



1 **Undertaking JTC1.1**

2

3 To advise the number of Hydro Ottawa poles that have wireline attachments in the  
4 communication space

5

6

7 **Response:**

8

9 There are 31,022 HOL poles with wire line attachments for telecommunications that pay  
10 OEB approved pole attachment rate as of August 13, 2015.

11



1 **Undertaking JTC1.2**

2

3 Provide number of HOL poles of the 35,663 that have only Hydro One attachments (no  
4 telecom or street, etc.).

5

6

7 **Response:**

8 There are no instances of HOL poles with Hydro One attachments having no telecomm  
9 attachments as of August 13, 2015. All HOL poles with Hydro One attachments also  
10 have telecomm attachments.

11



1 **Undertaking JTC1.3**

2

3 Provide number of Hydro Ottawa in-service distribution poles that have third party  
4 attachments of any sort.

5

6

7 **Response:**

8 There are 35,755 Hydro Ottawa poles with any third party attachment that pay OEB  
9 approved pole attachment rate as of August 13, 2015.

10

11



1 **Undertaking JTC1.4**

2

3 To provide the rate paid for over-lash attachments.

4

5

6 **Response:**

7 From the Hydro Ottawa competitive carrier's model pole attachment agreement::

8

9 *Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a*  
10 *cable or Support Strand not owned by the Licensee shall be charged 25% of the full*  
11 *Attachment License Fee, provided said cables were Approved by the Owner and were*  
12 *Over Lashed prior to March 7, 2005. Licensee-owned cables not directly Attached to the*  
13 *Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee*  
14 *on or after March 7, 2005 shall be charged the full Attachment License Fee, for which*  
15 *the Licensee shall require an Approved Permit from the Owner pursuant to the terms of*  
16 *this agreement.*

17

18



1 **Undertaking JTC1.6**

2

3 To provide a response to Carriers' Interrogatory 1(L), to provide the rates that Hydro One  
4 pays for usage of Hydro Ottawa poles for communication space the rate they pay for  
5 power attachments..

6

7

8 **Response:**

9 In 2014, Hydro One had a pole attachment rate of \$28.61 per pole for its power  
10 attachments on Hydro Ottawa poles.

11

12 Currently, Hydro One has a low voltage control cable in the communication space on  
13 Hydro Ottawa poles. Hydro One is decommissioning this facility and is in the process of  
14 removing this low voltage control cable from Hydro Ottawa poles. As of August 14, 2015,  
15 this Hydro One low voltage control cable remains on 391 Hydro Ottawa poles. Currently,  
16 Hydro One does not pay an attachment fee for this legacy installation. Hydro One has  
17 indicated that once Hydro Ottawa has completed its revision to its model pole attachment  
18 agreement, Hydro One will execute it and pay the OEB approved pole attachment rate.

19

20



1 **Undertaking JTC1.8**

2  
3 A: With reference to Exhibit B, Tab 1, Schedule 2, page 89 of 2014, to provide the year  
4 that the numbers reflected in table 2.2.5 stem from;

5 B: to provide what year the number is as reflected in the table on page 89 of 2014 and  
6 as reflected in the first paragraph on page 93 of 2014;

7 C: to clarify any discrepancy between the numbers reported in Table 1 in response to  
8 Carriers 6(a) and the numbers reported in this document we've just been looking at.

9  
10  
11 **Response:**

12  
13 A: The poles numbers from page 93 of the DSP are from the 2014 Asset Management  
14 Plan. These are end of year 2013 numbers.

15  
16 B: The original filing of Exhibit B-1-2, page 93 lines 2-3 states, "HOL [Hydro Ottawa]  
17 owns 47,815 wood poles and 537 non-wood poles and operates on an additional 11,635  
18 wood and 126 non-wood poles which are owned by third parties".

19  
20 C: Table 1 of interrogatory response to Carriers 6 a), Table 1 lists the amount of In-  
21 service Poles in 2013 and 2014 as 47,978 and 47,825, respectively.

22  
23 The numbers used in Table 1 of interrogatory response to Carriers 6 a) are Hydro  
24 Ottawa owned wood poles. There is a minor discrepancy between these numbers and  
25 the number stated in the original filing of Exhibit B-1-2, page 93 as a result of the source  
26 of the information, GIS, providing current state data and non-coincident date of  
27 information queries.

28



1 **Undertaking JTC1.9**

2

3 To further elaborate on the response to Carriers 11, and to make best efforts to provide  
4 the current number of poles per year that required testing, that required repairs, and that  
5 required straightening.

6

7 **Response:**

8 The number of poles visually inspected per year as queried from the GIS is shown in the  
9 table below:

10

11

Year	Number of Poles Visually Inspected
2011	7,769
2012	3,492
2013	356
2014	3,719
2015 (YTD)	27

12

13

14

15

16

17

18

19

20

21 It is not possible to query out the number of poles straightened and the number of poles  
22 repaired from 2011 – 2015 since the pole maintenance budgets do not break those costs  
23 out specifically by those activities.



1 **Undertaking JTC1.10**

2

3 Please provide the account number for “Work for Others” is tracked in.

4

5

6 **Response:**

7 The account number for “Work for Others” is USoA 4330.

8





1 **Undertaking JTC1.11**

- 2 a) To provide the numbers of hours with respect to the response to Carriers 12 for the  
3 years 2010, 2011, 2012, 2014, and 2015 Year-to-date.  
4 b) To provide the amount tracked for annual routine permit processing for 2011, 2012,  
5 2014, and year-to-date 2015.  
6 c) To provide the number of permits processed each year for 2011 through to 2015 year-  
7 to-date.

8 \_\_\_\_\_  
9

10 **Response:**

Undertaking #	Undertaking Description	2010	2011	2012	2013	2014	YTD July 2015
JTC1.11 (a)	# of Labour Hours	560	1015	2,373	1,689	1,838	970
JTC1.11 (b)	Annual Permit Processing	\$41,907	\$71,245	\$171,254	\$123,906	\$139,069	\$74,486
JTC1.11 (c)	# of Permits Processed	326	266	182	295	275	105

11  
12



1 **Undertaking JTC1.12**

2 To confirm whether or not the banners are included in the costs that are tracked.

3

4

5 **Response:**

6

7 Yes, Banner attachments are included in the annual routine permit processing costs.

8 However, this annual amount fluctuates and represents a very amount of the annual

9 permit processing costs (approximately 0.5-2%).

10



1 **Undertaking JTC1.13**

2 For the numbers for wires down and for trees on wires ~~to under~~ to indicate whether the  
3 number of calls provided relates to Hydro Ottawa-owned poles only or if it also relates to  
4 Hydro Ottawa plus third-party-owned poles that are operated on.

5 \_\_\_\_\_

6 **Response:**

7

8 Hydro Ottawa with the energized electrical equipment on the pole is normally the first  
9 point of contact by the public and emergency services with wires low/down and trees in  
10 wires. Hydro Ottawa responds to these reports as follows:

11

- 12 • If a tree on a wire is reported, Hydro Ottawa will dispatch a forestry technician the  
13 following day.
- 14 • If there are wires low/down on any pole, a Hydro Ottawa crew is dispatched  
15 immediately to investigate.
- 16 • Upon discovering that it is not a Hydro Ottawa owned plant, the affected telecom  
17 owner is informed of the issue.

18

19 In responding to these reports, a small percentage of the poles are not owned by Hydro  
20 Ottawa. How would Hydro Ottawa be compensated for their response with the telecom  
21 wire issues even if the pole is not owned by Hydro Ottawa?



1 **Undertaking JTC1.14**

2 To explain why the number of poles affected is the same as the number of poles used in  
3 the calculation in 2013.

4 \_\_\_\_\_  
5

6 **Response:**

7 It's a typo. The number of poles affected in 2013 should read 808, not 1,087. See yellow  
8 highlight in Carriers 13 c) table below.

9

10 Loss in productivity costs for the years 2010-2015.

LIP Costs	2010	2011	2012	2013	2014	2015
<b>Pole Replacement</b>						
Field Verification	48,007	72,797	70,251	81,410	79,163	100,743
Returning Crew	111,446	168,994	163,083	188,988	183,772	233,870
# of poles affected	476	722	697	808	785	999
# of poles used in calculation	641	972	938	1,087	1,057	1,345
<b>Field Verification</b>						
Wires Down	1,664	1,408	5,504	14,720	896	4,838
Tree on Wires	21,974	24,898	18,043	25,301	20,866	22,216
# of poles affected	36,075	35,929	35,870	35,633	35,519	35,389
<b>Total LIP Costs per pole</b>	5.08	7.46	7.16	8.71	8.02	10.22

11



1 **Undertaking JTC1.16**

2

3 To provide the number of poles replaced as part of planned pole replacement for 2011 to  
4 2015.

5

6

7 **Response:**

8

9 Table 2 from response to Carriers Interrogatory #9 e) provides planned pole replacement  
10 from 2010-2014. Table 3 from response to Carriers Interrogatory #9 f) provides planned  
11 pole replacement from 2015-2019.

12

13 HOL coordinates with third party attachers when poles with third party attachments are  
14 part of a planned replacement.

15

16 Approximately 74.3% of poles replaced as part of a planned replacement program had  
17 third party attachers, the table below shows the number of poles with third party  
18 attachers replaced for 2010 – 2015.

19

	2010	2011	2012	2013	2014	2015 (Planned)
No. of Poles replaced	142	372	380	257	212	500
No. of Poles replaced with third party attachers	106	276	282	191	158	372

20



1 **Undertaking JTC1.18**

2

3 To provide a copy of the model agreement referred to in response to carrier 17 (a), (b)  
4 and (c).

5

6

7 **Response:**

8 See attached Hydro Ottawa model pole attachment agreement for competitive carriers  
9 (Rev 22-12).

10

11

**MODEL AGREEMENT**

**For**

**LICENSED ATTACHMENT**

**To**

**HYDRO OTTAWA LIMITED**

**By**

*[insert full legal name of cable telecommunications company]*

**DATE OF ISSUE:** \_\_\_\_\_

## TABLE OF CONTENTS

### ARTICLE

ARTICLE 1 – DEFINITIONS.....	5
ARTICLE 2 – TERRITORY .....	9
ARTICLE 3 – AUTHORIZATION, PERMISSION AND RIGHT-OF-WAY .....	9
ARTICLE 4 – TAXES.....	9
ARTICLE 5 – PERFORMANCE GUARANTEE .....	10
ARTICLE 6 – COMPLIANCE WITH STATUTES .....	11
ARTICLE 7 – APPROVAL OF PERMITS.....	12
ARTICLE 8 – GRANT.....	15
ARTICLE 9 – INSTALLATION AND MAINTENANCE .....	16
ARTICLE 10 – LINE CLEARING .....	20
ARTICLE 11 – FEES .....	21
ARTICLE 12 – REMOVAL, REPLACEMENT OR RELOCATION OF POLES OR ATTACHMENTS .....	23
ARTICLE 13 – PAYMENT FOR WORK .....	25
ARTICLE 14 – LIABILITY, INDEMNITY AND INSURANCE .....	26
ARTICLE 15 – TERM AND TERMINATION OF AGREEMENT.....	28
ARTICLE 16 – TERMINATION OF APPROVAL.....	29
ARTICLE 17 – EXISTING RIGHTS OF OTHER PARTIES .....	30
ARTICLE 18 – VESTED RIGHTS.....	31
ARTICLE 19 – NOTICES.....	31
ARTICLE 20 – ASSIGNMENT .....	32
ARTICLE 21 – THIRD PARTIES .....	32
ARTICLE 22 – DISPUTE RESOLUTION .....	33
ARTICLE 23 – SCHEDULES .....	34
ARTICLE 24 – INTERPRETATION .....	34
ARTICLE 25 – ENTIRE AGREEMENT .....	34
ARTICLE 26 – HEADINGS .....	35
ARTICLE 27 – LEGISLATIVE REFERENCES .....	35
ARTICLE 28 – WAIVER .....	35
ARTICLE 29 – ENVIRONMENTAL OBLIGATIONS .....	35
ARTICLE 30 – FORCE MAJEURE .....	36
ARTICLE 31 – REASONABLENESS.....	36
<b>SCHEDULE ‘A’ - PERMIT FORM .....</b>	<b>37</b>
<b>THIRD PARTY - CONSTRUCTION VERIFICATION CERTIFICATE.....</b>	<b>46</b>



SCHEDULE 'B' - INTERPRETIVE SKETCHES.....45  
SCHEDULE 'C' - MINIMUM PERMIT DRAWING REQUIREMENTS.....49  
SCHEDULE 'D' - OWNER CONSTRUCTION STANDARDS, CONVENTIONS AND CAPACITIES.....50  
SCHEDULE 'E' - CERTIFICATE OF APPROVAL.....52  
SCHEDULE 'F' - RECORD OF INSPECTION AND CONSTRUCTION VERIFICATION PROGRAM CERTIFICATE  
.....53  
SCHEDULE 'G' - NOTICES.....54

**AGREEMENT FOR LICENSED ATTACHMENT**

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

**BETWEEN:**

**Hydro Ottawa Limited**

**(hereinafter the “Owner”)**

**OF THE FIRST PART**

**AND:**

*[insert full legal name of cable telecommunications company]*

**(hereinafter the “Licensee”)**

**OF THE SECOND PART**

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

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

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

**AND WHEREAS this Agreement replaces previous agreements and assignments between the Owner and Licensee for the Licensee’s material, apparatus, equipment or facilities to poles of the Owner;**

**AND WHEREAS the Ontario Energy Board regulates access to the Owner’s poles;**

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

## ARTICLE 1 – DEFINITIONS

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

- 1.1 “Affix”, “Affixed” and “Affixing” means to fasten, by the Licensee or its contractors, the material, apparatus, equipment or facilities of the Licensee to poles of the Owner or In-span.
- 1.2 “Annual Licence Fee” means the annual payment by the Licensee to the Owner determined in accordance with Article 11.
- 1.3 “Approval” or “Approved” means the permission granted by the Owner to the Licensee for the Licensee to Affix its Attachments, as specified in the Permit, to poles of the Owner or In-span.
- 1.4 “Attachment” means any material, apparatus, equipment or facility owned by the Licensee which the Owner has Approved for Affixing to poles of the Owner or In-span, including, but without limiting the generality of the foregoing:
- Licensee-owned cable not directly attached to a pole, but Over Lashed to a cable or Support Strand not owned by the Licensee;
  - Service Drops Affixed directly to the Owner's poles;
  - Service Drops Affixed In-span to a Support Strand supported by poles of the Owner;
  - Low transmitting power antenna; and
- Unless otherwise agreed by the parties, Attachment excludes Power Line Carriers.
- 1.5 “Attachment Licence Fee” means the licence fee payable in respect of an Attachment.
- 1.6 "Attachment Status Declaration" means a written notice, provided by the Licensee to the Owner in accordance with Article 9.18.
- 1.7 “Cable Riser/Dip” means a cable attached along a vertical portion of a pole to allow the cable to change its position from/to an underground route to/from an overhead route.
- 1.8 “Change In Control” of the Licensee means and shall be deemed to have occurred at any time when Control of the Licensee is changed, directly or indirectly, whether by merger, amalgamation, arrangement, consolidation, share issuance, share sale or otherwise;
- 1.9 “Clearance Pole” means a single pole, owned by the Owner and used by the Licensee solely to establish and maintain vertical clearance for its Service Drops.

- 1.10 **“Communications Space” means a vertical space on the pole, usually 600 mm in length, within which Telecommunications Attachments are made.**
- 1.11 **“Confidential Information” means any proprietary ideas, plans and information, including without limitation, information of a technical or business nature (including without limitation, all trade-secrets, technology, financial information, intellectual property, any information relating to human resources matters, data, summaries, reports, the terms of this Agreement, or customer lists, whether oral or written and if written, however produced or reproduced) of a party or any of the party’s affiliates that is received by or otherwise disclosed by one party to the other party that is marked proprietary or confidential, or that would logically be considered proprietary or confidential under the circumstances of its disclosure. Notwithstanding anything to the contrary in this Agreement, Confidential Information shall include this Agreement.**
- 1.12 **“Control” of the Licensee means (i) direct or indirect beneficial ownership of shares of the Licensee having attributed to them a majority of the outstanding votes attached to all of the issued and outstanding voting shares of the Licensee, or (ii) the right or the ability by voting power, contract or otherwise to elect or designate for election a majority of the board of directors of the Licensee;**
- 1.13 **“Construction Verification Program” means the Standards and requirements, as set out in Ontario Regulation 22/04 and this Agreement, for conducting inspections and the qualifications of persons conducting inspections.**
- 1.14 **“Dispute Resolution” means the dispute escalation and referral mechanism, described in Article 22.**
- 1.15 **“Emergency Situation” means a situation that poses an imminent danger or threat to public safety or public welfare.**
- 1.16 **“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in North America during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.**
- 1.17 **“Government Authority” means any government, parliament, legislature or any regulatory authority, agency, commission or a board of any government, parliament or legislature, or any political subdivision thereof, or any court or, without limitation to the foregoing, any other law, regulation or rule making entity or any person acting under the authority of any of the foregoing or any other authority charged with the administration or enforcement of laws.**
- 1.18 **“Guy Pole” means a separate pole, used to carry the strain of dead-ending or line deflection to ground.**

- 1.19 **“In-span” means a position between poles, at least one of which is owned by the Owner.**
- 1.20 **I.R.U. means Indefeasible Right of Use, which is the effective long-term lease (temporary ownership) of a portion of the capacity of a cable and associated equipment. IRU is granted by the company that owns the cable.**
- 1.21 **“Joint Use Pole” means a pole in respect of which its Owner has granted the Licensee Approval to Affix its Attachments.**
- 1.22 **“Joint Anchorage” means a common anchor system, including the anchor rod, to which two or more guy wires are attached, each guy wire providing guying for one party’s conductors and related equipment on a Joint Use Pole.**
- 1.23 **"Land Owner" means the owner of the property on which the Owner’s poles that are subject to the Attachments are installed.**
- 1.24 **“Make-ready Work” means any work undertaken or third party consent obtained by, or on behalf of, the Owner and/or an existing third party pole user to accommodate the Attachment and includes but is not limited to:**
- **initial Line Clearing, and**
  - **any changes or additions to or Rearrangement of the Owner's poles or the Owner's Attachments.**

**Such Make-ready Work will be scheduled by the Owner in a practical manner within its operations and the Owner will communicate this timeframe to the Licensee. Without restricting the generality of the foregoing, Make-ready Work does not include the costs of repairing any pole in order to ensure that it meets the Standard prior to permitting the Licensee to place its Attachments on the said Joint Use Pole.**

- 1.25 **“Minor Relocation” means the relocation of a Support Strand up to one metre (1.0 m) in a vertical and/or horizontal direction and includes relocation associated with pole changes.**
- 1.26 **“Over Lash” means to place an additional wire or cable communications facility onto an existing cable or Support Strand.**
- 1.27 **“Owner’s Standards” means the standards set out in Schedule D for construction convention and aerial capacities, and as amended from time to time.**
- 1.28 **“Permit,” means the formal written request for the adding, materially changing or removal of a Attachments to the Owner’s pole(s). The Permit form is entitled “Request for Licensed Occupancy of Poles”, in the form of Schedule "A" attached hereto, the form of which may be revised from time to time by the Owner.**

- 1.29 **“Personal Information” means information about an identifiable individual, including without limitation any information defined or deemed as such pursuant to any applicable laws related to privacy or data protection.**
- 1.30 **“Power Line Carrier” means the use of existing electricity wire infrastructure to carry voice and data signals simultaneously by transmitting high frequency data signals through the electric power lines.**
- 1.31 **“Power Space” means a vertical space at the top of the pole within which electrical power attachments are made.**
- 1.32 **“Rearranging” or “Rearrangement” means the removal of Attachments from one position on a pole and the placing of the same Attachments in another position on the same pole.**
- 1.33 **“Representatives” in reference to party, means the party’s directors, officers, employees, agents, subcontractors, and suppliers, the party’s affiliates, and all such affiliates’ respective directors, officers, employees, agents and suppliers.**
- 1.34 **“Service Drops” means small light-weight non-tensioned Telecommunications cables or wires, whether Affixed In-span or to a Clearance Pole, owned by the Licensee and connected to a Telecommunications cable, whether owned or not owned by the Licensee, and leading to customers of the Licensee.**
- 1.35 **“Standard or Standards” means Canadian Standards Association Standard C22.3 No.1 “Overhead Systems”; Ontario Occupational Health and Safety Act (R.S.O. 1990, c.O.; Part II of Canadian Labour Code; the Ontario Electrical Safety Code; Electrical & Utilities Safety Association Rules and Safe Practices; Ontario Regulation 22-04 or any other applicable regulation administered by the Electric Safety Authority and any successor legislation and standards; and the Owner’s Standards, together with any amendments thereto from time to time and subject to written notification, it being understood that changes to the Owner’s Standards are to be made at the sole discretion of the Owner.**
- 1.36 **“Support Strand” means a bare support strand whose main purpose is to support Telecommunications or low voltage wires or cables.**
- 1.37 **“Telecommunications” or “Communications” means the transmission of voice, data, video or information of any kind by electromagnetic or optical signals.**
- 1.38 **“Total Direct Cost” means the costs included in the annual pole access rate pertaining to administration and loss in productivity.**
- 1.39 **“Transferring,” means the removal of Attachments from one pole and the placing of the same Attachments on another pole.**

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

## **ARTICLE 2 – TERRITORY**

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

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

- 3.1 **The Licensee shall be responsible for obtaining any and all easements, rights of way, authorizations or permissions from others, including authorization or permission to locate on private property, public road allowances, or any other applicable authorization or permission required for private property or from any Government Authority having jurisdiction with respect to the Affixing and maintaining of the Attachments provided for in a Permit.**
- 3.2 **Where permitted to do so, the Owner may authorize the Licensee to use benefits of easements or rights of way to the Licensee, on mutually agreeable terms.**
- 3.3 **The Licensee shall be responsible for obtaining any and all authorizations or permissions for connection to the electrical supply authority's system required by the Electrical Safety Authority of Ontario (ESA).**
- 3.4 **The local electrical supply authority is required to authorize un-metered electrical supply requirements as per its Conditions of Service.**
- 3.5 **The Licensee shall obtain written permission from the building owner before installing an antenna in areas designated by the City of Ottawa as commercially sensitive, heritage, or residential. This includes owners of buildings where the Owner's poles abut the building(s) or are located on the other side of the public road to the building(s).**

## **ARTICLE 4 – TAXES**

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

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

#### **ARTICLE 5 – PERFORMANCE GUARANTEE**

- 5.1 **The Owner may request, and Licensee shall comply with such request, that the Licensee deposit with the Owner security in an amount of \$100 per pole to a maximum of \$500,000, or as otherwise agreed by the parties, securing the due performance of the obligations of the Licensee as provided for in this Agreement.**
- 5.2 **The security shall be in favour of the Owner and shall be in a form satisfactory to the Owner and may include a performance bond issued by a surety acceptable to the Owner, cash deposited with the Owner, negotiable bonds issued by an entity satisfactory to the Owner or an irrevocable bank letter of credit. In addition, the Owner may request that the Licensee deposit with the Owner security, and the Licensee shall comply with such request, in any of the following circumstances:**
- (1) the Licensee fails to make any payments required under this Agreement;**
  - (2) the Owner commences collection proceedings against the Licensee;**
  - (3) in Owner's opinion, the Licensee is a credit risk; or,**
  - (4) the Licensee's operational performance record with respect to the Owner's poles is unsatisfactory in Owner's opinion.**
- 5.3 **If the security is in the form of negotiable bonds or cash, then, provided that the Licensee is not in default of any of its obligations under this Agreement, the Licensee shall be entitled to receive any and all income therefrom.**
- 5.4 **The Licensee, when not in default of any of its obligations under this Agreement, shall have the right to substitute the security being held by the Owner with other security authorized by this Article.**
- 5.5 **The Owner shall be entitled to exercise upon the security in the event that the Licensee defaults on any of its obligations under this Agreement including, without limitation, for the purpose of recovering the costs of any of the following:**
- correction of Attachments;**



- **removal of Attachments from the Owner's poles or In-span;**
  - **damage to the Owner's equipment attributed to the joint use activity of the Licensee;**
  - **payment of any of the Licensee's accounts.**
- 5.6 **The security payable by the Licensee may be increased or decreased from time to time at the sole discretion of the Owner, who may take into consideration such factors as increases or decreases in the number of Attachments Approved by Permit, an increase or decrease in the estimated cost to remove Attachments or any other factors that the Owner may consider relevant.**
- 5.7 **Subject to Article 5.8, where, for a period of 3 years, the Licensee does not meet the conditions in Article 5.2 and, in an external rating agency's sole opinion, the Licensee is deemed credit-worthy, the security deposit paid by the Licensee shall be reduced by 50% and where, for a period of 2 additional years, the Licensee again does not meet the conditions in Article 5.2 and, in an external rating agency's sole opinion, the Licensee continues to be credit-worthy, the remainder of the security deposit shall be fully refunded.**
- 5.8 **Where a Licensee's security deposit is reduced or refunded in accordance with Article 5.7, the Owner, acting reasonably, may demand, and Licensee shall comply with such demand, that a Licensee provide a security deposit in accordance with Article 5.**

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

- 6.1 **This Agreement is subject to all applicable laws, regulations and Standards.**
- 6.2 **The Licensee and its contractors shall comply with the requirements of all relevant statutes, regulations, directions, guidelines, policies and governmental and regulatory agencies and with the Standards, both at the time of Affixing and thereafter, including, but not limited to:**
- **the safety qualifications of the Licensee's employees to carry out the work,**
  - **the use of safe working practices in carrying out the work,**
  - **training in safety awareness,**
  - **Ontario Regulation 22/04**
  - **Good Utility Practice, and**
  - **good and workmanlike practices.**

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

- 6.3 Any accident reportable by law to the Workplace Safety and Insurance Board or to the Ministry of Labour or to Human Resources and Development Canada or any notice or fine received from any of these authorities by the Licensee or the Licensee's contractor while working on the Owner's poles or In-span must be reported to the Owner within five (5) working days of the accident or notice or fine.**
- 6.4 The higher requirements of the *Canada Labour Code*, R.S. 1985, C. L-2 and the *Occupational Health and Safety Act* (Ontario), R.S.O. 1990, Chapter O.1, as amended from time to time, govern safety regarding the Affixing, Rearranging, Relocating, Transferring, maintenance or other work relating to Attachments. If there is any uncertainty about which standards are applicable, the Licensee shall ensure that the Licensee or its contractor ceases all work immediately and contacts the Owner who shall indicate which standard shall apply.**
- 6.5 The Attachments, requiring an electrical supply, shall be certified electrically safe by the Canadian Standards Association and/or the Electrical Safety Authority of Ontario (ESA).**

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

- 7.1 Prior to submitting a Permit to the Owner, and for the purpose of initiating discussions as to the parties' requirements, the Licensee shall inform the Owner that the Licensee intends to seek permission to Affix and maintain its Attachments to a pole belonging to the Owner or In-span. The Licensee shall provide to the Owner such preliminary information as may be requested by the Owner.**
- 7.2 At the Owner's sole discretion, the Owner may arrange for a joint field visit by both the Owner and the Licensee to inspect the site of the proposed Affixing of Attachments by the Licensee. The Licensee shall also be entitled to request from the Owner a joint visit, and the Owner shall have the obligation to consider the request, acting reasonably.**
- 7.3 Subsequent to the joint field visit, if any, the Owner shall form a preliminary, non-binding opinion as to the feasibility and desirability of the proposed Affixing of the Attachments by the Licensee, which opinion shall be communicated to the Licensee within a reasonable period of time.**
- 7.4 If the Owner forms a preliminary opinion in favour of the proposed Affixing of the Attachments, the Owner will prepare a preliminary estimate, which will not be binding on the Owner, of any costs of Make-ready Work and deliver such estimate to the Licensee with the preliminary opinion.**

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

7.6 Each Permit shall be accompanied by:

- drawings, plans or designs in a format approved by the Owner (see Schedule C and ESA's Regulation 22/04 Third Party Attachment Guideline) and signed and sealed by a Professional Engineer registered in Ontario, or signed by a Certified Engineering Technologist, or other competent person, who is qualified by knowledge, training and experience, and approved by the Owner, to indicate compliance with all Standards including the Licensee's standard design drawings and standard specifications, which shall have been prepared, signed, and sealed by a Professional Engineer; or drawings, plans or designs, together with a Certificate of Approval of the drawings by the Electrical Safety Authority. Each Permit shall state its compliance with O.Reg. 22/04 as per Appendix E;
- a purchase order or certified cheque authorizing the Owner to complete the Make-ready Work on the Owner's facilities pertaining to the applicable Permit;
- other items that the Owner may reasonably require and shall have requested from the Licensee pursuant to the terms of this Agreement.
- technical specifications including radiation patterns specific to the Licensee's transmitter;
- health studies specific to the Licensee's transmitter including recommended worker safety requirements within proximity to the transmitter;
- wind loading study for antennas with respect to the Owner's pole certified by a Professional Engineer; and
- documented aesthetic considerations for antennas.

At a minimum annually or whenever deemed necessary by either party, the Licensee shall submit for consideration to the Owner a list of its staff or staff positions, training and relevant qualifications for design approval as defined in O.Reg. 22/04 (see ESA's O.Reg. 22/04 Third Party Attachment Guideline). The Owner shall provide in writing its acceptance or refusal of all or part of the Licensee's submitted list.

7.7 If the Owner is satisfied that the Permit documentation is in accordance with this Article and is compliant with all Standards, the Owner will make best efforts to process the Permit within 30 days from receipt of completed Permit documentation and shall, if deemed necessary to further process the Permit, commence Make-ready Work where a signed purchase order or certified cheque has been received. If, while carrying out the Make-ready Work, the Owner determines that the proposed Attachments are no longer feasible because of previously unknown conditions or constraints or because of the intervention of a third party with jurisdiction, such as a Government Authority or Land Owner, the Make-ready Work will be suspended and the Licensee notified of the suspension. If the cause of such suspension cannot be resolved to the satisfaction of the Owner, the Licensee will be invoiced pursuant to Article 8 for all charges to the time of

**suspension. If the Permit is Approved, the Owner will sign both copies of the Permit and return a copy to the Licensee's representative, thus Approving the proposed Affixing of the Attachments by the Licensee.**

- 7.8 Each Approved Permit shall be deemed to have been issued pursuant to this Agreement, and shall be read and construed in accordance with this Agreement. Subject to Article 9.8, Permits approved prior to the Effective Date shall be deemed to have been approved in accordance with the then current Standards.**
- 7.9 The Licensee shall retain its copy of the Approved Permit as part of the Licensee's project file and may be required to produce the Approved Permit at any time when requested by the Owner.**
- 7.10 Permits for additional Attachments, except Service Drops, to an existing pole or In-span must be submitted and Approved using the same procedure set out in this Agreement for obtaining Approval to Affix new Attachments.**
- 7.11 When exercising its discretion as to whether to grant Approval to a Permit, the Owner shall exercise its discretion reasonably where the Licensee has complied with all terms this Agreement.**
- 7.12 When exercising the foregoing discretion, the Owner will consider its requirements with respect to, but not limited to, the following:**
- safety;**
  - operation of the Owner's electricity distribution network;**
  - planning;**
  - aesthetics;**
  - road authority and property owner requirements; and**
  - any other matters which the Owner, acting reasonably, may deem relevant and communicate to the Licensee by notice in writing in accordance with Article 19.**
- 7.13 It is expressly understood and agreed that Permit Approval, or use under a Permit, will be denied if, in the sole discretion of the Owner, the Attachments, or use derived therefrom could be:**
- damaging to the Owner's existing plant and/or electrical distribution services; or**
  - unreasonably constraining on the Owner's use of plant; or**
  - damaging to existing plant and /or service of a third party on the Owner's poles; or**
  - non-compliant with the obligations of the Owner.**
- Any such denial shall be communicated to the Licensee by notice in writing in accordance with Article 19.**
- 7.14 If a proposed installation which has been Approved by Permit is cancelled by the Licensee, the Licensee shall reimburse the Owner for the cost of any Make-ready Work**

completed on the Licensee's behalf upon receiving the invoice for same, and Article 13 shall apply.

## ARTICLE 8 – GRANT

- 8.1 For each Permit Approved pursuant to Article 7, the Owner hereby grants to the Licensee the permission to Affix and maintain such of its Attachments to such poles of the Owner, or In-span, as may be designated on each Approved Permit in accordance with the terms of this Agreement and any terms specified in said Permit.
- 8.2 The permission to Affix and maintain Attachments as described in an Approved Permit shall be deemed to be effective as of the date of the Approval of such Permit by the Owner. The Licensee must exercise this permission within 180 days of the date of Approval of the Permit or 180 days of the date of the completion of the Make-ready Work or within some other time period as mutually agreed to by the parties, whichever is later, failing which the Approval is of no force and effect and the Licensee may be required to submit a new Permit requesting permission to Affix its Attachments.
- 8.3 If the Owner determines that the Attachments Affixed pursuant to the Permit could be:
- damaging to the Owner's existing plant and/or electrical distribution services; or
  - unreasonably constraining on the Owner's use of plant; or
  - damaging to existing plant and /or service of a third party on the Owner's poles; or
  - non-compliant with the obligations of the Owner,
- the Licensee agrees that any Approval to Affix and maintain its Attachments previously granted by the Owner in any Permit may be revoked whether before or after the Affixing of Attachments, at the sole discretion of the Owner, if the Licensee has not carried out such work as required to rectify the situation to the satisfaction of the Owner within 30 days of notice by the Owner.
- Any such revocation as it relates to existing Attachments shall be communicated to the Licensee in accordance with Articles 16 and 19, and the Licensee shall pay the cost of removal of the Attachments in accordance with Article 13.
- 8.4 To the extent that other agreements do not prejudice the Licensee rights, granted hereunder, the Licensee agrees that this Agreement does not restrict the Owner in entering into agreements with other parties respecting the use of the Owner's poles.
- 8.5 At all times:
- the Attachments shall remain the property of the Licensee subject to Article 16; and
  - the pole shall remain the property of the Owner, subject to Articles 16.2 and 16.3.

## ARTICLE 9 – INSTALLATION AND MAINTENANCE

- 9.1 **The Licensee agrees that it will not Affix any of its Attachments, except Service Drops, to a pole of the Owner until the Owner approves the Permit designating such Attachment. The Licensee agrees that it is solely responsible for Affixing and maintaining its Attachments to the poles of the Owner or In-span.**
- 9.2 **Service Drops may be added to or altered, without reporting the addition or alteration to the Owner, when Affixed to a pole for which a Permit has been Approved, or Affixed In-span where a Permit has been Approved for the nearest pole. If the pole, or the nearest pole to the Service Drop, is not included in an existing Permit, the Service Drop must be reported to the Owner and a Permit applied for within thirty (30) days. If the Permit application is subsequently refused, the Licensee must revise the Permit application to the satisfaction of the Owner, or the Licensee must remove the Service Drop within thirty (30) days of the Owner notifying the Licensee of the refusal. If such plant is not removed within the specified period, the Licensee shall pay all associated costs of the Owner and third parties for the removal of its Service Drops. Any disputes relating to Service Drops shall be addressed in accordance with the Dispute Resolution process set out in Section 22.**
- 9.3 **In conjunction with the Licensee’s system rebuild/upgrade plans, the Licensee shall make best efforts to consolidate its multiple parallel strands on a pole into one strand during the Initial Term of this Agreement. If a third party seeks access to the Communications Space where the Licensee has parallel Attachments, the Licensee shall, at the Licensee’s option, either consolidate its parallel Attachments or transfer title of one of the Licensee’s Strands to the Owner at no charge to the Owner, or to the third party. The Owner shall be given the first opportunity to obtain title in the Licensee’s parallel strand, should the Licensee opt to transfer title of the strand. Any such transfer of the Licensee’s Strands to a third party shall be subject to the conditions in Articles 20 and 21. The Licensee shall consolidate its multiple parallel support strands on a pole into one support strand within 90 days’ notice, or other timing as mutually agreed upon, on a case by case basis, when reasonably requested by the Owner for requirements such as:**
- **safety;**
  - **operation of the Owner’s electricity distribution network;**
  - **planning;**
  - **aesthetics; and**
  - **road authority and property owner requirements**
- 9.4 **If the Licensee needs to carry out any work within safe electrical limits of approach, as specified by applicable regulation and legislation, in conformance with Article 6, the Licensee must use the Owner or an Owner-approved contractor. The Owner shall consider contractors for Approval requested by the Licensee according to the Owner’s approval process.**
- 9.5 **The Licensee covenants and agrees with the Owner to Affix and maintain its Attachments in a safe and serviceable manner satisfactory to the Owner, acting**

reasonably, and in accordance with the Standards and Good Utility Practice, and in such a way as not to

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

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

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

The Licensee shall provide the Owner a softcopy of the Licensee's Standards, certified by a professional engineer, and on-going revisions in a mutually acceptable format such as Acrobat PDF, at no cost to the Owner. The Owner shall only use the Licensee's standards for internal review of the Licensee's Permits and installations as required by and defined in O.Reg. 22/04 (see ESA's Regulation 22/04 Third Party Attachment Guideline). The Owner shall not provide the Licensee's standards to any third party unless: (i) so ordered by a Government Authority or (ii) the prior written consent of the Licensee is obtained. .

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

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

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



- 9.16 **Except where approved by the Owner, Joint Anchorage will not be permitted on all new or reconstructed pole lines. Each party shall be responsible to install and maintain its own separate anchoring system, as may be required.**
- 9.17 **On any existing pole line which has Joint Anchorage, each party will be responsible to satisfy themselves that the existing anchorage is adequate to sustain its plant.**
- 9.18 **At the end of each calendar year, the Licensee shall provide the Owner with an Attachment Status Declaration that declares which, if any, of the Licensee's Attachments, excluding Service Drops, are neither required for nor used to provide service or are reserved for future capacity. The parties, acting reasonably, shall determine the actions to be taken, which may require the Licensee to remove, reactivate, or sell such Attachments. If so required, the Licensee shall remove, sell, or reactivate such Attachments within one (1) year, or within such other time period as agreed to by the parties. The Licensee shall pay all associated costs with respect to such Attachments. The Owner reserves the right to carry out periodic audits of the Attachments. If an Attachment Status Declaration is inaccurate or misleading then the Licensee shall pay the full cost of the Owner's audit of the Attachments and pay the Owner's costs of the removal of Attachments and associated damages. Any disputes arising from Article 9.18 shall be addressed in accordance with the Dispute Resolution process set out in Section 22.**
- 9.19 **The Licensee shall, at all times and in accordance with the terms and conditions of this Agreement, maintain and operate its Attachments in a safe and serviceable condition, and replace Attachments as they deteriorate, become defective or unsafe. A public safety audit should be carried out at an interval mutually agreed upon by the Owner and Licensee.**
- 9.20 **The Licensee agrees that the Owner may change the nature or configuration of its equipment or change the characteristics, such as voltage, frequency or power levels of the electrical supply carried by its equipment at any time.**
- 9.20 **As stated in the Distribution System Code, issued by the OEB, only persons qualified under the Occupation of Health and Safety Act may be involved in inspection activities.**
- 9.21 **From time to time, the Owner or Licensee may have safety hazards and significant conditions with its plant, requiring prompt response. Each party will make best efforts to inform the other of safety hazards.**
- 9.22 **For all poles that have a Power Space, the Owner shall, wherever possible, use the highest position within the Communication Space for the Owner to place the Owner's telecommunications attachments. At the sole discretion of the Owner, the Licensee may use this location to place the Licensee's Strand if insufficient space capacity is available in the other two parallel strand locations. If the Licensee uses this location, the Licensee shall ensure that there is sufficient spare capacity for the Owner to Over Lash to the Licensee's Strand without on-going cost to the Owner. Nothing in this Agreement shall restrict the ability of the Licensee to reasonably charge the Owner for Make Ready Work to Over Lash Attachments to the Licensee's strand. The Owner shall provide**

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

- 9.23 **Subject to Article 14, the Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Attachments or the signals or supply carried by the Attachments which may arise from the Owner's equipment or the electrical supply carried by its equipment, except for such damages, harm or losses caused by gross negligence or wilful misconduct of the Owner.**
- 9.24 **After each installation, re-arrangement, repairs, or removal as defined within O.Reg. 22/04, the Licensee shall file with the Owner within 30 days a "Third Party Record of Inspection & Construction Verification Program Certificate" (see Schedule F).**
- 9.25 **At a minimum annually or whenever deemed necessary by either party, the Licensee shall submit for consideration to the Owner a list of its staff or staff positions, training, experience, and relevant qualifications for construction verification approval as defined in O.Reg. 22/04 (see ESA's Regulation 22/04 Third Party Attachment Guideline). The Owner shall provide in writing its acceptance or refusal of all or part of the Licensee's submitted list.**

#### **ARTICLE 10 – LINE CLEARING**

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

**on their behalf in advance of the commencement of the tree trimming or line clearing services.**

- 10.3 Should any extraordinary services, such as but not limited to tree trimming or line clearing services after storms, be required in order to establish clearances for the Attachments for operations, maintenance and safety, the cost of such services shall be the sole responsibility of the Licensee. In the event that such extraordinary services are required, in the sole but reasonable discretion of the Owner, the related proportional cost of such extraordinary services undertaken by the Owner shall be charged to the Licensee in accordance with the provisions of Article 13.**

## **ARTICLE 11 – FEES**

- 11.1 Commencing on the Effective Date, the Licensee shall pay an annual licence fee, in advance, to the Owner. The Owner will determine the Annual Licence Fee by multiplying the number of the Owner’s poles on which the Licensee had Attachments on December 31 in the prior year times the Attachment License Fee as determined in accordance with clause 11.2 and Schedule B.**
- 11.2 The Attachment License Fee for each year during the term of this Agreement shall be set by the Ontario Energy Board from time to time. This rate is exclusive of any un-metered electrical supply, which is a separate agreement with the local electrical supply authority.**
- 11.3 If the Licensee has an Approved Permit for a pole and is thus paying an Attachment License Fee, there is no charge for additional attachments made in the Communications Space, or in-span, if such attachments are approved by the Owner. See also Schedule B, Interpretive Sketches.**
- 11.4 The Licensee shall pay 50% of the full Attachment License Fee to the Owner in respect of each Clearance Pole of the Owner directly supporting one or more Service Drops of the Licensee, which Attachment License Fee shall be effective from March 7, 2005 as per Schedule B.**
- 11.5 The Licensee shall pay the full Attachment License Fee to the Owner in respect of each Guy Pole of the Owner directly supporting one or more Attachments of the Licensee, which Attachment License Fee shall be effective from March 7, 2005 as per Schedule B.**
- 11.6 If the Licensee has an Approved Permit for a pole and is thus paying an Attachment License Fee, the Licensee shall pay the Total Direct Cost, mutually agreed by the parties, or as otherwise amended by the Ontario Energy Board, from time to time, for Attachments below the Communications Space, such as antennas, or grandfathered amplifiers / power supplies. If the Licensee is not paying an Attachment License Fee for said pole, the full Attachment License Fee shall apply to such Attachments outside the Communications Space as per Schedule B.**

- 11.7 **Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee shall be charged 25% of the full Attachment License Fee, provided said cables were Approved by the Owner and were Over Lashed prior to March 7, 2005. Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee on or after March 7, 2005 shall be charged the full Attachment License Fee, for which the Licensee shall require an Approved Permit from the Owner pursuant to the terms of this agreement. The Licensee shall inform the Owner of details, including quantity, location, and characteristics of existing, prior to March 7, 2005, Over Lashes within two (2) months of the Effective Date of this Agreement, or as otherwise agreed by the parties.**
- 11.8 **In addition to the fees payable pursuant to clause 11.1, in each year the Licensee shall pay to the Owner, fees for the year, for poles to which Attachments have been made during the year. Any Attachments which are Affixed during the year shall be charged the Attachment License Fee for the full year.**
- 11.9 **There will only be one Attachment License Fee referable to the Communications Space of any pole regardless of the number of Attachments made by the Licensee thereto or in-span. In assessing the Attachment License Fee to be applied to a pole supporting multiple Attachments, which may have different fees, the highest fee shall apply.**
- 11.10 **The Attachment License Fee determined in accordance with Article 11 shall be invoiced by the Owner to the Licensee in one instalment to be paid on or before the first day of January in each year of this Agreement or any renewal hereof.**
- 11.11 **If at anytime during the term of this Agreement or of any renewals thereof an Attachment is Affixed to a pole of the Owner without a Permit being Approved by the Owner for such Attachment, then the Licensee shall pay to the Owner the Attachment License Fee for each year that the Attachment existed without a Permit, plus a penalty of five [5] times the Attachment License Fee, or as otherwise agreed by the parties.**
- 11.12 **In addition to the Annual License Fee and any other payments required under this Agreement, the Licensee is solely responsible for all of the costs associated with Affixing and maintaining the Attachments to the poles of the Owner or In-span. The Owner's related costs during regular workday business hours for correspondence, site meetings, preparing cost estimates, joint field visits, reviewing and Approving the Permit, and verifying completed work will be the responsibility of the Licensee. Without limiting the generality of the foregoing, the Licensee shall be responsible for the cost of:**
- **effecting changes, alterations or rearrangements, other than Minor Relocations, to the Owner's poles;**
  - **Affixing the Attachments;**
  - **cleaning up the site around each pole where the Licensee has Affixed Attachments and thereafter ensuring safe disposition of all materials;**

- **conducting a joint field inventory or joint audit program in accordance with the cost sharing arrangements as mutually agreed between the parties;**
  - **field audit and required corrections related to Ontario Regulation 22/04; and**
  - **any other reasonable expenses associated with the Licensee’s obligations under this Agreement and the Owner’s Conditions of Service, as amended from time to time.**
- 11.13 **As of December 31st of each year for which the Owner has the Attachments Affixed to its poles, the Owner will provide to the Licensee an “Annual Statement of Fees” which will itemize the number of Attachments involved and a breakdown of the calculation of the Annual License Fee. Every effort shall be made by the Owner to ensure that the content of the Annual Statement of Fees is accurate. The Licensee shall remit forthwith to the Owner the difference between the Annual License Fee as set out in the Annual Statement of Fees and the amount remitted to the Owner at the beginning of the year in advance. Any overpayment shall be remitted forthwith by the Owner to the Licensee. The Licensee is obligated to track any requested Attachment changes by Permits during a given year to confirm the Owner’s annual Attachment count contained in the Annual Statement of Fees. Any dispute on the numbers shall be settled between the engineering staff of the Licensee and the Owner, and failing resolution, Dispute Resolution shall be applied, with all adjustments (if any) reflected on the following year’s Annual Statement of Fees.**
- 11.14 **All invoices rendered by the Owner pursuant to this Article that are outstanding for longer than forty five (45) days will be subject to interest charged at a rate of one and one-quarter percent (1.25%) per month. The interest shall run from the due date of payment of the invoice until the date the payment should be received by the Owner in the ordinary course of post, following mailing of the payment. If the Licensee fails to pay any invoice within forty five (45) days, the provisions of Article 13 apply and the Owner may invoke any or all of the measures detailed in Article 13.**

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

- 12.1 **Where the Owner, the Land Owner or a Government Authority require that the Licensee remove, replace or change the location of any pole designated by a Permit to which Attachments are Affixed, whether the change or removal be on a temporary or permanent basis, and upon receipt of written notice of such a requirement, the Licensee remove its Attachments from that pole and, except where the notice specifies to the contrary, transfer the Attachments to the new location by the time specified in the notice and at the cost and expense of the Licensee.**

- 12.2 **The Licensee shall pay all costs, damages, charges, penalties, and fines howsoever incurred or levied by the Owner and the Land Owner with respect to the Licensee's failure to comply with a notice issued in accordance with Article 12.1.**
- 12.3 **Licensee acknowledges that the Owner may, in Owner's sole and absolute discretion, remove a pole without replacing it and that there will not be a pole upon which to Affix the Attachments. In such circumstances, the Approval associated with the applicable Permit will cease. The Owner will use commercially reasonable efforts to issue to the Licensee at least sixty (60) days prior written notice of such removal, replacement or change in location of a pole, but in case of emergency, as reasonably defined by the Owner, the Owner may issue no notice or issue a notice that the Owner, in its sole opinion, deems expedient. In Emergency Situations where no notice is issued by the Owner or where the Licensee fails to remove or relocate its Attachment after notice from the Owner, the Owner or its designate may remove or relocate the Attachments and the Licensee shall reimburse the Owner for all costs, as determined in the absolute discretion of the Owner, of removing or relocating the Attachments.**
- 12.4 **To expedite its own work, the Owner may relocate a Licensee's Support Strand at the Licensee's sole cost and expense provided that:**
- **it does not interfere with other Attachments;**
  - **it does not affect a Cable Riser/Dip pole for the Licensee;**
  - **Standards and safety are maintained;**
  - **the Licensee does not require an easement or third party permission; and**
  - **the Support Strand is attached to the pole in a manner equivalent, in the Owner's view, to that formerly used by the Licensee.**
- If the Owner relocates the Licensee's Support Strand, the Owner will provide a written notification to the Licensee of the relocation.**
- 12.5 **Licensee agrees that if the Licensee fails to comply with a notice issued in accordance with Article 12, then, unless the parties agree in writing otherwise, the Licensee shall pay to the Owner a monthly delayed removal fee of \$100.00, or an amount that is otherwise set by the Ontario Energy Board from time to time, for each pole that the Licensee fails to remove, replace or change as required under the notice. The parties agree that this fee is a pre-estimate of damages.**
- 12.6 **Where an Approval is granted and the presence of the existing Attachments causes the Owner to perform Make-ready Work to accommodate the new Attachment, the Licensee shall pay to the Owner the cost of such relocation or modification.**
- 12.7 **Where a Government Authority causes the Owner to accrue a penalty liability due the Licensee's failure to comply with a notice issued by a Government Authority, the Licensee shall pay to the Owner an amount equal to the total of the delayed removal charge under Article 12.5, the amount of penalty incurred by the Owner and the costs related to the payment of the penalty.**

- 12.8 All charges to the Licensee for carrying out work referenced in this Article shall be reasonably determined by the Owner and payable by the Licensee in accordance with Article 13.
- 12.9 Licensee agrees that it shall not hold the Owner liable for damage to the Licensee's plant caused by the Owner's or the Land Owner's removal or relocation of Attachments in accordance with Article 12.
- 12.10 Where a Licensee is in receipt of notices issued in accordance with Article 12 by a Government Authority, the Owner and a Land Owner, or any combination therefore, and the instructions enclosed in one notice conflict with those of any other notice then, to the extent that the instructions conflict:
- the instructions contained in a notice issued by a Government Authority shall prevail over the instructions contained in any other notice; and,
  - the instructions contained in a notice issued by the Owner shall prevail over the instructions contained in a notice issued by the Land Owner.
- 12.11 This Agreement shall continue to apply to the Attachments relocated in accordance with any notice under Article 12.

#### **ARTICLE 13 – PAYMENT FOR WORK**

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

**If the Licensee fails to remove the subject Attachments within thirty (30) days of receipt of the notice and the invoice is still unpaid, the Owner may remove such Attachments, at**

**the risk and expense of the Licensee. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal. If the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days of receipt of the invoice for same, the Owner shall have the further right to sell the Attachments so removed and apply the proceeds against the cost of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the exercise of any security posted by the Licensee with the Owner, pursuant to Article 5, to recover the outstanding amounts owed to it by the Licensee.**

- 13.5 The Licensee shall notify the Owner in writing of any dispute with respect to an invoice. If the dispute cannot be resolved within thirty days through normal business operations, the Dispute Resolution process, as described in Article 22 will be initiated. Article 13.4 will not take effect during the Dispute Resolution process.**

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

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



- the Owner, against liability due to damage to the property of the Owner or any other person or persons including third parties, and against liability due to injury to, or death of, any person or persons, including third parties, in any one instance. The Owner shall not be responsible for the payment of any premium with respect to any such insurance, which is the sole responsibility of the Licensee.**
- 14.5 Prior to the Approval of any Permit and as a condition of any Permit Approval or renewal, the Licensee shall furnish to the Owner annually a certificate of such insurance and for the renewal thereof, so long as this Agreement remains in force.**
- 14.6 The Licensee agrees that the insurance described herein does in no way limit the Licensee's liability pursuant to the indemnity provisions of this Agreement.**
- 14.7 During the term of the Agreement, the Licensee will immediately notify the Owner of any damage whatsoever to the equipment of the Owner or a third party or to persons arising as a result of the Licensee Affixing, inspecting, maintaining, changing, repairing or removing any of its Attachments to the Owner's poles. The Licensee will also immediately notify the Owner of any claims or notices of claims received by the Licensee related in any way to its Attachments.**
- 14.8 During the term of the Agreement, the Owner will immediately notify the Licensee, but not any third party having rights to the Licensee's equipment (whether by Irrevocable Right of Use, sublicense or otherwise) of any damage whatsoever to Attachment arising as a result of the Owner Affixing any Attachments to the Owner's poles. The Owner will also immediately notify the Licensee of any claims or notices of claim received by the Owner related in any way to the Attachments, or to any claims or notices of claim received by the Owner related in any way to any act or omission of the Licensee pursuant to this Agreement.**
- 14.9 The Owner will provide to the Licensee reasonable written notice of its intention to significantly change the nature or configuration of its equipment or change the characteristics, such as voltage, frequency or power levels of the electrical supply carried by its equipment when the Owner has reason to believe that such change might have adverse effects on the Attachments, or the product carried by such Attachments, or place the Licensee in non-compliance with any of the provisions of this Agreement. The Owner is not responsible for any adverse effects on the Attachments, or the product carried by such Attachments, as a result of any changes made by the Owner.**
- 14.10 Notwithstanding anything to the contrary in this Agreement, neither the Owner nor the Licensee shall be liable to the other for, and the indemnities set out herein shall be deemed not to include, indirect or consequential damages or damages for economic loss however caused, arising out of this Agreement.**
- 14.11 Notwithstanding Article 14.10, neither party's liability under Article 14.3 is limited by the provisions under Article 14.10.**
- 14.12 If third party Equipment interferes with the operation of the Attachment, then the Licensee will cooperate with the third party and the Licensor will make reasonable**

efforts, at the expense of the Licensee, to require the third party to cooperate with the Licensee to resolve the interference in a mutually acceptable manner. Subject to Article 22 and unless the Owner requests otherwise, if cooperation fails to resolve the matter, then the Licensee may enjoin the interference by legal action against the third party but without the involvement or participation of the Owner. The Licensee's sole remedy with respect to the Owner will be to terminate this Agreement on thirty (30) days' written notice, without further liability to the Owner. The Owner will not have any liability or responsibility for any interference with the Licensee's operations by third parties.

## ARTICLE 15 – TERM AND TERMINATION OF AGREEMENT

- 15.1 The Term of this Agreement is five (5) years.
- 15.2 Prior to six (6) months before the End of Term Date, either party may request the other to extend the Term of the Agreement for a further term of one year on the same or amended terms and conditions, as the parties may agree and in such case the Agreement, as amended, shall continue until the new End of Term Date.
- 15.3 If, within 12 months after any End of Term Date, the parties have not agreed on terms and conditions for a renewed Agreement, either party may invoke the Dispute Resolution process as per Article 22.
- 15.4 Subject to Article 15.3 and 15.6, the Licensee shall, upon the termination of this Agreement, as mutually agreed upon by the parties, remove from the poles of the Owner its Attachments covered by this Agreement or the terminated Permit and ensure that the site where the removal occurred is left in a safe and equal or better condition then prior to the removal, at the expense of the Licensee.
- 15.5 In accordance with Articles 15.4 and 15.6, if the Licensee fails to remove the subject Attachments, within one hundred and eighty (180) days of receipt of notice, or otherwise mutually agreed upon, the Owner may, at the Licensee's sole risk and expense, remove such Attachments. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal, and if the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days, then the Owner will have the further right to sell the Attachments so removed and apply the proceeds against the costs of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the execution of any security posted with it, to recover the outstanding amounts owed to it by the Licensee.
- 15.6 The Agreement shall be deemed to remain in effect during the Dispute Resolution process under Article 22. All of the Owner's and Licensee's remedies to enforce outstanding obligations under this Agreement and Article 15.3 and Article 22 shall survive termination of this Agreement.

## ARTICLE 16 – TERMINATION OF APPROVAL

- 16.1 **The Approval granted by each Permit Approved by the Owner pursuant to the provisions of this Agreement shall remain in full force from the date of the Approval until the earliest of:**
- **the End of Term Date; or**
  - **the date upon which the Attachment associated with the Approved Permit is removed by the Licensee or the Owner; or**
  - **subject to 16.5, the date upon which the Licensee defaults on any of its obligations under this Agreement; or**
  - **the pole designated by such Permit is abandoned or removed by the Owner; or**
  - **the date upon which Owner exercises its right to terminate the specific Permit in accordance with Article 16.11.**
- 16.2 **If the Owner intends to sell a pole designated by an Approved Permit to a third party, the Owner will attempt, on a best efforts basis, to secure the agreement of the purchaser that the Attachments be allowed to continue to be Affixed to the pole and the purchaser be bound to assume all of the Owner’s obligations hereunder.**
- 16.3 **The Owner and Licensee may negotiate terms of sale, from the Owner to the Licensee, of a pole vacated by the Owner and located on public and/or private property. Such sale will be subject to any existing obligations of the Owner to third parties, and subject to the consent of the property owner or any Government Authority having jurisdiction over said lands.**
- 16.4 **If the condition of sale of any pole pursuant to Article 16.2 or 16.3 cannot be satisfactorily arranged, the Owner may, by notice in writing at any time, require the Licensee to remove its Attachments from the poles involved, and the Licensee shall, within one hundred and eighty (180) days after receipt of said notice, remove its Attachments from such poles.**
- 16.5 **If the Licensee fails or neglects at any time to fully perform and observe all the covenants, terms and conditions herein contained, including a default at any time in the payment of fees or removal of Attachments, the Owner will notify the Licensee in writing of such default and the Licensee shall correct such default within thirty (30) days or such longer period as agreed to by the Owner. If the Licensee fails to cure such default within thirty (30) days of notice by the Owner or such longer period as agreed to by the Owner, the Owner may forthwith terminate the Approvals accompanying each Approved Permit.**
- 16.6 **The termination of an Approval pursuant to this Agreement shall not be deemed a termination of this Agreement unless the Permit containing such Approval is the last remaining or only Permit Approved pursuant to this Agreement, in which case the**

**termination of such Permit will be deemed to be a termination of this Agreement, subject to the Licensee fulfilling all of its outstanding obligations and the right of the Owner to enforce any such outstanding obligations.**

- 16.7 The Parties agree that obligations flowing from this Agreement, or a Permit Approved pursuant to this Agreement, will continue beyond the date of termination of the Agreement or Approved Permit, until the obligations are satisfied in full. All of the remedies to enforce outstanding obligations under this Agreement, Article 22 regarding Dispute Resolution, Article 30 and Schedule A, shall survive termination of this Agreement or an Approved Permit.**
- 16.8 The Licensee shall, upon the termination of a Permit Approved pursuant to this Agreement, forthwith at the request of the Owner, but at the expense of the Licensee, remove from the poles of the Owner its Attachments covered by this Agreement or the terminated Permit and ensure that the site where the removal occurred is left in a safe and equal or better condition than prior to the removal.**
- 16.9 If the Licensee fails to remove the subject Attachments, as per Article 16.8, within thirty (30) days of receipt of notice, or such longer period as agreed to by the Owner, the Owner may, at the Licensee's sole risk and expense, remove such Attachments. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal, and if the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days, then the Owner will have the further right to sell the Attachments so removed and apply the proceeds against the costs of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the execution of any security posted with it, to recover the outstanding amounts owed to it by the Licensee.**
- 16.10 When an Attachment on a pole subject to Joint Use is discontinued, the Licensee shall return its copy of the related Permit to the Owner and the Owner shall mark the Permit "cancelled".**
- 16.11 The Owner may, at its sole discretion, terminate a specific Permit in the event that the Licensee fails to resolve an interference with third party Equipment in accordance with Article 14.12.**

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

- 17.1 Nothing herein contained shall prevent or limit the right of the Owner from granting to others, not party to this Agreement, the right to occupy its poles.**
- 17.2 If the Owner has granted permission to others, not parties to this Agreement, to use any poles owned by the Owner, whether said poles are covered by this Agreement or not, then nothing herein contained shall be construed as affecting such permission. The Owner shall have the right to continue and extend such existing permission. The Licensee agrees that existing rights of third parties are in no way diminished by this Agreement. The Licensee shall treat third party Attachments to the pole with the same**

**duty of care as is required by the Agreement between the Licensee and Owner, and will respect the rights and privileges of third parties.**

- 17.3 The Owner shall not grant to any third party which includes, but is not limited to, any Affiliate (as defined in the Business Corporations Act RSO 1990, c.B.16, as amended) or any other entity related to it, by contract or otherwise, rights or privileges to use any Joint Use Poles used by the Licensee or any poles for which it has given permission for such Joint Use by the Licensee, unless the Owner includes a requirement substantially the same as Section 17.2 above in Owners' agreement with the third party.**

#### **ARTICLE 18 – VESTED RIGHTS**

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

#### **ARTICLE 19 – NOTICES**

- 19.1 Unless otherwise provided herein, any notice or other communication to Licensee under this Agreement shall be given or served by hand, by registered mail, postage prepaid, email, by same day or overnight courier, or by facsimile transmission (fax) addressed in accordance with Schedule 'G' - Notices.**

**Unless otherwise provided herein, any notice or other communication to Owner under this Agreement shall be given or served by hand, by registered mail, postage prepaid, email, by same day or overnight courier, or by facsimile transmission (fax) addressed to contacts in accordance with Schedule "G" – Notices.**

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

- 19.3 **The Licensee shall provide the required notice to ESA and the Owner for all incidents and accidents related to the Licensee’s Attachments and that affect public electrical safety as defined in O.Reg. 22/04.**
- 19.4 **As contact changes occur, the Licensee shall provide the Owner with the required local Licensee contacts for:**
- a. **Planned field installations, adjustments, and removals,**
  - b. **24/7 emergency response to repair, adjust, and remove Attachments due to emergency work.**

## **ARTICLE 20 – ASSIGNMENT**

- 20.1 **The Licensee agrees that it will not assign its interest, in whole or in part, in this Agreement, the privileges herein granted or any Approved Permit, without the prior written consent of the Owner, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall extend to, be binding upon, and enure to the benefit of the Owner, its successors and assigns, and the Licensee, its successors or permitted assigns. The Licensee shall have the right to assign its interest in this Agreement in its entirety to one of its affiliates with prior written consent of the Owner which consent shall not be unreasonably withheld, provided that the Licensee shall remain liable for the fulfilment of all of the Licensee’s obligations hereunder. Such consent may be requested more than once.**
- 20.2 **The parties agree that the Owner’s withholding of consent under Article 20.1 shall not be deemed unreasonable where assignee’s financial performance, safety practices and unsafe installations, operational performance (such as timely transfers off old poles and removal of NIU Attachments, Attachment field identification tagging or corrections of outstanding O.Reg. 22/04 audit findings) or asset record accuracy with respect to any agreements or undertakings with the Owner are deemed, in the Owner’s sole discretion, to be unsatisfactory.**
- 20.3 **No Change In Control of the Licensee, whether directly or indirectly, shall occur without the written consent of the Owner.**
- 20.4 **The Owner may assign this Agreement without the consent of the Licensee. The Owner agrees that it will notify the Licensee of assignment of any of the Owner’s interest in this Agreement.**

## **ARTICLE 21 – THIRD PARTIES**

- 21.1 **The Licensee may provide a third party with an Indefeasible Right of Use (IRU) and/or a sublicense to any part of Attachment that is Affixed to the Owner’s equipment. The third party shall not have direct access to the Owner’s poles or other equipment, unless the Licensee has obtained the prior written consent of the Owner and the third party enters into a separate Licensed Attachment Agreement with the Owner. The Licensee**

shall not confer any vested right, or franchise, by implication or otherwise, to use the Owner's poles or equipment or any privileges under this Agreement to a third party.

## ARTICLE 22 – DISPUTE RESOLUTION

- 22.1 **If any Approval is refused or terminations invoked, the Licensee may appeal that decision to the Owner's Chief Executive Officer. The Owner has the mutual right to bring a complaint to the attention of the Licensee's Chief Executive Officer. The appeal or complaint shall be heard and decided within thirty (30) days of receiving written notice of the appeal or complaint.**
- 22.2 **The Owner and the Licensee agree to attempt to resolve any disputes arising under this Agreement in an expedient manner. Where possible, the Owner and the Licensee shall endeavour to resolve any disputes between themselves, at the level at which the dispute arose. If the dispute cannot be so resolved, the Owner and the Licensee agree that either party may refer the matter to higher management ("Dispute Resolution"). For both parties, this shall be the Vice President level or designate.**
- 22.3 **Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its negotiation, existence, validity, breach or termination, or the negotiation of a new Agreement may be referred to the Ontario Energy Board for decision.**
- 22.4 **Alternatively, disputes arising under this Agreement may be resolved by a mutually agreed upon body of competent jurisdiction or arbitration in accordance with the *Arbitration Act* (Ontario), 1991, S.O. 1991, Chapter 17 (the "Act"), as amended from time to time. Arbitration may be initiated by either party by notice in writing. Within twenty (20) days after the written request of either of the parties hereto for arbitration, the parties shall agree upon a single arbitrator, failing which, each of them shall appoint one arbitrator, and the two so appointed shall, within twenty (20) days after the initial twenty (20) day period, jointly select a third, who shall act as the Chair of the tribunal. In case either of the parties hereto fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty (20) day period, application shall be made as soon as reasonably possible to any Judge of the Ontario Superior Court of Justice for the appointment of a third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the *Arbitration Act*, as from time to time amended, or any statute in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.**
- 22.5 **The Licensee shall resolve any dispute arising under this Agreement with the Owner or any dispute arising with a third party in relation to the Licensee's obligations under Article 14.12 by application or appeal to the Canadian Radio-television and Telecommunications Commission.**

## ARTICLE 23 – SCHEDULES

23.1 **The following schedules are hereby incorporated into and constitute part of this Agreement:**

- **Schedule A - Permit Form**
- **Schedule B - Interpretive Sketches**
- **Schedule C - Minimum Permit Drawing Requirements**
- **Schedule D – Owner Construction Standards, Conventions, and Capacities**
- **Schedule E – Certificate of Approval**
- **Schedule F - Record of Inspection & Construction Verification Program Certificate**
- **Schedule G - Notices**

## ARTICLE 24 – INTERPRETATION

24.1 **The terms of this Agreement shall be governed by the laws of the Province of Ontario and Canada, as applicable. In the event that any court or arbitration tribunal declares any portion of this Agreement invalid, the remainder of this Agreement shall remain in full force and effect.**

24.2 **Nothing in this Agreement or its performance shall create a partnership, tenancy or agency relationship between the parties, each of which is the independent operator of its facilities.**

## ARTICLE 25 – ENTIRE AGREEMENT

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



## ARTICLE 26 – HEADINGS

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

## ARTICLE 27 – LEGISLATIVE REFERENCES

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

## ARTICLE 28 – WAIVER

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

## ARTICLE 29 – ENVIRONMENTAL OBLIGATIONS

- 29.1 **The Owner makes no representation or warranty with respect to condition, defects, nature, composition, use (past, present or future) of land or plant. The Licensee hereby accepts land and plant of the Owner on an “as is” basis.**
- 29.2 **The Licensee shall comply with the provisions of any federal, provincial or municipal environmental laws which, during the continuance of this Agreement shall become applicable to the land, plant or Attachments pertaining to Approved Permits. If any governmental authority exercising jurisdiction with respect to environmental protection requires, in respect of any Attachments, the installation of equipment or apparatus, or requires that any other action be taken, then the Licensee shall promptly notify the Owner and install such equipment or apparatus or take such measures as may be required by such governmental authority. The Licensee shall be solely responsible for the cost of all work carried out to comply therewith.**
- 29.3 **Upon the termination of this Agreement, the Licensee shall leave the pole, plant and land upon which the pole is situated free of any environmental contamination resulting from the Attachments. If and when challenged in the future, the Licensee shall have the burden of proving that any environmental contamination has not resulted from its Attachments.**

- 29.4 **In the event the Licensee fails to comply with its obligations in this Article to the satisfaction of the Owner, the Owner may undertake any such work that it considers necessary to correct any environmental contamination which may have resulted from the Attachment or conduct of the Licensee, and all expenses incurred by the Owner, either directly or indirectly, shall be payable by the Licensee upon receipt of the Owner's invoice.**
- 29.5 **The responsibility of the Licensee to the Owner with respect to the environmental obligations contained herein shall continue to be enforceable by the Owner notwithstanding termination of this Agreement.**

**ARTICLE 30 – FORCE MAJEURE**

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

**ARTICLE 31 – REASONABLENESS**

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

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

**Hydro Ottawa Limited**

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

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

I have authority to bind the corporation

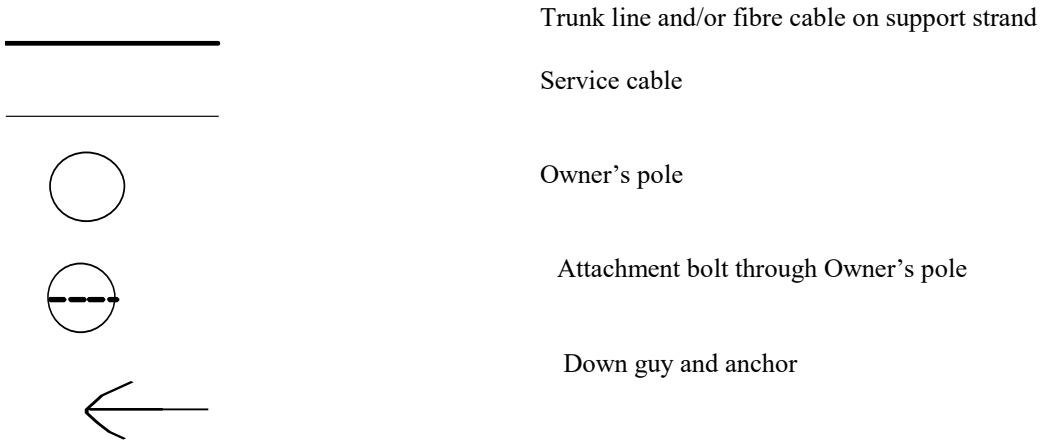
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**SCHEDULE 'A' - PERMIT FORM**

<b>TO:</b>		PERMIT NUMBER:
PERMISSION IS REQUESTED BY:		NUMBER OF POLES:
TO PLACE ATTACHMENTS AS FOLLOWS LOCATION:		
		SUPERSEDES/CANCELS PERMIT No.
APPLICANT'S REFERENCE:	POLE OWNER'S REFERENCE:	
APPLICANT'S FILE	POLE OWNER'S FILE	
APPLICANT	APPROVED	
_____	_____	
SIGNATURE AND TITLE	SIGNATURE AND TITLE	
DATE:	DATE:	

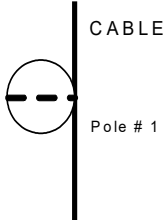
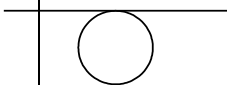
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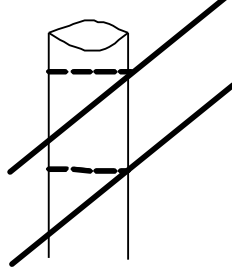
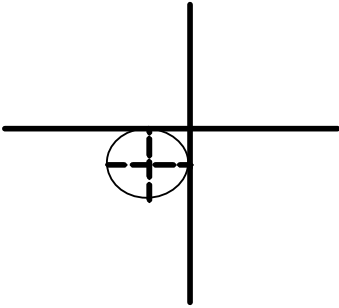
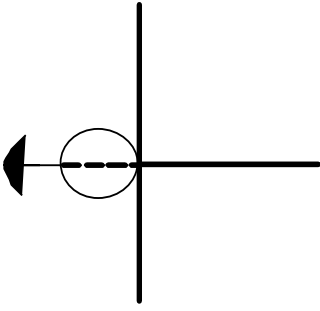
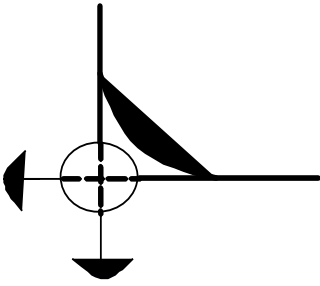
### LEGEND



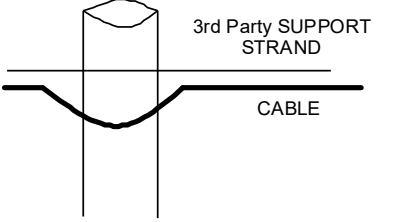
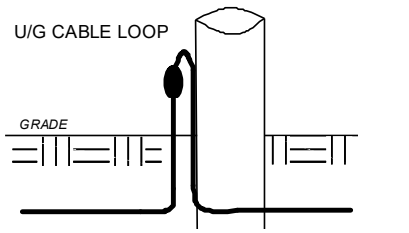
**Note:** All sketches include any overhead or underground services, and service clearance attached to the pole.

One FULL = 100% OEB rate

Item	Sketch	Description	Attachment Rate
# 1		Attachment at Pole	One FULL
#2		Service Drop on Clearance Pole	50% of One FULL

# 3		Two separate support strands	One FULL(subject to consolidation requirements)
# 4		Two intersecting support strands	One FULL
# 5		"T" tap support strands	One FULL
# 6		Dead end & change direction	One FULL

<p># 7</p>		<p>Angle pole attachment At Pole # 1</p> <p>Guy Pole to support Pole #1</p>	<p>One FULL</p> <p>One FULL</p>
<p># 8</p>		<p>Cable on support strand at Pole # 1</p> <p>Guy Pole- Dead end support strand at Pole # 2</p>	<p>One FULL</p> <p>One FULL</p>
<p># 9</p>		<p>Cable dip/riser</p>	<p>One FULL</p>
<p># 10</p>		<p>Antenna, or grandfathered amplifier / power supply</p>	<p>Total Direct Cost, if existing permit or One FULL, if no existing permit</p>

# 11		Over Lashed to a 3 <sup>rd</sup> Party support strand	No Charge if Licensee is paying for an Attachment; Otherwise One FULL (after March 7, 2005) or 25% (prior to March 7, 2005)
# 12		Underground cable loop pole	Total Direct Cost, if existing permit or One FULL, if no existing permit

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

- 1. Basic Drawing Requirements (applies to all drawings)**
  - a. Title block (name & address of Licensee, date, north point, drawing/project number, location of project)**
  - b. Name & phone number of the Project Manager for the specific application**
  - c. Language: English/French as appropriate**
  - d. Scale & Dimensions: Metric**
  - e. Scale Size: Larger than or equal to 1:1000 (e.g. 1:1000, 1: 500, 1: 250)**
  - f. Legend of symbols**
  - g. Key Map**
  - h. Street names: clearly indicated**
  
- 2. Project Specific Drawing Requirements**
  - a. Sidewalks, driveways, trees, buildings, bridges, rivers, railroads, other utilities if they add clarity to specific issues**
  - b. Clearly indicated poles and their ownership**
  - c. Proposed cable and Support Strands clearly indicated with heavier line style**
  - d. Proposed cable to be Over-lashed to existing Support Strand and indicate owner of that Support Strand**
  - e. Which side of the pole to be contacted**
  - f. Slack storage & splice can locations**
  - g. Electrical bonding locations**
  - h. Proposed ground rods**
  - i. Dips and/or risers**
  - j. Ducts, guards, and/or concrete work on poles for dips and/or risers**
  - k. Cable dip/riser details**
  - l. Proposed and existing Licensee anchoring**
  - m. Make ready work anticipated by the Licensee with the Owner's poles or third party Attachments**
  - n Existing & proposed pedestal locations along route**
  - o Railroad, major highway, & river crossing engineering details & associated profiles**
  - p. Pole height contact detail (by drawing or table) indicating dimensions above grade for all existing Telecommunications / CATV contacts by name, streetlight contacts, lowest Hydro contacts (neutral, secondary, primary, transformers, unprotected Hydro riser/dips) for both new and existing Support Strands.**
  - q. Horizontal offset measurements for proposed pole contact close construction to buildings, other non-Owner overhead systems (ex. traffic, street lighting, signs), and/or bridges.**
  - r. Wiring, wire routing, and Attachment methods to the pole.**
  - s. Curbs**
  - t. Lot lines and/or buildings, and house numbers in front of poles**



## **SCHEDULE 'D'      OWNER CONSTRUCTION STANDARDS, CONVENTIONS, AND CAPACITIES**

### **GUYS AND ANCHORS**

- **Joint anchoring on an Owner's anchor will not be permitted without the Owner's consent.**
- **A minimum 254 mm (10") power installed screw anchor (PISA or equivalent strength and reliability anchor) shall be installed to a minimum depth of 2.13 m (7') on a 25 mm (1") anchor rod. An equivalent strength anchoring device may be used in place of the PISA, but only after engineering calculations have been submitted to Owner and approved. Depending on soil conditions, greater anchoring support may be required. During installation of their anchors, the Licensee shall not weaken the soil around the Owner's anchor.**
- **No push braces shall be used in urban areas and major arterial roads.**
- **For all dead-end or major load changes to the line, pole equipment shall use a minimum of a 3" square washer to prevent pole damage.**

### **STRAND AND CABLE**

- **Unless indicated otherwise by the Owner, the strand shall be installed on the same side of the pole as other communications strands. Where no other communications strands exist, the Licensee shall install the strand on the same side as the electrical neutral conductor. Cables and strands shall not box in the pole to allow pole maintenance.**
- **The number of parallel, vertical (no offset brackets) strands contacting the pole on the same side will be limited to three. For all poles that have a Power Space, the uppermost position within the Communications Space shall be reserved for the Owner to place its own communications attachments. Therefore, over lashing to other communication parties' strands may be necessary. Parallel strands shall not cross over one another between poles.**
- **The installation height of the Licensee's strand shall conform to the Owner's pole framing standard.**
- **A minimum strand breaking strength of 36.5 kN (8200 lbs) for Support Strands shall be used on all major city arterial & collector roads, and crossings of railways, transitways, provincial highways and navigable waterways to provide a minimum capacity for multiparty over lashing.**
- **No self-supporting or figure '8' cable shall be used except for Service Drops. Along major city arterial & collector roads, Service Drop shall be supported by a steel Support Strand for distances greater than two pole spans.**
- **All cables shall be double lashed when crossing major arterial roads, railways, transitways, provincial highways and navigable waterways.**
- **Slack storage of the cable and splice cans shall be installed along the strand and not coiled at the pole. Slack storage and splice cans shall not be located over railways, transitways, roadways, or navigable waterways. Fibre cable and its related equipment (ex. slack storage, splice cans, ...) are not to be located in aesthetic sensitive areas. A maximum of one splice can per strand at a minimum spacing of two pole spans.**

### **IDENTIFICATION**

- **Markers shall be placed on strands and cables in a manner acceptable to the Owner to assist in field identification of attachment ownership by other authorized users of the pole. As a minimum, these markers shall be placed on the cable and strand at all cable risers/dips, at every second pole, each splice can, and antenna in a manner acceptable to the Owner.**

## **EQUIPMENT ON POLES (except antennas)**

- No new amplifiers, power supplies, splitters, permanent work platforms, or splice enclosures shall be installed on the Owner's poles. When requested by the Owner, all such existing equipment shall be removed, on a case-by-base, by the Licensee in accordance with a plan submitted to, and approved by, the Owner.
- All electrical bonding of aerial equipment to the neutral/ground system on a pole shall be done by the Owner or an approved contractor of the Owner at the Licensee's cost based on unit prices or cost estimates to be reviewed and agreed in advance with the Licensee.
- The Licensee shall consolidate multiple Riser/Dip cables on a pole under a protective U guard/pipe that has a maximum diameter of 76 mm (3").
- The Licensee shall not install Riser/Dip cables on poles that have more than 33% of the circumference [120 degrees] taken up with existing Riser/Dip cables and cable protection (guards, duct laterals and concrete curbs). Re-use of existing cable guards is mandatory.
- When required for at grade protection, concrete curbs shall be formed with a SONA tube or equivalent, and then striped for a clean concrete finish.

## **ANTENNAS & NON-ELECTRICAL SUPPLY BOXES ON POLES**

- Only one antenna shall be permitted on an Owner's pole.
- Antennas shall not be installed on poles with traffic signals, poles less than 7.5 metres in height above grade, or decorative poles.
- The 15 metre sight line triangle at all public road intersections, turning islands, and road way medians shall be kept clear of any antennas.
- Antenna mounting height on the pole shall be between 3.5 metres and 5 metres above grade and limited to one side of the pole.
- An antenna on the Owner's pole shall not be closer to other antennas than 100 metres mounted on any other Owner's poles.
- Antennas shall not be installed within  $\pm 60$  degrees from perpendicular to commercial building signs.
- Antennas shall not be installed within one pole span of critical crossings (such as railways, waterways, highways, transitways, cliffs).
- The antenna shall not weight more than 10 kg and not exceed 1m in height.
- The Licensee's equipment boxes associated with the antenna shall not be mounted on the Owner's poles.

## **INSTALLATIONS**

- During all work on the Attachments, the Licensee's contractor(s) shall display a large sign indicating that they are working for the Licensee. The Licensee's contractor shall keep a copy of the approved Attachment Permit on site during installation and it shall make available upon request.
- The Licensee and its contractor(s) shall maintain safe work practices as per Article 6. Failure to meet these standards, rules, and regulations shall result in suspension (and possible Agreement termination) of all new plant installation by the Licensee on the Owner's poles until appropriate safety practices and work conditions have been mutually agreed to by the Parties and implemented as required.
- At least two (2) working days notification will be given to the Owner's Lines Area Supervisor before the Licensee's installation commences.
- Unless otherwise directed by the road authorities, separation of at least 1 m from below ground facilities shall be maintained between centre lines of overhead and underground/on-grade facilities.
- Other than the Licensee and its contractor(s), no third party shall be allowed to work on the Licensee's plant on the Owner's pole without written permission from the Owner
- New pole spacing requirements are as per OLS0001 and OLS0003 specifications

## SCHEDULE 'E': CERTIFICATE OF APPROVAL

One of the following two versions must be utilized, as appropriate, to indicate compliance with the requirements of O.Reg. 22/04.

1. Work Instruction method in conjunction with Standard Design specifications.

<b>This Project Drawing has been assembled utilizing only certified and approved standard design specifications and equipment and meet with the safety requirements contained within Section 4 of Ontario Regulation 22/04.</b>	
_____ <b>Name</b>	_____ <b>Date</b>
_____ <b>Signature of Qualified Person</b>	
*** No additional Certificate of Approval is required ***	

2. Plan method requiring a Professional Engineer

<b>Certificate of Approval</b>	
<b>The installation work covered by this document meets the safety requirements of Section 4 of Regulation 22/04</b>	
_____ <b>Name</b>	_____ <b>Date</b>
_____ <b>Signature of Professional Engineer</b>	

**SCHEDULE 'F': RECORD OF INSPECTION & CVP CERTIFICATE**

**Third Party  
Record of Inspection & Construction Verification Program Certificate**

<p><b>As-Constructed</b></p> <p><input type="checkbox"/> Aerial Installation (New or Addition)</p> <p><input type="checkbox"/> Underground Installation (New or Addition)</p> <p>Like-For-Like: <input type="checkbox"/> Repairs  <input type="checkbox"/> Replacement  <input type="checkbox"/> Removal</p> <p>Note: All changes made during construction are shown on attached as-built construction drawing.</p>	<p>Inspection Date: _____</p> <hr/> <p>Permit #: _____</p> <p><b>Work Site Location</b></p> <p>Street Name : _____</p> <p><i>Between</i> : _____</p> <p>And : _____</p>
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**Third Party - Construction Verification Certificate**

This is to certify that the construction as recorded in this drawing is consistent with the approved plan, standard designs or work instruction and meets with the safety requirements of Ontario Regulation 22/04. This site has been left in a condition that presents no undue hazards.

**Attachment Licensee (Attacher):**  
*(company name)*

**Name of Licensee Inspector:**

**Position of Licensee Inspector:**

**Signature of Licensee Inspector:**

## SCHEDULE 'G': NOTICES

Notices for the purposes of Article 19.1 shall be given as follows:

	<b>Owner</b>	<b>Licensee</b>
<b>For Corporate &amp; Agreement:</b>	<u>Director, Distribution Asset Management</u>  Attn:  Address:  Tel.:  Fax:  Email:	  Attn:  Address:  Tel.:  Fax:  Email:
<b>For Permits, Field Audits, Field Coordination, &amp; Standards:</b>	<u>Supervisor, Standards</u>  Attn:  Address:  Tel.:  Fax:  Email:	  Attn:  Address:  Tel.:  Fax:  Email:
<b>For Invoicing &amp; 3<sup>rd</sup> party insurance claims:</b>	<u>Supervisor, Billing Projects Finance</u>  Attn:  Address:  Tel.:  Fax:  Email:	  Attn:  Address:  Tel.:  Fax:  Email: