

**TELECOMMUNICATIONS  
POLE ATTACHMENT  
LICENSE AGREEMENT**

**BETWEEN**

**DUKE ENERGY KENTUCKY, INC.**

**AND**

**Commonwealth of Kentucky**

**DATED**

**11/12/2015**

**TELECOMMUNICATIONS**  
**POLE ATTACHMENT**  
**LICENSE AGREEMENT**

This **TELECOMMUNICATIONS POLE ATTACHMENT LICENSE AGREEMENT** (“Agreement”) is made and entered into this 12<sup>th</sup> day of November, 2015 (“Effective Date”) by and between Duke Energy Kentucky, Inc. (“Licensor”), and Commonwealth of Kentucky (“Licensee”). Licensor and Licensee may be referred to hereafter individually as a “Party” and collectively as the “Parties.” The attached Terms and Conditions and Exhibits A, B, C, & D (“collectively “Exhibits”) are incorporated herein and made a part of this Agreement by this reference.

**Purpose.** The purpose of this Agreement is to establish terms and conditions for Licensee to install and maintain Attachments (except for Wireless Attachments) in accordance with this Agreement on Licensor’s electric Distribution Poles and Drop/Lift Poles in Licensee’s Service Area within Licensor’s Kentucky Service Area for the sole and limited purpose of providing Licensee’s Services.

THIS AGREEMENT APPLIES ONLY TO POLES, AND DOES NOT PERMIT ACCESS TO OR AFFIXING OF ATTACHMENTS TO TRANSMISSION TOWERS OTHER TRANSMISSION FACILITIES, OR ANY OTHER PROPERTY OR FACILITIES OF LICENSOR.

**Term of Agreement.** The initial term of this Agreement is one year from the Effective Date (if not lawfully terminated earlier) (“Initial Term”), and thereafter shall automatically be renewed from year to year (“Renewal Term”), unless terminated by either Party by giving notice of its intention to terminate at least sixty (60) days prior to the end of Initial Term or at least sixty (60) days at any time during any applicable Renewal Term. Upon termination of this Agreement, Licensee’s Attachments shall be removed in accordance with Section 17.

**Schedule of Fees.**<sup>1</sup> The charges for use of Licensor’s poles and any corresponding electricity consumption, shall be in accordance with the terms and conditions set forth herein and as contained in Licensor’s applicable tariffed rates on file with the Kentucky Public Service Commission (“Commission”), including, but not limited to, Rate CATV, KY.P.S.C. Electric No. 2, Sheet No. 92, as may be amended from time to time. The current applicable tariffed rates and other applicable charges as of the date of this Agreement are as follows:

Agreement Processing Agreement Fee.	\$250.00 per Agreement.
Pole Attachment License Fee(s) (Rate CATV). Currently:	
	\$4.60 per Attachment (two-user pole)/ yr.
	\$4.00 per Attachment (three (+) user pole)/ yr.
Safety Violation Fee.	\$200.00 per Attachment.

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<sup>1</sup> As used in this Schedule of Fees, Attachment has the same meaning as that appearing in the Terms and Conditions, Definitions, at Paragraph 1.5.

Unauthorized Attachment Fee.

\$100.00 per Unauthorized Attachment.

Initial Amount of the Security Instrument.

Refer to Exhibit C.

The tariffed charges are subject to change upon approval by the Commission and Licensee shall be charged in accordance with Licensor's tariffs, as may be amended, throughout the term of this Agreement.

**Notices.** The mailing addresses and telephone numbers of the Parties are as follows:

**Licensor:**

Asset Contract Administration  
Joint Use Specialist  
Duke Energy Kentucky, Inc.  
139 East 4th Street  
Room 467 Annex  
Cincinnati, Ohio 45201  
Telephone: (513) 287-2882  
Fax: 513-287-1743  
E-Mail: Van.Bryan@duke-energy.com

**Licensee:**

COMMONWEALTH OF KENTUCKY  
Finance & Administration Cabinet  
Office of the Secretary  
702 Capitol Ave.  
Room 383, Capitol Annex  
Frankfort, KY 40601

with a copy to

COMMONWEALTH OF KENTUCKY  
Finance & Administration Cabinet  
Office of General Counsel  
702 Capitol Ave.  
Room 383, Capitol Annex  
Frankfort, KY 40601

*[SIGNATURES ON FOLLOWING PAGE]*  
*[REMAINDER OF PAGE LEFT BLANK]*

Ledcor Technical Services  
Attn: Ledcor Legal Department  
1200-1067 West Cordova  
Vancouver BC  
V6C 1C7  
Canada

with a copy to

Ledcor Technical Services  
Attn: Jan Summarell  
188 Columbia Lane E  
Shepherdsville, KY  
40165  
USA

**IN WITNESS WHEREOF**, the Parties, each in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first above-written; *provided, however*, that this Agreement shall not become effective as to either Party until executed by both Parties.

**LICENSOR**

Duke Energy Kentucky, Inc.

By: Lee Mazzocchi  
(Signature)

Title: SVP-Grid Solutions

Print Name: Lee Mazzocchi

Date: 11/12/15

**LICENSEE**

Commonwealth of Kentucky

By: Lori Hudson Flanery  
(Signature)

Title: Secretary, Finance Cabinet

Print Name: Lori Hudson Flanery

Date: November 6, 2015

**APPROVED AS TO  
FORM & LEGALITY**  
Patrick McDevitt  
**APPROVED  
FINANCE & ADMINISTRATION CABINET**

## Table of Contents

<b><u>TELECOMMUNICATIONS POLE ATTACHMENT LICENSE AGREEMENT</u></b> .....	<b>1</b>
<b><u>TERMS AND CONDITIONS</u></b> .....	<b>10</b>
<b><u>1. DEFINITIONS</u></b> .....	<b>10</b>
1.1. <u>Affiliate</u> .....	10
1.2. <u>Agreement Fee</u> .....	10
1.3. <u>Application</u> .....	10
1.4. <u>Attached Pole</u> .....	10
1.5. <u>Attachment</u> .....	10
1.6. <u>Authorization</u> .....	10
1.7. <u>Authorized Attachment</u> .....	10
1.8. <u>Business Day</u> .....	10
1.9. <u>Capital Tree Trimming</u> .....	10
1.10. <u>Control</u> .....	11
1.11. <u>Default</u> .....	11
1.12. <u>Distribution Pole</u> .....	11
1.13. <u>Drop/Lift Pole</u> .....	11
1.14. <u>Imposition Costs</u> .....	11
1.15. <u>Licensee's Service Area</u> .....	11
1.16. <u>Licensor Practices</u> .....	11
1.17. <u>Make Ready Costs</u> .....	11
1.18. <u>Make Ready Estimate</u> .....	11
1.19. <u>Make Ready Work</u> .....	11
1.20. <u>Overlapping</u> .....	11
1.21. <u>Pole</u> .....	12
1.22. <u>Pole Attachment License Fee</u> .....	12
1.23. <u>Required Authorizations</u> .....	12
1.24. <u>Safety Violation</u> .....	12
1.25. <u>Security Instrument</u> .....	12
1.26. <u>Services</u> .....	12
1.27. <u>Term</u> .....	12
1.28. <u>Unauthorized Attachment</u> .....	12
1.29. <u>Unauthorized Attachment Fee</u> .....	12
<b><u>2. LICENSOR OBLIGATIONS</u></b> .....	<b>12</b>
2.1. <u>Diligence and Good Faith</u> .....	12
2.2. <u>Quiet Enjoyment</u> .....	13
2.3. <u>Maintenance of Attached Poles</u> .....	13
<b><u>3. LICENSEE OBLIGATIONS</u></b> .....	<b>13</b>
3.1. <u>Use of Attachments</u> .....	13
3.2. <u>Compliance with Applicable Rules</u> .....	13
3.3. <u>Licensee's Service Area</u> .....	13
3.4. <u>Technical Requirements and Specifications</u> .....	14
3.5. <u>Assumption of Risk</u> .....	14
3.6. <u>Safety Precautions</u> .....	15

3.7.	<u>Qualifications of Employees, Agents and Contractors</u> .....	15
3.8.	<u>Identification Markers</u> .....	15
3.9.	<u>Notification of Attachments</u> .....	16
<b>4.</b>	<b><u>MUTUAL OBLIGATIONS</u></b> .....	<b>16</b>
4.1.	<u>Prevention of Damage</u> .....	16
4.2.	<u>Easements; Access to Poles</u> .....	16
<b>5.</b>	<b><u>ESTABLISHING ATTACHMENT TO POLES</u></b> .....	<b>16</b>
5.1.	<u>Pole Attachment Application</u> .....	16
5.2.	<u>Decision Regarding Application</u> .....	17
5.3.	<u>Make Ready Procedures</u> .....	17
5.4.	<u>Coordination with Third Parties</u> .....	18
5.5.	<u>Drop/Lift Poles</u> .....	18
5.6.	<u>Overlashing</u> .....	19
<b>6.</b>	<b><u>PAYMENT PROVISIONS</u></b> .....	<b>19</b>
6.1.	<u>Attachment Fees</u> .....	19
6.2.	<u>Payment of Attachment Fees</u> .....	19
6.3.	<u>Payment Period</u> .....	20
6.4.	<u>Fee Disputes</u> .....	20
6.5.	<u>Fee Increases</u> .....	20
6.6.	<u>Security</u> .....	20
6.7.	<u>Power Supplies</u> .....	20
<b>7.</b>	<b><u>INSPECTIONS</u></b> .....	<b>20</b>
7.1.	<u>Right to Conduct</u> .....	20
7.2.	<u>Safety Violations</u> .....	21
<b>8.</b>	<b><u>INVENTORY</u></b> .....	<b>21</b>
8.1.	<u>Right to Conduct Inventory</u> .....	21
8.2.	<u>Review of Records in Lieu of Inventory</u> .....	21
<b>9.</b>	<b><u>UNAUTHORIZED ATTACHMENTS</u></b> .....	<b>21</b>
9.1.	<u>Unauthorized Attachment Fee</u> .....	21
9.2.	<u>Licensor Failure to Act</u> .....	22
<b>10.</b>	<b><u>REPLACEMENT, RELOCATION, REMOVAL AND ABANDONMENT OF POLES; REARRANGEMENT AND REMOVAL OF FACILITIES</u></b> .....	<b>22</b>
10.1.	<u>Notice</u> .....	22
10.2.	<u>Licensee Obligations</u> .....	22
10.3.	<u>Emergency Rearranging, Transfer or Removal</u> .....	22
10.4.	<u>Licensor Sale of Pole</u> .....	23
10.5.	<u>Replacement and Relocation Costs</u> .....	23
10.6.	<u>Reservation of Space</u> .....	23
10.7.	<u>Costs for Installation, Rearrangement, Removal and Transfer of Licensee's Attachments</u> 23	
10.8.	<u>Costs for Rearrangement of Other Facilities</u> .....	23

10.9.	<u>Removal of Attachments by Licensee</u>	23
<b>11.</b>	<b><u>REPRESENTATIONS, WARRANTIES AND COVENANTS</u></b>	<b>24</b>
11.1.	<u>Common Representations</u>	24
11.2.	<u>Required Authorizations</u>	24
11.3.	<u>LIMITATIONS ON WARRANTIES</u>	24
11.4.	<u>No Waiver of Licensee Obligations</u>	24
<b>12.</b>	<b><u>INDEMNIFICATION</u></b>	<b>24</b>
12.1.	<u>Licensee Indemnification</u>	24
12.2.	<u>Notice</u>	25
<b>13.</b>	<b><u>LIMITATIONS ON DAMAGES</u></b>	<b>25</b>
<b>14.</b>	<b><u>INSURANCE</u></b>	<b>25</b>
14.1.	<u>Insurance Requirement</u>	25
14.2.	<u>Additional Insureds</u>	26
14.3.	<u>Waiver of Subrogation</u>	26
14.4.	<u>Certificate of Insurance</u>	26
14.5.	<u>Responsibility for Contractors</u>	27
14.6.	<u>No Limitation on Indemnities</u>	27
14.7.	<u>Modification of Insurance Requirements</u>	27
<b>15.</b>	<b><u>DISCHARGE OF LIENS</u></b>	<b>27</b>
15.1.	<u>Waiver</u>	27
15.2.	<u>Discharge</u>	27
<b>16.</b>	<b><u>DEFAULTS</u></b>	<b>27</b>
16.1.	<u>Licensee Default</u>	27
16.2.	<u>Licensee Cure Period</u>	28
16.3.	<u>Termination Because of Licensee Default</u>	28
16.4.	<u>Reimbursement for Licensor Work</u>	28
16.5.	<u>Licensor Default</u>	28
16.6.	<u>Attorney's Fees and Court Costs</u>	28
<b>17.</b>	<b><u>TERMINATION OF AGREEMENT</u></b>	<b>28</b>
<b>18.</b>	<b><u>WAIVER OF TERMS OR CONDITIONS</u></b>	<b>29</b>
<b>19.</b>	<b><u>MODIFICATIONS</u></b>	<b>29</b>
<b>20.</b>	<b><u>PAYMENT OF TAXES</u></b>	<b>29</b>
<b>21.</b>	<b><u>NOTICES</u></b>	<b>29</b>
<b>22.</b>	<b><u>CONFIDENTIALITY</u></b>	<b>29</b>
<b>23.</b>	<b><u>FORCE MAJEURE</u></b>	<b>30</b>



<b><u>24.</u></b>	<b><u>GOVERNING LAW AND VENUE</u></b> .....	<b>30</b>
<b><u>25.</u></b>	<b><u>CONSTRUCTION OF AGREEMENT</u></b> .....	<b>30</b>
<b><u>26.</u></b>	<b><u>OWNERSHIP RIGHTS</u></b> .....	<b>31</b>
<b><u>27.</u></b>	<b><u>THIRD PARTY BENEFICIARIES</u></b> .....	<b>31</b>
<b><u>28.</u></b>	<b><u>PRIOR AGREEMENTS SUPERSEDED</u></b> .....	<b>31</b>
<b><u>29.</u></b>	<b><u>ASSIGNMENT AND TRANSFER</u></b> .....	<b>31</b>
<b><u>30.</u></b>	<b><u>FACSIMILE AND ELECTRONIC SIGNATURES; COUNTERPARTS</u></b> .....	<b>31</b>
<b><u>31.</u></b>	<b><u>SURVIVAL; LIMITATIONS ON ACTIONS</u></b> .....	<b>31</b>
<b><u>32.</u></b>	<b><u>TIME OF ESSENCE</u></b> .....	<b>32</b>
<b><u>33.</u></b>	<b><u>DISPUTE RESOLUTION</u></b> .....	<b>32</b>

**EXHIBITS**

**Exhibit A (Pole Attachment Request) ..... 30**

**Exhibit B (Notice of Termination)..... 32**

**Exhibit C (Schedule of Cash or Irrevocable Letter of Credit)..... 34**

**Exhibit D (Licensor Rules and Practices for Attachments) ..... 35**

# TELECOMMUNICATIONS POLE ATTACHMENT TERMS AND CONDITIONS

## DEFINITIONS

The following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the meaning otherwise set forth in the Agreement.

1.1 **Affiliate** Any legal entity that directly or indirectly owns or Controls, is owned or controlled by, or is under common ownership or Control with Licensee, where the term "own" means to own an equity interest (or the equivalent thereof) of more than 10%.

1.2 **Agreement Fee** The one-time fee that Licensee shall pay to reimburse Licensor for the costs of establishing the Telecommunication Pole Attachment License Agreement pursuant to which Licensee's Attachments will be made. A separate Agreement Fee will be required on each occasion that substantial modifications to the provisions of the Agreement are required. To be considered a substantial modification, significant changes to the implementation and/or administration of the Agreement is required. The inclusion of additional pole locations, in and of itself, does not constitute a substantial modification.

1.3 **Application** In Licensor's discretion, either the Pole Attachment Request Form attached hereto as Exhibit A, or the Pole Attachment application spreadsheet used as part of the Joint Use Request (JUR) electronic notification system. An Application must be completed by Licensee and approved by Licensor in writing in order for Licensee to attach to or make use of any of Licensor's Poles under this Agreement. Licensor may revise either Application from time to time in its sole discretion, but no revision of the Application shall materially affect the rights or obligations of Licensee under this Agreement.

1.4 **Attached Pole** A Pole owned or maintained by Licensor that contains at least one Attachment by Licensee.

1.5 **Attachment** Each affixation of Licensee's cables, strands, and wires to Licensor's Poles. Any such affixations contained within one foot of pole space that includes one half of the vertical clearance distance both above and below the point of attachment and required clearance shall be deemed to be a single Attachment for purposes of calculating the Pole Attachment License Fees, Safety Violation Fee, and Unauthorized Attachment Fee.

1.6 **Authorization** Licensor's grant of nonexclusive permission to Licensee to affix its Attachments to Licensor's Poles in accordance with the terms of this Agreement.

1.7 **Authorized Attachment** An Attachment for which Authorization has been obtained.

1.8 **Business Day** All days except Saturday, Sunday, and officially recognized Federal legal holidays.

1.9 **Capital Tree Trimming** Any clearing or re-clearing of new or existing rights-of-way or easements recorded as a capital expenditure by Licensor in accordance with the classification of accounts as required by the Federal Energy Regulatory Commission, the state utility commission, or Licensor's guidelines, policies, or procedures.

1.10 Control With respect to any entity, the possession, directly or indirectly, of: (a) 10% or more of its ownership interests; or (b) the power to direct or cause the direction of management and policy, whether through the ownership of voting securities, partnership interests, by contract or otherwise.

1.11 Default When either Party: (i) fails to perform any of its covenants or obligations set forth in this Agreement, (ii) makes any representation or warranty in this Agreement that is untrue or incorrect, (iii) files a bankruptcy petition in any bankruptcy court proceeding, or (iv) admits in writing its inability to pay its debts when due or its intention not to comply with any requirement of this Agreement.

1.12 Distribution Pole A pole owned by Licensor and bearing electric lines that have a voltage rating no higher than 34.5 kV.

1.13 Drop/Lift Pole An ancillary pole owned by Licensor and necessary to provide clearance or to extend service from a Distribution Pole (or from Licensee's facilities attached to a Distribution Pole) to an individual customer(s).

1.14 Imposition Costs All costs, including but not limited to the cost of materials and equipment, fully loaded direct and indirect labor, engineering, supervision and overhead, associated with performance by Licensor or any third party acting on Licensor's behalf of certain tasks as specified in this Agreement.

1.15 Licensee's Service Area The area within the state authorized in this Agreement in which Licensee does or plans to provide its Services.

1.16 Licensor Practices Licensor's rules and practices for Attachments as set forth in Exhibit D attached hereto.

1.17 Make Ready Costs All costs necessary for Licensor to perform the Make Ready Work and prepare its Poles for Licensee's Attachments, including but not limited to the costs of materials and equipment, fully loaded direct and indirect labor, engineering, supervision, and overhead. Engineering includes design, pole loading studies, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements in Section 3.4 hereto. Also included are the costs of installing or changing out primary poles, secondary poles and Drop/Lift Poles, including the cost of Capital Tree Trimming associated with the Make Ready Work required hereunder, installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications of Section 3.4.

1.18 Make Ready Estimate The estimate prepared by Licensor for all Make Ready Work that may be required by Licensor to accommodate Licensor's Poles for attachment by Licensee, in the form set forth in Exhibit A.

1.19 Make Ready Work All work required by Licensor, which shall be performed only by Licensor or a Licensor contractor on Licensor's behalf, to prepare Licensor's Poles for attachment by Licensee, except for any necessary rearrangement of third party facilities.

1.20 Overlash or Overlashing The practice whereby an entity, whether the Licensee or a third party, physically ties or otherwise connects or attaches new wiring or facilities to wiring or to support strands or hardware that already has been affixed to a Pole.

1.21 Pole Any Distribution Pole or Drop/Lift Pole, which does not include streetlight-only poles used primarily for lighting.

1.22 Pole Attachment License Fee The annual amount per Attachment that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor's Poles.

1.23 Required Authorizations All legally required authorizations that Licensee must obtain from federal, state, county, or municipal authorities, public or private landowners, or other third parties to install, erect, operate or maintain its Attachments, and to provide the Services, including all required franchises, permits, approvals, consents, easements, rights-of-way, and certificates of convenience and necessity.

1.24 Safety Violation. Any Attachment that fails to comply with the technical requirements and specifications listed in Section 3.4.

1.25 Security Instrument A cash deposit or irrevocable letter of credit to be used by Licensee to guarantee Licensee's payment in full of all Pole Attachment License Fees and other amounts payable to Licensor under this Agreement, including potential costs incurred by Licensor to remove Licensee's Attachments. The Security Instrument shall be in an amount to be determined in accordance with the attached Exhibit C attached, which is incorporated herein, as the same may be modified from time to time by Licensor in its sole discretion.

1.26 Services Telecommunications Service, as that term is defined in the Communications Act of 1934, as amended (47 U.S.C. § 153), and interpreted by the Federal Communications Commission ("FCC") or by a federal court on review of an FCC interpretation, and other commingled communications services; provided, however, that Services shall specifically exclude the offering or provision of any wireless communications services, except to the extent carried via cable, fiber, or wire.

1.27 Term Collectively the Initial Term and any applicable Renewal Term during which this Agreement remains in effect.

1.28 Unauthorized Attachment Any affixation of any Licensee facility of any nature to any property of Licensor wherever located, including Poles, and Licensee-owned facilities overlashed or attached to the attachments of any other attaching entity, that has not been authorized by Licensor as required by this Agreement or any predecessor agreement. Unauthorized Attachments may include Licensee-owned facilities affixed to Licensor's property or overlashed or attached to the attachments of any other attaching entity prior to the Effective Date of this Agreement, or after this Agreement has expired or been terminated.

1.29 Unauthorized Attachment Fee The fee to be paid by Licensee for each Unauthorized Attachment.

## 2. LICENSOR OBLIGATIONS

2.1 Diligence and Good Faith Licensor shall in good faith diligently pursue all reasonable measures to accommodate Licensee's Authorized Attachments. Notwithstanding the foregoing, Licensor specifically reserves the right in its sole judgment, to deny access to any Pole, facility, property, conduit or right of way where there is or may be insufficient capacity; for reasons of safety and reliability; for generally applicable engineering purposes; and for reasons otherwise determined by Licensor's, all which shall be at Licensor's sole discretion.

2.2 Quiet Enjoyment Provided that Licensee is performing in accordance with all terms and conditions of this Agreement, Licensor shall not intentionally disturb Licensee's Authorized Attachments except as necessary in a safety, emergency, Licensor operational necessity, or natural disaster situation, as determined in Licensor's sole judgment. Licensor shall make commercially reasonable efforts to notify Licensee prior to any planned or intentional disturbance of Licensee's facilities.

2.3 Maintenance of Attached Poles At its expense, Licensor shall maintain the Attached Poles and replace, reinforce, or repair such Poles as necessary, in Licensor's sole judgment.

## 3. LICENSEE OBLIGATIONS

3.1 Use of Attachments Licensee shall use each of the Attachments solely to provide the Services and not for any other purpose. Licensee is prohibited from making or using an Attachment on Poles, rights of way, property, or facilities for any transmitter, receiver, antenna, camera, optical emitter or sensor, or listening device. Licensee shall not acquire attachment rights for or on behalf of any Affiliate or other third party and, with the exception of permitted Overlapping, Licensee shall not authorize any Affiliate or other third party to affix any cables, strand, wires, or other facilities, or antennas, transmitters, receivers, and/or associated equipment on the Poles. Licensee shall not allow any Affiliate or third party to lease, Overlap, or otherwise use any Attachments or Poles that Licensee itself is not using to provide the Services. Licensee shall notify Licensor pursuant to Section 21 (Notices) within 10 days whenever Licensee Overlaps, leases capacity on, attaches to, or otherwise uses attachments owned by any third party that are affixed to the Poles, rights of way, property or facilities of Licensor. This notification requirement does not relieve Licensee of its obligation, under Section 5 of this Agreement, to submit an Application to Licensor requesting permission to attach to or make use of Poles. Any Licensor authorization for Licensee to install and maintain Attachments shall be null and void to the extent that a regulatory entity having competent jurisdiction rules that Licensee does not have such rights.

3.2 Compliance with Applicable Rules Licensee shall comply with all federal, state, and local rules, tariffs, regulations, and ordinances and all technical rules and specifications applicable to Licensee's affixation of Attachments to Poles, including any local zoning restrictions. Licensee shall be responsible for any and all permits and approvals required for Licensee's installations hereunder, and maintain current and valid permits for its installations for the Term of this Agreement, including but not limited to permits for highway, interstate, intrastate, and railroad crossings, etc. Licensee shall provide to Licensor copies of all such permits required for Licensee to perform the work or exercise its rights under this Agreement without notice or additional Licensor request. Should Licensee fail to obtain the appropriate permits at any time during the Term hereof, Licensee shall be responsible for any damage or loss that occurs under this Agreement for Licensee's failure to obtain the requisite permits or approvals for Licensee's installations or any Licensee work. This Section 3.2 is a material provision of this Agreement, and Licensor may terminate this Agreement upon Licensee's noncompliance herewith.

3.3 Licensee's Service Area Licensee shall attach to the last page of this Agreement a map or sketch graphically depicting Licensee's Service Area within each county for which the Licensee seeks to establish an attachment. The map or sketch need not show the precise location of each of Poles to which an attachment is sought, but should identify the general area in which Attachments currently exist or where any Licensee attachments are planned. The map or sketch shall be no larger than 30" x 30" and be folded to a size of no greater than 8 1/2" x 11" for inclusion in this Agreement. Licensee's Service Area may be extended or otherwise modified by a supplemental written agreement between the Parties containing a new map showing the changed area to be thereafter covered by this Agreement. Such supplement shall be effective on the date of its final execution and shall be attached to all executed copies of this Agreement.

3.4 Technical Requirements and Specifications

- (a) At its own expense, Licensee shall erect, install, maintain, and relocate when necessary the Attachments in a workmanlike manner that is not unsightly and is in safe condition and good repair, all as determined by Licensor, in accordance with all applicable technical requirements and specifications, including, but not limited to:
- (i) requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC"), the federal Occupational Safety and Health Act ("Federal OSHA"), the applicable state Occupational Safety and Health Act ("State OSHA"), and the applicable state Department of Transportation ("DOT"), and to the extent such requirements or specifications may conflict, then the most stringent of the NESC, NEC, Federal OSHA, State OSHA, or DOT requirements and specifications;
  - (ii) any amendments or revisions of, or successor(s) to, the requirements and specifications of the NESC, NEC, Federal OSHA, State OSHA and DOT;
  - (iii) the Licensor Practices set forth in the attached Exhibit D, which is incorporated herein;
  - (iv) any safety precautions specified by Licensor during the Term hereof;
  - (v) any current or future rules or orders of any federal, state, or local authority having jurisdiction over either Party hereto or this Agreement;
  - (vi) Telcordia's Blue Book Manual of Construction Procedures as amended, supplemented, or modified throughout the Term;
  - (vii) any Licensor/incumbent local exchange carrier agreement regarding joint use of poles that include Poles with the Attachments; and
  - (viii) any requirements that applicable property owners may prescribe.
- (b) Licensee shall bring into conformity as soon as practical following notice by Licensor and no later than any reasonable date set by Licensor, any existing Authorized Attachments of Licensee that do not conform to the technical requirements and specifications listed in this Section. In the event that Licensee fails to comply with this requirement, Licensor in its sole discretion may elect to bring such Attachments into compliance and Licensee shall promptly reimburse Licensor for all Imposition Costs related thereto. Failure by Licensor to inspect or determine Licensee's conformance to the technical requirements and specifications listed in this Section or to take action on its own to bring such Attachments into compliance shall not cause Licensor to be liable for any loss or injury resulting from such failure of conformance and shall not relieve Licensee of its obligations of indemnification hereunder.
- (c) The Licensor Practices may be amended, with a copy of such amendments being provided to Licensee, from time to time, by Licensor as necessary in its sole discretion

to promote the safe and efficient operation of its electric distribution system, including Poles, without resort to the provisions of Section 19 (Modifications), and Licensee agrees to be bound by any such amendment. In the event that Licensor amends the Licensor Practices set forth in Exhibit D, Licensee shall make all required modifications within thirty (30) days after receipt of notice thereof from Licensor or within such other period of time that Licensor may specify.

3.5 Assumption of Risk Licensee expressly assumes responsibility for determining the condition of all Poles to be accessed or climbed by its employees, agents, contractors or subcontractors or upon which Licensee's attachments are to be affixed, and shall notify Licensor within five (5) days of any dangerous conditions determined to be existing on any such Poles. Licensee assumes all risks related to the construction, operation, and maintenance of its Attachments, including exposure to any radiofrequency or electromagnetic fields, except as to those risks that may be directly caused by the gross negligence or malicious misconduct of Licensor.

3.6 Safety Precautions Licensee shall take all steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance or operation of Licensee's Attachments, and to avoid interference to other attaching entities and Licensor's safe, reliable and efficient operation of its electric distribution system. Should any such injury, damage, or interference occur despite such steps, Licensee shall promptly notify Licensor within 24 hours of such injury, damage, or interference. At Licensor's option, Licensee's sole and exclusive remedy shall be either: (i) repair such damage and/or resolve such interference within the time specified by Licensor; or (ii) compensate Licensor for the Imposition Cost of repairing any such damage and/or resolving such interference. Licensee also shall indemnify Licensor for such injury, damage, or interference as provided in Section 12.1.

3.7 Qualifications of Employees, Agents and Contractors Licensee shall ensure that all employees, agents, and contractors of Licensee used to install, maintain, or operate the Attachments are qualified and have received all applicable training with respect to work on Poles with energized electric systems and wired and wireless communications systems. Such qualification and training shall include electrical safety and radio frequency emissions safety and fall protection. Such qualification and training shall comply with all federal, state, and local rules, regulations and ordinances, and all technical rules and specifications applicable to Licensee's affixation of Attachments to Licensor's Poles (including licensure, where legally required) and with the technical requirements and specifications of this Section 3. Licensee shall produce proof of all such qualification and training upon request by Licensor.

3.8 Identification Markers

- (a) Licensee shall place and maintain permanent identification markers on each of its Attachments prior to affixing it to Licensor's Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Pole, and must:
- (i) be non-conductive;
  - (ii) be of a distinctive and uniform design to Licensor's reasonable satisfaction;
  - (iii) not be mounted directly to the Pole;
  - (iv) provide Licensee contact information that includes a phone number that Licensee monitors 24 hours per day, seven days per week;
  - (v) be legible, clearly visible, and recognizable by color or other distinction from the ground at all times that Attachments are affixed to the Poles during the Term hereof; and
  - (vi) show Licensee's name or insignia while making clear that Licensee is not the owner of the Pole.



Licensor reserves the right to specify the type, color, and nature of such identification markers to comport with a local or regional plan for identifying attaching entities. Should Licensee's identification markers fail to comply with this Section, Licensor may require Licensee to make necessary modifications to bring Licensee into compliance.

- (b) Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Licensor encounter any of Licensee's Attachments without permanent identification markers, Licensor may notify Licensee provided that Licensor can otherwise identify the Attachments as belonging to Licensee. Licensee shall have thirty (30) days from the date of notice to place such permanent identification markers on those Attachments. If the markers are not placed within thirty (30) days, then Licensor may remove such Attachments without incurring any liability to Licensee, and Licensee shall reimburse Licensor for the Imposition Costs of such removal; or Licensor may place or cause to be placed permanent identification markers, and Licensee shall pay or reimburse Licensor for the Imposition Costs for such placing such permanent identification markers on Attachment, although Licensor shall not be obligated in any manner to place such permanent identification marker on any Attachment, and such shall be at Licensor's sole discretion. Any removal hereby shall require that Licensee commence the initial process to establish an attachment and pay any Pole Attachment License Fee as if the attachment were being authorized and affixed for the first time.

**3.9 Notification of Attachments** When requested by Licensor, Licensee shall provide Licensor with the precise location, routes, and total number of Attachments within thirty (30) days of Licensor's request. Should Licensee fail to provide within such prescribed time, Licensor may perform a field audit (at Licensee's sole cost) or perform the work itself of identifying the total Attachments, or task a third party with the work to ascertain the total number of Attachment, either which shall be at the Imposition Costs. If Licensor subsequently discovers that Licensor's obtained number of total Licensee Attachments is under the actual number, in addition to the Imposition Fees, Licensor shall be entitled to the additional Licensee Fees for such Attachments (including any applicable interest), the charge for Unauthorized Attachments, any applicable post-inspection engineering fees, and any Imposition Costs resulting from the Unauthorized Attachments.

#### **4. MUTUAL OBLIGATIONS**

**4.1 Prevention of Damage** Each Party shall take all reasonable precautions to avoid damaging the facilities of the other.

**4.2 Easements; Access to Poles** Each Party shall be responsible for obtaining its own rights-of-way and easements. LICENSOR DOES NOT REPRESENT OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY, EASEMENTS, ENCROACHMENTS, OTHER PROPERTY RIGHTS, E.G., PERMISSIVE USE RIGHTS OR ACCESS RIGHTS ENTITLE LICENSEE TO: (I) ACCESS THE PROPERTY UNDERLYING LICENSOR'S POLES; (II) INSTALL, OPERATE, OR MAINTAIN LICENSEE'S FACILITIES OR ATTACHMENTS; OR (III) PROVIDE LICENSEE'S SERVICES. This Agreement does not license or assign the use of any Licensor real property rights to Licensee, including but not limited to easements and rights-of-way. Licensor shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Licensor's Poles because Licensee failed to obtain appropriate rights-of-way or easements. Consistent with Section 11.2, Licensee may require Licensee to demonstrate that it has secured its own rights-of-way or easements for any Attachments to or use of any of Licensor's Poles under this Agreement. If otherwise consistent with the terms and

conditions of this Agreement, Licensor shall permit Licensee to access Licensor's Poles, to the extent it may lawfully do so. Further, Licensee's use of Licensor's Poles and its overhead or other easements is contingent on, and may be prevented or otherwise constrained by, the extent to which such use is permissible under applicable contracts and instruments between Licensor and other entities, and under federal, state, and local laws and regulations.

## **5. ESTABLISHING ATTACHMENT TO POLES**

**5.1 Pole Attachment Application** Before Licensee may affix any Attachments to or make use of any of Licensor's Poles under this Agreement, Licensee shall: (a) submit to Licensor an Application requesting Licensor's permission to attach to or make use of each such Pole; (b) receive written approval from Licensor authorizing the Attachment(s) to or use of each such Pole; (c) pay the Make Ready Costs specified in this Section 5; (d) pay the Pole Attachment License Fees specified in Section 6; and (e) comply with all procedures set forth in this Section 5. An Application is required anytime Licensee seeks to add any new Attachments, or Overlash, expand or otherwise modify existing Attachments, provided, however, that Licensee may repair or replace an existing Attachment or any component thereof without submitting a new Application, but only if the repair or replacement does not change the physical loading of the Pole or any of the operating characteristics approved in the original Application for that Attachment. Any Attachment for which Licensee has not complied with these procedures shall be deemed an Unauthorized Attachment.

**5.2 Decision Regarding Application** Licensor may reject all or part of an Application or limit the number and character of Attachments on any Pole if, in the sole judgment of Licensor, any Attachment proposed in the Application is undesirable or impracticable because of capacity, safety, reliability, operational, design, engineering, or other Licensor concerns. Such Licensor concerns may include, without limitation: (i) overloading of Licensor's structures; (ii) interference with Licensor's facilities and the facilities of other attaching entities; (iii) any compromise of safety or reliability; or (iv) any violation of engineering standards. Within forty-five (45) days after the receipt of such Application, Licensor shall notify Licensee in writing whether the Application is approved, approved with modifications, or rejected. If Licensor rejects all or part of Licensee's Application because of capacity concerns, Licensee may request Licensor to replace, at Licensee's sole expense, any affected Pole(s) with a taller or stronger pole(s) that will accommodate Licensee's attachment(s). Licensor, in its sole discretion, may replace any affected Poles to accommodate Licensee's attachments.

### **5.3 Make Ready Procedures**

- (a) Make Ready Costs include, without limitation, the cost of performing an engineering survey of Licensor's Poles to determine if the Poles are suitable for attachment ("Engineering Survey"). Licensor may invoice Licensee the greater of the costs of conducting the Engineering Survey or a minimum fee of \$70.00 per Application.
- (b) If additional Make Ready Work is required, Licensor may in its sole discretion, on the basis of the Application and associated construction plans and drawings, submit to Licensee a Make Ready Estimate for all Make Ready Work that may be required for each Pole. The Make Ready Estimate shall be based on Licensor's standard work estimating methods, which shall follow generally accepted estimating principles and include items such as materials less salvage, labor, engineering, supervision, quality assurance, and overhead. The Make Ready Estimate shall be provided using the applicable Application Form identified in Exhibit A.
- (c) Upon notice pursuant to Exhibit A that the Make Ready Estimate has been accepted and paid by Licensee, Licensor shall proceed with the additional Make Ready Work covered

by the Make Ready Estimate, except to the extent that Licensee is permitted or required to contract directly with an approved contractor or engineering firm for Make Ready Work as provided in this Section 5.3. Licensor shall undertake commercially reasonable efforts to complete such Make Ready Work by the estimated completion date but does not guarantee completion by such date.

- (d) All Make Ready Work shall be performed by Licensor or one of Licensor's contractors, except that Licensor may, in its sole discretion, permit or require Licensee to contract directly with a high voltage electrical contractor and/or engineering design firm approved by Licensor. Any additional guying required because of Licensee's Attachments shall be made by Licensee at its expense, and to the satisfaction of Licensor. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work, which shall be done prior to the performance of such Make Ready Work and in writing signed by both Parties. Any failure of Licensee to comply with this Section may be considered a breach of this Agreement by Licensee.
- (e) Licensee shall be responsible for actual costs of all Make Ready Work, which shall be initially billed by Licensor and paid by Licensee per the Make Ready Estimate discussed above. Licensor shall use the standard accounting processes that Licensor uses to track its own project costs to track the actual costs for Make Ready Work in excess of \$15,000. If the Make Ready Estimate exceeds \$15,000, then upon completion of the associated Make Ready Work, Licensor shall send to Licensee an itemized invoice for the Make Ready Costs. If the actual cost of Make Ready Work is less than \$15,000, then upon completion of the associated Make Ready Work, Licensor shall send Licensee a summary invoice for the Make Ready Work. Licensee must reimburse Licensor for any unpaid Make Ready Costs within thirty (30) days of the receipt of Licensor's invoice. Licensee's continuing Authorization to use the Poles is contingent upon timely payment of Make Ready Costs. If the actual Make Ready Costs are less than the Make Ready Estimate, Licensor shall refund or credit the difference to Licensee within thirty (30) days after the total cost of the project has been determined.

#### 5.4 Coordination with Third Parties

- (a) If rearrangement or relocation of third party facilities is necessary to accommodate Licensee's Attachments, Licensee is solely responsible to negotiate separately with each third party for such rearrangement or relocation. Licensee shall notify each third party attached to the affected Poles of Licensee's proposed Attachments and, if necessary, negotiate with such third party(ies) to establish clearances between its facilities and those of Licensor and such other party(ies). Licensee shall reimburse the third party(ies) for any expense incurred by them in transferring or rearranging facilities to accommodate Licensee's Attachments.
- (b) Licensee shall negotiate with third parties with respect to any relocation or modification of Licensee's facilities that may be required by third party attachments requested subsequent to Licensee's Attachments. Licensor shall not be liable for any costs for the relocation or modification of Licensee's Attachments or facilities that may be required by any third party, such shall be Licensee's obligation.
- (c) Licensee shall use the applicable notification system designated by Licensor to notify, monitor, and update the status of work associated with Licensee's relocation needs.

Licensee shall respond timely to all notifications of work to be done by Licensee.

5.5 Drop/Lift Poles Unless Licensor otherwise consents in writing, Licensee may not attach to Drop/Lift Poles without prior written approval from Licensor, which shall be at Licensor's sole discretion. If Licensor so consents, then Licensee may attach to Drop/Lift Poles without prior written approval subject to the following conditions:

- (a) The Drop/Lift Pole Attachments do not require Make Ready Work to be performed;
- (b) Within ten (10) days from the date of such Drop/Lift Pole Attachment, Licensee shall submit an Application for such Attachment;
- (c) Except as otherwise specified in this Section 5.5, Licensee's Drop/Lift Pole Attachments shall be subject to all other covenants, representations, and warranties in this Agreement applicable to Attachments; and
- (d) Any Drop/Lift Pole Attachment for which Licensee fails to follow these procedures shall be deemed an Unauthorized Attachment.

5.6 Overlapping Licensee may Overlash existing Authorized Attachments under the following conditions:

- (a) Licensee may Overlash its Authorized Attachments only upon prior written approval from Licensor pursuant to the Application and approval process contained herein;
- (b) Prior to Overlapping any Attachment, Licensee shall submit an Application for such Overlapping and, if the Overlapping is to be performed on behalf of a third party, identify the third party;
- (c) Prior to Overlapping any Attachment, Licensee shall remove any cable, strand or wire that is not required to provide the Services or the services of any third party;
- (d) Any third party Overlapping shall be installed, operated, and maintained by Licensee or its agents, contractors, or subcontractors;
- (e) Licensee shall not allow the third party on whose behalf any third party Overlapping is to be performed to access the Poles unless the third party has obtained Licensor's prior, written permission for such access;
- (f) Except as otherwise specified in this Section 5.6, Licensee's Overlapping shall be subject to all other covenants, representations, and warranties in this Agreement applicable to Attachments, except that Licensor may charge Licensee any additional amount for such Overlapping that is permissible under applicable federal or state pole attachment regulations; and,
- (g) Any Overlapping for which Licensee fails to follow these procedures shall be deemed to be an Unauthorized Attachment.

## 6. PAYMENT PROVISIONS

6.1 Attachment Fees Licensee shall pay to Licensor the Pole Attachment License Fee identified in this Agreement and as set forth in Licensor's applicable tariffed rates on file with the Kentucky Public Service Commission ("Commission"), including, but not limited to, Rate CATV, KY.P.S.C. Electric No. 2, Sheet No. 92, as may be amended from time to time with approval by the Commission.

6.2 Payment of Attachment Fees Pole Attachment License Fees shall be assessed based upon an annual billing period of January 1<sup>st</sup> through December 31<sup>st</sup> and shall be paid in advance by Licensee. Initial Pole Attachment License Fees shall be prorated and will be based upon the number of Attachments authorized in Exhibit A. Initial Pole Attachment License Fees shall be paid within fourteen (14) days of Licensee executing Exhibit A. Thereafter, Pole Attachment License Fees shall be calculated as of July 1 of every year, based upon the number of Licensee Attachments as of the immediately preceding June 30. Except for the initial Pole Attachment License Fees, Licensor shall invoice Licensee for the Pole Attachment License Fees applicable to those Attachments within thirty (30) days of the first day of July. Licensor's failure to timely invoice Licensee shall not relieve Licensee of the obligation to pay the Pole Attachment License Fees.

6.3 Payment Period Unless otherwise specified in this Agreement, all amounts payable under this Agreement shall be due within thirty (30) days of the date of invoice. Interest shall be charged at the rate set in accordance with Kentucky Revised Statutes 45.454, presently one percent (1%), on the unpaid balance of delinquent bills for each month or part thereof until paid. Partial payment shall be applied first to payment of accrued late fees. Any failure to invoice for late fees on one or more occasions does not waive the right of either Party to invoice for late fees on any future one or more occasions where late fees are applicable.

6.4 Fee Disputes Licensee shall continue payment of all fees and charges when due and performance of all obligations under this Agreement during any period of controversy or claim arising out of, or relating to, this Agreement or its breach. Upon the resolution of any controversy or claim not subject to further appeal, which resolution requires the refund of any fees and charges paid by Licensee during the period of controversy, Licensor shall promptly refund such amounts with interest at the Internal Revenue Service corporate overpayment rate specified in 26 U.S.C. § 6621(a)(1) or its successor statute.

6.5 Fee Increases Except for the Pole Attachment License Fee, which may be increased as specified in Section 6.1, Licensor in its sole discretion may increase all fees that are due and payable under this Agreement effective on each annual anniversary date of the Effective Date to reflect increases in the "Consumer Price Index for All Urban Consumers" that have occurred since the Effective Date. Licensor shall provide at least sixty (60) days' notice to Licensee before the effective date of any such increase in fees.

### 6.6 Security

If Licensee maintains a Standard and Poor's credit rating of at least Single A, Licensor shall waive the Security Interest requirement. If during the term of the Agreement, Licensee's Standard and Poor's credit rating falls below Single A, Licensor reserves the right to require Licensee to furnish a Security Instrument at Licensee's expense and in the amount identified in Exhibit C, as the same may be revised from time to time in the sole discretion of Licensor, with terms and conditions and from a financial institution acceptable to Licensor, in order to guarantee Licensee's payment in full of all Pole Attachment License Fees and other amounts payable to Licensor under this Agreement, including potential costs incurred by Licensor to remove Licensee's Attachments. No Authorization for any

Attachments will be granted to Licensee until the Security Instrument required by this Section is received by Licensor.

6.7 Power Supplies Any electricity that Licensee requires to power its system shall be supplied by Licensor in accordance with tariffs and rates on file with the Commission and Licensee's application process.

## 7. INSPECTIONS

7.1 Right to Conduct Licensor may conduct inspections from time to time as necessary in Licensor's sole judgment to determine whether Licensee's Attachments meet the technical requirements and specifications listed in Section 3.4. An inspection may be based upon either a sample or all of Licensee's Attachments, in the sole discretion of Licensor. If practicable, as determined in Licensor's sole judgment, Licensor shall provide ten (10) days' notice of such inspections to Licensee, and Licensee shall have the right to be present at and observe any such inspections. Inspections may be conducted, in Licensor's discretion, either by Licensor or an independent agent approved by Licensor. Licensor may conduct an inspection of Licensee's Attachments once annually unless, in Licensor's sole determination, more frequent inspections are necessary for reasons involving safety of persons, reliability/Licensor operational issues, or protection of property. Licensee shall reimburse Licensor for all costs and expenses of conducting inspections to the extent that such expenses are attributable to Licensee's Attachments.

7.2 Safety Violations If during inspection or otherwise Licensor determines that a Safety Violation exists with respect to any of Licensee's Attachments, Licensee shall, upon notice by Licensor, correct such Safety Violation within thirty (30) days of notification, unless in Licensor's sole judgment, safety considerations require Licensee to take corrective action within a shorter period. If multiple Safety Violations are identified in the notice, Licensor may establish a schedule specifying the dates by which Licensee must correct those violations. Should Licensee fail to correct one or more such Safety Violations within the time specified, or if safety considerations so require, Licensor may elect to do such work itself, and Licensee shall reimburse Licensor for the Imposition Costs incurred by Licensor. Licensor shall not be liable for any loss or damage to Licensee's facilities that may result, and Licensee shall be responsible for any additional damages resulting from its failure to act in a timely manner in accordance with these requirements. If one or more Safety Violations are not corrected by Licensor or Licensee within the time specified, Licensee shall pay a Safety Violation Fee for each such Safety Violation. A single Attachment with multiple Safety Violations will be assessed as one Safety Violation for the purpose of determining the Safety Violation Fee. An additional Safety Violation Fee may be assessed on any Safety Violation for each additional sixty (60) day period or portion thereof during which the Safety Violation remains uncorrected following the date such Safety Violation is to be corrected according to this Section.

## 8. INVENTORY

8.1 Right to Conduct Inventory Licensor may conduct an inventory of Licensee's Attachments to verify the number of Licensee's Attachments. An inventory may be based upon either a representative and statistically relevant sample or all of Licensee's Attachments in the sole discretion of Licensor. Licensor shall provide thirty (30) days' notice of any such inventory so that Licensee may be present and observe such inventory if Licensee elects to do. Inventories may be conducted, in Licensor's discretion, either by Licensor or an independent agent approved by Licensor as specified in such notice. Any such inventory may be conducted no more than once every five (5) years, unless Licensor in good faith believes that Licensee's reported number of Attachments is inaccurate, in which case Licensor may inventory as frequently as is necessary in its sole discretion. Licensee shall reimburse Licensor for all

costs and expenses of conducting inventories to the extent that such expenses are attributable to Licensee's Attachments hereunder, including Unauthorized Attachments. Licensee shall make available to Licensor all of its relevant maps and records for any such inventory, and cooperate in any other manner to assist Licensor or Licensor's contractor with the same.

8.2 Review of Records in Lieu of Inventory Licensor and Licensee may mutually agree that in lieu of an inventory, the number of Attachments maintained by Licensee shall be determined from existing maps and attachment records. If both Parties agree to use this method, each Party shall make all relevant maps and records available to the other Party, and the number of Attachments maintained by Licensee shall be cooperatively determined. The accuracy of such maps and records shall be verified by the Party proposing to use them.

## **9. UNAUTHORIZED ATTACHMENTS**

9.1 Unauthorized Attachment Fee Within thirty (30) days of notification of each Unauthorized Attachment, Licensee shall pay to Licensor the Unauthorized Attachment Fee for each Unauthorized Attachment for each year or part thereof that the Unauthorized Attachment was attached to Licensor's Poles. Within such 30-day period, Licensee either must remove the Unauthorized Attachment or submit an Application for approval of the Attachment. The Unauthorized Attachment Fee shall be in addition to any and all other applicable fees, including without limitation, the Attachment Fees due and payable for the current annual period and for each prior period in which the Unauthorized Attachment existed. If the prior period in which the Unauthorized Attachment existed cannot be determined to the mutual satisfaction of the Parties, the prior period shall be the time period since the last 100% inventory of Licensee's Attachments. Should Licensee fail to comply with any of these requirements, Licensor may demand that such Unauthorized Attachment be removed by Licensee, or Licensor itself may remove the Unauthorized Attachment without liability and Licensee shall be liable to Licensor for the Imposition Costs associated with such removal. Nothing herein shall act to limit any other applicable remedies, including a remedy for trespass, that may be available to Licensor as a result of any Unauthorized Attachment, and Licensee shall be responsible for the costs incurred by Licensor to pursue any and all remedies for the Unauthorized Attachments, including but not limited to attorneys' fees, court costs, filing fees, Licensor expert fees, exhibit preparation, etc.

9.2 Licensor Failure to Act No act or failure to act by Licensor with regard to any Unauthorized Attachment shall be deemed to ratify, approve, or license the Unauthorized Attachment no matter how long the Unauthorized Attachment has existed. If an Application for such Attachment is subsequently approved, such approval shall not operate retroactively to constitute a waiver by Licensor of any of its rights under this Agreement regarding the Unauthorized Attachment, and Licensee shall be subject to all liabilities, obligations, and responsibilities of this Agreement from its inception with regard to any such Unauthorized Attachment.

## **10. REPLACEMENT, RELOCATION, REMOVAL AND ABANDONMENT OF POLES; REARRANGEMENT AND REMOVAL OF FACILITIES**

10.1 Notice Except ( i ) in an emergency involving safety of persons or protection of property, (ii) as necessary to maintain the efficient operation of Licensor's electric distribution system, or (iii) as necessary to provide new or upgraded electric service, all as determined by Licensor in its judgment, Licensor shall provide sixty (60) days' notice to Licensee whenever Licensor intends to replace, relocate, abandon, or remove an Attached Pole (except in the case of an emergency or as otherwise herein set forth). Notwithstanding the foregoing, if a federal, state, county, or municipal authority or private landowner requires discontinuance of the Attached Pole in less than sixty (60) days, the notice provided by Licensor shall be reduced accordingly. In instances for which notice is provided,

Licensors shall specify the Poles involved and the time of such proposed replacement, relocation, abandonment, or removal.

**10.2 Licensee Obligations** If Licensor replaces or relocates an Attached Pole, Licensee shall transfer its Attachments to the new or relocated Attached Pole within the time so specified by Licensor. If Licensor wishes to abandon or remove an Attached Pole, Licensee shall, at the time specified, remove its Attachments from the Attached Pole. Should Licensee fail to transfer or remove its Attachments at the time specified for such transfer or removal, Licensor may elect to: (i) transfer Licensee's Attachments; (ii) remove Licensee's Attachments; (iii) charge Licensee an additional fee for the continuing Attachments at the rate of \$25.00 per Pole per month for each month or portion thereof that the Attachments remain on the Poles in addition to any applicable Imposition Costs; or (iv) sell the pole to Licensee under the terms specified in Section 10.4. If Licensor elects to transfer or remove Licensee's Attachments, Licensee shall reimburse Licensor for the Imposition Costs of such transfer or removal, and Licensor shall not be liable for any loss or damage to Licensee's facilities that may result, except to the extent of the gross negligence or malicious conduct of Licensor, its employees, contractors or agents.

**10.3 Emergency Rearranging, Transfer or Removal** Notwithstanding the foregoing, Licensor may replace, relocate, remove, or abandon Poles in an emergency, as determined by Licensor and rearrange, transfer, or remove Licensee's Attachments. If Licensor elects to rearrange, transfer, or remove Licensee's Attachments in an emergency, Licensee shall reimburse Licensor for all costs of such rearrangement, transfer, or removal, and Licensor shall not be liable for any loss or damage to Licensee's facilities that may result. Licensor service restoration in an emergency shall take priority over the restoration of Licensee's service.

**10.4 Licensor Sale of Pole** If Licensor elects pursuant to Section 10.2 to sell the Pole to Licensee, Licensor shall provide Licensee with a properly authorized bill of sale reflecting the reproduction cost depreciated value of the Pole, except that such value shall not be less than 25% of the cost of a new replacement Pole. Upon provision of such bill of sale, Licensee shall receive the Pole "as is," take title to the Pole for all purposes, and indemnify, defend, and hold harmless Licensor from all obligation, liability, cost, claim, damage, expense or charge related thereto or raised thereafter. Because any Poles and related items may contain various hazardous chemicals or properties, Licensee shall comply with the terms and directions of the appropriate material safety data sheet and with state and federal law regarding the maintenance, replacement, and/or disposal of the Pole. Licensor does not warrant, guarantee, or imply that such Pole possesses sufficient mechanical strength as required by or for any use of Licensee. Licensor makes no representations or guarantees concerning any right to access or occupy the premises where the Pole is currently located or to use the Pole for any particular purpose.

**10.5 Replacement and Relocation Costs** Licensor shall replace or relocate Poles at its own expense, except as otherwise provided in this Section 10 and in Sections 3 and 5.

**10.6 Reservation of Space** Licensor may reserve space on the Poles for (i) future expansion of its core utility service, and (ii) the provision of emergency service. Licensee may not occupy any utility space or space on the Poles that is reserved for the provision of emergency service. If Licensor has reserved space on any Pole for future expansion, Licensee may make Authorized Attachments in that reserved space until such space is required by Licensor, at which point Licensee shall, upon receipt of sixty (60) days' notice, either (a) vacate the space by removing its Attachments at its own expense, or (b) request that Licensor replace such Pole with a taller or stronger pole that will accommodate Licensee's attachment(s). Should Licensee fail within the 60-day notice period to vacate the space or request Licensor to replace the Pole, Licensor may remove Licensee's Attachments without liability and Licensee shall reimburse Licensor for the Imposition Costs associated with such removal.



**10.7 Costs for Installation, Rearrangement, Removal and Transfer of Licensee's Attachments**

Licensee shall be solely responsible for all costs of installation, rearrangement, removal, or transfer of its Attachments on, from or to Licensor's Poles, including, as appropriate, the recovery of its costs from any other attaching entity. Licensee expressly agrees and understands that it shall not, at any time, seek reimbursement from Licensor of the costs incurred by or on behalf of Licensee to remove, relocate, re-arrange, transfer, or replace Licensee's Authorized Attachments.

**10.8 Costs for Rearrangement of Other Facilities** In any case where the facilities of Licensor or any other attacher(s) are required to be rearranged Licensor's Poles in order to accommodate Licensee's Attachments, Licensee shall reimburse Licensor and the other attacher(s) for the total reasonable costs incurred by Licensor and the other attacher(s) and shall be solely responsible for the notification to another attacher(s) and the payment of any cost for the installation, rearrangement, removal, or transfer of any other attacher(s)' facilities to accommodate Licensee's Attachments.

**10.9 Removal of Attachments by Licensee** Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Poles and, except as provided in Section 17 (Termination of Agreement), Licensee shall remove any unused Attachments within thirty (30) days of discontinuance. Licensee shall provide ten (10) days' notice of any such removal to Licensor in the form of the attached Exhibit B, which is incorporated herein. Such notice shall fully identify the location of the Poles from which such Attachments are being removed. Licensee's obligations to make Pole Attachment License Fee payments shall continue until the following conditions are completed in their entirety: (i) Licensor receives such notice; (ii) Licensee actually removes its Attachments; (iii) Licensee treats the relevant area where its Attachments were located on all affected Poles with an industry-accepted wood preservative, plugs all holes left by such Attachments and otherwise repairs any damage to Poles or other facilities that is caused by Licensee's use or removal of its Attachments; and (iv) Licensee advises Licensor of the date on which such Attachments were removed and affected Poles repaired. No refund of any License Fee will be due on account of such removal unless that removal is triggered by a Default of this Agreement by Licensor.

**11. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**11.1 Common Representations** Each Party represents and warrants that: (a) it has full authority to enter into and perform this Agreement; (b) this Agreement does not conflict with any other document or agreement to which it is a party or is bound, and this Agreement is fully enforceable in accordance with its terms; (c) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed; (d) the execution and delivery of this Agreement and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it; and (e) no additional consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver, and perform its obligations under this Agreement.

**11.2 Required Authorizations** Licensee represents and warrants that it has obtained all Required Authorizations, and covenants that it will maintain and comply with the Required Authorizations throughout the Term. Upon written request, Licensee shall provide Licensor with reasonable evidence that it has obtained any or all Required Authorizations.

**11.3 LIMITATIONS ON WARRANTIES** THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH HEREIN. THE PARTIES SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SPECIFICALLY DISCLAIMS ANY

WARRANTY OR REPRESENTATION REGARDING THE CONDITION AND SAFETY OF LICENSOR'S POLES OR THE SCOPE OF THE EASEMENTS OR RIGHTS-OF-WAY NECESSARY FOR LICENSEE TO ATTACH AND PROVIDE ITS SERVICES TO ANY THIRD PARTIES.

11.4 No Waiver of Licensee Obligations No actions or omissions of Licensor pursuant to this Agreement shall be construed as a warranty or representation by Licensor that Licensee has fulfilled any of its obligations pursuant to this Agreement and shall not relieve Licensee of its covenant to fulfill such obligation.

## 12. LOSS OR DAMAGE BY LICENSEE

12.1 Licensee's Responsibility To the extent permitted by law, including but not limited to Kentucky Constitution Section 177, Licensee shall be responsible for any loss or damage that occurs during the Term of this Agreement whatsoever that are (i) caused by Licensee or persons or entities under the direct or indirect control or authority of Licensee (collectively, "Licensee Entities") or (ii) related to the initiation, provision, continuation, or termination of the Services, the Services themselves, the Attachments, or the proximity of Licensee Entities on or in the vicinity of Licensor's Poles, including but not limited to: violation of property rights, service interruptions, damages to property, injury or death to persons, payments made under any workers compensation law or under any plan for employee disability and death benefits except to the extent such loss or damage is due to the acts or failure to act of Licensor.

12.2 Notice. In the event of any claim, demand, or litigation specified in this Section, the Indemnitee(s) shall give reasonable, prompt notice to Licensee of such claim, demand, or litigation. Licensee shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that Licensee may not make any non-monetary settlement or compromise without the Indemnitee(s)'s consent, which consent shall not be unreasonably withheld. The Indemnitee(s) shall cooperate with Licensee in the defense and/or settlement of any claim, demand, or litigation at Licensee's expense. Nothing herein shall be deemed to prevent the Indemnitee(s) from participating in the defense and/or settlement of any claim, demand, or litigation by the Indemnitee(s)'s own counsel at the Indemnitee(s)'s own expense. No Indemnitee shall take any action to settle, to compromise or otherwise to make any payment, admission, or statement to or for the benefit of any third party claimant without Licensee's written consent.

## 13 LIMITATIONS ON DAMAGES

- (A) **UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE EXTENT ALLOWED BY LAW, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES INCURRED BY LICENSEE OR BY ANY SUBSCRIBER, CUSTOMER, OR PURCHASER OF LICENSEE FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.**
- (B) **NOTWITHSTANDING ANY PROVISION OR IMPLICATION TO THE CONTRARY, IN NO EVENT (EXCEPT AS MAY BE OTHERWISE REQUIRED BY ANY APPLICABLE STATUTE, LAW, RULE, OR THE APPLICATION OF**

**COMMON LAW REQUIREMENTS REGARDING LIABILITY AS TO GROSS NEGLIGENCE AND/OR MALICIOUS CONDUCT) SHALL THE LIABILITY OF LICENSOR PURSUANT TO THIS AGREEMENT EXCEED THE POLE ATTACHMENT LICENSE FEES THERETOFORE PAID BY LICENSEE TO LICENSOR DURING ANY SEMIANNUAL PERIOD PURSUANT TO THIS AGREEMENT.**

**14. INSURANCE**

14.1 Insurance Requirement Licensee shall require and ensure that any and all of its contractors, subcontractors, vendors, etc., that perform work pursuant to this Agreement, shall carry insurance in such form and issued by such companies with a minimum A.M. Best rating of A-VII or higher to protect the Parties from and against claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reason of any loss, injury, death or damage involving any Attachment. Throughout the Term of this Agreement, Licensee shall require and ensure that any of its contractors, subcontractors or vendors shall take out and maintain, and shall ensure that its agents, contractors and subcontractors take out and maintain, the following insurance (where these limits can be met with inclusion of umbrella/excess liability limit):

- (a) Workers' compensation and employer's liability insurance, as required by law, covering all employees who perform any of Licensee's obligations under this Agreement, with statutory limits and employer's liability insurance limits of not less than One Million Dollars (\$1,000,000).
- (b) Commercial general liability or equivalent insurance with a per occurrence limit of not less than Two Million Dollars (\$2,000,000) per occurrence offered under an ISO form CG-00-01 (10/01) or better. Such insurance shall include but not be limited to products/completed operations liability, blanket contractual liability, personal injury liability and broad form property damage. Such insurance shall (i) be endorsed or shall otherwise provide that Licensee's insurance shall be primary with respect to Licensee's acts or omissions and not be in excess of, or contributing with, any insurance maintained by Licensor and its assigns, and (ii) the liability policies of insurance shall be endorsed or shall otherwise include a severability of interest or cross-liability clause.
- (c) Business automobile liability or equivalent insurance with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence on ISO form (CA 00 01) or better. Such insurance shall include coverage for owned, hired and non-owned automobiles, and contractual liability.
- (d) Such other insurance as may be necessary to insure the indemnity agreement in Section 12.1 and to protect Licensor from and against any and all insurable claims, demands, suits, actions, causes of action, proceedings, judgments, awards, losses, fees, costs, expenses and liabilities of every name and nature which may arise or result, directly or indirectly, from or by reason of this Agreement and any injury, loss or death that may result from this Agreement.

14.2 Additional Insureds The policies required by Sections 14.1(b)-(c) shall be endorsed to include Licensor and its directors, officers, members and employees as additional insureds (except for workers' compensation and employer liability) and shall stipulate that the insurance afforded for Licensee, its directors, officers, members and employees shall be primary insurance and that any

insurance carried by Licensor, its directors, officers, members or employees shall be excess and not contributory insurance.

14.3 Waiver of Subrogation Licensee's –contractors, subcontractors, vendors, etc., and their respective insurers providing the required coverage shall waive all rights of subrogation against Licensor and its directors, officers, employees and agents except in the event of gross negligence or intentional act on the part of Licensor.

14.4 Certificate of Insurance Before Licensee may affix any Attachments to or make use of any of Licensor's Poles under this Agreement, Licensee shall, on an annual basis and prior to the anniversary date of the Agreement, furnish Licensor with certificates of insurance from Licensee's contractors, subcontractors, vendors, etc., as evidence that policies providing the required coverage, conditions and limits are in full force and effect. The certificates shall identify this Agreement and state that the insurer shall endeavor to provide that not less than thirty (30) days' advance notice of cancellation or non-renewal. In the event of the Licensee's failure to maintain any insurance required in 14.1, the Licensor shall have the right to cancel this Agreement. Licensor shall not be obligated to review any of Licensee's certificates of insurance, insurance policies and/or endorsements or advise Licensee of any deficiencies in such documents, and any receipts of copies or review by Licensor shall not relieve Licensee from or be deemed a waiver of Licensor's right to insist on strict fulfillment of Licensee's obligations.

All such notices will be sent directly to Licensor at the following address (or other address as may be specified by Licensor):

Duke Energy Kentucky, Inc.  
Joint Use and Tower Leasing  
139 E. Fourth Street  
P.O. Box 960  
Room 467A  
Cincinnati, Ohio 45201

14.5 Responsibility for Contractors Licensee shall bear full responsibility for ensuring that its agents, contractors, and subcontractors are in full compliance with the requirements of this Section before they perform any work for Licensee in connection with this Agreement, and shall demonstrate such full compliance upon request of Licensor, and shall be responsible for any failure to comply herewith.

14.6 No Limitation on Indemnities Unless otherwise prohibited by law, the purchase of the insurance required by this Section 14 shall not relieve Licensee or its contractors, subcontractors, vendors, etc., of its liability or obligations under this Agreement or otherwise limit Licensee's liability under Section 12.

14.7 Modification of Insurance Requirements Licensor may periodically amend the insurance requirements in this Section 14 to require additional insurance coverage or other changes, as deemed necessary by Licensor but only after providing the Licensee with ninety (90) days' notice of such change.

## 15. DISCHARGE OF LIENS

15.1 Waiver Licensee waives, and shall require all of its contractors, subcontractors, and suppliers to waive, any and all liens and claims of liens, and the right to file and enforce and otherwise assert any such liens and claims of liens, against Licensor, Licensor's Pole(s), and any other Licensor property and facilities in connection with Licensee's Attachments or in connection with work done by or on behalf of Licensee. Licensee shall include, and shall require its contractors, subcontractors, and suppliers to include this lien waiver provision in all agreements with contractors, subcontractors, and suppliers.

15.2 Discharge If any liens or claims of liens are filed or asserted against Licensor, Licensor's Pole(s), or any other property or facilities of Licensor in connection with Licensee's Attachments or in connection with work done by or on behalf of Licensee, Licensee shall, within thirty (30) days after written notice of such lien, discharge, or remove any such lien or claim by bonding, payment, or otherwise. Notwithstanding the foregoing, Licensee may contest any such lien, in good faith, in an appropriate proceeding, and shall notify Licensor promptly when such lien or claim has been discharged or removed. Without limiting the generality of any other provision of this Agreement, Licensee assumes all liability for, and shall indemnify, defend, protect, and save harmless Licensor and Licensor's directors, officers, shareholders, affiliates, employees, agents, representatives, insurers, lenders, invitees, contractors and subcontractors from and against all such liens and claims of liens.

## 16. DEFAULTS

16.1 Licensee Default Excluding Licensee's payment obligations herein, if Licensee is in Default under this Agreement and fails to correct such Default within the cure period specified in Section 16.2 below, Licensor may, in addition to all other remedies available by contract, law and equity, at its option and without further notice:

- (a) terminate this Agreement where all costs hereunder become due and payable;
- (b) terminate the Authorization covering the Pole(s) with respect to which such Default shall have occurred;
- (c) decline to authorize additional attachments under this Agreement until such Default is cured;
- (d) suspend Licensee's access to or work on any or all of Licensor's Poles;
- (e) perform work necessary to correct such Default and charge the Imposition Costs to Licensee; and/or
- (f) seek specific performance of the terms of this Agreement through a court of competent jurisdiction, by which Licensee shall be responsible for the applicable Imposition Costs and otherwise at Licensee's sole cost and expense.

16.2 Licensee Cure Period Other than for any Licensee breach of its payment obligations herein, which will immediately subject Licensor to the remedies set forth in Section 16.1 above, Licensee shall be entitled to take all steps necessary to cure any Defaults for a period of thirty (30) days following receipt of written notice from Licensor, except in the case of a monetary Default. The 30-day notice and cure period does not apply to any Default by Licensee of its payment obligations under this Agreement.

16.3 Termination Because of Licensee Default If Licensor terminates this Agreement because of Licensee's Default, Licensee shall not be entitled to any refund of any Pole Attachment License Fees.

16.4 Reimbursement for Licensor Work If Licensee fails to cure a Default with respect to the performance of any work that Licensee is obligated to perform under this Agreement, Licensor may elect to perform such work, and Licensee shall reimburse Licensor for all Imposition Costs related thereto.

16.5 Licensor Default If Licensor is in Default under this Agreement, Licensor shall have thirty (30) days following receipt of written notice from Licensee within which to correct such Default. If Licensor does not cure its Default within the allotted time period or take reasonable measures to cure such Default if the Default cannot be cured within thirty (30) days, Licensee may, at its sole discretion and upon fourteen (14) days written notice to Licensor either terminate this Agreement or seek specific performance of the terms of this Agreement through a court of competent jurisdiction. If Licensor is in Default and Licensee elects to terminate the Agreement, Licensor shall within thirty (30) days refund to Licensee on a pro rata basis any Pole Attachment License Fees paid for portion of Term that Licensee will not be attached to the Poles.

16.6 Removal of Attachments  
Licensee may remove any of its Attachments at any time for any reason upon ten (10) days' written notice to Licensor.

## **17. TERMINATION OF AGREEMENT**

Upon termination of this Agreement, Licensee shall, within sixty (60) days: (i) remove all of its Attachments from Licensor's Poles; (ii) treat the relevant area where its Attachments were located on all affected Poles with an industry-accepted wood preservative, plug all holes left by such Attachments and otherwise repair any damage to poles or other facilities resulting from Licensee's use or removal of its Attachments; and (iii) advise Licensor of the date on which such Attachments were removed and affected Poles repaired. If any Attachments are not so removed within sixty (60) days following such termination, Licensor shall have the right to: (a) remove, use, dispose of or sell Licensee's Attachments without liability and Licensee shall reimburse Licensor for the associated Imposition Costs; and (b) Licensee shall be liable to Licensor damages for any trespass. All of Licensee's pre-termination obligations with respect to Attachments shall remain in full force and effect until such time as all the Attachments have been removed from Licensor's Poles.

## **18. WAIVER OF TERMS OR CONDITIONS**

The failure of either Party 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 such conditions and terms shall be and remain at all times in full force and effect.

## **19. MODIFICATIONS**

Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented at any time only upon written agreement by the Parties hereto. Notwithstanding the foregoing, all Exhibits may be modified by Licensor pursuant to this Agreement upon thirty (30) days, notice to Licensee, and the names, addresses, facsimile numbers, and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other.

## **20. PAYMENT OF TAXES**

Each Party shall pay all taxes and assessments lawfully levied on its own property and services subject to

this Agreement.

## **21. NOTICES**

Any notice, request, consent, demand, designation, approval, or statement required to be made to either Party by the other shall be in writing and shall be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), facsimile or electronic mail transmission, or certified U.S. mail return receipt requested to the person(s) identified on pages 1-2 of this Agreement, except that any notice, request, consent, demand, designation, approval, or statement that could affect or create: (1) either Party's ability to provide service over its facilities; (2) a monetary obligation under this agreement; (3) commencement of a cure period; (4) a legal obligation, such as an obligation to indemnify or right to pursue legal action; or (5) a termination under this Agreement, shall be sent by personal delivery, overnight delivery, or certified U.S. mail return receipt requested as provided above. Notice given by facsimile shall be deemed to have been received when transmitted, provided that the sender shall have received a transmission report indicating that all pages of the notice have been successfully transmitted with the correct facsimile number. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery, or certified U.S. mail shall be effective upon receipt.

## **22. CONFIDENTIALITY**

Neither Party shall at any time disclose, provide, demonstrate, or otherwise make available to any third party any of the terms or conditions of this Agreement nor any materials provided by either Party specifically marked as confidential, except upon written consent of the other Party, or as may be required by applicable law or governmental authorities. Notwithstanding the foregoing, nothing in this Section shall prevent disclosure to a Party's authorized legal counsel who shall be subject to this confidentiality Section, nor shall it preclude the use of this Agreement by the Parties to obtain financing, to make or report matters related to this Agreement in any securities statements, or to respond to any requests by governmental or judicial authorities; provided, however, that any such disclosure shall be limited to the extent necessary, and shall be made only after attempting to obtain confidentiality assurances. Notwithstanding the foregoing, prior to making any disclosure in response to a request of a governmental authority or legal process, the Party called upon to make such disclosure shall provide notice to the other Party of such proposed disclosure sufficient to provide the other with an opportunity to timely object to such disclosure. Notwithstanding the foregoing, Licensor may, without notice to Licensee: (i) negotiate or enter into any agreement with any other person(s) or entity(ies) that is identical or similar to this Agreement; and (ii) provide the text of all or part of this Agreement to any other party, so long as Licensor shall expurgate therefrom all references to Licensee and shall not associate such text with Licensee or identify Licensee as having agreed to such text or terms.

The Licensee's obligations under this subsection are expressly limited by the Licensee's legal obligations under the Kentucky Open Records Act ("ORA") set forth in KRS 61.870 to 61.884. No breach of this Agreement shall be deemed to occur should the Licensee be required to disclose this Agreement under the Kentucky Open Records Act.

## **23. FORCE MAJEURE**

- (a) Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or

wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this section and its effect on performance required under this Agreement.

- (b) If any Pole or other Licensor facility is damaged or destroyed by a force majeure event so that, in Licensor's sole discretion, the Pole is rendered materially unfit for the purposes described in this Agreement, and Licensor opts not to repair or replace the Pole or other facility, then the Authorization for the Pole shall terminate as of the date of such damage or destruction.

#### **24. GOVERNING LAW AND VENUE**

This Agreement shall be interpreted in accordance with the substantive and procedural laws of the Commonwealth of Kentucky and the regulations promulgated by the Commission, where applicable. Any action at law or judicial proceeding shall be instituted in the Circuit Court of Franklin County, Kentucky or if applicable, the Commission.

#### **25. CONSTRUCTION OF AGREEMENT**

This Agreement was reached by each Party after arms' length negotiations and upon the opportunity for advice of counsel, and shall not in any way be construed against either Party on the basis of having drafted all or any part of this document. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "including" or "includes" do not limit the preceding words or terms. Section headings are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

#### **26. OWNERSHIP RIGHTS**

All Attached Poles under this Agreement shall remain the property of Licensor, and Licensee's rights in Licensor's Poles shall be and remain a mere license for as long as authorized under the terms and conditions of this Agreement. Nothing herein shall be construed to compel Licensor to maintain any of its Poles for a longer period than is required by Licensor's own service requirements. All facilities of Licensee attached to the Poles under this Agreement shall remain the property of Licensee, except as otherwise provided herein.

#### **27. THIRD PARTY BENEFICIARIES**

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the Parties and may be enforced solely by the Parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, except as provided herein.

#### **26. PRIOR AGREEMENTS SUPERSEDED**

This Agreement embodies the entire agreement between Licensor and Licensee with respect to the subject matter of this Agreement, and supersedes and replaces any and all previous agreements entered into by and between Licensor and Licensee, written or unwritten, with respect to that subject matter.



## **29. ASSIGNMENT AND TRANSFER**

Licensee shall not assign, sublet, or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior, written consent of Licensor, which shall be at Licensor's sole discretion but not unreasonably withheld. No such consent granted by Licensor shall be effective until Licensee's assignee, sublessee, or other transferee has agreed, on an enforceable separate document signed and delivered to Licensor, to assume all obligations and liabilities of Licensee under this Agreement. Licensor may condition such consent upon the assignee's, sublessee's or transferee's agreement to reasonable additional or modified terms or conditions, including but not limited to additional security instruments. Subject to the terms and conditions of paragraph 6.6 above, if Licensee is assigning, subletting or otherwise transferring this Agreement to another agency of the Commonwealth of Kentucky, no additional security shall be required.

If there is a change of Control of Licensee, then Licensor shall have the right, in its reasonable discretion, immediately to terminate this Agreement in its entirety without further liability.

Licensor may assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

## **30. FACSIMILE AND ELECTRONIC SIGNATURES; COUNTERPARTS**

This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

## **31. SURVIVAL; LIMITATIONS ON ACTIONS**

Notwithstanding the termination of this Agreement for any reason, Sections 12, 13, 15, 17, 18, 21, 22, and 24 through 28 inclusive, shall survive termination to the maximum extent permitted under applicable law. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations that arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations period.

## **32. TIME OF ESSENCE**

Time is of the essence in this Agreement.

## **33. DISPUTE RESOLUTION**

To the extent permitted by law, in the event any dispute arises between the Parties under this Agreement, the Party seeking resolution of the dispute must submit written notice to the other describing the dispute and such Party's desire to resolve the dispute in accordance with the provisions of this Section 33, unless the Parties at any time mutually agree in writing to dispense with the dispute resolution process under this Section 33 for a particular dispute. If the Parties are then unable to resolve such dispute in the normal course of business within fifteen (15) days after delivery of the written notice as provided herein, each of the Parties shall promptly appoint a designated representative who has authority to settle the dispute. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve issues related to the dispute within forty-five (45) days after the Parties' appointment of

the designated representatives, then either Party may submit the dispute to the Secretary of the Finance and Administration Cabinet pursuant to KRS 45A.230 and 45A.235. Each Party shall bear its own costs and expenses in seeking resolution of any dispute under this Agreement pursuant to this Section 33. The dispute resolution procedures in this Section shall not preclude either Party from exercising Default remedies while the dispute is being resolved. Neither Party shall pursue any other rights or remedies under law or equity until that Party has first exhausted its administrative remedies under this Section 33, unless no regulatory authority has proper jurisdiction, in which case exhaustion of administrative remedies hereunder is not required.

**[END OF TERMS AND CONDITIONS]**

**Exhibit A  
Pole Attachment Request  
Duke Energy Kentucky, Inc.**

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*Section 1: General Information (Completed by Licensee)*

Date of Request: \_\_\_\_\_ Name of Company: \_\_\_\_\_ Commonwealth of Kentucky

Customer No.: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Email: \_\_\_\_\_

Estimated Number of Attachments: \_\_\_\_\_

Licensee's Project or Reference Number: \_\_\_\_\_

Type Request:  New Attachment  Modification to Existing Attachments  Other

(Describe: \_\_\_\_\_)

Location of Attachments:

State \_\_\_\_\_ County \_\_\_\_\_ Description \_\_\_\_\_

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Each application must be accompanied with a map showing specific Pole locations along with tabulated cable attachment point measurements of existing attachments, including lowest Duke Energy Kentucky, Inc. attachment (neutral, secondary, riser attachment points, street light brackets, drip loops, etc.).

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*Section 2: Engineering Information (Completed by Duke Energy Kentucky, Inc.)*

Assigned Exhibit Number: \_\_\_\_\_

Forwarded to Zone Contact: \_\_\_\_\_

Date Sent: \_\_\_/\_\_\_/\_\_\_

Project Engineer: \_\_\_\_\_

Duke Work Request Number: \_\_\_\_\_

Field Survey Completion Date: \_\_\_/\_\_\_/\_\_\_

Actual Number of Attachments: \_\_\_\_\_

Check One:

- Make-Ready Work Required - Charges based on Estimated Cost of \$ \_\_\_\_\_
- Make-Ready Work Required - Estimated Cost of \$ \_\_\_\_\_. Charges will be based on Actual Project Cost at Completion of Project
- No Make-Ready Work Required - Invoice for \$ \_\_\_\_\_ will be submitted for

**Engineering Survey**

License granted \_\_\_\_\_, 20\_\_\_\_, subject to Licensee's acceptance of proposed charges as described in this Exhibit.

By \_\_\_\_\_  
Title \_\_\_\_\_  
Duke Energy Kentucky, Inc.

Date Forwarded to Applicant for Acceptance: \_\_\_\_/\_\_\_\_/\_\_\_\_

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**Section 3: Licensee Acceptance of Fees:**

Make-Ready Costs as noted above and the following attachment license fees are accepted by Licensee and shall be paid pursuant to the Pole Attachment Agreement. Licensee acknowledges that attachment license fees are subject to change.

Annual Attachment Fee: \_\_\_\_\_ attachments X \$ \_\_\_\_\_ = \$ \_\_\_\_\_ per year

By \_\_\_\_\_ Date: \_\_\_\_\_  
Licensee

Title \_\_\_\_\_ Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

## Exhibit B

### Notice of Termination

Date of Notice: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Attaching Company Assigned Permit or Reference Number: \_\_\_\_\_

Licensee: JURIS# \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

Duke Energy Kentucky, Inc.:

In accordance with the terms of the Pole Attachment Agreement dated \_\_\_\_\_, notification is hereby provided that Licensee will remove its Attachments to the following Poles located in:

\_\_\_\_\_  
(City or Town - County and State)

Number of Attachments to be Removed: \_\_\_\_\_

Location of Attachments to be Removed: **[SEE ATTACHED]**

Anticipated Removal Date: \_\_\_\_\_

In accordance with the Pole Attachment Agreement, Licensee shall: (i) treat the relevant area where its Attachments were located on all affected poles with an industry-accepted wood preservative; (ii) plug all holes left by such Attachments; (iii) otherwise repair any damage to poles or other facilities that is caused by Licensee's use or removal of its Attachments; and (iv) notify Licensor of the date on which it removed and repaired the poles.

By: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Licensee  
\_\_\_\_\_  
Title

Notification of removal of the above-referenced Attachments is acknowledged \_\_\_\_\_ / \_\_\_\_\_,  
\_\_\_\_\_.

By: \_\_\_\_\_ Phone number: \_\_\_\_\_  
Duke Energy Kentucky, Inc. Representative  
\_\_\_\_\_  
Title

Licensor: Duke Energy Kentucky, Inc.

**Exhibit B (Cont'd)**

**LOCATION OF ATTACHMENTS TO BE REMOVED**  
(use additional sheets as necessary)

## Exhibit C

### Schedule of Cash Bond or Irrevocable Letter of Credit

NUMBER OF ATTACHMENTS			AMOUNT OF COVERAGE
-	THROUGH	200	\$20,000
201	THROUGH	400	\$40,000
401	THROUGH	600	\$60,000
601	THROUGH	1,000	\$100,000
1,001	THROUGH	1,500	\$150,000
1,501	THROUGH	2,500	\$250,000
2,501	THROUGH	3,000	\$300,000
3,001	THROUGH	3,500	\$350,000
3,501	THROUGH	4,000	\$400,000
4,001	THROUGH	4,500	\$450,000
4,501	THROUGH	5,000	\$500,000
5,001	THROUGH	6,000	\$600,000
6,001	THROUGH	7,000	\$700,000
7,001	THROUGH	8,000	\$800,000
8,001	THROUGH	9,000	\$900,000
9,001	THROUGH	10,000	\$1,000,000

## EXHIBIT D

### LICENSOR'S RULES AND PRACTICES FOR LICENSEE'S ATTACHMENTS

Licensee Attachments shall be placed on the Pole at a location approved by Licensor. The highest Attachment in the communications zone shall be placed at a height of no more than 23'8" from the ground level of the Pole. If Licensor approves the placement of an Attachment at a height higher than 23'8", the Attachment shall be considered to be in borrowed space and subject to displacement by Licensor at Licensee's expense if Licensor requires the space for its electric service. Any relocation of Licensee's Attachment shall be at Licensee's expense. Unique circumstances may require a deviation from this general standard and such circumstances shall be addressed on a case-by-case basis.

#### General

- 1) Before any attachment requests can be evaluated an Attachment Agreement must be executed with Licensor and all conditions of the Agreement must be satisfied.
- 2) All Attachments must comply with federal, state, and local rules.
- 3) All of Licensee's Attachments shall comply with NESC requirements and any other applicable requirements.
- 4) Licensee shall install, maintain, transfer, and remove its Attachments at its own expense in accordance with any applicable pole attachment license agreement between Licensee and Licensor.
- 5) A preliminary "ride through" of the proposed route of a Licensee's facilities shall be made by representatives of Licensor and Licensee upon request by Licensor.
- 6) All wireline Attachments shall be located on the same side of each Pole as existing secondary or neutral conductors or as otherwise designated in advance in writing by Licensor.
- 7) All of Licensee's Attachments shall be located within space authorized for those Attachments.
- 8) Licensee shall check and verify the condition of any Pole prior to climbing or performing work on it.
- 9) All of Licensee's Attachments shall comply with NESC clearance requirements and shall be located a minimum of forty inches (40") below Licensor's lowest attached facilities that are located in the supply space on the Pole, as well as at least forty inches (40") below any conductor drip loop that may extend below the transformer. All mid-span clearances between Licensee's facilities and Licensor's lowest conductors shall comply with NESC clearance requirements

#### Eligible Poles

- 1) All Poles for any Attachments must have adequate strength and space for installation. Any costs associated with structure modifications required to meet strengths or clearances will be at Licensee's expense.

#### Attachment Requests

- 1) All Attachment requests must be approved by Licensor.
- 2) Each Attachment request must include the following:
  - a) Appropriate Exhibits including Attachment Request and Equipment Description and Specifications
  - b) A street-level map indicating each Pole where each Attachment is proposed
  - c) Detailed drawing of Pole showing existing configuration



- d) Detailed drawing of Pole showing proposed installation including attachment points for all equipment, dimensional specifications, cabling, etc.
- e) Equipment specifications for all equipment including manufacturer, model number, size and weight. Attach manufacturer specification sheets for each.
- f) Input power requirements (maximum watts, kwh per month)
- g) Grounding methods for all equipment.

### **Construction Details**

- 1) Power supplies and equipment enclosures must be installed on a suitable ground-mounted base provided and installed by Licensee per Licensor's standards governing the installations. The electric power disconnect for this equipment is to be installed on the equipment. The Licensee is responsible for providing and installing the appropriate meter base and associated equipment required for supplying a metered electric service to the customer's equipment, following the current guidelines of the National Electric Code/National Electrical Safety Code (NEC/NESC).
- 2) Boring through a wood Pole is allowed as long as no hole is closer than four inches (4"), center-to-center, to another, existing or new. Attaching equipment with wood screws is also permissible and the previous hole placement provision does not apply.
- 3) No bolt used by Licensee to attach its facilities shall extend or project more than one inch (1").
- 4) On metal poles, no holes are to be bored. Stainless steel bands or brackets, which securely grip the Pole, shall be used to attach equipment.
- 5) Licensee may not install standoff brackets, cross arms, alley arms, or cable extension arms for the support of any of its facilities without prior written approval of Licensor.
- 6) Bonds, between any wireline Attachment, shall be made to the power system ground wire. If no ground wire exists, the Licensee will install a bond wire on his bracket and leave a tail sufficient to reach the power system neutral. The bond wire will be stapled to the pole and connected to the neutral by a qualified installer. Also, to prevent potential difference, bonds shall be made between the power system ground wire and the power supply/switch equipment cabinet (this is not a neutral bus bond). This bond shall be external and visible from the ground. These requirements do not preclude any NEC requirements.
- 7) Conductors running vertically on Poles are to be installed in a non-metallic (PVC) electric conduit, which terminates in a PVC weatherhead.
- 8) There is to be permanent tag affixed to each wireline Attachment on each Pole and ground-mounted equipment installation, provided and maintained by Licensee, indicating the following:
  - a) Licensee name
  - b) Contact phone number in case of emergency
  - c) Site number or other identifier
- 9) Service conductors are to be long enough to loop from the weatherhead and reach the secondary rack, or if there is no rack, the conductors are to be long enough to reach the transformer secondary terminals. These conductors must be left in a secured manner to prevent accidental contact with other conductors prior to connection. The Licensee is responsible for providing and installing all secondary ducts and conductors and for contacting local inspection bureaus for any additional requirements pertaining to these installations. The Licensee is also responsible for contacting the appropriate Licensor's designated customer project coordinator ("CPC") for the given area for service locations and any additional information that may pertain to the providing of electric service to the Licensee's equipment.
- 10) Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used pole, subject to the approval of Licensor in its sole discretion.
- 11) Licensee shall provide to Licensor a statement summarizing the standards used by Licensee for its

standard pole attachment installations. Such standards shall be signed and approved by a Licensee professional engineer, confirming that licensee's standard installations conform with the NESC and good engineering design. With respect to non-standard Attachments, Licensee's professional engineer shall prepare or review plans for such non-standard Attachments, and submit such plans to Licensor with a statement that such non-standard Attachments comply with the NESC and good engineering design.

- 12) For all matters related to the installation of equipment not covered in these rules and guidelines, contact the appropriate Licensor representative.
- 13) These rules and guidelines will be reviewed and updated as required. The Licensee is encouraged to ensure they have the latest copy of this rules and guidelines prior to revising existing installations, etc.
- 14) Any unbalanced loading of Poles caused by the placement of Licensee's facilities shall be properly guyed and anchored by Licensee with a guy and anchor provided by Licensee, at no expense to Licensor. Licensee shall not attach any guy wire to Licensor's anchor, anchor rod, guy wire, or guy wire attachment on the Pole.