



Contract No. _____

LICENSE AGREEMENT

This LICENSE AGREEMENT (“Agreement”) is made and entered into this 21st day of September, 2015 (“Effective Date”) by and between **FLEMING-MASON ENERGY COOPERATIVE**, an electric cooperative (“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 all associated Exhibits are incorporated herein and made a part hereof by this reference.

Notices. The addresses, facsimile numbers and electronic mail addresses of the Parties to which any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other are as follows:

(a) **Licensor:**

FLEMING-MASON ENERGY
P.O. BOX 328
FLEMINGSBURG, KENTUCKY 41041
(606) 845-2661

(b) **Licensee:**

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

LEDCOR TECHNICAL SERVICES
Attn: Ledcor Legal Department
1200-1067 West Cordova
Vancouver, BC
V6C-1C7
Canada

With a copy to

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

LEDCOR TECHNICAL SERVICES
Attn: Jan Summarell
188 Columbia Lane E.
Shepherdsville, KY 40165

Term of Agreement. The term of this Agreement is from the Effective Date and does not have a termination date (if not lawfully terminated), and thereafter from year to year, unless terminated by either Party by giving notice of its intention to terminate at least 30 days prior to

the end of any period.

Applicable Law. This Agreement is deemed executed in the State of Kentucky and shall be construed under the laws of the State of Kentucky, without regard to its conflict of laws principles. Any legal action regarding enforcement of this Agreement shall be commenced and heard in the Circuit Court of Franklin County, Kentucky ("Court"), and the Parties consent and submit to the jurisdiction and venue of the Court.

Fees

Pole Attachment Rental Fee. \$17.60 per year [per attachment]

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
Signature: Joni K Hazelrigg
Name: Joni K Hazelrigg
Title: President + CEO
Date: 9/29/15

LICENSEE
Signature: Lori H. Flanery
Name: Lori H. Flanery
Title: Secretary, Finance Cabinet
Date: September 30, 2015

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TERMS AND CONDITIONS

1. 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. Allocated Space. The space reserved for Licensor and is defined as the exclusive use of ten feet (10') measured downward from the top of a Distribution Pole including pole top, transformer, and other miscellaneous equipment.

1.2. Application. The Pole Attachment Application Form attached hereto as Exhibit A and the Pole Attachment Field Data Sheet attached hereto as Exhibit B must be completed by Licensee and approved by Licensor in writing before Licensee may attach to or make use of any of Licensor's Distribution Poles under this Agreement.

1.3. Attached Pole. A Distribution Pole owned or maintained by Licensor that contains at least one attachment by an entity other than Licensor.

1.4. Attachment. Each affixation of Licensee's cables, strands, wires and associated apparatus to Licensor's Distribution Poles.

1.5. Authorization. Licensor's grant of authority to Licensee to affix Attachments to Licensor's Distribution Poles in accordance with the terms of this Agreement.

1.6. Business Day. All days except Saturday, Sunday, officially recognized Federal legal holidays, and any other day designated as a holiday by Licensor's holiday schedule

1.7. Control. With respect to any entity, the possession, directly or indirectly, of: (a) 50% 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.

1.8. 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.

1.9. Distribution Pole. A pole bearing electric distribution lines and having a voltage rating of or below 34.5 kV.

1.10. Drop/Lift Pole. An ancillary pole necessary to extend service from a Distribution Pole to an individual customer(s).

1.11. Licensee's Service Area. The area in which Licensee does or plans to provide its Services, as shown as part of Exhibit A attached hereto.

1.12. Licensors Practices. Licensors rules and practices for Attachments as set forth in Exhibit C attached hereto.

1.13. Make Ready Costs. All costs necessary for Licensor to prepare its Distribution Poles for Licensees Attachments, including the costs of materials, labor, engineering, supervision, and overhead. Engineering includes design, 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 4.4 hereto. Also included among "Make Ready Costs" are the costs of installing or changing out primary poles, secondary poles and Drop/Lift Poles, including the cost of 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 4.4.

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

1.15. Make Ready Work. All work required by Licensor to accommodate Licensor's Distribution Poles for attachment by Licensee.

1.16. Overlapping. The practice whereby a service provider physically ties or otherwise attaches new wiring to wiring that already has been affixed to a Distribution Pole.

1.17. Pole Attachment Rental Fee. The annual amount per Attachment [**per Attached Pole**] that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor's Distribution Poles.

1.18. 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 erect, operate and maintain its Attachments, and to provide the Services, including all required franchises, consents, easements, and certificates of convenience and necessity.

1.20. Services. Telecommunications, Internet, data transmission or other similar services or combination of services provided by Licensee.

1.21. Term. The period during which this Agreement remains in effect.

1.22. Unauthorized Attachment. Any affixation of any Licensee facility of any nature to any property of Licensor, including Distribution Poles, that has not been authorized by Licensor as required by this Agreement. Unauthorized Attachments may include facilities affixed to Licensor's property prior to the Effective Date of this Agreement.

2. PURPOSE

The purpose of this Agreement is to allow Licensee to install and maintain Attachments on Licensor's electric Distribution Poles in Licensee's Service Area for the limited purpose of providing Licensee's Services.

3. LICENSOR OBLIGATIONS

3.1. Quiet Enjoyment. Subject to the terms and conditions of this Agreement, and throughout the Term of this Agreement, Licensor shall not intentionally disturb Licensee's authorized Attachments, except as such disturbance may be necessary in an emergency or natural disaster situation, provided that Licensee is performing in accordance with all terms and conditions of this Agreement.

3.2. Diligence and Good Faith. Consistent with the terms and conditions of this Agreement, Licensor shall in good faith diligently pursue all reasonable measures to accommodate Licensee's authorized Attachments.

3.3. Access to Distribution Poles; Easements. LICENSOR DOES NOT REPRESENT OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY OR EASEMENTS ENTITLE LICENSEE TO ACCESS THE PROPERTY UNDERLYING LICENSOR'S DISTRIBUTION POLES. Licensor shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Licensor's Distribution Poles because Licensee failed to obtain appropriate rights-of-way or easements. Licensor may require Licensee to demonstrate that it has secured its own rights-of-way or easements prior to authorizing any Attachments. If such a requirement is imposed, the time for Licensor to respond to Licensee's Application shall be tolled pending Licensee's response. Consistent with the terms and conditions of this Agreement, Licensor shall permit Licensee access to Licensor's Distribution Poles and related overhead and other easements. Further, Licensee's use of the 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.

3.4. Maintenance of Attached Poles. At its own expense, Licensor shall maintain the Attached Poles, and replace, reinforce or repair such poles as Licensor becomes aware that they are defective due to age and condition, in Licensor's sole judgment.

4. LICENSEE OBLIGATIONS

4.1. Use of Attachments. Licensee shall use the Attachments solely to provide the Services.

4.2. Licensee Service Area. Licensee shall identify the Licensee Service Area using Exhibit A.

4.3. Compliance with Applicable Rules. Licensee 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 Distribution Poles as authorized herein.

4.4. Technical Requirements and Specifications.

(a) At its own expense, Licensee shall erect, install, and maintain its Attachments in safe condition and good repair 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 Occupational Safety and Health Act ("OSHA") and Rural Utilities Service ("RUS"), and to the extent such requirements or specifications may conflict, then the most stringent of the

- NESC, NEC, OSHA or RUS requirements and specifications;
 - (ii) any amendments or revisions of, or successor(s) to, the requirements and specifications of the NESC, NEC, OSHA, and RUS;
 - (iii) the Licensor Practices set forth in Exhibit C; and
 - (iv) any current or future rules or orders of any federal, state or local authority having jurisdiction.
- (b) Licensee shall bring into conformity as soon as practical following notice by Licensor, and no later than thirty (30) days or any reasonable date set by Licensor, any existing 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 reimburse Licensor for all costs related thereto. Failure by Licensor to inspect 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 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 the Distribution Poles, without resort to the provisions of Section 20 (Modifications), and Licensee agrees to be bound by any such amendment. In the event that Licensor amends the Licensor Practices set forth in Exhibit C, Licensee shall make all required modifications within thirty (30) days after receipt of notice thereof from Licensor.

4.5. Assumption of Risk. Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, agents, contractors or subcontractors. Licensee assumes all risks related to the construction, operation and maintenance of its Attachments, except as to those that may be caused by the negligence or willful misconduct of Licensor.

4.6. 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 Licensor's safe and efficient operation of its electric distribution system.

4.7. Qualifications of Employees, Agents and Contractors. Licensee shall ensure that all employees, agents and contractors of Licensee used to install or maintain the Attachments have been certified or trained to work in the vicinity of electric Distribution Facilities. Licensee shall produce proof of such certification or training upon Licensor's request.

4.8. Identification Markers.

- (a) Licensee shall place and maintain permanent identification markers on each of its Attachments when affixing it to Licensor's Distribution Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Distribution Pole, and must:
 - (i) be non-metallic;
 - (ii) be of a distinctive and uniform design;

- (iii) include an alphanumeric code as specified by Licensor;
 - (iv) be legible, clearly visible and recognizable from the ground by a person having normal vision; and
 - (v) not show Licensee's name or insignia, unless prior consent of Licensor is obtained and it is made clear that Licensee is not the owner of the pole.
- (b) Identification markers shall be required on all new or replaced attachments that are made after the effective date of this agreement. Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Licensor encounter any new or replaced attachments without permanent identification markers, Licensor may notify Licensee provided that Licensor can 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 cost of such removal.

4.9. Notification of Attachments. Licensee shall notify Licensor on an ongoing basis [upon Licensor's request] of the precise location and total number of Licensee's Attachments.

5. MUTUAL OBLIGATIONS

Each Party shall take all precautions as are reasonably necessary to avoid damaging the facilities of the other.

6. ESTABLISHING ATTACHMENT TO POLES

6.1. Pole Attachment Application. Before Licensee may affix any attachments to, overlap to, or make use of any of Licensor's Distribution Poles under this Agreement, Licensee shall (a) submit to Licensor an Application requesting Licensor's permission to attach to, overlap to, or make use of each such pole; (b) receive written approval from Licensor authorizing the attachment, overlapping, or use of each such pole; and (c) comply with all procedures set forth in this section. Licensee's failure to request and receive Licensor's permission will result in an Unauthorized Attachment Fee and may result in termination of agreement.

6.2. Decision Regarding Application. If in the sole judgment of Licensor, the attachment to Licensor's Distribution Poles as proposed in the Application is undesirable or impracticable based on the technical requirements and specifications of Section 4.4, or because of other capacity, safety, reliability or engineering concerns, Licensor may reject all or part of the Application or limit the number and character of Attachments on any Distribution Pole. Within thirty (30) days after receipt of such Application, provided no Make Ready Work is required, Licensor shall notify Licensee in writing whether the Application is approved or denied. If Make Ready Work is required, Licensor shall notify Licensee in writing, within seven (7) days after completion of Make Ready Work, whether the Application is approved or denied. Licensee shall complete installation of its Attachments upon receiving notification from Licensor that the Application has been approved.

6.3. Make Ready Estimate.

- (a) Licensor shall, on the basis of the Application and associated construction plans and drawings, submit to Licensee within thirty (30) days of receipt of Licensee's Application a Make Ready Estimate (based on Licensor's method of computing costs, which shall

follow generally accepted accounting principles) for all Make Ready Work which may be required for each Distribution Pole, including an estimated completion date for such Make Ready Work.

- (b) Upon notice pursuant to Exhibit D attached hereto that the Make Ready Estimate has been accepted by Licensee and payment has been received by Licensor in advance, Licensor shall proceed with the Make Ready Work covered by the Make Ready Estimate. Licensor shall undertake commercially reasonable efforts to complete this work by the estimated completion date but does not guarantee completion by such date. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work. Upon completion of all Make Ready Work, Licensor may submit a supplemental invoice, not to exceed twenty percent (120%) of the original Make Ready Estimate, for additional unforeseen work that was not included in the original scope of work.
- (d) Upon receipt of payment and completion of the Make Ready Work, Licensee shall obtain Authorization to use the Distribution Poles and to make Attachments in accordance with the terms of this Agreement.

6.4. Overlashing.

- (a) Any proposed Overlashing by Licensee requires submittal of Joint Use Application Form attached hereto as Exhibit A and Joint Use Field Data Sheet attached hereto as Exhibit B. Make Ready Fees shall apply for any required work to be performed prior to Overlashing.
- (b) Licensee shall not allow third party Overlashing without Licensor's prior approval.

7. **PAYMENT PROVISIONS**

7.1. Pole Attachment Rental Fee. the Pole Attachment Rental Fee for each period shall be based on the number of Attachments on Licensor's Distribution Poles as the day pre-ceding the annual rental period. The first year of the annual rental period covered by this agreement shall end on December 31, 2015 and continuing for each twelve-month period thereafter. Licensor shall invoice Licensee for the Pole Attachment Rental Fee at the beginning of the annual rental period. The Pole Attachment Rental Fee for each period shall be based on the number of Attachments on Licensor's Distribution Poles as of December 31st of the prior year. Pole attachment rental fee shall not be based on proration for attachments made during any part of the annual renting period.

7.2. Payment Period. All amounts payable under this Agreement shall be due within thirty (30) days of the date of an approved invoice. Interest shall be charged at the rate of one percent (1%) or the maximum amount allowed by law on the unpaid balance of delinquent bills for each month or part thereof that any bill remains unpaid.

7.3. CPI Increases. The Pole Attachment Rental Fee set forth in Section 7.1 above shall become effective at the initial date of signing and shall remain in effect through the life of this contract and shall be considered the "Base Rate" for this Agreement. The Base Rate shall be escalated, effective January 1, 2016 and annually thereafter, based upon the increase in the Consumer Price Index for All Urban Consumers.

8. INSPECTIONS

8.1. Right to Conduct. Licensor may conduct inspections of Licensee's Attachments 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 4.4.

8.2. Safety Violations. If during inspection or otherwise Licensor determines that any of Licensee's Attachments do not conform with the technical requirements and specifications listed in Section 4.4, Licensee shall, upon notice by Licensor, correct such nonconformance within thirty (30) days of notification of such nonconformance, unless in Licensor's sole judgment safety considerations require Licensee to take corrective action within a shorter period. Should Licensee fail to take all steps necessary to comply with this requirement, or if safety considerations so require, Licensor may elect to do such work itself, and Licensee shall reimburse Licensor for all costs incurred by Licensor. Licensor shall not be liable for any loss or damage to Licensee's facilities which 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.

9. AUDITS

9.1. Right to Conduct Audits. Licensor may conduct an audit of Licensee's Attachments to verify the number of Licensee's Attachments. Any such audit may be conducted no more frequently 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 audit as frequently as is necessary in its sole discretion. If any difference in the number of Attachments is found between the actual physical inventory and the previous inventory, adjusted by any Attachments added or removed since the last inventory, the differential will be prorated as if the subject Attachments were placed in equal numbers over the past five (5) years and shall be billed and paid at the then appropriate rate in effect. Licensor must provide thirty (30) days' notice of any such audit so that Licensee may be present and observe such audit. Licensee(s) shall reimburse Licensor for all costs and expenses of conducting audits.

9.2. Review of Records in Lieu of Audit. Licensor and Licensee may mutually agree that in lieu of audits, 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 must be verified by the Party proposing to use them.

10. UNAUTHORIZED ATTACHMENTS

10.1. Unauthorized Attachment Fee. Licensee shall pay to Licensor an Unauthorized Attachment Fee, equivalent to two [2] times the current Pole Attachment Rental fee, within thirty (30) days of notification of each Unauthorized Attachment. Licensor may require that such Unauthorized Attachment be removed by Licensee, or Licensor itself may remove the Unauthorized Attachment without liability, at Licensee's expense. The Unauthorized Attachment Fee shall be in addition to any and all other applicable fees, including without limitation, Pole Attachment Rental Fees due and payable for the current year and all prior years in which the Unauthorized Attachment existed. Nothing herein shall act to limit any other remedies, including a remedy for trespass, which may be available to Licensor as a result of any Unauthorized Attachment.

10.2. Licensor Failure to Act. No act or failure to act by Licensor with regard to any Unauthorized Attachment shall be deemed to ratify or license the Unauthorized Attachment. 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.

11. REPLACEMENT AND RELOCATION OF POLES; REARRANGEMENT OF FACILITIES

11.1. Replacement or Relocation of Poles. Whenever Licensor replaces or relocates an Attached Pole, Licensor shall provide notification of such work to the Licensee, specifying the poles involved and the time at which the work was completed. Upon receiving notification, Licensee shall, within 60 days, transfer its Attachments to the new or relocated Attached Pole. If Licensor has removed its attachments and Licensee's Attachment(s) remain on the original pole, Licensee shall become liable for the original pole, if it still exists, as provided in Section 12.1.

11.2. Replacement and Relocation Costs. Licensor shall replace or relocate Distribution Poles at its own expense. Notwithstanding the foregoing, if Licensor in good faith determines that a Distribution Pole needs replacement in order to accommodate Licensee's proposed Attachments, then Licensor may do so with Licensee's consent and Licensee will bear the expense of such replacement. If Licensor in good faith determines that a Distribution Pole needs replacement as a result of damage caused by Licensee Attachments, Licensee shall bear the expense of such replacement.

11.3. Vacating Pole Space. In the event it becomes necessary for Licensor, Licensor's subsidiary or affiliate or any other entity in which Licensor holds an interest, or another utility with whom Licensor has a prior agreement for pole attachments, to use Allocated Space on a Distribution Pole occupied or to be occupied by Licensee's Attachments, Licensee shall, upon receipt of thirty (30) days' notice, either (a) vacate the space by removing its Attachments at its own expense, or (b) if Licensor decides to replace the pole with a larger pole that can accommodate Licensee's Attachments, bear the expense of such replacement and transfer its Attachments to the new pole.

11.4. Costs for Installation, Removal and Transfer of Licensee's Attachments. Licensee shall be solely responsible for all costs of installation, removal or transfer of its Attachments on, from or to Licensor's Distribution Poles.

11.5. Costs for Rearrangement of Other Facilities. In any case where the facilities of Licensor or another attacher(s) are required to be rearranged on the poles of Licensor in order to accommodate Licensee's Attachments, Licensee shall reimburse Licensor and the other attacher(s) the total reasonable costs incurred by Licensor or the other attacher(s) in rearranging such facilities to accommodate Licensee's Attachments.

12. ABANDONMENT OR REMOVAL OF ATTACHED POLES; COMPLIANCE WITH GOVERNMENT DIRECTIVES

12.1. Right to Abandon or Remove; Licensee Obligations. Licensor may in its sole discretion abandon or remove any Attached Pole. Upon receiving notification from Licensor that an Attached Pole has been abandoned, within a sixty (60) day period, Licensee shall remove its Attachments and may place its facilities underground if authorized to place its facilities underground, transfer its facilities to the nearest facilities owned by Licensor if authorized by Licensor, or take other action not inconsistent with this Agreement. If, at the expiration of the sixty (60) day period, Licensor shall have no attachments on such pole but Licensee shall not have removed all of its Attachments, ownership of such pole may be

transferred to and become the property of Licensee at the sole option of Licensor. If Licensor elects to transfer ownership of such pole, Licensor shall provide written notice to Licensee. Upon receipt of such notification, such pole shall become the property of the Licensee. Licensee shall receive the pole "as is," and shall, to the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, indemnify, defend and hold harmless Licensor from all obligation, liability, cost, claim, damage, expense or charge related thereto or raised thereafter. Because 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 occupy the premises where the pole is currently located upon the removal of Licensor's facilities. If Licensee decides to transfer its Attachments after pole ownership has been transferred, Licensee may do so, but it will be responsible for pulling the old pole(s).

12.2. Removal of Attachments. Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Distribution Poles. The Pole Attachment Application Form attached hereto as Exhibit A shall be completed and serve as notice of such removal to Licensor. Such notice shall fully identify, by pole number and location, the poles from which such Attachments are being removed. Licensee's obligations to make Pole Attachment Rental Fee payments shall continue until (i) Licensor receives The Pole Attachment Application Form, and (ii) Licensee actually removes its Attachments. No refund of any rental fee will be due on account of such removal unless that removal is triggered by a Default of this Agreement by Licensor.

13. REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1. 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 consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Agreement

13.2. 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.

13.3. 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 DISTRIBUTION POLES.

14. INDEMNIFICATION

14.1. Licensee Indemnification. To the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Licensee shall indemnify, protect, save harmless and insure Licensor, its officers, directors, employees and members, from and against any and all claims and demands for, or litigation with respect to, service interruptions, damages to property and for injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employee disability and death benefits and including all expenses incurred in defending against any such claims or demands, or other damages which may arise out of or be caused by Licensee or its agents, employees, contractors or subcontractors with respect to the erection, operation, maintenance, presence, use, repair, rearrangement or removal of Licensee's Attachments or Unauthorized Attachments or the proximity of Licensee, its agents and employees on or in the vicinity of Licensor's Distribution Poles.

14.2. Licensor Indemnification. Licensor shall indemnify, protect, save harmless and insure Licensee from and against any and all claims and demands for, or litigation with respect to, damages to property, and for injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employee disability and death benefits and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by any gross negligence or willful misconduct of Licensor or its agents, employees, contractors or subcontractors on or in the vicinity of Licensee's authorized Attachments.

14.3. Notice. In the event of any claim, demand or litigation specified in this section, the Party to be indemnified (the "Indemnified Party") shall give prompt 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/or 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.

15. LIMITATIONS ON DAMAGES

UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED 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.

16. INSURANCE

16.1. Insurance Requirement. Licensee, or its Contractors, shall carry insurance in such form and issued by such companies as are reasonably satisfactory to Licensor to protect the Parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature 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, or its Contractors, shall take out and maintain, and shall ensure that its agents, contractors and subcontractors take out and

maintain, insurance that, at a minimum, conforms with the RUS insurance requirements of 7 CFR §1788.11, as it may be amended, which currently requires:

- (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. If workers' compensation or employer's liability insurance is not required by law in the state in which the poles subject to this Agreement are located, then insurance shall be obtained by Licensee that is equivalent to what would be applicable if workers' compensation and employer's liability laws were in effect.
- (b) Public liability insurance covering all of Licensee's operations under the Agreement with limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$2 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
- (c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, non-owned, or hired, with limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may also be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

16.2. Certificate of Insurance. Within thirty (30) days of the Execution Date, Licensee shall furnish to Licensor a certificate evidencing compliance with the above insurance requirements. This certificate shall list Licensor as additional insured and shall note specific cancellation language, as follows: "In the event of cancellation or material change of said policies, the insuring company shall give the Party to whom this certificate is issued thirty (30) days prior notice of such cancellation or material change." If Licensee fails to renew adequate insurance, Licensor may terminate this Agreement pursuant to Section 17 (Defaults).

16.3. 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.

16.4. No Limitation on Indemnities. The purchase of the insurance required by this section shall not relieve Licensee of its liability or obligations under this Agreement or otherwise limit Licensee's liability under Sections 14.1 and 14.3.

17. DEFAULTS

17.1. Licensee Default. If Licensee is in Default under this Agreement and fails to correct such Default within the cure period specified below, Licensor may, at its option, and without further notice:

- (a) declare this Agreement to be terminated in its entirety;
- (b) terminate the Authorization covering the Distribution Pole(s) with respect to which such Default shall have occurred;
- (c) decline to authorize additional Attachments under this Agreement until such Defaults are cured;
- (d) suspend Licensee's access to or work on any or all of Licensor's Distribution Poles;
- (e) correct such Default and charge Licensee as provided in this Agreement; and/or

- (f) seek specific performance of the terms of this Agreement through a court of competent jurisdiction.

17.2. Licensee Cure Period. For a period of thirty (30) days following receipt of notice from Licensor, Licensee shall be entitled to take all steps necessary to cure any Defaults. The 30-day notice and cure period does not apply to any Default by Licensee of its payment obligations under this Agreement.

17.3. 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 Rental Fee.

17.4. 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 costs related thereto.

17.5. Licensor Default. If Licensor is in Default under this Agreement, Licensor shall have thirty (30) days following notice from Licensee within which to correct such Default. If Licensor does not cure its Default within the allotted time period, Licensee may, at its sole discretion, either terminate this Agreement or seek specific performance of the terms of this Agreement through a court of competent jurisdiction.

17.6. Attorney Fees and Court Costs. If either Party fails to cure a Default with respect to any of its obligations under this Agreement and it becomes necessary for the other Party to obtain the services of an attorney, who is not a salaried employee of that Party, to enforce its rights under this Agreement, the defaulting Party agrees to pay all reasonable attorney fees and court costs of litigation associated with such enforcement, if the other Party is successful.

18. TERMINATION OF AGREEMENT

Upon termination of this Agreement, Licensee shall remove all of its Attachments from all of Licensor's Distribution Poles within sixty (60) days. If any Attachments are not so removed within sixty (60) days following such termination, Licensor shall have the right to remove such Attachments, and to use, dispose of or sell same, at Licensee's sole expense and without any liability to Licensee. Termination of this Agreement by Licensee does not relieve Licensee of its responsibility to pay applicable Pole Attachment Rental Fees.

19. 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.

20. 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 upon thirty (30) days' notice to Licensee. 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.

21. PAYMENT OF TAXES

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

22. 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. 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 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.

23. 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, except and only after obtaining the 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.

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.

24. FORCE MAJEURE

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.

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.

26. OWNERSHIP RIGHTS

All Attached Poles under this Agreement shall remain the property of Licensor, and Licensee's rights in Licensor's Distribution 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.

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.

28. SEVERABILITY

Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail. In such event, however, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

29. 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.

30. ASSIGNMENT AND TRANSFER

Licensee shall not assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensor. Licensor may condition such consent upon the assignee's or transferee's agreement to reasonable additional or modified terms or conditions. 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.

31. 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.

32. SURVIVAL; LIMITATIONS ON ACTIONS

Notwithstanding the termination of this Agreement for any reason, Sections 14, 15, 19, 22, 23, and 25 through 29 shall survive termination for the applicable statute of limitations. 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.

[END OF TERMS AND CONDITIONS]