

**MASTER TRANSMISSION POLE ATTACHMENT LICENSE AGREEMENT  
BY AND BETWEEN  
SOUTH CAROLINA PUBLIC SERVICE AUTHORITY  
AND  
XYZ ENTITY**

This MASTER TRANSMISSION POLE ATTACHMENT LICENSE AGREEMENT (the “Agreement”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 202\_\_ (“Effective Date”), between South Carolina Public Service Authority, a body corporate and politic created by the laws of the State of South Carolina, with its principal place of business at 1 Riverwood Drive, Moncks Corner, South Carolina (hereinafter referred to as “Authority”) and [COMMUNICATIONS SERVICE PROVIDER], a [TYPE OF ENTITY] duly organized and existing under the laws of the state of \_\_\_\_\_ with its principal place of business at [ADDRESS] (hereinafter referred to as “Licensee”). Authority and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

WHEREAS Authority operates an electric transmission system in certain portions of South Carolina;

WHEREAS, to respond to the increased dependency on broadband for education, healthcare and work and the lack of broadband in some areas of South Carolina, the State legislature adopted the Broadband Accessibility Act (“Act”).

WHEREAS, the South Carolina General Assembly granted Authority the right to, among other things, allow in the Authority’s sole discretion Unaffiliated Communications Service Providers access to Authority Facilities for the provision of Broadband Services;

WHEREAS, Authority believes its resources may be leveraged in accordance with the Act to enable broadband internet service providers to offer more widespread access to Broadband Services across South Carolina, without jeopardizing the safety and operational integrity of the Authority water and electric systems;

WHEREAS, Licensee is an Unaffiliated Communications Service provider as defined in the Broadband Authority;

WHEREAS the Parties have undertaken certain studies and Make Ready Work for the Attached Facilities;

WHEREAS, Licensee proposes to install and maintain Attached Facilities and associated equipment, Licensees Attachments, on Authority Facilities to provide Broadband Services;

WHEREAS, Authority is willing to issue Accepted Design Packages authorizing the placement or installation of Licensee’s Attachments on Authority Facilities, provided that Authority may refuse, on a non-discriminatory basis, to issue an Accepted Design Package where there is insufficient capacity or for reasons relating to safety, reliability, generally applicable

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engineering purposes, or any other Applicable Standards consistent with the duties outlined in this Agreement;

NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

### AGREEMENT

#### ARTICLE 1 – DEFINITIONS

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

- 1.1. “Accepted Design Package” means the finalized design package submitted by Licensee and approved by the Authority as more specifically set forth in the Technical Requirements.
- 1.2. “Affiliate” means, when used in relation to Licensee, another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.3. “Attachment” means Licensees Broadband Facilities that are placed on the Authority’s Facilities.
- 1.4. “Attachment Rate” means the rate provided for in the Authority’s Transmission Pole Attachment Rate Schedule TPA-21 or successor rate in effect at the Effective Date.
- 1.5. “Applicable Standards” means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric utility facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), the Authority’s Transmission Line Standard Reference Manual, the Authority’s Technical Requirements, each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of Authority or other federal, state, or local authority with jurisdiction over Authority Facilities and Licensee Facilities.
- 1.6. “Authority Facilities” means all personal property and real property owned or controlled by Authority including transmission structures, poles, ducts, conduit, easement, right of ways, and related facilities.

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- 1.7. “Bankruptcy Proceeding” means with respect to a Person, such Person (i) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors, (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and solely with respect to any such proceeding or petition that is instituted or presented by a party other than the Party with respect to which such petition or proceeding relates is not dismissed within fifteen (15) days after the filing thereof, (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger), (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, (vi) causes or is subject to any event with respect to it, which, under Applicable Law, has an analogous effect to any of the events specified in clauses (i) through (v), or (vii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- 1.8. “Broadband Accessibility Act of 2020” (the “Broadband Act”) means Act 175 of 2020 enacted on September 29, 2020 which includes but is not limited to South Carolina Code of Laws § 58-9-3000 et seq. and § 58-31-230.
- 1.9. “Broadband Facilities” means any Facilities used to deliver Broadband Service or for the provision of Broadband Service as provided for by the Broadband Act.
- 1.10. “Broadband Services” means a landline or wireless service that meets the definition of ‘broadband service’ in Section 58-9-10(17) and that has minimum download speeds of 25 megabits per second and minimum upload speeds of 3 megabits per second as provided for by the Broadband Act.
- 1.11. “Law” means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction. For the avoidance of doubt the Broadband Act is a Law as defined herein.
- 1.12. “Licensee’s Facilities” means the Broadband Facilities owned by Licensee.
- 1.13. “Make Ready Work” means the modification or replacement of Authority’s Facilities or of the lines or equipment on the Authority’s Facilities or Facilities to accommodate the Attachments.
- 1.14. “Technical Requirements” means Authority’s Technical Requirements document current as of the date of this agreement, and as amended from time to time. Among other things, the Technical Requirements include the process, design and technical specifications, and construction and safety requirements for making Attachments to Authority Facilities.

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- 1.15. “Right of Way (ROW)” means electric easements and rights-of-way owned or utilized by Authority to access its facilities.
- 1.16. “Qualifying Letter of Credit” means an irrevocable standby letter of credit with an initial term of at least one year for the benefit of Authority, issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having (a) a Credit Rating of at least “A-” from S&P or Fitch or “A3” from Moody’s, and (b) total assets (determined in accordance with generally accepted accounting principles in the United States of America as in effect from time to time) of an amount determined by Authority, and which letter of credit (i) is substantially in the form of Exhibit B or another form of letter of credit reasonably satisfactory to the Authority, (ii) permits automatic renewal of the relevant Qualifying Letter of Credit for (which may be subject to an outside stated expiration date), and (iii) may be utilized by the beneficiary Party to satisfy all present and future payment obligations of the other Party under this Agreement when due.

### ARTICLE 2 – LICENSE

- 2.1 Grant of License. Authority hereby grants Licensee for the Term and Licensee hereby accepts a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments to Authority Facilities on the transmission line identified by Authority as “[INSERT TRANSMISSION LINE SEGMENT]” as more fully detailed in the Accepted Design Package and the associated Right of Way and the right of access, over, across, and on any properties legally utilized by Authority for ingress and egress to and from the Right of Way for the purposes agreed upon herein, on a specific portion of Authority’s Facilities as further described in one or more Accepted Design Packages (the “License”). The grant of this License to access available Authority Facilities is contingent on Licensee following the procedures and regulations in the Technical Requirements and all other Applicable Standards at all times. The installation of any Attachment by Licensee without obtaining an Accepted Design Package pursuant to the Technical Requirements, or otherwise installing Broadband Facilities in violation of the Technical Requirements is a material breach of this agreement. Authority only grants consent to install and maintain the Attachments to the extent the Authority has rights in the Right of Way. The Authority makes no warranty whatsoever as to its title or rights to the Right of Way.
- 2.2 Reserved Capacity. Access to Authority Facilities will be made available to Licensee with the understanding that certain Authority Facilities may be subject to Reserve Capacity for future electric service use. At the time of design acceptance, Authority shall notify Licensee if capacity on any particular Authority Facilities is being reserved for reasonably foreseeable future electric use. For Attachments made with notice of such a reservation of capacity, on giving Licensee at least sixty (60) calendar days prior notice, Authority may reclaim such reserved capacity at any time following the installation of Licensee’s Attachment if required for Authority’s future utility service. Authority will give Licensee the option to remove its Attachment(s) from the affected Authority Facilities or to pay for the cost of any Make Ready Work needed to expand Capacity for core utility service requirements, so that Licensee can maintain its Attachment on the affected Authority Facilities.

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- 2.3 Applicability of Technical Requirements. Licensee must obtain an Accepted Design Package for every Attachment pursuant to the procedures and requirements of the Technical Requirements. Licensee agrees that Authority has the right to amend the Technical Requirements from time to time in response to changing conditions in the technological advances, business requirements, policy initiatives, or changes in federal, state, or local Laws, and that the amended Technical Requirements will be incorporated in this Agreement as of their effective date.
- 2.4 Licensee's Right to Attach. Licensee must obtain an Accepted Design Package pursuant to the procedures and requirements of the Technical Requirements for each Attachment Licensee desires to undertake. The issuance of such Accepted Design Package is subject at all times to Authority's right to provide core electric utility services, including any and all internal communications service essential to the proper operations of such core electric utility services, using Authority Facilities. Nothing in this Agreement, other than an Accepted Design Package properly issued under the Technical Requirements, will be construed as granting Licensee any authorization to install an Attachment to any specific Authority Facility. Unauthorized Attachments constitute a material breach of this Agreement and may be subject to removal at Licensee's expense.
- 2.5 No Interest in Property. No use, however lengthy, of any Authority Facilities, and no payment of any fees or charges required under this Agreement, will create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Authority Facilities. Neither the Technical Requirements, this Agreement, nor any Accepted Design Package, will constitute an assignment of any of Authority's rights to Authority Facilities. Notwithstanding anything in the Technical Requirements or this Agreement to the contrary, Licensee will, at all times, be and remain a licensee only.
- 2.6 Rights over Authority Facilities. The parties agree that this Agreement does not in any way limit Authority's right to locate, operate, maintain, or remove Authority Facilities in the manner that will best enable it to fulfill its service requirements, if its desirable for the operation of its business, or to comply with any federal, state, or local Laws. Authority reserves all rights it may have in and to the Right of Way by virtue of conveyance, statute, regulation, law, or equity. Licensee shall not assign or in any way alienate any rights or privileges granted in this Agreement without the prior written consent of Authority.
- 2.7 Non-Exclusivity. Authority may have previously granted rights or privileges to use Authority Facilities to others not a party to this Agreement. After the execution of this Agreement, Authority may continue to grant nondiscriminatory access to Authority Facilities to other attaching entities seeking to make Attachments pursuant to the Technical Requirements and the nondiscrimination requirements in state law.
- 2.8 Necessary Authorizations. Licensee will be responsible for obtaining any required authorization(s), permits, and/or right of ways needed to construct, operate, and/or maintain its Broadband Facilities before it occupies any portion of Authority Facilities.
- 2.9 Permitted Uses. Licensee will only use Authority Facilities for the purpose of providing

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retail Broadband Service and no other use will be allowed unless such use is provided for by Law and then only with the Authority’s express written consent. Licensee will fully and timely cooperate with Authority as prescribed in the Technical Requirements, with regard to the transfer and relocation of Attachments. Nothing in this Agreement will be construed to require Authority to allow Licensee to use any Authority Facilities after the termination of the Agreement.

- 2.10 Lawful Purpose and Use. Licensee’s Broadband Facilities must at all times serve a lawful purpose, and the use of such facilities must comply with all applicable federal, state, and local Laws. The use of Attachments for any illegal or unauthorized purpose will constitute a breach of this Agreement.

### ARTICLE 3 - TERM OF AGREEMENT

- 3.1 Initial Term and Renewal. This Agreement will become effective on the \_\_\_ day of \_\_\_\_\_, 20\_\_ and, will have an initial term of **[one (1) – twenty (20)]** years. Following the expiration of the initial term, the Agreement will automatically renew for a renewal term of **[one (1) – five (5)]** year(s) terms. Either party may terminate this Agreement at the end of the initial term or a renewal term by giving six (6) months written notice of the intent to terminate prior to the expiration of the then-current term.

- 3.2 Survival of Obligations. Any expiration or termination of Licensee’s privileges under this Agreement will not relieve Licensee of any obligation, whether indemnity or otherwise, which has accrued prior to such expiration or termination of this Agreement or removal of Licensee’s Attachments.

### ARTICLE 4 – FEES, CHARGES, & PAYMENT TERMS

- 4.1 Make Ready Costs. Licensee must be responsible for all costs and work that Authority or its contractors performs pursuant to this Agreement and the Technical Requirements to accommodate Licensee’s Attachments. Should Authority’s Facilities additions or modifications be necessary for Licensee’s Attachments, Licensee must pay for all such additions or modifications. Nothing in this Agreement is intended to require the Authority to enhance or modify its Facilities to meet the existing or future needs of the Licensee.

4.1.1 Structure Replacement Credit. For the costs of Authority Facilities that must be replaced to accommodate Licensee’s Attachments, Licensee will receive a structure replacement credit based on the number of years the life of the replaced structure is extended (“Structure Replacement Credit”) for the Accepted Design Package. The Make Ready costs of Authority Facilities replacements will be credited on Licensee’s invoices against the Attachment charges until that credit is zero (\$0.00) or for the life of this Agreement, whichever occurs first. Should the Structure Replacement Credits survive the length of this Agreement, Santee Cooper will not reimburse Licensee any credits remaining after the expiration of this Agreement. Structure Replacement Credits are only applicable to the Accepted Design Package they apply to and will not be applied across projects.

- 4.2 Rate. Licensee will pay to the Authority the annual charge specified in Authority’s

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Transmission Pole Attachment Schedule in effect at the Effective Date for each Attachment (the “Pole Attachment Schedule”). The Authority’s Pole Attachment Rate Schedule TPA-21 is hereby incorporated by reference into this Agreement. The Pole Attachment Schedule will be evaluated annually and adjusted if projected costs of service cause the calculated rate to be plus or minus five percent (5%) of the published rate. This adjustment may result in a revision and reissuance of the Pole Attachment Schedule which will be applicable to this Agreement. The charge for each year in which there is such a change will be prorated.

4.3 Payments. For the initial term, the Authority will invoice Licensee on an annual basis. Invoices are payable upon receipt and are past due after thirty (30) days.

4.4 Authority will send invoices to Licensee at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.5 Late Payments. If Licensee does not pay any payment when due, Authority may assess a late fee of one percent (1%) per month (not to exceed the maximum rate allowed under applicable Law) on all amounts payable pursuant to this Agreement. Licensee will reimburse Authority for any third-party costs incurred by Authority in accommodating the late payment. Licensee’s failure to timely pay statements or invoices or other applicable fees or charges in accordance with their terms will constitute a material breach of this Agreement.

4.6 Taxes. Amounts for "payments in lieu of taxes," as prescribed by the Code of Laws of South Carolina §58-31-80, §58-31-90, and §58-31-100, as amended, have been included in the establishment of the Pole Attachment Schedule. The charges computed at the applicable rate also shall be subject to all other taxes, payments in lieu of taxes, franchise fees, assessments, and surcharges imposed by any governmental authority. In addition, South Carolina Sales Tax, if any, will be added to each bill unless the Customer has furnished the Authority evidence of specific exemption secured by the Customer from the South Carolina Tax Commission or its successor. Licensee shall be solely responsible for paying any and all taxes, franchise fee or assessments by any governmental entity related to Licensee’s Facilities, if any, when due. Notice is hereby given that the property interest vested in Licensee may create a possessory interest which entities may deem subject to property taxation and Licensee may be subject to payment of property taxes therefore. Licensee shall be solely responsible for opposing, protesting, appealing or challenging any tax or franchise fee imposed or asserted by any entity.

4.7 Adequate Assurance.

4.7.1 Within seven (7) business days of the Effective Date and throughout the Term, Licensee shall provide to and maintain in favor of the Authority, in connection with the obligations provided under this Agreement, a (i) Qualifying Letter of Credit for the benefit of Authority in the amount of \_\_\_ (\$\_\_\_) or (ii) a performance bond in the amount of \_\_ (\$ \_\_); or (iii) cash deposit equal to \_\_\_\_\_ (X) years of payments (either (i), (ii), or (iii) the “Security”). If in the form of (i) or (ii) the Security shall

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be with an entity and in a form acceptable to Authority that is substantially in the form attached hereto as Exhibit B.

- 4.72 The purpose of the Security is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, and fees due to Authority that arise by reason of this Agreement. Within thirty (30) days after notice to Licensee that Authority has drawn any amount against the Security, Licensee shall take action to replenish the Security to its prior amount.
- 4.73 Cancellation or Replacement. Licensee shall provide Authority with thirty (30) days prior written notice of any cancellation or replacement of the Security. Failure to maintain the Security throughout the term of the Agreement shall constitute a material breach of the Agreement retroactive to the date of the notice of cancellation.

### ARTICLE 5 – ROUTINE MAINTENANCE AND OPERATIONS

- 5.1 Installation/Maintenance of Broadband Facilities. When an Accepted Design Package is issued pursuant to this Agreement, Licensee's Broadband Facilities shall be installed, maintained and comply in accordance with all Applicable Standards.
- 5.2 Notice. Licensee will provide Authority thirty (30) days' written notice of any planned work not requiring a clearance on the transmission line. For work requiring a clearance on the transmission line, Licensee will provide Authority with sixty (60) days' notice of the work. Licensee shall be responsible for the installation, maintenance, and repair of its Attachments at its own expense, in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards.
- 5.3 Licensee Work. All of Licensee's installation, removal, and maintenance work, by either Licensee's employees or authorized contractors, shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Authority Facilities or other Broadband Facilities. Authority reserves the right to review and authorize Licensee's contractor bid list and final selection to perform the work. Any contractors (and their subcontractors) used by Licensee shall meet the qualifications described in the Technical Requirements. All such work is subject to the insurance requirements of Article 9, the Technical Requirements, Accepted Design Package, and Applicable Standards. Prior to the work being done, Licensee will seek Authority approval of any proposed changes to Attachments from the Accepted Design Package and confirm those modifications are within the Applicable Standards.
- 5.4 Inspections. Upon completion of construction, Authority will perform a final inspection as outlined in the Technical Requirements. Authority has no other responsibility to inspect Attachments, but it may conduct an inventory and inspection of Attachments at any time.



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Within thirty (30) calendar days of receiving written notice from Authority, Licensee shall correct all Attachments that Authority identifies as being out of compliance with Applicable Standards.

- 5.4.1 No Liability. Authority inspections performed under this Article 5.4, or the failure to do so, shall not operate to impose upon Authority any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations, or liability, whether assumed under this Agreement or otherwise existing.
- 5.5 Authority Planned Maintenance. Authority will provide not less than five (5) business days' notice to Licensee of planned maintenance and outages on Authority Facilities. Licensee acknowledges and accepts Authority will act in the best interest of its primary function as electric utility provider and Licensee Attachments will be restored at the lowest priority level.
- 5.6 Emergency Repairs. Licensee acknowledges and accepts electric system restoration takes priority in restoration efforts. Licensee will notify Authority of any outages and Authority will coordinate Licensee and other licensee's restoration work, as applicable. Licensee will cooperate with Authority on the timing of its restoration work. All restoration work shall comply with this Article Five (5) with the exception of the sixty (60) day notice requirement.
- 5.7 Required Transfers of Licensee's Broadband Facilities. If Authority reasonably determines that a transfer of Licensee's Facilities is necessary due to Authority Facility maintenance, new construction, rebuilds, or reroutes, Authority will give Licensee advanced written notice prior to any transfer. At its own expense, Licensee is responsible to move, reconfigure, relocate, add or remove Licensee Facilities as necessary to accommodate these efforts as further outlined in the Technical Requirements. Should Licensee fail to move, reconfigure, relocate, add or remove its Facilities, the Authority may cause such work to be done and bill the Licensee for that work. Authority shall not be liable for any outages or damage related to such work.

## ARTICLE 6 – LIABILITY AND INDEMNIFICATION

- 6.1 Liability. Authority reserves to itself the right to maintain and operate Authority Facilities and transmission system in such manner as will best enable it to fulfill its electric and water service requirements. AS A MATERIAL PART OF THE CONSIDERATION OF THIS AGREEMENT, LICENSEE TAKES AND ACCEPTS AUTHORITY FACILITIES "AS IS" IN THE CONDITION IN WHICH LICENSEE FINDS THE AUTHORITY FACILITIES, WITH ANY AND ALL LATENT AND PATENT DEFECTS AND WITH NO EXPRESS OR IMPLIED WARRANTIES BY AUTHORITY OF MERCHANTABILITY, FITNESS, SUITABILITY, OR THAT THE AUTHORITY FACILITIES ARE FIT FOR ANY PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION WITH RESPECT TO THE CONDITION OF THE AUTHORITY FACILITIES, BUT IS RELYING UPON ITS OWN EXAMINATION OF THE AUTHORITY FACILITIES. AUTHORITY EXPRESSLY

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DISCLAIMS AND SHALL NOT BE LIABLE FOR ANY CLAIMS RELATED TO THE CONDITION OF ITS FACILITIES AND TRANSMISSION SYSTEM.

- 6.2 Limitation of Damages. Authority will not be liable to Licensee, its customers, or anyone else for any interruption to service of Licensee or any interference with the operation of Licensee's Facilities. With the exception of third-party claims subject to Article 6.3, neither Party will be liable to the other for any indirect, special, incidental, or consequential damages suffered by the other Party such as, but not limited to, loss of any anticipated profits, claims of customers, loss of revenue, loss of use of Licensee's Facilities or system, cost of capital, increased expenses or operation of other facilities, or cost of replacement equipment, facilities or power.
- 6.3 Indemnification. Licensee will defend (at Authority's election), indemnify, and hold harmless Authority and its and its directors, officers, employees, successors, and assigns (each an "Indemnitee," and collectively, the "Indemnitees") against any and all claims, demands, liability, costs, damages (including indirect or consequential damages), fines, taxes, special charges by others, penalties, payments (including payments made by Indemnitees under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorneys' fees of Indemnitees and all other costs and expenses of litigation) of every kind or character arising from the performance of this Agreement, including any act, omission, failure, negligence, or willful misconduct in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal, or operation by Licensee or Licensee's officers, directors, employees, agents, or contractors of Licensee's Attachments and Broadband Facilities, or Authority Facilities ("Covered Claims"). Licensee's indemnification obligations for Covered Claims will apply irrespective of any negligence or alleged negligence of Indemnitees, except to the extent that Indemnitees' gross negligence gives rise to such Covered Claims. Covered Claims include, but are not limited to, the following:
- 6.31 Claims associated with cost of work performed by Authority that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents, or contractors, to install, maintain, use, transfer, or remove Broadband Facilities or Authority Facilities in accordance with the requirements and specifications of the Technical Requirements;
  - 6.32 Claims for damage to or destruction of Broadband Facilities, Authority Facilities, private property of any third-party, or injury to or death of any person or persons that arise out of or are caused by the erection, installation, maintenance, presence, operation, use, rearrangement, or removal of or from Authority Facilities of Licensee's Attachments or Licensee's Facilities, or the proximity of Licensee's Facilities to Authority Facilities, or by any act, omission, or negligence of Licensee or its contractors, agents and employees on or in the vicinity of Authority Facilities;
  - 6.33 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, or contractors, of any Law;
  - 6.34 Claims of property owners, or others alleging that the Parties do not have sufficient rights or authority for allowing or placing and maintaining Licensee's Facilities at the locations of Authority Facilities owned by Authority, the property has been

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taken, destroyed, utilized beyond the parameters of the right of way;

- 635 The conduct of Licensee's or its Affiliates' business, including without limitation the use or provision of Broadband Services or the content of any transmission;
- 636 A contractual or other relationship between a claiming party and either Licensee or its Affiliates, including any claim for interruption of service or in respect of service quality;
- 637 Claims for taxes or special charges by others that arise directly or indirectly from the construction, maintenance, or operation of Licensee's Facilities and are payable by Licensee pursuant to federal, state, or local regulation, statute, or other equipment;
- 638 Claims caused by or relating in any manner to a breach of this Agreement by Licensee or its agents and employees or by Licensee's contractors;
- 639 Claims arising from or due to environmental conditions arising from Licensee's use, storage, maintenance, disposal, or release of any Hazardous Substances on, under, adjacent, or proximate to Authority Facilities.

### 6.4 Procedure for Indemnification.

- 641 Indemnitee will give prompt notice to Licensee of any claim or threatened claim wherein Indemnitee is seeking indemnification pursuant to Article 5.3, specifying the alleged factual basis for such claim and the amount of the claim, if known.
- 642 Indemnitee's failure to give the required notice will not relieve Licensee of its obligation to indemnify Indemnitee unless and to the extent Licensee is materially prejudiced by such failure.
- 643 The Parties agree to cooperate fully with the other in the defense of any claims provided for under this Agreement. In cases in which require Licensee to indemnify the Indemnitee, no settlement or disposition of such claim will be made by the Licensee without written approval of the Indemnitee, which consent shall not be unreasonably withheld.

### 6.5 Environmental Hazards. Licensee represents and warrants that its use of Authority's Facilities will not generate Hazardous Substances, that it will not store or dispose of Hazardous Substances on or about Authority's Authority Facilities, that it will not transport to Authority Facilities any Hazardous Substances, and that Licensee's Broadband Facilities do not constitute or contain and will not generate any Hazardous Substances, including any such activities in violation of federal, state, or local law now or hereafter in effect, including any amendments. The term "Hazardous Substance" will be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations, or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Broadband Facilities will not release such Hazardous Substances.

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- 6.6 No Limitation. No indemnification provision contained in this Agreement under which Licensee indemnifies Authority will be construed in any way to limit any other indemnification provision contained in this Agreement.

### ARTICLE 7 – DUTIES, RESPONSIBILITIES, AND EXCULPATION

- 7.1 Duty to Inspect. Licensee acknowledges and agrees that Authority does not warrant the condition or safety of Authority's Facilities or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Authority Facilities, and/or premises surrounding the Authority Facilities prior to commencing any work on Authority Facilities or entering the premises surrounding the Authority Facilities.
- 7.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under the Technical Requirements and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 7.3 Duty to Inform and Protect. Licensee further warrants that it understands the imminent dangers, **INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION**, inherent in the work necessary to make installations on Authority Facilities by Licensee's employees, servants, agents, contractors, or subcontractors, and **LICENSEE ACCEPTS AS ITS DUTY AND SOLE RESPONSIBILITY TO NOTIFY, INFORM, AND KEEP INFORMED LICENSEE'S EMPLOYEES, SERVANTS, AGENTS, CONTRACTORS, OR SUBCONTRACTORS OF SUCH DANGERS, AND TO CAUTION ALL PERSONS ASSOCIATED WITH THE CONSTRUCTION OR MAINTENANCE OF THE ATTACHMENTS OF THE VERY HIGH VOLTAGE ASSOCIATED WITH THE OVERHEAD TRANSMISSION LINES WITHIN THE RIGHT OF WAY. NO BOOMS, CRANES OR OTHER EQUIPMENT SHALL BE BROUGHT CLOSER TO THE ENERGIZED CONDUCTOR THAN ALLOWED FOR BY OSHA AND NESC REQUIREMENTS.** Licensee also warrants that it will implement all precautions, procedures, and measures in the Technical Requirements to protect public safety and the safety of personnel working close to electrified lines.

### ARTICLE 8 – CONFIDENTIAL INFORMATION

- 8.1 Public Information. The Parties acknowledge and accept that this Agreement is not subject to any confidentiality requirements and may be disclosed by either party without notice. Other information not subject to any confidentiality requirement includes any information or portion of information which:
- 8.11 Information which a Party can demonstrate was rightfully in that Party's possession prior to the date of disclosure by the other Party;
- 8.12 Information which, at the time of disclosure or later, is or becomes published or otherwise available to the general public as part of the public domain through no

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act or failure to act on the part of the Party receiving the disclosure;

- 8.13 Information which a Party can demonstrate came into that Party's possession from a third Party who had a *bona fide* right to make such information available; or
- 8.14 Information which a Party can demonstrate was independently developed by or on behalf of said Party.
- 8.2 Non-Disclosure of Confidential Information. Confidential Information is information is expressly marked or identified as confidential or proprietary or that would normally be considered confidential under the circumstances, including without limitation information as it relates to design, maps, GIS type electronic files and specifications of or related to the Authority Facilities and transmission system. Neither Party will disclose the other Party's Confidential Information to a third party except to (a) any entity such Party directly or indirectly controls, is controlled by, or under common control with such Party; and (b) employees, agents or professional advisors of such Party but only to the extent needed to exercise its rights and fulfill its obligations under this Agreement.
- 8.3 Disclosure Required FOIA and Other Laws. Licensee further acknowledges that Authority is a public entity subject to the South Carolina Freedom of Information Act. In the event a Party is obliged or receives a request in either case to disclose Confidential Information as required by any statute or regulation, or under the terms of an order issued by a court of competent jurisdiction or by a governmental body or agency, or pursuant to an appropriate request for production of documents in any proceeding before a court of competent jurisdiction, the Party receiving such a request shall give written notice of same to the other Party at least ten (10) days prior to the date of compliance with such request (unless that Party has less than ten (10) days within which to comply, in which case said Party shall give the other Party as much notice as is practicable under the circumstances) so that the disclosing Party has an opportunity to seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If (in the absence of a waiver by the disclosing Party) the disclosing Party has not secured a protective order or other appropriate remedy despite attempting to do so, and the receiving Party is nonetheless then legally obliged to disclose any Confidential Information, the receiving Party may without liability hereunder, disclose only that portion of the Confidential Information which is necessarily subject to disclosure.

### ARTICLE 9 – INSURANCE & SAFETY

- 9.1 Licensee's Required Insurance Policies and Coverages. Licensee agrees that it, its employees, agents, contractors, and their subcontractors doing work related to this Agreement shall comply with all of Authority's Technical Requirements and insurance requirements as set forth on Exhibit A, which is attached and made a part of this Agreement by reference.
- 9.2 Insurance Certificates. On the Effective Date, and thereafter from time to time at the request of Authority, Licensee will cause its insurance carrier(s), each having a rating of A

## Authority – [Entity] Pole Attachment Agreement

minus or better from the A.M. Best Company, to furnish certificates of insurance to Authority evidencing the existence of the required coverage. Such certificates will provide that Authority be given thirty (30) days prior written notice by the insurer, or its authorized representative, of any cancellation, non-renewal, or adverse or material change of any policy and ten (10) days' prior written notice due to cancellation for non-payment of premiums for any required coverage provided by such insurer as evidenced by the certificates. Licensee will provide renewal certificates to Authority no later than thirty (30) days prior to expiration of any required policy. At Authority's request, Licensee will furnish copies of Licensee's insurance policies, forms, and endorsements. All documents should be submitted to Authority's Risk Management department.

- 9.3 Coverage for Full Term. All required coverage will remain in full force and effect during the Lease Term. Licensee's liability under this Agreement will not be limited to or by the insurance coverage required by this Agreement.
- 9.4 Application of Proceeds. Licensee will apply any insurance proceeds to replace, repair, reconstruct, or restore the property to substantially the same condition as that which existed prior to such damage or destruction.
- 9.5 Contractors Insurance. Licensee is solely responsible for ensuring that such its contractors and their subcontractors maintain insurance coverage that is usual, reasonable and customary for the services provided by such contractors and subcontractors to ensure that such Licensee can meet its obligations under this Agreement.

### ARTICLE 10 – AUTHORIZATION NOT EXCLUSIVE

Authority will have the right to grant, renew and extend nondiscriminatory rights and privileges to others not party to this Agreement, by contract or otherwise, to use Authority Facilities. Such rights will not interfere with the privileges granted to Licensee by the specific Accepted Design Packages issued pursuant to the Technical Requirements.

### ARTICLE 11 – REPRESENTATIONS

- 10.1 Licensee Representations. Licensee hereby warrants, covenants, and represents to Authority that:
- 10.1.1 It is a [TYPE OF ENTITY] duly organized and validly existing in good standing under the laws of the State of [INSERT STATE] with full power and authority to conduct its business as now conducted, own its assets and enter into and perform its obligations under this Agreement.
- 10.1.2 It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;
- 10.1.3 This Agreement constitutes a legal, valid, and binding obligation of Licensee enforceable against Licensee in accordance with its terms;

## Authority – [Entity] Pole Attachment Agreement

- 101.4 It will keep all parts of Authority's Facilities clear from liens and will not permit any damage to Authority's Facilities;
  - 101.5 It will comply with all applicable laws in connection with the its obligations under this Agreement;
  - 101.6 It is fully licensed by all governmental entities with jurisdiction over its activities, and has all permits or authorizing documentation required thereby;
  - 101.7 It is and shall remain at all times during the term of this Agreement, an Unaffiliated Communications Service Provider;
  - 101.8 Its use of the Attachments will be only for providing Broadband Retail Service as provided for by the Broadband Act;
  - 101.9 Licensee is acquainted and trained with the conditions related to the work being done and will ensure the same for its contractors;
  - 101.10 All work will be done in accordance with the Applicable Standards and good utility practice;
  - 101.11 It will not interfere in any manner with the Authority's electric system; and
  - 101.12 The signatory(ies) on behalf of such Licensee are fully authorized to execute this Agreement on behalf of Licensee for which such signatory(ies) sign.
- 10.2 Authority Representations. Authority hereby warrants, covenants, and represents to Licensee that:
- 102.1 It is a body corporate and politic created by the legislature of the State of South Carolina and is duly organized and validly existing under the laws of the State of South Carolina with full power and authority to conduct its business as now conducted, own its assets and property (including but not limited to the Authority Facilities) and enter into and perform its obligations under this Agreement.
  - 102.2 It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;
  - 102.3 This Agreement constitutes a legal, valid, and binding obligation of Authority enforceable against Authority in accordance with its terms;
  - 102.4 It will comply with all applicable laws in connection with the its obligations under this Agreement; and
  - 102.5 It is fully licensed by all governmental entities with jurisdiction over its activities, and has all permits or authorizing documentation required thereby.

**ARTICLE 12 – TERMINATION & DEFAULT**

- 11.1 Default – Failure to Make Payment. Failure to make any payment when due and such failure continues for more than thirty (30) days after the due date shall be a material breach of this Agreement.
- 11.2 If Licensee fails to make any payment then Authority may elect to: (1) terminate this Agreement and any other agreements made with Licensee; (2) continue attempts to collect the past due payment(s); (3) remove the Attachments; and/or (4) draw the amount of the past due payment(s) from the required Security. If the Authority elects to remove the attachments, prior to any reconnection Licensee must cure the default, replenish any amounts deducted from the required Security, and pre-pay any re costs in order to continue this Agreement and use.
- 11.3 Default – Other Grounds. Authority will have the right, pursuant to the procedure set out in Article 13.3, to terminate this entire Agreement, or any Accepted Design Package issued pursuant to the Technical Requirements, and to pursue any and all remedies provided in this Agreement, whenever Licensee is in default of any term or condition of this Agreement, including, but not limited to:
- 113.1 Assignment or transfer of Defaulting Party’s interest in this Agreement, whether voluntary or involuntary, except as provided for herein;
  - 113.2 Licensee becomes subject to a Bankruptcy Proceeding;
  - 113.3 Unauthorized or misuse of the Authority’s Facilities, including but not limited to unauthorized attachments;
  - 113.4 Licensee ceases to be an Unaffiliated Communications Service Provider;
  - 113.5 Abandonment of Licensee’s Attachments;
  - 113.6 A third party obtains a court order in a court of competent jurisdiction prohibiting the Defaulting Party from performing under this Agreement; or,
  - 113.7 In the event of any material representation, warranty, or statement made by a Party or Agreement that shall prove to have been incorrect in any material respect when made
  - 113.8 Construction, operation, or maintenance of Licensee’s Attachments or Broadband Facilities in violation of Law, in aid of any unlawful act or undertaking, or in any way impairing, endangering, or otherwise adversely impacting the Authority’s System.
  - 113.9 Construction, operation, or maintenance of Licensee’s Attachments or Broadband Facilities after any authorization required of Licensee has lawfully been denied or revoked by final action of any governmental or private authority;
  - 113.10 Construction, operation, or maintenance of Licensee’s Attachments or Broadband Facilities without the insurance and/or required Security coverage required under Articles 4.7 and 9;



## Authority – [Entity] Pole Attachment Agreement

- 113.11 Failing to promptly and fully perform any other covenant, condition, provision, or agreement contained in this Agreement, including without limitation the Technical Requirements.
- 11.4 Notice in Event of Default. In the event of a material breach of this Agreement, the Non-Defaulting Party shall give a notice to the Defaulting Party. The Defaulting Party shall have thirty (30) days from receipt of the notice to cure the material breach.
- 11.5 Right to Cure. When a cure of a material breach reasonably requires more than thirty (30) days, the Defaulting Party shall commence to cure within thirty (30) days of receipt of the notice, and the Defaulting Party shall be granted such additional time as is reasonably necessary to cure such default in the sole judgment of the Non-Defaulting Party so long as the Defaulting party diligently and continuously prosecutes such cure to completion. Unless excused by the Non-Defaulting Party in writing, no cure shall take more than sixty (60) days to complete before revocation or termination of this Agreement.
- 11.6 Other Termination Events. This Agreement may be terminated upon the occurrence of any of the following events:
- 116.1 State Entity Status. In the event of any change in Authority's legal status or the legal interpretation thereof, Authority, or its successors, may in its sole discretion terminate this Agreement. Termination for State Entity Status will constitute a Conditional Release.
- 116.2 Change in Law. In the event of any repeal or changes in Law which results in either Party no longer having the statutory authority to perform under this Agreement. Termination for Change in Law will constitute a Conditional Release.
- 116.3 Underlying Rights. In the event of any changes in underlying Rights of Way, rights to use fiber optic cable and/or equipment or Authority Facilities, resulting in Authority's loss of rights which it deems necessary to provide the License hereunder, Authority may in its sole discretion terminate this Agreement. Termination for Underlying Rights will constitute a Conditional Release.
- 116.4 Termination for Convenience. Upon sixty (60) days' notice, a Party may elect to terminate this Agreement for convenience for all (or a portion of) the Attachments. Termination under this subsection will be subject to a Termination Payment.
- 11.7 Termination Payment. Except as provided herein, any termination of this Agreement will be subject to a termination payment by the defaulting party which is equal to two (2) times the (apportioned) annual payment due within the subsequent four (4) quarters, or forty percent (40%) of remaining (apportioned) payments due under terms of the Agreement, whichever is less.
- 11.8 Conditional Release. In the event of termination under subsections 11.6.1, 11.6.2, or 11.6.3, Licensee will be released from any future obligations under this Agreement or any future

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obligations under any Approved Design, if terminated, provided however, that Licensee shall remain obligated for all obligations that arose prior to such termination.

- 11.9 Cumulative Rights and Remedies. The rights and remedies provided by law and under this Agreement are cumulative and either Party may seek the specific performance of the terms of this Agreement, unless this Agreement provides otherwise.
- 11.10 Licensee acknowledges and agrees that, in the event of a material default by Licensee, Authority may, separately or in addition to termination, at Authority's option and without any additional notice requirements or cure periods, suspend Authority's performance or exclude Licensee from use of the Attachments under any or all of the Accepted Design Packages in Authority's sole discretion, and that Authority shall have no liability of any kind to Licensee or to any third parties for any claims, charges, fees, assessments, or penalties of any kind for any loss or damage suffered as a result of such action. Licensee agrees to indemnify and hold harmless Authority for, from, and against any claim of any kind by any Person, entity or governmental agency for damages, penalties, fees, assessments, levies, or other damages of any kind (including, without limitation, attorneys' fees) arising directly or indirectly out of Authority's exclusion of Licensee from the Attachments.
- 11.11 Removal of Equipment. Upon expiration or termination of this Agreement, Licensee will within thirty (30) days remove the Attachments in a neat and orderly manner and repair all damage directly caused by such removal at Licensee 's sole expense, excluding normal wear and tear. Charges may continue to accrue until removal of Licensee's Attachments is complete. If not removed within thirty (30) days, Authority may remove or cause to be removed the Attachments or assume title to such Attachments. Should Authority remove or have the Attachments removed as provided herein, Licensee shall pay all costs and expenses of any such removal and the repair of all damage directly caused by such removal.

## ARTICLE 12 – FORCE MAJEURE

- 12.1. Force Majeure shall mean any cause beyond the reasonable control of Authority or Licensee, as applicable, or beyond the reasonable control of and not resulting from the fault or negligence of, a Party and affecting either of the parties hereto, including but not limited to:
- a. Acts of God, fires, floods, hurricanes, tornados, earthquakes, lightning, wind, unusually inclement weather, or other natural catastrophes;
  - b. Labor disputes, labor troubles, lockouts or strikes;
  - c. Acts of public enemy, acts of terrorism, civil commotions, sabotage, wars (either declared or non-declared), insurrections, riots, or pandemics; or
  - d. Acts of government or regulatory agencies, orders and judgments of any federal, state or local court, administrative agency or governmental body.
- 12.2. In the event performance by a party is delayed by reason of Force Majeure, such Party shall promptly notify the other in writing describing the particulars of the occurrence. The affected

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party shall attempt diligently and in good faith to remove any Force Majeure to the extent possible except that each party shall have the right to resolve labor disputes and labor troubles as it deems in its best interests. Further, nothing contained in this paragraph shall be construed as requiring Authority or Licensee to enter into any contract or other undertaking on terms which the Party deems to be unduly burdensome or costly.

- 12.3. Notwithstanding the provisions of this Article, if a Force Majeure occurs which causes the obligations of the Parties to be suspended as provided above and remain suspended for thirty (30) days, and at the conclusion of said thirty (30) days, the Party not claiming Force Majeure, in the exercise of reasonable judgment, concludes that there is little likelihood of ending the Force Majeure condition(s) in the immediate future, then the Party not claiming Force Majeure may terminate this Agreement without liability to the other Party by giving thirty (30) days' written notice of its intention to terminate. In such event, neither Party shall have any further obligation or liability under this Agreement or at law except with respect to payment for performance rendered prior to termination or as otherwise provided.

### ARTICLE 13 – AMENDING AGREEMENT AND TECHNICAL REQUIREMENTS

- 13.1 Amendments to Technical Requirements. Authority reserves the right to amend the Technical Requirements from time to time as it sees fit. Any amendment to the Technical Requirements will apply prospectively, except to the extent required by federal, state, or local Law.
- 13.2 Acceptance of Amendment. At least thirty (30) calendar days prior to the effective date of an amendment to the Technical Requirements, Authority will send Licensee a form notice requesting Licensee's acknowledgment of the amendment by a date certain and whether Licensee accepts or rejects the amendment. Licensee will return the executed form clearly marking acceptance or rejection of the amendment before the effective date of the amendment. If Licensee fails to timely return the form, Authority will send a written reminder within ten (10) business days following the effective date of the amendment requesting return of the executed form no later than ten (10) business days from the date of the reminder notice. If Authority does not receive the executed form by the effective date of the amendment, it will suspend processing of Licensee's Applications until such time as the form is received accepting the amendment.
- 13.3 Rejection of Amendment. If Licensee returns the form rejecting the amendment, Authority will suspend any further processing of Licensee's Applications and will send written notice to Licensee within ten (10) business days of receipt of the form verifying Licensee's choice to reject the amendment. Within thirty (30) days thereafter, the Parties will meet to discuss the timing for contract termination, not to exceed ninety (90) days, and the terms for the orderly removal or other disposition of Licensee's Attachments, not to exceed one hundred and eighty (180) days. If Licensee shows good cause as to why it cannot meet within thirty (30) days, the Parties may agree on an alternative time to meet. If Licensee refuses to meet within the thirty (30) day period or fails to schedule an alternative time to meet upon a showing of good cause, Authority may send notice of termination at any time and Licensee will remove its Attachments pursuant to the provisions of the Technical Requirements.

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- 13.4 Amendments to Agreement. Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement will not be amended, changed, or altered except in writing signed by authorized representatives of both Parties or upon Authority's adoption of amendments to the Technical Requirements and Licensee's acceptance thereof in accordance with the terms of this Agreement.

### ARTICLE 14 – ASSIGNMENT

- 14.1 Limitations on Assignment. A Party may not assign any right under this Agreement, whether in whole or in part, without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned, or delayed.
- 14.2 Obligations of Assignee/Transferee. Notwithstanding any provision in this Agreement to the contrary, the Parties may assign this Agreement to any parent, subsidiary, Affiliate, or any person, firm, or corporation that will control, be under the control of, or be under common control with the assigning Party, or to any entity into which the assigning Party may be merged or consolidated or which purchases all or substantially all of the assets of the assigning Party that are subject to this Agreement. No assignment or transfer under this Article 14 will be allowed, however, until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of the assigning Party arising under this Agreement. The assigning Party will furnish the non-assigning Party with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, the assigning Party will remain fully liable under this Agreement for claims that arose during the time period the assigning Party operated pursuant to the Agreement, and the assigning Party will not be released from those claims.
- 14.3 Change in Control. If at any point during the Term there is a transfer of legal ownership or control of the Authority or the Authority's Facilities, then Authority will provide written notice to Licensee and the Parties will comply with all constitutional, statutory, and regulatory requirements for the sale.
- 14.4 Sub-Licensing. Licensee will not sub-license space on Authority Facilities to any third-party or place an Attachment for the benefit of any third-party, including an Affiliate, on Authority Facilities. Any such action will constitute a material breach of this Agreement. The use of Licensee's Broadband Facilities by third-parties (including, but not limited to, leases of dark fiber) that involves no additional Attachment is not subject to the provisions of this Article 14.4.

### ARTICLE 15 – NOTICES

- 15.1 Notice. Any notice required by this Agreement will be in writing and will be given either personally or by overnight or express mail courier. Notices will be deemed sufficiently given if and when received by the party to be notified or the office of such party. Notices will be addressed as follows:

If to Authority at:

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Attention: Sr. Manager Broadband and Telecom Services  
Santee Cooper  
1 Riverwood Drive  
Moncks Corner, South Carolina  
Broadband\_SC@santeecooper.com

If to Licensee, at:

Attention: [Company Representative]  
[Company  
Name] [Street  
Address]  
[City, State, Zip Code]

Either party may, by giving notice, change (or add to) its address for receiving such notices. Either party may agree to accept notice by acknowledging receipt of an email transmittal.

- 15.2 Emergency Contact. Authority and Licensee respectively will maintain a staffed 24-hour emergency telephone numbers, not available to the general public, at which either Party can report damage to Attachments or other situations requiring immediate communications between the Parties. The contact person for each Party will be qualified and able to respond to the other Party's concerns and requests. Failure of Licensee to maintain an emergency contact will eliminate Authority's liability to Licensee for any actions that Authority deems reasonably necessary given the specific circumstances of the emergency or other damage to Attachments requiring notice under this Article 15.2.

### ARTICLE 16 – MISCELLANEOUS PROVISIONS

- 16.1 Entire Agreement. This Agreement in its entirety consists of the recitals stated above, the body of this License Agreement, all executed Accepted Design Packages, Transmission Pole Attachment Rates, Technical Requirements, Applicable Standards, and the attached exhibits, as they may be amended from time to time. This Agreement supersedes all previous oral and written agreements between Authority and Licensee regarding the approval, placement, transfer, maintenance, and removal of Licensee's Broadband Facilities on Authority Facilities. All provisions, terms, and conditions to this Agreement are expressed herein. Notwithstanding any contrary provision, term, or condition herein, this Agreement will neither waive nor be interpreted to waive any claims of any nature, any amounts or credits owed, or any obligations or duties arising under a prior agreement between the Parties or the Parties' performance thereunder. Nor will this Agreement act as a waiver of any claims for the prior use of Authority Facilities without valid authorization.
- 16.2 Nonwaiver. Failure of Authority or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder in default or terminated will not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same will be and remain at all times in full force and effect until terminated in accordance with this Agreement.

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- 16.3 Severability. The invalidity of one or more clauses, sentences, sections, or articles of this Agreement will not affect the validity of the remaining portions of the Agreement, provided that the material purposes of this Agreement are not altered and can be determined and effected.
- 16.4 Governing Law. This Agreement will be construed in accordance with and governed by the laws of South Carolina without giving effect to the principles of conflicts of law thereof. The Parties consent to the venue of the South Carolina Administrative Law Courts.
- 16.5 Compliance with Agreement and Standards. All Attachments made on or after the effective date of this Agreement are and will be authorized by the procedures, requirements, and limitations of this Agreement, subject to Licensee's compliance with all the terms and conditions of the Technical Requirements and all other Applicable Standards. Licensee's failure to maintain all Attachments in accordance with the Technical Requirements and all other Applicable Standards will be considered a material default.
- 16.6 Contractors and Agents Bound. Licensee agrees to include in all its contracts and agreements with independent contractors or agents provisions which are consistent with and which will fulfill the requirements of this Agreement
- 16.7 No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended to be for the benefit of Authority and Licensee. Except as otherwise provided herein, nothing in this Agreement, express or implied, is intended to confer upon any other person or entity, other than the Parties, any benefits, rights or remedies under or by reason of this Agreement.
- 16.8 Headings and Expressions. Titles and headings used in this Agreement are for reference only and are not a part of this Agreement. Words and expressions used in this Agreement shall be applicable according to the context and without regard to the number or gender of such words or expressions (with the exception of numbers indicating price, quantity, or technical specifications).
- 16.9 No Joint Venture. No agency, employment agreement, joint venture, or partnership is created between the Parties to this Agreement, and neither Party shall be deemed to be an agent of the other, nor shall either Party have the right, power or authority to act for the other in any manner to create any obligations, contracts, or debt binding upon the other Party.
- 16.10 Amendments. No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.
- 16.11 Headings and Expressions. Titles and headings used in this Agreement are for reference only and are not a part of this Agreement. Words and expressions used in this Agreement shall be applicable according to the context and without regard to the number or gender of such words or expressions (with the exception of numbers indicating price, quantity, or technical specifications).

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16.12 Attorney’s Fees. If Authority or Licensee brings any action at law or in equity to enforce any provision of this Agreement, the prevailing party will be entitled to recover its reasonable costs and attorney’s fees in addition to any other relief to which it may be entitled.

16.13 Counterparts; Electronic Copies. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

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

**LICENSEE**

**SOUTH CAROLINA PUBLIC SERVICE  
AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## REQUIRED INSURANCE COVERAGE

During the License Term, Licensee shall procure, pay premiums for and maintain in full force and effect the insurance coverage described below. Licensee shall include an endorsement in the following policies to include a waiver of subrogation in favor of the Authority and, with respect to the policies described in Subsections 1(b) to 1(d) below, listing Authority as an additional insured. Licensee may combine primary and excess policies to satisfy the coverage and amount of insurance required herein at Licensee's discretion.

- (a) Worker's compensation insurance with statutory limits as required by the laws of the state in which the Facility is located, and employer's liability insurance with minimum limits of \$1,000,000 or as established by state or federal law, if applicable. This insurance shall include all applicable maritime coverage as required by law.
- (b) Commercial general and umbrella/excess liability insurance, including coverage for (i) premises/operations, (ii) independent contractor, (iii) products and completed operations, (iv) broad form contractual liability, (v) broad form property damage, (vi) explosion, collapse and underground damage exclusion deletion, and (vii) personal injury, all with limits of not less than \$10,000,000 each occurrence and in the aggregate.
- (c) Business auto liability insurance with minimum limits of \$1,000,000, covering all vehicles and automobiles whether owned, leased, or rented when used by Licensee in connection with performance of this Agreement and including commercially reasonable coverage for each accident of bodily injury and property damage.



**FORM OF QUALIFYING LETTER OF CREDIT**

[Date]

**[Issuing Bank Letterhead]**

Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Issue Date: \_\_\_\_\_, 20\_\_

Initial Expiry Date: \_\_\_\_\_, 20\_\_

Beneficiary:

Ladies and Gentlemen:

At the request of and based on instructions from our customer, [\_\_\_\_\_] a [\_\_\_\_\_] (“Account Party”), we hereby establish this Irrevocable Standby Letter of Credit (“Letter of Credit”) in your favor as [Licensor] under the Master Transmission Pole Attachment License Agreement dated as of [\_\_\_\_\_] between [Licensee Name], as Licensee, and South Carolina Public Service Authority, as Licensor (as heretofore or hereafter amended and/or restated at any relevant time the “Pole Attachment Agreement”) for drawings up to a total of [\_\_\_\_\_] Dollars (US\$[\_\_\_\_\_]).

As used in this Letter of Credit: (a) each of “Dollars” and “US\$” mean lawful currency of the United States of America; (b) “ISP98” means the International Standby Practices, International Chamber of Commerce Publication No. 590; and (c) “Business Day” means a day that is not a Saturday, a Sunday or any other day on which banking institutions are not required to be open, or are authorized or required to close, in the State of our office location set forth below.

Drawings may be made by you from time to time by presentation of your certificate in the form of *Appendix A* hereto appropriately completed (a “Certificate”) to us at our office in the United States located at:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attn: [\_\_\_\_\_]

Telephone No: [\_\_\_\_\_]

Telecopy No: [\_\_\_\_\_]

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or at another office in the United States designated by us with at least fifteen (15) days prior written notice to and received by you.

In the alternative, presentation of any Certificate may be transmitted to us: (a) by telecopy to our telecopy number set forth above; or (b) in another electronic medium pursuant to any written permission which has been provided by us to you in our sole discretion. To the extent a presentation is made by telecopy transmission or in another permitted electronic medium, you must: (a) provide telephone notice thereof to us at our telephone number set forth above prior to or substantially simultaneously with such transmission; and (b) send the original Certificate by overnight courier to us at our office address set forth above. However, our receipt of such telephone notice or original Certificate will not be a condition to payment of the drawing described in the Certificate. Items delivered by telecopy transmission or in another permitted electronic medium will be the equivalent of originals of such items for purposes of this Letter of Credit.

We will honor each drawing made in compliance with this Letter of Credit by wire transfer of immediately available funds in the amount specified in the Certificate provided to us in connection with such drawing to the account specified in that Certificate. If any such drawing is presented by you on a Business Day at or before 12:00 noon local time at our address or telecopy number set forth above, such payment will be made not later than the close of business on the first Business Day after such presentation; drawings presented after 12:00 noon will be paid not later than close of business on the second Business Day after such presentation.

This Letter of Credit is effective immediately and will expire on the first to occur of the: (a) above Initial Expiry Date, subject to extension as described below (as so extended the “Expiry Date”); or (b) surrender by you to us of the original of this Letter of Credit, with any amendment(s) hereto, with your written consent to cancellation thereof (a “Cancellation Date”). The earliest to occur of the final extended Expiry Date or a Cancellation Date will be the “Termination Date.” The Initial Expiry Date and each subsequent Expiry Date will be automatically extended for an additional consecutive period of one year unless we notify you in writing by nationally recognized overnight courier service, at least sixty (60) days prior to the then applicable Expiry Date, of our decision that the then applicable Expiry Date will not be automatically extended. Subject to the provisions herein, we authorize you to make drawings hereunder in an aggregate sum not in excess of the above amount from the date hereof through our close of business on the Termination Date. If this Letter of Credit expires during an interruption of business as described in Rule 3.14 of ISP98, we specifically agree to effect payment if you draw on this Letter of Credit within thirty (30) days after the resumption of business.

Communications with respect to this Letter of Credit, including delivery of Certificates, shall, except as otherwise expressly provided above, be in writing and provided to you and us at our respective addresses and numbers set forth above by delivery in person or facsimile transmission at such address, as provided in this Letter of Credit, or as and in the medium otherwise permitted in writing by the recipient.

This Letter of Credit, except as otherwise expressly stated herein, is subject to ISP98, and as to matters not addressed by ISP98 the Laws of the [State/Commonwealth of \_\_\_\_\_], including the Uniform Commercial Code as in effect in such State, will control.

**Authority – [Entity] Pole Attachment Agreement**

This Letter of Credit sets forth in full our undertaking, which will not in any way be amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the preceding paragraph and appendices hereto, and any such reference will not incorporate herein by reference any document, instrument or agreement except as set forth above. Our obligations under this Letter of Credit are our individual obligations and not contingent on any reimbursement of us with respect thereto. Any drawing under this Letter of Credit will be paid from our general funds and not directly or indirectly from funds or collateral deposited with us or for our account by the Account Party or any other person or entity.

Very truly yours,

By .....  
Authorized Signator

**Appendix A to Qualifying Letter of Credit**

**[Beneficiary Letterhead]**

**DRAWING CERTIFICATE**

**LETTER OF CREDIT NO.** \_\_\_\_\_

\_\_\_\_\_, 20\_\_

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attn: [\_\_\_\_\_]

Telephone No: [\_\_\_\_\_]

Telecopy No: [\_\_\_\_\_]

The undersigned authorized signator of \_\_\_\_\_, as [Licensor] (“Beneficiary”), hereby certifies to \_\_\_\_\_ Bank (“Issuing Bank”), with reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the “Letter of Credit”) issued by Issuing Bank and now in favor of Beneficiary (except as otherwise set forth herein, capitalized terms used and not defined herein have the meanings set forth in the Letter of Credit or, if not defined therein, in the Pole Attachment Agreement), that:

1. Beneficiary is making this drawing under the Letter of Credit in the amount of \_\_\_\_\_ Dollars (US\$ \_\_\_\_\_) (the “Drawing Amount”).

2. The Drawing Amount does not exceed US\$[*insert face amount of letter of credit*] minus the amount of all payments of any previous drawings made under the Letter of Credit.

3. Beneficiary is entitled to make this drawing because [*Check one*]:

[Licensee] has failed to pay one or more amounts due and payable to Licensor under the Pole Attachment Agreement (“Required Payments”), all applicable grace periods for the Required Payments have expired, and the sum of such unpaid Required Payments is not now less than the sum of (a) the Drawing Amount plus (b) any amounts that are being drawn from one or more other Qualifying Letters of Credit in respect of such Required Payments; or

The Letter of Credit is not now a Qualifying Letter of Credit and has not been replaced with a Qualifying Letter of Credit for a period of ten (10) consecutive Business Days (as defined in the Pole Attachment Agreement) after the Letter of Credit no longer constituted a Qualifying Letter of Credit; or

The now effective Expiry Date of the Letter of Credit is less than thirty (30) days after the date of this Certificate.

4. You are hereby directed to make payment of the requested Drawing Amount to

\_\_\_\_\_ Bank, at \_\_\_\_\_ ABA No. \_\_\_\_\_ for further credit  
to \_\_\_\_\_ Account No. \_\_\_\_\_ Re: [\_\_\_\_\_] , Attention:  
\_\_\_\_\_.

IN WITNESS WHEREOF, Beneficiary has executed and delivered this Certificate.

*[Beneficiary]*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_