

ATTACHMENT B

SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.

- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.
- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

ATTACHMENT C DEFINITIONS

"Business Day" means any day that is not a weekend or a holiday in the Commonwealth of Kentucky.

"Completion" means the completion of a Milestone in accordance with the respective scope and deliverables for each Milestone outlined in this Agreement.

"Concessionaire" means the entity, other than the Commonwealth, that enters into the Concession Agreement.

"Concession Agreement" means the long-term agreement between the Commonwealth and the Contractor pursuant to which the Commonwealth procures the Contractor's services to design, build, finance, operate and maintain the state-wide fiber-optic middle-mile network to be called the Next Generation Kentucky Information Highway.

"Confidential Information" means all commercially sensitive, secret, or otherwise confidential business, financial, marketing, or technical information, and other confidential information belonging to a Party, including, but not limited to, the terms of this Agreement. Confidential Information shall not include information that (a) is or becomes (other than by disclosure by the other Party) publicly known, (b) is furnished by the Party to others without restrictions similar to those imposed by this Agreement, (c) is rightfully in the other Party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement, (d) is obtained from a source other than the Party without the obligation of confidentiality, (e) is disclosed with the written consent of the Party or (f) is independently developed by employees or agents of the other Party who can be shown to have had no access to the Confidential Information. Any reports or other documents or items (including software) that result from the use of the Confidential Information by the other Party shall be treated with respect to confidentiality in the same manner as the Confidential Information.

"Costs" shall mean the sum of External Costs and Internal Costs.

"Customary Industry Practice" means using standards, practices, methods and procedures to a good commercial standard, conforming to Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

"DB Contractors" has the meaning set out in the recitals of this Agreement.

"Demobilization Threshold: has the meaning set out in Section IV paragraph 12 of this Agreement.

"Default" shall (i) have the same definition as in 200 Ky. Admin. Reg. 5:312 or (ii) either Party fails to timely perform any material covenant, condition, agreement, and/or provision contained in this Agreement, subject to Section III.26 of this Agreement.

“Deficiency” means any defect or fault, including omission, in the NG-KIH System which is the result of a failure by Project Co to comply with the Design and/or Construction obligations under this Agreement.

“Design” means everything required for the design of the NG-KIH System in connection with the Phase 1 Early Works and the Phase 2 Early Works.

“External Costs” are costs incurred by the Contractor relating to discrete workstreams undertaken by third party consultants, as well as the Contractor’s and its subcontractors’ out of pocket expenses, as required by the Milestone Workplan to achieve each Milestone, and as set forth in such Milestone’s pre-agreed upon budget. In the absence of any updates thereto, Milestone budgets shall be those outlined in Exhibit A of this Agreement.

“Field Locations” means those locations on the Lands that are not Site Locations.

“Financial Close” means the when the Project financing is secured, the Parties have entered into the Concession Agreement, and the Project formally commences.

“Financial Close Milestone” means the delivery by the Contractor to the Commonwealth of the Deliverables set out in Attachment D.

“Force Majeure Event” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; the inability of Contractor to access Community Anchor Institutions sites; acts of public enemies and terrorists; orders or restraints of the Federal Government of the United States, or any of their departments, agencies or officials; insurrections; riots; landslides; earthquakes; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party and not due to their respective negligence.

“Governmental Authority” means any federal, state, territorial, regional, county, municipal or local governmental authority, quasi-governmental authority, court, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project.

“Guaranteed Maximum Pricing” means a not-to-exceed dollar amount of the availability payment required for the Project, as agreed to by the Parties.

“Indirect Losses” means any loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity or any exemplary, punitive or special damages or any consequential or indirect loss or damages of any nature claimed, suffered or allegedly suffered by:

- (a) Contractor or any director, officer, employee or agent of Contractor, in each case acting as such; or

- (b) the Client or any director, officer, employee or agent of Client, in each case acting as such;

and shall be deemed not to include the Phase 1 Early Works Price or the Phase 2 Early Works Price or other amounts expressly payable by one party to the other under this Agreement.

"Interim Milestone" means the delivery by Contractor to the Commonwealth of an updated availability payment reflecting the viability of third-party transactions, if such transactions are viable from both a risk and cost perspective, and incorporates refinements to the greenfield project proposal, with a specific focus on the key drivers set out in Attachment D.

"Internal Costs" are the Contractor's pre-agreed lump sums for internal staff time cost incurred in connection with a Milestone on the Project, and which expenses are set forth in a Milestone's budget in advance and pre-agreed upon by all Parties in writing before the beginning such Milestone.

"Lands" means the right-of-way owned or controlled by the Client in which a portion of the NG-KIH System will be constructed, all Site Locations and all Field Locations.

"Laws" means all validly enacted laws (including the common law), statutes, regulations, ordinances, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time in the Commonwealth of Kentucky and the United States of America, including, for greater certainty, those related to the issuance of Permits and any building codes.

"Milestone" means a discrete subpart of the Initial Project with deliverables, budgets, and deadlines, all as pre-agreed upon by the Parties in accordance with this Agreement, and following which there may exist certain opportunities for either Party to terminate this Agreement, subject to any applicable termination conditions. The Milestones are set forth in Section III. 2. of this Agreement.

"Models" has the meaning set forth in Section III. 6.

"NG-KIH System" means all of the electronic equipment, fiber cable, outside plant installations, building facilities, interface equipment, network services and customer services required to provide the fully functional and operating telecommunications carrier system contemplated by the Client.

"Notice" means any written notice required hereunder, which shall be delivered in accordance with Section III.35 of this Agreement.

"Open Book Process" means full transparency for the Commonwealth into the Contractor's proposed models, financial vehicles, cost proposals, technical specifications, operational role and responsibilities, and any other aspect of the Project, such that the Commonwealth fully understands each aspect of the Project, including profit and direct and indirect expenses. As between the Parties there shall be no aspect

of or information related to Project which is not shared, with the exception of proprietary information, information that consists of internal drafts or relates to Contractor's internal approvals process required to arrange and potentially provide financing for the Project.

"Open Records Act" means the Kentucky Open Records Act set forth at Kentucky Revised Statute 61.870 et. seq.

"Project Co" means KentuckyWired Infrastructure Company, LLC.

"Permits" means all permissions, consents, approvals, certificates, permits, licenses, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement.

"Person" means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority.

"Phase 1 Early Works" has the meaning set out in Attachment E [Phase 1 Early Works].

"Phase 1 Early Works Term" has the meaning set out in Section IV paragraph 2.

"Phase 1 Early Works Price" has the meaning set out in Attachment E [Phase 1 Early Works].

"Phase 2 Early Works" has the meaning set out in Attachment F [Phase 2 Early Works].

"Phase 2 Early Works Term" has the meaning set out in Section V paragraph 2.

"Phase 2 Early Works Price" has the meaning set out in Attachment F [Phase 2 Early Works].

"Similar Project" means a project to design, build, finance, operate and maintain, under a long term concession agreement, a regional or statewide information highway infrastructure of similar scope, terms and conditions to the Project for the use and benefit of the Commonwealth, its agencies or subsections of government, or any commercial user in addition thereto.

"Site Locations" means each of the site locations more particularly described in Attachment I [Site Locations].

"Working Assumptions" has the meaning set forth in Section II.2(d) of this Agreement.

ATTACHMENT D
MILESTONE WORKPLAN

Milestone	Details
<p>I-Guaranteed Maximum Price (“GMP”)</p>	<p>Contractor will provide the Commonwealth a not-to-exceed dollar amount of the availability payment required for the NGKIH. The availability payment will be based on a detailed list of Working Assumptions.</p> <p>The scope items for this Milestone will be:</p> <ul style="list-style-type: none"> • Engage all necessary advisors for this Milestone; • List of Working Assumptions on which the not-to exceed availability payment is based, including the actions that the Parties can take, individually or together, to reduce the GMP; • Negotiated, detailed term sheet for the Concession Agreement; • Proposed detailed scope, schedule and budget to reach Commercial Close; • Provide the Commonwealth a proposal summarizing the above deliverables and providing a not-to-exceed availability payment; • For the avoidance of doubt the Working Assumptions will include reasonable assumptions regarding the financing terms, including interest rates, applicable to debt sourced for the Project but changes in the financing terms, including the interest rates, post the GMP will result in upward or downward adjustments to the not to exceed GMP; and • Commonwealth to confirm that it has the legal authority to enter into the transaction. <p>This Milestone has been completed.</p>
<p>II - Interim Milestone</p>	<p>During this Milestone, the Contractor will work to provide the Commonwealth an updated availability payment that reflects the viability of third-party transactions, if such transactions are viable from both a risk and cost perspective, and incorporates refinements to the greenfield project proposal, based on diligence completed at such time</p> <p>The scope items for this Milestone will be:</p> <ul style="list-style-type: none"> • Refine greenfield project proposal through continued diligence and design work; • Pursue third party contracts which improve the affordability of the project; • Engage all necessary advisors for the Initial Project; • Proposed detailed scope, schedule and budget to reach Financial Close

	<p>Contractor's obligations under the Milestone will be considered complete once Contractor submits an updated availability payment estimate to the Commonwealth, which includes evidence, including without limitation letters of intent, term sheets, etc., reasonably satisfactory to the Commonwealth of any third party transaction to be considered as part of the updated availability payment.</p>
<p>III - Financial Close Milestone ("FC")</p>	<p>During this Milestone, final, executable contracts (including the Concession Agreement, DB Contract and O&M Contract and Interface Agreement) will be negotiated and provided to the Commonwealth, and all financing will be arranged for the transaction.</p> <p>The deliverables for this Milestone will be:</p> <ul style="list-style-type: none"> • Due diligence reports from Contractor advisors; • Executable fixed price, date certain, design-build agreement (the "DB Contract"); • Executable fixed price long-term operating, maintenance and refresh agreement (the "O&M Contract"); • Executable Concession Agreement, including without limitation a performance standards regime, and project design build schedule; • Detailed term sheet of a Wholesaler Agreement, including without limitation a revenue sharing mechanism; • Executable financing documentation; • Audited financial model; and • Proof of required insurances. <p>Contractor's obligations under this Milestone will be complete once the Contractor has satisfied the above deliverables.</p>

**EXHIBIT A
MILESTONE BUDGETS
(assuming Tax Exempt Financing)**

External Costs	GMP (actual)	Interim Milestone	To FC	At FC	Total
Project Counsel	160	450	368	545	1,523
Local Counsel	28	100	100	100	328
Underwriters' Counsel	-	100	250	-	350
Sponsors' Bond Counsel	-	55	275	-	330
Issuer Bond Counsel	-	-	100	-	100
Subcontractor Counsel (Ledcor)	-	120	120	-	240
Lenders' Technical Advisor	-	150	50	-	200
Sponsors Insurance	-	40	-	(40)	0
Lenders Insurance	-	20	-	-	20
Rating Agencies	-	300	-	210	510
Tax Advisor	-	75	75	-	150
Accounting Advisor	-	25	25	-	50
Model Audit	-	-	65	-	65
Stakeholder Relations	25	25	-	150	200
Out of Pockets	82	60	60	-	202
Contingency	-	184	103	-	287
External Total	295	1,704	1,591	965	4,554
Internal Costs	(actual)	Milestone	To FC	At FC	Total
Macquarie	(5)	250	300	-	545
First Solutions	100	255	170	-	525
Ledcor	-	205	205	-	410
Fujitsu	100	151	227	-	477
Black & Veatch	200	536	528	-	1,264
Internal Total	395	1,397	1,430	-	3,221
Total Cost	690	3,101	3,020	965	7,775

ATTACHMENT E PHASE 1 EARLY WORKS

The Phase 1 Early Works will consist of services and procurement scope as set out below in connection with the Project.

Engineering

In order to support the earlier commencement of make-ready construction and maintain an adequate engineering design buffer against the pace of construction, additional engineering resources will be added to the Project. The additional resources will continue the detailed design and accelerate the existing rate of production. In addition, make ready and construction permit applications will be submitted in advanced of the anticipated project schedule.

Deliverables:

- Pole Make-Ready Applications
- Environmental Consulting for Ring 1A & 1B
- Detail Design Drawings
- Anchor location field engineering
- Permit Drawings
- Permit Applications for Ring 1B
- Make-Ready estimate approval

Procurement

Procurement resources will be assigned to initiate equipment & material take-offs and the placement of orders for long-lead materials. The fiber order will be placed and the cost exposure is estimated at a 15% restocking fee. Full cost exposure would occur upon shipment of the material. Fiber order can be cancelled 30 days prior to delivery.

Deliverables:

- Purchase Orders for Long Lead items
 - Order Huts for Ring 1A & 1B

- Fiber Order 104 miles
- Purchase Orders for Make Ready Materials
- Subcontracts with contractors
- Confirmed delivery dates for long lead items

Phase 1 Early Works Price

The Phase 1 Early Works Price is \$2,957,000.00 and is broken down as follows:

Early Works	Phase 1	
	Jun 15-30	July 1-15
Labor - Eng, Proc., PMO, CM	940,000	988,000
Material - Fiber, Make-ready	-	207,000
Field Engineering Sub	335,000	130,000
Subcontractor		
Expenses - Travel, Per Diem, Vehicles	182,000	175,000
Total	1,457,000	1,500,000
	Phase 1 Total	2,957,000

For clarity, the Phase 1 Early Works Price is in addition to the Total Costs (set out in Exhibit A) that may be payable by the Commonwealth to the Contractor in accordance with this Agreement and the Phase 1 Early Works can be completed during the Phase 2 Early Works Term to the extent that the Phase 1 Early Works are not completed during Phase 1 Early Works Term but only up to, and not exceeding, the Phase 1 Early Works Price.

Attachment F Phase 2 Early Works

The Phase 2 Early Works will consist of services and procurement scope as set out below in connection with the Project.

Engineering

Engineering activity will be a continuation of the engineering work started in Phase 1 Early Works. During Phase 2 Early Works, the work will expand beyond the I-75 spine and Ring 1B to include Ring 1A.

Deliverables:

- Pole Make-Ready Applications
- Detail Design Drawings
- Anchor location field engineering
- Permit Drawings
- Permit Applications for Ring 1A & 1B
- Make-Ready estimate approval

Procurement

The Phase 2 Early Works activity will be a continuation of the procurement started in Phase 1 Early Works. Additional fiber and make-ready material orders will be issued as the engineering progresses. Similar to Phase 1 Early Works, the cost exposure for the fiber order is estimated at a 15% restocking fee. Full cost exposure would occur upon shipment of the material. The fiber order can be cancelled 30 days prior to delivery.

Deliverables:

- Purchase Orders for Long Lead items
 - Fiber Order 314 miles
 - Purchase Orders for Make Ready Materials
- Subcontracts with contractors
- Confirmed delivery dates for long lead items

Construction

The make-ready construction will commence as Utilities return aerial make-ready applications with approved estimates.

Deliverables:

- Make-ready construction
 - Make-ready subcontracts issued
 - Initial 85 miles of make-ready construction in progress
- Begin placement of strand along routes as make-ready is cleared

Phase 2 Early Works Price

The Phase 2 Early Works Price is \$4,895,000 and is broken down as follows:

Early Works	Phase 2	
	July 16-31	Aug 1-15
Labor - Eng, Proc., PMO, CM	988,000	1,122,000
Material - Fiber, Make-ready	311,000	646,000
Field Engineering Sub	130,000	
Subcontractor	660,000	660,000
Expenses - Travel, Per Diem, Vehicles	175,000	203,000
Total	2,264,000	2,631,000
	Phase 2 Total	4,895,000

The Client acknowledges that the Phase 2 Early Works Price may be exceeded in the Phase 2 Early Works Term but only to the extent that a portion of the Phase 1 Early Works Price was not expended in the Phase 1 Early Works Term in connection with Phase 1 Early Works. Further, the Client confirms that if either the Phase 1 Early Works Price or the Phase 2 Early Works Price has not been expended by the Contractor, then the Contractor may include the costs incurred in respect of the insurance coverage obtained for the Phase 2 Early Works, but only if this Agreement is terminated and costs are incurred for terminating any insurance coverage that was bound in the Phase 2 Early Works Term.

ATTACHMENT G INSURANCE

PHASE 2 CONSTRUCTION PERIOD INSURANCE REQUIREMENTS

“All Risks” Builder’s Risk Insurance

During the Phase 2 Early Works Term, Macquarie shall, at its own expense, take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, course of construction insurance against “all risks” of physical loss or damage except as otherwise mutually agreed to by the parties, including delay in start-up covering all materials, property, structures and equipment purchased for, entering into or forming part of the NG-KIH System, while located anywhere within the United States of America during construction, erection, installation and testing of the NG-KIH System, which will include the following terms:

- coverage in an amount not less than \$100,000,000 per occurrence and in the aggregate to replace the NG-KIH System to a minimum of all applicable codes, subject to the following principle extensions and sublimits:
- replacement cost valuation (property);
- most recent technology replacement cost valuation (equipment);
- flood (to policy limit with annual aggregate permitted);
- natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate permitted);
- for property insured under the policy and stored at an off-site location or in transit in the United States of America – minimum \$10,000,000 sublimit;
- the full value of all materials and equipment forming part of the NG-KIH System lifted on-site by cranes during the Construction;
- professional fees – minimum \$2,500,000 sublimit;
- firefighting expenses – minimum \$250,000 sublimit;
- debris removal and clean up – minimum \$1,000,000 sublimit;
- expediting expenses – limited to 25% of damage/claim, subject to maximum \$2,000,000 sublimit;
- extra and expediting expenses – maximum \$5,000,000 sublimit;

- change in ordinance, including demolition, increased cost of repairs and replacement – minimum \$15,000,000 sublimit;
- valuable papers – minimum \$500,000 sublimit;
- accounts receivable;
- contamination clean-up or removal – minimum \$250,000 sublimit;
- \$31.2 million of recurring soft costs;
- margin of profit for contractors;
- off premises services interruption (minimum 4 weeks);
- civil authority (minimum 4 weeks);
- prevention of ingress / egress (minimum 4 weeks);
- underground services, temporary buildings and structures, temporary boilers and pressure vessels, scaffolding, false work, forms, excavation, site preparation, landscaping and similar work;
- electronic data processing equipment and media, including the cost to restore from the application of by-laws or ordinances;
- non-vitiation;
- waiver of subrogation in favor of all named and unnamed insureds, including but not limited to Project Co, the Authority, Operations Co, the Project Contractors, the Collateral Agent, the Sub-Contractors, consultants and design professionals, except where a loss is caused by or resulting from any error in the Design or any other design professional error or omission; and
- permit use and occupancy of the incomplete NG-KIH System by Project Co, Operations Co, the Project Contractors, the Sub-Contractors and the Authority prior to the relevant Site Completion Date, Lateral Completion Date or Ring Completion Date, as applicable;
- delay in start-up coverage: in an amount not less than \$31.2 million sufficient to compensate Project Co for additional capital payments, additional interest for the extension of financing necessary for the completion of the Design and Construction, legal and accounting expenses, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed operation and maintenance expenses, additional commissions, advertising, margin of profit for Operations Co,

caused by the delay in Site Completion, Ring Completion or System Completion resulting from any perils insured under (a) above;

- having an indemnity period not less than 12 months in respect of the NG-KIH System; and
- having a waiting period of not greater than 14 days;
- deductibles, per occurrence, not exceeding the following amounts;
- flood – \$500,000;
- earthquake – \$250,000;
- LEG 3 – \$250,000;
- for all other insured perils – \$100,000; and
- if more than one event occurs, only the highest deductible applies;

Include, as named insureds, as their interests may appear the following entities: KentuckyWired Infrastructure Company, Inc. (“Project Co”); The Commonwealth of Kentucky (referred to herein as the Commonwealth); KentuckyWired Operations Company, LLC (“Operations Co”); NG-KIH Design-Builder LLC (the joint venture to be formed by the DB Contractors and also referred to as the Design-Builder in connection with the Project); LTS Kentucky Managed Technical Services LLC (also referred to as the Service Provider in connection with the Project; and all sub-contractors of the Design-Builder or the Service Provider in connection with the Project, consultants and sub-consultants as their interests may appear.

Include Lender Endorsements substantially in the form agreed to by the parties including, without limitation, naming the U.S. Bank National Association (“Collateral Agent”) as additional insured and loss payee, and, with respect to the delay in start-up coverage referred to above in this Attachment G, name the Client and the Collateral Agent as the exclusive loss payees.

Commercial General Liability Insurance

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, commercial general liability insurance, which will include the following terms:

- coverage in an amount of \$2,000,000 per occurrence and \$4,000,000 in the annual aggregate for bodily injury, death and damage to property, including loss of use thereof, subject to the following principle extensions and sublimits:
- products & completed operations ongoing operations coverage during the warranty period;

- medical payments;
- contractual liability;
- personal injury and advertising;
- cross liability, separation of insureds and/or severability of interests;
- hazardous operation XCU (excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunneling / grading and similar operations;
- waiver of subrogation in favor of all additional insureds as required by contract, including but not limited to Project Co, the Authority, Operations Co, the Project Contractors and the Collateral Agent;
- a deductible not exceeding \$500,000 per occurrence;

Include, as additional insureds, using the appropriate endorsements, KentuckyWired Infrastructure Company, Inc. ("Project Co"), the Commonwealth of Kentucky (also referred to as the Client), and KentuckyWired Operations Company, LLC ("Operations Co").

Worker's Compensation

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, worker's compensation insurance for each employee in conformance with applicable Law, which will include the following terms:

- a voluntary compensation endorsement;
- an alternative employer endorsement;
- an endorsement extending coverage to all states operations on an "in any" basis; and
- if any work is over or adjacent to navigable waters, coverage for any claims arising from the Longshore and Harbor Workers' Compensation Act and/or the Merchant Marine Act of 1920.

Employer's Liability

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, employer's liability insurance, which will include the following terms:

- coverage in the amount of \$1,000,000 per claim and in the aggregate against liability for death, bodily injury, illness or disease for all employees

working on or about any Lands or otherwise engaged in the Design and Construction; and

- a deductible not exceeding \$1,000,000 per claim.

Automobile Liability

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, automobile liability coverage, which will include the following terms:

- coverage in the amount of \$1,000,000 combined single limit, inclusive of defense, for accidental death, bodily injury, and property damage liability arising from the ownership, maintenance or use of all owned, non-owned, and hired vehicles used in the performance of the Design and Construction, including loading and unloading; and
- a deductible not exceeding \$1,000,000 per claim.

Include KentuckyWired Infrastructure Company, Inc., the Commonwealth of Kentucky (also referred to as the Client) and KentuckyWired Operations Company, LLC (“Operations Co”) as additional insureds.

Excess Liability

During the Early Works Phase 2, the Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, umbrella/excess liability insurance in the amount of \$50,000,000 per occurrence/annual aggregate. Such policy or policies shall be excess of and follow form over the primary insurance required in this Schedule 2D.

Professional Liability

During the Early Works Phase 2, DB Contractors will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, which will include the following terms:

- coverage in an amount of not less than \$15,000,000 per claim and in the aggregate (inclusive of defense and related costs and supplementary payments) for all architectural, engineering, land surveying, environmental, landscape architectural, interior design /space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier subject to the following principle extensions:
- primary insurance extension;
- include as insureds any present or former partner, executive officer, director, shareholder of any named insured while acting within their scope of duties for the named insured;

- claim defined as a written or oral demand for money or a written or oral allegation of liability or responsibility for a breach of professional duty in the rendering or failure to render professional services by an insured and resulting from a single error, omission or negligent act;
- lawyer fees and associated expenses incurred in the investigation, defense, settlement, arbitration or litigation of claims;
- duty to defend, even if the allegations are groundless, false or fraudulent;
- a deductible not exceeding \$500,000 per claim.

Contractors Pollution Liability

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, contractor's pollution liability insurance, which will include the following terms:

- coverage in the amount of not less than \$25,000,000 per claim and in the aggregate inclusive of defense and all costs and expenses subject to the following principle extensions:
- third party bodily injury and third party contamination;
- hazardous substances released completed operations period; and
- waiver of subrogation in favor of all additional insureds, including but not limited to any and all indemnified parties where required by contract and the Collateral Agent; and
- a deductible not exceeding \$1,000,000 per claim.

Include, as additional insureds, the following entities: KentuckyWired Infrastructure Company, Inc. ("Project Co"); The Commonwealth of Kentucky (also referred to herein as the "Client"); and KentuckyWired Operations Company, LLC ("Operations Co").

Include Lender Endorsements substantially in the form as mutually agreed to by the parties, including, without limitation, naming the U.S. Bank National Association ("Collateral Agent") as additional insured.

For clarity, the pollution liability insurance shall only include coverage for environmental risks relating to the exacerbation of pre-existing contamination and any new pollutants related to the Project. The remediation of pre-existing contamination shall be the responsibility of the Client.

Employee Dishonesty (Crime)

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, employee dishonesty insurance against the fraudulent acts of employees of KentuckyWired Infrastructure Company, Inc. ("Project Co"), which will include coverage in the amount of not less than \$1,000,000 per claim and will include the following principal extensions:

- broad form money and securities;
- money orders and counterfeit paper;
- depositors' forgery;
- computer fraud and funds transfer fraud;
- audit expenses; and
- credit card forgery.

Attachment H

Design and Construction Protocols

1. RESPONSIBILITIES

1.1 Phase 1 Early Works and Phase 2 Early Works Responsibility

Notwithstanding any other provision of this Agreement, Contractor will:

- (a) have complete responsibility for and control over the Phase 1 Early Works and the Phase 2 Early Works; and
- (b) perform and complete the Phase 1 Early Works and the Phase 2 Early Works in accordance with this Attachment H.

1.2 Grant of License by Client

During the Phase 2 Early Works Term, until termination of the this Agreement, the Client shall grant or shall cause to be granted to Contractor a non-exclusive license of use and access to, on, under and over the Lands and the NG-KIH System to the extent required by Contractor to carry out the Project in accordance with this Agreement (the "License").

For clarity, the Client will be responsible for ensuring that it has or will have such rights and interests in and to the Lands sufficient to permit the grant of the License free and clear of all encumbrances, restrictions or limitations, except for any encumbrances, restrictions or limitations which do not adversely affect, financially or otherwise, the License and the ability of Contractor to perform any of its obligations under this Agreement, including the ability to conduct the Phase 1 Early Works and the Phase 2 Early Works.

1.3 TERMS AFFECTING THE LICENSE GRANT

Without limiting the other provisions of this Attachment, the following terms and conditions apply to the License:

- (a) no legal demise or other interest in land, and no interest in the NG-KIH System or any other improvements, is granted to Contractor or created by this Agreement; and
- (b) the License is non-exclusive and no right to exclusive possession of the Lands or the NG-KIH System is granted to Contractor.

1.4 Deficiencies in Phase 1 Early Works and Phase 2 Early Works

Contractor will, without cost to the Client, correct any Deficiency that becomes apparent at any time during the Phase 1 Early Works or the Phase 2 Early Works.

1.5 Compliance with Laws

Contractor will undertake and perform the Phase 1 Early Works and the Phase 2 Early Works in accordance with applicable Laws, and so that all applicable elements of the Phase 1 Early Works and the Phase 2 Early Works, including all workmanship, construction equipment and materials meet the requirements of applicable Laws.

1.6 Permits for Phase 1 Early Works and Phase 2 Early Works

- (a) Contractor is responsible to obtain all Permits that are required for the performance of the Phase 1 Early Works and the Phase 2 Early Works.
- (b) Contractor assumes all risk and costs arising in relation to all Permits arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits or amendments to Permits as may be required.
- (c) Client will provide Contractor with such information within the Client's possession, and co-operate with Contractor, as Contractor reasonably requires in relation to all Permits.

2. DESIGN

2.1 Additional Design Considerations

During the Phase 1 Early Works Term and the Phase 2 Early Works Term, Contractor will undertake and perform the Design so that the Design is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the Design and Contractor will appoint a design team that:

- (a) is so qualified;
- (b) includes (as required by applicable Law or Customary Industry Practice) licensed or registered professional engineers and architects;
- (c) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Attachment H; and
- (d) has sufficient expertise and experience designing, constructing, operating and maintaining infrastructure in similar environmental and geotechnical conditions as in the Lands.

3. MAKE-READY CONSTRUCTION

3.1 Skilled Workers

Contractor will employ a sufficient number of sufficiently skilled workers to perform the Phase 1 Early Works and the Phase 2 Early Works in compliance with this Attachment

H. Trades and other workers will be licensed or registered as required by applicable Law or Customary Industry Practice.

3.2 Control of Phase 1 Early Works and Phase 2 Early Works

Contractor will have total control of the Phase 1 Early Works and the Phase 2 Early Works and will effectively direct and supervise such work so that it is undertaken in compliance with the terms of this Attachment H. Contractor will be responsible for all construction means, methods, techniques, sequences and procedures with respect to the Phase 1 Early Works and the Phase 2 Early Works and for coordinating the various elements of such work, and nothing in this Attachment H will be interpreted as giving any responsibility for the above to the Client or any representative or agent of the Client.

3.3 Existing Utilities and Services

Contractor will confirm the location of, and protect all existing utilities and services that may be affected by the Phase 1 Early Works or the Phase 2 Early Works.

3.4 Route and Lands Issues

Contractor will:

- (a) perform all Phase 1 Early Works and Phase 2 Early Works activities within lands for which the Contractor has been granted the License in accordance with this Attachment or for which Contractor has otherwise obtained sufficient rights of access;
- (b) if the Contractor performs any Phase 1 Early Works or Phase 2 Early Works-related activities outside of the Lands, without limiting any other provisions of this Agreement, will comply with all relevant Laws.

3.5 Safety

Contractor will be solely responsible for safety, during the Phase 1 Early Works Term and Phase 2 Early Works Term, including the safety of all persons on the Lands and any other location where the Phase 1 Early Works or Phase 2 Early Works is performed (whether on the Lands or any other location, lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, including applicable construction safety legislation, regulations and codes.

3.6 Protection of the Environment and Property

Contractor will:

- (a) follow all environmental protection requirements and restrictions while performing the Phase 1 Early Works and Phase 2 Early Works; and
- (b) protect the Client's property (and any third party's property) from damage caused by the Phase 1 Early Works and Phase 2 Early Works, including buildings, roadways, drainage systems, landscaping, surfaces, services and infrastructure.

4. QUALITY ASSURANCE

4.1 Quality of Phase 1 Early Works and Phase 2 Early Works

Contractor is solely responsible for the quality of the Phase 1 Early Works and the Phase 2 Early Works.

ASSIGNMENT OF MASTER AGREEMENT

THIS ASSIGNMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the “**Authority**”)

AND:

Macquarie Infrastructure Developments LLC

(“**Macquarie**”)

AND:

KentuckyWired Infrastructure Company, Inc.

(“**Project Co**”)

AND:

OpenFiber Kentucky Company, LLC

(the “**Wholesaler**”)

WHEREAS:

- A. Pursuant to RFP 758 1500000003-5 issued July 11, 2014 (as amended from time to time, the “**RFP**”), the Authority selected Macquarie to design, build, finance, operate and maintain the NG-KIH System (the “**Project**”).
- B. On December 22, 2014, the Authority and Macquarie entered into a master agreement (as amended from time to time, the “**Master Agreement**”) in respect of the Project.
- C. On or about the date hereof, the Authority and Project Co will enter into a project agreement (the “**Project Agreement**”) whereby Project Co will agree to design, build, finance, operate and maintain the NG-KIH System, all as more particularly described in the Project Agreement.
- D. On or about the date hereof, Project Co and KentuckyWired Operations Company, LLC (“**Operations Co**”) will enter into a project implementation agreement (the “**Project Implementation Agreement**”) whereby Operations Co will agree to design, build, operate and maintain the NG-KIH System, all as more particularly described in the Project Implementation Agreement.
- E. On or about the date hereof, the Authority, Macquarie, the Wholesaler and Operations Co will enter into a business development agreement (the “**Wholesaler Business Development Agreement**”) in respect of the commercialization of additional capacity

made available by the Project for third party users, all as more particularly described in the Wholesaler Business Development Agreement.

NOW THEREFORE THIS ASSIGNMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Assignment will have the respective meanings given to such terms in the Project Agreement.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, (a) words importing the singular include the plural and vice versa; (b) words importing a particular gender include all genders; (c) the words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively; and (d) in the event that any provision of this Assignment shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Assignment for any party, the provision shall be fully severable and shall not affect the remaining provisions of this Assignment, and this Assignment shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein.

2. ASSIGNMENT AND ASSUMPTION

2.1 Assignment to and Assumption by Project Co

Subject to Section 2.2, Macquarie hereby assigns to Project Co all of the rights, obligations, covenants and liabilities of Macquarie under the Master Agreement. Subject to Section 2.2, Project Co hereby assumes all of the rights, obligations, covenants and liabilities of Macquarie under the Master Agreement and agrees to comply with and be responsible for the performance of all of the obligations, covenants and liabilities of Macquarie under the Master Agreement as if Project Co was the original party thereto in the place of Macquarie.

2.2 Assignment to and Assumption by Wholesaler

Macquarie hereby assigns to the Wholesaler, and the Wholesaler assumes, all of the rights, obligations, covenants and liabilities of Macquarie under the Master Agreement related to the commercialization of additional capacity made available by the Project for third party users, including the obligation to deliver a detailed term sheet related to the Wholesaler Agreement. The Wholesaler hereby assumes all of the rights, obligations, covenants and liabilities of Macquarie under the Master Agreement related to the commercialization of additional capacity made available by the Project for third party users, including the obligation to deliver a detailed term sheet related to the Wholesaler Agreement, and agrees to comply with and be responsible

for the performance of all such obligations, covenants and liabilities of Macquarie under the Master Agreement as if the Wholesaler was the original party thereto in the place of Macquarie.

2.3 Written Agreements

The parties acknowledge and agree that the written agreements between the Parties referred to in Section II of the Master Agreement are the Project Agreement in respect of the Project and the Wholesaler Business Development Agreement in respect of the commercialization of additional capacity made available by the Project for third party users.

3. CONSENT TO ASSIGNMENT

3.1 Consent to Assignment

Pursuant to Section III.17 of the Master Agreement, the Authority hereby consents to the assignment by Macquarie of its rights, obligations, covenants and liabilities under the Master Agreement to Project Co and the Wholesaler.

4. GENERAL

4.1 Law of Agreement

This Assignment is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

4.2 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

4.3 Entire Agreement

Unless otherwise stated in this Assignment, this Assignment constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Assignment. No party has relied on any representation except as expressly set out in this Assignment.

4.4 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Assignment.

4.5 Counterparts

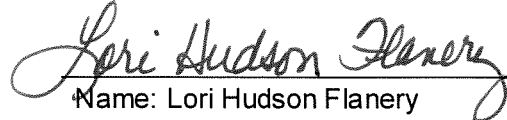
This Assignment may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment so that it will not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Assignment as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per:



Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

**MACQUARIE INFRASTRUCTURE
DEVELOPMENTS LLC**

Per:

Name:

Title:

Per:

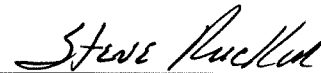
Name:

Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per:



Name: Steve Rucker

Title: Director

I have the authority to bind the corporation.

IN WITNESS WHEREOF the parties hereto have executed this Assignment as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: _____

Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

**MACQUARIE INFRASTRUCTURE
DEVELOPMENTS LLC**

Per: _____



Name: NICK BUTCHER

Title: MANAGER

Per: _____



Name: ANDREW ANCONE

Title: MANAGER

I/We have the authority to bind the corporation.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: _____

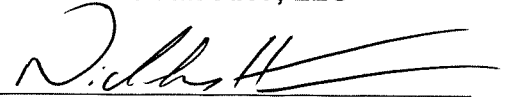
Name: Steve Rucker

Title: Director

I have the authority to bind the corporation.

OPENFIBER KENTUCKY COMPANY, LLC

Per:



Name: NICHOLAS HANIN

Title: MANAGER


Per:

Name: _____

Title: _____

I/We have the authority to bind the corporation.

OPENFIBER KENTUCKY COMPANY, LLC

Per: 
Name: Eliot Jamison
Title: Manager

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

**DESIGN-BUILDER COLLATERAL AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT**

**The Commonwealth of Kentucky
(the “Authority”)
and
NG-KIH Design-Build LLC
(the “Design-Builder”)
and
KentuckyWired Infrastructure Company, Inc.
 (“Project Co”)
and
KentuckyWired Operations Company, LLC
 (“Operations Co”)**

Dated: September 3, 2015

TABLE OF CONTENTS

1.	INTERPRETATION	2
1.1	Definitions	2
1.2	Construction and Interpretation	3
1.3	Law of Agreement	3
1.4	Venue	3
2.	TERMINATION NOTICE AND AUTHORITY TERMINATION	3
2.1	Termination Notice	3
2.2	Survival of Design-Build Agreement	3
2.3	Suspension Notice	3
3.	STEP-IN AND STEP-OUT	4
3.1	Step-In Notice	4
3.2	Lenders' Step-In Rights	5
3.3	Notice of Obligations and Step-In Undertaking	5
3.4	Update of Obligations	5
3.5	Delivery of Step-In Undertaking	5
3.6	Limits on Authority Liability on Step-In	6
3.7	Non-Delivery of the Step-In Undertaking	6
3.8	Effect of Step-In Undertaking	6
3.9	Step-Out	7
3.10	Effect of Step-Out	7
3.11	Payment by Operations Co	7
4.	TRANSFER	7
4.1	Proposed Substitute	7
4.2	Consent to Transfer	7
4.3	Grant of Consent	8
4.4	Consent Withheld	8
4.5	Implementation of Transfer	9
4.6	Effect of Transfer	9
4.7	Termination After Transfer	9
5.	RIGHTS AND OBLIGATIONS UNDER THE DESIGN-BUILD AGREEMENT	10
5.1	Rights of Termination	10
5.2	Operations Co's Obligations to Continue	10
6.	REVOCAION OF NOTICES	11
7.	ASSIGNMENT	11
7.1	Binding on Successors and Assigns	11
7.2	Restriction on Assignment	11

8.	GENERAL	11
8.1	Notices.....	11
8.2	Entire Agreement	13
8.3	Waiver	13
8.4	No Partnership or Agency	14
8.5	Conflicting Agreements.....	14
8.6	Remedies Cumulative.....	14
8.7	Counterparts	14
8.8	Disputes.....	14

DESIGN-BUILDER COLLATERAL AGREEMENT

THIS DESIGN-BUILDER COLLATERAL AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the “**Authority**”)

AND:

NG-KIH Design-Build LLC

(the “**Design-Builder**”)

AND:

KentuckyWired Infrastructure Company, Inc.

(“**Project Co**”)

AND:

KentuckyWired Operations Company, LLC

(“**Operations Co**”)

WHEREAS:

- A. The Authority and Project Co have entered into an agreement dated as of September 3, 2015 (the “**Project Agreement**”) whereby Project Co has agreed to design, build, finance, operate and maintain the NG-KIH System (the “**Project**”), all as more particularly described in the Project Agreement.
- B. Project Co and Operations Co have entered into an agreement dated as of September 3, 2015 (the “**Project Implementation Agreement**”) whereby Operations Co has agreed to design, build, operate and maintain the NG-KIH System, all as more particularly described in the Project Implementation Agreement.
- C. Operations Co and the Design-Builder have entered into an agreement dated as of September 3, 2015 (the “**Design-Build Agreement**”) whereby the Design-Builder has agreed to carry out the Design and the Construction.
- D. It is a condition of the Design-Build Agreement that the Design-Builder enter into this Design-Builder Collateral Agreement with the Authority, Project Co and Operations Co.
- E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Design-Builder Collateral Agreement.

Design-Builder Collateral Agreement
NG-KIH Project

F. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Design-Builder Collateral Agreement.

NOW THEREFORE THIS DESIGN-BUILDER COLLATERAL AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Design-Builder Collateral Agreement will have the respective meanings given to such terms in the Project Agreement and:

“Design-Build Agreement” has the meaning set out in Recital C;

“Design-Builder Collateral Agreement” means this agreement, as amended, supplemented or restated from time to time;

“Project” has the meaning set out in Recital A;

“Project Agreement” has the meaning set out in Recital A;

“Project Implementation Agreement” has the meaning set out in Recital B;

“Proposed Transfer Date” has the meaning set out in Section 4.1;

“Proposed Transfer Notice” has the meaning set out in Section 4.1;

“Proposed Step-In Date” has the meaning set out in Section 3.1;

“Proposed Substitute” has the meaning set out in Section 4.1;

“Step-In Date” means the date the Authority delivers the Step-In Undertaking;

“Step-In Notice” has the meaning set out in Section 3.1;

“Step-In Period” means the period commencing on the Step-In Date and ending on the earliest of:

- (a) the Step-Out Date;
- (b) the Transfer Effective Date; and
- (c) the termination date of the Design-Build Agreement as permitted under Section 3.8;

“Step-In Undertaking” has the meaning set out in Section 3.5;

“**Step-Out Date**” has the meaning set out in Section 3.9;

“**Termination Notice**” has the meaning set out in Section 2.1;

“**Transfer Agreement**” has the meaning set out in Section 4.5(b); and

“**Transfer Effective Date**” means the effective date of the Transfer Agreement.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, this Design-Builder Collateral Agreement will be interpreted according to the provisions set out in Sections 2 and 3(b) of Schedule 1 [Definitions and Interpretation] to the Project Agreement, except that references in such section to Project Co will also be deemed to be references to Operations Co and the Design-Builder.

1.3 Law of Agreement

This Design-Builder Collateral Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

1.4 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Termination Notice

The Design-Builder will not terminate the Design-Build Agreement without first giving the Authority at least 45 days’ notice specifying the grounds for such termination (the “**Termination Notice**”).

2.2 Survival of Design-Build Agreement

Notwithstanding any provision of the Design-Build Agreement to the contrary, on termination of the Project Agreement by the Authority, the parties agree that the Design-Build Agreement will not come to an end, except in accordance with the terms of this Design-Builder Collateral Agreement.

2.3 Suspension Notice

The Design-Builder will not exercise any right it may have under the Design-Build Agreement to temporarily suspend its performance thereunder, unless:

- (a) the Design-Builder first delivers a notice (a “**Suspension Notice**”) to the Authority detailing the event that has occurred that entitles it to exercise such

Design-Builder Collateral Agreement
NG-KIH Project

right and stating that it intends to exercise such suspension right, together with details of any sums which are due and payable but unpaid by Operations Co and any other material obligations or liabilities which should have been performed or discharged by Operations Co under the Design-Build Agreement, in each case as at the date of such Suspension Notice; and

(b) both:

- (1) the Design-Builder has confirmed in writing to the Authority that the Senior Secured Creditors have not agreed to pay the Design-Builder in accordance with the Design-Build Agreement for work performed by it during the period commencing on the date (the “**Suspension Date**”) when it, but for the provisions of this Section 2.3, would have been entitled to suspend its performance under the Design-Build Agreement and ending no sooner than 45 days after the Suspension Date; and
- (2) within 5 Business Days of receipt of confirmation from the Design-Builder pursuant to Section 2.3(b)(1), the Authority has not agreed, by written notice to the Design-Builder, to pay the Design-Builder in accordance with the Design-Build Agreement for work performed by it during the period (the “**No Suspension Period**”) commencing on the Suspension Date and ending on the earliest to occur of:
 - (A) the date on which the Senior Secured Creditors exercise any of their step-in or transfer rights pursuant to and in accordance with, respectively, Section 4 or Section 6 of the Lenders’ Remedies Agreement;
 - (B) the date from which the Senior Secured Creditors agree to pay the Design-Builder as contemplated under Section 2.3(b)(1); and
 - (C) the Step-In Date,

except that, if the Authority provides a written notice to the Design-Builder pursuant to Section 2.3(b)(2) and thereafter fails to make payment to the Design-Builder of any undisputed amount payable pursuant to and in accordance with the Design-Build Agreement for work performed by the Design-Builder during the No Suspension Period, the No Suspension Period will terminate and the Design-Builder may thereafter exercise any right it may have to temporarily suspend its performance under the Design-Build Agreement.

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the Authority has terminated the Project Agreement in accordance with its terms or if the Authority has received a Termination Notice, the Authority may give notice to the Design-Builder (a “**Step-In Notice**”) of the intention of the Authority to issue a Step-In Undertaking on a specified date (the “**Proposed Step-In Date**”) provided that such Proposed Step-In Date is:

- (a) no later than 30 days after termination of the Project Agreement if the Project Agreement was terminated by the Authority; and
- (b) no later than 30 days after delivery of the Termination Notice to the Authority.

3.2 Lenders' Step-In Rights

The Authority will not issue a Step-In Notice at any time that the Senior Secured Creditors are validly exercising any Step-In rights with respect to the Project under:

- (a) the Lenders' Remedies Agreement;
- (b) any Senior Financing Agreement; or
- (c) any direct agreement entered into between the Design-Builder and the Senior Secured Creditors with respect to the Design-Build Agreement,

and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Senior Secured Creditors are no longer exercising, or are no longer permitted to exercise, such rights under the Lenders' Remedies Agreement, any Senior Financing Agreement or any such direct agreement. The Design-Builder will provide copies of all relevant notices delivered by it to, or to it by, the Senior Secured Creditors in respect of the exercise of such rights so as to enable the Authority and the Design-Builder to determine, in accordance with this Section 3.2 the notice periods and timelines set out in Section 3.1.

3.3 Notice of Obligations and Step-In Undertaking

Not less than 5 Business Days prior to the Proposed Step-In Date, the Design-Builder will give notice to the Authority of any sums that are due and payable but unpaid by Operations Co and of any other material obligations or liabilities that should have been performed or discharged by Operations Co under the Design-Build Agreement, in each case as at the date of the Step-In Notice.

3.4 Update of Obligations

Not less than 2 Business Days prior to the Proposed Step-In Date, the Design-Builder will give notice to the Authority of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On or before the Proposed Step-In Date, the Authority may deliver to the Design-Builder a written undertaking to the Design-Builder (the "**Step-In Undertaking**") undertaking to the Design-Builder to:

- (a) pay or procure the payment to the Design-Builder, within 15 Business Days of demand by the Design-Builder, of any sum due and payable or accruing due and payable but unpaid by Operations Co to the Design-Builder under the Design-Build Agreement before the Step-In Date, provided that the Design-Builder has notified the Authority of such amounts in accordance with Sections 3.3 and 3.4;

- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Operations Co under the Design-Build Agreement that will have fallen due for performance or discharge before the Step-In Date and of which the Authority has been notified by the Design-Builder in accordance with Sections 3.3 and 3.4;
- (c) pay or procure the payment of any sum due and payable by Operations Co under the Design-Build Agreement as a result of either any work or services performed during the Step-In Period or any act or omission occurring during the Step-In Period which arises from any act or omission occurring after the Step-In Date; and
- (d) perform or discharge or procure the performance or discharge of any obligations of Operations Co under the Design-Build Agreement as a result of any act or omission occurring during the Step-In Period that arises from any act or omission occurring after the Step-In Date.

3.6 Limits on Authority Liability on Step-In

The Authority will not be required to assume any liability under a Step-In Undertaking for any outstanding obligations or liabilities of Operations Co to the Design-Builder:

- (a) that existed as of the Step-In Date; and
- (b) of which the Authority has not been notified pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the Authority does not deliver the Step-In Undertaking on or before the Proposed Step-In Date, the Step-In Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-In Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-In Period, the Design-Builder will continue to observe and perform its duties and obligations under the Design-Build Agreement and will only be entitled to exercise its rights of termination under the Design-Build Agreement:

- (a) by reference to a default under the Design-Build Agreement arising during the Step-In Period (other than to the extent that an Operations Co Insolvency Event constitutes such a default), provided that no event of default by Project Co under the Project Agreement or Operations Co under the Project Implementation Agreement will entitle the Design-Builder to exercise such rights of termination during the Step-In Period;
- (b) if the Authority fails to pay when due any amount owed to the Design-Builder or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-In Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Design-Build Agreement by the Authority or the Design-Builder.

3.9 Step-Out

The Authority may, at any time, terminate the Step-In Period by giving the Design-Builder at least 20 Business Days' notice specifying the date on which the Step-In Period will terminate (the "**Step-Out Date**").

3.10 Effect of Step-Out

The Authority will be released from the Step-In Undertaking on the expiration or termination of the Step-In Period, provided that the Authority has performed and discharged in full, or procured the performance and discharge in full, of any of the Authority's obligations under the Step-In Undertaking arising on or before the expiration or termination of the Step-In Period.

3.11 Payment by Operations Co

Operations Co will pay to the Authority on demand any amounts of which the Authority has been notified by the Design-Builder pursuant to Sections 3.3 and 3.4 and that were paid by the Authority or a Proposed Substitute to the Design-Builder pursuant to this Design-Builder Collateral Agreement. Any such amounts will constitute amounts due and payable by Operations Co to the Authority under this Design-Builder Collateral Agreement.

4. TRANSFER

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-In Notice pursuant to Section 3.1 or at any time during the Step-In Period, the Authority may give notice (a "**Proposed Transfer Notice**") to the Design-Builder that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Operations Co under the Design-Build Agreement and specifying a date (the "**Proposed Transfer Date**"):

- (a) if the Authority has terminated the Project Agreement but has not given a Step-In Notice, no later than 15 Business Days after termination of the Project Agreement;
- (b) if the Design-Builder has given a Termination Notice but the Authority has not given a Step-In Notice, no later than expiration of the Termination Notice; and
- (c) if the Authority has given a Step-In Notice (whether or not the Step-In Period has commenced), no later than 20 Business Days after the date of the Proposed Transfer Notice.

Subject to Section 3, the Design-Builder will not be entitled to terminate the Design-Build Agreement during the notice period specified in a Proposed Transfer Notice.

4.2 Consent to Transfer

If the Proposed Transfer Notice specifies the Authority as the Proposed Substitute, the Design-Builder's consent to the transfer will be deemed to have automatically been given. If the Proposed Substitute is not the Authority, a transfer in accordance with a Proposed Transfer

Notice will only be effective if the Design-Builder consents to that transfer in writing in accordance with Section 4.3, and the Authority will (as soon as practicable) supply the Design-Builder with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Design-Build Agreement.

4.3 Grant of Consent

The Design-Builder may withhold or delay consent to a transfer only if the Proposed Substitute is not the Authority and the Authority has failed to show to the Design-Builder's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Design-Build Agreement; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Operations Co under the Design-Build Agreement.

Within 5 Business Days of the receipt of a Proposed Transfer Notice and all information required under Section 4.2, the Design-Builder will notify the Authority in writing that it has consented to the transfer or, if the Design-Builder has not consented, will provide to the Authority an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Design-Builder withholds its consent to a Proposed Transfer Notice, the Authority may give one or more subsequent Proposed Transfer Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute that the Authority reasonably believes would fulfill the requirements of Sections 4.3, provided that only one Proposed Transfer Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-In Notice has not been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and

- (b) if a Step-In Notice has been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(c).

4.5 Implementation of Transfer

If the Design-Builder consents or is deemed to have consented to a transfer pursuant to a Proposed Transfer Notice, then on the Proposed Transfer Date:

- (a) the Proposed Substitute will become a party to the Design-Build Agreement in place of Operations Co and, thereafter, will be treated as if it was and had always been named as a party to the Design-Build Agreement in place of Operations Co; and
- (b) the Design-Builder, Operations Co and the Proposed Substitute will enter into a transfer agreement (the “**Transfer Agreement**”) and any other requisite agreements, in form and substance satisfactory to the Design-Builder, acting reasonably, pursuant to which:
 - (1) the Proposed Substitute will be granted all of the rights of Operations Co under the Design-Build Agreement; and
 - (2) the Proposed Substitute will assume all of the obligations and liabilities of Operations Co under the Design-Build Agreement.

4.6 Effect of Transfer

On and after the Transfer Effective Date:

- (a) the Design-Builder will owe its obligations under the Design-Build Agreement, whether arising before, on or after such date, to the Proposed Substitute; and
- (b) if the Authority has entered into a Step-In Undertaking, the Authority will be released from the Step-In Undertaking, provided that all obligations of the Authority under the Step-In Undertaking that have accrued up to the Transfer Effective Date have been fully and unconditionally discharged.

The Authority and the Design-Builder will use reasonable efforts to agree to any amendments to the Design-Build Agreement reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Transfer Effective Date.

4.7 Termination After Transfer

After the Transfer Effective Date, the Design-Builder will only be entitled to exercise its rights of termination under the Design-Build Agreement:

- (a) in respect of any Operations Co Event of Default arising after that date in accordance with the Design-Build Agreement; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities referred to in Section 4.5(b)(2) assumed by it under the Transfer Agreement that

relate to matters arising prior to the end of any Step-In Period within 15 Business Days following the Transfer Effective Date.

5. RIGHTS AND OBLIGATIONS UNDER THE DESIGN-BUILD AGREEMENT

5.1 Rights of Termination

If:

- (a) no Step-In Notice or Proposed Transfer Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the Authority;
- (b) a Step-In Undertaking is not issued on or before the Proposed Step-In Date;
- (c) the Step-In Notice is withdrawn or, pursuant to Section 3.7, is deemed to have been withdrawn;
- (d) the Step-In Period ends before the occurrence of the Transfer Effective Date;
- (e) in the absence of a Step-In Undertaking, the Design-Builder reasonably withholds its consent to a transfer pursuant to a Proposed Transfer Notice, in accordance with Section 4.3, and does not subsequently grant consent to a transfer in accordance with Section 4.4 on or before the Proposed Transfer Date;
- (f) in the absence of a Step-In Undertaking, a Transfer Agreement is not entered into on the Proposed Transfer Date;
- (g) the Design-Builder is entitled to terminate the Design-Build Agreement under Section 3.8 or 4.7; or
- (h) the Authority exercises its right to Step-Out under Section 3.9, then on the Step-Out Date,

the Design-Builder may:

- (i) exercise all of its rights under the Design-Build Agreement and act upon any and all grounds for termination available to it in relation to the Design-Build Agreement whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Operations Co.

5.2 Operations Co's Obligations to Continue

Until completion of a transfer pursuant to Section 4.5, Operations Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Design-Build Agreement notwithstanding:

- (a) the service of a Step-In Notice or the issue of a Step-In Undertaking or the expiration of the Step-In Period or the release of a Step-In Undertaking;

- (b) the service of a Proposed Transfer Notice; or
- (c) any other provision of this Design-Builder Collateral Agreement.

6. REVOCATION OF NOTICES

A Termination Notice and a Step-In Notice may each be revoked (in writing to the recipient) by the party giving them before the expiration of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

This Design-Builder Collateral Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Design-Builder Collateral Agreement without the prior consent of the other parties hereto (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Authority will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with Section 16.4 of the Project Agreement; and
- (b) the Design-Builder will assign or transfer all its rights and obligations under this Design-Builder Collateral Agreement to any person to whom it assigns or transfers all its rights and obligations under the Design-Build Agreement in accordance with the terms of the Design-Build Agreement and the Project Agreement.

8. GENERAL

8.1 Notices

Any notice or communication required or permitted to be given under this Design-Builder Collateral Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary
Finance and Administration Cabinet
702 Capitol Avenue

Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

If to the Design-Builder:

NG-KIH Design-Build LLC
c/o Overland Contracting Inc.
10950 Grandview #34
Overland Park, KS 66210

Attention: Dean Siegrist
Email: siegristDA@bv.com


with a copy to:

LTS Solutions (USA) LLC
9330 Corporate Drive, Suite 407
Selma, TX 78108

Attention: Allen Hemrich
Email: Allen.Hemrich@ledcor.com

If to Project Co:

KentuckyWired Infrastructure Company, LLC


Attention: Lori Hudson Flanery, Director
Email: 

with a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

If to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

8.2 Entire Agreement

Unless otherwise stated in this Design-Builder Collateral Agreement, this Design-Builder Collateral Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Design-Builder Collateral Agreement. No party has relied on any representation except as expressly set out in this Design-Builder Collateral Agreement.

8.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof, and no waiver will be effective unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Design-Builder Collateral Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Design-Builder Collateral Agreement.

8.4 No Partnership or Agency

Nothing in this Design-Builder Collateral Agreement will be construed as creating a partnership or as constituting the Design-Builder as an agent of the Authority. The Design-Builder will not hold itself out as having any authority or power to bind the Authority in any way.

8.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Design-Builder Collateral Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

8.6 Remedies Cumulative

The rights and remedies under this Design-Builder Collateral Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.7 Counterparts

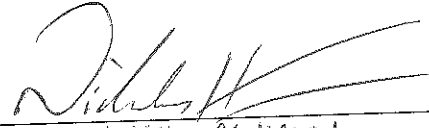
This Design-Builder Collateral Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Design-Builder Collateral Agreement so that it will not be necessary in making proof of this Design-Builder Collateral Agreement to produce or account for more than one such counterpart.

8.8 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Design-Builder Collateral Agreement or any disagreement between any of the parties with respect to any matter that, by the express terms of this Design-Builder Collateral Agreement, is to be agreed upon by the parties will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in the Project Agreement, provided that, for greater certainty, the parties acknowledge that, during a Step-In Period or after the Transfer Effective Date, any dispute with respect to any of the subject matters of the Design-Build Agreement will be resolved in accordance with the applicable dispute resolution procedure thereunder.

KENTUCKYWIRE OPERATIONS COMPANY,
LLC

Per:



Name: NICHOLAS HANN

Title: MANAGER

Per:

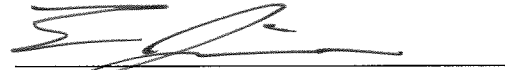
Name:

Title:

I/We have the authority to bind the company.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per:



Name: Eliot Jamison

Title: Manager

Per:

Name:

Title:

I/We have the authority to bind the company.

IN WITNESS WHEREOF the parties have executed this Design-Builder Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: 

Name: Lori Hudson Flanery
Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

NG-KIH DESIGN-BUILD LLC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the company.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: 
Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

IN WITNESS WHEREOF the parties have executed this Design-Builder Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per:

Name: Lori Hudson Flanery
Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

NG-KIH DESIGN-BUILD LLC

Per:

Name:
Title:

Per:



Name:
Title:

I/We have the authority to bind the company.

**KENTUCKYWIRE INFRASTRUCTURE
COMPANY, INC.**

Per:

Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

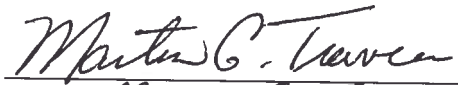
IN WITNESS WHEREOF the parties have executed this Design-Builder Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: _____
Name: Lori Hudson Flanery
Title: Secretary, Kentucky Finance & Administration Cabinet

I have the authority to bind the Commonwealth.

NG-KIH DESIGN-BUILD LLC

Per:  _____
Name: MARTIN G. TRAVERS
Title: Principle Member



Per: _____
Name:
Title:

I/We have the authority to bind the company.

KENTUCKYWIRED INFRASTRUCTURE COMPANY, INC.

Per: _____
Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

**LENDERS' REMEDIES AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT**

**The Commonwealth of Kentucky
(the "Authority")**

and

**U.S. Bank National Association
(the "Collateral Agent")**

and

**KentuckyWired Infrastructure Company, Inc.
("Project Co")**

and

**KentuckyWired Operations Company, LLC
("Operations Co")**

Dated: September 3, 2015

TABLE OF CONTENTS

1.	INTERPRETATION	2
1.1	Definitions	2
1.2	Construction and Interpretation	6
1.3	Law of Agreement	8
1.4	Venue	8
2.	CONSENT TO SECURITY	8
2.1	Consent	8
2.2	No Notice of Other Security	9
2.3	Authority Obligations	9
2.4	Rights not Prejudiced	9
3.	NOTICES	9
3.1	Termination Notice	9
3.2	Notice of Operations Co Financing Default	10
3.3	Indicative Notice	10
3.4	Collateral Agent's Withdrawal Notice	10
3.5	Notice of Antecedent Liabilities	10
3.6	Subsequent Authority Notice of Liabilities	11
3.7	No Right to Terminate	11
3.8	Payments to Account Designated by Collateral Agent	11
3.9	Operations Co to Pursue Remedies	11
4.	STEP-IN	11
4.1	Step-In Notice	11
4.2	Contents of Step-In Notice	12
4.3	One Step-In Period	12
4.4	Appointed Representative Rights	12
4.5	Authority Right to Terminate	12
5.	STEP-OUT	13
5.1	Step-Out Notice	13
5.2	Expiration of Step-In Period	13
5.3	Project Co and Operations Co Remain Bound	14
6.	SENIOR SECURED CREDITOR REPLACEMENT OF OPERATIONS CO	14
6.1	Operations Co Transfer Notice	14
6.2	Authority Consent	14
6.3	Withholding of Consent	14
6.4	Terms of Transfer	15
7.	INSURANCE	15

7.1	Release of Insurance Proceeds	15
8.	COVENANTS	16
8.1	Authority Covenants.....	16
8.2	Project Co Covenants	17
8.3	Collateral Agent Covenants	17
8.4	Operations Co Covenant.....	18
9.	STEP-IN RIGHTS UNDER PROJECT CONTRACTS	18
9.1	Priority of Step-In Rights under Project Contracts	18
9.2	Step-in from Termination Date	19
9.3	Release of Security.....	19
9.4	Retention of Security for Deficiency	19
9.5	Assignment of Project Contracts by Senior Secured Creditors.....	20
10.	NEW AGREEMENTS	20
10.1	Applicability of Section 10	20
10.2	Termination of Project Implementation Agreement and Replacement with New Agreements.....	20
10.3	Deliveries to Project Co.....	20
10.4	Authority to Enter into New Agreements	20
10.5	Conditions to New Agreements Becoming Effective.....	21
10.6	Assignment to Collateral Agent or other Senior Secured Creditors' Representative	21
10.7	Terms of New Agreements	22
11.	REPRESENTATIONS AND WARRANTIES	22
11.1	Representations and Warranties by the Authority	22
11.2	Representations and Warranties by Project Co.....	23
11.3	Representations and Warranties by Operations Co	23
11.4	Representations and Warranties by the Collateral Agent	24
12.	ASSIGNMENT.....	25
12.1	Restriction on Assignment	25
12.2	Assignment by Collateral Agent	25
12.3	Assignment by Senior Secured Creditors.....	25
12.4	Assignment by Authority	25
12.5	New Agreement	25
13.	GENERAL	25
13.1	Term	25
13.2	Conflict or Inconsistency	26
13.3	Entire Agreement	26
13.4	Waiver	26
13.5	Counterparts	26

13.6	Confidentiality	26
13.7	Notices.....	26
13.8	No Partnership or Agency	28
13.9	Remedies Cumulative.....	28
13.10	Disputes.....	28

LENDERS' REMEDIES AGREEMENT

THIS LENDERS' REMEDIES AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the "**Authority**")

AND:

U.S. Bank National Association

in its capacity as collateral agent on behalf of itself and the other Secured Parties
(the "**Collateral Agent**")

AND:

KentuckyWired Infrastructure Company, Inc.

("Project Co")

AND:

KentuckyWired Operations Company, LLC

("Operations Co")

WHEREAS:

- A. The Authority and Project Co have entered into the Project Agreement (as defined below).
- B. Project Co and Operations Co have entered into the Project Implementation Agreement (as defined below).
- C. Pursuant to the Senior Financing Agreements, the Senior Secured Creditors have agreed, subject to the terms and conditions contained therein, to make available to Project Co the credit facility specified therein to finance certain costs to be incurred and expenditures to be made by Project Co in connection with the Project.
- D. It is a condition precedent to the obligations of the Senior Secured Creditors under the Senior Financing Agreements that this Lenders' Remedies Agreement be executed and delivered by the parties.
- E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Lenders' Remedies Agreement. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Lenders' Remedies Agreement.

NOW THEREFORE THIS LENDERS' REMEDIES AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Lenders' Remedies Agreement will have the respective meanings given to such terms in the Project Agreement and:

"Antecedent Liabilities" means, as at any time:

- (a) all amounts due and payable by Project Co to the Authority under the Project Agreement or by Operations Co to Project Co under the Project Implementation Agreement, as applicable, at such time; and
- (b) all obligations which should have, but have not, been performed and outstanding liabilities of Project Co under the Project Agreement or Operations Co under the Project Implementation Agreement, as applicable, in each case at such time;

"Appointed Representative" means the Senior Secured Creditors' Representative identified in a Step-In Notice;

"Bankruptcy Proceedings" means:

- (a) any:
 - (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
 - (2) appointment of an Insolvency Officer in connection with;
 - (3) order or resolution passed in connection with; or
 - (4) formal agreement reached regarding,
a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co or Operations Co (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or
- (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of Project Co or Operations Co or any other similar process or event occurring in relation to Project Co's or Operations Co's assets in any other jurisdiction;

“Collateral Agency and Account Agreement” means the collateral agency and account agreement dated as of September 1, 2015 between Project Co, U.S. Bank National Association, as senior bonds trustee, U.S. Bank National Association, as subordinate bonds trustee, and the Collateral Agent;

“Collateral Agent’s Withdrawal Notice” has the meaning set out in Section 3.4;

“Deficiency” has the meaning set out in Section 9.4(b);

“Discharged Obligations” has the meaning set out in Section 6.4;

“Discharged Rights” has the meaning set out in Section 6.4;

“Event of Default” has the meaning set out in the Collateral Agency and Account Agreement;

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Transfer Notice given in accordance with Section 3.3;

“Indicative Notice Period” means:

- (a) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:
 - (1) the Step-In Date;
 - (2) the date of delivery of a Collateral Agent’s Withdrawal Notice; and
 - (3) 45 Business Days following the date of delivery of such Indicative Step-In Notice; or
- (b) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:
 - (1) the date on which any transfer in accordance with Section 6.1 becomes effective;
 - (2) the date of delivery of a Collateral Agent’s Withdrawal Notice; and
 - (3) 45 Business Days following the date of delivery of such Indicative Transfer Notice;

“Indicative Step-In Notice” has the meaning given to it in Section 3.3;

“Indicative Transfer Notice” has the meaning given to it in Section 3.3;

“Insolvency Officer” means any trustee, receiver, receiver and manager, liquidator, sequestrator, administrator or other custodian in connection with the insolvency of Project Co or Operations Co or any of their respective assets;

“Insurance Proceeds Account” has the meaning given to it in the Collateral Agency and Account Agreement;

“Lenders’ Remedies Agreement” means this lenders’ remedies agreement, as amended, supplemented or restated from time to time;

“Liability Report” has the meaning given in Section 3.5;

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

- (a) financial liabilities; or
- (b) non-financial liabilities, the breach of which will trigger any remedy of the Authority under Section 12 (Project Co Events of Default) of the Project Agreement or Project Co under Section 12 (Operations Co Events of Default) of the Project Implementation Agreement, as applicable;

“New Agreements” has the meaning given in Section 10.2;

“Notice Period” means:

- (a) in respect of a Project Co Event of Default or an Operations Co Event of Default, as applicable, the Termination Notice Period; and
- (b) in respect of an Operations Co Financing Default, the Indicative Notice Period;

“Operations Co Event of Default” has the meaning set out in the Project Implementation Agreement;

“Operations Co Financing Default” has the meaning set out in the Collateral Agency and Account Agreement;

“Project Agreement” means the project agreement dated September 3, 2015 between the Authority and Project Co relating to the design, construction, financing, operation and maintenance of the NG-KIH System;

“Project Documents” means, collectively, the Project Agreement, the Project Implementation Agreement and any other agreement (other than this Lenders’ Remedies Agreement) entered into from time to time by the Authority and Project Co (with or without other parties) or by Project Co and Operation Co (with or without other parties) in connection with the Project, and **“Project Document”** means any one of the foregoing;

“Project Contract” means either the Design-Build Agreement or the Services Contract, and **“Project Contracts”** means both of them;

“Project Contractor” means either the Design-Builder or the Service Provider, and **“Project Contractors”** means both of them;

“Project Implementation Agreement” means the project implementation agreement dated September 3, 2015 between Project Co and Operations Co relating to the design, construction, operation and maintenance of the NG-KIH System;

“Reported Antecedent Liabilities” means the Antecedent Liabilities identified in the Liability Report;

“Revocation of Termination Notice” means a written notice from the Authority or Project Co, as applicable, to the Collateral Agent revoking a Termination Notice;

“Security Documents” has the meaning as set out in the Collateral Agency and Account Agreement;

“Senior Debt Discharge Date” means the date on which all amounts due and owing to the Senior Secured Creditors under the Senior Financing Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Secured Creditors are under no further obligation to advance under the relevant Senior Financing Agreement;

“Senior Secured Creditors” has the meaning set out in the Collateral Agency and Account Agreement;

“Senior Secured Creditors’ Representative” means:

- (a) the Collateral Agent;
- (b) a receiver or receiver and manager of Operations Co appointed under or in connection with the Security Documents; or
- (c) any other Person approved by the Authority (such approval not to be unreasonably withheld or delayed);

“Step-In Date” means 5 Business Days after delivery of a Step-In Notice;

“Step-In Notice” means a notice given by the Collateral Agent to the Authority and Project Co pursuant to Section 4;

“Step-In Period” means, subject to Section 4.3, the period from the Step-In Date up to and including the earliest of:

- (a) the Step-Out Date;
- (b) the date of any transfer under Section 6;
- (c) the date of any termination under Section 4.5; and
- (d) the Expiration Date;

“Step-Out Date” means the date that is 20 Business Days after the date of a Step-Out Notice;

“Step-Out Notice” means a notice from the Collateral Agent or Appointed Representative to the Authority and Project Co pursuant to Section 5;

“Suitable Substitute Operations Co” means a Person approved by the Authority in accordance with Sections 6.2 and 6.3 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Project Implementation Agreement;
- (b) employing or contracting for the services of persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Operations Co under the Project Implementation Agreement; and
- (c) not being a Restricted Person;

“Termination Notice” means a notice given by the Authority or Project Co, as applicable, to the Collateral Agent under Section 3; and

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (a) the Step-In Date;
- (b) the date of service of a Revocation of Termination Notice; and
- (c) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a)) set out in the Termination Notice.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, this Lenders’ Remedies Agreement will be interpreted according to the following provisions:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Lenders’ Remedies Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Lenders’ Remedies Agreement are for convenience of reference only, do not constitute a part of this Lenders’ Remedies Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Lenders’ Remedies Agreement;
- (c) each reference in this Lenders’ Remedies Agreement to “Section” is to a section of this Lenders’ Remedies Agreement;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Lenders’ Remedies Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, replaced, novated or assigned, and a reference to an “amendment” and similar terms (including “amend” and “amended”) include a reference to supplement,

alteration, substitute, variation, change and any other modification and similar terms;

- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Eastern Standard time or Eastern Daylight time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Lenders’ Remedies Agreement and each reference to a “party” means any one of the parties to this Lenders’ Remedies Agreement, provided however that a reference to a third party does not mean a party to this Lenders’ Remedies Agreement;
- (k) all monetary amounts are expressed in U.S. Dollars;
- (l) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (m) any consent contemplated to be given under this Lenders’ Remedies Agreement must be in writing;
- (n) general words are not given a restrictive meaning:
 - (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (o) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of any party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation;

- (p) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP;
- (q) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day; and
- (r) in the event that any provision of this Lenders' Remedies Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Lenders' Remedies Agreement for any party, the provision shall be fully severable and shall not affect the remaining provisions of this Lenders' Remedies Agreement, and this Lenders' Remedies Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein. The parties shall promptly meet and endeavor in good faith to negotiate new provisions to eliminate such illegality, invalidity or unenforceability as much as is as possible and to restore this Lenders' Remedies Agreement as nearly as possible to its original intent and effect.

1.3 Law of Agreement

This Lenders' Remedies Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

1.4 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. CONSENT TO SECURITY

2.1 Consent

The Authority acknowledges notice of, and consents to, the security interest granted by Project Co in favor of the Senior Secured Creditors under the Senior Financing Agreements over Project Co's rights under the Project Implementation Agreement and all other Project Documents to which Project Co is a party, Project Co's assets and Project Co's rights to Insurance Proceeds and Insurance Receivables.

Project Co acknowledges notice of, and consents to, the security interest granted by:

- (a) Operations Co in favor of the Senior Secured Creditors under the Senior Financing Agreements over Operations Co's rights under the Project Implementation Agreement and, subject to certain exclusions, all other Project Documents to which Operations Co is a party, Operations Co's assets and Operations Co's rights to Insurance Proceeds and Insurance Receivables; and

- (b) KentuckyWired Operations Holding Company, LLC in favor of the Senior Secured Creditors under the Senior Financing Agreements over the membership interests in Operations Co.

2.2 No Notice of Other Security

The Authority confirms that, as of the date of this Lenders' Remedies Agreement, it has not received written notice of any other security interest granted over Project Co's rights or the equity interests in Project Co other than pursuant to the Senior Financing Agreements. Project Co confirms that, as of the date of this Lenders' Remedies Agreement, it has not received written notice of any other security interest granted over Operations Co's rights or the equity interests in Operations Co other than pursuant to the Senior Financing Agreements.

2.3 Authority Obligations

Except as specifically provided for in this Lenders' Remedies Agreement, the Authority has no obligations (whether express, implied, collateral or otherwise) to the Collateral Agent or the Senior Secured Creditors in connection with this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement or the Project. All of the obligations and liabilities given, undertaken or arising on the part of the Authority under this Lenders' Remedies Agreement are given solely to the Collateral Agent on behalf of the Senior Secured Creditors and do not confer any rights on or in favor of Project Co, any Affiliate of Project Co, Operations Co, any Affiliate of Operations Co or any other Person.

2.4 Rights not Prejudiced

The parties acknowledge that nothing in the Senior Financing Agreements, this Lenders' Remedies Agreement or any other agreement between any of them (including any giving by the Collateral Agent of a notice hereunder) will, except as between the Senior Secured Creditors, the Collateral Agent, the Authority and Project Co as expressly set out in this Lenders' Remedies Agreement, affect the rights of the Authority under the Project Agreement (but an exercise by the Authority of those rights will not preclude a proper exercise by the Collateral Agent of its rights under this Lenders' Remedies Agreement) or the rights of Project Co under the Project Implementation Agreement (but an exercise by Project Co of those rights will not preclude a proper exercise by the Collateral Agent of its rights under this Lenders' Remedies Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Lenders' Remedies Agreement will limit, and the Authority will be entitled at all times in accordance with the provisions thereof to exercise the Authority's rights under Section 11.1(a) (Authority's Step-In Rights) of the Project Agreement and the related exercise of its rights under Section 11.2 (Authority's Rectification Rights) of the Project Agreement.

3. NOTICES

3.1 Termination Notice

The Authority will not terminate or deliver any notice terminating the Project Agreement and Project Co will not terminate or deliver any notice terminating the Project Implementation Agreement without giving to the Collateral Agent written notice (a "**Termination Notice**") stating:

- (a) that a Project Co Event of Default or an Operations Co Event of Default, as applicable, has occurred and the proposed Termination Date, which will be no sooner than 60 Business Days after the Termination Notice; and
- (b) the specific grounds for termination.

3.2 Notice of Operations Co Financing Default

Concurrently with delivery by it to Operations Co of any notice of an Operations Co Financing Default, the Collateral Agent will provide a copy of such notice to Project Co and the Authority, together with reasonable details of such Operations Co Financing Default.

3.3 Indicative Notice

Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Operations Co Financing Default and, where relevant to such Operations Co Financing Default, the continuance of such Operations Co Financing Default, the Collateral Agent may give notice to Project Co and the Authority of its intention to nominate a Senior Secured Creditors' Representative to step-in in accordance with Section 4.1 (an "**Indicative Step-In Notice**") or to effect a transfer in accordance with Section 6.1 (an "**Indicative Transfer Notice**").

3.4 Collateral Agent's Withdrawal Notice

If, at any time after the giving of an Indicative Notice or a Termination Notice, the Collateral Agent has determined that it is not, or is no longer, considering appointing a Senior Secured Creditors' Representative or effecting a transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co in accordance with this Lenders' Remedies Agreement, the Collateral Agent will provide written notice (an "**Collateral Agent's Withdrawal Notice**") to the Authority and Project Co as soon as reasonably possible and thereafter the provisions of this Lenders' Remedies Agreement will not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and the Authority or Project Co, as applicable, will be at liberty to take any and all action available to it under the Project Agreement, the Project Implementation Agreement and the other Project Documents.

3.5 Notice of Antecedent Liabilities

Unless a Collateral Agent's Withdrawal Notice has been given, not later than 20 Business Days after the date of delivery by the Authority or Project Co, as applicable, of a Termination Notice or the date of delivery by the Collateral Agent of an Indicative Notice, as the case may be, the Authority or Project Co, as applicable, will give the Collateral Agent a notice (the "**Liability Report**") containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of which the Authority or Project Co, as applicable, is aware (after reasonable inquiry) that will fall due under the Project Agreement or the Project Implementation Agreement, as applicable, on or after the date of

delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:

- (1) in the case of a Termination Notice, the proposed Termination Date set out in that notice; and
- (2) in the case of an Indicative Notice, 20 Business Days after the date of delivery of the Indicative Notice.

3.6 Subsequent Authority Notice of Liabilities

After the delivery of the Liability Report, unless a Collateral Agent's Withdrawal Notice has been given, the Authority or Project Co, as applicable, will, promptly upon becoming aware of them, notify the Collateral Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

3.7 No Right to Terminate

The Authority will not terminate or deliver any notice terminating the Project Agreement and Project Co will not terminate or deliver any notice terminating the Project Implementation Agreement during any Notice Period, provided that, until the expiration of that period, the Authority will be entitled to require Project Co to remedy any Project Co Event of Default and will be entitled to exercise all rights under the Project Agreement other than termination of the Project Agreement and Project Co will be entitled to require Operations Co to remedy any Operations Co Event of Default and will be entitled to exercise all rights under the Project Implementation Agreement other than termination of the Project Implementation Agreement.

3.8 Payments to Account Designated by Collateral Agent

Project Co and the Collateral Agent hereby authorize and instruct the Authority, and the Authority agrees, to pay all sums payable by the Authority to Project Co under the Project Agreement, including any Termination Payment, to an account designated by the Collateral Agent.

3.9 Operations Co to Pursue Remedies

Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Event of Default and, where relevant to such Event of Default, the continuance of such Event of Default, Operations Co shall exercise its rights under Section 1.7 of the Project Implementation Agreement to pursue any rights, remedies or relief under the Project Agreement in the name of Project Co, including the right to any Termination Payment, at the Collateral Agent's request and in accordance with the Collateral Agent's directions.

4. STEP-IN

4.1 Step-In Notice

Subject to Section 4.3 and without prejudice to the Collateral Agent's rights under the Security Documents, the Collateral Agent may give the Authority and Project Co a notice (a "**Step-In**

Notice") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

4.2 Contents of Step-In Notice

In the Step-In Notice, the Collateral Agent will:

- (a) state that it intends to exercise its step-in rights under this Lenders' Remedies Agreement; and
- (b) identify the Appointed Representative.

4.3 One Step-In Period

There will be not more than one Step-In Period following any one Indicative Notice or Termination Notice.

4.4 Appointed Representative Rights

On the Step-In Date, the Appointed Representative will assume jointly and severally with Operations Co the rights of Operations Co under the Project Implementation Agreement, which rights are conditional on and may be exercised subject to performance of Operations Co's obligations under the Project Implementation Agreement. During the Step-In Period, the Authority and Project Co will deal with the Appointed Representative and not Operations Co. No Appointed Representative will be liable to the Authority, Project Co or Operations Co for any liabilities or obligations of Operations Co. An Appointed Representative who is also an Insolvency Officer will not, and will not be required to, assume or have any personal liability for any liabilities or obligations of Operations Co.

4.5 Authority Right to Terminate

The Authority will not terminate the Project Agreement and Project Co will not terminate the Project Implementation Agreement in whole or in part during the Step-In Period except as set out in this Section 4.5. The Authority will be entitled to terminate the Project Agreement during the Step-In Period by written notice to Project Co, the Collateral Agent and the Appointed Representative and Project Co will be entitled to terminate the Project Implementation Agreement during the Step-In Period by written notice to Operations Co, the Collateral Agent and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the Authority or Project Co, as applicable, on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if amounts, of which the Authority or Project Co, as applicable, was not aware (after reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:
 - (1) if notice of the liability is given to the Collateral Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date or, if the due date for payment thereof is after the Step-In Date, the due date;

- (2) if notice of the liability is given to the Collateral Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by the Authority or Project Co, as applicable, acting reasonably, when it gives such notice or as stated by the Collateral Agent, acting reasonably, by notice to the Authority or Project Co, as applicable, within 5 Business Days of receipt of the notice from the Authority or Project Co, as applicable), 20 Business Days after the Step-In Date or, if later, the due date; or
- (3) otherwise, 20 Business Days after delivery of the notice or, if later, the due date;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement (other than a Project Co Insolvency Event) or the Project Implementation Agreement (other than an Operations Co Insolvency Event), provided that, for the purposes of termination under the Project Agreement or the Project Implementation Agreement, as applicable, any Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;
- (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement or the Project Implementation Agreement, as applicable, but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities; or
- (e) if the System Completion Date does not occur on or before the date that is 6 months after the Longstop Date.

5. STEP-OUT

5.1 Step-Out Notice

The Collateral Agent or the Appointed Representative may at any time during the Step-In Period deliver to the Authority and Project Co a Step-Out Notice which specifies the Step-Out Date.

5.2 Expiration of Step-In Period

Upon the termination or expiration of the Step-In Period:

- (a) the rights of the Authority or Project Co, as applicable, against the Appointed Representative and the rights of the Appointed Representative against the Authority or Project Co, as applicable, will be cancelled; and
- (b) the Authority or Project Co, as applicable, will no longer deal with the Appointed Representative and will deal with Project Co in connection with the Project Agreement or Operations Co in connection with the Project Implementation Agreement, as applicable.

5.3 Project Co and Operations Co Remain Bound

Subject to Section 6.4, Project Co will continue to be bound by the terms of the Project Agreement and Operations Co will continue to be bound by the terms of the Project Implementation Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Collateral Agent, the Appointed Representative or the Senior Secured Creditors or any provision of this Lenders' Remedies Agreement, and for greater certainty Project Co or Operations Co, as applicable, will be liable for any obligations and liabilities (including Deductions) arising prior to the expiration of the Step-In Period from actions or inactions of the Collateral Agent, the Appointed Representative or the Senior Secured Creditors. Project Co or Operations Co, as applicable, will remain liable for any unpaid amounts due and payable to the Authority by Project Co under the Project Agreement or to Project Co by Operations Co under the Project Implementation Agreement, as applicable, provided that Project Co or Operations Co, as applicable, will not be required to discharge such liability during the Step-In Period.

6. SENIOR SECURED CREDITOR REPLACEMENT OF OPERATIONS CO

6.1 Operations Co Transfer Notice

Subject to Section 6.2, at any time:

- (a) during a Termination Notice Period;
- (b) during an Indicative Notice Period; or
- (c) during a Step-In Period,

the Collateral Agent may, on 30 Business Days' notice to the Authority, Project Co and any Appointed Representative, take any action available to it to cause the transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co in accordance with the provisions of Section 6.4.

6.2 Authority Consent

The Authority will notify the Collateral Agent as to whether any Person to whom the Collateral Agent proposes to transfer Operations Co's rights and liabilities under the Project Implementation Agreement is a Suitable Substitute Operations Co, not later than 30 Business Days after the date of receipt from the Collateral Agent of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Operations Co.

6.3 Withholding of Consent

The Authority will not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Operations Co and it will, without limitation, be reasonable for the Authority to withhold its consent:

- (a) if there are unremedied breaches under the Project Agreement and there is no remedial program acceptable to the Authority in respect of the breaches; or

- (b) based on any of the factors set out in Section 16.3 (Factors Authority May Consider) of the Project Agreement with respect to any transfer, including any assignment, to such Person or Change in Control resulting from the transfer.

6.4 Terms of Transfer

Upon the transfer referred to in Section 6.1 becoming effective:

- (a) Operations Co and Project Co will be released from their obligations under the Project Implementation Agreement to each other, including with respect to indemnification under the Project Implementation Agreement whether arising prior to or after such transfer (the “**Discharged Obligations**”);
- (b) the Suitable Substitute Operations Co and Project Co will assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Operations Co instead of Operations Co;
- (c) the rights of Operations Co against Project Co under the Project Implementation Agreement and vice versa (the “**Discharged Rights**”) will be cancelled;
- (d) the Suitable Substitute Operations Co and Project Co will acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Operations Co instead of Operations Co;
- (e) any subsisting ground for termination of the Project Agreement by the Authority or the Project Implementation Agreement by Project Co will be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;
- (f) the Authority and Project Co will enter into a lenders’ remedies agreement with the Suitable Substitute Operations Co and a representative of Senior Secured Creditors lending to the Suitable Substitute Operations Co on substantially the same terms as this Lenders’ Remedies Agreement; and
- (g) any Deductions that arose prior to that time will not be taken into account after the transfer for the purposes of Section 12.1(g) of the Project Agreement and the Project Implementation Agreement and Section 6.4 of Schedule 4 to the Project Agreement and the Project Implementation Agreement.

For clarity, the Project Agreement will remain in full force and effect following the transfer referred to in Section 6.1 becoming effective.

7. INSURANCE

7.1 Release of Insurance Proceeds

Notwithstanding the other provisions of this Lenders’ Remedies Agreement and the terms and conditions of the Senior Financing Agreements, the Collateral Agent will only permit amounts to be released from the Insurance Proceeds Account in accordance with Section 6 (Insurance, Damage and Destruction) and Schedule 5 [Insurance Requirements] of the Project Agreement and will not exercise any rights under the Senior Financing Agreements or take any other steps

to prevent amounts being released from the Insurance Proceeds Account in accordance with Section 6 (Insurance, Damage and Destruction) and Schedule 5 [Insurance Requirements] of the Project Agreement.

8. COVENANTS

8.1 Authority Covenants

The Authority agrees with the Collateral Agent that the Authority will:

- (a) as soon as is reasonably practicable, at Operations Co's or the Collateral Agent's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Operations Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Lenders' Remedies Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Operations Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and will, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by Project Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Secured Creditor in respect of any monies owing to it by Project Co for or on account of Project Co's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or
 - (5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.1(b)(1), (2), (3) or (4) above;
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the Authority and a third party, the effect of which would be reasonably likely to render the Authority unable to satisfy its obligations under the Project Agreement; and
- (d) not issue a Step-In Notice or Proposed Transfer Notice (as defined in the Design-Builder Collateral Agreement or the Service Provider Collateral Agreement, as applicable) under the Design-Builder Collateral Agreement or the Service

Provider Collateral Agreement, as applicable, at any time that the Senior Secured Creditors are validly exercising under any Senior Financing Agreement any step-in rights with respect to the Design-Build Agreement or the Services Contract, as applicable.

8.2 Project Co Covenants

Project Co agrees with the Collateral Agent that Project Co will:

- (a) as soon as is reasonably practicable, at Operations Co's or the Collateral Agent's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Operations Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Lenders' Remedies Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Operations Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and will, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Implementation Agreement, including rights to take amounts owing by Operations Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Secured Creditor in respect of any monies owing to it by Operations Co for or on account of Operations Co's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or
 - (5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.2(b)(1), 8.2(b)(2), 8.2(b)(3) or 8.2(b)(4) above; and
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between Project Co and a third party, the effect of which would be reasonably likely to render Project Co unable to satisfy its obligations under the Project Implementation Agreement.

8.3 Collateral Agent Covenants

The Collateral Agent will promptly:

- (a) notify the Authority when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event will so notify no later than 20 Business Days after its occurrence;
- (b) prior to the taking of any such action, notify the Authority of any decision by the Senior Secured Creditors to take action under any acceleration rights, security enforcement rights, step-in rights or transfer rights provisions of the Collateral Agency and Account Agreement, including those rights under Section 13.2 (Rights and Remedies Upon Default) of the Collateral Agency and Account Agreement, together with reasonable details of any such action;
- (c) unless notice is already provided under the above provisions, notify the Authority of any decision by the Senior Secured Creditors to:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in Sections 8.3(c)(1), (2) or (3) above; and
- (d) upon request by the Authority, cause all security on any real or personal property comprised in the NG-KIH System to be promptly discharged and released on the date requested by the Authority (which will be on or after the Termination Date).

8.4 Operations Co Covenant

Operations Co acknowledges and consents to the arrangements set out in this Lenders' Remedies Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Lenders' Remedies Agreement.

9. STEP-IN RIGHTS UNDER PROJECT CONTRACTS

9.1 Priority of Step-In Rights under Project Contracts

Subject to Sections 9.2 and 9.4, notwithstanding any provision in any Project Contractor Collateral Agreement, the Authority will not exercise any right it may have pursuant to a Project Contractor Collateral Agreement to step-in and assume or otherwise enforce (or cause a third party designated by the Authority to step-in and assume or otherwise enforce) Operations Co's rights and obligations under either of the Project Contracts (including the issuance of a step-in notice by the Authority pursuant to any Project Contractor Collateral Agreement), or to transfer or assign a Project Contract, unless:

- (a) within 30 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Authority has not received a copy of a step-in notice delivered under the terms of the lenders' direct agreement in respect of such Project Contract (a "**Lenders' Step-In Notice**"); or

- (b) if (i) within 30 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Authority has received a copy of a Lenders' Step-In Notice but (ii) within 60 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Collateral Agent has not completed either a step-in and assumption of Operations Co's rights and obligations under the relevant Project Contract or a transfer or assignment thereof.

9.2 Step-in from Termination Date

Subject to Section 9.4, from the Termination Date, provided that the Authority has (if applicable) complied with Section 3.7 and Section 4.5 in terminating the Project Agreement, the Authority will be free to exercise its rights under any Project Contractor Collateral Agreement to step-in and assume (or cause a third party designated by the Authority to step-in and assume) Operations Co's rights and obligations under, or to transfer or assign, any Project Contract in accordance with a Project Contractor Collateral Agreement.

9.3 Release of Security

Subject to Section 9.4, the Collateral Agent will release and discharge (or cause to be released and discharged) at no cost to the Authority, and as soon as reasonably possible, all security in respect of each of the Project Contracts in respect of which any of Operations Co's rights or obligations thereunder are assumed, transferred or assigned by or to the Authority (or by or to a third party designated by the Authority) pursuant to a Project Contractor Collateral Agreement.

9.4 Retention of Security for Deficiency

Until such time as any Deficiency has been determined and an amount equal to the Deficiency has been recovered by the Senior Secured Creditors, the Senior Secured Creditors will be entitled to retain the benefit of the security in respect of claims and losses that Operations Co has as against the Project Contractor under the relevant Project Contract (or as against any guarantor of such Project Contract) that arose prior to the date of the assumption, transfer or assignment of the relevant Project Contract (or guarantee in respect of such Project Contract) by or to the Authority (or by or to a third party designated by the Authority), provided that:

- (a) the Senior Secured Creditors will not, and will not be entitled to, exercise any rights or enforce any security in respect of any such claim during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and
- (b) the rights in relation to the security retained by the Senior Secured Creditors pursuant to this Section 9.4 may only be exercised if and to the extent that the Termination Payment actually paid by the Authority pursuant to Section 2 or Section 3 of Schedule 9 to the Project Agreement is less than the Senior Debt (the amount by which the Termination Payment is (or, in the reasonable opinion of the Collateral Agent, is likely to be) less than the Senior Debt being herein referred to as the "**Deficiency**").

Any amounts recovered by the Senior Secured Creditors pursuant to claims referred to in this Section 9.4, from the Termination Date to the date on which the Termination Payment and the amount of the Deficiency, if any, have been determined, will be held by the Collateral Agent in a segregated account on terms satisfactory to the Collateral Agent and the Authority, each acting reasonably, and, upon determination of the Termination Payment and the amount of the Deficiency, if any, such funds will be distributed to the Collateral Agent, to the extent of the Deficiency, if any, and the balance of such funds will be paid to the Authority.

9.5 Assignment of Project Contracts by Senior Secured Creditors

The Senior Secured Creditors will not transfer or assign any Project Contract except to a Suitable Substitute Operations Co in conjunction with a permitted transfer or assignment of the Project Agreement to that Suitable Substitute Operations Co in accordance with Section 6.

10. NEW AGREEMENTS

10.1 Applicability of Section 10

The provisions of this Section 10 shall apply only if there occurs an Operations Co Event of Default under Section 12.1(b) of the Project Implementation Agreement.

10.2 Termination of Project Implementation Agreement and Replacement with New Agreements

If this Section 10 is applicable and either (i) Project Co terminates the Project Implementation Agreement or (ii) Project Co receives notice that the Project Implementation Agreement is otherwise terminated, rejected, invalidated or rendered null and void by order of a bankruptcy court, then (a) Project Co shall deliver to the Collateral Agent notice of such event, and (b) the Collateral Agent, to the extent then permitted by Law, shall have the option to obtain from Project Co agreements to replace the Project Implementation Agreement, and, to the extent necessary, new ancillary agreements (together, the “**New Agreements**”) in accordance with and upon the terms and conditions of this Section 10.

10.3 Deliveries to Project Co

In order to exercise such option, the Collateral Agent or other Senior Secured Creditors’ Representative must deliver to Project Co, within 60 days after Project Co delivers its notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent or other Senior Secured Creditors’ Representative will enter into the New Agreements and pay all the amounts described in Section 10.5(a) and (c) below, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent or other Senior Secured Creditors’ Representative. If any of the foregoing is not delivered within such 60-day period, the option set forth in Section 10.2 in favor of the Collateral Agent and all other Senior Secured Creditors’ Representatives shall automatically expire.

10.4 Authority to Enter into New Agreements

Within 30 days after timely receipt of the written commitment and New Agreements duly executed by the Collateral Agent or other Senior Secured Creditors’ Representative, Project Co shall enter into the New Agreements to which Project Co is a party with the Collateral Agent or other Senior Secured Creditors’ Representative, subject to any extension of such 30-day period

as Project Co deems necessary to clear any claims of Operations Co to continued rights and possession, custody or control of the Project, or otherwise.

10.5 Conditions to New Agreements Becoming Effective

Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or other Senior Secured Creditors' Representative shall perform all of the following:

- (a) pay to Project Co:
 - (1) any and all sums which would, at the time of the execution of the New Agreements, be due under the Project Implementation Agreement but for such termination; and
 - (2) the amount of any compensation on termination previously paid by Project Co under the Project Implementation Agreement, with interest thereon at the Prime Rate from the date the compensation on termination was paid until so reimbursed;
- (b) otherwise fully remedy any existing Operations Co Event of Default under the Project Implementation Agreement (provided, however, that any Operations Co Insolvency Event need not be remedied and with respect to any Operations Co Event of Default which cannot be cured until the Collateral Agent or other Senior Secured Creditors' Representative obtains possession, custody and control of the Project, it shall have such time, after it obtains such possession, custody and control as is necessary using all reasonable efforts to cure such Operations Co Event of Default); and
- (c) without duplication of amounts previously paid by Operations Co, pay to Project Co all reasonable costs, fees and expenses incurred by Project Co in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy or related proceeding, (iii) the recovery of possession, custody and control of the Project, (iv) all Project Co activities during its period of possession, custody and control of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, minus the lesser of (A) the foregoing clause (iv) amount and (B) the amount of the Operations Co Payments, if any, that would have been paid during such period had the Project Implementation Agreement not been terminated and had there been no adjustments to such Operations Co Payments, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or other Senior Secured Creditors' Representative, Project Co will provide a written, documented statement of such costs, fees and expenses.

10.6 Assignment to Collateral Agent or other Senior Secured Creditors' Representative

Upon execution of the New Agreements and payment of all sums due Project Co pursuant to Section 10.5(a) and (c), Project Co shall assign and deliver to the Collateral Agent or other Senior Secured Creditors' Representative, without warranty or representation, all the property,

contracts, documents and information that Operations Co may have assigned and delivered to Project Co upon termination of the Project Implementation Agreement.

10.7 Terms of New Agreements

The New Agreements shall be effective as of the date of termination of the Project Implementation Agreement and shall run for the remainder of the Term. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the Project Implementation Agreement and ancillary agreements and documents that were binding on Project Co and Operations Co (except for any requirements which have been fulfilled by Operations Co prior to termination).

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties by the Authority

The Authority represents and warrants to the Collateral Agent that:

- (a) the Authority has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Lenders' Remedies Agreement or the Project Agreement;
- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Lenders' Remedies Agreement or the Project Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement and the Project Agreement, have been duly authorized by all necessary action on the part of the Authority, and this Lenders' Remedies Agreement and the Project Agreement have been duly executed and delivered by the Authority and constitute legal, valid and binding obligations of the Authority enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application;
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Authority Event of Default, the Authority is not aware of any Project Co Event of Default and there exists no event or condition of which the Authority is aware that would, with the giving of notice or passage of time or both, constitute an Authority Event of Default or a Project Co Event of Default;
- (d) the execution and delivery by the Authority of this Lenders' Remedies Agreement, and the performance by the Authority of its obligations hereunder, will not conflict with any Laws applicable to the Authority that are valid and in effect on the date of execution and delivery; and
- (e) as of the date of the execution of this Lenders' Remedies Agreement, there is no action, suit, proceeding, investigation or litigation pending and served on the

Authority which challenges the Authority's authority to execute, deliver or perform, or the validity or enforceability of, this Lenders' Remedies Agreement.

11.2 Representations and Warranties by Project Co

Project Co represents and warrants to the Collateral Agent that:

- (a) Project Co is a non-profit corporation duly created and validly existing under the laws of Kentucky and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Lenders' Remedies Agreement, the Project Agreement or the Project Implementation Agreement;
- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Lenders' Remedies Agreement, the Project Agreement or the Project Implementation Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement, the Project Agreement and the Project Implementation Agreement, have been duly authorized by all necessary action on the part of Project Co, and this Lenders' Remedies Agreement, the Project Agreement and the Project Implementation Agreement have been duly executed and delivered by Project Co and constitute legal, valid and binding obligations of Project Co enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Project Co Event of Default, Project Co is not aware of any Authority Event of Default or Operations Co Event of Default and there exists no event or condition of which Project Co is aware that would, with the giving of notice or passage of time or both, constitute a Project Co Event of Default, an Authority Event of Default or an Operations Co Event of Default.

11.3 Representations and Warranties by Operations Co

Operations Co represents and warrants to the Collateral Agent that:

- (a) Operations Co is a limited liability company duly created and validly existing under the laws of Delaware and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Lenders' Remedies Agreement or the Project Implementation Agreement;

- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Lenders' Remedies Agreement or the Project Implementation Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement and the Project Implementation Agreement, have been duly authorized by all necessary action on the part of Operations Co, and this Lenders' Remedies Agreement and the Project Implementation Agreement have been duly executed and delivered by Operations Co and constitute legal, valid and binding obligations of Operations Co enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Operations Co Event of Default, Operations Co is not aware of any Project Co Event of Default and there exists no event or condition of which Operations Co is aware that would, with the giving of notice or passage of time or both, constitute an Operations Co Event of Default or an Project Co Event of Default.

11.4 Representations and Warranties by the Collateral Agent

The Collateral Agent represents and warrants to the Authority, Project Co and Operations Co that:

- (a) the Collateral Agent has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement and all other documents, instruments and agreements required to be executed and delivered by the Collateral Agent pursuant to this Lenders' Remedies Agreement;
- (b) this Lenders' Remedies Agreement has been duly executed and delivered by the Collateral Agent and constitutes a legal, valid and binding obligation of the Collateral Agent enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) the Collateral Agent:
 - (1) has no ownership interest in any other party to this Lenders' Remedies Agreement or either Project Contractor; and
 - (2) does not Control, is not Controlled by and is not under common Control with any other party to this Lenders' Remedies Agreement or either Project Contractor.

12. ASSIGNMENT

12.1 Restriction on Assignment

No party to this Lenders' Remedies Agreement may assign or transfer all or any part of its rights or obligations under this Lenders' Remedies Agreement except as provided in this Section 12.

12.2 Assignment by Collateral Agent

The Collateral Agent may assign or transfer its rights and obligations under this Lenders' Remedies Agreement to a successor Collateral Agent in accordance with the Senior Financing Agreements without the consent of the Authority, provided that the Collateral Agent delivers to the Authority not less than 10 Business Days prior to such assignment or transfer a notice setting out such contact information regarding the assignee or transferee as the Authority may reasonably require and provided the assignee or transferee is not a Restricted Person.

12.3 Assignment by Senior Secured Creditors

Any Senior Secured Creditor may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements without the consent of the Authority, provided the assignee or transferee is not a Restricted Person.

12.4 Assignment by Authority

The Authority will assign or transfer its rights and obligations under this Lenders' Remedies Agreement to any permitted assignee of its interest in the Project Agreement in accordance with Section 16.4 of the Project Agreement, concurrently with the assignment of the Project Agreement to such assignee, and the Collateral Agent and the Senior Secured Creditors will cooperate with the Authority in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by the Authority.

12.5 New Agreement

If Section 12.2 applies in relation to the Collateral Agent, the Authority, Project Co and Operations Co will, upon request by the new Collateral Agent, enter into a new lenders' remedies agreement with the new Collateral Agent on substantially the same terms as this Lenders' Remedies Agreement.

13. GENERAL

13.1 Term

This Lenders' Remedies Agreement will remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date; and
- (b) subject to compliance with Section 6.4(f) above, the date of transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co pursuant to Section 6.

13.2 Conflict or Inconsistency

If there is any conflict or inconsistency between the provisions of this Lenders' Remedies Agreement and the Project Agreement, as between the Collateral Agent and the Authority, the provisions of this Lenders' Remedies Agreement will prevail. If there is any conflict or inconsistency between the provisions of this Lenders' Remedies Agreement and the Project Implementation Agreement, as between the Collateral Agent and Project Co, the provisions of this Lenders' Remedies Agreement will prevail.

13.3 Entire Agreement

Unless otherwise stated in this Lenders' Remedies Agreement, this Lenders' Remedies Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Lenders' Remedies Agreement. No party has relied on any representation except as expressly set out in this Lenders' Remedies Agreement.

13.4 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Lenders' Remedies Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Lenders' Remedies Agreement.

13.5 Counterparts

This Lenders' Remedies Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Lenders' Remedies Agreement so that it will not be necessary in making proof of this Lenders' Remedies Agreement to produce or account for more than one such counterpart.

13.6 Confidentiality

The Collateral Agent will be bound to comply with the confidentiality obligations on the part of Project Co contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

13.7 Notices

Any notice or communication required or permitted to be given under this Lenders' Remedies Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary

Lenders' Remedies Agreement
NG-KIH Project

Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

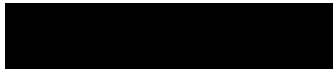
If to the Collateral Agent:

U.S. Bank National Association
Global Corporate Trust Services
One Financial Square
Louisville, KY 40202

Attention: Amy Anders, Vice President
Email: amy.anders@usbank.com

If to Project Co:

KentuckyWired Infrastructure Company, LLC



Attention: Lori Hudson Flanery, Director
Email: [Redacted]

with a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

If to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

13.8 No Partnership or Agency

Nothing in this Lenders' Remedies Agreement will be construed as creating a partnership or as constituting the Senior Secured Creditors, the Collateral Agent, the Appointed Representative, any other Senior Secured Creditors' Representative or a Suitable Substitute Operations Co as an agent of the Authority. No such person will hold itself out as having any authority or power to bind the Authority in any way.

13.9 Remedies Cumulative

The rights and remedies under this Lenders' Remedies Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

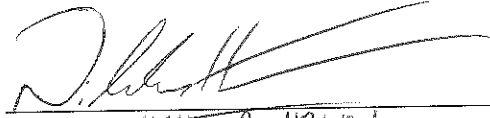
13.10 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Lenders' Remedies Agreement will be resolved in accordance with, and the parties will comply

with, the Dispute Resolution Procedure, and Schedule 13 [Dispute Resolution Procedure] of the Project Agreement is deemed to be incorporated, *mutatis mutandis*, in this Lenders' Remedies Agreement.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per:



Name: ~~NICHOLAS HAMLIN~~

Title: ~~MANAGER~~

Per:

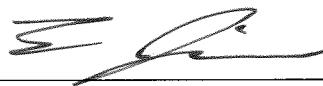
Name:

Title:

I/We have the authority to bind the company.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per:



Name: Eliot Jamison

Title: Manager

Per:

Name:

Title:

I/We have the authority to bind the company.

IN WITNESS WHEREOF the parties hereto have executed this Lenders' Remedies Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: *Lori Hudson Flanery*
Name: Lori Hudson Flanery
Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

U.S. BANK NATIONAL ASSOCIATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the association.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: *Steve Rucker*
Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

**SERVICE PROVIDER COLLATERAL AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT**

**The Commonwealth of Kentucky
(the “Authority”)**

and

**LTS Kentucky Managed Technical Services LLC
(the “Service Provider”)**

and

**KentuckyWired Infrastructure Company, Inc.
 (“Project Co”)**

and

**KentuckyWired Operations Company, LLC
 (“Operations Co”)**

Dated: September 3, 2015

TABLE OF CONTENTS

1.	INTERPRETATION	2
1.1	Definitions	2
1.2	Construction and Interpretation	3
1.3	Law of Agreement	3
1.4	Venue	3
2.	TERMINATION NOTICE AND AUTHORITY TERMINATION	3
2.1	Termination Notice	3
2.2	Survival of Services Contract	3
3.	STEP-IN AND STEP-OUT	3
3.1	Step-In Notice	3
3.2	Lenders' Step-In Rights	4
3.3	Notice of Obligations and Step-In Undertaking	4
3.4	Update of Obligations	4
3.5	Delivery of Step-In Undertaking	4
3.6	Limits on Authority Liability on Step-In	5
3.7	Non-Delivery of the Step-In Undertaking	5
3.8	Effect of Step-In Undertaking	5
3.9	Step-Out	6
3.10	Effect of Step-Out	6
3.11	Payment by Operations Co	6
4.	TRANSFER	6
4.1	Proposed Substitute	6
4.2	Consent to Transfer	6
4.3	Grant of Consent	7
4.4	Consent Withheld	7
4.5	Implementation of Transfer	8
4.6	Effect of Transfer	8
4.7	Termination After Transfer	8
5.	RIGHTS AND OBLIGATIONS UNDER THE SERVICES CONTRACT	9
5.1	Rights of Termination	9
5.2	Operations Co's Obligations to Continue	9
6.	REVOCAION OF NOTICES	10
7.	ASSIGNMENT	10
7.1	Binding on Successors and Assigns	10
7.2	Restriction on Assignment	10

8.	GENERAL	10
8.1	Notices.....	10
8.2	Entire Agreement	12
8.3	Waiver	12
8.4	No Partnership or Agency	12
8.5	Conflicting Agreements.....	12
8.6	Remedies Cumulative.....	12
8.7	Counterparts	13
8.8	Disputes.....	13

SERVICE PROVIDER COLLATERAL AGREEMENT

THIS SERVICE PROVIDER COLLATERAL AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the “**Authority**”)

AND:

LTS Kentucky Managed Technical Services LLC

(the “**Service Provider**”)

AND:

KentuckyWired Infrastructure Company, Inc.

(“**Project Co**”)

AND:

KentuckyWired Operations Company, LLC

(“**Operations Co**”)

WHEREAS:

- A. The Authority and Project Co have entered into an agreement dated as of September 3, 2015 (the “**Project Agreement**”) whereby Project Co has agreed to design, build, finance, operate and maintain the NG-KIH System (the “**Project**”), all as more particularly described in the Project Agreement.
- B. Project Co and Operations Co have entered into an agreement dated as of September 3, 2015 (the “**Project Implementation Agreement**”) whereby Operations Co has agreed to design, build, operate and maintain the NG-KIH System, all as more particularly described in the Project Implementation Agreement.
- C. Operations Co and the Service Provider have entered into an agreement dated as of September 3, 2015 (the “**Services Contract**”) whereby the Service Provider has agreed to carry out the Services.
- D. It is a condition of the Services Contract that the Service Provider enter into this Service Provider Collateral Agreement with the Authority, Project Co and Operations Co.
- E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Service Provider Collateral Agreement.

F. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Service Provider Collateral Agreement.

NOW THEREFORE THIS SERVICE PROVIDER COLLATERAL AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Service Provider Collateral Agreement will have the respective meanings given to such terms in the Project Agreement and:

“**Project**” has the meaning set out in Recital A;

“**Project Agreement**” has the meaning set out in Recital A;

“**Project Implementation Agreement**” has the meaning set out in Recital B;

“**Proposed Transfer Date**” has the meaning set out in Section 4.1;

“**Proposed Transfer Notice**” has the meaning set out in Section 4.1;

“**Proposed Step-In Date**” has the meaning set out in Section 3.1;

“**Proposed Substitute**” has the meaning set out in Section 4.1;

“**Service Provider Collateral Agreement**” means this agreement, as amended, supplemented or restated from time to time;

“**Services Contract**” has the meaning set out in Recital C;

“**Step-In Date**” means the date the Authority delivers the Step-In Undertaking;

“**Step-In Notice**” has the meaning set out in Section 3.1;

“**Step-In Period**” means the period commencing on the Step-In Date and ending on the earliest of:

- (a) the Step-Out Date;
- (b) the Transfer Effective Date; and
- (c) the termination date of the Services Contract as permitted under Section 3.8;

“**Step-In Undertaking**” has the meaning set out in Section 3.5;

“**Step-Out Date**” has the meaning set out in Section 3.9;

“**Termination Notice**” has the meaning set out in Section 2.1;

“**Transfer Agreement**” has the meaning set out in Section 4.5(b); and

“**Transfer Effective Date**” means the effective date of the Transfer Agreement.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, this Service Provider Collateral Agreement will be interpreted according to the provisions set out in Sections 2 and 3(b) of Schedule 1 [Definitions and Interpretation] to the Project Agreement, except that references in such section to Project Co will also be deemed to be references to Operations Co and the Service Provider.

1.3 Law of Agreement

This Service Provider Collateral Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

1.4 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Termination Notice

The Service Provider will not terminate the Services Contract without first giving the Authority at least 45 days’ notice specifying the grounds for such termination (the “**Termination Notice**”).

2.2 Survival of Services Contract

Notwithstanding any provision of the Services Contract to the contrary, on termination of the Project Agreement by the Authority, the parties agree that the Services Contract will not come to an end, except in accordance with the terms of this Service Provider Collateral Agreement.

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the Authority has terminated the Project Agreement in accordance with its terms or if the Authority has received a Termination Notice, the Authority may give notice to the Service Provider (a “**Step-In Notice**”) of the intention of the Authority to issue a Step-In Undertaking on a specified date (the “**Proposed Step-In Date**”) provided that such Proposed Step-In Date is:

- (a) no later than 30 days after termination of the Project Agreement if the Project Agreement was terminated by the Authority; and
- (b) no later than 30 days after delivery of the Termination Notice to the Authority.

3.2 Lenders' Step-In Rights

The Authority will not issue a Step-In Notice at any time that the Senior Secured Creditors are validly exercising any Step-In rights with respect to the Project under:

- (a) the Lenders' Remedies Agreement;
- (b) any Senior Financing Agreement; or
- (c) any direct agreement entered into between the Service Provider and the Senior Secured Creditors with respect to the Services Contract,

and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Senior Secured Creditors are no longer exercising, or are no longer permitted to exercise, such rights under the Lenders' Remedies Agreement, any Senior Financing Agreement or any such direct agreement. The Service Provider will provide copies of all relevant notices delivered by it to, or to it by, the Senior Secured Creditors in respect of the exercise of such rights so as to enable the Authority and the Service Provider to determine, in accordance with this Section 3.2 the notice periods and timelines set out in Section 3.1.

3.3 Notice of Obligations and Step-In Undertaking

Not less than 5 Business Days prior to the Proposed Step-In Date, the Service Provider will give notice to the Authority of any sums that are due and payable but unpaid by Operations Co and of any other material obligations or liabilities that should have been performed or discharged by Operations Co under the Services Contract, in each case as at the date of the Step-In Notice.

3.4 Update of Obligations

Not less than 2 Business Days prior to the Proposed Step-In Date, the Service Provider will give notice to the Authority of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On or before the Proposed Step-In Date, the Authority may deliver to the Service Provider a written undertaking to the Service Provider (the "**Step-In Undertaking**") undertaking to the Service Provider to:

- (a) pay or procure the payment to the Service Provider, within 15 Business Days of demand by the Service Provider, of any sum due and payable or accruing due and payable but unpaid by Operations Co to the Service Provider under the Services Contract before the Step-In Date, provided that the Service Provider has notified the Authority of such amounts in accordance with Sections 3.3 and 3.4;

- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Operations Co under the Services Contract that will have fallen due for performance or discharge before the Step-In Date and of which the Authority has been notified by the Service Provider in accordance with Sections 3.3 and 3.4;
- (c) pay or procure the payment of any sum due and payable by Operations Co under the Services Contract as a result of either any work or services performed during the Step-In Period or any act or omission occurring during the Step-In Period which arises from any act or omission occurring after the Step-In Date; and
- (d) perform or discharge or procure the performance or discharge of any obligations of Operations Co under the Services Contract as a result of any act or omission occurring during the Step-In Period that arises from any act or omission occurring after the Step-In Date.

3.6 Limits on Authority Liability on Step-In

The Authority will not be required to assume any liability under a Step-In Undertaking for any outstanding obligations or liabilities of Operations Co to the Service Provider:

- (a) that existed as of the Step-In Date; and
- (b) of which the Authority has not been notified pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the Authority does not deliver the Step-In Undertaking on or before the Proposed Step-In Date, the Step-In Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-In Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-In Period, the Service Provider will continue to observe and perform its duties and obligations under the Services Contract and will only be entitled to exercise its rights of termination under the Services Contract:

- (a) by reference to a default under the Services Contract arising during the Step-In Period (other than to the extent that an Operations Co Insolvency Event constitutes such a default), provided that no event of default by Project Co under the Project Agreement or Operations Co under the Project Implementation Agreement will entitle the Service Provider to exercise such rights of termination during the Step-In Period;
- (b) if the Authority fails to pay when due any amount owed to the Service Provider or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-In Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Services Contract by the Authority or the Service Provider.

3.9 Step-Out

The Authority may, at any time, terminate the Step-In Period by giving the Service Provider at least 20 Business Days' notice specifying the date on which the Step-In Period will terminate (the "**Step-Out Date**").

3.10 Effect of Step-Out

The Authority will be released from the Step-In Undertaking on the expiration or termination of the Step-In Period, provided that the Authority has performed and discharged in full, or procured the performance and discharge in full, of any of the Authority's obligations under the Step-In Undertaking arising on or before the expiration or termination of the Step-In Period.

3.11 Payment by Operations Co

Operations Co will pay to the Authority on demand any amounts of which the Authority has been notified by the Service Provider pursuant to Sections 3.3 and 3.4 and that were paid by the Authority or a Proposed Substitute to the Service Provider pursuant to this Service Provider Collateral Agreement. Any such amounts will constitute amounts due and payable by Operations Co to the Authority under this Service Provider Collateral Agreement.

4. TRANSFER

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-In Notice pursuant to Section 3.1 or at any time during the Step-In Period, the Authority may give notice (a "**Proposed Transfer Notice**") to the Service Provider that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Operations Co under the Services Contract and specifying a date (the "**Proposed Transfer Date**"):

- (a) if the Authority has terminated the Project Agreement but has not given a Step-In Notice, no later than 15 Business Days after termination of the Project Agreement;
- (b) if the Service Provider has given a Termination Notice but the Authority has not given a Step-In Notice, no later than expiration of the Termination Notice; and
- (c) if the Authority has given a Step-In Notice (whether or not the Step-In Period has commenced), no later than 20 Business Days after the date of the Proposed Transfer Notice.

Subject to Section 3, the Service Provider will not be entitled to terminate the Services Contract during the notice period specified in a Proposed Transfer Notice.

4.2 Consent to Transfer

If the Proposed Transfer Notice specifies the Authority as the Proposed Substitute, the Service Provider's consent to the transfer will be deemed to have automatically been given. If the Proposed Substitute is not the Authority, a transfer in accordance with a Proposed Transfer

Notice will only be effective if the Service Provider consents to that transfer in writing in accordance with Section 4.3, and the Authority will (as soon as practicable) supply the Service Provider with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Services Contract.

4.3 Grant of Consent

The Service Provider may withhold or delay consent to a transfer only if the Proposed Substitute is not the Authority and the Authority has failed to show to the Service Provider's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Services Contract; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Operations Co under the Services Contract.

Within 5 Business Days of the receipt of a Proposed Transfer Notice and all information required under Section 4.2, the Service Provider will notify the Authority in writing that it has consented to the transfer or, if the Service Provider has not consented, will provide to the Authority an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Service Provider withholds its consent to a Proposed Transfer Notice, the Authority may give one or more subsequent Proposed Transfer Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute that the Authority reasonably believes would fulfill the requirements of Sections 4.3, provided that only one Proposed Transfer Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-In Notice has not been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and

- (b) if a Step-In Notice has been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(c).

4.5 Implementation of Transfer

If the Service Provider consents or is deemed to have consented to a transfer pursuant to a Proposed Transfer Notice, then on the Proposed Transfer Date:

- (a) the Proposed Substitute will become a party to the Services Contract in place of Operations Co and, thereafter, will be treated as if it was and had always been named as a party to the Services Contract in place of Operations Co; and
- (b) the Service Provider, Operations Co and the Proposed Substitute will enter into a transfer agreement (the “**Transfer Agreement**”) and any other requisite agreements, in form and substance satisfactory to the Service Provider, acting reasonably, pursuant to which:
 - (1) the Proposed Substitute will be granted all of the rights of Operations Co under the Services Contract; and
 - (2) the Proposed Substitute will assume all of the obligations and liabilities of Operations Co under the Services Contract.

4.6 Effect of Transfer

On and after the Transfer Effective Date:

- (a) the Service Provider will owe its obligations under the Services Contract, whether arising before, on or after such date, to the Proposed Substitute; and
- (b) if the Authority has entered into a Step-In Undertaking, the Authority will be released from the Step-In Undertaking, provided that all obligations of the Authority under the Step-In Undertaking that have accrued up to the Transfer Effective Date have been fully and unconditionally discharged.

The Authority and the Service Provider will use reasonable efforts to agree to any amendments to the Services Contract reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Transfer Effective Date.

4.7 Termination After Transfer

After the Transfer Effective Date, the Service Provider will only be entitled to exercise its rights of termination under the Services Contract:

- (a) in respect of any Operations Co Event of Default arising after that date in accordance with the Services Contract; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities referred to in Section 4.5(b)(2) assumed by it under the Transfer Agreement that relate to matters arising prior to the end of any Step-In Period within 15 Business Days following the Transfer Effective Date.

5. RIGHTS AND OBLIGATIONS UNDER THE SERVICES CONTRACT

5.1 Rights of Termination

If:

- (a) no Step-In Notice or Proposed Transfer Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the Authority;
- (b) a Step-In Undertaking is not issued on or before the Proposed Step-In Date;
- (c) the Step-In Notice is withdrawn or, pursuant to Section 3.7, is deemed to have been withdrawn;
- (d) the Step-In Period ends before the occurrence of the Transfer Effective Date;
- (e) in the absence of a Step-In Undertaking, the Service Provider reasonably withholds its consent to a transfer pursuant to a Proposed Transfer Notice, in accordance with Section 4.3, and does not subsequently grant consent to a transfer in accordance with Section 4.4 on or before the Proposed Transfer Date;
- (f) in the absence of a Step-In Undertaking, a Transfer Agreement is not entered into on the Proposed Transfer Date;
- (g) the Service Provider is entitled to terminate the Services Contract under Section 3.8 or 4.7; or
- (h) the Authority exercises its right to Step-Out under Section 3.9, then on the Step-Out Date,

the Service Provider may:

- (i) exercise all of its rights under the Services Contract and act upon any and all grounds for termination available to it in relation to the Services Contract whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Operations Co.

5.2 Operations Co's Obligations to Continue

Until completion of a transfer pursuant to Section 4.5, Operations Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Services Contract notwithstanding:

- (a) the service of a Step-In Notice or the issue of a Step-In Undertaking or the expiration of the Step-In Period or the release of a Step-In Undertaking;
- (b) the service of a Proposed Transfer Notice; or
- (c) any other provision of this Service Provider Collateral Agreement.

Service Provider Collateral Agreement
NG-KIH Project

6. REVOCATION OF NOTICES

A Termination Notice and a Step-In Notice may each be revoked (in writing to the recipient) by the party giving them before the expiration of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

This Service Provider Collateral Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Service Provider Collateral Agreement without the prior consent of the other parties hereto (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Authority will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with Section 16.4 of the Project Agreement; and
- (b) the Service Provider will assign or transfer all its rights and obligations under this Service Provider Collateral Agreement to any person to whom it assigns or transfers all its rights and obligations under the Services Contract in accordance with the terms of the Services Contract and the Project Agreement.

8. GENERAL

8.1 Notices

Any notice or communication required or permitted to be given under this Service Provider Collateral Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

Service Provider Collateral Agreement
NG-KIH Project

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov


If to the Service Provider:

LTS Kentucky Managed Technical Services LLC
188 Columbia Lane E
Shepherdsville, KY 40165

Attention: Jan Summarell
Email: jan.summarell@ledcor.com

If to Project Co:

KentuckyWired Infrastructure Company, LLC


Attention: Lori Hudson Flanery, Director
Email: 

with a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

If to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

8.2 Entire Agreement

Unless otherwise stated in this Service Provider Collateral Agreement, this Service Provider Collateral Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Service Provider Collateral Agreement. No party has relied on any representation except as expressly set out in this Service Provider Collateral Agreement.

8.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof, and no waiver will be effective unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Service Provider Collateral Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Service Provider Collateral Agreement.

8.4 No Partnership or Agency

Nothing in this Service Provider Collateral Agreement will be construed as creating a partnership or as constituting the Service Provider as an agent of the Authority. The Service Provider will not hold itself out as having any authority or power to bind the Authority in any way.

8.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Service Provider Collateral Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

8.6 Remedies Cumulative

The rights and remedies under this Service Provider Collateral Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in

equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.7 Counterparts

This Service Provider Collateral Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Service Provider Collateral Agreement so that it will not be necessary in making proof of this Service Provider Collateral Agreement to produce or account for more than one such counterpart.

8.8 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Service Provider Collateral Agreement or any disagreement between any of the parties with respect to any matter that, by the express terms of this Service Provider Collateral Agreement, is to be agreed upon by the parties will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in the Project Agreement, provided that, for greater certainty, the parties acknowledge that, during a Step-In Period or after the Transfer Effective Date, any dispute with respect to any of the subject matters of the Services Contract will be resolved in accordance with the applicable dispute resolution procedure thereunder.

IN WITNESS WHEREOF the parties have executed this Service Provider Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per:



Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

**LTS KENTUCKY MANAGED TECHNICAL
SERVICES LLC**

Per:

Name:

Title:

Per:

Name:

Title:

I/We have the authority to bind the company.

**KENTUCKYWIRE INFRASTRUCTURE
COMPANY, INC.**

Per:



Name: Steve Rucker

Title: Director

I have the authority to bind the corporation.

IN WITNESS WHEREOF the parties have executed this Service Provider Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: _____

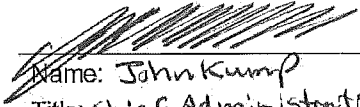
Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

**LTS KENTUCKY MANAGED TECHNICAL
SERVICES LLC**

Per: _____


Name: John Kump

Title: Chief Administration officer

Per: _____

Name:

Title:

I/We have the authority to bind the company.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: _____

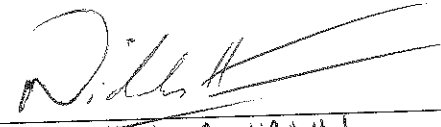
Name: Steve Rucker

Title: Director

I have the authority to bind the corporation.

**KENTUCKYWIRE OPERATIONS COMPANY,
LLC**

Per:


Name: NICHOLAS HANN
Title: MANAGER

Per:

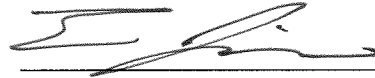
Name:

Title:

I/We have the authority to bind the company.

KENTUCKYWIRED OPERATIONS COMPANY,
LLC

Per:



Name: Eliot Jamison

Title: Manager

Per:

Name:

Title:

I/We have the authority to bind the company.