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September 1, 2011

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

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 CANDAS' revised Response to Staff Interrogatory 7. We are filing this revised Response as a result of "Interrogatory No. 1" dated August 30, 2011 received from Newmarket-Tay. We are providing this revision as a matter of expedience only, given that Newmarket-Tay's 'Interrogatory No. 1" is contrary to the process established by the Board's Procedural Orders No. 1 and 2.

Hard copies will be sent by courier in the usual fashion.

Yours very truly,

Michael Schafler

MDS/ag
cc: Helen Newland
Mr. George Vinyard
ExteNet Systems, Inc.
All Intervenors

Questions:

7. Section 2.7 of the application states that "at least one other large electricity distributor in Ontario appears to be following THESL's lead by adopting a 'no wireless policy'" and that "certain other distributors are not prepared to offer pole access agreements for wireless attachments at this time."

   7.1 Please identify the other distributor(s) that have adopted the "no wireless" policy.

   7.2 Please identify the distributors that are presently not prepared to offer pole access agreements for wireless attachments.

   7.3 Please provide evidence that would demonstrate that those distributors are unwilling to attach wireless equipment to their poles and/or unwilling to offer pole access agreements for wireless attachments.

   7.4 If attachment applications have been made to those distributors, please provide information on the status of these applications including:

      7.4.1. whether any permits have been granted;

      7.4.2. whether any reasons have been given for not offering pole access agreements and if so, please state those reasons.

Responses:

7.1-7.2 Since August of 2010, ExteNet, acting on behalf of and in conjunction with DAScom, has contacted a total of six electricity distributors in Ontario regarding attachment of DAS equipment to power poles. Veridian Corporation ("Veridian"), PowerStream, Inc. ("PowerStream") and Newmarket Hydro ("Newmarket") indicated that they would not allow antennas to be attached to their distribution poles. Oakville Hydro ("Oakville") and Oshawa PUC Networks Inc. ("Oshawa") refused to provide DAScom with copies of their standard pole access agreements until such time as DAScom submitted certain information and/or could demonstrate that it had entered into a municipal access agreements. Finally, Enersource Corporation ("Enersource") did not respond to enquiries regarding wireless attachments.

Given the responses of these utilities and in light of the August 13, 2011 letter and the refusal of THESI to renew the Light Pole Access Agreement, DAScom and ExteNet have put their efforts to construct DAS networks in Ontario on hold and

have, accordingly, not pursued these Ontario distributors or approached any others.

7.3

- **Veridian:** Email correspondence to and from Veridian regarding Veridian's "strict no antenna attachment policy". See Schedule Staff 7.3-1.

- **PowerStream**: PowerStream representative, Cheryl Goul, advised verbally, in multiple conversations (including on or about October 12, 2010), that PowerStream would not permit antenna attachments on its poles.

- **Newmarket Hydro**: In a telephone call on or about November 30, 2010, a Newmarket representative, Len Macdonald, advised that Newmarket would not permit antenna attachments on its poles.

- **Oshawa**: Oshawa refused to provide a form of attachment agreement. In an email dated February 22, 2011, Oshawa's representative, Eric Andres, stated that Oshawa PUC would not provide a form of attachment agreement until DAScom submitted an "application package/request to attach" as well as proof of a municipal access agreement with the City of Oshawa. See Schedule Staff 7.3-2.

- **Oakville**: Oakville refused to provide a form of attachment agreement. Oakville Hydro did not respond to numerous phone calls and voicemails, over a 6-7 week period requesting information. When contact was finally made on or about October 26, 2010, Oakville representative, Daniel Steel, stated that Oakville would not provide a form of attachment agreement without evidence of a municipal access agreement with the City of Oakville.

- **Enersource**: After difficulty making contact with Enersource between August and October of 2010, ExteNet immediately provided equipment information requested by Enersource on October 27, 2010. Subsequently, Enersource failed to respond to repeated attempts to make contact through January 2011 and no determination as to wireless attachments was ever reached.

7.4 No attachment applications have been made to any Ontario electric distributor other than THESL.

7.4.1. Not applicable.

7.4.2. See the responses to Staff 7.1-7.3.

Questions [Newmarket-Tay, Interrogatory No. 1, August 30, 2011]:

In "Interrogatory No. 1", attached to its letter dated August 30, 2011 to the Board, Newmarket–Tay indicated that it "limits communication attachments to the communication space and below for their attachments and risers/drops". Further, Newmarket-Tay requested CANDAS to explain how this substantiated CANDAS' "postulation that Newmarket-Tay has adopted a "no-wireless" policy or is not prepared to offer a pole access agreement".

Responses:

CANDAS understood Newmarket–Tay to be denying pole access to wireless carriers for the reasons set out in CANDAS' Responses to Staff 7.1-7.3, above. Moreover, on December 9, 2010, Newmarket–Tay provided ExteNet with a copy of its standard form pole attachment agreement. The definition of "Attachment" expressly excluded "Wireless Transmitters". ExteNet provided proposed changes to the agreement to Newmarket–Tay on January 7, 2011, including amendments to the definition of "Attachment" that would result in "Wireless Transmitters" being included. Newmarket–Tay rejected all of ExteNet's proposed changes, although its representative, Len Macdonald, by email dated March 7, 2011, did offer up a meeting to discuss ExteNet's "nice to have" and "need to have" requirements. As at the time that the Application had been filed on April 12, 2011, the meeting had not taken place. Copies of the relevant emails are attached at Schedule Staff 7.3-3.

Schedule

Staff 7.3-1

From: Matthew Aceto [mailto:maceto@veridian.on.ca]
Sent: Thursday, January 13, 2011 2:05 PM
To: Peter Komon
Cc: Brian Kirk
Subject: RE: New third party attachment request

Hi Peter,

The reasoning behind the no-antenna policy, is that Veridian would like to minimize the third-party attachments to as little as necessary. Since poles are on public road allowance, there is an esthetic concern to minimize clutter. More-so, Veridian's prime objective is distributing power, not renting poles. Therefore, we must maintain the ability to mount additional hydro equipment in the future (ie: transformer banks, high voltage risers, load break switches, etc).
The SCADA antennas that mount to poles are property of Veridian, and therefore pose no conflict of interest.

In fact, we strictly don't allow attachments of any party other than "Common Carriers" or "Major third Parties". Since you have stated that your company is regulated by the CRTC, I am assuming that the purposes of your business fit the description of a Common Carrier; am I correct?

Matt

From: Peter Komon [mailto:pkomon.ctr@extenetsystems.com]
Sent: Friday, January 07, 2011 3:55 PM
To: Matthew Aceto
Cc: Brian Kirk
Subject: RE: New third party attachment request

Matt,

Thank you for your prompt response. You have made it clear that Veridian has a strict no-antenna policy, that the agreement was for fiber only and that you are not in a position to change or make exceptions to that policy. However, I would like to understand the reasoning behind for that policy. I am aware that Veridian uses a SCADA system which includes smaller, low power antennas (presumably on the poles). I can understand the desire not to have large microwave or high power antennas on your poles. However, DAScom's antennas are not dissimilar from the SCADA antennas - they are low power and relatively small.

Given the similarity of the SCADA antennas and DAScom's antennas, understanding the basis for the no-antenna policy might bring to light the fact that having our antennas on Veridian's poles is not actually contrary to Veridian's goals in having the policy.

I continue to have concern over the fact that Veridian has chosen to allow the "major third parties" (presumably Bell, Rogers and Telus?) to set the guidelines on behalf of all possible attachers, including those with different business models, in different industries and using different technologies. However, my goal is not to dissuade Veridian from having and maintaining a no-antenna policy. Rather, my hope is that DAScom might be able to achieve its goals of attaching antennas without violating integrity and goals of Veridian's policy.

Thanks in advance for your feedback

From: Matthew Aceto [mailto:maceto@veridian.on.ca]
Sent: Thursday, January 06, 2011 3:57 PM
To: Peter Komon
Cc: Brian Kirk
Subject: RE: New third party attachment request

Hi Peter,

See my comments below. I am not in a position of authority to change our policy as you request; however, I am giving you Veridian's current stance which has been stated firmly.

Matt

From: Peter Komon [mailto:pkomon.ctr@extenetsystems.com]
Sent: Thursday, January 06, 2011 4:09 PM
To: Matthew Aceto
Cc: Brian Kirk
Subject: RE: New third party attachment request

Matt,

One of the biggest issues I had with the agreement as provided was that it did not permit attachment of "Wireless Transmitters" (i.e. antennas). While I appreciate the fact that Veridian has similar agreements with Bell, Rogers, Telus, etc., at a minimum those carriers do not require antennas as it is not a part of their business model. Accordingly, there must be at least some distinction, as well as a basis for working outside of Veridian's policy, between the existing attachment agreements for incumbent carriers and DAScom.
There is no mention of antennas because Veridian has a strict no-antenna policy; you and I have discussed this before. You requested that I send you the attachment agreement so that you may attach your fiber only (as I recall).

Further, many of the other amendments to the agreement that I proposed relate to the protection of our investment. Neither our business, nor our customers (such as PMI, Videotron, etc.) are willing to invest millions of dollars into creating a network if there is no guarantee that the network will be available for more than a few years. Not being a huge incumbent telecom carrier, we do not have the leverage to ensure sustainability of a network without contractual protection.

The agreement was formed with all major third parties in consensus. I understand your concern for your investment; however, Veridian also has an interest in limiting unnecessary liabilities. This is not to say that you must remove after five years, but we simply cannot commit to a 20 year contract.

While I recognize Veridian's desire to maintain an equal playing field amongst its attachers, the intention of that parity is to ensure that no one is unfairly advantaged. However, by maintaining a strict policy with regard to attachment terms, Veridian is effectively advantaging the incumbent carriers over other attachers. Thus, our requests are not intended to ask for an advantage, but only to allow us to make a sound investment in a newer technology so that we may fairly compete in the marketplace.
Could you kindly explain how Veridian's policy is unfair? Particularly, what advantage does it give to larger carrier over a small carrier?

As such, I ask that you reconsider our proposed changes. And if you refuse to reconsider your position, please provide me with the appropriate executive contact so that I may escalate the matter to the appropriate level. Since we've had difficulties connecting via email in the past, please confirm that you received this email. I trust that this will not take longer than a few days, but advise when I can expect a response. Please note that Brian Kirk, Assistant General Counsel is now copied on our correspondences.
Rest assured, your concerns are not falling on deaf ears. If this matter needs to be escalated to Veridian management, I shall see to it; in the mean time, I am still your contact. I understand Veridian's policy and I have advocated on your behalf to change it; still, Veridian Executives remain firm. I would advise not to escalate the matter until an argument of yours cannot be addressed by myself.

Peter

From: Matthew Aceto [mailto:maceto@veridian.on.ca]
Sent: Tuesday, January 04, 2011 2:36 PM
To: Peter Komon
Subject: RE: New third party attachment request

Hi Peter,

It was explained to me that the agreement was formed from with the consent of our current attachers (ie Bell, Rogers, Telus, etc.), and cannot be changed.

Matt

From: Matthew Aceto
Sent: Tuesday, January 04, 2011 2:27 PM
To: 'Peter Komon'
Subject: RE: New third party attachment request

Hi Peter,

I have no record of receiving the email you sent on October 27th. I will forward your comments for review.

Matt

From: Peter Komon [mailto:pkomon.ctr@extenetsystems.com]
Sent: Monday, December 27, 2010 10:58 AM
To: Matthew Aceto
Subject: FW: New third party attachment request

Mathew,

Have you had a chance to take a look at the requested changes? Please let me know status.

Peter

From: Peter Komon [mailto:pkomon.ctr@extenetsystems.com]
Sent: Tuesday, October 27, 2010 3:14 PM
To: Matthew Aceto
Subject: RE: New third party attachment request

Mathew,

Please see below for the requested amendments to the agreement. Please feel free to call me to discuss any of the propsed changes to the agreement if you have any questions.

Regards,
Peter

Requested changes

1.4 First line: Insert "antenna" after ....material, apparatus, equipment.
Delete last sentence beginning "Unless otherwise agreed..."

5.1 Need a definition of "satisfactory financial performance." Proposed language: Satisfactory financial performance is the fulfillment of Licencee to pay all compensation as
defined by and within the time frames stipulated within this Agreement, inclusive of all rights, remedies and extensions as provided for within the Agreement, including but not
limited to dispute resolution and the ability to cure defaults.

Delete $100,000 and Insert $10,000.

5.4 Delete entire clause as this clause can lead to arbitrary decisions by the Owner.

6.3 Insert ", or as soon a commercially reasonable" to the end of the last sentence.

7.1 Clarification: Haven't we done this already?

7.2 Delete: "At the Owner's sole discretion" and Insert "At Owner's discrestion and expense and not later than ten (10) business days after Licencee's Permit request".

7.3 Insert: "but if the Owner fails to to communicate an opinion within ten (10) days after the joint field visit, then the Owner will have deemed the Affixing of Attachments approved" to the end of the paragraph.

7.4 Insert: ", based on then current market labor rates," after "preliminary estimate."
Insert: "The Owner shall provide the Make-ready estimate within thirty (30) days of the Licensee's Permit request.

9.3 Please define the capitalized term "Strand".

9.23 Delete: gross

10.1 Redraft clause to state that Owner is responsible for clearing and costs of clearing Owner's space. All joint users of the communication space are jointly responsible for clearing vegetation and their pro rata share of costs.

11.1 Correct dates.

11.12 Delete the second sentence.

14.2 Modify: Owner shall be responsible for its negligence. Delete gross

15.1 Delete "five (5)" and in its place insert "twenty (20)".

From: Matthew Aceto [mailto:maceto@veridian.on.ca]
Sent: Monday, October 18, 2010 10:53 AM
To: Peter Komon
Subject: FW: New third party attachment request

Hi Peter,

Sorry, I did not ignore your request. I must have forgotten to forward this thread to you.

Matt

From: Terry Britton
Sent: Tuesday, October 12, 2010 8:28 PM
To: Matthew Aceto
Subject: RE: New third party attachment request

Hi Matt,

Here is a copy of the Third Party attachment agreement. It is set up that there is no changes allowed, they can only fill in the blank spots. It is that same agreement for all attaches. You should also ask were they intend to go as most poles already have the three allotted space occupied and there might be extensive make ready work to add height to the existing poles. They might have to talk to Rogers or Bell and go joint with them.

Terry

From: Matthew Aceto
Sent: Tuesday, October 12, 2010 3:28 PM
To: Terry Britton
Subject: FW: New third party attachment request

Hi Terry,

This gentleman's company wished to attach fiber as a third party user on Veridian poles. They claim to be governed by the CRTC, and no longer have an interest in attaching antennas.

He asks for "the fiber agreement". Since each company has their own individual set of terms and conditions, I imagine there is not a previously prepared document for me to send this gentleman; or is there?

Thank you,
Matt

From: Peter Komon [mailto:pkomon.ctr@extenetsystems.com]
Sent: Tuesday, October 12, 2010 3:14 PM
To: Matthew Aceto
Subject: RE: DasCom

Yes, please forward the fiber agreement.

Thanks,

Peter

From: Matthew Aceto [mailto:maceto@veridian.on.ca]
Sent: Tuesday, October 12, 2010 2:06 PM
To: Peter Komon
Subject: FW: DasCom

Hi Peter,

I got your voicemail from today. I've forwarded your data sheets on to Veridian's Chief Operating Officer, who below stated that no antennas are allowed in any case. Are you still interested in fiber attachments without antennas?

Regards,
Matt

From: Matthew Aceto
Sent: Wednesday, October 06, 2010 8:11 AM
To: 'pkomon.ctr@extenetsystems.com'
Subject: FW: DasCom

FYI

Matt

From: Terry Britton
Sent: Tuesday, October 05, 2010 9:12 PM
To: Matthew Aceto
Subject: FW: DasCom

FYI

Terry

From: Axel Starck
Sent: Tuesday, October 05, 2010 8:15 PM
To: Terry Britton
Subject: RE: DasCom

Agreed. The only space available to federally licensed public carriers is the communications space for cable/fibre/conductor and associated hardware (at or below that space?). No antennas in any case – I think we deny anything with an antenna in any case – worker safety, interference with our own SCADA communications equipment?

Axel

From: Terry Britton
Sent: Tuesday, October 05, 2010 11:06 AM
To: Axel Starck
Subject: FW: DasCom

Good morning Axel,

We have another request for antennas to be placed on Veridian poles. The information is attached for your viewing. I think we stick to our plan of not allowing these to be attached to our poles as they would have to be outside of the communication space.

Let me know what you think.

Terry

From: Matthew Aceto
Sent: Tuesday, October 05, 2010 9:18 AM
To: Terry Britton
Subject: FW: DasCom

Here are the specs for the proposal to attach antennas on our poles.

Matt

From: Peter Komon [mailto:pkomon.ctr@extenetsystems.com]
Sent: Monday, October 04, 2010 3:46 PM
To: Matthew Aceto
Subject: FW: DasCom

Matthew,

Attached please find the specs on the antennas and equipment boxes. The equipment shown in the attachments is typically used and attached in the construction of a node pole. The only other type of equipment that is attached is an optional battery back-up unit that weighs about 100lbs and is of similar dimension as the Powerwave equipment . As you made me aware, Veridian's current policy is not to allow antenna on poles due to possible future need for Veridian to place transformers and risers. Please know that we understand that the utilty companies require priority over telecom equipment and that there is a certain amount of flexibility to the placement of antenna.

Please forward the fiber optic attachment agreement, so that I may review and suggest some minor changes to allow equipment and antenna. If you have any questions, please feel free to call, other wise I will touch base with you later this week..

Peter Komon
(630) 505-3846

Schedule

Staff 7.3-2

From: Eric Andres [mailto:eandres@opuc.on.ca]
Sent: Tuesday, February 22, 2011 7:28 AM
To: Peter Komon
Subject: RE: DAScom

Hi Peter,

As per the last meeting, we are still waiting for the submission of the application package/request to attach, drawings and fibre network as well as proof of ***Municipal Access Agreement***. We are not able to provide the "Joint Use Agreement" unless we receive this requirements to confirm attachment, methodology and fibre network route.

Regards,

Eric Andres, EIT
Distribution System Engineer
Oshawa PUC Networks Inc.
100 Simcoe Street South
Oshawa, Ontario L1H 7M7
(905) 723-4626 ext .5220
eandres@opuc.on.ca

From: Peter Komon [mailto:pkomon.ctr@extenetsystems.com]
Sent: Thursday, February 03, 2011 2:59 PM
To: Eric Andres
Subject: DAScom

Eric,

Can you let me know what the status is of us being able to acquire an attachment agreement from you?

Best,

Peter

Schedule

Staff 7.3-3

From: Len Macdonald [lmacdonald@nmhydro.ca]
Sent: Monday, March 07, 2011 12:01 PM
To: Brian Kirk
Cc: Gaye-Donna Young; Paul Jolivel
Subject: Agreement Comments:
Attachments: 2011 dascom redlined.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning Brian, further to our telephone conversation this morning, we have reviewed your comments on the joint use attachment agreement and for the most part cannot accept the changes. I think it best at this point to set up a meeting to discuss your "nice to have" , "need to have " and to discuss our concerns with ownership, term of the agreement, make ready work as well as to discuss our present permit approval process.

A meeting will also provide an opportunity to clarify who you are, what business you're in and what equipment will be installed so that we can determine whether entering into a formal agreement could in any way adversely affect our business of supplying electricity to our customers. Additionally, we would like to find out the status of your regional and municipal access agreements in our service territory.

For your convenience, I've enclosed the first 27 pages of the agreement marked up to reflect your comments.

Sincerely,

Len Macdonald, CET

Manager of Technical Services

From: Brian Kirk [bkirk@extenetsystems.com]
Sent: Monday, January 10, 2011 12:13 PM
To: Len Macdonald
Subject: RE: Joint use Agreement

Hi Len. I much prefer to work with redline documents as well. However, I did not make redlines in this instance because the document would not allow edits. As I had seen this before with similar documents from other Toronto area hydros, I assumed it was a standard practice. Perhaps it was just a Microsoft or Adobe version issue.

Please take a look at the edits in their current format and let me know if you have concerns with the more material changes (e.g. allowing antennas, time frames for permit review and make-ready, agreement term, etc.). If not, we can consider getting a different document and putting changes into redline format.

Brian

Brian S. Kirk
Assistant General Counsel
ExteNet Systems, Inc.
(O) 630-505-3811
(M) 773-294-5811

From: Len Macdonald [mailto:lmacdonald@nmhydro.ca]
Sent: Monday, January 10, 2011 11:11 AM
To: Brian Kirk
Subject: RE: Joint use Agreement

Happy new years to you as well....when you did the review did you make a redlined version indicating the proposed changes? It would make review easier on our end...if not, let me know and we'll take a look at the list....thanks

Len Macdonald, CET

Manager of Technical Services

From: Brian Kirk [mailto:bkirk@extenetsystems.com]
Sent: Friday, January 07, 2011 5:04 PM
To: Len Macdonald
Cc: Gaye-Donna Young; Brian Kirk
Subject: RE: Joint use Agreement

Len, Happy New Year. I'm sorry it's taken so long to get back to you on this. In addition to the holidays, your proposed agreement is nearly identical to other hydros, I wanted to make sure we were consistent in our responses. That being said, please see our proposed changes to the Attachment agreement. Comments, even at a high level, would be greatly appreciated fairly quickly, particularly if you know certain changes are non-starters. Otherwise, I'd like to schedule a meeting sometime the week of Jan 24 to discuss.

Feel free to reach out to me with questions/comments.

Take care,

Brian

Brian S. Kirk
Assistant General Counsel
ExteNet Systems, Inc.
(O) 630-505-3811
(M) 773-294-5811

From: Len Macdonald [mailto:lmacdonald@nmhydro.ca]
Sent: Thursday, December 09, 2010 9:18 AM
To: Brian Kirk
Cc: Gaye-Donna Young
Subject: Joint use Agreement

Good morning Brian.....enclosed is a copy of a blank joint use agreement for your perusal. There are a couple schedules that are omitted that are presently being revised to be a bit more user friendly. I'll need some additional information as far as who you guys are, company name etc...contact information. Also whether you are CRTC regulated etc....once I have the schedules and forms finalized I will be seeking approval of the document from senior management , once I have that I can proceed with issuing the agreement for completion.

sincerely

Len Macdonald, CET

Manager of Technical Services

AGREEMENT

FOR

LICENSED ATTACHMENTS

To

Newmarket Tay Power Distribution Ltd

By

~~"ATTACHEE"~~

DAScom LLC

DATE OF ISSUE: DEC 2010

TABLE OF CONTENTS

ARTICLE

AGREEMENT FOR LICENSED ATTACHMENT

THIS AGREEMENT made in duplicate on the 15th day of August, 2006 is effective as of March 7, 2005 (the "Effective Date") through until December 31, 2010 (the "End of Term Date").

BETWEEN:

Newmarket Tay Power Distribution Ltd

(hereinafter the "Owner")

OF THE FIRST PART

AND:

DAScom LLC
~~ATTACHEE~~

(hereinafter the "Licensee")

OF THE SECOND PART

ANTENNA

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

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

AND WHEREAS the Licensee is a registered telecommunications provider with the Canadian Radio and Telecommunications Corporation (CRTC);

AND WHEREAS the Licensee has entered into a Municipal Access Agreement with the appropriate municipal road authority where the Licensee wishes to affix and maintain its material, apparatus, equipment or facilities;

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

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

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

ARTICLE 1 – DEFINITIONS

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

1.1 **"Affix", "Affixed" and "Affixing" means to fasten, by the Licensee or its contractors, the material, apparatus, equipment or facilities of the Licensee to poles or other equipment of the Owner or In-span.**

1.2 **"Annual Licence Fee" means the annual payment by the Licensee to the Owner determined in accordance with Article 11.**

1.3 **"Approval" or "Approved" means the permission granted by the Owner to the Licensee for the Licensee to Affix its Attachments, as specified in the Permit, to poles or other equipment of the Owner or In-span.**

1.4 **"Attachment" means any material, apparatus, equipment or facility owned by the Licensee which the Owner has Approved for Affixing to poles or other equipment of the Owner or In-span, including, but without limiting the generality of the foregoing:**

- **Licensee-owned cable not directly attached to a pole, but Over Lashed to a cable or Support Strand not owned by the Licensee;**
- **Service Drops Affixed directly to the Owner's poles;**
- **Service Drops Affixed In-span to a Support Strand supported by poles of the Owner; and**

Unless otherwise agreed by the parties in Schedule D, Attachment excludes Wireless Transmitters and Power Line Carriers.

1.5 **"Attachment Licence Fee" means the licence fee payable in respect of an Attachment.**

1.6 **"Cable Riser/Dip" means a cable attached along a vertical portion of a pole to allow the cable to change its position from/to an underground route to/from an overhead route.**

1.7 **"Clearance Pole" means a single pole, owned by the Owner and used by the Licensee solely to establish and maintain vertical clearance for its Service Drops.**

1.8 **"Communications Space" means a vertical space on the pole, usually 600 mm in length, within which Telecommunications Attachments are made.**

1.9 **"Construction Verification Program" means the standards and requirements for conducting inspections and the qualifications of persons conducting inspections.**

1.10 **"Dispute Resolution" means the dispute escalation and referral mechanism, described in Article 21.**

1.11 **"Emergency Situation" means a situation that poses an imminent danger or threat to public safety or public welfare.**

1.12 **"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in North America during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.**

1.13 **"Guy Pole" means a separate pole, used to carry the strain of dead-ending or line deflection to ground.**

1.14 **"In-span" means a position between poles, at least one of which is owned by the Owner.**

1.15 **I.R.U. means Indefeasible Right of Use, which is the effective long-term lease (temporary ownership) of a portion of the capacity of a cable. IRU is granted by the company that owns the cable (usually optical fibre).**

1.16 **"Joint Use Pole" means a pole in respect of which its Owner has granted the Licensee Approval to Affix its Attachments.**

1.17 **"Joint Anchorage" means a common anchor system, including the anchor rod, to which two or more guy wires are attached, each guy wire providing guying for one party's conductors and related equipment on a Joint Use Pole.**

1.18 **"Make-ready Work" means any necessary and required work by the Owner and/or an existing third party pole user solely to accommodate the Attachment and includes but is not limited to:**

- **initial Line Clearing,**
- **any changes or additions to or Rearrangement of the Owner's poles or the Owner's Attachments; and**

Without restricting the generality of the foregoing, Make-ready Work does not include the costs of repairing any pole in order to ensure that it meets the Standard prior to permitting the Licensee to place its Attachments on the said Joint Use Pole.

1.19 **"Minor Relocation" means the relocation of a Support Strand up to one metre (1.0 m) in a vertical and/or horizontal direction and includes relocation associated with pole changes.**

1.20 "Over Lash" means to place an additional wire or cable communications facility onto an existing cable or Support Strand.

1.21 "Permit," means the formal written request for the adding, materially changing or removal of a Licensee's Attachments to the Owner's pole(s). The Permit form is entitled "Request for Licensed Occupancy of Poles", in the form of Schedule "A" attached hereto, the form of which may be revised from time to time by the Owner.

1.22 "Power Line Carrier" means the use of existing electricity wire infrastructure to carry voice and data signals simultaneously by transmitting high frequency data signals through the electric power lines.

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

1.24 "Rearranging" or "Rearrangement" means the removal of Attachments from one position on a pole and the placing of the same Attachments in another position on the same pole.

1.25 "Service Drops" means Telecommunications cables or wires, whether Affixed In-span or to a Clearance Pole, owned by the Licensee and connected to a Telecommunications cable, whether owned or not owned by the Licensee, and leading to customers of the Licensee.

1.26 "Standard or Standards" means Canadian Standards Association Standard C22.3 No.1-01 "Overhead Lines"; Occupational Health and Safety Act; Part II of Canadian Labour Code; the Ontario Electrical Safety Code; Electrical & Utilities Safety Association Rules and Safe Practices; Ontario Regulation 22-04 or any other applicable regulation administered by the Electric Safety Authority; and the Owner's Standards, together with any amendments thereto from time to time, it being understood that changes to the Owner's Standards are to be made at the sole discretion of the Owner.

1.27 "Support Strand" means a bare support strand whose main purpose is to support Telecommunications or low voltage wires or cables.

1.28 "Telecommunications" or "Communications" means the transmission of voice, data, video or information of any kind by electromagnetic or optical signals.

1.29 "Total Direct Cost" means the costs included in the annual pole access rate pertaining to administration and loss in productivity.

1.30 "Transferring," means the removal of Attachments from one pole and the placing of the same Attachments on another pole.

1.31 "Wireless Transmitters" means stand-alone transmitters and/or receivers which use electromagnetic waves (rather than some form of wire or fibre optic cable) to carry voice, data, video or signals over part or all of the communication path.

ARTICLE 2 – TERRITORY

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

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

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

3.2 Where permitted to do so, the Owner may assign benefits of easements or rights of way to the Licensee, on mutually agreeable terms.

Licensees revenues generated from or related

ARTICLE 4 – TAXES

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

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

ARTICLE 5 – PERFORMANCE GUARANTEE

5.1 If the Licensee has not demonstrated satisfactory financial performance such as prompt payment of accounts and no collection action and is not deemed credit-worthy by an external rating agency, the Owner may require that the Licensee deposit with the Owner security in an amount of $100/per pole to a maximum of $100,000, or as otherwise agreed by the Parties, securing the due performance of the obligations of the Licensee as provided for in this Agreement. The security shall be in favour of the Owner and shall be ~~in a form satisfactory to the Owner, which may include a performance bond issued by a surety acceptable to the Owner, cash deposited with the Owner, negotiable bonds issued by an entity satisfactory to the Owner or an irrevocable bank letter of credit.~~

wants $20,000

in the form of a performance bond satisfactory to owner".

5.2 ~~If the security is in the form of negotiable bonds or cash, then, provided that the Licensee is not in default of any of its obligations under this Agreement, the Licensee shall be entitled to receive any and all income therefrom.~~

delete

5.3 The Licensee, when not in default of any of its obligations under this Agreement, shall have the right to substitute the security being held by the Owner with other security authorized by this Article.

5.4 The Owner shall be entitled to exercise upon the security in the event that the Licensee materially defaults on any of its obligations under this Agreement including, without limitation, for the purpose of covering the costs of any of the following:

- removal of Attachments from the Owner's poles or In-span;
- damage to the Owner's equipment attributed to the joint use activity of the Licensee;
- payment of any of the Licensee's accounts.

not to exceed defined limits contained in 5.1

5.5 The security payable by the Licensee may be increased or decreased from time to time at the sole discretion of the Owner, who may take into consideration such factors as increases or decreases in the number of Attachments Approved by Permit, an increase or decrease in the estimated cost to remove Attachments, or any other factors that the Owner considers relevant.

5.6 If, for a period of 3 years, the Licensee has demonstrated satisfactory financial performance such as prompt payment of accounts and no collection action, and is deemed credit-worthy by an external rating agency, the security paid by the Licensee shall be reduced by 50% after 3 years and fully returned after 5 years. The Owner may reactivate the security payable by the Licensee at any time, in accordance with Article 5.1

ARTICLE 6 – COMPLIANCE WITH STATUTES

6.1 **This Agreement is subject to all applicable laws, regulations and Standards.**

6.2 **The Licensee and its contractors shall comply with the requirements of all relevant statutes, regulations, directions, guidelines, policies and governmental and regulatory agencies and with the Standards, both at the time of Affixing and thereafter, including, but not limited to:**

- **the safety qualifications of the Licensee's employees to carry out the work,**
- **the use of safe working practices in carrying out the work,**
- **training in safety awareness,**
- **Good Utility Practice, and**
- **good and workmanlike fashion.**

The Owner reserves the right to have the Licensee's employees or contractors removed from the jobsite for non-compliance with the above.

6.3 **Any accident reportable by law to the Workplace Safety and Insurance Board or to the Ministry of Labour or to Human Resources and Development Canada or any notice or fine received from any of these authorities by the Licensee or the Licensee's contractor while working on the Owner's poles or In-span must be reported to the Owner within** commercially reasonable ~~**five (5) working days**~~ **of the accident or notice or fine.**

6.4 **The higher requirements of the *Canada Labour Code*, R.S. 1985, C. L-2 and the *Occupational Health and Safety Act* (Ontario), R.S.O. 1990, Chapter O.1 govern safety regarding the Affixing, Rearranging, Relocating, Transferring, maintenance or other work relating to Attachments. If there is any uncertainty about which Standards are applicable, the Licensee shall ensure that the Licensee or its contractor ceases all work immediately and contacts the Owner.**

ARTICLE 7 – APPROVAL OF PERMITS

7.1 **Prior to submitting a Permit to the Owner, and for the purpose of initiating discussions as to the parties' requirements, the Licensee shall inform the Owner that the Licensee intends to seek permission to Affix and maintain its Attachments to a pole or other equipment belonging to the Owner or In-span. The Licensee shall provide to the Owner such preliminary information as may be requested by the Owner.**

* how is this supposed to work ?

7.2 **At the Owner's sole discretion, the Owner may arrange for a joint field visit by both the Owner and the Licensee to inspect the site of the proposed Affixing of Attachments by**

the Licensee. The Licensee shall also be entitled to request from the Owner a joint visit, and the Owner shall have the obligation to consider the request, acting reasonably, each party to bear their own costs and expenses of personnel.

7.3 Subsequent to the joint field visit, if any, the Owner shall form a preliminary, non-binding opinion as to the feasibility and desirability of the proposed Affixing of the Attachments by the Licensee, which opinion shall be communicated to the Licensee within a reasonable period of time, not to exceed ten ~~days~~ business days.

7.4 If the Owner forms a preliminary opinion in favour of the proposed Affixing of the Attachments, the Licensee will submit an Application for a Permit with accompanying information as per Schedule C. The Owner will prepare a preliminary estimate of any costs of Make-ready Work and deliver such estimate to the Licensee with the preliminary opinion, not to exceed five (5) business days of any communication pursuant to section 7.3

7.5 After the estimate has been received and accepted by the Licensee, the Permit, in duplicate, shall be prepared, signed and delivered by the Licensee to the Owner.

7.6 Each Permit shall be accompanied by:

- drawings, plans or designs in a format approved by the Owner (see Schedule C);
- a purchase order authorizing the Owner to complete the Make-ready Work on the Owner's facilities pertaining to the applicable Permit; and
- other items that the Owner may reasonably require and shall have requested from the Licensee pursuant to the terms of this Agreement.

7.7 If the Owner is satisfied that the Permit documentation is in accordance with this Article and is compliant with all Standards, the Owner ~~will make best efforts to~~ shall process the Permit within 30 days from receipt of completed Permit documentation and shall, if deemed necessary to further process the Permit, commence Make-ready Work where a signed purchase order has been received. If, while carrying out the Make-ready Work, the Owner determines that the proposed Attachments are no longer feasible because of previously unknown conditions or constraints or because of the intervention of a third party with jurisdiction, such as a government authority or landowner, the Make-ready Work will be suspended and the Licensee notified of the suspension. If the cause of such suspension cannot be resolved to the satisfaction of the Owner, the Licensee will be invoiced pursuant to Article 13 for all charges to the time of suspension. If the Permit is Approved, the Owner will sign both copies of the Permit and return a copy to the Licensee's representative, thus Approving the proposed Affixing of the Attachments by the Licensee.

7.8 Each Approved Permit shall be deemed to have been issued pursuant to this Agreement, and shall be read and construed in accordance with this Agreement. Subject to Article 9.7, Permits approved prior to the Effective Date shall be deemed to have been approved in accordance with the then current Standards.

→ ALL MAKE READY WORK DONE by reasonable to perform shall be completed within 30 days of permit approval unless otherwise agreed

7.9 **The Licensee shall retain its copy of the Approved Permit as part of the Licensee's project file and may be required to produce the Approved Permit at any time when requested by the Owner.**

7.10 **Permits for additional Attachments, except Service Drops, to an existing pole or In-span must be submitted and Approved using the same procedure set out in this Agreement for obtaining Approval to Affix new Attachments.**

7.11 **When exercising its discretion as to whether to grant Approval to a Permit, the Owner shall exercise its discretion reasonably where the Licensee has complied with all terms this Agreement.**

7.12 **When exercising the foregoing discretion, the Owner will consider its requirements with respect to, but not limited to, the following:**

- **safety;**
- **operation of the Owner's electricity distribution network;**
- **planning;**
- **aesthetics;**
- **road authority and property owner requirements; and**
- **any other matters which the Owner, acting reasonably, may deem relevant and communicate to the Licensee by notice in writing in accordance with Article 19.**

7.13 **It is expressly understood and agreed that Permit Approval, or use under a Permit, will be denied if, in the sole discretion of the Owner, the Attachments, or use derived therefrom ~~could be~~ will;** (sole → reasonable)

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

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

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

7.15 owners make ready work shall be billed to licensee at the current market rate, and equal to the cost of that the owner paid for the make ready work.

ARTICLE 8 – GRANT

8.1 For each Permit Approved pursuant to Article 7, the Owner hereby grants to the Licensee the permission to Affix and maintain such of its Attachments to such poles or other equipment of the Owner, or In-span, as may be designated on each Approved Permit in accordance with the terms of this Agreement and any terms specified in said Permit.

8.2 The permission to Affix and maintain Attachments as described in an Approved Permit shall be deemed to be effective as of the date of the Approval of such Permit by the Owner. The Licensee must exercise this permission within 180 days of the date of Approval of the Permit or 180 days of the date of the completion of the Make-ready Work or within some other time period as mutually agreed to by the parties, whichever is later, failing which the Approval is of no force and effect and the Licensee may be required to submit a new Permit requesting permission to Affix its Attachments.

8.3 If the Owner determines that the Attachments Affixed pursuant to the Permit ~~could be:~~ is

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

previously

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

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

8.4 To the extent that other agreements do not prejudice the Licensee rights, granted hereunder, the Licensee agrees that this Agreement does not restrict the Owner in entering into agreements with other parties respecting the use of the Owner's poles.

8.5 At all times:

- the Attachments shall remain ~~the property of the Licensee; and~~ under the control and maintenance of the Licensee and shall not be the property of the owner; and
- the pole shall remain the property of the Owner, subject to 16.2 and 16.3.

ARTICLE 9 – INSTALLATION AND MAINTENANCE

9.1 The Licensee agrees that it will not Affix any of its Attachments, except Service Drops, to a pole of the Owner until the Owner approves the Permit designating such Attachment. ~~The Licensee agrees that it is solely responsible for Affixing and maintaining its Attachments to the poles or other equipment of the Owner or In-span.~~

leave as is (crossed out wrong clause)

9.2 Service Drops may be added to or altered, without reporting the addition or alteration to the Owner, provided that the Service Drop is installed and guyed in accordance with designs certified by a Professional Engineer as required by Ontario Regulation 22/04, and the tension does not exceed the maximum specified by the Owner, when Affixed to a pole for which a Permit has been Approved, or Affixed In-span where a Permit has been Approved for the nearest pole. If the pole, or the nearest pole to the Service Drop, is not included in an existing Permit, the Service Drop must be reported to the Owner and a Permit applied for within thirty (30) days. If the Permit application is subsequently refused, the Licensee must revise the Permit application to the satisfaction of the Owner, or the Licensee must remove the Service Drop within thirty (30) days of the Owner notifying the Licensee of the refusal. If such plant is not removed within the specified period, the Licensee shall pay all associated costs of the Owner and third parties for the removal of its Service Drops. Any disputes relating to Service Drops shall be addressed in accordance with the Dispute Resolution process set out in Section 21.

9.3 In conjunction with the Licensee's system rebuild plans, the Licensee shall make best efforts to consolidate its multiple parallel strands on a pole into one strand during the Initial Term of this Agreement. If a third party seeks access to the Communications Space where the Licensee has parallel Attachments, the Licensee shall, at the Licensee's option, either consolidate its parallel Attachments or transfer title of one of the Licensee's Strands to the Owner at no charge to the Owner, or to the third party. The Owner shall be given the first opportunity to obtain title in the Licensee's parallel strand, should the Licensee opt to transfer title of the strand. Any such transfer of the Licensee's Strands to a third party shall be subject to the conditions in Articles 20.01 and 20.02. The Licensee shall consolidate its multiple parallel support strands on a pole into one support strand within 90 days' notice, or other timing as mutually agreed upon, on a case by case basis, when reasonably requested by the Owner for requirements such as:

remove all after 1st sentence

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

9.4 If the Licensee needs to carry out any work within safe electrical limits of approach, as specified by applicable regulation and legislation, in conformance with Article 6, the Licensee must use the Owner or an Owner-approved contractor. The Owner shall

consider contractors for Approval requested by the Licensee according to the Owner's approval process. Either owner a owners approved contractor will perform the work within 30 days of request. elb neither owner nor any owner approved contractor can perform within 30 days, Licensee may use another certified and licensed contractor.

9.5 The Licensee covenants and agrees with the Owner to Affix and maintain its Attachments in a safe and serviceable manner satisfactory to the Owner, acting reasonably, and in accordance with the Standards and Good Utility Practice, and in such a way as not to

- interfere with the lines, works or equipment of the Owner; or
- interfere with the electrical supply carried by the Owner's equipment; or
- be damaging to existing plant or service of a third party.

9.6 Without limiting the generality of the foregoing, the Licensee is responsible for the installation of all guys, anchors and other equipment required for, or related to, the Affixing and maintaining of Attachments in accordance with the Standards.

9.7 The Owner and Licensee recognize that, from time to time, existing Standards may be amended or new standards may be enacted and that these amendments or enactments may affect both of the parties to this Agreement. The Owner specifically reserves the right to require the Licensee's compliance with the new standards or amended Standards. Any new standards or changes to the Standards shall be applied in a reasonable manner: - e.g. safety related concerns may have to be resolved by changes to existing plant, whereas other changes may apply only to new installations. Where either party feels it has been substantially prejudiced by any such amendment or enactment, it will advise the other party. The parties agree to engage in discussions with a view to addressing the alleged prejudice and may engage the Dispute Resolution process where necessary. During these discussions or Dispute Resolution, the Agreement and/or Approved Permits will continue in full force and effect.

→ industry and government

9.8 The Licensee agrees that, upon the Attachments being made in accordance with the provisions of this Agreement, it will not make any alterations to its Attachments, (Service Drops and Emergency Situations excluded), so as to effect technical considerations or safety, unless:

- such alteration is approved by the Owner using the same procedure as for a new Attachment, if required, as described in this Agreement; and
- such alteration is carried out in accordance with the Standards and in such a way as not to interfere with the lines, works or equipment of the Owner or of other permitted users of the pole.

9.9 If the Licensee applying for a Permit requires third party Make-ready Work or the use of a third party Support Strand or Attachment, the Licensee shall coordinate the aforementioned with the third party. The Licensee shall co-operate with third parties that request Make-ready Work and the use of the Licensee's Support Strand or Attachment.

9.10 The Owner shall use its agreements with Support Strand owners whose Support Strands are attached to its poles to encourage and facilitate Re-arrangement or Over Lash arrangements between the Licensee and third parties for Communication Space management.

9.11 The Owner may, at its discretion, require that an employee of the Owner be present when the Licensee is Affixing, Rearranging, or removing its Attachments so as to ensure that the work is carried out in accordance with the terms of this Agreement. The Licensee agrees to provide two (2) working days notice prior to the start of any such work and agrees to pay to the Owner the costs of such employee that may be reasonably necessary for the carrying out of the provisions of this clause in accordance with Article 13.

9.12 The Licensee shall ensure that its installations are inspected and approved in accordance with any applicable regulation, including, but not limited to, the Electricity Act 1998, Regulation 22-04, Section 8, and the Distribution System Code-Appendix C.

9.13 The Licensee shall notify the Owner when the Affixing, Rearranging or removing of its Attachments to a pole of the Owner is complete so that the Owner may verify the accuracy and completion of the work, including applicable review under the Owner's Construction Verification Program.

9.14 In order to ensure the accuracy and completeness of existing Approved Permits, a field inspection shall be made jointly at intervals mutually agreed upon, but generally, once every five years. Any discrepancies between the field conditions found and the Approved Permits will be corrected and a new Permit to reflect the actual field conditions will be submitted by the Licensee for Approval in accordance with this Agreement. If the new Permit is not Approved, the Licensee will be notified in writing of the reason why Approval was denied and, within thirty (30) days, the Licensee must either remedy the deficiency and reapply for a new Permit or remove the Attachments, and the provisions of Articles 11 through 13 shall apply. Every effort will be made to include all pole users in the field inspection. Participating parties will come to a negotiated agreement regarding the allocation of costs.

ADD "Each party to pay for its own cost and expense of inspection"

9.15 The Licensee agrees to place markers on its cables and Support Strands in a manner acceptable to the Owner to assist in field identification of ownership of Attachments made by various permitted users of the pole. As a minimum, these markers shall be placed at all Cable Risers/Dips and at every second pole, in a manner acceptable to the Owner. Within five (5) years of the Effective Date, the Licensee shall have placed identifying markers on all Affixed cables and Support Strands existing on the Effective Date.

9.16 Except where approved by the Owner, Joint Anchorage will not be permitted on all new or reconstructed pole lines. Each party shall be responsible to install and maintain its

own separate anchoring system, as may be required. The Owner reserves the right to require the Licensee to use Joint Anchorage.

9.17 On any existing pole line which has Joint Anchorage, each party will be responsible to satisfy themselves that the existing anchorage is adequate to sustain its plant.

9.18 At the end of each calendar year, the Licensee shall notify the Owner ~~in writing~~ of the Licensee's Attachments, excluding Service Drops, that ~~are no~~ longer required for or are no longer being used to provide services, or ~~are being~~ reserved for future capacity. The parties, acting reasonably, shall determine the actions to be taken, which may require the Licensee to remove, reactivate or sell such Attachments. If so required, the Licensee shall remove, sell or reactivate such Attachments within one (1) year, or within such other time period as agreed to by the parties. The Licensee shall pay all associated costs with respect to such Attachments. The Owner reserves the right to carry out periodic audits of the Licensee's Attachments. ~~In the event of false declaration or non-declaration, the Licensee shall pay the full cost of the audit and any associated damages.~~ Any disputes arising from Article 9.18 shall be addressed in accordance with the Dispute Resolution process set out in Article 21.

agree

at its own expense

limit the def^n of "no longer used" to exclude dark fibre

9.19 The Licensee shall, at all times and in accordance with the terms and conditions of this Agreement, maintain and operate its Attachments in a safe and serviceable condition, and replace Attachments as they deteriorate, become defective or unsafe. A public safety audit should be carried out at an interval mutually agreed upon by the Owner and Licensee but in no case shall the inspection interval exceed the minimum requirements set out in the Distribution System Code – Appendix C, issued by the OEB.

9.20 The Licensee agrees that the Owner may change the nature or configuration of its equipment or change the characteristics, such as voltage, frequency or power levels of the electrical supply carried by its equipment at any time.

9.21 As stated in the Distribution System Code, issued by the OEB, only persons qualified under the Occupation of Health and Safety Act may be involved in inspection activities.

9.22 From time to time, the Owner or Licensee may have safety hazards and significant conditions with its plant, requiring prompt response. Each party will make best efforts to inform the other of safety hazards.

9.23 For all poles that have a Power Space, the Owner shall, wherever possible, use the highest position within the Communication Space for the Owner to place the Owner's telecommunications attachments. At the sole discretion of the Owner, the Licensee may use this location to place the Licensee's Strand if insufficient space capacity is available in the other parallel strand location. If the Licensee uses this location, the Licensee shall ensure that there is sufficient spare capacity for the Owner to Over Lash to the Licensee's Strand. Nothing in this agreement shall restrict the ability of the Licensee to reasonably charge the Owner to Over Lash Attachments to the Licensee's strand. The

Licensee may affix Licensee's Attachments outside of the communications space including the pole top if available, subject to Owners permission which will not be unreasonably withheld.

Owner shall provide thirty (30) days' prior written notice to the Licensee where the Owner plans to Over Lash to the Licensee's Strand.

9.24 Subject to Article 14, the Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Attachments or the signals or supply carried by the Attachments which may arise from the Owner's equipment or the electrical supply carried by its equipment, except for such damages, harm or losses caused by gross negligence or wilful misconduct of the Owner.

9.25 The Licensee shall adjust the tension of an existing messenger as requested by the Owner.

ARTICLE 10 – LINE CLEARING

10.1 The Owner and the Licensee agree that vegetation management is required for the ongoing reliable provision of electricity and telecommunication services. The trimming or removing of trees, underbrush or any other items as required to establish clearance for the Licensee's Attachments shall be the sole responsibility of the Licensee. The Licensee, or its contractor as approved by the Owner, shall undertake the trimming or removing of trees, underbrush or any other items as required by the Licensee for the Licensee's purposes in the Communications Space, having regard for all safety, technical and engineering concerns of the Owner. If in the sole but reasonable discretion of the Owner, the vegetation on or around the Licensee's plant is or may be damaging to the Owner's existing plant or electrical distribution system or aesthetics, the Licensee shall correct the situation to the satisfaction of the Owner upon notification by the Owner. Nothing in this clause excuses the Licensee of liability in the event of damage to the Owner's plant because of such vegetation. If the Licensee fails to engage in the requisite trimming or removal within seven (7) days of notification from the Owner, the Owner may undertake such work or arrange for it to be completed, all at the risk and expense of the Licensee, and the Owner shall submit an invoice to the Licensee for the reasonable cost of such work, which invoice shall be paid by the Licensee in accordance with Article 13.

what's the intention here, it conflicts with 11.1 & 11.2

10.2 The Licensee and Owner may, by mutual agreement, make arrangements regarding provision of tree trimming or line clearing services. If such arrangements are made between the Licensee and Owner, the Owner shall inform the Licensee of the timing, location, cost, and extent of the tree trimming or line clearing services to be undertaken on their behalf in advance of the commencement of the tree trimming or line clearing services.

→ redraft to say all cost be shared by all joint users of the pole.

10.3 Should any extraordinary services, such as but not limited to tree trimming or line clearing services after storms, be required in order to establish clearances for the Licensee's Attachments for operations, maintenance and safety, the cost of such services shall be the sole responsibility of the Licensee. In the event that such extraordinary

redraft to say ↑ sole benefit of licensee etc or but pro rata bases if there are more joint users

services are required, in the sole but reasonable discretion of the Owner, the cost of such extraordinary services undertaken by the Owner shall be charged to the Licensee in accordance with the provisions of Article 13.

ARTICLE 11 – FEES

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

11.2 The Attachment License Fee for each year during the term of this Agreement shall be $22.35, or as otherwise amended by the Ontario Energy Board from time to time. In addition, the Licensee agrees to pay the Owner a fee of $2.77 per pole, per year, for tree trimming services in accordance with Article 10.2. The tree trimming fee will remain fixed for the term of the Agreement or until the Attachment License Fee is amended by the Ontario Energy Board, whichever comes first.

11.3 If the Licensee has an Approved Permit for a pole and is thus paying an Attachment License Fee, there is no charge for additional attachments made in the Communications Space, or in-span, if such attachments are approved by the Owner. See also Schedule B, Interpretive Sketches.

11.4 The Licensee shall pay 50% of the full Attachment License Fee to the Owner in respect of each Clearance Pole of the Owner directly supporting one or more Service Drops of the Licensee, which Attachment License Fee shall be effective from March 7, 2005.

11.5 The Licensee shall pay the full Attachment License Fee to the Owner in respect of each Guy Pole of the Owner directly supporting one or more Attachments of the Licensee, which Attachment License Fee shall be effective from March 7, 2005.

11.6 If the Licensee has an Approved Permit for a pole and is thus paying an Attachment License Fee, the Licensee shall pay the Total Direct Cost of $1.92, or as otherwise amended by the Ontario Energy Board, from time to time, for Attachments outside the Communications Space, such as amplifiers, or power supplies. If the Licensee is not paying an Attachment License Fee for said pole, the full Attachment License Fee shall apply to such Attachments outside the Communications Space.

antennas

11.7 Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee shall be charged 25% of the full Attachment License Fee, provided said cables were Approved by the Owner and were Over Lashed prior to March 7, 2005. Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee on or after March 7, 2005 shall be charged the full Attachment License Fee, for which the Licensee shall require an Approved Permit from the Owner pursuant to the terms of this agreement. The Licensee shall inform the Owner of details, including quantity, location, and characteristics of existing, prior to March 7, 2005, Over Lashes within two (2) months of the Effective Date of this Agreement, or as otherwise agreed by the parties.

11.8 In addition to the fees payable pursuant to clause 11.1, in each year the Licensee shall pay to the Owner, fees for the year, for poles to which Attachments have been made during the year. Any Attachments which are Affixed during the year shall be charged the Attachment License Fee for the full year.

11.9 There will only be one Attachment License Fee referable to the Communications Space of any pole regardless of the number of Attachments made by the Licensee thereto or in-span. In assessing the Attachment License Fee to be applied to a pole supporting multiple Attachments, which may have different fees, the highest fee shall apply.

11.10 The Attachment License Fee determined in accordance with Article 11 shall be invoiced by the Owner to the Licensee in one instalment to be paid on or before the first day of January in each year of this Agreement or any renewal hereof. or 30 days after invoicing, whichever is later.

11.11 If at anytime during the term of this Agreement or of any renewals thereof an Attachment is Affixed to a pole of the Owner without a Permit being Approved by the Owner for such Attachment, then the Licensee shall pay to the Owner the Attachment License Fee for each year that the Attachment existed without a Permit, plus a penalty of five [5] times the Attachment License Fee, or as otherwise agreed by the Parties.

11.12 In addition to the Annual License Fee and any other payments required under this Agreement, the Licensee is solely responsible for all of the costs associated with Affixing and maintaining the Attachments to the poles of the Owner or In-span. ~~The Owner's cost during regular workday business hours of correspondence, site meetings, preparing cost estimates, joint field visits, reviewing and Approving the Permit, and verifying completed work will be the responsibility of the Licensee.~~ Without limiting the generality of the foregoing, the Licensee shall be responsible for the cost of:

- effecting changes, alterations or rearrangements, other than Minor Relocations, to the Owner's poles;
- Affixing the Attachments;
- cleaning up the site around each pole where the Licensee has Affixed Attachments and thereafter ensuring safe disposition of all materials;

- conducting a field inventory or audit program in accordance with the cost sharing arrangements as mutually agreed between the parties;
- any other reasonable expenses associated with the Licensee's obligations under this Agreement.

11.13 As of December 31st of each year for which the Owner has the Licensee's Attachments Affixed to its poles, the Owner will provide to the Licensee an "Annual Statement of Fees" which will itemize the number of Attachments involved and a breakdown of the calculation of the Annual License Fee. Every effort shall be made by the Owner to ensure that the content of the Annual Statement of Fees is accurate. The Licensee shall remit forthwith to the Owner the difference between the Annual License Fee as set out in the Annual Statement of Fees and the amount remitted to the Owner at the beginning of the year in advance. Any overpayment shall be remitted forthwith by the Owner to the Licensee. The Licensee is obligated to track any requested Attachment changes by Permits during a given year to confirm the Owner's annual Attachment count contained in the Annual Statement of Fees. Any dispute on the numbers shall be settled between the engineering staff of the Licensee and the Owner, and failing resolution, Dispute Resolution shall be applied, with all adjustments (if any) reflected on the following year's Annual Statement of Fees.

11.14 All invoices rendered by the Owner pursuant to this Article that are outstanding for longer than thirty (30) days will be subject to interest charged at a rate of one and one-quarter percent (1.25%) per month. The interest shall run from the due date of payment of the invoice until the date the payment should be received by the Owner in the ordinary course of post, following mailing of the payment. If the Licensee fails to pay any invoice within thirty (30) days, the provisions of Article 13 apply and the Owner may invoke any or all of the measures detailed in Article 13.

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

12.1 The Licensee agrees that, if at any time the Owner deems it necessary or is required to remove, replace or change the location of any pole designated by a Permit to which Attachments are Affixed, whether the change or removal be on a temporary or permanent basis, the Owner shall notify the Licensee of the requirement to remove or relocate its Attachments, whereupon the Licensee, at the time specified in the notice shall, at the cost and expense of the Licensee, remove its Attachments from that pole and, except when the notice specifies to the contrary, the Licensee may transfer the Attachments to the pole in the new location or to the new pole, as the case may be, and in either case this Agreement and the associated Permits shall continue to apply to the Attachments so transferred. The Licensee acknowledges that in certain situations the Owner may remove a pole and not replace it, so that there would no longer be a pole upon which to Affix the Attachments. In such a situation, the Approval associated with the applicable Permit would cease. The Owner will endeavour to give the Licensee at

replace with "there is no reasonably acceptable pole available"

and where no reasonable pole exists

least sixty (60) days prior written notice of any such removal, replacement or change in location of a pole, but in case of emergency, as reasonably defined by the Owner, the Owner may give no notice or such shorter notice as the Owner deems expedient or the notice may be given verbally. In Emergency Situations, where no notice is given by the Owner or where the Licensee fails to remove or relocate its Attachment after being notified by the Owner, the Owner, or its designate, may remove or relocate the Attachments and the Licensee is responsible for the reasonable costs of the Owner in so removing or relocating the Attachments.

12.2 To expedite its own work, the Owner may carry out a Minor Relocation, at no cost to the Licensee, of the Licensee's Support Strand provided that:

- it does not interfere with other Attachments;
- it does not affect a Cable Riser/Dip pole for the Licensee;
- Standards and safety are maintained;
- the Licensee does not require an easement or third party permission; and
- the Support Strand is attached to the pole in a manner equivalent, in the Owner's view, to that formerly used by the Licensee.

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

add "owner shall provide 5 business days notice to Licensee prior to a minor relocation.

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

12.4 Where, at the time an Approval is granted, the presence of the existing Attachments causes the Owner to perform Make-ready Work to accommodate the new Attachment, the Licensee shall pay to the Owner the cost of such relocation or modification.

12.5 In instances where plant adjustments are initiated as a result of work being done by a municipality or a federal, provincial or municipal governing body or authority in Ontario, all conditions of notification and scheduling of work indicated may be null and void. These arrangements may be dictated by the requirements of the Municipality or said governing authority in Ontario.

on an emergency basis.

12.6 Subject to Article 12.5, in the event that the Owner is subject to any penalty by the Municipality or said governing authority in Ontario, due to the late removal by the Licensee of its Attachments, then in addition to the delayed removal charges as

stipulated in this Article, the Licensee shall pay to the Owner, a sum equal to any penalty incurred by the Owner, and any costs related to the payment of the penalty. provided owner has given reasonable notice to Licensee.

12.7 All charges to the Licensee for carrying out work referenced in this Article shall be reasonably determined by the Owner and payable by the Licensee in accordance with Article 13.

ARTICLE 13 – PAYMENT FOR WORK

13.1 The Licensee shall issue a purchase order to the Owner for each project such as Make-ready Work required to meet the terms and conditions of this Agreement, and which is not covered by the Annual License Fee. The Owner will invoice against the applicable purchase order, as work by the Owner for the Licensee is performed.

13.2 Upon completion of any work performed by the Owner on the Licensee's behalf as contemplated by this Agreement, the Owner will render an invoice or invoices to the Licensee for ~~the actual cost (including financial overheads)~~ of performing such work and the Licensee shall pay the amount of the invoice within thirty (30) days of the date of the invoice. at industry standards

13.3 All invoices that are outstanding for longer than thirty (30) days will be subject to interest at the rate of one and one-quarter percent (1.25 %) per month. The interest shall run from the due date for payment of the invoice until the date payment is received by the Owner.

13.4 If an undisputed invoice is outstanding for more than sixty (60) days, the Licensee shall forthwith, upon receipt of written notice from the Owner, but at the expense of the Licensee, remove from the poles of the Owner its Attachments covered by the invoice.

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

by the Licensee with the Owner, to recover the outstanding amounts owed to it by the Licensee.

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

ARTICLE 14 – LIABILITY, INDEMNITY AND INSURANCE

14.1 The Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Attachments or the signals or supply carried by the Attachments which may arise from the Owner's equipment or the supply carried by its equipment, except for such damages, harm or losses caused by gross negligence or wilful misconduct of the Owner.

14.2 The Licensee assumes all risk of loss or damage, including damage to or loss of its Attachments or of its service or its equipment, or to the plant or service of the Owner arising from any act or omission of the Licensee or its agents and contractors under this Agreement, save and except for such portion of losses or damages caused by the gross negligence or wilful misconduct of the Owner, and does hereby release the Owner from all claims and demands with respect thereto.

14.3 The Licensee does hereby indemnify and save harmless the Owner from all claims and demands for or in respect to any loss, damage or injury to property or persons (including loss of life), including those of third parties, arising out of, or attributable to, the exercise by the Licensee or its agents or contractors of the Approvals herein granted, save and except for such portion of loss or damage caused by the gross negligence or wilful misconduct of the Owner. Such indemnification shall include, but not be limited to, compensation to the Owner for time required to prepare for and attend hearings, for all reasonable legal fees and costs, for fees and costs of expert witnesses reasonably incurred and for the payment of any judgment, including costs, made by a Court, tribunal or decision maker and any and all appeals with respect thereto. Licensee will have sole control of the defence.

14.4 The Licensee shall, during the term of this Agreement and any renewals thereof, maintain a policy or policies of insurance in which the Owner is named as additional insured in the amount of $5,000,000 per occurrence and the policy or policies shall contain a cross liability clause, or as otherwise may be agreed between the Licensee and the Owner, against liability due to damage to the property of the Owner or any other person or persons including third parties, and against liability due to injury to, or death of, any person or persons, including third parties, in any one instance. The Owner shall not be responsible for the payment of any premium with respect to any such insurance, which is the sole responsibility of the Licensee.

14.5 Prior to the Approval of any Permit and as a condition of any Permit Approval or renewal, the Licensee shall furnish to the Owner annually a certificate of such insurance and for the renewal thereof, so long as this Agreement remains in force.

14.6 The Licensee agrees that the insurance described herein does in no way limit the Licensee's liability pursuant to the indemnity provisions of this Agreement.

14.7 During the term of the Agreement, the Licensee will immediately notify the Owner of any damage whatsoever to the equipment of the Owner or a third party or to persons arising as a result of the ~~Licensee Affixing~~, inspecting, maintaining, changing, repairing or removing any of its Attachments to the Owner's poles. The Licensee will also immediately notify the Owner of any claims or notices of claims received by the ~~Licensee~~ related in any way to its Attachments.

14.8 During the term of the Agreement, the Owner will immediately notify the Licensee, but not any third party having rights to the Licensee's equipment (whether by Irrevocable Right of Use, sublicense or otherwise) of any damage whatsoever to the Licensee's equipment arising as a result of the Owner Affixing any Attachments to the Owner's poles. The Owner will also immediately notify the Licensee of any claims or notices of claim received by the Owner related in any way to the Licensee's Attachments, or to any claims or notices of claim received by the Owner related in any way to any act or omission of the Licensee pursuant to this Agreement.

14.9 The Owner will provide to the Licensee reasonable written notice of its intention to significantly change the nature or configuration of its equipment or change the characteristics, such as voltage, frequency or power levels of the electrical supply carried by its equipment when the Owner has reason to believe that such change might have adverse effects on the Attachments, or the product carried by such Attachments, or place the Licensee in non-compliance with any of the provisions of this Agreement. The Owner is not responsible for any adverse effects on the Attachments, or the product carried by such Attachments, as a result of any changes made by the Owner.

14.10 Notwithstanding anything to the contrary in this Agreement, neither the Owner nor the Licensee shall be liable to the other for, and the indemnities set out herein shall be deemed not to include, indirect or consequential damages or damages for economic loss however caused, arising out of this Agreement.

ARTICLE 15 – TERM AND TERMINATION OF AGREEMENT

15.1 The Term of this Agreement is five (5) years.

15.2 Prior to six (6) months before the End of Term Date, either party may request the other to extend the Term of the Agreement for a further term of five years on the same or amended terms and conditions, as the parties may agree and in such case the Agreement, as amended, shall continue until the new End of Term Date.

15.3 If after any End of Term Date, the parties have not agreed on terms and conditions for a renewed Agreement, either party may invoke the Dispute Resolution process as per Article 21.

15.4 Subject to Article 15.3 and 15.6, the Licensee shall, upon the termination of this Agreement, as mutually agreed upon by the parties, remove from the poles of the Owner its Attachments covered by this Agreement or the terminated Permit and ensure that the site where the removal occurred is left in a safe and equal or better condition then prior to the removal, at the expense of the Licensee.

15.5 In accordance with Articles 15.4 and 15.6, if the Licensee fails to remove the subject Attachments, within one hundred and eighty (180) days of receipt of notice, or otherwise mutually agreed upon, the Owner may, at the Licensee's sole risk and expense, remove such Attachments. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal, and if the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days, then the Owner will have the further right to sell the Attachments so removed and apply the proceeds against the costs of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the execution of any security posted with it, to recover the outstanding amounts owed to it by the Licensee.

15.6 The Agreement shall be deemed to remain in effect during the Dispute Resolution process under Article 21. All of the Owner's and Licensee's remedies to enforce outstanding obligations under this Agreement and Article 15.3 and Article 21 shall survive termination of this Agreement.

15.7 If the Licensee fails or neglects at any time to fully perform and observe all the covenants, terms and conditions herein contained, including a default at any time in the payment of fees or removal of Attachments, the Owner will notify the Licensee in writing of such default and the Licensee shall correct such default within thirty (30) days or such longer period as agreed to by the Owner. If the Licensee fails to cure such default within thirty (30) days of notice by the Owner or such longer period as agreed to by the Owner, the Owner may forthwith terminate the Agreement and the Licensee shall remove from the poles of the Owner its Attachments covered by this Agreement and ensure that the site where the removal occurred is left in a safe and equal or better condition then prior to the removal, at the expense of the Licensee.

unless a dispute resolution is not in process

ARTICLE 16 – TERMINATION OF APPROVAL

16.1 The Approval granted by each Permit Approved by the Owner pursuant to the provisions of this Agreement shall remain in full force from the date of the Approval until the earliest of:

- the End of Term Date; or
- the date upon which the Attachment associated with the Approved Permit is removed by the Licensee or the Owner; or pursuant to this agreement; and
- subject to Article 16.5, the date upon which the Licensee defaults on any of its obligations under this Agreement; or
- the pole designated by such Permit is abandoned by the Owner.

16.2 If the Owner intends to sell a pole designated by an Approved Permit to a third party, the Owner will attempt, on a best efforts basis, to secure the agreement of the purchaser that the Attachments be allowed to continue to be Affixed to the pole and the purchaser be bound to assume all of the Owner's obligations hereunder. shall

16.3 The Owner and Licensee may negotiate terms of sale, from the Owner to the Licensee, of a pole vacated by the Owner and located on public and/or private property. Such sale will be subject to any existing obligations of the Owner to third parties, and subject to the consent of the property owner or any municipal, regional, provincial or federal government or agency having jurisdiction over said lands.

16.4 If the condition of sale of any pole pursuant to Article 16.2 or 16.3 cannot be satisfactorily arranged, the Owner may, by notice in writing at any time, require the Licensee to remove its Attachments from the poles involved, and the Licensee shall, within one hundred and eighty (180) days after receipt of said notice, remove its Attachments from such poles except as otherwise noted in Article 12.5. Owner shall pay licensee a prorated value of the attachments to the licensee based on the expected lifetime of the attachments

16.5 If the Licensee fails or neglects at any time to fully perform and observe all the covenants, terms and conditions herein contained, including a default at any time in the payment of fees or removal of Attachments, the Owner will notify the Licensee in writing of such default and the Licensee shall correct such default within thirty (30) days or such longer period as agreed to by the Owner. If the Licensee fails to cure such default within thirty (30) days of notice by the Owner or such longer period as agreed to by the Owner, the Owner may forthwith terminate the Approvals accompanying each Approved Permit.

16.6 The termination of an Approval pursuant to this Agreement shall not be deemed a termination of this Agreement unless the Permit containing such Approval is the last remaining or only Permit Approved pursuant to this Agreement, in which case the termination of such Permit will be deemed to be a termination of this Agreement, delete

subject to the Licensee fulfilling all of its outstanding obligations and the right of the Owner to enforce any such outstanding obligations.

16.7 The Parties agree that obligations flowing from this Agreement, or a Permit Approved pursuant to this Agreement, will continue beyond the date of termination of the Agreement or Approved Permit, until the obligations are satisfied in full. All of the remedies to enforce outstanding obligations under this Agreement, including Article 21 regarding Dispute Resolution, shall survive termination of this Agreement or an Approved Permit.

16.8 The Licensee shall, upon the termination of a Permit Approved pursuant to this Agreement, forthwith at the request of the Owner, but at the expense of the Licensee, remove from the poles of the Owner its Attachments covered by this Agreement or the terminated Permit and ensure that the site where the removal occurred is left in a safe and equal or better condition then prior to the removal.

16.9 If the Licensee fails to remove the subject Attachments, as per Article 16.8, within thirty (30) days of receipt of notice, or such longer period as agreed to by the Owner, the Owner may, at the Licensee's sole risk and expense, remove such Attachments. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal, and if the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days, then the Owner will have the further right to sell the Attachments so removed and apply the proceeds against the costs of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the execution of any security posted with it, to recover the outstanding amounts owed to it by the Licensee.

16.10 When an Attachment on a pole subject to Joint Use is discontinued, the Licensee shall return its copy of the related Permit to the Owner and the Owner shall mark the Permit "cancelled".

ARTICLE 17 – EXISTING RIGHTS OF OTHER PARTIES

17.1 Nothing herein contained shall prevent or limit the right of the Owner from granting to others, not party to this Agreement, the right to occupy its poles.

17.2 If the Owner has granted permission to others, not parties to this Agreement, to use any poles owned by the Owner, whether said poles are covered by this Agreement or not, then nothing herein contained shall be construed as affecting such permission. The Owner shall have the right to continue and extend such existing permission. The Licensee agrees that existing rights of third parties are in no way diminished by this Agreement. The Licensee shall treat third party Attachments to the pole with the same duty of care as is required by the Agreement between the Licensee and Owner, and will respect the rights and privileges of third parties.