

**ELECTRIC PLANT BOARD OF THE CITY OF PRINCETON, KENTUCKY**

RECEIVED  
Secretary  
DEC 5 - 2018  
Finance and  
Administration Cabinet

**POLE ATTACHMENT LICENSE AGREEMENT  
FOR CABLES AND ASSOCIATED EQUIPMENT**

This **POLE ATTACHMENT LICENSE AGREEMENT** ("Agreement") is made and entered into this 28<sup>th</sup> day of November, 2018, ("Effective Date") by and between the Electric Plant Board of the City of Princeton, Kentucky ("Licensor"), a municipally owned electric utility organized under the laws of the Commonwealth of Kentucky, and the Commonwealth of Kentucky, Finance and Administration Cabinet ("Licensee"). Licensor and Licensee may be referred to hereafter individually as a "Party" and collectively as the "Parties." The attached Terms and Conditions and any associated Exhibits are incorporated herein by reference and made a part of this Agreement.

**WITNESSETH:**

WHEREAS, the Licensee desires to install and maintain attachments such as aerial cables, wires, and associated wireline appliances and facilities on Licensor's electric Distribution Poles in Licensor's Service Area for the limited purpose of providing telecommunications or other lawful communications Services;

WHEREAS, Licensor is willing to permit, to the extent that it may do so lawfully and consistent with other license Agreements in effect, Attachments to its Distribution Poles if, in Licensor's sole judgment, such use will not interfere with its own service requirements and if Licensor is protected and indemnified against costs arising from such use by Licensee; and

WHEREAS, this Agreement is limited to wireline attachments and does not contemplate or authorize the attachment of Wireless Facilities to Licensor's facilities.

IN WITNESS WHEREOF, the Parties, each in consideration of the mutual covenants, terms and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, do hereby mutually covenant and agree as follows:

**ARTICLE I  
EXPLANATION OF TERMS**

For the purpose of this Agreement, the following terms shall have the following meanings:

Anchor. An assembly consisting of a rod secured to a fixed object or buried plate and attached to the pole by way of a guy wire to counteract the mechanical forces of cables attached to poles.

Application. The Pole Attachment Application Form, attached hereto as Exhibit A that 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.

Attached Pole. A Distribution Pole owned or maintained by Licensor that contains at least one attachment by the Licensee or another entity not party to this Agreement.

**Attachment.** Each affixation of Licensee's cables, strands, wires, conduit, and associated apparatus, including underground pedestals, attached to Licensor's Distribution Poles. For purposes of this Agreement, an Attachment may only be a wireline attachment and nothing contained herein shall be construed to authorize the attachment of Wireless Facilities.

**Attachment Space.** The space as referenced in Exhibit D allocated to the Licensee on the Distribution Pole for attachment of its facilities. For purposes of this Agreement, Attachment Space is defined as any portion of the Distribution Pole other than the Licensor's Reserved Distribution Pole Supply Space and the Communication Workers Safety Zone.

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

**Code.** The National Electrical Safety Code, as it may be amended from time to time.

**Conduit Attachment Rental Rate.** In addition to the Pole Attachment Rental Rate, the annual amount per foot of conduit attached to Licensor's Distribution Pole that Licensee must pay to Licensor pursuant to this Agreement in order to affix conduit risers to Licensor's Distribution Poles.

**Communication Workers Safety Zone.** The safety zone, or "neutral" space between the lowest electrical supply conductor or equipment and the highest communication cables or equipment.

**Costs and Expenses.** All costs and expenses incurred by the Licensor for performing Make Ready Work or other work including without limitation, material, labor, engineering, applicable overhead charges, permitting fees, legal fees, and administrative costs, plus ten percent (10%).

**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.

**Designated Contact Person(s).** The person(s) who have been identified by the Licensee and Licensor that will be available to be contacted by the other Party 24 hours a day 7 days a week.

**Distribution Pole.** Any pole bearing electric distribution lines and having a voltage rating of or below 14.4 kV.

**Facilities.** Any wire, cable, strand, material, apparatus, cabinet, terminal, conduit, power supply, splice enclosure, or other equipment.

**Final Invoice.** The invoice for the actual Licensor Costs and Expenses for all Make Ready Work or other work performed by Licensor.

**Joint Use.** Maintaining or specifically reserving space for the attachment of multiple parties on the same pole at the same time.

**Licensor Practices.** Licensor's rules, required procedures, operating practices, and policies concerning Attachments.

**Maintenance and Relocation Date.** Thirty (30) days from the date Licensor notifies Licensee of the need for Licensee to remove, relocate, replace, or renew its facilities, transfer its Attachments to a new Distribution Pole, or perform any other work required of the Licensee.

Make Ready Costs. All costs necessary for Licensor to prepare its Distribution Poles for Licensee's Attachments, including the costs of materials, labor, engineering, applicable overhead charges, permitting fees, legal fees, and administrative costs, plus ten percent (10%). 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 Article IV hereto. Also included in Make Ready Costs are the costs of determining pole ownership, and the costs of installing or changing out Distribution 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 Article IV.

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.

Make Ready Work Estimate Invoice. The invoice amount to be paid by the Licensee prior to any Make Ready Work being performed by the Licensor.

Make Ready Work. All work required by Licensor to prepare Licensor's Distribution Poles to accommodate Attachment by Licensee.

Other Licensee. Any person, corporation, or other legal entity, other than the Licensee, to whom Licensor has or hereafter shall extend an authorization to attach Facilities to a Distribution Pole or Anchor.

Other Owner. Refers to AT&T or any other entity with which Licensor has a Joint Use Pole Agreement.

Other Owner's Pole. Refers to a pole owned by an Other Owner.

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

Periodic Inspection. Refers to inspections conducted by Licensor of Licensee's Facilities or any portion thereof to determine that Attachments are authorized and that Attachments are maintained in conformance with this Agreement.

Pole Attachment Rental Rate. The annual amount per Attachment that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor's Distribution Poles, attached hereto as Exhibit E.

Pole Count Audit. The field audit conducted generally every five (5) years, or more frequently as determined by Licensor, to determine the number of Attachments Licensee has on Licensor's Distribution Poles.

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, but not limited to all required franchises, consents, easements, permits, and certificates of convenience and necessity.

Reserved Distribution Pole Space. Amount of Distribution Pole reserved for exclusive use by Licensor. For purposes of this Agreement, Licensor's Reserved Distribution Pole Space is the distance from the top of the Distribution Pole to the Communication Workers Safety Zone.

Right-of-Way. Any clearing or re-clearing of trees, brush, or vines from existing rights-of-way or easements for the establishment and maintenance of Attachments.

Services. Communications services, including but not limited to telecommunications, Internet, data transmission, or other similar services or combination of services provided by Licensee.

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

Unauthorized Attachment. Any affixation of any Licensee facility of any nature to any property of Licensor, including Distribution Poles, which 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.

Unauthorized Attachment Fee. The fee to be paid by Licensee for each Unauthorized Attachment. For purposes of this Agreement, the fee shall be three times (3X) the Pole Attachment Rental Rate in effect at the time of discovery of the Unauthorized Attachment by the Licensor.

Wireless Facilities. Telecommunications or data transmission devices in which electromagnetic waves (rather than some form of wire or fiber) carry the signal over part or all of the communication path. Wireless Facilities include but are not limited to, antennas, distributed antenna systems, wireless transmitters, wireless gateways, mini-cells, wireless loops, wireless networks, or devices transmitting in millimeter wavelength spectrum.

## **ARTICLE II SCOPE OF AGREEMENT**

### 2.1 Scope of Agreement.

- a) Subject to the provisions of this Agreement, Licensor will issue to Licensee a revocable, non-exclusive license authorizing Attachments. Licensee shall not attach, install, or use any Facilities affixed to the Distribution Poles for any purpose other than for providing telecommunication services to Licensee's patrons and the transmission of other lawful signals in connection therewith.
- b) No use, however extended, of Licensor's Distribution Poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in any of Licensor's Distribution Poles. Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel Licensor to construct, retain, extend, place, or maintain any Distribution Pole, equipment, or other structure which is not needed for its own service requirements.
- c) It is recognized by Licensee that Licensor may in the future enter into agreements and arrangements with others, not parties to this Agreement regarding Licensor's Distribution Poles covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction, or prohibition against Licensor with respect to such other agreements and arrangements.
- d) The rights of Licensee shall at all times be subject to any present or future Joint Use arrangement between Licensor and any other party regarding use of any Distribution Pole of Licensor.

## **ARTICLE III ESTABLISHING ATTACHMENT TO DISTRIBUTION POLES**

### 3.1 Pole Attachment Procedures.

Before Licensee may affix any Attachment 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 or make use of each such Distribution Pole; (b) receive written approval from Licensor authorizing the Attachment to or use of each such Distribution Pole; and (c) comply with all procedures set forth in this Article. Licensee's failure to request and receive Licensor's permission as described herein will subject each Unauthorized Attachment to an Unauthorized Attachment Fee.

### 3.2 Pole Attachment Application.

#### 1) Application for Authorization

- a) Subject to the terms, conditions, and requirements of this Agreement, Licensor grants Licensee a non-exclusive right to attach to its Distribution Poles for which Licensor has the power and privilege of granting licenses in accordance with all applicable law.
- b) Whenever Licensee desires to make an Attachment to Licensor's Distribution Poles, it shall make a written application on the form appended to this Agreement as "Exhibit A", Application. Licensee shall specify the location of the Distribution Poles involved and shall specify the precise Facilities it desires to attach to each Distribution Pole. Licensee shall furnish Licensor with such engineering data as requested by Licensor.
- c) Licensor's Service Area is comprised of Distribution Poles owned by either Licensor or Other Owner, where the Licensor has a Joint Use Agreement with Other Owner. In order to maintain a consistent Attachment position for Licensee's Facilities on all Attached Poles, in accordance with the technical requirements and sections of Article IV, it is the responsibility of the Licensee to facilitate communication and coordination with Other Owner to provide Licensor with the necessary information to evaluate Licensee's Pole Attachment Application and to determine authorization for Attachment on poles other than Licensor's Distribution Poles.

#### 2) Decision Regarding Application

- a) Licensor shall process the Application, check Licensee's design and layout proposal, perform any prerequisite engineering, determine pole ownership, and any other required functions on a first come first serve basis. Licensor shall be under no obligation to grant any license.
- b) If in the sole judgment of Licensor, Attachment to Licensor's Distribution Poles as proposed in the Application is undesirable or impracticable based on the technical requirements and sections of Article IV, 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. For Applications involving less than ten (10) Distribution Poles, Licensor shall notify Licensee in writing within thirty (30) days, contingent upon receiving requisite design and coordination information for Other Owner's Poles that have a direct bearing on Licensor's engineering design and construction, whether the Application is approved, approved with Licensee's modifications, approved contingent on Other Owner's rearrangement of Attachments on adjacent Distribution Poles, or rejected. For Applications involving more than ten (10) Distribution Poles, Licensor shall notify the Licensee in writing within a reasonable period of time not to exceed ninety (90) days, contingent upon receiving requisite design and coordination information for Other Owner's Poles that have a direct bearing on Licensor's engineering design and construction, whether the Application is approved, approved with Licensee's modifications, approved contingent on Other Owner's rearrangement of Attachments on adjacent Distribution Poles, or rejected.

- c) Licensor shall be under no obligation to grant or continue any license if Licensee has any outstanding and overdue payments owing to Licensor under this Agreement, any other agreement with Licensor for the provision of Attachments, or any other contractual arrangement between Licensor and Licensee.
- d) Licensor shall have the right to locate its Facilities in whatever manner Licensor determines. No provisions of this Agreement shall be construed to require Licensor to relocate its Facilities for the benefit of Licensee.

### 3.3 Make Ready Estimate and Make Ready Work.

- a) Licensor shall, on the basis of the approved Application and associated construction plans and drawings, submit to Licensee within forty-five (45) days of approval of Licensee's Application, a Make Ready Estimate (based on Licensor's method of computing costs) for all Make Ready Work which may be required for each Distribution Pole, including an estimate of the time required to complete such Make Ready Work, with the understanding that Licensor's Make Ready Work completion times are contingent upon Licensor receiving requisite design and coordination information for Other Owner's Poles that have a direct bearing on Licensor's engineering design and construction.
- b) Provided that, within thirty (30) days of Licensee's receipt of the Make Ready Estimate, Licensee provides notice of acceptance of the Make Ready estimate and pays the Make Ready Estimate Invoice in full to Licensor, Licensor shall proceed with the Make Ready Work covered by the Make Ready Estimate. Within forty-five (45) days of receipt of payment of the Make Ready Estimate Invoice, Licensor shall complete the Make Ready Work; provided, however, that if Make Ready Work is required for more than ten (10) poles at one time or if such Make Ready Work is of a complex nature, Licensor shall complete such Make Ready Work in a reasonable period of time and not necessarily within the aforementioned forty-five (45) day period, not to exceed one hundred twenty (120) days contingent upon Licensor receiving requisite design and coordination information for Other Owner's Poles that have a direct bearing on Licensor's engineering design and construction. Should Licensor fail to complete Make Ready Work in the time frames stated above, upon

approval of Licensor, Licensee will have the option to perform such Make Ready Work using a contractor approved by Licensor, after notifying Licensor of its intent and providing thirty (30) days for the Licensor to complete said Make Ready Work.

- c) Upon completion of all Make Ready Work, Licensor shall produce an itemized accounting statement for the actual Make Ready Costs. Licensor shall produce a Final Invoice by reconciling the Costs and Expenses with payment previously received from Licensee for the Make Ready Estimate. Licensor shall refund any overpayment or Licensee shall remit any payment due, as the case may be, within thirty (30) days of the Final Invoice.
- d) Upon receipt of payment in full of the Final Invoice, Licensor shall grant to Licensee Authorization (a License) to use Licensor's Distribution Poles and to make Attachments in accordance with the subject Application and the terms of this Agreement.

### 3.4 Make Ready Pole Replacements

In the event that any Distribution Pole(s) of the Licensor to which Licensee desires to make Attachments are inadequate to support the additional facilities in accordance with the requirements and specifications as set forth in Article IV of this Agreement, Licensor will notify Licensee of any changes necessary to provide adequate Distribution Pole(s) and will provide Licensee with a Make Ready Estimate. If Licensee still desires to make the Attachments, it shall pay Licensor the Make Ready Estimate Invoice and Licensor will perform the Make Ready Work as set forth in this Article. In addition to Make Ready Costs incurred by Licensor, Licensee is additionally responsible for the full costs incurred by Other Licensees for transferring Attachments to Licensor's upgraded Distribution Pole(s). Licensor shall take reasonable steps to complete non-complex Attachment transfers, including notification of all Other Licensees who are to transfer Attachments, or other construction necessary to make Licensor's Distribution Poles ready for said Attachments.

### 3.5 Make Ready Pole Rearrangements

#### 1) Distribution Poles owned by Licensor

Where Licensee's desired Attachments can be accommodated on Distribution Poles of Licensor, Attachments of Other Licensees will be rearranged in accordance with the requirements and specifications as set forth in Article IV of this Agreement. Licensor will notify Licensee of any changes necessary in rearranging Attachments and will provide Licensee with a Make Ready Estimate. If Licensee still desires to make the Attachments, it shall pay Licensor the Make Ready Estimate Invoice and Licensor will perform the Make Ready Work as set forth in this Article. In addition to Make Ready Costs incurred by Licensor, Licensee is additionally responsible for the full costs incurred by Other Licensees for rearranging Attachments on Licensor's Distribution Poles. Licensor shall take reasonable steps to complete non-complex rearrangements, including notification of all Other Licensees who are to rearrange Attachments, or other construction necessary to make Licensor's Distribution Poles ready for said Attachments.

## 2) Distribution Poles owned by Other Owner

Where Licensee's desired Attachments can be accommodated on Distribution Poles of an Other Owner, Licensor's Attachments shall be rearranged to allow for Licensee's Attachments in accordance with Section 4.1 of Article IV. Licensor will notify Licensee of any rearrangement changes necessary and will provide Licensee with a Make Ready Estimate. If Licensee still desires to make the Attachments, it shall pay Licensor the Make Ready Estimate Invoice and Licensor will perform the Make Ready Work as set forth in this Article. Licensor shall take reasonable steps to complete Licensor's Attachment rearrangements or other construction necessary to make Other Owner's Poles ready for said Attachments.

### 3.6 Right-of-Way.

Right-of-Way clearing necessary for the operation of the Licensor's electric distribution system shall be performed by Licensor as it determines in the exercise of its sole judgment and discretion. Any reasonable Right-of-Way clearing necessary for the installation of the Licensee's Attachment will be the financial and operational responsibility solely of the Licensee, and Licensee must obtain Licensor's permission prior to conducting any such clearing activity near any Distribution Pole or other facilities. In the event that Right-of-Way work is required due to a fallen tree or other object that is resting on the Licensee's cable and/or any other scenario whereby the condition of Licensee's cable and/or Facilities are creating undue strain on Distribution Poles or other facilities, Licensee agrees to remedy the situation as soon as possible. If Licensee is not able to remedy the situation within a timeframe suitable to Licensor, as determined in Licensor's sole discretion, Licensor may perform the necessary Right-of-Way clearing and invoice the Licensee for the Costs and Expenses associated therewith.

### 3.7 Overlashing.

Any proposed Overlashing by Licensee is subject to the Application process and all other provisions of this Agreement, and must be approved by the Licensor prior to installation. Licensee shall not Overlash to any third party attachments or allow any third party Overlashing to any of its Attachments or Unauthorized Attachments.

### 3.8 Timeliness of Attaching.

Once Licensee has been issued Authorization (a License) to attach, Licensee shall have three hundred sixty-five (365) calendar days from the date the approval was issued to begin the placement of its Attachments on the Licensor's Distribution Poles covered by the License. If Licensee has not begun placing its Attachments within the three hundred sixty-five (365) day period, Licensee shall provide notice of such fact 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 genuine effort to begin placing its Attachments within the three hundred sixty-five (365) calendar days prescribed by this section, the License for the subject Attachments 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. In the event that the License to attach is rescinded as



set forth above, the Licensee shall not be reimbursed any fees or charges associated with any Make Ready Work that was performed by the Licensor in preparation for Attachment by Licensee.

### 3.9 Allocated Attachment Space.

When Licensee has been granted Authorization to make Attachment to Licensor's Distribution Poles, said Attachment shall be made in the Attachment Space on the Distribution Poles. Licensee shall make no Attachment in the Reserved Distribution Pole Space or the Communication Workers Safety Zone. All Attachments must meet all applicable technical requirements and specifications as set forth in Article IV of this Agreement.

## **ARTICLE IV TECHNICAL REQUIREMENTS AND SPECIFICATIONS**

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:

### 4.1 Applicable Codes.

Licensee shall comply with all requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electric Code ("NEC"), the Occupational Safety and Health Act ("OSHA"), and to the extent such requirements or specifications may conflict, then the most stringent of the NESC, NEC, or OSHA requirements and specifications. Licensee must attach in the allocated Attachment Space on Distribution Poles and comply with current and future rules or orders of any federal, state, or local authority having jurisdiction.

### 4.2 Licensor Practices.

- a) 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 Article XXII (MODIFICATIONS), and Licensee agrees to be bound by any such amendment. In the event that Licensor amends the Licensor Practices, Licensee shall make all required modifications within thirty (30) days after receipt of notice thereof from Licensor.
- b) Licensor will attempt, to the extent practical, to designate the same relative position on Licensor's Distribution Poles for each Attachment. It is equally desirable to designate the same relative position on Other Owner's Poles in accordance with the requirements and specifications as set forth in Article IV of this Agreement.

**ARTICLE V  
MAINTENANCE OF POLES AND ATTACHMENTS, ATTACHMENT  
IDENTIFICATION AND LICENSEE REQUIREMENT TO ACT**

**5.1 Maintenance of Poles.**

Licensor, at its' own expense, shall maintain the Attached Licensor's Distribution Poles, and replace, reinforce, or repair such Attached Poles as determined by Licensor, in the exercise of its sole judgment.

**5.2 Maintenance of Attachments.**

Licensee shall, at its own expense, make and maintain Attachments in safe condition and in thorough repair, and in a manner satisfactory to Licensor and so as not to interfere with Licensor's use of any Distribution Pole; or the use by other companies of such Distribution Pole, or to interfere with the use and maintenance of facilities thereon or which may from time to time be placed thereon. Any guying or anchoring required to accommodate the Attachments of the Licensee shall be provided by and at the full expense of the Licensee and to the satisfaction of the Licensor. Licensee shall pay Licensor for Costs and Expenses resulting from engineering studies regarding routing, spacing, and design changes made necessary because of facilities proposed by and for the Licensee.

**5.3 Attachment Identification.**

Licensee shall tag all of its Attachments to allow for ready identification by Licensor. All identification markers must be located at or near the point where such Attachments are affixed to each Distribution Pole, and must:

- a) be non-metallic;
- b) be of distinctive and uniform design; and
- c) be legible, clearly visible, and recognizable from the ground by a person having normal vision.

Licensee shall be responsible for periodically inspecting its Attachments to ensure that they are tagged with permanent identification markers. Should Licensor encounter any Attachment without the required permanent identification marker, Licensor shall notify Licensee of such Attachment and Licensee shall install a permanent identification marker within thirty (30) days. In the event any Attachment is not tagged, Licensor reserves the right to charge all Costs and Expenses for time required by Licensor to identify the untagged Attachment.

**5.4 Licensee Requirement to Act.**

Licensee shall, at its own expense, within forty-five (45) days of notification from Licensor (unless, in Licensor's sole discretion, safety, emergency, power supply considerations, or restoration efforts require Licensee to take corrective action within a shorter period); remove, relocate, replace, or renew its Attachments and facilities placed on any Distribution Pole, or transfer them to a substitute Distribution Pole, or perform any other work in connection with the Attachments and facilities that may be required by Licensor.

Should Licensee fail to remove, relocate, replace, or renew its Attachments and facilities, fail to

transfer its Attachments to the new pole, or fail to perform any other work required of Licensee after the date specified by Licensor for such maintenance and relocation ("Maintenance and Relocation Date"), the following shall apply, in addition to any other rights and remedies available under this Agreement:

- a) Licensee shall pay Licensor the following amounts in addition to the required Pole Attachment Rental Rate until Licensee has completed the maintenance and relocation, notified Licensor in writing that the maintenance and relocation has been accomplished, and Licensor has verified proper completion of same: (1) an additional \$25 per affected Distribution Pole per month beginning with the sixty-first (61<sup>st</sup>) day after the Maintenance and Relocation Date and through and including the one hundred twentieth (120<sup>th</sup>) day after the Maintenance and Relocation Date; and (2) an additional \$50 per Distribution Pole per month beginning with the 121<sup>st</sup> day after the Maintenance and Relocation Date until such time as the maintenance and relocation is completed and verified by Licensor.
- b) Licensor, in its sole discretion, may require Licensee to pay all Costs and Expenses incurred by Licensor to return to the job site to inspect the status of Licensee's work and, as applicable, the Costs and Expenses incurred by Licensor to remove the old Distribution Pole.
- c) Licensor may, at Licensee's sole risk and without warranty of any kind, perform such maintenance and relocation work, and Licensee shall reimburse Licensor for the associated Costs and Expenses.

The intent of this Article is to ensure timely maintenance and relocation. Nothing in this Article shall operate to impose any liability upon Licensor for any loss or injury arising directly or indirectly from Licensee's failure to conform to applicable technical requirements and specifications, and nothing in this Article shall operate to relieve or in any way limit Licensee's obligations to indemnify Licensor under this Agreement.

## **ARTICLE VI RELOCATION; REMOVAL OR ABANDONMENT**

### **6.1 Required Relocation.**

Should Licensor at any time need for Licensor's own purposes the space occupied by Licensee's Attachments, Licensor shall notify Licensee that it shall either (i) surrender its license for those Attachments; (ii) remove, relocate or replace such Attachments, at Licensee's own expense; or (iii) authorize Licensor to replace or rearrange the applicable Attachments and/or Distribution Poles, at Licensee's sole and complete expense. Notwithstanding the foregoing, Licensee shall not be required to remove or relocate any Attachment to allow attachments of a third-party attacher until the third-party attacher pays Licensee's reasonable costs of removal or relocation.

### **6.2 Required Removal.**

If Licensor moves any portion of its overhead system underground, Licensee shall remove its Attachments from the affected Distribution Poles within ninety (90) calendar days of receipt of notice from Licensor, and Licensee must either relocate its affected facilities underground or must find other means to accommodate such facilities. If the Licensee does not remove its facilities within ninety

(90) days after notification, Licensee shall be subject to the fees set forth in Article V until such facilities are removed, and Licensor may also remove such facilities at Licensee's sole risk, with Licensee paying the Cost and Expenses of the same.

In the event that Licensee's use of Licensor's Distribution Pole is or becomes (in the determination of Licensor) forbidden by federal, state, county or municipal authorities, or by owners of private property, Licensor shall provide ninety (90) days' notice (or less if required in the determination of Licensor) to Licensee that the Authorization for the Attachment will be terminated and that Licensee must remove the Attachment at its own expense. If the Licensee does not remove its facilities within the designated period, Licensee shall be subject to the fees set forth in Article V until such facilities are removed, and Licensor may remove such facilities at Licensee's sole risk, with Licensee paying the Cost and Expenses of the same.

### 6.3 Pole Abandonment by Licensee.

Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Distribution Poles, but shall provide seven (7) business days' advance written notice of such removal to Licensor. Such notice shall fully identify, by pole number and location, the Distribution Pole(s) from which such Attachments are being removed. No refund of any Pole Attachment Rental Rate will be due on account of such removal.

### 6.4 Pole Abandonment by Licensor.

Licensor may at any time and in its sole discretion abandon or end its use of existing Distribution Pole(s). In the event Licensor chooses to abandon Distribution Pole(s), Licensor shall provide Licensee a written notice of its intent to abandon said Distribution Pole(s). If in its sole discretion, the Licensor chooses not to leave or allow the Distribution Pole(s) to remain in place, Licensor shall require that the Licensee relocate or remove its Attachment(s) from said Distribution Pole(s) within thirty (30) days of the written notification of Licensor's intent to abandon said Distribution Pole(s). In the event Licensee has not relocated or removed its Attachment(s) after thirty (30) days, Licensee will be subject to charges as set forth in Article V. In the event the Licensor is willing to offer to transfer ownership of the abandoned Distribution Pole(s) to the Licensee and Licensee desires to take ownership of said Distribution Pole(s), then upon expiration of thirty (30) days following notification of Licensor's intent to abandon said Distribution Pole, such Distribution Pole(s) shall thereupon become the property of the Licensee (or of an Other Licensee with Attachments on said Distribution Pole(s) as specified in the notice to Licensee). In the event of any abandonment, whether to Licensee or to an Other Licensee, and without limitation of other requirements of Licensee under this Agreement, to the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, the Licensee shall indemnify Licensor from all obligation, liability, damage, cost, expenses, or charges incurred thereafter (including legal fees and/or costs) because of, or arising out of, the presence or condition of such Distribution Pole(s) or the presence of any of Licensee's Attachments thereon. If Licensor abandons Distribution Pole(s) to Licensee, then Licensee shall pay the Licensor a sum equal to the value in place of such abandoned Distribution Pole(s), or such other equitable sum as may be agreed upon between the Parties.

### 6.5 Limitation.

Nothing in this Article VI shall limit the authorization of Licensor to require maintenance, removal or relocation of Attachments in accordance with the provisions of Article V, above.

## **ARTICLE VII LICENSEE AND LICENSOR MUTUAL AND INDIVIDUAL OBLIGATIONS**

In addition to the other specific rights and obligations described in this Agreement, Licensor and Licensee shall have the following additional mutual and/or individual rights and obligations.

### 7.1 Mutual Obligations.

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

### 7.2 Licensor Obligations.

Licensor shall maintain Licensor Owned Distribution Poles, and replace, reinforce, or repair such Attached Poles as Licensor becomes aware that they are defective, as determined in the exercise of Licensor's sole judgment. Licensor shall make a good faith effort to pursue all commercially reasonable measures to accommodate Licensee's reasonable request(s) for attachment on its Distribution Poles. Licensor shall not intentionally disturb Licensee's Authorized Attachments, except as such disturbance may be necessary in an emergency or natural disaster situation or as otherwise permitted by the terms and conditions of this Agreement, provided that Licensee is performing in accordance with all terms and conditions of this Agreement.

### 7.3 Licensee Obligations.

Licensee shall comply with all state, federal, and local rules and ordinances and obtain all Required Authorizations. Licensee shall comply with all technical requirements and specifications applicable to Licensee's Attachments to Licensor's Distribution Poles as authorized herein. Licensee shall comply with the Licensor's Practices including requirements for installing, transferring, relocating, removing, or maintaining Attachments. 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 Licensee shall take all steps necessary to avoid any interference with Licensor's safe and efficient operation of its electric distribution system including but not limited to Licensor's Distribution Poles.

### 7.4 Right to Share Utility Easements.

Licensor agrees to share with Licensee, but only to the extent permitted by applicable law and any controlling agreement with the owner of the subject property, such easements or similar rights as Licensor may have on, over or under the property of third parties where the facilities of Licensor that are the subject of this Agreement may be located ("Utility Easements"); provided, however, that Licensee's right to use such Utility Easements shall be at all times limited to such purposes and uses

as such Utility Easements may permit and shall be subject and subordinate to Licensor's prior rights. Licensor makes no representation or warranty of any kind or description with respect to any such Utility Easement or to any right Licensee may or may not have to share the use of such Utility Easements. To the extent Licensee makes any use of such Utility Easements, Licensee assumes all risks associated with Licensee's right to do so. To the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Licensee waives and releases Licensor from, and shall indemnify Licensor for, any claims or liabilities of any kind or description arising from Licensee's use of any Utility Easement or associated with the grant made by Licensor hereunder.

## **ARTICLE VIII ATTACHMENT RATES AND PAYMENT PROVISIONS**

### **8.1 Pole Attachment Rental.**

Licensee shall pay to the Licensor, for Attachments made to Licensor's Distribution Poles under this Agreement, the Pole Attachment Rental Rate as set forth in the Licensor's Pole Attachment Rate Schedule. The Pole Attachment Rental Rate shall be established annually by Licensor. In establishing the Pole Attachment Rental Rate, Licensor may, in its sole discretion, use a cost-allocation formula developed by the American Public Power Association (APPA), it being understood by both parties that Licensor may use the formula rate, but is not obligated to do so. Licensor may adjust the Pole Attachment Rental Rate to equal the rate derived from application of the appropriate formula as hereinabove provided, or such other basis as Licensor shall determine whether by formula or otherwise. Any increase or decrease resulting from the adjustment of the Pole Attachment Rental Rate shall be effective on the next rental payment date in the subsequent calendar year. Licensor is not subject to regulation by the Kentucky Public Service Commission (PSC) and is not subject to pole attachment rates or Service Practice Policies as prescribed by that body.

### **8.2 Pole Attachment Rental for Conduit**

In addition to the Pole Attachment Rental Rate for Attachments made to Licensor's Distribution Poles under this Agreement, all conduit attached to Licensor's Distribution Poles will be charged a Conduit Attachment Rental Rate as set forth in the Licensor's Pole Attachment Rate Schedule based on a per footage charge for the length of conduit attached to Licensor's Distribution Pole. The Conduit Attachment Rental Rate shall be established annually by Licensor.

### **8.3 Payment.**

Pole Attachment Rental Rate charges shall be payable annually in advance on the thirtieth (30<sup>th</sup>) day of January of each year. The total payment shall be based upon the number of Attachments being maintained as of on the first day of June preceding the payment date. For the purpose of computing the payment due, each outstanding permit shall be construed as if the Attachment authorized thereby had been made as of the date of the approval thereof by Licensor even if the Attachment has not been made on said date.

Invoices to Licensee shall be sent to the following address, unless Licensee subsequently gives Notice of a change in the invoicing address:

Kentucky Wired Project  
Attn: Pole Attachment Coordinator  
Ledcor Technical Services  
2008 Mercer Rd.  
Lexington, KY 40511  
[lts.ky.accountspayable@ledcor.com](mailto:lts.ky.accountspayable@ledcor.com)

#### 8.4 Payment Period.

Unless otherwise provided elsewhere in this Agreement, Licensee shall pay all rates and charges as specified in the Agreement within thirty (30) days from the date of the invoice for such rates/charges. If Licensee disputes any amount invoiced by Licensor, Licensee shall make payment of the invoice in full and shall notify Licensor in writing of the disputed amount. Licensee may dispute any amount within ninety (90) days after the date that payment has been made. Licensee shall include any documentation supporting its position in such written notification of any such dispute. The Parties shall work together in good faith to resolve the dispute in an expeditious manner.

#### 8.5 Removal for Nonpayment.

In the event Licensee fails to timely pay its pole rental invoice in full and such failure is not cured within thirty (30) calendar days (or such other period as may be specified by KRS 45.454) of Licensor's notice of same to Licensee, Licensee agrees that Licensor shall have the unqualified right to (in addition to all other remedies that may be available to it hereunder or otherwise at law or in equity), at Licensee's sole cost and expense, immediately remove Licensee's Attachments and any other associated facilities from its Distribution Poles without any liability therefor.

### **ARTICLE IX UNAUTHORIZED ATTACHMENTS**

#### 9.1 Unauthorized Attachment Fee.

Licensee shall pay to Licensor an Unauthorized Attachment Fee of three times (3X) the Pole Attachment Rental Rate in effect at the time of discovery of the Unauthorized Attachment by the Licensor, within thirty (30) days of notification of each Unauthorized Attachment. Licensor may, in the exercise of its sole discretion, require that such Unauthorized Attachment be removed by Licensee (at Licensee's sole expense), or Licensor itself may remove the Unauthorized Attachment without liability, and charge Licensee for the Cost and Expense of doing so. In addition to the Unauthorized Attachment Fee and any other remedies that may be available to Licensor hereunder or otherwise at law or in equity, Licensor may impose a retroactive Pole Attachment Rental Rate charge on, and require that the Licensee submit an application for, such Unauthorized Attachment(s) in the manner prescribed by this Agreement. For purposes of determining the Pole Attachment Rental Rate charge, and in the absence of satisfactory evidence to the contrary, the Unauthorized Attachment shall be treated as having existed since the Effective Date of this Agreement or since the last Pole Count Audit, whichever is most recent. Nothing herein shall act to limit any other remedies at law or in equity, including but not limited to remedies for trespass that may be available

to Licensor as a result of any Unauthorized Attachment. No refund shall be made for Attachment(s) paid for but found by the Pole Count Audit to have been removed without notification.

#### 9.2 Licensor Failure to Act.

No act or failure to act by Licensor with regard to any Unauthorized Attachment shall be deemed to ratify, license, or otherwise waive any remedies hereunder or at law or in equity with respect to the Unauthorized Attachment. If an Application for such Unauthorized 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.

### **ARTICLE X POLE COUNT AUDITS AND INSPECTIONS**

#### 10.1 Pole Count Audit.

No more frequently than every five (5) calendar years, unless Licensor in good faith believes that Licensee's reported number of Attachments is inaccurate, Licensor (or a third party contractor selected by Licensor) shall perform an inventory of Attachments on its Distribution Poles in all of the territory covered by this Agreement, for the purpose of verifying the number and location of Licensee Attachments. Licensee may provide a representative to participate in such Pole Count Audit to determine the number of Licensee's Attachments at Licensee's expense. By participating in any such Pole Count Audit, Licensor does not assume any obligation or responsibility for Licensee's Attachments nor does any such Pole Count Audit relieve Licensee of any responsibility, obligation, or liability that accrues under this Agreement for Attachments actually made or maintained by Licensee during the term hereof. Licensor must provide thirty (30) days' advance notice of any such Pole Count Audit so that Licensee may be present and observe such Pole Count Audit; provided, however, that Licensee's inability to be present and to observe shall not be a valid reason to suspend or forego such Pole Count Audit. Licensee shall reimburse Licensor for the Costs and Expenses associated with conducting any Pole Count Audit pursuant to this Article X.

#### 10.2 Review of Records in Lieu of Audit.

Licensee agrees that Licensor may determine, in the exercise of Licensor's sole judgment and discretion, that in lieu of any Pole Count Audit or in an effort to reduce the scope of a Pole Count Audit, the number of Attachments maintained by Licensee may be determined in whole or in part from existing maps and Attachment records. If Licensor decides to use this method, Licensee shall make all relevant maps and records available within a reasonable timeframe to Licensor, who will determine the number of Attachments maintained by Licensee with respect to that portion of the Pole Count Audit being conducted in this manner. All records disclosed by Licensee will be considered proprietary and will not be shared with others, absent legal compulsion.



### 10.3 Inspections.

Licensors may conduct inspections of Licensee's Attachments from time to time as necessary in the exercise of Licensor's sole judgment and discretion to determine whether Licensee's Attachments satisfy the technical requirements and specifications of this Agreement. If practicable, as determined in the exercise of Licensor's sole judgment and discretion, Licensor shall provide ten (10) business days' notice of such inspections to Licensee, and Licensee shall have the right to be present at and observe any such inspections, provided however, that Licensee's inability to be present and to observe shall not be a valid reason to suspend or forego such inspection(s). Such inspections may be conducted no more frequently than once every year, unless Licensor determines that more frequent inspections are necessary for reasons involving safety of persons or protection of property. Licensee shall reimburse Licensor for all Costs and Expenses of conducting inspections to the extent such expenses are attributable to non-compliance of any of Licensee's Attachments.

### 10.4 Licensee Non-Compliance

If any of Licensee's Attachments fail to conform with the technical requirements and specifications of this Agreement, Licensee shall, upon notice by Licensor, pay a Safety Violation Fee of one hundred dollars (\$100) for each such violation, and shall correct such nonconformance within thirty (30) days of notification of such nonconformance; provided, however, that Licensor may specify a shorter timeframe, with which Licensee shall comply, if in the exercise of Licensor's sole judgment and discretion, safety considerations require Licensee to take corrective action within such shorter period. Should Licensee fail to timely 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 and Expenses incurred by Licensor in connection therewith. Licensor shall not be liable for any loss or damage to Licensee's facilities, and Licensee shall be responsible for any additional damages, that result from Licensor's performance of such work itself and from Licensee's failure to act in a timely manner in accordance with these requirements. Failure by Licensor to inspect Licensee's conformance to the technical requirements and specifications listed in Article IV 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.

## **ARTICLE XI DESIGNATED CONTACT PERSON(S)**

### 11.1 Designated Contact Person(s).

Licensee shall establish and maintain a Designated Contact Person(s) for ordinary maintenance and relocation requests of Licensor during Licensor's normal business hours and a Designated Contact Person(s) for emergency maintenance and relocation requests. The Designated Contact Person(s) for emergency maintenance and relocation requests shall be reasonably available to Licensor 24

hours per day, 7 days a week, throughout the year. As of the date of this Agreement, the Designated Contact Person(s) are:

**LICENSEE (Normal Business)**

Name: Ledcor Technical Services  
Title: Director of Operations  
Print Name: John Colder  
Contact Number: 859-286-8142  
Email: [john.colder@ledcor.com](mailto:john.colder@ledcor.com)

**LICENSEE (Emergency)**

Name: Ledcor Technical Services  
Title: Director of Operations  
Print Name: John Colder  
Contact Number: 859-286-8142  
Email: [john.colder@ledcor.com](mailto:john.colder@ledcor.com)

Licensor contacts shall be as follows:

**LICENSOR (Normal Business)**

Name: Chris Burton  
Title: Operations Superintendent  
Print Name: Chris Burton  
Contact Number: 270-365-2031  
Email: [csburton@pepb.net](mailto:csburton@pepb.net)

**LICENSOR (After-Hours)**

Name: Central Dispatch  
Title: Princeton EPB Dispatcher  
Print Name: Central Dispatch  
Contact Number: 270-365-2031  
Email: Not Applicable

**ARTICLE XII  
LIMITATION OF LIABILITY AND ASSUMPTION OF RISK**

**12.1 Limitation of Liability.**

Licensor reserves to itself, its successors and assigns, the right to maintain its Distribution Poles and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any property damage, injury or death to persons (including payments made under any worker's compensation law or under any plan for employee disability and death benefits), interruption to service of Licensee, or for interference (however caused) with the operation of the cables, wires, appliances, and facilities of Licensee, arising in any manner out of the use of Licensor's Distribution Poles hereunder, including any effects undesirable to Licensee which the presence, breakdown, operation, maintenance, alterations of, or additions to, the lines and other facilities of Licensor or those jointly using Licensor's Distribution Poles may have upon the Attachments or the transmissions of Licensee, unless the cause of such effects are attributable to the gross negligence (including, to the fullest extent permitted by law and without limitation, Licensor's sole negligence) on the part of Licensor or its agents. Without limitation of the foregoing and to the fullest extent permitted by applicable law, Licensor shall not, in any circumstance, be liable to Licensee for any indirect, incidental, consequential, special, punitive, or exemplary damages (including but not limited to loss of profits, damages to business reputation, lost opportunity, or other remote items of damage) arising in any manner out of or in relation to the use of Licensor's Distribution Poles hereunder.

## 12.2 Assumption of Risk:

Licensee expressly assumes responsibility for determining the condition of all Distribution Poles to be climbed or worked on by its employees, agents, contractors, or subcontractors, and to the fullest extent permitted by law, assumes all risks (including, without limitation, risks arising from Licensor's sole negligence) related to the construction, operation, and maintenance of Licensee's Attachments on or about Licensor's Distribution Poles.

## **ARTICLE XIII QUALIFICATIONS OF EMPLOYEES, AGENTS AND CONTRACTORS**

### 13.1 Qualifications.

Licensee shall require all of its agents, contractors, or subcontractors that install, transfer, remove, relocate, maintain, or otherwise work on or near the Attachments to be appropriately qualified and trained to work on and in the vicinity of an electric distribution system, including but not limited to Distribution Poles.

Licensee shall require its agents, contractors, and subcontractors to comply with the Licensor Practices required under this Agreement and with the insurance and indemnification obligations under this Agreement as if each such agent, contractor, and subcontractor were the Licensee for purposes of this Agreement. Licensee shall ensure that Licensor is an intended third party beneficiary of such requirements with enforceable rights against each such agent, contractor, and subcontractor, and that such rights are enforceable against each such agent, contractor, and subcontractor in the same manner and to the same extent as Licensor has such rights against Licensee under this Agreement. Without limitation of the other requirements of this Agreement, to the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Licensee shall indemnify Licensor for all liabilities, claims, demands, and costs (including, without limitation, any legal fees and/or costs) arising from its failure to comply with the requirements of this Article.

## **ARTICLE XIV REPRESENTATIONS AND WARRANTIES**

### 14.1 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 enabling statute(s) or 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.

#### 14.2 DISCLAIMER OF 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 AND RELATED PROPERTY AND FACILITIES.

### **ARTICLE XV PRECAUTIONS OF LICENSEE**

#### 15.1 Precautions.

Licensee shall exercise precautions to avoid damage to facilities of Licensor and of others supported on Licensor's Distribution Poles, and to the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Licensee hereby assumes responsibility for any and all loss for such damage attributable to Licensee's actions or failures to act, including those of its employees, agents, and contractors. Licensee shall make an immediate report to Licensor upon Licensee's discovery of any such damage and, in addition to such other obligations as Licensee may have, hereby agrees to reimburse Licensor for the Costs and Expenses incurred by Licensor in making repairs.

### **ARTICLE XVI INDEMNIFICATIONS**

#### 16.1 Licensee Indemnification Obligations.

To the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Licensee shall indemnify, defend, protect, save, and hold Licensor and its directors, officers, employees and agents, harmless from and against any and all liabilities, claims, demands and costs (including, without limitation, any attorneys' fees or costs) incurred by reason of (a) breach of this Agreement; (b) damage to property; (c) injury to or death of persons, including payments made under any workers' compensation law or under any plan for employees' disability and death benefits; and (d) any slander, defamation, or infringement claim, provided that the foregoing liabilities, claims, demands, and costs arise out of or are related to the erection, maintenance, presence, use, removal, or abandonment of Licensee's Attachments, or by the proximity of the respective cables, wires, apparatuses, and appliances of the Licensee to any of the facilities belonging to the Licensor or to third-parties jointly using the Licensor's Distribution Poles, or by any act of Licensee or its employees, agents, contractors, or subcontractors on or in the vicinity of Licensor's Distribution Poles. To the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Licensee shall further indemnify, protect, and save Licensor and its directors, officers, employees and agents, harmless from and against any and all other liabilities, claims, demands, and costs (including, without limitation, any attorneys' fees or costs) which may arise out of or be caused by the erection, maintenance, presence, use, removal, or abandonment of said Attachments, or by the proximity of the respective cables, wires, apparatus, and appliances of the

Licensee to any of the facilities belonging to the Licensor or to third-parties jointly using the Licensor's Distribution Poles, or by any act of Licensee on or in the vicinity of Licensor's Distribution Poles. The obligations of this Article XVI shall survive termination or non-renewal of this Agreement, shall be enforced to the fullest extent permitted by applicable law (including without limitation and to the fullest extent permitted by law, to cover liabilities, claims, demands, and costs arising from Licensor's sole negligence), and the obligations of this Article XVI shall be construed liberally in favor of indemnification of Licensor.

The indemnification obligations of Licensee under this Article and under other provisions of this Agreement are cumulative and not exclusive. Licensor's request for indemnification under one or more Articles shall not preclude or in any way waive or limit Licensor's ability to seek indemnification under other provisions of this Agreement.

#### 16.2 Licensor Indemnification Obligations.

Except as may be otherwise specified in this Agreement, Licensor shall indemnify, defend, protect, save, and hold harmless 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 be directly caused by the gross negligence of Licensor or its agents, employees, contractors, or subcontractors on or in the vicinity of Licensee's authorized Attachments.

### **ARTICLE XVII INSURANCE**

Licensee, and its agents, contractors and subcontractors, shall carry insurance in such form and issued by such companies as required by 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 such loss, injury, death, or damage involving any Attachment by the Licensee. For the Term of this Agreement, Licensee shall take out and maintain, and shall ensure that each of its agents, contractors and subcontractors take out and maintain, insurance that names the Licensor as an additional insured on all applicable policies and that meet the following requirements of the Licensor:

#### 17.1 Workers Compensation.

Workers' compensation and employer's liability insurance, as required by law, covering all employees who perform any of Licensee's obligations under this Agreement.

#### 17.2 Public Liability.

Public Liability insurance, including automobile liability insurance, covering all of Licensee's obligations under this Agreement against liability due to bodily injury, death or damage to property as to any one occurrence of not less than \$2,000,000.00 per bodily injury, death or damage claim, with a total of \$5,000,000.00 aggregate against all claims during the policy period.

### 17.3 Additional Insurance.

Licenser reserves the right to require additional insurance requirements at any time during the Term of this Agreement upon written notification to Licensee and Licensee agrees to provide insurance at the level requested.

### 17.4 Insurance Maintenance.

Licensee shall submit to Licenser certificates from each company insuring Licensee demonstrating that it has insured Licensee for all liabilities of Licensee under this Agreement and that it will not cancel, change, nor fail to renew any policy of insurance issued to Licensee, except after thirty (30) days' prior written notice to Licenser. Notwithstanding any other provision in this Agreement to the contrary, Licenser may immediately terminate this Agreement upon cancellation or non-renewal of any of the policies required under this Article.

### 17.5 Insurance Rating.

The insurer Licensee uses to satisfy its obligations under this Agreement shall have a rating of no less than A.M. Best A-.

### 17.6 Responsibility for Agents, Contractors, and Subcontractors.

Licensee shall bear full responsibility for ensuring that its agents, contractors, and subcontractors are in full compliance with the requirements of this Article before they perform any work for Licensee in connection with this Agreement.

## **ARTICLE XVIII TERMINATION UPON DEFAULT; LEGAL FEES**

### 18.1 Termination Upon Default.

If Licensee or Licenser fail to comply with any of the provisions of this Agreement, including but not limited to the technical requirements and specifications set forth in Article IV hereof, or default in any of its obligations under this Agreement and shall fail within thirty (30) days after written notice from the other Party to correct such default or non-compliance, the non-defaulting Party may, at its option, and without further notice and without waiving its rights to simultaneously pursue any other remedies that may be available to it at law or in equity:

- Terminate this Agreement in its entirety and remove Licensee's Attachments and other facilities consistent with the terms of Article VIII of this Agreement;
- Terminate any permit(s) covering the Distribution Pole(s) as to which such default or non-compliance shall have occurred;
- Decline to authorize additional Attachments under this Agreement until such defaults are cured;
- Suspend Licensee's access to or work on any or all of Licenser's Distribution Poles;

- Correct such Default and charge Licensee for Licensor's Costs and Expenses associated therewith; and or
- Obtain specific performance of the terms of this Agreement through a court of competent jurisdiction.

### 18.2 Legal Fees and Costs.

Each Party acknowledges and agrees that in the event of its breach of the Agreement, and in the case of the Licensee, because it is the Commonwealth, to the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, it shall pay the other Party's legal fees and/or any related costs incurred in connection with enforcement of this Agreement. This obligation shall exist independently of all other obligations hereunder, notwithstanding the scope of the remedies available to each Party hereunder.

## **ARTICLE XIX TERM AND TERMINATION OF AGREEMENT**

### 19.1 Term.

The term of this Agreement shall commence on the Effective Date and if not otherwise terminated, shall continue in effect for a term of thirty (30) years. Thereafter, this Agreement shall automatically renew for renewal terms of one (1) year.

### 19.2 Termination.

In addition to the other rights of termination set forth in this Agreement, either Party may terminate this Agreement by giving to the other Party at least six (6) months prior written notice of intention to terminate this Agreement upon the expiration of the then-existing term or renewal term, or in the case of the Commonwealth, terminate this Agreement for convenience as provided for in 200 Ky. Admin. Reg. 5:312. Licensee shall remove all Attachments including its associated cables, wires, and appliances from all Distribution Poles prior to the termination date of the Agreement. If not so removed, Licensor may assess and Licensee shall pay the Pole Attachment Rental Rate for the next calendar year at the rates applicable to Unauthorized Attachments, and Licensor may thereafter remove the facilities at the sole Cost and Expense of Licensee and without any liability therefor. These remedies shall be cumulative to, and not exclusive of, any other remedies available to Licensor at law or in equity.

## **ARTICLE XX INVOICING AND PAYMENT TERMS FOR WORK**

### 20.1 General Payment Terms.

Unless otherwise specified in this Agreement, charges under this Agreement shall be payable within thirty (30) days after presentation. Non-payment of an invoice shall constitute a material default under this Agreement.

**ARTICLE XXI  
WAIVER**

21.1 Waiver.

Failure of Licensee or Licensor 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. To be effective, any waiver must be in writing and signed by the party granting the waiver.

**ARTICLE XXII  
MODIFICATIONS**

22.1 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, any changes in Licensor Practices shall become effective upon thirty (30) days' notice to Licensee unless a shorter time is mandated by law. The names, addresses, facsimile numbers and electronic mail addresses to which notices must be sent per Article XXX of this Agreement, may be modified by either Party upon notice to the other.

**ARTICLE XXIII  
NO EFFECT ON OTHER AGREEMENTS OR CONTRACTS**

23.1 Past or Current Agreements or Contracts.

Except as expressly set forth in this Agreement, nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Licensor, by contract or otherwise, to others not party to this Agreement, to use any Distribution Poles covered by this Agreement. Licensor shall have the right to continue and extend such rights and privileges to such third parties and to others. The Attachment privileges herein granted shall at all times be subject to such contracts and arrangements existing prior to each Attachment permit granted by Licensor. The Attachment privileges herein granted shall be non-exclusive and the Licensor shall have the right in its sole discretion to grant Attachment privileges of any sort to any person, firm, or corporation.

**ARTICLE XXIV  
PAYMENT OF TAXES**

24.1 Taxes.

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



**ARTICLE XXV  
ASSIGNMENT**

25.1 Assignment.

Licensee shall not assign, transfer, or sublet the privileges hereby granted without the prior consent in writing of Licensor. Licensor may condition such consent upon, without limitation, the payment of any outstanding amounts owed by Licensee to Licensor prior to assignment, assignee or transferee providing adequate assurance of payment, and assignee's or transferee's agreement to the terms and conditions of this Agreement and any modifications or amendments that Licensor may deem appropriate.

**ARTICLE XXVI  
NO OWNERSHIP OR PROPERTY RIGHTS**

26.1 Ownership or Property Rights.

No use, however extended, of Licensor's Distribution Poles under this Agreement shall create or vest in Licensee any ownership or property rights in said Distribution Poles, but Licensee's rights therein shall be and remain a mere license for as long as authorized under the terms and conditions of this Agreement. Nothing herein contained shall be construed to compel Licensor to maintain any of said Distribution Poles for a period longer than demanded by its own service requirements.

**ARTICLE XXVII  
FORCE MAJEURE**

27.1 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 Article and its effect on performance required under this Agreement.

**ARTICLE XXVIII  
SURVIVAL OF OBLIGATIONS**

28.1 Survival.

Notwithstanding any termination or non-renewal of this Agreement and without limitation upon the indemnification provisions of this Agreement, the obligations (but not the rights) of Licensee under this Agreement shall continue to apply to any Attachment, Unauthorized Attachment, or other authorized or unauthorized use of Licensor's Distribution Poles, facilities, or other property for so

long as Licensee continues to use or occupy Licensor's Distribution Poles, facilities, or other property.

## **ARTICLE XXIX PRIOR AGREEMENTS SUPERSEDED**

### 29.1 Prior Agreements.

This Agreement embodies the entire Agreement between Licensor and Licensee with respect to the subject matter of this Agreement, and it 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.

## **ARTICLE XXX NOTICES**

### 30.1 Notices.

Unless otherwise specifically provided herein, all notices, requests, consents, demands, designations, approvals, or statements 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 to 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. Notices shall be sent to the following:

#### Licensor:

Princeton Electric Plant Board  
General Manager  
P.O. Box 608  
Princeton, KY 42445  
Email: [kkizzee@pepb.net](mailto:kkizzee@pepb.net)  
Fax: 270-365-5427

#### With a copy to:

B. Todd Wetzel  
108 East Court Square  
Princeton, KY 42445  
Email: [btwetzel@att.net](mailto:btwetzel@att.net)  
Fax: 270-365-9117

**Licensee:**

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

KENTUCKY WIRED PROJECT  
Attn: Pole Attachment Coordinator  
Ledcor Technical Services  
Building C, Suite 100  
14400 The Lake Blvd.  
Pflugerville, TX 78660

**With a copy to:**

COMMONWEALTH OF KENTUCKY  
Finance & Administration Cabinet  
Office of General Counsel  
702 Capitol Ave.  
Room 392, Capitol Annex  
Frankfort, KY 40601

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

COMMONWEALTH OF KENTUCKY  
Kentucky Communications Network Authority  
209 St. Clair Street  
4<sup>th</sup> Floor  
Frankfort, KY 40601 Email: mike.hayden@ky.gov  
Fax: (502) 564-0883

**ARTICLE XXXI  
APPLICABLE LAW**

**31.1 Applicable Law.**

This Agreement shall be deemed to have been executed in the Commonwealth of Kentucky and shall be construed under the laws of the Commonwealth 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 courts of Caldwell County, Kentucky, and the Parties consent and submit to the jurisdiction and venue thereof.

**ARTICLE XXXII  
HEADINGS, ENTIRE AGREEMENT, NO PRESUMPTIONS**

**32.1 Acknowledgements.**

The Parties acknowledge and agree that the headings in this Agreement are for purposes of reference only and shall not be construed to limit or enlarge the substantive terms hereof. The Parties further acknowledge and agree that this Agreement sets out the entire understanding between the Licensee

and Licensor with respect to Licensee Attachments on Licensor's Distribution Poles. Neither Party intends to be bound or obligated except to the extent that it has so agreed herein. The Parties to this Agreement acknowledge that they are sophisticated entities and agree that this Agreement shall be strictly construed according to its express terms and that this Agreement shall be considered jointly drafted such that any presumptions otherwise arising in connection with draftsmanship shall not apply.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed the day and year first above written.

Commonwealth of Kentucky,  
Finance and Administration Cabinet  
Licensee

By: William M. Landrum

Print Name: WILLIAM M. LANDRUM

Title: Secretary, Finance Admin Cabinet

Electric Plant Board of the City of  
Princeton, Kentucky  
Licensor

By: Kevin Kizzee

Print Name: Kevin Kizzee

Title: General Manager

ATTEST

By: Rumsey B. Taylor, III

Rumsey B. Taylor, III - Chairman

**EXHIBIT "A"**

Date: \_\_\_\_\_

Subject: Application No. \_\_\_\_\_

Dear Sir:

In accordance with the terms and conditions of our agreement, dated \_\_\_\_\_, application is hereby made for a permit to make \_\_\_\_\_ attachments to poles and \_\_\_\_\_ attachments to anchors as shown on the attached design and layout proposal.

Location

Poles

Anchors

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

Title: \_\_\_\_\_

**EXHIBIT "B"**

POLE ATTACHMENT PERMIT

Permit No. \_\_\_\_\_

Estimate No. \_\_\_\_\_

Permission is hereby granted to make \_\_\_\_\_ attachments to poles and \_\_\_\_\_  
attachments to anchors as described below, subject to the terms and conditions of our Agreement  
dated \_\_\_\_\_.

Location

Poles

Anchors

\$ \_\_\_\_\_ Estimated cost paid on \_\_\_\_\_

Make-Ready work completed \_\_\_\_\_

Permit Approved:

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "C"**

Subject: Notification of Removal of Licenses

Dear Sir:

In accordance with the terms and conditions of our agreement, dated \_\_\_\_\_,  
please cancel from your records the following poles and/or anchors covered by Permit No.  
\_\_\_\_\_ from which Licensee's attachments were removed on \_\_\_\_\_.

Quantity: Poles \_\_\_\_\_ Anchors \_\_\_\_\_

Location: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Yours truly,

Notice No. \_\_\_\_\_

\_\_\_\_\_

(Name of Licensee)

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

Title: \_\_\_\_\_

Notice Acknowledged:

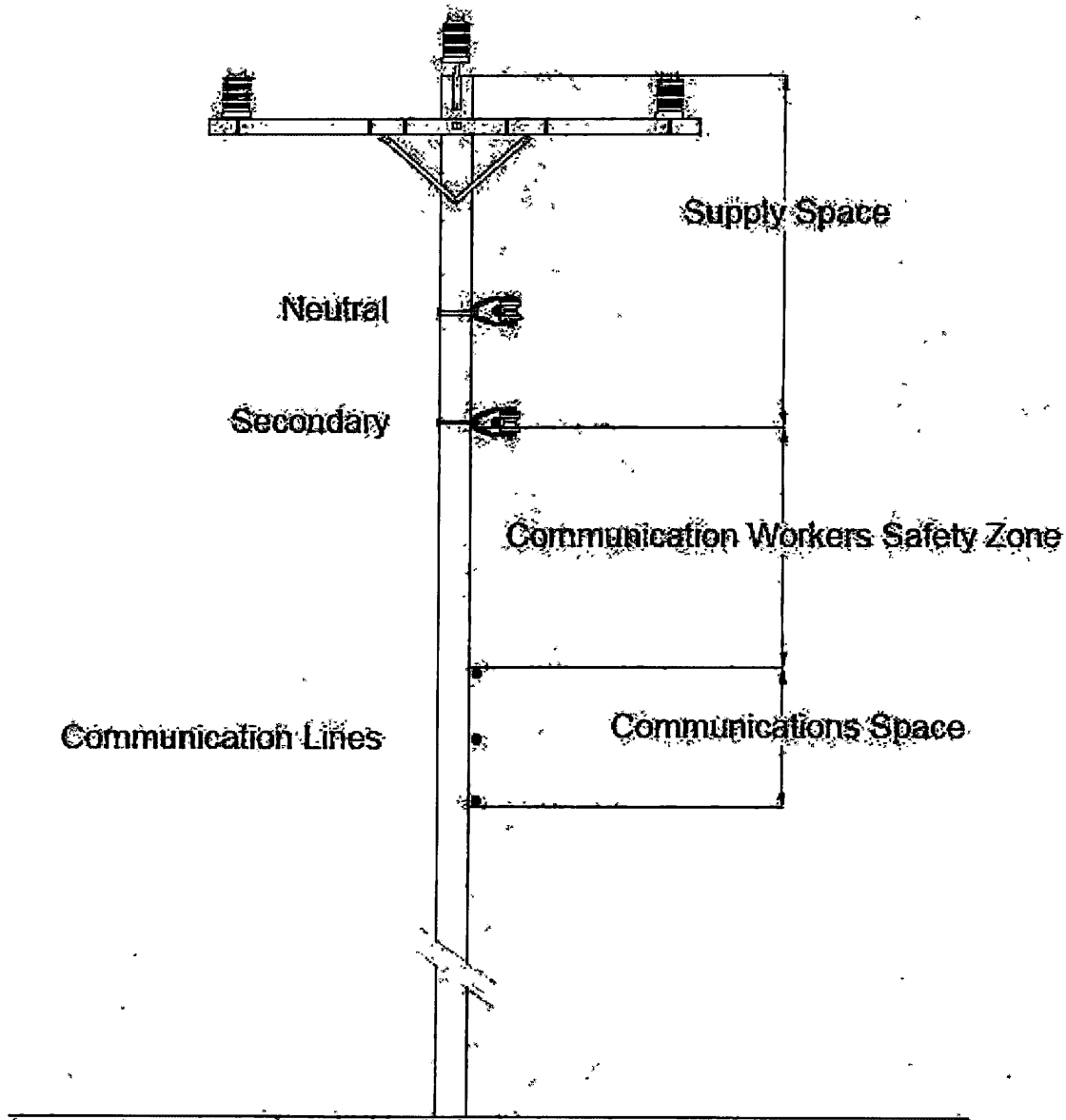
Date: \_\_\_\_\_

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

**Exhibit "D"**

**Electric Plant Board of the City of Princeton, Kentucky**

**Distribution Pole Zones**





**Exhibit "E"**

**Electric Plant Board of the City of Princeton, Kentucky  
Pole Attachment Rate Schedule  
2018**

**All Attachments**

Annual Rental Rate for Each Pole Attachment.....\$31.99 per year

**Conduit\* (In addition to Pole Attachment Rental Rate above)**

Annual Rental Rate for Each Pole Attachment.....\$1.00 per linear foot per  
year

\*All conduit measured from weatherhead or conduit cap to ground level and rounded up to the nearest foot.