

## LICENSE AGREEMENT

This License Agreement (“Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between **ZELIENOPE BOROUGH**, a municipal corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal address being 111 West New Castle Street, Butler County, Pennsylvania 16063 (“BOROUGH”), and \_\_\_\_\_, with its principal address being \_\_\_\_\_ (Licensee”).

WHEREAS, the BOROUGH owns and operates an electric distribution system within the Borough, and is the owner of certain Poles located in the Borough;

WHEREAS, Licensee wishes to install and maintain Licensee’s equipment and facilities (“Licensee’s Facilities”) on BOROUGH Poles in accordance with the requirements of the National Electrical Safety Code (“NESC”), applicable state and local requirements, and the BOROUGH’s generally applicable construction standards;

WHEREAS, the BOROUGH is willing to permit the attachment of Licensee’s Facilities on BOROUGH Poles at a BOROUGH-approved location, where, in the reasonable judgment of BOROUGH, such use will not interfere with BOROUGH’s provision of electric or other lawfully provided service and/or licenses or permits previously granted by BOROUGH to third parties;

WHEREAS, BOROUGH is willing to grant Licensee a non-exclusive license authorizing the attachment of Licensee’s Facilities to BOROUGH’s Poles (“License”) in accordance with the terms and conditions set forth in this Agreement.

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

### 1. DEFINITIONS

1.1 Approved Attachment Plan – consists of materials provided in Licensee’s Application, as approved by BOROUGH. The information contained in the Approved Attachment Plan shall serve as a baseline by which to judge future proposed additions and modifications to Licensee’s Attachments to which the respective Approved Attachment Plan pertains.

1.2 Attachment - any attachment to a Pole owned by BOROUGH, where each attachment outside of the twelve inches (12”) of space specifically assigned to Licensee shall constitute an additional Attachment.

1.3 Communications Space - space on a Pole above grade but below the Power Space in which Licensee’s Facilities may be located.

1.4 Cost - all costs and expenses incurred by BOROUGH in providing Licensee access to BOROUGH Poles. These Costs include, but are not limited to, all costs associated with

Make-Ready Work (as defined herein), Pre-License Survey (as defined herein), Application review, inspections, materials, labor, engineering, supervision, equipment rentals, and other charges, both direct and indirect, customarily charged to any work project under the standard accounting practices of BOROUGH. An amount of ten percent (10%) shall be added to the total of all such Costs by the BOROUGH to provide for its administration.

1.5 Drop Pole - Pole used where service drop crosses a roadway from the main route to serve customers.

1.6 Equipment - fittings, devices, appliances, fixtures, apparatus, and similar terms used as part of, or in connection with an electric supply or fiber-optic internet or telecommunications system.

1.7 License - the License shall consist of the Application as approved by BOROUGH, any documents attached thereto by BOROUGH, and all associated drawings.

1.8 Licensee's Facilities - all facilities, including but not limited to fiber-optic lines, cables, Equipment and associated hardware, owned and utilized by Licensee, which are attached to, or supported by, a Pole.

1.9 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 other changes, required to accommodate Licensee's Facilities on a Pole.

1.10 Overlash - the addition of facilities to a span between poles by lashing them to existing facilities.

1.11 Pole - a pole with respect to which BOROUGH has the right to authorize the attachment of Licensee's Facilities.

1.12 Pole Count - BOROUGH's periodic review of Attachments to BOROUGH Poles to identify the number of and the specific Poles to which Licensee has attached Licensee's Facilities.

1.13 Post-Installation Inspection - All work and inspections required by BOROUGH to determine and verify that the Attachments have been made in accordance with the respective Approved Attachment Plan and other applicable standards.

1.14 Power Space - That space from the top of the Pole to the lowest horizontal power conductor attachment or potential source of voltage such as transformer tanks, other equipment tanks, terminators, etc.

1.15 Pre-License Survey - all work, including but not limited to engineering, field inspection and administrative processing, used to determine if Make-Ready Work is necessary to accommodate Licensee's Facilities on a Pole.

1.16 Right-of-Way - a right granted to BOROUGH to permit BOROUGH to pass over, on, or under the land of another for purposes of erecting or installing BOROUGH Poles.

1.17 Unauthorized Attachment - an Attachment BOROUGH has not authorized by issuance of a License.

## **2. SCOPE**

- 2.1 Subject to all of the provisions of this Agreement for particular Licenses granted by BOROUGH pursuant to this Agreement, BOROUGH grants to Licensee a nonexclusive license authorizing the Attachment of Licensee's Facilities to BOROUGH Poles.
- 2.2 For Licensee's Attachments of Licensee's Facilities to BOROUGH Poles which exist as of the Effective Date of this Agreement, the BOROUGH grants provisional Licenses; provided however that all future rights and liabilities under said provisional Licenses shall be determined in accordance with the provisions of this Agreement, and the BOROUGH shall have the right to terminate any such provisional Licenses if Licensee is in noncompliance with any of the provisions of this Agreement. Promptly after the Effective Date, the parties shall jointly conduct a Pole Count to identify the number of and the specific Poles to which Licensee has attached Licensee's Facilities.
- 2.3 No use, however extended, of BOROUGH Poles 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 BOROUGH Poles. Licensee's rights herein shall be and remain a mere license. Neither this Agreement nor any License granted hereunder shall constitute an assignment of any of BOROUGH's rights to use the public or private property at locations of such BOROUGH Poles.
- 2.4 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. Licensee shall submit to BOROUGH evidence that Licensee has obtained all lawful authority to construct, operate and maintain Licensee's Facilities with Licensee's Application, unless BOROUGH informs Licensee that BOROUGH already has such evidence in its files.
- 2.5 Nothing contained in this Agreement shall limit BOROUGH's right to locate, relocate, operate and maintain BOROUGH Poles, and to operate its facilities in conjunction therewith, in such a manner, in the BOROUGH's sole discretion, as will best enable it to fulfill its own service.
- 2.6 This Agreement does not permit any entity besides Licensee to install Equipment or to Overlash Licensee's Equipment.

### **3. APPLICATION PROCEDURES**

3.1 Prior to attaching, upgrading, installing or otherwise using BOROUGH Poles, Licensee shall submit an application for License using the application form approved by BOROUGH (“Application”) and pay the fee to process the Application listed in Schedule A. The Application must include the following engineering information for each Pole:

-Pole number and location.

-Information, such as dimensions, weight, method of attachment, guying details, drawings of equipment, electrical connections (if any), etc, as required by BOROUGH, for each attachment and its associated equipment.

BOROUGH shall provide Licensee with written notification within forty five (45) days upon receipt of the completed Application of its decision either to approve or deny the plans set forth in the Application materials. In the event BOROUGH denies the Application, such written notice will provide a brief explanation of the basis for BOROUGH’s decisions. If the Application is approved, the information contained therein shall constitute Licensee’s Approved Attachment Plan.

3.2 Licensee agrees that Applications will not be accepted or processed by BOROUGH if Licensee is not current in its payments to BOROUGH related to the Licensee’s activities described in this Agreement.

3.3 If Licensee files an Application and then decides it does not wish to pursue the Application, Licensee must notify BOROUGH immediately and file a letter rescinding said Application.

### **4. PRE-LICENSE SURVEY AND MAKE-READY WORK**

4.1 As part of the Pre-License Survey, BOROUGH shall perform a visual inspection in the field to determine the suitability of BOROUGH Poles for Licensee’s Facilities.

4.2 If BOROUGH determines during the Pre-License Survey that Make-Ready Work is not necessary to accommodate Licensee's Facilities, and that the Application is otherwise acceptable, BOROUGH shall issue a License to Licensee and upon such issuance, Licensee may install Licensee's Facilities at the point of Attachment designated by BOROUGH.

4.3 If the Pre-License Survey reveals the need for Make-Ready Work, BOROUGH or its representative shall contact the Licensee and other licensees to schedule a meeting so BOROUGH, Licensee, and other licensees may meet and determine what Make-Ready Work is needed to Attach Licensee’s Facilities (“Make-Ready Work Meeting”).

- 4.4 Upon completion of the Make-Ready Work Meeting, BOROUGH will provide an estimate of BOROUGH's Costs of the Make-Ready Work. Licensee may be required to pay to other licensees Make-Ready costs incurred by other licensees to accommodate Licensee's Facilities.
- 4.5 BOROUGH will not be required to schedule or undertake Make-Ready Work until Licensee has paid the estimated Costs of Make-Ready Work.
- 4.6 Upon Licensee's payment of the estimated Costs of Make-Ready Work and agreement between BOROUGH and Licensee on a construction schedule, BOROUGH shall undertake the Make-Ready Work and upon completion of the Make-Ready Work, provided that the Application is otherwise acceptable, shall issue a License for the Attachment which shall authorize Licensee to attach Licensee's Facilities in compliance with the License and according to the parameters of the respective Approved Attachment Plan and its Application and survey forms. Licensee shall not undertake the installation of Licensee's Facilities until BOROUGH has completed the Make-Ready Work.
- 4.7 BOROUGH shall be obligated to initiate Make-Ready-Work as soon as is reasonably practicable after such Make-Ready Work Meeting given BOROUGH's own operational requirements, but in no event later than sixty (60) days after the Make-Ready Work Meeting. BOROUGH will complete Make-Ready Work in a commercially reasonable time according to a schedule agreed to by BOROUGH and Licensee taking into account the extent of the Make-Ready Work and the cooperation of necessary third parties.
- 4.8 Upon completion of the Make-Ready Work, BOROUGH 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 its installation, promptly pay BOROUGH the difference between the estimated Costs paid and the actual Costs. If the actual Costs are less than the estimated Costs, BOROUGH shall promptly refund, or otherwise credit, the difference to Licensee.
- 4.9 Upon receipt of a License, completion of the Make-Ready Work, and payment to BOROUGH for the Make-Ready Work, Licensee may undertake the Attachment for the purpose and in the manner described herein. Any License granted hereunder shall be void if Licensee does not accomplish Licensee's Attachment authorized thereby within one hundred and eighty (180) days from the date BOROUGH issued the License, unless BOROUGH, in its sole discretion, grants a written waiver of this provision.
- 4.10 Licensee shall be liable for Attachment charges commencing from the date BOROUGH issues a License.

4.11 At any time after the substantial completion of the Attachment of Licensee's Facilities, BOROUGH may conduct a Post-Installation Inspection to verify that the Attachment of Licensee's Facilities complies with the License, the respective Approved Attachment Plan, the License and the updated survey forms. Upon completion of the Post-Installation Inspection, any necessary corrections and adjustments will be made to the survey forms and BOROUGH's records will be updated to reflect the location and number of Licensee's Attachments. In the event that the Post-Installation Inspection reveals non-compliance by Licensee with the Approved Attachment Plan or any other applicable standard or requirement, the Licensee shall be given thirty (30) days following written notice in which to cure the default. If the default is not cured within the thirty (30) days, BOROUGH shall have the right, in its sole discretion, to unilaterally revoke and terminate the License. No cause of action in law, equity or otherwise shall accrue to Licensee as a result of BOROUGH's revocation of the License based on a Post-Installation Inspection in accordance with this Section.

## **5. FEES AND CHARGES**

5.1 Licensee shall pay all fees and charges for Licensee's Attachments as specified in Schedule A, which is attached hereto and made a part of this Agreement.

5.2 In addition to the Annual License Fee, and all other fees and charges set forth herein, and those as specified in Schedule A, Licensee shall reimburse BOROUGH for any taxes, fees or other charges, which BOROUGH is required or obligated to pay by reason of Licensee's Attachment.

5.3 Licensee shall pay to BOROUGH in advance the Annual License Fee for each License. The Annual License Fee shall be based on the number of Poles for which Licensee has a License. The First Annual License Fee, relative to the provisional Licenses under Section 2.2 of this Agreement, shall be due and payable thirty (30) days after the Effective Date of this Agreement. This payment will be prorated from the Effective Date of this Agreement to the end of the current calendar year. Thereafter, Licensee's payments of the Annual License Fee for each License shall be due on January 1<sup>st</sup> for each subsequent year.

5.4 Nonpayment of any amount due under this Agreement shall constitute a 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 one and one-half percent (1.5 %) per month on the outstanding balance including any previously accrued late payment charges. Subject to Section 23.11 hereof, Licensee shall be liable for any collection costs including reasonable attorney's fees incurred by BOROUGH.

5.5 From time to time, but no more than once every twelve (12) months, the BOROUGH may make, as it deems reasonable and necessary in its sole discretion, changes in the amounts of the fees and charges identified in Schedule A, upon at

least sixty (60) days prior written notice to Licensee in the form of a revised Schedule A. Licensee agrees to pay such changed fees and charges. 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 BOROUGH 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 18.4 of this Agreement and shall be responsible for payment of all termination-related charges as set forth in this Agreement.

## **6. SPECIFICATIONS FOR ATTACHMENT TO POLES**

- 6.1 Unless otherwise agreed by BOROUGH and Licensee, Licensee shall install, operate and maintain Licensee's Facilities on BOROUGH's Poles in BOROUGH's Communications Space. Licensee shall install, operate and maintain Licensee's Facilities in accordance with generally accepted engineering practices and within the parameters of Licensee's Approved Attachment Plan, so as not to conflict or interfere with the facilities of BOROUGH or other licensees. Licensee shall alter, rearrange or relocate Licensee's Facilities within thirty (30) days of notice from BOROUGH that alteration rearrangement or relocation is necessary to accommodate BOROUGH's electric system service or other lawfully provided utility service or as required by a court or government agency. Licensee shall undertake the work in accordance with the National Electrical Code ("NEC"), where applicable, NESC, the rules and regulations of the Occupational Safety and Health Administration ("OSHA"), state, local and federal requirements and BOROUGH's construction standards. It is expressly recognized that the forgoing sentence does not constitute submission by the BOROUGH to the jurisdiction, control or authority of OSHA, or the Pennsylvania Public Utility Commission ("PA PUC"), and that the BOROUGH is and remains exempt from the jurisdiction, control and authority of OSHA and the PA PUC, and all regulations and orders of OSHA and the PA PUC, in all respects. Licensee will cooperate with BOROUGH in altering, rearranging or relocating Licensee's Facilities to facilitate third party Attachments
- 6.2 BOROUGH shall specify the point of Attachment on each Pole for Licensee's Facilities.
- 6.3 Licensee shall secure BOROUGH's written consent, not to be unreasonably withheld or delayed, before adding to, relocating, replacing or otherwise modifying Licensee's Facilities attached to a Pole. Licensee shall not modify the placement or operation of the facilities of BOROUGH or other licensees without the express written consent of BOROUGH and the other licensee.
- 6.4 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 respective Approved Attachment Plan, the NEC, where

applicable, NESC, OSHA, regulations or directives of the BOROUGH and BOROUGH's construction standards. In the event that requirements or specifications differ, the more stringent shall apply.

- 6.5 Licensee shall maintain its Facilities in good order and condition. Licensee shall correct all safety violations immediately upon notice from BOROUGH. Licensee shall correct all other conditions in conflict with generally accepted engineering practice ("Non-standard Condition") within thirty (30) days after receiving written notice from BOROUGH. If Licensee does not correct any Non-Standard Condition within the time specified, BOROUGH may, at its option, correct the Non-standard Condition at Licensee's sole expense and risk; provided however that BOROUGH shall have no duty to do so.
- 6.6 When conditions created by Licensee's Facilities (a) pose an immediate threat to public safety or the safety of the employees of BOROUGH, Licensee, other licensees or third parties, (b) interfere with performance of service obligations of BOROUGH, other licensees or third parties, or (c) pose an immediate threat to the physical integrity of BOROUGH Poles or facilities of other licensees or third parties, BOROUGH may perform, but shall not be required to perform, such work and/or take such action as is necessary to correct such condition using reasonable care without first giving written notice to Licensee. As soon as practical after taking such action, BOROUGH will advise Licensee in writing of the work performed or the action taken. Licensee shall pay BOROUGH for all actual Costs incurred by BOROUGH in performing such work.
- 6.7 BOROUGH's failure to notify Licensee of Licensee's noncompliance with the requirements specified in Section 6.4 or the existence of Non-standard Conditions (as defined in Section 6.5) or BOROUGH's failure to correct 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.
- 6.8 BOROUGH shall not attach, Overlash, nor authorize other entities to attach or Overlash facilities on Licensee's Facilities without Licensee's prior written consent.
- 6.9 Prior to climbing BOROUGH Poles, Licensee and Licensee's employees, contractors, agents or representatives must ensure the BOROUGH Poles are suitable and safe for climbing. Licensee, Licensee's agents, employees and contractors, shall not climb any BOROUGH Poles reasonably believed to be unsuitable or unsafe and such person(s) shall immediately contact the BOROUGH regarding such BOROUGH Poles. **BOROUGH DISCLAIMS AND LICENSEE SHALL BEAR ANY AND ALL RISK AND LIABILITY FOR INJURIES, DAMAGES, OR DEATH RESULTING FROM THE, CLIMBING OF THE BOROUGH POLES BY LICENSEE, OR LICENSEE'S AGENTS, EMPLOYEES, REPRESENTATIVES AND CONTRACTORS.**



- 6.10 From time to time, BOROUGH may mark certain BOROUGH Poles with a tag or other mark indicating that it needs to be replaced or is otherwise unsafe or unsuitable for climbing and/or entry. Licensee, and Licensee's agents, employees, representatives and contractors, and all other persons shall not climb any BOROUGH Poles so marked. **BOROUGH DISCLAIMS AND LICENSEE ASSUMES ANY AND ALL RISK AND LIABILITY FOR INJURIES, DAMAGES AND DEATH RESULTING FROM THE ENTRY OR CLIMBING OF MARKED BOROUGH POLES BY LICENSEE, OR LICENSEE'S AGENTS, EMPLOYEES, REPRESENTATIVES AND CONTRACTORS.**

## **7. OVERLASHING**

- 7.1 Licensee may Overlash Licensee Facilities with additional Licensee Facilities provided that (1) Licensee provides BOROUGH with prior notification of such Overlashing; (2) the Overlashing complies with the NESC and all other applicable laws and regulations; and (3) Licensee remains responsible for any and all Costs associated with such Overlashing, including but not limited to any necessary Make-Ready Work. Any Licensee Facilities no longer used by Licensee upon completion of the Overlashing must be removed to reduce the burden on the BOROUGH Poles. Licensee shall not Overlash Licensee Facilities that Licensee has or intends to abandon.
- 7.2 Upon request, Licensee shall provide BOROUGH engineering calculations demonstrating such compliance.
- 7.3 Licensee shall pay BOROUGH a per Pole fee to cover any post-Overlashing inspection Costs incurred by BOROUGH as outlined in Schedule A hereto.

## **8. RELOCATION OR REMOVAL OF LICENSEE FACILITIES**

- 8.1 Licensee shall be responsible for any expenses associated with the relocation or transfer of Licensee's Facilities as a result of emergencies, storms, weather, acts of God, civil disturbances, acts of war, routine replacements, upgrades and betterment of the electric distribution system.
- 8.2 In the case of road widening, urban renewal projects or other major and/or minor construction projects that affect 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 BOROUGH in moving its facilities in a timely manner in order to minimize the expense of such projects. Licensee agrees to

accompany BOROUGH to the location of its attachments and relocate Licensee's Facilities at the time and date established by BOROUGH.

- 8.3 If Licensee removes any Equipment, wire, cable or other materials ("Materials") from BOROUGH Poles during the course of installing, inspecting, or maintaining Licensee's Facilities, Licensee must immediately reuse or dispose of such Materials. If Licensee fails to dispose of such Materials, Licensee will be responsible for all disposal costs and expenses including but not limited to any and all hazardous material disposal fees.
- 8.4 Licensee shall not move the Equipment of another licensee without the prior written consent of that licensee and the Pole owner. Licensee shall provide BOROUGH with copies of all such consents prior to making any such changes.
- 8.5 Licensee shall, at its expense, cause Licensee's Facilities to be removed from BOROUGH Poles and return BOROUGH's property to its original condition within sixty (60) days after written notice of termination, in accordance with the terms of this Agreement, or termination of the License covering such Attachment. In the alternative, Licensee may provide notice to BOROUGH of its intention to abandon Licensee's Facilities. In BOROUGH's sole discretion, BOROUGH may provide Licensee with written notice approving such abandonment.
- 8.6 Licensee shall remain liable for, and pay to BOROUGH, all fees and charges multiplied by a factor of four 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 and BOROUGH's property has been returned to its original condition, or BOROUGH, in its sole discretion, provides Licensee notice approving abandonment.
- 8.7 If Licensee fails to remove Licensee's Facilities within the timeframes as set forth above in Section 8.5, BOROUGH shall have the right to remove Licensee's Facilities at Licensee's sole risk and expense and without any liability on the part of BOROUGH for damage to Licensee's Facilities, subject to the Licensee remaining liable for any fees and charges set forth in section 8.6.
- 8.8 When Licensee removes Licensee's Facilities from BOROUGH Poles, Licensee shall not make additional, new or replacement Attachments to BOROUGH Poles until:
  - 8.8.1 Licensee has first complied with all of the provisions of this Agreement as though no such Attachment had previously been made; and
  - 8.8.2 Licensee has paid in full all outstanding charges due BOROUGH for such previous Attachment.

8.9 Licensee shall advise BOROUGH in writing of the date on which Licensee has removed Licensee's Facilities from BOROUGH Poles.

## **9. LIMITATIONS ON ATTACHMENT**

9.1 No License granted under this Agreement shall extend to any BOROUGH Poles where the Attachment would result in a forfeiture of rights of BOROUGH or BOROUGH's existing licensees to attach to the property on which such BOROUGH Poles is located. If the Attachment of Licensee's Facilities would cause a forfeiture of the right of BOROUGH or BOROUGH's existing licensees to attach to the property on which BOROUGH Poles is located, Licensee agrees to remove Licensee's Facilities forthwith upon receipt of written notification from BOROUGH. If Licensee does not remove Licensee's Facilities in accordance herewith, BOROUGH may remove Licensee's Facilities thirty (30) days after the date of BOROUGH's written notice to Licensee. If BOROUGH removes Licensee's Facilities as provided herein, Licensee shall pay BOROUGH's Costs associated with such removal.

## **10. TERMINATION OF LICENSE**

10.1 Any License issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Facilities on public or private property at the location of the particular Pole.

10.2 Licensee may at any time terminate its License with respect to the Attachment and remove Licensee's Facilities by giving BOROUGH sixty (60) days advance written notice of such termination.

10.3 The BOROUGH, in its sole discretion, may terminate the License if BOROUGH removes, abandons, or terminates its use of, or right to use, or loses its right to grant Licensee a right to attach to BOROUGH Poles. BOROUGH, in its sole discretion, also may terminate the License if Licensee undertakes modification or addition of Facilities not in accordance with the Approved Attachment Plan or in noncompliance with the provisions of this Agreement.

10.4 If this Agreement is terminated prior to the expiration of the current term of the Agreement, or if 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 BOROUGH.

10.5 Notwithstanding the terms of a License, all Licenses issued pursuant to this Agreement shall terminate and cease without notice upon termination of this Agreement.

## **11. INSPECTION OF LICENSEE'S FACILITIES**

- 11.1 BOROUGH may perform a Post-Installation Inspection of Licensee's Facilities following Licensee's Attachment at Licensee's sole cost and expense. BOROUGH may also inspect Licensee's Facilities on an ongoing basis and shall give Licensee an opportunity to participate in such inspections (typically at three (3) year scheduled intervals which schedules may be changed at any time by BOROUGH without notice, but no more than once every twelve (12) months unless as a result of a recent inspection, at least ten percent (10%) of Licensee's Attachments have been confirmed not to comply with the terms of this Agreement) at the sole expense of Licensee to ensure that Licensee's Attachments or other work have been performed in accordance with the License, this Agreement, the NESC and all applicable laws. Notwithstanding the foregoing, BOROUGH reserves the right to conduct additional inspections and audits of Licensee's Facilities if it finds any Unauthorized Attachments, violations of the NESC, any other applicable rules and regulations, the terms or conditions of this Agreement or the License. Licensee shall reimburse BOROUGH for the costs of such inspections and audits in the event at least ten percent (10%) of Licensee's Attachments have been confirmed not to comply with the terms of this Agreement.
- 11.2 BOROUGH shall be under no obligation to make such inspections and BOROUGH's failure to inspect Licensee's Facilities shall not operate to impose upon BOROUGH any liability of any kind nor relieve Licensee of any responsibility, obligations or liability under this Agreement.
- 11.3 In addition to its right to conduct inspections as provided for above, BOROUGH shall have the right at any time, and from time to time, to conduct periodic Pole Counts to identify the number of and the specific BOROUGH Poles to which Licensee has attached Licensee's Facilities, provided that BOROUGH gives Licensee an opportunity to participate in such Pole Counts. Licensee shall reimburse BOROUGH for the Costs of such Pole Count Audits.

## **12. UNAUTHORIZED ATTACHMENT OR USE**

- 12.1 Licensee shall not make new Attachments without first obtaining a License from BOROUGH nor modify its existing Attachments without first obtaining BOROUGH's approval of such modification(s) as required by the terms of this Agreement. The Approved Attachment Plan shall be modified (or deemed modified) to include any new Facilities or modification of existing Facilities that is permitted by BOROUGH. Attachment(s) or modification(s) made without a License shall be considered an Unauthorized Attachment and subject to the Unauthorized Attachment Fees outlined in Schedule A hereto and shall be removed by Licensee upon BOROUGH's request or shall be subject to removal by BOROUGH at Licensee's sole risk and expense. BOROUGH may, at its sole discretion, accept an Application for such attachment in lieu of its removal. If an Unauthorized Attachment does not qualify for a License, such Unauthorized

Attachment shall be immediately removed by Licensee or shall be subject to removal by BOROUGH at Licensee's sole risk and expense.

- 12.2 In the event that Licensee has made an Unauthorized Attachment to BOROUGH Poles, BOROUGH 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 BOROUGH of the Unauthorized Attachment. If Licensee does not submit an Application within fifteen (15) days, BOROUGH may require Licensee to remove the Unauthorized Attachment. In the alternative BOROUGH may, at BOROUGH's option, remove the Unauthorized Attachment at Licensee's sole expense and risk.
- 12.3 No act or failure to act by BOROUGH with regard to an Unauthorized Attachment shall be deemed as a ratification of unauthorized use; and if BOROUGH subsequently issues a License, the License shall not operate retroactively or constitute a waiver by BOROUGH of any its rights or privileges under this Agreement or otherwise. Provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said Unauthorized Attachment from its inception.
- 12.4 Licensee shall pay an Unauthorized Attachment Fee per pole for the time period of Licensee's Unauthorized Attachment dating back to the date that such attachment was made (if Licensee can present to BOROUGH reasonable documentation of such), the date the last Pole Count Audit was completed, or five (5) years, whichever is less.

### **13. LIABILITY AND DAMAGES**

- 13.1 BOROUGH shall exercise reasonable care to avoid damaging Licensee's Facilities Attached to BOROUGH Poles under this Agreement, and shall report to Licensee the occurrence of any such damage caused by BOROUGH's employees, agents or contractors. BOROUGH shall not be liable to Licensee for any claims, expenses, demands, causes of action, costs, loss, damages (including loss of life) or attorneys fees ("Claims") incurred by Licensee in conjunction with its Attachment, except to the extent such Claims are caused by the gross negligence or willful misconduct of BOROUGH. In no event shall BOROUGH be liable to Licensee for any loss of Licensee revenue or profits, or for any direct, indirect, incidental, consequential, punitive or special damages resulting from any interruption of Licensee's service resulting from damage to or interference with the operation of Licensee's Facilities. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the Borough of any applicable limits or exclusions on, or immunity from, municipal liability.
- 13.2 Licensee, and its employees, agents and contractors shall exercise reasonable care to avoid damaging BOROUGH Poles and the facilities of any other licensee attached to BOROUGH Poles, and shall report any damage immediately to

BOROUGH and the owner of facilities so damaged. Licensee assumes all responsibility for any and all direct loss or damage caused by Licensee's employees, agents or contractors.

- 13.3 **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.**
- 13.4 Licensee shall indemnify, protect, defend, and save harmless BOROUGH and other licensees from and against any and all Claims including, but not limited to, Claims for destruction to any property or injuries, including death, to any person, to the full extent that such arises out of or is caused by Licensee's erection, construction, installation, Attachment, maintenance, presence, operation, use, repair, replacement or removal of Licensee's Facilities, or by any act or omission of Licensee's employees, agents or contractors on or in the vicinity of BOROUGH Poles.
- 13.5 Licensee shall indemnify, protect, defend, and save harmless BOROUGH and other licensees from and against any and all Claims for damages to property and injury or death to Licensee's employees or other persons, including but not limited to payments under any Workers' Compensation law or under any plan for employee's disability and death benefits, to the full extent that such arises out of or is caused by Licensee's erection, construction, installation, Attachment, maintenance, presence, operation, use, repair, replacement or removal of Licensee's Facilities, or by any act or omission of Licensee's employees, agents or contractors on or in the vicinity of BOROUGH Poles.
- 13.6 Licensee shall indemnify, protect, defend, and save harmless BOROUGH and other licensees from any and all Claims to the full extent that such arises directly or indirectly from Licensee's erection, construction, installation, Attachment, maintenance, presence, operation, use, repair, replacement or removal of Licensee's Facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyright, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all Claims for infringement of patents with respect to the manufacture, use and operation of Licensee's Facilities in combination with BOROUGH Poles.
- 13.7. Licensee shall indemnify, protect, defend, and save harmless BOROUGH and other licensee from and against any and all Claims, including the cost of relocating Poles, ducts or conduits, resulting from a loss of Right-of-Way or property owner consents and/or the cost of defending those rights and/or consents incurred by BOROUGH

or any other licensee(s) as a result of any acts or omissions of Licensee or its employees, agents or contractors.

- 13.8 Licensee shall be solely responsible for any cost and/or expense associated with restoring any BOROUGH Pole to its original condition where such BOROUGH Pole is disturbed or destroyed by Licensee's installation, maintenance, operation, equipment failure, splicing, inadequate engineering, or other acts.
- 13.9 **UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY 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.**
- 13.10 BOROUGH 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. 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.

#### **14. NO WARRANTY**

**BOROUGH PROVIDES NO WARRANTY REGARDING THE SUITABILITY OF BOROUGH'S POLES 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.**

#### **15. INSURANCE**

- 15.1 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 BOROUGH and other authorized licensees of BOROUGH Poles 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.

- 15.2 The amounts of such insurance shall be as follows:
- 15.2.1 Comprehensive General Liability coverage on an occurrence basis in an amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage, with a policy aggregate of Two Million Dollars (\$2,000,000). Said agreement shall include the contractual, independent contractors products/completion operations, broad form property and personal injury endorsements.
  - 15.2.2 All Risk Property coverage on a full replacement cost basis insuring all of Licensee's real and personal property situated on or within BOROUGH Poles.
  - 15.2.3 Worker's Compensation Statutory coverage, and Automobile and Employer's Liability coverage each in the amount of One Million Dollars (\$1,000,000).
- 15.3 Subject to Section 15.1 hereof, Licensee shall name BOROUGH as an additional insured on the Comprehensive General Liability Insurance in Section 15.2.1 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 BOROUGH.
- 15.4 All insurance required in accordance with this Section 15 must be effective before the Effective Date of this Agreement, and shall remain in force until Licensee's Facilities have been removed from all BOROUGH Poles. In the event that the Licensee fails to maintain the required insurance coverage, BOROUGH may, but shall not be required to, pay any premium thereon falling due, and the Licensee shall forthwith reimburse BOROUGH for any such premium paid.
- 15.5 All policies purchased by Licensee shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by BOROUGH.

## **16. 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, BOROUGH shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any BOROUGH Poles covered by this Agreement.

## **17. ASSIGNMENT**

- 17.1 Licensee shall not assign or transfer any License granted under this Agreement, and any License granted hereunder shall not inure to the benefit of Licensee's successors



or assigns, without the prior written consent of BOROUGH. In the event BOROUGH grants such consent to assignment, then the rights and obligations of Licensee under this Agreement shall apply to and bind the successors and assigns of Licensee.

- 17.2 Notwithstanding the foregoing, Licensee may assign this Agreement without BOROUGH's consent to an entity controlling, controlled by, or under common control with Licensee, or to an entity acquiring all or substantially all of Licensee's assets, upon prior written notice to BOROUGH provided that the assignee is capable of assuming all obligations of Licensee hereunder, and further provided that nothing herein shall relieve Licensee of any of its obligations hereunder without BOROUGH's prior written consent.
- 17.3 BOROUGH may assign this Agreement and all rights and obligations hereunder, to any affiliated company or successor owner of BOROUGH Poles.

## **18. TERMINATION OF AGREEMENT**

- 18.1 If Licensee ceases using Licensee's Facilities 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, including all Licenses issued hereunder, shall automatically terminate as of the date following the final day that Licensee's Facilities are used.
- 18.2 Subject to Sections 18.3 and 18.4 below, BOROUGH shall have the right to terminate this Agreement or any License issued hereunder whenever Licensee is in default of any term of this Agreement, including, but not limited to, the following conditions:
- 18.2.1 If Licensee's Facilities are used or maintained in violation of any law or in aid of any unlawful act or undertaking; or
- 18.2.2 If Licensee Attaches to any BOROUGH Poles without having first been issued a License therefore; or
- 18.2.3 If 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; or
- 18.2.4 If Licensee's insurance carrier at any time notifies Licensee or BOROUGH that Licensee's policy or policies of insurance required under this Agreement will be canceled or changed, or if BOROUGH reasonably determines that the requirements of this Agreement with regard to Licensee's policy or policies of insurance will no longer be satisfied, this Agreement shall terminate upon the effective date of such cancellation or change.

- 18.3 BOROUGH shall promptly notify Licensee in writing of the occurrence of any condition described in Section 20.2, above. Licensee shall take immediate corrective action to eliminate any such condition(s) and shall confirm in writing to BOROUGH within thirty (30) days following receipt of such written notice that the cited condition(s) has ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) or fails to give the required confirmation, BOROUGH may immediately terminate this Agreement.
- 18.4 In the event BOROUGH terminates this Agreement or any of Licensee's rights, privileges or authorizations hereunder, in addition to any other obligation that Licensee may have under this Agreement to remove Licensee's Facilities from BOROUGH Poles, Licensee shall remove Licensee's Facilities from BOROUGH Poles no later than sixty (60) upon written notification of termination. Licensee's obligations under this Agreement including, but not limited to, Licensee's obligation to pay all fees and charges accruing pursuant to this Agreement, with regard to Licensee's Facilities that are not removed shall continue following termination of this Agreement.

## **19. TERM OF AGREEMENT**

- 19.1 The initial term of this Agreement shall be for one (1) year, beginning on the Effective Date first above written, and shall continue thereafter for additional periods of one (1) year, until either BOROUGH or Licensee terminates the Agreement by giving the other party six (6) months advance written notice of such termination prior to the expiration of the initial term, or any additional term.
- 19.2 Termination of this Agreement or any License issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.
- 19.3 If at any time, (a) the use of BOROUGH Poles is determined under applicable law to be prohibited by any public authority; or (b) a property owner on whose land BOROUGH Poles is located successfully challenges BOROUGH's or Licensee's use of such property this Agreement shall immediately terminate, and Licensee shall discontinue the Attachment or BOROUGH shall remove Licensee's Facilities at Licensee's expense. No liability shall inure to BOROUGH on account of such discontinuance or removal, and Licensee shall promptly pay BOROUGH's Costs of such removal.

## **20. ARBITRATION**

Any dispute arising under this Agreement will be subject to binding arbitration. Each party shall within thirty (30) days after written demand therefor by the other, appoint one arbitrator and notify the other thereof in writing. Said arbitrators shall within twenty (20)

days from the appointment of the last one choose a third, and a written decision upon the matters in dispute or any of them, signed by any two of said arbitrators shall be final on both parties. The arbitrators' expenses and charges for services shall be borne equally by the parties hereto.

**21. 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 BOROUGH:

Zelienople Borough  
Attention: Borough Manager  
111 West New Castle Street  
Zelienople, PA 16063

To Licensee:

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.

**22. PRIOR AGREEMENTS**

This Agreement supersedes and cancels all previous agreements, whether written or oral, between Licensee and BOROUGH regarding the Attachment of Licensee's Facilities to BOROUGH Poles. All currently authorized Attachments granted pursuant to any prior agreement shall be subject to the terms and conditions of this Agreement.

**23. MISCELLANEOUS**

23.1 Relationship of Parties. The relationship of BOROUGH 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.

- 23.2 Choice of Law. This Agreement shall be deemed to have been executed in the Commonwealth of Pennsylvania and the parties hereto agree that the terms and performance hereof shall be governed by and construed in accordance with the laws of Pennsylvania unless otherwise provided by Federal law.
- 23.3 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.
- 23.4 Entire Agreement. This Agreement, including all Schedules and Attachments hereto, constitute 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. This Agreement may only be modified in writing signed and agreed to by both parties.
- 23.5 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.
- 23.6 Headings. Headings in this Agreement are for reference only and do not affect the substantive provisions therein.
- 23.7 Third-Party Rights. Nothing in this Agreement is intended to create any rights in any third parties.
- 23.8 Force Majeure. Neither BOROUGH 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, 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 its best efforts to remove such condition as soon as possible.
- 23.9 Confidentiality. Any information of either party that is deemed proprietary and confidential and conspicuously marked as such shall be kept confidential and not disclosed to the public or a third party. In addition, except as otherwise required

by law, such 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. 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.

23.10 Counterparts. This Agreement may be signed in any number of counterparts and shall be deemed executed on the date first written above. 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.

23.11 Enforcement Costs. If either party is obligated to incur costs in order to enforce any provision of this Agreement, the prevailing party shall be entitled to reimbursement for all reasonable costs so incurred, including but not limited to reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the date first set forth above.

**ZELIENOPE BOROUGH**  
**Witness**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Andrew C. Spencer

Name: Mary Hess

Title: Manager

Title: President

**LICENSEE**

\_\_\_\_\_

\_\_\_\_\_

**License Agreement  
Schedule A**

Annual license fee for each license / cable	\$25.00 /Attachment/pole/year
Fee to process an application for a license	\$20.00/pole
Post Installation Inspection	\$3.00/pole
Post overlashing inspection	\$2.00/pole
Unauthorized attachment fee (per year)	\$50.00/unauthorized attachment/Pole
Cost for make-ready	BOROUGH actual Cost, as defined in Section 1.4 of the Agreement, plus the 10% administrative addition as set forth in Section 1.4