

POLE ATTACHMENT AGREEMENT

AGREEMENT, made as of _____ between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation having its principal office at 4 Irving Place, New York, New York, (hereinafter "Edison"), and,

(hereinafter "LICENSEE").

WHEREAS, LICENSEE proposes to attach certain cables, wires and appurtenances to utility poles throughout Edison's service territory ("the Franchise Area");

WHEREAS, Edison owns utility poles in the Franchise Area and has rights to poles owned by Verizon Communications, Inc. ("Verizon"), both categories of poles being subject to the terms of a joint use agreement with Verizon dated January 1, 1982; and

WHEREAS, Edison is willing to license attachments by LICENSEE to Edison-owned poles upon the terms and conditions more particularly set forth herein;

NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, Edison and LICENSEE agree as follows:

ARTICLE I
EXTENT OF PERMISSION

101. Area. The permission granted is limited to utility poles located in the Franchise Area.

102. Extent of License. The license is limited to the attachment of cables, wires and appurtenances solely for the purposes of the operation by LICENSEE of its service, as more particularly described and authorized in its franchise(s) or other appropriate governmental authorizations, copies of which have been supplied to Edison.

ARTICLE II
NATURE OF PERMISSION

201. Specific License Required. No general permission is granted hereunder. LICENSEE may not make an attachment to any pole until Edison grants a license for that specific attachment.

202. No Ownership; Nonexclusivity. No property rights in poles are created hereunder, but LICENSEE's rights in any pole shall be a mere license. Any license granted hereunder shall be nonexclusive and shall be subject at all times to the rights of Edison and Verizon and to any existing contracts, licenses, rights, permits, or privileges granted with respect to the attachments. Edison retains the right to grant attachment or other rights of any nature to others.

203. Discontinuance of Use of Pole.

(a) Right to Discontinue. Edison shall not be obligated to maintain poles to which LICENSEE's facilities have been attached beyond the time necessary for Edison's own requirements.

(b) Replacement. Should Edison determine to replace a pole to which LICENSEE's facilities have been attached with a pole installed adjacent to the existing pole, it will give LICENSEE written notice of the proposed replacement. Edison may, at its option, offer to transfer LICENSEE's facilities at LICENSEE's expense, in which case Edison will include with its offer Edison's then current fees for relocation of the LICENSEE's installed facilities to the replacement pole by Edison's forces. If Edison offers to relocate LICENSEE's facilities, LICENSEE shall, within thirty days after receipt of such notice, either authorize Edison in writing to relocate the facilities and pay to Edison the applicable relocation fee for Edison forces to do the work or notify Edison that LICENSEE will do the relocation work. If LICENSEE elects not to have Edison do the relocation work, or if Edison does not offer to do the work, LICENSEE shall within thirty days after the replacement pole becomes available to LICENSEE have the facilities relocated to the replacement pole. LICENSEE's license for use of the existing pole shall terminate: when its facilities are transferred if the transfer work is to be done by Edison; or when its facilities are transferred or thirty days after the replacement pole is made available to LICENSEE, whichever is earlier, if LICENSEE is to do the work itself or fails to respond within the time specified to Edison's offer to do the relocation work. Edison will issue a new license for use of the replacement pole when the facilities are transferred.

(c) No Pole Replacement. In the event Edison plans to discontinue a pole on which LICENSEE's facilities are installed without installing a replacement pole, it will give LICENSEE notice

of such intent. Within thirty days after receipt of such notice LICENSEE shall, at its option, remove its facilities from the pole to be discontinued or purchase the discontinued pole from Edison for its depreciated book cost. LICENSEE's license for use of the pole shall terminate upon removal of LICENSEE's facilities or thirty days after receipt of Edison's notice, whichever comes first.

(d) Inapplicable Provisions. Sections 301 to 306 of the Agreement shall not apply to discontinuance or replacement of poles.

204. Rights Limited. Some utility poles in the Franchise Area have been installed pursuant to easements obtained from private property owners rather than under Edison's franchise rights. The easements may or may not permit LICENSEE attachments.

205. Assignment of Rights. To the extent permitted by the easements, Edison hereby assigns to LICENSEE on a nonexclusive basis, whatever rights it has under the easements to erect and maintain communications facilities.

206. No Obligation or Warranty. The assignment under Section 205 and any license granted by Edison are and shall be without warranty. LICENSEE shall be responsible for determining the extent of the rights granted and for obtaining at its sole expense any additional consents, easements, franchises or other rights.

ARTICLE III MAKE READY WORK AND LICENSING

301. Written Application Required. No attachments of any nature shall be placed upon any pole by LICENSEE unless written application for a license shall have been made and granted. The application shall specify the location of the specific pole to which it is sought to make attachment. All plans or specifications describing the proposed attachments shall be in such detail as Edison may reasonably require for the purpose of determining the safety and propriety of the attachment and shall indicate compliance with the National Electric Safety Code ("NESC").

302. Feasibility Study and Joint Inspection. Upon receipt of the written application, Edison shall study the feasibility of the proposed installation. Edison's study may include, among other things, surveys, physical inspections and technical and other engineering work. There shall also be a joint field inspection by Edison and LICENSEE. Whether or not the attachment is ultimately made, LICENSEE shall reimburse Edison for the cost

of the study and the inspection.

303. (a) Make Ready Work. If Edison shall determine that the pole is available, it shall undertake to perform any work (hereinafter "Make Ready Work") required to make room for LICENSEE attachments. Make Ready Work shall include, but not be limited to, reinforcement, adjustment, reconstruction, anchoring, guying, protection, inspections during construction, and a subsequent inspection of LICENSEE construction work ("Post-Construction Survey"), but shall exclude the pro-rata cost of any work required to bring Edison's facilities up to its own specifications.

(b) Payment in Advance. Charges for Make Ready Work shall be billed in advance, together with the cost of the study and inspection under Section 302, and shall be payable in 30 days. Payments must be made prior to the commencement of work. Unless otherwise directed by the Public Service Commission ("PSC"), charges for Make Ready Work shall be in accordance with a schedule of unit costs filed with and approved by the PSC and made part of this Agreement, except that the charges for feasibility studies and joint inspections shall be based upon costs actually incurred.

(c) Contracting of Make Ready Work. Edison has no present plans to employ any outside contractor to perform Make Ready Work. However, if Edison should do so, LICENSEE shall pay an amount equal to the contractor's fees plus a premium of 10% in lieu of Edison's unit costs. Any contract shall be awarded in accordance with Edison's usual practices and in consultation with LICENSEE. Edison shall make available copies of all written contracts and work orders pertinent to Make Ready Work performed by the contractor.

(d) Statement of Make Ready Work. Edison shall submit to LICENSEE a statement describing Make Ready Work, which shall specify the person to perform the Make Ready Work and the cost, valid for 60 days. The estimated cost of any pole replacement necessary to accommodate LICENSEE facilities shall include the cost of rearranging Edison's facilities, the installed cost of the new pole and any removal costs. The cost shall be reduced by the percentage depreciation applicable to the removed pole, less its salvage value.

(e) Billing Disputes. Edison shall review the statement of Make Ready Work with LICENSEE if requested. If the parties disagree about the reasonableness of any estimated cost, either party may request mediation by the Staff of the Department of Public Service, with the understanding that the Staff may refer the dispute to the PSC for resolution. The cost agreed on by the parties or ordered by the PSC shall be valid for thirty days after the date of the agreement or PSC order.

(f) Cost Changes. The cost of Make Ready Work shall reflect unit costs expected to be in effect at the time the work will be done. The cost may be adjusted, after the fact, to reflect any unforeseen overtime costs made necessary by LICENSEE's construction schedule. The provisions of Subdivision (e) of this Section 303 shall apply also to any such cost adjustments.

304. Decision to Attach; Payment. If LICENSEE decides not to proceed with a proposed attachment, it shall so notify Edison in writing and the application relating thereto shall be deemed canceled. If LICENSEE decides to proceed with a proposed attachment, it shall so notify Edison in writing within 30 days of the submission of the statement of Make Ready Work. Payments under Section 303(b) must accompany such written notices. Failure to notify Edison shall be deemed equivalent to a notice not to proceed.

305. Performance of Make Ready Work. Edison shall then perform its portion of the Make Ready Work, provided that Edison's work will not be performed at any time or under any conditions that might interfere with the service requirements of Edison, Verizon or prior licensees.

306. License; No Attachment Until After Make Ready Work. LICENSEE shall not attach until Edison notifies it that all Make Ready Work is complete and thereafter issues a license for the attachment. The license shall be in the form annexed to this agreement, but Edison may revise the form from time to time.

307. Costs. "Costs", as the term is used in this Agreement, shall include the costs of all materials, supplies, engineering, labor (including normal overtime), supervision, taxes, overhead (including appropriate loadings for such items as relief and pension accruals, social security taxes, vacations, holidays, sickness and workers' compensation) and any other items associated with the work that are chargeable to Edison's accounts under the uniform system of accounts prescribed by the PSC.

308. Multiple Licensees. If a licensee already on the pole incurs Make Ready Work costs in order to provide space for a subsequent licensee, the prior licensee shall also be reimbursed by the subsequent licensee for its costs, excluding the pro-rata cost of any work required to bring the prior licensee's facilities up to specifications.

ARTICLE IV
POLE ATTACHMENT RENTALS

401. Pole Attachment Rental Fee. LICENSEE shall pay to Edison, for each licensed attachment to an Edison-owned pole, a rental at the rate currently applicable under the rules of the PSC. Any filing with the PSC, proposing rate changes, shall be on such notice to LICENSEE as is required by the PSC. The rental shall be payable in semiannual advance installments, January 1 and July 1 of each year this Agreement remains in effect, and billed the immediately preceding December 15 and June 15, respectively. Rentals shall be pro-rated whenever this is made necessary by the effective date of a change in rate.

402. First Payment. To the first payment of rental for any attachment there shall be added a pro-rata amount for the portion of the half-year remaining after issuance of the license.

403. Rental Effective Date. Unless Edison receives reasonable notice to cancel a license, rentals shall accrue as provided in Sections 401 and 402 whether or not LICENSEE actually places its facilities on the pole or poles for which rental is charged.

404. Post-Construction Surveys. In addition to the initial Post-Construction Survey provided for in Section 303(a), Edison may perform subsequent Post-Construction Surveys, chargeable to LICENSEE at intervals consistent with PSC rulings. The charges for any additional Post-Construction Survey shall be at rates in accordance with the prescriptions of the PSC.

405. Charges for Unlicensed Attachments. For each unlicensed LICENSEE attachment discovered on an Edison-owned pole, Edison shall charge LICENSEE an amount equal to the lesser of five (5) years rental or the rental for such period of time as may represent the lesser of (a) the time since the last Post-Construction Survey or (b) the then total of LICENSEE and its assignors' or predecessors' years of operation in the Franchise Area at the rate current at the time of discovery. The discovery of unlicensed attachments at a ratio of one or more to every 70 authorized attachments shall justify an increase in the frequency of Post-Construction Surveys as provided in Section 404.

406. "Unlicensed Attachment" Defined. As used in this Agreement, the term "unlicensed attachment" means an attachment for which a license has not been obtained or for which the license has been cancelled, but does not include any licensed attachment mistakenly put on the wrong pole. A refund shall be paid to LICENSEE for any double billing due to the erroneous double licensing of an attachment.

407. Arrears. If rentals or other charges have not been paid within 30 days of bill mailing, late payment charges pursuant to Edison's electric rate schedule (PSC No. 10) may be assessed on the arrears. Edison may suspend work under this Agreement whenever arrears occur, resuming only after the arrears and late payment charges have been paid.

ARTICLE V
COMPLIANCE WITH LAW;
MAINTENANCE OF FACILITIES

501. (a) Warranty of Franchise. LICENSEE represents that, before making any attachments, it shall obtain all appropriate governmental authority to do business and to erect and maintain its facilities in public highways.

(b) Rights to Program Material. If LICENSEE is a cable television operator, LICENSEE represents that it shall secure, prior to making attachments, any consents, permissions or licenses that may be legally required by any television broadcasting company or others by reason of LICENSEE pickup, transmission and furnishing of program material to its customers, or by reason of other operations of LICENSEE hereunder.

502. Compliance with NESC Codes and Agency Orders. LICENSEE, at its own cost, shall construct and maintain its attachments on the poles in accordance with the requirements of the latest edition of the NESC and any amendments or revisions of that code, and in compliance with any rules or orders now in effect or hereafter issued by the PSC, or other authority having jurisdiction.

503. Compliance with Edison Specifications. LICENSEE attachments shall be constructed in accordance with Edison Specifications 335241 Rev. 1 and EO-16286C, as they may be revised from time to time by Edison.

504. Construction Period: Reports and Correction of Substandard Work. During construction of its facilities, LICENSEE shall report periodically to Edison on the exact locations where its plant has been and is being installed. Upon notice from Edison, LICENSEE shall correct any of its substandard installations on a new line within 60 days.

505. Post-Construction Period: Maintenance. LICENSEE shall, at its own cost and expense, maintain all of its attachments in safe condition and in thorough repair and shall, upon notification by Edison, correct any substandard conditions within 60 days. All tree trimming necessitated by the facilities of LICENSEE shall be

done by it at its sole cost.

506. Protection of Facilities. The parties shall exercise special precautions to avoid damage to each other's facilities or those of Verizon or other licensees, and each hereby assumes full responsibility for any and all loss from such damage, caused by the acts, omissions or facilities of its agents. Each shall make an immediate report to the other of the occurrence of any damage and shall reimburse the appropriate owner of facilities for any expenses incurred in making repairs.

507. Changes in LICENSEE Attachments. LICENSEE shall not make additions to, or changes in the location of, its attachments without the prior written consent of Edison, except in the case of emergency or due to the requirement to continue service to the public. Edison's consent will not be unreasonably withheld or delayed. In such cases, work shall be performed in conformity with Sections 502 and 503, and Edison shall be notified immediately.

508. Inspections; No Effect on Liability. Edison may inspect LICENSEE plant, as conditions may warrant, and as provided in Sections 404 and 405. The inspections shall not relieve LICENSEE of any obligation or liability under this Agreement.

509. No Liability for Interruption. To the fullest extent permitted by law, neither Edison nor Verizon shall be liable to LICENSEE or to LICENSEE's customers (and, to the fullest extent permitted by law, LICENSEE hereby agrees to indemnify, protect and save harmless Edison and Verizon against any claim by LICENSEE's customers or any other person or entity) relating to or arising from any interruption to LICENSEE's service, any interference with the operation of LICENSEE's facilities, from any cause, or any other damage suffered by LICENSEE or its customers, whether or not the interruption, interference, or damage is caused by the negligence or misconduct of Edison, Verizon or their agents. To the fullest extent permitted by law, LICENSEE waives any claim for consequential damages or lost profits.

510. Existing Attachments. If LICENSEE maintains any existing attachments on the poles covered by this Agreement, it shall reconstruct, adjust or replace all such attachments in conformity with the technical standards and specifications set forth in this Article V and, as soon as practicable, shall ensure that all existing plant shall conform to such standards. LICENSEE further agrees that applications for permission to maintain any existing attachments, not previously licensed by Edison, shall be made forthwith in accordance with the terms and conditions of this Article and Article III.

ARTICLE VI
TERM OF AGREEMENT, CANCELLATION,
RELOCATION AND REVOCATION

601. One Year Term. Unless previously terminated pursuant to its terms, this Agreement shall continue in effect for a term of one year and shall remain in effect thereafter unless it shall have been terminated on 90 days' written notice.

602. Termination For Inactivity. If no license is applied for within one year of today or no license is issued within two years of today, then Edison shall have the option of terminating this Agreement, effective 30 days after mailing of notice. If within one year of the issuance of a license, appurtenances are not attached to poles detailed in the walk covered by the license, Edison shall have the option of modifying the license to exclude those particular poles to which no appurtenances have been attached, to be effective 90 days after mailing of notice. Following the modification of a license to exclude poles, future attachments to excluded poles will require a new walk and license and may require make-ready work.

603. Right to Give Up License. LICENSEE may give up any license by removing the attachment upon ten days' notice. Rental for the attachment shall be prorated for the half-year period in which the notice is given.

604. Termination for Unlawful Act. Notwithstanding the provisions of Section 601, this Agreement shall be subject to termination by Edison upon 90 days' written notice, upon any final regulatory or judicial determination that LICENSEE's facilities have been used in violation of any law or in aid of any unlawful act.

605. (a) Costs of Modifications to LICENSEE's Facilities. If Edison shall determine after the granting of any license (or, in the case of a hazardous condition, at any time after the granting of the license), that the service needs of Edison, Verizon or any licensee or any hazardous or improper condition require the rearrangement or transfer to a replacement pole of LICENSEE's plant, LICENSEE shall make such changes within 30 days after notice or within such shorter period as may be feasible in the case of any hazardous condition. LICENSEE shall not be required to bear any of the costs of rearranging or transferring its facilities if such rearrangement or transfer is required as a result of an additional attachment or the modification of an existing attachment(s) sought by Edison, Verizon or any other licensee. Any rearrangement or transfer costs resulting from an additional attachment or the modification of an existing attachment(s) sought by Edison, Verizon or any other licensee shall be the responsibility of the entity or entities requesting

the rearrangement or transfer. LICENSEE shall be solely responsible for collecting any rearrangement/modification costs incurred pursuant to this paragraph. Edison's responsibility shall be limited to reimbursement of its prorata share of such costs caused by its own additional attachment or modification to the pole. However, Edison shall, upon receipt of written request, provide LICENSEE with any information in Edison's possession that may facilitate LICENSEE's collection of such costs.

(b) Acts of God. LICENSEE is responsible for the timely repair, relocation or replacement of its own facilities when such work is required as the result of circumstances beyond anyone's control, including but not limited to storms, vehicular accidents, or public work projects.

606. Noncompliance. If LICENSEE fails strictly to comply with any lawful request made by Edison under this Article VI, Edison shall have the option, on 30 days' written demand for compliance (or, in the case of a hazardous situation, on such shorter notice as seems practical to Edison in the circumstances), to cancel LICENSEE's license for any attachment affected by LICENSEE's failure to comply.

607. Forbidden Installation. Upon a final regulatory or judicial determination that LICENSEE's use of any particular pole is forbidden, the license to attach to the pole shall immediately be cancelled, and LICENSEE shall remove its attachments immediately.

ARTICLE VII LIABILITY AND INSURANCE

701. Indemnity. Except for loss, liability, damage and expenses to the extent caused by the negligence of Edison or Verizon, LICENSEE, to the fullest extent permitted by law, hereby indemnifies, protects and saves harmless Edison and Verizon from and against any and all loss, liability, damages and expense arising out of any demand, claim, suit or judgment for damages to property or injury to or death of persons, including the officers, agents, and employees of either party hereto and of Verizon, including payment under the Workers' Compensation Law or under any plan or program for employees' injury, disability and/or death benefits, which arises out of this agreement, LICENSEE'S use of the pole, the right of way, and related equipment or arises out of the erection, maintenance, transfer, presence, use or removal of LICENSEE's attachments or out of the proximity of the cables, wires, apparatus and appliances of LICENSEE to those of Edison or of Verizon, or arises out of any act or omission of LICENSEE,

Edison or Verizon including any claims and demands of customers of LICENSEE or others. Without limitation of the foregoing, and to the fullest extent permitted by law, LICENSEE expressly agrees that Edison and/or Verizon may pursue claims for contribution and indemnification against LICENSEE in connection with any demand, claim, suit or judgment against Edison and/or Verizon for injury or death of LICENSEE'S employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law (or any provision of any plan or program for employees' injury, disability and/or death benefits) limiting such claims for contribution and indemnification against employers, and LICENSEE hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law (or any provision of any plan or program for employees' injury, disability and/or death benefits) insofar as such claims are asserted by Con Edison and/or Verizon against LICENSEE.

702. Insurance: Named Insureds. LICENSEE shall carry general liability insurance at its sole cost and expense to protect the parties hereto and Verizon, by naming Consolidated Edison Inc., Consolidated Edison of New York, Inc., Orange & Rockland Utilities Inc. and Verizon as an additional insured, in respect of LICENSEE's liability for indemnification under Sections 506, 509 and 701, and to protect the parties hereto and Verizon in respect of any other claim for bodily injury or property damage, including any claims and demands of customers of LICENSEE or others and injury to any of the parties' employees which arises out of this agreement, LICENSEE'S use of the pole, the right of way, or related equipment or the erection, maintenance, presence, use or removal of LICENSEE's attachments or out of the proximity of the cables, wires, apparatus and appliances of LICENSEE to those of Edison or of Verizon, or arises out of any act or omission of LICENSEE, its directors, officers, employees and agents. LICENSEE shall, at its own expense, procure and maintain throughout the period of this Agreement, the following minimum insurance coverages (and such other limits and additional insurance as may be required by Contract), with admitted insurers with a minimum A.M. Best rating of A VIII or better:

702.1. Employment related insurance

- i) Workers' Compensation Insurance as required by law.
- ii) Employers' Liability Insurance as follows:
 - a. Bodily Injury by Accident \$1,000,000 each accident
 - b. Bodily Injury by Disease \$1,000,000 policy limit
 - c. Bodily Injury by Disease \$1,000,000 each employee
- iii) Where applicable, insurance required by the United States Longshoremens' and Harbor Workers' Act, the Federal Employers, Liability Act, and the Jones Act.

Policy will include a Waiver of Subrogation in favor of Con Edison and Verizon.

702.2. **Commercial General Liability Insurance**, including Contractual Liability, with limits of not less than \$10 Million Dollars (\$10,000,000) combined single limit per occurrence for bodily injury, including death, and/or property damage and, for at least three (3) years after e expiration or earlier termination of this Agreement, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The insurance shall be on an occurrence and not a claims-made basis without Con Edison's prior written approval. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards or independent contractors. The insurance policy or policies shall name Consolidated Edison Inc., Consolidated Edison of New York, Inc., Orange & Rockland Utilities Inc. and Verizon as additional. Additional Insured endorsements CG 20 10 04 13 and CG 20 37 04 13 are required. For work on or near a railroad, the policy will include CG 24 17 10 01. There shall be no exclusions for claims by LICENSEE's or any Subcontractor's employees against Con Edison or Verizon based on injury to LICENSEE's or any contractor or subcontractor's employees. To the extent any work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, the City of New York or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the work hereunder involves or impacts such adjoining properties. The policy(ies) shall be primary and non-contributory and contain a Waiver of Subrogation.

The required limits may be met with a combination of primary and excess or umbrella liability policies. The Excess/Umbrella Liability policy will contain all extensions required herein including but not limited to the requirement for Additional Insured, Waiver of Subrogation and Primary and Non-Contributory coverage.

702.3. **Comprehensive Automobile Liability Insurance**, covering all owned, non-owned and hired automobiles used by LICENSEE or any subcontractors, with a combined single limit of not less than \$1Million Dollars (\$1,000,000) per accident for bodily injury, including death, and property damage. Policy will include Consolidated Edison Inc., Consolidated Edison of New York, Inc., Orange & Rockland Utilities Inc. and Verizon as Additional

Insureds, be primary and non-contributory and contain a waiver of subrogation.

702.4. If applicable, a **separate Railroad Protective Liability Policy** should be provided for work in connection with constructions or demolition work on or within 50 feet of a railroad.

702.5. Where the work which arises out of this agreement involves the use of aircraft, **Aircraft Liability Insurance**, covering all owned, non-owned and hired aircraft, including helicopters, used by LICENSEE or any Subcontractors, with a combined single limit of not less than \$7.5 Million Dollars (\$7,500,000) for bodily injury, including death, and property damage. The insurance policy shall name Consolidated Edison Inc., Consolidated Edison of New York, Inc. Orange & Rockland Utilities Inc. and Verizon as additional insureds, be primary and non-contributory and contain a waiver of subrogation.

702.6. For the asbestos abatement portion and the lead abatement portion of the work which arises out of this agreement, **Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance**, as applicable, each with a combined single limit of not less than \$7.5 Million Dollars (\$7,500,000) for bodily injury including death and property damage. Each insurance policy shall name Consolidated Edison Inc., Consolidated Edison of New York, Inc., Orange & Rockland Utilities Inc. and Verizon as additional insureds. The policy will be primary and non-contributory and contain a Waiver of Subrogation. Where the abatement work is to be performed by a subcontractor, LICENSEE shall require the subcontractor to name LICENSEE, Consolidated Edison Inc., Consolidated Edison of New York, Inc., Orange & Rockland Utilities Inc. and Verizon as additional insureds, be primary and non-contributory and contain a Waiver of Subrogation, and to submit copies of the policies to Con Edison.

702.7. If applicable, **Pollution Liability Insurance** in an amount no less than \$7.5 Million Dollars (\$7,500,000) per occurrence and \$7.5 Million Dollars (\$7,500,000) in the aggregate. The policy will provide coverage for claims resulting from pollution or other environmental impairment arising out of or in connection with work performed which arises out of this agreement by the LICENSEE and/or its subcontractors. Such insurance is to include coverage for, but not be limited to, cleanup, third party bodily injury and property damage and remediation and will be written on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. The policy shall name

Consolidated Edison Inc., Consolidated Edison of New York, Inc., Orange & Rockland Utilities Inc. and Verizon as additional insureds, be primary and non-contributory and contain a waiver of subrogation.

702.8. In the event the Work which arises out of this agreement includes any architectural, engineering, design, or other professional services, **Professional Liability Insurance** in the amount not less than Three Million Dollars \$3,000,000 per claim for the duration of the work and for at least three (3) years following final completion and acceptance of the work.

702.9. **All Risk Property Insurance** covering the loss, damage or destruction of all LICENSEE's property including but not limited to property in the course of construction or installation, or assembly and/or property of others for which the LICENSEE may have assumed liability and/or property in the LICENSEE's care, custody and control. The policy will include a waiver of subrogation.

702.10. The requirements contained herein as to the types and limits of all insurance to be maintained by the LICENSEE are not intended to and shall not in any manner, limit or qualify the LICENSEE's liabilities and obligations assumed under this Agreement.

702.11. Subcontractors must maintain the same insurance requirements stated above and comply with the Additional Insured requirements herein. In addition, their policies must state that they are primary and non-contributory and contain a waiver of subrogation.

702.12. The LICENSEE shall cause all insurance carried hereunder to be endorsed by the insurer to provide at least thirty (30) days written notice (10 days for non-payment of premium) prior to the effective date of cancellation or material change.

702.13. At least three (3) days prior to commencing the work, the LICENSEE shall furnish Consolidated Edison with Certificates of Insurance and copies of all required endorsements evidencing the requirements above. Certificates evidencing the renewal of any expired policy are required. All Certificates must be signed by the insurer or its authorized representative. Binders or policies shall be forwarded to Con Edison upon request.

LICENSEE will require all subcontractors to provide a certificate of insurance evidencing the coverage required and provide copies to Con Edison.

Certificates of insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.
TeAM - Telecom Applications Management
4 Irving Place, 9th Floor, Mailbox #16
New York, NY 10003
Attention: Project Manager/ Specialist

702.14. To the fullest extent allowed by law, LICENSEE agrees that this is an insured agreement and that the insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

702.15. For purpose of interpretation or determination of coverage of any policy of insurance or endorsement thereto, LICENSEE shall be deemed to have assumed tort liability for any injury to any employee of LICENSEE or Con Edison arising out of the performance of the work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of LICENSEE's contractual obligations hereunder.

702.16. In the event of any claim/allegation, bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with the Work/Agreement, LICENSEE, in accordance with the provisions of the insurance policies shall inform promptly and in writing the insurers that notice is being provided on behalf of LICENSEE, Con Edison and that it intends to invoke the coverage of the policies to protect the interest and preserve the rights of LICENSEE, Con Edison. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, LICENSEE shall provide a copy of such written notice, including a copy of any incident report or accident report, as follows: if the accident or incident occurs in connection with Work under this agreement, copies shall be sent to: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y., 10003, Attention: General Litigation - Room 1840.

703. In all instances in which LICENSEE is obligated to indemnify and save harmless Edison and/or Verizon ("Indemnatee"), and if LICENSEE is not in default of that obligation, LICENSEE's obligation is conditioned upon (i) the Indemnatee's giving LICENSEE written notice of all claims, damages, losses, suits and any other event which in any way relate to or will be asserted by Indemnatee as a basis for the obligation, (ii) Indemnatee's furnishing such available information and assistance in the disposition of the matter as may be reasonably requested by LICENSEE and (iii) no settlement or other disposition being made by any Indemnatee of any matter for which a claim of

indemnification or to be saved harmless will be made, without the prior written consent of LICENSEE.

ARTICLE VIII
SECURITY AND REMEDIES ON DEFAULT

801. Security. Upon the licensee's default in any of its obligations requiring it to make payment to Edison under this Agreement, Edison may require that LICENSEE furnish security to Edison for performance of LICENSEE's obligations to make any and all payments demanded by Edison as due under this Agreement, including, without limitation, rentals in respect of licenses and costs of Make Ready Work or removal of LICENSEE's plant. At LICENSEE's option, the security may be either a letter of credit or a bond, as provided in Sections 802 and 803. The security in either case shall be in the amount of \$15 per attachment for licenses under this Agreement, to be furnished prior to the granting of the licenses. The initial amount of security shall be at least \$1,500 (100 poles) and, as each additional 100 poles are licensed, shall be increased in \$1,500 increments. Similarly, the amount of security shall be decreased by \$1,500 for each decline of 100 in the total number of poles licensed to LICENSEE. Upon LICENSEE's completion of two years (four semiannual payments) of satisfactory payment of pole rentals, this security requirement shall be terminated. Con Edison may reinstitute this security requirement if LICENSEE shall have been late in paying any pole rental obligation or defaulted in any of its other obligations under this Agreement.

802. (a) Letter of Credit. If LICENSEE furnishes a letter of credit pursuant to Section 801, the letter of credit shall be issued by a bank having an office for the transaction of banking business in New York City or Westchester County. The form of the letter of credit must be satisfactory to Edison. The letter of credit shall be held during the continuance of this Agreement as security for any and all amounts that may become due to Edison hereunder.

(b) Rights of Edison. If LICENSEE shall fail to pay any sum demanded by Edison as due under this Agreement, Edison shall have the right forthwith to apply to the bank for any or all amounts in payment of the sum due, whether or not LICENSEE contests its liability to pay the sum and whether or not Edison exercises or has exercised any option it may have to terminate the Agreement.

(c) Reinstitution of Letter of Credit. LICENSEE shall fully reinstitute its letter of credit within thirty days after notice that Con Edison has applied to the bank for payment under an existing letter of credit, whether or not LICENSEE contests its liability by legal proceedings or otherwise. Failure to reinstitute its letter of credit shall constitute a default.

803. (a) Bond. If LICENSEE furnishes a bond pursuant to Section 801, the surety shall be an insurance company licensed to do business in New York State, and the form of bond must be satisfactory to Edison. The initial bond and any renewals or replacements thereof shall each be for a term of not less than one year. Proof shall be provided to ensure that replacement or renewal bonds shall be continuous.

(b) Rights of Edison. The bond shall provide that the surety will pay to Edison within the dollar limits of the bond any sum demanded by Edison as due under this Agreement, whether or not LICENSEE contests its liability to pay the sum and whether or not Edison exercises or has exercised any option it may have to terminate the Agreement.

(c) Renewal After Payment. If any amounts are paid by the surety, LICENSEE shall restore the bond to the full amount required under Section 801 within thirty days after notice of payment is sent to LICENSEE whether or not LICENSEE contests its liability by legal proceedings or otherwise. Failure to restore the bond shall constitute a default.

804. Remedies of LICENSEE. If LICENSEE contests its liability to pay any sum, its only remedies shall be to petition the PSC or to bring an action at law against Con Edison to recover the amounts claimed to have been erroneously applied by the issuing bank or the surety.

805. Failure to Maintain Security. If LICENSEE shall fail to pay any sum due under this Agreement, or shall fail to maintain the letter of credit or the bond as provided in Sections 801 through 804, Edison upon written notice to LICENSEE shall have the right to terminate the Agreement upon 15 days notice to cure and, if payment shall not have been made, the termination shall be effective five days after the expiration of the 15-day period.

806. Default in General. In addition to the right provided by Section 805 and to Edison's termination rights provided for elsewhere in this Agreement, if LICENSEE shall default in any other respect in performing any action required under this Agreement, Edison shall have the right to terminate the Agreement or to cancel any particular license affected, and the termination or cancellation shall be effective upon the expiration of 30 days after notice to LICENSEE provided that the default has not been cured within that time. Where, however, such default cannot reasonably be cured within such thirty (30) day period, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such default shall be extended for an amount of time as may be reasonably necessary to complete such cure. Termination of this Agreement shall not release LICENSEE from any liability or obligation to continue to pay rentals at the rates provided in Article IV for such time as LICENSEE's attachments remain on the poles or from the obligation to pay any costs of removal.

807. Removal After Termination or Cancellation. Upon termination of this Agreement, or cancellation of any licenses, LICENSEE shall remove its attachments within 90 days (or, in the case of a hazardous situation, within such shorter periods as seems practical to Edison in the circumstances) after the effective date of termination or cancellation or such shorter period as is herein otherwise provided.

808. (a) Failure to Remove Attachment. If, within any time period herein provided, LICENSEE shall fail to make a change in its plant required by Edison or shall fail to remove any attachments upon cancellation of any license or upon termination of this Agreement, Edison shall have the right to make the changes or effect the removals. In case of emergency or service needs of Edison or Verizon, Edison or Verizon may perform the work without written notice to LICENSEE or upon such other notice as Edison or Verizon deems reasonable in the circumstances.

(b) Costs of Removal. LICENSEE shall pay, within 30 days of billing, all the costs of removal performed by Edison or Verizon.

(c) Disposition of Equipment. If Edison removes any of LICENSEE's equipment pursuant to this Section 808, Edison may hold the equipment as security for the payment of any sums due under this Agreement, sell the equipment at public or private sale upon notice to LICENSEE, turn the equipment over to LICENSEE or do any combination of these things. If Edison sells any of LICENSEE's equipment, it shall apply the proceeds to pay sums due under this Agreement and shall pay any balance to LICENSEE.

809. PSC Review. Prior to terminating this Agreement or

cancelling any license for whatever cause or purpose, a petition may be brought by either party to the PSC requesting a PSC decision, which shall be binding on both parties. If termination or cancellation is based upon a safety hazard, an emergency or an illegal condition that puts Edison at any risk, Edison may remove LICENSEE's facilities pending the PSC's determination. If the PSC requires restoration of the removed facilities, the costs shall be Edison's.

ARTICLE IX
SPECIAL PROVISIONS

901. (a) Edison's Use Primary. Any license granted to LICENSEE is at all times subordinate to Edison's statutory duty to supply uninterrupted electric service to its consumers.

(b) Rights of Edison. Notwithstanding any contradictory provision, if at any time in the sole judgment of Edison its ability to fulfill its statutory public service duty may be threatened by reason of LICENSEE attachments or of this Agreement, LICENSEE shall forthwith comply with any request of Edison promptly to remove or alter its attachments, or other condition, that so threaten Edison's ability.

(c) Edison's Remedy. If LICENSEE shall fail promptly to comply with any request made pursuant to this Section 901, Edison shall have the right to cancel any license or to terminate this Agreement, effective immediately upon mailing of the notice.

902. (a) Maintenance of 24-Hour Emergency Services. LICENSEE shall maintain fully available on a 24-hour basis complete and adequate emergency services, consisting of appropriate equipment and trained personnel sufficient to assure a prompt response to requests or directions by Edison that LICENSEE's equipment be immediately removed or adjusted to accommodate any emergency conditions that may arise.

(b) Edison's Remedy. If, in the sole judgment of Edison, LICENSEE shall fail properly to maintain emergency services as provided herein, its failure shall constitute a default under this Agreement, and Edison upon written notice to LICENSEE shall have the right to cancel any license or to terminate this Agreement, effective immediately upon mailing of the notice.

903. (a) High Voltage: Warning. LICENSEE warrants and represents to Edison that it shall specifically and adequately warn all field personnel of the dangers inherent in electrical conductors before any personnel are permitted to perform any work near any Edison facilities. The warning shall be given to LICENSEE field personnel both orally and in writing. The written

warning shall be prepared in duplicate, with one copy retained by LICENSEE and the other by LICENSEE's field personnel, acknowledging receipt of both written and oral warnings. The written warning shall be made available for inspection by Edison at any time inspection may be requested.

(b) Edison's Remedy. If LICENSEE does not satisfy Edison, in its sole judgment, of its compliance with this Section 903, its failure will constitute a default, and Edison may at its sole option cancel any license or terminate this Agreement, effective immediately upon mailing of the notice.

904. 904. Anchors and Guys. LICENSEE may attach its guys to Edison's anchors under the following conditions:

(a) Each application under Section 301 for a licensed attachment shall also specify the anchor(s) to which LICENSEE wishes to attach. If the anchor has sufficient capacity, Edison shall authorize the attachment.

(b) The determination of whether an Edison anchor has sufficient capacity to permit the attachment of LICENSEE's guy(s) shall be made, as part of the study of Make Ready Work, solely by Edison or by Verizon. Edison's permission to attach to an anchor will be subject to Edison's normal operating practices and will not be unreasonably withheld.

(c) Con Edison is under no obligation to install new anchors or to replace existing anchors in order to accommodate LICENSEE's attachments.

(d) No rental shall be charged to LICENSEE for any attachment it makes pursuant to this Section 904, subject however to any determination hereinafter made, by the PSC or by other governmental body having jurisdiction, that may require Edison to charge rental for attachments to anchors, or that may, as a practical matter, bar Edison from including its anchor costs in its pole investment for the purpose of the calculation of pole attachment charges.

(e) Upon request by Edison, LICENSEE shall promptly remove from Edison anchors any attachments that have not been authorized pursuant to this Section 904.

(f) Any failure to remove an attachment, as required by Subdivision (e) of this Section 904, shall constitute a default, and Edison may at its sole option cancel any license or terminate this Agreement.

ARTICLE X
GENERAL PROVISIONS

1001. No Assignment by LICENSEE. LICENSEE shall not assign this Agreement without Edison's written consent, granting of which shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, Edison will be deemed to have consented in writing to the LICENSEE's assignment of this agreement if Con Edison does not provide the LICENSEE written notice of objection within 30 days of receipt from LICENSEE of a written request to assign this agreement. Subject to the foregoing, however, this Agreement shall extend to and bind the successors and assigns of the parties.

1002. No Waiver. Failure to enforce or insist upon compliance with any of the terms of this Agreement shall not constitute a waiver of any of the terms, which shall remain at all times in full force and effect.

1003. Merger. This Agreement constitutes the entire agreement between the parties, and it may not be modified or amended, nor may any obligation of either party be changed or discharged, except in writing signed by the duly authorized officer or agent of the party to be charged.

1004. Waiver of Jury Trial. Edison and LICENSEE each hereby waive any right to a trial by jury in any litigation arising out of this Agreement or out of LICENSEE's use of space on Edison's poles.

1005. Notice. Any notice to Edison shall be delivered by facsimile and by hand or overnight delivery to:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attn: Senior Vice President, Customer Operations
Fax: (212) 460-2744

Any notice to LICENSEE shall be delivered by facsimile and by hand or overnight delivery to:

Any notice shall be effective immediately upon receipt except where provided otherwise herein.

1006. New York Law. This Agreement shall be governed by the laws of New York.

1007. Captions Not Part of Agreement. The captions in this Agreement are not part of the Agreement. They are intended only to facilitate references to the provisions. They in no way affect, limit or cast light on the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By:

Senior Vice President

Attest:

Assistant Secretary

LICENSEE

By:

(Print Name)

Title:

Attest:

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

On the ___ day of _____, 20___, before me personally came _____ to me known, who, being by me duly sworn, did depose _____ and say that she resides at _____; that she is Senior Vice President of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., the corporation described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is said corporate seal; that it was so affixed by order of the board of trustees of said corporation; and that she signed her name thereto by like order.

STATE OF NEW YORK)
)
COUNTY OF _____) ss.:

On the ___ day of _____, 20___, before me personally came _____ to me known, who, being by me duly sworn, did depose _____ and say that he/she resides at _____; that he/she is _____ of _____, the corporation described in and which executed the foregoing instrument; and that the execution of said instrument has been authorized by appropriate action.

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