

FIBER LEASE AGREEMENT

THIS LEASE AGREEMENT is made this ___ day of _____, 2023, by and between the Lexington-Fayette Urban County Government (“LFUCG”), an urban county government created pursuant to KRS 67A, and the University of Kentucky (“UK”), a public university of the Commonwealth of Kentucky.

RECITALS

- A.** Through an existing agreement with the Commonwealth of Kentucky, the LFUCG has the right of first refusal for twenty-seven (27) miles of a 144-ct bundle of Corning Dielectric Fiber currently existing underground in Lexington-Fayette County (the “Licensed Fiber”). Upon payment of \$63,588.00 to the Commonwealth of Kentucky, LFUCG can obtain an Indefeasible Right of Use (“IRU”) to the Licensed Fiber for a period of twenty-eight (28) years.
- B.** UK currently has the need for twenty-four (24) strands of the Licensed Fiber for its needs at Rupp Arena and is willing to provide all of the funding necessary for LFUCG to exercise its right of first refusal for the Licensed Fiber in return for a lease of the twenty-four (24) strands.
- C.** To access the twenty-four (24) strands, UK requires an access point be installed by the Commonwealth, or its contractors, for which the LFUCG is willing to provide funds for installation.
- D.** The LFUCG has determined that it is in the public interest to obtain an IRU to the Licensed Fiber for the future needs of the Urban County. The LFUCG has also determined that it is in the public interest to lease twenty-four (24) strands of the Licensed Fiber to UK for its uses at Rupp Arena, a driver of economic development in the downtown area.
- E.** The LFUCG hereby agrees to lease to UK twenty-four (24) strands of the Licensed Fiber, contingent upon UK’s execution of this Lease Agreement and compliance with its terms and the Commonwealth granting an IRU to LFUCG pursuant to the terms of its previous agreement.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Adoption of Recitals. The Recitals set forth above are hereby adopted and incorporated herein by reference as if set forth in full.

SECTION 2. Incorporation of Exhibits. The following Exhibits shall be attached to this

Agreement and shall be incorporated herein by reference as if set forth in full.

Exhibit A: The IRU between the LFUCG and the Commonwealth of Kentucky, executed simultaneously with this Lease Agreement.

SECTION 3. Definitions. The following words, terms, and phrases, when used in this Agreement, shall have the following meanings:

- (a) **“Access Point”** shall mean the physical location at which the Lessee may connect to the Leased Fibers.
- (b) **“Agreement”** shall mean this Lease Agreement and all extensions and modifications hereof, together with all Schedules and/or Annexes.
- (c) **“Installed Fiber”** shall mean any fiber or related infrastructure or facilities installed from the Access Point by or at the behest of Lessee to an endpoint determined by Lessee.
- (d) **“IRU”** shall mean the Indefeasible Right of Use Agreement between the LFUCG and the Commonwealth of Kentucky, which is attached as Exhibit A. Nothing contained herein shall be construed to mean that UK is being provided an Indefeasible Right of Use to the Leased Fiber.
- (e) **“Leased Fiber”** shall mean twenty-four (24) strands of Licensed Fiber, as determined by the LFUCG.
- (f) **“Lease Payment”** shall have the definition set forth in Section 6 of this Agreement.
- (g) **“Lease Term”** shall have the definition set forth in Section 7 of this Agreement.
- (h) **“Lessee” or “UK”** shall mean the University of Kentucky.
- (i) **“Lessor” or “LFUCG”** shall mean the Lexington Fayette Urban County Government
- (j) **“Licensed Fiber”** shall mean the 144-ct. bundle of Dielectric Fiber, Corning # 432EU4-T4100A20 subject to the IRU.
- (k) **“Parties”** shall mean the Lessor and Lessee.

SECTION 4. Subordinate to IRU. Except as specifically set forth herein, this Lease Agreement is subject and subordinate to all of the terms and conditions of the IRU. Lessee hereby assumes and agrees to perform the obligations of the LFUCG under the IRU, as it relates to the Leased Fiber. The parties agree that this is not intended to be an assignment of any portion of the IRU to Lessee. With respect to the obligations assumed by Lessee, Lessee shall not commit or permit to be committed any act or omission which would violate any term or condition of the IRU. With respect to the obligations assumed by Lessee, Lessee shall neither do nor permit anything to be done which would cause the IRU to be terminated or forfeited by reason of any right of termination

or forfeiture reserved or vested in the Commonwealth of Kentucky under the IRU. **Lessee shall indemnify Lessor and hold the Lessor harmless from and against all liability, judgments, costs, demands, claims, and damages of any kind whatsoever (including, without limitation, attorneys' fees and court costs) by reason of any failure on the part of Lessee to perform any of the obligations of LFUCG under the IRU for the twenty-four (24) strands being leased in this Agreement.**

SECTION 5. Lease of Fiber. The Lessor hereby agrees that, in exchange for the payment of the Lease Payment, and the giving of other good and valuable consideration, as further described herein, it will lease to the Lessee the Leased Fiber for the Lease Term. The Lessor shall designate the particular strands that will constitute the Leased Fiber.

SECTION 6. Lease Payment.

- (a) In consideration for the lease of the Leased Fiber for the Lease Term, UK shall pay as rent one Lease Payment of Sixty-Three Thousand Five Hundred and Eighty-Eight Dollars and 00/100 Cents (\$63,588.00).
- (b) The Lease Payment shall be provided to the Lessor or to the Commonwealth of Kentucky, at the Lessor's request, within thirty (30) days of acceptance of the Licensed Fibers, as provided in the IRU.

SECTION 7. Term. The Initial Term of this Lease Agreement shall be coextensive with the term of the IRU.

SECTION 8. Use.

- (a) The Lessee shall use the Leased Fiber to conduct its business and shall not sub-lease or assign its rights herein. Failure to use the Leased Fiber as prescribed herein shall result in the immediate termination of this Lease Agreement.
- (b) The Lessee further agrees that it shall use the Leased Fiber in accordance with all applicable federal, state, and local laws.
- (c) This Lease Agreement does not grant the Lessee the authority or right to provide others the use of the Leased Fiber for a fee, or to otherwise provide "Cable Service"; "Telecommunications Service"; or "Local Exchange Service."
- (d) The grant of this Lease Agreement shall not convey title, equitable or legal, to the Lessee in any property of the Lessor, including the Lessor's Indefeasible Right of Use, the Lessor's infrastructure, or the Lessor's public rights of way, and shall only give to the Lessee the right to use the Leased Fiber for the purposes and for the period of time stated in this Lease Agreement.
- (e) The grant of this Lease Agreement shall not convey to the Lessee any greater or

more expansive right to the Leased Fiber than the Lessor possess in the Licensed Fiber as provided in the IRU. To the extent any provision in this Lease Agreement grants such greater or more expansive right, it shall be null and void.

SECTION 9. Ownership and Title. The Parties understand that all ownership, rights, title, and interest in all the Licensed Fibers, including the Leased Fibers, and any Access Points shall at all times remain exclusively with the Commonwealth of Kentucky pursuant to the IRU. All right, title and interest in the Lessor's equipment shall at all times remain exclusively that of the Lessor. All right, title, and interest in the Installed Fiber and the Lessee's equipment shall at all times remain exclusively that of the Lessee.

SECTION 10. Initial Acceptance Testing. In accordance with the IRU, the Commonwealth will be providing testing of the Licensed Fiber to identify end-to-end attenuation, end-to-end signature and splice testing results for each strand in accordance with the procedures and standards specified in Exhibit C of the IRU. The Parties agree that the Lessee approved the Exhibit prior to execution of the IRU and this Lease Agreement. The Parties also agree to work together to review any performance testing results provided by the Commonwealth of Kentucky after installation. If the performance testing results indicate that the Leased Fiber's performance is consistent with industry standards, the parties shall jointly provide notice of acceptance to the Commonwealth of Kentucky within the time provided in the IRU. Any performance testing of the Leased Fibers requested by the Lessee thereafter shall be paid by the Lessee.

SECTION 11. Creation of Access Point. The Lessor shall pay to construct an Access Point on the Leased Fiber, at a location determined by the Lessor, to allow the Lessee to use the Leased Fiber. The Parties shall work together to review any performance testing results provided by the Commonwealth of Kentucky after installation of the Access Point. If the performance testing results indicate that the Access Point's performance is consistent with industry standards, the parties shall jointly provide notice of acceptance to the Commonwealth of Kentucky within the time provided in the IRU. The performance testing described below shall be paid by the Lessor. Any performance testing required thereafter shall be paid by the Lessee.

SECTION 12. Maintenance and Repair.

- (a) The Parties understand that Lessor does not have the right to physically access the Licensed Fiber, including the Leased Fiber, and that all physical activities, including maintenance, relating to the Licensed Fiber, including the Leased Fiber, shall be undertaken solely by the Commonwealth of Kentucky or its contractors or agents. As such, Lessee shall look solely to the Commonwealth of Kentucky under the IRU, and the obligations of Lessor hereunder shall be limited to using its reasonable good faith efforts to obtain the performance by Commonwealth of Kentucky of its obligations through the process provided in subsection (d). Should Lessor be unable to obtain any performance by the Commonwealth of Kentucky, Lessor hereby assigns to Lessee the right to seek to obtain such performance, such right to include legal action against Commonwealth of Kentucky, to the extent of Lessee's interest in the Leased Fiber. Lessor shall have no liability to Lessee or any other person for damage of any nature whatsoever as a result of the failure of

Commonwealth of Kentucky to perform said obligations. **Lessee shall indemnify and hold Lessor harmless from any and all claims and liability whatsoever for any such damage (unless such damage is caused by Lessor’s breach of the IRU) including, without limitation, all costs and attorneys’ fees incurred in defending against same.**

- (b) Annually, the Lessee shall pay the Lessor’s share of maintenance costs required under the IRU, according to the following formula:

$$\frac{\text{\# of Access Points Used by Lessee}}{\text{\# of Access Points on the Licensed Fiber}} \times \text{Annual Maintenance Cost Determined by Commonwealth}$$

- (c) The maintenance payment required above shall be paid within fourteen (14) days of receipt of an invoice.
- (d) In the event that the Lessee learns that the Leased Fiber or Access Point is damaged or is otherwise not functioning (due to failure, interruption, or impairment to the Leased Fiber’s operation), it shall notify the Lessor of same as provided in Section 23. The Lessor shall timely provide this notice to the Commonwealth of Kentucky or its agent or contractors, as appropriate. Alternatively, the Lessee may also provide notice to the Commonwealth of Kentucky or its agents or contractors, directly, to the address, phone number, or electronic mail address provided by the Commonwealth of Kentucky.
- (e) Lessee shall maintain, at its own costs, the Installed Fiber. Lessor shall bear no cost in the installation or maintenance of the Installed Fiber. Prior to notifying the Lessor or Commonwealth of Kentucky as provided in (c) above, the Lessee shall test the Installed Fiber to ensure the Installed Fiber is not damaged or the cause of the failure, interruption, or impairment.

SECTION 13. Condition of the Leased Fiber. Lessee accepts the Leased Fiber and Access Point “as is”. Lessee accepts the Leased Fiber and Access point in its condition existing as of the date of their acceptance, as provided in Sections 10 and 11, respectively. Lessee acknowledges that neither Lessor nor the Commonwealth of Kentucky have made any representations or warranties as to the condition of the Leased Fiber or its present or future suitability for Lessee’s purposes. **Warranties, express or implied, including but not limited to, the implied warranties of merchantability or fitness for a particular purpose, validity, non-infringement, and all such other warranties, are hereby expressly disclaimed.**

SECTION 14. Insurance.

- (a) Before the installation of any Installed Fiber, Lessee shall cause its contractor and subcontractors to maintain insurance coverages of the types and in the minimum amounts, as set forth below, as applicable:

Type of Insurance	Limit
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General Liability	(\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit);
Commercial Automobile Liability	(combined single, \$1 million per occurrence);
Professional Liability	(\$1 million per occurrence, \$2 million aggregate);
Worker's Compensation	(Statutory); and
Employer's Liability	(\$1 million).

- (b) Before the installation of any Installed Fiber, the Lessee shall cause its contractors and subcontractors to name the Lessor as an additional insured by way of a policy endorsement on above referenced insurance policy. Lessee shall provide certificates of insurance and, if requested, copies of any policy to the Lessor.

SECTION 15. Default. If either Party fails to perform or observe any material term, covenant, provision, or condition of this Lease Agreement, then that party will be in default under this Lease Agreement.

SECTION 16. Right to Cure. From the date of written Notice of Default from the other party, the party in default shall have ninety (90) days to cure any default, except that the Lessee shall have no right to cure its failure to pay the Lease Payment or the annual maintenance payment, as required above.

SECTION 17. Failure to Cure. If the party in default fails to cure the default in the time prescribed by Section 16, then the other Party shall have the right to terminate this Lease Agreement and may, at its discretion, pursue any other remedies that may be available to it at law or in equity not otherwise proscribed by the terms of this Lease Agreement.

SECTION 18. Termination of the Agreement.

- (a) This Agreement shall terminate automatically upon termination of the IRU, without any liability of Lessor to Lessee; or
- (b) This Agreement may be terminated by the Lessor for any reason whatsoever by providing Lessee with at least (30) days advance notice as provided in Section 23. Lessee shall be entitled to the sole and exclusive remedy of repayment of a portion of the Lease Payment in accordance with the below formula:

(Months Remaining on Lease x \$189.25) – Lessor costs actually paid as provided in Section 11

SECTION 19. Rights upon Expiration or Termination of the Agreement. Upon the expiration or termination of this Lease Agreement, the Lessee's rights to the Leased Fibers shall terminate. Upon expiration or termination of this Lease Agreement, the Parties shall have no continuing rights

or obligations hereunder, except that any uncured defaults or any other obligations that are stipulated in this Lease Agreement shall survive the expiration or termination of this Lease Agreement.

SECTION 20. Limitation on Damages. In no event shall Lessor be liable to Lessee for any consequential, incidental, or special damages, or business interruption, lost revenues, lost profits, or lost data, even if the Party is advised of the possibility of such loss or damage or if such loss or damage could have been reasonably foreseen. Without limiting the foregoing, and excluding any indemnification obligations set forth in this Agreement, the total liability of Lessor for any reason whatsoever related to the services will, in no event, exceed the Lease Payment minus all costs actually paid by Lessor as provided in Section 11.

SECTION 21. Assignment. This Lease Agreement may not be sold, assigned, transferred, or sublet without the prior written approval or consent of Lessor.

SECTION 22. Authorization. Each of the persons executing this Lease Agreement, in behalf of the respective parties, represents and warrants that he or she has the authority to bind the party in behalf of whom he or she has executed this Lease Agreement, and that all acts required and necessary for authorization to enter into and to execute this Lease Agreement have been completed.

SECTION 23. Notice. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed by first class mail:

If to Lessor:

Lexington-Fayette Urban
County Government Attn:
Chief Information Officer
200 East Main Street
Lexington, Kentucky 40507

If to Lessee:

Either party may change where notices, requests, demands, or other communications are to be given by giving written Notice to the other party of any said change. Electronic Mail may be provided for any notice required under this Lease Agreement with prior approval of the party receiving the required notice.

SECTION 24. Successors and Assigns. This Lease Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

SECTION 25. Non-waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Lease Agreement or to exercise any of its rights hereunder shall not waive such rights, but the party shall have the right to enforce such rights at

any time and to take such action as might be lawful or authorized hereunder, whether in law or equity.

SECTION 26. Severability. If any section, sentence, clause, or phrase of this Lease Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Lease Agreement.

SECTION 27. Governing Law. This Lease Agreement shall be governed by the laws of the Commonwealth of Kentucky.

SECTION 28. Third Party Beneficiaries. Except as provided below, this Agreement does not create a contractual relationship with or right of action in favor of a third party against either party. The Parties hereby designate the Commonwealth of Kentucky as a third-party beneficiary, which shall have the right to enforce the provisions of this Agreement against the Lessee, and its successor and assigns.

SECTION 29. Miscellaneous.

- (a) This Lease Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between Parties with respect to the subject matter hereof. This Lease Agreement may only be amended by a writing signed by all parties.
- (b) The provisions of the Lease Agreement relating to indemnification or insurance requirements shall survive any termination or expiration of this Lease Agreement. Any provision of this Lease Agreement that would require performance subsequent to the termination or expiration of this Lease Agreement shall likewise survive any such termination or expiration.
- (c) This Agreement is contingent upon the Parties, or any successor or assign hereunder, obtaining all necessary governmental approvals, permits, or licenses.
- (d) This Lease Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.

IN WITNESS WHEREOF, the undersigned have caused this Lease Agreement to be executed as of the date noted above.

[SIGNATURE PAGES FOLLOW]

