

Pole Attachment License Agreement

This Pole Attachment License Agreement (the "Agreement") dated _____, 20____ ("Effective Date") is made by and between Independence, Missouri, a constitutional charter city, through its municipal utility Independence Power and Light ("IPL"), a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of Missouri, and Missouri Network Alliance d/b/a Bluebird Network LLC headquartered in Columbia, Missouri, but with offices located at 800 N.W. Chipman Road, Suite 5750 Lee's Summit, Missouri 64063 ("Licensee").

Recitals

IPL is a municipal utility performing the essential public service of distributing electric power; and

IPL is responsible for safeguarding the integrity of its electric system, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all applicable federal, state, and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to IPL's Poles; and

Licensee proposes to install and maintain fiber optic Facilities, Licensee's Attachments, on IPL's Poles to provide telecommunication and broadband Services; and

IPL is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on IPL's Poles, provided that IPL may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient capacity or for reasons relating to safety and reliability unless the Licensee will resolve the issue; and

The parties intend that this Agreement shall replace and supersede all previous pole attachment and or infrastructure use agreements between the parties upon the Effective Date of this Agreement; and

Therefore, in consideration of the mutual covenants, terms and conditions set out below the parties agree as follows:

Article 1. Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **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”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of IPL or other federal, state, or local authority with jurisdiction over utility facilities.
- 1.3 **Attaching Entity**: means any public or private entity, including Licensee, that, pursuant to a license, joint use, joint ownership or other attachment agreement with IPL, places an Attachment on IPL’s Pole(s)
- 1.4 **Attachment(s)**: means fiber optic Facilities that are placed directly on IPL’s Poles, are Overlashed onto an existing Attachment, but does not include either a Riser or a Service Drop attached to a single Pole where Licensee has an existing Attachment on such Pole. New Attachments permitted after the Effective Date of this Agreement shall only occupy twelve (12) inches of vertical space on a Pole, as measured either above or below (but not both) the point of attachment, and any Attachment outside of the twelve inches shall be deemed to constitute a separate Attachment for Pole Attachment Fee calculations purposes.
- 1.5 **Broadband Internet Access Service**: means a service that provides the capability to transmit data to, and receive data from, all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. Broadband internet access service also encompasses any service that provides a functional equivalent of that service or that is used to evade the provisions set forth in this Agreement.
- 1.6 **Capacity**: means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- 1.7 **Climbing Space**: means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable IPL employees and contractors to safely climb, access, and work on IPL Facilities and equipment.
- 1.8 **Correct**: means to perform work to bring an Attachment into compliance with Applicable Standards.
- 1.9 **Emergency**: means a situation exists which, in the reasonable discretion of Licensee or IPL, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.
- 1.10 **Equipment Attachment**: means each power supply, amplifier, pedestal, appliance or other single device or piece of equipment but excluding wireless attachments affixed to any IPL Pole or IPL Facilities.

- 1.11 **Facilities**: means one or more fiber optic cables composed of one or more strands of single mode optical fibers, which cable is owned by Licensee and installed along a defined route and includes any coaxial cable, cable and wires connected to such fiber optic cable and coaxial cable, and any and all supporting cable used to provide Telecommunications Service, including without limitation Broadband Internet Access Service, as defined by the FCC's rules, or any combination of cable television service and/or telecommunications service with any other service not otherwise classified by the FCC. but, excluding all wireless attachments affixed to, contained in or on any wireline or unit of IPL's infrastructure.
- 1.12 **IPL Facilities**: means all personal property and real property owned or controlled by IPL, including Poles, Conduit System, and related facilities.
- 1.13 **Licensee**: means Missouri Network Alliance d/b/a Bluebird Network LLC, its authorized successors and assignees.
- 1.14 **Make-Ready or Make-Ready Work**: means all work that IPL reasonably determines to be required to accommodate Licensee's Cable Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of IPL Facilities, existing Attachments, or attachments of other Users, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, but does not include Licensee's routine maintenance.
- 1.15 **Occupancy**: means the use or reservation of space for Attachments on an IPL Pole or portion of IPL's Conduit System.
- 1.16 **Overlash**: means to place an additional wire or Cable Facility onto an existing attached Cable Facility.
- 1.17 **Pedestals/Vaults/Enclosures**: means above- or below-ground housings that are not attached to Utility Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.
- 1.18 **Permit**: means written or electronic authorization by IPL for Licensee to make or maintain Attachments to specific IPL Poles pursuant to the requirements of this Agreement. Licensee's Attachments, Riser and Service Drops and other Licensee facility installations made prior to the Effective Date ("Existing Attachments") shall be deemed Permitted Attachments hereunder.
- 1.19 **Pole**: means a pole owned or controlled by IPL that is used for the distribution of electricity and/or Cable Service and is capable of supporting Attachments for Licensee's Cable Facilities.
- 1.20 **Pole Loading Study/Analysis**: means the engineering analysis of the existing and proposed loads on a Pole. The study shall be done using the following pole loading programs, O-Calc, SPIDA, Pole Foreman, or PLS Pole using liner analysis. The study shall be certified by a State of Missouri Licensed Professional Engineer, use National Electrical Safety Code (NESC) Grade B

Construction and current IPL Pole Attachment Standards which are available upon request from IPL's Engineering Manager.

- 1.21 **Post-Installation Inspection:** means the inspection by IPL or Licensee or some combination of both to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.22 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or IPL to determine the Make-Ready Work necessary to accommodate Licensee's Cable Facilities on a Pole. Such work includes, but is not limited to, a Pole Loading Study, field inspection and administrative processing.
- 1.23 **Reserved Capacity:** means capacity or space on a Pole that IPL has identified and reserved for its own future utility requirements at the time of the Permit grant, including the installation of cable circuits for operation of IPL's electric system.
- 1.24 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.
- 1.25 **Service Drop:** means cables, wires, and strands that serve to connect a customer to the service provider's distribution network to provide service to said customer.
- 1.26 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by IPL and/or applicable federal, state, or local regulations that will readily identify the type of Attachment (*e.g.*, cable TV, telephone, high-speed broadband data, public safety) and its owner.
- 1.27 **Telecommunications Services:** mean the offering of services for a fee to the public that permit transmission between or among points specified by the user of information, of the user's choosing, without change in the form or content of the information as sent and received.
- 1.28 **Unauthorized Attachment:** means any Attachment placed on IPL's Pole(s) without such authorization as is required by this Agreement, provided the Licensee's Permitted Attachments as of the Effective Date of this Agreement shall not be considered Unauthorized Attachments.
- 1.29 **User:** means any entity that has received approval from IPL to place facilities on the Poles and has an approved pole attachment agreement.
- 1.30 **Wireless Overlash:** means any Facility or Equipment Attachment used to provide wireless communications.

Article 2. **Scope of Agreement**

- 2.1 **Grant of License.** Subject to the provisions of this Agreement, IPL grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments to IPL's Poles.

Unless otherwise agreed this Agreement does not authorize the use of IPL transmission structures (other than those with distribution underbuild).

- 2.2 No Wireless Attachments.** This Agreement does not contemplate or authorize the attachment of wireless attachments to IPL's Poles, and such use will only be allowed pursuant to a separately negotiated wireless pole attachment agreement.
- 2.3 Parties Bound by Agreement.** Licensee and IPL agree to be bound by all provisions of this Agreement.
- 2.4 Permit Issuance Conditions.** IPL will issue one or more Permit(s) to Licensee only when IPL determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), taking into account the Licensee's willingness to resolve any sufficiency issue through Make-Ready, (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- 2.5 Reserved Capacity.** Access to space on IPL Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future IPL use. At the time of Permit issuance, IPL shall notify Licensee if capacity on particular poles is being reserved pursuant to a plan for reasonably foreseeable future electric use. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) days prior notice, IPL may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for IPL's future utility service. IPL shall reclaim Reserved Capacity from the Attaching Entity(s) in the order of the most recent to the first one that attached its Cable Facilities to the Pole upon which the Utility needs the Reserved Capacity. If reclaimed for IPL's use, IPL may at such time also install associated facilities, including the attachment of cable lines for internal IPL operational or governmental cable requirements. IPL shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) 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 Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 10. Licensee shall not be required to bear any of the costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity.
- 2.6 No Interest in Property.** No use, however lengthy, of any IPL Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of IPL's rights to IPL Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a Licensee only.

- 2.7 **Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee's Cable Facilities to any specific Pole.
- 2.8 **IPL's Rights over Poles.** The parties agree that this Agreement does not in any way limit IPL's right to locate, operate, maintain, or remove its Poles in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement.
- 2.9 **Expansion of Capacity.** IPL will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. It shall not be considered reasonable for IPL to refuse to expand Pole Capacity, including pole replacement, if the Licensee agrees to bear the cost for resolving the Capacity issue, unless other safety concerns are implicated. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require IPL to install, retain, extend, or maintain any Pole for use when such Pole is not needed for IPL's own service requirements.
- 2.10 **Other Agreements.** Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit IPL from fulfilling any agreement or arrangement regarding its Poles into which IPL has previously entered with others not party to this Agreement
- 2.11 **Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals set forth above and no other use shall be allowed without IPL's express written consent to such use. Nothing in this Agreement shall be construed to require IPL to allow Licensee to use IPL's Poles after the termination of this Agreement.
- 2.12 **Overlashing.** The following provisions apply to Overlashing:
- 2.12.1 Licensee shall obtain a Permit for each Overlashing, in accordance with the requirements of Article 6. Overlashing will be limited to fiber cables and only on a permanent basis. Absent such authorization, Overlashing constitutes an Unauthorized Attachment under Article 21.
- 2.12.2 Permits for Overlashing by Licensee shall not be withheld by IPL if such Overlashing can be done consistent with Applicable Standards, subject to any notice regarding Reserve Capacity pursuant to Article 2.5. Authorized Overlashing to accommodate Attachments shall not increase the Annual Attachment Fee paid pursuant to Appendix A. Licensee shall, however, be responsible for all Make-Ready Work and other charges associated with the Overlashing. Licensee shall not have to pay a separate Annual Attachment Fee for such Overlashed Attachment.
- 2.12.3 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

2.13 Enclosures. Licensee shall not place Pedestals, Vaults, and/or other Enclosures within four (4) feet of any Pole or other IPL Facilities without IPL's prior written permission. If permission is granted, all such installations shall be per the Applicable Standards. Such permission shall not be unreasonably withheld. Notwithstanding the foregoing all existing Licensee Pedestals, Vaults and/or other Enclosures are not subject to this provision, provided however, Licensee agrees to move any such above-ground enclosures in order to provide sufficient space for IPL to set a replacement Pole.

Article 3. Fees and Charges

3.1 Payment of Fees and Charges. Licensee shall pay to IPL the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in this Agreement.

3.2 Payment Period. Unless otherwise expressly provided, Licensee shall pay any invoice it receives from IPL pursuant to this Agreement within forty-five (45) days of receipt of invoice.

3.3 Application Fee. Licensee shall be charged a non-refundable Application Fee pursuant to Appendix A.

3.4 Attachment Fee. Licensee shall be charged an Annual Attachment fee ("Attachment Fee") per year, as set out in Appendix A.

3.5 Billing of Attachment Fee. IPL shall invoice Licensee for the Pole Attachment Fee, per wireline attachment, annually in advance. IPL will submit to Licensee an invoice for the annual rental period not later than January 30th of each year. The initial annual rental period shall be retroactive to the 2022 billing date – January 1, 2022 - Each subsequent annual rental period shall commence on the following January 1st and conclude on December 31st of that year. The invoice shall set forth the total number of IPL Poles on which Licensee was issued Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits.

3.5.1 Contesting Fee. Licensee shall have forty-five (45) days from receipt of invoice to contest the number of Attachments. Failure to contest or otherwise dispute the invoice within forty-five (45) days of receipt shall be deemed to be acceptance by the Licensee. In the event that Licensee does contest within forty-five (45) days either the number of Attachments or the Attachment Fee, Licensee shall pay an amount equivalent to the previous year's billing within the initial forty-five (45) days. Upon resolution of the disagreement regarding the then-current year's bill, either licensee shall pay the difference, if the agreed amount is greater than Licensee's initial payment, or IPL shall refund the difference to Licensee, if the agreed amount is less than Licensee's initial payment.

3.6 Refunds. No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Agreement.

- 3.7 **Late Charge(s)**. If IPL does not receive payment for any undisputed fee or other amount owed within forty-five (45) days after it becomes due, Licensee, upon receipt of ten (10) business days' written notice shall pay interest to IPL at the rate of three percent (3%) per month, or the maximum interest allowed by law, whichever is less on the amount due.
- 3.8 **Charges and Expenses**. Licensee shall reimburse IPL and any other Attaching Entity for those actual and documented costs incurred for facilitating Licensee's Attachments or for which Licensee is otherwise responsible under this Agreement.
- 3.8.1 Such costs and reimbursements shall include, but not necessarily be limited to, all design, engineering, administration, supervision, payments, labor, overhead, materials, equipment and applicable transportation used for work on, or in relation to Licensee's Attachments as set out in this Agreement or as requested by Licensee in writing.
- 3.8.2 For any grouping of Permit Applications in excess of fifty (50) submitted within a sixty (60) day time period, additional personnel and resources will be necessitated to meet time requirements. Licensee shall pay the actual and documented costs incurred to process such Permit Applications.
- 3.9 **Advance Payment**. IPL in its sole discretion will determine the extent to which Licensee will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work costs, in connection with the initial installation or rearrangement of Licensee's Attachments pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.10 **True-Up/True-Down**. Whenever IPL, in its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated expenses, Licensee agrees to pay IPL for the difference in cost, provided that IPL documents such costs with sufficient detail to enable Licensee to verify the charges. To the extent that IPL's actual cost of the activity is less than the estimated cost, IPL shall refund to Licensee the difference in cost.
- 3.11 **Determination of Charges**. Wherever this Agreement requires Licensee pay for work done or contracted by IPL, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. IPL shall bill its services based upon actual costs, and such costs will be determined in accordance with IPL's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used. Labor costs shall be the fully loaded costs of the labor title performing the work. Consistent with Article 19, if Licensee was required to perform work and fails to perform such work within the specified timeframe, and IPL performs such work, IPL may charge Licensee an additional twenty-five (25%) of its actual and documented costs for completing such work.

- 3.12 **Work Performed by IPL.** Wherever this Agreement requires IPL to perform any work, IPL, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work
- 3.13 **Charges for Incomplete Work.** In the event that an Application is submitted by Licensee and then steps are taken by IPL to carry out the review of the Application by performing necessary engineering and administrative work and the Application is subsequently cancelled, Licensee shall reimburse IPL for all of the actual and documented costs incurred by IPL through the date of cancellation, including engineering, clerical, administrative and Make-Ready construction costs.

Article 4. Specifications

- 4.1 **Installation** When a Permit is issued pursuant to this Agreement, Licensee's Cable Facilities shall be installed and maintained in accordance with the requirements and specifications of IPL including all Applicable Standards provided to the Licensee. Licensee shall be responsible for the installation and maintenance of its Cable Facilities.
- 4.2 **Maintenance of Facilities.** Licensee shall, at its own expense, make and maintain its Attachment(s) 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 needed because there is an imminent danger to the public, IPL or any workers on or around the Facilities. Licensee will bring into conformity with the new Applicable Standards any such Attachments that were in compliance when made at the time of their normal replacement, rebuilding, or reconstruction; unless applicable law requires that the changes must be implemented sooner.
- 4.3 **NJUNS.** Licensee shall become a participating member of the National Joint Utility Notification System ("NJUNS"), to facilitate required notices, including, but not limited to, any need to rearrange or transfer Licensee's Attachments. IPL will determine the extent to which notifications via NJUNS will be utilized for Pole Attachments, transfers, rearrangements, Pole Attachment abandonment and removal, as well as the extent to which such use will satisfy the notification requirements of this Agreement and provide notice thereof to Licensee. To the extent that IPL determines to use NJUNS, Licensee and IPL agree to perform their respective tasks set forth in NJUNS tickets in a commercially reasonable and timely manner and in accordance with the timeframes specified in this Agreement; but under no circumstance shall that time frame exceed sixty (60) days from time of notice.
- 4.4 **Tagging.** Licensee shall Tag all of its Facilities every 3rd pole as specified in the Applicable Standards and/or applicable federal, state, and local regulations upon installation of such Facilities. Within two years of the execution of this Agreement, during any maintenance activities performed at any specific pole(s), Licensee shall also tag any untagged Facilities that were on IPL

Poles on the Effective Date of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.

- 4.5 **Interference.** Licensee shall not allow its Facilities to impair the ability of IPL or any third party with superior rights to use IPL's Poles, nor shall Licensee allow its Facilities to interfere with the lawful operation of any IPL Facilities or third-party facilities.
- 4.6 **Protective Equipment.** Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and Facilities. Licensee shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by IPL's facilities in the event of a contact with such facilities. Except as provided in Article 23, Utility shall not be liable for any actual or consequential damages to Licensee's Facilities, Licensee's customers' facilities, or to any of Licensee's employees, contractors, customers, or other persons.
- 4.7 **Violation of Specifications.** If Licensee's Attachments, or any part of them, are installed, used, or maintained in violation of this Agreement, and Licensee has not Corrected the violation(s) within forty-five (45) days from receipt of written notice of the violation(s) from IPL, the provisions of Article 19 shall apply. When IPL believes, however, that such violation(s) pose an imminent threat to the safety of any person, interfere with the performance of IPL's service obligations, or present an imminent threat to the physical integrity of IPL Poles or facilities, IPL may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable afterward, IPL will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and documented costs incurred by IPL in taking action pursuant to this Article 4.7.
- 4.8 **Emergency Restoration of IPL Service.** IPL's emergency service restoration requirements shall take precedence over any and all work operations of Licensee on IPL's Poles.
- 4.9 **Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within one hundred twenty (120) days of the effective date of such right and any extension to such Permit(s), IPL may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. In such instances, IPL shall endeavor to make other space available to Licensee, upon written application under Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If IPL uses the space for its own needs or makes it available to other parties, then from the date that IPL or a third party begins to use such space, Licensee may obtain a refund on the portion of any Attachment Fees that it has paid in advance for that space. For purposes of this paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.
- 4.10 **Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service

(“Nonfunctional Attachment”) as provided in this Paragraph 4.10. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from IPL that removal is necessary to accommodate IPL’s or another Attaching Entity’s use of the affected Pole(s) in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. If Licensee contests whether the Attachment is nonfunctional, provisions of Article 28 shall apply. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment must first be removed after which the Licensee will apply for an attachment. In such case, no additional attachment fee will be charged assuming the Licensee was already paying for the non-functional attachment.

Article 5. Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Before Licensee occupies any of IPL’s Poles Licensee shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to construct, operate, or maintain its Facilities on public or private property. Licensee’s obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the services that it provides over its Facilities. Licensee shall defend, indemnify, and reimburse IPL for all losses, costs, and expenses, including reasonable attorney’s fees that IPL may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee’s Facilities on IPL’s Poles to provide particular services.
- 5.2 Lawful Purpose and Use.** Licensee’s Facilities must at all times serve a lawful purpose, and the Licensee’s use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of IPL’s Rights.** No Permit granted under this Agreement shall extend, or be deemed to extend, to any of IPL’s Poles, to the extent that Licensee’s Attachment would result in a forfeiture of IPL’s rights. Any Permit that would result in forfeiture of IPL’s rights shall be deemed invalid as of the date that IPL granted it. Further, if any of Licensee’s existing Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from IPL. If Licensee does not remove its Facilities in question within sixty (60) days of receiving written notice from IPL, IPL may at its option perform such removal at Licensee’s expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated, provided that Licensee shall indemnify IPL for liability, costs, and expenses, including reasonable attorney’s fees, that may accrue during Licensee’s challenge.

5.4 **Effect of Consent to Construction/Maintenance.** Consent by IPL to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required Authorizations with respect to such Attachment.

Article 6. Permit Application Procedures

6.1 **Permit Required.** Before making any Attachments (excluding Service Drops, Anchors and Riser Attachments where there is an existing licensed Pole Attachment) to any Poles, Licensee shall submit an Application and receive a Permit therefor, with respect to each Pole.

6.2 **Overlashing.** Overlashing is subject to the Streamlined Permit process of 6.2.1 once pole loading studies and necessary make-ready work is completed.

6..2.1 Owner shall make every effort to review Overlashing permit requests with a goal of providing a response within ten (10) working days. IPL and Licensee may mutually agree on a time extension for certain projects as needed.

6.2.2 It is Licensee's responsibility to verify that the Pole and strand to which it proposes to Overlash meets all Applicable Standards and a Pole Loading Analysis is done before Overlashing.

6.3 **Service Drop.** Licensee may attach a Service Drop, without Application, from one Pole with an existing Authorized Attachment to connect directly to Licensee's customer's building, premise, or location, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V. For Service Drops where there is no existing licensed Pole Attachment, Licensee may make the attachment and submit the permit application within thirty (30) days after the attachment is made.

6.3.1 It is Licensee's responsibility to verify that the Pole on which it proposes to make a Service Drop meets all Applicable Standards before attaching the Service Drop. If existing standards issues are identified, it is the responsibility of the Licensee to notify IPL of the issue(s). Licensee shall not be allowed to attach the Service Drop until the Applicable Standards issue is resolved.

6.3.2 If it is determined by IPL that Licensee has attached a Service Drop on a Pole with a pre-existing violation of Applicable Standards, Licensee shall be required to bring the Service Drop into compliance with Applicable Standards to the extent that it is Licensee's existing Attachment that is non-compliant. Subject to the provisions of Article 19, IPL will provide written notice to Licensee and Licensee will have thirty (30) days from receipt of such notice to Correct the existing standards issue, otherwise the provisions of Article 19 shall apply. If the Attachment that is non-compliant belongs to another Attaching Entity, then Licensee shall coordinate with IPL and the other Attaching Entity concerning any necessary

rearrangement of Licensee's Service Drop in conjunction with the Correction of the non-compliant Attachment.

6.3.3 For Service Drops subject to notification only, Licensee shall notify IPL of a Service Drop within thirty (30) days of installation. Any Service Drop that IPL discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to the provisions of Article 21.

6.4 **Pre-Existing Attachments.** Unless updates or upgrades are required by Applicable Standards, or unless IPL notifies Licensee to the contrary, Licensee shall not be required to obtain Permits for authorized Attachment(s) existing as of the Effective Date of this Agreement. Such grandfathered Attachments shall, however, be subject to the Attachment Fees specified in Appendix A. Licensee shall provide IPL a list of all such pre-existing Attachments within six (6) months of the Effective Date of this Agreement.

6.4.1 The last inventory of IPL's Poles conducted mutually by IPL and Licensee shall serve as the base line list of all such permitted attachments on the Effective Date of this agreement. IPL and Licensee will mutually agree on attachments made after the base line was established and prior to the Effective Date of this Agreement.

6.4.2 Licensee will participate in the next audit conducted by IPL and will split the cost of such audit proportionately by number of attachments with all other parties participating in the audit.

6.5 **Permit Certification.** Unless otherwise waived in writing by IPL, as part of the Permit application process and at Licensee's sole expense, a qualified and experienced employee, or an employee or contractor of Licensee who has been authorized by IPL ("Other Approved Party"), must participate in the Pre-Construction Survey, conduct the Post-Installation-Inspection, and certify that Licensee's Facilities can be and were installed on the identified Poles in compliance with the Applicable Standards and in accordance with the Permit. The employee's or Other Approved Party's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems but does not require the employee to possess a particular license or certification. IPL may require the Licensee's employee or Other Approved Party to conduct a post-installation inspection that IPL will verify by means that it deems to be reasonable.

- 6.6 Submission and Review of Permit Application.** Licensee will submit a properly executed Pole Attachment Permit Application, which shall include a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready Work to accommodate the Attachments by an experienced employee as described in Paragraph 6.5. Licensee will use IPL's Pole Attachment Permit Application form, which form has been provided to Licensee. IPL may amend the Pole Attachment Permit Application form from time to time, provided that any such changes are not inconsistent with the terms of this Agreement and are applied to all Attaching Entities on a non-discriminatory basis. IPL's acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, under normal circumstances, the Permit Application process shall be as follows:
- 6.7 Application Process.** Upon Licensee's submission of a properly executed and complete Permit Application for routine installations, IPL will review and respond to said application for routine installations as promptly as is reasonable, with a goal of providing a response during normal circumstances within thirty (30) days of receipt.
- 6.7.1** For Permit Applications seeking Attachments to fifty (50) or more Poles, IPL will make every effort to review with a goal of providing a response within a thirty (30) to forty-five (45) day time line but may require additional time. IPL and Licensee may mutually agree on a timeline that exceeds 45 days on projects as needed. On these types of Permit Applications, the Owner may utilize qualified contractors, authorized by IPL, to facilitate the application process.
- 6.7.2** IPL's response will either: (i) grant permission to undertake such Make-Ready as described in Licensee's Application and engineering survey (ii) grant permission to undertake such Make-Ready as IPL reasonably determines is required; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.
- 6.8 Response to Estimate.** Upon receipt of IPL's response, Licensee shall have fourteen (14) days to approve the estimate of any proposed Make-Ready Work and provide payment in accordance with this Agreement and the specifications of the estimate.
- 6.9 Permit as Authorization to Attach.** Upon completion and inspection of any necessary Make-Ready Work and receipt of payment for such work, IPL will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).
- 6.10 Notification to IPL.** Within thirty (30) days of completing the installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops) Licensee shall provide written notice to IPL.

Article 7. Make-Ready Work/Installation

- 7.1 **Estimate for Make-Ready Work.** If IPL determines that it can accommodate Licensee's request for Attachment(s), it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment. Determination consists of pole loading studies performed by the Licensee, and inspection by IPL.
- 7.2 **Who May Perform Make-Ready.** Make-Ready Work in the electric supply space may be performed only by IPL and/or a qualified contractor authorized by IPL to perform such work. Under normal circumstances, IPL will give Licensee the option of either having IPL perform any necessary Make-Ready Work, at Licensee's cost, or allowing Licensee to complete Make-Ready Work through the use of qualified contractors authorized by IPL, which authorization shall not be unreasonably withheld. Licensee shall be responsible for the costs associated with the Make Ready Work for its Attachments, regardless of who performed the Make Ready Work.
- 7.3 **Time Frame for Completion of Make-Ready.** If IPL is performing Make-Ready Work, it will use good faith efforts to complete routine Make-Ready Work within ninety (90) days of receipt of Licensee's approval of the Make-Ready estimate (and advance payment if required). If there are extenuating circumstances that make the necessary Make-Ready more complicated or time-consuming, including, but not limited to, the Application requesting Attachments to more than fifty (50) Poles, or seasonal weather conditions, IPL shall identify those factors in the Make- Ready description and cost estimate and the Parties shall mutually agree upon a reasonable timeframe for completion. If IPL does not complete agreed upon Make-Ready work within (90) days, or the agreed-upon timeframe, it will allow Licensee to use an IPL authorized, qualified contractor to complete such Make-Ready Work and refund any amounts paid by Licensee to IPL for performing such Make-Ready Work that is not completed.
- 7.3.1 The above notwithstanding, if IPL has substantially completed the Make-Ready, the Parties will reasonably determine whether it makes more sense from an operational efficiency perspective to have IPL complete the work rather than have Licensee's qualified contractors authorized by IPL to do the work.
- 7.4 **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Attachments, IPL will endeavor to include such work in its normal work schedule. If Licensee requests, and IPL agrees to perform Make-Ready Work on a priority basis or outside of IPL's normal work hours, Licensee will pay any resulting increased actual and documented costs. Nothing in this Agreement shall be construed to require IPL to perform Licensee's work before other scheduled work or IPL service restoration.
- 7.5 **Payment for Make-Ready Work.** Upon completion of the Make-Ready Work performed by IPL, or at such time as Licensee notifies IPL it is not proceeding with the project set out in the Application for which Make-Ready Work is being performed, IPL shall invoice Licensee for IPL's actual and documented cost of such Make-Ready Work. Licensee shall be responsible for entering into an agreement with existing other Attaching Entities to reimburse them for any costs that they incur in rearranging or transferring their facilities to accommodate Licensee's Attachments.
- 7.6 **Notification of Make Ready Work.** Before starting Make-Ready Work, Licensee shall notify all existing Attaching Entities of the date and location of the scheduled work and notify them of the

need to rearrange and/or transfer their facilities at Licensee's cost within the specified time period. To the extent that IPL has the legal authority, it shall rearrange and/or transfer existing facilities of such other Attaching Entities that have not been moved in a timely manner. Licensee shall pay for any such rearrangement or transfer.

7.6.1 In instances where Licensee is performing Make-Ready, where an existing Attaching Entity has not relocated or otherwise undertaken work required to complete Make-Ready (such as repairing existing Attachments not in compliance with Applicable Standards) within thirty (30) days of notice by IPL or Licensee to such other Attaching Entity, Licensee is authorized, to the extent that IPL has such authority, and the legal ability to delegate such authority, to relocate or repair the other Attaching Entity's Attachments on behalf of IPL. Licensee shall pay the costs to relocate the other Attaching Entity's Attachments as part of Licensee's Make Ready.

7.7 Licensee's Installation/Removal/Maintenance Work

7.7.1 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 IPL's Poles or other Facilities or other Attaching Entity's facilities or equipment. All such work is subject to the insurance requirements of Article 25.

7.7.2 All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Article 4. Licensee shall assure that any person installing, maintaining, or removing its Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 24 and the Minimum Design Specifications contained in Appendix C.

Article 8. Post-Construction Inspections

8.1 Within thirty (30) days of written notice to IPL that the Licensee has completed installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops), IPL or its contractors may perform a Post-Construction Inspection for each Attachment made to IPL's Poles. If such Post-Construction Inspections are performed, Licensee shall pay the actual and documented costs for the Post-Construction Inspection,

8.2 If IPL elects to not perform any Post-Construction Inspection, such non-inspection shall not be grounds for any liability being imposed on IPL or a waiver of any liability of Licensee.

8.3 If the Post-Construction Inspection reveals that Licensee's Facilities have been installed in violation of Applicable Standards or the approved design described in the Application, IPL will notify Licensee in writing and Licensee shall have thirty (30) days from the date of receipt of such notice to Correct such violation(s), or such other period as the Parties may agree upon in writing, unless such violation creates an Emergency in which case Licensee shall Correct such violation immediately. IPL may perform subsequent Post-Construction Inspections within thirty (30) days of receiving notice that the Correction has been made as necessary to ensure Licensee's Attachments have been brought into compliance.

8.4 If Licensee's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, consistent with Article 19, IPL will provide notice of the continuing violation and Licensee will have thirty (30) days from receipt of such notice to Correct the violation, otherwise the provisions of Article 19 shall apply.

Article 9. Intentionally Left Blank

Article 10. Pole Replacement and Removal

- 10.1 **Pole Replacement due to Emergency.** When there is an Emergency involving a Pole, and IPL is made aware of the Emergency, IPL will respond. IPL will immediately secure the area as needed to ensure public safety. If the Pole in question is reasonably determined by IPL to require replacement, IPL will replace the Pole and transfer IPL's attached Facilities. IPL will make Licensee's and other Attaching Entities' Facilities safe and notify them to transfer their Facilities.
- 10.2 **Defective Pole Replacement for Licensee.** Where Licensee requires a Pole be replaced, and where Licensee is unable to place an Attachment on a Pole because such Pole is Defective, provided that the communications space on such Pole could not otherwise have been arranged with sufficient spacing to accommodate Licensee's proposed Attachment(s), IPL may replace, at IPL's sole cost, such Defective Pole. A "Defective Pole" means a Pole that is no longer serviceable due to decay, damage, or deterioration. This does not include any Pole replacement for Make Ready work.
- 10.3 **Pole Replacement for Non-Emergency.** Where Licensee requests the replacement of a Defective Pole, that does not pose an imminent threat or danger to safety or the safe functioning or operation of existing Attachments or Facilities, IPL will replace said Pole, at its sole cost, consistent with its routine maintenance schedule.
- 10.4 **Expedited Pole Replacement for Licensee.** Except as provided in Section 11.1, if Licensee seeks to expedite the replacement of a Defective Pole, an IPL authorized contractor may replace the pole and Licensee will pay the labor cost of an IPL authorized electrical contractor(s) to replace the Pole. Communications contractors shall not be utilized to replace poles.
- 10.5 **IPL Not Required to Replace.** Nothing in this Agreement shall be construed to require IPL to replace any Pole for the benefit of Licensee.

Article 11. Allocation of Costs

- 11.1 The costs for any rearrangement or transfer of Facilities or Pole replacement shall be allocated on the following basis:
- 11.1.1 If a Pole is modified or replaced, IPL shall be responsible for the costs related to the modification or replacement of the Pole, unless the modification or replacement is requested by Licensee or another Attaching Entity. Each Party shall be responsible for transferring or rearranging their respective Attachments/Facilities and each Party shall be responsible for their respective costs associated with the rearrangement or transfer of their

respective Attachments/Facilities. Prior to making any such replacement, when practical, IPL shall provide Licensee written notification of its intent in order to provide Licensee a reasonable opportunity to modify or add to its existing Attachment(s). Should Licensee decide to do so, it must seek IPL's written permission in accordance with this Agreement. If Licensee elects to add to or modify its Facilities on the replaced Pole, Licensee shall pay its share of any additional costs incurred by IPL to make additional space on the replaced Pole accessible to Licensee.

- 11.1.2 If a Pole is modified or replaced at the request of Licensee, excluding modification or replacement due to routine maintenance, Licensee shall be responsible for all costs caused by the modification or replacement as well as the costs associated with the transfer or rearrangement of any other Attaching Entity's Facilities. As noted on the approved Permit, Licensee will notify any other Attaching Entity of such transfer or rearrangement. IPL shall not be obligated in any way to enforce or administer Licensee's responsibility for the cost associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Article.
- 11.1.3 If the modification or replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by another Attaching Entity other than IPL or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement as well as the costs for rearranging or transferring Licensee's Facilities. Licensee shall cooperate with such third-party Attaching Entities to determine the costs of moving Licensee's Facilities.
- 11.1.4 If the Pole must be modified for reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), IPL shall pay the costs of such modification and Licensee shall pay the costs of rearranging or transferring its Facilities.

11.2 **Transfer or Relocation of Licensee's Facilities.** Notwithstanding the foregoing Article 10 and Article 11, the Parties may agree that in order to provide maximum flexibility in meeting in-service requirements and eliminating duplicative efforts, IPL or a contractor mutually agreed to by the Parties, shall provide labor and equipment for Pole replacements, the transfer, and/or relocation of Licensee's Facilities. Licensee shall pay IPL or a mutually agreed to contractor for associated work.

Article 12. Treatment of Multiple Requests for Same Pole

If IPL receives Permit applications for the same Pole from two (2) or more prospective Attaching Entities within thirty (30) days of the initial request and has not yet completed the Permitting of the initial applicant and accommodating their respective requests would require modification of the Pole or replacement of the Pole, IPL will make reasonable and good faith efforts to allocate among such Attaching Entities the applicable costs associated with such modification or replacement.

Article 13. Equipment Attachments

Equipment Attachments are not part of this Agreement.

Article 14. Authorized Contractors

If IPL does not perform the Make Ready Work in or around the electric supply space, then Licensee shall only use qualified contractors authorized by IPL to conduct Make-Ready Work (or any other work) in or around the electric supply space on a Pole. IPL shall not unreasonably withhold, delay, or condition its approval of any contractor proposed by Licensee to be authorized by IPL to perform Make-Ready in the electric supply space on IPL's Poles, provided such contractors meet IPL's qualified contractor specifications.

Article 15. Guys and Anchor Attachments

Licensee shall at its own cost and to the satisfaction of IPL place its own guys and anchors to sustain any unbalanced loads caused by Licensee's Attachments. No attachments shall be made to guys or anchors owned by IPL.

Article 16. Installation of Grounds

Licensee shall install its own grounds, and all grounds installed by Licensee shall be in accordance with IPL's standard grounding practices.

Article 17. Abandonment of Poles

17.1 Notice of Abandonment or Removal of IPL Facilities. If IPL desires at any time to abandon, remove, or underground any IPL Facilities to which Licensee's Facilities are attached, it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon or remove such IPL Facilities. Notice may be limited to thirty (30) days if IPL is required to remove or abandon its IPL Facilities as the result of the action of a third party and the lengthier notice period is not practical. If, following the expiration of the 60-day or 30-day period, as applicable, Licensee has not yet removed and/or transferred all of its Facilities, IPL shall have the right, but not the obligation, to remove or transfer Licensee's Facilities at Licensee's expense and Licensee shall be subject to the provisions of Article 19. IPL shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

17.2 Underground Relocation. If IPL moves any portion of its aerial system underground, Licensee shall remove its Facilities from any affected Poles within sixty (60) days, unless the Parties mutually agree to ninety (90) days, of receipt of notice from IPL and must either relocate its affected Facilities underground with IPL or find other means to accommodate its Facilities. If Licensee does not remove its Attachments within the applicable time period, IPL shall have the right to remove or transfer Licensee's Facilities at Licensee's expense, provided that IPL or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work. Licensee's failure to remove its Facilities as required under this Article 17.2 shall subject Licensee to the provisions of Article 19, provided that IPL or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.

17.3 Failure to Remove Attachments from Abandoned Pole. In the event Licensee fails to remove its Attachments from such Abandoned Pole(s), ownership and liability for such Abandoned Pole shall transfer to any entities remaining Attached to the Abandoned Pole(s). To be clear, IPL shall bear no responsibility or liability for any such Abandoned Pole(s) Licensee remains Attached thereto.

Article 18. Inspection

18.1 General Inspections. IPL reserves the right to make periodic inspections, as conditions may warrant, of the entire system of Licensee. Such inspections, or the failure to make such inspections, shall not operate to relieve Licensee of any responsibility or obligation or liability assumed under this Agreement.

18.2 Periodic Safety Inspections. Upon twelve (12) months advance written notice from IPL, and not more frequently than every five (5) years, IPL may at its option jointly perform a safety inspection in all or in part of the territory covered by this Agreement with all Attaching Entities to identify any safety violations of all Attachments and facilities on IPL Poles or Facilities (“Safety Inspection”). Such notice shall describe the scope of the inspection and provide Licensee and all Attaching Entities an opportunity to participate. Regardless of whether Licensee chooses to participate, Licensee, IPL and other Attaching Entities shall share proportionately in the actual and documented Safety Inspection costs (based on the proportion of Attachments of IPL and each other Attaching Entity) irrespective of whether IPL elects to perform the Safety Inspection itself or have it performed by a contractor.

18.3 Corrections. In the event any of Licensee’s Facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency situation, Licensee shall use all reasonable efforts to Correct such violation immediately. Should Licensee fail or be unable to Correct such Emergency situation immediately, IPL may Correct the Emergency and bill Licensee for one hundred twenty-five percent (125%) of the actual and documented costs incurred. If any of Licensee’s Facilities placed after the Effective Date of this Agreement are found to be in violation of the Applicable Standards in affect at the time of initial construction or major upgrades and such violations do not pose potential Emergency conditions, IPL shall, consistent with Article 19, give Licensee notice, whereupon Licensee shall have thirty (30) days from receipt of notice to Correct any such violation, or within a longer, mutually agreed to time frame if Correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days. Notwithstanding the foregoing grace periods, in the event IPL or another Attaching Entity prevents Licensee from Correcting a Non-Emergency violation, the timeframe for Correcting such violation shall be extended to account for the time during which Licensee was unable to Correct the violation due to action (or failure to act) by IPL or another Attaching Entity. Licensee will not be responsible for the costs associated with violations caused by others that are not affiliated or acting under the direction of Licensee. In all circumstances, all of the Attaching Entities on the Pole and IPL will work together to maximize safety while minimizing the cost of Correcting any such deficiencies, but the Licensee shall be responsible for the actual and documented cost of any necessary or appropriate Corrective measures associated with violations caused by Licensee, including removal and replacement of the Pole and all transfers or other work incident thereto. If Licensee fails to Correct a non-Emergency violation within the specified time period, including any agreed upon extensions, the provisions of Article 19 shall apply.

- 18.3.1** If any Facilities of IPL are found to be in violation of the Applicable Standards and IPL has caused the violation, then the Parties will work together to minimize the cost of Correcting any such deficiencies, but IPL shall be responsible for the full cost of any necessary or appropriate Corrective measures, including removal and replacement of the Pole, provided, however, that IPL shall not be responsible for Licensee's own costs.
- 18.3.2** If one or more third-party Attaching Entity's Attachment caused the violation, then such Attaching Entities shall pay the Corrective costs incurred by all who have Attachments on the Pole, including the Licensee.
- 18.3.3** If there exists a violation of Applicable Standards and it cannot be determined which Attaching Entity on the Pole caused such violation or there is a mixture of the Attaching Entities causing the violation, then the Parties will work together to minimize the cost of Correcting any such deficiencies, and all Attaching Entities who may have caused such violation will share equally in such costs.

Article 19. Failure to Rearrange, Transfer or Correct

- 19.1** Unless otherwise agreed, as part of IPL's written notice of a need for Licensee to rearrange, transfer, remove or correct violations, IPL will indicate whether or not IPL is willing to perform the required work.
- 19.2** If IPL indicates in the notice that it is willing to perform the work, Licensee shall have fifteen (15) days to notify IPL in writing of its election to either have IPL perform the work or that the Licensee will perform the work itself.
- 19.2.1** If Licensee requests that IPL perform the work, Licensee shall reimburse IPL for the cost of such work. If Licensee asks IPL to perform the work and IPL does not complete the work within the prescribed time frame, Licensee can then perform the work itself. However, Licensee shall reimburse IPL for the costs for the portion of work IPL did.
- 19.2.2** If Licensee either fails to respond or indicates that it will perform the work itself, and then does not complete the work within the prescribed time frame, IPL can invoke the Issue Resolution Process in Article 28 and the time intervals in Articles 28.3 and 28.4 shall each be reduced to thirty (30) days or IPL can invoke the provisions of Article 19.2.3 and 19.2.4.
- 19.2.3** Notwithstanding Licensee's election under Article 19.2.2 to perform the required work itself, commencing on the thirtieth (30th) day after expiration of the time period for completion of the work specified in the Agreement and original notification, IPL may perform the required work at Licensee's expense, or may delegate such authority to another Attaching Entity utilizing a qualified contractor authorized by IPL, provided that IPL or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.
- 19.2.4** Notwithstanding Licensee's election under Article 19.2.2, if Licensee was to perform work under this Article 19 and fails to perform such work within the specified timeframe, and IPL performs or has performed such work, IPL may charge Licensee an additional twenty-five percent (25%) of its actual and documented costs for completing such work, provided

that IPL or another Attaching Entity through action or inaction has not delayed Licensee's ability to complete such work.

- 19.3** If IPL provides notice that it is unable to perform the work and Licensee fails to complete such work, then IPL may on the thirtieth (30th) day after expiration of the time period for completion of the work specified in the agreement or original notification hire a qualified contractor authorized by IPL to perform the work. IPL may charge Licensee an additional twenty-five percent (25%) of its actual and documented contractor costs.
- 19.4** Licensee shall provide written notification to IPL upon completion of any of the required work. Notice of completion shall be given by the same means as it was received from IPL.

Article 20. Actual Inventory.

- 20.1** IPL may, at intervals of not more often than once every five (5) years, perform an actual inventory of the Attachments of Poles in all or in specific service areas of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles on which Licensee and other Attaching Entities have Attachments. Such field verification shall be made collectively by IPL and all Attaching Entities, and the actual and documented cost shall be shared proportionately among all such Attaching Entities based upon the number of Attachments. Should a third-party contractor be selected to perform the inventory, the parties will mutually agree on the contractor selected and scope of work. However, if the parties are unable to agree within thirty (30) days, IPL shall select the outside contractor to conduct the inventory, as well as the scope of work.
- 20.2** **Attachment Records.** Notwithstanding the above inventory provisions, Licensee shall furnish to IPL annually an up-to-date electronic map depicting the locations of its Attachments, in a format specified by IPL and an update of Appendix C.

20.3 Baseline Inventory

The Parties mutually agree to conduct a baseline inventory, to establish all existing Attachments, within twelve (12) months of the Effective Date of this Agreement. All Attaching Entities participating in the baseline inventory shall share proportionately in the actual and documented costs (based on the proportion of Attachments each of the Attaching Entities have) irrespective of who performs the audit.

If an inventory has been completed within 12 months of the Effective Date of this Agreement, the Party that did not participate in the inventory has the option of accepting the inventory and reimbursing the participating parties for their proportionate share(s) or pay in whole for a new inventory.

Article 21. Unauthorized Attachments

If during the term of this Agreement, IPL discovers Unauthorized Attachments (including Overlapping, Riser Attachments or Service Drops for which timely notification was not provided) placed on its Poles, the following fees may be assessed, and procedures will be followed:

- 21.1 IPL shall provide specific written notice of each violation within thirty (30) days of discovering such violation and Licensee shall be given thirty (30) days from receipt of notice to contest an allegation that an Attachment is unauthorized (or that Licensee failed to timely provide notice). The notice shall identify the precise location and a description of the Unauthorized Attachment.
- 21.2 Licensee shall pay back rent for all Unauthorized Attachments (except Overlash Attachments and/or Riser Attachments where an existing licensed Pole Attachment exists) for a period of five (5) years, or since the date of the last inventory of Licensee's Attachments (whichever period is shortest), at the rental rates in effect during such periods.
- 21.3 In addition to the back rent, Licensee shall be subject to the Unauthorized Attachment Penalty as specified in Appendix A for each Unauthorized Attachment, including Service Drops, Riser Attachments where an existing licensed Pole Attachment exists and Overlash Attachments, where no Permit was obtained and/or required post-installation notification was not provided.
- 21.4 Licensee shall submit a Permit Application in accordance with Article 6 of this Agreement within thirty (30) days of receipt of notice from IPL of any Unauthorized Attachment, or such longer time as mutually agreed to by the Parties after an inventory.
- 21.4.1 No additional notification is required for Service Drops or Riser Attachments where an existing licensed Pole Attachment exists.
- 21.4.2 In the case of Overlash requiring a separate Permit application under Article 6.2, Licensee shall be required to submit an application within thirty (30) days of receipt of notice of Unauthorized Attachment. In the case of Overlash requiring a separate Permit application under Article 6.2 Licensee shall be required to submit an application within thirty (30) days of receipt of notice of Unauthorized Attachment.
- 21.5 In the event Licensee fails to submit a Permit Application within thirty (30) days, or such longer time as mutually agreed to by the parties after an inventory, the provisions of this Article (21.2, 21.3 and 21.4) shall apply.
- 21.6 Notwithstanding anything to the contrary herein, if Licensee contests the allegation that an Attachment is unauthorized, then it shall not be considered unauthorized until the Parties resolve their dispute regarding its status pursuant to the Issue Resolution Process of Article 28.
- 21.7 **No Ratification of Unauthorized Use.** No act or failure to act by Licensee with regard to any Unauthorized Attachments shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a Permit for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by IPL of any of its rights or privileges under this Agreement or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 22. Reporting Requirements

At the time that Licensee pays its annual Attachment Fee, Licensee shall also provide the following information to IPL, using the reporting form contained in Appendix C:

- 22.1 The Poles on which Licensee has installed, during the relevant reporting period, Risers and Service drops, for which no Permit was required.
- 22.2 All Attachments that have become nonfunctional during the relevant reporting period. The report shall identify the Pole on which the nonfunctional Attachment is located, describe the nonfunctional equipment, and indicate the approximate date the Attachment became nonfunctional.
- 22.3 Any equipment Licensee has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit.

Article 23. Liability and Indemnification

- 23.1 **Liability.** IPL reserves to itself the right to maintain and operate its Poles in the manner that will best enable it to fulfill its service requirements. Licensee agrees that its use of IPL's Poles is at Licensee's sole risk. Notwithstanding the foregoing, each party shall exercise reasonable precaution to avoid damaging Facilities and shall report to the other Party the occurrence of any such damage caused by its employees, agents, contractors or subcontractors. Subject to Paragraph 23.6, the Parties agree to reimburse the other Party for all reasonable costs incurred by the other Party for the physical repair of Facilities damaged by the negligence or willful misconduct of either Party's employees, agents, contractors or subcontractors who caused said damage. Provided, however, that the aggregate liability of IPL to Licensee, in any fiscal year, for any fines, penalties, claims, damages, or costs arising out of or relating in any way to Licensee's service or interference with the operation of Licensee's Facilities shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to IPL for that year, as calculated based on the number of Attachments under permit at the time of the occurrence, as set forth in Appendix A.
- 23.2 **Indemnification.** Licensee and any agent, contractor, or subcontractor of Licensee, shall defend, indemnify, and hold harmless IPL and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by IPL under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorneys' fees of IPL and all other costs and expenses of litigation) ("Covered Claims") arising in any way, 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 by

Licensee's officers, directors, employees, agents, contractors, or subcontractors of Licensee's Communications Facilities, except to the extent of IPL's negligence or willful misconduct solely giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

- 23.2.1** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- 23.2.2** Cost of work performed by IPL that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents, contractors or subcontractors to install, maintain, use, transfer, or remove Licensee's Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes IPL to perform on Licensee's behalf;
- 23.2.2** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, contractors, or subcontractors pursuant to this Agreement;
- 23.2.3** Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, contractors or subcontractors of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.

23.3 Procedure for Indemnification.

- 23.3.1** IPL shall give prompt written notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against IPL, IPL shall give the notice to Licensee no later than fifteen (15) calendar days after IPL receives written notice of the action, suit, or proceeding.
- 23.3.2** IPL's failure to give the required notice will not relieve Licensee from its obligation to indemnify IPL unless, and only to the extent, that Licensee is materially prejudiced by such failure.
- 23.3.3** Licensee will have the right, at any time by notice to IPL to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to IPL. IPL agrees to cooperate fully with Licensee. If Licensee assumes control of the defense of any third-party claim, IPL shall have the right to participate in the defense at its own expense. If Licensee does not assume control or

otherwise participate in the defense of any third-party claim, Licensee shall be bound by the results obtained by IPL with respect to the claim.

23.3.4 If Licensee assumes the defense of a third-party claim as described above, then in no event will IPL admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Licensee's prior written consent.

23.4 Fines and/or Penalties

23.4.1 Any fines, penalties or other costs incurred by either Party for non-compliance by such Party with the requirement of any law(s), rules(s), or regulation(s) shall be the sole responsibility of such non-complying Party.

23.4.2 If a Party is assessed such fines, penalties, or other costs due to the non-compliance of the other Party, the non-complying Party shall indemnify and hold harmless the other Party against any and all losses, liabilities, damages, and claims suffered or incurred because of the non-complying Party's non-compliance. The non-complying Party shall also reimburse the other Party for any and all legal or other expenses (including attorneys' fees) reasonably incurred by the other Party in connection with such losses, liabilities, damages, and claims resulting from the non-complying Party's non-compliance.

23.5 Environmental Hazards. Licensee represents and warrants that its use of IPL's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about IPL's Poles or transport to IPL's Poles any hazardous substances and that Licensee's Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall 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, unlawful radio frequency radiation, or other similar terms 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 Facilities would not release any Hazardous Substances. Licensee and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless IPL and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to IPL's Poles/Conduit System attributable to Licensee's use of IPL's Poles.

23.6 No Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY

CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, PUNITIVE, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

- 23.7 **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by IPL of any applicable state limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies IPL shall be construed in any way to limit any other indemnification provision contained in this Agreement.

Article 24. Duties, Responsibilities, and Exculpation

- 24.1 **Duty to Inspect.** Licensee acknowledges and agrees that IPL does not warrant the condition or safety of IPL's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect IPL's Poles or premises surrounding the Poles, prior to commencing any work on IPL's Poles or entering the premises surrounding such Poles.
- 24.2 **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 this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 24.3 **DISCLAIMER. IPL MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO IPL'S POLES OR FACILITIES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND IPL MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. IPL EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 24.4 **Duty of Competent Supervision and Performance.** The Parties further understand and agree that, in the performance of work under this Agreement, Licensee and its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other IPL Facilities. The Parties understand and intend that energy generated, stored, or transported by IPL Facilities will not be interrupted during the continuance of this Agreement, except in Emergencies endangering life or threatening grave personal injury or property. Licensee shall ensure that its employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of IPL; and

the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors, and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of IPL's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

- 24.5 Requests to De-energize.** If IPL de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse IPL in accordance with Article 3.8, for all costs and expenses that IPL incurs in complying with Licensee's request. Before IPL de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request.
- 24.6 Interruption of Service.** If Licensee causes an interruption of service by damaging or interfering with any equipment of IPL, Licensee shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify IPL immediately.
- 24.7 Duty to Inform.** 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 IPL's Poles by Licensee's employees, agents, contractors, or subcontractors, and Licensee accepts the duty and sole responsibility to notify and inform Licensee's employees, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding same.

Article 25. Insurance

- 25.1 Policies Required.** At all times during the term of this Agreement, the Parties shall keep in force and effect all insurance policies as described below:
- 25.2 IPL Insurance.** IPL derives its insurance through the Missouri Public Entity Risk Management Fund ("MOPERM"). MOPERM is a self-insurance fund with over 900 public entity members.
- 25.2.1** Coverage under MOPERM for claims on causes of action established by Sections 537.610 to 537.610, RSMo, shall not exceed the maximum amount provided for by Section 537.610, RSMo.
- 25.2.2** Coverage under MOPERM for claims on causes of action other than those established by 537.600 to 537.610, RSMo, shall not exceed \$2,000,000 for any one occurrence arising out of bodily injury, property damage, public officials' errors and omission, or any combination thereof.

- 25.3 Licensee Insurance.** Licensee shall obtain and maintain the following insurance coverages:
- 25.3.1 Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Missouri law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of IPL. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 25.3.2 Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.
- 25.3.3 Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles, with bodily injury limits of \$1,000,000 for each person and \$1,000,000 for each accident and with property damage limits of \$1,000,000 for each accident. For single liability, limits of \$2,000,000 per occurrence and \$5,000,000 aggregate.
- 25.3.4 Umbrella Liability Insurance.** Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence and \$4,000,000 aggregate.
- 25.3.5 Property Insurance.** Each party will be responsible for maintaining property insurance on its own Facilities, buildings, and other improvements, including all equipment, fixtures, and utility structures, fencing, or support systems that may be placed on, within, or around IPL Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.
- 25.4 Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the state of Missouri and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 25 with the same limits.
- 25.5 Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish IPL with a certificate of insurance ("Certificate") and, upon request, certified copies of

the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. IPL shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. IPL, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by IPL. Licensee shall defend, indemnify and hold harmless IPL and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors, and their subcontractors and provide a copy of such Certificates to IPL upon request.

- 25.6 Limits.** The limits of liability set out in this Article 25 may be increased or decreased by mutual consent of the Parties, which consent will not be unreasonably withheld by either Party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease Licensee's exposure to risk.
- 25.7 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with IPL except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to IPL's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 25.8 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 26. Assignment

- 26.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of IPL, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 26.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 26 shall be allowed until the assignee or transferee becomes a signatory to this

Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish IPL 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, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of Licensee by IPL.

- 26.3 Sub-licensing.** Without IPL's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to, allowing third parties to place Attachments on IPL's Facilities, including Overlapping, or to place Attachments for the benefit of such third parties on IPL's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to this Article 26.3.

Article 27. Failure to Enforce

Failure of IPL 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 terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

Article 28. Issue Resolution Process

- 28.1 Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the Parties shall invoke the dispute resolution procedures in this Article to resolve a controversy, claim, or breach arising under this Agreement. Each Party will bear its own costs for dispute resolution activity.
- 28.2 Initial Meeting.** At either Party's written request, each Party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The Parties will conduct any meeting in-person or via conference call, as reasonably appropriate.
- 28.3 Executive Meeting.** If ninety (90) days after the first meeting of the senior representatives, referenced in 28.2, the Parties have not resolved the dispute to their mutual satisfaction, each Party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the Parties may agree in writing to use mediation or another alternative dispute resolution procedure.

28.3.1 The Parties regard the aforesaid obligation, to escalate to an executive-level meeting, as an essential and material provision of this Agreement and one that is legally binding upon them. If such Executive Meeting is not engaged in, either Party may seek to specifically enforce this obligation in the courts having jurisdiction hereunder.

28.4 **Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person meeting, the Parties have not resolved the dispute to their mutual satisfaction; either Party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 29.

28.5 **Confidential Settlement.** Unless the Parties otherwise agree in writing, communication between the Parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.

28.6 **Business as Usual.** During any dispute resolution procedure or lawsuit, the Parties will continue providing services to each other and performing their obligations under this Agreement.

28.7 **Fees and/or Penalties.** Fees and penalties will continue to accrue pending dispute resolution procedures unless the dispute specifically involves a dispute over the application of the fee or penalty.

Article 29. Default

29.1 An Event of Default (each of the following being an “Event of Default”) shall be deemed to have occurred hereunder by Licensee if:

29.1.1 Licensee breaches any material term or condition of this Agreement or Permit granted hereunder; or

29.1.2 Licensee evades or attempts to evade any material provision of this Agreement or Permit granted hereunder; or

29.1.3 Licensee makes a material misrepresentation of fact in this Agreement or Permit granted hereunder; or

29.1.4 Licensee fails to complete work by the date and in accordance with the terms specified in this Agreement or Permit granted hereunder, unless an extension is obtained or unless the failure to complete the work is beyond the Licensee’s control or the result of a *Force Majeure Event*; or

29.1.5 Licensee fails to timely Correct violations of Applicable Standards.

29.2 Upon the occurrence of any one or more of the Events of Default set forth in Article 29 hereof, IPL, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon the bond for any fees, costs, expenses or penalties that Licensee has not paid, and, in addition, at its option, may terminate this Agreement upon providing notice to Licensee,

provided, however, IPL may take such action or actions only after first giving Licensee written notice of the Event of Default and a reasonable time in which Licensee may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than sixty (60) days, except that the period of time shall not be less than twenty (20) days for monies past due and owing by Licensee to IPL; for failure to maintain adequate insurance, as provided for herein; and for failure to maintain any bonds required pursuant to this Agreement.

29.3 Without limiting the rights granted to IPL pursuant to the foregoing Article 29.2, the parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort to meet and to resolve outstanding issues, including but not limited to the Dispute Resolution Process of Article 28.

29.4 In the event IPL fails to perform, observe or meet any material covenant or condition made in this Agreement or shall breach any material term of condition of this Agreement, or at any time any representation, warrant or statement made by IPL shall be incorrect or misleading in any material respect, then IPL shall be in default of this Agreement. Upon being provided notice from Licensee of said default, IPL shall have thirty (30) days to cure same and if such default is not cured, then Licensee shall have all remedies at law or in equity available to it, including termination of this Agreement without any liability therefor.

29.4.1 The above notwithstanding, Licensee's sole remedy if IPL is unable to perform a survey or complete Make-Ready Work within the prescribed timeframes under Articles 6 and 7 is the authority to perform such survey or Make Ready itself at Licensee's expense, except any work in the electric supply space which must be done by IPL or a contractor authorized by IPL. IPL will provide, upon request, a list of contractors authorized to perform surveys or Make-Ready Work. Licensee may perform such survey or Make Ready Work itself or, for work in the electric supply space, retain an IPL authorized contractor immediately upon expiration of the prescribed timeframes without any cure period or Issue Resolution Process.

29.4.2 Under no circumstances will a failure of IPL to meet the survey or Make Ready time periods set out in Article 7 subject IPL to damages.

29.5 Upon Termination of the entire Agreement for Default as provided for in Section 29.2 and after exhaustion of dispute resolution efforts, Licensee shall remove its Attachments from all IPL Poles within twelve (12) months of the notice, or at a rate of one thousand (1,000) Attachments per month, whichever period results in the greatest length of time for completing removal. The Parties agree that the time period will be extended for Licensee if permit requests by Licensee to install new poles to transfer its Attachments or permit requests to underground its Facilities are not being timely processed for reasons outside the control of the Parties. If, after six months, Licensee is not on pace to complete removal of all of its Attachments by the end of the specified time period (including applicable extensions) or, after the specified time period (including applicable extensions) has elapsed, Licensee has not removed all of its Attachments; IPL shall have the right, without need for further dispute resolution efforts to remove Licensee's Attachments, and Licensee agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from IPL. If applicable state or federal law provides that Licensee has a right to attach to IPL's Poles, then both Parties shall in good faith negotiate rates, terms and conditions of a new Pole Attachment Agreement, but such negotiations shall not relieve either Party of their obligations to remove Attachments as set forth above.

Article 30. Receivership, Foreclosure or Act of Bankruptcy

- 30.1** The Pole use granted hereunder to Licensee shall, at the option of IPL, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all Defaults under this Agreement.
- 30.2** In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, IPL may serve notice of termination upon Licensee and the successful bidder at such sale, in which event this Agreement herein granted, and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
- 30.2.1** IPL shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and
- 30.2.2** Such successful bidder shall have covenanted and agreed with IPL to assume and be bound by all the terms and conditions to this Agreement.

Article 31. Removal of Attachments

Licensee may at any time remove its Attachments from any Facility of IPL but shall promptly give IPL written notice of such removals. No refund of any rental fee will be due on account of such removal.

Article 32. Performance Bond

Licensee shall furnish a performance bond executed by a surety company reasonably acceptable to IPL which is duly authorized to do business in the state of Missouri in the amount of fifty thousand dollars (\$100,000.00) for the duration of this Agreement as security for the faithful performance of this Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Agreement.

Article 33. Term of Agreement

- 33.1** This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years and, unless terminated by either Party, shall automatically be renewed for two additional five (5) year terms. Either Party may terminate this Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Agreement at the end of the then-current

term. Such a notice must be given at least ninety (90) days prior to the end of the then-current term.

- 33.2 Even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demands related to Licensee's Facilities, as provided for in Article 23.

Article 34. Amending Agreement

This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both Parties.

Article 35. Notices

- 35.1 Wherever in this Agreement notice is required to be given by either Party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail with return receipt requested, with postage prepaid, and except where specifically provided for elsewhere, properly addressed as follows:

If to IPL, at: Independence Power & Light
ATTN: Power Engineering Manager
17221 E. 23rd Street South
Independence, MO 64057
Phone: 816-325-7442

If to Licensee, at: Bluebird Network LLC
4215 Philips Farm Road, Suite 103
Columbia, MO 65203
Phone: 1-855-BLUEBIRD

or to such other address as either Party, from time to time, may give the other Party in writing.

- 35.2 The above notwithstanding the parties may agree to utilize electronic communications such as, for NJUNS notifications, as well as email for notifications related to the Permits application and approval process and necessary transfer or pole modifications.
- 35.3 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where IPL can contact Licensee to report damage to Licensee's Facilities or other situations requiring immediate communications between the Parties. Such contact person shall be qualified and able to respond to IPL's concerns and requests regarding this Agreement. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident and shall

eliminate IPL's liability to Licensee for any actions that IPL deems reasonably necessary given the specific circumstances.

Article 36. Entire Agreement

This Agreement and its appendices constitute the entire Agreement between the Parties concerning Attachments of Licensee's Facilities on IPL's Poles within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between IPL and Licensee are superseded and of no further effect.

Article 37. Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, such provision shall not render unenforceable this entire Agreement. Rather, the Parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

Article 38. Governing Law

All matters relating to this Agreement shall be governed by the laws (without reference to choice of law) of the state of Missouri.

Article 39. Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 40. Force Majeure

If either IPL or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, epidemic or pandemic, or any other such cause not attributable to the negligence or fault of the Party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected Party shall endeavor to remove or overcome such inability as soon as reasonably possible.

Article 41. Counterparts

This Agreement may be executed in any number of counterparts by the Parties, each of which when so executed will be an original, but all of which together will constitute one and the same instrument. To

facilitate execution of this Agreement, the Parties may execute and exchange electronic form counterparts of the signature pages to this Agreement.

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

City of Independence
Zachary C. Walker, City Manager
111 East Maple Avenue
Independence, MO 64050

Bluebird Network, LLC
Doug Zerr, VP of Engineering
4215 Philips Farm Road, Suite 103
Columbia, MO 65203

BY: _____

BY: Doug Zerr

Title: _____

Title: VP of Engineering

IPL

STATE OF MISSOURI

: SS

County of _____

I, the undersigned, a Notary Public in and for the state of Missouri, hereby certify that on the _____ day of _____, 20____, personally appeared before me Zachary C. Walker, City Manager, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

Notary Public in and for the
State of Missouri, residing at

LICENSEE

STATE OF MISSOURI

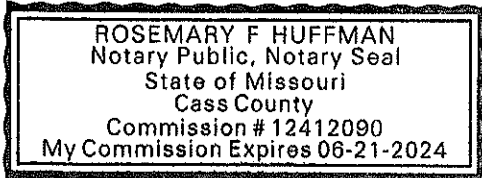
: SS

County of Jackson

I, the undersigned, a Notary Public in and for the State of Missouri, hereby certify that on the 4th day of April, 2022, personally appeared before me Doug Zerr, VP of Engineering to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

Doug Zerr



Notary Public in and for the
State of Missouri, residing at
Belton, MO

APPENDIX A--FEES AND CHARGES

The Annual Pole Attachment Fee shall be as set out below for the ten (10) year period ending on Dec. 31st, 2032. The Parties will meet before July 31 of the last year of this rate schedule. The new rate shall be effective January 1 of the following year.

10 Year Rate Schedule

Year	Price	% Increase
2022	\$10.29	
2023	\$10.60	3%
2024	\$10.92	3%
2025	\$11.24	3%
2026	\$11.58	3%
2027	\$11.93	3%
2028	\$12.29	3%
2029	\$12.66	3%
2030	\$13.04	3%
2031	\$13.43	3%
2032	\$13.83	3%

Each Attachment shall only occupy twelve (12) inches of vertical space on a Pole, as measured either above or below (but not both) the point of attachment, and any Attachment outside of the twelve inches shall be deemed to constitute a separate Attachment for Pole Attachment Fee calculation purposes.

Non-Recurring Fees

1. **License Application Fee:** One Hundred dollars (\$100.00) per Application (limit 50 attachments per application). See Article 3 of Agreement.
2. **Make Ready Work and Other Charges:** See Article 3 and Article 7 of this Agreement.
3. The Parties reserve the right to adjust non-recurring fees from time to time to cover actual costs, provided any such adjustments are applied on a nondiscriminatory basis to all Attaching Entities.

Penalties

1. **Standard Unauthorized Attachment Fee:** Licensee shall pay back rent for all Unauthorized Attachments (except Overlash Attachments and/or Riser Attachments where an existing licensed Pole Attachment exists) for a period of five (5) years, or since the date of the last inventory of Licensee's Attachments (whichever period is shortest), at the rental rates in effect during such periods.
2. **Unauthorized Attachment Penalty:** Fifty dollars (\$50.00) per Attachment (including Service Drops, and Riser Attachments that were not reported).
3. **Non-Transfer/Removal Penalty:** If, consistent with Article 19 of the Agreement, Licensee fails to rearrange, transfer, remove or Correct violations in a timely manner, Licensee shall be subject to a

daily penalty of five dollars (\$5) per Attachment, per day beginning on the day after expiration of the original time period for completion of the work specified in the Agreement and the original notification that Licensee needs to rearrange, transfer, remove or Correct violations. Beginning with the ninetieth (90th) day after expiration of the time period for completion of the work specified in the Agreement and original notification the daily penalty shall escalate to ten dollars (\$10) per Attachment per day

APPENDIX B — Pole Application

APPLICATION FOR POLE ATTACHMENT PERMIT

Independence Power & Light
17221 E. 23rd Street South
Independence, MO. 64057

Date:
Permit #:

Attention: Power Engineering Manager

In accordance with the terms and conditions of the Agreement between us, dated _____, 20____, an Application is hereby made for a Permit to make Attachments and/or Overlash to the following Pole(s):

Pole No.	Location	Attachments/Overlash
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Current total number of Attachments Licensee has to IPL Poles _____

Number of new Attachments Licensee will be making to IPL Poles _____

New total number of Attachments Licensee will have to IPL Poles _____

Application
By:

Permission
Granted by:

Title:

Title:

Address)
(City)

INDEPENDENCE POWER & LIGHT
17221 E. 23rd Street South
Independence, MO 64057

By: _____

Title: _____

Date: _____

Cost Accepted: _____

Cost: _____

1. Application shall be submitted electronically.
2. A complete description of all Facilities shall be given; including quantities, sizes and types of all cables and equipment.
4. Licensee will notify all other attaching Entities of the need to transfer and/or rearrange Attachments.

APPENDIX C—Annual Additional Attachment Report

Consistent with Article 22 of the Agreement, the Annual Pole Attachment Report shall include the follow:

The number of poles on which Licensee has installed Risers and Service Drops for which no Permit was required: _____

The number of Attachments that have become Nonfunctional during the relevant reporting period:

Provide Pole List with the following:

<u>Pole Number</u>	<u>Description of Nonfunctional Attachment</u>	<u>Date it was Nonfunctional</u>
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The list of equipment that has been removed from Poles during the relevant reporting period:

Provide the List with the following:

<u>Pole Number</u>	<u>Description of Equipment Removed</u>	<u>Date of Removal</u>
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