

MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT (“Agreement”) is made and entered into as of January 1st, 2015 by and between Board of Education of Spencer County (“Owner”), and LG Fiber (“Contractor”).

RECITALS

WHEREAS, Owner owns the private proprietary fiber optic cable (“fiber”), and desires to contract for maintenance of the fiber optic plant,

WHEREAS, Contractor provides maintenance services for Board of Education of Spencer County facilities and has agreed to provide those services on the terms and conditions set forth in this Agreement,

WHEREAS, Owner has determined pursuant to KRS 45A.385 the annual fiscal year amount to be paid under this Agreement is less than twenty thousand dollars (\$20,000) and subject to its small purchasing procedures.

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 AGREEMENT

Section 1.1 - *Agreement*. This Agreement consists of the terms and conditions set forth in the sections captioned by numbered article designations (“Articles”).

Section 1.2 - *Effective Date and Term*. This Agreement shall be effective upon its execution for the remainder of the 2014-15 school (fiscal) year, and if not terminated in accordance with Article 5 herein below, shall on each July 1st be automatically renewed for a term ending on June 30 of the following year, and shall govern the rights and obligations of the parties.

Section 1.3 - *Relationship of The Parties*. Contractor has been retained by Owner as an independent contractor to maintain the fiber plant on behalf of Owner. Owner has delegated to Contractor overall responsibility for maintaining the fiber plant to ensure that the fiber is available. Neither Contractor nor any of its employees, subcontractors or agents shall be deemed

to have any other status, except that Contractor is the agent of Owner to the limited extent that this Agreement expressly grants Contractor the authority to maintain the fiber optic plant.

Section 1.4 - *Representatives*. Owner and Contractor shall each designate a representative ("Designated Representative") to act on its behalf in overseeing the performance of this Agreement. Owner and Contractor may change their respective Designated Representatives upon written notice to the other party given as provided in this Agreement. Designated Representatives shall be the primary means for communication and all other interactions between Owner and Contractor that are required under this Agreement. Designated Representatives shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal corporate approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

ARTICLE 2 DEFINITIONS

Section 2.1 - *Definitions*. Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Article 2. Terms that are defined in other Articles shall have the meanings given to them in those Articles.

"Bankruptcy" means a situation in which (i) a party's actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors; (ii) a court of competent jurisdiction approves a petition filed against a party, which petition sought relief for the party's creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive); (iii) a party admits in writing its inability to pay its debts as they mature; (iv) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) a party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.

"Business Day" means any day other than a Saturday, Sunday or designated holiday by the Owner pursuant to Board Policy and its officially adopted school calendar.

"Contract Year" means: For the Contract Year, that period from the date of this Agreement to and including June 30, 2015 and thereafter shall be the period from July 1 to June 30.

"Maintenance" means a quarterly ride-out to check for: Loose/Broken lashing wire, tree trimming, pole transfers, general condition of fiber optic plant, and the general condition of splice enclosures. All repairs need to be performed on a regular basis. Repairs needed due to auto accidents, trees fallen across the fiber line, gun shots, etc., will be covered per this agreement as

well as the labor and materials. This Maintenance Agreement only covers the outside fiber optic plant and for only three (3) spans of fiber optic cable per occurrence. **Board of Education of Spencer County** commits to the purchase of insurance to cover all other major occurrences such as a major ice/snow storm, tornado, or other disaster that would affect a major part of the fiber optic plant that would not be covered under this Agreement.

“Services” has the meaning set forth in Article 3.1.

ARTICLE 3 SERVICES

Section 3.1 - *Scope of Services*. Contractor shall (i) maintain the fiber optic plant on behalf of Owner (“Services”) and (ii) also perform the specific duties set forth in this Agreement if they are not otherwise required by the standards defined in Section 3.2.

Section 3.2 - *Standards for Performance of the Services*. Contractor shall perform the Services required under this Agreement, Contractor shall use all reasonable efforts to optimize the useful life of the fiber optic cable and to minimize and fiber outages.

Section 3.3 - *Compliance*. Contractor shall comply with all Laws applicable to the maintenance of the fiber optic plant. The Contractor shall apply for and obtain any and all necessary permits, licenses, and approvals to perform the services covered by this Agreement at the local or State level. The Owner shall be responsible for any and all approvals required to authorize the services covered by this Agreement.

Section 3.4 - *No Liens or Encumbrances*. Contractor shall maintain the Project free and clear of all liens and encumbrances resulting from any action of Contractor or work done at the request of Contractor, except for such liens or encumbrances that result directly from nonpayment by Owner of amounts due and owing to Contractor under this Agreement.

Section 3.5 - *Emergency Action*. If an emergency endangering the safety or protection of persons, the fiber optic cable, or property located near the fiber optic cable occurs, Contractor shall promptly take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss.

Section 3.6 - *Action in Extraordinary Circumstances*. In the event that the fiber optic cable suffers an unplanned outage (or Contractor reasonably believes that such an occurrence is imminent), and Contractor has made reasonable, but unsuccessful, efforts to notify and communicate with Owner regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement, then Contractor shall take all necessary action to prevent or to

mitigate such unplanned outage, continue to attempt to notify and communicate with Owner regarding the occurrence and the remedial action.

Section 3.7 – *Insurance by Contractor*. The Contractor shall maintain in force during the initial term and any extensions thereof, at its expense, liability insurance and workers' compensation insurance in amounts required by law or consistent with industry standards. 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) business days from the date written notice thereof is actually received by the Contractor and shared with the Owner.

Section 3.8 – *Background Check for Each Employee Providing Services under Agreement*. The Contractor acknowledges its obligation under Board Policy 04.32, incorporated herein by specific reference, requiring a criminal history background check for each adult who is permitted access to school grounds at times when students are present.

Section 3.9 – *Prohibition Against Conflicts of Interest, Gratuities, or Kickbacks*. KRS 45A.455 PROHIBITS CONFLICTS OF INTEREST, GRATUITIES, AND KICKBACKS TO EMPLOYEES OF THE BOARD OF EDUCATION IN CONNECTION WITH CONTRACTS FOR SUPPLIES OR SERVICES WHETHER SUCH GRATUITIES OR KICKBACKS ARE DIRECT OR INDIRECT. KRS 45A.990 PROVIDES SEVERE PENALTIES FOR VIOLATIONS OF THE LAWS RELATING TO GRATUITIES OR KICKBACKS TO EMPLOYEES WHICH ARE DESIGNED TO SECURE A PUBLIC CONTRACT FOR SUPPLIES OR SERVICES.

ARTICLE 4 COMPENSATION AND PAYMENT

Section 4.1 - *Payments*. As compensation to Contractor for performance of the Services hereunder, Owner shall pay Contractor the Annual Fiscal Year (or *pro rata* portion thereof) Maintenance Fee. Owner may pay yearly, quarterly, or monthly.

Section 4.2 - *Annual Fiscal Year Maintenance Fee*. For the Contract Year as defined herein above, or *pro rata* portion thereof, Owner shall pay to Contractor the sum of seven hundred eight dollars and thirty four cents (\$708.34) per month of the Contract Year, or two thousand one hundred twenty five dollars (\$2,125.00) per quarter for an annual fiscal year fee of eight thousand five hundred dollars (\$8,500.00) (the "Annual Fiscal Year Maintenance Fee").

Section 4.3 - *Billing and Payment*. Owner shall pay Contractor the sum specified in submitted invoices within thirty (30) days of invoice date, unless other agreements have been arranged.

Section 4.4 - *Interest*. Any amount owed to either party under this Agreement by the other party which remains unpaid more than sixty (60) days after the date such amount is due and payable shall begin to accrue interest at one and one-half percent (1½%) commencing on the thirty-first day after such due date.

ARTICLE 5 TERM AND TERMINATION

Section 5.1 - *Term*. The term of this Agreement shall be as set out in Section 1.2 herein above. This Agreement is subject to earlier termination pursuant to Sections 5.2, 5.3, 5.4 or 5.5.

Section 5.2 - *Immediate Termination By Owner*. Subject to the terms of any Agreements, Owner may terminate this Agreement immediately upon the Bankruptcy of Contractor. If the Agreement is terminated by Owner pursuant to Section 5.2, Contractor shall be compensated for all costs incurred by Contractor to and including the date of termination.

Section 5.3 - *Termination Upon Notice By Owner*. Subject to the terms of any Agreements, Owner may terminate this Agreement upon 15 days prior written notice to Contractor in the event (i) that Contractor violates, or consents to a violation of, any Laws applicable to the maintenance of the fiber optic cable, where the violation has or may have a material adverse effect on the maintenance or operation of the fiber optic cable or Owner's interest, and Contractor does not cure such violation within 30 days (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days), or (ii) of a material breach by Contractor in the performance of the Services, if Contractor does not cure such breach within 30 days from the date of Contractor's receipt of notice from Owner demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days). If the Agreement is terminated by Owner pursuant to this Section 5.3, Contractor shall be compensated for all Reimbursable Costs incurred by Contractor and all unpaid Annual maintenance Fees to and including the date of termination.

Section 5.4 - *Other Termination Upon Notice By Owner*. Subject to the terms of any Agreements, Owner may terminate this Agreement with 2 months prior written notice to Contractor, (a) upon the occurrence of a sale or transfer by Owner of its rights in the fiber optic plant or a sale or transfer of all or substantially all of the assets of or interests in Owner, (b) a determination by Owner that it does not wish to extend this agreement pursuant to Section 5.1 . If the Agreement is terminated by Owner pursuant to this Section 5.4, Contractor shall be

compensated for all unpaid Annual maintenance Fees to and including the date of such termination under this Section 5.4.

Section 5.5 - Termination By Owner Without Cause. In addition to its rights set forth in this Article 5, subject to the terms of any Agreements, Owner reserves the right to terminate this Agreement without cause upon 90 days written notice to Contractor. If the Agreement is terminated by Owner pursuant to this Section 5.5, Contractor shall be compensated for all unpaid Annual maintenance Fees to and including the date of such termination under this Section 5.5. Such payments shall be Contractor's sole remedy in respect of such termination and shall be made by Owner within 30 days of receipt of a final invoice from Contractor.

Section 5.6 - Termination By Contractor. Subject to the terms of any Agreements, Contractor may terminate this Agreement for cause upon 15 days prior written notice to Owner in the event of: (i) Owner's Bankruptcy; or (ii) Owner's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within 30 days of Owner's receipt of a notice from Contractor demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that Owner diligently commences and continues to pursue such cure).

Section 5.7 - Project Condition At End Of Term. Upon expiration or termination of this Agreement, Contractor shall leave the fiber optic plant in as good condition as it was on the Effective Date, normal wear and tear accepted. Contractor shall be paid all unpaid fees. Owner shall assume and become liable for any issues with the fiber optic cable.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Board of Education of Spencer County

Signature: _____
Print Name: _____
Title: _____
Date Signed: _____
Date of Board Approval: _____

LG Fiber

Signature: _____
Print Name: _____
Title: _____
Date Signed: _____