.

**“Application”** means a written application submitted to the Owner by the Licensee requesting permission from the Owner to Affix its Proposed Attachments in accordance with the terms of this Agreement, in particular Section 7.07.

**“Approval”** means the written permission granted by the Owner, to the Licensee, for the Licensee to Affix its Proposed Attachments, as specified in the Permit.

**“Attachment”** means any material, apparatus, equipment or facility owned, in full or in part, or controlled and maintained by the Licensee that is Affixed to the Support Structures of the Owner or In-span, including, without limitation:

- (i) Overlashed Cable;
- (ii) Service Drops Affixed directly to the Support Structures;
- (iii) Service Drops Affixed In-span to a Strand or Messenger supported by Support Structures;
- (iv) Attachments owned by the Licensee that emanate from a cable not owned by the Licensee;
- (v) Messenger or Strand;
- (vi) Cable Riser/Dips;
- (vii) Power Supply/Rectifiers; and
- (vii) Other equipment as may be approved in writing by Owner in its sole discretion.

**“Bonding”** means the permanent connection of the Licensee’s Messenger or Strand and metallic cable sheaths to the Owner’s or its Affiliate’s power system neutral.

**“Business Day”** means any day other than a Saturday or Sunday or a civic or statutory holiday in the Province of Ontario.

**“Cable”** means fiber optic cable, coaxial cable, or any other cable owned by the Licensee, in whole or in part, used to provide Telecommunications Services or to support cable used to provide Telecommunications Services.

**“Cable Riser/Dip”** means a Cable owned by the Licensee, in whole or in part, attached along the vertical position of the Support Structure to allow the Cable to change its vertical position from/to an underground route to/from an overhead route.

**“Communications Space”** means a vertical space on the Support Structure, usually zero point six (0.6) metres, within which communications attachments are made.

**“Consumer Price Index”** means the Consumer Price Index for Ontario (all items), or any index for Ontario published in substitution thereof (if such index is no longer published) or any other



replacement index designated by the Owner and acceptable to the Licensee, published by Statistics Canada (or by any successor thereof or any other governmental authority) from time to time.

**“Effective Date”** means the date first written above.

**“Escalation Rate”** is defined in Section 11.06.

**“Force Majeure”** means any act, event, cause or condition that is beyond the reasonable control of the Party affected, including, without limitation, an act of God, fire, explosions, earthquakes, floods, ice, lighting or other storms, epidemics, acts of war or conditions arising out of or attributable to war (whether declared or undeclared), terrorism, riots, sabotage, any act of any federal, provincial, municipal or governmental or regulatory authority, civil commotions, and strikes, lockouts and other labour disputes. In no event shall lack of finances be considered as a Force Majeure.

**“Initial Term”** is defined in Section 15.01.

**“In-span”** means a position between Support Structures.

**“Joint Anchorage”** means a common anchor system and 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 the Support Structure.

**“Make-Ready Work”** means any changes, alterations, Rearrangements, or repairs of the attachments or Support Structures or other plant of the Owner, or any other Support Structure user, to accommodate the Attachments of the Licensee.

**“Master database”** means a computer database file on the Owner’s Local Area Network (“LAN”) system containing relevant plant information for all of the Licensee’s Attachments.

**“Messenger” or “Strand”** means a bare cable, made of aluminium and/or steel strands, whose main purpose is to support telecommunications and/or secondary voltage wires.

**“Minor Relocation”** means relocating an Attachment up to one (1) metre in a vertical or horizontal direction. This type of relocation is normally associated with Support Structure changes.

**“Municipal Access Fees”** is defined in Section 11.05.

**“Overlash”** means to Affix a Cable(s) to an existing cable, Messenger or Strand or other equipment of the Licensee, the Owner or a third party on a Support Structure or In-span. Overlashed has a corresponding meaning.

**“Permit”** means an approved Application evidenced by the signature of a duly authorized employee of the Owner in accordance with the terms of this Agreement.

**“Person”** means a natural person, corporation, firm, partnership, limited liability company, joint venture, governmental authority or other form of association or entity;

**“Power Space”** means a vertical space at the top of a Support Structure of the Owner within which electrical power attachments are made.

**“Power Supply/Rectifier”** means an enclosure owned by the Licensee and used to contain the Licensee’s power supply and electronic equipment.

**“Proposed Attachment”** means any material, apparatus, equipment or facility owned, in whole or in part, or controlled and maintained by the Licensee that Licensee is requesting permission from the Owner to Affix, including, without limitation:

- (i) Overlashed Cable;
- (ii) Service Drops Affixed directly to the Support Structures;
- (iii) Service Drops Affixed In-span to a Strand or Messenger supported by Support Structures;
- (vi) Attachments owned by the Licensee that emanate from a cable not owned by the Licensee;
- (v) Messenger or Strand;
- (vi) Cable Riser/Dips;
- (vii) Power Supply/Rectifiers; and
- (viii) Other equipment as may be approved in writing by the Owner in its sole discretion

**“Quarterly Support Structure Rental Fee”** is defined in Section 11.04.

**“Rearranging”** or **“Rearrangements”** means the removal of Attachments from one position on a Support Structure and the placing of the same Attachments in another position on the same Support Structure.

**“Renewal Term”** is defined in Section 15.02.

**“Representatives”** means the directors, officers, employees, contractors, subcontractors, agents, advisors, counsel or other representatives of either Party, as applicable.

**“Separation”** means the vertical or horizontal distance between power and communication systems including conductors and other related equipment.

**“Service Drop(s)”** means telecommunications cables or wires, whether affixed In-Span or to a Support Structure, owned by the Licensee and connected to a telecommunications cable, whether owned or not owned by the Licensee, that are used to supply Telecommunications Services to one or more customers of the Licensee.

**"Standards"** means all applicable standards of the Canadian Standards Association ("CSA"), including, without limitation, CSA Standard C22.3 No. 1-M87 "Overhead Systems", the Owner's Health and Safety Rule Book, and all applicable standards of the Electrical Safety Authority ("ESA"), the safety requirements of Ontario Regulation 22/04 "Electrical Distribution Safety", made under the *Electricity Act, 1998*, ("Ontario Regulation 22/04), and the Owner's Construction Standards, together with any amendments to the foregoing from time to time hereafter, each of which are incorporated by reference herein.

**"Support Structure"** means without limitation any lighting standard, pole, or other structure elevated above grade owned by the Owner.

**"Support Structure in Use"** means Support Structure, to which Attachments are Affixed or for which Licensee has been issued a Permit(s) to Affix its Attachments, whether or not Licensee's cable or other equipment designated in such Permit has been Affixed, and whether or not any such Attachments are being used to provide any Telecommunication Services.

**"Support Structure Rental Fees"** is defined in Section 11.01.

**"Support Structure Rental Rate"** at any time shall be the amount then in effect as determined pursuant to Section 11.03.

**"Telecommunications Services"** is as defined in the *Telecommunications Act* (Canada).

**"Term"** is defined in Section 15.02.

**"Transfer"** or **"Transferring"** means the removal of Attachments from one Support Structure and the placing of the same Attachments on another Support Structure.

## **ARTICLE 2 - TERRITORY**

- 2.01 This Agreement shall cover the Affixing, operating on and maintaining of the Attachments of the Licensee to the Support Structures, or Overlashing thereon, or In-span (and the removal of Licensee's Attachments therefrom), within the area of Ontario where their respective service territories overlap.

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

- 3.01 The Licensee shall be responsible for obtaining, and satisfying the Owner that it has obtained, any and all easements, rights of way, authorizations or permissions from others, including authorization or permission to locate on municipal or provincial road allowances or public highways or any other applicable authorization or permission required from any municipal, provincial or federal government or any agency, body or

board having jurisdiction with respect to the Affixing, operating and maintaining of the Attachments provided for in a Permit.

- 3.02 Proposed Attachments shall not be Affixed by the Licensee In-span, or to the Support Structures or Overlashed thereon when such Support Structures are located on private property, until the written consent of the registered owner of the property upon which such Support Structures are located has been obtained by the Licensee and delivered to the Owner, and the Licensee has obtained a Permit to install Licensee's Proposed Attachments in question in accordance with the terms of this Agreement.
- 3.03 Licensee represents and warrants that all Attachments are owned, in whole or in part by or are controlled and maintained by Licensee.

#### **ARTICLE 4 -TAXES**

- 4.01 The Licensee agrees that it shall pay, and indemnify and save harmless the Owner and its directors and officers against all taxes, rates, assessments, or fees of every nature and kind that are assessed against or as a result of the Attachments or privileges granted to the Licensee by this Agreement.

#### **ARTICLE 5 - PERFORMANCE GUARANTEE**

- 5.01 The Owner, in its reasonable discretion, at any time, may require that the Licensee deposit with the Owner security in an amount and in a form satisfactory to the Owner, securing the due performance of the obligations of the Licensee as provided for in this Agreement. The security shall be delivered within five (5) Business Days of the request, and shall be maintained in good standing by the Licensee during the Term of this Agreement or for such other term agreed to in writing by the Owner and the Licensee shall execute all documents reasonably requested by the Owner to obtain and maintain a first priority security interest in and to such security. The security will be in favour of the Owner and shall be an irrevocable bank letter of credit issued by an entity satisfactory to the Owner and in a form acceptable to the Owner.
- 5.02 The amount of the security to be placed with the Owner shall be determined by the Owner and may include amounts for:
- (i) the estimated cost from time to time for removing the Licensee's Attachments;
  - (ii) potential damage to the Owner's equipment or Support Structures attributed to the activity of the Licensee and/or any of its Representatives; and
  - (iii) and potential claims of third parties attributed to the activity of the Licensee and/or any of its Representatives.

The security payable by the Licensee may be increased from time to time in the sole discretion of the Owner. Factors such as additional Attachments approved by a Permit or an increase in the estimated cost to remove the same may warrant an increase in the security.

## **ARTICLE 6 - COMPLIANCE WITH STATUTES**

- 6.01 This Agreement is subject to all applicable laws, by-laws, regulations, rules, and codes and all orders and decisions of any court of competent jurisdiction or lawful authorities acting within their powers and all applicable Standards, as amended from time to time (collectively, "Applicable Laws").
- 6.02 The Licensee and its Representatives shall be responsible for complying with all Applicable Laws with respect to the Affixing, maintaining, inspecting, operating, and Rearranging of its Attachments (and removal of the Licensee's Attachments), and Licensee otherwise exercising its rights and obligations under this Agreement. Without limiting the foregoing, the Licensee shall be responsible for ensuring that it and all of its Representatives, at all times, comply with the *Workplace Safety and Insurance Act, 1997*, the *Occupational Health and Safety Act*, Ontario Regulation 22/04 and the *Canada Labour Code Part II* as they apply to the Licensee and its Representatives, or any amendments or additions thereto, and all Applicable Laws that apply to performance of work on public highways or private property that relate to the safety of workers and the public when performing work related to this Agreement.
- 6.03 If there is a conflict between the Owner's Health & Safety Rule Book and the Owner's Construction Standards and any other Applicable Laws, the Applicable Laws with the most stringent requirements shall apply. The Licensee shall notify and consult with the Owner with respect to any such conflicts before proceeding with any work under this Agreement.
- 6.04 The Owner shall provide the Licensee with a reasonable number of copies of the Owner's Health & Safety Rule Book and the Owner's Construction Standards, and shall promptly advise the Licensee of any amendments to the foregoing.

## **ARTICLE 7 - APPROVAL OF PERMITS**

- 7.01 The Licensee shall contact the Owner, and inform the Owner that the Licensee will seek permission to Affix, operate and maintain its Proposed Attachments, excluding Service Drops, and provide such preliminary information as may be requested by the Owner.
- 7.02 For each new request by the Licensee to Affix, operate and maintain its Proposed Attachments, the Licensee will be assessed an administration fee in accordance with Sections 9.12 and 11.06.

- 7.03 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 the Proposed Attachments by the Licensee. The Owner's costs of such site inspection shall be included in the administrative fee under Sections 9.12 and 11.06.
- 7.04 Subsequent to the joint field visit, if any, the Owner, in its sole discretion, shall form a preliminary opinion as to the feasibility and desirability of the proposed Affixing of the Proposed Attachments by the Licensee, which opinion the Owner will communicate to the Licensee.
- 7.05 If the Owner, in its sole discretion, determines that the proposed installation of Licensee's Proposed Attachments is not feasible or desirable, the Owner shall advise the Licensee that such proposed installation has been rejected and the Owner shall have no liability or further obligations to the Licensee with respect to such proposed installation.
- 7.06 If the Owner, in its sole discretion forms a preliminary opinion in favour of the proposed Affixing of the Proposed Attachments of the Licensee, the Owner will prepare a preliminary estimate of any costs for Make-Ready Work that may be incurred to accommodate the Proposed Attachments of the Licensee.
- 7.07 After the estimate has been received and accepted by the Licensee, an Application, in duplicate, shall be prepared, signed and delivered by the Licensee to the Owner. Each Application shall be accompanied by:
- (i) a plan (11" x 17"), prepared and approved in accordance with Section 7 of Ontario Regulation 22/04, showing Support Structure locations, pole numbers (if available/applicable), addresses, size and type of strand, size and number of Cables to be lashed or Overlashed, outside diameter of existing Cables, guys, anchors, grounding requirements, attachment heights & weights, Separation from the Owner's attachments and Separation from third party attachments. (These requirements may be subject to change based on any legal requirements by any regulatory agency with jurisdiction over the subject matter of this Agreement.) The plan for each Application shall include no more than one continuous Cable and/or Messenger or Strand route. The plan must be submitted in both paper and electronic form on floppy disk or other electronic format acceptable to the Owner. The plan must be compressed using WinZip, or another software program acceptable to the Owner; and
  - (ii) a table in MS Excel, or other software program acceptable to the Owner, identifying street name, pole number and GPS (Global Positioning System) location, submitted in both paper and electronic form on floppy disk or other electronic format acceptable to the Owner; and

- (iii) a purchase order authorizing the Owner to complete the Make-Ready Work on the Owner's facilities or facilities of third parties pertaining to the applicable Application; and
  - (iv) anything else the Owner may require pursuant to the terms of this Agreement, such as a security deposit.
- 7.08 (i) The Owner will receive and consider each Application submitted by the Licensee, and, at the sole discretion of the Owner, acting reasonably, will make a preliminary determination as to whether to reject such submitted Application, or proceed with the Make-ready Work related to that Application, and will advise the Licensee of such determination. Such consideration will be with regard to compliance with this Agreement and the Owner's requirements with respect to, but not limited to, issues such as:
- (a) operations of the Owner;
  - (b) the effect Licensee's Proposed Attachments, if Affixed, may have on the Owner's street light service or the Owner's use of its Support Structures or other plant;
  - (c) the effect Licensee's Proposed Attachments, if Affixed, may have on the Owner's equipment or equipment of other parties using the Support Structures or other plant;
  - (d) planning;
  - (e) safety;
  - (f) aesthetics;
  - (g) diameter of any Attachment (which shall not exceed the maximum diameter specified in the Owner's Construction Standards as revised from time to time, pursuant to Section 9.03;
  - (h) the proposed Affixing of Licensee's Proposed Attachments complying with all Applicable Laws;
  - (i) road authority and property owner requirements;
  - (j) whether granting a Permit to Licensee to Affix its Proposed Attachments would be inconsistent in any fashion with any obligations of the Owner to third parties; and
  - (k) any other matters that the Owner may deem relevant.

- (ii) Notwithstanding the foregoing, the Licensee acknowledges and agrees that if the Licensee is in breach of any of the terms of this Agreement, the Owner, in its sole discretion, may refuse to consider any new Applications or process any previously submitted Applications until such time as such breach has been remedied to the Owner's satisfaction. Licensee further acknowledges and agrees that any Application will be denied, if in the sole judgement of the Owner, the proposed installation, operation or maintenance of the Licensee's Attachments, or use derived therefrom, could:
  - (a) be detrimental to the Owner's street light service; or
  - (b) be detrimental to the Owner's use of its Support Structures or other plant; or
  - (c) threaten the health or safety of the Owner's employees or contractors, or others permitted occupants of the Owner's Support Structures or other plant; or
  - (d) be inconsistent with any Applicable Laws; or
  - (e) interfere physically or electronically with the Owner's equipment or equipment of other parties using the Owner's Support Structures or other plant; or
  - (f) be inconsistent in any fashion with any obligations of the Owner to third parties.

The Parties agree that the foregoing does not constitute a complete list of reasons why the Owner may reject an Application.

7.09 If the Owner rejects the Licensee's Application under Section 7.08, the Owner shall advise the Licensee accordingly and the Owner shall have no liability or further obligations to the Licensee with respect thereto.

7.10 (i) If the Owner's preliminary determination under Section 7.08 is to proceed with the Make-ready Work, the Owner shall advise the Licensee accordingly, and the Owner will proceed with the Make-Ready Work.

(ii) Upon completion of any Make-ready Work the Owner shall review the Application and if the proposed installation of the Proposed Attachments as set forth in the Application is still satisfactory to the Owner, as determined by the Owner in its sole discretion, acting reasonably, as set forth in Section 7.08, the Owner will approve the Application in writing and return one copy of the approved Application to the Licensee's representative, thus authorizing the Affixing of the Proposed Attachments by the Licensee. Such approved Application shall thereupon constitute a Permit hereunder. Such Permit shall be



effective as of the date of the Approval of the Application for such Permit by the Owner. At any time after the Approval of an Application, the Owner shall provide the Licensee with an invoice for all costs incurred in completing the Make-Ready Work.

- (iii) In the event that, after completion of the Make-Ready Work, the Owner, in its sole discretion, acting reasonably, determines that the proposed installation of Licensee's Proposed Attachments as set forth in the Application is no longer satisfactory, the Owner shall advise the Licensee that the Application has been rejected and the Owner shall have no liability or further obligation to the Licensee with respect to such Application; provided that the costs of such Make-Ready Work shall be the responsibility of the Owner and shall not be charged to the Licensee.
- (iv) For greater certainty, the Parties agree that, after completion of the Make-Ready Work, the Owner has the right to re-consider the Application in its entirety in light of all of the circumstances existing at that time and no decision or action taken by the Owner prior to such re-consideration, including the decision to proceed with, or the completion of, the Make-Ready Work, shall be construed or interpreted as evidence of the reasonableness of approving the Application at the time of re-consideration.

- 7.11 At the Owner's sole discretion, the Owner may change the order in which any of the requirements in this Article 7 are to be met.

## **ARTICLE 8 - PERMITS**

- 8.01 For each Application approved pursuant to Article 7, the Owner hereby grants to the Licensee the privilege to Affix, operate on and maintain such of its Attachments to such Support Structures of the Owner, or In-span, or Overlashed as may be designated on each Permit during the Term, and to remove and replace such Attachments for maintenance purposes, subject to the terms of this Agreement. The Licensee acknowledges and agrees that the Owner makes no representations or warranties with respect to the condition of the Owner's Support Structures or other plant or its suitability for Licensee's purposes. Notwithstanding the issuance of a Permit, the Licensee acknowledges and agrees that if, at the time of installation, there are any conditions on the Owner's Support Structures or other plant where the Licensee's Proposed Attachments are to be installed that would prevent such installation for safety or other reasons, as determined by the Owner in its sole discretion, the Owner may revoke the applicable Permit and require the Licensee to submit a new Application for approval, or the Owner may amend such Permit as it deems necessary.
- 8.02 Each Permit shall be deemed to have been issued pursuant to this Agreement and shall be read and construed in accordance with this Agreement.

- 8.03 The permission to Affix and maintain Attachments as described in a Permit shall be effective as of the date of the Approval of the Application for such Permit by the Owner. The Licensee must exercise this permission within one hundred eighty (180) days of the date of Approval of the Application, failing which the Permit is of no force and effect and the Licensee must submit a new Application requesting permission to Affix its Proposed Attachments.
- 8.04 (i) Except as required to maintain and repair Licensee's Attachments Affixed to the Support Structures or In-Span or Overlashed in accordance with a Permit or as otherwise permitted herein, under no circumstances shall any changes be made to the type or amount of equipment installed by the Licensee on the Support Structures or In-Span or Overlashed or the location of Licensee's Attachments as designated in a Permit without the Owner's prior written consent for such change, which may be withheld by the Owner in its sole discretion. In the case of emergencies, the Licensee shall contact a designated representative of the Owner to request the Owner's consent to make any of the foregoing changes.
- (ii) Notwithstanding Section 8.04(i), if the Owner verbally approves any of such proposed changes, the Licensee may change the location or configuration of the Licensee's Attachments as approved by the Owner and subject to any of the Owner's instructions. The Licensee acknowledges and agrees that any such approval shall only apply to the particular case at hand and any such approved change shall not become a standard form of installation. In addition, within five (5) Business Days of any such approval, the Licensee must submit an Application as set out in Article 7 to obtain a Permit for Licensee's Attachments as relocated or reconfigured. In the event that any such Application is not approved in accordance with the terms of Article 7, the Licensee shall forthwith remedy such relocation or reconfiguration to the state of affairs prior to such relocation or reconfiguration or such other state as may be approved in writing by the Owner, in its sole discretion.
- 8.05 In addition to the Owner's other rights of termination under this Agreement, the Licensee agrees that any Approval to Affix, operate and maintain its Attachments, previously granted by the Owner in any Permit, may be revoked or amended, in the sole discretion of the Owner, for the following reasons:
- (i) In the sole judgment of the Owner, the installation, operation or maintenance of Licensee's Attachments Affixed pursuant to the approved Permit could:
- (a) be detrimental to the Owner's street light service; or
  - (b) be detrimental to the Owner's use of the Support Structures or other plant of the Owner; or

- (c) threaten the health or safety of the Owner's employees or contractors, or other permitted occupants of the Support Structures or other plant of the Owner; or
  - (d) be inconsistent with any Applicable Laws; or
  - (e) interfere physically or electronically with the Owner's equipment or equipment of other parties using the Support Structures or other plant of the Owner; or
  - (f) be inconsistent in any fashion with any pre-existing obligations of the Owner to third parties.
- (ii) If the Owner requires the space occupied by the Licensee's Attachments for its own use; or
  - (iii) If the Owner is required by a governmental or regulatory authority with jurisdiction over the subject matter of this Agreement or otherwise by law to terminate or amend the Permit; or
  - (iv) If the Owner decides or is required by lawful authority to remove or relocate any of its Support Structures or other plant, where the installation, operation or maintenance of the Licensee's Attachments interferes with such relocation or replacement of such Support Structures or other plant; or
  - (v) If a Support Structure or other plant of the Owner occupied by the Licensee's Attachments is abandoned by the Owner.

Any such revocation or amendment as it relates to the Attachments of the Licensee or Proposed Attachments of the Licensee to be Affixed shall be communicated to the Licensee by notice in accordance with Articles 16 and 19. The Owner will endeavour to provide the Licensee with at least ninety (90) days prior written notice of any revocation or amendment to a Permit under this Section 8.05. Such written notice will include the reasons for such terminations or amendments. The Licensee shall forthwith comply with such terminations or amendments by removing Licensee's Attachments in accordance with Section 16.11 or changing the location of Licensee's Attachments in accordance with directions of the Owner.

- 8.06 The Licensee is responsible for all of its own costs regarding any aspect of this Agreement.

## **ARTICLE 9 - INSTALLATION AND MAINTENANCE**

- 9.01 Subject to Section 8.04, the Licensee agrees that it will not Affix any of its Proposed Attachments, except Service Drops for which no Permit is required, to a Support

Structure or In-span or Overlash any Proposed Attachments until the Owner approves an Application and issues a Permit designating such Proposed Attachment. If the Licensee Affixes any Attachment without a Permit, the Owner may order the removal of Licensee's Attachments in question in accordance with Section 16.07 or terminate this Agreement immediately, in which event the provisions in Sections 16.07, 16.11 and 16.12 shall apply.

- 9.02 The Licensee agrees that it is solely responsible for Affixing, operating and maintaining its Attachments. Notwithstanding the foregoing, the Licensee agrees that in the event of an emergency the Owner may, but is not obligated to, take any steps it deems necessary to temporarily secure Licensee's Attachments in a safe manner without prior notice to the Licensee. The Licensee shall reimburse the Owner for any costs incurred by the Owner so doing. Upon notice by the Owner, the Licensee shall immediately re-Affix and/or repair such Attachments to the Owner's satisfaction.
- 9.03 Overlashing by the Licensee will be permitted provided that: (i) the maximum allowable diameter of any Attachment (either single or multi-lashed cables) shall be in accordance with the Owner's Construction Standards as revised from time to time and (ii) Applications for Overlashing must be submitted and approved using the same procedure set out in this Agreement for obtaining Approval to Affix new Proposed Attachments.
- 9.04 In conjunction with the Licensee's system rebuild plans, the Licensee shall make best efforts to consolidate its multiple parallel Strands on a pole line 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 third party. Any such transfer of the Licensee's Strands to a third party shall be subject to the conditions in Sections 20.01, 20.02 and 20.03.
- 9.05 The Licensee covenants and agrees with the Owner to Affix, operate and maintain its Attachments, at its sole expense and at all times, in a safe and serviceable manner satisfactory to the Owner and in accordance with the Standards and the terms herein, and in such a way as not to interfere with:
- (i) the lines, attachments, works or equipment of the Owner or other permitted users of the Support Structures or other plant of the Owner; or
  - (ii) the electrical supply carried by the cables and equipment of the Owner or other permitted users of the Support Structures or other plant of the Owner; or
  - (iii) the Telecommunications Services provided by other permitted users of the Owner's Support Structures or other plant of the Owner.
- 9.06 Without restricting the generality of the foregoing, the Licensee covenants and agrees not to relocate, alter, remove or otherwise interfere with the attachments of other permitted

users of the Support Structures and other plant of the Owner without the prior written approval of the Owner and the applicable third party.

- 9.07 Notwithstanding anything in this Agreement to the contrary, and except as provided for in Article 14, the Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Licensee's Attachments, or the data, signals or supply carried by the Attachments, which may arise from the Owner's equipment or the supply carried by its equipment.
- 9.08 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, operating and maintaining of Attachments of the Licensee in accordance with the Standards.
- 9.09 The Owner and Licensee recognize that 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. Where either Party feels it has been substantially prejudiced by any such amendment or enactment, it will advise the other Party. The Parties will engage in discussions with a view to addressing the alleged prejudice. During these discussions, this Agreement will continue in full force and effect. Notwithstanding the foregoing, the Owner shall determine, in its sole discretion, what changes, if any, are required to be made to the Licensee's Attachments or the Licensee's operations and procedures in order to comply with such standards. The Licensee shall make any such changes within such time period as may be requested by the Owner, acting reasonably. The Parties further agree that no changes to Attachments constructed in accordance with a Permit shall be required unless such changes are required by any Applicable Laws or for safety purposes, as determined by the Owner in its sole discretion. The Owner shall provide the Licensee with a reasonable number of copies of any amendments to the Owner's Health & Safety Rule Book and the Owner's Construction Standards, and with any new standards of the Owner related to work on Support Structures or other plant of the Owner.
- 9.10 Subject to Section 8.04, the Licensee agrees that upon the Attachments being made in accordance with the provisions of this Agreement, it will not alter the Affixing of such Attachments, except Service Drops, unless:
- (i) such alteration is approved by the Owner using the same procedure as for a new Proposed Attachment as described in this Agreement; and
  - (ii) such alteration is carried out in accordance with the Standards and in such a way as not to interfere with the lines, attachments, works or equipment of the Owner or of other permitted users of the Support Structures or other plant of the Owner.
- 9.11 The installation, operation, Rearrangement and maintenance of Licensee's Attachments Affixed to the Support Structures or other plant or Overlashed thereon (including modifications to the Support Structures or other plant of the Owner to

accommodate Licensee's Attachments, and removal of Licensee's Attachments therefrom) shall be done by employees, contractors, subcontractors or agents of the Licensee who are "competent persons", as defined under the *Occupational Health and Safety Act*, and who are qualified because of knowledge, training and experience to perform the work in question, each of whom shall at all times comply with all Applicable Laws. The Licensee shall ensure its employees, contractors, subcontractors and agents have such qualifications and comply with all Applicable Laws in performing the work. In addition to any other rights the Owner may have hereunder, if the Owner, acting reasonably, determines that any of the Licensee's employees, contractors, subcontractors or agents are engaging in unsafe work practices when performing work on the Support Structures or other plant of the Owner, the Owner may order such work to stop, and the Licensee shall not proceed with such work until such time as the Owner is satisfied that the work will be conducted in accordance with safe work practices, including, without limitation, all Applicable Laws and the Owner's safety standards and provides a written notice to the Licensee that it may resume work. Notwithstanding any instructions provided by the Owner hereunder or any term in this Agreement, the Licensee shall be solely responsible for the safety of the Licensee's employees, contractors, subcontractors and agents when performing work on the Owner's Support Structures or other plant. The Licensee shall provide the Owner with a list of all employees, contractors, subcontractors or agents who may perform work on the Support Structures or other plant of the Owner on behalf of the Licensee. The Owner, acting reasonably, reserves the right at anytime to require that the Licensee obtain its prior approval of the use of any employee, contractor, subcontractor or agent of the Licensee to perform work on the Support Structures or other plant of the Owner. Notwithstanding the foregoing, the Owner may require that any or all work on the Support Structures or other plant of the Owner be performed by employees, contractors, subcontractors or agents of the Owner at the Licensee's expense. If, the Licensee receives notice that (i) any employee, contractor, subcontractor or agent must be approved by the Owner prior to performing work on the Support Structures or other plant of the Owner, or (ii) the Owner requires that any work on the Support Structures or other plant be performed by employees, contractors, subcontractors or agents of the Owner at the Licensee's expense, or (iii) the Owner requires that any work on the Support Structures or other plant of the Owner be stopped as a consequence of unsafe work practices and, at any time thereafter, any work is performed on the Licensee's behalf on the Support Structures or other plant of the Owner by an unapproved employee, contractor, subcontractor or agent, or by any Person who is not an employee, contractor, subcontractor or agent of the Owner, or prior to receipt of written notice to resume work, as applicable, the Owner may terminate this Agreement immediately, in which event the provisions in Sections 16.11 and 16.12 shall apply.

- 9.12 The Licensee shall pay the Owner an administrative fee as specified in Section 11.06 for each Application submitted by the Licensee to the Owner to cover the Owner's costs associated with the review and processing of such Applications, whether or not the Application is approved or denied by the Owner. This administrative fee will cover:

- (i) the cost of having an employee or contractor of the Owner attend at the location of the Support Structures designated in the Application submitted for Approval to determine what, if any, Make-Ready Work may be required to the Support Structures or equipment to accommodate the Proposed Attachment; and
- (ii) the cost of reviewing and processing the Application.

9.13 In addition to the other fees payable hereunder, the Licensee is solely responsible for all of the costs associated with Affixing, operating and maintaining the Attachments of the Licensee (and the removal of Licensee's Attachments). Without limiting the generality of the foregoing, the Licensee is responsible for:

- (i) the cost of preparing an estimate for any Make-Ready Work to the Support Structures or equipment that may be required of the Owner to accommodate the Attachments of the Licensee;
- (ii) the cost of acquiring easements, if applicable;
- (iii) the cost of effecting such Make-Ready Work to the Support Structures or equipment of the Owner subject to Section 7.10(iii);
- (iv) the cost of Affixing, operating and maintaining its Attachments;
- (v) the cost of cleaning up the site around each Support Structure where the Licensee has Affixed its Attachments and thereafter ensuring safe disposition of all materials;
- (vi) the cost for data entry of field Attachments into the Owner's Master database based on the joint field inspections specified in Section 9.18, which shall be shared proportionately among the licensees participating in the joint field inspections based on the number of attachments of each licensee;
- (vii) the cost of any inspector appointed by the Owner to supervise the Licensee's work on the Support Structures or other plant of the Owner;
- (viii) the cost of conducting an inspection and certification of the completed work in accordance with Section 8 of Ontario Regulation 22/04; and
- (ix) the cost of any other reasonable expenses associated with this Agreement.

9.14 The Owner may, at its discretion, require that an employee or contractor of the Owner be present when the Licensee is Affixing, Rearranging, maintaining 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 seven (7) days written notice prior to the start of any such work and to advise the Owner of the expected completion date

for such work, and agrees to pay to the Owner the costs of such employee or contractor that may be reasonably necessary for the carrying out of the provisions of this Article, and shall comply in a timely fashion with all directions or instructions received from the Owner's employee or contractor.

- 9.15 The Licensee shall notify the Owner within seven (7) days when the Affixing, Rearranging, maintaining or removal of its Attachments is complete so that the Owner may conduct an inspection and certification of the completed work related to such Attachments in accordance with Section 8 of Ontario Regulation 22/04, and verify that such work has been completed in accordance with all Applicable Laws. The Licensee agrees to pay to the Owner the costs of such employee or contractor of the Owner that may be reasonably necessary for the carrying out of the provisions of this Article, and shall comply in a timely fashion with all directions or instructions received from the Owner's employee or contractor.
- 9.16 The Licensee agrees to provide the Owner with "as constructed" drawings of the Attachments within thirty (30) days of the completion of the Affixing, Rearranging, or maintaining of Licensee's Attachments or removal thereof.
- 9.17 The Owner shall submit an invoice or invoices to the Licensee for the costs provided for in this Article and the Licensee shall pay the amount thereof within thirty (30) days of the date of such invoice or invoices. If the Licensee fails to pay any invoice within thirty (30) days of the invoice date, the provisions of Article 13 apply and the Owner may exercise any or all of its rights in Article 13.
- 9.18 In order to ensure the accuracy and completeness of existing Permits and the Owner's Master database, each Party shall participate in a joint field inspection at intervals mutually agreed upon, but at least once each five years at their expense. The field inspection cycles are to be conducted based on the boundaries of the former utilities for Scarborough, North York, Etobicoke, York, East York and the former City of Toronto. Any discrepancies between the field conditions found and the Permits will be corrected and a new Application to reflect the actual field conditions will be submitted by the Licensee for Approval, subject to the terms of this Agreement, in particular Article 7. If the new Application 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, at the Owner's option, remove the Attachments in question in accordance with Section 16.07.
- 9.19 During the Term, the Licensee agrees to provide the Owner with a report, on December 31 of each year for which it has Attachments Affixed to the Support Structures or In-Span, describing in detail all of the Support Structures supporting the Licensee's Attachments as well as a description of Licensee's Attachments that have been removed and the date of such removal (the "Statement of Annual License Fees List"). The Licensee agrees that the Owner may revise the Statement of Annual License Fees List based on the Owner's records of Permits issued to the Licensee. Every reasonable effort shall be made by the Owner to ensure its Master database is current and that the



"Statement of Annual License Fees List" with regards to the fees payable by the Licensee hereunder based on the Licensee's Attachments is accurate. The totals shown on the "Statement of Annual License Fees List" shall be accepted by the Licensee in good faith. Any dispute on the numbers shall be settled later between the engineering staff of the Licensee and the Owner, with all modifications (if any) reflected on the next year's "Statement of Annual License Fees List". If any inaccuracies in the "Statement of Annual License Fees List" results in an underpayment of fees hereunder by Licensee, the amount owing by the Licensee to the Owner shall be due upon invoicing therefor by the Owner. If any inaccuracies in the "Statement of Annual License Fee List" results in an overpayment of fees hereunder by Licensee, the Owner shall provide the Licensee with a credit for the amount of the overpayment on the next year's "Statement of Annual License Fees List".

- 9.20 The Licensee agrees to place markers on its Cables that are Affixed to Support Structures following the execution of this Agreement in a manner acceptable to the Owner to assist in field identification of ownership of attachments made by various permitted users of the Support Structures. As a minimum, these markers shall be placed on the Cable at all Cable Risers/Dips and at every second Support Structure. The Licensee agrees to identify existing Cables that were attached to the Support Structure before the execution of this Agreement with markers as required above during the Licensee's routine network service, maintenance, rebuild and/or audit activities, and shall complete such identification by the end of the Initial Term of this Agreement.
- 9.21 At all times the Attachments shall remain the property of the Licensee, and Support Structures to which such Attachments are Affixed shall remain the property of the Owner, unless such Attachments are sold by the Licensee or such Support Structures are sold by the Owner.
- 9.22 On all new or reconstructed pole lines, Joint Anchorage shall be discontinued regardless of who owns the pole line. Each Party shall be responsible to install and maintain its own separate anchoring system, as may be required, in accordance with the Standards. 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. No liability may be placed on the other Party for a Party's failure to verify the adequacy of such anchorage.

## **ARTICLE 10 - LINE CLEARING**

- 10.01 The trimming or removing of trees, underbrush or any other items as required to establish clearance for the Licensee's Attachments shall be the sole responsibility of the Licensee. However, the Licensee and Owner may, by mutual consent, make arrangements regarding provision of tree trimming or line clearing services. 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, at the expense of the Licensee and the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damages to Licensee's Attachments as a result thereof. The Owner shall submit an invoice to the Licensee for

these expenses and the Licensee shall pay such amount within thirty (30) days of the date of the invoice. If the Licensee fails to pay any invoice within thirty (30) days of the invoice date, the provisions of Article 13 apply and the Owner may exercise any or all of its rights in Article 13.

## **ARTICLE 11 - FEES**

- 11.01 During the Term, the Licensee shall pay to the Owner Support Structure rental fees equal to the sum of the Annual Support Structure Rental Fee and the Quarterly Support Structure Rental Fee (collectively, the "Support Structure Rental Fees") in accordance with Sections 11.02, 11.03, and 11.04.
- 11.02 During the Term, the Licensee shall pay to the Owner an annual Support Structure rental fee ("Annual Support Structure Fee") determined by multiplying the total number of Support Structures in Use as at December 31 of the calendar year immediately prior to the calendar year in respect of which the fee is being paid ("Support Structure Billing Year") times the Support Structure Rental Rate in effect as at January 1 of the Support Structure Billing Year. The Owner shall provide the Licensee with an invoice for the amount owing for the Annual Support Structure Rental Fee in January of each Support Structure Billing Year.
- 11.03 The "Support Structure Rental Rate" shall be \$22.35 per Support Structure in Use per calendar year or such higher pole rental rate for pole rentals by OEB regulated utilities approved or set from time to time by the Ontario Energy Board ("OEB") or another authority with jurisdiction over the Owner to set Support Structure rental rates. If the OEB or such other authority approves or sets a new Support Structure Rental Rate, such new Support Structure Rental Rate shall be effective as at the effective date specified by the OEB or other authority, or if no such effective date is specified, shall be effective as of the first of the month immediately following the approval or setting of a new Support Structure Rental Rate.
- 11.04 In addition to the Annual Support Structure Rental Fee payable pursuant to Section 11.02, during the Term the Licensee shall pay to the Owner, in accordance with this Section 11.04, a Support Structure rental fee for the Support Structure Billing Year determined by multiplying the total number of Support Structures in Use for which the Licensee has been issued a Permit(s) to Affix its Proposed Attachments during each calendar quarter of such Support Structure Billing Year times the Support Structure Rental Rate then in effect (the "Quarterly Support Structure Rental Fee"). For greater certainty, the Quarterly Support Structure Rental Fee shall only apply to Support

Structures, to which the Licensee had not Affixed any Attachments in accordance with a Permit(s) or for which Licensee had not been issued any Permits to Affix Proposed Attachments thereon prior to the relevant calendar quarter. The Owner shall provide the Licensee with an invoice for the Quarterly Rental Fees for each calendar quarter in the month immediately after the calendar quarter in which the Permits in question were issued.

- 11.05 In the event the Owner is required to pay any fees to any municipality for use of municipal rights-of-way, the Owner may recover such fees from the Licensee in proportion to Licensee's use of the Support Structures based on the number of Support Structures in Use in such municipal rights-of-way, as determined by the Owner in its sole discretion ("Municipal Access Fees"). The Licensee shall pay the Owner for the Municipal Access Fees within thirty (30) days of the date of the invoice issued by the Owner to the Licensee therefor.
- 11.06 In addition to the Support Structure Rental Fees and, if applicable, Municipal Access Fees, under this Article 11, the Licensee shall pay to the Owner a one-time, non-refundable administrative fee per Application submitted by the Licensee to the Owner in accordance with Article 7. This administrative fee shall be \$200.00 per Application, and shall be increased annually thereafter by the higher of (i) two percent (2%) and (ii) the Consumer Price Index (the "Escalation Rate"). The Owner shall provide the Licensee with a separate invoice for the administrative fees incurred in each calendar quarter in the month after the calendar quarter to which such administrative fees apply.
- 11.07 The Licensee shall also pay the Owner for any costs incurred by the Owner in performing any Bonding for the Licensee at the Licensee's request. On or about January 1 of each year of the Term, the Licensee shall submit to the Owner a purchase order in an amount acceptable to the Owner to cover the costs of any Bonding that may be performed by the Owner for the Licensee in that year. The Owner will invoice against such purchase order as such Bonding is performed by the Owner for the Licensee, and the Licensee shall pay such invoice within thirty (30) days of the invoice date.
- 11.08 All amounts owing under this Agreement shall be due within thirty (30) days of the invoice date. All amounts on invoices rendered by the Owner hereunder that are outstanding for longer than 30 days from the invoice date will be subject to interest at one and one-half percent (1½%) compounded monthly (19.56% annually). The interest shall run from the due date of payment of the invoice until the date payment is received by the Owner. If the Licensee fails to pay any invoice within thirty (30) days of the due date, the provisions of Article 13 apply and the Owner may exercise any or all of its rights in Article 13.

## **ARTICLE 12 - REMOVAL, REPLACEMENT OR RELOCATION OF SUPPORT STRUCTURES OR ATTACHMENTS**

- 12.01 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 Support Structure designated in a Permit to which the Attachments of the Licensee are Affixed, the Owner shall notify the Licensee of the requirement to remove or relocate designated Attachments, whereupon the Licensee, at the time specified in the notice, shall, at the sole cost and expense of the Licensee, remove its Attachments and, except when the notice specifies to the contrary, the Licensee may transfer the Attachments to a new location on the applicable Support Structure or to a new Support Structure, as the case may be, as approved by the Owner 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 Support Structure and not replace it, so that there would no longer be a Support Structure upon which to Affix the Attachments. In such a situation, the Approval associated with the applicable Permit would cease and the termination provisions of this Agreement as related to the Applicable Permit would apply. The Owner will endeavour to give the Licensee at least ninety (90) days prior written notice of any such removal, replacement or change in location of a Support Structure, but in case of emergency, as defined by the Owner, the Owner may give no notice, or such shorter notice as the Owner deems expedient and 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 Attachments after being notified by the Owner, the Owner, or its designate, may remove or relocate the Attachments at the Licensee's expense, and, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damage caused to the Licensee's Attachments as a result thereof.
- 12.02 The Licensee agrees that it will Rearrange or remove temporarily any of its Attachments whenever notified so to do by the Owner, so as to accommodate the use of the Support Structure(s) by the Owner or by another Person licensed by the Owner to Affix its equipment to the Support Structure. Such Rearrangement or temporary removal of the Licensee's Attachments is to be carried out within ninety (90) days of the date of the notice from the Owner, provided, however, that in case of an emergency, as defined by the Owner, the Owner may give such shorter notice as the Owner deems expedient and the notice, if any, may be given verbally. Where the Licensee fails to remove or Rearrange Licensee's Attachments within ninety (90) days of the date of notice from the Owner, or in emergency situations, where less than ninety (90) days notice is given, fails to remove or Rearrange Licensee's Attachments within such period as may be specified in the notice, the Owner, or its designate, may remove or relocate Licensee's Attachments at the expense of the Licensee, and, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damage caused to Licensee's Attachments as a result thereof.
- 12.03 All temporary Rearrangements, relocations or Minor Relocations of Attachments for the benefit of the Owner shall be performed at Licensee's expense, and all temporary

Rearrangements, relocations or Minor Relocations of Attachments by the Licensee for the benefit of another Person licensed by the Owner shall be at the expense of such other licensee.

- 12.04 To expedite its own work, the Owner may perform Minor Relocations with at least thirty (30) days notice to the Licensee, or no notice in the event of an emergency, provided that the Attachment to be relocated is not on a Support Structure supporting a CableRiser/Dip of the Licensee, Standards and safety are maintained, the Attachment is not relocated to a Support Structure on private property for which Licensee would require an easement or third party permit and the Attachment is attached to the new location on a Support Structure of the Owner in a manner similar to how the Attachment was attached in its original location. If the Owner relocates any of the Licensee's Attachments, the Owner will notify the Licensee of the Minor Relocation after such Minor Relocation. Such Minor Relocations shall be performed at the Licensee's expense.
- 12.05 If the Licensee fails to comply with a notice given pursuant to either Section 12.01 or Section 12.02, 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 Support Structure per month where there are Attachments that have not been removed or relocated as required under Section 12.01 or Section 12.02 until such time as the Licensee has fully complied with the Owner's notice. The Licensee acknowledges and agrees that such removal charge of \$100.00 per Support Structure per month is a genuine estimate of the damages the Owner would suffer as a result of such delayed removal or relocation and therefore constitutes liquidated damages and not a penalty. In addition to the foregoing and any other rights of the Owner hereunder, the Owner may carry out the work with respect to the Licensee's Attachments, as specified in the notice, at the expense of the Licensee, and, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damage to Licensee's Attachments as a result of the Owner performing such work.
- 12.06 Where the space occupied by the Attachments of the Licensee causes the Owner to replace an existing Support Structure with a higher Support Structure to accommodate additional equipment or attachments of the Owner, then the Licensee shall pay the Owner a sum equal to all of the costs associated with the replacement (as determined by the Owner), less the value in place of the removed Support Structure, together with the cost of transferring the existing attachments of the Owner and other permitted users of the Support Structure to the new Support Structure.
- 12.07 Where the presence of the Attachments of the Licensee causes the Owner to relocate or modify its plant for its own purposes, then the Licensee shall pay the Owner the cost of such relocation or modification.
- 12.08 The Owner may, in its discretion, require that an employee or contractor of the Owner be present when the Licensee is removing, replacing or relocating Licensee's Attachments

on the Support Structures or other plant of the Owner or Overlashed thereon so as to ensure that the work is carried out in accordance with the terms of this Agreement.

- 12.09 All costs charged to the Licensee for carrying out the work referenced in this Article 12 shall be as determined by the Owner and payable by the Licensee in accordance with Article 13 of this Agreement.

### **ARTICLE 13 - PAYMENT FOR WORK**

- 13.01 Upon completion of the work provided for in Articles 9 and 12 or other work as may be required by the Owner and contemplated by this Agreement, the Owner will render an invoice or invoices to the Licensee for the cost of performing such work and the Licensee shall pay the amount of the invoice within thirty (30) days of the date of the invoice.
- 13.02 All invoices that are outstanding for longer than thirty (30) days from the invoice date will be subject to interest at the rate of one and one-half percent (1 ½% ) compounded monthly (19.56% annually). The interest shall run from the due date for payment of the invoice until the date the Owner receives payment.
- 13.03 In addition to any other rights the Owner may have hereunder, if the Licensee fails to pay any amount hereunder within thirty (30) days of receipt of notice that the amount owing is overdue, the Licensee shall forthwith, at the request of the Owner, but at the expense of the Licensee, remove its Attachments covered by the invoice. If the Licensee fails to remove the designated Attachments as required by the Owner within thirty (30) days of the Owner's request to do so, or within such other time period as agreed between the Parties, the Owner may, at the expense of the Licensee, sell, remove or dispose of Licensee's Attachments specified in the notice, provided, however, that the Owner shall give the Licensee at least sixty (60) days prior written notice of its intention to sell or dispose of Licensee's Attachments. If the Owner sells or disposes of any of the Licensee's Attachments as permitted herein, the Owner may apply the amount received therefor against any costs and expenses incurred by the Owner in removing Licensee's Attachments, if applicable, and any other amounts owing by the Licensee to the Owner, and the Owner shall pay the balance of the proceeds, if any, to the Licensee. In addition, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damage caused to Licensee's Attachments as a result thereof. The Owner may also pursue any and all remedies it deems appropriate to recover the outstanding amounts owed to it by the Licensee.
- 13.04 All amounts properly payable by the Licensee to the Owner pursuant to this Agreement shall be non-refundable, regardless of whether the Licensee's Attachments remain Affixed to the Support Structures, or In-span, or Overlashed thereon.

## **ARTICLE 14 -LIABILITY, DAMAGE AND INSURANCE**

14.01 The Licensee does hereby assume all risk of loss or damage suffered by: (i) Licensee or any of its Representatives, (ii) by any Person to which Licensee has leased, sold or otherwise permitted the use of any portion of the Attachments, or (iii) or by any Person having an interest or claim in the Attachments, arising from any acts or omissions of the Owner or any of its Representatives, or any Person to which Licensee has leased, sold or otherwise permitted the use of any portion of the Attachments, howsoever caused, including damage to or loss of:

- (i) Licensee's Attachments; or,
- (ii) Licensee's services or those of any third party; or,
- (iii) the plant of any third party;

save and except for such loss or damage to the extent caused directly by the gross negligence or willful misconduct of the Owner or any of its Representatives, and, except as aforesaid, does hereby release the Owner and its Affiliates and their respective Representatives from all claims, demands, actions, penalties, damages, losses, judgements and settlements, costs and expenses or any other remedy brought by any Person (collectively "Claims") with respect thereto.

The Licensee does hereby indemnify and save harmless the Owner and its Affiliates and their respective Representatives from all Claims arising out of, or attributable to, any act or omission of Licensee or any of its Representatives, or of any Person to which Licensee has leased, sold or otherwise permitted the use of any portion of the Attachments, or of any Person having an interest or claim in the Attachments, the exercise by the Licensee or any of its Representatives of the permission herein granted or any breach of this Agreement by Licensee or any of its Representatives, including, without limitation, Claims for or in respect of any loss, damage, or injury (including loss of life) to property or persons, including a third party, any Claims against the Owner and/or any of its Affiliates by any Person to whom Licensee has leased, sold or otherwise permitted the use of any portion of its Attachments, and Claims by customers of Licensee including, without limitation, Claims with respect to the quality or integrity of data, signals or supply transmitted through the Attachments or any interruption or loss of service to customers, save and except for any loss or damage or injury to property or persons to the extent caused directly by the gross negligence or willful misconduct of the Owner or any of its Representatives. Such indemnification shall include, but is not limited to, compensation to the Owner for time required to prepare for and attend hearings, for all legal fees and costs on a substantial indemnity costs basis, and for fees and costs of expert witnesses incurred and for the financial ramifications of any decision made by a court, tribunal or decision maker. If the Owner assumes the defence of any Claim under this Agreement, the Licensee shall make available, at Licensee's cost, to the Owner (i) those of its Representatives whose assistance, testimony or presence is necessary to assist the Owner in evaluating and defending any such Claims; and (ii) all documents, records and other materials in the possession of the Licensee required by the Owner for its use in defending any such Claim; and (iii) will otherwise co-operate on a timely basis with the

Owner in the defence of such Claim. The Licensee shall be bound by any determination made with regards to any Claim or any compromise or settlement effected by the Owner under this Agreement. The Licensee shall have the right to assume the defence of any Claim, provided that it provides notice of its intention to do so in a timely manner having regard to all relevant factors including time required to file a defence to the Claim. If the Licensee assumes the defence of a Claim under this Agreement, no compromise or settlement of any such Claim may be made by the Licensee without the Owner's prior written consent.

14.02 Notwithstanding anything to the contrary in this Agreement, neither the Owner nor any of its Affiliates nor any of their respective Representatives shall be liable to the Licensee or to any Person having an interest or claim in the Attachments, in connection with this Agreement for loss of use or loss of profits or revenues or business interruption losses or loss of contract or loss of good will or loss of other economic benefits or any other indirect, incidental, special or consequential damages or damages for economic loss whatsoever, including punitive or exemplary damages, arising from any breach of this Agreement, fundamental or otherwise, or from any tortious acts, including the negligence or wilful misconduct of the Owner or any of its Affiliates or any of their respective Representatives.

14.03 The Licensee shall, at all times during the Term, maintain and pay for an insurance policy or policies covering all of its undertakings and, in particular, the following insurance:

- (i) comprehensive general liability insurance and property damage liability insurance coverage on an occurrence basis in an amount of Ten Million Dollars (\$10,000,000.00) for each occurrence involving:
  - a. Bodily Injury Liability
  - b. Broad Form Property Damage Liability
  - c. Personal Injury Liability
  - d. Products and Completed Operations
  - e. Blanket Contractual Liability
  - f. Contingent Employer's Liability
  - g. Non-Owned Automobile, including:
    - Additional Insureds under S.P.F No. 6 (Non-Owned Auto) and S.E.F. No. 96
    - Contractual Liability Endorsement under the S.P.F No. 6 (Non-Owned Auto)
  - h. Legal Liability for Damage to Hired Automobiles Endorsement; and
- (ii) Automobile liability insurance on all owned and non-owned vehicles used in connection with this Agreement and such insurance coverage shall have a limit of not less than Two Million Dollars (\$2,000,000.00) per vehicle, in respect of bodily injury (including passenger hazard) and property damage inclusive of any one accident and mandatory Accident Benefits.



The Licensee's comprehensive general liability insurance and property damage liability insurance shall add the Owner and its Affiliates as additional insureds, and shall contain a severability of interests and cross liability clause. The Licensee shall require the insurers providing the insurance described in this Article to waive any right of subrogation by the insurers against the Owner. The Licensee shall require its insurer to provide the Owner with thirty (30) days advance written notice of any adverse change to, cancellation or termination of Licensee's insurance policy or policies. The Licensee shall furnish to the Owner a certificate of such insurance upon execution of this Agreement, and annually thereafter during the Term or upon renewal of its insurance policies. The Owner shall not be responsible for the payment of any premiums with respect to any such insurance, which shall be the sole responsibility of the Licensee.

- 14.04 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.
- 14.05 During the Term, the Licensee shall promptly notify the Owner of any damage whatsoever to the equipment of the Owner or any third party arising as a result of the Licensee or its employees or contractors Affixing, inspecting, maintaining, changing, repairing or removing any of its Attachments. The Licensee shall be responsible for repairing any such damage at its expense to the satisfaction of the Owner or the third party and in accordance with the instructions of the Owner or the third party, as the case may be, or reimbursing the Owner or the third party, as the case may be, for any costs the Owner or the third party incurs to repair such damage upon receipt of an invoice therefor. The Licensee will also immediately notify the Owner of any claims or notices of claim received by the Licensee related in any way to its Attachments.
- 14.06 During the Term, the Owner shall promptly notify the Licensee of any damage whatsoever to the Licensee's Attachments arising as a result of the Owner or its employees or contractors performing work on a Support Structure to which Licensee's Attachments are Affixed.
- 14.07 Except as otherwise expressly stated herein, any work undertaken by the Owner as a result of this Agreement shall be at the expense of the Licensee, and the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damages in connection with such work.
- 14.08 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. The Owner will make reasonable efforts to provide to the Licensee written notice of its intention to significantly change the foregoing when the Owner has reason to believe that such change would have adverse effects on the Licensee's approved Attachments or the services carried by such approved Attachments or place the Licensee in non-compliance with any Standards. Notwithstanding anything to the contrary in this Agreement, the Owner is not responsible for any adverse affects on the Licensee's Attachments, or the services carried by such Attachments, as a result of any such changes made by the Owner.

- 14.09 The indemnity and limitation of liability provisions under this Article 14 shall survive the termination of this Agreement.

#### **ARTICLE 15 - TERM OF AGREEMENT**

- 15.01 Subject to earlier termination as provided by Article 16 and subject to Section 15.02, the term of this Agreement shall commence on the Effective Date and shall continue through until midnight on December 31, 2010 (the "Initial Term").
- 15.02 After the Initial Term, this Agreement shall be renewed automatically from year to year (each one-year period referred to herein as a "Renewal Term") on the same terms and conditions unless either Party provides the other with written notice as follows: either Party may terminate this Agreement at the end of the Initial Term by providing the other Party with at least three (3) months prior written notice and thereafter with at least three (3) months prior written notice at any time during the applicable Renewal Term. Where such notice is given less than three (3) months before the end of the Initial Term or a Renewal Term, as the case may be, this Agreement shall remain in effect until the end of the three (3) month notice period. The Initial Term and any Renewal Terms hereunder are collectively referred to herein as the "Term".
- 15.03 Each Permit approved by the Owner pursuant to the provisions of this Agreement shall remain in full force from the date of the Approval of the Application for the Permit until the termination of this Agreement or the applicable Permit in accordance with the terms of this Agreement.

#### **ARTICLE 16 - TERMINATION**

- 16.01 In addition to other rights the Owner has to terminate any Permit hereunder, any Permit may be terminated by either Party at any time upon one hundred eighty (180) days notice served in writing upon the other.
- 16.02 In addition to other rights the Owner has under this Agreement to terminate any Permit hereunder, any Permit hereunder may be terminated by the Owner if the Support Structure designated in such Permit is abandoned by the Owner.
- 16.03 The Owner and Licensee may negotiate terms of sale, from the Owner to the Licensee, of a Support Structure abandoned or to be abandoned and no longer used by the Owner. Such a sale will be:
- (i) subject to any existing obligations of the Owner to any Person; and

- (ii) subject to the consent of the property owner or municipal, regional, provincial or federal government or agency having jurisdiction over said lands.

However, if the Support Structure designated by such Permit is intended to be sold to another Person, the Owner will endeavour to secure the agreement of the purchaser that the Attachments be allowed to continue to be Affixed thereon.

- 16.04 If the condition of sale of any Support Structure pursuant to Section 16.03 cannot be satisfactorily arranged, the Owner may then, by notice in writing at any time, require the Licensee to remove its Attachments Affixed on the Support Structures involved, and the Licensee shall, within ninety (90) days after receipt of said notice, remove such Attachments, at its own expense. The Owner will endeavour to give notice pursuant to this Article no less than 90 days prior to the date upon which the sale or abandonment is to occur. If the Licensee fails to remove the subject Attachments within ninety (90) days of receipt of notice the Owner may, at the expense of the Licensee, sell, remove or dispose of Licensee's Attachments specified in the notice, provided, however, that the Owner shall give the Licensee at least sixty (60) days prior written notice of its intention to sell or dispose of Licensee's Attachments. If the Owner sells or disposes of any of the Licensee's Attachments herein, the Owner may apply the amount received therefor against any costs and expenses incurred by the Owner in removing Licensee's Attachments, if applicable, and any other amounts owing by the Licensee to the Owner, and the Owner shall pay the balance of the proceeds, if any, to the Licensee. In addition, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damage caused to Licensee's Attachments as a result thereof. The Owner may also pursue any and all remedies it deems appropriate to recover the outstanding amounts owed to it by the Licensee.
- 16.05 In addition to other rights the Owner has under this Agreement to terminate any Permit hereunder, any Permit governed by this Agreement may be terminated or amended by the Owner in accordance with Section 8.05.
- 16.06 If the Licensee fails or neglects at any time to fully perform, observe and keep all the covenants, terms and conditions herein contained, including, without limitation, a default at any time in the payment of fees referred to in this Agreement or a failure to deliver or maintain security in strict accordance with Article 5, then the Owner will notify the Licensee in writing of such default and the Licensee shall correct such default within (i) thirty (30) days of receipt of such notice or such period of time otherwise required under this Agreement, or (ii) sooner in the event of an emergency, as determined by the Owner, or (iii) within such period of time as agreed to in writing by the Owner and the Licensee, failing which the Owner may forthwith terminate this Agreement, the privileges hereby granted and any Permit governed by this Agreement by notice to the Licensee.
- 16.07 In addition to the Owner's termination rights hereunder, the Owner may order the removal of any of the Licensee's Attachments that have been installed without a Permit or not in compliance with the applicable Permit. In such circumstances, the Licensee

shall remove Licensee's Attachments in accordance with the notice or order of the Owner. If the Licensee fails to comply promptly with any such notice or order, the Owner may sell, remove or dispose of Licensee's Attachments specified in the notice or order at the expense of the Licensee, provided, however, that the Owner shall give the Licensee at least sixty (60) days prior written notice of its intention to sell or dispose of Licensee's Attachments. If the Owner sells or disposes of any of the Licensee's Attachments as permitted herein, the Owner may apply the amount received therefor against any costs and expenses incurred by the Owner in removing Licensee's Attachments, if applicable, and any other amounts owing by the Licensee to the Owner, and the Owner shall pay the balance of the proceeds, if any, to the Licensee. In addition, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damage caused to Licensee's Attachments as a result thereof.

16.08 The Owner may forthwith terminate this Agreement if:

- (i) the Licensee Affixes Attachments, except Service Drops for which a Permit is not required under this Agreement, without a Permit issued in accordance with the terms of this Agreement;
- (ii) the Licensee Affixes Attachments, except Service Drops for which a Permit is not required under this Agreement, in a manner that does not comply with the terms in the Permit(s) issued for such Attachments;
- (iii) a resolution is passed, or an order is made or documents are filed at an office of public record for the dissolution, termination of existence, or liquidation or winding-up of the Licensee;
- (iv) in the reasonable opinion of the Owner, a material change has occurred in the creditworthiness, financial condition or ongoing business of the Licensee that may adversely affect its ability to fulfil its financial obligations hereunder, unless security satisfactory to the Owner has been or is posted by the Licensee in accordance with Article 5;
- (v) a receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Licensee or any of its property is appointed by any government authority, and such receiver, manager, receiver-manager, liquidator, monitor or trustee is not discharged within thirty (30) days of such appointment; or, if by decree of any government authority, the Licensee is adjudicated bankrupt or insolvent, or any substantial part of its property is taken, and such decree is not discharged within thirty (30) days after the entry thereof; or a petition to declare bankruptcy or to reorganize the Licensee pursuant to any applicable law is filed against the Licensee and is not dismissed within thirty (30) days of such filing; or
- (vi) the Licensee files, or consents to the filing of, a petition in bankruptcy or seeks, or consents to, an order or other protection under any provision of any legislation

relating to insolvency or bankruptcy ("Insolvency Legislation"); or, files, or consents to the filing of, a petition, application, answer or consent seeking relief or assistance in respect of itself under any provision of any Insolvency Legislation; or files, consents to the filing of, an answer admitting the material allegations of a petition filed against it in any proceeding described herein; or makes an assignment for the benefit of its creditors; or admits in writing its inability to pay its debts generally as they become due; or consents to the appointment of a receiver, trustee, or liquidator over any, or all, of its property.

- 16.09 In addition to the Owner's right to terminate this Agreement or any Permit hereunder, if the Licensee fails to pay any fees under this Agreement in accordance with Section 16.06, the Owner may draw on any letter of credit then held by or for the benefit of the Owner as a security deposit pursuant to Article 5 an amount equal to the Support Structure Rental Fees or other charges in default or other expenses owing to the Owner.
- 16.10 The Licensee acknowledges and agrees that if the Owner or the Licensee terminates this Agreement or any Permit in accordance with the terms of this Agreement, any fees paid by the Licensee hereunder in respect of any terminated Permit shall be non-refundable. The termination of a Permit pursuant to this Agreement shall not be deemed a termination of this Agreement unless such Permit is the last remaining or only Permit issued under or governed by this Agreement, in which case the termination of the Permit will be deemed a termination of this Agreement, subject to the Licensee fulfilling all of its outstanding obligations. If the Owner terminates a Permit hereunder, the Owner shall provide the Licensee with written notice of such termination and the reasons therefore.
- 16.11 Upon the termination, for any reason, of this Agreement or of a Permit pursuant to this Agreement, the Licensee, at its expense, shall forthwith remove Licensee's Attachments covered by this Agreement, or the terminated Permit, as the case may be, and ensure that the site where the removal occurred is restored to its original condition, save for ordinary wear and tear, that it was in before the Attachment was made, and any damage caused by Licensee or any of its Representatives is repaired forthwith to the Owner's satisfaction. If the Licensee fails to remove Licensee's Attachments as required by the Owner within sixty (60) days of receipt of such notice, the termination of this Agreement or of a Permit, as the case may be, or within a shorter period of time in the event of an emergency, as determined by the Owner, the Owner may, at the expense of the Licensee, sell, remove or dispose of Licensee's Attachments specified in the notice, provided, however, that the Owner shall give the Licensee at least sixty (60) days prior written notice of its intention to sell or dispose of Licensee's Attachments. If the Owner sells or disposes of any of the Licensee's Attachments as permitted herein, the Owner may apply the amount received therefor against any costs and expenses incurred by the Owner in removing Licensee's Equipment, if applicable, and any other amounts owing by the Licensee to the Owner, and the Owner shall pay the balance of the proceeds, if any, to the Licensee. In addition, notwithstanding any other term in this Agreement, the Owner shall not be liable to the Licensee or to any Person having an interest or claim in the Attachments, for any damage caused to Licensee's Attachments as a result thereof. The Owner may also pursue any

and all remedies it deems appropriate to recover the outstanding amounts owed to it by the Licensee.

- 16.12 The Parties agree that all obligations flowing from this Agreement or a Permit governed by this Agreement, including, without limitation, the indemnities and releases provided by the Licensee to the Owner, will continue beyond the date of termination of this Agreement or any Permit, until the obligations are satisfied in full. Any rights that a Party may have arising out of either the termination of this Agreement or any Permit or the event giving rise to the termination of this Agreement or any Permit shall survive the termination of this Agreement or any Permit.

#### **ARTICLE 17 - EXISTING RIGHTS OF OTHER PARTIES**

- 17.01 If the Owner has previously granted permission to others, not Parties to this Agreement, by contract or otherwise, to use any Support Structures owned by it and not covered by this Agreement, then nothing herein contained shall be construed as affecting such permission, if and when this Agreement is made applicable to such Support Structures. The Owner hereto shall have the right, by contract or otherwise, to continue and extend such existing permission.
- 17.02 Subject to the rights conveyed herein, the Licensee agrees that this Agreement shall not prevent or limit the right of the Owner to grant to others, not Parties to this Agreement, the right to occupy its Support Structures.

#### **ARTICLE 18 - VESTED RIGHTS**

- 18.01 It is understood and agreed that neither this Agreement, nor the Approval granted by the Owner to use Support Structures or other plant of the Owner, shall confer upon the Licensee any vested rights, or franchise, by implication or otherwise, to use the said Support Structures or plant and no further or additional privileges, or rights, if any, than are expressly provided for by this Agreement shall be acquired and all such privileges and rights, if any, shall come to an end if and when a notice to terminate this Agreement has been given or served by the Owner. However, the obligations of the Licensee will continue until completed to the satisfaction of the Owner.
- 18.02 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 Licensee's Attachments, other than as provided for in this Agreement.

#### **ARTICLE 19 - NOTICES**

- 19.01 Unless otherwise provided herein, any notice or other communication to a Party under this Agreement shall be in writing and given or served by personal delivery or courier or by registered mail, postage prepaid, or by facsimile addressed as follows:

**TO: TORONTO HYDRO ENERGY SERVICES INC.**  
10 Belfield Road  
Toronto, Ontario M9W 1G1  
Attn: Rick Cook  
General Manager

**Fax No: (416) 542-2550**

**With a copy to:**

**TORONTO HYDRO ENERGY SERVICES INC.**  
14 Carlton Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5B 1K5  
Attn: Lawrence Wilde  
Vice-President, General Counsel & Corporate Secretary

**Fax No: (416) 542-2540**

**TO:**  
**TO: DAScom Inc.**  
27 Fima Crescent  
Toronto, Ontario M8W 3R1  
Attn: President

**Fax No: (416) 752-4243**

**With a copy to:**

**Fraser Milner Casgrain**  
Suite 1240 99 Bank Street  
Ottawa, Ontario K1P 1H4  
Attn: Kirsten Embree

**Fax No: (613) 799-1209**

Any notice or other communication so mailed shall be deemed to have been given or served on the fifth Business Day after it is deposited in any post office in Canada. Any notice or other communication transmitted by facsimile shall be deemed to have been given or served on the first Business Day after transmission (provided the transmission is evidenced by documented proof of proper fax transmittal). In the event that mail delivery is impeded for any reason, notice shall be given by personal delivery or courier or by facsimile. Any such notice or other communication to a Party may also be served in person by delivering the same to a responsible person in the offices of the Parties to be served at the above address, and such delivery by hand shall be deemed received on the

date delivered. Either Party may change its address and/or contact for service at any time by giving written notice to the other as set forth herein.

## ARTICLE 20 - ASSIGNMENT

- 20.01 The Licensee agrees that it will not assign its interests in this Agreement, the privileges herein granted, or any Permit, or sell any Attachments, without the prior written consent of the Owner, not to be unreasonably withheld. Any such approved assignment or sale shall only take effect once the assignee or purchaser, as the case may be, has entered in an agreement directly with the Owner on terms and conditions satisfactory to the Owner, including covenants by the assignee or purchaser to the Owner to perform, observe and keep every covenant, provision and condition of this Agreement to be performed, observed and kept by the Licensee.
- 20.02 Licensee shall include as a condition of any agreement for the sale any of Licensee's Attachments, if Licensee's Attachments are to remain installed on the Support Structures or other plant of the Owner or Overlashed thereon, a requirement that the sale is subject to the Owner's prior written approval, and will not be effective until the purchaser has entered into an agreement directly with the Owner on terms and conditions satisfactory to the Owner governing the terms on which such cables and equipment of the purchaser may be installed on the Support Structures or other plant, or overlashed to existing cable, Messenger or Strand, or other equipment of the Purchaser, the Licensee, the Owner or a third party on a Support Structure or In-Span.
- 20.03 Notwithstanding Sections 20.01 and 20.02, the Licensee may sell or lease individual strands of fibre in cable Affixed to the Support Structures or other plant or Overlashed thereon provided that the Licensee shall advise the purchaser or lessee of such strands that the underlying rights granted hereunder are for a fixed term, and provided that the Licensee does not confer any rights to the use of the underlying rights contrary to the terms of this Agreement or beyond the Initial Term, subject to extension or renewal as provided for hereunder, and provided that such strands shall continue to be subject to all of the terms and conditions of this Agreement and shall be maintained and repaired by the Licensee and the Representatives of the purchaser or lessee shall not have access to the Support Structures or other plant of the Owner.
- 20.04 The Owner may assign this Agreement at any time and its rights and obligations thereunder to any Person without Licensee's consent provided that the assignee agrees to be bound by the obligations of the Owner in this Agreement and the Owner notifies the Licensee in writing of any such assignment. Upon any assignment of this Agreement by the Owner, the Owner shall be released of all of its obligations under this Agreement except for any obligations of the Owner outstanding as of the effective date of such assignment.



- 20.05 The Owner may grant or permit to exist security interests in its rights under this Agreement and the Support Structures and other supporting structures and equipment of the Owner without the Licensee's consent and without notice to the Licensee.
- 20.06 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 and permitted assigns.

#### **ARTICLE 21 - INTERPRETATION**

- 21.01 The terms of this Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. In the event that any court or other authority with jurisdiction over the subject matter hereof declares any portion of this Agreement invalid, illegal or unenforceable, to the extent permitted by law, the remainder of this Agreement shall remain in full force and effect.

#### **ARTICLE 22 - ENTIRE AGREEMENT**

- 22.01 This Agreement and any permits issued hereunder or governed by this Agreement, as may be amended from time to time, constitute the entire agreement between the Parties relating to the Affixing of the Licensee's Attachments, and supersedes all previous agreements and understandings, oral and written, with regards to the subject matter herein.. All previous Support Structure or pole attachment agreements between the Parties or predecessor entities thereto are, notwithstanding the provisions thereof, hereby terminated as of the Effective Date. Notwithstanding the foregoing, any permit issued under any prior agreement between the Parties, or predecessor entities thereto, which permit has not been terminated by the Owner, or predecessor entity of the Owner, shall, notwithstanding anything contained in such prior agreement, remain in force and effect as if such permit had been issued pursuant to this Agreement, on the express condition that the Licensee satisfies all of the terms of this Agreement. This Agreement and any permit governed by this Agreement may only be amended by written agreement signed by the authorized representatives of the Parties.

#### **ARTICLE 23 - HEADINGS**

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

#### **ARTICLE 24 - LEGISLATIVE REFERENCES**

- 24.01 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 25 -WAIVER**

- 25.01 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 such terms or conditions, but the same shall be and remain at all times in full force and effect. No waiver of any provision of this Agreement shall be valid unless in writing and signed by an authorized officer or employee of the Party waiving the protection of the provision in question, and such waiver shall not extend to any provision, matter or occurrence not specified by such Party.

## **ARTICLE 26 - ENVIRONMENTAL OBLIGATIONS**

- 26.01 The Licensee hereby accepts land and plant of the Owner on an "as is" basis and hereby waives against the Owner and its Affiliates and their respective Representatives, all rights and recourse of any nature whatsoever in respect of any defects therein. The Owner makes no representation or warranty with respect to the condition, nature, composition, use (past, present or future) of such land or plant.
- 26.02 The Licensee shall comply with the provisions of any federal, provincial or municipal environmental laws that during the Term shall become applicable to the land, plant or Attachments pertaining to 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 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.
- 26.03 Upon the termination of this Agreement, the Licensee shall leave the Support Structure, plant and land upon which the Support Structure is situated free of any environmental contamination resulting from the Licensee's Attachments. In the event that the Licensee fails to comply with the above to the satisfaction of the Owner, the Owner may undertake any such work that it considers necessary to correct any environmental contamination that may have resulted from the Licensee's Attachment and all expenses incurred by the Owner, either directly or indirectly, shall be payable by the Licensee upon receipt of the Owner's invoice therefor.
- 26.04 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 the termination of this Agreement.

## **ARTICLE 27 - DISPUTE RESOLUTION**

- 27.01 Except for disputes related to Article 28, all disputes between the Parties arising out of or related to this Agreement shall be resolved in accordance with this Article 27. The Parties shall attempt in good faith to resolve any dispute between the Parties arising under this Agreement. If the Parties are unable to resolve the dispute within thirty (30) days of the date the dispute arose, either Party may submit the dispute to binding arbitration as set forth below. The Parties shall submit any arbitration under this Article 27 to a single arbitrator agreed upon by both Parties. If the Parties cannot agree upon a single arbitrator within ten (10) days after the dispute is referred to arbitration, each Party shall within ten (10) more days choose one individual who shall sit on a three-member arbitration panel. The two arbitrators appointed shall name the third arbitrator within ten (10) days or, if they fail to do so within that time period, either Party may make application to a court of competent jurisdiction for appointment of the third arbitrator. Any arbitrator selected to act under this Agreement shall be qualified by education, training and experience to pass on the particular question in dispute and shall have no connection to either of the Parties other than acting in previous arbitrations. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The arbitration shall be conducted in the City of Toronto, Ontario unless the Parties agree otherwise. The decisions of the arbitration tribunal shall be made in writing and shall be final and binding on the Parties as to the questions submitted and the Parties shall have no right of appeal therefrom. All costs and expenses relating to a dispute which is finally determined or settled by arbitration, including reasonable legal fees, will be borne by the Party determined to be liable in respect of such dispute; provided, however, that if complete liability is not assessed against only one Party, the Parties will share the total costs in proportion to their respective amounts of liability so determined. The Parties agree to keep all details of the arbitration proceeding and the arbitral award strictly confidential. Notwithstanding the provisions to arbitrate any dispute hereunder, either Party may seek from a court any equitable relief (including, without limitation, injunctive relief) that may be necessary to protect such Party's rights. This Article 27 shall survive the termination of this Agreement.

#### **ARTICLE 28 -CONFIDENTIALITY**

- 28.01 Except as permitted herein, each Party shall keep in strict confidence and not disclose any of the terms of this Agreement or any information or data in any form disclosed to or obtained by one Party (the "Receiving Party") in connection with this Agreement (collectively, "Confidential Information") from the other Party (the "Disclosing Party") to any Person without the Disclosing Party's prior written consent. Notwithstanding the foregoing Confidential Information shall not include any information or data that
- (a) is in the public domain at the time of its disclosure to the Receiving Party or which thereafter enters the public domain otherwise than by any breach of this Agreement;

- (b) is already known to or in the possession of the Receiving Party at the time of its disclosure by the Disclosing Party as evidenced by the Receiving Party's records; or
- (c) is lawfully acquired at any time by the Receiving Party without restrictions from a third party without breach of confidentiality by such third party.

28.02 The Receiving Party may disclose such Confidential Information to any of the Representatives of the Receiving Party or any of its Affiliates who agree to be bound by the obligations of confidentiality herein and who have a reasonable need to know such Confidential Information in the course of their duties for the Receiving Party but only for the purposes of the Receiving Party exercising its rights and obligations under this Agreement. Notwithstanding the foregoing, if the Receiving Party is required by law to disclose any Confidential Information to a court, government department or agency or regulatory body, or any other Person, the Receiving Party may so disclose; provided that it shall, to the extent permitted by law, first inform the Disclosing Party of the request or requirement for disclosure to allow an opportunity for the Disclosing Party to apply for an order to prohibit or restrict such disclosure.

28.03 The Receiving Party shall be responsible for any breach of the obligations of confidentiality under this Agreement by it and by any Person to whom it discloses any Confidential Information. The Receiving Party agrees that the Disclosing Party would be irreparably injured by a breach of the obligations of confidentiality under this Agreement by the Receiving Party, or by any Person to whom it discloses any Confidential Information, and that monetary damages would not be a sufficient remedy. Therefore, in such event, the Disclosing Party shall be entitled to all available equitable relief, including injunctive relief without proof of actual damages, as well as specific performance. Such remedies shall not be deemed to be exclusive remedies for a breach of the obligations of confidentiality under this Agreement but shall be in addition to all other remedies available at law or equity. The obligations of confidentiality under this Agreement shall survive the termination of this Agreement.

## **ARTICLE 29 - RELATIONSHIP OF THE PARTIES**

29.01 Nothing in this Agreement creates the relationship of principal and agent, employer and employee, partnership or joint venture between the Parties. The Parties agree that they are and will at all times remain independent and are not and shall not represent themselves to be the agent, employee or partner or joint venturer of the other.

## **ARTICLE 30 - FORCE MAJEURE**

30.01 Except for the payment of any monies or the provision of any security as required hereunder, if either Party fails to perform or is delayed in performing any of its obligations hereunder as a result of Force Majeure, the Party affected by Force Majeure

(the "Frustrated Party") shall not be deemed to be in breach of this Agreement and shall be relieved of liability with respect to such delay or failure to perform during the continuance of Force Majeure provided that the Frustrated Party shall, as soon as reasonably practicable, give the other Party prompt written notice thereof stating the date and extent of the Force Majeure and the cause thereof, an estimate as to when the Frustrated Party expects to be able to perform its obligations, and, upon cessation of the Force Majeure, takes all reasonable steps to resume the performance of its obligations hereunder. Notwithstanding the foregoing, the settlement of strikes, lockouts or other labour disputes shall be within the discretion of the Frustrated Party. Notwithstanding the terms herein, if a delay or failure to perform as a result of Force Majeure extends beyond ninety (90) days, then either Party may, by written notice to the other Party, terminate any Permit(s) governed by this Agreement affected by Force Majeure, or if the Force Majeure materially affects the Frustrated Party's ability to perform its obligations hereunder, then either Party may terminate this Agreement and any Permit(s) governed by this Agreement.

#### **ARTICLE 31 - TIME OF ESSENCE**

31.01 Time shall be of the essence of this Agreement.

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## ARTICLE 32 - COUNTERPARTS

32.01 This Agreement may be executed in counterparts and delivered by facsimile, each of which shall be deemed an original and all of which, together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed by their duly authorized signing officers.

For: **TORONTO HYDRO ENERGY SERVICES INC.**

Signature: \_\_\_\_\_

  
Chris Tyrrell  
President

I have authority to bind the Corporation.

For: **DASCOM INC.**

Signature: \_\_\_\_\_

  
Name: Ken Clarke  
Title: President/CEO

I have authority to bind the Corporation.

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