

## **AGREEMENT TO PERMIT ATTACHMENTS**

**THIS AGREEMENT**, made this \_\_\_\_ day of May, 2012, by and between **SPENCER COUNTY BOARD OF EDUCATION**, whose address is 207 West Main Street, Taylorsville, Kentucky 40071, hereinafter called "Permittee," party of the first part, and **KENTUCKY UTILITIES COMPANY**, a Kentucky corporation, One Quality Street, Lexington, Kentucky 40507, hereinafter called "KU," party of the second part,

### **W I T N E S S E T H:**

WHEREAS, Permittee, an "Educational Provider", as that term is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as amended (the "Act") desires to attach to KU's poles in order to be able to provide services to certain educational facilities as described in the Act;

WHEREAS, pursuant to the provisions of this Agreement and attached Schedules A, B, and C, which are hereby made a part of this Agreement, Permittee desires to install or cause the installation of the facilities on the poles of KU in the area all as shown on Schedule A, and,

WHEREAS, KU is willing to permit, to the extent it may lawfully do so, the attachment of the described facilities to its poles where, in its judgment, such use will not interfere with its own use of the facilities and or with other licensees using KU's poles,

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

#### **1. PERMITTED ATTACHMENTS.**

KU agrees to permit Permittee to attach and maintain the facilities described in the Schedule A to KU's poles, in the manner set out and pursuant to the provisions of this Agreement. Any attachment other than to tangent poles must be properly braced with guys and anchors provided by

Permittee to the satisfaction of KU. The use of existing KU anchors for this purpose will not ordinarily be permitted. Permittee agrees to pay KU the fees set forth in Schedule B. All attachments made pursuant to this Agreement shall be at such points and in such manner as KU or its employees may direct.

**2. CONSTRUCTION AND MAINTENANCE REQUIREMENTS  
AND SPECIFICATIONS.**

All facilities attached pursuant to this Agreement shall be erected and maintained in compliance with the requirements and specifications of the current National Electrical Safety Code, KU's construction practices, all as may be changed from time to time; with any rules, orders, or regulations now in effect or that hereinafter may be issued by the Public Service Commission of Kentucky; and with all existing applicable Federal, state or local laws, rules, regulations, orders and ordinances issued by any Federal, state or local authority and as may be changed from time to time. All facilities attached pursuant to this Agreement shall be identified as to the owner of said facilities at each attachment location. In the event any part of Permittee's construction does not meet any of the above requirements, Permittee will correct same in fifteen (15) work days after written notification. If Permittee fails to correct same within fifteen (15) days, KU may make such corrections and charge Permittee for the total costs incurred, which may include attorney's fees and court costs. Permittee, at all times, warrants compliance with all the requirements as set out above and assumes the continuing responsibility for such compliance in the future and assumes all responsibility for any damages, fines or penalties resulting from any noncompliance. KU undertakes no duty with respect to such compliance by requiring Permittee to meet any specifications or by requiring or failing to require any corrections, modifications, additions or deletions to any work or planned work by Permittee.

**3. MAINTENANCE OF ATTACHMENTS.**

At all times, Permittee shall, at its own expense, make and maintain said attachments in safe condition and in good repair, and in a manner suitable to KU and so as not to conflict with the use of said poles by KU, or by any other parties, firms, corporations, governmental units, or entities using said poles pursuant to any license or permit by KU. Permittee agrees not to interfere with the working use of facilities thereon or which may, from time to time in the future, be placed thereon. KU in no way insures the continuance of Permittee's facilities at their original location or placement of KU's poles or other facilities. If KU determines, at its sole discretion to relocate, replace, enlarge, add to, modify or in any manner alter its poles or other facilities, even for KU's sole convenience, Permittee shall, at its expense, upon written notice from KU, at KU's sole discretion, relocate, replace or renew the facilities placed on said poles, and transfer them to substituted poles, or perform any other work in connection with said facilities that may be required by KU. In case of emergency, KU may arrange to relocate, replace or renew the facilities placed on said poles; transfer them to substituted poles or perform any other work in connection with said facilities that may be required in the maintenance, replacement, removal or relocation of said poles, the facilities thereon or which may be placed thereon, or for the service needs of KU, or its other licensees, and Permittee shall, on demand, reimburse KU for the expense thereby incurred. KU undertakes no duty however to inspect or insure the repair of any facilities.

**4. MAINTENANCE AND OPERATION OF KU's FACILITIES.**

KU reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will, in its own judgment, best enable it to fulfill its own service requirements, but in accordance with the specifications hereinbefore listed. KU shall not be liable to Permittee for any interference with the operation of Permittee's facilities, or loss of business

arising in any manner out of the use of KU's poles hereunder.

**5. EASEMENTS.**

Permittee must secure its own easement rights from real property owners. KU's permitting attachments shall not constitute any representation or warranty by KU to Permittee regarding Permittee's right to occupy or use any public or private right-of-way.

**6. INSPECTION OF FACILITIES.**

KU reserves the right to inspect at any time, in its sole discretion, facilities described in the attached Schedule. Except for an inspection in an emergency situation (such emergency shall be determined by KU), KU shall give Permittee 24 hours prior written notice of any need to perform an inspection. Permittee shall, on demand, reimburse KU for the reasonable expense of any such inspections at KU's prevailing wage rate per man-hour plus associated expenses and applicable overheads. Such inspections, made or not, shall not operate to relieve Permittee of any responsibility, obligation or liability assumed under this Agreement. KU undertakes no duty to inspect such facilities or insure that no damage or loss occurs by reason of such facilities.

**7. PRECAUTIONS TO AVOID FACILITY DAMAGE.**

Permittee shall not damage any facilities of KU or of others supported on KU's poles and facilities. Permittee shall not interfere with KU's operation; and hereby assumes all responsibility for any and all loss for such damage and for interference. Permittee shall make an immediate report to KU of any damage or interference and hereby agrees to reimburse KU for the expenses incurred in making repairs.

**8. INDEMNITIES.**

(a) Permittee agrees to protect, defend, indemnify and save harmless KU from all damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including

but not limited to costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, by reason of (a) injuries or deaths to persons, (b) damages to or destructions of properties, (c) pollution, contaminations of or other adverse effects on the environment or (d) violations of governmental laws, regulations or orders whether suffered directly by KU itself or indirectly by reason of claims, demands or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of Permittee, its employees, agents, or other representatives or from their presence on the premises of KU or otherwise from performance of this Agreement, or from or in connection with the construction, installation, operations, maintenance, presence, replacement, enlargement, use or removal of any facilities of Permittee attached or in the process or being attached or removed from any poles of KU.

(b) KU agrees to protect, defend, indemnify and save harmless Permittee from all damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including but not limited to costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, by reason of (a) injuries or deaths to persons, (b) damages to or destructions of properties, (c) pollution, contaminations of or other adverse effects on the environment or (d) violations of governmental laws, regulations or orders suffered directly by Permittee itself or alleged to have resulted from acts or omissions of KU, its employees, agents, or other representatives or from their presence on the premises of KU or otherwise from performance of this Agreement.

**9. ATTACHMENT REMOVAL AND NOTICES.**

Permittee may voluntarily remove its attachments from any pole or poles of KU, but shall give KU prior written notice of any such removal. Any such removal shall be undertaken in a manner consistent with Paragraph 7 of this Agreement. No refund of any rental will be due on

account of such voluntary removal.

**10. NONCOMPLIANCE.**

If Permittee fails to comply with any of the provisions of this Agreement or defaults in any of its obligations under this Agreement and fails to correct such default or noncompliance within thirty (30) days (except for the 15 day requirement in paragraph 2) after written notice from KU, KU may, at its option, forthwith terminate this Agreement by giving written notice to Permittee of said termination. No refund of any rental will be due on account of such termination.

**11. BILLING.**

Bills for inspections, expenses and other charges under this Agreement shall be payable within thirty (30) days after presentation. Nonpayment of bills shall constitute a default of this Agreement.

SPENCER COUNTY BOARD OF EDUCATION to pay all make ready costs associated with providing sufficient clearance necessary for the proper installation of their attachments on KU poles.

**12. WAIVERS.**

Failure 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.

**13. USE OF KU's FACILITIES BY OTHERS.**

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by KU, by contract or otherwise, to others, not parties to this Agreement, to use any poles covered by this Agreement; and KU shall have the right to continue and to extend such rights and privileges. The permitted attachment herein granted shall at all times be subject to such previously conferred privileges.

**14. ASSIGNMENT.**

Permittee shall not assign, transfer or sublet the privileges hereby granted without the prior written consent of KU. Any attempt to so assign without such written consent shall be void.

**15. PROPERTY RIGHTS.**

No use, however extended, of KU poles or other facilities under this Agreement shall create or vest in Permittee any ownership or property rights in said poles; rights herein contained shall be and remain a mere permission. Nothing herein contained shall be construed to compel KU to maintain any of said poles for a period longer than demanded by its own service requirements.

**16. TERM.**

This Agreement shall become effective upon its execution and if not terminated in accordance with the provisions of Paragraph 10 shall continue in effect for a term of twenty (20) years. Either party may terminate the Agreement at the end of the term or at any time thereafter for any reason whatsoever by giving to the other party at least sixty (60) days written notice. Upon termination of the Agreement in accordance with any of its terms, Permittee shall immediately remove all its facilities attached to KU's poles or other facilities pursuant to this contract. All costs of such removal will be borne by Permittee. Permittee shall exercise precautions to avoid damage to facilities of KU in so removing and assumes all responsibility for any and all such damage. If Permittee's facilities attached to KU's pole and other facilities pursuant to this contract are not promptly removed, KU shall have the right to remove them to the cost and expense of Permittee and without any liability therefore.

**17. NOTICES.**

Any notice or request required by this Agreement shall be deemed properly given if mailed, postage prepaid, to:

Mr. P. Greg Thomas  
VP Energy Deliver-Distribution Operations  
Kentucky Utilities Company  
c/o LG&E and KU Energy, LLC  
820 West Broadway  
Louisville, Kentucky 40202

And

Permittee      Spencer County Board Of Education  
207 West Main Street  
Taylorsville, KY 40071  
Attention: Eric Cecil

The designation of the person to be notified, and/or his address may be changed by KU or Permittee at any time, or from time to time, by similar notice.

**18. ACCESS.**

At all times, Permittee shall maintain, operate and construct all facilities in such manner to insure that KU has full and free access to all of its facilities described in the Schedule attached to this Agreement for the purpose of repairing, rebuilding, replacing, maintaining and operating such facilities.

**19. ADJUSTMENTS.**

Nothing contained herein shall be construed as affecting in any way the right of KU, and KU shall be as set forth in Schedule B. Such change or changes to become effective as provided for in this Agreement after written notifications or changes in applicable regulations or statutes.



**20. SUCCESSORS AND ASSIGNS.**

All provisions of this Agreement shall extend to and bind the successors and assigns of the parties hereto, specifically including the provisions of paragraph 15.

**21. INSURANCE.**

Unless otherwise specified in the attached Schedule C, Permittee shall maintain in force during the term of this Agreement at its expense public liability insurance, with deductible provisions and in a minimum amount satisfactory to KU as provided in Schedule C. Upon request, Permittee shall provide KU with certificates or other evidence of any insurance coverage required herein. Every contract of insurance providing the coverages required herein shall contain the following or equivalent clause: "No reduction, cancellation, or expiration of the policy shall become effective until ten (10) days from the date written notice thereof is actually received by Permittee and KU as appropriate."

**22. MAKE-READY.**

If any make-ready work is required to be done by KU for Permittee, KU shall be reimbursed for all costs in connection with such make-ready work. KU will perform any necessary make-ready work on the route described herein. KU's actual make-ready costs shall be reimbursed by Permittee.

**23. ENTIRE AGREEMENT.**

This Agreement and attached Schedule constitute the entire Agreement between KU and Permittee and all previous representations relative thereto, either written or oral, are hereby annulled and superseded. No modification shall be binding on KU and Permittee unless it shall be in writing and signed by both parties. Nothing contained in this Agreement or attached Schedules shall be construed as having any effect in any future agreement or contemplated future agreement between the parties.

**24. HEADINGS.**

Paragraph headings are for the convenience of the parties only and are not to be construed as part of Agreement.

**25. REPRESENTATIONS AND WARRANTIES OF PERMITTEE.**

Permittee hereby represents and warrants that it will attach to KU's facilities pursuant to this agreement in order to provide the following services: the education of children, in accordance with applicable laws and regulations.

**26. OVERLASHING.**

Permittee shall be allowed to overlash their existing fiber in order to access fiber strands to facilitate the extension of new fiber to the school. Such new fiber may be overlashd with their existing fiber in a bundle of up to a maximum total of two (2) inches in diameter. No additional attaching fees shall be due for that portion of a new fiber extension which is overlashd, however; attaching fees shall be due for the remaining new build at the attachment rate presently in effect.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

ATTEST:

\_\_\_\_\_

SPENCER COUNTY BOARD OF EDUCATION

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

Name: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_

KENTUCKY UTILITIES COMPANY

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

Name: \_\_\_\_\_

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

## **SCHEDULE A**

Attachment area being approved.

## **SCHEDULE B - FEES**

Due to yearly attaching fee escalations for those attachments in the KU territory, Spencer County Board of Education is now paying one dollar and fifty-eight cents (\$1.58) per linear foot for those attachments approved prior to December 31, 2012.

For all segments approved after December 31, 2012 and throughout the remaining term of this agreement, the attachment fee shall be escalated at a rate of 3% per year unless otherwise agreed to in writing subsequent hereto signed by the parties to this Agreement.

The one-time attaching fee is for a twenty (20) year period.

ATTEST:

\_\_\_\_\_

SPENCER COUNTY BOARD OF EDUCATION

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

Name: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
Secretary

KENTUCKY UTILITIES COMPANY

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

Name: \_\_\_\_\_

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

## **SCHEDULE C - INSURANCE**

Permittee shall provide and maintain, and shall require subcontractor(s) to provide and maintain, with an Insurance Company(s) authorized to do business in the Commonwealth of Kentucky or Virginia (depending on the state where the Work is performed), and otherwise acceptable to Kentucky Utilities Company, the following insurance:

- (a) Workers' Compensation and Employer's Liability Policy: Prior to the start of the Work, Permittee shall submit evidence of Permittee's Workers' Compensation and Employer's Liability Insurance Policy, and each such policy shall include:
  - 1) Workers' Compensation and Workers' Occupational Disease Insurance in accordance with the laws of the state where the Work is performed
  - 2) Employer's Liability with a minimum limit of One Million Dollars (\$1,000,000) each loss with respect to each accident
  - 3) Thirty (30) Day Cancellation Clause
  - 4) Broad Form All States Endorsement
  - 5) United States Longshoremen and Harbor Workers Act Endorsement
  - 6) Maritime Endorsement
  - 7) Jones Act Endorsement
- (b) Commercial General Liability Policy: Prior to the start of Work, Permittee shall provide evidence of Permittee's Policy providing Commercial General Liability Insurance, with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence/aggregate and the following:
  - 1) Coverage for premises, operations, elevators and Work let or sublet
  - 2) Thirty (30) Day Cancellation Clause
  - 3) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by Contractor under this Contract
  - 4) Broad Form Property Damage
  - 5) Insurance for liability arising out of blasting, collapse and underground damage (deletion of X, C, U Exclusions)
  - 6) Products Liability and Completed Operations, including coverage for occurrences within two (2) years from the Acceptance of Work
  - 7) Personal Injury Liability Hazards A, B, & C with Employee and Contractual exclusions eliminated
  - 8) Said policy shall name Kentucky Utilities Company as an additional insured to the extent necessary to fulfill Permittee's indemnity obligations under Article 14 - Indemnity By Contractor

- 9) Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against Kentucky Utilities Company and Kentucky Utilities Company's insurance carrier(s)
- (c) Commercial Automobile Liability Insurance: Prior to the start of Work, Permittee shall provide evidence of Contractor's Commercial Automobile Liability Insurance covering the use of all owned, non-owned and hired automobiles, with bodily injury and death with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence/aggregate with respect to Permittee's vehicles assigned to or used in performance of Work under this Contract. Said policy shall name Kentucky Utilities Company as an additional insured to the extent necessary to fulfill Permittee's indemnity obligations under Article 14 - Indemnity By Contractor, Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against Kentucky Utilities Company and Kentucky Utilities Company's insurance carrier(s).
- (d) Aircraft Public Liability Insurance: If applicable, Permittee shall provide prior to the start of the Work, evidence of Permittee's Aircraft Public Liability Insurance covering fixed wing and rotor craft aircraft whether owned, non-owned, leased, hired or assigned with a combined single minimum limit for bodily injury and property damage of Five Million Dollars (\$5,000,000) including passenger liability coverage. Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against Kentucky Utilities Company and Kentucky Utilities Company's insurance carrier(s).

The above policies to be provided by Permittee shall be written by companies satisfactory to Kentucky Utilities Company or having a Best Rating of not less than A+. These policies shall not be materially changed or canceled except with thirty (30) days written notice to Kentucky Utilities Company from the Permittee and the Insurance Carrier. Evidence of coverage, notification of cancellation or other changes shall be mailed to:

Mr. Greg Thomas  
Kentucky Utilities Company  
c/o LG&E and KU Energy, LLC  
820 West Broadway  
Louisville, KY 40202

Kentucky Utilities Company shall not be obligated to review any of Permittee's Certificates of Insurance, insurance policies, or endorsements, or to advise Permittee of any deficiencies in such documents. Any receipts of such documents or their review by Kentucky Utilities Company shall not relieve Permittee from or be deemed a waiver of Kentucky Utilities Company's rights to insist on strict fulfillment of Permittee's obligations under the Contract. Kentucky Utilities Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements.

Contractor shall provide notice of any accidents or claims at the Work site to Kentucky Utilities Company's Manager Risk Management at the above address, Manager Employee Relations at the above address, and Kentucky Utilities Company's site authorized representative.

ATTEST:

KENTUCKY UTILITIES COMPANY

\_\_\_\_\_  
Secretary

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

Name: \_\_\_\_\_

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

ATTEST:

SPENCER COUNTY BOARD OF EDUCATION

\_\_\_\_\_

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

Name: \_\_\_\_\_

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