

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made as of the day of , 20 by and between **ORANGE AND ROCKLAND UTILITIES, INC.** (“Licensor”), with an address of One Blue Hill Plaza, Pearl River, New York 10965, and _____ (“Licensee”), with an address of _____.

WITNESSETH:

WHEREAS, Licensee desires to attach _____ on certain utility poles, located in _____ County which are owned or jointly owned and/or used by Licensor and others, (the “Poles”) which Poles will be designated in a national joint use electronic system, as such may be amended from time-to-time.

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the attachment of Licensee’s _____, provided such attachment does not interfere with the operations of Licensor, or any other user of the Poles;

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

1. No use, however granted, of the Poles or payment of any fees or charges required under this Agreement shall create or vest in the Licensee any ownership or property right in the Poles, and nothing contained herein shall be construed in any way as indicating that Licensor has conveyed to Licensee any ownership or property right in the Poles.
2. Nothing contained herein shall be construed as affecting any rights previously conferred by Licensor by agreement to others to make attachment to the Poles, and Licensor shall continue to have all rights which it now possesses to grant such rights.
3. The Poles are and will continue to be used, operated, and maintained primarily for the purposes of Licensor, and Licensee’s use will be secondary.
4. Licensee will use the equipment attached to the Poles solely for the purpose of its _____ system.

5. Licensee shall, at its own cost and expense, maintain its attachments to the Poles so as to provide a minimum of 40 inches of clearance between Licensor's and Licensee's attachments and a minimum of 6 inches of clearance between Licensee's attachments and the attachments of any other user of the Poles.
6. Licensee shall, at its own cost and expense, maintain its attachments to the Poles in a safe condition and in good repair.
7. Licensee shall exercise special precautions to avoid damage to the facilities of Licensor and any other user of the Poles, and hereby assumes responsibility for any and all loss resulting from such damage caused by the acts, omissions or facilities of Licensee, its employees, contractors, or agents. Licensee shall make an immediate report to Licensor's Manager - Risk Management, c/o Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965, of any such damage and shall reimburse Licensor and any other user of the Poles for all expenses incurred in repairing any such damage. The requirements of this paragraph are in addition to and not in limitation of the requirements set forth in Paragraph 13 below.
8. Licensee shall not, at any time, make any changes in the location of the attachments on the Poles without Licensor's prior written consent, except in cases of emergency in which case oral permission must first be obtained from Licensor's Service Operations Supervisor (Radio Dispatcher) at 845-352-6046, Spring Valley, NY. Such permission shall be confirmed in writing within five days of the time oral permission is given.
9. All Licensee attachments permitted by Licensor shall be tagged by Licensee in a manner specified by the Licensor such that Licensor can identify Licensee's attachments at ground level.
10. At Licensee's expense, Licensor shall perform periodic inspections of Licensee's attachments licensed by Licensor, provided, however that Licensee shall not be responsible for the costs of more than one such inspection per year. The fees associated with the periodic inspection shall be paid by Licensee, who will be billed at Licensor's prevailing billing rates, as the same may

be adjusted from time-to-time. A copy of Licensor's current billing rates is attached hereto as Exhibit A. Licensor will provide the results of said inspections in writing within 30 days of each inspection, and Licensee may rely on the results of such inspections in connection with documenting compliance with the terms of this Agreement. The discovery of any unauthorized attachments will result in the immediate termination of this License Agreement and will require removal of all attachments within 30 days of notification of termination by Licensor.

11. Licensee shall pay Licensor a pole attachment fee each month per attachment for (i) sole-owned electric Poles and (ii) joint-owned Poles on which the attachment is in Electric's custodial area. Where there are joint-owned poles and no custodial area, the pole attachment fee will be the sole-owned pole fee proportioned by the pole ownership ratio. The annual attachment fee shall be payable in advance and is due in January. The pole attachment fee shall be reviewed and re-determined annually and shall be adjusted and effective as of January 1st of the then current year.
12. Licensee shall indemnify, hold harmless and defend Licensor and its affiliates, and its and their officers, employees, directors, trustees, representatives, and agents from and against any and all claims, actions, liabilities, demands, damages, liens, losses, costs, expenses (including legal fees), judgments, and settlements of any nature whatsoever arising out of or incidental to this Agreement or work performed thereunder unless due to the gross negligence or intentional acts of Licensor, its officers, employees, representatives or agents. In the event any suit, claim or proceeding, whether groundless or not, within the intendment of this provision is brought against Licensor, Licensee, upon notice from Licensor, shall defend the same at Licensee's own expense. This provision shall survive the termination of this Agreement.
13. Neither Licensor nor any other user of the Poles shall be liable to Licensee for any interruption of Licensee's private system or for any damage to Licensee's wires or equipment to perform as intended, arising in any manner. With respect to any such interruption or damage, Licensee specifically waives any claim against Licensor or any other user of the Poles, for consequential damages or loss of profits, irrespective of any fault, failure, negligence or alleged negligence on the part of Licensor or any other user of the Poles.

14. (a) Before commencing its attachment to the Poles, Licensee shall procure and maintain, at its own expense for the time period specified below, the following minimum insurance in forms and with insurance companies authorized to do business in New York and New Jersey with a Best's Rating of A VIII or better:
- (1) **Workers' Compensation** Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, and Employer's Liability Insurance with a minimum limit of \$1,000,000.
 - (2) **General Liability** Insurance for third party claims alleging bodily injury and/or property damage in an amount no less than \$7,500,000 per occurrence and in the aggregate. Policy will include contractual liability coverage and will cover all claims arising from on-going and products/completed operations, independent contractors. Additional Insured endorsements CG 20 10 04 13 and CG 20 37 04 13 or equivalent are required. If applicable, the policy will include CG 24 17 10 01 or equivalent – Contractual Liability Railroad.
 - (3) **Automobile Liability** Insurance, including coverage for all owned, non-owned and hired automotive equipment used by Licensee so as to attach or maintain Licensee's cable with minimum limits of liability of \$1,000,000 per occurrence.
- (b) If any of the work required to attach or maintain Licensee's cable is subcontracted, Licensee shall require each subcontractor to carry all insurance required under this Section and to submit standard Acord Certificates of Insurance to the Licensor prior to subcontractor's commencement of its work.
- (c) For all insurance required hereunder, except Workers' Compensation and Employers Liability, the Licensor shall be named as an additional insured.
- (d) All of the insurance required hereunder shall be primary to any or all other insurance coverage and shall not contribute with similar insurance in effect for the Licensor.
- (e) All insurance required hereunder shall contain provisions wherein all rights of subrogation or recovery of any kind against the Licensor, its agents, employees, officers,

successors and assigns are specifically waived by Licensee and the insuring entity.

- (f) All insurance where the Licensor is an additional insured must contain provisions which state that the policy will respond to claims or suits by the Licensor against Licensee or any other insured thereunder.
- (g) All insurance required hereunder shall provide insurance for occurrence during the effective dates of this Agreement and for a period of two years thereafter. In the event that any insurance as required herein is available only on a “claims-made” basis, such insurance shall provide for a retroactive date not later than the effective date of the Agreement and such insurance shall be maintained by Licensee, with a retroactive date not later than the retroactive date required above, for a minimum period of five years after the termination of the agreement.
- (h) The required limits of coverage can be met with a combination of primary and umbrella/excess liability policies. All umbrella/excess liability policies will contain all the coverage extensions required including additional insured, primary and non-contributory and waiver of subrogation
- (i) Licensee’s insurance carrier shall notify the Licensor of any material change in, or or cancellation of, the insurance required hereunder at least 30 days prior to the effective date of any such change or cancellation.
- (j) Prior to the attachment of any cable to the Poles, Licensee shall provide, for the Licensor’s review and approval, a Certificate of Insurance verifying the existence of insurance coverage in compliance with above requirements, from insurance companies acceptable to Licensor. Unless otherwise specified, the Certificate of Insurance should be mailed to:

Orange and Rockland Utilities, Inc.
Joint Use Facilities Department
390 West Route 59
Spring Valley, NY 10977

Licensor reserves the right to request copies of the required policies.

- 15. Unless previously terminated pursuant to its terms, this Agreement shall continue in effect for a term of five years and shall remain in effect thereafter until terminated by Licensor

upon 90 days notice to Licensee, or until termination by Licensee effective upon Licensee's removal of its attachments from the Poles and Licensor's inspection and approval thereof.

16. If Licensee: (i) fails to perform any of the covenants, conditions, terms or provisions of this Agreement and, except where a specified time is provided for the performance of the covenant or condition, when such default is not made good within 30 days after written notice, or (ii) is adjudicated a bankrupt or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act or if a permanent receiver or trustee is appointed for Licensee's property or if a temporary receiver is appointed for its property and such appointment is not vacated within 90 days, then, and in any of such events, Licensor may, at its option, on five days notice in writing, terminate this agreement and the terms hereof.
17. Termination of this Agreement under the provisions of Paragraph 15 or of Paragraph 16 above, shall not relieve Licensee from any liability or obligation hereunder.
18. If this Agreement is terminated under the provisions of Paragraph 15 or Paragraph 16 above, Licensee shall remove its attachments from the Poles within 30 days of the effective date of such termination. If Licensee fails to remove its attachments within 30 days of termination, Licensor may remove the attachments and charge Licensee with the cost of such removal.
19. Licensee shall not assign, transfer, sublet, or otherwise encumber this Agreement without Licensor's express prior written consent and any such assignment without such consent shall be void.
20. To the extent that any Makeready work (as defined therein) is required, it will be performed in accordance with Attachment 1.
21. This Agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous offers, proposals, agreements or discussions between the parties relating to the subject matter hereof. The Agreement may not be modified or amended, nor may any obligation of either party be changed or modified, except in writing signed by the duly authorized officers or agents of the parties.
22. Licensee hereby waives any right to trial by jury in any litigation arising out of this Agreement or out of its use of space on the Pole.

23. Except as otherwise agreed in writing by the parties, any written notification to be given to Licensee under this Agreement shall be effective only if it is in writing and (1) delivered by hand (against signed receipt); (ii) sent postage prepaid, certified or registered mail, return receipt requested, (iii) sent by nationally recognized courier service providing for overnight delivery, provided the sender shall obtain a written receipt; or (iv) sent by facsimile after with a confirming hard copy by regular mail, addressed as follows:

Orange and Rockland Utilities, Inc.
390 West Route 59
Spring Valley, NY 10977
Attention: Joint Use Facilities
Fax: (845) 577-3074

24. Except as otherwise agreed in writing by the parties, any written notification to be given to Licensee under this Agreement shall be effective only if it is in writing and (1) delivered by hand (against signed receipt); (ii) sent postage prepaid, certified or registered mail, return receipt requested, (iii) sent by nationally recognized courier service providing for overnight delivery, provided the sender shall obtain a written receipt; or (iv) sent by facsimile after with a confirming hard copy by regular mail, addressed as follows:


Phone: 
Fax: 

25. This Agreement shall be governed by and interpreted according to the laws of the State of New York without giving effect to the conflict or law principles thereof. The parties hereto consent to the exclusive jurisdiction of the state or federal courts situated in the County of Rockland or City of New York for purposes of any legal action arising out of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By _____

Title _____

Date _____



By _____

Title _____

Date _____

EXHIBIT A

Fee Schedule (Effective January 1, 2004)

Pre- and Post Walk Inspection (1)

	<u>Straight Time Basis</u>	<u>Overtime Basis (2)</u>
Engineering	\$8.40 pre-walk \$6.30 post-walk \$6.30 periodic inspection	\$12.59 pre-walk \$ 9.45 post-walk

- (1) The inspection rates per pole attachment listed above are for combined utility field walks that are required to ensure satisfactory pole attachments. The inspection rates per pole attachment for post-walks are also applicable to the periodic Licensor inspections of Licensee's attachments.
- (2) Work shall not be performed on an overtime basis except with the prior approval of Licensee.
- (3) Licensor (Orange and Rockland Utilities, Inc.) reserves the right to update the fee schedule annually.

ARTICLE I

MAKEREADY WORK DEFINITIONS

SECTION I

- A. **Request:** The electronic document submitted through the national joint use electronic system, when it has been submitted by Licensee to Licensor.
- B. **Notice:** The Request when it has been returned by Licensor to Licensee.
- C. **Confirmation:** The Notice when it has been submitted by Licensee to Licensor.
- D. **Endorsement:** The Confirmation when it has been returned by Licensor to Licensee.
- E. **Active Endorsement:** An Endorsement which has not been canceled for any reason.
- F. **Any Other User:** Any person, who has a right, by agreement, as of the date of this Agreement, to attach facilities to poles or, who may in the future by agreement, obtain such right.
- G. **Makeready Work:** Surveys by Licensor to determine the availability for the attachment of Licensee's equipment to Poles, the work required by Licensor to make such Poles physically available for the attachment of Licensee's equipment, including bonding and grounding Licensee's support strand and equipment to that of the Licensor, and Any Other User; the work required by Licensor to prepare and deliver the invoices contemplated under this agreement; and the work required by Licensor to inspect Licensee's attachments.

ARTICLE II

GENERAL AGREEMENTS

SECTION 2

- A. Licensee shall have no right to attach its equipment to any Poles owned and/or used by Licensor until an Endorsement is issued specifically covering such Poles and further agrees not to make any such attachments until it has received such Endorsement.
- B. Licensee will use any equipment attached to Poles pursuant to Endorsement provided hereunder solely to provide telecommunication services.

- D. Licensor shall make every reasonable effort to satisfy itself that it has determined the full extent of the Makeready Work. Nothing in the Agreement however, shall prevent Licensor from planning or making, at any time, whatever additional changes may be required to satisfy its service requirements, to remove hazardous conditions, or to provide for attachments of the equipment of Any Other User. Licensee agrees to reimburse Licensor for any costs of additional changes occasioned solely by the presence of Licensee attachments, except for those changes, which occur within two years after completion of the initial Makeready Work.

- E. In the event that Licensee is required to obtain an easement or right-of-way for its Attachments to the Poles, it shall obtain such easement or right-of-way at no cost to Licensor.

SECTION 7

- A. Upon Licensee's request, Licensor shall permit Licensee to review the work prints, together with available supporting costing details, in order that Licensee may satisfy itself as to the contemplated Makeready Work and associated costs and that the Makeready Work will be performed in accordance with the current edition of the National Electric Safety Code, the American National Standards Institute, and Licensor's Construction Standards.

ARTICLE IV

CONFIRMATION, COMPLETION OF

MAKEREADY WORK AND ENDORSEMENT

SECTION 8

- A. Licensee shall, within 30 days after Licensor gives Notice, confirm the Notice, in duplicate, in the national joint use electronic system.
- B. The absence of Confirmation within 30 days shall automatically result in the cancellation of the Notice. In this event, Licensee shall immediately pay to Licensor such portion of the invoice that represents that part of the Makeready Work that has been completed.
- C. At the time that Licensee confirms the Notice it shall:
 - (i) Pay to Licensor the full amount of Makeready charges; and
 - (ii) Provide or update as may be necessary the insurance policies described in Paragraph 14 of the Agreement.

SECTION 9

Work required to be performed prior to, and because of, attachment of Licensee equipment, including but not limited to the initial survey, re-arrangement of existing equipment, guying and anchoring, pole replacements, and construction inspections, shall be referred to as "Makeready." Similar work required after initial attachment to a pole solely because of the existence of Licensee attachments shall be referred to as "additional Makeready."

SECTION 10

- A. Licensor will endeavor to cooperate with Any Other User in performing the Makeready Work, but does not undertake and expressly disclaims any right or obligation to require Any Other User to perform or cooperate in the performance of such Makeready Work.

SECTION 11

- A. Licensor, shall upon completion of the Makeready Work, endorse, date, and return copy of the Endorsement form as provided through the national joint use electronic system hereto.
- B. The Endorsement shall be Licensee's authority to make attachments to the Poles designated in the endorsed Notice.
- C. Attachment fees described in Paragraph 11 shall begin to accrue 30 days following the date of Endorsement for sole owned electric and joint owned poles in the Licensor's custodial areas.

SECTION 12

- A. Licensee shall in accordance with the provisions of Licensor's then current tariff, make application apart from this Agreement to Licensor for the purchase of electric energy for any appliance that may now or in the future require the use of electric energy.

ARTICLE V

ATTACHMENTS AND MAINTENANCE OF ATTACHMENTS

SECTION 13

- A. Licensee, at its own cost and expense, shall construct, maintain, and replace all of its attachments on the Poles in accordance with the requirements and specifications of the National Electrical Safety Code, latest edition, and any amendments or revisions of said specifications or code, and in compliance with any rules or orders now in effect or that hereafter may be issued by the New York Public Service Commission, or other authority having jurisdiction over the Poles.

SECTION 14

Licensee shall, at its own cost and expense, maintain all of its attachments on the Poles in safe condition and in good repair. All tree trimming required on account of Licensee's attachments shall be done by it at its sole expense and in a manner satisfactory to Licensor and Any Other User.