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**COMMUNICATIONS SERVICE PROVIDER**

**POLE ATTACHMENT AGREEMENT**

This Pole Attachment Agreement (Agreement) dated for convenience this 26<sup>th</sup> day of March, 2024 is entered into by and between the DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES, a department organized and existing under the Charter of the City of Los Angeles, a municipal corporation of the State of California (LADWP), as Licensor, and

Stimulus Technologies of California, LLC  
as Licensee, with its principal place of business at 111 W Ocean Blvd.  
4<sup>th</sup> Floor, Long Beach, CA 90802

Licensor and Licensee may be referred to individually as "Party" and collectively as "Parties".

**RECITALS**

Whereas, Licensor owns, operates and maintains Poles (as defined below) within and outside the boundaries of the City of Los Angeles, State of California; and

Whereas, Licensee, in its capacity as a Communications Service Provider, desires to attach its Communication Facilities (as defined below) on certain Poles, subject to compliance with all Applicable Laws and Regulations.

NOW, THEREFORE, in consideration of the premises, mutual covenants, terms, conditions, and obligations set forth in this Agreement, the Parties for themselves, successors and assigns, agree as follows:

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**1.0 DEFINITIONS**

In addition to other terms defined within this Agreement, the following terms, whether in the singular or plural, when used herein and in appendices attached hereto and initially capitalized or, where applicable, in lower case, shall have the meanings specified below:

- 1.1 Above Ground Facilities** shall mean, for purposes of this Agreement only, any monopole, steel-lattice tower or pedestals installed within the public right-of-way.
- 1.2 Agreement** shall mean this Pole Attachment Agreement and all appendices attached hereto which exclude pole mounted antennas and power supplies that are subject to a separate agreement and fee schedule.
- 1.3 Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, or tribunal.
- 1.4 Attachment**, when used in upper or lower case for purposes of this Agreement, shall mean any wire, cable or overlashed cable bundle affixed to any Pole within the usable space and expressly excludes pole mounted antennas and Power Supplies.
- 1.5 Communication Facilities** shall mean any one or more of those facilities that support services related to telephone, telecommunications, data, internet, cable television or other video service, digital subscriber line, Voice Over internet Protocol or other voice communication, broadband, and other entity and communications cables, wires, and Fiber Optics as owned or controlled by Licensee and regulated by Applicable Laws and Regulations. For purposes of any General Order, this term shall be used interchangeably with CIP facilities.

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- 1.6 Communications Service Provider** shall have the same meaning ascribed in Cal. Pub. Util. Code § 9510.5(a) or its successor statute and, for purposes of any General Order, this term shall be used interchangeably with communication infrastructure providers (CIP or CIPs).
- 1.7 CPUC** shall mean the California Public Utilities Commission.
- 1.8 Default** shall have the meaning ascribed in Section 5.3.1.
- 1.9 Effective Date** shall have the meaning ascribed in Section 5.1.
- 1.10 Fiber Optics** shall mean any cable, along with the medium or technology, associated with the transmission of information via a laser transmitter that encodes frequency signals into pulses of light by means of a glass or plastic wire or fiber.
- 1.11 Force Majeure Event** shall mean any one or more of the following occurrences, that are unrelated to such Party's negligence, willful misconduct, breach of any contract, intentional act, or omission or wrongdoing for the Party claiming a force majeure, that either directly or indirectly prevent(s) or obstruct(s) a Party's performance under the terms and conditions of this Agreement resulting from any cause or causes beyond the relevant Party's reasonable control: acts of God; war; acts of terrorism; civil disobedience or riots; embargo; fire; flood; earthquake or other catastrophes; explosions; vandalism; destruction of property; adverse weather conditions; material or facility shortages; acts of government within its sovereign capacity; state of emergencies declared by the national, state, county or city government; insurrections; strikes; lockouts; work stoppages or other labor disturbances.
- 1.12 General Order or G.O.** shall mean those rules and regulations issued by the CPUC that have been embodied within a general order, together with all associated decisions and resolutions thereto.

- 1.13 ground or grounding**, when used in lower case as an adjective or noun, shall refer to a ground connection of sufficiently low impedance (inherently or intentionally obtained) that fault grounds which may occur cannot build up voltages dangerous to connected equipment.
- 1.14 Inspection** shall mean the examination by Licensor of any of its Poles used or occupied by Licensee under this Agreement.
- 1.15 Make-ready services** mean any work that is necessary, within Licensor's sole and reasonable judgment, to prepare any Pole for the attachment of Licensee's Communications Facilities including, without limitation, pre-construction Inspection, engineering studies and work, permitting work, installation, completion and activation of Communications Facilities, post-construction Inspection, and final approval.
- 1.16 Monopole** shall mean any pole erected for the sole purpose to support an antenna or array of antennas.
- 1.17 overlash or overlashing**, whether used as a noun or verb in lower case, shall mean the use of a lashing wire to lash one or more wires or cables to a messenger cable to form a single bundle, subject to the restrictions set forth in Section 6.1. Overlashing is subject to the application process set forth in Section 3.2.1.2.1, but shall not be considered a separate attachment for billing purposes.
- 1.18 Party or Parties** shall have the meaning ascribed in the first paragraph of this Agreement.
- 1.19 Penalty** shall mean any fee, fine, loss, forfeiture or other punishment in the form of a financial payment or value imposed by any regulatory agency or governmental authority.

- 1.20 Permit** shall mean any permit, license, permission, approval or consent required of Licensee by any regulatory agency or governmental authority to install any Communications Facilities or to attach to any Pole located within the public right-of-way.
- 1.21 Person** shall mean any individual, partnership, corporation, joint venture, joint stock company, limited liability company, association, trust, unincorporated association, entity, government or other political subdivision.
- 1.22 Pole or Poles** shall mean any wood, steel, concrete, fiberglass, ductile iron or other electricity distribution pole, excluding street light poles as defined by Calif. Pub. Util. Code § 9510.5(c) or its successor statute or other electricity pole at 50 kilovolts or higher that isn't intended for electricity at lower voltages, whether jointly or solely owned by Licensor.
- 1.23 Power Supply or Power Supplies** shall mean any device specifically designed and used to supply auxiliary power to Communications Facilities on any Pole.
- 1.24 Risers**, shall mean those conductors above ground vertically affixed to any Pole with or without conduit attachments for the purpose of encasing communication wires and cables on overhead line structures. Risers are subject to the application process set forth in Section 3.2.1.2.1, but shall not be considered a separate attachment for billing purposes.
- 1.25 Service Drop** shall mean that portion of an overhead circuit located between any Pole and a building, a structure or a service pole.
- 1.26 Service Risers** shall mean those conductors above ground vertically affixed to any Pole with or without conduit attachments for the purpose of encasing communication wires and cables on overhead line structures that transition from an overhead line structure underground to a building, or structure. Service Risers are subject to the application process set forth in Section 3.2.1.2.1, but shall not be considered a separate attachment for billing purposes.

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- 1.27 SCJPC** shall mean the Southern California Joint Pole Committee.
- 1.28 Third Party or Third Parties** shall mean any Person which is not identified as a Party to this Agreement.
- 1.29 Unauthorized Attachment** shall mean Licensee's Communications Facilities that are attached to any Pole that (i) Licensor has no record of Licensee's written request or application to attach and/or no record of authorization to attach to such Pole, or (ii) is considered an abandoned line pursuant to General Order 95.
- 1.30 Usable space**, when used in upper or lower case, means the space above the minimum grade level on a Pole that can be used for the attachment of wires, cables, and associated hardware.

## **2.0 SCOPE OF LICENSE**

Licensor grants to Licensee a non-exclusive license to use the Poles subject to the terms and conditions of this Agreement.

## **3.0 REQUIREMENTS, PERFORMANCE SECURITY, FEES AND INSPECTIONS BY LICENSOR**

### **3.1 Requirements for Attachment**

#### **3.1.1 Execution of a Pole Attachment Agreement**

Licensee shall not be allowed to attach or remain attached to any Pole unless and until it has executed a pole attachment agreement with Licensor and said Agreement is valid.

#### **3.1.2 Pole Loading Calculations**

Licensee must perform pole loading calculations pursuant to the terms and conditions set forth in Section 3.2.1.2.5.

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**3.1.3 Tagging**

Licensee shall clearly tag or mark all of its Communications Facilities as required by General Order 95 Rule 91.5 or its successor, General Order 128 and other Applicable Laws and Regulations. Licensee's failure to tag or rectify any mislabeled or missing tags or markings of its Communications Facilities as required by any General Order shall be deemed a breach of this Agreement, subject to Section 5.3.1.2.

**3.2 Other Requirements**

**3.2.1.1 For Present-day Attachments**

For all Attachments that are presently affixed to any Pole as a result of a former pole license agreement or business relationship between Licensor and Licensee or Licensee's successor or assign, Licensee shall comply with Section 3.1 and complete the attestation attached as Appendix A to verify the number of Attachments subject to an annual fee.

**3.2.1.2 For New Attachments**

**3.2.1.2.1 Written Request for Attachment**

Licensee shall submit a written request or application to Licensor for each new Attachment that Licensee proposes to affix to any Pole, and each request or application must include a plan of installation and specifications on the Communications Facilities for Licensor's review and approval.

Notwithstanding anything else in this agreement, Licensee may attach Service Drops to poles without prior authorization, so long as the attachment meets

the requirements of G.O. 95 and Licensee submits a simplified request to attach in the form of Attachment D within 45 days after the attachment. Meeting the requirements of G.O. 95 may include Licensee performing a pole loading calculation where required by G.O. 95 to ensure the pole\’s have sufficient remaining capacity to support the addition of the Service Drops.

All Service Risers are subject to the application process set forth in this Section 3.2.1.2.1 and must be approved by Licensor prior to any attachment to a Pole. Licensor will attempt to process and approve applications for Service Risers within thirty (30) calendar days from receipt of Licensee’s request for attachment.

**3.2.1.2.2 Preconstruction Engineering Studies and Field Inspections**

Licensee shall be responsible for performing any and all preconstruction engineering studies and field inspections to ensure that each Pole has proper spacing, bonding, clearances and strength capability for the Communications Facilities proposed for attachment to any Pole. Upon completion of the preconstruction studies and inspections, Licensee shall provide Licensor with a written report of its engineering studies and inspection results for Licensor’s evaluation of approving or denying Licensee’s request or application.

**3.2.1.2.3 Issuance of Authorization or Denial**

Except as expressly provided in Section 3.2.1.2.1, all Communications Facilities and installation methods must be pre-approved by Licensor before Licensee attaches to any Pole. Licensor will issue its written authorization in accordance with Applicable Law and Regulations and only upon Licensor's determination, in its sole judgment which will be reasonably exercised, that (i) the pole loading calculations are consistent with General Order 95 and validate that there is sufficient capacity on the relevant Pole and Licensee's use of such Pole does not compromise any reliability, safety or engineering standards or regulations or other Applicable Laws and Regulations; and (ii) Licensee has met the requirements set forth in this Agreement.

Make ready service as used in this Agreement shall not include work required to cure violations of safety codes or other regulations that exist on a pole prior to Licensee's attachment, and Licensee shall not be responsible for curing such existing violations, provided the violation is not a pre-existing Licensee attachment.

Licensor will deny any application or request for any of the following reasons: (i) there is insufficient capacity on a Pole; (ii) Licensee fails to perform and/or submit pole loading calculations to Licensor; (iii) Licensor has safety, reliability, or engineering concerns with Licensee's Attachment(s) based on design, usable space, engineering studies or pole loading calculations; (iv) Licensor has an approved project related to its utility service for the future use of such Pole(s)

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scheduled within nine months of Licensee's application; (v) Licensee has failed to execute a pole attachment agreement with Licensor; (vi) Licensee has not complied with all Applicable Laws and Regulations; or (vii) Licensee failed to provide its security performance and/or proofs of insurance to Licensor.

**3.2.1.2.4 Make Ready Services**

Licensee shall bear any and all costs for any Make-ready services. Licensee may request a Third Party to perform the Make-ready services required for attachment, except for all inspections, approvals and rearrangements of Licensor's facilities. In cases of rearrangements, Licensor will seek the cooperation of Third Parties who are affected by Licensee's attachment to any Pole and will evaluate on a case-by-case basis how to proceed if a Third Party fails to rearrange its facilities within the time limitations imposed under Applicable Laws and Regulations.

Any and all Make-ready services performed by Licensee's employees, agents, or a Third Party contractor shall comply with the provisions set forth in Section 7.1.4.

**3.2.1.2.5 Pole Loading Calculations**

Prior to submitting any request or application for a new Attachment or overlash, subject to Section 3.2.1.2.1, Licensee shall perform pole loading calculations on each Pole and promptly submit the results to Licensor in two forms: a hard copy and an electronic form in Osmose O-Calc Pro or other software program

specifically approved by Licensor. All pole loading calculations for each new Attachment or overlash must comply with all Applicable Laws and Regulations including General Order 95 and Licensor's requirements as contained in Appendix E. Such data and results shall be maintained by Licensee for the minimum time prescribed by General Order 95 and any other Applicable Laws and Regulations.

**3.3 Reserved Capacity**

Licensor grants access to its Poles based on Licensee's understanding and agreement that Licensor may need to reserve capacity on certain Poles to meet its future electric service use in accordance with Applicable Laws and Regulations. If and when Licensor has sufficient information about its future electric service obligations, Licensor will notify Licensee that capacity on certain Poles have or are in the process of being reserved for future use. In such an event, Licensor will present Licensee with potential options which may include attaching to another Pole or paying for Make-ready services to increase additional Pole capacity.

**3.4 Inspections**

Licensor shall have the right to make Inspections without advance notice to Licensee. If, during any Inspection, Licensor discovers any impairment or condition on Licensee's Communications Facilities that is in contravention of this Agreement, any General Order, or Applicable Laws and Regulations, Licensor shall provide notice to Licensee and Licensee shall cure such condition(s) or impairment(s) within the time prescribed in General Order 95. Subsequently, Licensee shall provide notice to Licensor that such impairment(s) or condition(s) has/have been remedied. Licensee's failure to do so shall be treated as a breach of this Agreement subject to the provisions of Section 5.3.1.2.

**3.5 Notice of Fee Adjustments and Modifications of Terms and Conditions**

- 3.5.1 Annual fees for Attachments under this Agreement are set forth in Appendix B, subject to Section 4.0.
- 3.5.2 Annual fees for Attachments will be invoiced each calendar year with the cycle beginning January 1<sup>st</sup> and ending December 31<sup>st</sup>. For annual billing purposes, the annual fees will be calculated on the number of Attachments on record as of January 1<sup>st</sup> of the relevant calendar year and on the annual fee in effect. During a given calendar year, if Licensee requests new Attachments, or Licensor discovers Unauthorized Attachments, Licensee will be invoiced by Licensor at the prorated annual fee which will be due and payable (i) upon completion of all Make-ready services for new Attachments or (ii) upon Licensor's approval of Licensee's application or request for Unauthorized Attachments subject to the provisions of Section 3.7.4.1.

In the event of a removal of any Attachment from any Pole after January 1<sup>st</sup> of the relevant calendar year, Licensee will not be entitled to any prorated credit or reimbursement of any portion of the annual fee for such removal(s), but Licensor will adjust the number of Attachments for the next annual billing period upon receipt of Licensee's Notice of Removal in accordance with Section 10.2.

**3.6 Performance Security**

- 3.6.1 Based upon the number of Attachments, Licensee shall furnish a cash deposit, surety bond, irrevocable bank letter of credit or other similar security satisfactory to Licensor in the following amounts:

Number of Attachments	Required Security
1 – 50	\$15,000
51-100	\$30,000
101-300	\$75,000
301-1000	\$250,000
1001-2000	\$500,000
2001-3000	\$750,000
>3,000	\$1,000,000

The maximum security is \$1,000,000.00 under this Agreement.

If Licensee chooses a surety bond, irrevocable Letter of Credit, or other similar security deemed acceptable to Licensor as its form of performance security, such instrument shall be issued by a nationally recognized and rated surety company (rated not less than A- by A.M. Best) or bank and shall guarantee Licensee's obligations under this Agreement, and such performance security needs to be reviewed and approved by the Los Angeles City Attorney's Office as to form and legality before accepted by Licensor.

If Licensee expands the number of Attachments during the term of this Agreement, Licensee shall adjust its performance security in accordance with the table identified within this section.

Licensee is obligated to maintain its performance security in the full amount for the term of this Agreement, including any extension.

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3.6.2 Performance security shall be sent to:

Risk Management Section  
Los Angeles Department of Water and Power  
P.O. Box 51111  
JFB, Room 465  
Los Angeles, CA 90051-0100

**With a Copy to:**

Superintendent of Overhead Distribution Design  
Los Angeles Department of Water and Power  
111 N. Hope Street, Room 865  
Los Angeles, California 90012

**3.7 Additional Charges**

**3.7.1 Administrative Services**

All administrative services required for Licensor to process Licensee's attachment applications and notices shall be billed at the current actual, loaded labor rate.

**3.7.2 Accommodation or Rearrangement Services**

If Licensee requires an accommodation or rearrangement on any Pole, such services shall be billed at actual cost.

**3.7.3 Field Engineering Services**

Field engineering services shall be based on current actual, loaded labor rates, and applies to any work performed by Licensor as part of the Make-ready services.

**3.7.4 Unauthorized Attachments**

3.7.4.1 Unauthorized Attachments are prohibited under this Agreement. Licensor may impose a one-time charge equal to three years of the then-current annual fee for each Unauthorized Attachment discovered in the relevant calendar

year, which such charge shall be due and payable forthwith. Additionally, Licensee shall have up to forty-five (45) calendar days from the date of Licensor's written notice to Licensee (or such longer time as agreed by the parties in writing relating to the Unauthorized Attachment to either (i) submit an application to attach in accordance with Section 3.2.1.2.1 or (ii) present sufficient documentation that Licensee has been authorized to attach to the relevant Pole. If Licensee fails to make such application or present documentation to Licensor to refute the assertion of Unauthorized Attachment within the time prescribed in this section, then Licensee shall remove its Unauthorized Attachment within ten (10) calendar days of expiration of the 45-day period. If Licensee timely submits documentation to refute the assertion of Unauthorized Attachment, Licensor will evaluate Licensee's documentation and, if necessary, extend the 45-day period in writing to investigate any discrepancies between the Licensee's and Licensor's records. If Licensee's documentation does not demonstrate that Licensee's Attachment was previously authorized, Licensee shall either submit an application to attach or shall remove its Unauthorized Attachment within thirty (30) calendar days of Licensor's confirmation that the attachment is still deemed to be an Unauthorized Attachment. If Licensee further fails to remove its Unauthorized Attachment in accordance with the time limitations prescribed in this section, then Licensor, subject to Applicable Laws and Regulations, may remove each Unauthorized Attachment without any liability to and without indemnification of Licensee, and the cost for such removal shall be the responsibility of Licensee pursuant to the terms and conditions of this Agreement.

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3.7.4.2 No omission or inaction by Licensor shall be construed as approval of an Unauthorized Attachment. If Licensee submits a request or application pursuant to Section 3.7.4.1 to seek approval of any Unauthorized Attachment, any subsequent authorization by Licensor shall not operate retroactively or constitute a waiver of Licensor's rights, privileges or remedies available under this Agreement or at law or equity. Licensee shall remain subject to all liabilities, obligations and responsibilities related to each Unauthorized Attachment from the date of attachment until (i) the date that Licensee's application for each Unauthorized Attachment is approved by Licensor and said Attachments are incorporated into this Agreement or (ii) the date of removal of any Unauthorized Attachment from any Pole. The provisions of this section shall survive the termination of this Agreement and shall remain enforceable against the Licensee until full removal of all Unauthorized Attachments has been completed.

3.7.4.3 If Licensee makes an application or request within the time prescribed in Section 3.7.4.1 and Licensor subsequently denies its application or request to approve the Unauthorized Attachment, Licensee shall have thirty (30) calendar days to remove such Unauthorized Attachment. If Licensee fails to remove any Unauthorized Attachment in accordance with the time limitations prescribed in this section, then Licensor, subject of Applicable Laws and Regulations, may remove any Unauthorized Attachment without any liability to and without indemnification of Licensee and the cost for such removal shall be the responsibility of Licensee pursuant to the terms and conditions of this Agreement.

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**3.8 Procedures for Competing Requests**

Licensor shall manage any and all competing requests for attachment to or use of the same Pole on a first-come, first-served basis. In the event that Licensee submits a written request or application for attachment to or use of a Pole that has insufficient space, Licensor shall make reasonable efforts to accommodate Licensee's request or application; provided that, Licensee shall pay all costs associated with the accommodation including, without limitation, field engineering services to modify or remove the existing Pole, cost of the new Pole where applicable, transfer or rearrangement of all existing facilities, removal and disposal of the preceding Pole where applicable, and Make-ready services in cases where a replacement Pole is set. Payment of such costs shall not and does not vest Licensee with any ownership interest in any Pole.

**4.0 RATE ADJUSTMENT**

Year 2020 and onwards, Licensor shall set the annual fees for Attachments for calendar years 2020 in accordance with Applicable Laws and Regulations, and update Appendix B accordingly.

**5.0 TERM AND TERMINATIONS**

**5.1 Term**

This Agreement shall become effective upon the last date that the Parties duly executed this Agreement ("Effective Date") and shall remain in effect for a term of ten (10) years, unless terminated sooner in accordance with Section 5.3 or 5.4.

**5.2 Mere License; No Agreement to Hold-Over Tenancy-At Will**

This Agreement is intended by the Parties and shall be and forever remain a mere license which is non-exclusive in nature, whereby the Licensee has no possessory rights, ownership interests, or property rights to or within the Poles and Licensor may license available space on its Poles to Third Parties. This

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Agreement shall be subject and subordinate to the terms and conditions of any Licensor's underlying property rights and obligations including, without limitation, any obligation relating to or arising from the SCJPC, covenant, condition, restriction, easement, reversionary interest, bonds, mortgages and indentures, and other matters, whether or not such instrument has been recorded within official records. Additionally, this Agreement shall be subject and subordinate to any underlying property rights of Licensor to use and maintain any right-of-way for any other operation, activity or business enterprise by Licensor.

Licensee's attachment to or use of any Pole and payment of any fee, rate, charge or other costs shall neither create nor vest any property right of any nature or ownership interest in any portion of Licensor's facilities or Poles. Neither this Agreement nor any authorization issued by Licensor hereunder shall be construed as an assignment of any of Licensor's rights, possession, control and ownership of Licensor's facilities and Poles. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times during the term of this Agreement, be and remain a licensee only.

Notwithstanding any provision within this Agreement, Licensor does not agree to any hold-over tenancy-at will. Subject to Applicable Laws and Regulations, Licensor will require the Licensee execute a new pole attachment agreement within ninety (90) calendar days prior to the expiration of this Agreement to maintain its Attachments on any Pole.

### **5.3 Default; Termination and Remedies**

#### **5.3.1 Default**

Each of the following events or circumstances shall independently constitute a "Default" by the responsible Party ("Defaulting Party"):

**5.3.1.1 Inability to Obtain or Maintain Permits or Other Authorizations**

Failure of Licensee to obtain or maintain any and all Permits, licenses, franchises, certifications, or other authorizations to operate as a Communication Service Provider shall be cause for Licensor, upon discovery, to terminate this Agreement effective immediately.

**5.3.1.2 Breach of Agreement**

A Party shall be deemed in breach of this Agreement ("Breaching Party") if it fails to maintain the truthfulness of its covenants, representations and warranties in Section 7.0, or fails to perform or abide by any material term or condition of this Agreement. Upon discovery of the breach by the non-breaching Party and its written notification of the alleged breach to the Breaching Party, the Breaching Party shall have sixty (60) calendar days to cure the breach ("Cure Period"), unless the Parties mutually agree in writing to extend the time. Failure of the Breaching Party to cure such breach within the Cure Period or a mutually agreed date shall be deemed a Default. In the event of a Default, this Agreement shall automatically terminate on the first calendar day after (i) the Cure Period or (ii) the mutually agreed date, whichever applies, and Licensee shall comply with Section 10.6.

**5.3.1.3 Non-Payment**

Licensee's failure to make timely payments shall be deemed a breach under this Agreement. The Breaching Party shall have thirty (30) calendar days to cure the breach ("Payment Cure Period"), unless the Parties mutually agree in writing to extend

the time. Failure of the Breaching Party to cure such breach within the Payment Cure Period or a mutually agreed date shall be deemed a Default. In the event of a Default, this Agreement shall terminate on the first calendar day after (i) the Payment Cure Period or (ii) the mutually agreed date, whichever applies, and Licensee shall comply with Section 10.6. Licensee's payment obligations for any outstanding fees and any removal costs incurred by Licensor in accordance with Section 10.0 shall survive the termination of this Agreement and shall remain enforceable and collectible against Licensee until full payment is received by Licensor in accordance with its remedies available in law or equity.

If Licensee submits payment under protest, the Parties shall follow the dispute resolution process set forth in Section 17.0 herein to resolve the payment dispute.

**5.3.1.4 Lapse in Insurance or Performance Security**

Licensee's failure to obtain and/or maintain any insurance or performance security, in whole or in part, shall be deemed a breach under this Agreement. The Breaching Party shall have thirty (30) calendar days to cure the breach ("Renewal Cure Period"), unless the Parties mutually agree in writing to extend the time. Failure of the Breaching Party to cure such breach within the time limitations prescribed within this section or a mutually agreed date shall be deemed a Default. In the event of a Default, this Agreement shall terminate on the first calendar day after (i) the Renewal Period or (ii) the mutually agreed date, whichever applies, and Licensee shall comply with Section 10.6.

**5.3.1.5 Insolvency**

In the event that any Party becomes subject to bankruptcy or a custodian, receiver, trustee, intervenor, or other officer under the authority of Chapters 7, 9, 11, or 13 of the Bankruptcy Code as defined in the United States Code or any applicable state law within any jurisdiction, whether voluntary or involuntary, or makes an admission or is determined by a court of law to be insolvent ("Insolvent Party"), the Insolvent Party shall be deemed in Default of this Agreement and either Party shall have the right to terminate this Agreement within thirty (30) calendar days of its notification of any bankruptcy proceeding or any admission or judicial determination of insolvency, as permitted by Applicable Laws and Regulations.

**5.4 Termination**

**5.4.1 Mutual Agreement**

Licensor and Licensee may mutually agree in writing to terminate this Agreement before expiration of the term.

**5.4.2 Changes in Law**

The Parties entered into this Agreement based upon the then-current Applicable Laws and Regulations. If, during the term of this Agreement, any change in law, rule or regulation occurs that causes a material adverse effect on a Party's use, control or management of its Poles or its obligations under this Agreement, then the Party reserves its right to terminate this Agreement upon thirty (30) calendar days' advance written notice which such notice shall include a copy of the new law and the Party's reasons for termination.

**5.4.3 Operational Necessity**

Licensee entered into this Agreement with the knowledge and understanding that Licensor may need to use the space or capacity on or in any Pole or support structure to meet its future electric service use. If, at any time during the term of this Agreement, Licensor determines that any Pole or support structure utilized by Licensee is required for Licensor's current operations in accordance with Applicable Laws and Regulations then Licensor shall have the right to terminate its license for any affected Pole upon ninety (90) calendar days' advance written notice and Licensee shall remove its Communications Facilities at its own expense in accordance with Section 10.0. Licensor will adjust the number of Attachments that will be invoiced for the next billing cycle accordingly.

**5.4.4 Force Majeure**

If a Force Majeure Event occurs, neither Party shall be liable for any failure of performance under this Agreement, excepting Licensee's payment obligations set forth within this Agreement.

In the event that a Force Majeure Event continues without interruption for a period exceeding ninety (90) consecutive days, the affected Party may terminate this Agreement, in whole or in part, upon ninety (90) calendar days' advance written notice to the other Party. Licensee shall comply with Section 10.0 upon termination of this Agreement.

**5.4.5 Termination of All Rights and Privileges**

In the event of termination of this Agreement, all rights and privileges previously granted to Licensee under this Agreement shall automatically terminate and Licensee shall not claim or assert any continuing right or privilege to attach to, occupy or use any Pole pursuant to this Agreement. Licensee understands and agrees that it shall remove its Attachments

and Communication Facilities from any and all Poles promptly in accordance with Section 10.0.

**6.0 RESTRICTIONS ON LICENSE**

**6.1 Overlashing and Cable Bundles**

- 6.1.1 Fiber Optic Cable may be mixed and bundled together with metallic wire cables and coaxial cable, and may be overlashed one-over-the-other on any combination of cables.
- 6.1.2 Licensee shall remove abandoned cables in cable bundle in accordance with General Order 95.
- 6.1.3 Prior to undertaking any new overlash, Licensee shall comply with the requirements set forth in Section 3.2.1.2.

**6.2 Application, Plans, Rules and Regulations**

Any attachment to or use of any Pole by Licensee shall conform to its request or application and the plans submitted to and approved by Licensor. Additionally, any Attachment or use of any Pole shall be made in strict conformity with the guidelines, standards and regulations prescribed by the Los Angeles Department of Water and Power (attached as Appendix E), General Orders 95 and 128, the applicable provisions of the California Occupational Safety and Health Act (Cal-OSHA) and regulations under Title 8 of the California Code of Regulations, and all other Applicable Laws and Regulations.

**6.3 Attachment of Communications Facilities**

Licensee's use of the Poles and anchors shall be limited to supporting its Attachments and Communications Facilities, as pre-approved by Licensor subject to Section 3.2.1.2.1. No other purpose or use of any Pole or anchor is permitted under this Agreement including, without limitation, the grounding of Communications Facilities to Licensor's power distribution system ground wires and grounding rods.

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**7.0 COVENANTS, REPRESENTATIONS AND WARRANTIES**

**7.1** Licensee represents and warrants the following and further covenants that it will continue to abide by the below representations and warranties throughout the term of this Agreement without any interruption:

7.1.1 Prior to the Effective Date of this Agreement, Licensee shall obtain all necessary Permits, licenses, franchises, certifications, or other authorizations ("Operating Permits") for the provisioning and operation of as a Communications Service Provider and shall continually keep, without interruption, its Operating Permits in effect during the term of this Agreement;

7.1.2 Licensee agrees (i) not to erect or install a new pole within twenty-five (25) feet of any Pole without express written consent of Licensor and (ii) not to erect or install any Above Ground Facilities at or within ten (10) feet of any Pole;

7.1.3 Licensee shall tag or clearly mark its Communications Facilities for each new Attachment and any reworking of an existing cable or overlashed cable bundle in accordance with General Order 95, Rule 91.5 or its successor rule;

7.1.4 Licensee's agents and employees or any Third Party hired by Licensee to perform any work on any Communication cable or wire installation on any Pole shall be a qualified contractor and subject to all Applicable Laws and Regulations.

7.1.5 Licensee shall be and continue to be responsible for discovering which areas are designated "Extreme and Very High Fire Threat Zones" in Southern California as defined by California Department of Forestry and Fire Protection's Fire Resources Assessment Program (FRAP) Fire Threat Map and any other map designated by the CPUC, and comply with all Applicable Laws and Regulations, including General Orders 95

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and 128, for every Attachment and associated facilities of any Pole located in those designated areas. For convenience, Licensee may seek information directly from FRAP's website at <http://frap.cdf.ca.gov> or the CPUC website at <http://www.cpuc.ca.gov>;

- 7.1.6 Licensee shall adhere to Licensor's requirements for pole loading calculations (attached hereto as Appendix E) which are incorporated by reference and made a part of this Agreement;
- 7.1.7 Licensee acknowledges and agrees that no exemption or exception will be permitted for any requirement, General Order or regulation identified within this Agreement;
- 7.1.8 Licensee shall comply with all Applicable Laws and Regulations pertaining to health and safety, labor and employment, wage and hours, and licensing regulations which affect Licensee's employees connected to Licensee's obligations and performance under this Agreement;
- 7.1.9 In the event that Licensee's Attachments or other Communications Facilities require a source of electrical energy for power supply, Licensee shall request electrical service from the local utility and will not engage or attempt to engage in self-supplying of electrical service for its Communications Facilities attached to the Poles. For purposes of Power Supply, Licensor or the applicable local utility shall install any and all electric Risers and electric service wires associated with such Risers on any Pole and any service cable, and cable splices to the power cable for the incoming power supply also must be performed by Licensor or the applicable local utility. Licensee is expressly prohibited from making such installations on any Pole subject to this Agreement;
- 7.1.10 Licensee shall use and operate its Attachments and other Communications Facilities in a manner that will not cause interference with Licensor's use or occupation of the Pole or that of any Third Party authorized by Licensor including, without limitation, obstructing access to

the Pole, interference with radio frequency (RF), and mechanical interference. In the event that Licensee receives written notice from Licensor that an interference has occurred by Licensee, Licensee represents and warrants that it shall remedy such interference within forty-eight (48) hours after receipt of written notice from Licensor, unless Licensor grants an extension in writing, such extension not to be unreasonably withheld. Failure of Licensee to remedy any interference within the time prescribed shall be treated as a Default subject to the provisions of Section 5.3.1.2.

7.1.11 Under the terms and conditions of this Agreement, Licensee shall not affix any facilities or equipment on any Pole other than Attachments and equipment approved by Licensor.

## **7.2 Limitation of Liability**

Licensee acknowledges, agrees and accepts that, as to Licensor, it shall at all times remain responsible, liable, and obligated for the condition, safety, reliability, operation, non-function, defectiveness and/or failure of its Attachments and other Communications Facilities, whether caused by the negligence, error, omission or willful misconduct of any Person or any unforeseen event or other occurrence, and Licensee agrees to indemnify Licensor and hold it harmless in accordance with the provisions of Section 12.0 herein.

## **8.0 TAXES AND ASSESSMENTS**

Licensee shall promptly pay any and all taxes, fees, charges or Penalty levied or assessed against its Attachments and other Communications Facilities on any Pole. In the event that Licensor is required to pay any tax, fee or charge levied or assessed against any Pole resulting in whole or in part from Licensee's attachment to or use of said Pole(s), Licensee shall, upon demand, reimburse Licensor for Licensee's pro rata share of said tax, fee, charge or Penalty. Notwithstanding the foregoing sentences, nothing in this section is intended in any way to limit either Party's rights to challenge such levy or assessment.

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**9.0 RELOCATION, REPLACEMENT AND REARRANGEMENT**

- 9.1** In the event that Licensee needs to relocate, replace or rearrange its Communications Facilities or requests Licensor to do so, Licensee must first obtain written approval from Licensor subject to the following conditions:
- 9.1.1 Licensee shall bear the sole responsibility for and pay any and all cost to relocate, replace or rearrange its Attachments and other Communications Facilities;
  - 9.1.2 Licensee may retain a Third Party contractor to relocate, replace or rearrange Licensee's Attachments and other Communications Facilities, subject to Section 7.1.4. Licensee shall be responsible for all compliance, costs, obligations and insurance requirements with a Third Party contractor; and
  - 9.1.3 At all times, Licensee shall be responsible for the acts, errors, omissions, and willful misconduct of its Third Party contractors and shall indemnify Licensor for same in accordance with Section 12.0; and
  - 9.1.4 Licensee understands and agrees that it is not entitled to any reimbursement by Licensor, or any compensation for added value to Licensor or any Third Party associated with Licensor, for use of any additional space resulting from Licensee's request or need for any relocation, replacement, accommodation or rearrangement of its Attachments and other Communications Facilities.
- 9.2** In the event Licensee requests Licensor to relocate, replace or rearrange any Pole and related facilities to accommodate Licensee's Attachments and Communications Facilities, Licensee shall:
- 9.2.1 Make a written request or application to Licensor stating the nature and reason for the relocation, replacement or rearrangement on any Pole and related facilities; and

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9.2.2 Upon approval of its written request or application, Licensee shall cooperate with Licensor in Licensor's performance of the relocation, replacement or rearrangement on its Poles and related facilities.

9.3 In the event of a street improvement or other improvement project which necessitates Licensor to relocate, replace or rearrange any Pole and related facilities, the following shall apply:

9.3.1 Licensor, within its sole discretion, shall direct Licensee in writing to make a temporary transfer of Licensee's Attachments and other Communication Facilities in order to expedite the improvement upon fourteen (14) calendar days of written notification; and

9.3.2 Licensee shall be solely responsible for making the permanent relocation, replacement or rearrangement of its Attachments and other Communications Facilities to Licensor's new Poles.

#### 10.0 REMOVAL OF COMMUNICATION FACILITIES

10.1 Licensor shall provide Licensee with advance written notice of any Pole being removed from service for any reason. Licensee understands and agrees that it is required to remove all Attachments and other Communications Facilities within ninety (90) calendar days from its receipt of such notice.

10.2 Licensee may at any time remove its Attachments and other Communications Facilities from any Pole and, in each case of removal, Licensee shall notify Licensor before December 1<sup>st</sup> of the calendar year in which the removal occurs ("Notice of Removal") to avoid inclusion of such removed Attachments in the next billing cycle and failure to notify Licensor accordingly will not excuse or relieve Licensee of any obligation identified within the next annual invoice. All Poles shall be restored to pre-licensing status less ordinary wear and tear and loss by casualty. Removal of any Attachment and other Communications Facilities shall automatically terminate Licensee's rights to access and use said Pole(s) under this Agreement.

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- 10.3** Any and all costs related to the removal of Attachments and other Communications Facilities from Poles shall be the sole responsibility of Licensee.
- 10.4** If Licensor requested removal under Section 10.1 or Licensee tendered a Notice of Removal to Licensor pursuant to Section 10.2 but Licensee fails to remove its Attachments and other Communications Facilities within the time specified or prescribed, Licensee shall be considered to be in Default if Licensee fails to remove Licensee's Attachments and other Communications Facilities from any Pole within sixty (60) calendar days after receiving written notice for such removal from Licensor and the provisions of Section 5.3.1.2 shall apply.
- 10.5** In the event Licensee fails to or refuses to remove its Attachments and other Communications Facilities from the Poles and abandons its Attachments and other Communications Facilities, Section 11.0 shall apply.
- 10.6** If this Agreement terminates in its entirety due to any events identified within Sections 5.3 or 5.4, Licensee has one hundred eighty (180) calendar days to remove its Attachments and other Communications Facilities, subject to the terms and conditions of this Agreement and Applicable Laws and Regulations.

**11.0 ABANDONMENT OF COMMUNICATION FACILITIES**

**11.1 Abandonment after an Event of Default**

In the event of a Default and Licensee is the Defaulting Party, Licensee shall remove its Attachments and other Communications Facilities at Licensee's sole risk and expense. If Licensee fails to remove its Attachments and other Communications Facilities within sixty (60) days, Licensor may remove Licensee's Attachments and other Communications Facilities, in which event Licensee shall reimburse Licensor for the expense thereby incurred or alternatively make a claim against Licensee's performance security. In the event that Licensor is required to remove Licensee's Attachments and other Communication Facilities, Licensor shall treat Licensee's Attachments and other

Communications Facilities as abandoned property and may discard said property without any consideration of salvage value.

**11.2 Abandonment upon Termination**

In the event that this Agreement is terminated by operation of its terms and Licensee fails to or refuses to remove its Communication Facilities from the Poles and abandons its Attachments and Communication Facilities from Licensor's Poles, Licensor shall remove Licensee's Attachments and Communication Facilities at Licensee's sole risk and expense in which event Licensee shall reimburse Licensor for the expense hereby incurred. Licensor shall become the sole and absolute owner of Licensee's Attachments and Communication Facilities in which title to the Communication Facilities shall vest in Licensor as of the date of removal.

**12.0 INDEMNIFICATION**

**12.1** In the performance of this Agreement Licensee, and any of its Third Party contractors acting for or on behalf of Licensee, shall indemnify and hold harmless, and defend LADWP and other owners of an interest in or of facilities on LADWP Poles, and each of them, and their respective Boards, officers, employees, administrators, executors, successors, and assigns, against and from any and all claims, demands, causes of action, damages, costs, or liabilities, in law or in equity, of every kind and nature whatsoever, indirectly or directly resulting from or caused by (a) the installation, maintenance, operation, ownership, use, or removal of Attachments and other Communications Facilities on or from LADWP Poles, or (b) any interruption, discontinuance, or interference with Licensee's service to any of its subscribers occasioned or claimed to have been occasioned by any action of LADWP or each other such owner, or any two or more of them.

**12.2** Subject to Section 12.1 and other applicable provisions of this Agreement, Licensee shall pay and satisfy any such judgment or decree which may be rendered against LADWP, or any other such owner, or any two or more of them,

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or their respective Boards, officers, employees, administrators, executors, successors, or assigns, in any and all suits, actions, or other legal proceedings which may be brought or instituted by Third Parties against LADWP, or any such owner, or any two or more of them, or their respective Boards, officers, employees, administrators, executors, successors, or assigns, on any such claim, demand, or cause of action; and further, Licensee shall reimburse LADWP and each other such owner for any and all expense incurred by each of them in connection therewith; provided that, Licensee has adequate notice of such action and an opportunity to defend.

**12.3** LADWP shall not be indemnified under this Section 12.0 for liability or loss resulting from its own gross negligence or willful misconduct.

**13.0 INSURANCE REQUIREMENTS**

**13.1 Additional Insured Status Required**

Licensee shall procure at its own expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on the attached Contract Requirement page (attached as Appendix C). The specified insurance shall also, either by provisions in the policies, by City of Los Angeles's own endorsement form or by other endorsement attached to such policies, include and insure City of Los Angeles ("City"), its Department of Water and Power ("Department"), its Board of Commissioners ("Board"), and all of its officers, employees and agents, their successors and assigns, as additional insureds (except for Professional Liability and Workers' Compensation), against the area of risk described herein as respects Licensee's acts or omissions in its performance of the Agreement, use and occupancy of Poles hereunder or other related functions performed by or on behalf of Licensee. Such insurance shall not limit or qualify the liabilities and obligations of the Licensee assumed under this Agreement.

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**13.2 Severability of Interests and Cross Liability Required**

Each specified insurance policy (other than Workers' Compensation and Employer's Liability and Property coverages) shall contain a Severability of Interest and Cross Liability clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Liability Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."

**13.3 Primary and Non-Contributory Insurance Required**

All such insurance shall be Primary and Noncontributing with any other insurance held by City's Department where liability arises out of or results from the acts or omissions of Licensee, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Licensee. Any insurance carried by the Department which may be applicable shall be deemed to be excess insurance and the Licensee's insurance is primary for all purposes despite any conflicting provision in the Licensee's policies to the contrary.

**13.4 Deductibles Subject to Department's Discretion**

Deductibles and/or self-insured retentions shall be at the sole discretion of the Risk Manager of the Department ("Risk Manager"). The Department shall have no liability for any premiums charged for such coverage(s). The inclusion of the Department of Water and Power, its Board, and all of its officers, employees and agents, and their agents and assigns, as additional insureds, is not intended to, and shall not, make them, or any of them a partner or joint venturer with Licensee in its operations.

**13.5 Proof of Insurance for Renewal or Extension Required**

At least ten (10) days prior to the expiration date of any of the policies required on the attached Contract Requirement page, documentation showing that the

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insurance coverage has been renewed or extended shall be filed with the Department. If such coverage is canceled or reduced in coverage, Licensee shall, within fifteen (15) days of such cancellation or reduction of coverage, file with the Department evidence that the required insurance has been reinstated or provided through another insurance company or companies.

### **13.6 Submission of Acceptable Proof of Insurance and Notice of Cancellation**

Licensee shall provide proof to the Department's Risk Manager of all specified insurance and related requirements either by production of the actual insurance policy(ies), by use of Department's own endorsement form(s), by other written evidence of insurance acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager and the Office of the City Attorney. The documents evidencing all specified coverages shall be filed with the Department prior to Licensee beginning operations or occupying the premises hereunder. Said proof shall contain at a minimum, the applicable policy number, the inclusive dates of policy coverages, the date the protection begins for the Department of Water and Power, and the insurance carrier's name. It shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, material reduction in coverage or non-renewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) calendar days prior to the effective date thereof. The notification shall be sent by registered mail to: Risk Manager Section – Los Angeles Department of Water and Power, Post Office Box 51111, JFB Room 465, Los Angeles, California 90051-0100.

### **13.7 Claims-Made Insurance Conditions**

Should any portion of the required insurance be on a "Claims Made" policy, the Licensee shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended

three (3) years discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

**13.8 Failure to Maintain and Provide Proof as Cause for Termination**

Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which the Department may immediately terminate or suspend the Agreement.

**13.9 Periodic Right to Review/Update Insurance Requirements**

The Department and Licensee agree that the insurance policy limits specified on the Contract Requirement page (attached as Appendix C) may be reviewed for adequacy annually throughout the term of this Agreement by the Risk Manager/City Attorney, who may thereafter require Licensee to adjust the amounts and types of insurance coverage however the Risk Manager/City Attorney deems to be adequate and necessary. City reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance, including applicable license and ratings.

**13.10 Specific Insurance Requirements**

See Appendix C, "Contract Insurance Requirements".

**14.0 DISCLAIMERS**

**14.1 Content of Data, Cable or Communications**

Licensor disclaims any and all liability or responsibility whatsoever for the content (including the nature of materials, opinions and views) of any and all data or communications transmitted in, across, on, through or over the Attachments and other Communications Facilities attached to the Poles which are subject to this Agreement. Licensee agrees that it shall make no claim whatsoever against Licensor relating to the content of any data or communications transmitted in, across, on, through or over the Attachments and other Communications

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Facilities, and Licensee shall defend, indemnify and hold Licensor harmless from any and all claims of any type or nature whatsoever by any end user or Third Party related to the transmission of such data or communications; provided that, Licensee has adequate notice and an opportunity to defend.

#### **14.2 Contractual Relationships with End Users or Third Parties**

Licensor disclaims any and all liability or responsibility whatsoever for any services provided to any of Licensee's end users or Third Parties, including without limitation, uninterrupted service, quality of service, and non-interference with service regardless if such interruption, interference or deficiency in quality is caused by or related to any Pole.

#### **15.0 PROPRIETARY INFORMATION**

Licensor and Licensee agree that if either Party (the "Disclosing Party") provides confidential or proprietary, non-public information that is consciously marked as "confidential" or "proprietary" or identified as such prior to oral communications ("Proprietary Information"), to the other Party (the "Recipient Party"), such Proprietary Information shall be held in confidence to the extent permitted by law, and the Recipient Party shall use, maintain and store the Proprietary Information with the standard of care and protection permitted by law in effort to prevent disclosure or unauthorized use by any Third Party. For purposes of this Agreement, Proprietary Information shall not include information which (i) at the time of disclosure is fully within the public domain through no breach of this Agreement by either Party, (ii) is shown by evidence to have been, and in fact has been, known or independently developed by and is currently in the possession of either Party prior to disclosure hereunder, (iii) was or is acquired by either Party from a Third Party who did not breach any obligation of confidentiality by disclosing it to either Party, or (iv) is required to be disclosed to comply with any Applicable Laws and Regulations; provided however, both Parties shall give timely notice of any such disclosure pursuant to this section.

**16.0 NOTICES**

All notices, request, report and other communications related to this Agreement shall be made in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by courier service, by registered or certified mail (postage prepaid, return receipt requested), or by facsimile to the respective Party as follows:

**LICENSOR:**

Superintendent of Overhead Distribution Design  
Los Angeles Department of Water and Power  
111 North Hope Street, Room 865  
Los Angeles, California 90012-2607  
Facsimile (213) 367-3680

**LICENSEE:**

Nathan Whittacre, CEO  
Stimulus Technologies of California, LLC  
111 West Ocean Blvd. 4<sup>th</sup> Floor  
Long Beach, CA 90802  
Fax (702) 952-2062

**17.0 DISPUTE RESOLUTION**

For any payment dispute subject to Section 5.3.1.3, Licensee shall submit a written dispute to Licensor's representative identified in Section 16.0 herein. Licensor will set up a meeting or conference call with Licensee within ten (10) calendar days of receipt of such notice. Each Party's representative will discuss the allegations made within the written dispute and attempt to resolve the dispute. If the representatives are unable to reach a resolution, the written dispute will be escalated to the Director of Power System Transmission and Distribution on behalf of Licensor and Nothon Whitacre, CEO on behalf of Licensee. Each Party's manager will engage in negotiations to resolve the payment dispute. If resolution is not reached between the Parties' managers within forty-five (45) calendar days from date of Licensee's written notice of dispute, then each Party preserves its rights to pursue any remedy available at law or in equity.

**18.0 MISCELLANEOUS**

**18.1 Captions and Use of Gender**

The captions and section headings appearing in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement in any way.

Whenever used throughout this Agreement, the singular form shall include the plural form, the plural form shall include the singular form, and the use of any gender shall include all genders.

**18.2 Governing Law**

This Agreement was made and entered into in the City of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California and the City of Los Angeles, without regard to conflict of law principles.

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**18.3 Venue**

All litigation arising out of, or relating to this Agreement, shall be brought in a State or Federal Court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

**18.4 Waivers**

Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter arising in connection therewith. Any delay, short of the statutory period of limitation in asserting or enforcing any right, shall not be deemed a waiver of such right.

**18.5 Assignments**

Neither Party shall assign, transfer, convey or otherwise delegate any of its rights or obligations under this Agreement without the other Party's advanced written consent, which such consent shall not be unreasonably withheld or delayed. In addition, Licensee shall not assign this Agreement to any Third Party unless the following conditions have been met: (i) the assignee Third Party assumes in writing all rights, duties, liabilities and obligations of the assignor Licensee under this Agreement; and (ii) the assignee Third Party meets the then-existing credit rating requirements of Licensor.

**18.6 Amendments**

Subject to Applicable Laws and Regulations, modification to, change of, or variation from this Agreement and any appendix thereto shall be in writing and executed by the Parties' duly authorized officers or representatives excepting any update to Appendix B required under Section 4.0.

**18.7 Further Assurances**

Each Party acknowledges that no waiver, amendment, release or modification of any provision of this Agreement shall be implemented by conduct, custom or course of dealing, but rather shall be implemented exclusively by a written instrument duly executed by the Parties.

**18.8 No Third Party Beneficiaries**

The Parties do not intend to create rights in, or to grant remedies to, any Third Party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

**18.9 Prior Agreements Superseded**

In the event that prior agreements existed between the Parties, this Agreement shall supersede and replace any and all previous agreements entered into by and between Licensor and Licensee with respect to the subject matter stated within this Agreement.

**18.10 Entire Agreement**

This Agreement contains the entire agreement and understanding between the Parties, their representatives and employees as to the subject matter of this Agreement. It is understood by the Parties that the terms and conditions of this Agreement are unique to the provisions described herein and shall not, therefore, be considered as precedent for any future provision or agreement between the Parties or among Licensor and Third Parties. Each Party represents and warrants that it is free to enter into this Agreement and to perform each of the terms, covenants, representations, warranties, conditions and obligations stated herein.

**18.11 Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and either Party hereto may execute this Agreement by signing any such counterparts.

**18.12 Savings Clause**

Subject to Section 5.4.2, if any term, covenant, condition or provision of this Agreement is later held to be invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other terms, covenants, conditions and provisions of this Agreement shall nevertheless remain in full force and effect; provided that, the economic or legal substance of the transaction originally contemplated does not become adverse to either Party, and a court of final jurisdiction does not find that the invalid term, covenant, condition or provision is inseparable from the remaining terms, covenants, conditions and provisions.

19.0 SIGNATURES

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom each signs. This Agreement is hereby executed as of this 6<sup>th</sup>, day of August, 2024.

DEPARTMENT OF WATER AND POWER OF  
THE CITY OF LOS ANGELES BY  
BOARD OF WATER AND POWER COMMISSIONERS OF  
THE CITY OF LOS ANGELES

Dated: \_\_\_\_\_

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

Printed Name: Janisse Quinones

Title Chief Executive Office and Chief Engineer

APPROVED AS TO FORM AND LEGALITY  
HYDEE FELDSTEIN SOTO, CITY ATTORNEY

AUG 05 2024  
BY Syndi Driscoll  
SYNDI DRISCOLL  
DEPUTY CITY ATTORNEY

And: \_\_\_\_\_

Chante L. Mitchell, Board Secretary

LICENSEE

Dated: 8/6/2024

By: [Signature]

Printed Name: Nathan Whittacre

Title: CEO

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APPENDIX A

**ATTESTATION FOR EXISTING POLE ATTACHMENTS**

**EXCLUDING POWER SUPPLIES**

I, the undersigned, am an authorized representative acting on the behalf of Licensee,  
Stimulus Technologies of California, LLC, and hereby attest that  
 our company records indicate that Licensee has 0 number of Attachments to  
 Licensor's Poles, excluding power supplies, at the time of execution of this Pole  
 Attachment Agreement dated for convenience this 26<sup>th</sup> day of  
March, 2021. Licensee further attests that it shall cooperate with  
 Licensor and make its business records available for inspection to substantiate the  
 number of Attachments identified by the undersigned in this attestation.

Dated: 3/26/2024 By: [Signature]  
 Printed Name: Nothon Whittacre  
 Title: CEO

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**APPENDIX B**

**ANNUAL FEES AND OTHER CHARGES**

<b>Annual Fee per each Attachment</b>	Calendar Year 2020: \$33.52 Calendar Year 2021: \$34.19 Calendar Year 2022: \$34.87 Calendar Year 2023: \$35.57 Calendar Year 2024: \$36.28 Calendar Year 2025: \$37.01 Calendar Year 2026: \$37.75 Calendar Year 2027: TBD Calendar Year 2028: TBD Calendar Year 2029: TBD
<b>Field Engineering Rates</b>	Current actual, loaded labor rate
<b>Administrative Services</b>	Current actual, loaded labor rate
<b>Rearrangement Services</b> which includes equipment, rentals, indirect costs and other project expenses	Current actual, loaded labor rate
<b>Contractors</b>	Actual costs
<b>Other Labor Expenses</b>	Current actual, loaded labor rate

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**APPENDIX C**

**CONTRACT INSURANCE REQUIREMENTS – DEPARTMENT OF WATER AND  
POWER FOR CONTRACTORS, SERVICE PROVIDERS, VENDORS, AND TENANTS**

**(see attachment)**

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**APPENDIX D**  
**COMMUNICATION SERVICE DROP WIRE REQUEST**

(see attachment)

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**APPENDIX E**  
**POLE LOADING INFORMATION**

(see attachment)