

Contract No. \_\_\_\_\_

**Shelby Energy  
Cooperative**  
® A Touchstone Energy Cooperative  
**JOINT USE AGREEMENT**

This **JOINT USE AGREEMENT** ("Agreement") is made and entered into this 6<sup>th</sup> day of January, 2017 ("Effective Date") by and between **Shelby Energy Cooperative, Inc.**, an electric cooperative ("Cooperative"), and **Bellsouth Telecommunications, LLC d/b/a AT&T Kentucky** ("AT&T"). Cooperative and AT&T may be referred to hereafter individually as a "Party", "Pole Owner", or "Attachor" 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) **Cooperative:**

Shelby Energy Cooperative, Inc.  
620 Old Finchville Road  
Shelbyville, Kentucky 40365  
[REDACTED]

(b) **AT&T:**

Bellsouth Telecommunications, LLC d/b/a AT&T Kentucky  
3719 Bardstown Road  
Louisville, Kentucky 40218  
[REDACTED]

**Term of Agreement.** The term of this Agreement is from the Effective Date until [REDACTED] (if not lawfully terminated sooner), and thereafter from [REDACTED], unless terminated by either Party by giving notice of its intention to terminate at least [REDACTED] prior to the end of any period.

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

Fees



**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.

**COOPERATIVE**  
Signature: [Signature]  
Name: Jason Ginn  
Title: V.P. Oper & Eng  
Date: 1-17-17

**AT&T**  
Signature: [Signature]  
Name: Reynold Maus  
Title: VP-SE Construction & Engineering  
Date: 1-17-17

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**EXHIBITS**

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**EXHIBIT B (POLE ATTACHMENT FIELD DATA SHEET)**

**EXHIBIT C (POLE OWNER RULES AND PRACTICES FOR ATTACHMENTS)**

**EXHIBIT D (MAKE READY ESTIMATE AND ACCEPTANCE OF COST)**

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# TERMS AND CONDITIONS

## 1. DEFINITIONS

The following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the meaning otherwise set forth in the Agreement.

- 1.1. Allocated Space. The space reserved for Pole Owner, which is defined for Cooperative-owned poles as the exclusive use of [REDACTED] measured downward from the top of a Distribution Pole, including the pole top, transformer, and other miscellaneous equipment. For AT&T-owned poles, this space is defined as [REDACTED] from the lowest permissible point of attachment under the technical requirements specified in this Agreement.
- 1.2. Application. The Pole Attachment Application Form attached hereto as Exhibit A and the Pole Attachment Field Data Sheet attached hereto as Exhibit B must be completed by Attachor and approved by Pole Owner in writing before Attachor may attach to or make use of any of Pole Owner's Distribution Poles under this Agreement. Service drops do not require an Application, but are required to meet all technical requirements and specifications specified in this Agreement and also require notification to Pole Owner within [REDACTED].
- 1.3. Attached Pole. A Distribution Pole owned or maintained by Pole Owner that contains at least one Attachment.
- 1.4. Attachment. Each affixation of one of Attachor's cables, strands, wires or associated apparatus, excluding MGNV bonds at the base of the Pole, to one of Pole Owner's Distribution Poles.
- 1.5. Authorization. Pole Owner's grant of authority to Attachor to affix Attachments to Pole Owner's Distribution Poles in accordance with the terms of this Agreement.
- 1.6. Business Day. All days except Saturday, Sunday, officially recognized Federal legal holidays, and any other day designated as a holiday by Pole Owner's holiday schedule.
- 1.7. Control. With respect to any entity, the possession, directly or indirectly, of: (a) 50% or more of its ownership interests; or (b) the power to direct or cause the direction of management and policy, whether through the ownership of voting securities, partnership interests, by contract or otherwise.
- 1.8. Default. When either Party: (i) fails to perform any of its covenants or obligations set forth in this Agreement, (ii) makes any representation or warranty in this Agreement that is untrue or incorrect, (iii) files a bankruptcy petition in any bankruptcy court proceeding, or (iv) admits in writing its inability to pay its debts when due or its intention not to comply with any requirement of this Agreement.
- 1.9. Distribution Pole. A pole bearing communication and/or electric distribution lines and having a voltage rating of or below 34.5 kV.

- 1.10. Drop/Lift Pole. An ancillary pole necessary to extend service from a Distribution Pole to an individual customer(s).
- 1.11. Attachor. The Party to this Agreement attached, or requesting to attach, to a Pole owned by the other Party.
- 1.12. Attachor's Service Area. This Agreement shall apply wherever the Cooperative has Attachments on AT&T poles and AT&T has Attachments on Cooperative poles, both as they exist as of the date this Agreement is executed and as they may exist from time to time in the future.
- 1.13. Pole Owner. The Party to this Agreement owning a Pole with at least one existing Attachment by Attachor, or for which Attachor has submitted a request to attach.
- 1.14. Pole Owner Practices. Pole Owner's rules and practices for Attachments as set forth in Exhibit C attached hereto.
- 1.15. Make Ready Costs. All costs necessary for Pole Owner to prepare its Distribution Poles for Attachor's Attachments, including the costs of materials, labor, engineering, supervision, and overhead. Engineering includes design, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements in Section 4.4 hereto. Also included among "Make Ready Costs" are the costs of installing or changing out primary poles, secondary poles and Drop/Lift Poles, including the cost of installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications of Section 4.4.
- 1.16. Make Ready Estimate. The estimate prepared by Pole Owner for all Make Ready Work that may be required by Pole Owner to accommodate Pole Owner's Distribution Poles for attachment by Attachor, in the form set forth in Exhibit D.
- 1.17. Make Ready Work. All work required by Pole Owner to accommodate Pole Owner's Distribution Poles for attachment by Attachor.
- 1.18. Overlashing. The practice whereby a service provider physically ties or otherwise attaches new wiring to wiring that already has been affixed to a Distribution Pole.
- 1.19. Pole Attachment Rental Fee. The annual amount per Attached Pole that Attachor must pay to Pole Owner pursuant to this Agreement in order to affix each Attachment to Pole Owner's Distribution Poles.
- 1.20. Required Authorizations. All legally required authorizations that Attachor 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.

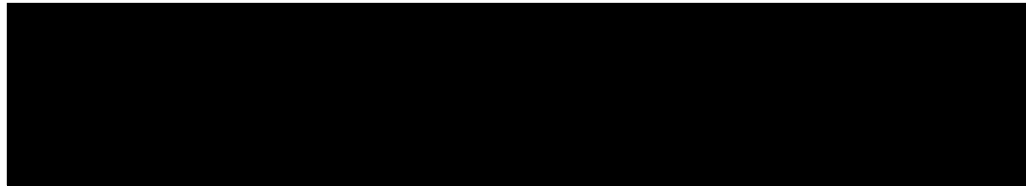
- 1.21. Security Instrument. A performance bond or its equivalent (e.g., irrevocable letter of credit) to be used by Attachor to guarantee Attachor's payment in full of all Pole Attachment Rental Fees and other amounts payable to Pole Owner under this Agreement.
- 1.22. Services. Electricity (only allowed by Cooperative on Cooperative's poles), telecommunications, Internet, data transmission or other similar services or combination of services provided by Attachor.
- 1.23. Term. The period during which this Agreement remains in effect.
- 1.24. Unauthorized Attachment. Any affixation of any Attachor facility of any nature to any property of Pole Owner, including Distribution Poles, that has not been authorized by Pole Owner as required by this Agreement. Unauthorized Attachments may include facilities affixed to Pole Owner's property prior to the Effective Date of this Agreement.

## 2. PURPOSE

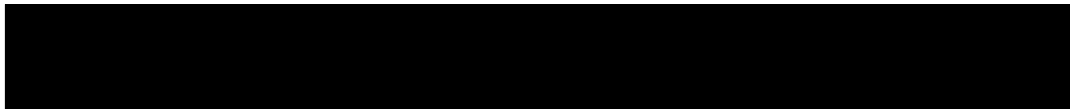
The purpose of this Agreement is to allow Attachor to install and maintain Attachments on Pole Owner's Distribution Poles in Attachor's Service Area for the limited purpose of providing Attachor's Services.

## 3. POLE OWNER OBLIGATIONS

3.1.



3.2.



- 3.3. Access to Distribution Poles; Easements. POLE OWNER DOES NOT REPRESENT OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY OR EASEMENTS ENTITLE ATTACHOR TO ACCESS THE PROPERTY UNDERLYING POLE OWNER'S DISTRIBUTION POLES. Pole Owner shall not be liable should Attachor at any time be prevented from placing or maintaining its Attachments on Pole Owner's Distribution Poles because Attachor failed to obtain appropriate rights-of-way or easements. Pole Owner may require Attachor to demonstrate that it has secured its own rights-of-way or easements prior to authorizing any Attachments. If such a requirement is imposed, the time for Pole Owner to respond to Attachor's Application shall be tolled pending Attachor's response. Consistent with the terms and conditions of this Agreement, Pole Owner shall permit Attachor access to Pole Owner's Distribution Poles and related overhead and other easements. Further, Attachor's use of the overhead or other easements is contingent on, and may be prevented or otherwise constrained by, the extent to which such use is permissible under applicable contracts and instruments between Pole Owner and other entities, and under federal, state and local laws and regulations.

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

#### 4. ATTACHOR OBLIGATIONS

- 4.1. Use of Attachments. Attachor shall use the Attachments solely to provide the Services.
- 4.2. Attachor Service Area. The area defined in Paragraph 1.12 of this agreement.
- 4.3. Compliance with Applicable Rules. Attachor shall comply with all federal, state, and local rules, regulations and ordinances and all technical rules and specifications applicable to Attachor's affixation of Attachments to Pole Owner's Distribution Poles as authorized herein.
- 4.4. Technical Requirements and Specifications.
- (a) At its own expense, Attachor 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, 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 Cooperative Practices set forth in Exhibit C; and
  - (iv) any current or future rules or orders of any federal, state or local authority having jurisdiction.
- (b) Attachor shall bring into conformity as soon as practical following notice by Pole Owner, and no later than [REDACTED] or after any reasonable date set by Pole Owner, or immediately if a safety violation exists, any existing Attachments of Attachor that do not conform to the technical requirements and specifications listed in this section 4. In the event that Attachor fails to comply with this requirement, Pole Owner in its sole discretion may elect to bring such Attachments into compliance and Attachor shall reimburse Pole Owner for all costs related thereto. Failure by Pole Owner to inspect Attachor'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 Pole Owner to be liable for any loss or injury resulting from such failure of conformance and shall not relieve Attachor of its obligations of indemnification hereunder.
- (c) The Cooperative Practices may be amended [REDACTED]  
[REDACTED]

[REDACTED]

4.5. Assumption of Risk. [REDACTED]

[REDACTED]

4.6. Safety Precautions. Attachor 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 Attachor's Attachments, and to avoid interference with Pole Owner's safe and efficient operation of its distribution system.

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

4.8. Identification Markers.

(a) Attachor shall place and maintain permanent identification markers on each of its Attachments, excluding electrical conductors, when affixing it to Pole Owner's Distribution Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Distribution Pole, and must:

- (i) be non-metallic;
- (ii) be of a distinctive and uniform design;
- (iii) be legible, clearly visible and recognizable from the ground by a person having normal vision; and
- (iv) not show Attachor's name or insignia, unless prior consent of Pole Owner is obtained and it is made clear that Attachor is not the owner of the pole.

(b) Identification markers shall be required on all new or replaced Attachments that are made after the effective date of this agreement, as well as existing Attachments if identification markers were required by the contract under which these existing Attachments were made. Attachor shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Pole Owner encounter any new, replaced, or existing attachments without required permanent identification markers, Pole Owner may notify Attachor provided that Pole Owner can identify the Attachments as belonging to Attachor. Attachor shall have [REDACTED] from the date of notice to place such permanent identification markers on those Attachments.

4.9. Notification of Attachments. An initial inventory audit shall be conducted in [REDACTED] [REDACTED] After this occurs, Attachor shall notify Pole Owner on an ongoing basis [upon Pole Owner's request] of the precise location and total number of Attachor'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. Excluding service drops, before Attachor may affix any attachments to, overlash to, or make use of any of Pole Owner's Distribution Poles under this Agreement, Attachor shall (a) submit to Pole Owner an Application requesting Pole Owner's permission to attach to, overlash to, or make use of each such pole; (b) receive written approval from Pole Owner authorizing the attachment, overlash, or use of each such pole; and (c) comply with all procedures set forth in this section. Attachor's failure to request and receive Pole Owner's permission will result in an Unauthorized Attachment Fee and may result in termination of this Agreement.

6.2. Decision Regarding Application. If in the sole judgment of Pole Owner, the Attachment to Pole Owner's Distribution Poles as proposed in the Application is undesirable or impracticable based on the technical requirements and specifications of Section 4.4, or because of other capacity, safety, reliability or engineering concerns, Pole Owner may reject all or part of the Application or limit the number and character of Attachments on any Distribution Pole. Within [REDACTED] after receipt of such Application, Pole Owner shall notify Attachor in writing whether the Application is approved or denied, or approved subject to completion of required Make Ready Work. In the absence of the need for Make Ready Work, an Authorization to use the Distribution Poles and to make Attachments in accordance with the terms of this Agreement shall be granted for each approved Application.

6.3. Make Ready Work Required.

(a) If Make Ready Work shall be required, Pole Owner shall, on the basis of the Application and associated construction plans and drawings, submit to Attachor within [REDACTED] after receipt of Attachor's Application a Make Ready Estimate (based on Pole Owner's method of computing costs, which shall follow generally accepted accounting principles) for all Make Ready Work which is required for each Distribution Pole, including an estimated completion date for such Make Ready Work.

(b) Upon notice pursuant to Exhibit D attached hereto that the Make Ready Estimate has been accepted by Attachor and payment has been received by Pole Owner in advance, [REDACTED] and Pole Owner shall proceed with the Make Ready Work covered by the Make Ready Estimate. Pole Owner shall undertake commercially reasonable efforts to complete this work [REDACTED]  
[REDACTED]  
[REDACTED] Upon completion of all Make Ready Work, Pole Owner may submit a supplemental invoice, [REDACTED]  
[REDACTED] or additional [REDACTED] work that was not included in the original scope of work.

(c) Upon receipt of payment and completion of the Make Ready Work, Attachor shall be granted Authorization to use the Distribution Poles and to make Attachments in accordance with the terms of this Agreement.

6.4. Overlapping.

- (a) Any proposed Overlashing by Attachor requires submittal of Joint Use Application Form attached hereto as Exhibit A and Joint Use Field Data Sheet attached hereto as Exhibit B.  
[REDACTED]
- (b) Attachor shall not allow third party Overlashing without Pole Owner's prior written approval.

**7. PAYMENT PROVISIONS**

- 7.1. Pole Attachment Rental Fee. The Pole Attachment Rental Fee set forth in this Agreement for 2016 shall be [REDACTED]  
[REDACTED]

- 7.2. Payment Period. All amounts payable under this Agreement shall be due within [REDACTED] days of the date of invoice. Interest shall be charged at the rate of [REDACTED] 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. If the Attachor disputes the bill or any portion thereof, it must do so through electronic or written means within [REDACTED] [REDACTED] after receipt thereof. Further, the Attachor must pay any undisputed amount due. Parties shall in good faith attempt reach agreement as to any disputed amounts and, if necessary, through escalation to upper management.

7.3. [REDACTED]

- 7.4. Security. Within [REDACTED] of the Execution Date, Attachor shall furnish [REDACTED]  
[REDACTED]

## 8. INSPECTIONS

8.1. Right to Conduct. Pole Owner may conduct inspections of Attachor's Attachments [REDACTED] to determine whether Attachor's Attachments meet the technical requirements and specifications listed in Section 4.4.

8.2. Safety Violations. If during inspection or otherwise Pole Owner determines that any of Attachor's Attachments do not conform with the technical requirements and specifications listed in Section 4.4, Attachor shall, upon notice by Pole Owner, either provide a written explanation disputing Attachor's responsibility for or correct such nonconformance within [REDACTED] after notification of such nonconformance, unless in Pole Owner's sole judgment safety considerations require Attachor to take corrective action within a shorter period. Should Attachor fail to take all steps necessary to comply with this requirement, or if safety considerations so require, Pole Owner may elect to, [REDACTED]

## 9. AUDITS

9.1. Right to Conduct Audits. The Parties may conduct an inventory audit of Attachments to verify the number of Attached Poles. Any such audit may be conducted no more frequently than once [REDACTED] unless either Party in good faith believes that the reported number of Attached Poles is inaccurate, in which case that Party may audit as frequently as is necessary in its sole discretion. If any difference in the number of Attached Poles is found between the actual physical inventory and the previous inventory, adjusted by any authorized Attached Poles with Attachments added or removed since the last inventory, the [REDACTED]

9.2. Review of Records [REDACTED]

## 10. UNAUTHORIZED ATTACHMENTS

10.1. Unauthorized Attachment Fee. Subsequent to the initial audit under Section 9.1 to establish a baseline for the location and number of Attached Poles, any new Attached Poles for which Attachor failed to submit Application or any Attached Poles that Attachor replaces without first gaining approval from the Pole Owner identified in such an audit shall be subject to the Unauthorized Attachment Fee. Attachor shall pay to Pole Owner [REDACTED] after [REDACTED]

notification of each Unauthorized Attachment. [REDACTED]

10.2. Pole Owner Failure to Act. [REDACTED]

11. **REPLACEMENT AND RELOCATION OF POLES; REARRANGEMENT OF FACILITIES**

11.1. Replacement or Relocation of Poles. Whenever Pole Owner replaces or relocates an Attached Pole, Pole Owner shall provide notification of such work to the Attachor, specifying the poles involved and the time at which the work was completed. Upon receiving notification, Attachor shall, within [REDACTED] transfer its attachments to the new or relocated Attached Pole. Should Attachor fail to transfer its attachments at the time specified for such transfer, Pole Owner may elect to transfer Attachor's Attachments, and Attachor shall reimburse [REDACTED]

[REDACTED] If Pole Owner has removed its attachments and Attachor's Attachment(s) remain on the original pole, and Pole Owner does not elect to transfer the Attachment(s), Attachor shall become liable for the original pole, if it still exists, as provided in Section 12.1.

11.2. Replacement and Relocation Costs. [REDACTED]

11.3. Vacating Pole Space. In the event it becomes necessary for Pole Owner, Pole Owner's subsidiary or affiliate or any other entity in which Pole Owner holds an interest, or another utility with whom Pole Owner has a prior agreement for pole attachments, to use Allocated Space on a Distribution Pole identified during the Application process for Attachor's Attachment(s) and either occupied or to be occupied by Attachor's Attachments, Attachor shall, upon receipt of [REDACTED] notice, either (a) vacate the space by removing its Attachments [REDACTED] or (b) if Pole Owner decides to replace the pole with a

[REDACTED]

- of another attachment(s) are required to be rearranged or renumbered to accommodate Attachor's Attachments, Attachor shall
- [REDACTED]
- [REDACTED]
- [REDACTED]

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- or charge related thereto or raised thereafter. [REDACTED]

- 12.2. Removal of Attachments. Attachor may at any time and in its sole discretion remove any of its Attachments from Pole Owner's Distribution Poles. [REDACTED]

13. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 13.1. Common Representations. Each Party represents and warrants that: [REDACTED]

- 13.2. Required Authorizations. Attachor 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. [REDACTED]

DISTRIBUTION POLES.

14. **INDEMNIFICATION**

[REDACTED]

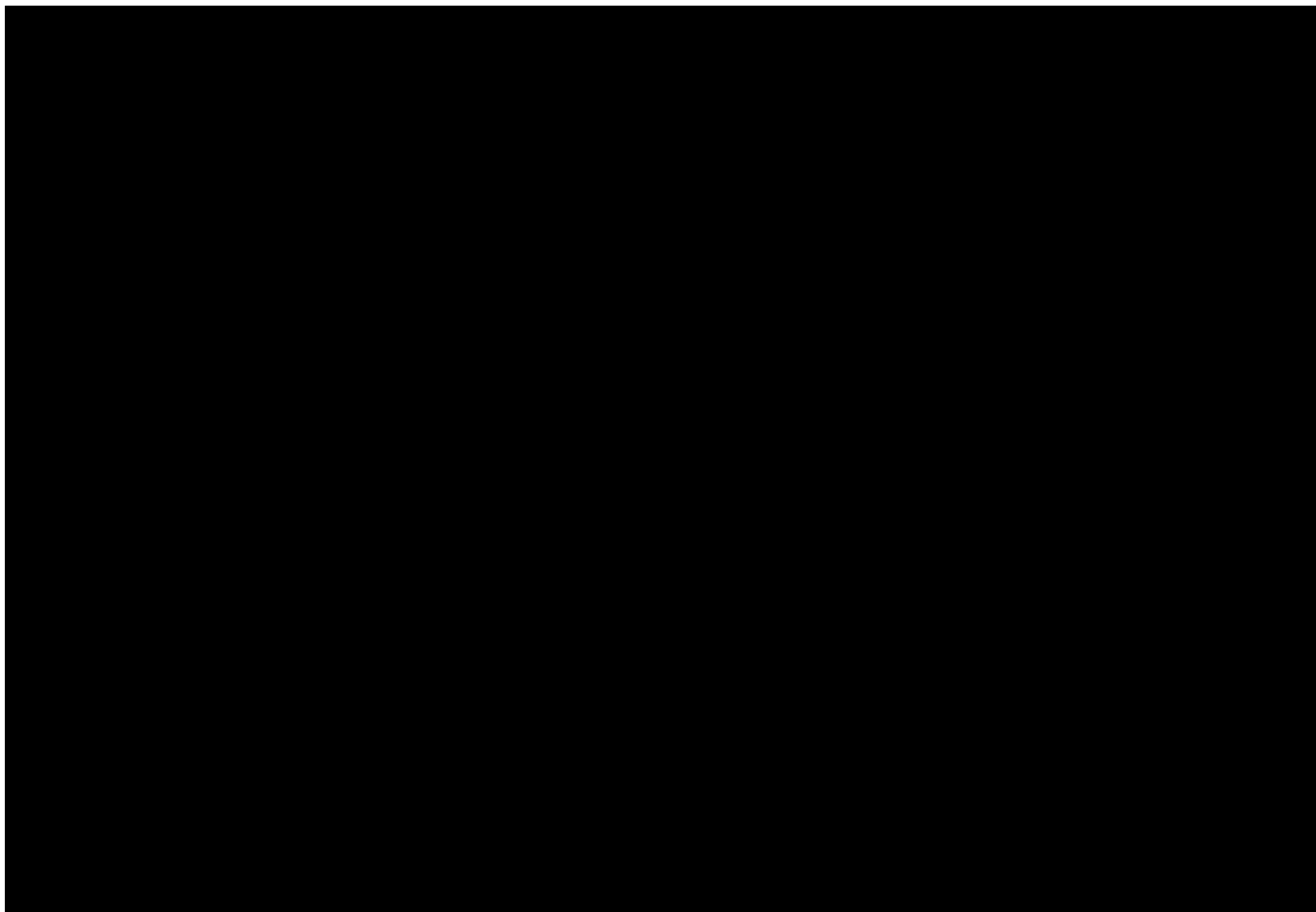
[REDACTED]

**15. LIMITATIONS ON DAMAGES**

[REDACTED]

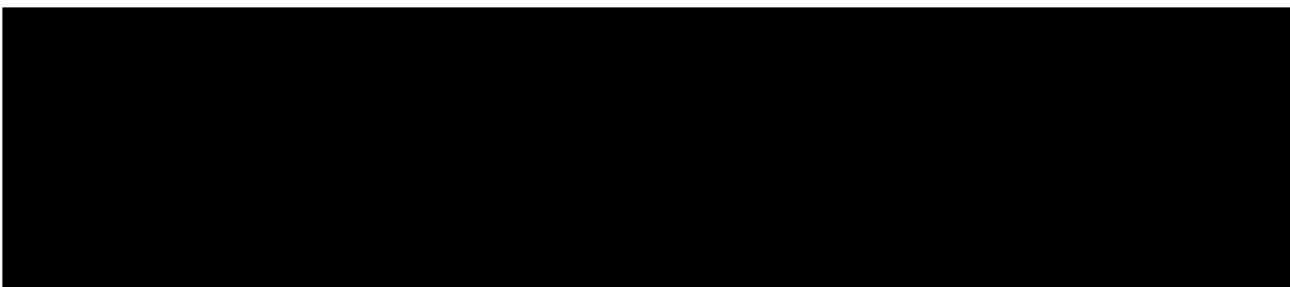
**16. INSURANCE**

[REDACTED]



17. **DEFAULTS**

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



- 17.2. Attachor Cure Period. For a period of [REDACTED] following receipt of notice from Pole Owner, Attachor shall be entitled to take all steps necessary to cure any Defaults. This [REDACTED] notice and cure period does not apply to [REDACTED] [REDACTED]  
[REDACTED]

17.3. Termination Because of Attachor Default. If Pole Owner terminates this Agreement because of Attachor's Default, Attachor shall not [REDACTED]

17.4. Reimbursement for Pole Owner Work. If Attachor fails to cure a Default with respect to the performance of any work that Attachor is obligated to perform under this Agreement, [REDACTED]

17.5. Pole Owner Default. If Pole Owner is in Default under this Agreement, Pole Owner shall have [REDACTED] following notice from Attachor within which to correct such Default. If Pole Owner does not cure its Default within the allotted time period, Attachor may, [REDACTED]

17.6. Attorney Fees and Court Costs. [REDACTED]  
[REDACTED]

## 18. TERMINATION OF AGREEMENT

Upon termination of this Agreement, Attachor may maintain its existing Attachments as long as it complies with the terms and conditions of this Agreement. Pole Owner shall not be required, however, to approve any Applications received after the termination becomes effective. If Attachor violates any of the terms and conditions of this Agreement after termination becomes effective, then (1) immediately, if the default is the failure to pay any obligations to Pole Owner and such unpaid amounts are not being disputed pursuant to Paragraph 7.2 of this Agreement, or (2) [REDACTED] following receipt of notice of such violation from Pole Owner and Attachor's failure to correct all defaults listed in that notice (provided however, Attachor shall have such additional time, not to exceed [REDACTED], as reasonably necessary if such cure could not practically be completed in this [REDACTED] cure period), Attachor shall promptly begin removing all of its Attachments and shall complete removal within a reasonable period, not to exceed [REDACTED] to be negotiated in good faith between the parties.

## 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. [REDACTED]

[REDACTED] The names, addresses, facsimile numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other.

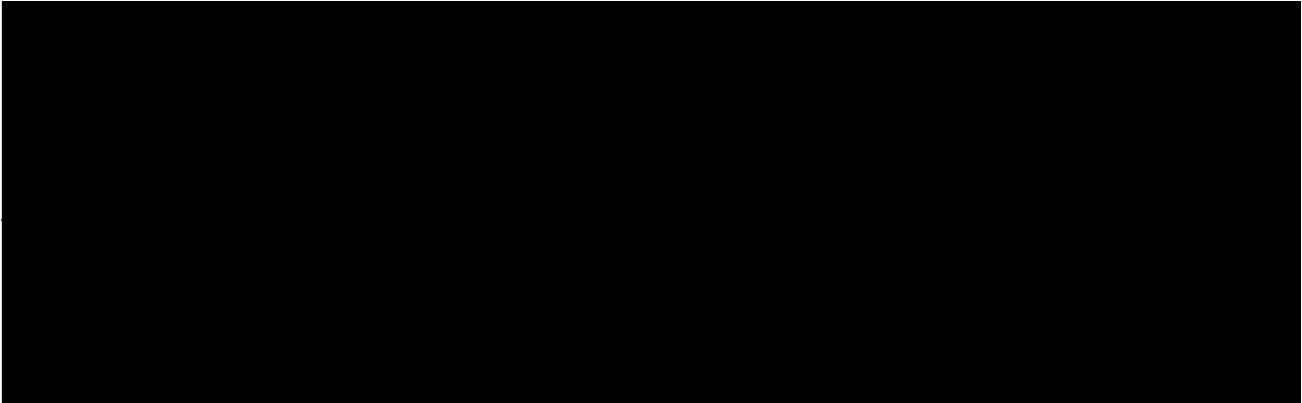
## **21. PAYMENT OF TAXES**

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

## **22. NOTICES**

Any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other shall be in writing and shall be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), facsimile or electronic mail transmission, or certified U.S. mail return receipt requested. Notice given by facsimile shall be deemed to have been received when transmitted, provided that the sender shall have received a transmission report indicating that all pages of the notice have been transmitted with the correct facsimile number. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery, or certified U.S. mail shall be effective upon receipt.

## **23. CONFIDENTIALITY**



## **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 Pole Owner, and Attachor's rights in Pole Owner's Distribution Poles shall be and remain a mere license for as long as authorized under the terms and conditions of this Agreement. Nothing herein shall be construed to compel Pole Owner to maintain any of its poles for a longer period than is required by Pole Owner'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 Pole Owner and Attachor with respect to the subject matter of this Agreement and supersedes and replaces any and all previous agreements entered into by and between Pole Owner and Attachor, written or unwritten, with respect to that subject matter.

## **30. ASSIGNMENT AND TRANSFER**

Attachor 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 Pole Owner. Pole Owner may condition such consent upon the assignee's or transferee's agreement to reasonable additional or modified terms or conditions. If there is a change of Control of Attachor, then Pole Owner shall have the right, in its reasonable discretion, immediately to terminate this Agreement in its entirety without further liability. Pole Owner 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 Attachor.

## **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 [REDACTED]. 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 [REDACTED]



[END OF TERMS AND CONDITIONS]

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# Shelby Energy Cooperative

® A Touchstone Energy Cooperative

## Exhibit A

### Pole Attachment Application

Attachor hereby requests permission to ☐ Overlash (OVL) ☐ Make (NEW) ☐ Remove (REM) attachments to/from the following Pole Owner poles as shown on the attached construction plans and drawings. All work shall be done in accordance with the terms and conditions set forth in the most current Pole Attachment Agreement.

#### Applicant Information

Company: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State & Zip: \_\_\_\_\_  
Request Date: \_\_\_\_\_  
Request #: \_\_\_\_\_  
(Company Name – 001, 002, etc...)

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#### Attachment Information

|              | OVL | NEW | REM |
|--------------|-----|-----|-----|
| No. of Poles |     |     |     |

Project: \_\_\_\_\_  
City / Township: \_\_\_\_\_  
Road or Address: \_\_\_\_\_

Cable Type:

|  |
|--|
|  |
|  |
|  |

Messenger Type:

Stringing Tension (lbs.)

Diameter (in.)

Weight/ft. (lbs.)

Equip. Description:

|  |
|--|
|  |
|  |
|  |

**Additional Information**

The following information shall be attached as part of this Application:

1. Construction Plans and Drawings detailing Attachor's build out plan
2. Map showing location(s) of attachments
3. Cut sheet for all equipment attachments showing size, weight, power consumption, and attachment methods
4. Completed Field Data Sheet for all attachments

If "make ready work" is required, upon receipt of Pole Owner provided estimate, the Attachor shall provide notice to Pole Owner of approval of the "make ready estimate". Once Pole Owner receives payment for the "make ready work", Pole Owner will proceed with completion of "make ready work". Upon completion of "make ready work", Pole Owner will grant permission for Attachor to install its Attachments.

**Send Completed Application, as Applicable, To:**

Shelby Energy Cooperative, Inc.  
620 Old Finchville Road  
Shelbyville, KY 40065  
Attn: Engineering Manager

AT&T Kentucky  
3719 Bardstown Rd  
Louisville, KY 40218  
Attn: Joint Use Engineer

**Attachor**

Submitted By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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**Pole Owner Use Only**

Request Response:    ☐ Approved    ☐ Approved Pending Make Ready    ☐ Denied

Reason: \_\_\_\_\_

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

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

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



Shelby Energy  
Cooperative

® A Touchstone Energy Cooperative

**Exhibit C**

**Pole Owner Rules and Practices for Attachments**

November 16, 2016

1. Attachor shall install and maintain its Attachments at its own expense.
2. Any unbalanced loading of Pole Owner's Distribution Poles caused by the placement of Attachor's facilities shall be properly guyed and anchored by Attachor with a guy and anchor provided by Attachor, at no expense to Pole Owner. Attachor may not place new guy attachments on Pole Owner's anchors without Pole Owner's prior consent.
3. A preliminary "ride through" of the proposed route of Attachor's facilities shall be made by representatives of Pole Owner and Attachor upon request by Pole Owner.
4. Attachor shall check and verify the condition of any pole prior to climbing or performing work on it. If a pole is deemed unsafe, Attachor must immediately notify Pole Owner by telephone and in writing as soon as practicable.
5. All Attachments shall be located on the same side of each pole as any existing telephone or communications cable, or as otherwise designated by Pole Owner.
6. On Attached Poles where Cooperative has secondary conductors, all Attachments shall be located on the same side of the pole as the secondary conductors, or as otherwise designated by Pole Owner.
7. Attachor shall cause all cabinets, enclosures, and messengers to be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.
8. Attachor shall install no power supply on any of Pole Owner's poles on which underground electric services, capacitor banks, sectionalizing equipment or voltage regulators are already installed.
9. No electrical service connection to a communications power supply shall be made or installed by Attachor until after Pole Owner shall have completed inspection of an approved fused service disconnect switch or circuit breaker.
10. No bolt used by Attachor to attach its facilities shall extend or project more than one (1) inch beyond its nut.
11. All Attachments of Attachor shall have at least two inches clearance from un-bonded hardware such as pedestals and any other enclosures containing equipment.
12. All of Attachor's Attachments shall comply with NESC clearance requirements. All mid-span clearances shall comply with NESC clearance requirements.
13. Attachor may, with prior approval of Pole Owner, install cross arms, alley arms, or cable extension arms for the support of any of its facilities in accordance with such approval.
14. Attachor shall install and maintain any and all of its facilities in a neat and workmanlike manner

consistent with the maintenance of the overall appearance of the jointly used pole, subject to the approval of Pole Owner in its sole discretion.

15. In the event that any of Attachor's proposed attachments are to be installed upon poles already jointly used by Pole Owner and another party(ies), Attachor shall negotiate with such other party(ies) to determine clearances between its facilities and those of Pole Owner and such other party(ies), except that Attachor may not in any way modify the clearance requirements set forth in this Agreement.

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\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Request #:



Shelby Energy  
Cooperative

® A Touchstone Energy Cooperative

**Exhibit D**

**Make Ready Estimate and Acceptance of Cost**

**Make Ready Estimate**

Pole Owner must perform the following Make Ready Work at an estimated cost to Attachor of \$\_\_\_\_\_.

Pole Owner estimates the Make Ready Work can be completed within thirty (30) business days upon receipt of payment.

| Line Item | Description | Qty. | Unit Cost | Ext. Cost |
|-----------|-------------|------|-----------|-----------|
|           |             |      |           |           |
|           |             |      |           |           |
|           |             |      |           |           |

**Total**

**POLE OWNER**

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

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

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

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**Acceptance of Make Ready Estimate**

The above Make Ready Estimate is accepted by Attachor. Attachor understands that Make Ready Work will begin upon payment being received by Pole Owner. Attachor shall complete installation of its Attachments upon receiving notification from Pole Owner that Attachor is authorized to attach.

**ATTACHOR**

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

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

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