



POLE LICENSE AGREEMENT

THIS AGREEMENT, made as of the Month, date, year, by and between CONSUMERS ENERGY COMPANY, a Michigan corporation, having its principal office in the City of Jackson, Michigan, hereinafter called "the Owner," and Attaching Company Name located at Address, City, State, Zip.

WITNESSETH:

WHEREAS, the Licensee represents that it is the holder of all necessary governmental permits to erect and maintain aerial cables, wires and associated equipment in the streets, alleys and other public places of the State of Michigan hereinafter called "the municipality," for the purpose of transmitting communications; and

WHEREAS, the Licensee desires to attach such aerial cables, wires and associated equipment to pole(s) of the Owner located in said municipality in order to avoid expensive and unnecessary duplication of facilities; and

WHEREAS, the Owner is willing to permit, to the extent it may lawfully do so, the attachment of such aerial cables, wires and associated equipment to its poles in the municipality for the above stated purposes, upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of their respective undertakings herein, the parties agree as follows:

ARTICLE I AVAILABILITY OF POLES FOR LICENSEE'S ATTACHMENTS

To the extent permitted by law, by the provisions of presently existing joint-use contracts, and by the terms of all necessary permits, licenses, easements, franchises or consents from property Owners and governmental authorities having jurisdiction, all of the Owner's poles in the municipality shall be available to the Licensee for the attachment of aerial cables, wires and associated equipment constituting a portion of the Licensee's system in accordance with the terms of this agreement, if and to the extent that such use, in the Owner's judgement, will not interfere with the Owner's service requirements, including, but not by way of limitation, considerations of safety and economy. No payment for facility alterations (including, but not limited to, contributions toward the cost of replacement poles) or use of the Owner's poles under this agreement, however extended, shall create or v in the Licensee any ownership or property rights in such facilities or poles, and the Licensee's rights in said poles shall be and remain a mere license.

ARTICLE II SPECIFICATIONS

All of the Licensee's cables, wires and associated equipment herein provided for shall be erected and maintained in accordance with the requirements, specifications and other applicable rules or orders of the Michigan Public Service Commission and other authorities having jurisdiction, and such other specifications, not less restrictive than the foregoing, as the parties may agree upon from time to time. Drawings showing certain of such requirements and specifications are attached hereto and made a part hereof as Exhibit A.

All of the Licensee's cables, wires and associated equipment shall be erected and maintained by properly trained, skilled workers who are fully qualified to perform such work in proximity to electric lines and equipment.

The Owner may specify the location on its pole or poles at which attachments are to be made. In the event an attachment at the location specified by the Owner would violate any applicable law, rule, regulation, ordinance or order of any governmental authority or regulatory body, including the Michigan Public Service Commission, the Licensee shall so advise the Owner and obtain its authorization to make such attachment at a location which does not violate any such law, rule, regulation, ordinance or order. It shall be the sole responsibility of the Licensee to determine if the making or maintaining of attachments at the specified location or locations will violate any such law, rule, regulation, ordinance or order. No attachment shall be made or maintained at a location that violates any such law, rule, regulation, ordinance or order.

ARTICLE III APPLICATION AND PERMIT PROCEDURE

Whenever the Licensee desires to make an attachment to any pole or poles of the Owner, the Licensee shall prepare and submit to the Owner three (3) copies of an application (accompanied by the application fee required by Paragraph (1) of Article VII hereof) on an Application and Permit form, a copy of which is attached hereto and made a part hereof as Exhibit B, including any sketch and other information necessary to clearly show the location of such pole or poles. As soon as reasonably possible after a properly prepared and submitted Application and Permit is furnished to the Owner, the Owner shall either deny or grant permission for such attachment as follows:

- (1) If, in the Owner's judgement, such pole or poles or any of them are unavailable for attachment, such Application and Permit shall be ineffective, and the Owner shall notify the Licensee in writing of such unavailability.
- (2) If, in the Owner's judgement, such pole or poles are available for attachment, and the Licensee is not to be charged for any cost of facility alterations in connection

therewith, the Owner shall complete, execute and furnish to the Licensee one (1) copy of such Application and Permit, which shall thereupon be effective as a Permit.

- (3) If, in the Owner's judgement, such pole or poles are available for attachment, and the Licensee is to be charged for the cost of facility alterations in connection therewith, the Owner shall complete, execute and furnish to the Licensee two (2) copies of such Application and Permit, setting forth the estimated cost of such facility alterations. The Licensee, if it desires to proceed with the permitted attachments subject to payment of the cost of such facility alterations as provided in Article V hereof, shall endorse its authorization of such facility alterations on the Application and Permit and return one (1) copy thereof to the Owner within ten (10) days after the time the executed copies of the Application and Permit were furnished to the Licensee by the Owner. Such Application and Permit shall be effective as a Permit upon the furnishing of written notice to the Licensee that all necessary facility alterations have been completed. If the Licensee does not return the Application and Permit containing its endorsed authorization of such facility alterations within the time specified herein, such Application and Permit shall be ineffective.

The Licensee shall make no attachments to any pole of the Owner as to which there does not exist an effective Permit, and as to which all necessary permits, licenses, easements, franchises and consents have not been secured by the Licensee as required by or pursuant to Article IV hereof.

If any cable, wire or equipment of Licensee shall be found on a pole for which no permit is outstanding, the Owner, without prejudice to its other rights or remedies under this agreement or otherwise, may (1) impose a charge, and (2) require Licensee to remove such cable, wire or equipment forthwith or the Owner may remove them without liability 30 days after having given written notice to the Licensee of their unauthorized attachment and the expense of removal shall be borne by Licensee. In the latter event, the Licensee shall reimburse the Owner upon demand for the cost to the Owner of such removal and shall indemnify and save the Owner harmless from and against all loss, liability or expense (including, but not limited to, claims of third parties) resulting from such unauthorized attachment and the removal thereof. For the purpose of determining the charge, in the absence of satisfactory evidence to the contrary, the unlicensed use shall be treated as having existed for a period of three (3) years prior to its discovery; and the fee, at the appropriate rate as shown in Article VII hereof, for each year and for any portion of a year contained in such period, shall be due and payable forthwith. Any such fee imposed by the Owner shall be in addition to its rights to any other sums due and payable and to any claims or damages under this agreement or otherwise. No act or failure to act by the Owner with regard to said fee or said unlicensed use shall be deemed as a ratification, or the licensing, of the unlicensed use, and if any permit should subsequently be issued, after application

and payment of the application fee therefor, said permit shall not operate retroactively or constitute a waiver by the Owner of any of its rights or privileges under this agreement or otherwise.

ARTICLE IV RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

The Licensee shall be responsible for securing from property owners and governmental authorities having jurisdiction all necessary permits, licenses, easement, franchises and consents relating to the Licensee's erection and maintenance of aerial cables, wires and associated equipment at any pole location proposed to be utilized, and for submitting satisfactory evidence of the same to the Owner if requested so to do, before making an attachment at such pole location.

Upon the execution of this agreement, the Licensee shall submit to the Owner satisfactory evidence of the Licensee's right to erect and maintain aerial cables, wires and associated equipment in the streets, alleys and other public places of the municipality.

ARTICLE V FACILITY ALTERATIONS FOR LICENSEE'S ATTACHMENTS

If the Licensee, by endorsement of an Application and Permit as provided in Article III hereof, indicates its desire to make a pole attachment, which in the Owner's judgement will require a facility alteration, such endorsement shall constitute authorization for the making of the alteration by the Owner or others. The alterations, including replacement of inadequate poles, shall be made with reasonable promptness after receipt of the Licensee's authorization, and notice of completion shall be given to the Licensee within ten (10) days after completion. The Licensee shall pay the Owner for such facility alterations in accordance with Article VII hereof.

The Licensee shall also reimburse the Owner or Owners of any other facilities attached to the existing pole pursuant to joint use or pole license agreements for their respective costs of altering their attached facilities, including where applicable the cost of transferring said facilities from the existing pole to the replacement pole, except to the extent, if any, that such Owner(s) has agreed to pay for same.

The time and manner of the making of any such payment to the Owner or Owners of any such facilities shall be as agreed between the Licensee and said Owner or Owners.

ARTICLE VI MAINTENANCE OF LICENSEE'S ATTACHMENTS AND INSPECTION

The Licensee shall make and maintain its attachments in safe condition and in thorough repair, at its own expense, and in such manner, suitable to the Owner, that said attachments will not conflict

with the use of poles by the Owner or other authorized parties, or interfere with the operation or use of facilities which are or which may from time to time be placed thereon. The Licensee shall at any time, at its own expense, upon notice from the Owner, relocate, replace or renew its facilities placed on said poles, transfer its facilities to replacement poles, or perform any other work in connection with said facilities: (a) that may be required by the Owner in the maintenance, replacement, removal or relocation of said poles or the facilities which are or which may from time to time be placed thereon, or (b) that may be required for the service needs of the Owner. If the Licensee neglects or refuses to comply with the directives of such a notice, or in cases of emergency, the Owner shall have the right to remove, relocate, replace or renew the facilities placed on said poles by the Licensee, transfer such facilities to replacement poles, or perform any other work in connection with said facilities and the Licensee shall, on demand, reimburse the Owner for the costs thereby incurred as a result of the Licensee's failure or refusal to act in compliance with such notice.

The Licensee shall be solely responsible for eliminating any and all inductive interference. The Owner will, if requested by the Licensee, cooperate with the Licensee in eliminating such interference; however, the Licensee shall pay all costs of any work or operations performed by the Owner to eliminate or reduce inductive interference.

The Owner reserves the right to inspect each new installation and to make periodic inspections of any part of the cable, wires and equipment of Licensee on the Owner's poles and in the vicinity thereof; and the Licensee shall reimburse the Owner for the expense of such inspections. Inspections will not be made more often than once a year unless, in the Owner's judgement, such inspections are required for reasons involving safety or are required because of a violation of the terms of this agreement by Licensee. The charge for the inspection shall be in accordance with the terms and conditions of Article VII hereof. The making of such inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this agreement.

ARTICLE VII FEES AND CHARGES

The provisions of the Owner's Pole Attachment and Conduit Use Rate "PA" ("Rate PA") pertaining to fees, charges and payments, including any amendments thereto, which may be made from time to time, shall apply to this agreement to the same extent as if this agreement were governed by said Rate PA.

- (1) The Licensee shall pay the Owner an Application Fee in the amount provided for in Rate PA, as the same may be amended from time to time, for each application for a license. Said Fee must accompany the Application.
- (2) The Licensee shall pay the Owner an Annual Fee in the amount provided for in Rate PA, as the same may be amended from time to time. For each pole covered by a Permit granted after July 1 of any contract year, the Licensee shall, within twenty-one (21) days after issuance of the Permit for said pole, pay the pro rata portion of the Annual Fee for the remainder of the contract year.
- (3) The Licensee shall pay the Owner:
 - (a) The Owner's cost (including, but not limited to, the cost of inspection, engineering, rearranging the existing facilities, guying of the pole, tree trimming and/or replacement of the pole) of making alterations of its facilities to permit an attachment by the Licensee when the Licensee has authorized such alteration pursuant to this agreement. Consumers' cost, for purposes of this and other provisions of this Agreement shall be determined in accordance with Consumers' regular and customary method of determining such cost.
 - (b) The Owner's cost of making any inspection or inspections pursuant to Article VI hereof.
- (4) In the event that any present or future Federal Law, Executive Order or Administrative Rules and Regulations pertaining to Economic Controls prevent the Owner from charging all or any part of the Application Fee provided for in Paragraph (1) of this Article VII or any part of the Annual Fee provided for in Paragraph (2) of this Article VII, the Licensee shall, during the time or times that the Owner is prevented from making such charges, pay the portion of said Application Fee and/or Annual Fee which is permissible under such Federal Law, Executive Order or Administrative Rules and Regulations pertaining to Economic Controls.
- (5) When any charge to the Licensee provided for in this agreement is to be based upon the Owner's cost, said cost shall be determined in accordance with the Owner's regular and customary method of determining such costs unless otherwise expressly provided herein.
- (6) The Owner may at its option require the Licensee to pay the estimated cost of any facility alteration, to be paid by it pursuant to Paragraph (3)(a) of this Article VII, prior to the commencement of engineering and/or other work on said alterations. If the actual cost of any such alterations is not equal to the advance payment made by

the Licensee for said alterations, the Owner will, after completion of said alteration, submit to the Licensee a bill for the amount by which the cost of said alterations exceeded said advance payment or will grant the Licensee a credit for the amount by which said advance payment exceeded the actual cost of said alteration.

ARTICLE VIII TERMINATION OF ATTACHMENT PERMITS

Upon notice from the Owner to Licensee that the use of any pole is not authorized by Federal, State, County or Municipal authorities or private property owners, the license covering the use of such pole shall immediately terminate and shall be surrendered and Licensee shall remove its cables, equipment and facilities at once from the affected pole or poles.

Upon notice from the Owner to the Licensee that the Owner intends to abandon any pole, the Permit covering said pole shall, unless otherwise provided in the notice, terminate and cease to be effective as to said pole. To the extent that it may legally do so under prior agreements or otherwise, the Owner may sell to the Licensee, at any time within thirty (30) days after such notice, at the then value thereof in place or such other equitable sum as may be agreed upon between the parties, any pole which the Owner has given notice of intent to abandon.

If at any time the Owner, or other party under the terms of a joint use or pole license agreement executed prior to the date of this agreement, desires to make additional attachments to any pole (except a pole replaced at the Licensee's expense under Article V hereof) carrying attachments of the Licensee, or otherwise to use for its own service needs the space occupied by the Licensee's attachments, and in the Owner's judgement the existing pole is inadequate under applicable requirements and specifications to support such additional attachments or use, the Owner shall give the Licensee notice to that effect and the Permit covering said pole shall terminate and cease to be effective as to said pole unless within ten (10) days after such notice the Owner receives authorization from the Licensee agreeing to pay the entire cost (as provided in Paragraph (3)(a) of Article VII hereof) to the Owner of replacing the inadequate pole with a pole adequate to support such additional attachments or use together with the attachments of the Licensee and the existing attachments of the Owner that are to remain, and the existing attachments of other parties if made pursuant to joint use or pole license agreements executed prior to the date of this agreement. If the existing pole would be adequate but for the attachments of other parties made pursuant to joint use or pole license agreements executed after the date of this agreement, the Licensee shall not be liable for any portion of the cost of a replacement pole therefor.

The Licensee may at any time terminate any Permit or Permits by removing its attachments from any pole or poles and by notice to the Owner in duplicate on the Termination of Attachments by

Licensee form attached hereto and made a part hereof as Exhibit C; the Permit or Permits covering the use of such pole or poles shall thereupon terminate and cease to be effective.

Any Permit granted hereunder for attachment to the Owner's poles shall terminate without further notice to Licensee as to individual poles covered by the Permit to which Licensee has not attached within sixty (60) days from the date that Owner has notified Licensee that such poles are available for attachment of the facilities of Licensee.

All Permits shall automatically terminate and cease to be effective upon the termination of this agreement.

ARTICLE IX TERMINATION FOR DEFAULT

If the Licensee shall neglect or refuse to comply with any of the provisions of this agreement, including the specifications and requirements referred to in Article II hereof, or default on any of its obligations hereunder, and shall fail within ten (10) days after written notice from the Owner to correct such neglect, refusal or default, the Owner may at its option, in addition to any other remedy available to it, forthwith terminate this agreement or the Permit or Permits covering the pole or poles as to which such neglect, refusal or default shall have occurred.

ARTICLE X REMOVAL UPON TERMINATION

The Licensee shall remove from any pole or poles its facilities, the Permit or Permits for which have been terminated, within thirty (30) days (except as otherwise provided in the first paragraph of Article VIII hereof) after the time such Permit or Permits cease to be effective, failing which the Owner shall have the right to remove the Licensee's facilities from said pole or poles without notice or liability of any kind to the Licensee; in the latter event, the Licensee shall reimburse the Owner upon demand for the cost to the Owner of such removal, and shall indemnify and save the Owner harmless from and against all loss, liability or expense (including, but not limited to, claims of third parties), resulting from such removal.

ARTICLE XI LIABILITY AND INSURANCE

The Owner reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. The Owner shall not be liable to the Licensee for any interruption in service furnished by the Owner to the Licensee or to other customers of the Owner, or in service furnished by the Licensee to customers of the Licensee, or for any interference, including, but not limited to, inductive interference, with the operation of facilities of the Licensee or of customers of the Owner or of the Licensee, which may arise

in any manner out of the Licensee's use of the Owner's pole or other facilities, whether by negligence of the Owner or otherwise.

The Licensee shall exercise special precautions to avoid damage to facilities of the Owner and of others on the Owner's poles, and the Licensee hereby assumes responsibility for any and all damage to such facilities arising out of or caused by the conduct or property of the Licensee, whether by the negligence of the Licensee or otherwise. The Licensee shall make an immediate report to the Owner or Owners of any such facilities of the occurrence of any such damage and shall reimburse such Owner or Owners for expenses incurred by them in making necessary repairs and replacements.

The Licensee hereby assumes all responsibility for bodily injury to persons, including death or damages, sustained or claimed by its employees, the employees of the Owner, or by any other person, and also for damage to property, including property of the Licensee, the Owner, or any other person, and also for any interruptions to electric or community antenna television or other communications service, which may occur or allegedly occur because of, or result from, or in any manner are connected with or directly or indirectly arise out of or are caused in whole or in part by the erection, maintenance, presence, replacement, use or removal of the Licensee's facilities hereunder or by the proximity of the Licensee's cables, wires and associated equipment and those of the Owner or other users of the Owner's poles, or by any action, operation or omission of the Licensee, its agents, contractors or employees, under this agreement; and the Licensee shall assume all responsibility for and shall indemnify and save the Owner harmless from and against all losses, liabilities, claims, demands, payments, actions, legal proceedings, recoveries, costs, expenses, attorney fees, settlements, judgements, orders and decrees of every nature and description brought or recovered against, or incurred by, the Licensee, the Owner, or both of them, by reason of any such bodily injury to persons, damage to property, or interruptions to service.

Licensee shall also pay or reimburse the Owner for any and all claims and demands of whatever kind which arise directly or indirectly from the operation of Licensee's facilities including taxes, special charges by others, claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of other program material, and all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's equipment whether arising from the use of Licensee's equipment in combination with Owner's poles or otherwise.

The Licensee shall at its sole expense secure and maintain in force in the name of the Licensee during the entire life of this Agreement, policies of insurance of the following types:

- (a) Workers' Compensation Insurance with Michigan statutory limits.

- (b) Commercial General Liability Insurance, including contractual liability, with a minimum combined bodily injury and property damage single limit of \$1,000,000 per occurrence. Such insurance shall name the Owner, its Directors, Officers, and Employees as additional insureds as their interest may appear; and such coverage shall be primary to any insurance maintained by owner.
- (c) Automobile Liability Insurance with a minimum combined bodily injury and property damage single limit of \$500,000 per occurrence, providing coverage for owned, non-owned and hired vehicles.

Such policies of insurance shall be in a form and with companies satisfactory to the Owner and shall be obtained and become effective prior to the attachment of facilities of the Licensee to any pole or poles of the Owner hereunder. A copy of the policy shall be furnished to the Owner at the Owner's request.

The Licensee shall submit Certificates of Insurance to Owner prior to the attachment of facilities of the Licensee to any pole or poles of the Owner. The Certificate of Insurance shall be on the form furnished by the Owner or any other form approved by the Owner's Corporate Insurance Department. The Certificate shall require that the Insurance Company give at least thirty (30) days prior written notice of cancellation or material change in any such policy.

The Certificate of Insurance shall be submitted to:

Consumers Energy
Corporate Insurance Department
One Energy Plaza
Jackson, Michigan 49201

Certifications can be sent electronically to: insurancecertificates@cmsenergy.com

The above requirements as to policies of insurance may be varied by written amendment to this agreement.

ARTICLE XII RIGHTS OF OTHER PARTIES

Nothing contained herein shall be construed as affecting any rights or privileges, heretofore granted by the Owner by contract or otherwise to any other parties, to use any poles covered by this agreement, and the Owner shall have the right to continue, modify and extend any such rights or

privileges in accordance with the terms of any such rights or privileges. The attachment privileges granted herein shall be subject to such previously granted rights or privileges. Moreover, nothing contained herein shall be construed as affecting any rights or privileges hereafter granted by the Owner by contract or otherwise to any other parties, to use any poles covered by this agreement, and the Owner shall have the right to initiate, continue, modify and extend any such rights or privileges in any manner not inconsistent with the performance of its obligations hereunder.

ARTICLE XIII ASSIGNMENT

This agreement shall be personal to the Licensee, and any assignment or other transfer by the Licensee, in whole or in part, of its rights or privileges hereunder, without the prior written consent of the Owner, shall be void and not merely voidable. Subject to the foregoing, this agreement shall extend to and bind the successors and assigns of the parties hereto.

ARTICLE XIV WAIVER OF TERMS AND CONDITIONS

Failure of the Owner 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.

ARTICLE XV BILLS AND PAYMENTS

Unless otherwise expressly provided herein, bills under this agreement shall be payable within twenty-one (21) days after presentation. Nonpayment of bills within said period shall be deemed to be a default within the meaning of Article IX hereof. Any bill not paid when due shall be subject to the Late Payment Charge provided in Rate PA, as the same may be amended from time to time.

ARTICLE XVI MICHIGAN PUBLIC SERVICE COMMISSION

This agreement is subject to all applicable present and future rules, regulations and orders of the Michigan Public Service Commission. To the extent that any provision of this agreement is in conflict with any such rule, regulation or order, such rule, regulation or order shall control.

ARTICLE XVII TERM OF AGREEMENT

This agreement shall take effect on [Agreement Origination Date](#) and unless sooner terminated in accordance with the provisions of Article IX hereof, shall continue in effect until terminated by mutual

consent, or by either party giving the other at least six months' advance written notice of its desire to terminate the same at any time hereafter.

ARTICLE XVIII NOTICES AND DOCUMENTS

Except as otherwise provided in this agreement, the giving or furnishing of any notice or document in connection with this agreement shall be deemed to occur (a) in the case of delivery of such notice or document, on the date of such delivery, (b) in the case of mailing of such notice or document by registered or certified mail, on the date of receipt of such registered or certified mail, or in the case of mailing of such notice or document by regular mail, on the second business day following the date of postmark of such mailing.

Notices or other documents given or furnished to the Owner shall be delivered or mailed to:

Consumers Energy Company
Attn:
1945 W. Parnall Road
Jackson, Michigan 49201

Notices or other documents given or furnished to the Licensee shall be delivered or mailed to:

[Attaching Company Name](#)
Attn: [Agreement Signer](#)
[Address](#)
[City, State, ZIP Code](#)

Either party may at any time change a designation of the individual or address to which notices or other documents are to be delivered or mailed by giving notice in writing of such change of designation to the other party.

This agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the Parties with respect to the Agreement, including the Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

ARTICLE XIX SEVERABILITY

The invalidity or unenforceability of any provision of this agreement shall not in any way affect any other provision or provisions hereof. This agreement shall remain in effect and be construed in all respects as if such invalid or unenforceable provision were omitted.

ARTICLE XX HEADINGS

Headings are provided for convenience only. They are not a part of this agreement and shall not affect the construction or interpretation thereof.

**ARTICLE XXI
PREVIOUS AGREEMENTS**

With respect to the subject matter hereof, this agreement supersedes all previous representations, understandings and negotiations, either written or oral, between the parties hereto or their representatives, and constitutes the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized representatives.

CONSUMERS ENERGY COMPANY

Attaching Company Name

By _____
Gregory R. Griffin,
Executive Director, Electronic Design

By _____
Agreement Signer Name
Job Title