

POLE LICENSE AGREEMENT  
FOR WIRELESS COMMUNICATIONS FACILITIES

DATED \_\_\_\_\_

BETWEEN

WEST BOYLSTON MUNICIPAL LIGHT PLANT (LICENSOR)

AND

\_\_\_\_\_ (LICENSEE)

## CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>
I.	Definitions
II.	Scope of Agreement
III.	Fees and Charges
IV.	Advance Payment
V.	Specifications
VI.	Legal Requirements
VII.	Issuance of Licenses
VIII.	Pole Make-Ready Work
IX.	Construction, Maintenance and Removal of Wireless Facilities
X.	Termination of License
XI.	Inspections of Licensee's Wireless Facilities
XII.	Unauthorized Wireless Facilities
XIII.	Liability and Damages
XIV.	Insurance
XV.	Authorization Not Exclusive
XVI.	Assignment of Rights
XVII.	Failure to Enforce
XVIII.	Termination of Agreement
XIX.	Term of Agreement
XX.	Notices
XXI.	Amendment
XXII.	Governing Law, Jurisdiction and Venue

## APPENDIXES

I.	Schedule of Fees and Charges
II.	Procedure For Processing Multiple Attachment License Applications
III.	License Application Forms
IV.	Technical Standards

**WIRELESS FACILITIES LICENSE AGREEMENT**

THIS AGREEMENT (“Agreement”), made this \_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”) by and between the West Boylston Municipal Light Plant, a Massachusetts municipal light plant, having a business address at 4 Crescent Street, West Boylston, MA 01583 (hereinafter referred to as the “Licensor”) and \_\_\_\_\_, a \_\_\_\_\_, having a business address at \_\_\_\_\_ (hereinafter called the “Licensee”) (Licensor and Licensee also referred to individually as “Party” and collectively as “Parties”).

**WITNESSETH**

WHEREAS, Licensor is the sole owner or joint owner of utility poles in its electric service territory in the Town of West Boylston, Massachusetts;

WHEREAS, Licensee is in the business of providing wireless communications services and desires to place and maintain its Wireless Facilities on certain of Licensor’s poles;

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of Licensee’s Wireless Facilities by Licensee on certain of Licensor’s poles subject to the terms of this Agreement;

WHEREAS, Licensor intends to require all entities seeking to place and maintain Wireless Facilities on Licensor’s poles to execute a Wireless Facilities License Agreement with Licensor that is substantially similar to this Agreement;

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

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

- (A) Anchor Rod. A metal rod connected to an anchor and to which a guy strand is attached. Also known as a “guy rod”.
- (B) Emergency. A condition or situation (including any condition or requirement imposed on either Party by a governmental authority or the failure by Licensee to perform any obligation hereunder) that presents a physical threat of danger to life, health or property, or presents the threat of loss of transmission or distribution facilities or service, or that presents a threat to electric system reliability.
- (C) Field Survey Work, Survey Work or Field Survey. A survey of the poles on which Licensee wishes to attach in order to determine what work, if any, is required to make the pole ready to accommodate the proposed Wireless Attachment, and to provide the basis for estimating the cost of this work.

- (D) Guy Strand. A metal cable of high tensile strength which is attached to a pole and Anchor Rod (or another pole) for the purpose of reducing pole stress.
- (E) Identification Tags. Identification tags are used to identify Licensee's Wireless Facilities. Identification tags shall be made of polyethylene and polyvinyl chloride with ultraviolet inhibitors. The two types of Identification tags are cable and apparatus tags as described in Appendix III, Form D.
- (F) Joint Owner. A person, firm or corporation having an ownership interest in a pole and/or Anchor Rod with Licensor.
- (G) Joint User. A party with whom Licensor has entered into, or may hereafter enter into, a written agreement covering the rights and obligations of the parties thereto with respect to the use of poles and Anchor Rods owned by each party.
- (H) Make-Ready Work. The work required (rearrangement and/or transfer of existing facilities on a pole, replacement of pole or any other changes) to accommodate the Licensee's Wireless Facilities on Licensor's pole.
- (I) Micro Wireless Facility. A Wireless Facility suspended on cables strung between existing poles that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and (ii) any exterior antenna is no longer than 11 inches.
- (J) Other Licensee. Any entity, other than Licensee herein or a Joint User, to whom Licensor has or hereafter shall extend the privilege of attaching communications facilities to Licensor's poles.
- (K) Power Supply Wireless Facilities. Wireless Facilities requiring a power supply from Licensor.
- (L) Reserved Capacity. The capacity or space on Licensor's pole that Licensor has identified and reserved for its own future requirements relating to the provision of electric service permitted pursuant to M.G.L. c. 164, including, but not limited to, communications services or functions that relate to Licensor's electric operations.
- (M) Wireless Facilities. Licensee's antennas, equipment, cabinets, riser cables, and any related wires, conduit, device, apparatus, or appliance installed upon any pole owned or controlled, in whole or in part, by Licensor and used for the provision of wireless communications services that meet the following conditions: (1) the facilities are mounted on poles 50 feet or less in height including their antennas, or are mounted on poles no more than 10 percent taller than other adjacent poles, or do not extend existing poles on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; (2) each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; (3) all other

wireless equipment associated with the pole, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, is no more than 28 cubic feet in volume; (4) the facilities do not require antenna structure registration under applicable law; and (5) the facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards. However, Licensor may agree to issue a License for a Wireless Facility that does not satisfy one or more of clauses (1) through (3). Licensor shall have the flexibility to reasonably determine whether a combination of antennas, equipment, cabinets, riser cables, and any related wires, conduit, device, apparatus, or appliances installed on multiple poles, in multiple locations constitute one Wireless Facility, as defined, or more than one Wireless Facility for which an additional license would be required.

## **ARTICLE II SCOPE OF AGREEMENT**

- (A) Subject to the provisions of this Agreement, Licensor agrees to issue to Licensee for any lawful communications purpose, revocable, non-exclusive licenses authorizing the attachment of Licensee's Wireless Facilities to Licensor's poles in the Licensor's service territory in the Town of West Boylston, Massachusetts.
- (B) This Agreement supersedes any and all previous agreements for the attachment of Wireless Facilities between Licensor and Licensee. This Agreement shall govern all existing licenses for Wireless Facilities between Licensee and Licensor as well as all licenses for Wireless Facilities issued subsequent to execution of this Agreement. This Agreement does not govern Licensees' attachment of its cables and wires pursuant to M.G.L. c. 166, § 25A. The attachment of wires and cables shall be subject to a separate agreement.
- (C) No use, however extended, of Licensor's poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles. Licensee's rights herein shall be and remain a non-exclusive, revocable license in accordance with the terms hereof. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of Licensor's rights to use the public or private property at the location of Licensor's poles.
- (D) Nothing contained in this Agreement shall be construed to compel Licensor to construct, retain, extend, place or maintain any pole, or other facilities not needed for Licensor's own service requirements. The Parties acknowledge and agree that except as expressly stated, this Agreement does not limit Licensor's right to locate, operate, maintain, or remove any of its poles as necessary or expedient for its electric service requirements or to comply with its franchise obligations or any federal, state, or local requirements.
- (E) Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor with respect to any agreement(s) and arrangement(s) which Licensor has heretofore entered into, or may in the future enter into with others not parties to this Agreement regarding the poles covered by this Agreement, subject to the terms hereof.

The rights of Licensee shall at all times be subject to any such existing agreement(s) or arrangement(s) between Licensor and any Joint Owner(s) or Joint User(s) of Licensor's poles. Licensee must obtain separate authorization from, and pay all applicable make ready fees and charges to, each Joint Owner or Joint User of the pole.

- (F) This Agreement is not in and of itself a license, and before attaching any Wireless Facilities to any of Licensor's poles, Licensee must apply for and obtain a license in accordance with this Agreement.
- (G) This Agreement does not convey any rights or approvals for Licensee to occupy the public ways. Licensee shall obtain any required approvals, permits and licenses to install its Wireless Facilities in the public ways from the local municipal officials where such Wireless Facilities will be located. Licensor makes no representation or warranty of any nature that existing or future rights-of-way, easements or other property rights, private or public, were, are or will be sufficient to permit the attachment, maintenance, replacement, relocation, repair, or modification of Licensee's Wireless Facilities on any poles.
- (H) Except as expressly provided herein, this Agreement does not govern the terms and conditions upon which Licensor will install, repair or replace Licensee's Wireless Facilities in the electric space. Such services performed by Licensor shall be subject to a separate agreement.

**ARTICLE III  
FEES AND CHARGES**

- (A) Licensee agrees to pay to Licensor the fees and charges as specified in and in accordance with the terms and conditions of APPENDIX I, attached hereto and made a part hereof, as well as all other amounts that may become due hereunder.
- (B) Nonpayment of any amount due from Licensee under this Agreement, beyond any applicable notice, cure or grace period, shall constitute a default of this Agreement.
- (C) Licensee shall furnish a Surety Bond or irrevocable Letter of Credit satisfactory to the Licensor to guarantee the payment of any sums which may become due to Licensor for Attachment Fees (as defined in attached Appendix I) due hereunder and any other charges for work performed or to be performed for Licensee by Licensor, including the removal of Licensee's Wireless Facilities upon termination of any authorization issued hereunder, according to the following criteria:

<b>Poles</b>	<b>Security</b>
1 – 50	\$10,000
51 – 500	\$75,000
501 – 2000	\$300,000

2001 – 3000	\$450,000
3,000 +	\$500,000

The maximum security limit required is \$500,000. If the financial security is in the form of a bond, irrevocable Letter of Credit, or other security as deemed acceptable by Licensor, such instrument shall be issued by a surety company or bank satisfactory to the Licensor and shall guarantee Licensee’s obligations under this Agreement. The Licensee is obligated to maintain the security in the full amount for the term of this Agreement. The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee. The financial security requirement may be reduced or waived in writing by Licensor and be reinstated at any time for any or no reason if reduced or waived. If financial security is required by Licensor hereunder, then Licensee shall provide such security to Licensor before Licensee attaches to any of Licensor’s poles or within sixty (60) days of any request to provide such security if it was not required when Licensee initially attached to Licensor’s poles.

(D) Beginning on the third anniversary of the Effective Date, the Licensor may change the amount of fees and charges specified in Appendix I by giving the Licensee not less than one hundred eighty (180) days’ written notice prior to the date the change is to become effective, provided that any increase in the amount of fees and charges must comply with applicable requirements of federal and state law. Licensor agrees that it shall not change such fees and charges more often than once every year. Licensee may challenge such fees in any tribunal of its choice having jurisdiction if it believes that such charges are not permitted by applicable law. During any such challenge Licensee will continue to pay the fees and charges as stated in Appendix I including the Licensor’s intended modification. To the extent that a final judgment or other dispositive resolution issues in favor of Licensee on any disputed charge and fee amount(s) and any applicable appeal periods have elapsed, Licensor will promptly pay the disputed amounts calculated as of the date on which the change became effective. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement if the change in fees and charges is not acceptable to Licensee; provided Licensee gives Licensor written notice of its election to terminate this Agreement prior to the date on which the change otherwise would become effective, or, if the change is upheld in whole or part after a challenge, within forty-five (45) days after the final disposition of the challenge and the lapsing of any applicable appeal periods.

**ARTICLE IV  
ADVANCE PAYMENT**

- (A) Licensee shall make an advance payment to the Licensor prior to:
- (1) any undertaking by Licensor of the required Field Survey Work[See Article VIII par. (A)] in an amount specified by Licensor sufficient to cover the estimated cost to be incurred by Licensor to complete such Field Survey Work.
  - (2) any performance by Licensor of any Make-Ready Work required in an amount specified by Licensor sufficient to cover the estimated cost to be incurred by

Licensors to complete the required Make-Ready Work.

- (B) The amount of the advance payment required will be credited against the full cost to Licensor for performing such work or having such work performed by others.
- (C) Where the advance payment made by Licensee to Licensor for Field Survey Work or Make-Ready Work is less than the full cost to Licensor for such work, Licensee agrees to pay Licensor all sums due in excess of the amount of the advance payment within sixty (60) days of Licensee's receipt from Licensor of an invoice identifying the amount due.
- (D) Where the advance payment made by Licensee to Licensor for Field Survey Work or Make-Ready Work exceeds the full cost to Licensor for such work, Licensor shall refund the difference to Licensee within sixty (60) days of the completion of such Field Survey Work or Make-Ready Work, unless a balance for Attachment Fees specified in Appendix I or other charges hereunder remain outstanding, in which case, Licensor may apply the difference to offset the outstanding balance.

## **ARTICLE V SPECIFICATIONS AND REQUIREMENTS**

- (A) Licensee's Wireless Facilities shall be placed, maintained and removed in accordance with Licensor's specifications and technical standards set forth in Appendix IV and with the applicable requirements and specifications of the latest editions of the Manual of Construction Procedures (Blue Book), Electric Company Standards, the National Electrical Code (NEC), the National Electrical Safety Code (NESC), the American Public Power Association (APPA) Safety Manual, and rules and regulations of the Occupational Safety and Health Act (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in applicable specifications may exist, the more stringent shall apply. [NTD: We suggest that WBMLP adopt technical standards for the installation of wireless facilities on its poles.]
- (B) Licensee's Wireless Facilities shall conform to applicable and lawful requirements and design guidelines of the municipalities having jurisdiction over the locations where Licensee's Wireless Facilities will be located. Licensee shall submit proof of compliance upon Licensor's request. Licensee shall promptly correct or remove any unauthorized or nonconforming installations at its sole expense.
- (C) Licensee will not be granted a license for the installation of Wireless Facilities on poles with capacitor controls, regulator controls, recloser controls, Scadamates, Intellirupters, meter data collectors / gateways, existing antennas, fiber nodes, radios, air switch operating handles, an existing three-phase overhead transformer bank, single-phase transformers, underground electric or communication riser conduits or primary service wires. Licensee also will not be granted a license for the installation of Wireless Facilities on riser poles, switch poles, dead-end poles, heavily guyed corner poles, or multi-circuit poles, or other poles that are not accessible by mechanized equipment (*e.g.*, a bucket truck). [NTD: Subject to discussion. We suggest including limitations specific to

WBMLP's requirements. The attached provision is included as a placeholder. Some of the equipment listed is MLP-specific. Some light plants allow installations on poles with primary service. The limitations are intended to allow WBMLP the right to reject an application in order to defend a potential access claim.]

- (D) Licensee may only perform work to install and maintain its Wireless Facilities in the communications space to the extent that Licensee is qualified to work in such space. If Licensee is not qualified to work in such space, Licensee must use a contractor that is qualified to work in such space.
  
- (E) If Licensee desires to locate any Wireless Facilities in the electric space, all installation, maintenance, and removal work shall be performed only by Licensor or a qualified outside contractor approved by Licensor. If Licensee wishes to use an outside contractor, Licensee shall submit the name of the contractor and the names of each person that will be working in the electric space and copies of such persons' current qualifications to work in such space to Licensor for review and approval. At a minimum, each such person must have the following current qualifications: (1) 15 kV Rubber Glove Certificate; (2) 15 kV Journeyman / Lineworker qualification; (3) OSHA 1910.269 Certificate; (4) annual Pole Top & Bucket Rescue Certificate; (5) CPR / First Aid Certificate; (6) Machinery / Hoisting License; (7) Energy Hazards Awareness Program (EHAP), if Licensee's work will involve trimming any trees. All such persons must have passed a current Massachusetts Criminal Offender Record Information (CORI) check and evidence must be provided to Licensor. Licensee and any outside contractor must follow all NESC, OSHA and APPA safety requirements as well as Licensor's safety policies, rules and requirements before, during and after installation, maintenance and removal. A copy of the APPA manual and Licensor's adopted safety manual will be provided by Licensor to Licensee and any outside contractor upon request. Licensee and any outside contractor must fill out and submit a job briefing daily in accordance with Licensor's safety policies. Licensor will monitor the Licensee's and its contractors' work to ensure work is performed in accordance with Licensor's safety rules and requirements. Licensee and its contractors must address Licensor's safety concerns or instructions before the job opening, during installation, maintenance and removal and after closing the job every day until the job is completed. Licensee and its contractors are responsible for providing all required safety equipment such as cones, signs, hardhats, gloves, sleeves, boots, harnesses, safety glasses, face shields, fire retardant clothing Category 2 and Category 4, safety vests, etc. Licensor has the right to halt Licensee's and its contractors' work if applicable safety rules and regulations are not followed or fully executed. If Licensee requests Licensor's consent to perform work by use of a qualified outside contractor, such request shall not be unreasonably denied, conditioned or delayed by Licensor after receipt of a complete request that includes all of the information set forth in this section. Licensor shall have the right to observe and inspect all work for the protection of its equipment, electric service and safety, at Licensee's sole expense. Licensor shall not be responsible for the safety of Licensee's contractors or workers or the performance of the work. Licensee shall at all times be responsible for its contractors and shall be responsible for verifying all work is performed with the appropriate safety gear and in accordance with applicable safety requirements and codes. [NTD: Subject to discussion. We suggest discussing

conditions and qualifications to work in the electric space. The highlighted text is included as a placeholder and has been agreed to by Verizon with other parties.]

- (F) All installation, maintenance and removal work for Licensee's Wireless Facilities must comply with all applicable vegetation management plans in effect for each applicable municipality.
- (G) Licensee shall timely coordinate with Licensor when Licensor distribution system switching is required.
- (H) All installation, maintenance and removal work for Licensee's Wireless Facilities, whether performed by Licensor or an outside contractor, shall be at Licensee's sole expense. All fees and charges imposed by outside contractors, regardless of whether such work is performed in the communications space or the electric space, shall be payable by Licensee directly to the contractor.
- (I) Licensee shall provide or cause to be provided, at Licensor's request, on-site training of Licensor's personnel to safely install and remove the Wireless Facilities, as well as radio frequency ("RF") occupational training related to working in close proximity to such Wireless Facilities.
- (J) If Licensee or its contractors perform the work, Licensor, in its discretion may perform a post-installation inspection at Licensee's sole expense to verify that the work has been performed in accordance with all applicable standards and the terms and conditions of this Agreement.
- (K) If any part of Licensee's Wireless Facilities is not placed and maintained in accordance with this Agreement, Licensor shall provide notice to Licensee, who shall correct any non-compliant Wireless Facilities within thirty (30) days, or longer if mutually agreed by the Parties and reasonably necessary due to the nature and scope of the non-compliance. Should Licensee fail to comply, Licensor may upon ten (10) days written notice to Licensee and in addition to any other remedies Licensor may have hereunder, remove Licensee's Wireless Facilities from the affected poles or perform such other work and take such other action in connection with said Wireless Facilities that Licensor deems necessary or advisable to provide for the safety of Licensor's employees or performance of Licensor's service obligations at the cost and expense to Licensee and without any liability therefore; provided, however, that when in the sole judgment of Licensor such a condition constitutes an Emergency, Licensor may take such action with less prior notice to Licensee, including, but not limited to no prior notice, as reasonable under the circumstances, and such action shall be at the Licensee's cost and expense. Licensor shall use reasonable efforts to provide prior notice to Licensee, in light of the circumstances at the time, before removing Licensee's Wireless Facilities from affected poles or performing such other work and taking such other action in connection with said Wireless Facilities that Licensor deems necessary or advisable to provide for the safety of Licensor's employees or performance of Licensor's service obligations.

- (L) As described in Appendix III, Form D, Licensee shall place Identification Tags on Wireless Facilities and cables located on poles and Identification Tags on any associated items of Licensee's equipment, e.g., guys, anchors or terminals. Licensor, in its sole determination, has the right to approve all identification tags that are different than those described in Appendix III, Form D.
- (M) To the extent Licensee requires electric service for its Wireless Facilities, Licensee shall obtain electric power pursuant to Licensor's prevailing electric service requirements.
- (N) Licensee shall not allow its Wireless Facilities to impair the ability of Licensor to use its pole or access its equipment. Licensee shall not allow or cause its Wireless Facilities to interfere with the operation of any of Licensor's equipment or facilities or those of any Other Licensee, Joint User or Joint Owner. If Licensee causes an interruption of service by damaging or interfering with any equipment of Licensor, Licensee shall immediately do all things necessary to avoid injury or damages, direct and incidental, resulting therefrom and shall notify Licensor immediately.
- (O)
- (1) Licensee shall be solely responsible for the RF emissions emitted by its Wireless Facilities and associated equipment.
  - (2) Licensee's Wireless Facilities shall not cause RF Interference to Licensor's equipment, facilities or operations. "Interference" in the context of spectrum licensed by the Federal Communications Commission refers to material adverse effects resulting from transmitting outside of the licensed spectrum or otherwise in violation of the authority granted by the license of the party alleged to be causing the Interference. In the context of unlicensed spectrum, it means the material adverse effect of unwanted energy due to one or a combination of emissions, radiations or inductions upon reception in a pre-existing radio communication system, manifested by any material performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy. If Licensor has reasonably determined that Licensee Wireless Facilities are causing RF Interference with Licensor's pre-existing facilities, equipment, or operations, then Licensee, following reasonable written notice and explanation from Licensor concerning such Interference, shall promptly take all reasonable steps necessary to correct the Interference, including, but not limited to, powering down the facility and later powering up the facility for intermittent testing.
  - (3) Licensee shall be responsible for ensuring that its RF emissions, in combination with the lawful emissions of all other contributing sources of RF emissions, are within the limits permitted under all applicable rules of the FCC. Licensee shall provide evidence of such compliance by Licensee to Licensor upon reasonable request, which evidence may include an emissions study by a qualified engineer demonstrating that the Licensee equipment at issue (singly and in combination with the lawful emissions of all other contributing sources of RF emissions) is in compliance with all applicable RF emissions limitations.

(4) To the extent required by FCC rules or Licensor's standards, to the extent Licensor's standards do not conflict with FCC rules, Licensee shall install and maintain appropriate signage to notify workers and third parties of the potential for exposure to RF emissions.

(5) Licensee shall be under a continuing duty and obligation to protect against exceeding RF emissions limits and causing RF Interference to the RF signals of Licensor or any Other Licensee, Joint User or Joint Owner operating in accordance with applicable law. Licensor shall also ensure that Licensor's equipment and facilities do not exceed RF emissions limits or cause RF Interference contrary to applicable law. In the event of RF Interference, Licensor will endeavor to have all Other Licensees, Joint Users and Joint Owners coordinate and cooperate with each other and with Licensee and itself relating to the resolution of such interference. Licensee shall be under no obligation to remedy or resolve RF Interference caused by any party other than Licensee. Licensee shall use commercially reasonable efforts to include the provisions of this subparagraph (5) in its agreements with other Licensees, but any failure to do so shall not be deemed a breach of this Agreement.

(6) Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of persons and facilities.

(7) Licensee shall install a lockable power cut-off switch as directed by Licensor and consistent with applicable laws and standards and Licensor's specifications and technical standards for every pole to which Licensee has attached facilities that can emit RF energy. Such lockable power cut-off switch shall have a visible open or indicator showing that power is off. Licensee may not use battery back-up on facilities that emit RF energy unless the lockable power cut-off switch also disables the battery back-up. Licensee shall provide Licensee with access to disconnect the switch by providing keys or combinations to the lock. Disconnect and meter sockets must be installed according to Licensor's requirements.

(8) In Licensor's discretion, Licensor may either call Licensee and request Licensee to power down its antennas or Licensor may, after reasonable advance notice to Licensee, if any, as set forth below, power down Licensee's antennas using the disconnect switch when working on its own facilities. Licensor shall not be liable to Licensee or any third parties for costs or damages related to the shut-down. In ordinary circumstances, Licensor will endeavor to contact the Licensee's designated point of contact in advance to inform the Licensee of the need for a temporary power shut-down. Upon receipt of the call, Licensee will power down its antenna remotely, the power-down will occur during normal business hours and with 24-hours advance notice unless otherwise directed by Licensor. In the event of an unplanned power outage or other unplanned cut-off of power, or an emergency, the power-down will be with such advance notice as may be practicable and, if circumstances warrant, employees and/or contractors of Licensor may

accomplish the power-down by operation of the power disconnect switch without advance notice to Licensee and shall notify the Licensee as soon as possible. Once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down ordinarily will restore power and inform the other as soon as possible that power has been restored. Licensor, however, shall not be liable for any damages to Licensee or any third party, including Licensee's customers, for the failure to restore power. Licensee shall have the sole obligation to ensure that power is restored.

- (P) Licensee and Licensor shall provide each other with emergency after hours contact information including 24/7 telephone and/or pager information, a list of duty managers by district and escalation procedures. Licensee shall be required to include signage that provides Licensor's emergency contact information, Licensee's emergency contact information, and NESC required information. In the event of an emergency, including but not limited to a pole hit or tree limb damage, Licensor, at Licensee's cost, may take whatever actions it reasonably deems necessary to secure the area and its distribution facilities, including if necessary the removal of Licensee's Wireless Facilities. If Licensor removes Licensee's Wireless Facilities pursuant to the prior sentence, Licensor shall be liable to Licensee to the extent of Licensor's gross negligence or intentional misconduct. The Parties acknowledge and understand that Licensor's first priority will be to restore electric service to its customers. Following such emergency situation, the Parties will discuss and undertake the necessary actions to promptly reinstall or transfer Licensee's Wireless Facilities to the repaired or replaced pole, or to an available alternative pole that is suitable for Licensee's needs.
- (Q) In accordance with applicable laws and codes, Licensee shall be required to install its own dedicated ground and ground wire for each attachment requiring a ground.

## **ARTICLE VI LEGAL REQUIREMENTS**

- (A) Licensee makes the following representations and warranties: (a) Licensee is a registered telecommunications provider in the Commonwealth of Massachusetts, (b) Licensee will use Licensor's poles exclusively for the provision of wireless communications services in accordance with applicable laws or regulations, and as authorized by Licensor pursuant to the terms and conditions of this Agreement.
- (B) Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain its Wireless Facilities in the public ways and on public and private property at the location of Licensor's poles which Licensee uses. Licensee shall submit to Licensor upon written request evidence of such authority, in such form reasonably acceptable to Licensor, before installing any Wireless Facilities on such public ways, and/or other public or private property.
- (C) Licensee shall be required to obtain separate authorization from any Joint Owner to attach its Wireless Facilities to any of Licensor's jointly owned poles. Prior to the granting of

any license hereunder, Licensee shall furnish written proof of such permission, in such form satisfactory to the Licensor, as set forth in Appendix III, Form A-1.

- (D) The Parties hereto shall at all times observe and comply with, and the provisions of the Agreement are subject to, all lawful and applicable laws, by-laws, and regulations which in any manner affect the rights and obligations of the Parties under this Agreement, so long as such laws, by-laws or regulations remain in effect.
- (E) Licensor shall not grant a license under this Agreement for any of Licensor's poles where the placement of Licensee's Wireless Facilities would result in a forfeiture of the rights of Licensor or Joint Users to occupy the property on which such poles are located. If Licensor, despite reasonable diligence, issues a license to Licensee to place Licensee's Wireless Facilities on a Licensor pole and subsequently is notified by a third party with a superior right to the property on which the pole is located that the location of the Licensee Equipment would result in a forfeiture of the rights of Licensor, Joint Owners, Joint Users or Other Licensees, or all of them, to occupy such property, Licensee agrees not to install its Wireless Facilities on that pole or, if already installed, to remove its Wireless Facilities within a commercially reasonable period of time, and Licensor agrees to work with Licensee to identify a suitable nearby substitute pole location for the installation of Licensee's Wireless Facilities.

## **ARTICLE VII ISSUANCE OF LICENSES**

- (A) Before Licensee shall attach to any pole, Licensee shall make application for and have received a license therefor from Licensor in the form of APPENDIX III, Forms A-1 and A-2. A license shall be required for each Wireless Facility, including Micro Wireless Facilities, to be attached to Licensor's poles. Licensor reserves the right to require the Licensee to submit technical information, structural analyses, and other information required for Licensor to evaluate the request and suitability of the pole for the mounting of Licensee's Wireless Facilities. At a minimum, the Licensee shall submit with its application the following: (1) written deployment plan, (2) equipment type and cut sheets on all proposed equipment to be installed on Licensor's poles, which includes a list of frequencies used when receiving and transmitting, (3) installation design and a detailed description of the work to be performed on Licensor's poles; (4) preconstruction drawings; (5) required information for Licensor to perform pole loading calculations; (6) documentation and/or certifications confirming RF emissions compliance for Licensee's Wireless Facilities and in combination with all other known sources of RF emissions at the site; and (7) pole top test results for poles in instances when Licensee proposes to attach / install equipment at the top of the pole. Licensee shall submit any additional information as set forth on the application and as requested by Licensor. Licensee shall be responsible for reasonably identifying and soliciting RF emission information from Licensor, Other Licensees, Joint Users and Joint Owners to determine combined RF emission compliance at each site.
- (B) Licensee agrees to limit the filing of applications for licenses to include not more than ten (10) poles on any one application and thirty (30) poles on all applications which are

pending approval by Licensor at any one time. Licensee further agrees to designate a desired priority of completion of the Field Survey Work and Make-Ready Work for each application relative to all other of its applications on file with Licensor at the same time. Licensee understands and agrees that the Joint Owner shall be responsible for processing applications for poles located in such Joint Owner's set area, except for requests involving work in the electric space, in which case, an application must also be filed with Licensor. [NTD: We suggest including filing and processing requirements so that WBMLP can meet any applicable deadlines. The highlighted text has been included as a placeholder. Please advise whether additional restrictions should be included.]

- (C) Licensor shall use reasonable efforts to review and respond to properly submitted and complete Application(s) within sixty (60) days of receipt. Licensor is not obligated to review any Applications not accompanied by the applicable fees. Licensor will use reasonable efforts to provide written notice of an incomplete Application within ten (10) days of Licensor's receipt of the Application and such notice will include a description of the omissions rendering the Application incomplete.
- (D) Prior to the issuance of any licenses hereunder, Licensee shall have obtained the necessary authorizations and shall have provided to Licensor acceptable proof of such authorizations as set forth in Article VI and Appendix III, Form A-1.
- (E) Licensor may deny access to poles that have been reserved for the installation of Licensor's distribution equipment or other equipment in connection with Licensor's smart grid automation plans.
- (F) In Licensor's discretion, access to space on its poles may be made available to Licensee with the understanding that certain poles may be subject to Reserved Capacity for Licensor's own future utility service use, including, but not limited to, communications services or functions that relate to Licensor's electric operations. As part of the application and licensing process and before a license is issued, Licensor shall notify Licensee if capacity on particular poles to which Licensee seeks to attach is subject to Reserved Capacity. Licensee may decide whether or not to attach to poles subject to Reserved Capacity. For installations made with notice of such a reservation of capacity, upon giving Licensee at least one hundred and twenty (120) calendar days' prior notice, Licensor may reclaim such Reserved Capacity at any time following installation of Licensee's Wireless Facilities if required for Licensor's future needs. Licensee may request Licensor to expand capacity needed to accommodate Licensee's Wireless Facilities to the extent feasible. Licensee shall be solely responsible for the cost of all Make-Ready Work needed to accommodate its Wireless Facilities and all costs of rearrangement. Neither Licensor nor Licensee shall be required to bear any of the costs of rearranging or replacing Licensee's Wireless Facilities, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any Joint User or Other Licensee. If Licensee is unable or unwilling to maintain its Wireless Attachment, Licensee and Licensor will work together in good faith to accommodate reattachment of Licensee's Wireless Facility to a nearby pole, and Licensee shall submit an application for a license to occupy the new pole pursuant to the terms and conditions

of this Agreement. If a license is granted, Licensee shall be solely responsible for all costs to transfer its Wireless Facilities as well as any Make-Ready Work needed to accommodate its Wireless Facilities on such pole.

### **ARTICLE VIII POLE MAKE-READY WORK**

- (A) A Field Survey will be required for each pole for which the installation of Licensee's Wireless Facilities is requested in order for Licensor, in its sole discretion, to determine the adequacy of the pole to accommodate Licensee's Wireless Facilities. The Field Survey will be jointly performed by representatives of Licensor and Licensee, with participation by the Joint Owner and/or Joint User, at Licensor's option. A separate Field Survey may be required by any Joint Owner. In addition, where applicable, Licensee shall submit to Licensor an anchor design and analysis for each Wireless Facility and for each pole for which Licensee seeks a license.
  
- (B) Licensor reserves the right to refuse to grant a license for attachment to a pole if Licensor, in its sole discretion, determines that (i) there is insufficient capacity in the communications or electric space on such pole, as applicable; (ii) reasons of safety, electric system reliability or generally applicable engineering standards preclude such attachment; or (iii) for other good cause shown. In general, Wireless Facilities will not be allowed in the electric space on poles with primary service. In the event that capacity limitations could be addressed by installing a taller pole, Licensor will install a replacement pole not exceeding \_\_ feet to accommodate Licensee's Wireless Facilities at Licensee's sole cost and expense, provided that Licensee obtains authorizations by the applicable city or town in accordance with M.G.L c. 166, § 22. To the extent permitted by local authorities, in its sole discretion, Licensor may install a replacement pole in excess of \_\_ feet, if the height of the replacement pole is uniform with the surrounding poles, and Licensor determines, in its sole discretion, that the height of the replacement pole would not place an undue burden or expense on the Licensor with respect to maintaining its own attachments and facilities or jeopardize the safety of Licensor's employees. [NTD: Please advise whether there are any height limitations. Some light plants limit installations to 45' poles.]
  
- (C) In the event Licensor determines that a pole to which Licensee desires to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the Wireless Facilities in accordance with Licensor's requirements and/or the specifications set forth in Article V, Licensor will indicate on the Authorization for Pole Make-Ready Work (Appendix III, Form B-2) the estimated cost of the required Make-Ready Work and return it to Licensee.
  
- (D) Any required Make-Ready Work will be performed by Licensor following receipt by Licensor of completed Form B-2. Nothing in this Agreement authorizes Licensee to perform any Make-Ready Work to Licensor's poles. Licensee shall pay Licensor for all Make-Ready Work completed in accordance with the provisions of APPENDIX I, and shall also reimburse the owner(s) of other facilities attached to said poles for any expense incurred by it or them resulting from transferring or rearranging such facilities to accommodate

Licensee's Wireless Facilities. Licensee shall not be entitled to reimbursement of any amounts paid to Licensor for pole replacements or for rearrangement of Wireless Facilities on Licensor's poles by reason of the use by the Licensor or other authorized user(s) of any additional space resulting from such replacement or rearrangement.

- (E) Upon receipt of Licensee's completed Form B-2, Licensor shall notify all existing attachers of the date and location of the scheduled work and of the need to rearrange and/or transfer their facilities at Licensee's cost. Licensor shall request that such work be performed within 30 days (or 90 days for work above the Communication Space). When Licensor provides the make-ready notice to existing attachers, it shall provide Licensee with a copy of the notice and contact information of the existing attachers to which notices were sent, and thereafter Licensee shall assume responsibility for coordinating with existing attachers concerning timely completion of make-ready work. Licensor shall use reasonable efforts to complete Make-Ready Work itself within the time frames set forth above plus an additional 15 days.
- (F) Within thirty (30) days after completion of all installation, maintenance and/or removal of Licensee's Wireless Attachments, as applicable, Licensee shall provide written notice of completion to Licensor.
- (G) Should Licensor, or another party with whom it has a pre-existing joint use agreement, for its own service requirements, need to attach additional facilities to any of Licensor's poles, to which Licensee is attached, Licensee will either rearrange its Wireless Facilities on the pole or transfer them to a replacement pole as determined by Licensor so that the additional facilities of Licensor or Joint Owner or Joint User may be attached. If Licensee does not rearrange or transfer its Wireless Facilities within sixty (60) days after receipt of written notice from Licensor requesting such rearrangement or transfer, Licensor, Joint Owner or Joint User may perform or have performed such rearrangement or transfer, upon providing five (5) days' written notice to Licensee, and Licensee agrees to pay the costs thereof.
- (H) If the modification or the replacement of a pole is the result of an additional attachment or the modification of an existing attachment sought by a Joint User or Other Licensee, the Joint User or Other Licensee requesting the additional or modified attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring Licensee's Wireless Facilities. Licensee shall cooperate with such attaching entity to determine the costs of moving Licensee's Wireless Facilities.
- (I) Licensor may, when it deems an Emergency to exist, rearrange, transfer or remove Licensee's Wireless Facilities from Licensor's poles and store such Wireless Facilities, at Licensee's expense, and without any liability on the part of the Licensor for damage or injury to Licensee's Wireless Facilities unless caused by Licensor's gross negligence or intentional misconduct.
- (J) License applications received by Licensor from two or more licensees for attachment

accommodations on the same pole, prior to the commencement of any Field Survey Work or Make-Ready Work required to accommodate any licensee, will be processed by Licensor in accordance with the procedures detailed in APPENDIX II attached hereto.

- (K) Licensee may attach its guy strand to Licensor's existing Anchor Rod at no charge where Licensor determines that adequate capacity is available; provided that Licensee agrees to secure any necessary right-of-way therefore from the appropriate property owner and Licensee shall tag its guy strand using Appendix III, Form D. Should Licensor, or Joint User or Joint Owner, if any, for its own service requirements, need to increase its load on the Anchor Rod to which Licensee's guy is attached, Licensee will either rearrange its guy strand on the Anchor Rod or transfer it to a replacement anchor as determined by Licensor. The cost of such rearrangement and/or transfer, and the placement of a new or replacing anchor will be at the sole expense of Licensee, which Licensee agrees to pay. If Licensee does not rearrange or transfer its guy strand within fifteen (15) days after receipt of written notice from Licensor regarding such requirement, Licensor, Joint Owner or Joint User may perform, or have performed, the work involved and Licensee agrees to pay the full costs thereof.

#### **ARTICLE IX CONSTRUCTION, MAINTENANCE AND REMOVAL OF WIRELESS FACILITIES**

- (A) As provided herein, Licensee shall, at its own expense, construct, maintain and remove its Wireless Facilities on Licensor's poles in a safe condition and so as not to conflict with the use of the Licensor's poles by Licensor or by Joint Users, Joint Owners or Other Licensees, nor interfere with Licensor's facilities attached thereon. Licensee understands and agrees that its use of Licensor's poles is at all times subordinate to Licensor's use of its poles.
- (B) Licensor shall specify the point of attachment on each of Licensor's poles to be occupied by Licensee's Wireless Facilities.
- (C) Licensee shall obtain specific written authorization from Licensor before relocating, materially altering, or replacing its Wireless Facilities on Licensor's poles.
- (D) All tree trimming to the extent made necessary, in the opinion of the Licensor, by reason of the Licensee's proposed Wireless Facilities at the time of attachment (as part of make ready) or thereafter that are in excess of Licensor's needs, shall be performed by Licensor and/or its contractors, at the sole cost and expense of the Licensee, which shall be paid by Licensee to Licensor within sixty (60) days of Licensee's receipt of an invoice.
- (E) In performing work on Licensor's poles, Licensee shall use vehicles that clearly and conspicuously display the name of the Licensee or its contractor(s) and its contact information so as to readily allow identification. Licensee's workers and contractors also shall carry positive photo identification displaying the name of the worker and the name of the company for whom such worker is employed and such worker shall present such identification upon request.

- (F) Licensor shall have no obligation to interrupt electric service or de-energize its lines to accommodate Licensee's work. If Licensor, in its discretion, de-energizes any equipment or line at Licensee's request, Licensee shall reimburse Licensor for all costs and expenses Licensor incurs in complying with Licensee's request. Before Licensor de-energizes any equipment or line, it shall provide an estimate of all costs and expenses to be incurred in accommodating Licensee's request.
- (G) Licensee, at its expense, shall remove its Wireless Facilities from any of Licensor's poles within ninety (90) days after termination of the license covering such Wireless Facilities. If Licensee fails to remove its Wireless Facilities within such ninety (90) day period, or such additional time as may be agreed upon by the parties, Licensor shall, after notice to Licensee, have the right to remove such Wireless Facilities at Licensee's expense and without any liability on the part of the Licensor for damage or injury to Licensee's Wireless Facilities. Licensor may then dispose of such Wireless Facilities in its sole discretion at Licensee's sole cost and expense and without any liability to Licensee.
- (H) At its sole expense, Licensee shall remove any of its Wireless Facilities or any part thereof that becomes nonfunctional or obsolete, and/or no longer fit for wireless communications service provided by the Licensee. Except as otherwise provided in this Agreement, Licensee shall remove such nonfunctional, obsolete or unsuitable Wireless Facilities within one (1) year of such Wireless Facilities becoming nonfunctional, obsolete or unsuitable. Provided however, Licensee shall remove such Wireless Facilities within sixty (60) days if Licensor provides written notice to Licensee that removal is necessary to accommodate Licensor's or a Joint User's or Joint Owner's use of the affected pole(s).
- (I) Upon notification, Licensee promptly shall remove or relocate its Wireless Facilities on any pole that has been damaged or destroyed. In Emergency situations, Licensor may remove Licensee's Wireless Facilities from such damaged poles without liability, except to the extent of Licensor's intentional misconduct or gross negligence, at Licensee's sole expense. If a replacement pole is installed, the Parties shall coordinate the transfer of Licensee's Wireless Facilities to the new pole, which Licensee shall transfer within sixty (60) days of notice from Licensor. Licensor shall be under no obligation to replace damaged poles or replace such poles in any particular amount of time or to transfer Licensee's Wireless Facilities to any replacement poles.
- (J) To the extent applicable, Licensee shall coordinate all construction, maintenance, transfer and removal activities through participation in any data management system utilized by the Licensor.

**ARTICLE X  
TERMINATION OF LICENSE**

- (A) Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct, operate and/or maintain its Wireless Facilities on the public or private property at the location of the particular pole covered by the license or otherwise ceases to be entitled to access to Licensor's poles pursuant to applicable laws or regulations, subject to Licensee's right to promptly challenge the validity of the alleged underlying

grounds for such termination and to provide prompt written notice of such challenge to Licensor.

(B) Upon written notice, Licensor shall have the right to terminate any license, authorizations and/or rights granted under provisions of this Agreement where:

- The Licensee's facilities are maintained or used in violation of any law and such violation is not cured within fifteen (15) business days of Licensee's receipt of notice of such violation;
- The Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its obligations hereunder and such violation is not cured within thirty (30) days of Licensee's receipt of notice of such failure, provided that if Licensee is not reasonably able to cure any such default or violation within such time and continues to diligently attempt to cure such default or violation, the termination shall not take effect until such time as Licensee has failed to cure the default or violation and is no longer making a diligent attempt to do so, which in no case shall be more than ninety (90) days after Licensee's receipt of such notice;
- The Licensee attaches to a utility pole without having first been issued authorization therefore and such failure is not cured within fifteen (15) business days of Licensee's receipt of notice of such failure;
- The Licensee ceases to provide its services;
- The Licensee's Wireless Facilities are transferred, assigned, leased or licensed to others not authorized under this Agreement without prior written authorization by Licensor and such failure is not cured within fifteen (15) business days of Licensee's receipt of notice of such failure;
- The Licensee sublets or apports part of the licensed Wireless Facilities to an entity not a party to this Agreement; and/or
- The Licensee fails to pay any sum due or to deposit any sum required under this Agreement, or shall fail to maintain satisfactory surety as required by the Agreement, and such violation is not cured within ten (10) business days of Licensee's receipt of notice of such failure.

(C) Licensee may at any time remove its Wireless Facilities from the communications space after first giving Licensor written notice of such removal (APPENDIX III, Form C). For Wireless Facilities in the electric space, Licensee shall give Licensor ninety (90) days' advanced written notice requesting the removal of such equipment. Following removal of all Licensee's Wireless Facilities from a pole, no attachment shall again be made to such pole until Licensee shall have first complied with all of the provisions of this Agreement as though no such attachment had previously been made.

(D) In addition to the termination rights above, in the event a pole is no longer available for use by the Licensee for its Wireless Facilities, Licensor will provide no less than one hundred eighty (180) days' notice to Licensee (or such lesser period of time as is needed given the circumstances) of such termination. In such case, Licensor will cooperate with Licensee to identify and make reasonable efforts to provide a suitable alternative pole available for relocation of Licensee's Wireless Facilities, at Licensee's expense, prior to the date of

termination of the applicable license.

- (E) If Licensor moves any portion of its aerial system underground, Licensee shall remove its Wireless Facilities from any affected poles within ninety (90) calendar days of receipt of notice from Licensor will work in good faith with Licensee to accommodate reattachment of Licensee's Wireless Facilities to any nearby unaffected poles. If Licensee does not remove its Wireless Facilities within ninety (90) days, or such reasonable extended time agreeable to the parties, Licensor shall have the right upon 10 business days advance notice to Licensor, to remove or transfer Licensee's Wireless Facilities at Licensee's expense and without liability to Licensor.

## **ARTICLE XI INSPECTIONS OF POLES AND LICENSEE'S WIRELESS FACILITIES**

- (A) Licensor reserves the right to make periodic inspections, but not more than annually of any part of Licensee's Wireless Facilities, including guying, anchors or other supports attached to Licensor's poles, and Licensee shall reimburse Licensor for the reasonable expense of such inspections.
- (B) The Licensor's making of periodic inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.
- (C) Any charge imposed by Licensor for such inspections shall be in addition to any other sums due and payable by Licensee under this Agreement. No act or failure to act by Licensor with regard to said charge or any unlicensed use by Licensee shall be deemed as a ratification or the licensing of the unlicensed use; and if any license should subsequently be issued, said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise.
- (D) Licensee acknowledges and agrees that Licensor does not warrant the condition, safety or suitability of its poles, other facilities, or the premises surrounding Licensor's facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Licensor's poles and premises surrounding Licensor's facilities, prior to commencing any work on Licensor's poles or entering the premises surrounding Licensor's facilities. Licensee acknowledges and agrees that Licensee shall have sole responsibility to fully acquaint itself and its employees and contractors with the conditions of Licensor's facilities and the surrounding premises.

## **ARTICLE XII UNAUTHORIZED WIRELESS FACILITIES**

- (A) In addition to any other right of Licensor hereunder, if any of Licensee's Wireless Facilities or other equipment related thereto shall be found attached to Licensor's poles for which no license is outstanding, Licensor, without prejudice to its other rights or remedies under this Agreement (including termination) or otherwise, may impose a charge and may require Licensee to submit in writing, within thirty (30) days after receipt of written notification

from Licensor of the unauthorized attachment, a license application. If such application is not received by the Licensor within the specified time period, Licensee shall remove its unauthorized facilities and equipment within sixty (60) days of the final date for submitting the required application, or Licensor may remove Licensee's facilities and equipment and dispose of them without liability, and the expense of such removal and disposal shall be borne by Licensee. Licensor reserves the right to remove and dispose of any of Licensee's Wireless Facilities, at Licensee's sole cost and expense, that are attached to Licensor's poles for which no license is outstanding; provided that Licensor shall give Licensee sixty (60) days prior notice before removing and disposing of such unauthorized Wireless Facilities.

- (B) For the purpose of determining the applicable charge, absent satisfactory evidence to the contrary, the unauthorized attachment shall be deemed as having existed since the date of this Agreement, and the fees and charges as specified in APPENDIX I, shall be applicable thereto and due and payable forthwith whether or not Licensee is permitted to continue to attach its facilities and equipment.

### **ARTICLE XIII LIABILITY AND DAMAGES**

- (A) Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's communications services arising in any manner out of the use of Licensor's poles or Licensor's installation or maintenance of Licensee's Wireless Facilities, except to the extent caused by Licensor's gross negligence or willful misconduct. In no event shall Licensor be liable for any special, consequential, incidental, punitive, or other indirect damages, including but not limited to lost profits. Licensor shall not be liable for any work performed by Licensee or by third parties engaged by Licensee to perform work on its behalf, regardless of whether Licensor observes and inspects such work.
- (B) Licensee shall exercise precaution to avoid damaging the facilities of Licensor and of others attached to Licensor's poles, and Licensee assumes all responsibility for any and all loss from such damage caused by Licensee's employees, agents or contractors. Licensee shall make an immediate report to Licensor and any other user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs incurred in making repairs.
- (C) Except as may be caused by the gross negligence or willful misconduct of Licensor, Licensee shall defend, indemnify and save harmless Licensor against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses arising from or in connection with this Agreement (including reasonable attorneys' fees) including, but not limited to, those which may be imposed upon, incurred by or asserted against Licensor by reason of (a) any work or thing done upon the poles licensed hereunder or any part thereof by Licensee or any of its agents, contractors,

servants, or employees; (b) any use, occupation, condition, operation of said poles or any part thereof by Licensee or any of its agents, contractors, servants, or employees; (c) any act or omission on the part of Licensee or any of its agents, contractors, servants, or employees, for which Licensor may be found liable; (d) any accident, injury (including death) or damage to any person or property occurring upon said poles or any part thereof arising out of any use thereof by Licensee or any of its agents, contractors, servants, or employees; (e) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement; (f) payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits arising out of any use of the poles by Licensee or any of its agents, contractors, servants, employees; (g) the erection, maintenance, presence, or use of Licensee's Wireless Facilities; or (h) removal of Licensee's Wireless Facilities in accordance with the provisions hereof by Licensee or Licensor or any of their agents, contractors, servants or employees..

- (D) Licensee shall indemnify, save harmless and defend Licensor from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of Licensee's Wireless Facilities, including, but not limited to, claims and demands for personal injury, damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's Wireless Facilities in combination with Licensor's poles, or otherwise.
- (E) The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued thereunder.

#### **ARTICLE XIV INSURANCE**

- (A) Licensee shall carry insurance issued by an insurance carrier satisfactory to Licensor to protect the Parties hereto from and against claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly from or be, caused, in whole or in part, by reason of Licensee's operations under this Agreement. Licensee shall obtain the insurance types in the amounts set forth below and, if necessary, excess liability insurance with a limit of the amounts set forth in Article XIV(B).
- (B) The Licensee shall obtain insurance of the types and in the amounts described below:
  - (1) Commercial General Liability, written on ISO form CG 00 01 04 13 or its equivalent, with limits of not less than \$3,000,000 each occurrence. Such insurance shall cover liability due to damage to property and liability due to injury to or death of persons.
  - (2) Commercial Automobile liability insurance with a combined single limit of \$1,000,000 per accident providing coverage for Symbol 1, any auto.

- (3) Workers Compensation Insurance and Employers Liability insurance with limits of not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (C) Licensee may use any combination of primary and excess insurance to meet the total limits required.
- (D) All insurance must be effective before Licensor will authorize Licensee to make Wireless Facilities to any pole and shall remain in force until such Wireless Facilities have been removed from all such poles.
- (E) Licensee shall submit to Licensor ACORD form certificates of insurance including renewal thereof, by each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement. Except for workers' compensation insurance, such insurance coverages shall: (i) include Licensor as an additional insured by endorsement as its interests may appear under this Agreement; (ii) be primary and non-contributory with respect to any self-insurance or other insurance maintained by Licensor; and (iii) be obtained from insurance carriers having an A.M Best rating of at least A-VII. Licensee waives all rights against Licensor, its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by any insurances listed under Article XIV(B).
- (F) Licensee shall provide Licensor with a Certificate of Insurance to provide evidence of insurance compliance prior to the placement of attachments and annually upon insurance renewals during the term of this Agreement. Licensee shall not cancel or change any such policy of insurance issued to Licensee except after the giving of not less than thirty (30) days' prior written notice to Licensor.
- (G) Licensee shall provide Licensor with prompt written notice in the event that the policy or policies of insurance required hereunder will be canceled or changed so that the requirements of this Article no longer will be satisfied.

**ARTICLE XV  
AUTHORIZATION NOT EXCLUSIVE**

Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Licensor 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 pole covered by this Agreement, subject to the rights granted to Licensee under this Agreement or any license issued thereunder.

**ARTICLE XVI  
ASSIGNMENT OF RIGHTS**

- (A) Licensee shall not assign or transfer this Agreement or any authorization granted hereunder, and this Agreement shall not inure to the benefit of Licensee's successors and assigns, without

the prior written consent of Licensor. Any purported assignment of this Agreement not in compliance with the provisions of this Article shall be null and void. Notwithstanding the foregoing, Licensee may assign this Agreement and/or any license issued hereunder to any entity which acquires all or substantially all of Licensee's assets in the market defined by the FCC in which the pole(s) is/are located by reason of a merger, acquisition or other business reorganization, without prior approval or consent of Licensor. Licensee shall furnish Licensor with prior written notice of any such transfer or assignment that includes the name and address of the transferee or assignee.

- (B) Licensee shall use commercially reasonable efforts to provide written notice to Licensee of any change in control over Licensee, including any consolidation, amalgamation, merger, or transfer of assets to another entity with thirty (30) days of such change in control.
- (C) In the event such written consent or consents are granted by Licensor, then this Agreement shall extend to and bind the successors and assigns of the Parties hereto, except that no assignment, pledge or other transfer of this Agreement shall operate to release the Licensee from any of its obligations under this Agreement unless the Licensor consents in writing to the assignment, pledge or other transfer and expressly releases the Licensee.
- (D) Pole space licensed to Licensee hereunder is for Licensee's use only, and Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder.
- (E) Upon request, Licensor may require Licensee to provide proof of compliance with this Article XVI, in such form acceptable to the Licensor.

#### **ARTICLE XVII FAILURE TO ENFORCE**

Failure of Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

#### **ARTICLE XVIII TERMINATION OF AGREEMENT**

- (A) If Licensee shall fail to comply with any of the terms or conditions of this Agreement or default in any of its obligations under this Agreement, beyond any applicable notice, cure and grace period, or if Licensee's facilities are maintained or used in violation of any law and Licensee shall fail within sixty (60) days after written notice from Licensor to correct such default or noncompliance, Licensor may at its option forthwith terminate this Agreement and all authorizations granted hereunder, or the authorizations covering the poles as to which such default or noncompliance shall have occurred provided that if Licensee is not reasonably able to cure any such default or noncompliance within such time and continues to diligently attempt to cure such default or noncompliance, the termination shall not take effect until

such time as Licensee has failed to cure the default or noncompliance and is no longer making a diligent attempt to do so, which in no case shall be more than ninety (90) days after such written notice.

- (B) If, at any time, Licensor is notified that the policy or policies of insurance required under ARTICLE XIV hereof will be canceled or changed so that the requirements of ARTICLE XIV will no longer be satisfied, then Licensor may immediately terminate this Agreement and all licenses issued hereunder unless prior to the effective date thereof, Licensee shall furnish to Licensor certificates of insurance including insurance coverage in accordance with the provisions of ARTICLE XIV hereof.
- (C) In the event of termination of this Agreement, Licensee shall remove its Wireless Facilities from Licensor's poles within six (6) months from date of termination; provided, however, that Licensee shall be liable for and pay all fees pursuant to the terms of this Agreement to Licensor until Licensee's Wireless Facilities are removed from Licensor's poles.
- (D) If Licensee does not remove its Wireless Facilities from Licensor's poles within the applicable time periods specified in this Agreement, Licensor shall have the right to remove and dispose of them at the expense of Licensee and without any liability on the part of Licensor to Licensee therefore; and Licensee shall be liable for and pay all fees pursuant to the terms of this Agreement to Licensor until such Wireless Facilities are removed.
- (E) This Article XVIII shall survive early termination or expiration of this Agreement.

#### **ARTICLE XIX TERM OF AGREEMENT**

- (A) This Agreement is effective on the Effective Date. The term of this Agreement will begin on the Effective Date and continue for a period of ten (10) years from the Effective Date ("Initial Term") and will automatically renew for successive one (1) year terms each (each a "Renewal Term"). Licensor or Licensee may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing notice of termination at least six (6) months prior to the end of the Initial Term or relevant Renewal Term. The use of the word "Term" in this Agreement means the Initial Term as extended by any Renewal Term. Except in cases of termination of the Agreement due to Licensee default, following the expiration or other termination of the Agreement, if Licensee desires to maintain its Attachments on some or all of the Poles and/or Conduit, the parties will negotiate in good faith to enter into a new agreement and the terms of this Agreement will continue in effect on a day to day basis until (i) the new agreement is signed or (ii) 18 months following the date of expiration or termination of this Agreement or other mutually agreed upon time period, whichever first occurs (the "Grace Period").
- (B) Termination of this Agreement or any licenses issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.

**ARTICLE XX  
NOTICES**

All written notices required under this Agreement shall be given by posting the same in first class mail as follows:

To Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn.: \_\_\_\_\_

To Licensor: West Boylston Municipal Light Plant  
Attn: General Manager  
4 Crescent Street  
West Boylston, MA 01583

**ARTICLE XXI  
AMENDMENT**

With the exception of price modifications made to APPENDIX I pursuant to Article III(D) herein, no amendment or modification of this Agreement shall be valid or binding upon the Parties unless made in writing, signed on behalf of each of the Parties by their respective proper officers thereunto and duly authorized, and validated.

**ARTICLE XXII  
GOVERNING LAW, JURISDICTION AND VENUE**

The Parties shall comply with applicable laws, including, without limitation, regulations and judicial decisions. This Agreement is made in, and shall be interpreted, construed, governed, and enforced in accordance with the laws of the Commonwealth of Massachusetts and of the United States. Any claim or action arising under this Agreement shall be resolved in any appropriate forum with jurisdiction physically located within the Commonwealth of Massachusetts, and the Parties irrevocably consent to the jurisdiction of such forum.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

WEST BOYLSTON MUNICIPAL LIGHT PLANT

By \_\_\_\_\_  
(Title) \_\_\_\_\_  
Date of Execution: \_\_\_\_\_

[NAME OF LICENSEE]

By \_\_\_\_\_

(Title) \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**APPENDIX I**  
**SCHEDULE OF FEES AND CHARGES**  
**Wireless Facilities**

(A) Application Fees

Licensee shall pay to Licensor an application fee of \$100 per Wireless Facility which Licensee wishes Licensor to review. The application fee shall be paid to Licensor at the same time an application is submitted to Licensor. Licensor shall have no obligation to review an application unless it is accompanied by the applicable fee.

(B) Annual Attachment Fees

1. General

- (a) The recurring annual attachment fee for each Wireless Facility shall be \$270.00 (“Attachment Fee”). [NTD: The FCC determined that an attachment fee of \$270 is per se reasonable.]
- (b) Annual attachment fees commence on the first day of the month following the date the license is issued. Annual attachment fees shall be paid promptly for each license regardless of whether the Licensee has installed its Wireless Facility.
- (c) For the purpose of computing the annual attachment fees due hereunder, the fee shall be based on the number of licenses issued. A separate license shall be required for each Wireless Facility. The advance payment of the fee for licenses under this Agreement shall include a proration from the first day of the month following the date the license was issued.

(C) Other Charges

All charges for Field Survey, inspections, Make-Ready Work, emergency response, installation, maintenance, and removal of Licensee’s facilities from Licensor’s poles and any other work performed for Licensee relating to Licensee’s use of Licensor’s poles shall be based upon the costs and expenses actually incurred by Licensor in performing such work or having such work performed by an authorized representative.

(D) Late Payment

Failure to pay all fees and charges owed by Licensee to Licensor hereunder within sixty (60) days after presentment of the bill therefore or on the specified payment date, whichever is later, shall constitute a default of this Agreement, if such failure continues beyond any applicable notice, cure and grace period, and all such outstanding amounts shall bear interest at the rate of 1.5% per month.

## **APPENDIX II**

### **PROCEDURE FOR PROCESSING MULTIPLE LICENSE APPLICATIONS**

The following procedure shall be adhered to in processing applications to attach Wireless Facilities to Licensor's poles by multiple licensees:

Licensor will process applications from multiple providers in the order that they are received.

The first entity submitting the application will receive priority over subsequent applications in the event of a conflict if the pole(s) cannot accommodate the Wireless Facilities of all applicants. If the first entity submitting the application is granted a license, Licensor will reject all subsequent applications for the same licensed area. Entities whose applications are rejected may revise and resubmit their applications to eliminate the conflict.

If the first entity submitting an application fails to pay for the Field Survey and/or make-ready construction within the timeframe specified in the agreement, Licensor will reject the application and accept the next filed application for review.

**APPENDIX III**

**Index of License Application Forms**

Application and License	A-1
Pole Details	A-2
Authorization for Field Survey Work	B- 1
Authorization for Pole Make-Ready Work	B-2
Notification of Discontinuance of Use of Poles	C
Identification Tags	D

**EXPLANATION OF THE USE OF APPENDIX III  
ADMINISTRATIVE FORMS**

1. At the time any Licensee anticipates a request for a new license, it should (pursuant to Article VII) submit to Licensor: Form A-1 (Application and License) and Form A-2 (Pole Details) - (pursuant to Article VIII) Form B-1 (Authorization for Field Survey Work), and Form B-2 (Authorization for Pole Make-Ready Work).
2. Licensor shall fill out Part I of Form B-1 (Authorization for Field Survey Work). If Licensee agrees to the Field Survey estimate, it will fill out, execute and return the form to the Licensor with the appropriate fee.
3. Licensor shall fill out Form B-2 (Authorization for Pole Make-Ready Work) when appropriate. If Licensee agrees to the make-ready changes, it will execute and return to the Licensor with the appropriate fee. (See Article VIII, par. D.)
4. After the completion of the Make-Ready Work, the Licensor shall complete Form A-1 with a license number, date and signature. Receipt of this executed Form A-1 by Licensee is Licensee's license authorization for the Wireless Facilities described in the application.
5. Any time a Licensee discontinues the use of a pole or poles upon which it has a license, it shall submit Form C (Notification of Discontinuance of the Use of Poles) to Licensor in addition to a mark-up of the current Appendix III, Form A-2 delineating the discontinued Wireless Facilities.

**APPLICATION AND LICENSE**

License Applicant: \_\_\_\_\_

License Application Number: \_\_\_\_\_

Date of Application: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Tel. \_\_\_\_\_

Email: \_\_\_\_\_ Fax \_\_\_\_\_

**ATTACH the Following (1) FORMS A-2 and A-3 – Pole Details; (2) Grant of Location or other evidence of authority from the local officials in the applicable municipality(ties) for Wireless Facilities located on public ways; (3) Proof of Permission from Property Owner for Wireless Facilities located on private ways or property; (4) Proof of Registration with the Department of Telecommunications and Cable; (5) Technical drawings identifying all electrical specifications and requirements for the Wireless Facilities; (6) written deployment plan; (7) cut sheets on all proposed equipment to be installed on Licensor’s poles; (8) description of the work to be performed on Licensor’s poles; (9) preconstruction drawings; and (10) all other information required by the Agreement.**

In accordance with the terms and conditions of the Pole License Agreement between Licensor and Licensee, dated \_\_\_\_\_, 20\_\_, application is hereby made for a license to attach \_\_\_\_\_ Wireless Facilities to JO poles, \_\_\_\_\_ Wireless Facilities to SO poles, and \_\_\_\_\_ Power Supply Wireless Facilities located in Licensor’s service territory, as indicated on Form A-2 and A-3.

**Applicant’s Name** (Print) \_\_\_\_\_ **Title** \_\_\_\_\_

Signature \_\_\_\_\_

\*\*\*\*\* **For Licensor use, do not write below this line** \*\*\*\*\*

License Application Number \_\_\_\_\_ is hereby granted/denied for the installation of the Wireless Facilities as described in this application for attachment of \_\_\_\_\_ Wireless Facilities to JO poles, \_\_\_\_\_ Wireless Facilities to SO poles, \_\_\_\_\_ Power Supply Wireless Facilities located in Licensor’s service territory, as indicated on the attached Form A-2 and A-3.

Licensor’s Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_



- ID tags are required on all equipment, anchors and guys
- Use Appendix III Form A-3 for anchor, guy and power supply - detail requests



**AUTHORIZATION FOR FIELD SURVEY WORK**

Applicant: \_\_\_\_\_

In accordance with Article IV, Paragraph (A) (1) of the Agreement, following is a summary of the estimated charges which will apply to complete a Field Survey covering Pole Attachment License Application Number \_\_\_\_\_.

	<u>Hours</u>	<u>Rate/Hour</u>	<u>Total</u>
Field Survey	_____	_____	\$_____
TOTAL			\$_____

If you wish us to complete the required Field Survey, please sign this copy below and return with an advance payment in the amount of \$ \_\_\_\_\_. **Please note, this quote is only valid for 30 days from the date hereof.**

Licensor's Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

The required Field Survey covering License Application No. \_\_\_\_\_ is authorized and the costs therefore will be paid to Licensor in accordance with Appendix I to the Agreement.

My anticipated date of attachment is \_\_\_\_\_

Applicant's Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Tel. No. \_\_\_\_\_

Date \_\_\_\_\_

**AUTHORIZATION FOR POLE MAKE-READY WORK AND WORK IN ELECTRIC SPACE**

Applicant: \_\_\_\_\_

Field Survey Work associated with your License Application No. \_\_\_\_\_ dated,  
\_\_\_\_\_  
20\_\_\_\_, for attachment to poles has been completed.

Following is a summary of the make-ready charges which will apply.

<u>Make-Ready Work</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Total</u>
Labor	_____	_____	\$_____
Material			\$_____
Sub Total			\$_____
<b>TOTAL</b>			\$_____

In-House Labor for Work in the Electric Space:

Labor: Rate/Hour\_\_\_\_\_ (\_\_\_ employees)

Licensee shall be responsible for the actual charges for work performed by an approved outside contractor. Licensee shall contract directly with such contractor.

If you wish us to complete the required Make-Ready Work and work in the electric space, if applicable, please sign this copy below and return with an advance payment for the Make Ready Work in the amount of \$\_\_\_\_\_. Work in the electric space will be estimated and charged separately.

Licensor's Name (Print)\_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Applicant's Authorization of Make-Ready Work

The replacements and rearrangements included in License Application No. \_\_\_\_\_ are authorized and the costs therefore will be paid to Licensor in accordance with Appendix I to the Agreement.

Applicant's Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_ Tel. No. \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

**NOTIFICATION OF DISCONTINUANCE OF USE OF POLES**

This form is to be completed and delivered to West Boylston Municipal Light Plant at the address set forth below:

General Manager  
West Boylston Municipal Light Plant  
4 Crescent Street  
West Boylston, MA 01583

Licensee: \_\_\_\_\_

License Application Number: \_\_\_\_\_

Date of Application: \_\_\_\_\_

In accordance with the terms of the Pole License Agreement, dated \_\_\_\_\_, 20 \_\_, (Article X, paragraph B) this serves as written notification from Licensee that the licensed attachment(s) to the following pole(s) are being discontinued (removed) on \_\_\_\_\_, 20 \_\_\_\_. These Wireless Facilities are covered by license application number(s) \_\_\_\_\_.

**Note: Submit changes to current Appendix III Form A-2 and attach.**

Total number of Wireless Facilities on JO poles to be discontinued \_\_\_\_\_.  
Total number of Wireless Facilities on SO poles to be discontinued \_\_\_\_\_.  
Total number of Power Supplies to be discontinued \_\_\_\_\_.  
Said license is to be canceled as above.

Licensee \_\_\_\_\_ Print Name \_\_\_\_\_  
Signature \_\_\_\_\_ Tel. No. \_\_\_\_\_  
Fax No. \_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_

**To be completed by Licensor:**

**It has been verified by Licensor that use of poles has been discontinued.**

Licensor's Name \_\_\_\_\_ Print Name \_\_\_\_\_  
Signature \_\_\_\_\_ Tel. No. \_\_\_\_\_  
Fax No. \_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_

It is the Licensee's responsibility to submit an original copy of this form to West Boylston Municipal Light Plant.

\_\_\_\_\_

## **TECHNICAL STANDARDS**

Licensee shall be responsible for obtaining a copy of Licensor's current technical standards and shall be responsible at its own sole cost for maintaining compliance with Licensor's technical standards as they may be amended from time-to-time. [NTD: Subject to discussion. We suggest that WBMLP adopt technical standards for wireless installations if NMLD has not already done so.]