

**DISTRIBUTION POLE LICENSE AGREEMENT**

**BY AND BETWEEN**

**WILLIAMSON COUNTY, TEXAS**

**AND**

**ONCOR ELECTRIC DELIVERY COMPANY LLC**

**DATED**

**APRIL 6, 2022**

**NO. JUDPLA21-007**

<b>DISTRIBUTION POLE LICENSE AGREEMENT</b>
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April 6, 2022

**WHEREAS**, This DISTRIBUTION POLE LICENSE AGREEMENT (the "Agreement") is made by and between ONCOR ELECTRIC DELIVERY COMPANY LLC, a Delaware limited liability company ("Company"), and WILLIAMSON COUNTY, TEXAS, a county organized under the laws of and existing within the State of Texas ("Licensee"); and

**WHEREAS**, Company is a public utility company transmitting and distributing electric power to its customers, and owns or has acquired the right to use certain rights of way and easements for the construction and operation of its business, and has installed distribution poles on portions of such rights of way and easements in connection with the construction and operation of its business; and

**WHEREAS**, Licensee desires to attach to and thereafter maintain its Equipment (as hereinafter defined) that is attached pursuant to this Agreement on Poles (as hereinafter defined) solely for the purpose of engaging in the Permitted Use; and

**WHEREAS**, Company is willing to allow Licensee, pursuant to the terms and conditions of this Agreement, to attach to and thereafter maintain its Equipment on Poles solely for the purpose of allowing Licensee to engage in the Permitted Use;

**NOW, THEREFORE**, in consideration of the covenants, agreements and undertakings set forth below, the Parties agree as follows:

The words and phrases listed in this Section, "Definitions" shall have the meaning set forth in this Section wherever such words and phrases appear in this Agreement (or the Attachments to it) with an initial capital letter on each word.

The meanings stated in this Section shall control the meanings of all such words and phrases when so capitalized, notwithstanding the context or associations in which such words or phrases may appear in this Agreement (or the Attachments to it). Words and phrases not listed in this Section and words and phrases listed in this Section without an initial capital letter shall have the meanings necessary to achieve the intentions of the Parties as expressed in this Agreement.

This shall mean any other person or entity directly or indirectly controlling or controlled by, or under the direct or indirect common control with, a specified person or entity.

This word shall mean this Distribution Pole License Agreement.

This phrase shall mean the individuals identified on Attachment A to this Agreement and any replacements for them made pursuant to the procedures prescribed in the Section entitled "Replacement of Authorized Representatives".

This shall mean any and all claims, losses, expenses, damages, demands, judgments, attorneys' fees, causes of action, suits and liability, in tort, warranty, contract, or any other basis, and of every kind and character, including, without limitation, claims, losses, expenses,

## EFFECTIVE DATE

## RECITALS

## SECTION 1. DEFINITIONS

- |     |  |                            |
|-----|--|----------------------------|
| 1.1 |  | Affiliate                  |
| 1.2 |  | Agreement                  |
| 1.3 |  | Authorized Representatives |
| 1.4 |  | Claims                     |

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damages, demands, judgments, causes of action, suits and liability on account of personal injuries or death, damage to property or economic loss.

This shall mean equipment, including appurtenances, attached by or on behalf of Licensee to any Pole. Such Equipment shall include, without limitation, the fiber optic or other cables (whether original or overlashed), power supplies, amplifiers and drop wires, wires and appliances, including Service Drops and bonding wires, together with associated cable messengers, anchors, pedestals, guy wires, and other appurtenances as well as cameras, radios, antennas and other wireless equipment used by Licensee and approved by Company.

This shall mean a public utility company, municipality or other person or entity which has attachment privileges on any Pole.

This word shall mean **Williamson County, Texas.**

This shall mean Licensee, any Affiliate of Licensee, any director, officer, agent, servant, employee, independent contractor, supplier, customer, advertiser, client, licensee or concessionaire of Licensee or any Affiliate of it, or any director, officer, agent, servant, or employee of the independent contractor, supplier, customer, advertiser, client, licensee or concessionaire of Licensee or any Affiliate of it.

This term shall have the meaning specified in section 4.1.3.

This word shall mean the practice of tying or connecting fiber optic cable, conductors, or other telecommunications equipment, to Equipment attached to Poles.

This word shall mean Company or Licensee; collectively Company and Licensee shall be referred to as "Parties."

This shall mean a written application in the form of the Permit Application available for use at the website shown below:

<https://www.oncor.com/content/oncorwww/us/en/home/about-us/electric-distribution-system/joint-use-management.html>

This phrase shall mean the transmission and exchange of information (including image and video signals) by means of the Equipment, among and between Licensee's facilities, solely in furtherance of Licensee's governmental services or purposes, and at no time for commercial or profit-making activities or purposes.

This shall mean distribution poles located within the boundaries of the areas in which Company provides electric utility service, each of which has a circuit with a nominal voltage of less than 69,000 volts, which are owned solely by Company; such term does not mean or include, without limitation, poles or other structures owned by Company which are used for the transmission, rather than distribution, of electric energy.

This phrase shall have the meaning specified in Section 4.1.2.

This phrase shall mean a service line or wire connection between a Pole and a building or other structure, being served by other

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|------|--|--------------------|
| 1.5  |  | Equipment          |
| 1.6  |  | Joint User         |
| 1.7  |  | Licensee           |
| 1.8  |  | Licensee Party     |
| 1.9  |  | NJUNS              |
| 1.10 |  | Overlashing        |
| 1.11 |  | Party              |
| 1.12 |  | Permit Application |
| 1.13 |  | Permitted Use      |
| 1.14 |  | Poles              |
| 1.15 |  | Preparation Costs  |
| 1.16 |  | Service Drops      |

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Equipment.

This word shall have the meaning specified in Section 4.2.

This phrase shall mean Oncor Electric Delivery Company LLC.

This shall mean Company, its majority investor, Energy Future Holdings Corp., and all subsidiaries and affiliates of Energy Future Holdings Corp., and all officers, directors, shareholders, associates, related firms and entities, employees, servants and agents of Company and each such subsidiary or affiliate.

This shall mean any space on the Poles normally and primarily utilized by Company for the distribution of electric power, including the space from the tops of the Poles down to and including the neutral space.

This shall mean any party retained by Licensee and acting for or on behalf of Licensee, or in furtherance of Licensee's obligations, pursuant to or in connection with this Agreement that is approved to perform certain installation, repair and maintenance functions on the Equipment attached to the Poles in the Power Space.

The singular of a word shall also refer to the plural and vice versa, unless the context otherwise requires.

This shall mean Company Group, its present and future affiliates, and its representatives, agents, officers and employees. For purposes of this Agreement, the term shall also include any contractor, electric utility or other entity authorized by Company to perform work on its Poles on its behalf.

1.17 Standards

1.18 Company

1.19 Company Group

1.20 Power Space

1.21 Approved Contractor

1.22 Singular and Plural Words

1.23 Indemnified Party (Parties)

**SECTION 2. COMPANY'S GRANT OF PRIVILEGE TO LICENSEE TO ATTACH, MAINTAIN, REPLACE, RELOCATE, REPAIR AND MODIFY EQUIPMENT ON POLES**

Subject to the provisions of this Agreement, Licensee shall be permitted to attach Equipment to, and thereafter maintain, replace, relocate, repair, or modify its Equipment on, Poles, solely for the purpose of engaging in the Permitted Use.

Licensee shall not attach Equipment on any Company equipment or facilities other than Poles, including, without limitation, any portion of Company's underground duct system.

2.1 Facilities to Which License Applies

Licensee shall exercise its license under this Agreement solely to engage in the Permitted Use, in accordance with the terms of this Agreement and any applicable franchises and/or permits needed to operate its Equipment and engage in the Permitted Use. Licensee shall not lease or sublet the Equipment, including, without limitation, dark fiber, to a third party, or otherwise allow a third party to attach its equipment to Licensee's Equipment; provided, however, that Licensee may allow third parties to use the Equipment on Licensee's behalf, but

2.2 Use of Equipment



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only in furtherance of Licensee engaging in the Permitted Use.

Further, in the event that Licensee's Equipment requires the supply or provision of electric power, Licensee shall be solely responsible for separately arranging for such power with its retail electric provider.

Nothing in this Agreement shall be construed as requiring Company to give Licensee permission to use any particular Pole or to allow Licensee to continue to use any particular Pole after Licensee has received Company's permission to do so.

Company may refuse Licensee permission to use any Pole, or may, as provided for in this Agreement, require Licensee to replace, relocate, modify, remove or perform other work with respect to Licensee's Equipment on any Pole.

No use, however extended, of Poles under this Agreement shall create or vest in Licensee any ownership or property right in them, but Licensee's rights in such Poles shall be and remain a mere license terminable at any time as provided herein.

Nothing in this Agreement shall be construed to compel Company to maintain any Pole for any period of time.

Licensee represents and warrants that:

(a) it has obtained, or prior to undertaking any construction or other work by which it contacts Company's property it will obtain, all legally required franchises, licenses, waivers, consents, approvals, easements, rights of way and permits needed to construct and operate its Equipment and engage in the Permitted Use;

(b) it shall use its best efforts to maintain such franchises, licenses, waivers, consents, approvals, easements, rights of way and permits in full force and effect throughout the term of this Agreement;

(c) it shall comply with such franchises, licenses, waivers, consents, approvals, easements, rights of way and permits in connection with engaging in the Permitted Use; and

(d) it shall promptly notify Company in writing of any change in the status of such franchises, licenses, waivers, consents, approvals, easements, rights of way and permits.

Upon Company's request, Licensee shall promptly deliver to Company documentation satisfactory to Company, evidencing that all such franchises, licenses, waivers, consents, approvals, easements, rights of way and permits have been obtained.

Company shall not be required to obtain any additional license, waiver, consent, easement, right of way or permit in connection with this Agreement; provided, however, upon Licensee's request, Company may provide such assistance as Company deems appropriate to Licensee, in furtherance of obtaining any such license, waiver, consent, easement, right of way or permit, that Licensee may need in order to

2.3 Rights of Pole Use

2.4 No Ownership of Poles

**SECTION 3.  
FRANCHISES, LICENSES  
AND RIGHTS OF WAY**

3.1 Licensee's Required Approvals and Rights of Way

3.2 Additional Approvals and Rights of Way

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engage in the Permitted Use.

Licensee shall reimburse Company for any expenses reasonably incurred by Company in providing such assistance. All costs of obtaining such additional licenses, waivers, consents, easements, rights of way or permits needed by Licensee will be borne by Licensee.

**COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE THAT ITS EXISTING OR FUTURE RIGHTS OF WAY, EASEMENTS OR OTHER PROPERTY RIGHTS, PRIVATE OR PUBLIC, WERE, ARE, OR WILL BE SUFFICIENT TO PERMIT THE ATTACHMENT, MAINTENANCE, REPLACEMENT, RELOCATION, REPAIR, MODIFICATION OR REMOVAL OF EQUIPMENT ON OR BETWEEN ANY POLES. FURTHER, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WITH RESPECT TO THE CONDITION OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY POLE OR POLES OR ANY OF ITS OTHER REAL OR PERSONAL PROPERTY WHICH LICENSEE MAY USE. LICENSEE CONFIRMS THAT IT HAS NOT IN THE PAST RELIED, IT IS NOT PRESENTLY RELYING, AND IT WILL NOT IN THE FUTURE RELY, ON ANY REPRESENTATION OR WARRANTY OF COMPANY CONCERNING: (A) COMPANY'S EXISTING OR FUTURE RIGHTS OF WAY, EASEMENTS OR OTHER PROPERTY RIGHTS, PUBLIC OR PRIVATE, OR (B) THE CONDITION OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY POLE OR POLES OR ANY OTHER REAL OR PERSONAL PROPERTY OR PROPERTY RIGHT OF COMPANY.**

Throughout the term of this Agreement, Licensee may designate a Pole or Poles on which it desires to attach, replace, relocate or modify any Equipment. For purposes of this requirement, modification of Equipment shall include, without limitation, any Overlashing, on or undertaken with respect to that Equipment or the equipment of any third party.

Each such designation shall be made by Licensee, by submitting to Company or, as appropriate, a Company Representative, at least thirty (30) days before the date when Licensee desires to begin such work, a Permit Application, in such number, manner, and format as prescribed by Company from time to time, signed by any Authorized Representative of Licensee and specifying, in the appropriate spaces thereon, the type of work Licensee desires to perform and the Pole or Poles on which such work is to be performed, and providing drawings, data and specifications necessary to review and evaluate such Permit Application.

Notwithstanding the requirements of Section 4.1, Licensee may attach a Service Drop to any Pole without first submitting a Permit Application requesting such attachment; provided, however, that Licensee shall notify Company within fifteen (15) days after Licensee makes such attachment. Licensee shall thereafter notify Company within fifteen (15) days after Licensee makes any change to a Service Drop previously attached to any Pole, as more fully described in the Permit Application.

**3.3 NO WARRANTIES AS TO COMPANY'S RIGHTS OF WAY**

**SECTION 4. ATTACHMENT, REPLACEMENT, RELOCATION AND MODIFICATION OF EQUIPMENT**

**4.1 Permit Applications for the Attachment, Replacement, Relocation or Modification of Equipment**

**4.1.1 Service Drops**

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Within thirty (30) days of receiving any such notice, Company may, at Licensee's sole cost, inspect the Service Drop, for the purpose of confirming that such attachment is in compliance with the Standards. In the event that Company (or, as appropriate, a Company Representative) determines that such attachment is not in compliance with the Standards, Licensee shall, at its sole cost, promptly correct any condition of such attachment, as necessary to ensure that such attachment is in compliance with the Standards.

Licensee acknowledges that Company or, as appropriate, a Company Representative, shall incur various costs and expenses in reviewing and responding to each Permit Application; such costs may include, without limitation, costs incurred in connection with inspection, design, construction, attachment or removal activities, and related processes, pertaining to the Poles or Equipment identified or described in the Permit Application (the "Preparation Costs").

Company may, in its sole discretion, invoice Licensee for any Preparation Costs, at any time after Company, or a Company Representative, has either incurred such Preparation Costs, or has provided to Licensee an estimate of such Preparation Costs to be reasonably incurred. Section 10.8 notwithstanding, Licensee shall pay the full amount of such Preparation Costs to Company within thirty (30) days following its receipt of such invoice. Licensee shall pay Preparation Costs, to the extent actually incurred by Company or a Company Representative, notwithstanding Licensee's withdrawal, cancellation, or suspension of the related Permit Applications, or Company's disapproval of such Permit Applications.

In the event that Licensee fails to pay the full amount of such Preparation Costs to Company within that thirty (30) day period, Company may suspend further efforts, pertaining to its review of and response to that Permit Application, until Licensee has paid the full amount of such Preparation Costs.

Company may, upon advance written notice of at least thirty (30) days, direct Licensee to submit each Permit Application by means of such formats and electronic procedures as Company may reasonably specify, consistent with customary or accepted practices within the utility industry. Such formats and electronic procedures may include, without limitation, those prescribed by the National Joint Utilities Notification System ("NJUNS"). Licensee will thereafter submit each Permit Application by means of such formats and electronic procedures. In addition, Licensee will, to the extent directed by Company, make any other notifications or submittals, as required or contemplated by this Section 4, or by other provisions of this Agreement, by means of such formats and electronic procedures.

Licensee shall be responsible, at its sole cost and expense, for obtaining the necessary resources and capabilities to enable it to use such designated formats and electronic procedures in the manner contemplated by this Agreement.

Company shall deny, approve or conditionally approve each Permit Application for the attachment, replacement, relocation or modification of Equipment by returning one copy of it to Licensee, reflecting Company's denial, approval or conditional approval in the appropriate spaces thereon.

4.1.2 Preparation Costs Incurred in Reviewing and Responding to Permit Application

4.1.3 Applicable Formats and Electronic Procedures

4.2 Company's Response to Permit Applications

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All work undertaken by or on behalf of Licensee on any Poles shall be performed in accordance with the following safety and engineering standards:

(a) the National Electrical Safety Code;

(b) the rules and regulations of the Occupational Safety & Health Administration ("OSHA");

(c) other applicable laws or regulations of any governing authority or regulatory body, having jurisdiction over the subject matter of this Agreement; and

(d) Company's standards and procedures applicable to the Poles, as referred to or included in the website referenced in Section 1.12, which are reasonably in furtherance of and not expressly inconsistent with the other engineering and safety standards referenced above.

Such engineering and safety laws, regulations, and standards, as described in subsections (a) through (d) above, both as effective on the Effective Date of this Agreement and as may be hereafter amended from time to time, are hereinafter collectively referred to as the "Standards". No approval or other response to a Permit Application shall constitute a guarantee or representation that adequate space exists on the subject Poles for the attachment of Equipment.

Company may approve a Permit Application for the attachment, replacement, relocation or modification of Equipment attached to Poles, on the condition that Licensee modifies the Permit Application in certain respects. In such event, Company or, as appropriate, a Company Representative shall return one copy of the Permit Application to Licensee, reflecting such conditional approval and detailing the required modifications to the Permit Application and the estimated costs of making any resulting or related modification or rearrangement, whether of Equipment or existing attachments.

If Licensee is willing to assume all costs associated with such modification or rearrangement, Licensee shall return that copy of the Permit Application to Company within thirty (30) days of its receipt, signed by an Authorized Representative of Licensee and reflecting Licensee's acceptance of such costs in the appropriate spaces thereon. The copy of the Permit Application shall be accompanied by payment (payable to Company) of the amount of the estimated cost of making such modifications.

Upon receipt by Company, or by a Company Representative, of the modified Permit Application and the accompanying payment, the Permit Application, as modified, shall be deemed approved. Sections 4.2.2 and 4.2.3 are specific examples of situations in which Company may conditionally approve a Permit Application for the attachment, replacement, relocation, or modification of Equipment. Those sections shall not be construed as limiting Company's right to conditionally approve Permit Applications in other situations, or to impose other or additional conditions in the future.

If approval of a Permit Application for the attachment, replacement, relocation or modification of Equipment will require a modification or

4.2.1 Approval  
Conditioned  
Upon  
Modifications to  
Permit  
Application

4.2.2 Approval  
Conditioned

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rearrangement of the attachments of Licensee, Company, Company Group, or a Joint User on any Pole, Company may approve the Permit Application on the condition that Licensee agrees to assume all costs associated with such modification or rearrangement. In such event, Company or, as appropriate, a Company Representative shall return one copy of the Permit Application to Licensee, reflecting such conditional approval and detailing the attachments that must be modified or rearranged, and the estimated cost of making the modification or rearrangement in the appropriate spaces thereon.

If Licensee is willing to assume all costs associated with such modification or rearrangement, Licensee shall return that copy of the Permit Application to Company, within thirty (30) days of its receipt, signed by an Authorized Representative and reflecting Licensee's acceptance of such costs in the appropriate spaces thereon.

The copy of the Permit Application shall be accompanied by payment (payable to Company) of the amount of the estimated cost of making such modification or rearrangement. Upon receipt by Company, or by a Company Representative, of the modified Permit Application, the Permit Application, as modified, shall be deemed approved.

If approval of a Permit Application for the attachment, replacement, relocation or modification of Equipment will require the replacement of one or more Poles to accommodate the attachments of Licensee, Company Group, and any Joint Users, Company may approve the Permit Application on the condition that Licensee agrees to assume all costs associated with the replacement of the existing Poles with new poles sufficient to accommodate the attachments of Licensee, Company Group, and any Joint Users. In such event, Company shall return a copy of the Permit Application to Licensee, reflecting such conditional approval and specifying the conditions for approval in the appropriate spaces thereon.

If Licensee is willing to assume all costs associated with such replacement, Licensee shall return that copy of the Permit Application to Company, within thirty (30) days of its receipt, signed by an Authorized Representative and reflecting Licensee's acceptance of such costs in the appropriate spaces thereon.

The copy of the Permit Application shall be accompanied by payment (payable to Company) of the amount of the estimated cost of making such replacement. Upon receipt by Company, or by a Company Representative, of the modified Permit Application, and said payment, the Permit Application, as modified, shall be deemed approved.

If Company conditionally approves a Permit Application applicable to a Pole pursuant to the provisions of Sections 4.2.2 or 4.2.3, and at or about the same time Company approves a request of a third party for use of such Pole, requiring that such Pole be replaced, or that attachments thereon be modified or rearranged to provide additional space, to provide room for the attachments of Company, Company Group, Licensee and the third party, Company shall pro rate between Licensee and the third party the costs of such modification, rearrangement or replacement.

Such costs, as prorated to Licensee, shall be deemed to be and considered part of the Preparation Costs pertaining to that Permit Application. Company shall notify Licensee of such pro ration, and

Upon  
Modification or  
Rearrangement  
of Existing  
Attachments

4.2.3 Approval  
Conditioned  
Upon  
Replacement of  
Poles

4.2.4 Proration of  
Costs of  
Replacing  
Poles, or  
Modifying or  
Rearranging  
Attachments

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such modification, rearrangement or replacement shall take place as provided for in Sections 4.2.2 or 4.2.3.

Any work undertaken on or in furtherance of Licensee's use of the Equipment, on or within any Power Space of a Pole, shall be performed exclusively by an Approved Contractor. Work performed on other portions of a Pole need not be performed by an Approved Contractor.

Licensee shall pay all costs and expenses incurred by such Approved Contractor in performing such work, and, in addition, shall reimburse Company for its costs reasonably incurred in furtherance of: (a) providing any material or equipment to the Approved Contractor, for use or inclusion on a Pole as part of the work; and (b) any required engineering assessment or other technical support provided by Company.

Licensee shall provide fifteen (15) days prior written notice to Company of each occasion on which Licensee shall perform any activity within the Power Space.

Licensee shall limit its submission of Permit Applications for the attachment, replacement, relocation or modification of Equipment to Company so as to allow Company to respond to them in an orderly and timely fashion. In particular, and except as may be otherwise expressly agreed to by Company, Licensee shall, within any thirty (30) day period, submit no more than ten (10) Permit Applications, collectively requesting a total of no more than one hundred twenty (120) attachments to the Poles. Company shall use reasonable efforts to respond to each Permit Application within thirty (30) days of its submission.

If Licensee submits more than one such Permit Application at the same time or submits additional Permit Applications during the pendency of another such Permit Application, Licensee shall designate, in writing, an order of priority for their review by Company. In the absence of such a designation, Company shall review them in the order of their submission.

Licensee may, with Company's prior express, written consent, submit Permit Applications that exceed the quantity limitations specified above, for either Permit Applications or attachments.

Company shall not unreasonably withhold its consent to such submittals, provided that the Parties shall first agree to a reasonable period of time, in excess of thirty (30) days, during which Company may review and respond to such submittals.

If Licensee desires to locate Equipment on any right of way, easement or other property right of Company on which no Poles or an insufficient number of Poles are located, Licensee shall so notify Company. Within a reasonable time after Company's receipt of such notice, the Parties shall commence good faith negotiations to determine the locations of Poles that will meet the present or anticipated future service requirements of both Company and Licensee.

At its option, Company may install the necessary Poles, and Licensee shall pay all of the costs associated with their installation. Notwithstanding such payment, such Poles shall be owned by Company and Licensee shall not acquire any ownership or property

4.2.5 Work Within the Power Space

4.3 Number and Priority of Permit Applications; Time to Respond

4.4 Location of Equipment on Company Right of Way That Has Insufficient Poles

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interest in them.

Except as permitted by Sections 4.7 and 7.1, in the event Licensee attaches, replaces, relocates or modifies Equipment on one or more Poles without first obtaining Company's approval of a Permit Application for such work, Licensee shall pay Company as a processing charge, upon receipt of an invoice therefore and in addition to any unpaid rental due for such Equipment (together with interest applied to such unpaid rental, calculated in accordance with Section 10.8) and any other expenses or costs incurred by Company on account of such work, fifty dollars (\$50.00) for each such attachment, replacement, relocation or modification.

In the event that the time of any such unauthorized work cannot be determined, such work shall be deemed to have occurred on the date succeeding the day on which the last physical inspection was made in accordance with Section 10.6; provided, however, that, with respect to any such unauthorized work, Licensee shall not be obligated to pay any unpaid rental, or any such fifty dollars (\$50.00) processing charge, for or attributable to any period more than five (5) years prior to the date on which Company notifies Licensee of such unauthorized work.

At the option of and upon notice from Company, Licensee, at its sole risk and expense, shall either: (a) remove, replace, relocate or modify all or any portion of such Equipment within the time period specified in the notice; or (b) prepare and submit one or more Permit Applications for such Equipment. Licensee shall notify Company of the performance of such work within fifteen (15) days of its completion.

If Licensee fails to perform such work within the period specified in the notice, Company may, without notice or demand to Licensee, and at the sole expense of Licensee, either perform all or any portion of such work or remove all or any portion of the Equipment from such Poles.

After the approval of a Permit Application for the attachment, replacement, relocation or modification of Equipment and the completion of all work required in connection with that Permit Application (including work for which any Preparation Costs were paid and other required engineering or make-ready construction work), Licensee may, at its sole expense, consistent with that approval, attach, replace, relocate or modify the Equipment identified in the Permit Application on the Poles specified in that Permit Application, during a period of ninety (90) days from the date of its approval, but not thereafter unless a new Permit Application is submitted to, and approved by, Company, pursuant to the procedures described in this Section 4.

Notwithstanding Licensee's rights as provided for in the preceding sentence, in the event that Licensee determines that the locations, configuration, or other physical characteristics of equipment attached to such Poles (including, without limitation, equipment attached to such Poles by any third parties) are materially different from those identified or depicted in that approved Permit Application, or if Licensee otherwise determines that it cannot complete its work, as contemplated by or approved in that Permit Application, in accordance with the Standards, then Licensee shall promptly notify Company, and shall not undertake any such work until such time as Company has authorized such work.

While performing any work identified in and approved pursuant to a

4.5      Unauthorized  
Work

4.6      Time to  
Complete Work  
After Approval  
of a Permit  
Application

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Permit Application, the Licensee Party performing such work shall maintain a copy of that Permit Application at the location where such work is being performed. That copy of the Permit Application shall be made available for inspection by Company, or by Company Representatives, upon request.

Upon written notice from Company, Licensee shall, at its sole expense and within the period specified in the notice, replace, relocate or modify all or any portion of the Equipment on a Pole that Company requests in such notice. Licensee, in the exercise of its sole discretion and in accordance with the provisions of Sections 6.1, 6.5 and 8, may, instead of performing such work, remove all of the Equipment on the Pole, within the time period specified in the notice, and provided that such removal does not create a safety hazard or otherwise result in a condition of non-compliance with the Standards. Licensee may perform such work without prior notice to Company and without first submitting a Permit Application to Company; provided, however, Licensee shall notify Company of the performance of such work within fifteen (15) days of its completion.

If Licensee fails to perform such work within the period specified in the notice, Company may, without notice or demand to Licensee and at the sole expense of Licensee, either perform all or any portion of such work, or remove all or any portion of the Equipment from that Pole.

Company, in the exercise of its sole discretion and in accordance with the provisions of the Agreement, may transfer Licensee's simple, tangent attachments to a new Company Pole or relocate simple, tangent attachments as needed on an existing Pole, provided that such work does not create a safety hazard. The parties agree that Company may perform such work without prior notice to Licensee, and shall notify Licensee of the performance of such work within fifteen (15) days of its completion, and request inspection by Licensee of said work for Standards compliance. Company shall invoice Licensee seventy-five Dollars (\$75.00) per transfer for all transfers performed on a monthly basis, with payment due within thirty (30) days of receipt.

At Company's discretion, Company may increase or decrease said transfer price from time to time upon sixty (60) days' notice to Licensee. For and with respect to Equipment located within the Power Space, such work shall continue to be performed exclusively by an Approved Contractor.

Licensee may communicate in writing to Company that it does not wish to participate in the transfer program described in the preceding paragraph, or that it does not wish for Company to make a specific category or type of transfer or relocation upon Licensee's behalf.

Licensee shall notify Company before it begins any work authorized by a Permit Application, approved by Company pursuant to the procedures prescribed by this Section 4; such notice shall include, without limitation, the date on which Licensee anticipates beginning that work. Company may have a representative present during all or any portion of such work.

Licensee shall notify Company of the attachment, replacement, relocation or modification of Equipment on any Pole within fifteen (15) days of the completion of such work. The notice shall identify the nature of the work and the Equipment and Poles involved. Company may

4.7 Relocation,  
Replacement or  
Modification of  
Equipment at  
Company's  
Request

4.8 Notice to  
Company



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inspect all or any portion of such work at any time after its completion, for the purpose of:

- (a) initially evaluating the work, to determine if it was performed in accordance with the Permit Application; and
- (b) subsequently evaluating any follow-up or "punch list" work performed by Licensee, reasonably determined to be necessary during the initial evaluation.

Licensee shall reimburse Company or, as appropriate, Company Representatives, for all expenses incurred by Company or, as appropriate, Company Representatives, in connection with such entities' presence at or inspection of such work, or for all expenses otherwise incurred by Company or Company Representatives in completing the post-work evaluations described above.

Except as otherwise expressly authorized in writing by Company's designated representative, Licensee shall not attach any Equipment to any portions of a Pole consisting of:

- (a) guy wires or anchor rods; or
- (b) cross-arms or brackets.

In addition, when making attachments to any non-wood Poles, Licensee shall comply with any applicable specialized attachment methods, as prescribed in the Standards or otherwise specified by Company.

At such time as any Equipment is attached to a Pole, Licensee shall attach or otherwise securely affix to that Equipment an identification tag, readable from ground level beneath the Pole that identifies such Equipment as belonging to Licensee and contains an emergency phone number at which Licensee's Authorized Representative may be contacted.

The identification tag and required attachment hardware shall be provided by the Licensee. Licensee shall not attach any other identification tag to its Equipment, attached to any Pole, without the prior written consent of Company's designated representative. Licensee shall attach or otherwise affix the identification tag to its Equipment, attached to any Pole, as close to that Pole as is practicable, consistent with the Standards.

As part of its routine and periodic maintenance of its Equipment, and throughout the term of this Agreement, Licensee will ensure that the identification tags remain securely attached or otherwise affixed to that Equipment, including any Equipment which may have been previously attached to a Pole without an identification tag. In the event that Licensee determines that any of its Equipment, attached to any Pole, is no longer tagged, Licensee shall thereafter promptly attach to that Equipment a replacement identification tag.

In addition to and apart from the requirements provided for above in this Section 4.10, Licensee shall, with respect to its Equipment, comply with any other tagging, labeling, or other identification requirements, as may be imposed by any governmental entities.

4.9      Guy Wires,  
Anchor Rods,  
Cross-arms And  
Brackets/Non-  
Wood Poles

4.10.    Identification of  
Licensee's  
Equipment

## SECTION 5. MAINTENANCE AND REPAIR OF EQUIPMENT

## 5.1 Maintenance of Equipment

## 5.2 Routine Inspection of Equipment by Company

### 5.3 Special Inspection of Equipment by Company

Upon notice from Company, Licensee shall, at its sole expense and within such reasonable period as may be specified in the notice, perform any repair or maintenance work, relating to the Equipment on any Pole specified in such notice, as necessary to ensure that such Equipment is in a safe condition and in thorough repair. Licensee shall notify Company of the performance of such work within fifteen (15) days of its completion.

If Licensee fails to perform such work, Company may, without notice or demand to Licensee, and at the sole expense of Licensee, either perform all or any portion of such necessary work, or remove all or any portion of the Equipment from that Pole.

Company's actions and decisions in either performing or choosing not to perform such inspections shall not operate to relieve Licensee of any responsibility, obligation, or liability Licensee may have pursuant to this Agreement.

In addition to the inspection rights provided for in Section 5.2, in the event that Company should otherwise determine or discover that one or more of Licensee's attachments of Equipment to Poles is not in compliance with the Standards or, in Company's reasonable judgment, otherwise presents a safety hazard, Company may, at Licensee's expense, inspect all or any portion of Licensee's other Equipment on any Pole, for the purpose of determining whether such Equipment is in a safe condition and in thorough repair (including, without limitation, in compliance with the Standards).

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Upon notice from Company, Licensee shall, at its sole expense and within such reasonable period as may be specified in the notice, perform any repair or maintenance work, relating to the Equipment on any Pole specified in such notice, as necessary to ensure that such Equipment is in a safe condition and in thorough repair. Licensee shall notify Company of the performance of such work within fifteen (15) days of its completion.

If Licensee fails to perform such work, Company may, without notice or demand to Licensee, and at the sole expense of Licensee, either perform all or any portion of such necessary work or remove all or any portion of the Equipment from that Pole.

Company's actions and decisions in either performing or choosing not to perform such inspections shall not operate to relieve Licensee of any responsibility, obligation, or liability Licensee may have pursuant to this Agreement.

Licensee, in the exercise of its sole discretion, may remove any Equipment on any Pole, without prior notice to or the prior approval of Company; provided, however, that Licensee shall submit a Permit Application pertaining to such completed work, pursuant to Section 6.5.

If Company determines that such removal or related work performed by Licensee resulted in a safety hazard (including, without limitation, a condition of non-compliance with the Standards) then Licensee shall, at its sole expense and within such reasonable period as may be specified in the notice, replace such Equipment or perform any other corrective action, as necessary to correct that safety hazard or other condition of non-compliance. Licensee shall notify Company of the performance of such work within fifteen (15) days of its completion.

If Licensee fails to perform such work within the period specified in the notice, Company may, without notice or demand to Licensee and at the sole expense of Licensee, perform all or any portion of such work.

In the event that Licensee either:

(a) discontinues its use of any Equipment for purposes of the Permitted Use; or

(b) does not use any Equipment, for purposes of the Permitted Use, for any consecutive period of one-hundred eighty (180) days,

then Licensee shall, at its sole expense and within thirty (30) days of either such occurrence, remove that Equipment from any Pole.

The Overlashing of any Equipment shall not constitute use of that Equipment, for purposes of this paragraph.

Upon notice from Company, Licensee shall, at its sole expense, remove all of the Equipment on any Pole, which Company is abandoning, or otherwise discontinuing its use of for purposes of providing electric utility service (including, without limitation, discontinuance due to Company being required to relocate its facilities to underground

## **SECTION 6. REMOVAL OF EQUIPMENT**

6.1 Removal of Equipment by Licensee

6.2 Removal of Equipment Upon Abandonment of Pole, or

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locations).

Licensee shall remove all such Equipment within thirty (30) days of receiving such notice.

In the event that Company contracts to sell or sells a Pole on which Equipment is attached, Company shall notify Licensee of such fact. Unless Licensee obtains the permission of the new owner of the Pole to maintain its Equipment on the Pole, Licensee shall, at its sole expense, remove the Equipment from that Pole within the time period specified in such notice.

Licensee shall, at its sole expense, remove all of the Equipment on all Poles prior to the end of the term of this Agreement (as provided for in Section 9) or within thirty (30) days of receiving notice of Company's intent to terminate this Agreement for other reasons, as expressly provided for in this Agreement (including, without limitation, pursuant to Section 11).

Whenever Licensee removes any Equipment from a Pole, it shall submit to Company, within fifteen (15) days thereafter, a Permit Application, signed by an appropriate Authorized Representative and identifying, in the appropriate spaces thereon, the Equipment removed and the Pole from which it was removed.

In the event that Licensee fails to remove all or any portion of the Equipment on any Pole within the time period required by the provisions of this Section 6 or by other applicable provisions of this Agreement, Company may, without notice or demand to Licensee, remove such Equipment.

Such removal shall be at the sole expense of Licensee and Licensee shall pay Company, upon receipt of an invoice therefore and in addition to any expenses incurred by Company in connection with such removal, as a processing charge, fifty dollars (\$50) for each Pole from which Equipment is removed.

Discontinuance  
of Utility Service

6.3      Removal when  
Company Sells  
a Pole

6.4      Removal Upon  
Termination of  
this Agreement

6.5      Submission of a  
Permit  
Application  
Following the  
Removal of  
Equipment on a  
Pole

6.6      Licensee's  
Failure to  
Timely Remove  
Equipment

**SECTION 7.  
EMERGENCIES**

In the event of an emergency pertaining to a Pole, Licensee shall, at its sole risk and expense, have the right to attach, replace, relocate or modify Equipment on any Pole without first obtaining Company's approval of a Permit Application for such work; provided, however, that before performing such work, an Authorized Representative shall obtain the oral approval of Company's designated representative, and provided further that such work is performed within the time period and under such conditions as may be reasonably specified by such representative of Company.

Any such oral approval shall be confirmed, within five (5) days of the performance of the work, by Licensee to Company in writing, identifying

7.1      Licensee's  
Rights in an  
Emergency

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both the work performed and the Poles affected.

If Company determines that such emergency attachment, replacement, relocation or modification resulted in a safety hazard (including, without limitation, a condition of non-compliance with the Standards), and Company provides Licensee with a written notice of such determination, then Licensee shall, at its sole expense and within such reasonable period as may be specified in the notice, remove, replace, relocate or modify all or any portion of such Equipment, as necessary to correct that safety hazard or other condition of non-compliance. Licensee shall notify Company of the performance of such work within fifteen (15) days of its completion.

If Licensee fails to perform such work, Company may, without notice or demand to Licensee and at the sole expense of Licensee, either perform all or any portion of such work or remove the Equipment from the Pole.

In the event of an emergency, Company may, without prior notice to Licensee and at Licensee's sole expense, permanently or temporarily replace, relocate, modify, remove or perform any other work in connection with the Equipment on any Pole.

In such event, Company shall notify Licensee of both the work performed and the Pole affected by such work within a reasonable time after its performance.

7.2      Company's  
Rights in an  
Emergency

## **SECTION 8. DISCHARGE OF LIENS; PERFORMANCE OF WORK**

Licensee agrees that it will not, directly or indirectly, create, incur, assume or suffer to exist any lien (whether mechanics, materialman or other) or other encumbrances on the Equipment attached to any Pole, or to any property, real or personal, owned or controlled by a Company Group, resulting from or arising out of any work performed by or on behalf of Licensee (including, without limitation, by any Licensee Party) pursuant to this Agreement.

8.1      Discharge of  
Liens or other  
Encumbrances

Licensee will, at its sole expense, promptly take any action as may be necessary to discharge any such lien or encumbrance.

All work performed by any Licensee Party, pursuant to or within the scope of this Agreement, shall be undertaken and completed in a safe, good and workmanlike manner (including, without limitation, in compliance with the Standards) and shall not interfere with the use of any equipment of any Company Group or any Joint User.

8.2      Licensee's  
Performance of  
Work

Licensee shall ensure that any Licensee Party, performing any such work, is properly trained with respect to, and otherwise familiar with, all applicable safety procedures and requirements (including, without limitation, those pertaining to the risks associated with making contact with electrical conductors, and prohibitions against coming into closer proximity to the electrical conductors of Company than is permitted by the Standards).

This Agreement, if not terminated earlier in accordance with the provisions of Section 11, shall continue in effect for a term of one (1) year and thereafter until terminated as provided herein.

## **SECTION 9. TERM**

<b>DISTRIBUTION POLE LICENSE AGREEMENT</b>
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This Agreement may be terminated in its entirety or with respect to any one or more of the Poles, or with respect to one or more designated areas in which Company provides utility service, at the end of the initial one year term, or at any time thereafter, by either Party giving to the other Party at least sixty (60) days' written notice.

Upon termination of this Agreement for any reason, all obligations of the Parties pursuant to this Agreement shall terminate, except for those which, by their sense and context, are intended to survive such termination, including, without limitation, obligations pertaining to indemnification.

In each calendar year during the term of this Agreement, Licensee shall make an advance rental payment to Company. During the first calendar quarter of each year, Company shall submit to Licensee an invoice designating the advance rental payment due for that calendar year; further, Company shall make a reasonable effort to submit that invoice to Licensee during the month of January of each year. That invoice shall be paid in accordance with the provisions of Sections 10.8 and 10.9.

The advance rental payment shall be equal to the rental payment specified in Section 10.3 times the sum of the individual Poles on which Equipment is attached, on January 1 of the calendar year for which the advance rental payment is being paid, as determined from the perpetual inventories maintained by the Parties pursuant to Section 10.6

The rental rate for attachments of Equipment to each Pole shall be in the amount specified in Attachment B.

The rental rate will be adjusted each calendar year by the amount of any increase in the Consumer Price Index (published by the Bureau of Labor Statistics of the U.S. Department of Labor), for the twelve month period ending September 30 of the year immediately preceding the year with respect to which the rate adjustment is being made.

The advance rental payment may be adjusted, at Company's discretion, for all additional Poles on which Equipment is attached during any calendar year. If invoiced by Company, Licensee shall make payments to Company reflective of additional Poles on which Equipment is attached at any time during such calendar year.

Company shall maintain a perpetual compilation of the Permit Applications and notices submitted to it by Licensee pursuant to this Agreement. Licensee and Company shall maintain perpetual inventories of the Equipment attachments on Poles and the Poles on which Equipment is attached. Such inventories shall be based on the physical inspections specified in this Section 10.6, together with the Permit Applications and notices pertaining to attachments of Equipment required by this Agreement.

The Parties will conduct, or will cause to have conducted, a physical inspection of the Equipment attached to Poles every five (5) years, at a time designated by Company. Such inspection will be conducted

## SECTION 10. RENTAL AND OTHER PAYMENTS

10.1 Advance Rental Payment

10.2 Computation of the Advance Rental Payment

10.3 Rental Rate

10.4 Adjustments to Rental Rate

10.5 Adjustment to the Advance Rental Payment

10.6 Compilation of Permit Applications and Notices; Perpetual Inventories; Physical Inspection

**DISTRIBUTION POLE LICENSE AGREEMENT**

either:

(a) by joint physical inspection, utilizing both Licensee and Company employees; or

(b) when Company and Licensee employees are not available to perform the inspection, by a contractor selected by Company, in its reasonable judgment.

In the event that the inspection is performed by a contractor, Company will, from time to time during the course of that inspection, review the contractor's work to assess whether the inspection is being performed accurately.

Company shall use reasonable efforts to have the physical inspection conducted in cooperation with Joint Users (including, as appropriate, having the inspection performed with respect to all attachments on Poles, rather than with respect to just the Licensee's attachments), and the costs of any joint physical inspection, undertaken in cooperation with Joint Users, shall be borne pro rata by the Licensee and Joint Users.

Nevertheless, Licensee will otherwise be charged for and shall pay all costs for, or incurred in connection with, the inspection, regardless of the method utilized. Such costs will include, but are not limited to, costs of materials employees, and contractors, transportation costs, and any miscellaneous charges necessary for conducting the inspection.

Licensee acknowledges that Company may, in its discretion, contract with or otherwise arrange for one or more agents or contractors to act for or on behalf of Company, or in furtherance of Company's rights, pursuant to or in connection with this Agreement (collectively, "Company Representatives"). Licensee agrees that Company Representatives may invoice Licensee for all costs and expenses incurred by them in furtherance of such actions.

Further, Licensee agrees that Company Representatives shall be third party beneficiaries to the extent necessary for them to enforce Licensee's payment obligations hereunder. Company Representatives shall invoice Licensee for all costs and expenses incurred by them pursuant, but not limited to, Section 3, 4, 5, 6, 7 and 10, from time to time.

Subject to Section 4.1.2 pertaining to Preparation Costs, Licensee shall pay each invoice submitted to it by Company or, as appropriate, by a Company Representative, within thirty (30) days of its receipt of that invoice and will remit payment to the address indicated on each invoice, as Company or Company Representatives may designate from time to time.

Any portion of an invoice not paid when due shall bear interest at a rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less, unless such amount is disputed and is paid into escrow pursuant to Section 10.9.

Unless otherwise agreed to by the Parties, whenever Licensee in good faith disputes a payment, it shall deposit the amount in dispute in an interest bearing escrow account acceptable to Company within the time

10.7 Licensee's  
Payment of  
Costs and  
Expenses  
Incurred by  
Company or  
Company  
Representatives

10.8 Payment of  
Invoices

10.9 Disputed  
Invoices or  
Adjustments

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period provided by Section 10.8. Any amount so deposited shall remain in such escrow account until the dispute is resolved.

Upon resolution of the dispute, the amount so deposited, plus interest earned on that amount, shall be paid to the Party determined to be entitled to the amount in the escrow account.

If Licensee:

(a) fails to pay fully or deposit in escrow all monies due Company or Company Representatives on the date that the payment is due, pursuant to the provisions of Section 10, and such failure shall continue, in whole or in part, for a period of more than thirty (30) days; or

(b) fails to comply with any term, condition or covenant of this Agreement, other than any provision providing for the payment of monies due Company or Company Representatives, and such failure remains uncured for a period of thirty (30) days following Licensee's receipt of written notice of the kind, character and nature of the failure by Licensee (or if such non-compliance cannot reasonably be cured within thirty (30) days of such notice, Licensee has not commenced to cure and satisfy the failure within thirty (30) days and shall not thereafter proceed to cure such failure with reasonable diligence and good faith); then, in any such event, Licensee shall pay all monies owed to Company or Company Representatives under this Agreement in accordance with the provisions of Section 10, and Company may pursue any one or more of the following remedies, and Company Representatives may pursue the remedies contained in subsection (iii) below, without any notice or demand whatsoever to Licensee:

(i) cancel and terminate this Agreement in its entirety, or with respect to one or more designated areas in which Company provides utility service, or with respect to any one or more of the Poles; or

(ii) revoke Licensee's permission to use any Poles involved in such default or non-compliance; or

(iii) institute suit or other adjudicatory proceedings.

Licensee shall pay all of the costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Company or, as appropriate, Company Representatives, by reason of the foregoing events of default, and in seeking any remedy for, or relief from, such events of default.

Company's, or Company Representatives', pursuit of any of the respective remedies available to them pursuant to this Section 11.1, shall not preclude Company or Company Representatives from pursuing any other remedies provided for in this Agreement or otherwise provided by law, nor shall Company's, or Company Representatives', pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any payment of monies due to Company or Company Representatives under this Agreement, or of any damages accruing to Company or Company Representatives by reason of Licensee's failure to comply with any of the terms, conditions

## **SECTION 11. DEFAULT AND TERMINATION**

### **11.1 Default by Licensee**



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or covenants of this Agreement.

In the event any lawfully required franchise, license, permit, waiver, consent or easement held by Licensee, and required for or in furtherance of Licensee's use of any Equipment attached to Poles, is revoked or denied to Licensee for any reason, in whole or in part, Licensee's rights under this Agreement shall immediately terminate to such extent, and Licensee shall, within thirty (30) days, remove such Equipment from Poles as may be required to comply with such revocation or denial of authority.

11.2 Termination  
Upon  
Licensee's Loss  
of its Franchise

**SECTION 12.  
INDEMNIFICATION,  
CONSEQUENTIAL  
DAMAGES AND TEXAS  
DECEPTIVE TRADE  
PRACTICES-CONSUMER  
PROTECTION ACT**

(a) **To the fullest extent allowed by Texas law**, Licensee agrees to defend, protect, indemnify and hold harmless the Indemnified Parties from and against all Claims asserted by any person or entity, including, without limitation, any Licensee Party, in any way arising out of, related to, caused by or incident to this Agreement, including, but not limited to:

- (i) Claims arising out of, related to, caused by or incident to Licensee's breach of this Agreement or any representation, warranty, covenant or obligation of Licensee set forth herein;
- (ii) Claims arising out of, related to, caused by or incident to the attachment, maintenance, replacement, relocation, repair, modification, removal, use or operation of, or in any other way arising out of, related to, caused by or incident to, any Equipment;
- (iii) Claims arising out of, relating to, caused by or incident to the Permitted Use; or
- (iv) Claims arising out of, related to, caused by or incident to any interruption, disruption, interference or termination of the Permitted Use.

(b) The obligations provided for in this Section 12.1 apply to any of Licensee's contracts with contractors, whether now or hereafter in effect, under the terms of which any such contractors attach, maintain, replace, relocate, or modify any Equipment on a Pole (the "Attachment Contracts"). Licensee shall use its best efforts to ensure that each of the Attachment Contracts includes provisions whereby the subject contractor acknowledges and agrees that Company (whether identified by name or description) shall have the full benefit of any indemnity obligation, insurance coverage (with Company being designated as an insured or additional insured party under the terms of the applicable policies), and limitations of liability, applicable to or protecting Licensee under the terms of that contractor's Attachment Contract.

(c) To the extent necessary to permit the Indemnified Parties to enforce the indemnity obligations provided for in Section 12.1(a), Licensee agrees that, with respect to any Claims, it shall and does, to the fullest extent legally permissible, hereby waive, and shall require each of its insurers to waive, as to the Indemnified Parties, any and all defenses, limitations of liability, or other protections

12.1 Licensee's Obligation to  
Indemnify

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Licensee may have or claim pursuant to the laws of the State of Texas, including, without limitation, those provided for in the Texas Tort Claims Act (Chapter 101 of the Texas Civil Practice and Remedies Code), and the Texas Workers' Compensation Act (Chapter 401 of the Texas Labor Code).

- (d) The Parties acknowledge and agree that, within their lawful and reasonable contemplation, all payments which may be made by Licensee, pursuant to its indemnity obligations or other potential liabilities under this Agreement, can and will reasonably be paid and satisfied from some fund in the immediate control of Licensee, readily available for the purpose of satisfying and paying such indemnity obligations and other potential liabilities. Nevertheless, in the event any such indemnity obligation or potential liability accrues and becomes ascertainable in amount and, further, if the amount of such indemnity obligation or liability exceeds the funds then available to Licensee to satisfy such indemnity obligation or liability, Licensee agrees that, in each year during which such indemnity obligation or liability ascertainable in amount exists, arising from or relating to a Claim, it will, promptly and as soon as permissible under applicable law, levy a tax, with full allowances being made for tax delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required (including, without limitation, any applicable sinking fund) to ensure that all indemnity obligations or liabilities ascertainable in amount, arising from or relating to a Claim, are satisfied and discharged.
- (e) If, for whatever reason, any provision of this Agreement is held by a court to be in conflict with or contradictory to Licensee's duty to indemnify the Indemnified Parties, as provided for in this Agreement, such conflicting or contradictory provision shall be subjugated to, and shall not impair, affect, or invalidate, Licensee's duty to indemnify the Indemnified Parties, and such duty shall remain in full force and effect.
- (f) With regard to Licensee's obligations of indemnification and other potential liabilities provided for in this Agreement, the Parties acknowledge and agree that Licensee has entered into this Agreement in furtherance of public purposes, and that no payment made or obligation incurred by Licensee hereunder shall constitute or be construed as an application or lending of Licensee's credit, or an application of public funds for private use.

Under no circumstances whatsoever shall any Company Group be liable to any Licensee Party in contract, in tort (INCLUDING SOLE OR CONCURRENT, ACTUAL OR IMPUTED, NEGLIGENCE, OR STRICT LIABILITY), under any warranty, or otherwise for any special, indirect, incidental, or consequential loss or damage of any nature, including, without limitation, for the cost of capital, loss of profits or revenues or the loss of use thereof, attorneys' fees (except as otherwise expressly provided for in this Agreement) or the cost of purchased or replacement services, or claims of Licensee's users, licensees, concessionaires, or any other person, firm or entity in such regard, and to the extent allowed by law, Licensee agrees to indemnify and hold each Company Group harmless from and against such losses or damages.

12.2 Licensee's Waiver of Consequential Damages

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No Company Group shall have any liability to any Licensee Party for any expense, damage or loss caused, in whole or in part, by the action of any Company Group that damages or injures any Equipment except to the extent directly attributable to the gross negligence or willful misconduct of any Company Group.

**To the extent that the Texas Deceptive Trade Practices - Consumer Protection Act, Texas Bus. & Comm. Code Section 17.41, et. seq., may be applicable to any Claim that Licensee may have against any Company Group in any way arising out of, related to, caused by or incident to this Agreement, Licensee waives the applicability of such Act to the maximum extent that it can now or in the future be waived.**

**Notwithstanding the foregoing, nothing in this Agreement shall be construed as an admission by any Party that Licensee is a "consumer" as defined in such Act or that such Act is otherwise applicable to any Company Group, any Licensee Party or this Agreement.**

Within a reasonable period after receiving or becoming aware of the assertion of any Claim within the scope of Section 12.1, Company shall notify Licensee of the assertion of such Claim.

Company's failure to provide such notice shall not, however, alter or, in any manner, impair Licensee's obligations of indemnity, as provided for in Section 12.1, except to the limited extent that such failure directly and adversely affects Licensee's efforts or ability to fulfill such obligations of indemnity.

Licensee shall, at its sole expense and during the term of this Agreement, purchase and maintain insurance in accordance with the requirements of Attachment C, Licensee's Insurance Requirements.

However, notwithstanding the foregoing insurance requirements, if an entity is exempt by law from the provision of insurance or has otherwise been granted by law the ability to self-insure, a cite to the applicable law or regulation creating such exemption, or other verifiable evidence of any exemption from the provision of insurance is required. Such evidence shall be provided to Company prior to the execution of this Agreement and shall be made an attachment hereto.

Licensee will notify the Company manager of claims per the requirements in Attachment C as soon as practical of any accidents or occurrences resulting in injuries to any person, including death, or any property damage (including, without limitation, damage to any Equipment or Pole), arising out of or relating to this Agreement.

Nothing in this Section 13, or the provision of any insurance required by this Section 13, shall affect, limit or otherwise reduce the indemnity obligations provided for in Section 12.

12.3 No Liability for Damage to Equipment

**12.4 Licensee's Waiver of Rights and Remedies Under the Texas Deceptive Trade Practices-Consumer Protection Act**

12.5 Notice Of Claim To Licensee

### **SECTION 13. INSURANCE**

13.1 Proof of Coverage

13.2 Notification of Accident, Injury, or Damage

13.3 Enhancement of Indemnification

### **SECTION 14. NON-EXCLUSIVITY OF THIS AGREEMENT**

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The license granted to Licensee hereunder with respect to any Pole shall be non-exclusive, in that Company reserves the right to use any or all of such Pole for any lawful purpose or business, or to lease or otherwise permit any other person or entity the right to lease or use any or all of such Pole for any lawful purpose.

Licensee has and retains whatever rights it may have to install and construct its Equipment, separate and apart from this Agreement; provided, however, that in no event shall Licensee make any use of Poles, or any other facilities or equipment of Company, except in accordance with, and subject to, the terms and conditions of this Agreement; and provided further, however, that Licensee shall not locate poles, guys, or other facilities where they will;

(a) interfere with access to Poles or the operation of Company's electric system; or

(b) result in or cause a condition of non-compliance with any provision of the Standards.

In addition to the limitations provided for in, and without limiting Licensee's responsibilities under, Section 2.2, Licensee shall not, without the prior written consent of Company, transfer, assign, delegate or sublet any of its rights or obligations under this Agreement.

Except to the extent expressly consented to by Company (such consent not to be unreasonably withheld), no permitted transfer, assignment, delegation or subletting by Licensee shall release or relieve Licensee, or Licensee's successor-in-interest, of any of its obligations under this Agreement, and Licensee, or Licensee's successor-in-interest, shall remain fully obligated and liable to Company under this Agreement, notwithstanding any such permitted transfer, assignment, delegation or subletting.

Company may transfer, assign or delegate any of its rights or obligations under this Agreement at any time, without the consent of or prior notice to Licensee. Company shall notify Licensee of any such transfer, assignment or delegation within thirty (30) days thereof.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, where assignment is permitted by this Agreement.

Licensee shall pay, in the normal course of its business and before they become delinquent, all taxes, assessments, fees and other governmental charges of any kind whatsoever properly levied or assessed against it, or against the Equipment or otherwise pertaining to the Permitted Use, including, without limitation, all franchise, license, permit, and other fees due to any cities or other governmental bodies in connection with Licensee engaging in the Permitted Use.

**THIS AGREEMENT IS GOVERNED BY AND WILL BE CONSTRUED IN ACCORDANCE WITH LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF TEXAS**

14.1 Company

14.2 Licensee

**SECTION 15.  
ASSIGNMENTS**

15.1 Assignment by Licensee

15.2 Non-Release

15.3 Assignment by Company

15.4 Successors and Assigns

**SECTION 16. LICENSEE'S  
PAYMENT OF TAXES,  
ASSESSMENTS, FEES  
AND OTHER  
GOVERNMENTAL  
CHARGES**

**SECTION 17. CHOICE OF  
LAW**

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OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF TEXAS. THE PARTIES MUTUALLY CONSENT TO THE EXCLUSIVE JURISDICTION OF THE STATE COURTS IN TARRANT COUNTY, TEXAS AND AGREE THAT ANY ACTION, SUIT OR PROCEEDING CONCERNING, RELATED TO OR ARISING OUT OF THIS AGREEMENT AND THE NEGOTIATION OF THIS AGREEMENT WILL BE BROUGHT ONLY IN A STATE COURT IN TARRANT COUNTY, TEXAS AND THE PARTIES AGREE THAT THEY WILL NOT RAISE ANY DEFENSE OR OBJECTION OR FILE ANY MOTION BASED ON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, INCONVENIENCE OF THE FORUM OR THE LIKE IN ANY CASE FILED IN A STATE COURT IN TARRANT COUNTY, TEXAS. THE PARTIES MUTUALLY AGREE THAT THIS AGREEMENT IS A "MAJOR TRANSACTION" WITHIN THE MEANING OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE § 15.020 AND AS SUCH AGREE THAT ANY ACTION OR SUIT ARISING FROM THIS AGREEMENT WILL BE BROUGHT IN TARRANT COUNTY, TEXAS, AND VENUE WILL BE IN TARRANT COUNTY, FORT WORTH, TEXAS.

This Agreement and all Attachments attached hereto shall constitute the entire, complete and final agreement of the Parties with respect to the subject matter hereof, and all prior negotiations, undertakings, understandings, representations, statements and agreements between the Parties with respect to the subject matter hereof are merged into this Agreement.

Any notice, other than Permit Applications, required to be given or made in connection with this Agreement shall be in writing and shall be deemed properly or sufficiently given or made if:

- (a) delivered in person with receipt acknowledged in writing by the person specified below;
- (b) sent by registered or certified mail, return receipt requested, to the person and address specified below;
- (c) sent by confirmed telephonic document transfer to the person and fax number specified below;
- (d) sent electronically to the recipient's designated e-mail address; provided that the recipient acknowledges receipt of that notice; or
- (f) sent or delivered by such other method as will ensure evidence of its receipt by the person specified below:

- (a) If to Licensee (Contracts Administrator):

Williamson County Courthouse  
710 S. Main Street  
Suite 101  
Georgetown, TX 78626

Attn: Judge Bill Gravell Jr.  
Telephone Number: 512.943.1550  
Email: ctyjudge@wilco.org

## **SECTION 18. COMPLETE AGREEMENT**

## **SECTION 19. NOTICES**

- 19.1 Method of Notice

<b>DISTRIBUTION POLE LICENSE AGREEMENT</b>
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(b) If to Company:

Oncor Electric Delivery Company LLC  
 Attention: Contracts Administrator  
 777 Main Street 1033-20  
 Suite 770  
 Fort Worth, TX 76102

Attn: Karen Flewharty  
 Telephone: 817-215-5037  
 Fax: 817-215-6243  
 Email: Karen.flewharty@oncor.com

Notices given or made pursuant to or in connection with this Agreement shall be effective as of the time of delivery to or receipt by the Party to whom such notice is addressed; provided, however, that no notice shall be effective unless it is given or made in compliance with this Section 19.1.

The person, address, fax number, or Email address of any Party, to which notice shall be given pursuant to Section 19.1, may be changed at any time, upon written notice given pursuant to Section 19.1 to the other Party.

Licensee shall, at its own cost, operate, attach, replace, relocate, repair, modify and remove its Equipment on or from Poles in compliance with the Standards, and all other applicable constitutions, statutes, ordinances, rules, regulations, codes, orders, decisions, ordinances and decrees of all governmental bodies with jurisdiction over the Licensee or subject matter of this Agreement.

Where a difference in any of the foregoing specifications may exist, the more stringent shall apply.

If any portion of this Agreement becomes or is determined by a governmental body with jurisdiction to be void, unenforceable, invalid or illegal, Licensee and Company shall modify, to the extent they are able to do so, such portion in a manner which preserves the intent and effect both of such portion and the remainder of this Agreement, to the maximum extent which is effective, enforceable, valid and legal.

A void, unenforceable, invalid or illegal portion of this Agreement shall not affect the effectiveness, enforceability, validity or legality of the remainder of this Agreement.

Licensee may replace any or all of its Authorized Representatives, at any time or from time to time, by delivering to Company a written notice specifying:

(a) the name of the new Authorized Representative;

(b) if not an employee of Licensee, the employer and relationship to Licensee;

19.2 Change in  
 Person's  
 Address and  
 Fax Number

**SECTION 20. COMPLIANCE  
 WITH LAWS**

20.1 Licensee's  
 Compliance

20.2 Severability

**SECTION 21.  
 REPLACEMENT OF  
 AUTHORIZED  
 REPRESENTATIVES**

<b>DISTRIBUTION POLE LICENSE AGREEMENT</b>
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- (c) title;
- (d) business address;
- (e) business telephone number;
- (f) fax number;
- (g) Email address;
- (h) the name of the Authorized Representative being replaced; and
- (i) the date when the change becomes effective.

Unless otherwise specified in the notice, the new Authorized Representative shall have the same authority as the Authorized Representative being replaced.

Upon good cause shown by Company:

- (a) Licensee shall increase or decrease the number of Authorized Representatives or replace any or all of them; and
- (b) Company may reject any replacement for an Authorized Representative

Only written amendments of this Agreement duly authorized and signed by the Parties shall be effective, and no writing shall constitute an amendment of this Agreement unless such writing is expressly identified as an amendment, with specific reference to the provisions of this Agreement to be amended. No amendment shall be effective prior to the date such amendment is signed by the Parties, unless such amendment expressly so provides.

Notwithstanding the requirements of this Section 22.1, Licensee may replace any or all of its Authorized Representatives by delivering written notice to Company in accordance with Section 21, without any requirement that such notice be identified as, or be deemed to be, an amendment to this Agreement.

No rights or duties under this Agreement shall be waived except as expressly provided in this Agreement, or unless the Party having the right expressly waives such rights or duties in a written instrument identified as a waiver.

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

Except as specifically provided herein (and in particular, but without limitation, for or with respect to Company Representatives), this Agreement is entered into for the sole benefit of Company and Licensee and, where permitted, their respective successors and assigns.

## **SECTION 22. AMENDMENTS AND WAIVERS**

### **22.1 Amendments**

### **22.2 Waiver**

## **SECTION 23. AGREEMENT FOR THE SOLE BENEFIT OF LICENSEE AND COMPANY**

<b>DISTRIBUTION POLE LICENSE AGREEMENT</b>
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Nothing in this Agreement or in any approved Permit Application shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, Licensee's or Company's customers, concessionaires and licensees.

Nothing in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners or joint ventures between the Parties, it being understood and agreed that no such provision, or any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of licensor and licensee.

Except for and as provided in any applicable franchise granted by Licensee to Company or its predecessor-in-interest, any existing agreements between the Parties or their predecessors, regarding the attachment of Equipment to Poles, are by mutual consent of the Parties hereby abrogated and superseded by this Agreement.

Notwithstanding anything to the contrary in this Agreement, the Parties from time to time may prepare and implement such supplemental operating routines or working practices as they mutually agree in writing to be necessary or desirable to effectively administer the provisions of this Agreement.

Section and subsection headings are inserted in this Agreement for convenience of reference only and shall in no way modify or restrict any of the terms and provisions of this Agreement.

This Agreement may be simultaneously executed in several counterparts. All such counterparts, when executed and delivered, each as an original, shall constitute but one and the same instrument.

No provision of this Agreement shall be construed against or interpreted to the disadvantage of either Party by any court or other governmental or judicial authority, by reason of such Party having or being deemed to have prepared, structured or dictated such provision.

As used in this Agreement, the term "Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or of any State, any arrests and restraints, civil disturbances, explosions, adverse weather conditions (including, without limitation, rain, snow, or ice), and inability despite reasonable diligence to obtain materials essential to the obligations to be performed under the Agreement.

Should either Party be rendered unable, either wholly or in part, by an event of Force Majeure, the occurrence of which is beyond the affected Party's reasonable control, to fulfill its obligations under the Agreement, the obligation(s) affected by such event of Force Majeure shall be suspended only during the continuance of such inability.

## **SECTION 24. RELATIONSHIPS OF THE PARTIES**

## **SECTION 25. EXISTING CONTRACTS SUPERSEDED**

25.1 Existing  
Contracts  
and/or Letter  
Agreements

25.2 Operating  
Routines and  
Working  
Practices

## **SECTION 26. HEADINGS**

## **SECTION 27. EXECUTION IN COUNTERPARTS**

## **SECTION 28. INTERPRETATION**

## **SECTION 29. FORCE MAJEURE**



**DISTRIBUTION POLE LICENSE AGREEMENT**

The Party so affected shall give notice of the existence, extent and nature of such event of Force Majeure, in writing, to the other Party within forty-eight (48) hours after the occurrence.

The Party so affected shall remedy such inability with all reasonable dispatch and shall use due diligence in this regard.

The following are attached to and hereby made a part of this Agreement:

Attachment A, Authorized Representatives  
Attachment B, Rental Rate Schedule  
Attachment C, Licensee's Insurance Requirements  
Attachment D, Contractor Agreement  
Attachment E, County Addendum

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the **EFFECTIVE DATE** first written above.

**WILLIAMSON COUNTY, TEXAS**

Signature:  Bill Gravell (May 4, 2022 11:36 CDT)

Name: Bill Gravell Jr.

Title: County Judge

Date: May 4, 2022

**ONCOR ELECTRIC DELIVERY COMPANY LLC**

Signature:  DocuSigned by:  
Karen Flewharty  
1DDF7B169219405...

Name: Karen Flewharty

Title: Manager, Joint Use Management Group

Date: 4/6/2022

**ATTACHMENT A**  
**AUTHORIZED REPRESENTATIVES**

***Contracts Administrator***

Name: Tammy McCulley

Title: Office Administrator

Company: Williamson County

Mailing Address: 301 SE Inner Loop, STE 105

City/State/Zip: Georgetown, TX 78626

Phone: 512.943.1455

Email: [tmcculley@wilco.org](mailto:tmcculley@wilco.org)

***Accounts Receivable Contact***

Name: Tammy McCulley

***Accounts Payable Contact***

Name: Tammy McCulley

***Construction Contact***

Name: Chris Gonzalez

Title: Key Account Manager

Company: BryComm, LLC

Mailing Address: 1051 New Technology Blvd.

City/State/Zip: Hutto, TX 78634

Phone: 512.712.4008

Mobile: 512.569.5309

Fax: 512.712.4009

Email: [chris.gonzalez@brycomm.com](mailto:chris.gonzalez@brycomm.com)

***Engineering Contact***

Name: Andrew Creel

Title: Sr. VP

Company: LJA Telecom

Mailing Address: 2700 La Frontera Blvd. STE 150

City/State/Zip: Round Rock, TX 78681

Phone: 512.767.7300

Email: acreel@lja.com

***Operations Contact***

Name: Chris Ball

Title: System Engineer

Company: Williamson County

Mailing Address: 301 SE Inner Loop, STE 105

City/State/Zip: Georgetown, TX 78626

Phone: 737.900.5993

Email: cball@wilco.org

***Emergency Contact***

Name: Chris Ball

***Claims Representative***

Name: Tammy McCulley

**ATTACHMENT B**  
**RENTAL RATE SCHEDULE**

During calendar year **2022**, the rental rate for each Pole to which one or more attachments of Equipment is made shall be:

**\$32.14**

The rental rate specified herein is subject to, and shall be determined in accordance with, **Section 10.4** of the Agreement.

**ATTACHMENT C****LICENSEE'S INSURANCE REQUIREMENTS****A. Coverage Requirements**

Licensee will, at its own expense, maintain in force throughout the period of the Agreement or as otherwise specified and until released by Company, at least the following minimum insurance coverages with insurers acceptable to Company.

- 1) Commercial General Liability Insurance including bodily injury and property damage, personal and advertising injury, contractual liability, and including products and completed operations, with minimum limits of one million dollars (\$1,000,000) per occurrence for bodily injury, including death and property damage.
- 2) Automobile Liability Insurance for coverage of owned, non-owned and hired autos, trailers or semi-trailers with a minimum combined single limit of one million dollars (\$1,000,000) per accident for bodily injury, including death, and property damage.
- 3) Excess Liability Insurance over and above the employers' liability, commercial general liability and automobile liability insurance coverage, with a minimum limit of two million dollars (\$2,000,000) per occurrence. Coverage must replace exhausted aggregate limits under Commercial General Liability and Workers' Compensation (Employers Liability) insurance coverages referenced herein.
- 4) Workers' Compensation and Employers' Liability Insurance providing statutory benefits in accordance with the laws and regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for the employers' liability insurance will be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.

Note: The required limits of insurance can be satisfied by any combination of primary and excess coverage.

**B. Additional Requirements**

- 1) Each of the policies in section A., above, except workers' compensation and employers' liability insurance, will contain provisions that specify that the policies are primary and will apply without consideration for other policies separately carried and will state each insured is provided coverage as though a separate policy had been issued to each, except with respects to limits of insurance, and that only one deductible will apply per occurrence regardless of the number of insureds involved in the occurrence. Licensee will be responsible for any deductibles or retentions.
- 2) Each of the policies in section A., above, except workers' compensation and employers' liability insurance, if written on a claims-made basis, will be maintained in full force and effect for two (2) years after final acceptance or completion of the Work, whichever is later.
- 3) All policies must be issued by carriers having an *A.M. Best's* rating of "A-" or better, and an *A.M. Best's* financial size category of "VIII", or better. If requested in writing by Company, Licensee will make available to Company a certified copy of any or all insurance policies or endorsements required of Licensee.
- 4) Company will receive advance written notice prior to non-renewal or cancellation.
- 5) Certificates of insurance (COI) must show "Oncor Electric Delivery Company LLC and its affiliates" as the certificate holder, and as an additional insured (including completed operations) to the extent Licensee has agreed to indemnify any Indemnified Party or Parties pursuant to the provision of indemnity therein. The additional insured requirement shall apply to all of the required coverages except workers' compensation. All of the required coverages must provide a waiver of subrogation in favor of the certificate holder.

**C. Limitation of Liability**

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

**D. Carrier/Agent to Provide Proof of Insurance**

Prior to execution of the Agreement, and when requested by Company, Licensee will instruct its insurance carrier/agent to submit directly to Company valid certificate(s) of insurance, evidencing the coverage required herein. Valid certificates of insurance utilize ACORD 25 form dated 2010/05 or later and other Texas Department of Insurance (TDI) approved forms which properly addresses each requirement referenced in this document (as depicted in Company's Sample COI, available on request). If Licensee's insurance carrier/agent provides to Company a certificate of insurance that is not an ACORD 25 form dated 2010/05 or later, insurance carrier/agent must also submit sufficient documentation directly to Company indicating that certificate is approved by TDI. Company's review of certificates or policies will not be construed as accepting any deficiencies in Licensee's insurance or relieve Licensee of any obligations set forth herein. In addition, Licensee will require each of its subcontractors to provide adequate insurance. Any deficiencies in the insurance provided by subcontractors will be the responsibility of Licensee.

**E. Description of Operations Language**

The following language or language substantially in the form of such language must be included in the Description of Operations section of the COI or otherwise indicated on the form:

**Certificate holder is included as an additional insured (including completed operations) as respects all of the required coverages except workers' compensation. All of the required coverages provide a waiver of subrogation in favor of the certificate holder.**

**F. Certificate Holder Detail**

The certificate holder must be shown on the COI as follows:

**Oncor Electric Delivery Company LLC and its affiliates  
Attention: Joint Use Management  
777 Main Street 1033-20  
Suite 770  
Fort Worth, TX 76102**

**G. Reporting of Damage and Accidents**

Licensee agrees to report to the manager of the claims department (address shown below) of the Company in writing as soon as practical all instances of property damage (including, without limitation, damage to any Equipment or Pole), and all accidents or occurrences which may result in injuries to any person, including death, arising out of or relating to this Agreement.

**Oncor Electric Delivery Company LLC  
Attention: Claims  
1616 Woodall Rodgers Freeway  
Dallas, TX 75202**

**H. Maximum Limits of Insurance**

If the insurance obligations required in the Agreement exceed the maximum limits permitted by law or do not otherwise conform with any applicable law, then this Agreement will be deemed amended so as to only require Licensee to provide insurance to the maximum extent allowed by law.

**I. Notice for Legislatively Created Entities**

Notwithstanding the foregoing insurance requirements, if an entity is exempt by law from the provision of insurance or has otherwise been granted by law the ability to self-insure, a cite to the applicable law or regulation creating such exemption, or other verifiable evidence of any exemption from the provision of insurance is required. Such evidence shall be provided to Company prior to the execution of this Agreement and shall be made an attachment hereto.

**ATTACHMENT D**  
**CONTRACTOR AGREEMENT**

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**ATTACHMENT D**  
**DISTRIBUTION POLE LICENSE CONTRACTOR AGREEMENT**  
**BY AND BETWEEN**  
**ONCOR ELECTRIC DELIVERY COMPANY LLC**  
**AND**  
**BRYCOMM, LLC**

**WHEREAS, Oncor Electric Delivery Company, LLC ("Company")** owns certain utility poles ("Poles") on which third parties place equipment pursuant to license agreements granted by Company; and

**WHEREAS, Williamson County Texas ("Licensee")** desires to attach to and thereafter maintain its equipment to Company's Poles pursuant to Distribution Pole License Agreement JUDPLA21-07 between Licensee and Company ("PLA"); and

**WHEREAS, Brymer Communications Services, LLC dba BryComm, LLC ("Contractor")** desires to attach, maintain, replace, relocate, or modify Licensee equipment on Company's Poles on behalf of Licensee ("Work"); and

**WHEREAS,** the PLA requires that any Licensee contractor which performs Work on behalf of Licensee must execute this Agreement as a condition of Company's grant to Licensee of access to Company's Poles;

**NOW, THEREFORE,** in consideration of the covenants, agreements and undertakings set forth below, the Parties agree as follows:

**ARTICLE I: STANDARDS**

Whenever performing any Work on Company's Poles, Contractor shall comply with the safety or engineering standards Company applies to electric distribution and/or communication overhead and underground construction and maintenance, both as effective on the Effective Date of this Agreement and as may be hereafter amended from time to time, which shall include, without limitation:

- (a) the National Electrical Safety Code;
- (b) the rules and regulations of the Occupational Safety & Health Administration ("OSHA");
- (c) other applicable laws or regulations of any governing authority or regulatory body, having jurisdiction over the subject matter of this Agreement; and
- (d) Company's standards and procedures applicable to the Poles, which are reasonably in furtherance of and not expressly inconsistent with the other engineering and safety standards referenced above, as referred to or included in the following website:

<https://www.oncor.com/SitePages/JointUseManagement.aspx>

**ARTICLE II: INSURANCE**

**A. Proof of Coverage**

Contractor shall, at its sole expense and during the term of this Agreement, purchase and maintain insurance in accordance with the requirements of Attachment 1, Contractor's Insurance Requirements.



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**B. Notification of Accident, Injury or Damage**

Contractor will notify the Company manager of claims per the requirements in Attachment 1 as soon as practical of any accidents or occurrences resulting in injuries to any person, including death, or any property damage (including, without limitation, damage to any Licensee equipment or Pole), arising out of or relating to the PLA or this Agreement.

**C. Enhancement of Indemnification**

Nothing in this Article II, or the provision of any insurance required by this Article II, shall affect, limit or otherwise reduce the indemnity obligations provided for in Article III.

**ARTICLE III: INDEMNIFICATION AND CONSEQUENTIAL DAMAGES****A. Contractor's Obligation to Indemnify.**

1. To the fullest extent allowed by Texas law, Contractor shall indemnify, defend, protect and hold harmless Company, its majority investor, Energy Future Holdings Corp., and all subsidiaries and affiliates of Energy Future Holdings Corp., and all officers, directors, shareholders, associates, related firms and entities, employees, servants and agents of both Company and each such subsidiary or affiliate, as well as any contractor, electric utility or other entity authorized by Company to perform work on its Poles on its behalf (the "Indemnified Parties") from and against all claims, losses, expenses, damages, demands, judgments, causes of action, suits and liability, in tort, warranty, contract or any other basis and of every kind and character, including without limitation, claims, losses, expenses, damages, demands, judgments, causes of action, suits and liability on account of personal injuries or death, damage to property or economic loss, except as otherwise expressly provided for herein ("Claims") arising or claimed to have arisen by, through or as a result of any of Contractor's Work, Licensee's equipment, or the acts or omissions of Contractor, Licensee, or any of their respective employees, agents or contractors, in respect to, without limitation, the following:
  - a. Claims arising out of, relating to, caused by or incident to Licensee's or Contractor's use or Work on the Poles;
  - b. Damage to or loss of property (including, without limitation, property of Company, Licensee, or Contractor);
  - c. Injuries or death to persons, including payments made under any worker's compensation law or under any plan for employees' disability and death benefits;
  - d. Any condition of the Poles and/or Licensee's or Contractor's equipment;
  - e. Separate operations being conducted on the premises;
  - f. Licensee's or Contractor's breach of this Agreement;
  - g. Damages or injuries to Licensee's or Contractor's Equipment;
  - h. Any interference with the television or radio reception of, or with the transmission or receipt of telecommunications by, any person which may be occasioned by the installation or operation of Licensee's equipment;
  - i. Additional compensation for use of Company's distribution rights-of-way for an additional use; or

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- j. The imperfection, whether latent or patent, of any Pole, material or equipment furnished by an Indemnified Party.
2. IT IS THE EXPRESS INTENT OF THE PARTIES THAT CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS, INCLUDING ATTORNEYS' FEES, SHALL INCLUDE, WITHOUT LIMITATION, CLAIMS ARISING OR CLAIMED TO HAVE ARISEN BY, THROUGH OR AS A RESULT OF ANY INDEMNIFIED PARTY'S SOLE OR CONCURRENT:
- a. NEGLIGENCE;
  - b. STRICT LIABILITY IN TORT;
  - c. BREACH OF WARRANTY, EXPRESS OR IMPLIED; OR
  - d. OTHER FAULT OF ANY NATURE
3. Article III(A)(1) notwithstanding, in any action, suit, or proceeding involving Claims arising out of or incident to, directly or indirectly, this Agreement, in which both Contractor and any Indemnified Party are made parties and where the Court, in such action, suit, or proceeding, permits a submission to the finder of fact as to the comparative fault or responsibility of Contractor and any Indemnified Party in relation to each other, and in relation to other parties to such action, suit, or proceeding, Contractor and Company hereby agree that they will have their respective measures of comparative fault or responsibility submitted to the finder of fact. Contractor shall not be required to indemnify any Indemnified Party for the liability of any Indemnified Party, as to such Claims for or with respect to any percentage of fault or responsibility found by the finder of fact to be attributable to any Indemnified Party. Further, after such finding is made, Company shall promptly reimburse Contractor for that portion of costs or expenses incurred by Contractor, in defending or responding to such Claims, allocable to the percentage of fault or responsibility found to be attributable to any Indemnified Party.
4. Article III(A)(1) notwithstanding, with regard to any action described in Article III(A)(3) in which the Court, in such action, suit, or proceeding, fails or refuses to permit a consideration by the finder of fact as to the comparative fault or responsibility of Contractor and any Indemnified Party in relation to each other, and in relation to other parties to such action, suit, or proceeding, and where, upon final adjudication of the action, suit, or proceeding, either an Indemnified Party or Contractor is found to be liable to the party or entity initiating such action, suit or proceeding; or upon final settlement and release of Claims, under circumstances in which no such finder of fact has made a determination as to such comparative fault or responsibility, Contractor and the Indemnified Parties agree to submit to mediation the issue of comparative fault or responsibility (whether arising from common law, statute, or this Agreement), as between any Indemnified Party and Contractor. In the event that Contractor and the Indemnified Parties are unable to agree upon their comparative fault or responsibility through that mediation process, then Contractor and the Indemnified Parties agree to submit to arbitration, in accordance with the then prevailing rules of the American Arbitration Association, the issue of comparative fault or responsibility (whether arising from common law, statute, or this Agreement), as between the Indemnified Parties and Contractor. In determining the percentage of such responsibility as between the Indemnified Parties and Contractor, the arbitrator shall consider the percentage attributable to each party with respect to causing in any way, whether by negligent act or omission or otherwise, the personal injury, property damage, death or other harm out of which such Claims arose. With respect to the arbitrator's findings as to the comparative

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fault or responsibility of the parties, Contractor shall not be required to indemnify any Indemnified Party for the liability of any Indemnified Party as to such Claims for or with respect to any percentage of fault or responsibility found by the arbitrator to be attributable to any Indemnified Party. Further, after such finding is made, Company shall promptly reimburse Contractor for that portion of costs or expenses incurred by Contractor, in defending, responding to, or settling such Claims, allocable to the percentage of fault or responsibility found to be attributable to any Indemnified Party.

5. To the extent necessary to permit the Indemnified Parties to enforce the indemnity obligations provided for in Article III, Contractor agrees that, with respect to any Claims, it shall and does, to the fullest extent legally permissible, hereby waive, and shall require each of its insurers to waive, as to the Indemnified Parties, any and all defenses, limitations of liability, or other protections Contractor may have or claim pursuant to the laws of the State of Texas, including, without limitation, those provided for in the Texas Tort Claims Act (Chapter 101 of the Texas Civil Practice and Remedies Code), and the Texas Workers' Compensation Act (Chapter 401 of the Texas Labor Code).

**B. Notice of Claim to Contractor**

Within a reasonable period after receiving or becoming aware of the assertion of any Claim within the scope of Article III, Company shall notify Contractor of the assertion of such Claim. Company's failure to provide such notice shall not, however, alter or, in any manner, impair Contractor's obligations of indemnity, as provided for in Article III.

**C. Waiver of Consequential Damages**

Under no circumstances whatsoever shall any Indemnified Party be liable to Contractor in contract, in tort (INCLUDING SOLE OR CONCURRENT, ACTUAL OR IMPUTED, NEGLIGENCE, OR STRICT LIABILITY), under any warranty, or otherwise for any special, indirect, incidental, or consequential loss or damage of any nature, including, without limitation, for the cost of capital, loss of profits or revenues or the loss of use thereof, attorneys' fees or the cost of purchased or replacement services, and Contractor agrees to indemnify and hold each Indemnified Party harmless from and against such losses or damages.

This Agreement shall be effective on the date signed by the last party to sign as indicated below.

**CONTRACTOR**

DocuSigned by:  
Signature: Mike Baker  
475406232097480

Name: Mike Baker

Title: CFO

Date: 8/2/2021

**COMPANY**

DocuSigned by:  
Signature: Karen Flewharty  
100F7B15B219405

Name: Karen Flewharty

Title: Joint Use Manager

Date: 8/2/2021



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**ATTACHMENT 1****CONTRACTOR'S INSURANCE REQUIREMENTS****A. Coverage Requirements**

Contractor will, at its own expense, maintain in force throughout the period of the Agreement or as otherwise specified and until released by Company, at least the following minimum insurance coverages with insurers acceptable to Company.

- 1) **Commercial General Liability Insurance** including bodily injury and property damage, personal and advertising injury, contractual liability, and including products and completed operations, with minimum limits of one million dollars (\$1,000,000) per occurrence for bodily injury, including death and property damage.
- 2) **Automobile Liability Insurance** for coverage of owned, non-owned and hired autos, trailers or semi-trailers with a minimum combined single limit of one million dollars (\$1,000,000) per accident for bodily injury, including death, and property damage.
- 3) **Excess Liability Insurance** over and above the employers' liability, commercial general liability and automobile liability insurance coverage, with a minimum limit of two million dollars (\$2,000,000) per occurrence. Coverage must replace exhausted aggregate limits under Commercial General Liability and Workers' Compensation (Employers Liability) insurance coverages referenced herein.
- 4) **Workers' Compensation and Employers' Liability Insurance** providing statutory benefits in accordance with the laws and regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for the employers' liability insurance will be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.

**Note:** The required limits of insurance can be satisfied by any combination of primary and excess coverage.

**B. Additional Requirements**

- 1) Each of the policies in section A., above, except workers' compensation and employers' liability insurance, will contain provisions that specify that the policies are primary and will apply without consideration for other policies separately carried and will state each insured is provided coverage as though a separate policy had been issued to each, except with respects to limits of insurance, and that only one deductible will apply per occurrence regardless of the number of insureds involved in the occurrence. Contractor will be responsible for any deductibles or retentions.
- 2) Each of the policies in section A, above, except workers' compensation and employers' liability insurance, if written on a claims-made basis, will be maintained in full force and effect for two (2) years after final acceptance or completion of the Work, whichever is later.
- 3) All policies must be issued by carriers having an A.M. Best's rating of "A-" or better, and an A.M. Best's financial size category of "VIII", or better. The Certificate of Insurance (COI) must show the name and NAIC number of each carrier. If requested in writing by Company, Contractor will make available to Company a certified copy of any or all insurance policies or endorsements required of Contractor.
- 4) Company will receive advance written notice prior to non-renewal or cancellation.
- 5) The COI must show "Oncor Electric Delivery Company LLC and its affiliates" as the certificate holder, and as an additional insured (including completed operations) to the extent Contractor has agreed to indemnify any Indemnified Party or Parties pursuant to the provision of indemnity in the Agreement. The additional insured requirement shall apply to all of the required coverages except workers' compensation. All of the required coverages must provide a waiver of subrogation in favor of the certificate holder.

**C. Limitation of Liability**

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

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**D. Carrier/Agent to Provide Proof of Insurance**

Prior to execution of the Agreement, and when requested by Company, Contractor will instruct its insurance carrier/agent to submit directly to Company valid certificate(s) of insurance, evidencing the coverage required herein. Valid certificates of insurance utilize ACORD 25 form dated 2010/05 or later and other Texas Department of Insurance (TDI) approved forms which properly addresses each requirement referenced in this document (as depicted in Company's Sample COI, available on request). If Contractor's insurance carrier/agent provides to Company a certificate of insurance that is not an ACORD 25 form dated 2010/05 or later, insurance carrier/agent must also submit sufficient documentation directly to Company indicating that certificate is approved by TDI. Company's review of certificates or policies will not be construed as accepting any deficiencies in Contractor's insurance or relieve Contractor of any obligations set forth herein. In addition, Contractor will require each of its subcontractors to provide adequate insurance. Any deficiencies in the insurance provided by subcontractors will be the responsibility of Contractor.

**E. Description of Operations Language**

The following language or language substantially in the form of such language must be included in the Description of Operations section of the COI or otherwise indicated on the form:

Certificate holder is included as an additional insured (including completed operations) as respects all of the required coverages except workers' compensation. All of the required coverages provide a waiver of subrogation in favor of the certificate holder.

**F. Certificate Holder Detail**

The certificate holder must be shown on the COI as follows:

Oncor Electric Delivery Company LLC and its affiliates  
Attention: Joint Use Management  
777 Main Street 1033-20  
Suite 770  
Fort Worth, TX 76102

**G. Reporting of Damage and Accidents**

Contractor agrees to report to the manager of the claims department (address shown below) of the Company in writing as soon as practical all instances of property damage (including, without limitation, damage to any Equipment or Pole), and all accidents or occurrences which may result in injuries to any person, including death, arising out of or relating to this Agreement.

Oncor Electric Delivery Company LLC  
Attention: Claims  
1616 Woodall Rodgers Freeway  
Dallas, TX 75202

**H. Maximum Limits of Insurance**

If the insurance obligations required in the Agreement exceed the maximum limits permitted by law or do not otherwise conform with any applicable law, then this Agreement will be deemed amended so as to only require Contractor to provide insurance to the maximum extent allowed by law.



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COUNTY OF WILLIAMSON §

## 1

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**II.**

**No Agency Relationship:** It is understood and agreed that Company shall not in any sense be considered a partner or joint venturer with The County, nor shall Company hold itself out as an agent or official representative of The County unless expressly authorized to do so by a majority of the Williamson County Commissioners Court.

**III.**

**Compliance with All Laws:** Licensee and Company agree to and will comply with any and all applicable local, state or federal laws with respect to this Addendum.

**IV.**

**Payment:** Company will be compensated as set forth in Company's License Agreement, which is incorporated herein as if copied in full.

Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date The County receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by The County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of The County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

**V.**

**Termination for Convenience:** The Agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving thirty (30) days written notice thereof. In the event of termination, The County will only be liable for its pro rata share of services rendered and goods actually received.

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**VI.**

**County Judge or Presiding Officer Authorized to Sign Agreement:** The presiding officer of Licensee's governing body who is authorized to execute this instrument by order duly recorded may execute this addendum on behalf of Licensee.

WITNESS the signatures of all parties in duplicate originals to be effective as of the date of the last party's execution below.

**Williamson County**

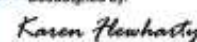
Name: Bill Gravell Jr.

Title: County Judge

Signature:  Bill Gravell (Apr 5, 2022 12:51 CDT)Date: Apr 5, 2022**Oncor Electric Delivery Company LLC**

Name: Karen Flewharty

Title: Joint Use Manager

Signature:  DocuSigned by:  
Karen Flewharty  
10DF7B108219405Date: 2/18/2022