

POLE ATTACHMENT AGREEMENT

BETWEEN

ROCKY MOUNTAIN POWER

AND

**{LICENSEE COMPANY NAME}**

<b>Article I.</b>	<b>DEFINITIONS .....</b>	<b>1</b>
<b>Article II.</b>	<b>SCOPE OF AGREEMENT .....</b>	<b>3</b>
	Section 2.01 Grant of License; Geographic Scope .....	3
	Section 2.02 Attachments; Purpose .....	4
	Section 2.03 Reservation of Rights.....	4
<b>Article III.</b>	<b>LICENSEE’S USE OF POLES .....</b>	<b>4</b>
	Section 3.01 Application for Permission to Install Attachment .....	4
	Section 3.02 Make-ready Work .....	5
	Section 3.03 Licensee’s Installation Responsibilities .....	7
	Section 3.04 Identification of Equipment .....	7
	Section 3.05 Conformance to Requirements and Specifications .....	7
	Section 3.06 Nonconforming Equipment .....	8
	Section 3.07 Interference with Rocky Mountain Power’s Equipment .....	9
	Section 3.08 Expense of Situating Pole Attachments .....	9
	Section 3.09 Vegetation Management .....	9
	Section 3.10 Third-party Consents, Permits, Licenses, or Grants .....	9
	Section 3.11 Relocation of Attachments at Rocky Mountain Power’s Option.....	10
	Section 3.12 Removal of Attachments by Licensee .....	10
	Section 3.13 Damage to Equipment.....	11
	Section 3.14 Inspections and Audits.....	11
	Section 3.15 Tax Liability.....	12
<b>Article IV.</b>	<b>RENTAL PAYMENTS; FEES .....</b>	<b>12</b>
	Section 4.01 Rental Amount .....	12
	Section 4.02 Attachment Space .....	12
	Section 4.03 Unauthorized Attachments.....	13
	Section 4.04 Billing and Payments .....	13
	Section 4.05 Interest on Late Payments.....	13
<b>Article V.</b>	<b>INDEMNIFICATION; LIMITATION OF LIABILITY; WARRANTIES .....</b>	<b>13</b>
	Section 5.01 Indemnification/Release .....	13
	Section 5.02 Warranty .....	14
<b>Article VI.</b>	<b>INSURANCE, SECURITY AND CREDIT REQUIREMENTS .....</b>	<b>14</b>
	Section 6.01 Insurance .....	14
	Section 6.02 Additional Insurance Requirements.....	15
	Section 6.03 Security .....	16
	Section 6.04 Credit Requirements .....	16

<b>Article VII.</b>	<b>TERM, DEFAULT AND TERMINATION .....</b>	<b>17</b>
Section 7.01	Term and Termination .....	17
Section 7.02	Default.....	17
Section 7.03	Notice of Default/Cure Period .....	17
Section 7.04	Remedies for Default .....	18
<b>Article VIII.</b>	<b>GENERAL PROVISIONS.....</b>	<b>18</b>
Section 8.01	Entire Agreement .....	18
Section 8.02	Choice of Law/Venue .....	18
Section 8.03	Changes in Law.....	18
Section 8.04	Severability .....	18
Section 8.05	Encumbrances .....	18
Section 8.06	Headings and Exhibits .....	18
Section 8.07	Force Majeure .....	19
Section 8.08	Assignments .....	19
Section 8.09	Waiver.....	19
Section 8.10	Time is of Essence .....	19
Section 8.11	No Partnership .....	19
Section 8.12	No Third Party Beneficiaries .....	19
Section 8.13	Attorneys' Fees .....	19
Section 8.14	Agreement Notices.....	20
Section 8.15	Operational Notice .....	20

THIS POLE ATTACHMENT AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_, is entered into by and between PACIFICORP, an Oregon Corporation, doing business in Utah as ROCKY MOUNTAIN POWER, hereinafter "Rocky Mountain Power," and {LICENSEE COMPANY NAME} "Licensee", a(n) {State} Corporation.

WHEREAS, PacifiCorp is engaged in the business of providing electric service to customers in certain areas within the state of Utah; and

WHEREAS, Licensee conducts its {Company Description e.g. "telecommunications"} business in a number of the same areas within Utah; and

WHEREAS, Licensee desires to attach its {Type of Equipment to be Attached e.g. "Telephone Service"} Equipment to Poles owned by Rocky Mountain Power within the state of Utah and Rocky Mountain Power desires to grant Licensee access to such Poles in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

## **ARTICLE I. DEFINITIONS**

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified in this Article I:

"Application" is an action where Licensee requests permission to add or modify its Attachment(s), or sends notification of its removal of previous Attachment(s). For each Application received, Rocky Mountain Power analyzes the data, updates its records, and responds to Licensee at least once per Application, regarding its approval or acknowledgement of the Application.

"Attachment(s)" means Pole Attachment(s) as defined in R746-345-2-E of the Utah Administrative Rules ("UAR"), except for antennas or other non-power utility equipment placed on a pole above any power conductors ("Pole-Top Attachment(s)").

"Attachment Space" shall have the meaning set forth in UAR R746-345-2-B.

"Business Days" means days other than a Saturday, Sunday, or state or federal holiday when banks are authorized to be closed.

"Commission" means the State of Utah Public Service Commission.

"Cost Estimate" means a cost estimate prepared by Rocky Mountain Power, based either on anticipated actual costs on each individual piece of work or flat rates for Make-Ready Work when included in the Fee Schedule (Exhibit B). Rocky Mountain Power reserves the right to determine when flat rates are applicable according to the specific situation.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

“Credit Requirements” means the most recently published senior, unsecured long-term debt rating (or corporate rating if such debt rating is not available) of (a) “BBB-“or greater from S&P, or (b) “Baa3” or greater from Moody’s, or such other indicia of creditworthiness acceptable to Rocky Mountain Power in its reasonable judgment.

“Distribution Construction Standards” means the current Rocky Mountain Power Distribution Construction Standards attached hereto as Exhibit C, and any subsequent revisions thereof.

“Electronic Notification System” or “ENS” means the electronic system, or combination of electronic systems designated by Rocky Mountain Power in its sole discretion, Licensee may utilize to submit Applications for permission to attach, relocate, or remove its Equipment, and complete any other notifications as required under the terms of this Agreement.

“Equipment” means cables, wires, antennas, wireless communication devices, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, power supplies, devices, structures, materials, machines, appurtenances, articles, or apparatus of any sort, whether electrical or physical in nature, or otherwise, including without limitation all support equipment such as guy wires, anchors, anchor rods, grounds, and other accessories. This definition specifically excludes Licensee Pole-Top Attachments.

“Estimated Attachments” means the number of Attachments which Licensee, as of the date of this Agreement, estimates will be installed by Licensee pursuant to this Agreement, which estimate shall be provided to Rocky Mountain Power prior to, as of the date of Licensee’s execution of this Agreement.

“Fee Schedule” means the fees set forth in Exhibit B attached hereto, as may be amended from time to time in accordance with UAR R746-345-3.A.

“Inspection” means examination by Rocky Mountain Power of its Poles and all proposed or existing Attachments for the purpose of verifying the number and location of all Attachments and any other Pole-mounted Equipment of Licensee, or determining whether Licensee is in compliance with the terms of this Agreement, which includes the following five (5) types of Inspections:

1. Pre-Construction Inspection: Performed when Applications by Licensee are submitted for new Attachment.
2. Post Construction Inspection: Performed when Licensee completes its construction of new, modified, or transferred Attachment(s). Also performed for verification of Licensee’s Attachment removal. Licensee may avoid a Post Construction Inspection fee on transfer and removals of Attachments if an electronic photograph is provided to Rocky Mountain Power showing that the work is completed and in compliance with this Agreement.
3. Special Inspection: Rocky Mountain Power’s field visit made at the request of Licensee for all non-periodic Inspections. A Special Inspection does not include Pre-Construction Inspections or Post Construction Inspection.
4. Audit: A periodic effort to collect information through examination by Rocky Mountain Power of all or any number of Poles that may have Licensee Attachments.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

5. Periodic Safety Inspection: Any Inspection done by Rocky Mountain Power to review the safety and integrity of its Poles. If, upon inspecting a percentage of Licensee's reported corrections from a Periodic Safety Inspection that consists of a representative random sample and it is discovered that there is a failure rate of 15% or more, Rocky Mountain Power reserves the right to charge Post Construction Inspection Fees for a complete re-inspection of the reported corrections.

"Make-ready Work" means all engineering, Inspection, design, planning, construction, or other work necessary, in Rocky Mountain Power's reasonable judgment, to prepare Rocky Mountain Power's Poles for the installation of Licensee's Attachments, including without limitation, work related to transfers, rearrangements and replacements of existing Poles or Equipment, and/or the addition of new Poles or Equipment.

"Material Adverse Change" means the occurrence of any event of default under any material agreement to which Licensee is a party and of any other development, financial or otherwise, which would have a material adverse effect on Licensee, or on Rocky Mountain Power's ability to remove the Attachments or to have access to its Poles.

"National Electrical Safety Code" or "NESC" means the current edition published by the Institute of Electrical and Electronics Engineers, Inc., as may be amended or supplemented from time to time.

"Party" means Rocky Mountain Power or Licensee, as the context requires; "Parties" means Rocky Mountain Power and Licensee.

"Pole" means any pole owned by Rocky Mountain Power that is designed to carry distribution as defined in R746-345-2.C of the Utah Administrative Rules.

"Security" means a bond, cash escrow, letter of credit or parental guaranty, acceptable in form to Rocky Mountain Power in its sole and reasonable discretion, to assure performance by Licensee of its obligations hereunder, which shall be in an amount sufficient to pay Rocky Mountain Power for the cost to remove and dispose of Licensee Attachments and related equipment, plus two years' of rental payment obligations under this Agreement. The calculation of the initial amount of Security shall be Rocky Mountain Power's current hourly wage rate of a two-person crew multiplied by the number of Estimated Attachments, plus the current rental rate multiplied by the number of Estimated Attachments; *provided, however*, that if at any time the number of Attachments exceeds one hundred twenty percent (120%) of the Estimated Attachments, the calculation of Security shall be based on the number of actual Attachments rather than the number of Estimated Attachments.

### **ARTICLE II. SCOPE OF AGREEMENT**

#### **Section 2.01 Grant of License; Geographic Scope**

In accordance with the terms and conditions of this Agreement, Rocky Mountain Power hereby grants Licensee the non-exclusive right to attach its Equipment pertaining directly to its business purpose as defined in Section 2.02. Licensee Attachments hereunder shall be limited to Rocky Mountain Power's Poles within the state of Utah.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

Attachments shall not be permitted by Rocky Mountain Power on Poles which are not designed to accommodate distribution. Nothing in this Agreement shall be construed to obligate Rocky Mountain Power to grant Licensee permission to use any particular Pole or Poles.

### **Section 2.02      Attachments; Purpose**

Licensee's use of Poles shall be confined to the Attachments which Rocky Mountain Power may give Licensee prior written permission to install for the sole purpose of providing: \_\_\_\_\_ (the "Permitted Purpose") service. This Agreement does not apply to Pole-Top Attachments.

In the event Licensee intends to expand or modify its Permitted Purpose, Licensee shall provide at least ninety (90) days advance written notice to Rocky Mountain Power. Following receipt of such notice, Rocky Mountain Power shall determine in its sole discretion, whether to permit the modification or expansion and if permitted, whether this Agreement shall be amended accordingly or whether Licensee shall be required to enter into a new agreement.

### **Section 2.03      Reservation of Rights**

Rocky Mountain Power reserves the right, in its sole judgment, to reject Applications for Attachments to its Poles for the following reasons:

- a. Insufficient capacity - once all reasonable potential accommodations have been considered by Rocky Mountain Power and communicated to Licensee.
- b. The Poles are necessary for Rocky Mountain Power's own sole use or the Attachments would threaten Rocky Mountain Power's system reliability.
- c. The proposed Attachment is considered to be unsafe according to the NESC, Rocky Mountain Power's Distribution Construction Standards (Exhibit C) or Commission safety rules.
- d. Unreasonable interference with Rocky Mountain Power's or a third party's Equipment.
- e. Licensee's account with Rocky Mountain Power is not current (i.e. all undisputed invoices are not paid on time).
- f. Licensee is in default of this Agreement.

## **ARTICLE III.    LICENSEE'S USE OF POLES**

### **Section 3.01      Application for Permission to Install Attachment**

With the exception of service drops, as addressed in Section 3.03, Licensee shall not have the right to place, nor shall it place, any Equipment upon Poles without first making Application and receiving permission to do so; nor shall Licensee modify the position of any Attachment upon any Poles without first making Application and receiving permission to do so.

Licensee shall apply for prior permission from Rocky Mountain Power to place any Equipment upon any Poles, or overlash its Equipment to any existing Attachments or other Equipment already attached to Poles, in writing or via the Electronic Notification System (ENS). The Application shall include, without limitation: all location information with Rocky Mountain Power's Pole numbers; description of Equipment to be attached; engineering information for the

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

calculation of Pole loading, clearances and viability of each Pole to accept the Attachment; indication of required Make-ready Work as outlined in Section 3.02; and all applicable contact information for Licensee or Licensee's qualified contractor. Rocky Mountain Power will either approve or deny Applications in writing in accordance with the requirements of UAR R746-345-3.

Licensee shall promptly submit payment for all fees applicable to the assessment of proposed Attachments pursuant to the Fee Schedule (Exhibit B) upon receipt of an invoice from Rocky Mountain Power. Rental charges for each approved Attachment shall commence as of the date of Rocky Mountain Power's approval of the Application pursuant to the Rental Rate Schedule (Exhibit A) and the first charge for annual rent on the Attachment shall be due and payable at this time, with no abatement for the period of the current annual billing period prior to the Attachment approval. For illustrative purposes only, if the Attachment is approved in December and the current annual billing period is the prior July through the following June, for \$100 per Attachment, Licensee shall be charged \$100 in December for the new approved attachment and then \$100 for the Attachment the following July for the next annual billing period.

### **Section 3.02      Make-ready Work**

Licensee shall identify in its Applications any Make-ready Work necessary to accommodate its Attachments. If in the sole judgment of Rocky Mountain Power, the accommodation of any of Licensee's Attachments necessitates Make-ready Work, Rocky Mountain Power shall provide the Cost Estimate for the Make-ready Work in its response to Licensee's Application within the applicable Application processing time period identified in UAR R746-345-3. Licensee shall indicate whether it accepts or rejects the Cost Estimate by returning Rocky Mountain Power's Make-ready Work notice, signed by an authorized Licensee representative, within thirty (30) days of Rocky Mountain Power's Cost Estimate notice. Failure to reject the Cost Estimate within said period shall be deemed acceptance thereof by Licensee. If Licensee accepts or fails to timely reject the Cost Estimate, Rocky Mountain Power may perform such Make-ready Work, and Licensee shall reimburse Rocky Mountain Power for the entire expense thereby actually incurred, without regard to whether Licensee elects not to use the Pole or Poles after Make-ready Work has commenced. Licensee shall be obligated to pay Rocky Mountain Power for its costs related to preparation of a Make-ready Work Cost Estimate, regardless of whether Licensee accepts or rejects the Cost Estimate. If requested by Rocky Mountain Power, Licensee shall submit pre-payment for the estimated Make-ready Work in accordance with UAR 746-345-3.C.7.

Rocky Mountain Power shall provide Licensee an estimated completion date for any Make-ready Work, taking into account the timeframes set by UAR 746-345-3, the overall scope of Licensee's project, the volume of Applications received from other licensees, as well as the availability of crews to perform the work. Licensee and Rocky Mountain Power shall negotiate solutions in good faith when the estimated time to perform the Make-ready Work does not meet Licensee's project requirements. At Licensee's option and upon approval from Rocky Mountain Power, Licensee may request either assistance with the work by Licensee or by qualified contractors hired by Licensee, payment of premium rates for Rocky Mountain Power's employees to be dedicated to perform work solely on Licensee's project, or similar measures designed to augment Rocky Mountain Power's capabilities. If Licensee chooses to employ self-build option as



## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

provided in UAR 746-345-3 C to complete the Make-ready Work, to ensure safety and reliability, the qualified contractor and the schedule must be approved by Rocky Mountain Power.

Rocky Mountain Power shall perform such Make-ready Work as may be required and Licensee shall pay Rocky Mountain Power for the Make-ready Work in accordance with the procedures outlined in UAR 746-345-3. Licensee shall pay the costs of all Make-ready Work undertaken by Rocky Mountain Power where such work is initiated as a result of the proposed installation of Attachments on any poles without regard to whether Licensee elects not to use the pole or poles after Make-ready Work has commenced. Upon request, Rocky Mountain Power shall provide Licensee a statement of the actual material, hours, equipment costs, and any other associated costs for payment of Make-ready Work.

### **Section 3.02.01 Pole Replacement for Licensee's Benefit**

Where an existing Pole is prematurely replaced by a new Pole for the benefit of Licensee, Licensee shall reimburse Rocky Mountain Power for all costs, including, but not limited to, the cost to replace the Pole, transfer and any required replacement of existing Rocky Mountain Power equipment, lower and haul of the existing Pole, and topping of the existing Pole when performed either as an accommodation to Licensee or as required by the NESC. Rocky Mountain Power shall remove and may retain or dispose of such Pole as the sole owner thereof. Any payments for Poles made by Licensee shall not entitle Licensee to ownership of any part of said Poles.

### **Section 3.02.02 Mid-span Poles**

Any Poles erected by Licensee shall not interfere with, or be in-line with Rocky Mountain Power's Poles, and shall not create a structure conflict as defined in the NESC. If Licensee requires placement of a Pole in-line with any existing Poles ("i.e., a mid-span Pole"), Licensee shall notify Rocky Mountain Power of its need and Rocky Mountain Power shall determine the feasibility of such request and the request shall not be unreasonably denied. Licensee shall pay Rocky Mountain Power for all costs incurred by Rocky Mountain Power in installing such additional Poles. Rocky Mountain Power shall have sole ownership of the mid-span Pole and Licensee shall pay rental fees to Rocky Mountain Power in accordance with Article IV.

### **Section 3.02.03 Pole Placement or Replacement for Joint Benefit of Rocky Mountain Power and Licensee**

Where Rocky Mountain Power requires a new Pole for its utility purposes irrespective of Licensee's Attachment and Licensee requires a Pole with extra height or strength exceeding Rocky Mountain Power's requirements, Licensee shall pay to Rocky Mountain Power a sum equal to the difference between the cost, of erecting a Pole adequate to meet Rocky Mountain Power's needs, and the actual cost, of erecting a Pole adequate to meet both Parties' needs. Rocky Mountain Power shall bear the remainder of the cost of erecting such Pole. Each Party shall transfer its equipment at its own cost.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

### **Section 3.03      Licensee's Installation Responsibilities**

Licensee shall complete the installation of its Attachments upon the Pole(s) covered by each approved Application within one hundred eighty (180) days following approval by Rocky Mountain Power. Licensee shall provide written notice to Rocky Mountain Power of its completion within five (5) Business Days of the actual installation.

In the event Licensee fails to complete installation of its Attachments within the prescribed time limit, the permission granted by Rocky Mountain Power to place Attachments upon the Pole or Poles shall automatically terminate and Licensee shall be required to reapply and receive permission to do so, all as prescribed in Section 3.01 as applicable to the initial Application. Licensee's failure to actually install its Equipment, after it has received approval from Rocky Mountain Power, shall not constitute entitlement for any refund or reduction of fees or rental charges incurred for its proposed attachments.

Licensee shall have the right to install service drops prior to, but still subject to, approval by Rocky Mountain Power. However, when Licensee installs service drops, Licensee must follow all procedures applicable to Attachments generally, except that the Application pertaining to the service drop must be submitted to Rocky Mountain Power no later than five (5) Business Days after installation. Should Rocky Mountain Power deny permission to install the service drop, Licensee shall remove the service drop immediately. If Licensee has not removed its Attachments or fails to contact Rocky Mountain Power requesting a reasonable extension within the five (5) Business Day period, or in the case of emergencies, within the period specified by Rocky Mountain Power, Rocky Mountain Power may remove Licensee's Equipment at Licensee's sole risk and expense, and Licensee shall pay, upon demand, for all costs thereby incurred by Rocky Mountain Power.

Licensee need not submit Applications for additional Attachments within the permitted Attachment Space for mid-span service drops from permitted Pole Attachments, or service drop risers and associated equipment attached directly to the Pole.

### **Section 3.04      Identification of Equipment**

Licensee shall comply with UAR R746-345-4 regarding Attachment labeling, Licensee shall clearly mark Attachments with suitable identification visible from the ground that will not interfere with other facility identification, as mutually agreed to by both Parties.

### **Section 3.05      Conformance to Requirements and Specifications**

Licensee shall, at its sole risk and expense, place and maintain its Equipment upon the Pole in conformity with the requirements and specifications of the NESC and such requirements and specifications as Rocky Mountain Power shall from time to time prescribe, including without limitation, the current Rocky Mountain Power Distribution Construction Standards (Exhibit C) and, as applicable, the current Rocky Mountain Power Engineering Handbook provisions (Exhibit D). In the event of any conflict between any of the requirements and specifications of the NESC, and those prescribed by Rocky Mountain Power, the more stringent requirements and specifications shall govern.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

Licensee (including its employees and contractors) shall not enter Rocky Mountain Power's electric utility space for any purpose including making connections to the Rocky Mountain Power neutral. If Licensee requires grounding on an existing Pole where a grounding conductor does not exist, Licensee shall request that Rocky Mountain Power install grounding at the sole expense of Licensee. Licensee, its employees and its contractors, shall at all times exercise Licensee's rights and perform Licensee's responsibilities under the terms of this Agreement in a manner that treats all electric facilities of Rocky Mountain Power as energized at all times. Licensee shall indemnify, defend, and hold Rocky Mountain Power harmless from any liability of any sort derived from Licensee or Licensee's employees' or contractors' failure to abide by the terms of this paragraph.

Licensee shall have in place a facility inspection program that ensures compliance with the requirements and specifications of this section, and Licensee shall provide Rocky Mountain Power with comprehensive documentation of Licensee's program upon request.

In the event that a streetlight photo-control socket is used to supply energy to Licensee's Equipment, the installation of which shall be performed only by a Rocky Mountain Power-approved qualified worker, Licensee shall: 1) assume responsibility for all costs associated with repair necessary due to such installation; 2) shall indemnify and hold Rocky Mountain Power harmless for any claims associated with a power outage caused by such installation; and 3) ensure that the light is working after installation, provided Licensee didn't previously notify Rocky Mountain Power of a malfunctioning of the light within two (2) Business Days of discovery of such malfunction and prior to installation of Licensee's Equipment.

Licensee shall not permit the transmission of its radio frequency signals to cause interference with or degradation of the transmissions, licensed or unlicensed radio frequencies, Equipment or utility operations of Rocky Mountain Power, other attaching entities, or devices lawfully operated by the public or other third-parties. Licensee shall, at its own expense, eliminate any such interference or degradation as soon as practicable after receipt of notice by Rocky Mountain Power or other third-parties, which notice may be made by telephone, facsimile or by notice.

### **Section 3.06      Nonconforming Equipment**

If any Attachment is not placed and maintained in accordance with the requirements and specifications of Section 3.05, Rocky Mountain Power reserves the right to correct said condition upon Licensee's failure to do so. Such work shall be performed at Licensee's sole risk and expense. Rocky Mountain Power shall make commercially reasonable efforts to notify Licensee in writing prior to performing such work. However, if Rocky Mountain Power determines the conditions pose an immediate threat to the safety of utility workers or the public, interfere with the performance of Rocky Mountain Power's service obligations, or pose an immediate threat to the integrity of Rocky Mountain Power's Poles or Equipment, Rocky Mountain Power may perform such work, without prior notice, at the sole risk and expense of Licensee. As soon as practicable thereafter, Rocky Mountain Power shall notify Licensee in writing of the work performed. Licensee shall pay, upon demand, all costs thereby incurred by Rocky Mountain Power.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

### **Section 3.07      Interference with Rocky Mountain Power's Equipment**

If, in Rocky Mountain Power's judgment, Licensee's existing Attachments on any Pole interfere with Rocky Mountain Power's existing Equipment or prevent the placing of any additional Equipment by Rocky Mountain Power, Rocky Mountain Power shall notify Licensee in writing of rearrangements or transfers of Licensee's Attachment, Pole replacements or other changes required in order to continue to accommodate Licensee's Attachments. If appropriate, this notice shall include a Cost Estimate for any applicable Make-ready Work by Rocky Mountain Power to accommodate Licensee's continued attachment.

If Licensee desires to continue to maintain its Attachments on a Pole where a Cost Estimate has been provided for accommodation work to be completed by Rocky Mountain Power, it shall return Rocky Mountain Power's notice of the Cost Estimate, signed by an authorized Licensee representative, within thirty (30) days. If Licensee does not accept the cost to accommodate its continued attachment, Licensee shall remove its Attachments from the affected Pole or Poles within thirty (30) days from such notification by Rocky Mountain Power; provided, however, that Rocky Mountain Power in any emergency may require Licensee to remove its Attachments within the time required by the emergency. Licensee shall notify Rocky Mountain Power of its removal within five (5) Business Days of completion of the removal.

If Licensee has not removed its Attachments at the end of the thirty (30) day period, or in the case of emergencies, within the period specified by Rocky Mountain Power, Rocky Mountain Power may remove Licensee's Equipment at Licensee's sole risk and expense, and Licensee shall pay, upon demand, for all costs thereby incurred by Rocky Mountain Power.

### **Section 3.08      Expense of Situating Pole Attachments**

Licensee shall place, maintain, rearrange, transfer, and remove its own Attachments at its own expense except as otherwise expressly provided hereunder. Nothing in this Agreement shall prohibit Licensee from seeking reimbursement for costs it incurs from third party requests; however, all required work to be completed by Licensee must meet the timeframe prescribed by Rocky Mountain Power, without regard to third party cost recovery negotiations.

### **Section 3.09      Vegetation Management**

All vegetation management in connection with the initial placement of wires or other Attachment shall be undertaken entirely by the Party placing the wires or other Attachment at such Party's sole risk and expense. Unless agreed to otherwise, each Party shall be responsible for any and all vegetation management related to the wires or Attachment it owns. If Licensee fails to fulfill its obligations of this section, Rocky Mountain Power shall provide written notice to Licensee that if the issue is not resolved within thirty (30) days, Rocky Mountain Power shall perform the required remedy at Licensee's sole risk and expense.

### **Section 3.10      Third-party Consents, Permits, Licenses, or Grants**

The right of access to Rocky Mountain Power's Poles granted by this Agreement does not include any right of access to the land upon which the Pole is situated nor does it include any right to cross the land from Pole-to-Pole with Licensee's Equipment and such access rights are specifically disclaimed. Licensee shall be solely responsible for obtaining from public authorities and private owners of real property and maintaining in effect any and all consents, permits,

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

licenses or grants necessary for the lawful exercise by Licensee of the permission granted by Rocky Mountain Power hereunder. Licensee agrees to indemnify, defend and hold harmless Rocky Mountain Power against and from any and all third-party claims, demands, law suits, losses, costs and damages, including attorney's fees, to the extent arising from Licensee's failure, or alleged failure to have the requisite authority. Rocky Mountain Power, at any time, may require Licensee to submit written documentation of compliance with this section. Upon notice from Rocky Mountain Power to Licensee that necessary permission for the use of any Pole or Poles has expired, or has not been secured from property owners or public authorities, any permission granted covering the use of such Pole or Poles shall immediately terminate and Licensee shall remove its Equipment from the affected Pole or Poles within thirty (30) days of said notice, or within the period required by the property owners or public authorities, whichever is shorter. If Licensee has not removed its Equipment within said period, Rocky Mountain Power may remove Licensee's Equipment from such Poles without incurring any liability and Licensee shall, upon demand, pay Rocky Mountain Power all costs incurred by Rocky Mountain Power in the removal of Licensee's Equipment.

### **Section 3.11 Relocation of Attachments at Rocky Mountain Power's Option**

Licensee shall at any time at its own sole risk and expense, upon notice from Rocky Mountain Power, relocate, replace, repair, or perform any other work in connection with the Attachments that may be required by Rocky Mountain Power, within thirty (30) days unless another timeframe is specified in writing by Rocky Mountain Power. Licensee shall provide written notification to Rocky Mountain Power within five (5) Business Days of its completion. Provided, however, that in cases of emergency or if Licensee does not complete required work by the end of the thirty (30) day period or other period specified by Rocky Mountain Power, Rocky Mountain Power may, without incurring any liability, except for Rocky Mountain Power's gross negligence or intentional misconduct, complete any work in connection with Licensee's Attachments that may be required, and Licensee shall reimburse Rocky Mountain Power for the entire expense thereby incurred.

Where Rocky Mountain Power replaces its Pole and cannot remove the replaced Pole due to Licensee's Attachment, Rocky Mountain Power shall remove the top of the Pole to allow Licensee to relocate its Attachment to the new Pole, and Rocky Mountain Power shall make a return trip to remove the replaced Pole. Licensee shall reimburse Rocky Mountain Power for the cost incurred for the topping and return trip.

At Rocky Mountain Power's option, Rocky Mountain Power shall transfer Licensee's Attachment(s) when possible, at the listed rate in the Fee Schedule (Exhibit B) or for the actual cost of the transfer if a listed rate is not in place. If equipment is needed for the transfer, Licensee shall supply the equipment.

### **Section 3.12 Removal of Attachments by Licensee**

Licensee may at any time remove its Attachments from any of the Poles and, in each case, Licensee shall immediately give Rocky Mountain Power written notice of such removal and removal shall occur within five (5) days of the notice. Application fees will apply to notices to remove attachments pursuant to the Fee Schedule (Exhibit B). Removal of the Attachments from any Pole shall constitute a termination of Licensee's right to use such Pole. Licensee shall

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

not be entitled to a refund of any rental on account of any such removal. When Licensee removes Attachments, the applicable Attachment count shall be reduced in the next annual billing cycle following Licensee's proper notice to Rocky Mountain Power of the removal. When Licensee performs maintenance to or removes or replaces its Attachment on a Rocky Mountain Power Pole, Licensee shall chemically treat all field drilled holes and plug any unused holes, including those resulting from removal of Attachment. If Licensee fails to adequately plug and treat such holes, Rocky Mountain Power may do so at Licensee's sole risk and expense.

If Licensee has not removed its Attachments within five (5) days of notice or fails to contact Rocky Mountain Power requesting a reasonable extension within five (5) Business Days, such Attachments(s) will be subject to unauthorized attachment in accordance with Fee Schedule (Exhibit B).

### **Section 3.13      Damage to Equipment**

Licensee shall exercise all necessary precautions to avoid causing damage to Rocky Mountain Power's Poles and Equipment and other Pole users' Equipment. Licensee shall assume responsibility for any and all loss from any such damage and shall reimburse Rocky Mountain Power for the entire expense incurred in making repairs.

### **Section 3.14      Inspections and Audits**

*Inspections.* Rocky Mountain Power shall have the right to perform an Inspection (other than Audits) for each of Licensee's Attachments upon Rocky Mountain Power Poles at any time. Except for routine Periodic Safety Inspections and Audits, Rocky Mountain Power may charge Licensee for the expense of any such Inspections, including Inspections for Make-ready Work, Pre-Construction Inspections, Post-Construction (including any modifications or Pole transfers) Inspections, and any other Inspections requested by Licensee or deemed necessary by Rocky Mountain Power.

*Audits.* Rocky Mountain Power may conduct an Audit of Attachments made to its Poles no more frequently than once every five (5) years. Rocky Mountain Power shall give Licensee at least ninety (90) days prior notice of an initial meeting to plan the next Audit. At such meeting, Rocky Mountain Power, Licensee and all other Pole attachers in attendance in person or by representative shall participate in, among other things, review of the predicted costs to perform an audit, the selection of an independent contractor for conducting the Audit, as well as the scheduling, scope, extent and reporting of the Audit results. Regardless of whether Licensee attends the Audit planning meeting or expresses an intention to participate in the Audit, Rocky Mountain Power shall notify Licensee at least sixty (60) days prior to the commencement of the Audit. Licensee shall advise Rocky Mountain Power if Licensee desires to participate in the Audit with Rocky Mountain Power not less than thirty (30) days prior to the scheduled date of such Audit. The cost of the Audit shall be included in the rental rate pursuant to the methodology approved by the Commission for such purposes. The data from the Audit shall be made available to Licensee and all other attachers on the Poles and used to update the Parties' records. Any Party shall make any objections to the Audit results within ninety (90) days of receipt of the Audit report or such objections are waived.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

### **Section 3.15      Tax Liability**

Licensee shall promptly pay any tax, fee, or charge that may be levied or assessed against Rocky Mountain Power's Poles or property resulting from use by Licensee. If Licensee should fail to pay any such tax or assessment on or before the date such tax or assessment becomes delinquent, Rocky Mountain Power, at its own option, may pay such tax on account of Licensee and Licensee shall, upon demand, reimburse Rocky Mountain Power for the full amount of tax and any penalties so paid. Nothing in this provision in any way limits either Party's rights to challenge such tax assessments.

## **ARTICLE IV.    RENTAL PAYMENTS; FEES**

### **Section 4.01      Rental Amount**

For authorized Attachments covered under this Agreement, Licensee shall pay to Rocky Mountain Power, in advance, on an annual basis, a rental amount computed in accordance with UAR R746-345-5.A and Electric Service Schedule 4 (Exhibit A), on a billing cycle beginning July 1 of each year. The rental amount for each year shall be based on Rocky Mountain Power's tabulation of Licensee's Attachments situated upon Rocky Mountain Power's Poles and based upon Rocky Mountain Power's current records.

Consistent with the terms of this provision, the components of the rental rates, and the methodology employed to determine the rental rates are subject to UAR R746-345-5.A and may not be changed, modified or replaced except as allowed by applicable law.

The rental rate does not include the costs of Application processing, Inspections (other than Audits and Periodic Safety Inspections), Make-Ready Work, and the costs related to unauthorized attachments as addressed in Section 4.03. Charges for activities not included in the rental rate will be based on actual costs, including administrative costs, or flat rates specified in Exhibit B, and will be charged in addition to the rental rate. Parties recognize that rates shall change consistent with approved changes to Electric Service Schedule 4 (Exhibit A) and Exhibit B.

### **Section 4.02      Attachment Space**

Each permitted Attachment on a Pole shall constitute one Attachment Space for the calculation of annual contact rental (Exhibit A). If additional Attachments are placed within the same Attachment Space as a previously permitted Attachment, and are compliant with all requirements of this Agreement, no additional annual contact rental is applicable. If additional Attachments are permitted which are placed in the usable space of the Pole, but outside of the previously permitted Attachment Space, then an additional Attachment Space shall be added for calculation of annual contact rental. Permitted Attachments placed outside of the usable space on a Pole shall be excluded from the calculation of annual contact rental, including overlashed Attachments. Attachments, for the purpose of permitting, shall be limited to those wires, cables, wireless antennas, or rigid risers affixed to the Pole, including overlashed Attachments, and does not include related devices, apparatus, or auxiliary equipment, such as non-rigid risers, fasteners, or brackets.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

### **Section 4.03      Unauthorized Attachments**

Licensee shall not make Attachments to Rocky Mountain Power's Poles without obtaining Rocky Mountain Power's written permission as provided for in this Agreement. Rocky Mountain Power may charge Licensee an unauthorized attachment fee as shown on Exhibit B, upon the discovery of unauthorized Attachments belonging to Licensee. Back rent shall be charged for the lesser of 5 years or the period of unauthorized attachment. The imposition of such charges shall be without prejudice to Rocky Mountain Power's right to utilize additional other remedies, including, but not limited to, the remedies available for default under Article VII of this Agreement and any remedies available under Commission rules. Licensee may avoid unauthorized attachment fees, except back rent, if it self-discloses unpermitted attachments and provides an Application for said attachment permits prior to Rocky Mountain Power's discovery.

### **Section 4.04      Billing and Payments**

Rocky Mountain Power shall send invoices to Licensee via regular U.S. Mail at the address(es) provided by Licensee in writing. Licensee shall pay all charges within forty-five (45) days of the invoice date. Late charges and interest shall be imposed on any delinquent amounts as specified in Section 4.05.

In the event Licensee disputes an invoice, Licensee shall provide written notice of the dispute to Rocky Mountain Power within forty-five (45) days of the date of the disputed invoice; otherwise Licensee shall forfeit its right to dispute the invoice, except as provided by Commission rule. Notice shall include an explanation of the basis for Licensee's dispute. Rocky Mountain Power reserves the right to impose interest as specified in Section 4.05 in the event the dispute is unfounded.

Licensee shall provide its accounts payable address(es) upon execution of this agreement and any future changes to the address(es) in writing sixty (60) days prior to the date of the change. Copies of individual invoices may be requested in writing to be forwarded to an alternate address upon each written request.

### **Section 4.05      Interest on Late Payments**

All amounts payable under the provisions of this Agreement shall, unless otherwise specified, be payable within forty-five (45) days of the invoice date. An interest charge at the lower of one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law shall be assessed against all late payments.

## **ARTICLE V. INDEMNIFICATION; LIMITATION OF LIABILITY; WARRANTIES**

### **Section 5.01      Indemnification/Release**

To the fullest extent permitted by law, Licensee shall indemnify, protect, and hold harmless Rocky Mountain Power, its successors and assigns, and its directors, officers, employees and agents (collectively, the "Rocky Mountain Power Indemnified Parties") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by the Rocky Mountain Power Indemnified Parties resulting from, arising out of, or in any way connected with any act, omission, fault or negligence of Licensee, its employees, agents,



## POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]

representatives or contractors, their employees, agents or representatives in the performance or nonperformance of Licensee's obligations under this Agreement or in any way related to this Agreement except to the extent that such claim, demand, loss, cause of action, or costs arises from Rocky Mountain Power's gross negligence or intentional misconduct. Licensee shall also indemnify and release, protect and hold harmless the Rocky Mountain Power Indemnified Parties from and against any and all claims, demands, causes of action, costs (including attorneys' fees), or other liabilities arising from any interruption, discontinuance, or interference with Licensee's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Rocky Mountain Power undertaken in furtherance of the purposes of this Agreement, including damages caused by Rocky Mountain Power's ordinary negligence. In addition, Licensee shall, upon demand, and at its own sole risk and expense, defend any and all suits, actions, or other legal proceedings which may be brought against Rocky Mountain Power Indemnified Parties, on any claim, demand, or cause of action arising from any interruption, discontinuance, or interference with Rocky Mountain Power's service to Rocky Mountain Power's customers which may be caused, or which may be claimed to have been caused, by any action of Licensee. To the extent Licensee shall be found to have caused such interruption, discontinuance or interference, Licensee shall pay and satisfy any judgment or decree which may be rendered against Rocky Mountain Power Indemnified Parties, in any such suit, action, or other legal proceeding; and further, Licensee shall reimburse Rocky Mountain Power for any and all legal expenses, including attorneys' fees, incurred in connection therewith, including appeals thereof. Licensee hereby releases Rocky Mountain Power from any liability for damage to Equipment, or for any interruption, discontinuance or interference with Licensee's service to its customers, caused by or resulting from Rocky Mountain Power's actions or inaction, including damages caused by Rocky Mountain Power's ordinary negligence.

### Section 5.02 Warranty

Rocky Mountain Power warrants that its work in constructing and maintaining the Poles covered by this Agreement shall be consistent with prudent utility practices. **ROCKY MOUNTAIN POWER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** Under no circumstances shall Rocky Mountain Power be liable for economic losses, costs or damages, including but not limited to special, indirect, incidental, punitive, exemplary or consequential damages.

## ARTICLE VI. INSURANCE, SECURITY AND CREDIT REQUIREMENTS

### Section 6.01 Insurance

Without limiting any liabilities or any other obligations of Licensee, Licensee shall secure and continuously carry during the term of this agreement with insurers having an A.M. Best Insurance Reports rating of A-:VII or better the following insurance coverage:

- a. Workers' Compensation. Licensee shall comply with all applicable Workers' Compensation Laws and shall furnish proof thereof satisfactory to Rocky Mountain Power prior to commencing Work.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

- b. All Workers' Compensation policies shall contain provisions that the insurance companies will have no right of recovery or subrogation against Rocky Mountain Power, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all parties.

Employers' Liability. Insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 by disease-each employee, and \$1,000,000 by disease-policy limit.

- c. Commercial General Liability. Licensee shall maintain commercial general liability insurance on the most recently approved ISO policy, or its equivalent, written on an occurrence basis, with minimum limits of \$1,000,000 each occurrence/ \$2,000,000 general aggregate for bodily injury and property damage, including the following coverages:
- a. Premises and operations coverage
  - b. Independent contractor's coverage
  - c. Contractual liability
  - d. Broad form property damage liability
  - e. Sudden and accidental pollution liability, if appropriate
- d. Business Automobile Liability. Licensee shall maintain business automobile liability insurance on the most recently approved ISO policy, or its equivalent, with a minimum combined single limit of \$1,000,000 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Work.
- e. Umbrella Liability. Licensee shall maintain umbrella or excess liability insurance with minimum limits of \$5,000,000 each occurrence/\$5,000,000 aggregate where applicable, providing following form coverage in excess of the coverages and limits required in Employers' Liability insurance, Commercial General Liability insurance and Business Automobile Liability insurance above. Licensee shall notify Rocky Mountain Power, if at any time their full umbrella limit is not available during the term of this agreement, and will purchase additional limits, if requested by Rocky Mountain Power.

### **Section 6.02      Additional Insurance Requirements**

The following additional requirements apply to coverage specified in Section 6.01:

Commercial general liability and business automobile insurance policies shall include provisions or endorsements that:

- i) name Rocky Mountain Power, its officers, directors, agents, and employees as additional insureds.
- ii) such insurance is primary insurance with respect to the interests of Rocky Mountain Power and that any other insurance maintained by Rocky Mountain Power is excess and not contributory insurance with the insurance required herein;
- iii) such insurance shall provide cross liability or a severability of interest clause.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

All policies shall include provisions or endorsements that provide:

- i) limits of coverage in each of these required policies shall not be reduced without written notification to Rocky Mountain Power prior to the effective date of such change, and
- ii) no policy shall be cancelled without prior written notice to Rocky Mountain Power and to all other insured parties of no less than (a) ten (10) days if cancelled for nonpayment of premium, or (b) thirty (30) days if cancelled for any other reason.

All required insurance policies shall not contain any provisions prohibiting waivers of subrogation. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against Rocky Mountain Power, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all parties.

Prior to installation of equipment as permitted under this Agreement, and prior to expiration of each policy throughout the term of this agreement, Licensee shall provide certificates of insurance evidencing current insurance coverage, and confirming compliance with the requirements stated in this article.

### **Section 6.03      Security**

Rocky Mountain Power may require Licensee to furnish Security if (a) the total number of Estimated Attachments is greater than fifty (50) and Licensee does not make the affirmation specified in Section 6.04 (f); (b) the total number of Licensee's actual Attachments at any time exceeds fifty (50) unless Licensee provides to Rocky Mountain Power an affirmation as set forth in Section 6.04(f); or (c) Licensee experiences a Material Adverse Change. If Licensee is required to post Security pursuant to this Section 6.03, and at any time the number of Attachments exceeds one hundred twenty percent (120%) of the Estimated Attachments, Licensee shall continue to provide, no less frequently than annually, increased Security based on the number of actual Attachments. Rocky Mountain Power may draw upon such Security to satisfy Licensee's obligations under this Agreement, and Licensee shall replenish such Security within sixty (60) days.

### **Section 6.04      Credit Requirements**

Licensee need not post Security under Section 6.03 for the benefit of Rocky Mountain Power as long as Licensee warrants, and continues during the term of this Agreement, to comply with all of the following representations, warranties and obligations:

- a. Neither Licensee nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Licensee's performance under this Agreement;
- b. Licensee has not at any time defaulted in any of its payment obligations under any other agreement with Rocky Mountain Power;
- c. Licensee is not in material default under any of its other agreements and is current on all of its financial obligations;

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

- d. Licensee shall provide to Rocky Mountain Power and shall at all times maintain an official Certificate of Existence as issued by the Utah Secretary of State;
- e. Licensee shall provide to Rocky Mountain Power and shall at all times maintain a valid business license, issued by the proper local, state and/or Federal authority.
- f. Applicable only to a Licensee with Estimated Attachments greater than fifty (50) Licensee meets the Credit Requirements, and will, within thirty (30) days of a request by Rocky Mountain Power, provide copies of its most recent annual and quarterly financial statements.

Licensee hereby declares (Licensee initial one only):

\_\_\_\_\_ Licensee affirms and adopts all warranties in this Section 6.04, and therefore is not required to post the security specified in Section 6.03.

\_\_\_\_\_ Licensee does not affirm and adopt all warranties in this Section 6.04, and therefore Licensee elects to post the security specified in Section 6.03.

**ARTICLE VII. TERM, DEFAULT AND TERMINATION**

Section 7.01 Term and Termination

Unless terminated sooner as provided herein, this Agreement shall remain in full force and effect unless and until it is terminated by either Party upon ninety (90) days written notice to the other Party. Licensee shall remove its Equipment from Poles within said ninety (90) day notice period. Should Licensee fail to remove its Equipment within such period, Rocky Mountain Power may remove and dispose of Licensee's Equipment at Licensee's sole risk and expense. On the date of termination specified in such notice, all rights and privileges of Licensee hereunder shall cease; provided however that Licensee shall not be released from any liability hereunder, which may accrue or be accruing or which arises out of any claim that may have accrued or may be accruing at the time of termination.

Rocky Mountain Power reserves the right to terminate Licensee's permit to use any particular Pole or Poles at any time upon thirty (30) days written notice to Licensee and Licensee shall remove its Equipment from Rocky Mountain Power's Pole or Poles within the thirty (30) day period and provide written notice to Rocky Mountain Power upon its completion.

Section 7.02 Default

The following shall constitute a default hereunder if not cured as provided in Section 7.03: (a) any material breach of this Agreement, including, without limitation, the failure to comply with Section 6.03 and Section 6.04; (b) the appointment of a receiver to take possession of all of the assets of Licensee; (c) a general assignment for benefit of creditors; (d) any action taken or suffered by Licensee under any insolvency or bankruptcy act.

Section 7.03 Notice of Default/Cure Period

The non-defaulting Party shall provide written notice of the default to the other and the defaulting party shall have thirty (30) days from receipt of said notice to cure the default. Provided however, in such cases where a default cannot be cured within the thirty (30) day

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

period by the exercise of diligent, commercially reasonable effort, the defaulting Party shall have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default.

### **Section 7.04      Remedies for Default**

The non-defaulting Party may utilize any and all remedies available to it at law and in equity in the event the defaulting Party fails to cure a default within the time period set forth above. Such remedies may include, without limitation: (a) refusal to authorize any additional Attachments until the default is cured; (b) termination, in whole or in part, of this Agreement; (c) withhold amounts due to the defaulting Party from non-defaulting Party pursuant to this Agreement or another agreement; and (d) cure the default, if Licensee is the defaulting Party, at Licensee's sole cost and expense.

## **ARTICLE VIII.      GENERAL PROVISIONS**

### **Section 8.01      Entire Agreement**

This Agreement constitutes the entire Agreement of the Parties and supersedes and terminates any prior agreements relating to the subject matter hereof. Any amendments hereto shall be in writing and signed by the Parties.

### **Section 8.02      Choice of Law/Venue**

This Agreement and performance hereunder shall be construed, interpreted, regulated and enforced pursuant to the laws of Utah. The state and federal courts within Salt Lake County, Utah shall constitute the sole proper venue for resolution hereunder and the Parties agree to submit to such jurisdiction.

### **Section 8.03      Changes in Law**

The parties agree to negotiate in good faith any changes to this Agreement necessitated to conform to applicable law.

### **Section 8.04      Severability**

If any provision or part of this Agreement is or becomes invalid under any applicable statute, regulation, or law and such invalidity does not materially alter the essence of this Agreement with respect to either Party, the invalidity shall not render this entire Agreement unenforceable and such provision or part shall be deemed void.

### **Section 8.05      Encumbrances**

Licensee shall prevent any and all liens or other encumbrances from attaching, as result of Licensee's activities hereunder, to Rocky Mountain Power's property.

### **Section 8.06      Headings and Exhibits**

The captions and headings herein are for convenience in reference only and not for interpretation purposes. All exhibits referred to herein and recitals are incorporated by reference.

## **POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

### **Section 8.07      Force Majeure**

Except for the late payment of monies due under this Agreement, neither Party shall be deemed in default hereunder for any delay or failure in the performance of its obligations to the extent that such inability shall be due to causes beyond the control of the Party seeking to invoke this provision, including, but not limited to, the following: (a) the operation and effect of any rules, regulations and orders promulgated by any Commission, municipality, or governmental agency of the United States, or subdivision thereof; (b) restraining order, injunction or similar decree of any court; (c) war; (d) earthquake, fire or flood; (e) act of God; (f) civil disturbance; (g) strikes or boycotts; or (h) major equipment breakdown or failure. Should any of the foregoing occur for a continuous duration lasting longer than one month, the contact rental rate shall be applied to only those Attachments where Rocky Mountain Power is able to provide Poles and to those Poles where Licensee is able to attach. The Party claiming Force Majeure under this provision shall provide prompt written notice to the other Party and shall make every reasonable attempt to mitigate or remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect. In the event that a Force Majeure event occurs, and Licensee does not reinstall Attachments at pre-event levels within six (6) months of the beginning of the event, the Permit for each Attachment which is not reinstalled shall terminate.

### **Section 8.08      Assignments**

Licensee shall not voluntarily or involuntarily assign, transfer, sublease or sublet this Agreement, in whole or in part, or any right, privilege or obligation hereunder, without Rocky Mountain Power's prior written consent, at which time Rocky Mountain Power may require that the proposed assignee or successor enter into a new agreement or other reasonable conditions. Approval of assignment may require Application to remove from each Pole by the Assignor and an Application to attach to each Pole by Assignee, and payment of associated fees, if the record of attachments from either attaching party is inconsistent with Rocky Mountain Power's records.

### **Section 8.09      Waiver**

Failure by either Party to enforce any of the terms or provisions of this Agreement shall not be construed as a waiver hereunder.

### **Section 8.10      Time is of Essence**

Time is of essence with respect to every term and provision of this Agreement.

### **Section 8.11      No Partnership**

Nothing herein shall be construed to create a partnership, trust, joint venture, or association between the Parties.

### **Section 8.12      No Third Party Beneficiaries**

This Agreement shall not be construed for the benefit of any third party, including without limitation, customers of either Party.

### **Section 8.13      Attorneys' Fees**

If either Party files any action or brings any court proceeding against the other arising from or related to this Agreement, the prevailing Party shall be entitled to recover, in addition to any

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

judgment or decree for costs, such reasonable attorneys' fees as it may have incurred in such suit, action, or other legal proceeding, together with other reasonable litigation expenses.

Section 8.14      Agreement Notices

Except as otherwise provided herein, any notice regarding this Agreement hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by written notice, and shall be transmitted by United States mail, by regularly scheduled overnight delivery, or by personal delivery:

Rocky Mountain Power:  
Joint Use Administration-Contracts  
825 NE Multnomah St., Suite 1700  
Portland, Oregon 97232

[OTHER ENTITY]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 8.15      Operational Notice

All notices regarding permitting and other communications regarding day-to-day operations shall be submitted by the Parties via an ENS if designated by Rocky Mountain Power, via e-mail at the addresses set forth below or at such other address as a Party may designate for itself from time to time by written notice.

Rocky Mountain Power:  
[tdcoordeastreg@Rocky Mountain Power.com](mailto:tdcoordeastreg@Rocky Mountain Power.com)

[OTHER ENTITY]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

LICENSEE

{LICENSEE COMPANY NAME}

ROCKY MOUNTAIN POWER, doing  
business as

ROCKY MOUNTAIN POWER

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Signed



**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit A**  
Page 1 of 1

Contact Rental Rate Schedule

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit B**

Page 1 of 2

Fee Schedule

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit B**  
Page 2 of 2

[This page intentionally left blank]

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit C**

Rocky Mountain Power's Distribution Construction Standards

**POLE ATTACHMENT AGREEMENT ROCKY MOUNTAIN POWER AND [LICENSEE]**

**Exhibit D**

Rocky Mountain Power's Engineering Handbook