

POLE ATTACHMENT LICENSE AGREEMENT

BY AND BETWEEN

North Central Telephone Cooperative Corporation

("Licensor")

AND

Commonwealth of Kentucky, Finance and Administration Cabinet

("Licensee")

This Pole Attachment License Agreement (this “**Agreement**”) is made and entered into as of the date last signed by all the parties, with an effective date of April __, 2017 (the “**Effective Date**”), by and between: North Central Telephone Cooperative Corporation, a Tennessee non-profit corporation with an address of PO Box 1574 Old Gallatin Road, Scottsville, Kentucky 42164, on behalf of itself, and as agent for, and on behalf of, its Affiliates (“**Licensor**”), and the **COMMONWEALTH OF KENTUCKY, FINANCE AND ADMINISTRATION CABINET**, with an address of 702 Capitol Avenue, Room 383, Capitol Annex, Frankfort, Kentucky 40601 (“**Licensee**”). This Agreement is entered into in connection with that certain Dark Fiber Indefeasible Right of Use Agreement by and between Licensee and Bluegrass Network LLC, a Kentucky limited liability company (“**Bluegrass**”), dated April __, 2017 (the “**IRU Agreement**”) and that certain Contact for Last Mile Infrastructure Services by and among Bluegrass, the Commonwealth of Kentucky, and Kentucky Communications Network Authority dated April __, 2017 (the “**Maintenance Agreement**” and collectively with the IRU Agreement, the “**Commonwealth Agreements**”). Licensor and Licensee may sometimes be referred to in this Agreement individually as a “**party**” and collectively as the “**parties**”.

1. **DEFINITIONS**

A. “**Affiliate**” means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, “control” means direct or indirect ownership of at least 50% of the interest of such Person.

B. “**Application**” means that completed and duly-executed Application for Pole Request, in the form attached hereto as **Exhibit A**, from Licensee to Licensor requesting authorization to attach Licensee-owned facilities to a Pole or Poles in accordance with this Agreement.

C. “**Attachment(s)**” means any facilities, cables, or equipment attached to a Pole or Poles or any other property owned or controlled by Licensor.

D. “**Consumer Price Index**” means the Consumer Price Index, All Urban Consumers, United States, All Items (1982-1984 = 100), as published by the Bureau of Labor Statistics of the United States Department of Labor, or if such index is not available, such other index as the parties may agree, while acting in good faith, most closely resembles such index.

E. “**Governmental Authority**” means any nation or country (including, the United States of America), and any state, commonwealth, territory or possession of the United States of America, any political subdivision thereof (including counties, municipalities, home-rule cities and the like), and any agency, authority or instrumentality of any of the foregoing, including, without limitation, any court, tribunal, department, bureau, commission or board.

F. “**Legal Requirement**” means any constitution, statute, ordinance, code, or other law (including common law), rule, regulation, Order, notice, standard, procedure or other requirement enacted, adopted, applied or issued by any Governmental Authority, including, without limitation, judicial decisions applying or interpreting any such Legal Requirement.

G. “**License**” means the specific, nonexclusive, and revocable permission from a Licensor to Licensee, in the form of a countersigned Application delivered by Licensor to Licensee, authorizing Licensee to attach its facilities to a Licensor’s Poles in accordance with the terms set forth in the applicable counter-signed Application and this Agreement.

H. “**Licensee Contractor**” shall mean any Person performing services on behalf of Licensee or any Affiliate of Licensee.

I. “**Make Ready Estimate**” means the Licensor-estimated cost to perform Make Ready Work on a Pole, right-of-way, and related facilities to accommodate Licensee’s Attachment.

J. “**Make Ready Work**” means all work performed by Licensor or another Person to prepare a Pole, right-of-way, and related facilities for the requested occupancy or attachment of Licensee’s Attachment or facilities.

K. “**Notification of Surrender**” means the Notification of Surrender, in the form attached hereto as Exhibit B, submitted by or on behalf of Licensee to Licensor surrendering the applicable License.

L. “**Order**” means any order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction, or other similar determination or finding by, before, or under the supervision of any Governmental Authority, arbitrator, or mediator.

M. “**Overlashing**” or “**overlashed**” means lashing of an additional Licensee-owned cable to Licensee’s existing cable and/or strand attached to a Pole as set forth in Section 11 of this Agreement.

N. “**Person**” means an individual, partnership, corporation, association, joint stock company, trust, joint venture, limited liability company, unincorporated organization, or Governmental Authority.

O. “**Pole(s)**” means a pole owned by Licensor or pole owned by another Person, such as a Licensor’s Affiliate, to the extent that, and for so long as, Licensor has the right to permit others to attach to such pole.

P. “**Pole Attachment Fee**” means the amount paid annually to Licensor for each Attachment on a Pole by Licensee in accordance with Exhibit C. For billing purposes, a single Attachment includes the point of Attachment and all facilities located in the space on the applicable Pole in the space assigned to Licensee, which shall not exceed six inches above and six inches below the point of Attachment. If Licensee either (i) occupies more than one foot of space on the applicable Pole or (ii) the Attachment extends either six inches below or six inches above the point of Attachment, Licensee shall be responsible for an additional Pole Attachment Fee for each one foot of space occupied (rounded up to the nearest whole foot) or for each instance in which the Attachment extends either six inches below or six inches above the point of Attachment (rounded up to the nearest six inch increment). The Pole Attachment Fees set forth in Exhibit C shall be subject to an increase on each anniversary of the Effective Date by any percentage rate increase in the Consumer Price Index for the immediately preceding 12-month period.

Q. “**Services**” means the internet, data transmission, and telecommunication services Licensee provides as a result of the placement of Licensee’s Attachment to Licensor’s Poles.

2. **PURPOSE AND SCOPE OF AGREEMENT; RELATIONSHIP BETWEEN LICENSOR AND LICENSEE**

A. The purpose of this Agreement is to set forth the rates, terms, conditions, and procedures under which a Licensor will provide Licensee access to Licensor's Poles in the Commonwealth of Kentucky in connection with the Commonwealth Agreements.

B. Subject to the provisions of this Agreement and the written approval of Licensor, within Licensor's sole and absolute discretion, Licensor will issue to Licensee revocable, nonexclusive Licenses authorizing the placement of Licensee's Attachment to Licensor's Poles for purposes of providing the Services in accordance with Legal Requirements.

C. In no event shall Licensee's use of any Pole, right-of-way, and related facilities, the payment of any fee or charge required under this Agreement, any License issued under this Agreement, or any of the terms or conditions set forth in this Agreement create or vest in Licensee any ownership or property rights in any Pole, right-of-way, and related facilities. Any right granted to Licensee hereunder shall be and remain a license, terminable in accordance with the terms and conditions set forth in this Agreement. Nothing herein contained shall be construed to compel Licensor to construct, retain, extend, place, or maintain any Pole, right-of-way, and related facilities. Nothing contained in this Agreement or in any License issued hereunder shall in any way affect, restrict, or impair the right of Licensor to convey, transfer, mortgage, or assign to any other person or entity any interest in real or personal property, including, but not limited to, any Pole, right-of-way, and related facilities in which Licensee has attached or placed Licensee's Attachments pursuant to Licenses issued under this or other license agreements.

D. Licensee recognizes that Licensor has entered into, or may in the future enter into, agreements and arrangements with others that are not parties to this Agreement regarding the Poles, right-of-way, and related facilities covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction, or prohibition against Licensor with respect to such other agreements or arrangements. The rights of Licensee shall at all times be subject to any present or future joint use, joint ownership arrangement, or any other arrangement or agreement between Licensor and any other Person.

E. Licensee shall not be deemed a partner, agent, principal, or joint venturer with or of Licensor, and Licensor shall not be deemed a partner, agent, principal, or joint venturer with or of Licensee.

3. TERM AND TERMINATION OF AGREEMENT

A. Subject to any party's right to terminate this Agreement for default and subject to the Licensee's right to terminate this Agreement for default or convenience in accordance with 200 KAR 5:312, the initial term shall be for a period of ten (10) years from the Effective Date (the "Initial Term"). Thereafter, the Agreement shall continue in full force and effect for subsequent terms of one (1) year unless either party provides written notice to the other party of their intent to terminate this Agreement at least six (6) months prior to the end of the Initial Term (each, a "Renewal Term"); *provided, however*, that either party may terminate this Agreement after the Initial Term for any reason or for no reason, without liability to the other party for such termination, by giving to the other party notice of termination at least six (6) months prior to the end of the then-current Renewal Term. Notwithstanding the foregoing, at any time(s) the rates, fees and charges, including, but not limited to, those contained in Exhibit C, may be increased or decreased by written notice from Licensor to Licensee.

B. Upon termination of the Agreement in accordance with any of its terms, all outstanding Licenses in connection therewith shall terminate and shall be surrendered, and Licensee shall immediately, and at its sole expense, remove all Attachments located on Poles prior to the effective date of the termination of this Agreement.

4. TERMINATION OF LICENSES

A. In addition to other termination rights set forth in this Agreement, upon notice from Licensor to Licensee that Licensor has been advised by a Person that the use of any Pole is not authorized and is objected to by such Person or that any Pole is to be removed, Licensee shall immediately remove its cables, equipment, and facilities at once from the affected Pole(s) or shall make arrangements for the removal of its Attachments from the affected portion of the Pole(s) at Licensee's sole expense. If Licensee fails to remove such Attachments within the timeframe stated on the Notice, Licensor shall have the right to remove Licensee's Attachments from Licensor's Poles at the cost and expense of Licensee without incurring any liability for such removal, and Licensee shall promptly reimburse Licensor for any and all reasonable costs and expenses incurred by Licensor or Licensor's Affiliate in removing Licensee's Attachments.

B. Licensee may at any time remove its Attachments from any Poles. In the event that Licensee removes its Attachments from any Poles, Licensee shall immediately give Licensor written notice of such removal and surrender of the applicable License in the form of a Notification of Surrender. If Licensee surrenders its License but fails to promptly remove its Attachments from Licensor's Poles, Licensor shall have the right, but not the obligation, to remove Licensee's Attachments at Licensee's sole expense without incurring any liability for damage or injury to Licensee's Attachments or interruption of Licensee's services, and Licensee shall promptly reimburse Licensor for any and all costs and expenses incurred by Licensor or Licensor's Affiliate in removing Licensee's Attachments. Licensee's obligations with regard to maintenance and fees continue until Attachments are removed from the Poles. In the event that Licensee's Attachments shall be removed from any Pole, Licensee shall not attach any Attachment to the applicable Pole unless Licensee shall have obtained a new License after submitted an Application for License in accordance with the provisions of this Agreement as though no Attachment had previously been made to such Pole.

5. RATES, FEES AND CHARGES

A. All rates, charges, and fees set forth in this Agreement and those shown in Exhibit C (Schedule of Rates, Fees, and Charges) shall be subject to, and calculated in accordance with, applicable law. Pursuant to Ky. Rev. Stats. 45.454, if Licensee fails to make any payments within thirty (30) days of receipt of invoice, such amounts shall accrue interest at the rate of one percent (1%) per month or at the maximum percentage allowed by applicable law, whichever is less.

B. For the purpose of computing the annual Pole Attachment Fee due under this Agreement, the Pole Attachment Fee shall be equal to the following: (i) (a) the total number of Poles where Licensee was issued, held, or maintained a License from Licensor or Licensor's Affiliate pursuant to this Agreement at any time during the preceding calendar year (without proration) *multiplied by* (b) the Pole attachment Fee for Authorized Attachments set forth on Exhibit C; *plus* (ii) (a) the total number of Poles where Licensee maintained an Unauthorized Attachment at any time during the preceding calendar year (without proration) *multiplied by* (b) the Pole Attachment Fee for Unauthorized Attachments. The invoice for the annual Pole Attachment Fee shall be sent to Licensee prior to March 30 of each calendar year.

C. All charges for inspections, engineering, replacement, or rearrangements of Licensee's Attachments from any Pole and, without limitation, any other work performed for Licensee shall be based upon the full cost and expense, including, but not limited to, the allocation of an amount of Licensee's overhead, incurred by Licensor or its representative for performing such work.

D. Upon termination or surrender of a License granted hereunder, no refund of any Pole Attachment Fees shall be made, and Licensee shall remain liable for all fees and charges set forth in this

Agreement, including, but not limited to, the Pole Attachment Fee related to such Attachments and License that shall be due and payable the following calendar year in accordance with **Section 5(B)**.

6. PAYMENT

A. All amounts for work performed by Licensor or its representative, the fees set forth in this Agreement, and the other amounts payable under this Agreement, shall be due and payable upon Licensee's receipt of an invoice setting forth such amounts and shall be deemed delinquent if not paid within thirty (30) days after the date of the invoice. The Pole Attachment Fee shall be invoiced as set forth in **Section 5(B)**, and all other amounts may be invoiced at the discretion of Licensor.

B. Should Licensor remove Licensee's Attachments from Poles in accordance with this Agreement, Licensor will deliver to Licensee the Attachments so removed upon Licensee's payment of the cost of removal, storage and delivery of such Attachments and all other amounts due under this Agreement. Licensee hereby grants a lien and security interest in Licensee's Attachments to Licensor, with power of public or private sale and all other rights and remedies set forth under the Uniform Commercial Code (as the same has been adopted, and is in effect, in the Commonwealth of Kentucky) and such other rights and remedies as are provided under applicable law, to cover any amounts due Licensor under this Agreement. Such liens shall not operate to prevent Licensor from pursuing, at its option, any other remedy in law, equity or otherwise, including, but not limited to, any other right or remedy provided for in this Agreement.

7. ATTACHMENT REQUEST AND LICENSE PROCESS

A. Before Licensee shall have a right to place Attachments to any Pole, right-of-way, and related facilities, Licensee shall complete and submit to Licensor a Application for Pole Attachment Application, duly-executed by Licensee, seeking a revocable, nonexclusive License to place the Attachment on such Pole, together with the Application Fee set forth on **Exhibit C**, and prior to placing any Attachment of such Pole, Licensee shall have first received an Application for Pole Attachment Application, duly-executed by Licensor, granting such revocable, nonexclusive License to place the Attachment on such Pole.

B. Each Application for Pole License shall contain a request for Licenses for no more than twenty-five (25) Poles. Licensee may submit up to twelve (12) Applications for Pole License within any thirty (30) day period. Licensor will process Applications for Pole Licenses in the order in which it determines, within Licensor's sole and absolute discretion. In no event shall Licensee attach any Attachment to any guy wires, anchors, or strands owned by Licensor or any of Licensor's Affiliate at any time and for any period.

C. Whenever Licensee delivers an Application for Pole License to Licensor, Licensee shall include a drawing of the proposed route; the Pole detail; and the name, telephone, facsimile, and email information for Licensee's contact person. Upon receipt of an Application for Pole License, Licensor will conduct an engineering survey to determine whether and where Licensee's Attachment is feasible and what Make Ready Work is required to accommodate Licensee's Attachment. Upon completion of the engineering survey, Licensor shall inform Licensee of the Make Ready Estimate associated with such Attachment. If Licensor determines the request will not be completed because of safety, reliability, generally applicable engineering purpose, or any other reason, Licensor shall notify Licensee in writing that the Application for Pole License is denied. All expenses incurred by Licensor in reviewing Licensee's Application for Pole License shall be borne by Licensee even if such request is denied by Licensor.

D. If Licensor desires to obtain a License from Licensor, Licensee shall promptly pay the Make Ready Estimate and costs and expenses incurred by Licensor pursuant to Section 7(C) within fourteen (14) days of receipt of the Make Ready Estimate and invoice for such amounts; *provided, however*, that the applicable License shall not be issued, and the Make Ready Work shall not commence, until Licensor has received all amounts due and payable pursuant to this Section 7(D). Licensee shall be solely responsible for negotiating with existing attachers for Make-Ready Work relating to such other existing attacher cables, equipment, and facilities located on, within, or in Licensor's Pole, right-of-way, and related facilities and shall be responsible for paying all charges incurred in transferring or rearranging existing attacher cables, equipment, and facilities to accommodate the placement of Licensee's Attachment on, within or in Licensor's Pole, right-of-way, and related facilities. Licensor shall provide Licensee with existing attacher(s) contact information upon Licensee's written request. In the event Licensee declines to obtain the License, Licensee shall promptly pay Licensor all reasonable costs and expenses incurred by Licensor, including, but not limited to, the Application Fee, engineering, and administrative expenses and costs.

E. Licensor shall undertake to complete any Make Ready Work of those facilities owned by Licensor upon receipt of Licensee's payment of all amounts due and payable under Section 7(D). Upon completion of all Make Ready Work and receipt of all amounts due and payable under Section 7(D), Licensor shall issue Licensee a License in the form of the applicable Application for Pole Attachment Application initially submitted by Licensee, duly-executed by Licensor. Upon receipt of the applicable License, Licensee may attach to Licensor's Poles in accordance with the terms and conditions of that License and in accordance with the terms and conditions set forth in this Agreement.

F. Licensee shall maintain a copy of all Applications for Pole Licenses and all approved Licenses. Licensor may provide copies of the same to the extent available upon Licensee's request, and Licensee shall reimburse Licensor for its costs and expenses in preparing and sending requested copies.

8. LICENSEE REPRESENTATIONS AND WARRANTIES; AUTHORITY FOR PLACEMENT OF ATTACHMENT

A. Licensee represents, warrants, and covenants as follows:

1. Licensee has the authority to maintain Attachments within each public right-of-way or private rights-of-way or on private property; shall, upon request, provide a copy of documentation evidencing such right to Licensor; and shall, at all times during the Term, maintain such authority;
2. Licensee shall use the Attachments solely for purposes of providing the Services;
3. Licensee shall erect, install, and maintain its Attachments in a safe condition and in good repair in accordance with the requirements set forth in Section 9;
4. Licensee and Licensee's representatives shall at all times comply with all applicable Legal Requirements and applicable industry standards;
5. Licensee and each Licensee Contractor 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 the Attachments and to avoid interference to Licensor's safe and efficient operation of its Poles, rights-of-way, and other facilities;

6. Each Licensee Contractor shall be have such professional certificate and training reasonably necessary for such Licensee Contractor to render the services that Licensee Contractor renders in connection with the Attachment; and
7. Licensee shall be solely responsible for obtaining all licenses, easements, authorizations, permits, and consents from any Person that may be required to place and maintain Attachments on Licensor's Poles.

B. Licensor may, without incurring any liability to Licensee, remove Attachments of Licensee from Licensor's Poles, at Licensee's sole expense, where such removal is required in Licensor's sole discretion in connection with the performance of Licensor's obligations or the safety of any Person. Licensor shall provide Licensee with notice of any removal of any Attachment pursuant to this Section 8(B).

9. CONSTRUCTION AND MAINTENANCE

- A. Licensee's Attachments shall be placed and maintained in accordance with the following:
1. the terms and conditions of this Agreement;
 2. Licensor's requirements and specifications, as the same may be amended, modified, or supplemented from time to time within Licensor's sole discretion;
 3. the National Electrical Safe Code, the National Electrical Code, the Occupational Safety and Health Act, and the Rural Utilities Services; and
 4. in compliance with all Legal Requirements and applicable industry standards.

In the event of a conflict or difference between any of these specifications and requirements, the most stringent will apply. Licensee shall promptly rearrange, modify, alter, or take other remedial or corrective action with respect to its Attachments in the event that such Attachments at any time do not comply with the requirements set forth in this Section 9(A), and in the event that Licensee does not promptly take such action to bring the Attachments into compliance with the requirements set forth in this Section 9(A), then Licensor shall be authorized, in its sole discretion, to remove, rearrange, modify, alter, or take other remedial or correction action with respect to such Attachments, at Licensee's sole cost and expense, and Licensee shall promptly reimburse Licensor for any and all reasonable costs and expenses incurred by Licensor (including, but not limited to, an amount of Licensor's overhead) in connection with such actions.

B. Licensee shall, at its own expense, make and maintain its Attachments in a safe condition and in good repair and shall make use of the Poles in a safe manner, in a manner acceptable to Licensor, and in a manner that does not conflict with the use of said Poles by Licensor or by other Persons using said Poles. Licensee shall not interfere with other facilities on the Poles which may be placed thereon from time to time. Licensee shall, at its sole expense, upon written notice from Licensor, relocate or replace its Attachments placed on said Poles, transfer the Attachments to substitute Poles authorized by Licensor, or perform any other work in connection with the Attachments that may be required in accordance with Section 9(A)-(B). Licensor shall give such written notice as is reasonable in the circumstances prior to taking any action with respect to the maintenance of the Attachments. Licensor may relocate, remove, or replace Licensee Attachments placed on the Poles, transfer such Attachments to substitute Poles, or perform any other work in connection with said Attachments that may be required in the maintenance, replacement, removal, or relocation of said Poles or facilities located thereon or which

may be placed thereon, or for the service needs of Licensor, Licensee shall promptly reimburse Licensor for any and all reasonable costs and expenses incurred by Licensor (including, but not limited to, an amount of Licensor's overhead) in connection with such actions.

C. Licensee shall be responsible at all times for the condition of Licensee's Attachments and for Licensee's compliance with the requirements set forth in **Section 9(A)**. Licensor shall have no duty to Licensee to inspect, monitor, or maintain the condition of Licensee's Attachments (including, but not limited to, splices and other facilities connections) located on, within, or in the Poles. Licensor may, but is under no obligation or responsibility to, make periodic or spot inspections at any time of any part of Licensee's Attachments as Licensor determines reasonable or necessary in its sole discretion.

D. Licensee shall not authorize any Licensee Contractor to perform any work on, within, or in Licensor's Poles without first verifying, to the extent practicable, on each date when such work is to be performed and that the condition of the Poles is suitable for the work to be performed. If Licensee or Licensee Contractor determines that the condition of the Poles is not suitable for the work to be performed, Licensee shall notify Licensor of the condition of the Poles in question and shall not proceed with construction activities until Licensee is reasonably satisfied that the work can be safely performed.

E. Licensee shall be solely responsible for paying all Persons that provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and placement of Licensee's Attachments and for directing the activities of all Licensee Contractors while they are physically present on, within, or in the vicinity of Licensor's Poles. Licensee shall not permit any mechanic's lien, material man's lien, lien, claim, security interest, or encumbrance to attach to or encumber any of Licensor's real or personal property at any time.

F. Licensee's main line Attachments shall be tagged so as to identify Licensee as the owner of the Attachment. Licensee shall place fiber wrap/ID at the specific Poles attaching point and at any aerial span splice location and slack loop. The tags shall be of sufficient size and lettering so as to be easily read from ground level.

G. Licensee shall place and maintain permanent identification markers on each of its Attachments prior to affixing it to the Poles. All identification marker must be located at or near the point where such Attachments are affixed to each Pole and must be (i) non-metallic; (ii) of a distinctive and uniform design; and (iii) legible, clearly visible, and recognizable from the ground without visual aid.

H. Licensee shall immediately notify Licensor of any damage caused to any Persons or property in the course of installation or maintenance of Licensee's Attachments.

10. OVERLASHING

A. Any proposed Overlashing by Licensee shall constitute a separate Attachment subject to **Section 7** and all other provisions of this Agreement. Any additional Attachments being installed on Poles, regardless of it being an overlash of existing Attachment or a new Attachment, will require an engineering analysis to determine if the additional loading negatively impacts the Pole's capacity.

B. In no event shall Licensee allow a third party to overlash to Licensee's Attachments without Licensor's prior written consent. Any third party must execute a separate license agreement with Licensor and obtain a license thereunder.

11. MODIFICATIONS, ADDITIONS, REPLACEMENTS OR REARRANGEMENTS

A. Licensee shall not modify, overlash, add to, or replace Attachments on any Pole without first notifying Licensor in writing at least thirty (30) days prior to such modification, overlashing, addition, or replacement, and such written notice shall set forth the following:

1. The date the activity is scheduled to begin and a description of the modification, addition, or replacement to be performed, including, but not limited to, the Pole location and Pole number;
2. A representation that the modification, overlashing, addition, or replacement will not require any space other than the space previously designated for Licensee's Attachments; and
3. A representation that the modification, overlashing, addition, or replacement will not impair the structural integrity of the applicable Pole.

B. Upon Licensor's receipt of a complete Application for Pole License, Licensor will perform a field check at Licensee's sole expense, and if Licensor determines that the modification, addition, or replacement specified by Licensee in its notice will require more space than that allocated to Licensee or will require the rearrangement of, reinforcement of, replacement of, or an addition of support equipment to the Poles involved in order to accommodate Licensee's modification, addition, or replacement, Licensor will so notify Licensee and the parties will follow the Make Ready Work process as set forth in Section 7 of this Agreement in order to obtain authorization for the modification, addition, or replacement of its Attachments.

C. Should Licensee request Licensor to expand capacity and should Licensor so agree, Licensee agrees to pay all cost and expenses thereby incurred by Licensor. If another party that has been granted a license joins in the request and will benefit from the expansion, Licensee agrees to pay a percentage of all costs proportionate to Licensee's share of the benefit received from the expansion or purchase, but Licensee shall be responsible for all costs and expenses not paid by the other party.

D. When multiple applications, including those of Licensee, are received by Licensor with respect to any Poles which must be replaced or rearranged to provide additional space prior to commencement of the work on such Poles, Licensor's facilities may need to be transferred in which case Licensee shall pay for all costs for such transfers.

E. In the event Licensor plans to modify or alter any Poles upon which Licensee has placed Attachments, Licensor, except in emergency situations, shall provide Licensee written notice of the proposed modification or alteration at least sixty (60) days prior to the time the proposed modification or alteration is scheduled to take place. Should Licensee decide to modify or alter Licensee's Attachments on Poles, Licensee shall so notify Licensor in writing at least thirty (30) days prior to the day the work is to begin. In such event, Licensee shall bear a proportionate share of the total costs incurred by Licensor to make Licensor Poles accessible.

F. In the event Licensor is required to move the location of, or replace, any Licensor Poles for reasons beyond its control, Licensee concurrently shall relocate Licensee's Attachments. Licensee shall be solely responsible for the costs of the relocation of Licensee's Attachments. When it is mutually agreed that it is in the best interest of Licensor and Licensee, Licensor may, after proper notification has been provided, transfer Licensee's Attachments at the same time that Licensor transfers its facilities and shall invoice Licensee for the actual costs incurred in performing the transfer of Licensee's Attachments.

12. EMERGENCY RESTORATION

A. In the event of an emergency, restoration procedures may be affected by the presence of Licensee's Attachments. While Licensor shall not be responsible for the repair of damaged Attachments, Licensor shall nonetheless control access to its Poles if the restoration is to be achieved in an orderly fashion.

B. Where Licensor and Licensee are involved in emergency restorations, access to Licensor's Poles will be controlled by Licensor according to the following guidelines.

1. Service Disruptions/Outages

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where simultaneous access is not possible, Licensor will grant access on first come, first served basis.

2. Emergencies Affecting Services

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where Licensor is unable to grant simultaneous access to all other Persons with attachments, access will be granted according to the level of damage to the attachments of each Person and the likelihood that a given level of damage will result in service disruption. Where the likelihood that a service disruption will result is not clearly discernible, access will be on a first come, first served basis.

C. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by Licensor regarding access to its Attachments, or any action or failure to act by Licensor, under this section shall not be the basis for any claim by Licensee against any Licensor or Affiliate for any damage to Licensee's Attachments or disruption of Licensee's Services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee.

13. FAILURE TO PLACE ATTACHMENTS

Once Licensee has been issued a License, Licensee shall have 180 calendar days from the date the License was issued to begin the placement of its Attachments on the applicable Poles covered by the License. If Licensee has not begun placing its Attachments within such 180 calendar day period, Licensee shall provide prompt written notice to Licensor with a written explanation for the delay. If Licensee fails to advise Licensor of its delay by notice thereof or if Licensee fails to act in good faith by not making a *bona fide* effort to begin placing its Attachments within the ninety (90) calendar days prescribed by this Section, the License shall be automatically rescinded by Licensor and deemed null and void, and Licensee shall have no further right to place the Attachments pursuant to such voided License.

14. ABANDONMENT

Nothing in this Agreement shall prevent or be construed to prevent Licensor from abandoning, selling, assigning, or otherwise disposing of any Pole. Licensor shall notify Licensee of any sale, assignment, or other disposition of any Pole used for Licensee's Attachments.

15. INSPECTIONS AND INVENTORIES

A. Licensor shall have the right, but not the obligation, to make a post construction inspection and periodic inspections at any time of any part of Licensee's Attachments on Poles and any other associated facilities for the limited purpose of determining whether Licensee's Attachments are in compliance with the terms of this Agreement and any Licenses issued hereunder. Such inspections shall be conducted at Licensor's expense with the exception of: (1) a post construction inspection; (2) follow-up inspection to confirm remedial action after an observed Licensee violation of the requirements of this Agreement; and (3) inspection of Licensee Facilities in compliance with a specific mandate of appropriate governmental authority, for which inspections the cost shall be borne solely by Licensee.

B. Upon written notice to Licensee, the total number and location of Licensee's Attachments on Licensor's Poles may be determined, at Licensor's discretion, through a survey which may be made not more than once per calendar year by Licensor. If so requested, Licensee and any other Person owning or jointly using the Poles with Licensor may participate in the survey. The costs incurred by Licensor to conduct the survey shall be reimbursed to Licensor by Licensee upon demand by Licensor regardless of whether or not Licensee participates in the survey. If the Attachments of more than one licensee are surveyed, each such licensee shall contribute a proportionate share of the costs reimbursed to Licensor.

C. Neither the act of inspection or survey by Licensor of Licensee's Attachments nor any failure to inspect such Attachments shall operate to impose on Licensor any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations or liability under this Agreement, any License issued hereunder, or applicable law, or to any third party contractor, Licensee Contractor, or otherwise.

16. UNAUTHORIZED ATTACHMENTS

A. If any Licensee Attachment shall be found on Poles for which no License has been granted by Licensor pursuant to the terms of this Agreement ("**Unauthorized Attachment**"), Licensor, without prejudice to its other rights or remedies under this Agreement or otherwise, may:

1. Impose charges as set forth herein or in Exhibit C; and
2. Require Licensee to remove such Unauthorized Attachment, or Licensor may remove such Unauthorized Attachment without liability, and the expense of removal shall be borne by Licensee.

B. Any such charge as set forth in **Section 16(A)** imposed by Licensor for an Unauthorized Attachment shall be in addition to Licensor's rights to any other sums due and payable, including, without limitation, Make Ready Work costs, the actual costs of any audit or survey which established the existence of the Unauthorized Attachment and to any other costs and expenses associated therewith.

C. No act by Licensor with regard to any unauthorized use shall be deemed as a ratification or the licensing of the unauthorized use, and if any License should subsequently be issued, after application and payment of all applicable fees therefore, said License shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise, and

Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized use from its inception.

D. An Unauthorized Attachment shall include, but not limited to:

1. An Attachment to Poles which is not identified in any License issued in accordance with this Agreement;
2. An Attachment that occupies more space than that allocated to Licensee by Licensor in a License;
3. An Attachment that is not placed in accordance with the provisions of this Agreement or the appropriate License issued pursuant to this Agreement, unless Licensee can demonstrate to Licensor's reasonable satisfaction that said misplacement is not due to any act or omission of Licensee or Licensee's agents;
4. An addition or modification by Licensee to its pre-existing Attachment(s) that impairs the structural integrity of the involved Licensor Poles.
5. An Attachment that consists of facilities owned or controlled by, or for the use of, a Person other than Licensee that is overlashed to Licensee Attachments without approval by Licensor as required under this Agreement.

E. Once Licensor has notified Licensee of an Unauthorized Attachment, Licensee shall promptly submit an Application for Pole License to request an authorization for such Attachment. An Application for Pole License submitted pursuant to this provision will be treated like any other Application for Pole Attachment. Licensee will be responsible for all fees associated with the Application for Pole License. If an Application for Pole License is not received by Licensor within ten (10) days of Licensor's notice of an Unauthorized Attachment, Licensee has thirty (30) days from the date of the Unauthorized Attachment notification to vacate the Pole. If Licensee fails to remove Licensee's facilities within such thirty (30) day period, Licensor shall have the right to remove Licensee's facilities at Licensee's expense and without any liability on the part of Licensor for damage or injury to Licensee's facilities or disruption of Licensee's Services.

17. COMPLIANCE WITH LAW, ASSUMPTION OF RISK, AND DISCLAIMER OF WARRANTIES

A. Notwithstanding anything to the contrary in this Agreement, Licensee shall ensure that any and all activities it undertakes pursuant to this Agreement shall comply with all applicable Legal Requirements and shall not infringe on the rights of any Persons.

B. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR DOES NOT MAKE ANY REPRESENTATION OR WARRANTIES AS TO THE CONDITION OR SAFETY OF LICENSOR'S POLES, ANY ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE SAME, OR THE PREMISES SURROUNDING THE SAME. LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY, OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY, OR IN CONNECTION WITH, THE USE OF POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE SAME, AND THE PREMISES SURROUNDING THE SAME AND LICENSEE IS SOLELY RESPONSIBLE FOR ALL ALLEGED DAMAGES CLAIMED BY THIRD PARTIES ACCESSING OR WORKING ON OR NEAR LICENSOR'S POLES.

C. EXCEPT AS OTHERWISE PROVIDED HEREIN, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE POLES OR ANY MATTERS SET FORTH IN, OR OTHERWISE RELATED TO, THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, WITH REGARD TO THIS AGREEMENT AND ANY LICENSE ISSUED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ACCESS TO LICENSOR'S POLES OR OTHER FACILITIES.

18. LICENSEE CONTRACTOR QUALIFICATIONS

A. The parties acknowledge that, from time to time, Licensee may use a Licensee Contractor to perform work for Licensee on, within, or in the Poles.

B. Licensee represents and warrants that any of its employees or Licensee Contractors shall not climb or work on any of Licensor's Poles, or work within Licensor's right-of-way, unless such Person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Poles and to perform the work safely.

C. Licensee assumes all risk of Licensee Contractors' acts or omissions and, except as otherwise expressly prohibited by Section 177 of the Kentucky Constitution, agrees to be responsible to the full extent allowed by law, to defend and to hold harmless Licensor from all claims, losses, damages and liabilities, costs and expenses (including, but not limited to, reasonable attorney's fees) associated therewith.

D. When Licensee Contractors are working on, within or in the vicinity of any part of Licensor's Poles or Right-Of-Way, all such Licensee Contractors shall follow procedures which Licensee deems appropriate for the protection of persons and property. Licensee shall be responsible at all times for determining and implementing the specific steps required to protect persons and property at the site. Licensee will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers and property from danger. Licensee has sole responsibility for the safety of all its employees and Licensee Contractors, for the safety of bystanders, and for insuring that all operations conform to terms and conditions set forth in this Agreement. Licensor reserves the right to suspend Licensee's activities on, within or in the vicinity of Licensor's Poles or Right-Of-Way if, in Licensor's sole judgment, any hazardous condition arises due to the activity (including both acts and omissions) of any Licensee Contractor or Licensee employee, which suspension shall cease when the condition has been rectified.

E. Licensee represents and warrants that all Licensee Contractors shall maintain the same insurance coverage and limits as are required of Licensee under this Agreement, and if not Licensee's insurance will provide such coverage.

F. Licensee acknowledges that all Licensee Contractors are not Licensor's employees or agents, and Licensee assumes full responsibility for their actions or omissions to act. Licensee shall be solely responsible for the payment of compensation of Licensee's employees, contractors or agents assigned to perform work hereunder and such employees, contractors and agents shall be informed that they are not entitled to the provision of any Licensor benefits. Licensor shall not be responsible for payment of workman's compensation, disability benefits, and unemployment insurance or for withholding or paying employment related taxes for any employee of Licensee, but such responsibility shall be solely that of Licensee. In the event that any Governmental Authority determines that the

personnel provided by Licensee or any permitted Licensee Contractor are employees of Licensor for any purpose, to the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, Licensee agrees to indemnify, defend and save harmless Licensor from all liabilities, costs, and expenses (including, but not limited to, reasonable attorney fees) associated with such determination in accordance with the indemnification provision of this License Agreement.

G. Any work by Licensee Contractors on, within, or in Licensor's Poles or right-of-way shall be done only when specific authorization for such work has been obtained in writing in advance from Licensor pursuant to the terms and conditions of this Agreement. The parties agree that all work shall be performed according to industry standards and practices, the requirements and specifications set forth in this Agreement, and any License issued hereunder.

19. DEFAULT

A. Subject to the Licensee's authority to terminate this contract for convenience under 200 KAR 5:312 and the grounds for termination for default contained therein, in addition to other events of defaults defined anywhere else in this Agreement, any one of the following shall be deemed the occurrence of a default under this Agreement:

1. Failure by Licensee to pay when due any fee or other sum required to be paid under the terms of this Agreement;
2. Failure by either party to perform or observe any other term, condition, covenant, obligation, or provision of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from the other party (provided that if such default is not curable within a thirty (30) day period, the period may be extended if the party substantially commences to cure such default and proceeds diligently thereafter to effect such cure);
3. The filing of any lien, security interest, or other encumbrance against any Pole because of any act or omission by Licensee which is not bonded or discharged within thirty (30) days of the date of notice that such lien has been filed;
4. Licensee's use or maintenance of its Attachments in violation of any Legal Requirement or in aid of any unlawful act or undertaking; and
5. If any authorization which may be required of Licensee by any Person for the placement, operation, or maintenance of Licensee's Attachments is denied or revoked.

B. In the event of a default and subject to any other applicable provision of this Agreement, the non-defaulting party, without any further notice to the defaulting party (except where expressly provided for below or required by applicable law), may do any one or more of the following:

1. Perform on behalf and at the expense of the defaulting party, any obligation of the defaulting party under this Agreement which the defaulting party has failed to perform and of which the non-defaulting party shall have given the defaulting party notice, the cost of which performance shall be paid by the defaulting party to the non-defaulting party promptly upon demand;
2. Terminate this Agreement by giving sixty (60) days written notice of such termination to Licensee and remove Licensee's Attachments and store Licensee's facilities in a public

warehouse or elsewhere at the expense of, and for the account of, Licensee without Licensor being deemed guilty of trespass or conversion or otherwise liable in any respect, and without Licensor becoming liable for any loss or damages to Licensee occasioned thereby; or

3. Exercise any other legal or equitable right or remedy that the non-defaulting party may have pursuant to this Agreement, pursuant to applicable law, or in equity.

C. Subject to KRS 45A.245 and 200 KAR 5:312, as applicable, the defaulting party shall repay to the non-defaulting party upon demand any costs and expenses incurred by the non-defaulting party (including, without limitation, reasonable attorneys' fees) in successfully enforcing this Agreement.

D. Subject to KRS 45A.245 and 200 KAR 5:312, as applicable upon termination of this Agreement by the non-defaulting party, the defaulting party shall remain liable to the non-defaulting party for any and all fees, other payments and damages which may be due or sustained in accord with this Agreement prior to such termination, all reasonable costs, fees and expenses, including, without limitation, reasonable attorneys' fees incurred by the non-defaulting party in pursuit of its remedies hereunder.

E. All rights and remedies of the non-defaulting party set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

20. INDEMNIFICATION AND LIMITATION OF LIABILITY

A. To the extent permitted by Legal Requirement, including, but not limited to, Section 177 of the Kentucky Constitution, Licensee shall compensate Licensor and Licensor's employees, agents, officers, directors, shareholders, managers, members successors, assigns, affiliates, representatives, partners, and contractors (collectively with Licensor, the "Licensor Parties" and each a "Licensor Party") for the full actual loss, damage or destruction of any Licensor Party's property that in any way arises from, or is related to, this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation, or maintenance of Licensee's Attachments).

B. To the extent permitted by Legal Requirement, including, but not limited to Section 177 of the Kentucky Constitution, Licensee agrees to defend, indemnify, protect and hold harmless the Licensor Parties from and against any and all claims, actions, administrative proceedings (including, without limitation, informal proceedings), judgments, damages, penalties, fines, cost, liabilities, interests, or loss, including, without limitation, reasonable attorneys' fees and expenses, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature suffered by or asserted against any Licensor Party in any way arising out of or connected with this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Attachments, unless caused solely by the gross negligence or willful misconduct of the Licensor Party). Licensee expressly assumes full responsibility and liability for acts or omissions by its agents, officers, employees, and Licensee Contractors.

C. Without limiting any of the foregoing, to the extent permitted by Legal Requirement, including, but not limited to Section 177 of the Kentucky Constitution, Licensee assumes all risk of, and agrees to relieve the Licensor Parties of any and all liability for, loss or damage (and the consequences of loss or damage) to any of Licensee's facilities placed on a Licensor Party's property and any other

financial loss sustained by Licensee, except to the extent caused by the sole negligence or willful misconduct on the part of such Licensor Party.

D. Without limiting the foregoing, to the extent permitted by Legal Requirement, including, but not limited to Section 177 of the Kentucky Constitution, Licensee expressly agrees to indemnify, defend, and hold harmless the Licensor Parties from any and all claims asserted by end users and customers of Licensee in any way arising out of, or in connection with, this Agreement or Licensee's Attachments, except to the extent caused solely by the negligence or willful misconduct of the Licensor Party.

E. In the event of any claim, demand or litigation specified in any indemnity provision, the party to be indemnified (the "**Indemnified Party**") shall give prompt written notice to the other party (the "**Indemnifying Party**") of such claim, demand or litigation. The Indemnifying Party 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 the Indemnifying Party may not make any non-monetary settlement or compromise without the Indemnified Party's consent, which consent shall not be unreasonably withheld. The Indemnified Party shall cooperate with the Indemnifying Party in the defense and settlement of any claim, demand or litigation. Nothing herein shall be deemed to prevent the Indemnified Party from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnified Party's own counsel at the Indemnified Party's own expense.

F. SUBJECT TO 200 KAR 5:312 AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT; *PROVIDED, HOWEVER* THAT THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 20(F) SHALL NOT ACT TO LIMIT ANY INDEMNITY OBLIGATION FOR CLAIMS BY A THIRD PARTY. FOR PURPOSES OF CLARITY, LICENSEE SHALL ONLY BE ENTITLED TO SEEK DAMAGES THAT WOULD OTHERWISE BE EXCLUDED PURSUANT TO THIS SECTION OF AND TO THE EXTENT THE LICENSEE WOULD BE PROHIBITED FROM WAIVING SUCH DAMAGES BY 200 KAR 5:312; AND IF THE COMMONWEALTH IS ENTITLED TO SEEK SUCH DAMAGES DUE TO A PROHIBITION AGAINST WAIVING THE SAME, THEN LICENSOR SHALL BE ENTITLED TO SEEK LIKE DAMAGES AGAINST LICENSEE TO SETOFF DAMAGES CLAIMED BY LICENSEE.

G. This Section shall survive termination of the Agreement.

21. INSURANCE

A. For the entire duration of this Agreement (and thereafter until the completion of this Agreement) on a per occurrence basis with respect to this Agreement, Licensee and Licensee Contractors shall provide and maintain, and shall require any of its or their subcontractors to provide and maintain the following insurance (and except with regard to workers' compensation, employers liability, and professional liability, naming Licensor and its Affiliates as additional insureds and waiving rights of subrogation against Licensor and its Affiliates) in the minimum amounts and on the terms set forth herein:

1. Commercial General Liability Insurance

General Aggregate (other than Prod/Comp Ops Liability)	\$2,000,000
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Products/Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury Liability	\$1,000,000
Each Occurrence	\$1,000,000

2. Workers' Compensation and Employers Liability

Workers' Compensation	Statutory Requirements
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee

3. Automobile Liability \$1,000,000 each accident

4. Umbrella/Excess Liability \$3,000,000 per occurrence and in the aggregate

5. Professional Liability \$3,000,000 per occurrence and in the aggregate

The Professional Liability policy shall be required to the extent that engineering or other professional services are provided by Licensee Contractor(s).

B. The policies required hereunder shall not be canceled or reduced except upon thirty (30) days written notice to Licensor. Licensor has the right, but not the obligation, to review certificates of insurance for deficiency. Licensor's receipt and review of such certificates shall not relieve Licensee or Licensee Contractors from any of their duties or obligations under this Agreement and shall not be deemed a waiver of any matter under this Agreement. Neither the minimum policy limits required hereunder nor the actual policy limits shall be deemed to limit the liability of Licensee or Licensee Contractors.

C. Licensee or Licensee Contractor shall promptly notify Licensor of any accidents or claims relating to this Agreement, the rights granted under this Agreement, or the work related to this Agreement.

22. NOTICES

Any notice or request required by this Agreement shall be deemed properly given if sent by either (i) certified mail, return receipt requested; (ii) facsimile transmission (sender to retain confirmation of delivery to be effective in the event of disputed receipt); or (iii) electronic mail (sender to retain confirmation of delivery to be effective in the event of disputed receipt) to the addresses set forth below.

If to Licensor:

North Central Telephone Cooperative Corporation
 Attn: Nancy J. White
 PO Box 1574 Old Gallatin Road

Scottsville, KY 42164

with copy to:

Dinsmore & Shohl LLP
Attn: John E. Selent, Esq.
101 South Fifth Street, Suite 2500
Louisville, Kentucky 40202

If to Licensee:

Commonwealth of Kentucky
Finance and Administration Cabinet
Office of the Secretary
702 Capitol Street
Room 383, Capitol Annex
Frankfort, Kentucky 40601
Fax: 502-564-6785
Email: Patrick.McGee@ky.gov

with copy to:

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

Ledcor Technical Services
Attn.: John Colder
2008 Mercer Road
Suite 200
Lexington, Kentucky 40511
Fax: _____
Email: john.colder@ledcor.com

Kentucky Communications Network Authority
Attn: Executive Director
209 St. Clair St.
4th Floor
Frankfort, KY 40601
Fax: (502) 564-0883
Email: Chris.Moore@ky.gov and KentuckyWired@ky.gov

23. CONFIDENTIALITY

Each party acknowledges that, in the course of the performance of this Agreement, it may have access to privileged or proprietary information claimed to be unique, secret, and confidential and which

constitutes the exclusive property or trade secrets of the other party. This information may be presented in documents marked with a restrictive notice or otherwise tangibly designated as proprietary, or disclosed during oral discussions, at which time the disclosing party will specify that the information is proprietary. Unless jointly agreed to in writing, a receiving party shall not knowingly disclose to third parties any proprietary information received from another party in connection with this Agreement, nor shall they disclose the terms of this Agreement to any other person or entity (other than to their respective Affiliates, directors, officers, employees, agents and contractors who have a need to know the same), unless required in order to prosecute or defend any claim in an action involving the parties hereto, or unless required by the Kentucky Open Records Act (K.R.S. 61.770 to 61.884) or upon the Order of any Governmental Authority having competent jurisdiction. In the case of disclosure for such prosecution or defense or as required by any such judicial or quasi-judicial body, the non-disclosing party shall be given sufficient notice so as to allow it to seek a protective order with respect to such disclosure. The parties shall each protect proprietary information received from another party with the same degree of care it would take to protect its own proprietary information. Each party shall be responsible for ensuring that its Affiliates, directors, officers, employees, managers, members, agents, and contractors who have access to the confidential or proprietary information maintain the confidentiality of such information in accordance with this Agreement. Notwithstanding the foregoing, the parties shall have no obligation to keep confidential any information that is in, or becomes part of, the public domain through no fault of their own. Notwithstanding anything to the contrary in this Agreement, Licensee acknowledges and agrees that Licensor may disclose, share, and discuss this Agreement and all matters related to the transactions contemplated herein with each of the following:

- A. Brandenburg Telephone Company, Inc. and its Affiliates;
- B. Duo County Telephone Cooperative Corporation, Inc. and its Affiliates;
- C. Foothills Rural Telephone Cooperative Corporation, Inc. and its Affiliates;
- D. Gearheart Communications Company, Inc. and its Affiliates;
- E. Logan Telephone Cooperative, Inc. and its Affiliates;
- F. Mountain Rural Telephone Cooperative Corporation, Inc. and its Affiliates;
- G. North Central Telephone Cooperative Corporation and its Affiliates;
- H. Peoples Rural Telephone Cooperative Corporation, Inc. and its Affiliates;
- I. South Central Rural Telephone Cooperative Corporation, Inc. and its Affiliates;
- J. Thacker-Grigsby Telephone Company, Inc. and its Affiliates;
- K. Cumberland Cellular Inc. and its Affiliates;
- L. East Kentucky Network, LLC and its Affiliates; and
- M. Bluegrass Network LLC and its Affiliates.

Notwithstanding any other provision herein, no receiving party shall be required to hold confidential any information that: (A) becomes publicly available other than through the receiving party's violation of this Agreement or the violation of receiving party's employees, officers, directors, shareholders, agents, or Affiliates; (B) is required to be disclosed by a Legal Requirement, provided that a receiving party subject to such requirement shall promptly notify the disclosing party of such requirement; (C) is independently developed by the receiving party without use of, or reference to, the disclosing party's confidential information; or (D) becomes available to the receiving party without restriction from a third party who is not otherwise restricted from disclosing such information.

24. DISPUTE RESOLUTION

Subject to Chapter 45A of the Kentucky Revised Statutes, in the event any dispute arises between Licensor and Licensee 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, unless the parties at any time mutually agree in writing to

dispense with these procedures for a particular dispute. Each party shall designate one or more knowledgeable, responsible representative(s) to meet and negotiate in good faith to resolve any dispute, controversy, or claim arising under this Agreement. Discussions and correspondence between the representatives for the purposes of these negotiations shall be treated as confidential, undertaken for purposes of settlement, and shall not be admissible in any subsequent proceeding without the concurrence of all parties. If a resolution of the dispute, controversy, or claim is not reached within fifteen (15) days of the initial written request referred to in this Section, the dispute, controversy, or claim may be filed with the State utility commission (i.e. the Kentucky Public Service Commission) or the Federal Communication Commission, if such commissions have jurisdiction over the matter, for review and determination. Each party shall bear its own costs and expenses in seeking resolution of any dispute under this Agreement. Neither party shall pursue its rights and remedies in a court of law until that party has first exhausted the procedures required under this Section and any administrative remedies.

25. WAIVER

Failure by 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 the same shall be and remain at all times in full force and effect.

26. NO 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.

27. FORCE MAJEURE

Neither party shall be liable for any delay or failure in performance of any part of this License Agreement or License issued hereunder from any cause beyond its reasonable control and without its fault, omission or negligence, including but not limited to acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, cable or other material failures, delay in delivery or transportation, labor strikes, lockouts or work stoppages or severe weather ("Force Majeure Event"). In the event of a Force Majeure Event, upon giving prompt notice to the other party, the due date for performance by the affected party of its original obligation(s) shall be extended by a term equal to the time lost by reason of the Force Majeure Event. In the event that the affected party is able to partially perform its obligations, it shall perform its obligations at a performance level no less than that which it uses for its own operations.

28. ASSIGNMENT

Except as provided for by law, Licensee shall not assign, transfer, or sublet any of the privileges hereby granted, or delegate any of its obligations or responsibilities hereunder, without first obtaining the prior written consent of Licensor, which may be withheld in Licensor's sole discretion.

29. APPLICABLE LAW

The laws of the Commonwealth of Kentucky, without regard to the conflict of laws provisions thereof, shall apply to the Agreement and its interpretation, except to the extent that federal law controls. All legal proceedings related to this Agreement shall be brought only in the Franklin Circuit Court or federal court sitting in the Commonwealth of Kentucky or before the Kentucky Public Service

Commission to the extent that said Commission has jurisdiction over rates, conditions, or other matters concerning this Agreement.

30. ENTIRE AGREEMENT, MODIFICATIONS, AND SURVIVAL

A. This Agreement contains the entire agreement between the parties hereto concerning the subject matters covered herein, and there are no other provisions, terms or conditions to this Agreement except as expressly set forth herein.

B. This Agreement may be amended or supplemented at any time only upon written agreement by executed by the parties.

C. Notwithstanding the termination of this Agreement for any reason, Section 18 (Compliance with Laws, Assumption of Risk and Disclaimer of Warranties), Section 21 (Indemnification and Limitation of Liability), Section 22 (Insurance), Section 24 (Confidentiality), and any other provision intended to survive, shall survive termination to the maximum extent permitted under applicable law. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which 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.

31. AUTHORITY AND COUNTERPARTS AND ELECTRONIC SIGNATURES

A. Each party warrants that it has full power and authority to execute and deliver this License Agreement and to perform its obligations hereunder.

B. 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.


[Remainder of Page Left Blank Intentionally – Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly-authorized representatives on the dates indicated below.

LICENSOR:


NORTH CENTRAL TELEPHONE COOPERATIVE CORPORATION

on behalf of itself, and as agent for, and on behalf of, its Affiliates


By: Nancy J. White
Its: President & CEO
Date: _____

LICENSEE:

**COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET**


By: WILLIAM M. LANFORD
Its: Sec, Fin, Admin
Date: 20 April 2017

Approved as to form and legality:


Counsel for Finance and Administration Cabinet

**EXHIBIT A
APPLICATION FOR POLE LICENSE**

Name of Licensee/Applicant: _____
 Contact Name: _____ Email Address: _____
 Phone Number: _____ Date: _____
 Licensee Authorized Signature: _____

Check box to confirm that map/sketch is attached.
 If this is a proposal for Overlapping existing Licensee Attachments, check box to confirm that configuration diagram is attached.
 Check box to confirm that Licensee has obtained or will obtain all necessary permissions or easements prior to placing the Attachments contemplated herein.

By submitting this Application, Licensee agrees to pay all engineering and administrative fees associated with this Application even if Licensee chooses not to proceed with the project. All estimated fees, including engineering and make ready, must be paid up-front and in full per the terms of the Agreement. **NONPAYMENT OF FEES WILL RESULT IN THE APPLICATION BEING PUT ON HOLD.** Final costs will be determined by actual time and material required to do the make ready work. Any difference in charges will be billed accordingly.

Pole No.	Licensee to Complete	Location Street/Road Name	Licensee to Complete	Height of Attach.	Licensee to Complete	Type of Attach.	Licensee to Complete	Stringing Tension	Licensee to Complete	Cable weight/diameter	Licensee to Complete	Existing Pole Information (Licensor's Use Only)		(Licens +	
												Make Ready Needed	Other Contacts on Pole		
1.															
2.															
3.															
Total:															

[North Central Telephone Cooperative Corporation]
 Date Received: _____
 Proposal No.: _____ Date: _____
 Field Checked By: _____
 Make Ready Work Order No.: _____
 Drawing No.: _____

PERMISSION IS HEREBY GRANTED FOR THE ABOVE ATTACHMENTS

DATE: _____ APPROVED BY: _____

EXHIBIT B
REMOVAL NOTICE AND LICENSE SURRENDER FORM

In accordance with the terms and conditions of the Pole Attachment License Agreement dated April ____, 2017, Licensee hereby gives notice that the License is surrendered for the Attachments to the Poles and facilities shown on the attached drawing. Licensee must remove all of its equipment and attachments no later than twenty (20) days after the delivery of this document.

Licensee: _____

Signature: _____

By (Print): _____

Title: _____

Date: _____

Date Surrender Notice Received: _____

Licensor: _____

Signature: _____

By (Print): _____

Title: _____

Date: _____

EXHIBIT C
SCHEDULE OF RATES

1. Pole Attachment Fee for Authorized Attachments \$25.00 per pole per year

2. Pole Attachment Fee for Unauthorized Attachments Five (5) times the Pole Attachment Fee for Authorized Attachments if Licensee self-reports such Unauthorized Attachment or such Unauthorized Attachment is discovered through a joint inspection between Licensor and Licensee. If Licensor discovers the Unauthorized Attachment without Licensee's reporting of such Unauthorized Attachment or not during a joint inspection, an additional \$100.00 per Pole shall be added in addition to the Attachment Fee for Unauthorized Attachments that would otherwise had been payable had Licensee self-reported..

3. Application Fee \$75.00 per application