

RESOLUTION NO. 254 of 2014

**RESOLUTION AUTHORIZING THE CITY OF MARGATE CITY
TO ENTER INTO AN INFRASTRUCTURE LICENSE AGREEMENT WITH
ATLANTIC CITY ELECTRIC COMPANY**

WHEREAS, the City of Margate City (hereinafter “City”) and Atlantic City Electric Company (hereinafter “ACE”), desire to enter into an Infrastructure License Agreement so as to allow the City to connect aerial fiber optic cable to poles owned by ACE; and

WHEREAS, the Governing Body of the City has determined that it is in the best interest of the City to enter into an Infrastructure License Agreement with ACE as said License Agreement will allow the City to connect aerial fiber optic cable to poles owned by ACE; and

WHEREAS, there is no rental payment with regard to the Infrastructure License Agreement, although there will be an application fee and “make ready work” which will entail the expenditure of monies with same to be approved by the Governing Body prior to said expenditure.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Margate City that it does hereby authorize the Mayor on behalf of the City of Margate City, to sign the Infrastructure License Agreement between the City and Atlantic City Electric Company, a copy of which is attached hereto and made a part hereof, same to be effective upon full execution by the City and ACE.

DATE: December 18, 2014

I, **Thomas D. Hiltner**, Clerk of Margate City, Atlantic County, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Commissioners of the City of Margate at a meeting of said Commission held on December 18, 2014 and said Resolution was adopted by not less than a two-thirds vote of the members of the Commission.

THOMAS D. HILTNER, RMC, City Clerk

ATLANTIC CITY ELECTRIC COMPANY INFRASTRUCTURE LICENSE AGREEMENT

This License Agreement (“Agreement”), made this ____ day of _____, _____ by and between **Atlantic City Electric Company**, (“ACE” or “Licensor”) a New Jersey corporation with its principal offices at 500 North Wakefield Drive, Newark, Delaware 19702 and City of Margate with its principal offices at 9001 Winchester Avenue, Margate, New Jersey 08402 (“Licensee”).

WHEREAS, ACE is a utility that owns or controls Poles, Transmission Structures, Ducts, Conduit Systems and Rights-of-Way ("ACE Infrastructure") in the state of New Jersey;

WHEREAS, Licensees is a competitive local exchange carrier certificated to provide Telecommunications Services in the state of New Jersey and has acquired all necessary permits and certifications necessary to enable it to use ACE’s Rights-of-Way.

WHEREAS, in order to provide Telecommunications Services, Licensee wishes to install and maintain Licensee’s aerial and underground fiber optic and coaxial cables and other equipment and facilities (“Facilities”) on or within ACE Infrastructure in the state of New Jersey in accordance with the requirements of the National Electrical Safety Code (“NESC”), Occupational Safety and Health Act (“OSHA”) applicable state and local requirements and ACE’s Joint Use Manual;

WHEREAS, to the extent that it is required by law and may lawfully do so, ACE is willing to permit the attachment of Licensee’s Facilities on or within ACE Infrastructure in accordance with this Agreement at an ACE-approved location, where, in the sole judgment of ACE, such use will not interfere with ACE’s provision of electric service and/or licenses previously granted by ACE to third parties;

WHEREAS, ACE may grant Licensee a non-exclusive license authorizing the attachment of Licensee's Facilities to ACE’s Infrastructure;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the parties do hereby mutually agree and covenant as follows:

1. DEFINITIONS

- 1.1 Attachment – one cable or one bundle of cables, video cameras, video recording devices and associate cable and equipment attached with a single point of contact to a Pole, Duct, Conduit, or Transmission Structure owned or controlled by ACE, which utilizes no more than one foot of vertical space on a pole.
- 1.2 Cable Operator – any person or group of persons (a) who provides cable service over a cable system, as that term is defined in Section 602 of the Communications Act of 1934, as amended (the “Communications Act”), and directly or through one or more affiliates owns a significant interest in such cable system, or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such cable system.

- 1.3 Cable Rate – The rate applied to Attachments made by a Cable Operator when such Attachments are used solely for the provision of cable service or Internet access service.
- 1.4 Collateral - includes the following property of the Licensee, whether now owned or hereafter acquired and the proceeds and products of any of the following:
- (a) all of Licensee’s aerial and underground fiber optic and coaxial cables, equipment, wires and facilities located, installed or found on or within ACE Infrastructure, authorized or unauthorized under or pursuant to this Agreement or any infrastructure license agreement or similar agreement between ACE and Licensee, including but not limited to all fittings, devices, appliances, fixtures, apparatus and similar items and equipment used or intended to be used as part of or in connection with Licensee’s Attachments.
- 1.5 Communications Space - space on a Pole above grade but below the Power Space to which communications cables may be horizontally attached.
- 1.6 Conduit - a structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed and with respect to which ACE has the right to authorize the Attachment of Licensee’s Facilities.
- 1.7 Conduit, Duct, Right-of-Way Audit - an audit of Attachments in ACE’s Conduit System or Rights-of-Way, which ACE may undertake from time to time.
- 1.8 Conduit System – an energized space that includes the collection of one or more Conduits together with their supporting infrastructure, including Handholes, Manholes, *etc.*
- 1.9 Cost - all costs and expenses incurred by ACE in providing Licensee access to ACE Infrastructure. These Costs may include, but are not limited to, all costs associated with Make-Ready Work, Pre-license Survey, Application Engineering Review, inspections, materials, labor, engineering, supervision, and other charges, both direct and indirect, customarily charged to any work project under ACE’s standard accounting practices.
- 1.10 Distribution Pole – includes all poles that are capitalized in the FERC accounting system as being used for transmitting electricity at levels below 15,000 volts.
- 1.11 Drop Pole - Pole used where service drop crosses a roadway from the main route to serve customers.
- 1.12 Duct - a single enclosed raceway for conductors, cable or wire.
- 1.13 Emergency Situation – a situation or condition (a) that poses an immediate threat to public safety or the safety of the employees or contractors of ACE, Licensee, other licensees or third parties; (b) that poses an immediate threat to the physical integrity of ACE Infrastructure or the facilities of other licensees or third parties; or (c) that interferes with the performance of ACE’s service obligations or the service obligations of other licensees or third parties.

- 1.14 Equipment - fittings, devices, appliances, fixtures, apparatus, and similar items used as part of or in connection with an electric supply or communication system.
- 1.15 Handhole - an access opening, provided in equipment or in a below-the-surface enclosure in connection with underground lines, into which personnel reach but do not enter, for the purpose of installing, operating, or maintaining equipment or cable or both.
- 1.16 Innerduct - a Duct-like raceway smaller than a Duct that is inserted into a Duct so that the Duct may carry multiple wires or cables.
- 1.17 License - the License shall consist of the Application as approved in writing by ACE, any documents attached thereto by ACE, and all associated drawings and may be referred to as a conditional license, which is an initial license to attach that is conditioned on ACE's final approval of the installed Attachment, or a Final License, which is issued by ACE upon completion of ACE's Post-Installation Inspection if the parameters of the Attachment match the parameters of the Application.
- 1.18 Licensee's Facilities - all facilities, including but not limited to Attachments, cables, Equipment and associated hardware, and any other item owned or operated by Licensee, which are attached to or used to install Attachments to a Pole, Conduit System, or Transmission Structure.
- 1.19 Loading Capacity – the maximum allowable stress, strain or force the ACE Infrastructure can be subjected to, as determined by ACE's standards and the guidelines within the NESC.
- 1.20 Major Rebuild – Licensee Attachment project encompassing multiple Applications totaling seven hundred (700) or more Attachment requests. A project is only a Major Rebuild if Licensee has made such indication on all Applications subject to the Major Rebuild.
- 1.21 Make-Ready Work - all work, including but not limited to engineering and the rearrangement and/or transfer of existing facilities, replacement of a Pole, and any other changes, required to accommodate Licensee's Facilities on a Pole, Transmission Structure or in a Conduit System.
- 1.22 Manhole - a subsurface enclosure used to install, operate, and maintain submersible energized equipment and facilities.
- 1.23 Obligations - all of Licensee's obligations to ACE now existing or hereafter arising under this Agreement or any pole attachment or infrastructure license agreement or similar agreement between ACE and Licensee and all amendments, renewals or modifications of the same and all costs and expenses of ACE incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses.

- 1.24 Other Service Provider - Party seeking Attachment that is neither a Telecommunications Carrier nor a Cable Operator.
- 1.25 Overlash - the addition of a cable to a span between poles by lashing them to an existing Attachment.
- 1.26 Pole - a pole with respect to which ACE has the right to authorize the attachment of Licensee's Facilities.
- 1.27 Pole Count - ACE's periodic review of Attachments to ACE Distribution Poles or Transmission Structures used to identify the number of and the specific Poles to which Licensee has attached Licensee's Facilities.
- 1.28 Power Space - That space from the top of the Pole to the lowest horizontal power conductor attachment. The energized space located within ACE's Conduit System.
- 1.29 Pre-license Survey - all work, including engineering, field inspection and administrative processing, used to determine if Make-Ready Work is necessary to accommodate Licensee's Facilities on a Pole or Transmission Structure, or in the Conduit System or Right-of-Way.
- 1.30 Right-of-Way - a right granted to ACE by a third party or third parties to permit ACE to pass over, on, or under the land of another for purposes of erecting or installing ACE Infrastructure. Some of ACE's Rights-of-Way are limited by contract or law to ACE's sole use and ACE is not permitted to allow access by third parties, including Licensee. For purposes of this Agreement, Licensee's access to ACE's Rights-of-Way is limited to the installation of an Attachment to ACE Infrastructure.
- 1.31 Service Provider Classification – a Cable Operator, Telecommunications Carrier, or Other Service Provider as Licensee specifies on each Application.
- 1.32 Telecommunications Carrier – Provider of Telecommunications Services, as that term is defined in Section 3(46) of the Communications Act. A Telecommunications Carrier shall not include an aggregator of telecommunications services, as that term is defined in Section 226 of the Communications Act.
- 1.33 Telecommunications Rate – The rate applied to Attachments by Telecommunications Carriers that are used to provide Telecommunications Services.
- 1.34 Transmission Structure - shall include Transmission Poles which are wood or metallic material, cylindrical in shape, and that are capitalized in the Transmission FERC accounting system having voltages of 15,000 volts or higher and Transmission Towers, which are Metal Lattice Structures specifically designed with fixed foundations capitalized in the Transmission FERC Accounting System for the purpose of Transmitting Electricity, at the foregoing described voltages.

1.35 Unauthorized Attachment - an Attachment ACE has not authorized by issuance of a written License, or an Attachment that is not otherwise permitted under this Agreement.

2. SCOPE

2.1 Pursuant to the provisions of this Agreement, ACE will grant to Licensee a nonexclusive license for the Attachment of Licensee's Facilities to ACE Infrastructure.

2.2 No use, however extended, of ACE Infrastructure or payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement(s) or any other ownership or property rights of any nature in such ACE Infrastructure. Licensee's rights herein shall be and remain a mere license. Neither this Agreement nor any license nor authorization granted hereunder shall constitute an assignment of any of ACE's rights to use the public or private property at locations of such ACE Infrastructure.

2.3 Licensee must obtain from the appropriate public and private property owners and authorities any authorization required to construct, operate and maintain Licensee's Facilities. Licensee is responsible for securing any applicable State, County, or local operating or franchise permits. Upon request Licensee shall submit to ACE evidence that Licensee has obtained lawful authority to construct, operate and maintain Licensee's Facilities. Licensee indemnifies ACE and holds ACE harmless for any and all liability and costs associated with Licensee's failure to obtain any and all authorizations needed to construct, operate and maintain Licensee's Facilities.

2.4 Nothing contained in this Agreement shall limit ACE's right to relocate and maintain ACE Infrastructure, and to operate its facilities in conjunction therewith, in such a manner as will best enable it to fulfill its own service requirements consistent with any applicable law or regulation. Nothing in this agreement shall be construed to compel ACE to construct, reconstruct, retain, expand, extend, repair, place, replace or maintain any ACE Infrastructure that, in ACE's sole discretion, is not needed for its own purposes.

2.5 ACE reserves the right to reserve space on and in the ACE Infrastructure for emergencies and future growth.

2.6 To the extent required by applicable law, ACE shall grant Licensee nondiscriminatory access to ACE Infrastructure, however, Licensee is not authorized to install an Attachment unless and until it has complied with the Application and permitting procedures outlined in this Agreement and has received affirmative written authorization from ACE to install such Attachment.

2.7 This Agreement does not cover attachments or Equipment used to provide wireless services.

3. APPLICATION PROCEDURES

- 3.1 Prior to attaching, upgrading, installing, modifying (including, but not limited to, changes in elevation, overlashing and modifications that reduce the burden on the ACE Infrastructure) or replacing Attachments, or otherwise using ACE Infrastructure, Licensee shall submit an application for attachment, with appropriate fees, using the application form approved by ACE, which shall include the Application to Attach Facilities to Atlantic City Electric Co. [ACE] Infrastructure, Aerial Attachment Survey Form Atlantic City Electric Co. [ACE], Conduit Survey Form [ACE], and the Pole Survey Form (collectively referred to as the "Application"), copies of which are attached hereto as Exhibit A. ACE may return any incomplete Application and any Application that does not include all applicable fees. A returned Application will lose its priority over subsequently filed applications.
- 3.2 ACE strongly encourages Licensee to contact ACE to discuss the Application process, and ACE's construction standards and inspection methods prior to submitting an Application.
- 3.3 The Application requires, and Licensee must, classify itself as a Cable Operator, Telecommunications Carrier, or Other Service Provider, ("Service Provider Classification") as those terms are defined herein. Licensee must also notify ACE within thirty (30) days of when its Attachments, directly or through Overlash, are used to provide Telecommunications Services and other services not subject to the Cable Rate. Such notification must be in the form of a fully completed "Notification of Change in Service Offering," a copy of which is attached hereto as Exhibit B. Licensee must specify which Attachments are used to provide Telecommunications Services or any other service(s) not subject by law to the Cable Rate. If Licensee fails to list the specific Attachments used to provide Telecommunications Services, ACE will apply, and Licensee shall pay, the higher Annual Rental Fee on all Attachments. Licensee shall provide ACE with any additional notices required by applicable law.
- 3.4 Licensee certifies that the information provided on the Application is true and accurate. Licensee shall provide ACE with prompt notice of any changes in the information contained in the Application, including but not limited to Licensee's Service Provider Classification and the services for which its Attachments are used.
- 3.5 Each Application may include up to one hundred (100) Attachments, as outlined in the Joint Use Procedures Manual, attached hereto as Exhibit C. Each Application and ACE's review of the same shall include the engineering and route information specified in ACE's Joint Use Procedures Manual. Each Application must include subscriber drops and mid-span taps. Subscriber drops are subject to Annual License Fees and shall accrue from the date of Attachment. Mid-span taps are not subject to Annual License Fees.
- 3.6 Each Application must indicate if Licensee's Attachment requires electric power service. If power is required to run Licensee's Attachment, ACE will connect Licensee's Attachment to the power source at Licensee's sole cost and expense. Licensee will be

billed the applicable metered rate for such electric service. Licensee must contact ACE's local district to apply for the installation of power service.

- 3.7 If Licensee wishes to change its Application, or License by adding or deleting any information, such changes must be provided to ACE in writing in the form of an Application for authorization to install Attachments to such additional locations, or for authorization to delete of locations that are not to be used. Such changes may not be made until Licensee obtains ACE's written approval.
- 3.8 Pending further agreement with Bell Atlantic/Verizon New Jersey ("Verizon"), Licensee shall submit to ACE, with a copy to Verizon, all Applications and associated fees for (a) Attachments to ACE Transmission Structures, (b) Attachments to the Power Space on all ACE-owned or Verizon-owned Distribution Poles, and (c) Attachments to Distribution Poles upon which Verizon does not have an Attachment. Applications for authorization to Attach to ACE-owned Distribution Poles to which Verizon is attached shall be submitted to Verizon, with a copy to ACE. If ACE determines that Verizon should process an Application, it will return to Licensee the Application and associated fees.
- 3.9 Licensee agrees that Applications will not be accepted or processed by ACE if Licensee is not current in its payments to ACE that are related to its attachment activities. ACE shall not be required to process any Application that is not accompanied by all required fees, including but not limited to the Application Engineering Review Fee and the Pre-License Survey Fee.
- 3.10 ACE shall notify Licensee of the acceptance or denial of Licensee's Application, as submitted, within forty-five (45) days of receiving the complete Application. If the Application is not denied within such forty-five (45) day period, it will be presumed accepted.
- 3.11 Before or after submitting an Application, and in conjunction with a *bona fide* application for Attachment, Licensee may request preliminary information from ACE in the form of maps, drawings, and other records in ACE's actual possession needed to prepare the Application. Upon receipt of a legitimate request for Attachment identifying a specific geographic area and the types and quantities of ACE Infrastructure desired, ACE may, at its sole discretion, use its best efforts to provide Licensee access to such maps or other relevant data reasonably necessary to complete the Application, subject to Section 27.10 of this Agreement. Licensee shall pay ACE's costs for providing such information. Licensee is responsible for verifying the content of such records, and ACE makes no representations or warranties regarding the accuracy or completeness of such records or otherwise.
- 3.12 If Licensee files an Application and then decides it does not wish to pursue the Application, Licensee must notify ACE immediately by submitting to ACE a letter rescinding said Application. ACE will return the Pre-License Survey Fees with such Application provided ACE's engineering review or the Pre-license Survey has not begun. No other fees will be returned to Licensee.

4. PRE-LICENSE SURVEY AND MAKE-READY WORK

- 4.1 As part of the application process, ACE shall perform an engineering review of Licensee's Application. Licensee shall pay ACE's costs of such engineering review, which the parties agree shall be reflected in a flat fee of \$200.00 per Application, which may include up to 100 Attachments ("Application Engineering Review Fee"). Licensee shall pay the Application Engineering Review Fee in conjunction with the submission of the Application to ACE. ACE shall not be required to process any Application that is not accompanied by the Application Engineering Review Fee and the Pre-License Survey Fee(s).
- 4.2 ACE shall conduct a Pre-License Survey to determine if Make-Ready Work is needed to accommodate Licensee's Attachments. The need for and type of Make-Ready Work is ascertained on a Pole-by-Pole basis, and is based upon ACE's construction standards, pending applications and existing attachments. As part of the Pre-license Survey, ACE shall perform a visual field inspection to determine the suitability of ACE Infrastructure for Licensee's Facilities.
- 4.3 If ACE determines during the Pre-license Survey that Make-Ready Work is not necessary to accommodate Licensee's Facilities, ACE will issue a conditional license to Licensee and upon such issuance, Licensee may install Licensee's Facilities at the point of attachment designated by ACE.
- 4.4 If the Pre-license Survey reveals the need for Make-Ready Work, ACE or its representative will contact Licensee and other licensees to schedule a meeting so ACE, Licensee, and other licensees may meet and determine what Make-Ready Work is needed to Attach Licensee's Facilities ("Make-Ready Work Meeting"). ACE may in its sole discretion permit the expansion of the capacity of the ACE Infrastructure to accommodate Licensee's Facilities (*e.g.*, by replacing an existing Distribution Pole with a taller Distribution Pole), but nothing in this Agreement shall require ACE to permit such expansion.
- 4.5 Upon completion of the Make-Ready Work Meeting, ACE will provide Licensee with an estimate of ACE's Costs of the Make-Ready Work ("Make-Ready Cost Estimate"). This estimate will be limited to ACE's Costs. Licensee must pay other licensees for all Make-Ready costs incurred by other licensees to accommodate Licensee's Facilities before these licensees are required to begin Make-Ready Work. Any subsequent attachers shall be required to pay Licensee's Make-Ready Work costs necessary to accommodate such user, including Licensee's rearrangement costs. ACE may deny Licensee a Final License(s) and revoke the conditional license(s) for all Attachments subject to third party Make-Ready Work if Licensee fails to pay such third parties' Make-Ready Work costs.
- 4.6 ACE will not schedule nor undertake Make-Ready Work until Licensee has paid the Make-Ready Cost Estimate.
- 4.7 Upon Licensee's payment to ACE of the Make-Ready Cost Estimate and subject to the receipt by ACE of the certificate of insurance required by Section 18.5, ACE will

undertake the Make-Ready Work. Upon completion of the Make-Ready Work, ACE shall issue a conditional license for the Attachment, which shall authorize Licensee to Attach Licensee's Facilities in compliance with the Attachment Agreement and the parameters of its Application and Survey Forms. Licensee shall not undertake the installation of Licensee's Facilities on any ACE Infrastructure until all Make-Ready Work has been completed.

- 4.8 ACE shall begin its Make-Ready Work within sixty (60) days of receipt of payment of the Make-Ready Cost Estimate. ACE will complete Make-Ready Work in a commercially reasonable time taking into account the extent of the Make-Ready Work and the cooperation of necessary third parties. ACE will schedule and perform Make-Ready Work for Licensee in the same manner that ACE schedules Make-Ready Work for its electric system.
- 4.9 Upon completion of the Make-Ready Work, ACE shall deliver to Licensee a statement of the actual Costs of the Make-Ready Work. If the actual Costs are greater than the estimated Costs, Licensee shall, prior to the installation of its Attachments, promptly pay ACE the difference between the estimated Costs paid and the actual Costs. If the actual Costs are less than the estimated Costs, ACE shall promptly refund the difference to Licensee.
- 4.10 Upon completion of the Make-Ready Work, payment to ACE of the Make-Ready Work Costs, and receipt from ACE of a conditional license, Licensee may undertake the installation of the Attachment for the purpose and in the manner described herein. The conditional license will designate the attachment location and elevation. Licensee may not deviate from this approved location and elevation.
- 4.11 Any portion of the various conditional licenses covering a Major Rebuild that are not constructed in accordance with the conditional license within one hundred and eighty (180) days from the date ACE issued the license shall be void, unless ACE grants a written waiver of this provision. Any portion of the conditional license(s) for other projects not covered by the preceding sentence that are not constructed in accordance with the conditional license(s) within ninety (90) days shall be void, unless ACE grants a written waiver of this provision. Licensee shall be required to submit a new Application with associated fees, to cover any Attachments subject to a void license. In order to be treated as a Major Rebuild, Licensee's Application must indicate that the Application is part of a Major Rebuild and only those Applications with such indication will be treated as part of the Major Rebuild.
- 4.12 Licensee shall be liable for Annual License Fees and other applicable charges commencing from the date ACE issues a conditional license.
- 4.13 As outlined in Section 14.1 herein, Licensee shall notify ACE upon substantial completion of the Attachment of Licensee's Facilities. ACE shall conduct a Post Installation Inspection to verify that the installation of Licensee's Facilities complies with the Attachment Agreement and the conditional license. Licensee shall pay the Post-Installation Inspection fees outlined on Schedule I.

- 4.14 If the installation of Licensee's Facilities differs in any way from the parameters of the conditional license, Licensee shall immediately correct the installation errors. Licensee's failure to immediately correct these errors may result in ACE's removal of Licensee's Facilities at Licensee's sole risk and expense and with no liability on the part of ACE.
- 4.15 If upon completion of the Post-Installation Inspection ACE finds that the installation of Licensee's Facilities matches the parameters of the conditional license, ACE will issue Licensee a Final License.

5. FEES AND CHARGES

- 5.1 Licensee shall timely pay all fees and charges outlined in this Agreement, including but not limited to those fees and charges specified in Schedule I, which is attached hereto and made a part of this Agreement.
- 5.2 The Cable Rate shall apply to Attachments made by a Cable Operator when such Attachments are used by the Cable Operator solely for the provision of Cable Service or Internet access service. The Telecommunications Rate shall apply to Attachments by a Telecommunications Carrier and shall apply to Attachments by a Cable Operator when such Attachments are used to provide Telecommunications Services, either directly, through overlash, or through third party leasing of capacity.
- 5.3 The Annual License Fees for the service offerings outlined in Section 5.2 will be calculated from the later of the first day such services are offered, or the date when applicable law permits a different rate for such service offerings. If Licensee fails to notify ACE, as required by Section 3.3 of this Agreement, of the date upon which its Attachments are first used to provide Telecommunications Services or some Other Service subject to an Annual License Fee higher than the Cable Rate ("Other Service"), Licensee shall pay all past due Annual License Fees calculated at the Telecommunications Rate (unless ACE is permitted by law to charge a higher rate), dating back to (a) the date License's Attachments were first used to provide Telecommunications Services, if Licensee establishes the same by records-proof satisfactory to ACE or (b) five (5) years from the date of discovery, whichever is less. If Licensee fails to notify ACE of the specific Attachments used to provide Telecommunications Services, or Other Service, the Annual License Fee shall be applied to all Attachments and calculated in accordance with the preceding sentence. Licensee shall also pay interest on the past due Annual License Fees at the rate set for that period by the Internal Revenue Service for individual underpayments.
- 5.4 Licensee shall reimburse ACE for any taxes, (other than taxes based upon ACE's income) fees or other charges, which ACE is required or obligated to pay by reason of Licensee's Attachment.
- 5.5 Annual License Fees shall be paid annually and in advance one year. Licensee's Billing Year shall begin on the date ACE issues the first conditional license under this Agreement ("Annual Billing Date") and shall run up to the Annual Billing Date of the

following calendar year (“Billing Year”). Annual License Fees for licenses issued within a Billing Year (and for other Attachments for which an Annual License Fee applies) shall be billed at the time the conditional license is issued (and the date of installation for other Attachments for which Annual License Fees apply) and shall be prorated up to the end of the Billing Year within which the conditional license is issued.

- 5.6 Following the initial year of this Agreement, ACE shall invoice Licensee for the following year’s Annual License Fees thirty (30) days prior to the Annual Billing Date (“Billing Date”). Licenses issued after the annual invoice shall be billed in accordance with Section 5.5. Late payment charges shall apply thirty (30) days following the date of an invoice.
- 5.7 If Licensee removes an Attachment, Licensee shall promptly notify ACE of such removal, and shall receive a credit prorated from the date of receipt of such Notice up until the next Annual Billing Date.
- 5.8 The Annual License Fees listed on Schedule I, shall be paid in advance. If Licensee installs multiple cables without Overlapping, the Annual License Fee shall be based on the number of cables attached to the ACE Infrastructure. ACE may charge an additional Annual Rental Fee to cover space occupied by splice boxes, power supplies, drop poles and any other Equipment occupying space on ACE Infrastructure.
- 5.9 Nonpayment of any amount due under this Agreement shall constitute a material default by Licensee of this Agreement, if such amount remains unpaid thirty (30) days after receipt of a written notice of nonpayment. Late payments shall be subject to a late payment charge of 1.5 % per month on the outstanding balance and shall accrue when payment is not received by ACE within thirty (30) days of the date of the invoice (“Due Date”). Licensee shall be liable for any collection costs including reasonable attorney’s fees incurred by ACE.
- 5.10 Changes in the amount of the fees and charges identified in Schedule I may be made by ACE upon at least sixty (60) days prior written notice to Licensee in the form of a revised Schedule I. Licensee agrees to pay such changed fees and charges provided that they are in accordance with applicable law. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such notice period if the change in fees and charges is not acceptable to Licensee by giving ACE written notice of its election to terminate this Agreement at least thirty (30) days prior to the end of such notice period. If Licensee terminates this Agreement, Licensee shall follow the procedures outlined in Section 21.5 of this Agreement.
- 5.11 To the extent Attachments (i) are used for services not regulated by Section 224 of the Communications Act or (ii) are used for services not regulated by any law or regulation that effects the rates for services covered by this Agreement, ACE may establish and Licensee shall pay different rates established by ACE.

6. SECURITY INTEREST

- 6.1. As security for Licensee's performance of its Obligations, Licensee, as debtor, hereby grants and assigns to DPL, as secured party, a continuing lien and security interest in the Collateral.
- 6.2. Within thirty (30) days of the date thereof, Licensee shall notify DPL, in writing, of any change in Licensee's name, the location of the Collateral, the jurisdiction under whose laws Licensee is organized or incorporated, identifying the nature of the change and the date of the change.
- 6.3. Licensee authorizes DPL to file or record one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code, in form satisfactory to DPL and Licensee will pay the cost of preparing and filing the same in all jurisdictions in which such filing is deemed by DPL to be necessary or appropriate. A carbon, photograph or other copy of this Agreement or of a UCC-1 financing statement may be filed as and in lieu of a UCC-1 Financing Statement, a copy of which is attached hereto as Exhibit D.
- 6.4. In the event that Licensee defaults on its obligations under this Agreement or any infrastructure license agreement or similar agreement between Licensee and DPL, DPL shall have all the rights of a secured party under the Uniform Commercial Code and under applicable law.

7. SPECIFICATIONS FOR ATTACHMENT TO DISTRIBUTION POLES AND TRANSMISSION STRUCTURES

- 7.1 Unless otherwise agreed to by ACE and Licensee, Licensee shall install, operate and maintain Licensee's Facilities in the Communications Space on ACE's Distribution Poles. Licensee shall install, operate and maintain Licensee's Facilities in accordance with generally accepted engineering practices, NESC, OSHA, NEC, where applicable, Federal Communications Commission ("FCC") rules, and the PHI Aerial Joint-Use Engineering Manual so as not to conflict or interfere with the facilities of ACE or other licensees.
- 7.2 Licensee's installation of Attachments on ACE Transmission Structures is within ACE's sole discretion. Requests for Attachments to Transmission Structures must be in the form of an Application, which must be prepared in accordance with the terms of this Agreement, and must include all required fees.
- 7.3 In order to ensure nondiscriminatory access to ACE's Distribution Poles, no single Attachment to a Distribution Pole will be allowed to utilize more than seven point four one percent (7.41 %) of the Distribution Pole's Loading Capacity ("Loading Capacity Limit") unless specifically authorized by ACE. This percentage has been calculated based on the FCC's presumptions of usable space.

ACE may permit Licensee's Attachment to exceed the Loading Capacity Limit where the Attachment would not unreasonably prevent third party attachers from installing Attachments on the pole and provided the following conditions are met:

(a) ACE has provided written authorization to Licensee permitting Licensee to exceed the Loading Capacity Limit. (A waiver of the Loading Capacity Limit does not in any way constitute a waiver of Licensee's responsibility to conduct necessary Make-Ready Work); and

(b) the ACE Infrastructure, as determined by ACE standards and the NESC, is not compromised; and

- 7.4 Licensee shall alter, rearrange or relocate Licensee's Facilities within thirty (30) days of notice from ACE that alteration rearrangement or relocation is necessary to accommodate ACE's electric system service, a third party attacher, or as required by a court or government agency. Licensee shall undertake the work in accordance with the requirements and specifications of applicable law, the requirements and specifications of the NEC, where applicable, the NESC, OSHA, the Joint Use Manual federal laws, rules, regulations and directives of the governing authorities having jurisdiction over the use of ACE Infrastructure. Licensee will cooperate with ACE in altering, rearranging or relocating Licensee's Facilities to facilitate third party Attachments.
- 7.5 ACE shall specify the point of Attachment on each Pole for Licensee's Facilities. Where more than one licensee is attached to a Pole, ACE will attempt, to the extent practical and as allowed by the NESC and existing contracts, to designate the same relative position on each Pole for each licensee's facilities.
- 7.6 Licensee shall install, operate and maintain Licensee's Facilities in accordance with the requirements and specifications of applicable law, the requirements and specifications of the NEC, where applicable, the NESC, OSHA, the Joint Use Manual and the regulations or directives of the governing authorities having jurisdiction over the use of ACE Infrastructure. In the event that these requirements or specifications differ, the more stringent shall apply.
- 7.7 Licensee shall maintain its Facilities in good order and condition and shall correct any safety violations immediately upon discovery, upon notice from a third party, or upon notice from ACE. Licensee shall correct all conditions that are in conflict with generally accepted engineering practice ("Non-standard Condition") within thirty (30) days of receiving written Notice from ACE and immediately upon discovery by Licensee. If Licensee does not correct any Non-Standard Condition within the time specified, ACE may, at its sole discretion, correct the Non-standard Condition at Licensee's sole expense and risk.

- 7.8 In addition to immediately rectifying all NESC violations and Non-standard Conditions, Licensee shall reimburse ACE for all costs, fees, fines and forfeitures, and any other amounts ACE is required to pay, as a result of the Non-standard Condition, Licensee's violation of the requirements and specifications of applicable law, the requirements and specifications of the NEC, where applicable, the NESC, OSHA, the Joint Use Manual, federal law, rule, regulation or directive of the governing authorities having jurisdiction over the use of ACE Infrastructure.
- 7.9 Licensee must immediately repair or remove all Attachments and associated Equipment damaged or dislodged from the ACE Infrastructure as a result of a storm, natural or unnatural disaster, or for any other reason. At no time during any such situation shall ACE be responsible for any damage to Licensee's Facilities. When re-installing previously authorized Attachments that were damaged or dislodged as outlined above, Licensee must maintain the same vertical attachment height and clearances previously authorized by ACE. ACE will conduct, and Licensee shall pay the Costs of, a Post-installation Inspection of the re-installation of Licensee's Attachments.
- 7.10 When conditions created by Licensee's Facilities result in an Emergency Situation, ACE may, using reasonable care and without first giving notice to Licensee, perform such work and/or take such action as it deems necessary to correct such condition. As soon as practical after taking such action, ACE will advise Licensee in writing of the work performed or the action taken. Licensee shall pay ACE for all actual Costs incurred by ACE in performing such work.
- 7.11 ACE's failure to notify Licensee of Licensee's noncompliance with the requirements specified in Section 7, including but not limited to the existence of Non-standard Conditions, the existence of an Emergency Situation, or ACE's failure to correct the same shall not relieve Licensee of its responsibility to install, construct and maintain Licensee's Facilities in a safe manner in accordance with the terms of this Agreement, and shall not relieve Licensee of any liability under this Agreement.
- 7.12 ACE, ACE's employees, ACE's contractors and any other ACE representative (collectively referred to as "ACE Representative") may, at any time, direct Licensee, Licensee's employees, Licensee's contractors and any other Licensee Representative (collectively referred to as "Licensee Representative") to discontinue work on ACE Infrastructure and remove the Licensee Representatives from the ACE Infrastructure or ACE owned or controlled property if an ACE Representative believes the Licensee Representative is endangering ACE Infrastructure or third party property, or the work, or the manner in which the work is undertaken, risks the public health or the safety of any person or property or the ACE Representatives believes an Emergency Situation exists.

- 7.13 An ACE Representative may, whenever a Licensee Representative is working on ACE Infrastructure, request that such Licensee Representative show ACE a copy of Licensee's conditional license(s) for the Attachments upon which the Licensee Representative is working. If the on-site Licensee Representative is unable to provide a copy of such permit, ACE may ask all of the Licensee Representatives at the site location to vacate the ACE Infrastructure, and discontinue all work on Licensee's Attachments until the permit is provided to ACE.
- 7.14 Licensee's contractors may work on and around the Communications Space but not the Power Space, provided ACE has not expressly prohibited the contractor from working on or around the ACE Infrastructure. ACE may in its sole discretion and at any time and for any reason prohibit a contractor from working on the ACE Infrastructure.
- 7.15 ACE shall not attach, Overlash, nor authorize other entities to attach or Overlash Licensee's Facilities without Licensee's prior written consent.
- 7.16 Licensee must notify ACE of any and all Attachments to Drop Poles in the form of an Application prepared in accordance with Section 3. Licensee must pay an additional Annual License Fee and Make-Ready Costs for each Attachment to a Drop Pole. Any Attachments to Drop Poles made without notifying ACE in accordance with Section 3 shall be considered Unauthorized Attachments as that term is defined in Section 1.35 of this Agreement and shall be subject to Section 15 of this Agreement, including but not limited to Unauthorized Attachment fees.
- 7.17 Prior to climbing ACE Infrastructure, all Licensee Representatives must ensure the ACE Infrastructure is suitable and safe for climbing. Neither Licensee Representatives nor any other persons shall climb any ACE Infrastructure reasonably believed to be unsuitable or unsafe and such person(s) shall immediately contact ACE regarding such ACE Infrastructure. ACE DISCLAIMS AND LICENSEE SHALL BEAR ANY AND ALL RISK FOR LIABILITY FOR INJURIES, DAMAGES, OR DEATH RESULTING FROM THE, CLIMBING OR ENTERING OF THE ACE INFRASTRUCTURE BY ANY LICENSEE REPRESENTATIVE.
- 7.18 From time to time, certain ACE Infrastructure may be marked with a tag or other mark indicating that it needs to be replaced or is otherwise unsafe or unsuitable for climbing and/or entry. Neither Licensee Representatives nor any other persons shall climb and/or enter any ACE Infrastructure so marked. ACE DISCLAIMS AND LICENSEE ASSUMES ANY AND ALL RISK FOR LIABILITY FOR INJURIES, DAMAGES AND DEATH RESULTING FROM THE ENTRY OR CLIMBING OF MARKED ACE INFRASTRUCTURE BY LICENSEE REPRESENTATIVES.

8. OVERLASHING

- 8.1 Licensee may, without an additional Annual License Fee, Overlash its own Facilities with additional Licensee Facilities provided that (1) Licensee provides ACE with prior notification of such Overlashing in the form of an Application in accordance with Section 3; (2) the Overlashing complies with the NESC, the Joint Use Manual and all other applicable laws and regulations; (3) Licensee remains responsible for any and all costs and fees associated with such Overlashing, including but not limited to Engineering Review Fees, ACE's Pre-License Survey Fees, the costs of all Make-Ready Work, ACE's Post-Installation Inspection and any other engineering fees; and (4) Licensee follows the Overlashing procedures outlined in the Joint Use Procedures Manual
- 8.2 Any Licensee Facilities no longer used by Licensee upon completion of the Overlashing must be removed to reduce the burden on the ACE Infrastructure. Licensee may not abandon any Attachments or Equipment and Licensee shall not Overlash Licensee Facilities that Licensee has or intends to discontinue using in the manner outlined in this Agreement.
- 8.3 Licensee may allow third parties to Overlash Licensee's facilities provided all of the following requirements are met:
- 8.3.1 Licensee submits to ACE an Application with associated fees, in accordance with Section 3 stating the application is for a third party overlash. Licensee is responsible for all fees outlined in this Agreement, including but not limited to Engineering Review Fees, ACE's Pre-License Survey, costs of all Make-Ready Work, ACE's Post Installation Inspection and any other engineering or other applicable fees;
- 8.3.2 Licensee shall enforce each agreement it has with third party overlashers with at least the same degree of diligence used in enforcing similar agreements covering Licensee's own services. Licensee's agreement with third party overlashers must include the following provisions:
- (i) ATLANTIC CITY ELECTRIC COMPANY ("ACE"), 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. ACE, 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 OVERLASHER'S USE OF ACE FACILITIES, REGARDLESS OF WHETHER SUCH LOSS OR

DAMAGE OCCURS AS A RESULT OF ACE's, ACE's EMPLOYEE'S OR ACE's CONTRACTORS' (HEREINAFTER COLLECTIVELY AND INDIVIDUALLY REFERRED TO AS "ACE REPRESENTATIVE") NEGLIGENCE.

(ii) IN NO EVENT SHALL AN ACE REPRESENTATIVE BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE OVERLASH OR THE ACE INFRASTRUCTURE.

(iii) ACE shall be deemed to be a third-party beneficiary of the agreement between Licensee and the third party overlasher, with the right to enforce the terms of this agreement.

(iv) Third party overlasher's facilities shall be installed only upon receipt of written authorization from ACE, and such installation must follow the parameters outlined in the written authorization. Deviations from the authorization shall be considered Unauthorized Attachments subject to removal, and Licensee shall be subject to applicable Unauthorized Attachment fees. All installations shall be made in accordance with the ACE Infrastructure License Agreement by and between ACE and Licensee, the NESC, applicable federal, state, and local requirements and the Joint Use Manual. In the event that these requirements or specifications differ, the more stringent shall apply.

(v) Third party overlasher shall not Overlash Licensee Facilities that Licensee has or intends to discontinue using.

(vi) Third party overlasher shall not install its overlash until Licensee has received ACE's express written consent authorizing the Overlashing.

(vii) In order to reduce the burden on the Pole, third party overlasher must remove any overlash facilities and equipment that are no longer in use within thirty (30) days of when it ceases using the overlash. Third party overlashers may not abandon any facilities or equipment.

(viii) An ACE Representative may, at any time, direct third party overlasher, or its employees or contractors to discontinue the installation of the Overlash and remove such employees or contractors from the ACE Infrastructure or ACE owned or controlled property if the ACE Representative believes the contractor or employee is endangering ACE Infrastructure, or the installation, or the manner of installation, risks the public health or the safety of any person or property. The third party overlasher shall immediately comply with such direction.

- (ix) An ACE Representative may, whenever a third party overlasher's employee, agent, representative or contractor is working on ACE Infrastructure, request that such employee or contractor show ACE a copy of third party overlasher's conditional license(s) for the Attachments upon which such employee or contractor is working. If the on-site employee or contractor is unable to provide a copy of such permit, the ACE Representative may direct all of third party overlasher's employees or contractors to vacate the ACE Infrastructure, and discontinue all work on the Overlash project until the permit is provided to ACE. The third party overlasher shall immediately comply with such direction.
- (x) Third party overlasher agrees that its contractors will not enter the Power Space, and that it will not authorize contractors to work on Attachments to ACE Infrastructure if ACE has prohibited such contractor from working on or around the ACE Infrastructure. ACE may at any time and in its sole discretion prohibit any contractor from working on or around the ACE Infrastructure.
- (xi) Third party overlasher shall install its overlash facilities in accordance with the most recent version of the PHI Aerial Joint-Use Engineering Manual, the NESC and applicable federal, state and local laws. Any overlash or attachment made in violation of these requirements is subject to removal by ACE at Licensee's sole risk and expense and without any liability on the part of ACE, and are also subject to unauthorized attachment fees.
- (xii) Third party overlasher's authorization to overlash Licensee's Facilities is directly linked to Licensee's authorization. If Licensee's authorization to attach to the ACE infrastructure is lost, terminated or otherwise ceases to exist, third party overlasher's authorization shall also be lost, terminate or cease to exist and third party overlasher shall immediately remove its overlash facilities. The third party overlasher's facilities are subject to removal by ACE at Licensee's sole risk and expense and without any liability on the part of ACE, if the third party overlasher fails to immediately remove the overlash facilities when Licensee's authorization to attach to the ACE Infrastructure is lost, terminated or otherwise ceases to exist.

8.3.3 Third party overlasher's authorization to overlash Licensee's Facilities is directly linked to Licensee's authorization. If Licensee's authorization to attach to the ACE infrastructure is lost, terminated or otherwise ceases to exist, the authorization of the third party overlasher shall also be lost, terminate or cease to exist and third party overlasher shall immediately

remove its overlash facilities. The third party overlasher's facilities are subject to removal by ACE at Licensee's sole risk and expense and without any liability on the part of ACE, if the third party overlasher fails to immediately remove the overlash facilities when Licensee's authorization to attach to the ACE Infrastructure is lost, terminated or otherwise ceases to exist.

- 8.3.4 Licensee is responsible for any third party overlashing that is not in compliance with the requirements and specifications of applicable law, the requirements and specifications of the NEC, where applicable, the NESC, OSHA, the Joint Use Manual, federal law, rule, regulation or directive of the governing authorities having jurisdiction over the use of ACE Infrastructure. Licensee is responsible for reimbursing ACE for any costs, fees, or penalties assessed on ACE as a result of any overlash project associated with Licensee's Attachments.
- 8.3.5 ACE may, at the sole expense of Licensee, conduct periodic inspections of third party overlash to ensure that it is in compliance with the requirements and specifications of applicable law, the requirements and specifications of the NEC, where applicable, the NESC, OSHA, the Joint Use Manual, federal law, rule, regulation or directive of the governing authorities having jurisdiction over the use of ACE Infrastructure.
- 8.3.6 Any breach by the third party overlasher of the terms outlined in Section 8.3.2 shall be deemed a material breach by Licensee of this Agreement. ACE may suspend or terminate the License of the third party overlasher and Licensee if Licensee or the third party overlasher breaches any of the terms of this Agreement.
- 8.3.7 Licensee shall not permit third parties to Overlash Licensee Facilities that Licensee has or intends to discontinue using.
- 8.3.8 ACE shall not be liable to Licensee or the 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 overlash in conjunction with the Overlash or Attachments, except to the extent such Claims are caused solely by the gross negligence or willful misconduct of ACE. In no event shall ACE 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 Licensee's or third party overlasher's facilities.
- 8.3.9 Licensee's Representatives shall exercise reasonable care to avoid damaging ACE Infrastructure and the facilities of any other licensee attached to ACE Infrastructure, and shall report any damage immediately

to ACE 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.

- 8.4 Licensee may not Overlash the facilities of another licensee unless the host licensee has obtained the express written consent of ACE.
- 8.5 Licensee and all third party overlashers shall install their Overlash facilities in accordance with the NESC, the Joint Use Manual and applicable federal, state and local requirements. Licensee shall provide ACE with engineering calculations demonstrating its own compliance with these requirements as well as compliance by third party overlashers.
- 8.6 Licensee shall notify ACE upon substantial completion of all Licensee's overlash projects as well as third party overlashing projects. ACE shall conduct a Post-Installation Inspection of all overlash projects. As outlined in Schedule I, Licensee shall pay ACE's engineer costs to cover the Post-Installation Inspection of Licensee's and third party's overlashing.
- 8.7 If an entity other than a Cable Operator overlashes a Licensee Attachment that is used solely to provide cable service, the Rental Fee for Licensee's Attachment shall be calculated at the higher of the Telecommunications and the Cable Rate, unless ACE is permitted by law to charge a higher rate.

9. SPECIFICATIONS FOR FACILITIES IN THE ACE POWER SPACE

- 9.1 ACE may, at its sole discretion, permit Licensee to install Attachments in the Power Space of Distribution Poles or the Power Space of Transmission Structures. To ensure the safety and reliability of ACE's electric system, ACE shall at all times retain exclusive control of the Power Space on Distribution Poles and Transmission Structures. Neither Licensee nor a Licensee Representative may physically enter the Power Space on Distribution Poles or Transmission Structures.
- 9.2 If Licensee obtains ACE's approval for the installation of Licensee's Facilities in the Power Space on a Distribution Pole or Transmission Structure, Licensee shall authorize ACE to install, operate and maintain such Licensee Facilities by executing a Construction and Maintenance Agreement, the form of which shall be provided by ACE.
- 9.3 Licensee shall provide ACE with any and all pertinent facts or information concerning Licensee's Facilities Attached in the Power Space of a Distribution Pole, and anywhere on a Transmission Structure that could affect ACE's Construction and Maintenance Services to be performed under a Construction and Maintenance Agreement.

- 9.4 If Licensee has an Attachment in the Power Space, it may also have Equipment attached in the Communications Space. In accordance with the terms of this Agreement, Licensee may construct and maintain Equipment located in the Communications Space, but may under no circumstances enter the Power Space.
- 9.5 ACE DISCLAIMS AND LICENSEE ASSUMES ANY AND ALL RISK FOR LIABILITY FOR INJURIES, DAMAGES AND DEATH RESULTING FROM THE ENTRY OR CLIMBING OF ACE INFRASTRUCTURE BY LICENSEE'S REPRESENTATIVES.

10. SPECIFICATIONS FOR ATTACHMENTS IN THE CONDUIT SYSTEM

- 10.1 In accordance with applicable law and in compliance with the contracts ACE has with third parties, ACE may, where there is sufficient capacity, permit the Attachment of Licensee's Facilities in the Conduit System provided the proposed Attachment will not interfere with the safety and reliability of ACE's facilities and the proposed Attachment complies with the requirements of the NEC, where applicable, the NESC, OSHA, applicable state and local requirements and the Joint Use Manual.
- 10.2 Licensee recognizes that the Conduit System is composed of energized spaces with special safety concerns and requirements. To ensure the safety, integrity and reliability of the ACE Infrastructure, ACE shall at all times retain exclusive control of the Conduit System. Licensee's Representatives shall not enter ACE's Conduit System. Licensee shall authorize ACE to install, operate and maintain Licensee Facilities located in the Conduit System by executing a Construction and Maintenance Agreement, the form of which shall be provided by ACE.
- 10.3 Whenever ACE intends to modify or alter the Conduit System occupied by Licensee's Facilities, ACE shall provide Licensee written notice at least sixty (60) days prior to undertaking such modification or alteration in order to provide Licensee a reasonable opportunity to add to or modify Licensee's Facilities. If Licensee adds to or modifies Licensee's Facilities in accordance with this provision, Licensee shall bear a proportionate share of the costs incurred by ACE in making modifications or alterations of the Conduit System.
- 10.4 If Licensee applies for access to ACE's Conduit System and there is not sufficient space to accommodate Licensee's Attachment, ACE may, in its sole discretion, allow for the addition of a new Conduit in the Conduit System. The new Conduit shall be of like kind and size as the existing Conduit(s) located in the Conduit System and shall be comprised of as many Innerducts as possible. Licensee shall bear all costs of the new Conduit, including but not limited to engineering and material costs, associated with acquiring and installing the new Conduit. Licensee is responsible for obtaining the permits necessary to authorize the installation of the new Conduit. ACE shall at all times remain the sole owner of the Conduit. Licensee shall indicate in its Application the number of Innerducts it intends to

lease from ACE. Licensee shall pay an Annual License Fee based on the number of Innerducts Licensee leases from ACE, as outlined in Schedule I. Licensee shall authorize ACE to acquire and install the new Conduit by executing a Construction and Maintenance Agreement, the form of which shall be provided by ACE.

- 10.5 Licensee shall provide ACE with any and all pertinent facts or information concerning Licensee's Facilities Attached in the Conduit System that could affect ACE's Construction and Maintenance Services to be performed under a Construction and Maintenance Agreement.
- 10.6 ACE DISCLAIMS AND LICENSEE SHALL BEAR ANY AND ALL RISK FOR LIABILITY FOR INJURIES, DAMAGES, OR DEATH RESULTING FROM LICENSEE'S ATTACHMENTS IN THE CONDUIT SYSTEM.

11. RELOCATION OR REMOVAL OF LICENSEE FACILITIES

- 11.1 Licensee shall be responsible for any and all expenses associated with the relocation, removal, or transfer of Licensee's Facilities due to emergencies, storms, weather, acts of God, civil disturbances, acts of war, routine replacements, upgrades or betterment of the electric distribution system.
- 11.2 In the case of road widening, urban renewal projects or other major and/or minor construction projects that require the relocation of Licensee's Facilities, Licensee shall relocate Licensee's Facilities at Licensee's sole expense. In the case of road widening and urban renewal projects, which require the replacement of a Pole, Licensee shall cooperate with ACE in moving its facilities in a timely manner. Licensee agrees to accompany ACE to the location of its Attachments and relocate Licensee's Facilities at the time and date established by ACE or the applicable government authority.
- 11.3 Licensee agrees that should it fail to relocate, remove or transfer Licensee's Facilities within thirty (30) days (a) of notification from ACE or (b) of notice from the relevant government authority of the need to move Licensee's Facilities, ACE may transfer, remove, or relocate Licensee's Attachments at Licensee's sole risk and expense and without any liability on the part of ACE. In addition, Licensee shall pay ACE the costs incurred as a result of transferring, removing, or relocating Licensee's Attachment and the costs for removing the Pole.
- 11.4 All Equipment, wire, cable or other materials ("Materials") removed from ACE Infrastructure or used by Licensee during the course of installing, inspecting, or otherwise maintaining Licensee's Facilities, must immediately be reused or disposed of by Licensee. If Licensee fails to dispose of such Materials, ACE shall have the right to dispose of said Materials at Licensee's sole risk and expense and without any liability on the part of ACE. Licensee will be responsible for all disposal costs and expenses associated with such removal, including but not

limited to any and all hazardous material disposal fees, and shall reimburse ACE for said costs and expenses immediately upon receipt of an invoice from ACE.

- 11.5 Licensee shall not modify the placement or operation of ACE's facilities or the facilities of other licensees without the express written consent of ACE and the other licensees. Licensee shall, as an attachment to its Application, and with associated fees, provide ACE with copies of all such consents. At no time may Licensee modify the location, elevation or placement of its own Attachment without ACE's prior written approval.
- 11.6 Licensee shall, at its own expense, cause Licensee's Facilities to be removed from ACE Infrastructure and shall return ACE's property to its original condition less reasonable wear and tear within ninety (90) days after termination of this Agreement. Notwithstanding the foregoing, ACE may afford Licensee reasonable additional time to remove Licensee's Facilities from the ACE Infrastructure if Licensee is reasonably diligent in removing Licensee's Facilities but is unable to meet this ninety (90) day period, and there is no substantial harm to ACE or public health or safety from the delay.
- 11.7 Licensee shall, at its own expense, cause Licensee's Facilities to be removed from ACE Infrastructure and shall return ACE's property to its original condition less reasonable wear and tear within sixty (60) days after termination of the License or conditional permit covering such Attachment or when Licensee replaces Licensee's Facilities with replacement Licensee Facilities. Notwithstanding the foregoing, ACE may afford Licensee reasonable additional time to remove Licensee's Facilities from the ACE Infrastructure if Licensee is reasonably diligent in removing Licensee's Facilities but is unable to meet this sixty (60) day period, and there is no substantial harm to ACE or public health or safety from the delay.
- 11.8 Licensee shall remain liable for and pay to ACE all fees and charges pursuant to this Agreement for any Attachment that continues after the termination of the License for such Attachment until such time as Licensee's Facilities have been fully removed from the ACE Infrastructure and ACE's property has been returned to its original condition.
- 11.9 If Licensee fails to remove Licensee's Facilities within the periods set forth above in Sections 11.6 and 11.7, ACE shall have the right to remove Licensee's Facilities at Licensee's sole risk and expense and without any liability on the part of ACE. Licensee shall pay the costs and expenses associated with such removal immediately upon receipt of ACE's invoice covering said expenses.
- 11.10 When Licensee removes Licensee's Facilities from ACE Infrastructure, Licensee shall not make additional, new or replacement Attachments to ACE Infrastructure until:

- 11.10.1 Licensee has first complied with all of the provisions of this Agreement as though no such Attachment had previously been made, including the filing of an Application and payment of associated fees in accordance with Section 3; and
- 11.10.2 Licensee has paid in full all outstanding amounts due to ACE for such previous Attachment.
- 11.11 Licensee shall advise ACE in writing of the date on which Licensee has removed Licensee's Facilities from ACE Infrastructure.
- 11.12 Licensee may not abandon any Licensee Facilities or Equipment.

12. LIMITATIONS ON ATTACHMENT

- 12.1 No License granted under this Agreement shall extend to any ACE Infrastructure where the Attachment would result in a forfeiture of the rights of ACE or ACE's existing licensees to Attach to the property on which such ACE Infrastructure is located. If the Attachment of Licensee's Facilities would cause a forfeiture of the rights of ACE or ACE's existing licensees to attach to the property on which ACE Infrastructure is located, Licensee agrees to remove Licensee's Facilities forthwith upon receipt of written notification from ACE. If Licensee does not remove Licensee's Facilities in response to ACE's written notice, ACE may, at Licensee's sole risk and expense and without any liability on the part of ACE, remove Licensee's Facilities sixty (60) days after the date of ACE's written notice to Licensee. If ACE removes Licensee's Facilities as provided herein, Licensee shall pay ACE's Costs associated with such removal.
- 12.2 Licensee's right to Attach and ACE's right to permit communications facilities in the Power Space on both ACE's and Bell Atlantic New Jersey's/Verizon's Pole(s) shall be subject to the Joint Use of Poles Agreement by and between Atlantic City Electric Company and New Jersey Bell Telephone Company dated August 1, 1966, and any amendments thereto ("Bell Atlantic/Verizon Agreement").

13. TERMINATION OF LICENSE

- 13.1 Any License issued under this Agreement shall automatically terminate when Licensee ceases to have or is found not to have authority to construct and operate its Facilities on public or private property at the location of the particular ACE Infrastructure covered by the License.
- 13.2 Licensee may at any time terminate its License with respect to an Attachment(s) and remove Licensee's Facilities by giving ACE sixty (60) days advance written notice of such License termination.

- 13.3 ACE may terminate Licensee's License(s) if ACE removes, abandons, or terminates its use of, or its right to use, ACE Infrastructure, ACE loses its right to grant Licensee a right to Attach to ACE Infrastructure, ACE is found not to have the right to occupy the property on which the ACE Infrastructure is located, or Licensee fails to pay any and all amounts due under this Agreement.
- 13.4 If a License is terminated prior to the expiration of the current term of the Agreement the entire Annual License Fee for the License term in which such termination occurs shall be considered earned and shall be retained by ACE and Licensee shall remain liable to ACE for all amounts due under this Agreement, including those accruing before and after termination of the license.
- 13.5 Notwithstanding the terms of a License, all Licenses (conditional or otherwise) issued pursuant to this Agreement shall terminate and cease without notice upon expiration or termination of this Agreement.
- 13.6 If Licensee ceases using Licensee's Attachment(s) and associated Equipment in the manner outlined in this Agreement on other than a demonstrably temporary basis not to exceed six (6) months, then all of Licensee's rights, privileges and authorizations under this Agreement for that Attachment, including the Licenses associated with the unused Attachment(s) issued hereunder, shall automatically terminate as of the date following the final day that Licensee's Facilities are used. Licensee shall remove Licensee's Attachments and Associated Equipment within sixty (60) days of when it ceases using the Attachment(s) and associated Equipment. Licensee may not abandon any Attachments or Equipment.

14. INSPECTION OF LICENSEE'S FACILITIES

- 14.1 Licensee shall notify ACE upon substantial completion of the installation of Licensee's Attachments. ACE shall perform a Post-Installation Inspection of Licensee's Facilities following the installation of Licensee's Attachments at Licensee's sole cost and expense. To ensure that Licensee's Attachments and other work have been performed in accordance with the License, this Agreement, the NESC and all applicable laws and regulations, ACE may, at the sole expense of Licensee, also inspect Licensee's Facilities on an ongoing basis (typically at three (3) year scheduled intervals, which schedules may be changed at any time by ACE without notice).
- 14.2 Notwithstanding the foregoing paragraph, ACE reserves the right to conduct additional inspections of Licensee's Attachments if it finds any Unauthorized Attachments, violations of the NESC or any other applicable rules or regulations, or a breach of the terms or conditions of this Agreement or License. ACE may conduct an inspection of Licensee's Facilities if ACE finds any of these violations, breaches or Unauthorized Attachments. ACE shall provide Licensee with an estimate of the Costs of conducting an inspection of Licensee's Attachments ("Estimated Inspection Costs"), which shall be paid by Licensee.

Payment of the Estimated Inspection Costs of the inspection shall in no way waive ACE's rights and remedies under this Agreement nor shall such payment waive the requirement that Licensee follow the application process outlined in Section 3 of this Agreement. Licensee shall be subject to applicable Unauthorized Attachment Fees outlined in Section 15.

- 14.3 Upon completion of the inspection, ACE shall deliver to Licensee a statement of the actual inspection Costs. If the actual Costs are greater than the Estimated Inspection Costs, Licensee shall promptly pay ACE the difference between the estimated Costs paid and the actual Costs. If the actual Costs are less than the estimated Costs, ACE shall promptly refund the difference to Licensee. Licensee may, at ACE's discretion, lose its License(s) for all affected Attachments if it fails to pay ACE the Estimated Costs or the difference between the estimated inspection Costs and the actual inspection Costs, and Licensee shall immediately remove its Attachments from the ACE Infrastructure and return the ACE Infrastructure to its original condition. If Licensee fails to remove its Attachments within sixty (60) days of Notice from ACE that Licensee has lost its License for the affected Attachments for failure to pay these Costs, ACE may remove the Attachments at Licensee's sole risk and expense and without any liability on the part of ACE.
- 14.4 ACE shall be under no obligation to inspect Licensee's Facilities and ACE's failure to inspect Licensee's Facilities shall not operate to impose upon ACE any liability of any kind nor relieve Licensee of any responsibility, obligations or liability under this Agreement.
- 14.5 In addition to its right to conduct inspections as provided for above, ACE shall have the right at any time, and from time to time, to conduct periodic Pole Counts/Audits, NESC Audits, Right-of-Way and Conduit System Audits and any other audits ACE deems necessary to identify the number of and the specific ACE Infrastructure to which Licensee has attached Licensee's Facilities. Licensee shall reimburse ACE for its pro rata share of the Costs of such Pole Count/Audits, NESC Audits and Conduit System Audits.

15. UNAUTHORIZED ATTACHMENT OR USE

- 15.1 Except as specifically provided herein, Licensee shall not Attach or modify its existing Attachments without first obtaining a License from ACE as required by the terms of this Agreement. Attachment(s) or modification(s) made without a License shall be considered Unauthorized Attachments and subject to removal in addition to the Unauthorized Attachment Fees outlined in Section 15.5 below.
- 15.2 Unauthorized Attachments shall be removed by Licensee upon ACE's request or shall be subject to removal by ACE at Licensee's sole risk and expense and without any liability on the part of ACE. ACE may, at its sole discretion, accept an Application prepared in accordance with Section 3 of this Agreement with all

appropriate fees and costs, for such attachment in lieu of its removal. If an Unauthorized Attachment does not qualify for a License, such Unauthorized Attachment shall be promptly removed by Licensee or shall be subject to removal by ACE at Licensee's sole risk and expense and without any liability on the part of ACE. Neither removal of the Unauthorized Attachment, nor ACE's acceptance of an Application to cover an Unauthorized Attachment shall in any way limit ACE's rights and remedies under this Agreement, including the right to recover past due amounts, including but not limited to Make Ready Work Costs, Inspection or Survey Costs and Unauthorized Attachment Fees outlined in Section 15.5 below.

- 15.3 In the event that Licensee has made an Unauthorized Attachment to ACE Infrastructure, ACE may, without prejudice to its other rights or remedies under this Agreement, require Licensee to submit an Application pursuant to this Agreement within fifteen (15) days after receipt of written notice from ACE of the Unauthorized Attachment. If Licensee does not submit an Application within fifteen (15) days, ACE may require Licensee to remove the Unauthorized Attachment. In the alternative ACE may, at ACE's option, remove the Unauthorized Attachment at Licensee's sole expense and risk and without any liability on the part of ACE.
- 15.4 No act or failure to act by ACE with regard to an Unauthorized Attachment shall be deemed as a ratification of the unauthorized use; and if ACE subsequently issues a License, the License shall not operate retroactively or constitute a waiver by ACE of any its rights or privileges under this Agreement or otherwise. Licensee shall remain subject to all liabilities, obligations and responsibilities of this Agreement in regard to said Unauthorized Attachment from its inception.
- 15.5 Licensee shall pay an Unauthorized Attachment Fee equal to the Annual License Fee for the time period of Licensee's Unauthorized Attachment dating back to (a) the date the Attachment was first made to ACE Infrastructure, if Licensee establishes the same by records-proof satisfactory to ACE, (b) the date the last Pole Count or Conduit System Audit was completed, or (c) five (5) years from the date of discovery, whichever is less. Licensee shall also pay interest on the Unauthorized Attachment Fee for the Unauthorized Attachment at the rate set for that period by the Internal Revenue Service for individual underpayments.

16. LIABILITY AND DAMAGES

- 16.1 ACE shall exercise reasonable care to avoid damaging Licensee's Facilities Attached to ACE Infrastructure under this Agreement, and shall report to Licensee the occurrence of any such damage caused by ACE's employees, agents or contractors. ACE shall not be liable to Licensee 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 third party overlasher in conjunction with its Attachment, except to the extent such

Claims are caused solely by the gross negligence or willful misconduct of ACE. In no event shall ACE 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 Licensee's or third party overlasher's service resulting from damage to or interference with the operation of Licensee's Facilities or third party overlasher's facilities.

- 16.2 Licensee's Representatives shall exercise reasonable care to avoid damaging ACE Infrastructure and the facilities of any other licensee attached to ACE Infrastructure, and shall report any damage immediately to ACE 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, and for third party overlashers and the third party overlasher's contractors, employees, agents or any other person acting on behalf of the third party overlasher ("Overlasher Representative").
- 16.3 **THE REMEDIES SET FORTH IN THIS AGREEMENT ARE THE EXCLUSIVE REMEDIES OF LICENSEE FOR ANY BREACH, DEFECT OR ANYTHING ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, WHETHER CLAIMS BY LICENSEE ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE.**
- 16.4 Except to the extent any Claims are proximately caused solely by the gross negligence or willful misconduct of ACE's Representatives, Licensee shall indemnify, protect, defend, and save harmless ACE from and against any and all Claims arising out of, or caused by the installation, Attachment, maintenance, repair, replacement or removal of Licensee's Facilities, or by any act or omission of Licensee's Representatives, including, but not limited to, Claims for damages to any property, or injuries, including death, payments to be made under any Workers' Compensation law or under any plan for employee's disability and death benefits, taxes, special charges by others, damages or loss resulting from the infringement of any copyright(s), patent(s) or other intellectual property rights with respect to the manufacture, use or operation of Licensee's Facilities in combination with ACE Infrastructure or third party attacher, including but not limited to compliance with Section 1.1307(b) of Title 47 of the Code of Federal Regulations concerning human exposure to levels of radiofrequency radiation, Claims for libel, slander, or the unauthorized use of television or radio broadcast programs and other program material, the cost of relocating ACE Infrastructure due to the loss of any Right-of-Way or property owner consent(s) resulting from any acts or omissions of Licensee's Representatives and including but not limited to ACE's reasonable costs of defending those rights and consents.
- 16.5 Except to the extent any Claims are proximately caused solely by the gross negligence or willful misconduct of ACE's Representatives, Licensee shall indemnify, protect, defend, and save harmless ACE from and against any and all

Claims arising out of, or caused by third party overlasher's installation, Attachment, maintenance, repair, replacement or removal of third party overlasher's facilities, or by any act or omission of the Overlasher Representatives, including, but not limited to, Claims for damages to any property, or injuries, including death, payments to be made under any Workers' Compensation law or under any plan for employee's disability and death benefits, taxes, special charges by others, damages or loss resulting from the infringement of any copyright(s), patent(s) or other intellectual property rights with respect to the manufacture, use or operation of third party overlasher's facilities in combination with ACE Infrastructure or third party attacher, including but not limited to compliance with Section 1.1307(b) of Title 47 of the Code of Federal Regulations concerning human exposure to levels of radiofrequency radiation, Claims for libel, slander, or the unauthorized use of television or radio broadcast programs and other program material, the cost of relocating ACE Infrastructure due to the loss of any Right-of-Way or property owner consent(s) resulting from any acts or omissions of the Overlasher Representatives and including but not limited to ACE's reasonable costs of defending those rights and consents.

- 16.6 Licensee shall be solely responsible for any cost and/or expense associated with restoring ACE Infrastructure to its original condition where such ACE Infrastructure is disturbed or destroyed by Licensee's or third party overlasher's operation, installation, equipment failure, splicing, inadequate engineering, or other acts.
- 16.7 **UNDER NO CIRCUMSTANCES SHALL ACE BE LIABLE TO LICENSEE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING LOST PROFITS, TIME, OR REVENUE) FOR ANYTHING ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, WHETHER CLAIMS FOR SAID LOSSES OR DAMAGES ARE PREMISED ON WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHERWISE.**
- 16.8 ACE and Licensee shall promptly advise each other of all Claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by the erection, construction, installation, Attachment, maintenance, presence, operation, use, repair, replacement, or removal of Licensee's Facilities governed by this Agreement and any other Claims described in this Section 16. Copies of all accident reports and statements made to a party's insurer by the other party or affected entity shall be furnished promptly to the insured party. The indemnifying party shall have the authority to settle any Claims hereunder and may defend against such actions by counsel of its own choosing, providing it includes a release from all matters associated with the Claim in favor of the indemnified party.

17. **NO WARRANTY**

ACE PROVIDES NO WARRANTY REGARDING THE SUITABILITY OF THE ACE INFRASTRUCTURE FOR LICENSEE'S FACILITIES AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

18. **INSURANCE**

18.1 Licensee shall, at its sole cost and expense, procure, maintain, pay for and keep in force insurance, including endorsements insuring the indemnification provisions of this Agreement issued by an insurance carrier authorized to conduct business in Licensee's operating region and having an A.M. Best rating of not less than A-, to protect ACE Infrastructure from and against all claims, demands, causes of actions, judgments, costs, including attorneys' fees, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage as covered in this Agreement.

18.2 The amounts of such insurance shall be as follows:

18.2.1 Comprehensive General Liability coverage on an occurrence basis in an amount of Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage, with a policy aggregate of Five Million Dollars (\$5,000,000). Said agreement shall include the contractual, independent contractors products/completion operations, broad form property and personal injury endorsements.

18.2.2 All Risk Property coverage on a full replacement cost basis insuring all of Licensee's real and personal property situated on or within ACE Infrastructure. Licensee may also elect to purchase Transmission and Distribution insurance and/or contingent business interruption insurance.

18.2.3 Worker's Compensation Statutory coverage, and Automobile and Employer's Liability coverage each in the amount of Three Million Dollars (\$3,000,000).

18.3 Licensee shall name ACE as an additional insured on the Comprehensive General Liability Insurance in 18.2.1 above and shall provide certificates by each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement and that it will not cancel or change any such policy of insurance issued to Licensee except after thirty (30) days written notice to ACE.

- 18.4 All insurance required in accordance with this Section 18 must be effective before ACE will issue a License and shall remain in force until Licensee's Facilities have been removed from all ACE Infrastructure. In the event that the Licensee fails to maintain the required insurance coverage, ACE may pay any premium thereon falling due, and the Licensee shall forthwith reimburse ACE for any such premium paid.
- 18.5 ACE shall not begin Make-Ready Work until Licensee has delivered to ACE a Certificate of Insurance.
- 18.6 All insurance policies purchased by Licensee shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by ACE.
- 18.7 Contractor shall provide certificates of insurance and applicable policy wording and/or endorsements to DPL's third party vendor, myCOI, <http://www.mycoitracking.com/> for review. Contractor shall comply with the requirements of myCOI for review of certificates of insurance, insurance policy wording and insurance policy endorsements for verification of compliance with the insurance requirements specified by subsections 18.2.1 and 18.2.3. All insurance carriers must have a Best's rating of A- or better.
- 18.8 With respect to subsections 18.2.1 and 18.2.3, above, such insurance shall name DPL, its officers, directors, employees and agents as additional insured's. Insurer must have a Best's rating of A- or better. All insurance required hereunder shall provide a waiver of subrogation in favor of DPL, state that coverage is primary to any other valid insurance available to DPL (to the extent permitted by applicable insurance law), and allow cross-liabilities and coverage regardless of fault. Any material change in the policy or cancellation must be reported to DPL with not less than thirty (30) days prior written notice. The policy must be kept in force during the life of the contract and for six (6) years (either as a policy in force or extended reporting period) after contract termination.
- 18.9. Consultant shall maintain adequate insurance coverage for Subcontractors, and in the event any Subcontractor(s) provide any Services hereunder, Consultant shall require such Subcontractor(s) to maintain insurance in accordance with the requirements of this Section 18.

19. AUTHORIZATION NOT EXCLUSIVE

Nothing contained in this Agreement shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Subject to the rights granted Licensee under the provisions of this Agreement, ACE shall have the right to grant, renew and extend rights and privileges in a nondiscriminatory manner to others not parties to this Agreement, by contract or otherwise, to use any ACE Infrastructure covered by this Agreement.

20. ASSIGNMENT

- 20.1 Licensee shall not assign or transfer any License granted under this Agreement and no License granted hereunder shall inure to the benefit of Licensee's successors or assigns, without the prior written consent of ACE. If ACE grants such consent to assignment, the rights and obligations of Licensee under this Agreement shall apply to and bind Licensee's successors and assigns. To effectuate an assignment, Licensee shall use the form of Assignment attached hereto as Exhibit E.
- 20.2 ACE may assign this Agreement and all of its rights and obligations hereunder, to any affiliated company or successor-owner of ACE Infrastructure.

21. LETTER OF CREDIT

Prior to the issuance by ACE of Licensee's first Final License, Licensee shall deliver to ACE an original, irrevocable and unconditional standby letter of credit ("Letter of Credit") in the amount specified by ACE. On each Annual Billing Date, ACE will notify Licensee if any increase to the Letter of Credit is required based on the number of Final Licenses issued the previous year. Each Letter of Credit shall:

be issued by a bank having offices in Wilmington, Delaware where drafts drawn under the Letter of Credit may be presented and shall be issued by a bank that is acceptable to ACE;

be in an amount equal to the estimated annual License Fee plus removal costs equal to \$300 per Attachment to Transmission Structures, \$200.00 per Attachment to Distribution Poles and \$2.40 per cable foot for Attachments in the Conduit System;

have an expiration date of not less than one year and three months from the date of its issuance;

include a provision that it is automatically renewed and extended for successive periods of one year and three months from its original expiration date or any subsequent expiration date unless the Letter of Credit is replaced by a new Letter of Credit or the issuer notifies ACE in writing at least ninety (90) days prior to such expiration date that it will not extend the expiration date for another one year period.

Permit draws under the Letter of Credit upon presentation of a sight draft and a draw certificate that states that a Material Breach has occurred under this Agreement or that ACE has terminated the Agreement due to the issuer's failure to extend the expiration date of the Letter of Credit or the

issuer's failure to increase the amount of the Letter of Credit in the amount specified by ACE.

Permit partial draws.

22. TERMINATION OF AGREEMENT

- 22.1 Subject to Sections 22.3 and 22.4 below, ACE shall have the right to terminate this Agreement or any License issued hereunder whenever Licensee is in default of any material term of this Agreement ("Material Breach") that is not cured after thirty (30) days written notice, including, but not limited to, the following conditions:
- 22.1.1 Licensee's Facilities are used or maintained in violation of any law or in aid of any unlawful act or undertaking; or
 - 22.1.2 Licensee Attaches to any ACE Infrastructure without having first been issued a License therefore; or
 - 22.1.3 Any authorization required of Licensee by any governmental or private authority for the construction, operation and/or maintenance of Licensee's Facilities is denied or revoked;
 - 22.1.4 Licensee fails to timely pay any amounts due under this Agreement;
 - 22.1.5 The filing by or against Licensee of a petition seeking relief, or the granting of relief, under the United States Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Licensee; the appointment of a custodian, receiver, liquidator or trustee for Licensee or for any of the property of Licensee, or any action by Licensee to effect any of the foregoing; or if Licensee becomes insolvent (however defined) or is not paying its debts generally as they become due;
 - 22.1.6 The rejection of this Agreement pursuant to an order of any bankruptcy court having jurisdiction over any bankruptcy proceeding involving Licensee; or
 - 22.1.7 Upon receipt of notice from the bank issuing the Letter of Credit that it will not extend the expiration date of the Letter of Credit or that it will not increase the Letter of Credit in the amount specified by ACE. The occurrence of this event shall not be subject to cure by Licensee.
- 22.2 If Licensee's insurance carrier at any time notifies Licensee or ACE that Licensee's policy or policies of insurance required under this Agreement will be canceled or changed, or if ACE reasonably determines that the requirements of this Agreement with regard to Licensee's policy or policies of insurance will no

longer be satisfied, ACE shall have the right to terminate this Agreement unless Licensee cures such condition within five (5) business days of Licensee's receipt of written cancellation or change of insurance from such insurance company.

- 22.3 ACE shall promptly notify Licensee in writing of the occurrence of any condition described in Section 22.1, above. Licensee shall take immediate corrective action to eliminate any such conditions(s) and shall confirm in writing to ACE within thirty (30) days following receipt of such written Notice that the cited condition(s) has ceased or been corrected or cured. If Licensee fails to discontinue or correct such condition(s) or fails to give ACE the required confirmation, ACE may immediately terminate this Agreement.
- 22.4 If the nature of the Material Breach outlined in Section 22.1 cannot be cured within thirty (30) days and Licensee is reasonably diligent in curing the breach, ACE may reasonably grant an extension of time to cure if there is no substantial harm to ACE or public health or safety from the material breach. The foregoing period of time described above to cure a defect shall be referred to as the "Cure Period."
- 22.5 In the event ACE or Licensee terminates this Agreement or any of Licensee's rights, privileges or authorizations hereunder are terminated, in addition to any other obligation that Licensee may have under this Agreement to remove Licensee's Facilities from ACE Infrastructure, Licensee shall remove Licensee's Facilities from ACE Infrastructure in accordance with the time periods outlined in Sections 11.6 and 11.7 of this Agreement. Licensee's obligations under this Agreement including, but not limited to, Licensee's obligation to pay all fees, expenses, costs and charges accruing pursuant to this Agreement, with regard to Licensee's Facilities that are not removed within these time periods shall continue up to receipt of Notice by ACE that Licensee has removed Licensee's Facilities from the ACE Infrastructure.
- 22.6 If this Agreement is terminated, for other than ACE's breach, prior to the expiration of the current term of the Agreement or Licensee defaults on this Agreement, the entire Annual License Fee for the License term in which such termination occurs shall be considered earned and shall be retained by ACE and Licensee shall remain liable to ACE for all amounts due under this Agreement, including those amounts accruing before after termination of the Agreement.
- 22.7 Termination of this Agreement or any License issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to, on or after the effective date of such termination.
- 22.8 If at any time, ACE provides written Notice to Licensee (a) that the use of ACE Infrastructure is prohibited by any public authority or (b) that a property owner on whose land ACE Infrastructure is located successfully challenges ACE's or Licensee's use of such property, this Agreement shall immediately terminate, and

Licensee shall discontinue the Attachment or ACE shall remove Licensee's Facilities at Licensee's expense. No liability shall inure to ACE on account of such discontinuance or removal, and Licensee shall promptly pay ACE's Costs of such removal, and all other costs associated with such removal, including but not limited to ACE's attorneys fees.

23. TERM OF AGREEMENT

The initial term of this Agreement shall be for three (3) years and shall continue thereafter for additional periods of three (3) years until either ACE or Licensee terminates the Agreement by giving the other party six (6) months advance written notice of such termination.

24. DISPUTE RESOLUTION

If either Party identifies an issue or issues regarding performance under this Agreement that it believes requires resolution, it shall give written Notice thereof to the other party. Within two (2) business days of receiving such written Notice, each Party shall negotiate in good faith on a regular basis to resolve the issue or issues as expeditiously as feasible. If the Parties are unable to resolve the issue or issues within thirty (30) days of the date such Notice was first received, then either Party may pursue whatever rights it may have at law or in equity.

25. NOTICES

All Notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be deemed duly given on the day of receipt when delivered personally (which shall include delivery by a recognized overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended, or three (3) business days after mailing by registered or certified mail, postage prepaid and return receipt requested, and addressed as follows:

To ACE:

U.S. Mail Delivery

Joint Use Analyst79NC45
Atlantic City Electric Company
New Castle Regional Office
P.O. Box 9239
Newark, Delaware 19714-9239
Telephone: (302) 454-4460
Fax: (302) 454-4577

Courier Delivery

Joint Use/79NC45
Atlantic City Electric Company
New Castle Regional Office
401 Eagle Run Road
Newark, Delaware 19702

with copies to:

U.S. Mail Delivery

General Counsel
Atlantic City Electric Company
P.O. Box 6066
Newark, DE 19714-6066
Telephone: (302) 429-3320
Fax: (302) 429-3801

Courier Delivery

General Counsel
Atlantic City Electric Company
500 N. Wakefield Drive
Newark, Delaware 19702

To Licensee:

City of Margate
9001 Winchester Avenue
Margate, NJ 08402
Attention: Fred Verna
Telephone: (609) 822-8053
Fax: (609) 487-1142

with copies to:

Tom Hiltner, City Clerk
Richard Deaney, Business Administor

Either party may change its address for notices by written Notice to the other given pursuant to this Section. Notice given to either party by any means other than as set forth in this Section is to be deemed ineffective.

26. PRIOR AGREEMENTS

This Agreement, including all Schedules, Exhibits and Attachments hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, written or oral, in respect thereof. All currently authorized Attachments granted pursuant to any prior agreement shall be subject to the terms and conditions of this Agreement. The execution of this Agreement by ACE does not constitute a waiver of ACE's right to require Licensee to remove Unauthorized Attachments and pay Unauthorized Attachment fees or correct or remove existing attachments that are in violation of the NESC, NEC, OSHA or other applicable rules or regulations or the PHI Aerial Joint-Use Engineering Manual.

27. CONFLICTS

This Agreement, including all exhibits and appendices hereto, shall be subject to the National Electrical Safety Code, the Communications Act, the Occupational Safety and Health Act, New Jersey Overhead High Voltage Line Safety Act, and all other applicable rules and regulations. In the event of any conflict between (i) the provisions of this Agreement and such laws, rules or regulations, such laws, rules and regulations shall govern; or (ii) any conflict between the provisions of this Agreement and any exhibits or attachments hereto, the terms of this Agreement shall control. Notwithstanding the foregoing sentence, under no circumstances shall any provision of this Agreement be construed to require or to condone any violation of the National Electrical Safety Code, NEC, OSHA, the New Jersey High Voltage Lines Act of New Jersey P.L. 2004, c. 154, regarding the placement, replacement or removal of public utility poles and underground facilities.

28. MISCELLANEOUS

28.1 Relationship of Parties. The relationship of ACE and Licensee to each other shall be that of parties to a contract, and neither this Agreement nor anything done pursuant this Agreement shall be deemed to create any partnership, joint venture, or agency relationship between the two parties.

28.2 Choice of Law. This Agreement shall be deemed to have been executed in the state of New Jersey and the parties hereto agree that the terms and performance hereof shall be governed by and construed in accordance with the laws of that state applicable to transactions conducted entirely within the state, unless otherwise provided by Federal law.

- 28.3 Severability. If any provision of this Agreement is held to be invalid the parties shall reform the agreement to eliminate the invalid provision while preserving the intent of the parties. Such removal shall not invalidate the remaining provisions of this Agreement. Notwithstanding the foregoing, Licensee's obligation to pay ACE any amounts due under this Agreement may not be severed.
- 28.4 Joint Use Procedures. The Joint Use Procedures Manual attached hereto is an integral part of this Agreement and shall be fully incorporated herein, and may be amended from time to time. Licensee and third party overlashers are responsible for contacting ACE to obtain the most recent version of the Joint Use Procedures Manual and are responsible for ensuring that their Attachments comply with the most recent version of the Joint Use Procedures Manual.
- 28.5 Amendment. This Agreement shall be amended only upon the written and signed approval of both parties hereto. Notwithstanding the foregoing, this Agreement may be amended to allow ACE to take advantage of any rights or privileges afforded to it under any ruling or change in law, rule or regulation subsequently adopted by any court, legislative or regulatory body having jurisdiction over the subject matter hereof, including but not limited to the rental fees.
- 28.6 Waivers. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or excuse is in writing signed by the party claimed to have waived or consented to excuse. Either Party's failure to demand or insist, in any one or more instances, upon strict performance of these terms, or to exercise any rights conferred under this Agreement, shall not be construed as a waiver or relinquishment of its right to assert or rely upon any such terms or rights in the future.
- 28.7 Headings. Headings in this Agreement are for reference only and do not affect the substantive provisions therein.
- 28.9 Force Majeure. Neither ACE 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, 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 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.

28.10 Confidentiality.

28.10.1 All information (*e.g.*, maps and routing information) provided by ACE to Licensee that is not publicly available and any information provided by Licensee to ACE that is conspicuously marked as “Confidential” (collectively referred to as “Confidential Information”) is deemed proprietary and confidential and shall be kept confidential and not disclosed to the public or a third party. In addition, except as otherwise required by law, such Confidential Information may only be used in connection with the performance of this Agreement, and for other purposes, only upon such terms as the parties may agree to in writing.

28.10.2 ACE shall be permitted to disclose technical and engineering information contained in Licensee’s Application to third parties for purposes of calculating Make-Ready Work necessary to accommodate Licensee’s Attachments and/or third party Make-Ready Work necessary to accommodate third party attachments.

28.10.3 Information shall not be considered confidential if it is (a) disclosed in a printed publication available to the public or is otherwise in the public domain at the time of the disclosure, or becomes publicly known through no breach of this Agreement; (b) becomes known to the party receiving the information from sources other than the other party and the disclosing party has a legitimate right to disclose such information; (c) is disclosed pursuant to the requirements of law or by a governmental agency, in such event the other party shall be provided with prior written notice of any such disclosure insofar as the same be practicable; or (d) is generally disclosed to third parties by the disclosing party without similar restriction on such third parties.

28.10.4 Nothing herein shall prevent either party from disclosing any Confidential Information pursuant to a valid order of a court or other governmental body; provided, however, that where permitted by law, such party shall first give to the other party prompt written notice of such order and an opportunity to interpose an objection to disclosure of the Confidential Information or to obtain a protective order with respect to the Confidential Information.

28.11 Counterparts. This Agreement may be signed in any number of counterparts and shall be deemed executed on the date last written below. The signature on each counterpart shall have the same effect as if each such counterpart was executed on the same instrument. Each fully executed set of counterparts shall be deemed to be an original and all of the signed counterparts together shall be deemed to be one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Atlantic City Electric Company Infrastructure License Agreement to be effective on the date last set forth below.

City of Margate

Atlantic City Electric Company

By: _____

By: _____

Name: Michael Becker

Name: Michael W. Maxwell

Title: Mayor

Title: Vice President

Date: _____

Date: _____