

## LICENSE AGREEMENT

This **LICENSE AGREEMENT** ("Agreement") is made and entered into this 12th day of April, 2017 ("Effective Date") by and between Charter Communications Operating, LLC and its Affiliates ("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:**

Charter Communications  
Jerry Avery, AVP, Field Operations  
10168 Linn Station Rd. Suite 120  
Louisville, KY 40223  
(502) 357-4374

Charter Communications  
George Duffy, Sr. Manager Construction  
10168 Linn Station Rd. suite 120  
Louisville, KY 40223  
(502) 357-4374

(b) **Licensee:**

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

KENTUCKY WIRED PROJECT  
Attn: Pole Attachment Coordinator  
Ledcor Technical Services  
2008 Mercer Rd.  
Lexington, KY 40511

With a copy to

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

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

KENTUCKY COMMUNICATIONS NETWORK AUTHORITY (KCNA)  
209 Saint Clair Street – 4<sup>th</sup> Floor  
Frankfort, KY 40601

**Term of Agreement.** The term of this Agreement is from the Effective Date until 4/12/2017 (if not lawfully terminated sooner), and thereafter from year to year, unless terminated by either Party by giving notice of its intention to terminate at least six months 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 by 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                      \$10.00 per Attachment per year.

Unauthorized Attachment Fee                      \$30 per Unauthorized Attachment per year for the duration of the unauthorized attachment.

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**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**

Charter Communications Operating, LLC  
Charter Communications, Inc., its Manager

By: \_\_\_\_\_  
(Signature)

Title: Area Vice President

Print Name: Jerry Avery Jerry W Avery

Date: 4/12/17

**LICENSEE**

Commonwealth of Kentucky

By: William M Landrum  
(Signature)

Title: Sec, FAC

Print Name: William M LANDRUM

Date: 19 Apr 2017

**APPROVED AS TO  
FORM & LEGALITY**

Steve R. Punsor

**APPROVED  
FINANCE & ADMINISTRATION CABINET**

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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. Affiliates. With respect to Charter, Affiliate(s) means Charter Parent, any entity that is Controlled by Charter Parent, or any entity in which Charter Parent holds the power to vote, directly or indirectly, 25% or more of the voting securities. "Control" means the power to direct management and policies of any entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. "Charter Parent" means the ultimate parent entity of Charter, which is the parent entity that holds the power to vote, directly or indirectly, 50% or more of the voting securities of Charter, but in which no person or entity holds the power to vote 50% or more of such parent entity's voting security.

1.2. Application

. The Pole Attachment Application Form attached hereto at Exhibit 1.1 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 Poles under this Agreement

1.3. Attached Pole. A Pole owned or maintained by Licensor that contains at least one attachment by Licensee.

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

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

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

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

- 1.10. Licensors Practices. The National Electric Safety Code ("NESC"), any other applicable law, as specified in Section 4.3, or any rules and practices for Attachments as Licensor may specify from time to time upon notice to Licensee.
- 1.11. Make Ready Costs. All costs necessary for Licensor to prepare its Poles for Licensee's Attachments, including the costs of materials, labor, engineering, supervision, and overhead expenses. Any tree trimming necessary for the installation of the attachment or cable will be the responsibility of the licensee. 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 4.3 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 4.3.
- 1.12. Make Ready Estimate. The estimate prepared by Licensee and approved by Licensor for all Make Ready Work that may be required to accommodate Licensor's Poles for attachment by Licensee, in the form set forth in Exhibit 1.12.
- 1.13. Make Ready Work. All work required by Licensor to accommodate Licensor's Poles for attachment by Licensee.
- 1.14. Overlashing. The practice whereby a service provider physically ties or otherwise attaches new wiring to wiring that already has been affixed to a Pole.
- 1.15. Pole Attachment Rental Fee. The annual amount per Pole that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor's Poles.
- 1.16. 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.
- 1.17. Services. Telecommunications, Internet, data transmission or other similar services or combination of services provided by Licensee.
- 1.18. Term. The period during which this Agreement remains in effect.
- 1.19. Tree Trimming. Any clearing or re-clearing of existing rights-of-way or easements for the establishment and maintenance of Attachments shall be the responsibility of the Licensee. Licensor will only clear or re-clear rights-of-way or easements in its sole judgment.
- 1.20. Unauthorized Attachment. Any affixation of any Licensee facility of any nature to any property of Licensor, including Poles, that has not been authorized by Licensor as required by this Agreement.

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

## 2. PURPOSE

The purpose of this Agreement is to allow Licensee to install and maintain Attachments on Licensor's electric 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 Poles; Easements. Each Party shall be responsible for obtaining its necessary rights-of-way and easements. Licensor agrees to share with Licensee, but only to the extent permitted by applicable law, 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. Licensor shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Licensor's Poles because Licensee failed to obtain appropriate rights-of-way or easements. 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 maximum extent permitted by applicable 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 associated with the grant made by Licensor hereunder. Licensor may require Licensee to demonstrate that it has secured any necessary 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 Poles and the Utility Easements. Further, Licensee's use of the Utility 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. THIS AGREEMENT APPLIES ONLY TO POLES AND THE UTILITY EASEMENTS, AND DOES NOT PERMIT ACCESS OR AFFIXING OF ATTACHMENTS TO OTHER PROPERTY OF LICENSOR.

- 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, 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. 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 Poles as authorized herein.
- 4.3. 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; 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 **60 days**, any 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 system, including the 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, Licensee shall make all new attachments in compliance with such practices on a going-forward basis.
- 4.4. 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 gross negligence or willful misconduct of Licensor.

- 4.5. 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 communications system. Should any such injury, damage or interference occur despite such steps, Licensee shall notify Licensor within **10 days** of such injury, damage or interference. (In the event an injury that requires treatment at a medical facility or an electrical contact occurs Licensor should be notified immediately). At Licensor's option, Licensee shall promptly **within 30 days of invoice** either (i) repair such damage and/or resolve such interference, or (ii) compensate Licensor for the cost of repairing any such damage and/or resolving such interference, and shall indemnify Licensor as provided in Section 14.1.
- 4.6. 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 by an entity acceptable to Licensor to work in the vicinity of electric and communications lines, as applicable. Licensee shall produce proof of such certification or training upon Licensor's request.
- 4.7. Identification Markers
- (a) Licensee shall place and maintain permanent identification markers on each of its Attachments prior to affixing it to Licensor's Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Pole, and must:
- (i) be non-metallic;
  - (ii) be of a distinctive and uniform design;
  - (iii) be legible, clearly visible and recognizable from the ground by a person having normal vision; and
- (b) Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Licensor encounter any of Licensee's Attachments without permanent identification markers, Licensor may notify Licensee provided that Licensor can 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.
- 4.8. Notification of Attachments. Licensee shall notify Licensor **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 or make use of any of Licensor's Poles under this Agreement, Licensee shall (a) submit to Licensor an Application requesting Licensor's permission to attach to or make use of each such pole; (b) receive written approval from Licensor authorizing the attachment to 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 as described herein will subject each Unauthorized Attachment to an Unauthorized Attachment Fee.
- 6.2. Decision Regarding Application. If in the sole judgment of Licensor attachment to Licensor's 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 Pole. Within forty-five (45) days after the receipt of such Application, Licensor shall notify Licensee in writing whether the Application is approved, approved with modifications, or rejected.
- 6.3. Make Ready Estimate.
- (a) Licensee shall as part, of the Application and associated construction plans and drawings, submit to Licensor a proposed solution for any Make Ready Work which may be required for each Pole, including an estimated completion date for such Make Ready Work.
  - (b) Upon notice pursuant to Exhibit 1.12 attached hereto that the Make Ready Estimate has been accepted by Licensor, 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 shall send to Licensee an itemized statement for the actual, full costs of the Make Ready Work.
  - (c) Licensor may, in its sole discretion, require Licensee to submit a deposit up to the amount identified in the Make Ready Estimate prior to performing any Make Ready Work.
  - (d) Upon completion of the Make Ready Work and payment of the Make Ready Costs, Licensee shall obtain Authorization to use the Poles and to make Attachments in accordance with the terms of this Agreement.
  - (e) Where Licensee is permitted to self-perform Make Ready Work, Licensor may, at Licensee's agreed upon expense, perform post-construction audit to ensure adherence to Licensor's internal construction standards, and to NESC standards. If the post construction audit reveals any defects in attachment installation under such standards, Licensee, at its own cost and expense, will correct such defects as soon as reasonably possible, and Licensor may audit construction until all defects have been cured. All costs and expenses associated with post construction and any additional costs or expenses incurred by Licensor as a result of Licensee's failure to properly install attachments shall be borne or reimbursed by Licensee.

- 6.4. Tree Trimming. Tree Trimming shall be performed by Licensor in its sole judgment. The cost, including associated administrative costs, of any Tree Trimming that is not related to Licensee's attachments but benefit all parties generally shall be paid in equal percentages by Licensor, Licensee and all other entities attaching to the poles who are contractually obligated to pay for such Tree Trimming. Any tree trimming necessary for the installation of the attachment or cable will be the responsibility the licensee.
- 6.5. Overlashing.
- (a) Any proposed Overlashing by Licensee shall constitute a separate Attachment subject to the Application process and all other provisions of this Agreement.
- (b) Licensee shall not allow third party Overlashing without Licensor's prior approval.

6.6. Timeliness of Attaching

. Once Licensee has been issued approval to attach, Licensee shall have 365 calendar days from the date the approval was issued to begin the placement of its Attachments at the specified location as identified in the approved Application, on the Licensor Poles. If Licensee has not begun placing its Attachments within the 365 day period, Licensee shall so advise Licensor with a written explanation and notice for the delay. If Licensee fails to advise Licensor of its delay by notice thereof or if Licensee fails to act in good faith by not making a bona fide effort to begin placing its Attachments within the 270 calendar days prescribed by this section, the License shall be automatically rescinded by Licensor and deemed null and void, and Licensee shall have no further right to place the Attachments pursuant to such voided License

**7. PAYMENT PROVISIONS**

- 7.1. Pole Attachment Rental Fee The annual rental period covered by this Agreement shall be the twelve-month period beginning on January 1<sup>st</sup> each year and continuing for each twelve-month period thereafter. Licensor shall invoice Licensee for the Pole Attachment Rental Fee on December 1<sup>st</sup> each year for the annual rental period. The Pole Attachment Rental Fee for each period shall be based on the number of Attachments on Licensor's Poles as of the day preceding the annual rental period. For Attachments that are authorized during any part of the first six (6) months of the annual rental period, the Pole Attachment Rental Fee will be assessed for the entire annual rental period.
- 7.2. Payment Period. All amounts payable under this Agreement shall be due within thirty (30) days of receipt of the invoice. Interest shall be charged at the rate of [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. Licensor in its sole discretion may increase all fees that are due and payable under this Agreement effective on each annual anniversary date of the Effective Date to reflect increases in the Consumer Price Index that have occurred since the Effective Date. Licensor shall provide at least thirty (30) days' notice to Licensee before the effective date of any such increase in fees.

**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. If practicable, as determined in Licensor's sole judgment, 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. 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 Licensee's Attachments.

- 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, pay a Safety Violation Fee for each such violation, and shall 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 year, 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. Licensor must provide thirty (30) days' notice of any such audit so that Licensee may be present and observe such audit.
- 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. All records disclosed by Licensee will be considered proprietary and will not be shared with other parties.

## 10. UNAUTHORIZED ATTACHMENTS

- 10.1. Unauthorized Attachment Fee. Licensee shall pay to Licensor an Unauthorized Attachment 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, that 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. Except in an emergency involving safety of persons or protection of property, as determined by Licensor in its sole judgment, Licensor shall provide twenty (20) days' notice to Licensee whenever Licensor intends to replace or relocate an Attached Pole, or remove an Attached Pole in order to relocate facilities underground, specifying the poles involved and the time of such proposed replacement, relocation or removal. Licensee may, at the time so specified, transfer its Attachments to the new or relocated Attached Pole or the underground facilities, provided that Licensee has entered into a contract with Licensor authorizing the use of such underground facilities. Should Licensee fail to transfer its Attachments at the time specified for such transfer, Licensor may elect to transfer Licensee's Attachments, and Licensee shall reimburse Licensor for all costs of such transfer, and Licensor shall not be liable for any loss or damage to Licensee's facilities which may result. Licensee shall be responsible for any additional damages resulting from its failure to transfer its Attachments. 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 Poles at its own expense. Notwithstanding the foregoing, if Licensor in good faith determines that a 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.
- 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 the space on a Pole occupied or to be occupied by Licensee's Attachments, if Licensor decides to replace the pole with a larger pole that can accommodate Licensee's Attachments, Licensor shall 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 Poles.
- 11.5. Costs for Rearrangement of Other Facilities. In any case where the facilities of Licensor or another attachment(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 attachment(s) the total reasonable costs incurred by Licensor or the other attachment(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. Upon sixty (60) days' notice to Licensee, Licensor may in its sole discretion abandon or remove any Attached Pole. Within this 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 60-day period, Licensor shall have no attachments on such pole but Licensee shall not have removed all of its Attachments, such pole may be sold to and become the property of Licensee at the sole option of Licensor. If Licensor elects to sell such pole, Licensor shall provide Licensee with a properly authorized bill of sale reflecting the net book value (fair market value) of the pole. Licensee shall receive the pole "as is," and, to the extent permitted by law including but not limited to Section 177 of the Kentucky constitution, shall indemnify, defend and hold harmless Licensor from all obligation, liability, cost, claim, damage, expense or charge related thereto or raised thereafter. Should Licensor elect to sell such pole, Licensee shall take title to the pole for all purposes. 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.
- 12.2. Governmental Requirement to Remove. In the event that the use of any Pole is or becomes lawfully forbidden by federal, state, county or municipal authorities or by owners of private property, Licensor shall provide sixty (60) days' notice to Licensee that the Authorization covering the use of such pole will be terminated, and that the Attachment(s) of Licensee must be removed from the affected pole at Licensee's expense. Notwithstanding the foregoing, if the federal, state, county or municipal authority, or private landowner requires discontinuance of the pole in less than sixty (60) days, the notice provided by Licensor shall be reduced accordingly.
- 12.3. Governmental Requirement to Shorten Pole. If a governmental authority requires Licensor to reduce the height of a Pole such that the continued presence of Licensee's Attachments would not comply with the requirements of this Agreement, then the Authorization covering Licensee's Attachments to the pole shall immediately terminate upon notice from Licensor, and Licensee shall remove its Attachments from the affected pole at its own expense by the date specified by Licensor.
- 12.4. Removal of Attachments. Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Poles, but shall provide seven (7) business days' 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)

Licensors receive such notice, 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 Licensors.

### 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 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 Licensors, 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 Licensors' Poles.
- 14.2. Licensors Indemnification. Licensors 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 be caused by Licensor or its agents, employees, contractors or subcontractors' negligence, gross negligence or intentional.

- 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

EXCEPT AS PROVIDED FOR IN 200 KAR 5:312, OR 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:
- (a) Workers' compensation insurance covering all employees of Licensee requiring the same of its contractors with regard to its employees of contractors, subcontractors and employees of subcontractors who shall perform any of the obligations of Licensee hereunder, whether or not such insurance is required by the laws of the state governing the employment of any such employee. If any employee is not subject to the workers' compensation laws of such state, such insurance shall extend to such employee voluntary coverage to the same extent as though such employee were subject to such laws.
  - (b) Public liability and property damage liability insurance covering all operations under this Agreement with limits of not less than \$1,000,000 single and not less than \$2,000,000 aggregate for accidents during the policy period.

- (c) Automobile liability insurance on all self-propelled vehicles used in connection with This Agreement, whether owned, non-owned or hired: public liability limits of not less than \$2,000,000 for each accident
- 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 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 Poles, except in emergency situations;
  - (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, provided that if a cure is not possible within thirty (30) days, Licensee shall have a reasonable period of cure if Licensee is diligently pursuing such cure. 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, provided that if a cure is not possible within thirty (30) days. Licensor shall have a reasonable period to cure if Licensor is diligently pursuing such cure. 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. If Licensee elects to terminate the Agreement, Licensor shall within thirty (30) days refund to Licensee on a pro rata basis any Pole Attachment Rental Fee paid for the current annual rental period.

## **18. TERMINATION OF AGREEMENT**

Upon termination of this Agreement, Licensee shall remove all of its Attachments from all of Licensor's 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.

## **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**

Licensor 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, (with evidence of 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 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]**

Exhibit 1.1

**POLE ATTACHMENT APPLICATION**

In accordance with the above referenced Agreement, application is hereby made for Licensee to make attachments to \_\_\_\_ (no more than 50) Poles located in or near \_\_\_\_\_, in the County of \_\_\_\_\_ and the State of \_\_\_\_\_.

The poles for which Authorization to attach is requested are listed by pole number below and further identified on the attached map.

The following information is attached as part of this Application:

- (a) Construction plans and drawings detailing Licensee's build out plan;
- (b) Maps indicating specifically the Poles of Licensor that Licensee proposes to use;
- (c) The number and character of the Attachments to be placed on each Pole;
- (d) All equipment to be included in Licensee's attachments;
- (e) Drop/Lift Poles that Licensee intends to install;
- (f) The total tension, weight, and transverse loading data for the wires, including multiplication by the applicable overload factors of the NESC;
- (g) The size and type of messenger wire including weight/feet and design tension;
- (h) The size and type of cable including weight/feet, design tension, and diameter;
- (i) A drawing showing the type and manner of bolted Attachments;
- (j) A drawing showing installation specifications, rating, and guy and anchor requirements proposed to be used by Licensee;
- (k) Any pedestal attachments; and
- (l) Any other information necessary, in Licensor's sole judgment, for Licensor to determine if the requirements of Section 4.4 are met.

**LICENSEE:**

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

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

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

**List of Poles**

(use additional sheets as necessary)

Exhibit 1.12

Name of Licensee Company:

**MAKE READY ESTIMATE**

## **AND ACCEPTANCE OF MAKE READY ESTIMATE**

### **Make Ready Estimate**

Licensor must perform the following Make Ready Work at an estimated cost to Licensee of \$ \_\_\_\_\_ and an estimated completion date of \_\_\_\_\_:

[SEE ATTACHED]

### **LICENSOR:**

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

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

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

\* \* \*

### **Acceptance of Make Ready Estimate**

The above Make Ready Estimate is accepted by Licensee.

Licensee shall complete installation of its Attachment(s) within \_\_\_\_ days following Licensor's notice of completion of Make Ready Work.

### **LICENSEE**

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

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

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