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March 11, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pole Attachment Agreement between PECO Energy Company
and Downingtown Borough, Chester County, Pennsylvania**

Dear Ms. Chiavetta:

Enclosed for filing and approval pursuant to §507 of the Public Utility Code is a Pole Attachment Agreement between PECO Energy Company and Downingtown Borough, Chester County, Pennsylvania. Please forward the Pole Attachment Agreement to the Bureau of Technical Utility Services Department for approval.

The purpose of this Agreement is for Downingtown Borough to attach its network facilities to PECO's poles.

Thank you for your consideration. If you have any questions or comments, please feel free to contact me.

Very truly yours,

/s/ Maryellen T. White

Maryellen T. White
Paralegal

/mtw
Enclosure

POLE ATTACHMENT AGREEMENT (NON-FCC)

DISTRIBUTION INFRASTRUCTURE

Between

PECO Energy Company

And

Downingtown Borough

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POLE ATTACHMENT AGREEMENT (NON-FCC)

March THIS POLE ATTACHMENT AGREEMENT (this "Agreement") is made as of this 11th day of February, 2020, by and between PECO Energy Company, a Pennsylvania corporation ("UTILITY") and Downingtown Borough ("Licensee").

In consideration of the mutual covenants, terms and conditions contained, and intending to be legally bound, the parties agree as follows:

1.0 PURPOSE AND CONSTRUCTION OF AGREEMENT.

1.1 Licensee desires to locate certain of its network facilities on electrical distribution poles that are owned or jointly owned by UTILITY.

1.2 UTILITY owns or jointly owns valuable pole plant that is acquired, constructed and maintained at considerable cost and expense.

1.3 This Agreement is not intended, and shall not be construed, to authorize any action by Licensee that would adversely affect the quality or reliability of the services provided by UTILITY. Nor shall it be construed so as to preclude UTILITY from taking any action that it considers reasonably necessary or appropriate to maintain the reliability or quality of such service or to ensure the safety of its employees, its customers, or the public.

1.4 As specified in this Agreement, UTILITY will consider granting Licensee a Permit or license to use particular UTILITY Poles for the attachment of Licensee's Equipment. No leasehold or easement rights and no interest in real estate or other interest in property is granted or intended to be granted by this Agreement. No use, however extended, of UTILITY Poles under this Agreement shall create or vest in Licensee any ownership or property rights in UTILITY Poles.

1.5 Licensee acknowledges that this Agreement was negotiated between UTILITY and Licensee that Licensee has had an adequate opportunity to review this Agreement, that it has made an independent assessment of the business risks and benefits of entering into this Agreement, and that based on this evaluation, Licensee desires to enter into this Agreement.

2.0 DEFINITIONS

2.1 "Application" means the "Application for Joint Use of UTILITY Poles" in UTILITY'S current form, which Licensee must submit as specified by UTILITY, including through UTILITY's designated online

information and application system, if any, to obtain permission from UTILITY for the placement or Modification of Licensee's Equipment on UTILITY Poles or on strand attached to those Poles.

2.2 "Attachment" or "Attachments" means each affixation of one or more items of Licensee's Equipment to UTILITY Poles or to strands attached to UTILITY Poles.

2.3 "Conditional License" means the document issued by UTILITY when an application is granted, providing permission to Licensee for the placement, Modification or removal of Licensee's Attachments after the completion of Make Ready.

2.4 "Cost" or "Costs" means UTILITY'S fully-allocated costs, including without limitation all direct and indirect costs for labor, time, overhead, services, material, contractors and related engineering and administrative expense, as determined by UTILITY.

2.5 "Distribution Pole" means a support structure bearing electric or communication distribution lines that is classified by UTILITY as a distribution pole in the Federal Energy Regulatory Commission ("FERC") accounting system.

2.6 "Effective Date" means the date of this Agreement.

2.7 "Environmental Laws" means all federal, state and local statutes, and all regulations or ordinances of any federal, state, county or local regulatory agency, relating to the protection of health, safety or the environment including, without limitation, the Clean Air Act, the Water Pollution Control Act, the Resource Conservation and Liability Act, the Toxic Substance Control Act, all statutes, rules and regulations applicable to wetlands and all similar state and local laws now or hereinafter enacted or amended.

2.8 "Equipment" means Licensee's antennae, support mounts and structures, fiber optic cable, cable equipment, strand, wires, and other wireline and wireless equipment, including all associated equipment, which are used to provide communications services.

2.9 "Hazardous Materials" means any waste, pollutant, toxic substance or hazardous substance, contaminant or material regulated by any Environmental Laws including, without limitation, petroleum or petroleum-based substances or wastes, asbestos and polychlorinated biphenyls.

2.10 "Licensee Services" means the communications services provided by Licensee to its customers using its Attachments.

2.11 "Make Ready" is all work required to be performed by UTILITY and other users of the UTILITY Pole to accommodate the proposed attachment of Licensee's Equipment, or its proposed Modifications, including all administrative, survey, engineering and construction work.

2.12 “Modification”, “Modifications” or “Modify” means any change or alteration affecting the Attachment, including without limitation any change in the number, type, location, ownership or use of the Attachment, which causes the information provided by Licensee or in the prior Application(s) to be incorrect or incomplete in any respect.

2.13 “Neutral Space” is the communications worker safety zone between the facilities located in the supply space and facilities located in the communications space, as specified by UTILITY’s standards or the NESC if not specified in UTILITY’s standards.

2.14 “Noncompliant Attachment” is an Attachment that does not comply with the requirements and specifications identified in Section 7.1.

2.15 “Notice of Removal” is the document describing the location, number and type of Attachments to be removed, as required by Section 12.1.

2.16 “Permit” means the document issued by UTILITY when an application is granted after the completion of Make Ready, providing permission to Licensee for the placement, Modification or removal of Licensee’s Attachments.

2.17 “Required Authorizations” are all legally required authorizations that Licensee must obtain from federal, state, county or municipal authorities, public or private landowners, or other third parties, to erect, operate and maintain its Attachments, and to provide the Licensee Services, including all required franchises, consents, easements, and certificates of convenience and necessity.

2.18 “Response to Application” means UTILITY’s response to the Application (i) to reject the Application, or (ii) to identify any Make Ready or installation work, the estimated Cost thereof, and any special conditions governing the placement, Modification or removal of any Attachments.

2.19 “Standards and Specifications” means all standards, practices, procedures, rules, regulations and other requirements adopted by UTILITY and applicable to the construction, installation, modification, repair, maintenance, use, operation, relocation or removal of any Attachments, as such requirements may be revised, modified, restated, supplemented or updated by UTILITY from time to time.

2.20 “Transmission Pole” means a pole, tower or other support structure that carries transmission lines, and which is classified by UTILITY as a transmission pole in the FERC accounting system.

2.21 “Unauthorized Attachment” is any Attachment or Modification made without the approval of UTILITY pursuant to the terms of this Agreement.

2.22 “UTILITY” is defined in the first paragraph of this Agreement.

2.23 "UTILITY Pole" means a Distribution Pole owned or partially owned by UTILITY.

2.24 "Wire Attachment" is an Attachment that is a single aerial cable, strand or wire, plus any associated hardware or equipment mounted thereon, including without limitation cable amplifiers and splice boxes, but not including Wireless Attachments. Wire is "placed on," "attached to," or "affixed to" a UTILITY Pole if any portion of it is physically located on the UTILITY Pole.

2.25 "Wireless Attachment" means each Attachment that is an antenna, transmitter, receiver or associated equipment that is used for the transmission or reception of radiofrequency ("RF") signals.

3.0 TERM OF AGREEMENT

3.1 This Agreement shall commence on its Effective Date and shall remain in effect for an initial period of one (1) year following the Effective Date (the "Initial Term"), unless terminated sooner in accordance with this Agreement. The Agreement will automatically renew on the same terms and conditions set forth herein for successive one (1) year renewal periods (each such one-year period referred to as a "Renewal Term"), except that the Annual Fees for each Attachment may be adjusted annually in accordance with Section 14.3 below (Annual Fees"). The Agreement will be subject to termination by either party upon written notice to the other party sixty (60) days prior to the expiration of the then current Renewal Term, unless the Agreement is otherwise terminated in accordance with this Agreement.

4.0 GENERAL PROVISIONS

4.1 Licensee personnel are not permitted to access any Pole above the communication space. Only UTILITY personnel or approved contractors are permitted to access the Pole above the communication space, and any installation, re-installation, maintenance, transfer or removal work that Licensee wishes to perform must be performed by UTILITY personnel or approved contractors at Licensee's expense, following the UTILITY-Approved Contractor and UTILITY Contractor Requirements specified in Exhibit A.

4.2 Licensee shall exercise reasonable care to avoid damaging UTILITY Infrastructure and the facilities of any other licensee attached to UTILITY Infrastructure, and shall report any damage immediately to UTILITY and the owner of the facilities so damaged. Licensee assumes all responsibility for any and all direct loss or damage caused by Licensee's Representatives.

4.3 Nothing contained in this Agreement shall be construed as a limitation, restriction or prohibition on UTILITY with respect to any agreement or arrangement UTILITY has heretofore entered into or may enter into in the future with respect to any UTILITY Poles. In no event will UTILITY be liable

for any noise, inducted voltages, currents or other interference affecting any of Licensee's Attachments. Except for the Make-Ready work expressly described in the Response to Application, Licensee hereby acknowledges and agrees that UTILITY has not agreed to undertake any alterations or improvements to make the UTILITY Poles suitable for Licensee's intended use and that Licensee hereby accepts use of the UTILITY Poles in their AS-IS WHERE-IS CONDITION, WITH ALL FAULTS.

5.0 AUTHORITY FOR ATTACHMENTS AND MODIFICATION

5.1 No Equipment shall be attached to any UTILITY Poles or to strand attached to those Poles, and no existing Attachments may be Modified, until (a) an Application has been submitted by Licensee and a Permit or Conditional License has been issued by UTILITY, all in accordance with this Agreement, and (b) Licensee has obtained all Required Authorizations.

5.2 UTILITY shall provide, at the time of execution of this Agreement, a copy of its Application form that may be revised, modified, restated, supplemented or updated by UTILITY from time to time. UTILITY may reject an Application for a specific Pole or Poles in its reasonable discretion and may condition any approval upon a specific size, location and manner of installation, if UTILITY determines that:

- (i) Licensee's use of a proposed UTILITY Pole is unsuitable or incompatible with UTILITY's use or proposed use of the UTILITY Pole or other property of UTILITY;
- (ii) a site or UTILITY Pole is of insufficient capacity, or applicable industry, operational, safety, reliability or engineering standards support such a decision;
- (iii) the Equipment jeopardizes the structural integrity or climbability of the UTILITY Pole; or
- (iv) the Permit or Conditional License would violate any covenants and restrictions applicable to the UTILITY Pole, other UTILITY facilities, or the property on which it is located.

5.3 Licensee agrees to comply with any and all applicable laws, statutes, ordinances, rules and regulations related to the installation, use and operation of its Attachments. Additionally, Licensee shall be responsible for obtaining, at its sole cost and expense, all Required Authorizations. UTILITY has no obligation to confirm or verify that Licensee has obtained any Required Authorization, but Licensee shall provide UTILITY with a copy of any Required Authorization upon request.

5.4 This Agreement does not license to Licensee or assign to Licensee the use of any UTILITY rights-of-way, easements, encroachments, other property rights, permissive use rights or access rights. UTILITY does not represent or warrant that any of its rights-of-way, easements, encroachments, other property rights, permissive use rights or access rights entitles Licensee to: (i) access the property underlying UTILITY'S Poles; (ii) install, operate or maintain Licensee's facilities or Attachments; or (iii) provide the Licensee Services.

5.5 No Permit granted under this Agreement shall extend to any of UTILITY's Poles or to strand attached to those Poles if the installation or placement of Licensee's Attachments thereon would result in a forfeiture of any rights held by UTILITY or a Joint User to occupy the property on which UTILITY's Poles are located. If UTILITY notifies Licensee that the existence of Licensee's Attachments would cause such forfeiture, Licensee shall remove such Attachments within sixty (60) days of notification by UTILITY.

5.6 Licensee shall not place any Equipment on UTILITY Poles or strands attached to UTILITY Poles until all necessary Make Ready work has been performed in accordance with Section 6 hereof.

5.7 The permission given by UTILITY to Licensee to install and maintain its Attachments shall in no way limit UTILITY's use of UTILITY Poles for its own business operations, or the rights or privileges previously given by UTILITY to any third parties not party to this Agreement, to use any UTILITY Poles, whether or not such UTILITY Poles are at any time occupied by Licensee's Attachments.

6.0 APPLICATION PROCESS FOR ATTACHMENTS AND MODIFICATIONS

6.1 Licensee shall submit an Application to UTILITY for any and all proposed Attachments, Modification of any existing Attachments or overloading. Licensee's Application shall specify the date proposed for such Attachment, a detailed description of the Equipment to be installed, the number of Attachments, a pole list sheet and location map, and any proposed Modification to existing Attachments. Each Application for a Wireline and Wireless Attachment shall contain whatever survey, pole loading or other information is required in the Application, and shall indicate the Global Positioning Satellite coordinates for the pole(s) to which Licensee wishes to attach unless waived by the UTILITY.

6.2 Unless otherwise agreed by UTILITY and Licensee, each Application submitted by Licensee to UTILITY for the installation attachment of proposed attachments to UTILITY or jointly owned Poles or Modification of existing Attachments shall not exceed, in total, attachments to the number of Utility Poles permitted in the Application form.

6.3 For jointly owned poles, if applicable, Licensee must file a separate Application with the other owner of the jointly owned poles.

6.4 Upon receipt of Licensee's completed Application, and consistent with the payment provisions specified in the Application, UTILITY shall perform whatever survey, pole loading analysis and engineering and administrative activities are necessary in addition to the information provided in the Application to determine whether the requested attachments can be made or grounds exist for denying an application ("Technical Review"). UTILITY shall schedule a joint ride-out of the affected UTILITY Poles and provide at least three business days' notice of the time and location of the joint ride-out to Licensee and all the existing attachers on the UTILITY Poles that will be subject to the survey. If Licensee is

allowed by UTILITY or any applicable Federal Communications Commission ("FCC") rules to use a non-UTILITY contractor, Licensee shall be responsible for scheduling the joint ride-out.

6.5 Unless the Application is denied, then following the Technical Review UTILITY will indicate on the Response to Application the Make Ready work that UTILITY and all the other attachers must perform to accommodate the proposed installation or Modification of Licensee's Attachments and the estimated Cost of UTILITY'S Make Ready work and estimates of existing attachers' Make Ready. Existing attachers are responsible for billing Licensee for the final cost of any Make Ready work. UTILITY will also specify on the Response to Application any special conditions that will govern the proposed Modifications or installation of Licensee's Attachments on UTILITY Poles. Should Licensee seek a pole-by-pole breakdown of Make Ready work, UTILITY may take whatever additional time is necessary to prepare such an estimate and Licensee shall reimburse UTILITY for the additional costs associated with preparing such a detailed estimate.

6.6 If, after receiving the Response to Application, Licensee still desires to install its proposed Attachments or to implement the proposed Modifications under the terms and conditions indicated on the Response to Application, Licensee shall accept such terms and conditions by signing the Response to Application and returning the same to UTILITY within fourteen (14) business days after delivery by UTILITY, together with payment in full of the UTILITY estimated Make Ready Cost shown on the Response to Application. If Licensor does not respond within fourteen (14) days, UTILITY reserves the right to deny the Application.

6.7 The following process applies with respect to Poles located in States where pole attachments are regulated by the FCC or where the State follows FCC pole attachment regulations. Upon payment of UTILITY's Make Ready estimate by Licensee, UTILITY shall notify all existing attachers that must perform Make Ready of the following, together with the estimate of the respective attacher's Make Ready work ("Make Ready Notice"):

For attachments in the communications space, UTILITY's Make Ready Notice shall:

- (i) Specify where and what Make Ready will be performed.
- (ii) Set a date for completion of Make Ready in the communications space.
- (iii) State that any entity with an existing attachment may modify the attachment consistent with the specified Make Ready before the date set for completion.
- (iv) State that if Make Ready is not completed by the completion date identified in paragraph (ii), then Licensee may complete the make-ready specified in paragraph (i).
- (v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.
- (vi) The existing attacher is responsible for billing the new attacher for the final cost of Make Ready work.

For attachments above the communications space, UTILITY's Make Ready Notice shall:

- (i) Specify where and what Make Ready will be performed.
- (ii) Set a date for completion of Make Ready.
- (iii) State that any entity with an existing attachment may modify the attachment consistent with the specified Make Ready before the date set for completion.
- (iv) State that UTILITY may assert its right to 15 additional days to complete Make Ready.
- (v) State that if Make Ready is not completed by the completion date set by paragraph (ii) (or, if UTILITY has asserted its 15-day right of control, 15 days later), the new attacher may complete the Make Ready specified pursuant to paragraph (i).
- (vi) State the name, telephone number, and e-mail address of a person to contact for more information about the Make Ready procedure.
- (vii) The existing attacher is responsible for billing the new attacher for the final cost of Make Ready work.

Once UTILITY provides the Make Ready Notices, UTILITY shall provide Licensee with a copy of the notices and the existing attachers' contact information and addresses where UTILITY sent the notices.

Following Licensee's receipt of a copy of the Make Ready Notices and the existing attachers' contact information and addresses, Licensee shall thereafter be responsible for coordinating with existing attachers to encourage their completion of Make Ready by the completion dates specified.

6.8 The following process applies if a Pole needs to be replaced to accommodate Licensee's proposed attachment and UTILITY agrees to replace the Pole, and the Pole is located in a State where attachments are regulated by the FCC or where the State follows FCC pole attachment regulations. Licensee shall be responsible for coordinating with existing attachers to encourage their completion of make-ready transfer work by the completion dates specified. If existing attachers do not complete their make-ready transfer work by such completion date, then Licensee shall hire a UTILITY-approved contractor to perform the transfer work within 15 days following such specified completion date and shall also remove the old pole and complete restoration work, including concrete restoration where applicable ("Restoration Work").

UTILITY shall issue Licensee a Permit to attach following receipt of the Make-Ready Certification defined below, which includes without limitation a certification that all make-ready work has been completed and, where the make-ready work includes pole replacements, the attachments have been transferred to the new pole, the old pole has been removed, and the Restoration Work has been completed.

6.9 The following process applies with respect to Poles located in States where pole attachments are regulated by the FCC or where the State follows FCC pole attachment regulations. Licensee shall perform any Make Ready or installation construction work that is not performed by existing attachers in a timely manner under the following conditions:

- (i) Licensee uses an approved UTILITY contractor or (if Licensee is a cable television system or a telecommunications carrier, as those terms are used in the federal Pole Attachment Act) another contractor if consistent with the UTILITY Contractor Requirements specified at Exhibit A;
- (ii) such Make Ready construction work is in or below the communications space;
- (iii) all Make Ready construction work above the communications space is performed by UTILITY or under UTILITY's supervision;
- (iv) following Make Ready construction, Licensee provides certification to UTILITY ("Make-Ready Certification") that: (i) the Make Ready construction work and Restoration Work has been completed; (ii) all attachments on the affected poles comply with the National Electrical Safety Code and UTILITY's construction standards; and (iii) if a pole was replaced, then all attachments on the replaced pole have been transferred to the new pole and the replaced pole has been removed;
- (v) following installation of Licensee's attachments, Licensee provides certification to UTILITY ("Post-Installation Certification") that (i) the new attachment installation has been completed; and (ii) all attachments on the affected poles comply with the National Electrical Safety Code and UTILITY's construction standards; and
- (vi) such Make-Ready Certification and Post-Installation Certification are both signed by either: (i) the UTILITY approved contractor hired by Licensee to perform such work consistent with Exhibit A; or (ii) a Professional Engineer licensed in state where the Attachments are located.

Licensee must provide whatever notifications to existing attachers that FCC rules require Licensee to provide.

6.10 Upon the completion of all Make-Ready construction work, UTILITY will issue a Permit or Conditional License authorizing Licensee to install its Attachments. Licensee shall have 90 days from the date of issuance to install its Attachments.

6.11 All charges for work performed by UTILITY pursuant to this Section 6 shall be assessed and collected by UTILITY as specified in the Application.

7.0 ATTACHMENT OF EQUIPMENT TO UTILITY POLES.

7.1 Licensee's Attachments and Modifications must be installed and maintained good and safe condition and repair and in accordance with (a) the applicable Permit or Conditional License; (b) UTILITY's then current Standards and Specifications, (c) the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC"), and the Occupational Safety and Health Act ("OSHA"), (d) all applicable laws, statutes, ordinances, rules and regulations imposed by any governmental entity with jurisdiction over the construction, operation, use, maintenance, repair, replacement or removal of the Attachments, UTILITY Poles or other facilities thereon, as amended from time to time, and (e) all applicable easements or licenses. To the extent these requirements or specifications may conflict, then the most stringent of them shall apply. Licensee will follow the procedures for a new UTILITY delivery customer.

7.2 Licensee shall have the right to accompany UTILITY on any post-construction inspections scheduled by UTILITY to determine Licensee's compliance with the terms and conditions of this Agreement. UTILITY shall provide Licensee with sufficient notice prior to any such post-construction inspection. Licensee shall pay when billed all reasonable Costs incurred by UTILITY in conducting any post-construction inspections. If the Attachments are in or above the Neutral Space, Licensee shall cause a qualified electrical contractor approved by UTILITY consistent with Exhibit A to perform the installation of any and all Attachments, at Licensee's sole cost and expense.

7.3 All Attachments shall be clearly labeled at each pole location with Licensee's name and a telephone number where a representative of Licensee can be reached, twenty-four (24) hours a day, seven (7) days a week, to receive reports of problems with the Attachments. Licensee shall investigate all such reports in a timely manner and perform all necessary repair and maintenance to remedy such problems. UTILITY may further specify the type of placard, any required information and penalty for not attaching placard specific to wireline and wireless attachments. Licensee agrees to pay incremental cost associated with identifying and verifying unlabeled or mislabeled equipment.

7.4 UTILITY shall cause bonding of Licensee's Attachments to be made to UTILITY'S multi-grounded neutral system in accordance with, as applicable, UTILITY's specifications, DAS Guidelines 1722 Revision F, NESC requirements and UTILITY's construction standards. UTILITY will schedule such work in a manner that permits the work to be completed without conflict or interference with UTILITY's prior work commitments and regular business operations. Licensee shall pay UTILITY in advance for the Cost of the required bonding as determined and performed by UTILITY.

7.5 In the event of any emergency or condition during installation that threatens persons or property, UTILITY may, in its sole-discretion, order Licensee to stop work as appropriate. UTILITY will give such order and notice in such manner as is practicable under the circumstances.

8.0 WIRELESS ATTACHMENTS

In addition to all other provisions in this Agreement, Licensee's Wireless Attachments are subject to the following conditions:

8.1 An Application is required for any installation or Modification of any Licensee Attachment on a Utility Pole including any Modification that may change the operational characteristics of the Wireless Attachment (e.g., elevation, effective radiated power ("ERP")). An Application for installation of Wireless Attachments shall not exceed one attachment per Application. Notwithstanding anything herein to the contrary and provided that Licensee is not physically touching the antenna or that the antenna is not physically changing orientation via electrical down tilt or otherwise, then without submitting an Application, Licensee may: (i) add or modify frequencies, (ii) decrease the ERP of the Wireless Attachment, and/or (iii) change the orientation of the RF transmission of antenna. Licensee shall submit, as requested, a revised Application to UTILITY and approval of the change by UTILITY.

8.2 If the proposed installation of Licensee's Wireless Attachments requires the preparation of an Environmental Assessment pursuant to 47 C.F.R. §1.1307 (or successor provision), Licensee shall prepare such Environmental Assessment, and upon request, provide proof that the FCC has determined the proposed installation will not have a significant environmental effect. If the proposed installation of Licensee's Wireless Attachments requires notification to and/or approval from a State Historic Preservation Officer or Tribal Historic Preservation Officer, Licensee shall provide such notification and/or obtain such approval, and provide proof of such notification and/or approval upon request. If Licensee fails to provide any documentation or proof required by this Section, then in addition to all other remedies available under this Agreement, UTILITY may at any time remove the applicable Wireless Attachments at Licensee's expense and without incurring any liability to Licensee.

8.3 Each Application for a Wireless Attachment shall detail the technical manufacturer specifics of Licensee's proposed Attachments, including but not limited to Licensee's engineering plans stamped by a professional engineer as required, an analysis of the structural integrity of the UTILITY Pole in light of the Licensee's proposed attachments thereon, and Licensee's proposed frequency. Each Application shall also include a certification by a Professional Engineer licensed in the state where the UTILITY Pole are located, who is certified by the International Association for Radio, Telecommunications and Electromagnetics (INARTE) or similar certifying body, that Licensee's Wireless Attachments, as installed, will comply with all state and federal MPE limits applicable to wireless emissions as part of the Application. Upon receiving Equipment approval by UTILITY, Licensee must: (i) utilize only the Equipment that has been specified in the Response to Application and approved by UTILITY; (ii) operate the Equipment identified in the Response to Application only in accordance with the specifications listed therein; and (iii) affix that Equipment only in accordance with the drawing attached to Licensee's Application.

8.4 As part of its Application, Licensee shall, at Licensee's sole cost and expense, perform an intermodulation analysis, including all frequencies at the Pole, and submit a copy to UTILITY as evidence of non-interference with existing uses. Licensee may, from time to time, re-utilize previously prepared intermodulation studies, not more than two years old, if such re-utilization is reasonable under

the circumstances and such studies analyze the same frequencies as those involved at the subject Pole. Licensee's acceptance of a Permit shall signify its determination that the existing uses will not cause interference to Licensee's own Wireless Attachments. If Licensee's Attachment causes measurable interference, as defined by the FCC, to other lawful users of UTILITY's property or distribution system with respect to those uses existing prior the execution of the Permit, Licensee agrees to take all steps necessary to immediately correct and eliminate the interference. Notwithstanding any other provisions in this Agreement, if Licensee fails to correct and eliminate such interference within twenty-four (24) hours of notice thereof, UTILITY shall have the option (but not the obligation) to require Licensee to cease all operations until such interference is corrected or eliminated and shall have the right (but not the obligation) to engage outside consultants, at Licensee's expense, to resolve interference issues.

8.5 With respect to all Licensee Wireless Attachments installed on UTILITY facilities, Licensee shall: (1) comply on an on-going basis with all applicable federal, state and local rules and regulations, including, without limitation, the rules and regulations of the FCC, governing the maximum permitted levels of radio frequency energy exposure ("maximum permissible exposure," or "MPE") (calculated on an aggregate basis with any other radio frequency energy emitters that may be present); (2) comply with all applicable federal, state and local rules and regulations, including the rules and regulations of the FCC, governing protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of Licensee's Wireless Attachments (taking into account the actual conditions of human proximity to Wireless Attachments on UTILITY Poles); and (3) pay the costs of testing Licensee's Wireless Attachments for compliance with the preceding clauses (1) and (2) as UTILITY may, in its sole discretion direct from time to time, which testing shall be conducted by independent experts selected by UTILITY following consultation with the Licensee and which testing shall be conducted in accordance with the FCC's Office of Engineering and Technology ("OET") Bulletin 65 (or a successor thereto) and may include the requirements of any other administrative authority having jurisdiction over Licensee's Wireless Attachments.

8.6 Licensee shall provide UTILITY with the capability to disconnect the Wireless Attachment or associated equipment so that the output of RF emissions can be eliminated while performing installation, repair, maintenance, transfer, removal or other work on a Wireless Attachment Pole. Such disconnect capability must be readily accessible and identifiable, and be suitable for lock out, tag out safety procedures. Except in the event of an emergency, UTILITY shall make reasonable efforts to notify Licensee before disconnecting such equipment.

8.7 Licensee shall post appropriate RF warning signs at each Wireless Attachment location in accordance with Occupational Safety and Health Administration regulations, IEEE Standards and other applicable regulations.

8.8 Licensee must comply with the UTILITY wireless construction standards, as those guidelines may be amended by UTILITY from time to time.

8.9 If Licensee's Wireless Attachments are installed on a UTILITY pole that must be replaced with another UTILITY pole that is of a type that is not suitable for Wireless Attachments, then the License for Wireless Attachments at that pole location shall be terminated. Should Licensee desire to relocate those Wireless Attachments to another suitable pole, the parties shall work together to find another such pole. Licensee agrees to pay all cost associated with transfer. [Discuss]

8.10 If a UTILITY Pole to which Licensee's Wireless Attachments are affixed is located on private property or a public right-of-way and the landowner or public entity on whose property or right-of-way the Pole is located evidences that it has not authorized such Wireless Attachments, then the Wireless Attachments shall immediately be removed at Licensee's expense unless Licensee provides evidence which in UTILITY's judgment is sufficient to make a good faith challenge to such evidence. Licensee shall be solely responsible for any and all fines, penalties, and/or liabilities of whatever kind arising out of Licensee's unauthorized Wireless Attachment.

8.11 Should there be significant citizen opposition to any Licensee Wireless Attachments on UTILITY Poles, UTILITY may require Licensee to attempt to mitigate such opposition.

9.0 FUTURE MAKE READY

9.1 If UTILITY is required to modify its Poles for its own operating purposes, except in the case of an emergency, UTILITY shall notify Licensee at least sixty (60) days prior to making the modifications requiring the rearrangement or transfer of Licensee's Attachments. Licensee shall make such rearrangements or transfers at its expense within the time specified by UTILITY.

9.2 Licensee upon request shall modify, rearrange, transfer or replace Licensee's Attachments to accommodate the placement of an additional attachment or modification of an existing attachment requested by a third party and approved by UTILITY. Licensee shall make such modification within the timeframe specified by UTILITY. UTILITY shall not be obligated to reimburse Licensee for costs incurred by Licensee to accommodate third party requests.

9.3 In the event Licensee fails to complete the necessary transfers required by Sections 9.1 and 9.2 within the specified time periods, the Attachment shall be considered an Unauthorized Attachment, and UTILITY (and in the case of Section 9.2, if appropriate the new attacher) shall have the right, but not the obligation, to transfer Licensee's attachment at Licensee's expense without incurring any liability to Licensee.

10.0 MAINTENANCE AND REPAIR

10.1 UTILITY will maintain, repair or replace UTILITY Poles as necessary to fulfill its own service requirements and as required by law. UTILITY is not required to maintain any UTILITY Poles for a period longer than is necessitated by its own service requirements. In the event that UTILITY determines that it will no longer maintain a UTILITY Pole upon which any Attachment is affixed, or that the use of

any UTILITY Pole is or becomes lawfully forbidden by federal, state, county or municipal authorities or by owners of private property, UTILITY shall provide sixty (60) days' notice to Licensee, or such lesser time as needed to comply with the government or property owner requirements, that the Permit covering the use of such Pole will be terminated. Within this notice period, Licensee shall at its expense either: (i) remove its Attachments; (ii) place its facilities underground if authorized to place its facilities underground; or (iii) transfer its facilities to the nearest facilities owned by UTILITY if authorized by UTILITY. If, at the expiration of the notice period, UTILITY has no attachments on such Pole but Licensee has not removed all of its Attachments, then UTILITY may in its discretion, remove or transfer Licensee's Attachments at Licensee's expense and without incurring any liability to Licensee, or sell such pole to Licensee. If UTILITY elects to sell such Pole, Licensee shall receive the Pole "as is," and shall indemnify, defend and hold harmless UTILITY from all obligation, liability, cost, claim, damage, expense or charge related thereto or raised thereafter.

10.2 Licensee shall maintain its Attachments in such a manner so as not to endanger or interfere with the use of UTILITY Poles by UTILITY or others granted a right to attach to said UTILITY Poles. Upon receipt of any notice from UTILITY or any court or governmental entity that any Attachment of Licensee is interfering with or endangering any person, equipment, property or facilities of UTILITY or any other party including the general public by exceeding MPE or otherwise. Licensee agrees that it will, at its sole cost and expense, immediately take all necessary steps to remedy such danger or interference. In the event Licensee fails to remedy such danger or interference within twenty-four (24) hours after notice thereof from UTILITY or any court or government entity, UTILITY will take all actions it deems necessary or appropriate to remedy such matter, including without limitation the removal from UTILITY Poles of any Attachments causing such danger or interference. UTILITY shall have no liability of any kind or nature whatsoever for any actions taken by UTILITY to remedy such danger or interference and, unless such liability is caused by UTILITY's sole negligence or willful misconduct, Licensee shall pay UTILITY upon demand for all Costs of such activities.

11.0 REMOVAL, REPLACEMENT OR RELOCATION

11.1 In the event Licensee wishes to remove any of its Attachments, Licensee shall submit to UTILITY a notice of removal ("Notice of Removal") describing the location, number and type of Attachments to be removed. At the time of the execution of this Agreement, UTILITY shall provide Licensee with a copy of the Notice of Removal form which may be revised, modified, restated, supplemented or updated by UTILITY from time to time. UTILITY will review the Notice of Removal and identify thereon any special conditions governing Licensee's removal of the subject Attachments. Upon Licensee's acceptance and return of the Notice of Removal, UTILITY will issue a Permit authorizing such removal. No refund of any fees or charges previously paid to UTILITY shall be made as a result of such removal. Licensee shall notify UTILITY in writing or via the online system as applicable, within ten (10) days after the completion of such removal work, and no adjustment in future fees due and payable by Licensee hereunder pursuant to Section 14 shall be made until UTILITY has received such notice of

completion from Licensee and has had an opportunity to field verify the number of UTILITY Poles from which Licensee's Attachments have been removed.

11.2 In the event that notice is provided by a governmental body that Licensee's use of any UTILITY Pole hereunder is in violation of any municipal, state or federal law, statute, ordinance, rule or regulation, over which said governmental entity has jurisdiction, or is not authorized by permit, license or other approval required from any governmental body, or in the event notice is provided by a property owner of such violation or unauthorized use, UTILITY may elect, in its sole discretion by written notice to Licensee, to revoke any Permit given under this Agreement authorizing Licensee's use of said UTILITY Pole, such revocation to be effective upon the sixtieth (60th) day following the date of such notice. In the event UTILITY elects to revoke such Permit, Licensee shall remove the subject Attachments, at Licensee's sole cost and expense, within sixty (60) days from the date of UTILITY's revocation notice. If, however, the governmental entity or property owner providing notice of such violation or unauthorized use requires removal within less than the sixty (60) day time frame, then Licensee shall perform such removal within the time frame set or required by said entity. In the event Licensee fails to perform any such removal, UTILITY may, in its sole discretion, and at the sole cost and expense of Licensee, perform such removal without incurring any liability of any kind or nature whatsoever to Licensee, its customers, affiliates, parents, owners or subsidiaries. However, upon written request from the Licensee, UTILITY may permit Licensee to continue to maintain its Attachments on such Pole or Poles until Licensee exhausts its legal remedies with respect to the governmental determination, or the claim of the property owner or joint owner of the Pole, provided the Licensee: (i) promptly and diligently prosecutes such legal remedies or defends against the actions of the governmental or private agency, or the property owner seeks such stays, injunctions and protective orders as may be warranted; (ii) provides adequate protection, in the judgment of UTILITY, to protect UTILITY, other owners and other Licensees from loss due to the determination; and (iii) promptly removes its Attachments in the event the Licensee's action or defense is dismissed, decided or compromised unfavorably to Licensee, the stay or injunction is denied, or the protection of the stay or injunction becomes inadequate.

11.3 In the event of any emergency that threatens persons or property or government order, UTILITY may, in its sole discretion, without prior notice, remove or relocate any of Licensee's Attachments. Such removal or relocation shall be at Licensee's sole cost and expense. UTILITY will give notice subsequent to UTILITY's removal or relocation of Licensee's Attachments as soon as practicable under the circumstances.

11.4 In non-emergency situations, if UTILITY determines that its electric service or operating requirements or considerations of safety, reliability, and engineering, require the removal, relocation, transfer or replacement of any of Licensee's Attachments, Licensee shall, at its sole cost and expense, effect such removal, relocation, transfer or replacement within sixty (60) days after receipt of such written notice from UTILITY. If Licensee fails to perform such removal, relocation, transfer or replacement within the timeframes above, Licensee shall pay for any expenses UTILITY incurs as a result of Licensee's failure to perform the required removal, relocation, transfer or replacement within the specified period. Also, if Licensee fails to perform such removal, relocation, transfer or replacement

within the specified period, UTILITY may, in its reasonable discretion, and the sole cost and expense of Licensee, perform such removal, relocation, transfer or replacement without incurring any liability of any kind or nature whatsoever to Licensee, its customers, affiliates, parents, owners or subsidiaries.

12.0 UTILITY FACILITIES

12.1 Licensee covenants and agrees (as a specific condition of this Agreement) that Licensee and Licensee's agents, contractors, employees, invitees, and customers will not, under any circumstances whatsoever, touch, handle, tamper with or contact directly or indirectly, any of UTILITY's facilities other than the UTILITY Pole, without the express written consent of UTILITY, which consent UTILITY may withhold in its sole and absolute discretion. Licensee covenants and agrees that UTILITY shall not be held responsible for, and UTILITY is hereby expressly relieved from all liability by reason of injury (including death) or damage of any nature whatsoever to Licensee, or to its agents, contractors, employees, invitees, customers and others who are on the UTILITY Poles under, through or by the authority of Licensee, or to property in, upon or about the UTILITY Poles, except if such liability results from the sole negligence or willful misconduct of UTILITY. Licensee further hereby releases and waives any right to ask for and demand damages of any nature or kind for any matter or thing, however caused. In the event of a casualty or loss which results in the damage or destruction of UTILITY's facilities to which Licensee's Equipment is attached or located, UTILITY shall have no obligation hereunder to rebuild or restore the UTILITY's facilities; provided that if the UTILITY elects not to rebuild or restore UTILITY's facilities, the Permit in question shall immediately terminate. UTILITY reserves the right to make periodic inspections of the entire plant of Licensee located on UTILITY Poles, or a portion of that plant, as often as conditions warrant. If UTILITY determines that corrections or changes need to be made in order to meet the NESC or UTILITY's service or operating requirements, including, but not limited to considerations of economy and safety, Licensee agrees that it will cause such corrections or changes to be made at its own expense, within thirty (30) days, or as mutually agreed. Licensee shall reimburse UTILITY for the cost of any damage to UTILITY Poles or UTILITY facilities caused by Licensee or its contractors within thirty (30) days of receipt of a bill therefor.

13.0 FEES, CHARGES AND RENT.

13.1 Licensee agrees to pay UTILITY all fees and charges set forth in this Section within thirty (30) days from the date of invoice from UTILITY.

13.2 Licensee is a Borough and will not be charged an attachment fee, subject to the PA Public Utility Commission approval.

13.3 Charges for Unauthorized or Noncompliant Attachments. Licensee shall pay UTILITY for each Unauthorized Attachment or Noncompliant Attachment an amount equal to the annual fee that

would have been charged for each item of such Unauthorized or Noncompliant Attachment under this Agreement for the year when the Unauthorized or Noncompliant Attachment is discovered, multiplied by five years, or if the Unauthorized or Noncompliant Attachment is discovered during a pole audit in which Licensee was invited to participate and did not, the annual fee multiplied by five years, plus \$100 per Unauthorized or Noncompliant Attachment. Such charge shall be paid by Licensee without prejudice to any of UTILITY's other rights under this Agreement, including UTILITY's right to remove such Unauthorized Attachment under the circumstances described elsewhere in this Agreement.

13.4 UTILITY reserves the right to conduct a pole audit for the purpose of verifying the number and location of all or portion of Licensee's Attachments, as often as conditions warrant, but in any event once every five (5) years, and charge Licensee its proportionate share of the Cost. UTILITY shall give Licensee at least thirty (30) days prior notice of such pole audit. Upon request, UTILITY will furnish Licensee with a summary report of such pole audit within a reasonable time after its completion. If, as the result of such pole audit, UTILITY determines that corrections or changes need to be made in order to meet UTILITY's service or operating requirements, including, but not limited to, considerations of safety, reliability, or engineering, Licensee will promptly make such corrections or changes at its sole cost and expense. Neither the occurrence nor the nonoccurrence of any pole audit will relieve Licensee of its duties, obligations or liability under this Agreement.

13.5 Interest. Licensee agrees to pay interest at the rate of 1.5 percent (1.5%) per month on all monies to be paid under this Agreement from the date such monies are due up to the date paid.

13.6 Taxes. Licensee will be solely responsible for any real estate taxes or assessments levied on any of its equipment, and for any increase in any taxes or assessments levied on UTILITY as a result of Licensee's Attachments.

14.0 LIABILITY AND INDEMNIFICATION

14.1 Notwithstanding any permission granted by UTILITY pursuant to any Application, Response to Application or Permit issued hereunder, UTILITY retains the right to maintain, replace, relocate and remove UTILITY Poles and to maintain, replace, relocate, remove and operate its facilities in such manner as it deems necessary or appropriate to fulfill its own service requirements. Accordingly, UTILITY shall not be liable to Licensee, any customer of Licensee, any affiliate of Licensee, or any other person or entity, for any interruption of service or for any interference with the operation of the Attachments arising in any way out of UTILITY's use, operation, maintenance, repair, removal or relocation of its Poles or equipment in connection with UTILITY's own business needs and requirements, unless such liability is caused by the sole negligence or willful misconduct of UTILITY in its performance of such activities. Without limiting the generality of the foregoing, UTILITY will not be liable for any noise, induced voltages, currents or other interference in Licensee's Attachments.

14.2 Licensee agrees to defend and hold harmless UTILITY, its parent company, Exelon Corporation, and their respective affiliates, directors, officers, employees, shareholders, agents,

contractors, subcontractors, successors and assigns (the "Indemnitees", from and against any and all claims, demands, actions, causes of action, liabilities, judgments, obligations, costs or expenses for any damage to property, or for injury to or death of any person or persons, or any other costs or expenses, including without limitation reasonable attorneys' fees and costs, related to, arising out of or connected with the placement, use, operation, repair, Modification or removal of any of Licensee's Attachments; provided, however, that Licensee shall have no obligation hereunder to indemnify any Indemnitees from their sole negligence or willful misconduct. The foregoing indemnification shall include, but not be limited to, claims made under any worker's compensation law or under any plan for employee's disability and death benefits (including, without limitation, claims and demands that may be asserted by employees, agents, contractors, and subcontractors). Licensee shall immediately notify UTILITY of any such claims, demands, damages, injuries or deaths, and shall provide a written report, or other pertinent material or information, if requested. Licensee shall defend the Indemnitees with counsel reasonably acceptable to UTILITY.

14.3 Licensee agrees to indemnify UTILITY against any and all claims and demands for damages or losses resulting from any interruption of UTILITY's service, the service of Licensee, or the service of UTILITY's or Licensee's customers, if such interruption in services arises out of or is caused by the exercise by Licensee of the permission granted by UTILITY under this Agreement.

14.4 At all times, Licensee shall conduct its operations and otherwise use or occupy UTILITY Poles hereunder in compliance with all applicable Environmental Laws and shall not cause any Hazardous Materials to be introduced to or handled on or about UTILITY Poles. Licensee hereby indemnifies and shall defend and hold harmless UTILITY and all other Indemnitees from and against any suits, damages, injuries, costs and expenses of any kind including, without limitation, court costs, reasonable attorney and consultant fees, remediation costs, fines and penalties, whether asserted under Environmental Laws or at common law, arising out of or related to (a) any breach by Licensee of the Environmental Laws; or (c) the presence, release or threatened release or threatened release of any Hazardous Materials at, on or about UTILITY Poles hereunder caused by Licensee, its agents, employees, contractors, or any entity in privity with or providing a benefit to Licensee; provided, however, that Licensee shall have no obligation to so indemnify any Indemnitee from such Indemnitee's sole negligence or willful misconduct. The foregoing covenants and indemnification obligations shall survive any termination of this Agreement.

14.5 Neither party shall have any liability to the other under this Agreement or otherwise for special, punitive or consequential damages, including without limitation, damages for lost profits or business interruption.

14.6 UTILITY shall not be liable to any third party overlasher for any claims, expenses, demands, causes of action, costs, loss, damages (including loss of life) or attorneys' fees (collectively referred to as "Claims") incurred by Licensee or the third party overlasher in conjunction with any third party overlashing. In no event shall UTILITY be liable to Licensee or third party overlasher for any loss of revenue or profits, or for any direct, indirect, incidental, consequential, punitive or special damages

resulting from any interruption of service resulting from damage to or interference with the operation of third party overlasher's facilities.

14.7 Licensee's duties and obligations to indemnify UTILITY and the other Indemnitees under this Section 15 shall survive any termination of this Agreement.

15.0 INSURANCE AND BOND.

15.1 Licensee shall purchase and maintain, and shall cause each contractor and subcontractor performing any work in behalf of Licensee pursuant to this Agreement to obtain and maintain, prior to commencing any work on the UTILITY Poles or any of UTILITY's other property, the following insurance coverages:

15.2 Workers' Compensation Insurance Policy: Coverage A providing payment promptly when due of all compensation and other benefits required of the insured by the workers' compensation law; Coverage B Employers' Liability providing payment on behalf of the insured with limits not less than \$1,000,000 each accident/occurrence for all sums which the insured shall become legally obligated to pay as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, Coverage A and Coverage B will cover all contractors, subcontractors, and their subcontractors.

15.3 Commercial General Liability Policy or Policies (with coverage consistent with ISO from CG 00 01 (12/07) covering all contractors, subcontractors (including by not limited to coverage for claims against UTILITY for injuries to employees of such contractors or subcontractors) and all their subcontractors with limits not less than \$5,000,000 for bodily injuries to or death of one or more persons and/or property damage sustained by one or more organizations as a result of any one occurrence, with policy or policies shall not exclude property of UTILITY. UTILITY shall be added as Additional Insured using ISO Form CG 2026 (11/85), or the combination of ISO Form CG 20 10 07 04 and CG 20 37 07 04, or their equivalents as may be available at commercially reasonable rates. Bodily injury means bodily injury, sickness, or disease sustained by any person which occurs during the policy period, including death, at any time resulting therefrom. Property damage means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

15.4 Automobile Liability in the amount of not less than \$2,000,000 per occurrence combined single limit covering all owned, leased, rented and non-owned vehicles.

15.5 There shall be furnished to UTILITY, prior to commencing the work of installing, repairing, replacing or removing Licensee's Attachments, a Certificate of Insurance evidencing the coverage specified in Sections (16.2), (16.3) and (16.4) of this Section. Insurance coverage as required herein in Sections (16.2), (16.3) and (16.4) shall be kept in force until all of Licensee's Attachments have

been removed from UTILITY's Poles. Declarations in each of said policies shall identify the work as being done by and for others on property owned by UTILITY, and there shall be no exclusions in any of said policies not approved by UTILITY, in its commercially reasonable discretion. UTILITY hereby reserves the right to amend, correct and change, from time to time, in its commercially reasonable discretion, the limits, coverage and form of policy as may be required from Licensee, Licensee's contractors and subcontractors, and all of their subcontractors, before entering onto the UTILITY Pole or UTILITY's other property to perform any work thereon. In the event the insurance policy or coverage has been cancelled or changed and no longer meets requirements, Licensee shall provide immediate prior written Notice to UTILITY.

15.6 All insurance policies required by this Section shall be issued by good and reputable companies having a Best's Rating of A-VII or better, and Licensee shall provide thirty (30) days prior written notice of any substantial change in the coverage, cancellation or non-renewal. Any policies of insurance maintained by Licensee, its contractors or subcontractors, shall be primary without right of contribution or offset from any policy of insurance or program of self-insurance maintained by UTILITY. Licensee may, in lieu of obtaining insurance policies from third parties, furnish the insurance required of it hereunder through a commercially reasonable self-insurance program, subject to the approval of UTILITY (which approval shall not be unreasonably withheld, conditioned or delayed so long as the demonstrated claims paying ability and financial resources of such program equal or exceeded those of insurance companies having Best's Ratings equal to that described above). Licensee and UTILITY agree and shall require each of their respective contractors and subcontractors to agree that they shall each arrange for the issuers of all policies of insurance to waive their rights of subrogation against UTILITY or Licensee (as the case may be) and their respective directors, officers, employees and agents. Prior to the date of this Agreement and within thirty (30) days prior to each anniversary of the date of this Agreement occurring during the term hereof, Licensee shall furnish UTILITY with certificates of insurance evidencing Licensee's compliance with the requirements of this Section.

15.7 Bond or Letter of Credit. At UTILITY's request, Licensee will maintain either a surety bond or letter of credit (as specified by UTILITY) to guarantee the payment of all of the sums that may become due from Licensee to UTILITY under the terms of this Agreement. At the time this Agreement becomes effective, Licensee agrees to furnish bonds or letters of credit to UTILITY in the amount of \$20,000 for the initial 1 to 10 Wireless Attachments to be made to UTILITY Poles and \$25,000 for initial 1 to 1000 Wire Attachments to be made to UTILITY Poles. Licensee shall increase said bonds or letters of credit by \$ 20,000 for each additional group (or partial group) of 10 Wireless Poles and by \$25,000 for each additional group (or partial group) of 1000 Wire Attachments in excess of the initial 1000 Wire Attachments to be made to UTILITY Poles. The required bond or letter of credit amounts shall at all times be equal to or in excess of the amounts determined as aforesaid for the number of Attachments covered by Permits hereunder. The bonds or letters of credit shall be in a form and with a surety acceptable to UTILITY.

16.0 LIMITATION ON DAMAGES

UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, UTILITY SHALL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY LICENSEE OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF LICENSEE FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.

17.0 DEFAULT, TERMINATION AND OTHER REMEDIES.

17.1 Breach of Representations or Warranties. Either party may terminate this Agreement upon the discovery of a breach by the other party of one or more of the representations or warranties set forth in Section 20 of this Agreement.

17.2 Other Breaches. Licensee agrees that UTILITY may terminate this Agreement upon the discovery of one or more of the breaches of this Agreement identified in this Section 18).

17.3 Failure to Notify of Assignment. Licensee shall be in breach of this Agreement if it fails properly to notify UTILITY in writing, and to obtain UTILITY's prior written consent of any assignment of this Agreement where Section 19 requires such notice and consent.

17.4 Bankruptcy or Insolvency. Licensee shall be in breach of this Agreement if it fails to make a payment or is at risk of failing to make a payment because it (a) makes any general assignment for the benefit of creditors; (b) initiates or is the subject of a request to initiate a bankruptcy or insolvency proceeding under any provision of law, including the United States Bankruptcy Code; (c) files or is the subject of a filing for the appointment of a receiver; or (d) is rendered or declared insolvent as defined by applicable law.

17.5 Failure Materially to Comply. Licensee shall be in breach of this Agreement if Licensee fails materially to comply with any of the provisions of this Agreement to be performed or observed by Licensee or uses the Attachments for purposes other than those specified herein, and such breach continues without cure (a) for thirty (30) days after written notice from UTILITY for any monetary defaults; or (b) for the period of time specified in any default notice issued by UTILITY for any emergency posing an immediate safety risk of loss, injury or damage; or (c) for sixty (60) days for any other type of default.

17.6 Loss of Franchise. Licensee shall be in breach of this Agreement if at any time Licensee loses its operating authority, whether as a result of an action by any appropriate governmental entity, applicable law, or otherwise, to use the public streets or highways.

17.7 Failure to Act on Agreement. Licensee shall be in breach of this Agreement should Licensee not install any Attachments within twelve (12) months of the effective date of the Agreement. If Licensee fails to install Attachments for which a Permit or Conditional License has been granted by UTILITY within ninety (90) days of the receipt of that Permit from UTILITY, the Permit shall be cancelled unless such delay is due solely to UTILITY's failure to perform or UTILITY otherwise delays Licensee's ability to perform.

17.8 Rights and Remedies for Breach. In the event Licensee shall be in breach of this Agreement and such breach continues beyond any applicable cure period provided herein, UTILITY may exercise any one or more of the following rights and remedies: (a) terminate this entire Agreement or terminate or cancel any Permit(s) or Conditional License(s) given pursuant to this Agreement; (b) take any and all corrective action UTILITY deems necessary or appropriate to cure such default and charge the Cost thereof to Licensee, together with interest at the rate specified by the Internal Revenue Service for tax underpayments (ii) an administrative charge in an amount equal to twenty percent (20%) of the Cost of the corrective action, such payment to be made by Licensee upon UTILITY's presentment of demand therefor; (c) stop processing applications for new Attachments or (d) exercise any other remedy available to UTILITY under this Agreement or at law or equity.

17.9 Upon Termination of any Permit, Licensee shall have ninety (90) days to remove its Attachments associated with that Permit and upon termination of the entire Agreement, Licensee shall have ninety (90) days to remove its Attachments from UTILITY's Poles. UTILITY shall have the right, upon notice to Licensee, to remove all of Licensee's Attachments from the UTILITY Poles to which the Permit applies or from all of UTILITY's Poles where the entire Agreement has been terminated if Licensee fails to remove its Attachments within the specified time. Licensee shall pay UTILITY for all Costs of such removal within ten (10) days after billing, UTILITY shall deliver the removed Equipment to a location given by Licensee or stipulated by UTILITY without incurring any liability for the condition of the Equipment, or for any other loss, damage or casualty, of any kind or nature whatsoever, incurred or alleged to have been incurred by Licensee arising out of resulting from the removal of the Equipment.

17.10 Duties and Obligations Remain. In the event that Licensee is in default or in breach under this Agreement and UTILITY elects to terminate Permits or Conditional Licenses granted under this Agreement or the Agreement itself, in whole or in part, or upon any other cause of termination of this Agreement, Licensee shall not be relieved of any of its duties or obligations under this Agreement, so long as any Attachment remains on any UTILITY Pole.

18.0 ASSIGNMENT

18.1 Licensee may not assign or transfer all or any portion of its rights, privileges or obligations under this Agreement without written notice to and the prior written consent of UTILITY.

18.2 Except as provided in Section 19.1, the obligations of Licensee under this Agreement shall extend to and be binding upon any successors or assigns of Licensee. All right, title and interest of UTILITY hereunder shall be binding upon an issue to the benefit of UTILITY's successors and assigns.

18.3 Nothing herein shall be deemed to restrict or limit UTILITY's right to assign all or any portion of its right, title or interest in this Agreement.

19.0 REPRESENTATIONS AND WARRANTIES.

19.1 Power and Authority. Each party represents and warrants that (a) it is a legal entity duly organized, validly existing and in good standing in its state of organization, (b) it is qualified to do business (if a foreign corporation) under the laws of the State of its incorporation, and (b) it has full power and authority to enter into this Agreement and undertake the responsibilities and obligations contemplated by it in accordance with its terms.

19.2 Enforceability. Each party represents and warrants that this Agreement constitutes a valid and binding obligation of such party and is enforceable against such party in accordance with its terms and conditions. Each party further represents and warrants that it has independently reviewed this Agreement, including the charges set forth in Section 14, and concluded that this Agreement is just, reasonable and equitable.

20.0 FORCE MAJEURE.

20.1 Neither Utility nor Licensee shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly, from Acts of God, civil or military authority, acts of the public enemy, war, terrorism, riots, civil disturbances, insurrections, acts or omissions of any governmental body accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes, unavailability at reasonable costs of materials, labor or transportation, breakdown of plant or machinery, or the acts or omissions of the other party or any causes beyond the reasonable control of the affected party. The affected party upon giving written Notice of the force majeure condition to the other party, shall be excused from the performance to the extent necessitated by the force majeure condition; provided, however, that the affected party shall use commercially reasonable efforts to remove such condition as soon as possible. UTILITY shall not be liable for failure of performance due to UTILITY assisting another Utility with a force majeure event.

21.0 MISCELLANEOUS.

21.1 Merger. All understandings and agreements, oral or written, heretofore made by and between the parties hereto are merged into this Agreement. This Agreement and the exhibits attached

hereto, alone fully and completely expresses the agreement between UTILITY and Licensee with respect to the subject matter hereof.

21.2 Waiver of Terms or Conditions. The failure of UTILITY or Licensee to enforce or insist on compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any right to seek enforcement of such terms or conditions. The acceptance of payment by UTILITY of any of the fees or charges set forth in this Agreement shall not constitute a waiver of any breach, default or violation of the terms or conditions of this Agreement. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

21.3 Severability. If any clause, phrase, provision or portion of this Agreement or the application thereof to any person or circumstances otherwise shall be held to be invalid or unenforceable under applicable law by any court or governmental body having jurisdiction, such invalidity or unenforceability shall not affect, impair or render invalid or unenforceable any other provision of this Agreement, nor shall it affect the application of such clause, phrase, provision or portion hereof to any other person or circumstances. In the event any provision of this Agreement is so found to be invalid or unenforceable, the parties agree to amend this Agreement by replacing the invalid or unenforceable term with such other provision as will give the fullest possible effect, within the limits of applicable law, to the intention and understandings of the parties as set forth in this Agreement. Notwithstanding the foregoing, in the event that any of the terms and conditions contained in Section 14 hereof are determined by a court or governmental body having jurisdiction to be invalid or unenforceable in any material respect, then, at UTILITY's option, this Agreement shall be terminated and, in such event, the Parties will use commercially reasonable efforts to reach a new Agreement. If a new Agreement is not reached within sixty (60) days following the termination, then UTILITY shall have the right to remove all of Licensee's Attachments from any or all of the UTILITY Poles in the manner provided by hereinabove with respect to the termination of this Agreement.

21.4 Notice. Unless otherwise specified in this Agreement, any written notice required to be provided from one Party to another under this Agreement regarding insurance, indemnities, assignments, termination and defaults ("Legal Notices") shall be sent by United States mail, certified mail, with return receipt requested and postage prepaid, or by personal delivery or a nationally recognized overnight courier (i.e. Federal Express), with proof of delivery. In an emergency situation, Legal Notice may be provided by electronic mail transmission followed by written notice. In addition to these delivery options, all notices, requests, consents, designations, approvals or statements required with respect to operational matters or any other non-Legal Notice may be delivered via facsimile, via electronic mail transmission, or via an electric notification system specified by UTILITY.

Legal Notice to Licensee shall be addressed as follows:

Legal Notice to UTILITY shall be addressed as follows:

PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
Attn: Manager, Real Estate & Facilities

21.5 The laws of the State or jurisdiction where attachment occurs, without regard to its conflict of law principles, shall govern the construction of this Agreement. EACH PARTY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, CLAIM, COUNTERCLAIM OR OTHER JUDICIAL PROCEEDING, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.

21.6 Agreement to do all Things Necessary or Appropriate. Both parties agree to do all things necessary or appropriate from time to time, including the execution and delivery of such ancillary documents and agreements as UTILITY may reasonably require to carry out the express terms and conditions of this Agreement and the intentions and understandings of the parties as described herein.

21.7 No Partnership or Joint Venture Created. The parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, UTILITY and Licensee. UTILITY and Licensee are each independent contractors and nothing contained in this Agreement shall be construed to constitute either party an agent of the other.

21.8 UTILITY, ITS EMPLOYEES AND ITS CONTRACTORS DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. UTILITY, ITS EMPLOYEES AND ITS CONTRACTORS SHALL NOT BE LIABLE FOR ANY THIRD-PARTY SERVICE FAILURES OR OTHER LOSSES OR DAMAGES, OF ANY KIND, RESULTING FROM LICENSEE'S USE OF UTILITY FACILITIES, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE OCCURS AS A RESULT OF UTILITY'S, UTILITY'S EMPLOYEE'S OR UTILITY'S CONTRACTORS' (HEREINAFTER COLLECTIVELY AND INDIVIDUALLY REFERRED TO AS "UTILITY REPRESENTATIVE") NEGLIGENCE.

21.9 Revision of Forms. Any forms attached hereto or provided by UTILITY are subject to revision by UTILITY at any time and at its discretion.

21.10 Counterparts. This Agreement may be executed using counterpart signature pages and may be provided via electronic mail or facsimile.

21.11 Section Headings. Section headings are for convenience only and shall not affect the meaning or interpretation of this Agreement.

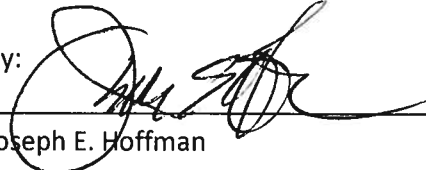
21.12 If attachments are located in Pennsylvania and this Agreement is with a municipal corporation, UTILITY shall file a copy of this Agreement with the Pennsylvania Public Utility Commission (the "PUC") promptly after the execution hereof. The effective date of this Agreement shall be the 33rd day after such filing of this Agreement, unless prior to such date the PUC as instituted as permitted under Section 507 of the Pennsylvania Public Utility Law, Title 66. In the event proceedings are instituted, then this Agreement shall become effective only after approval by the PUC. If attachments are located in Delaware and pursuant to the Delaware Public Service Commission (the "PSC") Order No. 3092, "Attachment Regulation", including its Sections 6.2 and 6.3 thereof, UTILITY shall file a copy of this Agreement with the PSC.

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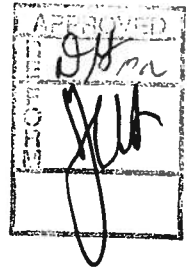
IN WITNESS WHEREOF, the Parties to this Agreement, by their duly authorized representatives, have executed this Agreement to be effective as of the day and year first written above.

PECO Energy Company

By:




Joseph E. Hoffman
Manager, Real Estate & Facilities



Downingtown Borough

By:



Stephen Sullins
Borough Manager

EXHIBIT A

UTILITY Approved Contractor and UTILITY Contractor Requirements

The following contractors are approved by UTILITY to perform surveys and construction work associated with simple make-ready. Simple make-ready means make-ready where existing attachments in the communications space of a pole could be rearranged, relocated or transferred without any reasonable expectation of a service outage or facility damage, and does not require splicing of any existing communication attachment, rearrangement or relocation of an existing wireless attachment, or replacement of a pole.

Company	Name	Email	Phone #
Blair Park	James Brun	Jbrun@blairpark.com	267-718-2699
Blair Park	Kerry Heller	Kerry.Heller@blairpark.com	267-421-2331
MJ Electric	Ed Johnson	Ejohnson@mjelectric.com	484-665-0420

The following contractors are approved by UTILITY to perform surveys and construction associated with complex make-ready. Complex make-ready means rearrangements, relocations, transfers and other work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment, or rearrangement or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are considered complex. Pole replacements are included in the definition of complex make-ready, except that no such pole replacement may be performed by any contractor that is not also approved by UTILITY to perform surveys and construction associated with make-ready above the communications space.

Company	Name	Email	Phone #
Blair Park	James Brun	Jbrun@blairpark.com	267-718-2699
Blair Park	Kerry Heller	Kerry.Heller@blairpark.com	267-421-2331
MJ Electric	Ed Johnson	Ejohnson@mjelectric.com	484-665-0420

The following contractors are approved by UTILITY to perform surveys and construction associated with make-ready above the communications space:

Company	Name	Email Address	Phone#
Carr & Duff, Inc. "U"	Jack Duff	jduff@carrduff.com	215-416-1203
	Brian Cummings	cdpecobid@carrduff.com	215-672-4200
Henkels & McCoy, Inc. "U"	Gerri Brauckmann	gbrauckmann@henkels.com	215-283-7849
InfraSource (Quanta) "U"	Matt Sarmiento	Matt.Sarmiento@infrasourceinc.com	610-312-7939
Intren (W) "U" Q2	Shawn Rasmussen	srasmussen@intren.com	815-354-8632
Miller Bros "U"	Steve Johnson	sjohnson@millerbros.us	610-832-1000
Mirarchi Brothers "U"	Michael O'Neill	m.oneill@mirarchibrothers.com	215-957-2600
Riggs Distler & Co., Inc. "U"	David Countess	dcountess@riggsdistler.com	215-778-9714

All of the contractors on these lists meet the following requirements:

- (1) The contractor has agreed to follow UTILITY's published Safety and Operational Guidelines, as UTILITY makes available;
- (2) The contractor has agreed to follow the National Electrical Safety Code (NESC) guidelines, to the extent they do not conflict with UTILITY's Safety and Operational Guidelines.
- (3) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, as required by UTILITY;
- (4) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;
- (5) The contractor has agreed to meet or exceed all of UTILITY's uniformly applied and reasonable safety and reliability thresholds set by UTILITY in its Safety and Operational Guidelines and made available by UTILITY; and
- (6) The contractor is adequately insured or will establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers.

UTILITY Contractor Requirements

Licensee must select a contractor from UTILITY's list of approved contractors. Should Licensee, consistent with FCC regulations, propose to use any other contractor, such contractor must meet the following minimum requirements. Any contractor proposed by Licensee must provide a certification to UTILITY from a Professional Engineer certified in the state in which the attachments are located that:

- (1) The contractor has read, has understood and will follow UTILITY's published Safety and Operational Guidelines, as UTILITY makes available;
- (2) The contractor has agreed to follow the National Electrical Safety Code (NESC) guidelines, to the extent they do not conflict with UTILITY's Safety and Operational Guidelines.
- (3) The contractor knows how to read and follow licensed-engineered pole designs for make-ready, as required by UTILITY;
- (4) The contractor understands and will follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;
- (5) The contractor understands and will meet or exceed all of UTILITY's uniformly applied and reasonable safety and reliability thresholds set by UTILITY and made available by UTILITY in its Safety and Operational Guidelines; and
- (6) The contractor is adequately insured or will establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers in amounts specified by UTILITY.

In addition to this certification, any contractor proposed by Licensee who is not on UTILITY's approved list must provide proof to UTILITY that it has obtained adequate insurance or has established an adequate performance bond.

UTILITY may veto any contractor proposed by Licensee within three business days for make-ready survey contractors and within 15 days for make-ready construction contractors. When vetoing a contractor, UTILITY shall use commercially reasonable efforts to identify another contractor qualified to do the work.

Any contractor proposed by Licensee who is not on UTILITY's approved list who meets these qualifications and is otherwise not vetoed by UTILITY may begin make-ready survey and construction work on a limited basis specified by UTILITY until such time as UTILITY is assured the contractor is capable of following the guidelines specified above. Should UTILITY

discover that the contractor has not followed these guidelines, UTILITY may immediately disqualify the contractor from continuing to perform such work.

If Licensee hires a non-UTILITY approved contractor to perform survey and construction work, Licensee must reimburse UTILITY for any post-installation inspection work performed by UTILITY to verify the work was done properly.

EXHIBIT B

UTILITY's Safety and Operational Guidelines

The following Safety and Operational Guidelines must be followed by any contractor hired by an attaching entity to work on UTILITY's distribution poles. These Guidelines may be amended at any time by UTILITY.

1. All work on the UTILITY system must comply with UTILITY electric and communications standards.
2. All work must be safely performed following all applicable UTILITY, OSHA and NESC rules, regulations, policies and procedures.
3. Traffic control must comply with applicable state DOT standards and the federal guideline MUTCD.
4. No communications make-ready construction work will be done until after the power make-ready work is complete.
5. All make-ready work in the power space of the pole must be performed by qualified UTILITY COC's.
6. Antennas and equipment installed in, above or through the power zone must be installed by qualified UTILITY COC's.
7. Whenever work is to be performed in a manhole, OSHA Standard 29 CFR 1926.1201 — 1926.1213 must be followed.
8. Before entering a UTILITY manhole, atmospheric testing must be done with an approved and calibrated monitor that has an audible alarm.
 - a) Testing shall be done through a hole in the manhole lid prior to lifting the lid.
 - b) If there is no hole in the lid, the lid shall be raised just enough for testing without causing a spark.
 - c) After it is determined that the atmospheric conditions in the space are safe (checking the top, middle and bottom of the space) for entrance, the space shall be continuously monitored or continuously ventilated with forced air.
9. All entrants into the manhole must be trained.
10. There must be a trained attendant at the entrance at all times

11. Whenever there is anyone in the manhole and the alarm sounds or the testing equipment fails, the attendant must immediately have the workers leave the hole and secure the space from anyone else entering.
12. Constructors on UTILITY facilities are the face of UTILITY and must maintain an agreeable relationship with the public.
13. Make-ready survey and construction work shall be performed by the contractor on a limited basis specified by UTILITY until such time as UTILITY is assured the contractor is capable of following the Pole Attachments Application and Make-Ready Procedures and the Utility Contractor Requirements.
14. Should UTILITY discover that the contractor has not followed these Safety and Operational Guidelines, UTILITY may immediately disqualify the contractor from continuing to perform such make-ready survey and construction work.