

**SCHEDULE 2
DESIGN AND CONSTRUCTION PROTOCOLS**

1. DEFINITIONS

In this Schedule 2, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Certificate of Site Completion” has the meaning set out in Section 13.3(a) of this Schedule 2;

“Commissioning” means to test, calibrate, certify or otherwise verify that the applicable equipment or portion of the NG-KIH System has been installed and is operating in accordance with any commissioning requirements set out in this Project Agreement, all applicable standards and Customary Industry Practice, the manufacturer’s requirements and specifications and the applicable criteria set forth in the Design and Construction Specifications, and **“Commission”** and **“Commissioned”** have corresponding meanings;

“Commissioning Plan” has the meaning set out in Section 12.1 of this Schedule 2;

“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 Project Agreement, including a failure by Project Co to comply with the requirements of Schedule 3 [Design and Construction Specifications];

“Design and Construction Plan” has the meaning set out in Section 5.1(a) of this Schedule 2;

“Design and Construction Representative” has the meaning set out in Section 2.1 of this Schedule 2;

“Disability-Owned Business Enterprise” means an individual, partnership, corporation, limited liability company or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one or more persons who are United States citizens and a member(s) of a disabled group;

“Disadvantaged Business Enterprise” means any Disability-Owned Business Enterprise, Minority-Owned Business Enterprise, Veteran-Owned Business Enterprise or Women-Owned Business Enterprise;

“Implementation Plan” has the meaning set out in Section 10.4 of this Schedule 2;

“Independent Certifier” has the meaning set out in Section 3.1 of this Schedule 2;

“Independent Certifier’s Monthly Report” means the report produced by the Independent Certifier at the end of each month from the time Project Co first applies for a Certificate of Site Completion until the System Completion Date confirming the Site Migration Dates for each Site for which Project Co has applied for a Certificate of Site Completion during the period beginning 5 Business Days prior to the end of the preceding month and ending 5 Business Days prior to the end of the current month;

“Intended Uses” means the uses for the NG-KIH System as described in the Design and Construction Specifications;

“Minority-Owned Business Enterprise” means an individual, partnership, corporation, limited liability company or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one or more persons who are United States citizens and a member(s) of a minority group;

“Outside Ring Completion Holdback” has the meaning set out in Section 11.1 of this Schedule 2;

“Project Schedule” has the meaning set out in Section 10.1 of this Schedule 2;

“Quality Assurance Plan” means the quality assurance plan prepared by Project Co, as revised and updated by Project Co from time to time;

“Quality Assurance Program” has the meaning set out in Section 9.2 of this Schedule 2;

“Reviewed Drawings and Specifications” has the meaning set out in Appendix 2B [Design Review];

“Rock Risk Amount” has the meaning set out in Section 14.1 of this Schedule 2;

“Site Access Plan” has the meaning set out in Section 10.1 of this Schedule 2;

“Site Completion Deficiency” has the meaning set out in Section 13.1 of this Schedule 2;

“Submittals” has the meaning set out in Appendix 2B [Design Review];

“Submittal Schedule” has the meaning set out in Appendix 2B [Design Review];

“Updated Project Schedule” has the meaning set out in Section 10.2 of this Schedule 2;

“Veteran-Owned Business Enterprise” means an individual, partnership, corporation, limited liability company or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one or more veterans who are United States citizens; and

“Women-Owned Business Enterprise” means an individual, partnership, corporation, limited liability company or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one or more women who are United States citizens.

2. PARTIES’ DESIGN AND CONSTRUCTION REPRESENTATIVES

2.1 Appointment of Representatives

Each party will, within 5 Business Days of the Effective Date, designate in writing a person (the **“Design and Construction Representative”**) to be the party’s single point of contact with respect to the Design and the Construction. Project Co’s Design and Construction Representative will be a Key Individual. Except as otherwise set out in this Project Agreement, all costs or expenses incurred by or with respect to a party’s Design and Construction Representative will be for the account of that party.

2.2 Replacement

Subject to Section 2.8 of this Project Agreement in respect of Key Individuals, a party may, at any time and in its own discretion by notice to the other party and Operations Co, change the person appointed as the party's Design and Construction Representative. If, for any reason, a party's Design and Construction Representative is unable or unwilling to continue, then the party will immediately appoint a replacement Design and Construction Representative. If, at any time, a party objects to a Design and Construction Representative of the other party, then the other party will give reasonable consideration to replacing the Design and Construction Representative with a person reasonably acceptable to the objecting party.

2.3 Authority of Representatives

A party's Design and Construction Representative will have full authority to act on behalf of and bind the party with respect to Design and Construction under this Project Agreement, including giving any review, acceptance, approval or confirmation which may be given by the Authority. Notwithstanding the above, a party's Design and Construction Representative will not have the authority to execute or agree to any amendments of or to give any waivers under this Project Agreement.

2.4 Review Procedure

The parties will follow the submittal schedule and design review process set out in Appendix 2B [Design Review].

2.5 Authority Not Responsible for Design or Construction

The Authority's review, acceptance, approval or confirmation of compliance with respect to any technical aspect of the Design or Construction, including pursuant to Appendix 2B [Design Review], will be for the Authority's benefit only, and no review, acceptance, approval or confirmation of compliance by the Authority's Design and Construction Representative or other representative of the Authority will in any way relieve Project Co of its obligations for all aspects of the Design and Construction of the NG-KIH System except as may be expressly set out in this Project Agreement.

3. INDEPENDENT CERTIFIER

3.1 Appointment

The parties will cooperate to jointly appoint a person (or firm of persons) (the "**Independent Certifier**"), who is:

- (a) qualified and experienced with respect to the design and construction of telecommunications projects similar to the Project; and
- (b) independent from both the Authority and Project Co (and who will be impartial to the parties),

to provide certification services during the Construction Period. The parties will enter into an agreement with the Independent Certifier on the terms generally as set out in Appendix 2A [Independent Certifier Agreement]. The parties confirm that Project Co may also appoint the

Independent Certifier to provide payment certification services in respect of the Design-Build Agreement.

3.2 Appointment and Replacement

If, within 20 Business Days of the Effective Date, the Independent Certifier has not been appointed, or if for any reason during the Construction Period the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services, or if the Independent Certifier's appointment has been terminated by the Authority and Project Co, then:

- (a) within 5 Business Days of the date that is 20 Business Days after the Effective Date (or within 5 Business Days of the date of termination of the Independent Certifier's appointment, if applicable), the Authority will provide the names of 3 candidates acceptable to the Authority for consideration by Project Co;
- (b) within 10 Business Days of receiving the candidate names, Project Co will notify the Authority of the candidates acceptable to Project Co, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 2A [Independent Certifier Agreement]; and
- (c) if none of the candidates are acceptable to Project Co, acting reasonably, or if for any reason an Independent Certifier is not appointed within 40 Business Days of the Effective Date (or within 20 Business Days of the date of termination of the Independent Certifier's appointment, if applicable), then either party may immediately apply to a judge of the state court in Franklin County, Kentucky for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

3.3 Milestone Inspections and Report

In accordance with key milestone dates set out in the Project Schedule, the parties will require the Independent Certifier to:

- (a) consult with the Design-Builder and others involved in the Design; and
- (b) conduct inspections of the Construction,

and, within 20 Business Days of the relevant consultation and/or inspection, prepare and deliver to the Authority, Project Co and Operations Co a written report containing a description of:

- (c) the completed Design and Construction; and
- (d) the progress of the Design and Construction relative to the Updated Project Schedule, with an overview analysis of any variances.

3.4 Payment Certification

The parties may require the Independent Certifier to provide payment certification services in respect of the Design-Build Agreement and Sub-Contracts for parts of the Construction.

3.5 Application for Certificates of Site Completion

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Section 13 of this Schedule 2.

3.6 Project Co Obligations

Project Co will:

- (a) give the Independent Certifier such access to the Design and Construction as the Independent Certifier reasonably requests in order to be fully informed as to the progress of the Design and Construction, including access to drawings, specifications, schedules, records and other documents or data relating to the Design and Construction and including such information that is being produced by or in the possession of the Design-Builder or others;
- (b) enable the Independent Certifier to enter and inspect the Lands, in accordance with Section 4.5 of Appendix 2A [Independent Certifier Agreement];
- (c) permit the Independent Certifier to attend all Design and Construction meetings during the Construction Period, except to the extent Project Co and the Authority expressly otherwise agree; and
- (d) keep the Independent Certifier informed as to the progress of the Construction, including giving notice in accordance with Customary Industry Practice of any part of the work on the NG-KIH System which does not comply with the Design and Construction Specifications, and provide an opportunity for the Independent Certifier to review the field conditions.

3.7 No Responsibility for Design or Construction

Nothing in this Project Agreement (including this Schedule 2) or in the parties' agreement with the Independent Certifier will be interpreted as giving the Independent Certifier any responsibility or authority for any aspect of the Design or Construction, or as relieving Project Co of its responsibility for the Design and Construction as set out in this Project Agreement, and none of Project Co, Operations Co, the Design-Builder or any Sub-Contractor will be entitled to rely on any review, acceptance, approval or confirmation that the Independent Certifier may give with respect to the Design or Construction.

4. DESIGN AND CONSTRUCTION RESPONSIBILITIES

4.1 Design/Build Responsibility

Notwithstanding any other provision of this Project Agreement, Project Co will:

- (a) have complete responsibility for and control over the Design and Construction of the NG-KIH System; and
- (b) perform and complete the Design and Construction:

- (1) in accordance with all terms of this Project Agreement, including the terms of this Schedule 2 and the Design and Construction Specifications; and
- (2) so as to provide the NG-KIH System that at System Completion:
 - (A) is complete and operational and fit for the Intended Uses;
 - (B) is fully compliant with the applicable requirements set out in Schedule 3 [Design and Construction Specifications]; and
 - (C) will permit Project Co to provide the Services in accordance with the requirements of this Project Agreement.

Each of the obligations in Sections 4.1(b)(1) and 4.1(b)(2) of this Schedule 2 are independent obligations, and the fact that Project Co has satisfied one obligation will be no defense to an allegation that it has failed to satisfy another.

4.2 Standard of Performance for Design and Construction

Without limiting the other requirements of this Project Agreement, Project Co will perform the Design and Construction to the standards required by Schedule 3 [Design and Construction Specifications].

4.3 Deficiencies in Design or Construction

Project Co will, without cost to the Authority, and without limiting Project Co's obligations to perform the Services as set out in this Project Agreement, including Schedule 4 [Services Protocols and Specifications], correct any Deficiency that becomes apparent at any time during the Term, subject to the terms of this Project Agreement, including the Handback Requirements.

4.4 Compliance with Laws

Project Co will undertake and perform the Design and Construction in accordance with applicable Laws, and so that all applicable elements of the Design and Construction, including all workmanship, construction equipment and materials, and the supply and installation of NG-KIH System equipment, meet the requirements of applicable Laws. If there is any conflict or ambiguity between the provisions of applicable Laws, or between a provision of applicable Laws and the Design and Construction Specifications, or between provisions of the Design and Construction Specifications, then the provision of higher quality or higher standard will govern.

4.5 Permits for the Design and Construction

- (a) Subject to Section 3.9 (Pole Attachment Agreements) of this Project Agreement, Section 8 (Supervening Events) of this Project Agreement and the Authority's obligation in respect of zoning for all Site Locations, Project Co is responsible to obtain all Permits that are required for the performance of the Design and Construction.
- (b) Project Co will:

- (1) keep the Authority's Design and Construction Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits;
 - (2) provide access to copies of all applications relating to Permits and issued Permits for the Construction of the NG-KIH System in the DMS; and
 - (3) where practicable, provide reasonable advance notice to the Authority of any meetings with Governmental Authorities relating to Permits and, upon request by the Authority, permit a representative of the Authority to attend any such meetings.
- (c) Subject to Section 3.9 (Pole Attachment Agreements) of this Project Agreement, Section 8 (Supervening Events) of this Project Agreement and the Authority's obligation in respect of zoning for all Site Locations, Project Co assumes all risk and costs arising in relation to all Permits, including delays to the Project Schedule arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits or amendments to Permits as may be required.
- (d) The Authority will provide Project Co and Operations Co with such information within the Authority's possession, and co-operate with Project Co and Operations Co, as Project Co or Operations Co reasonably require in relation to all Permits.

5. DESIGN AND CONSTRUCTION PLAN

5.1 Design and Construction Plan

Project Co will:

- (a) prepare a design and construction plan and an installation plan and a traffic flow and control plan (the "**Design and Construction Plan**");
- (b) submit the Design and Construction Plan to the Authority within 20 Business Days of the Effective Date, which plan shall be reviewed by the Authority in accordance with Appendix 2B [Design Review]; and
- (c) comply with the reviewed Design and Construction Plan in the Design and Construction of the NG-KIH System.

6. DESIGN

6.1 Additional Design Considerations

In addition to other requirements of this Project Agreement, Project Co will undertake and perform the Design so that the Design:

- (a) 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, as of the date of this Project Agreement, and Project Co will appoint a design team that:

- (1) is so qualified;
 - (2) includes (as required by applicable Law or Customary Industry Practice) licensed or registered professional engineers and architects;
 - (3) 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 Project Agreement; and
 - (4) has sufficient expertise and experience designing, constructing, operating and maintaining infrastructure in similar environmental and geotechnical conditions as in the Lands;
- (b) includes specific consideration of constructability, staging and equipment delivery restrictions and lifecycle cost issues at all stages of Design, as appropriate; and
 - (c) includes consideration of efficient and cost-effective operation and maintenance, including any environmentally sustainable operating practices.

6.2 Design Process

Project Co will undertake the Design in accordance with Appendix 2B [Design Review], including providing submittals to the Authority in accordance with the submittal schedule. This Section 6.2 does not limit Project Co's obligation to comply with any requirements set out in the Design and Construction Specifications in relation to the stages and requirements for the Design.

6.3 Design Change

Any revisions to drawings, specifications and equipment requested by the Authority and any other change to any Design described in the Reviewed Drawings and Specifications (other than a change required to bring the Design into conformity with this Project Agreement) requested by the Authority will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

6.4 Ownership of Design

With respect to ownership and property rights relating to the Design:

- (a) the Authority will not have an ownership interest in the Design, including any of the drawings or specifications prepared and produced by Project Co, Operations Co, the Design-Builder or any Sub-Contractor;
- (b) Project Co grants to the Authority, or will cause Operations Co, the Design-Builder and all Sub-Contractors to grant to the Authority, an irrevocable perpetual license giving the Authority the non-exclusive right to use the Design, including any of the documents and information listed in Section 7.18 of this Schedule 2:
 - (1) in connection with the NG-KIH System during and beyond the end of the Term and as long as the NG-KIH System exists, including for operational

purposes during the Term and for renovations, additions and alterations to the NG-KIH System; and

- (2) for reference purposes in connection with other operations, projects and facilities of the Authority; and
- (c) Project Co will execute and deliver through the DMS, or cause to be executed and delivered through the DMS, any and all further and other documents as the Authority may reasonably request to effect and record the license referred to in Section 6.4(b) of this Schedule 2.

7. CONSTRUCTION

7.1 Construction of the NG-KIH System

Project Co will perform the Construction in strict conformity with the Reviewed Drawings and Specifications, as may be modified and amended from time to time in accordance with the terms of this Project Agreement, and this obligation will be in addition to all other obligations of Project Co under this Project Agreement.

7.2 Amendments and Changes to the Drawings and Specifications

During the Construction, Project Co will submit all amendments or additions to the Reviewed Drawings and Specifications to the Authority's Design and Construction Representative for review under Appendix 2B [Design Review]. Any Changes during the Construction will be subject to the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.3 Skilled Workers

Project Co will employ or cause Operations Co to cause the Design-Builder to employ a sufficient number of sufficiently skilled workers to perform the Construction in compliance with this Project Agreement. Trades and other workers will be licensed or registered as required by applicable Law or Customary Industry Practice.

7.4 Local Content Utilization

Subject to Section 7.3, Project Co will use commercially reasonable efforts to utilize, or cause Operations Co to cause the Design-Builder to utilize, local labor to perform no less than 60% of the total Construction man hours. No later than 60 days following the end of each calendar year during the Construction Period, Project Co will provide a report to the Authority detailing its efforts to utilize and actual utilization of local labor in the Construction.

7.5 Disadvantaged Business Enterprises

Project Co will use commercially reasonable efforts to utilize, or cause Operations Co to cause the Design-Builder to utilize, Disadvantaged Business Enterprises to perform no less than 10% of the total Construction man hours. No later than 60 days following the end of each calendar year during the Construction Period, Project Co will provide a report to the Authority detailing its efforts to utilize and actual utilization of Disadvantaged Business Enterprises in the Construction.

7.6 Control of the Construction

Project Co will have total control of the Construction and will effectively direct and supervise the Construction so that it is undertaken in compliance with the terms of this Project Agreement. Project Co will be responsible for all construction means, methods, techniques, sequences and procedures with respect to the Construction and for coordinating the various elements of the Construction, and nothing in this Project Agreement (including this Schedule 2) will be interpreted as giving any responsibility for the above to the Authority, the Authority's Design and Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

7.7 Existing Utilities and Services

Project Co will:

- (a) confirm the location of, and protect all existing utilities and services that may be affected by the Construction; and
- (b) subject to Section 8 (Supervening Events) of this Project Agreement, relocate, or cause to be relocated, any existing utilities and services that conflict with the Construction.

All existing utilities and services to local communities must remain in operation at all times with interruption only with the prior written consent of the Authority's Design and Construction Representative.

7.8 Route and Lands Investigation

Subject to Section 8 (Supervening Events) of this Project Agreement or as otherwise expressly provided to the contrary in this Project Agreement and, for clarity, without derogating from the Authority's obligation to provide the License, Project Co will be deemed to have visually inspected portions of the planned route and Lands in relation to the performance of its obligations under this Project Agreement and to have satisfied itself and accepted all obvious risks and related responsibilities relating to the Construction on the planned route and Lands, including:

- (a) the adequacy of physical access to and through the Lands for the Construction;
- (b) vehicular access and parking;
- (c) traffic control and requirements for works on all roadways or public access right-of-ways;
- (d) temporary storage of building materials and equipment;
- (e) existing utilities and services on the Lands;
- (f) existing building structures to receive tie-ins; and
- (g) building components requiring demolition and disposal, if any.

7.9 Route and Lands Issues

Project Co will:

- (a) carry out the Construction in accordance with an approved Design and Construction Plan that includes the details for Project Co's phasing of all parts of the Construction;
- (b) perform all Construction activities within lands for which Project Co has been granted a license in accordance with Schedule 7 [Lands] or for which Project Co has otherwise obtained sufficient rights of access;
- (c) provide a community liaison officer to provide a single point of contact for local communities regarding construction and development issues;
- (d) before commencing the Construction, prepare and implement, in co-operation with the Authority, an emergency response plan for the Project; and
- (e) if Project Co performs any Construction-related activities outside of the Lands, without limiting any other provisions of this Project Agreement, including the Design and Construction Specifications, comply with all relevant Laws.

7.10 Authority's Access to the Lands

Subject to complying with all relevant safety procedures, including any relevant health and safety plans for the carrying out of the Construction and Project Co's, Operation Co's and/or the Design-Builder's site rules, the Authority's Design and Construction Representative and its delegates and any other person designated by the Authority will have access during normal working hours to:

- (a) attend the Lands and view the Construction; and
- (b) subject to obtaining the consent of Project Co's Design and Construction Representative, visit any other location where Construction is being performed for the purposes of general inspection and/or of attending any test or investigation being carried out in respect of the Construction or Commissioning.

The Authority's Design and Construction Representative and its delegates will have the right to attend all monthly progress meetings and site meetings, including meetings between Project Co, Operations Co and any Sub-Contractors.

Project Co will cooperate with the Authority to arrange for tours of the Lands or the NG-KIH System at reasonable times during Construction, in a way that does not interfere with the progress of the Construction.

Except as set out above or as otherwise provided for in this Project Agreement, the Authority will not grant any person access to the Lands or NG-KIH System during the Construction Period without the consent of Project Co, such consent not to be unreasonably withheld or delayed.

7.11 Inspection

Prior to the Site Completion Date of a Site, Project Co will, upon request by the Authority's Design and Construction Representative, which will include detailed reasons for the request, open up for inspection by the Authority's Design and Construction Representative any part of the Site which the Authority's Design and Construction Representative, acting reasonably, believes is defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Deficiencies in the relevant part of the Site, then any delay caused by the exercise of such rights will be treated as a Compensation Event and be subject to Section 8.3 of this Project Agreement;
- (b) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are Deficiencies in the relevant part of the Site, then:
 - (1) Project Co will rectify and make good such Deficiencies;
 - (2) any consequence of such rectification or making good Deficiencies will be carried out by Project Co at no cost to the Authority; and
 - (3) Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of Deficiencies; and
- (c) if the parties are unable to reach agreement in accordance with (a) or (b) above, then the matter will, at the request of either party, be referred to the Dispute Resolution Procedure. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter in Dispute, the parties will proceed in accordance with the position of the Authority, provided that Project Co proceeding in accordance with the Authority's position will be a Compensation Event if the relevant matter in Dispute is determined in favor of Project Co.

7.12 Safety

Project Co will be solely responsible for safety during the Construction Period, including the safety of all persons on the Lands and any other location where the Construction 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.

7.13 Protection of the Environment and Property

Project Co will:

- (a) follow all environmental protection requirements and restrictions while performing the Construction;

- (b) protect the Authority's property (and any third party's property) from damage caused by the Construction, including buildings, roadways, drainage systems, landscaping, surfaces, services and infrastructure;
- (c) promptly notify the Authority of any damage to property caused by Project Co in undertaking the Construction, including any damage caused by site settlement or ground vibration; and
- (d) subject to Section 8 (Supervening Events) of this Project Agreement, promptly repair any damage to property caused by Project Co in undertaking the Construction, including any damage caused by site settlement or ground vibration.

7.14 Survey and Progress Monitoring

Project Co will conduct a pre-construction ride-out survey of the route and regular progress monitoring surveys in accordance with the Design and Construction Plan.

7.15 Signage

Project Co may erect signage on the Lands during Construction to identify Project Co, Operations Co and the Project Contractors, provided such signs are acceptable to the Authority's Design and Construction Representative, acting reasonably.

7.16 Temporary Works

During the Construction Period, Project Co will:

- (a) have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use; and
- (b) subject to the Authority's obligation to provide utilities and services at all Site Locations, provide its own utilities and services necessary for Project Co's construction use, including power and water, and will not connect directly to existing Authority buildings or infrastructure except with the Authority's prior approval.

7.17 Project Management

Project Co will assign a project team, which will be headed by Project Co's Design and Construction Representative, to work in conjunction with the Authority's Design and Construction Representative. Project Co will provide overall project management, scheduling, reporting and financial management.

Project Co will initiate a kick-off meeting, on a mutually agreed upon date, after the Effective Date. The purpose of the kick-off meeting will be to confirm the working level contacts between the Authority, Project Co and any relevant third parties, to identify high level deployment schedules and to finalize the detailed project plan requirements.

Project Co will track and report status of both outside plant and inside plant Construction deliverables, including any impacts on the Project Schedule.

Other project management tasks include:

- (a) developing the Quality Assurance Plan and developing and implementing the Quality Assurance Program in accordance with Section 9.2 of this Schedule 2;
- (b) developing the Commissioning Plan in accordance with Section 12.1 of this Schedule 2;
- (c) creating and distributing meeting agendas and minutes;
- (d) administering the Change process;
- (e) ensuring circuits are documented and retained (circuit layout record assignments);
- (f) coordinating all corrective actions identified during inspections and audits;
- (g) capturing and tracking the resolution of any complaints about or damage by construction crews; and
- (h) documenting, mitigating and escalating Project-related issues to the Authority and maintaining a log of these issues, including actions in progress and resolution.

At the Authority's request, Project Co's Design and Construction Representative will attend meetings to update the Authority on the progress of the Construction and to discuss any issues that have arisen during the Construction Period.

7.18 Project Records

Notwithstanding any other provision of this Project Agreement:

- (a) As-Built Drawings and Specifications: Project Co will:
 - (1) no later than 4 months following Ring Completion in respect of any Ring, update the Reviewed Drawings and Specifications (with respect to the drawings, such update will be in approved electronic format), including all geospatial details and depth of cable, civil works, final NG-KIH POP floor plan layout, shop drawings and equipment rack mounted layouts and configurations, network element layouts and configurations, so as to produce accurate and complete as-built documents for the NG-KIH System, including any revisions permitted under this Project Agreement to the requirements of the Design and Construction Specifications or other provisions of this Project Agreement;
 - (2) make available the Reviewed Drawings and Specifications in approved electronic format to the Authority's Design and Construction Representative for review to permit the Authority's Design and

Construction Representative to monitor Project Co's compliance with the requirements of this provision and for the Authority's operational and other use; and

- (3) submit all electronic copies through the DMS in compliance with the standards established by the Authority from time to time for electronic copies.
- (b) Maintenance Manuals: Project Co will:
- (1) on or before System Completion, make available all maintenance manuals, specifications, warranties and related information, in written and/or electronic form, for all the equipment and systems that have been included in the Design and Construction of the NG-KIH System for review by the Authority's Design and Construction Representative; and
 - (2) organize and store such information in accordance with Schedule 14 [Records and Reports].
- (c) Design Records: Project Co will retain records of the Design process.
- (d) Minutes of Meetings: Project Co will retain minutes of all meetings between the Authority, Project Co and Operations Co relating to the Design and Construction. Project Co will circulate such minutes to the Authority's Design and Construction Representative for review and comment within the time period specified in this Project Agreement for the particular meeting or, if no time period is specified, then as soon as reasonably possible after the relevant meeting and a reasonable period before any subsequent meeting so that all parties may consider the minutes and take required actions in advance of the subsequent meeting.
- (e) Inspection Reports and Tests Results: Project Co will retain and maintain in the DMS official reports and certified test records of all inspections and tests which were undertaken as part of the Construction and/or Commissioning.
- (f) Monitoring Results: Project Co will retain all survey and monitoring records obtained in connection with Section 7.14 (Survey and Progress Monitoring).
- (g) Utility Plans: Project Co will retain utility plans for the NG-KIH System and the Lands.
- (h) Copies of all Permits: Project Co will retain copies of all Permits for the Construction of the NG-KIH System.
- (i) Signed Quality Assurance Plan: Project Co will retain a signed copy of the Quality Assurance Plan for the Construction and all records of the Quality Assurance Program implemented as required by this Project Agreement.

8. EQUIPMENT SUPPLY AND INSTALLATION

8.1 Design and Construction Requirements

Project Co will complete the Design and Construction to accommodate the installation, operation, repair and maintenance of all the NG-KIH System equipment, including, as required, all electrical and fiber optic connections, structural support, seismic restraints and space for efficient access, all as specified in Schedule 3 [Design and Construction Specifications].

9. QUALITY ASSURANCE

9.1 Quality of the Design and Construction

Project Co is solely responsible for the quality of the Design and Construction.

9.2 Quality Assurance Program

Project Co will develop and implement a quality assurance program (the “**Quality Assurance Program**”) in accordance with the Quality Assurance Plan.

9.3 Quality Review by the Authority

The Authority may, at its discretion, perform audits of the Quality Assurance Program and for that purpose Project Co will make available for review by the Authority, upon request from the Authority, all records of the Quality Assurance Program and the Quality Assurance Plan.

10. PROJECT SCHEDULE, SITE ACCESS PLAN, IMPLEMENTATION PLAN

10.1 Initial Project Schedule and Initial Site Access Plan

Attached as Appendix 2C [Initial Project Schedule] is the initial project schedule (the “**Project Schedule**”), which the parties have relied upon in entering into this Project Agreement. Attached as Appendix 2D [Initial Site Access Plan] is the initial site access plan (the “**Site Access Plan**”), which the parties have relied upon in entering into this Project Agreement. The Site Access Plan includes 24x7 access security codes (where applicable), site contact names, site contact emails, site contact phone numbers, security badges, specific access restrictions, general access notification requirements, rights and policies and any other site access requirements for all Project-related activities in respect of each of the Sites. Subject to Section 8 (Supervening Events) of this Project Agreement, the Site Access Plan may be updated by the Authority, as required from time to time, in consultation with Project Co and having regard to the impact of any changes on the Project Schedule.

10.2 Project Schedule Updates

Project Co will, as required from time to time until System Completion, but no less than once per calendar month by the 15th day of each month, in consultation with the Authority, update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of Project Co’s plans for the completion of the Design and Construction of the NG-KIH System in accordance with the requirements of this Project Agreement.

The updates will include:

- (a) adjustments resulting from Supervening Events and Changes, if any, as permitted by this Project Agreement;
- (b) best estimates of the following:
 - (1) the start and completion dates for the Design phases described in Section 6.2 of this Schedule 2;
 - (2) the commencement of Construction; and
 - (3) the planned start and completion dates of the major activities of Construction; and
- (c) the Target Site Completion Date for each Site, the Target Ring Completion Date for each Ring and the Target System Completion Date, which (except to the extent necessary to reflect adjustments made in accordance with Section 10.2(a) of this Schedule 2) may not be updated or otherwise changed without the prior consent of the Authority, acting reasonably.

Project Co will deliver an updated Project Schedule monthly to the Authority and the Independent Certifier and upon delivery the updated Project Schedule (the “**Updated Project Schedule**”) will be the Project Schedule under this Project Agreement in substitution for the previously issued Project Schedule. If, at any time, the Authority does not agree with the proposed updates that may be required to the Project Schedule, then the disagreement may be referred to the Dispute Resolution Procedure.

10.3 Failure to Update Project Schedule

If Project Co fails or refuses to deliver an Updated Project Schedule as required under Section 10.2 of this Schedule 2, then such failure or refusal will be deemed to be a Project Co Material Breach.

10.4 Implementation Plan

Project Co will develop an implementation plan (the “**Implementation Plan**”) that will be coordinated with the Project Schedule (as updated from time to time in accordance with Section 10.2 of this Schedule 2) and the Site Access Plan.

The Implementation Plan will include:

- (a) detail about the roles, responsibilities and inter-dependencies of the Authority, Project Co, Operations Co, the Design-Builder and any relevant third parties; and
- (b) schedules, best practices, MOP, communications plans, risk mitigation strategies, escalation procedures, action item registers and completion certification requirements.

The Implementation Plan will be completed and submitted to the Authority in a form to be agreed by the parties, acting reasonably.

10.5 Compliance with Project Schedule

Project Co will undertake the Design and Construction of the NG-KIH System in compliance with the Updated Project Schedule, as may be updated pursuant to this Project Agreement.

11. DELAY AND ACCELERATION

11.1 Delay in Achieving Outside Ring Completion Dates

If Project Co fails to achieve Site Completion of 90% of the Sites on a Ring by the relevant Outside Ring Completion Date, the Authority may suspend payment of that portion of the Availability Payment corresponding to the completed Sites on the Ring (the “**Outside Ring Completion Holdback**”) until such time as 90% of the Sites on the Ring have achieved Site Completion. Once Project Co achieves Site Completion of 90% of the Sites on the Ring, Project Co will be entitled to receive the Outside Ring Completion Holdback and the Authority will resume payment of that portion of the Availability Payment corresponding to the completed Sites on the Ring. For greater certainty, Project Co will not be entitled to suspend the Services as a result of the suspension of payment contemplated in this Section 11.1.

11.2 Acceleration to Advance Construction or Other Changes to Project Schedule

If, at any time, the Authority determines that it requires the Construction to proceed in advance of the Updated Project Schedule or other than in accordance with the Updated Project Schedule, then the Authority may give written notice to Project Co and Operations Co to provide the Authority with a written proposal to accelerate the Construction or otherwise modify the Updated Project Schedule.

If the Authority, acting reasonably, decides to proceed with the acceleration or other modification to the Updated Project Schedule:

- (a) the Authority will notify Project Co and Operations Co in writing;
- (b) Project Co will implement the directed acceleration or other modification to the Updated Project Schedule in accordance with its proposal;
- (c) the Authority will reimburse Project Co for costs that were described in Project Co’s proposal and reasonably incurred by Project Co (but not for any other costs); and
- (d) if the acceleration or other modification to the Updated Project Schedule involves a Change (other than to the Updated Project Schedule), then such Change will be made in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

12. COMMISSIONING AND OPERATIONAL READINESS

12.1 Commissioning Plan

Project Co will prepare a commissioning plan (the “**Commissioning Plan**”). The Commissioning Plan must be reasonable having regard to the requirements of this Project Agreement and will be developed and finalized as follows:

- (a) Project Co will deliver a draft of the Commissioning Plan to the Authority not more than 3 months following the Effective Date;
- (b) the Authority will provide its comments, if any, on the draft Commissioning Plan to Project Co and Operations Co within 30 days of receipt of the draft;
- (c) Project Co will deliver a revised draft of the Commissioning Plan to the Authority not less than 30 days after receipt of the Authority's comments on the draft;
- (d) the Authority will, within 30 days of receipt of the revised draft, advise Project Co and Operations Co whether the Authority accepts the Commissioning Plan or, if the Authority does not accept it, the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (e) if the Authority does not accept the Commissioning Plan, the parties will, acting reasonably, diligently work together with a view to revising the Commissioning Plan to address the Authority's reasons for non-acceptance; and
- (f) if the Authority has not accepted the Commissioning Plan by the date that is 6 months following the Effective Date, Project Co may refer the Dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Commissioning Plan is reasonable.

13. COMPLETION

13.1 Site Completion Deficiency List

Prior to and as a condition of issuance of the Certificate of Site Completion, Project Co will, in cooperation with the Authority's Design and Construction Representative and the Independent Certifier, prepare a complete list of Deficiencies that are apparent upon inspection of the relevant Site at that time (the "**Site Completion Deficiencies**") and deliver to the Authority's Design and Construction Representative the list of Site Completion Deficiencies. Subject to the right of Project Co to refer matters to the Dispute Resolution Procedure as set out below, the list of Site Completion Deficiencies will include all items required by the Authority to be included on such list. The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of Site Completion Deficiencies to the Dispute Resolution Procedure.

13.2 Advance Notice of Application for Site Completion

Project Co acknowledges that the Authority or the relevant Site, as applicable, will need sufficient time to notify existing service providers and the Independent Certifier will need sufficient time to complete any reviews, consult with the Authority and consider the list of Site Completion Deficiencies. Accordingly, Project Co will:

- (a) at least 45 days before Project Co expects to achieve Site Completion for a Site, deliver to the Independent Certifier, the Authority's Design and Construction Representative and, if applicable, the contact person for the relevant Site a notice setting out the anticipated Site Completion Date;

- (b) at least 15 Business Days before Project Co expects to achieve Site Completion for a Site, deliver to the Independent Certifier and the Authority's Design and Construction Representative a notice setting out:
 - (1) a description of all outstanding Design and Construction to be completed by Project Co prior to Site Completion; and
 - (2) the list of Site Completion Deficiencies; and
- (c) assist the Independent Certifier to make any advance reviews requested by the Independent Certifier.

13.3 Application for Certificate of Site Completion

If Project Co believes it has achieved the requirements for Site Completion in respect of a Site and complied with Section 13.2, then Project Co may apply to the Independent Certifier (with a copy to the Authority's Design and Construction Representative) for a Certificate of Site Completion.

No later than 5 Business Days after application by Project Co for a Certificate of Site Completion, the parties will require the Independent Certifier to review Project Co's application for Site Completion.

Within 5 Business Days of the Independent Certifier's review of Project Co's application for Site Completion, the Independent Certifier shall:

- (a) if Site Completion has been achieved, issue a certificate indicating that Site Completion has been achieved (a "**Certificate of Site Completion**"), together with comments on the list of Site Completion Deficiencies (if any); or
- (b) if Site Completion has not been achieved, provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction (specifying the nature and extent of each incomplete item) that must be completed prior to Site Completion.

In accordance with the Independent Certifier Agreement, the Independent Certifier will, within 5 Business Days after the end of each month, deliver the Independent Certifier's Monthly Report for such month to the Authority, Project Co and Operations Co.

13.4 Correction of Deficiencies

Upon issuance of the Certificate of Site Completion, Project Co will proceed expeditiously to correct each Site Completion Deficiency as soon as reasonably possible.

14. ROCK RISK SHARING MECHANISM

14.1 Rock Risk Amount

The parties acknowledge and agree that the Contract Price under and as defined in the Design-Build Agreement includes \$21,770,681 in respect of rock risk (the "**Rock Risk Amount**"). The

parties further acknowledge and agree that, as Changes are implemented during the Construction Period, the Rock Risk Amount will be evaluated and adjusted if appropriate.

14.2 Monthly Reporting

On a monthly basis throughout the Construction Period, Project Co will provide, or cause Operations Co to cause the Design-Builder to provide, a report to the Authority detailing the use of the Rock Risk Amount on a per foot basis at \$37.14/foot, including all supporting information and documentation as the Authority may reasonably require to substantiate the Design-Builder's claims.

14.3 Rock Risk Sharing Mechanism

On the System Completion Date, if the Rock Risk Amount:

- (a) has been exceeded, the Authority will make a payment to Project Co in the amount of 80% of the amount by which the Rock Risk Amount has been exceeded; or
- (b) has not been fully used, Project Co will make a payment to the NG-KIH Account in the amount of 80% of the unused Rock Risk Amount.

**APPENDIX 2A
INDEPENDENT CERTIFIER AGREEMENT**

See attached.

**APPENDIX 2A
FORM OF INDEPENDENT CERTIFIER AGREEMENT**

TABLE OF CONTENTS

1.	DEFINITIONS.....	1
1.1	Definitions.....	1
2.	INTERPRETATION	2
2.1	Interpretation.....	2
2.2	Obligations and Exercise of Rights by the PA Parties	3
3.	ROLE OF THE INDEPENDENT CERTIFIER	3
3.1	Engagement	3
3.2	Acknowledgement by Independent Certifier	3
3.3	Standard of Care.....	3
3.4	Duty of Independent Judgment	3
3.5	Authority to Act	4
3.6	Knowledge of the PA Parties' Requirements.....	4
3.7	Co-ordination by Independent Certifier.....	5
3.8	Conflict of Interest.....	5
3.9	Independent Certifier Personnel.....	5
4.	ROLE OF THE PA PARTIES	6
4.1	Assistance	6
4.2	Instructions in Writing.....	6
4.3	Information and Services	6
4.4	Additional Information	6
4.5	Right to Enter and Inspect.....	6
4.6	PA Parties Not Relieved.....	7
4.7	PA Parties not Liable	7
5.	SUSPENSION.....	7
5.1	Notice	7
5.2	Costs of Suspension	7
5.3	Recommencement.....	7
6.	INSURANCE AND LIABILITY.....	8
6.1	Independent Certifier's Professional Indemnity Insurance.....	8
6.2	Workers' Compensation Insurance	8
7.	PAYMENT FOR SERVICES	9
7.1	Fee	9
7.2	Payment of Fee	9
8.	FUNCTIONS VARIATIONS.....	9
8.1	Notice of Functions Variation	9
8.2	No Adjustment	10
8.3	Functions Variation Procedure.....	10
8.4	Cost of Functions Variation	10

9.	TERM AND TERMINATION	11
9.1	Term	11
9.2	Notice of Breach	11
9.3	Termination for Breach	11
9.4	Termination for Financial Difficulty	11
9.5	Termination for Convenience	11
9.6	Independent Certifier’s Rights upon Termination for Convenience	11
9.7	Procedure upon Termination	12
9.8	Effect of Termination	12
9.9	Survival	12
10.	INDEMNITY	12
10.1	Indemnity	12
11.	GENERAL	13
11.1	Entire Agreement	13
11.2	Negation of Employment	13
11.3	Waiver	13
11.4	Notices	13
11.5	Transfer and Assignment	14
11.6	Governing Laws and Venue	15
11.7	Confidentiality	15
11.8	Project Material	15
11.9	Time of the Essence	16
11.10	Amendment	16
11.11	Severability	16
11.12	Enurement	16
11.13	Counterparts	16
	SCHEDULE 1 FUNCTIONS	1
	SCHEDULE 2 FEE	4
	SCHEDULE 3 INDEPENDENT CERTIFIER PERSONNEL	1

**APPENDIX 2A
FORM OF INDEPENDENT CERTIFIER AGREEMENT**

THIS INDEPENDENT CERTIFIER AGREEMENT dated as of ■, 2015 is entered into:

BETWEEN:

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

AND:

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

AND:

■
(the “**Independent Certifier**”)

WHEREAS:

- A. The Authority and Project Co have entered into the Project Agreement.
- B. The Authority and Project Co wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The Authority, Project Co and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier will perform such services.

NOW THEREFORE THIS INDEPENDENT CERTIFIER 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. DEFINITIONS

1.1 Definitions

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

“**Fee**” means the fees payable by the PA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Schedule 2 [Fee];

“**Functions**” means:

- (a) all of the functions and obligations conferred on the Independent Certifier under the Project Agreement;
- (b) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Schedule 1 [Functions]; and
- (c) all other things or tasks which the Independent Certifier is required to do to comply with its obligations under this Independent Certifier Agreement;

“Functions Variation” means any change to the Functions;

“Independent Certifier Agreement” means this Independent Certifier Agreement and its Schedules;

“Intellectual Property” means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names;

“PA Parties” means, collectively, the Authority and Project Co;

“Project Agreement” means the project agreement dated ■, 2015 between the Authority and Project Co relating to the design, construction, financing, operation and maintenance for the NG-KIH System, as the same may be amended, supplemented or replaced from time to time; and

“Project Material” means all material:

- (a) provided to the Independent Certifier or created by or required to be created by any PA Party; and
- (b) provided by or created by or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

2. INTERPRETATION

2.1 Interpretation

The division of this Independent Certifier Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Independent Certifier Agreement and will not be used to affect the construction or interpretation of this Independent Certifier Agreement. The word “including” will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Independent Certifier Agreement to “Section” and “Schedule” is to a Section of, and a Schedule to, this Independent Certifier Agreement;

- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean Eastern Standard Time or Eastern Daylight Time, as the case may be;
- (e) all references to amounts of money mean U.S. Dollars; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

2.2 Obligations and Exercise of Rights by the PA Parties

The obligations of the PA Parties under this Independent Certifier Agreement will be several. Except as specifically provided for in this Independent Certifier Agreement, the rights of the PA Parties under this Independent Certifier Agreement will be jointly exercised by each of the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this Independent Certifier Agreement. The Independent Certifier will perform the Functions in accordance with this Independent Certifier Agreement.

3.2 Acknowledgement by Independent Certifier

The Independent Certifier hereby acknowledges in favor of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

The Independent Certifier will exercise the standard and skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

3.4 Duty of Independent Judgment

In exercising the Functions, the Independent Certifier will act:

- (a) impartially, honestly and independently;
- (b) reasonably, professionally and to the best of its abilities; and
- (c) in a timely manner:

- (1) in accordance with the times prescribed in this Independent Certifier Agreement or the Project Agreement, as applicable; or
- (2) where no times are prescribed, within 5 Business Days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement.

Although the Independent Certifier should take account of any opinions or representations made by the PA Parties, the Independent Certifier will not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

The Independent Certifier acknowledges that, as set out under the Project Agreement, the Independent Certifier's certifications will be final and binding on the PA Parties in respect of the issuance of a Certificate of Site Completion, and that the Independent Certifier will use its best skill and judgment in providing the Functions and making any certifications. A PA Party may dispute any other decision made by the Independent Certifier, including any list of Site Completion Deficiencies or list of incomplete Design and Construction that must be completed prior to Site Completion in respect of a Site.

3.5 Authority to Act

The Independent Certifier:

- (a) is an independent consultant and is not, and will not purport to be, a partner, joint venturer or agent of any PA Party;
- (b) other than as may be expressly set out in the Project Agreement, has no authority to give any directions to a PA Party or its officers, employees, contractors, consultants or agents; and
- (c) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a PA Party from any of its obligations under the Project Agreement unless jointly agreed in writing by the PA Parties.

3.6 Knowledge of the PA Parties' Requirements

The Independent Certifier warrants that:

- (a) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;
- (b) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
- (c) without limiting Sections 3.6(a) or 3.6(b), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;

- (d) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Functions and the means of access to and facilities at the NG-KIH System and Lands including restrictions on any such access or protocols that are required; and
- (e) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.7 Co-ordination by Independent Certifier

The Independent Certifier will:

- (a) fully co-operate with the PA Parties and their designated representatives or agents;
- (b) carefully co-ordinate the Functions with the work and services performed by the PA Parties;
- (c) without limiting its obligations under Sections 3.4 and 3.7(b), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
- (d) provide copies to all PA Parties of all reports, communications, certificates and other documentation that it provides to any PA Party.

3.8 Conflict of Interest

The Independent Certifier warrants that:

- (a) at the date of signing this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement; and
- (b) if, during the term of this Independent Certifier Agreement, any such conflict of interest or risk of conflict of interest arises, the Independent Certifier will immediately notify the PA Parties in writing of such conflict of interest or risk of conflict and take such steps, including withdrawal, as may be required by each of the PA Parties to avoid or mitigate the conflict of interest or risk of conflict of interest.

3.9 Independent Certifier Personnel

- (a) Subject to Section 3.9(b), the Independent Certifier will use the partners, directors or employees described in Schedule 3 [Independent Certifier Personnel] of this Independent Certifier Agreement in connection with the performance of the Functions and such persons' services will be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such persons will have full authority to act on behalf of the Independent Certifier for all purposes in connection with this Independent Certifier Agreement.

- (b) None of the persons listed in Schedule 3 [Independent Certifier Personnel] will be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Certifier or he/she is unable to work because of death or illness. The Independent Certifier will notify the PA Parties of any such circumstances and will be responsible for finding a replacement who will previously have been approved in writing by the PA Parties.

4. ROLE OF THE PA PARTIES

4.1 Assistance

The PA Parties agree to co-operate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

All instructions to the Independent Certifier by the PA Parties will be given in writing.

4.3 Information and Services

The PA Parties will each make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to determine whether the criteria for Site Completion in respect of a Site have been achieved, and will provide copies of all such information, documents and particulars to the other PA Party.

4.4 Additional Information

If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by Project Co or the Authority, as the case may be, then:

- (a) the Independent Certifier will give notice in writing to Project Co's Design and Construction Representative or the Authority's Design and Construction Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (b) Project Co or the Authority, as the case may be, will arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

Upon giving reasonable notice to Project Co's Design and Construction Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Lands, NG-KIH System and work in progress at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:

- (a) observance of the reasonable rules of Project Co as to safety and security for the Lands, NG-KIH System and work in progress;
- (b) not causing unreasonable delay to the carrying out of the Construction by reason of its presence at the Lands or NG-KIH System; and
- (c) not causing any damage to the Lands, NG-KIH System or work in progress.

4.6 PA Parties Not Relieved

Neither PA Party will be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission will not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. SUSPENSION

5.1 Notice

The Functions (or any part thereof) may be suspended at any time by the PA Parties:

- (a) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
- (b) in any other case, by the PA Parties giving 5 Business Days joint notice in writing to the Independent Certifier.

5.2 Costs of Suspension

The Independent Certifier will:

- (a) subject to the Independent Certifier complying with Section 8, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 5.1(b) that constitutes a Functions Variation under Section 8; and
- (b) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 5.1(a).

5.3 Recommencement

The Independent Certifier will immediately recommence the carrying out of the Functions (or any part thereof) on receipt of a joint written notice from the PA Parties requiring it to do so.

6. INSURANCE AND LIABILITY

6.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier will, at its cost, have in place:
- (1) professional errors and omissions insurance:
 - (A) in the amount of \$■ per claim and in the aggregate, a deductible of not more than \$■ per claim and from an insurer and on terms satisfactory to each of the PA Parties;
 - (B) with a term and extended reporting period from the date of this Independent Certifier Agreement until the expiration of 2 years from the cessation of the Functions; and
 - (C) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations or any breach of a duty owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Functions; and
 - (2) at all times during the term of this Independent Certifier Agreement, comprehensive general liability insurance in the amount of \$■ per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$■ per occurrence for property damage, naming the Authority as an additional insured and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier will:
- (1) ensure that each of the insurance policies described in Section 6.1(a):
 - (A) bears an endorsement to the effect that the insurer will not effect any adverse material change or amendment to the policy or any cancellation of the policy without first giving at least 30 Business Days prior written notice by registered mail to the Authority; and
 - (B) is obtained and maintained with reputable and Qualified Insurers licensed in the Commonwealth of Kentucky; and
 - (2) provide copies of each of the insurance policies described in Section 6.1(a) to each of the PA Parties upon request.

6.2 Workers' Compensation Insurance

The Independent Certifier will, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Functions.

7. PAYMENT FOR SERVICES

7.1 Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this Independent Certifier Agreement, the PA Parties will pay the Independent Certifier the Fee.
- (b) The Fee includes all taxes (except for Sales Taxes), disbursements and expenses (including accommodation, car rental, equipment and travel expenses), overheads and profit to perform the Functions.

7.2 Payment of Fee

- (a) The PA Parties will each pay half the Fee to the Independent Certifier in accordance with the payment schedule specified in Schedule 2 [Fee]. Each payment of the Fee due to the Independent Certifier with 30 days of receipt by the PA Parties of an invoice therefor, together with all supporting documentation reasonably required by either PA Parties.
- (b) The obligation on Project Co and the Authority to each pay half of the Fee to the Independent Certifier is not subject to joint and several liability and neither the Authority nor Project Co will have any liability whatsoever for the non-payment by the other of any fees or costs payable by such other party under this Independent Certifier Agreement.
- (c) Project Co acknowledges and agrees that if any amount due and payable by Project Co to the Independent Certifier is outstanding, the Independent Certifier will not have any obligation to Project Co to make any certification under the Project Agreement.

8. FUNCTIONS VARIATIONS

8.1 Notice of Functions Variation

- (a) If the Independent Certifier believes, other than a "Functions Variation Order" under Section 8.3, that any direction by the PA Parties constitutes or involves a Functions Variation it will:
 - (1) within 5 Business Days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers that the direction constitutes or involves a Functions Variation; and
 - (2) within 15 Business Days after giving the notice under Section 8.1(a)(1), submit a written claim to each of the Authority's Design and Construction Representative and Project Co's Design and Construction Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier will

continue to perform the Functions in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section.

8.2 No Adjustment

If the Independent Certifier fails to comply with Section 8.1, the Fee will not be adjusted as a result of the relevant direction.

8.3 Functions Variation Procedure

- (a) The Authority's and Project Co's Design and Construction Representatives may jointly issue a document titled "Functions Variation Price Request" to the Independent Certifier, which will set out details of a proposed Functions Variation that the PA Parties are considering.
- (b) Within 7 Business Days after the receipt of a "Functions Variation Price Request", the Independent Certifier will provide each of the Authority's and Project Co's Design and Construction Representatives with a written notice in which the Independent Certifier sets out the effect that the proposed Functions Variation will have on the Fee.
- (c) Each of the Authority's and Project Co's Design and Construction Representatives may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order", which will state either that:
 - (1) the Fee is adjusted as set out in the Independent Certifier's notice; or
 - (2) the adjustment (if any) to the Fee will be determined under Section 8.4.

8.4 Cost of Functions Variation

- (a) Subject to Section 8.2, the Fee will be adjusted for all Functions Variations carried out by the Independent Certifier or suspensions under Section 5.1(b) by:
 - (1) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 8.3(c);
 - (2) if Section 8.4(a)(1) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Schedule 2 [Fee]; or
 - (3) where such rates or prices set out in the fee schedule for Functions Variations in Schedule 2 [Fee] are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Authority's and Project Co's Design and Construction Representatives jointly, acting reasonably.
- (b) Any reductions in the Fee will be calculated on the same basis as any increases.

9. TERM AND TERMINATION

9.1 Term

Subject to earlier termination, this Independent Certifier Agreement will commence on the date first written above and continue in full force until:

- (a) 45 Business Days after the System Completion Date; or
- (b) such later date as may be mutually agreed between the PA Parties and the Independent Certifier.

9.2 Notice of Breach

If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:

- (a) specifying the breach; and
- (b) directing its rectification in the period specified in the notice, being a period not less than 5 Business Days from the date of service of the notice.

9.3 Termination for Breach

If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 9.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

9.4 Termination for Financial Difficulty

The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:

- (a) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or
- (b) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

9.5 Termination for Convenience

Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may at any time terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier.

9.6 Independent Certifier's Rights upon Termination for Convenience

Upon a termination under Section 9.5, the Independent Certifier will:

- (a) be entitled to be reimbursed by the PA Parties for the value of the Functions performed by it to the date of termination; and
- (b) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (1) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
 - (2) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

9.7 Procedure upon Termination

Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Sections 9.3, 9.4 or 9.5 or otherwise), the Independent Certifier will:

- (a) co-operate with the PA Parties;
- (b) hand to the PA Parties all Project Material and all other information concerning the Project held or prepared by the Independent Certifier; and
- (c) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Functions.

9.8 Effect of Termination

Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement will be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of Project Co and the Authority to recover damages from the Independent Certifier).

9.9 Survival

Termination of this Independent Certifier Agreement will not affect the continuing rights and obligations of Project Co or the Authority and the Independent Certifier under Sections 6, 7, 9.6, 9.7, 9.8, 10, 11.7, 11.8 and this Section 9.9 or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10. INDEMNITY

10.1 Indemnity

The Independent Certifier will indemnify and save harmless the PA Parties, and each of them, and their respective employees, agents, officers and directors from and against any and all losses incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (a) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this Independent Certifier Agreement or the Project Agreement; or
- (b) any act or omission of the Independent Certifier in connection with the subject matters of this Independent Certifier Agreement.

11. GENERAL

11.1 Entire Agreement

This Independent Certifier Agreement and the Project Agreement constitute the entire agreement between the PA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral, written, made or entered into prior to the date of this Independent Certifier Agreement between the PA Parties and the Independent Certifier with respect to the subject matter of this Independent Certifier Agreement.

11.2 Negation of Employment

- (a) The Independent Certifier, its officers, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Functions will not by virtue of this Independent Certifier Agreement or the performance of the Functions become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer of, or otherwise in relation to, such officers, employees, servants and agents and other persons who are engaged by the Independent Certifier.

11.3 Waiver

Failure by any PA Party or the Independent Certifier to enforce a provision of this Independent Certifier Agreement will not be construed as a waiver by that PA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this Independent Certifier Agreement.

11.4 Notices

Any notice or communication required or permitted to be given under this Independent Certifier 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 Project Co: ■
 ■

 Attention: ■
 Email: ■

With a copy to: ■
 ■

Attention: ■
Email: ■

If to the Authority: The Commonwealth of Kentucky
Finance and Administration Cabinet
Room 456, Capital Annex
Frankfort, KY 40601

Attention: Director
Email: ■

If to the Independent
Certifier:

■
■

Attention: ■
Email: ■

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.

11.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (1) will not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and

- (2) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 11.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

11.6 Governing Laws and Venue

This Independent Certifier 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. Any legal actions or proceeding brought by the Authority, Project Co or the Independent Certifier in connection with this Independent Certifier Agreement 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 such venue and agrees to be bound by any judgement thereof and not to seek, and hereby waives, review of its merits by the court of any other jurisdiction.

11.7 Confidentiality

- (a) The Independent Certifier will ensure that:
 - (1) neither it nor any of its officers, employees, servants and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Functions without prior written approval of the PA Parties; and
 - (2) no Project Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, employees, servants and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier will promptly arrange for such agreements to be executed and delivered.

11.8 Project Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Project Material provided to the Independent Certifier or created or required to be created by any PA Party.
- (b) All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the Independent Certifier as part of,

or for the purposes of performing the Functions, is hereby assigned jointly to the Authority and Project Co on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Project Material, it will be assigned to the Authority and Project Co on creation. In addition, to the extent that copyright may subsist in such Project Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier will ensure that any agent or employee of Independent Certifier will have waived all such moral rights.

- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Project Material referred to in Section 11.8(b).

11.9 Time of the Essence

Time will be of the essence of this Independent Certifier Agreement and of the transactions contemplated by this Independent Certifier Agreement.

11.10 Amendment

No change or modification of this Independent Certifier Agreement will be valid unless it is in writing and signed by each party to this Independent Certifier Agreement.

11.11 Severability

If any provision of this Independent Certifier Agreement will be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Independent Certifier Agreement.

11.12 Enurement

Subject to the restrictions on transfer contained in this Independent Certifier Agreement, this Independent Certifier Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

11.13 Counterparts

This Independent Certifier Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

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

THE COMMONWEALTH OF KENTUCKY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Commonwealth.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

[INDEPENDENT CERTIFIER]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

SCHEDULE 1 FUNCTIONS

The Independent Certifier will, subject to the provisions of the Project Agreement, provide the services as set out below and as further detailed in the Independent Certifier proposal and work plan attached as Appendix 1A [Independent Certifier Proposal and Work Plan]. The provisions of this Independent Certifier Agreement (other than the provisions of Appendix 1A [Independent Certifier Proposal and Work Plan]) will prevail over the provisions of Appendix 1A [Independent Certifier Proposal and Work Plan], provided that, in determining whether an ambiguity, conflict or inconsistency exists between Appendix 1A [Independent Certifier Proposal and Work Plan] and any other provision in this Independent Certifier Agreement, to the extent that Appendix 1A [Independent Certifier Proposal and Work Plan] includes additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and the Independent Certifier's obligations hereunder will include compliance with all such additional requirements. In the event of a conflict between any provision of this Independent Certifier Agreement, including this Schedule 1 [Functions] and Appendix 1A [Independent Certifier Proposal and Work Plan], and a provision of the Project Agreement, the Project Agreement will prevail.

- (a) In accordance with key milestone dates set out in the Project Schedule, the Independent Certifier will:
 - (1) consult with the Design-Builder and others involved in the Design and Construction as required in the performance of its services;
 - (2) perform a desktop review of each application for Site Completion submitted by Project Co;
 - (3) make quarterly or, to the extent required, more frequent physical visits to:
 - (A) review progress and conduct inspections of the Construction;
 - (B) audit a sample of Certificates of Site Completion and Site Completion Deficiencies;
 - (C) resolve disputes regarding the award or denial of a Certificate of Site Completion or a list of Site Completion Deficiencies; and
 - (D) confirm the Ring Availability Date for Ring 1B,

and, within 20 Business Days of the relevant desktop review and/or inspection, prepare and deliver to the Authority and Project Co a written report containing a description of:

- (4) the completed Design and Construction; and
- (5) the progress of the Design and Construction relative to the Updated Project Schedule, with an overview analysis of any variances.

- (b) The Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, with respect to an application for Site Completion in respect of a Site, review and comment on the list of Site Completion Deficiencies.
- (c) No later than 5 Business Days after application by Project Co for a Certificate of Site Completion, the Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, complete a desktop review of the basis for Project Co's application for a Certificate of Site Completion in respect of that Site and, within a further 5 Business Days of such desktop review:
 - (1) if Site Completion has been achieved, issue a Certificate of Site Completion, together with comments on the list of Site Completion Deficiencies (if any) and attaching a copy of the list of Site Completion Deficiencies; or
 - (2) if Site Completion has not been achieved, provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Site Completion.
- (d) The Independent Certifier will, within 5 Business Days after the end of each month, deliver the Independent Certifier's Monthly Report for such month to the Authority, Project Co and Operations Co.

**APPENDIX 1A
INDEPENDENT CERTIFIER PROPOSAL AND WORK PLAN**

[NTD: To be attached.]

**SCHEDULE 2
FEE**

[NTD: This Schedule 2 will be developed having reference to the Independent Certifier's Proposal and Work Plan.]

**SCHEDULE 3
INDEPENDENT CERTIFIER PERSONNEL**

This schedule identifies key Independent Certifier personnel and the specific roles each will undertake

[NTD: Independent Certifier to add names, titles, roles and responsibilities of the Key Independent Certifier personnel.]

**APPENDIX 2B
DESIGN REVIEW**

1. SUBMITTALS

Except as expressly set out otherwise in this Project Agreement, the provisions of this Appendix 2B will apply to any and all drawings, specifications or other documents specifically pertaining to the KMZ file containing the GIS data regarding route level and building connections (“**Submittals**”) required or specified by this Project Agreement in respect of the Design and Construction to be submitted to, reviewed, accepted or otherwise processed by the Authority prior to Site Completion of a Site or after Site Completion of a Site in respect of the completion of Site Completion Deficiencies, including any and all subsequent revisions, amendments and changes thereto. A flow chart illustrating the review process is included as Appendix 2F [Review Process Flow Diagram].

2. SUBMITTAL SCHEDULE

- (a) The schedule for Submittals (the “**Submittal Schedule**”) is included as part of Appendix 2C [Initial Project Schedule]. The Submittal Schedule may be amended by agreement of the parties in accordance with the terms of this Section 2.
- (b) Any amendment to the Submittal Schedule will provide for a progressive and orderly flow of Submittals from Project Co to the Authority as appropriate to allow sufficient time for review of each Submittal by the Authority, taking into account both the resources necessary to be available to the Authority to conduct such review (as anticipated by or inferred from the Submittal Schedule).
- (c) Unless a longer period is agreed by the parties, required by this Project Agreement or is otherwise reasonably required by the Authority, the Authority will have 5 Business Days for review of a Submittal from the date the Authority received the Submittal. If the Submittal Schedule is inconsistent with the foregoing review period then it will be deemed to be amended to be consistent. If the Authority receives a Submittal after 12 p.m. (Eastern Time) on a Business Day, the 5 Business Day review period will commence on the next Business Day.
- (d) Project Co will, in scheduling Submittals, and in the performance of the Design and Construction, allow adequate time prior to performing the Design or the Construction that is the subject of the Submittals for review of the Submittals by the Authority, and for Project Co to make changes to the Submittals, the Design and/or the Construction as may be required to account for any comments received from the Authority.
- (e) If the Submittal Schedule indicates that a large number of Submittals will be made at one time, the Authority may, acting reasonably, request a longer period for review or a staggering of the Submittals, and Project Co will, acting reasonably, revise the Submittal Schedule accordingly, taking into account both the availability of resources required by the Authority to conduct such review and whether delay in the review of the subject matter of the Submittal will have a material impact on Project Co’s ability to progress future anticipated Submittals and the Design or Construction in accordance with the Project Schedule.

- (f) Project Co will submit the then current Submittal Schedule to the Authority on a monthly basis until the System Completion Date. All amended Submittal Schedules will be required to meet all the requirements of this Section 2.
- (g) Project Co will submit all Submittals to the Authority in accordance with the then current Submittal Schedule.
- (h) Project Co will bear the risk of delays and additional costs caused as a result of the late submission of Submittals to the Authority, by Submittals which are rejected or required to be corrected and re-submitted in accordance with the terms of this Appendix 2B, or by changes in the Design and Construction required as a result of comments made by the Authority pursuant to this Appendix 2B.

3. GENERAL REQUIREMENTS FOR SUBMITTALS

- (a) Unless otherwise specified by the Authority, Project Co will deliver electronic copies of each Submittal to the Authority through the DMS, in a format acceptable to the Authority. Project Co will provide to the Authority, along with each Submittal, a summary page detailing the various documents in the Submittal.
- (b) All Submittals will be in English.
- (c) All Submittals required by this Project Agreement, by applicable Law or by Customary Industry Practice to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers) will be so signed and/or sealed.
- (d) All Submittals will refer to the relevant provisions of the Design and Construction Specifications, the Services Protocols and Specifications (if applicable) and to any matter that has previously been subject to review. All Submittals (or covering documentation delivered with the Submittals) will include a statement confirming that the Submittals comply with, or identifying any elements of the NG-KIH System that for any reason vary from, the requirements of the Project Agreement, with particular reference to Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications].
- (e) All Submittals will be clearly identified as a Submittal and will be delivered with appropriate DMS identifiers, which will include:
 - (1) the specific item or items in the Submittal that is subject to review by the Authority;
 - (2) Project Co's expectations for the Authority's review of the Submittal; and
 - (3) for each Submittal:
 - (A) the document number(s) or drawing number(s);
 - (B) revision numbers (if applicable);

- (C) document or drawing title(s);
 - (D) name of entity that prepared the Submittal;
 - (E) the Submittal history showing date and delivery information and/or log number of all previous submissions of that Submittal; and
 - (F) identification of any previous Submittal superseded by the current Submittal.
- (f) Project Co will compile and maintain, in the DMS, a register of the date, contents and status of the submission of all Submittals, including the date of receipt and content of all returned Submittals and comments thereon.

4. REVIEW PROCEDURE

- (a) The Authority will review and respond to each Submittal in accordance with the applicable time periods set out in the Submittal Schedule (as may be amended from time to time in accordance with this Appendix 2B).
- (b) Before commencing the Construction of a particular component of the Project, Project Co will submit to the Authority a Submittal describing that component, including all necessary Design and other information as the Authority may reasonably require, including any Design reports and calculations, for the Authority to conduct an appropriate review to confirm that the Design described in the Submittal conforms to the requirements of this Project Agreement.
- (c) The Authority will review Submittals submitted under Section 4(b) above and assign one of the following 4 comments on the summary page provided with the Submittal:
 - (1) "REVIEWED";
 - (2) "CORRECT DEFICIENCIES";
 - (3) "REJECTED"; or
 - (4) "NOT REVIEWED".
- (d) The comment "REVIEWED" will be assigned to those Submittals that, in the opinion of the Authority, acting reasonably, appear to conform to the requirements of this Project Agreement.
- (e) The comment "CORRECT DEFICIENCIES" will be assigned to those Submittals that, in the opinion of the Authority, acting reasonably, appear to generally conform to the requirements of this Project Agreement, but in which minor deficiencies have been found and identified by the Authority's review. Project Co will, to the extent necessary, correct these Submittals and provide a copy of such corrected Submittals to the Authority within 5 Business Days. Project Co may proceed on the portions of such Submittals that have not received comments but Project Co will not proceed on the portions of such Submittals that have received

the comment "CORRECT DEFICIENCIES" until Project Co obtains a comment that permits Project Co to proceed. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. If, at any time, it is discovered that Project Co has not corrected the deficiencies on Submittals that were correctly stamped "CORRECT DEFICIENCIES", then Project Co will be required to modify the Submittals and the relevant Design and Construction as required to correct the deficiencies and Project Co may be required, at the Authority's discretion, acting reasonably, to resubmit relevant Submittals.

- (f) The comment "REJECTED" will be assigned to those Submittals that, in the opinion of the Authority, acting reasonably, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement. Project Co will correct and re-submit these Submittals within 5 Business Days after the comment has been provided to Project Co. The Authority will then review such corrected Submittals and assign a comment to the corrected Submittal. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. Except with the written consent of the Authority, Project Co will not proceed with any Design or Construction to which such Submittals receiving the comment "REJECTED" relate until Project Co obtains a comment that permits Project Co to proceed.
- (g) The comment "NOT REVIEWED" may be assigned to those Submittals that have not been reviewed by the Authority in detail because, in the opinion of the Authority, acting reasonably, the Submittals do not comply with the requirements of this Appendix 2B (including Section 4(b) above), are incomplete or otherwise insufficient for the purposes of a Design review, or are received by the Authority before the date scheduled in the Submittal Schedule. Project Co will correct and re-submit these Submittals within 5 Business Days or, if a later date is set out on the Submittal Schedule, by such later date. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. Project Co will not proceed with any Design or Construction to which such Submittals receiving the comment "NOT REVIEWED" relate until Project Co obtains a comment that permits Project Co to proceed.
- (h) If the Authority does not respond to a Submittal within the applicable time period for that Submittal as determined in accordance with Section 2(c) of this Appendix 2B, the Submittal will be deemed "REVIEWED" and Project Co may proceed with and implement the Design and Construction on the basis set forth in the applicable Submittal without any further action or documentation required.
- (i) Where the Authority issues the comment "CORRECT DEFICIENCIES", "REJECTED" or "NOT REVIEWED", the Authority will provide reasons for the comment, referencing particulars of the Section(s) of this Project Agreement that the Submittal fails to satisfy and, if requested by Project Co, the Authority will meet with Project Co to discuss the reasons for the comment.
- (j) If, at any time after assigning any comment to a Submittal or where Section 4(h) applies, the Authority or Project Co discovers deficiencies or any failure to conform to the requirements of this Project Agreement, the Authority or Project

Co, as the case may be, will promptly notify the other party of such deficiencies or non-conformance and the Authority may revise the comment assigned to any Submittal. If the parties agree or it is determined in accordance with the Dispute Resolution Procedure that the revised comment is correct, Project Co will make all such corrections to the Submittals and the Design and Construction.

- (k) For the purpose of facilitating and expediting the review and correction of Submittals, the Authority's and Project Co's Design and Construction Representatives will discuss and review any outstanding Submittals and any comments thereon.
- (l) Where an individual Submittal item is voluminous, the Authority at its discretion may elect to stamp only the cover page or first sheet of the Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages not returned without such an explanation as to their status will be deemed to be "REVIEWED" by the Authority.
- (m) In lieu of returning a Submittal, the Authority may by email or letter, or through the DMS with a notification by email or letter, notify Project Co of the comment assigned to the Submittal and, if such comment is "CORRECT DEFICIENCIES", "REJECTED" or "NOT REVIEWED", the letter will contain comments in sufficient detail, including referencing applicable Section(s) of this Project Agreement, for Project Co to identify the correction sought.

5. REVIEWED DRAWINGS AND SPECIFICATIONS

- (a) The following Submittals will be deemed to be "**Reviewed Drawings and Specifications**":
 - (1) any Submittals which the Authority has marked as "REVIEWED" under Section 4(d) of this Appendix 2B;
 - (2) any portions of any Submittals that Project Co may proceed with under Section 4(e) of this Appendix 2B; and
 - (3) any Submittals which have been deemed "REVIEWED" by the Authority under Section 4(h) of this Appendix 2B.
- (b) Project Co's Design and Construction Representative will deliver promptly by email or letter, or through the DMS with a notification by email or letter, one complete electronic copy of the Reviewed Drawings and Specifications to the Independent Certifier.

6. DISPUTES

If Project Co disputes any comment issued by the Authority in respect of a Submittal made under Section 4 of this Appendix 2B, Project Co will promptly notify the Authority of the details of such Dispute and will submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Authority will review the

Submittal, the reasons and supporting documentation and, within 7 Business Days after receipt thereof, will either confirm the original comment or notify Project Co of a revised comment. Nothing in this Section 6 will limit either party's right to refer a Dispute to the Dispute Resolution Procedure.

7. CHANGES

If Project Co considers that compliance with any comment made by the Authority in respect of a Submittal made under Section 4 of this Appendix 2B would lead to a Change, Project Co will, before taking into account such comment, notify the Authority. If it is agreed by the Authority that such comment would lead to a Change, then the procedure set out in Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply. If the parties are unable to reach agreement, then either party may refer the matter directly to the Referee in accordance with Schedule 13 [Dispute Resolution Procedure]. In all cases, the parties will cooperate to identify potential alternative solutions to any comments raised that would not lead to a Change.

8. EFFECT OF REVIEW BY AUTHORITY

For greater certainty, Section 2.5 (Authority Not Responsible for Design or Construction) of Schedule 2 [Design and Construction Protocols] applies to any review or comment by the Authority on any Submittal.

9. SUBMITTAL MEETINGS AND EXPLANATIONS

At any time, the Authority may, acting reasonably, require Project Co, including Project Co's consultants, Sub-Contractors and any other relevant personnel, at no additional cost to the Authority, to meet in person or virtually through screen sharing technology with representatives of the Authority and its advisors to answer questions regarding Project Co's Submittals or to explain to the Authority and the Authority's advisors the intent of Project Co's Submittals, including in relation to any Design and any associated documentation and as to its satisfaction of the requirements of this Project Agreement (including the Design and Construction Specifications). Project Co will, and will cause its consultants, Sub-Contractors and any other relevant personnel to, attend all meetings requested by the Authority and answer all questions asked by the Authority in accordance with this Section 9 as soon as practicable and, in any event, no later than 5 Business Days from the date it received the Authority's questions or such longer period as agreed by the parties.

10. REVISIONS

- (a) Project Co will ensure that each Submittal keeps the same, unique reference number throughout the review process, and that all subsequent revisions of the same Submittal are identified by a sequential revision number. Correspondence related to such Submittal will reference the reference number and revision number and maintain same in the DMS.
- (b) Re-submittals will clearly show all revisions from the previous Submittal. Submitted documents, including reports and manuals, will contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents will be used (e.g. deletions struck out and additions underscored). Revised portions of drawings will be clearly marked (with appropriate means to

visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision will be included on the drawing.

- (c) All revisions on electronic media will be marked up by the design checker and, where applicable, by the drafter and the drafting checker and will identify the persons who initialed the Submittal. Electronic versions of the Submittal will identify the persons who initialed the revisions to the Submittal.
- (d) Project Co will keep all Reviewed Drawings and Specifications current and available through the DMS. If any Reviewed Drawings and Specifications are revised as part of a Submittal, all other Reviewed Drawings and Specifications relying on or based on that Reviewed Drawings and Specifications will also be revised accordingly. All such revised Reviewed Drawings and Specifications will also be submitted with the Submittal to which it relates.

**APPENDIX 2C
INITIAL PROJECT SCHEDULE**

See attached.

Kentucky Information Highway

Summary Schedule

NGKIH Design Build LLC

Activity ID	Activity Name	Start	Finish	2016												2017												2018																							
				A	S	Oct	N	Dec	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	Dec	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	D	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	D							
KIH - Ring 1B		26-Jan-15 A	02-Nov-16	02-Nov-16, KIH - Ring 1B																																															
PROCUREMENT		24-Jul-15 A	16-Dec-15	16-Dec-15, PROCUREMENT																																															
POLE ATTACHMENT AGREEMENT		26-Jan-15 A	14-Aug-15	14-Aug-15, POLE ATTACHMENT AGREEMENT																																															
BACK BONE		10-Apr-15 A	29-Apr-16	29-Apr-16, BACK BONE																																															
Permitting		31-Aug-15	03-Mar-16	03-Mar-16, Permitting																																															
Engineering		10-Apr-15 A	07-Dec-15	07-Dec-15, Engineering																																															
Make Ready Engineering Approval		17-Aug-15	19-Nov-15	19-Nov-15, Make Ready Engineering Approval																																															
Make Ready Construction		31-Aug-15	18-Feb-16	18-Feb-16, Make Ready Construction																																															
Segment Construction		24-Nov-15	29-Apr-16	29-Apr-16, Segment Construction																																															
LATERAL		10-Jul-15 A	02-Nov-16	02-Nov-16, LATERAL																																															
Permitting		08-Sep-15	02-Feb-16	02-Feb-16, Permitting																																															
Engineering		10-Jul-15 A	10-Nov-15	10-Nov-15, Engineering																																															
Make Ready Engineering Approval		24-Aug-15	03-Nov-15	03-Nov-15, Make Ready Engineering Approval																																															
Make Ready Construction		08-Sep-15	16-Feb-16	16-Feb-16, Make Ready Construction																																															
Site Construction		18-Jan-16	02-Nov-16	02-Nov-16, Site Construction																																															
KIH - Ring 1A		26-Jan-15 A	09-Jan-17	09-Jan-17, KIH - Ring 1A																																															
PROCUREMENT		24-Jul-15 A	23-Oct-15	23-Oct-15, PROCUREMENT																																															
POLE ATTACHMENT AGREEMENT		26-Jan-15 A	14-Aug-15	14-Aug-15, POLE ATTACHMENT AGREEMENT																																															
BACK BONE		18-Mar-15 A	30-May-16	30-May-16, BACK BONE																																															
Permitting		31-Aug-15	24-Mar-16	24-Mar-16, Permitting																																															
Engineering		18-Mar-15 A	28-Jan-16	28-Jan-16, Engineering																																															
Make Ready Engineering Approval		12-Aug-15	21-Jan-16	21-Jan-16, Make Ready Engineering Approval																																															
Make Ready Construction		15-Sep-15	14-Apr-16	14-Apr-16, Make Ready Construction																																															
Segment Construction		08-Dec-15	30-May-16	30-May-16, Segment Construction																																															
LATERAL		29-May-15 A	09-Jan-17	09-Jan-17, LATERAL																																															
Permitting		13-Oct-15	08-Mar-16	08-Mar-16, Permitting																																															
Engineering		29-May-15 A	12-Jan-16	12-Jan-16, Engineering																																															
Make Ready Engineering Approval		22-Sep-15	28-Dec-15	28-Dec-15, Make Ready Engineering Approval																																															
Make Ready Construction		27-Oct-15	22-Mar-16	22-Mar-16, Make Ready Construction																																															
Site Construction		22-Jan-16	09-Jan-17	09-Jan-17, Site Construction																																															
KIH - Ring 2		06-Oct-15	26-Mar-17	26-Mar-17, KIH - Ring 2																																															
PROCUREMENT		05-Jan-16	23-May-16	23-May-16, PROCUREMENT																																															
POLE ATTACHMENT AGREEMENT		06-Oct-15	04-Jan-16	04-Jan-16, POLE ATTACHMENT AGREEMENT																																															
BACK BONE		12-Jan-16	31-Jan-17	31-Jan-17, BACK BONE																																															
Permitting		15-Mar-16	19-Sep-16	19-Sep-16, Permitting																																															
Engineering		12-Jan-16	22-Jul-16	22-Jul-16, Engineering																																															
Make Ready Engineering Approval		18-Feb-16	08-Jul-16	08-Jul-16, Make Ready Engineering Approval																																															
Make Ready Construction		17-Mar-16	03-Oct-16	03-Oct-16, Make Ready Construction																																															
Segment Construction		10-May-16	31-Jan-17	31-Jan-17, Segment Construction																																															
LATERAL		12-Jan-16	26-Mar-17	26-Mar-17, LATERAL																																															
Permitting		15-Mar-16	06-Oct-16	06-Oct-16, Permitting																																															
Engineering		12-Jan-16	10-Aug-16	10-Aug-16, Engineering																																															
Make Ready Engineering Approval		01-Mar-16	03-Aug-16	03-Aug-16, Make Ready Engineering Approval																																															
Make Ready Construction		29-Mar-16	27-Oct-16	27-Oct-16, Make Ready Construction																																															
Site Construction		04-Aug-16	26-Mar-17	26-Mar-17, Site Construction																																															

█ Remaining Level of Effort
 █ Actual Work
 █ Critical Remaining Work
█ Actual Level of Effort
 █ Remaining Work
 █ Summary

Kentucky Information Highway
 Summary Schedule
NGKIH Design Build LLC

Activity ID	Activity Name	Start	Finish	2016												2017												2018												
				A	S	Oct	N	Dec	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	Dec	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	D	Jan	F	Mar	Apr	M	Jun	Jul	Aug
KIH - Ring 3		10-Aug-15	31-Aug-17	31-Aug-17, KIH - Ring 3																																				
PROCUREMENT		08-Oct-15	02-Mar-16	02-Mar-16, PROCUREMENT																																				
POLE ATTACHMENT AGREEMENT		10-Aug-15	02-Nov-15	02-Nov-15, POLE ATTACHMENT AGREEMENT																																				
BACK BONE		15-Oct-15	07-Oct-16	07-Oct-16, BACK BONE																																				
Permitting		30-Dec-15	07-Jun-16	07-Jun-16, Permitting																																				
Engineering		15-Oct-15	11-Apr-16	11-Apr-16, Engineering																																				
Make Ready Engineering Approval		19-Nov-15	28-Mar-16	28-Mar-16, Make Ready Engineering Approval																																				
Make Ready Construction		21-Dec-15	21-Jun-16	21-Jun-16, Make Ready Construction																																				
Segment Construction		18-Feb-16	07-Oct-16	07-Oct-16, Segment Construction																																				
LATERAL		15-Oct-15	31-Aug-17	31-Aug-17, LATERAL																																				
Permitting		22-Jan-16	27-May-16	27-May-16, Permitting																																				
Engineering		15-Oct-15	01-Apr-16	01-Apr-16, Engineering																																				
Make Ready Engineering Approval		20-Nov-15	18-Mar-16	18-Mar-16, Make Ready Engineering Approval																																				
Make Ready Construction		22-Dec-15	13-Jun-16	13-Jun-16, Make Ready Construction																																				
Site Construction		26-Apr-16	31-Aug-17	31-Aug-17, Site Construction																																				
KIH - Ring 4		20-Apr-16	05-Jul-18	05-Jul-18, KIH - Ring 4																																				
PROCUREMENT		15-Jul-16	06-Dec-16	06-Dec-16, PROCUREMENT																																				
POLE ATTACHMENT AGREEMENT		20-Apr-16	14-Jul-16	14-Jul-16, POLE ATTACHMENT AGREEMENT																																				
BACK BONE		12-Sep-16	01-Nov-17	01-Nov-17, BACK BONE																																				
Permitting		17-Oct-16	09-Mar-17	09-Mar-17, Permitting																																				
Engineering		31-Oct-16	12-Jan-17	12-Jan-17, Engineering																																				
Make Ready Engineering Approval		12-Sep-16	20-Dec-16	20-Dec-16, Make Ready Engineering Approval																																				
Make Ready Construction		10-Oct-16	16-Mar-17	16-Mar-17, Make Ready Construction																																				
Segment Construction		21-Nov-16	01-Nov-17	01-Nov-17, Segment Construction																																				
LATERAL		08-Sep-16	05-Jul-18	05-Jul-18, LATERAL																																				
Permitting		27-Sep-16	05-Apr-17	05-Apr-17, Permitting																																				
Engineering		11-Oct-16	08-Feb-17	08-Feb-17, Engineering																																				
Make Ready Engineering Approval		08-Sep-16	11-Jan-17	11-Jan-17, Make Ready Engineering Approval																																				
Make Ready Construction		06-Oct-16	29-Mar-17	29-Mar-17, Make Ready Construction																																				
Site Construction		23-Jan-17	05-Jul-18	05-Jul-18, Site Construction																																				
KIH - Ring 5		21-Dec-16	31-Jul-18	31-Jul-18, KIH - Ring 5																																				
PROCUREMENT		03-Mar-17	24-Jul-17	24-Jul-17, PROCUREMENT																																				
POLE ATTACHMENT AGREEMENT		21-Dec-16	16-Mar-17	16-Mar-17, POLE ATTACHMENT AGREEMENT																																				
BACK BONE		21-Apr-17	08-Feb-18	08-Feb-18, BACK BONE																																				
Permitting		05-May-17	12-Sep-17	12-Sep-17, Permitting																																				
Engineering		19-May-17	17-Jul-17	17-Jul-17, Engineering																																				
Make Ready Engineering Approval		21-Apr-17	02-Jun-17	02-Jun-17, Make Ready Engineering Approval																																				
Make Ready Construction		19-May-17	28-Aug-17	28-Aug-17, Make Ready Construction																																				
Segment Construction		11-Jul-17	08-Feb-18	08-Feb-18, Segment Construction																																				
LATERAL		28-Apr-17	31-Jul-18	31-Jul-18, LATERAL																																				
Permitting		12-May-17	02-Oct-17	02-Oct-17, Permitting																																				
Engineering		19-May-17	04-Aug-17	04-Aug-17, Engineering																																				
Make Ready Engineering Approval		28-Apr-17	30-Jun-17	30-Jun-17, Make Ready Engineering Approval																																				
Make Ready Construction		26-May-17	26-Sep-17	26-Sep-17, Make Ready Construction																																				
Site Construction		01-Sep-17	31-Jul-18	31-Jul-18, Site Construction																																				

█ Remaining Level of Effort
 █ Actual Work
 █ Critical Remaining Work
█ Actual Level of Effort
 █ Remaining Work
 █ Summary

The schedule does not include a full integration or impact of the Cincinnati Bell Telephone Company or MuniNet Third Party deals. These deals will be integrated into the project schedule as detailed plans from Cincinnati Bell Telephone Company and MuniNet are made available. **Date: 17-Aug-15**

**APPENDIX 2D
INITIAL SITE ACCESS PLAN**

See attached.

APPENDIX 2D INITIAL SITE ACCESS PLAN

1. DEFINITIONS

In this Appendix 2D, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**Access**” means access to the Sites as such access is set out in this Appendix 2D;

“**Escalation Protocol**” has the meaning set out in Section 4.3 of this Appendix 2D;

“**OM Access Protocol**” has the meaning set out in Section 4.2(a) of this Appendix 2D;

“**Primary Access**” means the Access required during the Construction Period and the Operating Period as set out in Sections 3.1(a) and 4.1(a) respectively;

“**Response Timeout**” has the meaning set out in Section 4.3(a)(2) of this Appendix 2D;

“**Secondary Access**” means has the meaning set out in Section 4.3(a)(1);

“**Site Representative**” has the meaning set out in Section 2.1(a) of this Appendix 2D;

“**Site Representative List**” has the meaning set out in Section 2.1(a) of this Appendix 2D and such other information as set out in Section 2.1(b); and

“**Site Timeout Minutes**” has the meaning set out in Section 5.1(a) of this Appendix 2D.

2. SITE REPRESENTATIVE LIST

2.1 Site Representative List

- (a) The Authority will provide Project Co with an accurate list (the “**Site Representative List**”) of all the individuals (each, a “**Site Representative**”) that will be responsible for coordinating Access. One Site Representative can be responsible for arranging Access at multiple Sites.
- (b) The Site Representative List will also include the following accurate information:
 - (1) Name
 - (2) Address (Office Location)
 - (3) Primary phone number
 - (4) Backup phone number
 - (5) Email address
 - (6) Name of the respective group/organization of the Site Representative

- (7) List of all Sites (with addresses) that are under the Site Representatives control
 - (8) Site access protocols
 - (9) Other information pertinent to performing work at the Site
 - (10) Ownership of the Site
 - (11) Site escalation name, phone number, email address
- (c) The Site Representative List for all Sites on Ring 1A and Ring 1B will be provided by the Authority to Project Co on the Effective Date.
 - (d) The Site Representative List for all Sites on Ring 2 through Ring 5 will be provided by the Authority to Project Co one month after the Effective Date.
 - (e) Project Co will coordinate a meeting with the designated Site Representatives, as may be required, prior to the commencement of Construction of the relevant Rings.

3. SITE ACCESS – CONSTRUCTION PERIOD

3.1 Access Requirements During Construction Period

- (a) The Authority will provide the following Primary Access to the Sites during the Construction Period:
 - (1) 24x7x365 access to outside plant construction route;
 - (2) 24x7x365 access to inside plant construction route and telecommunications room; and
 - (3) adequate parking for construction vehicles.
- (b) Project Co will coordinate Access with the designated Site Representative for each Site.
- (c) The designated Site Representative will work with Project Co to notify the Site of any work area closures associated with inside or outside Construction.

3.2 Escalation

- (a) Project Co will notify the Authority's Design and Construction Representative of any delay or other issue in gaining Access.
- (b) Project Co will be required to track and maintain written records (e.g. call logs, etc.) of all failures to achieve either Primary Access or Secondary Access to a Site. Project Co will generate a monthly report of any Access failures.

- (c) Project Co will notify the Authority of any repeated failures to Access a Site for each group/organization. Project Co and the Authority will jointly review the failures, determine root cause and corrective action as required.

4. SITE ACCESS – OPERATING PERIOD

4.1 Access Requirements During Operating Period

- (a) The Authority will provide the following Primary Access to the Sites during the Operating Period in order to enable Project Co to meet the performance standards set out in Section 2 of Schedule 8 [Payments]:
 - (1) Node Sites: 24x7x365 secured access.
 - (2) Service Level 1 Sites: 24x7x365 secured access.
 - (3) Service Level 3 Sites: Access during Regular Business Hours, Monday to Friday, excluding any statutory or bank holidays that fall on such days.

4.2 Operating Period Access Protocols

- (a) The Authority will establish the form of Access with the Site Representative and will document the protocol in an access protocol document (the “**OM Access Protocol**”) at least 30 days in advance of the Operating Period and provide it to Project Co for review and comment. Project Co will have 20 Business Days to respond in writing to a Site Representative’s proposal which will form the OM Access Protocol. If no written response is delivered by Project Co to the Site Representative within this timeframe, the proposal will be deemed accepted by Project Co.
- (b) For each Site, the OM Access Protocol will include the following accurate information:
 - (1) the identification number;
 - (2) the physical address;
 - (3) categorization as a Node Site, SL1 Site or SL3 Site;
 - (4) the defined access protocol (e.g. keycard, physical key, escort required, passcode, I.D. badges, any alternative measures such as an emergency contact number, etc.); and
 - (5) confirmation of requirements (e.g. letter of authorization for access, certificate of insurance, list of authorized personnel, etc.).

4.3 Escalation Protocol

- (a) The Authority, working with the Site Representative, will, based on the location, condition and resources at the Site, provide to Project Co:

- (1) Secondary Access: an alternative method that can only be used should the Primary Access fail such as an emergency contact phone number; and
- (2) Response Timeout: the period of time after which Project Co can notify the Authority that Access is not achievable, following Project Co's completed attempt to gain Primary Access and Secondary Access.

4.4 Notifying the Authority of a Response Timeout

- (a) Project Co will notify the Authority's Operating Period Representative of a Response Timeout with information as set out in Section 5.1(a) of this Appendix 2D.

4.5 Review of the Access Protocols

- (a) Project Co will review the OM Access Protocol for the relevant Sites with each Site Representative every 6 months.
- (b) Should the Site Representative or the Authority become aware of any planned or reasonably foreseeable changes to the Site that may impact the OM Access Protocol, Project Co must be notified in writing 30 days before the change occurs. If there is an immediate change, the Authority will immediately notify Project Co.
- (c) Following notification by the Site Representative or the Authority of such planned or reasonably foreseeable change, Project Co will have 30 days to advise the Site Representative as to the Access required, in order to ensure that the obligations in Schedule 8 [Payments] can be met, and request that such Access be reflected in the revised OM Access Protocol.
- (d) Project Co must update the relevant schedule in the Operating Plan within 15 days once revised protocols have been agreed with the Site Representative.

5. SITE ACCESS AND OUTAGES

5.1 Site Access and Outages

- (a) Project Co's NOC will be responsible for noting:
 - (1) the time at which Project Co notified the Authority in accordance with Section 4.3(a) of this Appendix 2D; and
 - (2) the time at which Access was regained at the Site,where the minutes that occur in between are defined as "**Site Timeout Minutes**".
- (b) To the extent the Site Timeout Minutes occur during an Outage that affects the Site, such minutes will be treated as follows:

- (1) Total Outage minutes, response times and restoration times will be calculated in accordance with Schedule 8 [Payments].
 - (2) Site Timeout Minutes will be deducted from the Total Outage minutes.
 - (3) Project Co will only incur Deductions in the event that the performance standards in Schedule 8 [Payments] are breached following the subtraction of the Site Timeout Minutes.
- (c) Project Co will be required to track and maintain written records (e.g. call logs, etc.) of all failures to achieve either Primary Access or Secondary Access to a Site. Project Co will generate a monthly report of any Access failures.
 - (d) Project Co will notify the Authority of any repeated Access failures for each group/organization. Project Co and the Authority will jointly review the failures, determine root cause and corrective action as required.
 - (e) In the event that the Authority disputes the calculation of Site Timeout Minutes, it can refer the matter to the Dispute Resolution Process within 30 days.

**APPENDIX 2E
EXPECTED PERMIT TIMING**

**Part 1
General Permits**

Permit Class	Permit Type	Permit Delivery Time Period
STATE (KYTC)	Encroachment Permit; FHA Review, ADHS Review	60 days
COUNTY	ROW/Encroachment Permit, Street Cut/Bore, Administrative Review, Informational	30 days
CITY	ROW/Encroachment Permit, Street Cut/Bore, Administrative Review, Informational	30 days
NATIONAL FOREST SERVICE	Special Use Permit	90 days
ARMY CORPS OF ENGINEERS	Nationwide 12 Permit, Section 10 Navigable Water Crossing	120 days
RR CROSSINGS	Encroachment Permit	90 days
ENVIRONMENTAL	Environmental	See Below

**Part 2
Federal Permits**

Permit Class	Permit Type	Citation as of Effective Date	Permit Delivery Time Period
Federal	NEPA Review	40 CFR Parts 1500-1508	One year
U.S. Army Corps of Engineers	Section 10 Nationwide Permit	33 CFR 330	Nationwide Permit - 45 days Individual Permit - 90 days

Permit Class	Permit Type	Citation as of Effective Date	Permit Delivery Time Period
U.S. Army Corps of Engineers	Section 404 Permit	33 CFR 330	Nationwide Permit - 90 days Individual Permit - 6 months
U.S. Environmental Protection Agency	Construction SPCC Plan(s)	40 CFR 112	No agency review
United States Fish and Wildlife Service	Endangered Species Act Compliance Informal Consultation	16 USC 1536	60 days
U.S. National Forest Service	Special Use Authorization	36 CFR 251	60 days
Federal	Encroachment Permit – Military/Federal Land	N/A	60 days

APPENDIX 2F
REVIEW PROCESS FLOW DIAGRAM

