

**AMENDED AND RESTATED PROJECT IMPLEMENTATION AGREEMENT  
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT**

**KentuckyWired Infrastructure Company, Inc.**

**(“Project Co”)**

**and**

**KentuckyWired Operations Company, LLC**

**(“Operations Co”)**

**Dated: March 13, 2019**

## TABLE OF CONTENTS

	Page
1. INTERPRETATION AND INTERACTION WITH PROJECT AGREEMENT .....	2
1.1 Definitions .....	2
1.2 Interpretation.....	2
1.3 Schedules .....	2
1.4 Interaction with Project Agreement .....	2
1.5 Communication with the Authority and Third Parties .....	3
1.6 Equivalent Project Relief .....	4
1.7 Enforcement of Parallel Issues.....	6
1.8 Pass-Down Provisions .....	7
1.9 Authority Not Directly Liable .....	7
2. GENERAL PROJECT TERMS .....	7
2.1 Term and Termination.....	7
2.2 Document Deliveries .....	8
2.3 Assumption of Risk .....	9
2.4 Opportunities .....	9
2.5 General Duty of Operations Co to Mitigate.....	9
2.6 General Duty of Project Co to Mitigate .....	10
2.7 Representatives .....	10
2.8 Key Individuals.....	10
2.9 Naming .....	11
2.10 Signs.....	11
2.11 Early Works .....	11
2.12 Performance Security .....	11
3. PROJECT CO'S GENERAL OBLIGATIONS .....	11
3.1 Payments.....	11
3.2 Limitation on Payments.....	12
3.3 Provision of Lands .....	12
3.4 Permitting Assistance .....	12
3.5 Project Co's Representations and Warranties.....	13
3.6 Purchase of Designated Equipment .....	13
3.7 Project Co Common Carrier Covenant.....	13
3.8 Not Used.....	14
3.9 Pole Attachment Agreements.....	14
3.10 Procurement Protest or Challenge .....	15
3.11 Project Co's Obligations re Third Party Infrastructure Agreements.....	15
4. OPERATIONS CO'S GENERAL OBLIGATIONS.....	16
4.1 General Obligations Re: Project.....	16
4.2 Records and Reports .....	16
4.3 No Other Business.....	16
4.4 Operations Co Persons.....	16
4.5 Use of Sub-Contractors.....	16
4.6 Project Contracts .....	17
4.7 Costs of Request for Consent .....	18
4.8 Replacement Project Contract .....	18
4.9 Delivery of Amended Project Contracts.....	19

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
4.10	Permits .....19
4.11	Operations Co's Representations and Warranties.....19
4.12	Responses to Project Co and Authority Inquiries .....20
4.13	Operations Co Common Carrier Covenant.....21
4.14	Project Co Tax Compliance Covenant .....21
4.15	Operations Co's Obligations re Third Party Infrastructure Agreements .....21
5.	FINANCING OF THE PROJECT .....22
5.1	Compliance with Financing Agreements .....22
5.2	Changes to Financing Agreements .....22
5.3	Restrictions on Refinancing .....23
5.4	Refinancing Process .....23
5.5	Not Used.....23
5.6	Not Used.....23
5.7	Not Used.....23
5.8	Not Used.....23
6.	INSURANCE, DAMAGE AND DESTRUCTION .....24
6.1	Insurance Coverage.....24
6.2	Operations Co's Obligations - Damage or Destruction During Construction Period .....24
6.3	Insufficient Insurance .....24
6.4	Uncollectible Insurance Receivables.....25
6.5	Application of Insurance Proceeds If No Termination.....25
6.6	Application of Insurance Proceeds In Case of Termination .....26
6.7	Standards of Repair, Replacement or Restoration .....26
6.8	Mitigation .....26
6.9	Risks Becoming Uninsurable .....26
6.10	Consequences of Risks Becoming Uninsurable .....26
6.11	Subrogation .....27
6.12	Continuing Attempts to Insure Uninsurable Risks.....28
6.13	Uninsurable Risks Becoming Insurable.....28
7.	CHANGES, MINOR WORKS AND INNOVATION PROPOSALS .....28
7.1	Changes Required by the Authority .....28
7.2	Innovation and Value Engineering .....28
7.3	Minor Works.....29
8.	SUPERVENING EVENTS .....29
8.1	Supervening Events.....29
8.2	Procedures Upon the Occurrence of a Supervening Event .....29
8.3	Operations Co's Entitlements Upon Occurrence of a Compensation Event.....31
8.4	Operations Co's Entitlements Upon Occurrence of a Relief Event .....32
8.5	Operations Co's Entitlements Upon Occurrence of an Excusing Event.....34
8.6	Parties' Entitlements Upon Occurrence of a Force Majeure Event .....34
8.7	Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event .....35
8.8	Parties' Entitlements Upon Occurrence of a Change in Law .....36

## TABLE OF CONTENTS

(continued)

	Page
8.9	Labor Disputes.....37
8.10	Payments in Respect of Supervening Events.....37
8.11	Supervening Events Mitigated by Change .....37
8.12	Delay in Notification .....37
8.13	Equivalent Project Relief .....38
9.	INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES .....38
9.1	Operations Co Obligations to Indemnify .....38
9.2	Conduct of Third Person Claims .....39
9.3	General Obligation to Pursue Third Person Recovery .....40
9.4	Waiver of Remedies.....41
9.5	Remedies Cumulative .....41
9.6	Limitation on Project Co's Remedies.....42
9.7	Limitation on Operations Co's Remedies .....42
9.8	Limits on Monetary Compensation .....43
9.9	No Liability for Indirect Losses .....43
9.10	No Liability for Governmental Activities .....43
9.11	Project Co's Right of Set Off .....43
9.12	Operations Co's Right of Set Off .....43
9.13	Undisputed Amounts and Interest on Disputed Amounts .....43
9.14	Interest on Overdue Amounts .....44
9.15	Reimbursement of Delay Liquidated Damages .....44
10.	PAYMENTS.....44
10.1	Lump Sum Payments.....44
10.2	Not Used.....45
10.3	Adjustments to Operations Co Payments.....45
10.4	Not Used.....45
10.5	Construction Period Payments.....45
10.6	Operating Period Payments .....45
10.7	Deductions.....46
10.8	Settlement Payments and Shared Savings .....46
11.	AUTHORITY'S STEP-IN RIGHTS .....46
11.1	Authority's Step-in Rights.....46
11.2	Authority's Rectification Rights.....47
11.3	Notice of NG-KIH System Change .....47
11.4	No Effect on Operations Co's Design and Construction Responsibility .....48
11.5	Allocation of Costs for Authority Actions.....48
12.	OPERATIONS CO EVENTS OF DEFAULT.....48
12.1	Operations Co Events of Default.....48
12.2	Notification .....49
12.3	Operations Co Material Breach Cure and Remedial Program .....50
12.4	Project Co Termination Right .....50
12.5	Replacement of Non-Performing Service Provider .....51
12.6	The Authority's Costs.....53
13.	PROJECT CO EVENTS OF DEFAULT .....53

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
13.1 Project Co Events of Default .....	53
13.2 Notification .....	54
13.3 Operations Co's Options .....	54
13.4 Operations Co's Costs .....	55
13.5 Termination for Convenience .....	55
13.6 Automatic Termination upon Project Agreement Termination .....	55
14. PROCEDURE ON TERMINATION .....	55
14.1 Compensation on Termination .....	55
14.2 Transfer to Project Co of Assets, Contracts, etc.....	55
14.3 Transition Out Arrangements .....	57
14.4 Operations Co to Cooperate .....	58
14.5 Operations Co Materials .....	59
14.6 Continued Performance .....	60
15. DISPUTE RESOLUTION.....	60
15.1 Procedure .....	60
16. ASSIGNMENT/CHANGE IN CONTROL.....	60
16.1 Limitations on Assignment of Project by Operations Co.....	60
16.2 Limitations on Change in Control .....	60
16.3 Not Used.....	61
16.4 Limitations on Assignment of Project by Project Co .....	61
16.5 Costs of Request for Consent .....	61
17. GENERAL .....	62
17.1 Confidentiality .....	62
17.2 Public Communications.....	63
17.3 Law of Agreement.....	63
17.4 Venue .....	63
17.5 Entire Agreement, Waivers and Consents in Writing.....	63
17.6 Notices.....	64
17.7 Further Assurances.....	65
17.8 Counterparts .....	65
17.9 No Partnership.....	66
17.10 Survival.....	66

## SCHEDULES

SCHEDULE 1	DEFINITIONS AND INTERPRETATION
SCHEDULE 2	DESIGN AND CONSTRUCTION PROTOCOLS
APPENDIX 2A	INDEPENDENT CERTIFIER AGREEMENT
APPENDIX 2B	DESIGN REVIEW
APPENDIX 2C	SITE ACCESS PLAN

## TABLE OF CONTENTS

(continued)

Page

APPENDIX 2D	EXPECTED PERMIT TIMING
APPENDIX 2E	REVIEW PROCESS FLOW DIAGRAM
SCHEDULE 3	DESIGN AND CONSTRUCTION SPECIFICATIONS
APPENDIX 3A	PRODUCT SERVICE CATALOG
APPENDIX 3B	MIGRATION ROLES AND RESPONSIBILITIES
APPENDIX 3C	DESIGNATED EQUIPMENT
APPENDIX 3D	DESIGNATED EQUIPMENT PROTOCOL
APPENDIX 3E	DESIGN MAP
APPENDIX 3F	NODE AND EXTENDER RESPONSIBILITIES
SCHEDULE 4	SERVICES PROTOCOLS AND SPECIFICATIONS
APPENDIX 4A	SERVICES SPECIFICATIONS
APPENDIX 4B	HANDBACK REQUIREMENTS
SCHEDULE 5	INSURANCE REQUIREMENTS
APPENDIX 5A	LENDER ENDORSEMENTS
SCHEDULE 6	CHANGES, MINOR WORKS AND INNOVATION PROPOSALS
SCHEDULE 7	LANDS
APPENDIX 7A	SITE LOCATIONS
APPENDIX 7B	NOTIFY AND GO LETTER
SCHEDULE 8	PAYMENTS
SCHEDULE 9	COMPENSATION ON TERMINATION
SCHEDULE 10	LENDERS' REMEDIES AGREEMENT
SCHEDULE 11	PROJECT CONTRACTOR COLLATERAL AGREEMENT
SCHEDULE 12	OPERATIONS CO'S OWNERSHIP INFORMATION
SCHEDULE 13	DISPUTE RESOLUTION PROCEDURE
APPENDIX 13A	REFEREE AGREEMENT
SCHEDULE 14	RECORDS AND REPORTS
SCHEDULE 15	FINANCING AGREEMENT OBLIGATIONS
SCHEDULE 16	COMMUNICATION ROLES
SCHEDULE 17	KEY INDIVIDUALS
SCHEDULE 18	COMPLETION DOCUMENTS
SCHEDULE 19	MARKET TESTING PROCEDURE
SCHEDULE 20	THIRD PARTY INFRASTRUCTURE AGREEMENTS

**TABLE OF CONTENTS**  
(continued)

**Page**

SCHEDULE 21	MASTER AGREEMENT	
SCHEDULE 22	APPROVED CHANGE CERTIFICATES AND DIRECTIVES	

## AMENDED AND RESTATED PROJECT IMPLEMENTATION AGREEMENT

THIS AMENDED AND RESTATED PROJECT IMPLEMENTATION AGREEMENT dated as of March 13, 2019 is entered into:

### BETWEEN:

**KentuckyWired Infrastructure Company, Inc.**

("Project Co")

### AND:

**KentuckyWired Operations Company, LLC**

("Operations Co")

### WHEREAS:

A. Pursuant to RFP 758 1500000003-5 issued July 11, 2014 (as amended from time to time, the "**RFP**"), The Commonwealth of Kentucky (the "**Authority**") selected Macquarie Infrastructure Developments LLC to design, build, finance, operate and maintain the NG-KIH System.

B. On December 22, 2014, the Authority and Macquarie Infrastructure Developments LLC entered into a master agreement (as amended from time to time, the "**Master Agreement**") in respect of the Project, a copy of which is attached as Schedule 21 [Master Agreement].

C. Project Co was created by the Authority in order to decrease the cost to the Authority of financing the Project. Macquarie Infrastructure Developments LLC assigned its rights and obligations under the Master Agreement to Project Co.

D. On September 3, 2015, the Authority and Project Co entered into a project agreement (the "**Original Project Agreement**") in respect of the Project and to facilitate the financing of the Project.

E. On September 3, 2015, Project Co and Operations Co entered into a project implementation agreement (the "**Original Project Implementation Agreement**") whereby Operations Co agreed to undertake all aspects of the Project (other than the Excluded Obligations) on behalf of Project Co, subject to and in accordance with the terms of the Original Project Implementation Agreement.

F. Project Co and Operations Co have agreed to amend and restate the Original Project Implementation Agreement on the terms and conditions set out herein to reflect the full and final settlement of the Relevant Supervening Event Claims and the Changes set out in all Change Certificates and Change Directives issued on or before October 31, 2018, which are listed in Schedule 22 [Approved Change Certificates and Directives].

G. Between April 2017 and October 2017, the Authority paid to Project Co, for the sole benefit of the Design-Builder, \$7,758,572.48 in respect of the Relevant Supervening Event Claims. On April 16, 2018, the Authority paid to Project Co, for the sole benefit of the Design-

Builder, an additional \$2,000,000 in respect of the Relevant Supervening Event Claims. On December 18, 2018, the Authority paid to Project Co, for the sole benefit of the Design-Builder, an additional \$24,820,428 in respect of the Relevant Supervening Event Claims.

H. The rights and obligations of the parties will be governed by the terms and conditions set out in this Project Implementation Agreement.

**NOW THEREFORE THIS PROJECT IMPLEMENTATION 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 to the foregoing and as follows:

## **1. INTERPRETATION AND INTERACTION WITH PROJECT AGREEMENT**

### **1.1 Definitions**

In this Project Implementation Agreement, unless the context otherwise requires, capitalized terms will have the meanings set out in Schedule 1 [Definitions and Interpretation]. Certain words and expressions are defined within the schedules hereto and such definitions will apply, unless the context otherwise requires, in all other parts of this Project Implementation Agreement whether or not Schedule 1 [Definitions and Interpretation] contains a cross-reference to such definitions. Any capitalized terms used but not defined herein will have the meanings set out in Schedule 1 [Definitions and Interpretation] to the Project Agreement.

### **1.2 Interpretation**

Unless the context otherwise requires, this Project Implementation Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

### **1.3 Schedules**

The schedules hereto and the terms set out therein will be deemed fully a part of this Project Implementation Agreement.

### **1.4 Interaction with Project Agreement**

- (a) Notwithstanding any other provision of this Project Implementation Agreement, to the extent that Project Co is or becomes obligated under the Project Agreement to take any action, do anything or perform any obligation in connection with the Project (other than the Excluded Obligations), Operations Co agrees that, except as otherwise specified herein, it will be obligated to take any such action, do any such thing or perform any such obligation under this Project Implementation Agreement in the manner and to the standard specified herein or, in the absence of any such standard, any standard specified in the Project Agreement.
- (b) Where the Authority has the right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction under the Project Agreement in respect of any matter, and Project Co has a corresponding right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a

request or submission, make any determination or confirm its satisfaction pursuant to the terms of this Project Implementation Agreement in respect of the same or substantially the same or similar matter, and the Authority has exercised its rights in a particular manner, Project Co will exercise its discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission or make the relevant determination in a manner that is consistent with the discretion exercised, approval granted or refused, request or submission accepted or refused or determination made or level of satisfaction confirmed by the Authority under the Project Agreement, subject to any limitations on Project Co's discretion under the terms of the Senior Financing Agreements.

- (c) Where the Authority asserts or exercises any right against Project Co in accordance with the Project Agreement in regard to any matter associated with the Project or Operations Co, including reductions in or retentions from payments under the Project Agreement, claims for indemnification and claims for damages for breach of the Project Agreement (such assertion or exercise of rights by the Authority being referred to as an "**Authority Claim**"), any determination made or reached under the Project Agreement as to the amount, nature and extent of Project Co's liability in relation to any Authority Claim shall be binding on Operations Co, provided that Project Co may not compromise any Authority Claim without the prior written consent of Operations Co, in its sole discretion. Operations Co shall bear and discharge on a current basis, and shall indemnify Project Co against all Direct Losses reasonably and properly incurred by Project Co related to any Authority Claim, except to the extent that (1) such Direct Losses arise from a Project Co Event of Default or (2) the liability for the relevant Authority Claim will be shared by the parties, in which case, each party shall bear a fair and reasonable proportion of the related costs and expenses. For clarity, Project Co will only share in the liability for an Authority Claim to the extent related to its specific obligations under this Project Implementation Agreement.
- (d) Where the Project Agreement contemplates meetings between Project Co and/or Project Co's Representatives and the Authority and/or the Authority's Representatives, Project Co will ensure that Operations Co is included in such meetings.
- (e) In certain sections of this Project Implementation Agreement, there are references to or acknowledgements of the Project Agreement or portions thereof and the absence of such a reference or acknowledgement in any other particular section of this Project Implementation Agreement will not be construed for or against either party in interpreting this Project Implementation Agreement.

## 1.5 Communication with the Authority and Third Parties

- (a) To the extent that any written notice, information, consent, claim, request, response, submission or other communication (a "**Communication**") is required or permitted to be given or made by Operations Co directly to the Authority or any other third party under this Project Implementation Agreement, Operations Co will provide a copy of the same to Project Co at the same time as giving or making the Communication to the Authority or such third party.

- (b) Except as otherwise specifically set out in this Project Implementation Agreement, Project Co hereby gives permission to Operations Co to provide all Communications directly to the Authority.
- (c) Project Co will make all Communications required to be made by Project Co to Operations Co under this Project Implementation Agreement in a timely manner so as to permit Operations Co to comply with its obligations under this Project Implementation Agreement and will consult with Operations Co in respect of all Communications with the Authority.
- (d) Operations Co will make all Communications required to be made by Operations Co to Project Co under this Project Implementation Agreement in a timely manner so as to permit Project Co to comply with its obligations under this Project Implementation Agreement.

## **1.6 Equivalent Project Relief**

- (a) Except to the extent any entitlement of Project Co under the Project Agreement (including any rights, remedies or relief) does not, in any way, relate to the rights or obligations of Operations Co under this Project Implementation Agreement, Operations Co will be entitled to receive the benefit of such entitlement from Project Co (in accordance with and subject to the provisions of Section 1.6(c)), including the benefit of:
  - (1) any compensation, damages or other payment of any kind on the same or substantially the same grounds as Project Co is entitled to compensation, damages or other payment of any kind under the Project Agreement, including, without limitation, compensation on termination;
  - (2) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Project Implementation Agreement on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Project Agreement;
  - (3) any entitlement of Operations Co under this Project Implementation Agreement in respect of which any provision of this Project Implementation Agreement states that the Pass-Down Provisions are to apply; and
  - (4) any certificate, consent or approval granted under this Project Implementation Agreement, the Project Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to Operations Co, including any entitlement of Project Co to request or apply for such certificate, consent or approval from the Authority, or any other person under this Project Implementation Agreement or the Project Agreement,

including, for greater certainty, any benefit to Project Co arising out of any Change implemented or any Change required by the Authority pursuant to the Project Agreement or any Supervening Event or remedies or compensation in

respect of any Authority Event of Default (as defined in the Project Agreement) in respect of which Project Co is entitled to relief, compensation or benefit under the Project Agreement in respect of Project Co's obligations, but excluding:

- (5) any compensation payable to Project Co under the Project Agreement in respect of any Senior Debt Service Amount (except to the extent that Operations Co or any Operations Co Person has previously made payment to Project Co in respect of debt service costs as a result of a Supervening Event) or any other obligation of Project Co under the Senior Financing Agreements; and
- (6) any specific loss, cost or expense incurred by Project Co to which the relevant compensation expressly relates and which is not included in any amount claimed by Operations Co.

Project Co's entitlement under the Project Agreement in respect of the matters set out in this Section 1.6 is referred to in this Project Implementation Agreement as "**Equivalent Project Relief**".

- (b) Operations Co will not be entitled to any relief from, or waiver in respect of performance of its obligations under this Project Implementation Agreement other than:
  - (1) to the extent Project Co receives Equivalent Project Relief; or
  - (2) to the extent expressly provided for in this Project Implementation Agreement.
- (c) Operations Co will be entitled to the benefit of any Equivalent Project Relief to the extent that Project Co is or becomes entitled under the Project Agreement only if, when and to the same extent that Project Co has received Equivalent Project Relief from the Authority under the Project Agreement.
- (d) For purposes of Project Co asserting a claim under the Project Agreement against the Authority in respect of Equivalent Project Relief, where Operations Co has suffered Direct Losses or otherwise claims relief in respect of any event or circumstance in respect of which Project Co is entitled to claim Equivalent Project Relief, Project Co acknowledges that it will be obligated to include such Direct Losses or relief claimed by Operations Co in its claim against the Authority and to make such claim against the Authority under the Project Agreement, provided that Operations Co's recourse against Project Co and Project Co's liability to Operations Co in respect of any such Direct Losses or relief will be subject to, and strictly limited by, the provisions of Sections 1.6(a) through 1.6(c) above and that Project Co will not be required to reimburse Operations Co to the extent that such Direct Losses or relief arise as a result of any failure on the part of the Authority to perform its obligations under the Project Agreement, unless Project Co has received compensation from the Authority under the Project Agreement in respect of such Authority failure, in which case the Pass-Down Provisions shall apply.

## 1.7 Enforcement of Parallel Issues

- (a) Project Co will preserve, protect and pursue under the Project Agreement such rights, remedies and relief as may relate to Operations Co's rights and obligations hereunder, including any claim for Equivalent Project Relief, (a "**Parallel Issue**") in order to secure a favorable resolution of the Parallel Issue, provided that:
- (1) Project Co has received written notice from Operations Co of the Parallel Issue;
  - (2) Operations Co will not be entitled to recover from Project Co any Direct Losses or claims arising out of or in connection with Project Co pursuing resolution of a Parallel Issue on Operations Co's behalf other than any amounts received from the Authority in respect of such Parallel Issue; and
  - (3) Operations Co will indemnify Project Co in respect of any Direct Losses arising out of or in connection with Project Co pursuing resolution of a Parallel Issue on Operations Co's behalf in accordance with this Section 1.7(a), including reimbursing Project Co for any deduction from, reduction of or exercise of set-off, compensation or similar right against any amount payable by the Authority associated therewith, provided that such indemnification will, unless Project Co has no entitlement to any amount received in respect of such Parallel Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Issue.
- (b) Subject to Section 1.7(c), Project Co consents to Operations Co pursuing the rights, remedies and relief under the Project Agreement described in Section 1.7(a) of this Project Implementation Agreement, including, without limitation, any entitlement to compensation on termination, in the name of Project Co, which may, subject to the provisions of Section 9.2 of the Project Agreement, include the defense of claims where Operations Co is required to provide an indemnity to Project Co in accordance with the indemnity provisions in this Project Implementation Agreement. Operations Co will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that, if Operations Co is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the parties in proportion to their ultimate entitlements to same. Project Co will, at the sole cost and expense of Operations Co, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Operations Co may reasonably request in connection with the pursuit of such Parallel Issue by Operations Co.
- (c) No later than 7 days following receipt of the notice referred to in Section 1.7(a)(1), Project Co may take conduct of the Parallel Issue and pursue the rights, remedies and relief under the Project Agreement described in Section 1.7(a) of this Project Implementation Agreement on behalf of Operations Co and in accordance with the reasonable directions of Operations Co.
- (d) Project Co will not enter into any compromise or settlement of a Parallel Issue with the Authority which affects, in any respect, Operations Co's obligations,

rights, remedies or relief hereunder without the prior written consent of Operations Co, in its sole discretion.

- (e) Where Project Co pursues a Parallel Issue in accordance with this Section 1.7, Operations Co will be kept informed of Project Co's progress under this Section 1.7 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Project Co in accordance with this Section 1.7.
- (f) Operations Co will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Project Co may reasonably request in connection with the pursuit of any Parallel Issue.
- (g) Any claims in respect of a Parallel Issue and any recoveries obtained by Project Co or Operations Co in respect of any Parallel Issue under the Project Agreement will be subject to the provisions of Section 1.6 in respect of Equivalent Project Relief.

## **1.8 Pass-Down Provisions**

The parties acknowledge and agree that all provisions of this Project Implementation Agreement including the provisions of each Schedule hereto will be subject to the provisions of Sections 1.4 through 1.7 of this Project Implementation Agreement (the "**Pass-Down Provisions**"), and the absence of any specific reference to the Pass-Down Provisions will not preclude the application of the Pass-Down Provisions to any provision of this Project Implementation Agreement.

## **1.9 Authority Not Directly Liable**

Without prejudice to Operations Co's right to pursue the rights, remedies and relief under the Project Agreement in the name of Project Co, Operations Co acknowledges and agrees that it will not have any direct claim against the Authority in respect of any act or omission of Project Co under this Project Implementation Agreement, except in respect of any fraudulent action, bad faith or willful misconduct of the Authority, Project Co or any present or future director, officer, employee or agent of Project Co.

## **2. GENERAL PROJECT TERMS**

### **2.1 Term and Termination**

Operations Co acknowledges the provisions of Section 2.1 of the Project Agreement. The term of this Project Implementation Agreement (the "**Term**") will commence on the Effective Date and will continue to the Expiration Date unless earlier terminated:

- (a) upon the Authority terminating the Project Agreement at any time in its discretion, and at its convenience, by notice to Project Co stating that termination is for convenience pursuant to Section 2.1(a) of the Project Agreement;

- (b) upon either the Authority or Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.3 of the Project Agreement in connection with insufficient insurance;
- (c) upon either the Authority or Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.4 of the Project Agreement in connection with uncollectible Insurance Receivables;
- (d) upon the Authority electing to terminate the Project Agreement pursuant to Section 6.10 of the Project Agreement in connection with a Principal Insured Risk becoming Uninsurable;
- (e) upon either the Authority or Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.4(c) or 8.4(e) of the Project Agreement, or Operations Co electing to terminate this Project Implementation Agreement pursuant to Section 8.4(c) or 8.4(e), in connection with a Relief Event;
- (f) upon either the Authority or Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.6(c) or 8.6(d) of the Project Agreement, or Operations Co electing to terminate this Project Implementation Agreement pursuant to Section 8.6(c) or 8.6(d), in connection with a Force Majeure Event;
- (g) upon the Authority electing to terminate the Project Agreement pursuant to Section 12.4 of the Project Agreement in connection with a Project Co Event of Default;
- (h) by Project Co pursuant to Section 12.4 in connection with an Operations Co Event of Default;
- (i) upon Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 13.3 of the Project Agreement in connection with an Authority Event of Default; or
- (j) by Operations Co electing to terminate this Project Implementation Agreement pursuant to Section 13.3.

Unless otherwise specified, the Termination Date for such earlier terminations will be the date notice of termination is given by one party to the other party in accordance with this Project Implementation Agreement. Except as referred to in this Section 2.1, neither party will have the right to terminate this Project Implementation Agreement.

## **2.2 Document Deliveries**

Concurrently with the execution and delivery of the Original Project Implementation Agreement:

- (a) Operations Co delivered to Project Co the documents described in Section 2 of Schedule 18 [Completion Documents]; and

- (b) Project Co delivered to Operations Co the documents described in Section 3 of Schedule 18 [Completion Documents].

Upon receipt from the Design-Builder, Operations Co will deliver to Project Co the information and documentation described in the project transparency requirements set out in Aconex Document Reference Number KIH-TRN-010533.

### **2.3 Assumption of Risk**

Except to the extent expressly allocated to Project Co or otherwise provided for under this Project Implementation Agreement, all risks, costs and expenses in relation to the performance by Operations Co of its obligations under this Project Implementation Agreement are allocated to, and accepted by, Operations Co as its entire and exclusive responsibility.

### **2.4 Opportunities**

Operations Co acknowledges the provisions of Section 2.4 of the Project Agreement whereby, except as expressly provided in the Project Agreement, or as may be specifically agreed in writing between the Authority and Project Co (with the prior consent of Operations Co) during the Term, the Authority reserves the right to all commercial and other opportunities for, or related to, the Project and the Lands.

### **2.5 General Duty of Operations Co to Mitigate**

In all cases where Operations Co is entitled to receive from Project Co any compensation in addition to the payments described in Section 3.1(b), costs, damages or extensions of time, Operations Co will use all commercially reasonable efforts to mitigate such amount required to be paid by Project Co to Operations Co under this Project Implementation Agreement, or the length of the extension of time. Upon request from the Authority, Operations Co will promptly submit a detailed description, supported by all such documentation as the Authority may reasonably require, of the measures and steps taken by Operations Co to mitigate and meet its obligations under this Section 2.5.

Upon reasonable request from the Authority under the Project Agreement, Project Co will request and Operations Co will also provide such Project data as the Authority reasonably requires to assist Project Co or Operations Co in the mitigation of actual or potential Supervening Events. As soon as reasonably practicable and in any event within 7 Business Days of receipt of any such request or such longer period as the parties and the Authority may agree, Operations Co will provide the Project data requested by the Authority or notify the Authority that it objects to the request, in whole or in part, on the basis that the scope of Project data requested, the time period to provide the Project data and/or the cost of providing the Project data is not reasonable.

The Authority, Project Co and Operations Co will meet within 5 Business Days of delivery of the notice of objection to consult and seek to agree on the reasonableness of the request for Project data. If the Authority, Project Co and Operations Co, within 5 Business Days following the meeting, have not reached agreement, Operations Co acknowledges and agrees that either the Authority or Project Co (at the direction of Operations Co) may refer the question of whether a request for Project data is reasonable for resolution in accordance with the Dispute Resolution Procedure under the Project Agreement. The parties agree to abide by the determination under the Project Agreement, and neither party will exercise any rights under this Project

Implementation Agreement to dispute the final determination arising under the Project Agreement, other than in accordance with the Pass-Down Provisions.

## **2.6 General Duty of Project Co to Mitigate**

In all cases where Project Co is entitled to receive from Operations Co any compensation, costs or damages, but not in any other case, Project Co will use all commercially reasonable efforts (including enforcing its rights against the Authority pursuant to Section 2.6 of the Project Agreement) to mitigate such amount required to be paid by Operations Co to Project Co under this Project Implementation Agreement (except where Project Co is unable to do so under the Project Agreement, including as a result of a circumstance where the Authority is not required to mitigate pursuant to Section 2.6(a) of the Project Agreement, or the Senior Financing Agreements).

- (a) Not used
- (b) Not used

Project Co will have no obligation to mitigate, implied or otherwise, except as set out in this Section 2.6 or as otherwise expressly set out in this Project Implementation Agreement. Upon request from Operations Co, Project Co will promptly submit a detailed description, supported by all such documentation as Operations Co may reasonably require, of the measures and steps taken by Project Co to mitigate and meet its obligations under this Section 2.6.

## **2.7 Representatives**

Operations Co will appoint a Design and Construction Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 2 [Design and Construction Protocols] to the Project Agreement, and an Operating Period Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 4 [Services Protocols and Specifications] to the Project Agreement. Operations Co's Design and Construction Representative and Operating Period Representative may be the same person and will act as Project Co's Design and Construction Representative and Operating Period Representative under the Project Agreement.

## **2.8 Key Individuals**

Attached as Schedule 17 [Key Individuals] is a list of persons (the "**Key Individuals**") that Operations Co will utilize in undertaking the Design and the Construction. With respect to each of the Key Individuals:

- (a) Operations Co will use commercially reasonable efforts to retain the Key Individuals to perform the duties for the period described in Schedule 17 [Key Individuals]; and
- (b) if for any reason a Key Individual resigns or is otherwise unavailable to perform the duties described in Schedule 17 [Key Individuals], Operations Co will use commercially reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Individual, satisfactory to the Authority under the Project Agreement, and Operations Co will not replace such Key Individual without the Authority's consent under the Project Agreement.

No later than 6 months prior to the start of the Operating Period, Operations Co will notify Project Co and the Authority of the name and qualifications of the person designated by Operations Co to be the “General Manager” or equivalent as of the start of the Operating Period, and such person will, from the date of such notice, be a Key Individual for the purposes of Section 2.8(b) above.

## **2.9 Naming**

Operations Co acknowledges the provisions of Section 2.9 of the Project Agreement pursuant to which the Authority retains the exclusive right to name the NG-KIH System and any parts thereof.

## **2.10 Signs**

Subject to Section 7.14 of Schedule 2 [Design and Construction Protocols], Operations Co will not erect or maintain any signs on the Lands or the NG-KIH System, other than warning, safety and instructional signs or signs required by applicable Laws, without the written consent of the Authority under the Project Agreement.

## **2.11 Early Works**

The parties acknowledge and agree that the early works undertaken pursuant to the Master Agreement (the “**Early Works**”) terminated on the Effective Date and that the Early Works performed prior to the Effective Date are deemed to have been undertaken by Operations Co pursuant to this Project Implementation Agreement. Operations Co accepts and assumes the risk, responsibility and liability for and in respect of the performance of the Early Works in accordance with the provisions of this Project Implementation Agreement.

## **2.12 Performance Security**

The parties acknowledge and agree that the performance security required to be delivered by or on behalf of Operations Co in connection with the Project is the performance security to be provided by the Design-Builder pursuant to the Design-Build Agreement and the Service Provider pursuant to the Services Contract.

# **3. PROJECT CO’S GENERAL OBLIGATIONS**

## **3.1 Payments**

Subject to Operations Co meeting the requirements for payment set out in this Project Implementation Agreement, and subject to the Pass-Down Provisions, as applicable, Project Co will pay Operations Co amounts expressly provided for herein, including:

- (a) the payments as set out in Section 5.4 (Refinancing Process);
- (b) the payments as set out in Section 10 (Payments);
- (c) the Termination Payments as set out in Schedule 9 [Compensation on Termination];
- (d) amounts owing under Section 3.6 (Purchase of Designated Equipment);

- (e) amounts owing under Section 6 (Insurance, Damage and Destruction);
- (f) amounts owing under Section 7 (Changes, Minor Works and Innovation Proposals);
- (g) amounts owing under Section 8 (Supervening Events);
- (h) Not used
- (i) amounts owing pursuant to the final resolution of a Dispute in accordance with the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure],

in accordance with the provisions of this Project Implementation Agreement and all applicable Laws.

### **3.2 Limitation on Payments**

Other than the payments expressly provided for herein, Operations Co will have no right to any further payment from Project Co in connection with the Design, Construction, Services or System Refresh or otherwise in connection with the Project. The parties acknowledge and agree that, other than as expressly provided for herein, this Project Implementation Agreement is a fixed price contract pursuant to which Operations Co takes the risk of cost overruns and is entitled to the benefit of cost saving. As such, the costs incurred by Operations Co in connection with the Project, and the allocation of such costs, are within Operations Co's sole discretion.

### **3.3 Provision of Lands**

Project Co will make the Lands available for the Project pursuant to the Sub-License in accordance with Schedule 7 [Lands] and the parties' rights and obligations in respect of the Lands are set out in such Schedule 7. Operations Co acknowledges the provisions of Section 3.3 of and Schedule 7 [Lands] to the Project Agreement regarding Project Co's access to the Lands and the NG-KIH System and agrees that neither Operations Co nor any Operations Co Person will have any greater rights than are granted to Project Co under the Project Agreement. Operations Co will comply, and will ensure that each Operations Co Person complies, with the terms of the License granted by the Authority to Project Co. The Sub-License granted by Project Co to Operations Co herein will be effective from the date the License takes effect pursuant to the Project Agreement and will expire on the earlier of the date the License terminates pursuant to the Project Agreement and the Termination Date.

### **3.4 Permitting Assistance**

Operations Co acknowledges the provisions of Section 3.4 of the Project Agreement. Project Co agrees to enforce its contractual rights under Section 3.4 of the Project Agreement against the Authority in accordance with the Pass-Down Provisions. Operations Co agrees that Project Co will not be responsible for obtaining or for any delay in obtaining or for the failure of Operations Co to obtain any Permit.

### **3.5 Project Co's Representations and Warranties**

Project Co represents and warrants to Operations Co, as of the Effective Date and the date of this Project Implementation Agreement, that:

- (a) Project Co is a non-profit corporation duly created and validly existing under the laws of Kentucky and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Project Implementation Agreement;
- (b) the execution and delivery of this Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Project Implementation Agreement, and the completion of the transactions contemplated by this Project Implementation Agreement, have been duly authorized by all necessary action on the part of Project Co, and this Project Implementation Agreement has been duly executed and delivered by Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Project Implementation Agreement have been received.

### **3.6 Purchase of Designated Equipment**

Operations Co acknowledges and agrees that the Authority will purchase the Designated Equipment and arrange for delivery of the Designated Equipment to Project Co (or as Project Co may direct) in accordance with the Designated Equipment Protocol. Project Co will direct the Authority to deliver the Designated Equipment directly to the Design-Builder. Operations Co acknowledges and agrees that, the Authority will, on the System Completion Date, make a payment to Project Co in the amount of \$1,354,000 in respect of the Designated Equipment. Operations Co further acknowledges and agrees that, to the extent that the amount actually paid by the Authority in respect of Designated Equipment is less than \$25,864,489 as a result of a change in the type or quantity of Designated Equipment required by Project Co under the Project Agreement, the Authority will, on the System Completion Date, make a further payment to Project Co in the amount of the difference between \$25,864,489 and the amount actually paid by the Authority in respect of Designated Equipment (taking into account changes in the type or quantity of Designated Equipment only). Project Co will, subject to the Pass-Down Provisions, make corresponding payments to Operations Co upon receipt of these payment from the Authority.

### **3.7 Project Co Common Carrier Covenant**

Project Co covenants not to take or fail to take any action that would result in the designation of Operations Co or any Operations Co Person as a Common Carrier or in the application of the Common Carrier Regulations to Operations Co or any Operations Co Person. Project Co

acknowledges and agrees that the performance by Operations Co or any Operations Co Person of obligations under this Project Implementation Agreement or any Project Contract does not require Operations Co or any Operations Co Person to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws. The parties acknowledge and agree that the Kentucky Communications Network Authority has obtained status as a competitive local exchange carrier, which is not a breach of this Section 3.7.

### **3.8 Not Used**

### **3.9 Pole Attachment Agreements**

Operations Co acknowledges and agrees that the Authority will enter into each Pole Attachment Agreement required for the Project. During the Term, the Authority will, if applicable, renew each Pole Attachment Agreement no later than the expiration date set out in such Pole Attachment Agreement to ensure the continuous operation of the NG-KIH System. Subject to Project Co's obligation to pay Pole Attachment Fees as set out in Section 3.5 of Appendix 4A [Services Specifications] to the Project Agreement, the Authority will fulfill, or cause to be fulfilled, any of the other obligations under the Pole Attachment Agreements. Project Co will cause the Authority to appoint Operations Co as its agent or designee pursuant to each Pole Attachment Agreement.

Since Pole Attachment Agreements had not been entered into with all Pole Providers as at the Effective Date, the parties acknowledge that there may be an increase or decrease in the Baseline Pole Attachment Costs.

Subject to the remaining provisions of this Section 3.9, Operations Co will finalize a Simple Pole Attachment Agreement with each Pole Provider (other than a Material Telecommunications Company) in accordance with the Project Schedule and subject to the Authority's right to review each Simple Pole Attachment Agreement before it is finalized in accordance with the agreed review procedure.

For clarity, Operations Co will not be entitled to claim a Compensation Event in respect of any delay in obtaining a fully executed Simple Pole Attachment Agreement from each Pole Provider (other than a Material Telecommunications Company) during the Construction Period unless:

- (a) the Authority does not execute the finalized Simple Pole Attachment Agreement provided to the Authority by Operations Co within 3 Business Days of receipt thereof; or
- (b) a Pole Provider refuses to enter into a Simple Pole Attachment Agreement.

For the five Pole Providers identified with a double asterisk in Appendix 8A [Baseline Pole Attachment Costs] to the Project Agreement, Operations Co will use commercially reasonable efforts to negotiate alternate (i) payment structures, including upfront payment of pole attachment rates, (ii) contract duration, including multi-year pole attachment agreements and/or (iii) other contractual terms and conditions that may result in a Complex Pole Attachment Agreement.

Project Co agrees to enforce its contractual rights under Section 3.9 of the Project Agreement against the Authority to ensure that the Authority provides or causes to be provided such

information, documentation and assistance as Operations Co may request and as the Authority may reasonably be able to provide to support the negotiation of any Complex Pole Attachment Agreement.

The parties agree to discuss with the Authority certain of the Simple Pole Attachment Agreements that have been entered into by the Authority in order to determine whether approaching the relevant Pole Provider (each, a “**Targeted Pole Provider**”) could result in an amended commercial agreement with that Targeted Pole Provider (each, an “**Amended Pole Attachment Agreement**”) that would benefit the Project. The discussion between the parties and the Authority will determine the list of Targeted Pole Providers to approach, if any, and the elements of the Complex Pole Attachment Agreement that would be presented to such Targeted Pole Provider (such as connections, trades, swaps). The parties and the Authority will take into account any relevant factors in determining whether to approach a Targeted Pole Provider, including the impact or effect on the quality or delivery of the NG-KIH System or the Services, the relationship between the Authority and the Targeted Pole Provider and any negative impact or increased risk to Project Co, Operations Co, any Project Contractor or the Authority.

The parties acknowledge that the discussions between the parties and the Authority referenced in the preceding paragraph and any negotiations with a Targeted Pole Provider resulting in an executed Amended Pole Attachment Agreement must occur during the Construction Period and in advance of any make-ready design work in respect of the Targeted Pole Provider’s poles (the “**Simple Pole Attachment Agreement Amendment Period**”).

If Operations Co and the Targeted Pole Provider have negotiated an Amended Pole Attachment Agreement, Operations Co will submit a Pole Attachment Proposal in accordance with Section 5 of Schedule 6 [Changes, Minor Works and Innovation Proposals]. Operations Co acknowledges that, pursuant to Section 3.9 of the Project Agreement, the Authority agrees that it will not enter into an Amended Pole Attachment Agreement until it has completed the process set out in Section 5 of Schedule 6 to the Project Agreement.

### **3.10 Procurement Protest or Challenge**

Operations Co acknowledges the provisions of Section 3.10 of the Project Agreement and agrees to assist in the defense of any protest or challenge to the procurement process contemplated thereunder. Operations Co will pay any costs incurred in defending the actions of Operations Co related to the procurement process or to its interests in this Project Implementation Agreement.. Project Co agrees to enforce its contractual rights under Section 3.10 of the Project Agreement against the Authority in accordance with the Pass-Down Provisions.

### **3.11 Project Co’s Obligations re Third Party Infrastructure Agreements**

Project Co will make the upfront IRU payment due and payable pursuant to the Third Party Infrastructure Agreement between the Authority and Cincinnati Bell Telephone Company LLC.

## **4. OPERATIONS CO'S GENERAL OBLIGATIONS**

### **4.1 General Obligations Re: Project**

Subject to and in accordance with the provisions of this Project Implementation Agreement and all applicable Laws and Permits, Operations Co will carry out the Design and Construction and perform the Services.

### **4.2 Records and Reports**

Operations Co will, at its own cost and expense, retain and maintain the records and reports referred to in Schedule 14 [Records and Reports] in accordance with such Schedule and in a form that is capable of audit by Project Co and to enable Project Co to fulfill its obligations to the Authority under Section 4.2 of the Project Agreement. Upon reasonable request from the Authority under the Project Agreement, Project Co will request and Operations Co will, and will cause any of its Project Contractors to, provide such records and reports (or copies thereof) to the Authority for purposes of audit by the Authority.

### **4.3 No Other Business**

Operations Co will not engage in any business or activity other than the business or activities conducted for the purpose of the Project or otherwise expressly permitted hereunder or under the Financing Agreements.

### **4.4 Operations Co Persons**

Operations Co will, as between itself and Project Co, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and/or willful misconduct of any Operations Co Person and all references in this Project Implementation Agreement to any act, omission, breach, default, non-compliance, negligence or willful misconduct of Operations Co will be construed accordingly to include any act, omission, breach, default, non-compliance, negligence or willful misconduct committed by an Operations Co Person.

### **4.5 Use of Sub-Contractors**

Without limiting Section 4.4, Project Co acknowledges that Operations Co may carry out the Design, Construction, Services and/or System Refresh by contracting such obligations to the Project Contractors who may, in turn, contract all or part of their obligations under any Project Contract to one or more Sub-Contractors. In respect of the Project:

- (a) Operations Co will not contract with, or allow any of its Project Contractors or any Sub-Contractors to contract with, any Person that is a Restricted Person; and
- (b) Operations Co will not utilize, and will not allow any of its Project Contractors or any Sub-Contractors to utilize, any materials from any Restricted State other than unprocessed raw materials and Non-Operative Components.

Notwithstanding the use of Project Contractors or Sub-Contractors, Operations Co:

- (c) will not be relieved or excused from any of its obligations or liabilities under this Project Implementation Agreement; and
- (d) will remain liable to Project Co for the performance of all the covenants, obligations, agreements and conditions of this Project Implementation Agreement that are to be performed by Operations Co.

Upon reasonable request from the Authority under the Project Agreement, Project Co will request and Operations Co will, and will cause any of its Project Contractors to, provide such information as the Authority reasonably requires to confirm that any Sub-Contractor has the resources to perform its obligations under the relevant Sub-Contract. As soon as reasonably practicable and in any event within 10 Business Days of receipt of any such request or such longer period as the parties and the Authority may agree, Operations Co will provide the information requested by the Authority or notify the Authority that it objects to the request, in whole or in part, on the basis that the scope of information requested, the time period to provide the information and/or the cost of providing the information is not reasonable.

The Authority, Project Co and Operations Co will meet within 5 Business Days of delivery of the notice of objection to consult and seek to agree on the reasonableness of the request for information. If the Authority, Project Co and Operations Co, within 5 Business Days following the meeting, have not reached agreement, Operations Co acknowledges and agrees that either the Authority or Project Co (at the direction of Operations Co) may refer the question of whether a request for information is reasonable for resolution in accordance with the Dispute Resolution Procedure under the Project Agreement. The parties agree to abide by the determination under the Project Agreement, and neither party will exercise any rights under this Project Implementation Agreement to dispute the final determination arising under the Project Agreement, other than in accordance with the Pass-Down Provisions.

#### **4.6 Project Contracts**

Operations Co will not:

- (a) terminate, or agree to or permit the termination of, all or any material part of any Project Contract except:
  - (1) as required to do so by the Authority pursuant to the provisions of the Project Agreement; or
  - (2) if there is an event of default under a Project Contract and Operations Co terminates it in order to prevent or cure an Operations Co Event of Default;
- (b) make, or agree to or permit the making of:
  - (1) any material amendment of any Project Contract, other than amendments (whether made by Change Certificate or otherwise) that are the direct and reasonable consequence of a Change; or
  - (2) any departure by any party from any material provision of any Project Contract;

- (c) Not used
- (d) permit any Project Contractor to assign or transfer to any Person any of such Project Contractor's rights or obligations under a Project Contract other than in accordance with the terms of such Project Contract; or
- (e) enter into, or permit the entering into of, any Project Contract other than those entered into on or before the Effective Date,

unless Operations Co has, at its earliest practicable opportunity, submitted to Project Co and the Authority notice of the proposed course of action (and any relevant documentation) and the Authority has consented to such course of action under the Project Agreement. Operations Co acknowledges the provisions of Section 4.6 of the Project Agreement and agrees that the Authority will give or deny such consent within: (i) 15 Business Days of receipt of such notice and all relevant documentation, if Operations Co is seeking to terminate a Project Contract and such Project Contract may, in accordance with its terms, be terminated immediately; and (ii) 30 Business Days of receipt of such notice and all relevant documentation in all other cases, and, if the Authority fails to give or deny its consent within such time periods, it will be deemed not to have given its consent. Operations Co further acknowledges and agrees that, in determining whether to provide such consent under the Project Agreement and without limiting the Authority's discretion, it will be reasonable for the Authority to refuse its consent to the proposed course of action if:

- (f) the proposed assignee, transferee or party entering into any Project Contract is a Restricted Person; or
- (g) the proposed course of action could, in the reasonable opinion of the Authority, have a material adverse effect on the Authority or the Project.

#### **4.7 Costs of Request for Consent**

If Operations Co requests consent to a proposed course of action pursuant to Section 4.6, Operations Co will pay to Project Co, without duplication, the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with the Authority considering any such request under the Project Agreement. At the time of such request, Operations Co will make a payment to Project Co in the amount of \$5,000 (Index Linked) against its obligations under this Section 4.7. After the Authority renders its decision, Project Co will either refund any overpayment upon receipt of such amount from the Authority or invoice Operations Co for any additional amounts owing under this Section 4.7 and Operations Co will promptly pay such amount to Project Co.

#### **4.8 Replacement Project Contract**

Subject to the provisions of Schedule 15 [Financing Agreement Obligations], if any Project Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Project Contract are no longer reasonably required for the Project or such Project Contract has been fully performed and all liabilities and obligations thereunder have been fully discharged:

- (a) Operations Co will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (b) if the Authority and the relevant Project Contractor had entered into a Project Contractor Collateral Agreement with respect to the replaced Project Contract, Operations Co will forthwith enter into, or cause the replacement Project Contractor to enter into, a Project Contractor Collateral Agreement.

#### **4.9 Delivery of Amended Project Contracts**

If at any time any amendment is made to any Project Contract, or a replacement Project Contract (or any agreement which materially affects the interpretation or application of any Project Contract) is entered into, Operations Co will deliver to Project Co and the Authority a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Operations Co.

#### **4.10 Permits**

- (a) Subject to Section 3.9, Section 8 (Supervening Events) and Section 2.1 of Schedule 7 [Lands], Operations Co shall, at its own cost and risk and in accordance with the Project Schedule obtain, maintain and, as applicable, renew all Permits in accordance with Schedule 2 [Design and Construction Protocols] and comply with all Permits in accordance with their terms.
- (b) Where a Permit has requirements that may impose any conditions, liabilities or obligations on the Authority or any Authority Person, Operations Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Permit without the prior written consent of the Authority under the Project Agreement. Operations Co acknowledges the provisions of Section 4.10(b) of the Project Agreement and, to the extent appropriate, Project Co agrees to enforce its contractual rights under Section 4.10(b) of the Project Agreement against the Authority in accordance with the Pass-Down Provisions.
- (c) Operations Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the Authority may request from Project Co under the Project Agreement and as Operations Co may reasonably be able to provide to enable the Authority to demonstrate compliance with any Permit. Operations Co shall provide or cause to be provided such information, documentation and assistance pursuant to this Section 4.10(c) within 10 Business Days of receipt of the Authority's request.

#### **4.11 Operations Co's Representations and Warranties**

Operations Co represents and warrants to Project Co that:

- (a) Operations Co is a limited liability corporation duly created and validly existing under the laws of Delaware and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Project Implementation Agreement and all other documents,

instruments and agreements required to be executed and delivered by Project Co pursuant to this Project Implementation Agreement;

- (b) the information set out in Schedule 12 [Operations Co's Ownership Information] is true and correct and, except as set out in Schedule 12 [Operations Co's Ownership Information], there is, as at the date of this Project Implementation Agreement, no outstanding offer, agreement or other arrangement pursuant to which:
  - (1) any Person is obligated to subscribe for or take by means of transfer or by conversion any form of investment, security or voting rights in Operations Co; or
  - (2) Operations Co's formation documents will be amended or otherwise altered;
- (c) to Operations Co's knowledge, none of Operations Co, Persons who control Operations Co, the Project Contractors or the Sub-Contractors are Restricted Persons;
- (d) the execution and delivery of this Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Project Implementation Agreement, and the completion of the transactions contemplated by this Project Implementation Agreement, have been duly authorized by all necessary action on the part of Operations Co, and this Project Implementation Agreement has been duly executed and delivered by Operations Co and constitutes a legal, valid and binding obligation of Operations Co enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application;
- (e) all required third party consents to the execution by Operations Co of, and performance of its obligations under, this Project Implementation Agreement have been received, other than any Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project; and
- (f) Operations Co is not aware of any representation or warranty made by Project Co under the Financing Agreements that is not true and correct in all material respects.

#### **4.12 Responses to Project Co and Authority Inquiries**

Unless otherwise specified in this Project Implementation Agreement, Operations Co will respond in writing to all written inquiries received from Project Co or the Authority as soon as reasonably practicable and in any event within 10 Business Days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require.

#### **4.13 Operations Co Common Carrier Covenant**

Operations Co covenants not to take or fail to take any action that would result in the designation of Operations Co or any Operations Co Person as a Common Carrier or in the application of the Common Carrier Regulations to Operations Co or any Operations Co Person. Operations Co acknowledges and agrees that the performance by Operations Co or any Operations Co Person of obligations under this Project Implementation Agreement or any Project Contract is not intended to require Operations Co or any Operations Co Person to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

#### **4.14 Project Co Tax Compliance Covenant**

The parties acknowledge and agree that, pursuant to Section 4.14 of the Project Agreement, Project Co covenants, among other things, that it shall not take any action or inaction, nor fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds. The parties further acknowledge and agree that, except for the specific reporting and other obligations undertaken by Operations Co in accordance with Schedule 15 [Financing Agreement Obligations], Project Co will remain responsible for compliance with the covenant set out in Section 4.14 of the Project Agreement.

#### **4.15 Operations Co's Obligations re Third Party Infrastructure Agreements**

Project Co and Operations Co acknowledge and agree that, as of the Effective Date, the Authority had negotiated non-binding term sheets (each, a "**Third Party Infrastructure Term Sheet**") with MuniNet Fiber Agency and Cincinnati Bell Telephone Company LLC that were attached to the Original Project Implementation Agreement and that, subsequent to the Effective Date, the Authority entered into the Third Party Infrastructure Agreements described in Schedule 20 [Third Party Infrastructure Agreements]. Operations Co will be responsible for fulfilling the responsibilities, including ordering and delivery, of the Authority with respect to all Specified Fibers, as defined and contemplated in the Third Party Infrastructure Agreement between the Authority and MuniNet Fiber Agency. The parties acknowledge and agree that the Specified Fibers form part of the Designated Equipment.

If, following the Effective Date, there is any change to a Third Party Infrastructure Term Sheet (including, for greater certainty, expiration thereof in accordance with its terms) or a Third Party Infrastructure Agreement that results in any change to Operations Co's obligations under this Project Implementation Agreement, the scope or manner of carrying out the Project or Operations Co's costs of carrying out the Project, Operations Co acknowledges that the Authority shall issue a Change Directive in accordance with Section 2.17 of Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement in respect of such Change based on a description of the Change provided by Operations Co to Project Co.

Operations Co will use commercially reasonable efforts to manage the Third Party Infrastructure Providers in accordance with the terms of the Third Party Infrastructure Agreements and enforce its rights under the Third Party Infrastructure Agreements so as to mitigate the impact of any failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement or any breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement. Upon request from the Authority, Operations Co will promptly submit a detailed description, supported by all such

documentation as the Authority may reasonably require, of the measures and steps taken by Operations Co to enforce its rights under each of the Third Party Infrastructure Agreements. Project Co consents to Operations Co pursuing all rights, remedies and relief under a Third Party Infrastructure Agreement in the name of Project Co.

In the event a Third Party Infrastructure Agreement involves any engineering, procurement or construction to be provided by a Third Party Infrastructure Provider, the term “manage” above shall not be construed as requiring Operations Co to (a) provide any warranty as to that portion of the work, (b) exercise control over the quality of any engineering performed, (c) exercise control over the means and methods of construction or (d) exercise control over the safety of such Third Party Infrastructure Provider or such Third Party Infrastructure Provider’s safety program.

Operations Co acknowledges that the Authority shall provide or cause to be provided such information, documentation and assistance as Project Co may request and as the Authority may reasonably be able to provide to enable Project Co to enforce its rights under the Third Party Infrastructure Agreements. Project Co agrees to enforce its contractual rights under Section 4.15 of the Project Agreement against the Authority in accordance with the Pass-Down Provisions.

In accordance with Section 8.2(h), if the Compensation Event described in (x) of the definition of Compensation Event occurs, the Authority, Project Co and Operations Co will consult and seek to agree on the steps to be taken by Operations Co in enforcing its rights under the relevant Third Party Infrastructure Agreement. The parties acknowledge and agree that the compensation to which Operations Co will be entitled in respect of any such Compensation Event will include, as a component of Operations Co’s Direct Losses, the reasonable cost of legal or professional services incurred by Operations Co in connection with the enforcement of its rights. Operations Co will not pursue any legal action to enforce its rights under a Third Party Infrastructure Agreement without the prior written consent of the Authority.

## **5. FINANCING OF THE PROJECT**

### **5.1 Compliance with Financing Agreements**

Each of Project Co and Operations Co acknowledges the provisions of the Financing Agreements set out in Schedule 15 [Financing Agreement Obligations]. Project Co agrees to comply with the Project Co Financing Rights and Obligations and Operations Co agrees to comply with the Operations Co Financing Rights and Obligations.

### **5.2 Changes to Financing Agreements**

Project Co will not without the prior written consent of Operations Co, not to be unreasonably withheld or delayed, terminate, amend, assign or otherwise modify the Financing Agreements, or waive or exercise any of its rights under the Financing Agreements or enter into any replacement Financing Agreement or any agreement which affects the interpretation or application of any Financing Agreements if such action would:

- (a) materially adversely affect Operations Co’s ability to perform its obligations under this Project Implementation Agreement;

- (b) have the effect of increasing any liability or potential liability of Operations Co other than as contemplated in the Financial Model (unless Operations Co is specifically compensated for such liability or potential liability); or
- (c) have any adverse impact on the Operations Co Availability Payment or Project Co's ability to service the Junior Debt.

If at any time any amendment is made to any Financing Agreement or Project Co enters into any replacement Financing Agreement (or any agreement which affects the interpretation or application of any Financing Agreement), Project Co will deliver to Operations Co a copy of each such amendment or agreement within 5 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

### **5.3 Restrictions on Refinancing**

Except for an Exempt Refinancing, Project Co will not enter into any Refinancing without the prior written consent of Operations Co, not to be unreasonably withheld or delayed. Without limitation, it will be reasonable for Operations Co to withhold consent if such Refinancing would:

- (a) materially adversely affect Operations Co's ability to perform its obligations under this Project Implementation Agreement;
- (b) have the effect of increasing any liability or potential liability of Operations Co other than as contemplated in the Financial Model (unless Operations Co is specifically compensated for such liability or potential liability); or
- (c) have any adverse impact on the Operations Co Availability Payment or Project Co's ability to service the Junior Debt.

### **5.4 Refinancing Process**

If Project Co intends to undertake a Refinancing, Project Co will notify Operations Co of such intention before the anticipated completion date of such Refinancing and will include with such notice all applicable information then available to Project Co in connection therewith. Project Co will promptly provide all other documents and information related to the proposed Refinancing as Operations Co may reasonably request. Project Co will pay to Operations Co the reasonable and proper costs that Operations Co directly incurs in relation to the Refinancing, together with a fee to be agreed, provided that such costs and fee, when aggregated with any costs incurred by either Project Co or the Authority in relation to the Refinancing, do not exceed an amount equal to 2% of the par amount of the redeemed Bonds. For clarity, the amounts payable by Project Co to Operations Co pursuant to this Section 5.4 will be deducted from the amount of the Refinancing Gain payable to the Authority in accordance with Section 5.7 of the Project Agreement.

**5.5 Not Used**

**5.6 Not Used**

**5.7 Not Used**

**5.8 Not Used**

## **6. INSURANCE, DAMAGE AND DESTRUCTION**

### **6.1 Insurance Coverage**

Subject to Section 6.10(b), Operations Co will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Schedule 5 [Insurance Requirements].

### **6.2 Operations Co's Obligations - Damage or Destruction During Construction Period**

Operations Co acknowledges the provisions of Section 6.2 of the Project Agreement. Without prejudice to Section 8 (Supervening Events), if the NG-KIH System is completely or substantially destroyed during the Construction Period, Operations Co will repair, replace or restore those components of the NG-KIH System still under construction in accordance with the Design and Construction Specifications, subject only to:

- (a) applicable Laws; and
- (b) the Authority agreeing to pay to Project Co (pursuant to Section 6.2 of the Project Agreement) and Project Co paying to Operations Co:
  - (1) the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage required under the Project Agreement for such risk (which, for greater certainty, is the maximum amount of coverage prior to any deductibles for which, as between Project Co and the Authority, Project Co is responsible pursuant to Schedule 5 [Insurance Requirements] to the Project Agreement); or
  - (2) if no insurance coverage is required under the Project Agreement for such risk, an amount equal to the total costs of such repair, replacement or restoration,

and if the Authority agrees and pays such amount to Project Co, Project Co will pay such amounts to Operations Co in accordance with the Pass-Down Provisions promptly upon receipt of one or more invoices from Operations Co indicating that such amounts are due and payable by Operations Co in connection with such repair, replacement or restoration.

For the purposes of this Section 6.2, the maximum amount of insurance coverage is, in respect of insurance required to be obtained by Project Co pursuant to the Project Agreement, the full amount of coverage required under the Project Agreement for such risk prior to any deductibles for which Project Co is responsible (as between Project Co and the Authority) pursuant to Schedule 5 [Insurance Requirements] to the Project Agreement.

### **6.3 Insufficient Insurance**

Operations Co acknowledges the provisions of Section 6.3 of the Project Agreement. If:

- (a) the NG-KIH System is completely or substantially destroyed during the Construction Period;

- (b) the cost to repair, replace or restore those components of the NG-KIH System still under construction exceeds the maximum amount of insurance coverage (which, for greater certainty, is the maximum amount of coverage prior to any deductibles for which Project Co is responsible, as between Project Co and the Authority, pursuant to Schedule 5 [Insurance Requirements] to the Project Agreement) required under the Project Agreement for the risk that caused the destruction; and
- (c) none of Project Co or the Authority (pursuant to Section 6.2 of the Project Agreement) or Operations Co has agreed to pay the amount by which the cost to repair, replace or restore those components of the NG-KIH System still under construction exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

and the Authority or Project Co (with the prior consent of Operations Co) elects to terminate the Project Agreement pursuant to Section 6.3 thereof, this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]. If Project Co has become entitled to terminate the Project Agreement pursuant to Section 6.3 thereof, Operations Co may, at any time thereafter, terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement.

#### **6.4 Uncollectible Insurance Receivables**

Operations Co acknowledges the provisions of Section 6.4 of the Project Agreement. If the Project Agreement is terminated in accordance with Section 6.4 thereof, this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]. If Project Co has become entitled to terminate the Project Agreement pursuant to Section 6.4 thereof, Operations Co may, at any time thereafter, terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement.

#### **6.5 Application of Insurance Proceeds If No Termination**

Unless the Project Agreement has been terminated by the Authority or Project Co (including pursuant to Section 6.3 or Section 6.4 thereof), Operations Co will cause all:

- (a) applicable Insurance Proceeds which Operations Co has received;
- (b) applicable Insurance Proceeds which Operations Co is entitled to receive;
- (c) amounts which the Authority has agreed to pay Project Co and Project Co has paid Operations Co as contemplated in Section 6.2(b); and
- (d) amounts which Operations Co has agreed to pay to cover the amount by which the cost to repair, replace or restore the NG-KIH System exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

to be applied to the reinstatement of the NG-KIH System in accordance with the terms of this Project Implementation Agreement.

## **6.6 Application of Insurance Proceeds In Case of Termination**

If this Project Implementation Agreement has been terminated pursuant to Section 6.3:

- (a) any Insurance Proceeds received prior to the Termination Payment Date by Operations Co in respect of damage to the NG-KIH System and not already applied to the repair of such damage will be paid Project Co (or as Project Co may direct); and
- (b) on the Termination Payment Date, Operations Co will assign to Project Co (or as Project Co may direct) the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

## **6.7 Standards of Repair, Replacement or Restoration**

Any repair, replacement or restoration of the NG-KIH System or any part thereof pursuant to the provisions of Section 6.2 will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications, subject to any agreement made between the Authority and Project Co (with the prior consent of Operations Co) to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any repaired, replaced or restored NG-KIH System.

## **6.8 Mitigation**

Operations Co and Project Co will use all commercially efforts to mitigate the effects of any risks or claims covered by this Section 6 (Insurance, Damage and Destruction), including minimizing the amount of any costs and expenses which might result.

## **6.9 Risks Becoming Uninsurable**

Operations Co acknowledges the provisions of Section 6.9 of the Project Agreement. Each party will, forthwith upon Having Knowledge, notify the other if a Principal Insured Risk becomes or is expected to become Uninsurable and Project Co will so advise the Authority. Operations Co, together with its insurance advisor, will participate in any meetings of the Authority, Project Co and their respective insurance advisors to discuss the means by which a Principal Insured Risk should be managed pursuant to Section 6.9 of the Project Agreement (including considering the feasibility of self-insurance by any or all of the Authority, Project Co and Operations Co).

## **6.10 Consequences of Risks Becoming Uninsurable**

Operations Co acknowledges the provisions of Section 6.10 of the Project Agreement. If the requirements of Section 6.9 of the Project Agreement are satisfied but the Authority and Project Co (at the direction of Operations Co) cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the "**Uninsurable Risk**"):

- (a) if the Uninsurable Risk is third party liability, Operations Co acknowledges that the Authority shall terminate the Project Agreement, in which case this Project

Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; or

- (b) if the Uninsurable Risk is not third party liability:
  - (1) Operations Co acknowledges that the Authority may terminate the Project Agreement, in which case this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; or
  - (2) if and for as long as the Authority has not terminated this Project Implementation Agreement under Section 6.10(b)(1) of the Project Agreement:
    - (A) this Project Implementation Agreement will continue;
    - (B) neither Operations Co nor Project Co will be obligated by this Project Implementation Agreement, and the Authority will not be obligated by the Project Agreement, to maintain insurance in respect of the Uninsurable Risk and references in this Project Implementation Agreement to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Schedule 5 [Insurance Requirements] will be construed accordingly;
    - (C) the Operations Co Payments will thereafter be adjusted in accordance with Section 10.3 by agreement of the parties, acting reasonably, or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Operations Co's insurance cost as a result of Operations Co not having to insure against the Uninsurable Risk; and
    - (D) subject to the Pass-Down Provisions, the occurrence of the Uninsurable Risk will be deemed to be a Compensation Event unless the Authority terminates the Project Agreement in which case this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination].

## 6.11 Subrogation

If Project Co makes any payment to Operations Co pursuant to the Compensation Event referred to in Section 6.10(b)(2)(D), then the Authority and Project Co, as applicable and to the extent of the amount paid, will be subrogated to Operations Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation

against such third party. Project Co may assign its rights under this Section 6.11 to the Authority.

### **6.12 Continuing Attempts to Insure Uninsurable Risks**

When there is an Uninsurable Risk for which Operations Co is responsible to obtain insurance under Schedule 5 [Insurance Requirements], Operations Co will approach the insurance market on a regular basis and, in any event, at regular intervals of no longer than six months to establish whether the Uninsurable Risks remain Uninsurable. Following each such approach of the insurance market, Operations Co will notify Project Co and the Authority as to whether the Uninsurable Risks remain Uninsurable.

### **6.13 Uninsurable Risks Becoming Insurable**

Where a risk that was previously an Uninsurable Risk ceases to be so and either party becomes aware or is informed by the other party that this is the case (or in the case of Project Co, is informed by the Authority pursuant to the Project Agreement), Operations Co will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Project Implementation Agreement in respect of the risk, and in any case:

- (a) Sections 6.9, 6.10 and 6.12 will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) the Operations Co Payments will be adjusted pursuant to Section 10.3 by agreement of the parties and the Authority or, failing such agreement, by the Dispute Resolution Procedure under the Project Agreement, from the date upon which the Uninsurable Risk became insurable, to reflect any increase in Operations Co's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

## **7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS**

### **7.1 Changes Required by the Authority**

Operations Co acknowledges that the Authority may require Changes in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement and agrees that it will be responsible to fulfill all obligations of and receive all payments (other than any portion of such payments related to Senior Debt Service Amounts) to Project Co thereunder in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement and the Pass-Down Provisions.

### **7.2 Innovation and Value Engineering**

Operations Co may submit an Innovation Proposal for consideration by the Authority in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement. For greater certainty, Innovation Proposals will be approved or rejected by the Authority in accordance with the requirements of Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement, and such approval or rejection will be binding on Project Co and Operations Co.

### 7.3 Minor Works

Operations Co acknowledges that the Authority may require Minor Works in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement and agrees that it will be responsible to fulfill all obligations of and receive all payments (other than any portion of such payments related to Senior Debt Service Amounts) to Project Co thereunder in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement and the Pass-Down Provisions.

## 8. SUPERVENING EVENTS

### 8.1 Supervening Events

Operations Co acknowledges the provisions of Section 8 of the Project Agreement and agrees that its rights in relation to Supervening Events, and any claims it may have or make in respect thereof, are subject to the Pass-Down Provisions. If:

- (a) a Compensation Event, Relief Event or Excusing Event occurs, Operations Co may; or
- (b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may,

apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Project Implementation Agreement to the extent provided in this Section 8 (Supervening Events). The “**Applicant**” means the party making such application.

### 8.2 Procedures Upon the Occurrence of a Supervening Event

Subject to the Pass-Down Provisions, the following procedure will apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within 5 Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other party and the Authority a notice (“**Supervening Event Notice**”) identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant’s claim;
- (b) within 10 Business Days after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party and the Authority:
  - (1) additional details, including available supporting documentation, in support of its claim; and
  - (2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by Operations Co, if it is the Applicant, as a result of the Supervening Event;

- (c) from time to time thereafter, the Applicant will notify the other party and the Authority if at any time it receives or becomes aware of any further material information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other party and the Authority as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;
- (d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;
- (e) where the Authority is claiming the benefit of an Eligible Change in Law Event under the Project Agreement, Operations Co will provide Project Co and the Authority information reasonably requested in order to make its claim;
- (f) the Applicant must demonstrate:
  - (1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to have taken;
  - (2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss, a delay in the Project Schedule or the need for relief from other obligations under this Project Implementation Agreement; and
  - (3) in the case of Operations Co, it has complied with its mitigation obligations pursuant to Section 2.5 and in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.6,

provided that, with respect to the Compensation Event described in (cc) of the definition of Compensation Event, Operations Co's mitigation obligations shall not be interpreted as requiring Operations Co to incur any costs associated with obtaining a sufficiently detailed description of any Site Location so as to enable Operations Co to carry out its obligations under this Project Implementation Agreement by the date reasonably required by Operations Co in accordance with the Project Schedule;

- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to the Project Agreement, this Project Implementation Agreement, any Project Contract or any Senior Financing Agreement as a result of the Supervening Event; and
- (h) the Authority, Project Co and Operations Co will meet within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event and if the Authority, Project Co and Operations Co, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, Operations Co acknowledges and agrees that either the Authority or Project Co (at the direction of Operations Co) may refer the question of whether a Supervening Event has occurred,

whether the conditions in Section 8.2(f) above have been satisfied or the extent of relief or compensation to which the affected party is entitled for resolution in accordance with the Dispute Resolution Procedure under the Project Agreement. The parties agree to abide by the determination under the Project Agreement of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) above have been satisfied or the extent of relief or compensation to which the affected party is entitled, and neither party will exercise any rights under this Project Implementation Agreement to dispute the final determination arising under the Project Agreement in respect thereof, other than in accordance with the Pass-Down Provisions.

### **8.3 Operations Co's Entitlements Upon Occurrence of a Compensation Event**

Subject to the Pass-Down Provisions and Section 8.12, if at any time a Compensation Event has occurred and Operations Co has given Project Co and the Authority a Supervening Event Notice related thereto:

- (a) Operations Co is relieved from any liability or consequence (including termination by Project Co) under this Project Implementation Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Project Implementation Agreement to the extent resulting from the Compensation Event;
- (b) the Operations Co Payments will be calculated as if the Compensation Event had not occurred based on the Reasonably Expected Performance of Operations Co, except that any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Operations Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Project Implementation Agreement or any policy of insurance maintained or required to be maintained under this Project Implementation Agreement will be deducted therefrom;
- (c) Project Co will pay to Operations Co compensation in respect of a Compensation Event calculated on the basis that Operations Co will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):
  - (1) any Direct Losses (including the amount of any applicable insurance deductibles calculated without netting out Insurance Receivables) resulting from the Compensation Event;
  - (2) any net increase or decrease in the costs of Operations Co performing its obligations under this Project Implementation Agreement resulting from the Compensation Event; and
  - (3) the Operations Co Payments payable to Operations Co, taking into account the adjustments pursuant to Section 8.3(b) above;

except that:

- (4) any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Operations Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Project Implementation Agreement or any policy of insurance maintained or required to be maintained under this Project Implementation Agreement will be deducted therefrom; and
- (5) no Indirect Losses will be taken into consideration;
- (d) concurrent with the first payment of any compensation by Project Co under Section 8.3(c), Operations Co will assign to Project Co (or as Project Co may direct) its rights to all applicable Insurance Receivables (whether or not Operations Co has made a claim); and
- (e) if the Compensation Event occurs prior to the System Completion Date, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed if, and only to the extent that, such dates are postponed pursuant to Section 8.3(e) of the Project Agreement, but the Expiration Date will not be extended.

#### **8.4 Operations Co's Entitlements Upon Occurrence of a Relief Event**

Subject to the Pass-Down Provisions and Section 8.12, if at any time a Relief Event has occurred and Operations Co has given Project Co and the Authority a Supervening Event Notice related thereto:

- (a) Operations Co is relieved from any liability or consequence (including termination by Project Co, except as provided for in this Section 8.4) under this Project Implementation Agreement arising from any delay or failure in performing any of its obligations under this Project Implementation Agreement to the extent resulting from the Relief Event, except that nothing will affect any entitlement of Project Co to make Deductions and Project Co will only be obligated to make Operations Co Payments to the extent that the performance or other criteria for Operations Co Payments are met in accordance with the applicable provisions of this Project Implementation Agreement notwithstanding the Relief Event;
- (b) if the Relief Event occurs prior to the System Completion Date:
  - (1) the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed if, and only to the extent that, such dates are postponed pursuant to Section 8.4(b) of the Project Agreement, but the Expiration Date will not be extended;
  - (2) Not used
  - (3) Not used

- (c) if Project Co has become entitled to terminate the Project Agreement pursuant to Section 8.4(c) thereof:
  - (1) Operations Co may, at any time thereafter so long as such Relief Event is, or such effect is, continuing, terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement; and
  - (2) Project Co may not exercise its right to terminate the Project Agreement without the prior written consent of Operations Co, in its sole discretion;
- (d) if the Authority gives notice to Project Co under Section 8.4(c) of the Project Agreement terminating the Project Agreement, Project Co will not exercise its option either to accept such notice or to require the Project Agreement to continue without the prior written consent of Operations Co, in its sole discretion;
- (e) Operations Co acknowledges and agrees that, if Operations Co gives notice to Project Co under Section 8.4(c) terminating this Project Implementation Agreement and, as a result, Project Co gives notice to the Authority under Section 8.4(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:
  - (1) Operations Co's termination notice to Project Co under Section 8.4(c) will be deemed null and void and Operations Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Project Implementation Agreement;
  - (2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
  - (3) at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing, the Authority may terminate the Project Agreement by notice to Project Co, in which case this Project Implementation Agreement will terminate automatically; and
  - (4) Operations Co may, at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing after a further period of 180 days after the date on which Operations Co delivered the termination notice to Project Co pursuant to Section 8.4(c), terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement;
- (f) if the Project Agreement is terminated in accordance with Section 8.4 thereof, this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; and

- (g) Deductions made while Operations Co is entitled to relief under this Section 8.4 will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Schedule 4 [Services Protocols and Specifications].

### **8.5 Operations Co's Entitlements Upon Occurrence of an Excusing Event**

Subject to the Pass-Down Provisions and Section 8.12, if during the Operating Period an Excusing Event has occurred and Operations Co has given Project Co and the Authority a Supervening Event Notice related thereto:

- (a) Operations Co is relieved from any liability or consequence (including termination by Project Co) under this Project Implementation Agreement arising from any delay or failure in performing any of its obligations to the extent resulting from the Excusing Event; and
- (b) the Operations Co Payments will be calculated as if the Excusing Event had not occurred based on the Reasonably Expected Performance of Operations Co, except that any Avoidable Costs and applicable Insurance Proceeds and Insurance Receivables and insurance proceeds which Operations Co would have recovered if it had complied with the requirements of this Project Implementation Agreement or any policy of insurance maintained or required to be maintained under this Project Implementation Agreement will be deducted therefrom.

### **8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event**

Subject to the Pass-Down Provisions and Section 8.12, if at any time a Force Majeure Event has occurred and the Applicant has given the other party and the Authority a Supervening Event Notice related thereto:

- (a) the Applicant is relieved from any liability or consequence (including termination by Project Co, except as provided for in this Section 8.6) under this Project Implementation Agreement arising from any delay or failure in performing any of its obligations under this Project Implementation Agreement to the extent resulting from the Force Majeure Event, except that nothing will affect any entitlement of Project Co to make Deductions and Project Co will only be obligated to make Operations Co Payments to the extent that the performance or other criteria for Operations Co Payments are met notwithstanding the Force Majeure Event;
- (b) if the Applicant is Operations Co and the Force Majeure Event occurs prior to the System Completion Date, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed if, and only to the extent that, such dates are postponed pursuant to Section 8.6(b) of the Project Agreement, but the Expiration Date will not be extended;
- (c) if Project Co has become entitled to terminate the Project Agreement pursuant to Section 8.6(c) thereof:

- (1) Operations Co may, at any time thereafter so long as such Force Majeure Event is, or such effect is, continuing, terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement; and
  - (2) Project Co may not exercise its right to terminate the Project Agreement without the prior written consent of Operations Co, in its sole discretion;
- (d) Operations Co acknowledges and agrees that, if Operations Co gives notice to Project Co under Section 8.6(c) terminating this Project Implementation Agreement and, as a result, Project Co gives notice to the Authority under Section 8.6(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:
- (1) Operations Co's termination notice to Project Co under Section 8.6(c) will be deemed null and void and Operations Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Project Implementation Agreement;
  - (2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;
  - (3) at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing, the Authority may terminate the Project Agreement by notice to Project Co, in which case this Project Implementation Agreement will terminate automatically; and
  - (4) Operations Co may, at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing after a further period of 180 days after the date on which Operations Co delivered the termination notice to Project Co pursuant to Section 8.6(c), terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement;
- (e) if the Project Agreement is terminated in accordance with Section 8.6 thereof, this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; and
- (f) Deductions made while Operations Co is entitled to relief under this Section 8.6 will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Schedule 4 [Services Protocols and Specifications].

## **8.7 Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event**

Subject to the Pass-Down Provisions and Section 8.12, if at any time an Eligible Change in Law Event has occurred and the Applicant has given the other party and the Authority a Supervening Event Notice related thereto:

- (a) the Applicant will be entitled to compensation, or an increase or decrease in the Operations Co Payments, in respect of the Eligible Change in Law Event calculated on the basis that Operations Co will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):
- (1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event;
  - (2) any net increase or decrease in the costs of Operations Co performing the Design, Construction, Services or System Refresh, as applicable, resulting from the Eligible Change in Law Event; and
  - (3) the Operations Co Payments payable to Operations Co,

except that:

- (4) any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Operations Co would have recovered if it had complied with the requirements of this Project Implementation Agreement or any policy of insurance maintained or required to be maintained under this Project Implementation Agreement will be deducted therefrom;

and concurrent with the first payment of any compensation by Project Co under this Section 8.7(a), Operations Co will assign to Project Co (or as Project Co may direct) its rights to all applicable Insurance Receivables (whether or not Operations Co has made a claim); and

- (b) in the case of a Relevant Works Change in Law, Operations Co will be entitled to compensation from Project Co in an amount equal to the Allowable Capital Expenditure in addition to any compensation payable pursuant to Section 8.7(a).

## **8.8 Parties' Entitlements Upon Occurrence of a Change in Law**

Without limiting Section 8.4, Section 8.5 or Section 8.7 but subject to the Pass-Down Provisions:

- (a) if compliance by Operations Co with a Change in Law is outside the scope of, or inconsistent with, Operations Co's obligations under this Project Implementation Agreement, or would mean a change in Operations Co's obligations under this Project Implementation Agreement or a change in the scope or manner of carrying out the Project, such Change in Law will be deemed to constitute a Change having effect from the time that such Change in Law takes effect, except that Operations Co will not be entitled to any payment or other compensation other than as set out in Section 8.4, Section 8.5 or Section 8.7;
- (b) except as otherwise provided in this Project Implementation Agreement, including in Section 8.4, Section 8.5 or Section 8.7, Operations Co will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and

- (c) nothing in Section 8.4, Section 8.5 or Section 8.7 will be interpreted as relieving Operations Co of its obligation, following any and all Changes in Law, to perform its obligations under this Project Implementation Agreement in compliance with all Laws.

## **8.9 Labor Disputes**

If Operations Co Has Knowledge of an actual or potential labor dispute that may affect any of the Design, Construction, Services or System Refresh, Operations Co will promptly:

- (a) give notice thereof to Project Co and the Authority, including all relevant information related to the dispute of which Operations Co Has Knowledge; and
- (b) use commercially reasonable efforts to mitigate the effects of such labor dispute on the performance of any of the Design, Construction, Services or System Refresh, including by applying for relief to appropriate tribunals or courts if such labor dispute involves workers of Operations Co, a Project Contractor and/or a Sub-Contractor.

Operations Co acknowledges that if the labor dispute involves workers of Operations Co, a Project Contractor or Sub-Contractor, or of anyone employed by or through them, neither Project Co nor the Authority will be required to provide any facilities, space or assistance in the NG-KIH System or on the Lands for the purposes of such workers or any applicable union.

## **8.10 Payments in Respect of Supervening Events**

Payments between the parties and any adjustments to Operations Co Payments in respect of Supervening Events will be made in accordance with Section 10 (Payments).

## **8.11 Supervening Events Mitigated by Change**

Operations Co acknowledges the provisions of Section 8.11 of the Project Agreement and agrees that nothing in the Project Agreement will limit the right of the Authority to perform or mitigate its obligations in respect of Supervening Events or the consequences of a Supervening Event by requiring a Change or Changes.

## **8.12 Delay in Notification**

If a Supervening Event Notice or any required information is provided by an Applicant to the other party and the Authority after the dates referred to in Section 8.2, then without prejudice to any other rights or remedies of the other party under this Project Implementation Agreement or the Authority under the Project Agreement:

- (a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Project Implementation Agreement to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and
- (b) if the period of delay is 12 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

### **8.13 Equivalent Project Relief**

The parties acknowledge that Operations Co will share with the Project Contractors, who will, in turn, share with Sub-Contractors certain benefits to Operations Co derived from the rights of Operations Co under, and subject to the obligations and limitations under, this Project Implementation Agreement including rights of Operations Co under Section 8 (Supervening Events) (such rights, as qualified by such obligations and limitations, are collectively “**Operations Co’s Rights**”). Accordingly:

- (a) any circumstance affecting a Project Contractor or a Sub-Contractor which, if such circumstance had affected Operations Co directly would have given rise to a claim by Operations Co pursuant to Operations Co’s Rights, will, for the purpose of this Project Implementation Agreement, be deemed to be a circumstance affecting Operations Co in respect of which Operations Co may claim under and subject to Operations Co’s Rights; and
- (b) amounts claimed by the Project Contractor or Sub-Contractor against Operations Co in respect of any circumstance referred to in Section 8.13(a) above may be claimed by Operations Co against Project Co under and subject to Operations Co’s Rights, but whether or not Project Co is liable for such amounts will be determined under this Project Implementation Agreement as if the circumstance had affected Operations Co directly,

provided that:

- (c) all such claims will be made and administered by Operations Co and no Project Contractor or any Sub-Contractor will have any rights against Project Co, including under this Section 8.13;
- (d) in no event will the liability of Project Co under this Section 8.13 be greater than it would have been if Operations Co had been directly affected by the circumstance referred to in Section 8.13(a) above; and
- (e) in no event will Project Co be liable under this Section 8.13 for any Direct Losses or other compensation that Project Co would not have been liable for if Operations Co had been directly affected by the circumstance referred to in Section 8.13(a) above.

## **9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES**

### **9.1 Operations Co Obligations to Indemnify**

Operations Co will indemnify and keep Project Co and each Project Co Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Project Co Indemnified Person, arising by reason of any negligent act or omission or other tortious conduct of Operations Co or any Operations Co Person, except to the extent caused, or contributed to, by any negligent act or omission or other tortious conduct of Project Co, any Project Co Person, the Authority or any Authority Person. This Section 9.1 may be relied upon by Project Co Indemnified Persons and may be

enforced directly by any of them against Operations Co in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and Operations Co.

## 9.2 Conduct of Third Person Claims

This Section 9.2 will apply to the conduct of claims made by a third Person against a party having or claiming to have with respect to such third Person claim, the benefit of an indemnity or a right to compensation under this Project Implementation Agreement. The party having, or claiming to have, the benefit of the indemnity or right to compensation is referred to as the “**Beneficiary**” and the party from whom the indemnity or compensation is sought is referred to as the “**Indemnifier**”. Accordingly, subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Implementation Agreement:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Project Implementation Agreement in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;
- (b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations and the Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) in defending any claim described in Section 9.2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;
- (d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b), the Indemnifier will:
  - (1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
  - (3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (e) the Beneficiary may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

- (1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b); or
- (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or
- (3) the Indemnifier fails to comply in any material respect with Section 9.2(d) above,

and, in the case of (3) above, the Beneficiary may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Project Implementation Agreement. Otherwise the Beneficiary will not pay or settle such claims without the consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;

- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) above applies. On receipt of such notice, the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3)), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 or its obligation to provide compensation, as the case may be; and
- (g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property rights of any Person, Operations Co may replace such infringing or allegedly infringing item provided that:
  - (1) the replacement is performed without additional cost to Project Co; and
  - (2) the replacement has at least equal quality performance capabilities when used in conjunction with the NG-KIH System.

### 9.3 General Obligation to Pursue Third Person Recovery

If a party (the “**Paying Party**”) has paid to the other party (the “**Receiving Party**”) an amount in respect of any indemnity, Supervening Event or other liability hereunder (a “**Liability Payment**”), and the Receiving Party has a *bona fide* claim for recovery of any such Liability Payment from a third Person or under any insurance required pursuant to this Project Implementation Agreement, the Receiving Party will:

- (a) as directed by the Paying Party either:

- (1) promptly make commercially reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
  - (2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and
- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:
- (1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and
  - (2) the Liability Payment,

provided that the Paying Party will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Receiving Party in respect of the fact, matter or circumstance giving rise to the Liability Payment.

For greater certainty, the above reference to a "third Person" will not include, in the case where Project Co is the Paying Party, Operations Co and Operations Co Persons and their respective employees, directors, officers and agents and will not include, in the case where Operations Co is the Paying Party, Project Co and the Project Co Indemnified Persons.

#### **9.4 Waiver of Remedies**

No failure to exercise, and no delay in exercising, any right or remedy under this Project Implementation Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Implementation Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

#### **9.5 Remedies Cumulative**

Subject to Sections 9.6, 9.7 and 9.8:

- (a) the rights and remedies of the parties under this Project Implementation Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and

- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

## **9.6 Limitation on Project Co's Remedies**

Project Co's remedies in respect of any failure by Operations Co:

- (a) to achieve Ring Completion of any Ring by the relevant Target Ring Completion Date or the relevant Outside Ring Completion Date will be limited to Project Co's rights pursuant to Section 11.1 of Schedule 2 [Design and Construction Protocols];
- (b) to achieve System Completion by the Target System Completion Date or the Longstop Date will be limited to Project Co's rights pursuant to Section 12.4; and
- (c) to perform the Services in accordance with this Project Implementation Agreement will be limited to Deductions in accordance with Schedule 8 [Payments] to the Project Agreement,

provided that nothing in this Section 9.6 will limit Project Co's right to:

- (d) claim, on or after a termination of this Project Implementation Agreement, costs, losses, damages and expenses suffered or incurred by Project Co as a result of rectifying or mitigating the effects of any breach of this Project Implementation Agreement by Operations Co except to the extent recovered by Project Co under this Project Implementation Agreement or taken into account to reduce any compensation payable by Project Co pursuant to Schedule 9 [Compensation on Termination];
- (e) make a claim for indemnification pursuant to Section 9.1;
- (f) deliver to Operations Co a Dispute Notice or a notice of default or termination pursuant to Section 12 (Operations Co Events of Default) and pursue all remedies in respect thereof; or
- (g) pursue any other express remedy available to Project Co under this Project Implementation Agreement or any equitable remedy, including injunctive relief and specific performance.

## **9.7 Limitation on Operations Co's Remedies**

To the extent Operations Co has claimed for relief or compensation for a Supervening Event pursuant to Section 8 (Supervening Events), Operations Co may not make any further claim against Project Co for costs, losses, damages or expenses incurred by Operations Co, or for any other relief, in respect of such event, provided that nothing in this Section 9.7 will limit Operations Co's right to:

- (a) deliver to Project Co a Dispute Notice or a notice of default or termination pursuant to Section 13 (Project Co Events of Default) and pursue all remedies in respect thereof; or

- (b) pursue any other express remedy available to Operations Co under this Project Implementation Agreement or any equitable remedy, including injunctive relief and specific performance.

### **9.8 Limits on Monetary Compensation**

Every right to claim compensation or indemnification or reimbursement under this Project Implementation Agreement will be construed so that recovery is without duplication to any other amount recoverable under this Project Implementation Agreement. Neither party will be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Project Implementation Agreement.

### **9.9 No Liability for Indirect Losses**

Unless specifically allowed in this Project Implementation Agreement, neither party to this Project Implementation Agreement will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party.

### **9.10 No Liability for Governmental Activities**

Project Co will not be liable to Operations Co or any Operations Co Person for any Direct Losses suffered or incurred as a result of damage to the NG-KIH System, whether arising from or related to Governmental Activities or otherwise, to the extent that such Direct Losses were directly or indirectly caused or contributed to by any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Implementation Agreement by Operations Co or any Operations Co Person, including, for greater certainty but without limitation, the failure of Operations Co or any Operations Co Person to comply with the terms of the Design and Construction Plan, and, for greater certainty, the same shall not constitute a Compensation Event.

### **9.11 Project Co's Right of Set Off**

Project Co may only set off any amounts owing by Operations Co to Project Co under this Project Implementation Agreement against any payments due by Project Co to Operations Co under this Project Implementation Agreement to the extent that the Authority has exercised its corresponding right of set off under the Project Agreement.

### **9.12 Operations Co's Right of Set Off**

Operations Co may set off any amounts owing by Project Co to Operations Co under this Project Implementation Agreement against any payments due by Operations Co to Project Co under this Project Implementation Agreement.

### **9.13 Undisputed Amounts and Interest on Disputed Amounts**

Subject to Sections 9.11 and 9.12, a party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Project Implementation Agreement, but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure. If payment of any amount payable under this Project Implementation Agreement is delayed while the matter is in Dispute, upon resolution

of the Dispute, interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure at the Default Rate, compounded monthly, from the time such amount became payable under this Project Implementation Agreement until paid.

#### **9.14 Interest on Overdue Amounts**

If payment of any amount payable under this Project Implementation Agreement is not made when due (including Termination Payments payable pursuant to Schedule 9 [Compensation on Termination]), interest will be payable on such amount at the Default Rate, compounded monthly, from the time such amount became payable under this Project Implementation Agreement until paid. The party to whom payment is owed and overdue will notify the other party at least monthly of the overdue amount and the accrued interest on that amount.

#### **9.15 Reimbursement of Delay Liquidated Damages**

Subject to the Pass-Down Provisions, Project Co will reimburse Operations Co in respect of any Delay Liquidated Damages (as defined in the Design-Build Agreement) paid by the Design-Builder pursuant to Section 9.15(a) of the Design-Build Agreement in respect of a Supervening Event to the extent that Project Co receives any compensation in respect of such Supervening Event from the Authority or receives any Insurance Proceeds in respect of any advance loss of profits insurance policy within 3 Business Days of receipt by Project Co of any such compensation from the Authority or any such Insurance Proceeds from the relevant insurer.

### **10. PAYMENTS**

#### **10.1 Lump Sum Payments**

To the extent a party:

- (a) is entitled to payment from the other party under this Project Implementation Agreement, including in respect of a Change under Section 7 (Changes, Minor Works and Innovation Proposals), a Supervening Event under Section 8 (Supervening Events) or an indemnification claim under Section 9 (Indemnities and Limits on Liabilities and Remedies); or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Project Implementation Agreement, including in respect of an Innovation Proposal under Section 7 (Changes, Minor Works and Innovation Proposals) or an Eligible Change in Law Event under Section 8 (Supervening Events),

the entitled party may make written demand for such payments from time to time after being entitled to payment and (i) in respect of any Direct Losses, after such Direct Losses have been incurred, and (ii) in respect of any shared benefit, after receipt by the other party of the shared benefit, and such payment will be due and payable within 5 Business Days of delivery of such written demand supported by all relevant information.

Where the Pass-Down Provisions apply, such amounts shall be due within 3 Business Days of receipt by Project Co of the corresponding amount from the Authority or 3 Business Days prior to the date on which the corresponding amount is payable by Project Co to the Authority under the Project Agreement, as applicable, unless specific additional timeframes are stipulated for

payment of any amounts owing or payable by Project Co to Operations Co, or by Operations Co to Project Co, as applicable, under this Project Implementation Agreement.

## **10.2 Not Used**

## **10.3 Adjustments to Operations Co Payments**

Operations Co acknowledges the provisions of Section 10.3 of the Project Agreement and agrees that any adjustments to the Operations Co Payments as a result of adjustments to the Availability Payments (as defined in the Project Agreement) thereunder shall be addressed in accordance with the Pass-Down Provisions.

## **10.4 Not Used**

## **10.5 Construction Period Payments**

No less frequently than monthly during the Construction Period, Project Co will pay to Operations Co:

- (a) any amounts owing to the Design-Builder under the Design-Build Agreement or any other Person under a Sub-Contract entered into by Operations Co in connection with the performance by Operations Co of its obligations under this Project Implementation Agreement;
- (b) the budgeted amount of Operations Co's internal operating costs set out in Part A of Schedule 8 [Payments];
- (c) subject to the requirements of the Senior Financing Agreements, any amounts in excess of the budgeted amount of Operations Co's internal operating costs required by Operations Co to pay internal operating costs related to the Project,

in each case, no later than 5 Business Days following delivery by Operations Co to Project Co of an Operations Co Construction Account Withdrawal Certificate, together with the certificates of the Design-Builder and the Secured Creditors' Technical Advisor required to be attached thereto.

## **10.6 Operating Period Payments**

On a monthly basis during the Operating Period, Project Co will pay to Operations Co:

- (a) any amounts owing to the Service Provider under the Services Contract or any other Person under a Sub-Contract entered into by Operations Co in connection with the performance by Operations Co of its obligations under this Project Implementation Agreement;
- (b) the budgeted amount of Operations Co's internal operating costs set out in Part A of Schedule 8 [Payments];
- (c) subject to the requirements of the Senior Financing Agreements, any amounts in excess of the budgeted amount of Operations Co's internal operating costs

required by Operations Co to pay internal operating costs related to the Project;  
and

- (d) subject to satisfaction of the Restricted Payment Conditions, the Operations Co Availability Payment,

(collectively, the “**Operations Co Payment**”). The Operations Co Payments will be payable to Operations Co by Project Co no later than 3 Business Days following delivery by Operations Co to Project Co of an Operations Co Funds Transfer Certificate.

## **10.7 Deductions**

Operations Co will be liable for Deductions (as defined in the Project Agreement) incurred by Project Co under the Project Agreement. For greater certainty, if, in any month, the aggregate Deductions exceed the Operations Co Payment for such month (as calculated, in each case, prior to any Deductions), Operations Co will pay the excess to Project Co within 3 Business Days of receipt by Operations Co of the corresponding amount from the Service Provider.

## **10.8 Settlement Payments and Shared Savings**

Project Co will pay to Operations Co, upon receipt thereof by Project Co, each Monthly Settlement Payment and any Shared Savings paid to Project Co under the Project Agreement. Operations Co will provide to Project Co such information and documentation as Project Co reasonably requires to substantiate the entitlement to payment of such amounts under the Project Agreement.

## **11. AUTHORITY’S STEP-IN RIGHTS**

### **11.1 Authority’s Step-in Rights**

Operations Co acknowledges the provisions of Section 11.1 of the Project Agreement and the rights of the Authority therein and agrees that the Pass-Down Provisions apply to the operation of this Section 11.1. If:

- (a) the Authority reasonably considers that a breach by Project Co of any obligation under the Project Agreement is likely to create an immediate and serious threat to the health or safety of any person, any property or the environment; or
- (b) notwithstanding that Project Co is not in breach of its obligations under the Project Agreement, the Authority reasonably considers the circumstances to constitute an Emergency,

then Operations Co will follow the direction given by the Authority pursuant to Section 11.1 of the Project Agreement. In such case, either:

- (c) Project Co may require Operations Co by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs, including, if applicable due to breach of this Project Implementation Agreement, any Project Contract or Sub-Contract, Project Co may require that Operations Co, any Project Contractor or any Sub-Contractor suspend its operations in some or all

respects and Operations Co will use commercially reasonable efforts to comply with Project Co's requirements as soon as reasonably practicable; or

- (d) the Authority may take such steps as it considers are appropriate pursuant to Section 11.1 of the Project Agreement (either itself or by engaging others) to mitigate or rectify such state of affairs to the standards required by the Project Agreement (or as close as possible to those standards as the circumstances permit) and Operations Co agrees not to inhibit or interfere with the exercise of such rights by the Authority.

Operations Co will ensure that the provisions contained in all applicable Project Contracts and Sub-Contracts will not prevent or inhibit the Authority from exercising its rights under Section 11 (Authority's Step-In Rights) of the Project Agreement. Project Co acknowledges and agrees that this Section 11.1 does not create a separate step-in right that can be exercised by Project Co alone in circumstances where the Authority has not asserted its rights pursuant to Section 11.1 of the Project Agreement.

### **11.2 Authority's Rectification Rights**

Operations Co acknowledges the provisions of Section 11.2 of the Project Agreement and the rights of the Authority therein and agrees that the Pass-Down Provisions apply to the operation of this Section 11.2. If Project Co gives notice to Operations Co under Section 11.1(c) and Operations Co either:

- (a) does not confirm, within 5 Business Days of such notice, or such shorter period as is appropriate in the case of an Emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to Project Co and the Authority to mitigate, rectify and protect against such circumstances that the Authority may, within a further 5 Business Days, accept or reject pursuant to the Project Agreement; or
- (b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as the Authority, under the Project Agreement, will stipulate,

then the Authority may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of Operations Co to provide the relevant Services, but only for so long as the circumstances referred to in Section 11.1(a) or Section 11.1(b) subsist. If the circumstances referred to in Section 11.1(a) or Section 11.1(b) no longer subsist or Operations Co has proposed a plan acceptable to the Authority, under the Project Agreement, for mitigating, rectifying and protecting against such circumstances, any suspension of the right and obligation of Operations Co to provide any Services will cease and such right and obligation will once again be in full force and effect.

### **11.3 Notice of NG-KIH System Change**

Project Co will notify Operations Co of any NG-KIH System Change which the Authority intends to make pursuant to the exercise of the Authority's rights under Section 11.1(d) or Section 11.2

of the Project Agreement and provide Operations Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed NG-KIH System Change. Project Co will ensure that, in making such NG-KIH System Change, the Authority will reasonably consider comments received in a timely manner from Operations Co on the proposed NG-KIH System Change.

#### **11.4 No Effect on Operations Co's Design and Construction Responsibility**

Operations Co acknowledges and agrees that the exercise by the Authority of any of its rights under Section 11 (Authority's Step-In Rights) of the Project Agreement will not reduce or affect in any way Operations Co's responsibility under Section 4.1 of Schedule 2 [Design and Construction Protocols].

#### **11.5 Allocation of Costs for Authority Actions**

Operations Co acknowledges the provisions of Section 11.5 of the Project Agreement and the right of the Authority to require Project Co to reimburse certain of its costs and additional mark-up. To the extent that any of the circumstances set out in Section 11.1 arise as a result of any breach by Operations Co of its obligations under this Project Implementation Agreement, then Operations Co will pay Project Co the amount of all direct costs and expenses reasonably incurred by the Authority in exercising its rights under Section 11.1 or Section 11.2 of the Project Agreement and an additional mark-up of 5% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, any actions of the Authority under Sections 11.1 and 11.2 will, subject to the Pass-Down Provisions, constitute a Compensation Event.

### **12. OPERATIONS CO EVENTS OF DEFAULT**

#### **12.1 Operations Co Events of Default**

For the purposes of this Project Implementation Agreement, "**Operations Co Event of Default**" means any of the following events or circumstances but, except with respect to the Operations Co Event of Default in Section 12.1(a) related to an Operations Co Material Breach pursuant to (d) or (e) of the definition thereof, Section 12.1(b) or Section 12.1(e), only to the extent that such event or circumstance is a Project Co Event of Default (as defined in the Project Agreement):

- (a) the occurrence of an Operations Co Material Breach that is not remedied in accordance with Section 12.3, including in accordance with the program for remediation produced by Operations Co in accordance with Section 12.3, or the occurrence of an Operations Co Material Breach for which a program for remediation has not been produced by Operations Co in accordance with Section 12.3;
- (b) the occurrence of an Operations Co Insolvency Event;
- (c) Operations Co abandons the Project, other than pursuant to its right to suspend performance under Section 13.3 or due to a Supervening Event;
- (d) System Completion does not occur on or before the Longstop Date;

- (e) Operations Co breaches Section 16.1 or a Change in Control occurs which is prohibited by Section 16.2;
- (f) Operations Co breaches its obligations under this Project Implementation Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Implementation Agreement or a breach by the Authority of its obligations under the Project Agreement) which results in a criminal conviction related to health and safety violations against Operations Co, any Operations Co Person, Project Co, any Project Co Person or the Authority (an "**H&S Conviction**"), except that:
  - (1) an H&S Conviction of Operations Co, an Operations Co Person, Project Co, a Project Co or the Authority will not constitute an Operations Co Event of Default if, within 60 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Operations Co Person is terminated or Operations Co takes such other action against each such Operations Co Person as is acceptable to the Authority under the Project Agreement; and
  - (2) Project Co will not exercise any right of termination for an Operations Co Event of Default pursuant to this Section 12.1(f) unless the Authority has exercised its right of termination pursuant to Section 12.1(f) of the Project Agreement;
- (g) subject to Sections 8.4(g) and 8.6(f), Operations Co accumulates Deductions of \$6,500,000 (Index Linked) or more in any 12 consecutive month period during the Operating Period;
- (h) Operations Co makes a representation or warranty in the body of this Project Implementation Agreement or Schedules 1 to 20 that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the Project or the Services and, in the case of a false or misleading representation or warranty that is capable of being remedied, Operations Co has not remedied such breach within 10 Business Days following notice from Project Co or the Authority; or
- (i) Not used,

unless caused by non-compliance by Project Co with any provision of this Project Implementation Agreement or any document, instrument or agreement delivered to Operations Co as required under this Project Implementation Agreement or any negligent act or omission, or any willful misconduct, of Project Co or any Project Co Person or non-compliance by the Authority with any provision of the Project Agreement or any document, instrument or agreement delivered to Project Co as required under the Project Agreement or any negligent act or omission, or any willful misconduct, of the Authority or any Authority Person.

## 12.2 Notification

Operations Co will notify Project Co and the Authority of the occurrence, and details, of any Operations Co Event of Default and of any event or circumstance which is likely, with the

passage of time or otherwise, to constitute or give rise to an Operations Co Event of Default, in either case, promptly and in any event within 3 Business Days from the date that Operations Co Has Knowledge of its occurrence.

### **12.3 Operations Co Material Breach Cure and Remedial Program**

Operations Co acknowledges the provisions of Section 12.3 of the Project Agreement and the Authority's rights and discretions provided for therein. Project Co will not exercise any of its rights or discretions under this Project Implementation Agreement unless the Authority has exercised its corresponding rights or discretions under the Project Agreement and, where the Authority has exercised its rights or discretion under Section 12.3 of the Project Agreement, Project Co will exercise the same rights or discretions under this Project Implementation Agreement to the extent that such circumstance has arisen from an act, omission or breach of this Project Implementation Agreement by Operations Co. After the occurrence of an Operations Co Material Breach and while it is subsisting, Project Co may serve a notice on Operations Co specifying in reasonable detail the type and nature of the Operations Co Material Breach and:

- (a) Operations Co will remedy such Operations Co Material Breach referred to in such notice (if it is continuing) within 45 days of such notice; or
- (b) if either Project Co (as set out in its notice) or Operations Co reasonably considers that an Operations Co Material Breach cannot reasonably be remedied within 45 days of such notice, Operations Co will deliver to Project Co and the Authority within 15 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Operations Co Material Breach, which program will specify in reasonable detail the manner in, and the latest date by, which the Operations Co Material Breach is proposed to be remedied.

If Operations Co puts forward a program in accordance with Section 12.3(b), Operations Co acknowledges and agrees that the Authority will have 10 Business Days from receipt of the program within which to notify Project Co that the Authority, under the Project Agreement, does not accept the program. If the Authority notifies Project Co that it does not accept the program as being reasonable or does not respond within 10 Business Days from receipt of the program, the Authority and Project Co (in consultation with Operations Co) will use commercially reasonable efforts within the following 5 Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such 5 Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Operations Co Material Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either the Authority or Project Co (at the direction of Operations Co) for resolution in accordance with the Dispute Resolution Procedure under the Project Agreement. The parties agree to abide by the determination under the Project Agreement.

### **12.4 Project Co Termination Right**

Operations Co acknowledges the provisions of Section 12.4 of the Project Agreement and the Authority's rights and discretions provided for therein. Project Co will not exercise any of its rights or discretions under this Project Implementation Agreement unless the Authority has exercised its corresponding rights or discretions under the Project Agreement and, where the Authority has exercised its rights or discretion under Section 12.4 of the Project Agreement,

Project Co will exercise the same rights or discretions under this Project Implementation Agreement to the extent that such circumstance has arisen from an act, omission or breach of this Project Implementation Agreement by Operations Co. If:

- (a) an Operations Co Material Breach is not remedied before the expiration of the period referred to in Section 12.3(a) and no program has been put forward by Operations Co under Section 12.3(b);
- (b) Operations Co puts forward a program pursuant to Section 12.3(b) which has been accepted by the Authority (including after agreement under Section 12.3 to amendments to the program) or has been determined to be reasonable pursuant to the Dispute Resolution Procedure under the Project Agreement and Operations Co fails to remedy the Operations Co Material Breach before the end date for the program;
- (c) any program put forward by Operations Co pursuant to Section 12.3(b) is rejected by the Authority as not being reasonable, and, if such rejection is disputed by Operations Co, the Dispute Resolution Procedure under the Project Agreement does not find against that rejection; or
- (d) any Operations Co Event of Default other than an Operations Co Material Breach occurs,

then Project Co may (if the Operations Co Event of Default continues unwaived and unremedied and the Authority has exercised its corresponding termination right under the Project Agreement), subject to the terms of the Lenders' Remedies Agreement, terminate this Project Implementation Agreement by notice to Operations Co. The right of Project Co to terminate this Project Implementation Agreement under this Section 12.4 is in addition, and without prejudice, to any other right which Project Co may have in connection with Operations Co's defaults hereunder.

For the purposes of Section 12.4(b), if Operations Co's performance of the program is adversely affected by the occurrence of a Supervening Event or a breach by Project Co of its obligations under this Project Implementation Agreement or the Authority of its obligations under the Project Agreement, then, subject to Operations Co complying with the mitigation and other requirements in this Project Implementation Agreement concerning such events and the Pass-Down Provisions, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

## **12.5 Replacement of Non-Performing Service Provider**

- (a) As an alternative to termination of this Project Implementation Agreement pursuant to Section 12.4, if:
  - (1) Project Co has a right to terminate this Project Implementation Agreement due to an Operations Co Event of Default that was caused, or contributed to, by the Service Provider; and
  - (2) the actions of the Service Provider constitute a breach under the Services Contract that entitles Operations Co to terminate the Service Provider,

Project Co will, if the Authority has exercised its corresponding right under Section 12.5(a) of the Project Agreement, require Operations Co to terminate the Service Provider and ensure that a replacement Service Provider is appointed to provide the Services within 40 Business Days.

- (b) If Project Co exercises its rights under this Section 12.5, Operations Co shall, within 10 Business Days, put forward a proposal to Project Co and the Authority for the interim management or provision of the Services until such time as a replacement Service Provider can be engaged by Operations Co. If:
- (1) Operations Co fails to submit a proposal for the interim management or provision of the Services, or the Authority is of the opinion, under the Project Agreement, that Operations Co's proposal is not reasonably likely to result in adequate provision of the Services; and
  - (2) the Authority and Project Co (in consultation with Operations Co) cannot agree within a further 3 Business Days to a plan for the interim management or provision of the Services,

then Operations Co acknowledges and agrees that:

- (3) the Authority itself may perform, or engage others (including a third party) to perform, the Services;
- (4) Operations Co will pay Project Co the amount of all direct costs and expenses reasonably incurred by the Authority in exercising its rights pursuant to Section 12.5(b)(3) of the Project Agreement and an additional mark-up of 5% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights; and
- (5) Operations Co shall not be subject to Deductions in respect of those Services that are being performed by the Authority or a third party appointed by the Authority pursuant to Section 12.5(b)(3) of the Project Agreement to the extent and for the duration of time that Operations Co is not performing those Services.

Operations Co acknowledges and agrees that any Dispute in respect of the interim management or provision of the Services will be determined in accordance with the Dispute Resolution Procedure under the Project Agreement.

- (c) Operations Co's appointment of a replacement Service Provider pursuant to this Section 12.5 shall be subject to the following:
- (1) the Authority's prior written consent under the Project Agreement as to the suitability of the replacement; and
  - (2) the replacement Service Provider entering into:
    - (A) a contract with Operations Co upon the same or substantially similar terms as the Person so replaced; and

- (B) a Project Contractor Collateral Agreement with the Authority, Project Co and Operations Co on the same terms as the Project Contractor Collateral Agreement entered into by the Person so replaced,

unless any material variations are approved by the Authority under the Project Agreement.

- (d) If Operations Co fails to terminate the Service Provider and to secure a replacement Service Provider in accordance with this Section 12.5, Project Co shall be entitled to exercise its termination rights in accordance with Section 12.4.
- (e) If Operations Co terminates the Service Provider and secures a replacement Service Provider in accordance with this Section 12.5, any Deductions accrued by Operations Co prior to such replacement will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Schedule 4 [Services Protocols and Specifications].

## 12.6 The Authority's Costs

Operations Co will reimburse Project Co for any and all reasonable costs incurred by the Authority in exercising any of its rights (including, but not limited to, any relevant increased administrative expenses and actual legal expenses) under Section 12 (Project Co Events of Default) of the Project Agreement to the extent caused by an act, omission or breach of this Project Implementation Agreement by Operations Co.

## 13. PROJECT CO EVENTS OF DEFAULT

### 13.1 Project Co Events of Default

For the purposes of this Project Implementation Agreement, "**Project Co Event of Default**" means any of the following events or circumstances:

- (a) a failure by Project Co to pay any amount due and owing to Operations Co under this Project Implementation Agreement on the due date (which amount is not being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days of notice from Operations Co;
- (b) except as provided for in Section 13.1(a), a breach, or series of breaches, by Project Co of any term, covenant or undertaking to Operations Co, or any representation or warranty made by Project Co to Operations Co in this Project Implementation Agreement is incorrect when made, the consequence of which:
  - (1) has a material adverse effect on the performance of the Design, Construction, Services or System Refresh; or
  - (2) results in any material provision of this Project Implementation Agreement being unenforceable against Project Co,

and, as a result thereof, Operations Co is reasonably likely to be materially deprived of the benefit of this Project Implementation Agreement;

- (c) Not used
- (d) Project Co breaches Section 16.4; or
- (e) the occurrence of a Project Co Insolvency Event.

### **13.2 Notification**

Project Co will notify Operations Co of the occurrence, and details, of any Project Co Event of Default under this Project Implementation Agreement and any Authority Event of Default under the Project Agreement and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Co Event of Default or Authority Event of Default, in either case, promptly and in any event within 3 Business Days from the date that Project Co Has Knowledge of its occurrence.

### **13.3 Operations Co's Options**

After the occurrence of a Project Co Event of Default and while a Project Co Event of Default is continuing, Operations Co may exercise one or more of the following, as applicable:

- (a) in respect of the Design and the Construction prior to the System Completion Date, suspend performance by it of its obligations under this Project Implementation Agreement until such time as Project Co has demonstrated to the reasonable satisfaction of Operations Co that it will perform and is capable of performing its obligations under this Project Implementation Agreement and, if so extended pursuant to Section 13.3(a) of the Project Agreement, the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be extended by the time such suspension is in effect;
- (b) in the case of a Project Co Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Project Implementation Agreement until Project Co has remedied such Project Co Event of Default and, if so extended pursuant to Section 13.3(b) of the Project Agreement, the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be extended by the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension;
- (c) in the case of a Project Co Event of Default under Sections 13.1(a) or 13.1(b), serve notice on Project Co of the occurrence specifying details of such Project Co Event of Default and if the relevant matter or circumstance has not been rectified or remedied by Project Co or otherwise within 45 days of such notice (or in the case of a Project Co Event of Default under Section 13.1(b) such longer period as is reasonably required for Project Co to rectify or remedy such Project Co Event of Default as long as Project Co is diligently pursuing such rectification or remedy), Operations Co may serve a further notice on Project Co terminating this Project Implementation Agreement with immediate effect; or

- (d) in the case of a Project Co Event of Default under Sections 13.1(d) or 13.1(e), terminate this Project Implementation Agreement by notice to Project Co with immediate effect.

If Project Co has become entitled to terminate the Project Agreement pursuant to Section 13.3 thereof, Operations Co may, at any time thereafter, terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement. Project Co may not exercise its right to terminate the Project Agreement without the prior written consent of Operations Co, in its sole discretion.

#### **13.4 Operations Co's Costs**

Project Co will reimburse Operations Co for any and all reasonable costs incurred by Operations Co in exercising any of its rights (including, but not limited to, any relevant increased administrative expenses, interest expenses during Construction and actual legal and other expenses) under this Section 13 (Project Co Events of Default).

#### **13.5 Termination for Convenience**

Neither party will have the right to terminate this Project Implementation Agreement for convenience. Operations Co acknowledges the provisions of Section 2.1(a) of the Project Agreement pursuant to which the Authority may, in its sole discretion and for any reason whatsoever, be entitled to terminate the Project Agreement at any time on written notice to Project Co. Project Co will provide notice to Operations Co as soon as reasonably practicable following receipt of notice from the Authority that it is exercising its right to terminate the Project Agreement for convenience. This Project Implementation Agreement will automatically terminate upon termination of the Project Agreement by the Authority in accordance with Section 2.1 thereof.

#### **13.6 Automatic Termination upon Project Agreement Termination**

For greater certainty, and in addition to the specific provisions herein with respect to termination of this Project Implementation Agreement, this Project Implementation Agreement will automatically terminate upon any termination of the Project Agreement, including where the Authority terminates the Project Agreement as a result of a Project Co Event of Default thereunder.

### **14. PROCEDURE ON TERMINATION**

#### **14.1 Compensation on Termination**

If this Project Implementation Agreement is terminated pursuant to its terms, compensation on termination will be determined and paid in accordance with Schedule 9 [Compensation on Termination].

#### **14.2 Transfer to Project Co of Assets, Contracts, etc.**

On or promptly after the Termination Date:

- (a) if prior to the System Completion Date:

- (1) in so far as any transfer will be necessary to fully and effectively transfer property to Project Co (or as Project Co may direct), Operations Co will transfer to, and there will vest in, Project Co (or as Project Co may direct) free from all financial encumbrances:
  - (A) such part of the NG-KIH System as has been constructed on or has become affixed to the Lands; and
  - (B) all construction materials on-hand to be affixed to the Lands or otherwise used in the NG-KIH System; and
- (2) if the Authority so elects pursuant to Section 14.2(a) of the Project Agreement:
  - (A) the construction equipment will remain available to the Authority or Project Co (or as Project Co may direct) for the purposes of completing the Design and Construction; and
  - (B) all other Project related materials will remain available to the Authority or Project Co (or as Project Co may direct) for the purposes of completing the Design and Construction,subject to payment by Project Co of Operations Co's reasonable charges;
- (b) if the Authority so elects pursuant to Section 14.2(b) of the Project Agreement, Operations Co will cause any or all of the Project Contracts to be novated or assigned to Project Co (or as Project Co may direct), provided that:
  - (1) Operations Co will not be obligated to assign to Project Co (or as Project Co may direct) any of Operations Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and
  - (2) if termination occurs under Section 13.3, the consent of the applicable Project Contractor will be required;
- (c) Operations Co will, or will cause any Project Contractor to, offer to sell to the Project Co (or as Project Co may direct) at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, vehicles, spare parts and other moveable property owned by Operations Co or any Project Contractor and reasonably required by Project Co or the Authority in connection with the operation of the NG-KIH System or the provision of the Services;
- (d) Operations Co will deliver to Project Co (or as Project Co may direct) (to the extent not already delivered to Project Co or the Authority):
  - (1) all existing designs, network configurations, plans and other documents produced in connection with the NG-KIH System and in the control of Operations Co;

- (2) one complete set of existing “as built drawings” showing all alterations made to the NG-KIH System since the commencement of operation of the NG-KIH System; and
- (3) one complete set of existing up to date maintenance, operation and training manuals for the NG-KIH System,

subject to reasonable generally applicable third party licensing terms;

- (e) Operations Co will use commercially reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical equipment used or made available by Operations Co under this Project Implementation Agreement and included in the NG-KIH System but not previously assigned or licensed to Project Co or the Authority are assigned, licensed or otherwise transferred to Project Co (or as Project Co may direct);
- (f) to the extent permitted by Law, Operations Co will assign to Project Co (or as Project Co may direct) all Permits;
- (g) Operations Co will deliver to Project Co (or as Project Co may direct) all records required to be kept by Operations Co hereunder (Operations Co having the right to retain copies thereof) unless such documents are:
  - (1) required by Law to be retained by Operations Co or a Project Contractor or a Sub-Contractor, in which case complete copies will be delivered to Project Co (or as Project Co may direct); or
  - (2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design, Construction, Services or System Refresh will be delivered to Project Co (or as Project Co may direct) no later than the Termination Payment Date; and
- (h) return to Project Co all Confidential Information of Project Co and to the Authority all Confidential Information of the Authority within the possession or control of Operations Co or any Project Contractor or any Sub-Contractor.

Operations Co will ensure that provision is made in all applicable contracts to ensure that Project Co will be in a position to exercise its rights, and Operations Co will be in a position to comply with its obligations, under this Section 14.2 without additional payment or compensation to any Person.

### **14.3 Transition Out Arrangements**

On the Expiration Date, Operations Co will:

- (a) on request by the Authority under the Project Agreement, for a period not to exceed 6 months after the Expiration Date:

- (1) co-operate fully with the Authority and any successor providing to the Authority services in the nature of any of the Services or any part of the Services to achieve a timely, safe, orderly, effective and efficient transition of the performance of services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any material interruption to the Services or risk to the health and safety of any person; and
  - (2) continue to provide the Services or any part of the Services required by the Authority and, subject to the Pass-Down Provisions, Project Co will pay to Operations Co a reasonable price for such services determined with reference to Operations Co's price for such Services prior to the Expiration Date;
- (b) subject to Section 14.3(a), as soon as practicable following the Expiration Date remove all property of Operations Co or any Operations Co Person that is not acquired by Project Co or the Authority (or not belonging to Project Co or the Authority) and, if it has not done so within 20 Business Days after any notice from Project Co or the Authority requiring it to do so, Project Co or the Authority may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of Operations Co;
- (c) subject to Section 14.3(a), on the Expiration Date deliver to Project Co (or as Project Co may direct):
- (1) all keys, access codes and/or other devices required to operate the NG-KIH System in the control of Operations Co; and
  - (2) any Project Intellectual Property required to be delivered by Operations Co pursuant to Section 14.2(e);
- (d) subject to Section 14.3(a), as soon as practicable after the Expiration Date, vacate, and cause the Operations Co Persons to vacate, those parts of the NG-KIH System over which Operations Co has control and occupation and will leave such parts of the NG-KIH System in a safe, clean and orderly condition; and
- (e) comply with all requirements of Appendix 4B [Handback Requirements].

#### **14.4 Operations Co to Cooperate**

If the Authority wishes to conduct a solicitation prior to the Expiration Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiration of the Project Agreement, the Authority will provide notice of same to Project Co and Operations Co and, upon receipt of any such notice from the Authority, Operations Co will, prior to the Expiration Date, co-operate with the Authority fully in such solicitation process including by:

- (a) providing any information in Operations Co's control or possession which the Authority may reasonably require to conduct such solicitation except that information which is commercially sensitive to Operations Co or an Operations

Co Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of Operations Co or an Operations Co Person give that competitor a competitive advantage over Operations Co or the Operations Co Person and thereby prejudice the business of Operations Co or the Operations Co Person); and

- (b) assisting the Authority by providing any participants in such solicitation process with access to the Lands and the NG-KIH System provided such access does not affect the Services in a way that results in any reduction in Operations Co Payments.

Operations Co will, subject to the Pass-Down Provisions, be entitled to reimbursement for all reasonable out-of-pocket expenses and costs incurred in connection with the foregoing services.

#### **14.5 Operations Co Materials**

In connection with all information, records, documents, data and other materials delivered by Operations Co to Project Co or the Authority as required pursuant to this Section 14 (Procedure on Termination) (collectively, the “**Operations Co Materials**”), Operations Co shall deliver to Project Co and the Authority a certificate of an officer of Operations Co addressed to Project Co and the Authority, in form and substance satisfactory to Project Co and the Authority, certifying, among other things:

- (a) all Operations Co Materials delivered to Project Co or the Authority are true, accurate and complete copies of the originals of all such Operations Co Materials;
- (b) with respect to Operations Co Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between Operations Co and any Persons:
  - (1) all are in good standing and in full force and effect with no amendments and Operations Co is entitled to all rights and benefits thereunder;
  - (2) Operations Co has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and
  - (3) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and
- (c) other than Operations Co Materials there no other material agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments relating to the Project.

## **14.6 Continued Performance**

Subject to Operations Co's rights of suspension under Sections 13.3(a) and 13.3(b) and subject to the provisions of this Section 14 (Procedure on Termination), the parties will continue to perform their obligations under this Project Implementation Agreement (including Project Co continuing to make Operations Co Payments) notwithstanding the giving of any notice of default or notice of termination.

## **15. DISPUTE RESOLUTION**

### **15.1 Procedure**

Except as otherwise provided in this Project Implementation Agreement, any Dispute will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure].

## **16. ASSIGNMENT/CHANGE IN CONTROL**

### **16.1 Limitations on Assignment of Project by Operations Co**

Operations Co will not assign, transfer or otherwise dispose of any interest in this Project Implementation Agreement or a Project Contract except:

- (a) as security, substantially in a form approved by the Authority, under the Project Agreement, prior to its grant for any loan made to Project Co under any Senior Financing Agreement;
- (b) in connection with the exercise of rights of the Collateral Agent under the Senior Financing Agreements; or
- (c) otherwise:
  - (1) prior to the day (the "**Transfer Restriction Date**") that is one year after the System Completion Date, with the written consent of Project Co, which may be given or withheld in Project Co's discretion; and
  - (2) after the Transfer Restriction Date, with the written consent of Project Co, which will not be unreasonably withheld or delayed,

provided that, in the case of an assignment under Section 16.1(b) or 16.1(c), the assignee:

- (d) is not a Restricted Person; and
- (e) assumes all the obligations of Operations Co under this Project Implementation Agreement.

### **16.2 Limitations on Change in Control**

No Change in Control of Operations Co will be permitted (whether by Operations Co or otherwise) to occur except:

- (a) in connection with the exercise of rights of the Collateral Agent under the Senior Financing Agreements, provided that such Change in Control does not result in a Restricted Person obtaining Control of Operations Co;
- (b) arising from any bona fide open market transaction in any shares or other securities of Operations Co or any other Person effected on a recognized public stock exchange;
- (c) if Control of Operations Co following the Change in Control is held by:
  - (1) one or more Affiliates of Operations Co immediately prior to the Change in Control;
  - (2) one or more funds or other investment vehicles managed by or under common management with one or more of the Investors (or Affiliates thereof) immediately prior to the Change in Control; or
  - (3) one or more Affiliates of, or funds or other investment vehicles managed by, Macquarie Corporate Holdings Pty Limited or any Affiliate thereof; or
- (d) otherwise:
  - (1) prior to the Transfer Restriction Date, with the written consent of Project Co, which may be given or withheld in Project Co's discretion; or
  - (2) after the Transfer Restriction Date, with the written consent of Project Co, which will not be unreasonably withheld or delayed.

### **16.3 Not Used**

### **16.4 Limitations on Assignment of Project by Project Co**

Project Co will not assign, transfer or otherwise dispose of any interest in this Project Implementation Agreement without the prior consent of Operations Co, in its sole discretion. Notwithstanding the foregoing, Project Co may assign its right, title and interest in and to this Project Implementation Agreement to the Senior Secured Creditors as security for Project Co's liabilities and obligations under the Senior Financing Agreements or in connection with the exercise of rights of the Senior Secured Creditors under the Senior Financing Agreements.

### **16.5 Costs of Request for Consent**

If Operations Co requests consent to an assignment, transfer or disposition pursuant to Section 16.1 or to a Change in Control pursuant to Section 16.2, Operations Co will pay Project Co's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Operations Co will make a payment to Project Co in the amount of \$10,000 (Index Linked) against its obligation under this Section 16.5. After Project Co renders its decision, Project Co will, subject to the Pass-Down Provisions, either refund any over payment or invoice Operations Co for any additional amounts owing under this Section 16.5 and Operations Co will promptly pay such amount to Project Co.

## 17. GENERAL

### 17.1 Confidentiality

- (a) Subject to Section 17.1(b), each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 will not restrict:
- (1) each party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Project Implementation Agreement;
  - (2) subject to obtaining confidentiality restrictions similar to those set out in this Project Implementation Agreement, Project Co from providing to the Senior Secured Creditors and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements;
  - (3) subject to obtaining confidentiality restrictions similar to those set out in this Project Implementation Agreement, Operations Co from providing to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Operations Co to perform (or to cause to be performed) its obligations under this Project Implementation Agreement but which Confidential Information is not used by the Project Contractor, its advisors or other third parties, as applicable, for any other purpose; and
  - (4) Project Co from disclosing or granting access to such information to the Authority, any department of the Commonwealth of Kentucky or any other Governmental Authority which requires the information in relation to the Project.
- (b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- (1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
  - (2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Project Implementation Agreement;
  - (3) to the extent any Person is required to disclose such Confidential Information by Law, including the Open Records Act;
  - (4) Not used; or

- (5) that is known to the recipient of the Confidential Information prior to disclosure to the recipient by the other party or becomes known to the recipient thereafter by way of disclosure to the recipient by any other Person who, to the knowledge of the recipient, is not under any obligation of confidentiality with respect thereto.
- (c) Without prejudice to any other rights and remedies that the other party may have, a party may be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a).
- (d) Operations Co will be fully liable for any breach of confidentiality under this Section 17.1 by any Person to whom Operations Co has disclosed or granted access to Confidential Information under this Section 17.1 to the same extent as if Operations Co itself breached confidentiality under this Section 17.1.

## **17.2 Public Communications**

Unless expressly provided in this Project Implementation Agreement or otherwise required by any Law, including the Open Records Act, (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Schedule 16 [Communication Roles].

## **17.3 Law of Agreement**

This Project Implementation 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.

## **17.4 Venue**

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

## **17.5 Entire Agreement, Waivers and Consents in Writing**

This Project Implementation Agreement and the instruments and documents to be executed and delivered pursuant to this Project Implementation Agreement constitute the entire agreement between the parties.

The parties acknowledge that, due to the size and complexity of the Project, they have clarified through extensive negotiation the contents of both the RFP and the proposal(s) (including any clarifications, modifications or amendments thereto) submitted in response to either the RFP or the Master Agreement.

Accordingly, the body of this Project Implementation Agreement and Schedules 1 to 20 expressly supersede the contents of both the RFP and the proposal(s) (including any

clarifications, modifications or amendments thereto) submitted in response to either the RFP or the Master Agreement, other than the components of the original proposal required pursuant to Section 6, Item 6.1 (Transmittal Letter), Section 6, Item 6.2 (Disclosure of Violation of Statutes), Section 6, Item 6.3 (Kentucky Tax Registration Application), Section 6, Item 6.4 (Registration with the Secretary of State by a Foreign Entity), Section 6, Item 6.5 (Required Affidavits), Section 6, Item 6.6 (Completed and signed face of solicitation), Section 6, Item 6.7 (Signed face of latest addendum of the solicitation), Section 6, Item 6.8 (EEO Forms), Section 6, Item 6.9 (Vendor Background and Project Resources), Section 6, Item 6.10 (Comparable Experiences), Section 6, Item 6.11 (Financial Viability – Finance Partner and Concessionaire) and Section 6, Item 6.18 (Network Security Plan) of the RFP.

This Project Implementation Agreement also expressly supersedes all prior agreements and communications (both oral and written) between the parties hereto with respect to all matters contained herein or therein and, except as stated herein or in the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties. In addition, no waiver of any provision of this Project Implementation Agreement and no consent required pursuant to the terms of this Project Implementation Agreement is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

#### **17.6 Notices**

Any notice or communication required or permitted to be given under this Project Implementation 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:

KentuckyWired Infrastructure Company, LLC  
1408 Highland Avenue  
Louisville, KY 40204

Attention: Phillip K. Brown, Director  
Email: KWICpkb@gmail.com

With a copy to:

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

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

If to Operations Co:

KentuckyWired Operations Company, LLC  
101 Helm Street, Suite 150  
Lexington, KY 40505

Attention: Robert Morphonios, CEO  
Email: Robert.Morphonios@kentuckywired.com

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

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

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

### **17.7 Further Assurances**

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

### **17.8 Counterparts**

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

## **17.9 No Partnership**

Nothing contained in this Project Implementation Agreement nor any action taken pursuant hereto or thereto will be deemed to constitute Project Co and Operations Co a partnership, joint venture or any other similar such entity.

## **17.10 Survival**

Notwithstanding any other provision of this Project Implementation Agreement, the provisions of Section 8 (Supervening Events) (if and to the extent a Compensation Event relates to a claim made by a third party against Operations Co after the Termination Date), Section 9 (Indemnities and Limits on Liabilities and Remedies), Section 14 (Procedure on Termination), Section 15 (Dispute Resolution), Section 17.1, Appendix 4B [Handback Requirements], Schedule 9 [Compensation on Termination] and Schedule 13 [Dispute Resolution Procedure] will survive the expiration or any earlier termination of this Project Implementation Agreement.

[signature page follows]

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

**KENTUCKYWIRE INFRASTRUCTURE  
COMPANY, INC.**

Per:   
Name: *Scott W. Brinkman*  
Title: *Director*

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIRE OPERATIONS COMPANY,  
LLC**

Per:   
Name: *Robert G. Morphonios*  
Title: *Chief Executive Officer*

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the company.

**SCHEDULE 1  
DEFINITIONS AND INTERPRETATION**

**1. DEFINITIONS**

In this Project Implementation Agreement:

**“Actual Coverage Amount”** has the meaning set out in Schedule 5 [Insurance Requirements];

**“Affiliate”** in respect of:

- (a) a Person (other than Operations Co) means any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person; and
- (b) Operations Co means:
  - (1) any Investor or any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, Operations Co or an Investor; or
  - (2) any Person owned, in whole or in part, by (i) Operations Co, (ii) any Investor or (iii) any Affiliate of Operations Co under (b)(1) above, whether the ownership interest is direct or indirect and legal, beneficial or equitable, provided that ownership of less than 10% of the equity interest in a Person shall not give rise to Affiliate status;

**“Allowable Capital Expenditure”** means the Capital Expenditure incurred by Operations Co as a direct consequence of a Relevant Works Change in Law;

**“Amended Pole Attachment Agreement”** has the meaning set out in Section 3.9;

**“Applicant”** has the meaning set out in Section 8.1;

**“Authority”** means the Commonwealth of Kentucky;

**“Authority Activities”** means any activities carried on or to be carried on by the Authority, or other Persons permitted by the Authority, on or connected to the NG-KIH System, related to the Project;

**“Authority Claim”** has the meaning set out in Section 1.4(c);

**“Avoidable Costs”**, when used in relation to an event or circumstance, means all costs and expenditures which:

- (a) are saved or avoided as a result of the event or circumstance or its effects; or
- (b) if Operations Co acted reasonably and in accordance with this Project Implementation Agreement, would have been saved or avoided as a result of the event or circumstance or its effects;

**“Bankruptcy Law”** means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto, and any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due;

**“Base Date”** means June 30, 2016;

**“Beneficiary”** has the meaning set out in Section 9.2;

**“Business Day”** means a day other than a Saturday, Sunday or federal or state statutory holiday in the Commonwealth of Kentucky;

**“Capital Cash Collateral Account”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Capital Contribution Agreement”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Capital Contribution LC Fees”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Capital Expenditure”** means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP;

**“Certificate of Site Completion”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Change”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Certificate”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Directive”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change in Control”** means with respect to a relevant Person any direct or indirect change in the ownership or Control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the relevant Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger, consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a Person or group of Persons, other than the equity holders of the relevant Person immediately prior to the change, directly or indirectly:

- (a) controlling the composition of the majority of the board of directors of the relevant Person or of a general partner or manager of the relevant Person;

- (b) controlling the decisions made by or on behalf of the relevant Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of the relevant Person, a general partner of the relevant Person or a manager of the relevant Person or otherwise;
- (c) holding equity (either beneficially or otherwise) of the relevant Person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of the relevant Person with more than one half of the voting rights; or
- (d) having the ability to direct or cause the direction of the management, actions or policies of the relevant Person;

**“Change in Law”** means the coming into effect after the Effective Date of:

- (a) any final and non-appealable new Law; or
- (b) any final modification (including repeal or appeal) of any Law existing on such date,

which is binding on Operations Co or Project Co, but excluding in each such case:

- (c) any lawful requirements of any Governmental Authority in effect on the Effective Date; and
- (d) any change in the interpretation of any Law, other than a judgment of a relevant court which changes binding precedent in the Commonwealth of Kentucky;

**“Change Mark-Up”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Report”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Report Costs”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Charge”** has the meaning set out in Schedule 7 [Lands];

**“Collateral Agency and Account Agreement”** means the collateral agency and account agreement between Project Co, as borrower, U.S. Bank National Association, as trustee, and U.S. Bank National Association, as collateral agent;

**“Collateral Agent”** means U.S. Bank National Association;

**“Commissioning”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Commissioning Plan”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Common Carrier”** means any Person engaged as a common carrier for hire under applicable Law;

**“Common Carrier Regulations”** means any applicable Law governing Common Carriers;

**“Communication”** has the meaning set out in Section 1.5(a);

**“Compensation Event”** means any of the following events or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Design, Construction, Services or System Refresh, causes an Outage or causes Direct Losses to Operations Co or any Operations Co Person:

- (a) a breach by the Authority of any of its obligations under the Project Agreement, including a failure of the Authority to grant, or cause to be granted, and to maintain, or cause to be maintained, the License as set out in Section 2.1 of Schedule 7 [Lands] to the Project Agreement;
- (b) a breach of any representation or warranty by the Authority set out in the Project Agreement;
- (c) any misconduct of the Authority or an Authority Person, including unauthorized use of the NG-KIH System;
- (d) a negligent act or omission of the Authority or an Authority Person;
- (e) the discovery or exacerbation of any:
  - (1) Hazardous Substances located in, on, below or that have migrated to the Lands; or
  - (2) Hazardous Substances located in, on, below or that have migrated to any other location at which any aspect of the Project is performed, but only to the extent that Operations Co's Direct Losses related thereto exceed \$200,000 in the aggregate over the Term,

in either case, other than Operations Co Hazardous Substances;

- (f) if:
  - (1) the terms and conditions of any Permit, or the refusal to issue a Permit, require (i) the Construction to be performed in a manner that materially differs from the conceptual design prepared by Operations Co as of the Effective Date or (ii) the creation of a new route in connection with the Project that differs from the conceptual design prepared by Operations Co as of the Effective Date and Operations Co's Direct Losses related thereto exceed \$25,000 in the aggregate over the Term;
  - (2) during the Construction Period, any Permit that falls into one of the Permit Classes set out in Appendix 2D [Expected Permit Timing] is not received within the Permit Delivery Time Period associated with the relevant Permit Class or, if a Permit (other than a Simple Pole Attachment

Agreement) does not fall within one of the Permit Classes set out in Appendix 2D [Expected Permit Timing], there is an unreasonable delay in the receipt of such Permit, which delay has an impact on any critical path matter in the Project Schedule, provided that Operations Co has submitted a complete and accurate Permit application and provided further that, in respect only of the Federal Permits, Operations Co's Direct Losses related thereto exceed \$50,000 in the aggregate over the Term;

- (3) notwithstanding (f)(2) above, the Authority does not execute a finalized Simple Pole Attachment Agreement provided to the Authority by Project Co within 3 Business Days of receipt thereof or any Pole Provider refuses to enter into a Simple Pole Attachment Agreement or a Complex Pole Attachment Agreement; or
- (4) Operations Co is required to obtain an Environmental Permit or any Permit that requires any Environmental Assessment to be performed on the Lands or any other location at which any aspect of the Project is performed;
- (g) the existence of any encumbrance enforceable against or affecting the Lands or the NG-KIH System;
- (h) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on, in, under or adjacent to the Lands or any other location at which any aspect of the Project is performed;
- (i) a Public Protest Action;
- (j) a lawful or unlawful strike, lockout, job action or other labor dispute by employees of the Authority or an Authority Person;
- (k) the existence of geotechnical conditions that are materially different from those reasonably anticipated in the conceptual design prepared by Operations Co as of the Effective Date:
  - (1) on, in or under the Lands that will be utilized for the Huts;
  - (2) in connection with any water crossings, provided that Operations Co has investigated and confirmed that the following are not viable options in advance of placing new conduit underground at a water crossing: attaching to an existing aerial crossing, pulling fiber through an existing underground conduit or an existing conduit on a bridge or placing new conduit on an existing bridge; or
  - (3) in connection with any wetlands, provided that Operations Co has investigated and confirmed that the following are not viable options in advance of placing new conduit underneath the wetlands: attaching to an existing aerial crossing, pulling fiber through an existing underground conduit or an existing conduit on a bridge or placing new conduit on an existing bridge;

- (l) the event referred to in Section 6.10(b)(2)(D);
- (m) the event referred to in Section 8.4(e)(2);
- (n) the event referred to in Section 8.6(d)(2);
- (o) the actions referred to in Section 11.5 as constituting a Compensation Event;
- (p) the event referred to in Sections 7.11(a) or (c) of Schedule 2 [Design and Construction Protocols];
- (q) Operations Co's compliance with a direction from the Authority under Section 3.3 of Schedule 13 [Dispute Resolution Procedure] to the Project Agreement when the matter in dispute is subsequently resolved, or settled, in Operations Co's favor, unless relief has otherwise been provided pursuant to the Dispute Resolution Procedure;
- (r) the execution of works, other than usual or reasonably expected works, on the Lands or in respect of the NG-KIH System not forming part of the Project Agreement by:
  - (1) the Authority;
  - (2) any person permitted to execute such works by the Authority or any Authority Person; or
  - (3) any Utility Company,including any relocation of the NG-KIH System required due to the construction of a highway, pipeline or other infrastructure;
- (s) an activity undertaken by the Authority or any Authority Person in accordance with Section 2.4 that has a material adverse effect on Operations Co's ability to perform the Design, Construction, Services and/or System Refresh;
- (t) if part of the NG-KIH System or part of the portion of the Lands on which the NG-KIH System is situated or any interest of Operations Co is expropriated by any Governmental Authority and such expropriation is not an Authority Event of Default as set out in Section 13.1(c) of the Project Agreement;
- (u) an event that causes a loss of or physical damage to any portion of the NG-KIH System at a Site Location;
- (v) an earthquake, tornado, hurricane, fire, wind storm, ice storm, mud slide, rock slide, flood, explosion, lightning or any other act of God that impacts:
  - (1) the aerial plant in excess of 15 pole spans or 3000 aerial feet of fiber;
  - (2) the underground plant in excess of 500 feet of fiber; or

- (3) a combination of the aerial plant and the underground plant with an aggregate impact comparable to (1) or (2) above, assuming a ratio of 6 feet of aerial fiber being equal to 1 foot of underground fiber,

for each single event;

- (w) during the Construction Period, an injunction or other order of a court of competent jurisdiction resulting from a challenge to, or an expropriation that materially adversely interferes with, Operations Co's right to access any lands, easements or other property (including, without limitation, access to the poles owned by any Utility Company);
- (x) a failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement, an uncured breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement, a negligent act or omission of a Third Party Infrastructure Provider, an extension agreed by the Authority to the schedule of any dark fiber indefeasible right of use agreement or any dark fiber installation agreement with any Third Party Infrastructure Provider that materially and adversely impacts the critical path of a Site Completion or the bankruptcy or insolvency of a Third Party Infrastructure Provider, including any disputes that may arise between the Third Party Infrastructure Provider and the Authority or other third party that materially impacts the Project Schedule;
- (y) any change to the Site Access Plan that impacts the Project Schedule;
- (z) during the period beginning on June 1, 2019 for any poles on Ring 2 owned by East Kentucky Network LLC or the Barbourville Utility Commission and on Ring 3, Ring 4 and Ring 5 and for the remainder of the Construction Period, without limiting Operations Co's obligation to manage all Pole Attachment Agreements, including (i) managing the make ready engineering and make ready construction processes, (ii) accurately identifying, communicating and following-up with relevant Utility Company and Telecommunications Company first to move and next to move activities, (iii) exercising all rights available to the Authority under the relevant Pole Attachment Agreement to move existing attachments on the poles in accordance with make ready engineering, (iv) communicating with Pole Providers and any Utility Company, local authority or other like body that has attachments on poles, and (v) submitting any and all make ready engineering applications within industry standard time frames in advance of the make ready construction completion date for the relevant Site as set out in Appendix 7A, and to provide stand-by power facilities for the NG-KIH System in accordance with the Design and Construction Specifications:
  - (1) a failure by any Utility Company, local authority or other like body to perform works (which includes the approval of any application for work and the remediation of any pole violations not caused by Operations Co) or provide services required to be provided by them, or requested of them, in a reasonably timely manner with "reasonably timely manner" deemed to mean the Utility Company's or Telecommunications Company's completion of the make ready engineering approval such that Operations Co (or any Operations Co Person), acting reasonably, can

meet the make ready construction completion date for the relevant Site as set out in Appendix 7A, or the make ready construction moves by the respective Pole Providers not later than the make ready construction completion date for the relevant Site as set out in Appendix 7A; or

- (2) any unreasonable interference with the Construction by any such body as a result of maintenance or other work,

provided, in either case, that Operations Co (or any Operations Co Person) has (i) exercised the rights of the Authority that Operations Co (or any Operations Co Person) is entitled to exercise under the relevant Pole Attachment Agreement, including self-help to the extent permitted, as agent or designee of the Authority, provided that the Authority retains the obligation to enforce the Pole Provider's obligations under the Pole Attachment Agreements; and (ii) not less than 90 calendar days prior to the issuance of a Supervening Event Notice related to this Compensation Event (z), informed the Authority of an anticipated claim with sufficient and accurate detail and supporting documentation to substantiate the likelihood of occurrence of such claim and to enable the Authority to take steps as owner to further mitigate the occurrence of such claim, and provided further that this Compensation Event (z) cannot be claimed in respect of any interference with, or failure of, the carrying out of the Design or Construction of Ring 1A, Ring 1B or Ring 2 (except in respect of any poles on Ring 2 owned by East Kentucky Network LLC or the Barbourville Utility Commission) with the exception of any make ready engineering or make ready construction impacts due to a Change which affects the Design of Ring 1A, Ring 1B or Ring 2 (except in respect of any poles on Ring 2 owned by East Kentucky Network LLC or the Barbourville Utility Commission);

- (aa) except as otherwise provided in Schedule 7 [Lands], Operations Co is required to obtain an easement or other right of access to any lands from a private landowner to carry out the Project in accordance with this Project Implementation Agreement;
- (bb) any Dispute in respect of a Change Directive issued pursuant to Section 4.15 (Project Co's Obligations re Third Party Infrastructure Agreements) of the Project Agreement;
- (cc) a failure by the Authority to provide a sufficiently detailed description of each Site Location so as to enable Operations Co to carry out its obligations under this Project Implementation Agreement by the date reasonably required by Operations Co in accordance with the Project Schedule;
- (dd) any claim asserted against Operations Co and/or any Operations Co Person arising from the implementation of the Notify and Go Approach or the Authority's representation that it has rights of access to the Lands, provided that:
  - (1) Operations Co and/or the relevant Operations Co Person notifies the Authority within five (5) days of service of complaint related to such claim;
  - (2) Operations Co and/or the relevant Operations Co Person submits said claim under any and all applicable commercial liability insurance policies

either currently held or held at the time of the alleged tort by Operations Co and/or the relevant Operations Co Person;

- (3) upon receipt of such complaint, the Authority shall assume the defense of Operations Co and/or the relevant Operations Co Person, including the right to settle or otherwise resolve any claim relating to the complaint, (with Operations Co and the relevant Operations Co Person retaining the right of independent counsel at their own expense), provided that the Authority may not consent to the entry of any judgment or enter into any settlement with respect to the complaint without the prior written consent of Operations Co and/or the relevant Operations Co Person, which consent shall not be unreasonably withheld, conditioned or delayed;
- (4) the Authority shall intervene in the action to initiate a condemnation proceeding and seek to hold the underlying claims against of Operations Co and/or the relevant Operations Co Person in abeyance;
- (5) any damages awarded against Operations Co and/or the relevant Operations Co Person in respect of any such claim may be recovered after all appeals have been exhausted and/or waived. Punitive damages, on an aggregate basis for all such claims, shall be paid in accordance with the Punitive Damage Distribution Table set out below. Payment of claims is contingent on (i) Operations Co and/or the relevant Operations Co Person completing work within the confines of the existing utility easement in which the Authority has asserted the contractual right to access; (ii) Operations Co and/or the relevant Operations Co Person exercising reasonable care within the industry standards during any necessary points of ingress and/or egress to access the existing utility easement in which the Authority has asserted the contractual right to access; and (iii) to the extent applicable, Operations Co and/or the relevant Operations Co Person providing proof of denial of coverage from any/all applicable liability insurance policies; and
- (6) without limiting the potential survivability of any other provision of this Project Implementation Agreement, the parties expressly acknowledge that such legal challenges may arise or continue after Project completion, and that this Compensation Event (dd) survives completion of the Project;

Punitive Damage Distribution Table		
Amount Range	Authority	Operations Co
\$0 - \$500,000	0%	100%
\$500,000 - \$1,000,000	50%	50%
\$1,000,000 - above	100%	0%

- (ee) any inability to access any lands, easements or other property required by Operations Co or any Operations Co Person to perform its Design and Construction obligations, whether as a result of an injunction, court order, refusal of a landowner or otherwise, including, without limitation, an inability to:
  - (1) access poles on any property owned by others; or
  - (2) investigate, survey or construct underground routes within existing easements or routes identified to be required for the Design and Construction, which requires (i) the Construction to be performed in a manner that materially differs from the design prepared by Operations Co; or (ii) the creation of a new route in connection with the Project that differs from the design prepared by Operations Co,thereby causing Operations Co or any Operations Co Person to incur Direct Losses and/or delays to the Project Schedule, provided that Operations Co or any Operations Co Person will only be entitled to relief if the Authority is unable to arrange access within 60 days from notification for the first 100 denials of access and 30 days from notification for all subsequent denials of access; and
- (ff) any other event which is expressly stated in the Project Agreement to constitute a Compensation Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Implementation Agreement by Operations Co or any Operations Co Person;

**“Complex Pole Attachment Agreement”** means any agreement with a Pole Provider that is not a Simple Pole Attachment Agreement and includes, but is not limited to, an agreement with specialized negotiated rates, extended term, trades, swaps or other subject matter not contemplated in a Simple Pole Attachment Agreement;

**“Confidential Information”** means:

- (a) information obtained in the course of performing the Services; and
- (b) information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

**“Construction”** means everything (other than Design) required to achieve System Completion, including the construction of the NG-KIH System, temporary works and the supply of all labor and materials, construction equipment, management, supervision and support of any kind or nature whatsoever required for the construction of the NG-KIH System and the supply, installation, testing and commissioning of all Equipment, but specifically excluding, for clarity, the Excluded Work;

**“Construction Period”** means:

- (a) in respect of any Site, the period commencing on the Effective Date and ending on the Site Completion Date for that Site;
- (b) in respect of any Lateral, the period commencing on the Effective Date and ending on the Lateral Completion Date for that Lateral; and
- (c) in respect of any Ring, the period commencing on the Effective Date and ending on the Ring Completion Date for that Ring;

**“Contract Year”** means each of:

- (a) the period from the Effective Date to the next June 30;
- (b) each subsequent period of 12 calendar months commencing on July 1; and
- (c) the period from the July 1 immediately prior to the Termination Date to and including the Termination Date;

**“Control”** means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person, and **“Controlled”** has a corresponding meaning;

**“Controlling Party”** with respect to a Person, means a Person, or a group of Persons acting jointly or in concert, who Control such first mentioned Person;

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

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

**“Default Rate”** means, on any day, 2% per annum over the Prime Rate;

**“Deficiency”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Demarcation Point”** means the physical point at which the NG-KIH System ends and another network begins;

**“Deposit Account Bank”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Deposit Account Control Agreement”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Design”** means everything required for the design of the NG-KIH System, except for any design that is expressly excluded from Operations Co’s responsibility under this Project Implementation Agreement, and specifically excluding, for clarity, the Excluded Work;

**“Design and Construction Plan”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Design and Construction Protocols”** means the provisions of Schedule 2 [Design and Construction Protocols];

**“Design and Construction Representative”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Design and Construction Specifications”** mean the provisions of Schedule 3 [Design and Construction Specifications], which are comprehensive and reflect all of the design and construction requirements for the Project;

**“Design-Build Agreement”** means the design-build agreement between Operations Co and the Design-Builder, a certified copy of which has been delivered by Operations Co to Project Co;

**“Design-Builder”** means NG-KIH Design-Build LLC or any assignee or replacement permitted under this Project Implementation Agreement;

**“Designated Equipment”** means the equipment listed in Appendix 3C [Designated Equipment];

**“Designated Equipment Protocol”** means the protocol in respect of the Designated Equipment set out in Appendix 3D [Designated Equipment Protocol];

**“Development Change”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Development Change Record”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Development Change Record Confirmation”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Development Change Register”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Direct Financing Losses”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Direct Losses”** means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs (including increased Capital Expenditures), expenses (including the reasonable cost of legal or professional services, but excluding any general and administrative expenses), demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:

- (a) net of related Insurance Proceeds and Insurance Receivables and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Project Implementation Agreement or any policy of insurance maintained or required to be maintained under this Project Implementation Agreement;
- (b) excluding any Indirect Losses, except to the extent included in a third party claim; and
- (c) in the case of Operations Co, without limiting the foregoing, including the full amount of the related loss or reduction of any Operations Co Payments, net of Avoidable Costs related to such condition, event or omission,

and, in calculating any amount of any additional Capital Expenditure, labor or similar cost claimed by Operations Co under this definition of “**Direct Losses**”, Operations Co will be entitled to add to such amounts the aggregate payroll burden of 35% referred to in Section 2.10(d) of Schedule 6 [Changes, Minor Works and Innovation Proposals] and the mark-up referred to in Section 2.11 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“**Disability-Owned Business Enterprise**” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“**Disadvantaged Business Enterprise**” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“**Dispute**” means any disagreement, failure to agree or other dispute between Project Co and Operations Co arising out of or in connection with this Project Implementation Agreement, including in respect of the interpretation, breach, performance, validity or termination of this Project Implementation Agreement, whether in the law of contract or any other area of law;

“**Dispute Notice**” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“**Dispute Resolution Procedure**” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“**DMS**” has the meaning set out in Schedule 14 [Records and Reports];

“**Draft Market Testing Proposal**” has the meaning set out in Schedule 19 [Market Testing Procedure];

“**Early Works**” has the meaning set out in Section 2.11;

“**Effective Date**” means September 3, 2015;

“**Eligible Change in Law Event**” means the occurrence of:

- (a) a Relevant Change in Law; or
- (b) a Relevant Works Change in Law;

“**Emergency**” means any situation, event or circumstance that:

- (a) constitutes or may constitute a hazard to or jeopardizes or may jeopardize the health and safety of any persons or any part of or the whole of the NG-KIH System;
- (b) causes or may cause damage or harm to property, buildings and/or equipment; or
- (c) constitutes a state of emergency declared as such by any Governmental Authority,

and which requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing;

**“Employee Information”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Employee Payments”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Environmental Assessment”** means an environmental assessment of any kind, including an environmental impact assessment;

**“Environmental Laws”** means all Laws relating to the protection of human health and all plant, animal, land, water and air resources that may be affected by the Project;

**“Environmental Permit”** means any Permit required pursuant to Environmental Laws, including any Permit required pursuant to the National Environmental Policy Act or Section 404 of the Clean Water Act, as well as any Permit required by the U.S. Army Corps of Engineers, the United States Department of Agriculture, the National Park Service, the U.S. Fish and Wildlife Service, any Native American Tribe or the Kentucky Heritage Council;

**“Equipment”** means any passive or electronic components necessary to deliver the xWDM, Ethernet or IP/MPLS services as set out in Schedule 3 [Design and Construction Specifications];

**“Equipment-Only Outage”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Equivalent Financing Relief”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Equivalent Project Relief”** has the meaning set out in Section 1.6(a);

**“Excluded Obligations”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Excluded Rights”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Excluded Work”** means the design and construction of work (a) allocated to Third Party Infrastructure Providers pursuant to the Third Party Infrastructure Agreements and/or (b) related to the Ring 4 Gap;

**“Excusing Event”** means any of the following events or circumstances if it occurs during the Operating Period and if and to the extent that it interferes adversely with, or causes a failure of, the performance of the Services or causes an Outage:

- (a) the carrying out by Operations Co of Minor Works required by the Authority in accordance with the Project Agreement;
- (b) compliance by Operations Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (c) a Change in Law during the Operating Period;
- (d) without limiting Operations Co’s obligation to provide stand-by power facilities for the NG-KIH System in accordance with the Design and Construction Specifications:
  - (1) a failure or shortage of power;
  - (2) a failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner; or
  - (3) any unreasonable interference with the Services by any Utility Company, local authority or other like body as a result of maintenance or other work;
- (e) a failure or underperformance of the telecommunications infrastructure that permits the transmission of data between the NG-KIH System and other internet networks, provided that such telecommunications infrastructure is owned and operated by a third party that is not an Affiliate of Operations Co;
- (f) a cyber attack, cyber security failure or denial of service impacting the NG-KIH System;
- (g) any vandalism or theft of any component of the NG-KIH System;
- (h) an industry-wide shortage of key materials or equipment necessary for the performance by Operations Co of its obligations under this Project Implementation Agreement;
- (i) an injunction or other order of a court of competent jurisdiction resulting from a challenge to the procurement process pursuant to which Project Co was selected to enter into the Project Agreement or to the Authority’s or Project Co’s right to proceed with the Project or any aspect thereof;
- (j) the First System Refresh is not complete by the date that is 11 years from the Effective Date or the Second System Refresh is not complete by the date that is 21 years from the Effective Date, in each case, in accordance with the System Refresh Baseline Requirements or such other requirements as may be agreed by the parties from time to time or the Authority does not initiate the Market Testing

Procedure or complete the Market Testing Procedure in accordance with Schedule 19 [Market Testing Procedure] to the Project Agreement;

- (k) an injunction or other order of a court of competent jurisdiction resulting from a challenge to, or an expropriation that materially adversely interferes with, Project Co's right to access any lands, easements or other property (including, without limitation, access to the poles owned by any Utility Company);
- (l) unauthorized access by any Person to a Site or the NG-KIH System; or
- (m) any other event which is expressly stated in the Project Agreement to constitute an Excusing Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Implementation Agreement by Operations Co or any Operations Co Person;

**"Exempt Refinancing"** means:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:
  - (1) breach of representations, warranties, covenants or undertakings;
  - (2) movement of monies between the Project Accounts (as defined in the Financing Agreements) in accordance with the terms of the Financing Agreements;
  - (3) late or non-provision of information or consents;
  - (4) amendments to the Project Implementation Agreement, Project Contracts or Financing Agreements;
  - (5) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements);
  - (6) restrictions imposed by the Secured Creditors on the dates at which the financing provided by the Secured Creditors under the Financing Agreements can be advanced to Project Co under the Financing Agreements, and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Secured Creditors to the Authority prior to being given;
  - (7) changes to milestones for drawdown set out in the Financing Agreements and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the

Project Schedule and which are notified in writing by Project Co or the Secured Creditors to the Authority prior to being given;

- (8) failure by Project Co to obtain any consents from Governmental Authorities required by the Financing Agreements; or
- (9) voting by the Secured Creditors and the voting arrangements between the Secured Creditors in respect of the levels of approval required by them under the Financing Agreements;
- (c) an amendment or variation of an agreement approved by the Authority as part of any Change; or
- (d) a Qualifying Bank Transaction;

**“Expiration Date”** means the date that is 30 years after the Effective Date;

**“Fair Market Value”** means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale;

**“Federal Permit”** means any Permit set out in Part 2 of Appendix 2D [Expected Permit Timing];

**“Fiber Outage”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Field Locations”** has the meaning set out in Appendix 4A [Services Specifications];

**“Financing Agreements”** means the Senior Financing Agreements and the Junior Financing Agreements;

**“First System Refresh”** means the first refresh of the NG-KIH System in accordance with Schedule 19 [Market Testing Procedure];

**“Float”** means, subject to Operations Co’s general duty to mitigate in this Project Implementation Agreement, where mitigation efforts do not involve the consumption of Float, the amount of time that a task in a project schedule network can be delayed without causing a delay to subsequent tasks (Free Float) and the project completion date (Total Float). For the Project, the Total Float is the period between the Project Schedule Finish Milestone activities ending in 7150 (DB Construction & Commissioning) through Project Schedule Finish Milestone activities ending in 7160 (Site Turnover Date to the Authority), as such terms are represented in the Project Schedule. The Design-Builder exclusively owns the Float. Any impact to the Design-Builder’s Float, to the extent such impact is a Supervening Event, will entitle the Design-Builder to Schedule relief and/or reimbursement of Direct Losses subject to the Supervening Event claim procedures set forth in Section 8 of the Project Agreement;

**“Force Majeure Event”** means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a

result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Implementation Agreement by Operations Co or an Operations Co Person; or

- (c) pressure waves caused by devices traveling at supersonic speeds,

which directly causes a party to be unable to comply with all or a material part of its obligations under this Project Implementation Agreement;

**“GAAP”** means generally accepted accounting principles in effect in the United States as set by the American Institute of Certified Public Accountants;

**“Governmental Activities”** means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands and/or the NG-KIH System by any Governmental Authority;

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

**“H&S Conviction”** has the meaning set out in Section 12.1(f);

**“Handback Amount”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Certificate”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Holdback”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Requirements”** means the requirements set out in Appendix 4B [Handback Requirements];

**“Handback Survey”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Works”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Works Plan”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Has Knowledge”, “Have Knowledge” or “Having Knowledge”** means:

- (a) for an individual, when information is acquired by the individual;
- (b) for a corporation, when information has come to the attention of:
  - (1) a director or officer of the corporation; or
  - (2) a senior employee of the corporation with responsibility for matters to which the information relates,

- (c) for a partnership other than a limited partnership, when any partner Has Knowledge under the other Sections of this definition or under this Section (c) or Section (d) below for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates;
- (d) for a limited partnership, when any general partner Has Knowledge under the other Sections of this definition or under this Section (d) or Section (c) above for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates; or
- (e) Not used.

**“Hazardous Substance”** means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

**“Hut”** means a physical structure used to house a Node Site at certain Sites;

**“IEEE”** means the Institute of Electrical and Electronics Engineers;

**“Implementation Plan”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Income Tax”** means any tax imposed on the income of a Person by any Governmental Authority;

**“Indemnifier”** has the meaning set out in Section 9.2;

**“Independent Certifier”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Independent Certifier’s Monthly Report”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Index Linked”** means that, with respect to an amount at any time, the amount is adjusted as at each July 1st commencing as of July 1, 2017 by:

- (a) multiplying it by the Materials Inflation Index as at the immediately preceding July; and
- (b) dividing it by the Materials Inflation Index as at the Base Date;

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

- (a) Operations Co or any Operations Co Person (other than a Person who is an Operations Co Person solely by virtue of being an invitee of Operations Co or any Operations Co Person); or
- (b) Project Co or any Project Co Person (other than a Person who is a Project Co Person solely by virtue of being an invitee of Project Co, any Project Co Person or a Project Co Indemnified Person),

and shall be deemed not to include any loss of Operations Co Payments, the Milestone Payment (or any foregone interest thereon) or other amounts expressly payable by one party to the other party under this Project Implementation Agreement;

**“Innovation Proposal”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Insurance Proceeds”** means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Project Implementation Agreement other than:

- (a) any policy of insurance maintained by the Authority or Project Co solely for the benefit of the Authority or Project Co; and
- (b) for the purposes of Sections 6.3, 6.5 and 6.6, insurance proceeds received by Operations Co or the Senior Secured Creditors from the delay in start-up insurance described in Section 2 of Schedule 5 [Insurance Requirements];

**“Insurance Proceeds Account”** has the meaning set out in Schedule 10 [Lenders’ Remedies Agreement];

**“Insurance Receivables”** means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained under this Project Implementation Agreement other than:

- (a) any policy of insurance maintained by the Authority or Project Co solely for the benefit of the Authority or Project Co; and
- (b) for the purposes of Sections 6.3, 6.5 and 6.6, insurance proceeds received by Operations Co or the Senior Secured Creditors from the delay in start-up insurance described in Section 2 of Schedule 5 [Insurance Requirements];

**“Intellectual Property”** means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;

- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;
- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world;

**"Intended Uses"** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**"Investor"** means KentuckyWired Operations Holding Company, LLC, Macquarie NG-KIH Holdings, LLC, Ledcor US Ventures Inc. and First Solutions, LLC, together with any assignee or replacement permitted under this Project Implementation Agreement;

**"ITU"** means the International Telecommunications Union;

**"Junior Debt"** means indebtedness issued by Project Co which ranks subordinate in all respects to the Senior Debt, excluding:

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (b) all fees, including commitment fees and standby fees, paid or to be paid by Project Co; and
- (c) capitalized interest, and interest on overdue interest;

**"Junior Financing Agreements"** means the financing agreements related to the Junior Debt;

**"Junior Secured Creditors"** means the holders of the Junior Debt;

**"Key Individuals"** has the meaning set out in Section 2.8;

**"Labor Inflation Index"** means the Employment Cost Index (ECI), Utilities, as published by the U.S. Bureau of Labor Statistics, seasonally adjusted, base period of December, 2005 = 100, or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably, or failing agreement as determined by the Dispute Resolution Procedure;

**"Lands"** has the meaning set out in Schedule 7 [Lands];

**“Lateral”** means physical fiber from a Node Site or Ring to a Service Level 1 Site and/or Service Level 3 Site;

**“Lateral Completion”** means that Site Completion has been achieved for all Sites on a Lateral;

**“Lateral Completion Date”** means the date that Lateral Completion has been achieved in respect of a Lateral;

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

**“Lender Endorsements”** has the meaning set out in Schedule 5 [Insurance Requirements];

**“Lenders’ Remedies Agreement”** means the agreement between the Authority, the Collateral Agent (on behalf of the Senior Secured Creditors), Project Co and Operations Co in the form set out in Schedule 10 [Lenders’ Remedies Agreement], as amended, supplemented or replaced from time to time in accordance with this Project Implementation Agreement;

**“Liability Payment”** has the meaning set out in Section 9.3;

**“Longstop Date”** means the date that is 12 months after the Target System Completion Date, as adjusted in accordance with this Project Implementation Agreement;

**“Market Testing”** has the meaning set out in Schedule 19 [Market Testing Procedure];

**“Market Testing Date”** has the meaning set out in Schedule 19 [Market Testing Procedure];

**“Market Testing Meeting”** has the meaning set out in Schedule 19 [Market Testing Procedure];

**“Market Testing Procedure”** means the procedure out in Schedule 19 [Market Testing Procedure];

**“Market Testing Proposal”** has the meaning set out in Schedule 19 [Market Testing Procedure];

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

**“Materials Inflation Index”** means the Consumer Price Index for All Urban Consumers (CPI-U), as published by the U.S. Bureau of Labor Statistics, base period of 1982-84 = 100, or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably, or failing agreement as determined by the Dispute Resolution Procedure;

**“Minor Works”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Minor Works Rates”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Minority-Owned Business Enterprise”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Monthly Settlement Payment”** has the meaning set out in Schedule 8 [Payments] to the Project Agreement;

**“NG-KIH PoP”** or **“NG-KIH Point of Presence”** means a facility at a terminal or intermediate location along the NG-KIH System that permits access to the NG-KIH System and the secure co-location of multiple vendor/ISP equipment for interconnection to the NG-KIH System;

**“NG-KIH System”** means all of the electronic equipment, fiber cable, outside plant installations, building facilities, interface equipment, network services and customer services required to provide a fully functional and operating telecommunications carrier system over the Term of this Project Implementation Agreement;

**“NG-KIH System Change”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Net Change Value”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“NOC”** has the meaning set out in Appendix 4A [Services Specifications];

**“Node Site”** has the meaning set out in the Project Agreement;

**“Nominal”** means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecast inflation;

**“Non-Operative Components”** means components of the NG-KIH System that are not capable of performing, nor of hosting inserted technology that is capable of performing, data extraction and transmission functions;

**“Notify and Go Approach”** has the meaning set out in Schedule 7 [Lands];

**“Notifying Party”** has the meaning set out in Schedule 5 [Insurance Requirements];

**“Open Records Act”** means KRS 61.870 through KRS 61.884;

**“Operating Period”** means:

- (a) in respect of any Site, the period commencing on the day following the Site Completion Date for that Site and ending on the Termination Date;
- (b) in respect of any Lateral, the period commencing on the day following the Lateral Completion Date for that Lateral and ending on the Termination Date; and
- (c) in respect of any Ring, the period commencing on the day following the Ring Completion Date for that Ring and ending on the Termination Date;

**“Operating Period Representative”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Operating Plan”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Operations Co”** means KentuckyWired Operations Company, LLC;

**“Operations Co Act”** means (a) a breach by Operations Co of any provision of this Project Implementation Agreement or (b) any negligent act or omission or other tortious conduct of Operations Co or any Operations Co Person;

**“Operations Co Availability Payments”** means the payments set out in set out in Part B of Schedule 8 [Payments];

**“Operations Co Concurrent Rights and Obligations”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Operations Co Construction Account Withdrawal Certificate”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Operations Co Distribution Account”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Operations Co Event of Default”** has the meaning set out in Section 12.1;

**“Operations Co Financing Rights and Obligations”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Operations Co Funds Transfer Certificate”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Operations Co Hazardous Substances”** means any Hazardous Substances brought onto:

- (a) the Lands; or
- (b) any property acquired or accessed by Operations Co or any Operations Co Person in connection with the NG-KIH System,

by Operations Co or any Operations Co Person during the Term;

**“Operations Co Insolvency Event”** means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Operations Co and, if such proceedings are commenced against Operations Co and are disputed by Operations Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted;

- (b) any voluntary or involuntary proceedings with respect to Operations Co being commenced under the Bankruptcy Law and, if such proceedings are commenced against Operations Co and are disputed by Operations Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted;
- (c) Operations Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Operations Co under the Bankruptcy Law or otherwise and, if proceedings are commenced against Operations Co and are disputed by Operations Co, such proceedings are not stayed, dismissed or otherwise remedied within 90 days of such proceedings being instituted;
- (d) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Operations Co or its debts under any Bankruptcy Law or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, this Project Implementation Agreement is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute; or
- (e) Operations Co voluntarily or involuntarily ceasing to carry on business;

**“Operations Co Material Breach” means:**

- (a) a failure by Operations Co to pay any amount due and owing to Project Co under this Project Implementation Agreement on the due date (which amount is not being disputed in good faith) and Operations Co has not remedied such failure to pay within 10 Business Days following notice from Project Co;
- (b) a failure by Operations Co to:
  - (1) maintain the policies of insurance required to be maintained by Operations Co under this Project Implementation Agreement;
  - (2) maintain such policies on the terms required under this Project Implementation Agreement (including a failure to comply with its obligation under Schedule 5 [Insurance Requirements] to name the Authority or Project Co as an insured party); or
  - (3) provide evidence to Project Co as required by the terms of this Project Implementation Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Project Implementation Agreement;
- (c) except as provided above, a breach (other than a breach for which a Deduction can be made), or series of breaches (other than a series of breaches for which Deductions can be made), by Operations Co of its obligations under this Project Implementation Agreement (other than as a consequence of a breach by Project

Co of its obligations under this Project Implementation Agreement or a breach by the Authority of its obligations under the Project Agreement), which results in:

- (1) a risk to the safety of the public;
- (2) a risk of material liability of the Authority or Project Co to third Persons or other material financial loss to the Authority or Project Co;
- (3) a material adverse effect on the performance of the Design, Construction, Services or System Refresh and, as a result thereof, the Authority is reasonably likely to be materially deprived of the benefit of the Project Agreement or Project Co is reasonably likely to be materially deprived of the benefit of this Project Implementation Agreement ; or
- (4) any material provision of this Project Implementation Agreement being unenforceable against Operations Co and, as a result thereof, the Authority is reasonably likely to be materially deprived of the benefit of the Project Agreement or Project Co is reasonably likely to be materially deprived of the benefit of this Project Implementation Agreement,

and, in the case of a breach that is capable of being remedied, Operations Co has not remedied such breach within 10 Business Days following notice from the Project Co;

- (d) a breach by Operations Co of Section 4.3 of this Project Implementation Agreement; or
- (e) a breach by Operations Co of any of its material obligations under Schedule 15 [Financing Agreement Obligations] to this Project Implementation Agreement;

**“Operations Co Materials”** has the meaning set out in Section 14.5;

**“Operations Co Operating Account”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Operations Co Payment”** has the meaning set out in Section 10.6;

**“Operations Co Person”** means:

- (a) any director, officer, employee or agent of Operations Co in each case acting as such;
- (b) any Project Contractor, any Sub-Contractor and any representative, advisor (including any legal and financial advisor) or contractor of Operations Co, in any such Person’s capacity as a provider of services, work or materials, directly or indirectly to Operations Co in connection with the Project; or
- (c) any invitee of Operations Co or any of the Operations Co Persons referred to in (a) or (b) above who enters upon the Lands,

but specifically excludes any Third Party Infrastructure Provider;

**“Operations Co Proposal”** has the meaning set out in Schedule 19 [Market Testing Procedure];

**“Operations Co Proposal Validity Period”** has the meaning set out in Schedule 19 [Market Testing Procedure];

**“Operations Co’s Rights”** has the meaning set out in Section 8.13;

**“Operations Co Security Agreement”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Original Project Agreement”** has the meaning set out in Recital D of this Project Implementation Agreement;

**“Original Project Implementation Agreement”** has the meaning set out in Recital E of this Project Implementation Agreement;

**“Original Project Schedule”** means the Project Schedule that was attached to the Original Project Agreement as at the Effective Date;

**“Original Target Site Completion Date”** means the Target Site Completion Date for a Site as defined in the KIH Re-Baseline Settlement Schedule (RBS) r2 entitled “NG-KIH Engineering Settlement Baseline Revision r2” and “NG-KIH Construction Settlement Baseline Revision r2” and having Aconex Document Reference Number KIH-TRN-008529 dated November 29, 2018 (without taking account of any extensions thereto pursuant to Section 8 (Supervening Events) or any other provision of the Project Agreement);

**“Outage”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Outside Ring Completion Date”** means the date that is 6 months after the Target Ring Completion Date for a Ring, as adjusted in accordance with this Project Implementation Agreement;

**“Outside Ring Completion Holdback”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Parallel Financing Issue”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Parallel Issue”** has the meaning set out in Section 1.7(a);

**“Pass-Down Provisions”** has the meaning set out in Section 1.8;

**“Pass-Through Financing Rights and Obligations”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Paying Party”** has the meaning set out in Section 9.3;

**“Payment Adjustment Report”** has the meaning set out in the Project Agreement;

**“Performance Monitoring Plan”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Performance Monitoring Program”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

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

**“Permitted Debt”** has the meaning set out in the Project Agreement;

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

**“Planned Maintenance”** means maintenance on the NG-KIH System that is set out in or scheduled pursuant to the Operations and Maintenance Plan and is in full compliance with all manufacturers’ recommendations;

**“Pledge Agreement”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Pole Attachment Agreements”** has the meaning set out in the Project Agreement;

**“Pole Attachment Fees”** means any amounts payable to a Pole Provider under a Pole Attachment Agreement;

**“Pole Attachment Proposal”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Pole Provider”** has the meaning set out in the Project Agreement;

**“PoP”** or **“Point of Presence”** means an access point to the internet;

**“Preferred Service Tenderer”** has the meaning set out in Schedule 19 [Market Testing Procedure];

**“Preliminary Change Instruction”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Preliminary Estimate”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Prime Rate”** means the annual rate of interest published in the Wall Street Journal as the WSJ prime rate from time to time;

**“Principal Insured Risk”** means a risk that would be insured against by policies for the insurance referred to in Sections 2 and 3 of Schedule 5 [Insurance Requirements];

**“Project”** means the design, construction, financing, testing, commissioning, provisioning, operation, maintenance and refresh of the NG-KIH System and all other works and ancillary services in accordance with this Project Implementation Agreement;

**“Project Agreement”** means the amended and restated project agreement dated as of March 13, 2019, entered into between the Authority and Project Co and which sets out the terms and conditions upon which, as between the Authority and Project Co, Project Co is required to perform and supply the Design, Construction, Services and System Refresh (each as defined in the Project Agreement);

**“Project Co”** means KentuckyWired Infrastructure Company, Inc.;

**“Project Co Event of Default”** has the meaning set out in Section 13.1;

**“Project Co Financing Rights and Obligations”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Project Co Indemnified Person”** means any director, officer or employee of Project Co, in each case acting in such capacity;

**“Project Co Insolvency Event”** means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Project Co and, if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted;
- (b) any voluntary or involuntary proceedings with respect to Project Co being commenced under the Bankruptcy Law and, if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted;
- (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the Bankruptcy Law or otherwise and, if proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 90 days of such proceedings being instituted;
- (d) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Project Co or its debts under any Bankruptcy Law or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, this Project Implementation Agreement is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute; or
- (e) Project Co voluntarily or involuntarily ceasing to carry on business;

**“Project Co Person”** means:

- (a) any director, officer, employee or agent of Project Co, in each case acting in such capacity;
- (b) any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person's capacity as a provider of services, work or materials, directly or indirectly to Project Co in connection with the Project, other than Operations Co, any Operations Co Person, the Project Contractors, the Sub-Contractors or any Third Party Infrastructure Provider; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) or (b) above who enters upon the Lands;

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

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

**"Project Contractor Breakage Costs"** has the meaning set out in Schedule 9 [Compensation on Termination];

**"Project Contractor Collateral Agreement"** means the agreement to be entered into between the Authority, a Project Contractor, Project Co and Operations Co in the form set out in Schedule 11 [Project Contractor Collateral Agreement], as amended, supplemented or replaced from time to time in accordance with this Project Implementation Agreement;

**"Project Costs"** has the meaning set out in the Collateral Agency and Account Agreement;

**"Project Implementation Agreement"** means this amended and restated project implementation agreement, including any recitals, schedules, appendices and attachments to this agreement, as further amended or restated from time to time;

**"Project Intellectual Property"** means the Intellectual Property that is created, brought into existence, acquired, licensed or used by Operations Co, any Project Contractor, any Sub-Contractor or any other third party, directly or indirectly, for the purposes of the Design, Construction, Services or System Refresh, or otherwise for the purposes of this Project Implementation Agreement;

**"Project Schedule"** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**"Prospective Service Tenderers"** has the meaning set out in Schedule 19 [Market Testing Procedure];

**"Protected Personal Information"** means an individual's personal information that is considered confidential and privileged in accordance with applicable Law;

**"Prudent Coverage Amount"** has the meaning set out in Schedule 5 [Insurance Requirements];

**“Public Protest Action”** means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken, by any Person or Persons protesting or demonstrating against:

- (a) the carrying out of any part of the Project, including the construction of the NG-KIH System; or
- (b) the construction or operation of the NG-KIH System in general, occurring after the Effective Date,

but excluding any lawful or unlawful strike, lockout, job action or other labor dispute;

**“Qualified Insurer”** means a reputable insurer of good standing authorized to conduct business in the Commonwealth of Kentucky and having a financial strength rating of A- VIII or better with A.M. Best;

**“Qualifying Bank Transaction”** has the meaning set out in the Project Agreement;

**“Qualifying Service Tender”** has the meaning set out in Schedule 19 [Market Testing Procedure];

**“Quality Assurance Plan”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Quality Assurance Program”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Reasonably Expected Performance”** shall be determined based on the following:

- (a) if a period of time equal or greater than 6 months has elapsed since the System Completion Date, an average of the Operations Co Payment amounts payable to Operations Co during the previous 6 month period;
- (b) if a period of time greater than 1 month but less than 6 months has elapsed since the System Completion Date, an average of the Operations Co Payment amounts payable to Operations Co since the System Completion Date; or
- (c) if a period of time equal to or less than 1 month has elapsed since the System Completion Date or if System Completion has not been achieved, the Maximum Operations Co Payment;

**“Receiving Party”** has the meaning set out in Section 9.3;

**“Referee”** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**“Referee Agreement”** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**“Referee Notice”** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**“Refinancing”** means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which the Authority, with the consent or at the request of Project Co, grants rights to any Person under an agreement similar to the Lenders' Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders' Remedies Agreement entered into on the Effective Date;
- (c) any amendment, variation, novation, supplement or replacement of any Senior Debt, Junior Debt or Financing Agreement;
- (d) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement;
- (e) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Agreements, Senior Debt or Junior Debt or the creation or granting of any other form of benefit or interest in the Financing Agreements, the Senior Debt, the Junior Debt or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Project Co's ability to carry out any of the actions referred to in (a) through (e) above,

but excluding any financing pursuant to Section 10.2 of the Project Agreement;

**"Relevant Change in Law"** means a change in the applicability of any taxes in connection with the Lands or the NG-KIH System relative to that which is described in Section 3.5 of Schedule 7 [Lands] to the Project Agreement or a Change in Law:

- (a) which specifically applies to:
  - (1) the Project or telecommunications-related projects procured and contracted on a basis similar to the Project;
  - (2) Project Co, Operations Co or Persons that have contracted on similar telecommunications-related projects procured and contracted with the Authority or another statutory or public body on a basis similar to the Project; or
  - (3) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar telecommunications-related projects procured and contracted on a basis similar to the Project and not other Persons;
- (b) which principally affects or principally relates to the design, provision, operation or maintenance of telecommunications infrastructure and associated services; or

- (c) which results in the designation of Project Co or any Project Co Person (as defined in the Project Agreement) as a Common Carrier or in the application of the Common Carrier Regulations to Project Co, any Project Co Person (as defined in the Project Agreement) or the NG-KIH System or any part thereof,

and compliance with which would require a variation (as applicable) in the design, quality, scope, methodology or cost of the Design, Construction, Services or System Refresh;

**“Relevant Supervening Event Claims”** means all Supervening Event claims known to have been in existence as of January 18, 2018 (specifically including Supervening Events 001 through 207). For clarity, the payments referred to in Recital H of the Project Agreement and the Monthly Settlement Payments are in full and final settlement of the Direct Losses claimed by the Design-Builder in respect of the Relevant Supervening Event Claims, but do not include any amounts claimed by and payable to Project Co and Operations Co in respect of the Relevant Supervening Event Claims;

**“Relevant Works Change in Law”** means a Change in Law (other than a Relevant Change in Law) which causes Operations Co to incur Capital Expenditures to perform works affecting the NG-KIH System (being any work of alteration, addition, demolition or extension or variation in the quality or function of the NG-KIH System) which is not work which Operations Co would otherwise be required to perform under this Project Implementation Agreement;

**“Relief Event”** means any of the following events or circumstances if and to the extent it interferes adversely with, or causes a failure of, the carrying out of the Design, Construction, Services or System Refresh or causes an Outage:

- (a) an earthquake, tornado, hurricane, fire, wind storm, ice storm, mud slide, rock slide, flood, explosion, lightning or any other act of God, in each case, to the extent it does not constitute a Compensation Event;
- (b) ionizing radiation to the extent it does not constitute a Force Majeure Event;
- (c) a lawful or unlawful strike, lockout, job action or other labor dispute generally affecting the construction, telecommunications maintenance or management industry or a significant sector thereof;
- (d) during the Construction Period, any delay of more than 3 days in respect of any critical path matter in the Project Schedule caused by compliance by Operations Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) an unreasonable delay in the payment of any Insurance Receivables;
- (g) any accidental loss of or physical damage to the NG-KIH System or any portion thereof, except any portion of the NG-KIH System that has not been properly marked and GPS located by Operations Co in accordance with the Design and Construction Specifications, or any roads servicing the Lands;

- (h) a blockade or embargo to the extent it does not constitute a Force Majeure Event;
- (i) during the Construction Period, an industry-wide shortage of key materials or equipment necessary for the performance by Operations Co of its obligations under this Project Implementation Agreement, which shortage has an impact on any critical path matter in the Project Schedule;
- (j) during the Construction Period, an injunction or other order of a court of competent jurisdiction resulting from a challenge to the procurement process pursuant to which Project Co was selected to enter into the Project Agreement or to the Authority's or Project Co's right to proceed with the Project or any aspect thereof; or
- (k) any other event which is stated in the Project Agreement to constitute a Relief Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Implementation Agreement by Operations Co or any Operations Co Person;

**"Repair"** means a repair to the NG-KIH System undertaken at any time after the System Completion Date except for the completion of Deficiencies;

**"Reporting Error"** has the meaning set out in the Project Agreement;

**"Representative"** means, as the case may be, a Design and Construction Representative or an Operating Period Representative;

**"Restricted Payment Conditions"** has the meaning set out in the Collateral Agency and Account Agreement;

**"Restricted Person"** means (i) any Person who, or (ii) any member of a group of Persons acting together, any one of whom:

- (a) has, directly or indirectly, its/his/her principal or controlling office in a country or state that is a Restricted State;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms;
- (c) is or has been involved in the promotion, support, financing or carrying out of terrorism;
- (d) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanors) less than 5 years prior to the date at which the determination of whether the Person falls within this definition is being made;

- (e) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent or are in financial distress;
- (f) is subject to any claim of the Authority in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in the Authority's view, in either case, be reasonably likely to materially affect the ability of Operations Co to perform its obligations under this Project Implementation Agreement;
- (g) has been suspended or debarred by the United States Government or under the Kentucky Revised Statutes Chapter 45A and the applicable administrative regulations; or
- (h) is prohibited from holding a contract with the Commonwealth of Kentucky under Kentucky Revised Statutes Chapter 45A and the applicable administrative regulations; and

includes the Controlling Party of, and any Person Controlled by, a Person described in this definition;

**"Restricted State"** means any country or state subject to any economic or political sanctions imposed by the United States of America for reasons other than its trade or economic policies;

**"Reviewed Drawings and Specifications"** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**"RFP"** has the meaning set out in Recital A of this Project Implementation Agreement;

**"Ring"** means each of Ring 1A, Ring 1B, Ring 2, Ring 3, Ring 4 and Ring 5, as represented in Appendix 3E [Design Map];

**"Ring 4 Gap"** means the portion of the Design and Construction of Ring 4 of the NG-KIH System not included in Operations Co's responsibilities under this Project Implementation Agreement, as described in more detail in Aconex Document Reference Number KIH-TRN-008530;

**"Ring Availability"** means that a Ring has achieved required redundancy;

**"Ring Availability Date"** means the date that Ring Availability has been achieved;

**"Ring Completion"** means:

- (a) in respect of Ring 1A, Ring 1B, Ring 2, Ring 3 and Ring 5, that Site Completion has been achieved for all Sites on each such Ring; and
- (b) in respect of Ring 4, that the Design and the Construction of such Ring has been completed, specifically excluding, for clarity, the Excluded Work;

**“Ring Completion Date”** means the date that Ring Completion has been achieved in respect of a Ring;

**“Rock Risk Amount”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Second System Refresh”** means the second refresh of the NG-KIH System in accordance with Schedule 19 [Market Testing Procedure];

**“Secured Creditors”** means the Senior Secured Creditors and the Junior Secured Creditors;

**“Secured Creditors’ Technical Advisor”** has the meaning set out in the Collateral Agency and Account Agreement;

**“Senior Executive”** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**“Senior Financing Agreements”** means:

- (a) the Collateral Agency and Account Agreement;
- (b) the Senior Indenture;
- (c) the Senior Loan Agreement;
- (d) the Security Documents;
- (e) the Lenders’ Remedies Agreement;
- (f) the direct agreement dated as of the Effective Date between Project Co, Operations Co, the Collateral Agent and the Design-BUILDER;
- (g) the direct agreement dated as of the Effective Date between Project Co, Operations Co, the Collateral Agent and the Service Provider; and
- (h) any other document, agreement or instrument which the Collateral Agent, the Authority and Project Co may from time to time agree (in writing) is a Senior Financing Agreement;

**“Senior Indenture”** means the trust indenture between KEDFA, as issuer, and U.S. Bank National Association, as trustee, pursuant to which KEDFA issued the Series 2015 Senior Bonds;

**“Senior Loan Agreement”** means the senior loan agreement between KEDFA, as issuer, and Project Co, as borrower, pursuant to which KEDFA agreed to loan the entire proceeds of the Series 2015 Senior Bonds to Project Co, together with any other senior loan agreement entered into between KEDFA and Project Co pursuant to which KEDFA agrees to loan the entire proceeds of a series of Additional Senior Bonds (as defined in the Collateral Agency and Account Agreement) to Project Co;

**“Senior Secured Creditors”** means U.S. Bank National Association, in its capacity as trustee pursuant to the Senior Indenture (on behalf of itself and the holders of the Series 2015 Senior Bonds and any Additional Senior Bonds issued pursuant to the Senior Indenture) and any

holders of (and any representatives of) any Other Permitted Senior Secured Indebtedness (as defined in the Collateral Agency and Account Agreement);

“**Service Level 1 Site**” has the meaning set out in the Project Agreement;

“**Service Level 3 Site**” has the meaning set out in the Project Agreement;

“**Service Level 4 Site**” has the meaning set out in the Project Agreement;

“**Service Provider**” means LTS Kentucky Managed Technical Services LLC or any assignee or replacement permitted under this Project Implementation Agreement;

“**Service Tender Requirements**” has the meaning set out in Schedule 19 [Market Testing Procedure];

“**Service Tenderers**” has the meaning set out in Schedule 19 [Market Testing Procedure];

“**Service Tender Validity Period**” has the meaning set out in Schedule 19 [Market Testing Procedure];

“**Services**” means everything required to operate and maintain the NG-KIH System as set out in Schedule 4 [Services Protocols and Specifications] and Appendix 4A [Services Specifications], but excluding the First System Refresh and the Second System Refresh except in accordance with Schedule 19 [Market Testing Procedure];

“**Services Change**” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“**Services Contract**” means the services contract between Operations Co and the Service Provider, a certified copy of which has been delivered by Operations Co to Project Co;

“**Services Protocols and Specifications**” means the provisions of Schedule 4 [Services Protocols and Specifications];

“**Services Specifications**” means the provisions of Appendix 4A [Services Specifications], which are comprehensive and reflect all of the service specifications required for the Project and required to meet the rigorous performance standards set out in Schedule 8 [Payments];

“**Simple Pole Attachment Agreement**” means a standard form pole attachment agreement that a Pole Provider provides to Operations Co or that Operations Co provides to a Pole Provider, that is not negotiated by the Pole Provider, Operations Co or the Authority, and that requires only minor changes, additions or modifications necessary to create a binding agreement, such as the insertion of the Pole Provider’s suggested rate, the legal names of the contracting parties, contact names and numbers for notification and the effective date;

“**Simple Pole Attachment Agreement Amendment Period**” has the meaning set out in Section 3.9;

“**Site**” means any Person that is connected to the NG-KIH System under this Project Implementation Agreement, including each Node Site, Service Level 1 Site, Service Level 3 Site and Service Level 4 Site;

**“Site Access Plan”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Site Completion”** means that all of the following have been achieved in relation to a Site:

- (a) the Site is located on a Ring that has achieved Ring Availability;
- (b) the Independent Certifier has issued a Certificate of Site Completion with respect to the Site based on the criteria set out in Section 2.13 (Turn-up and Test Services) and Section 2.14 (Service Migration) of Schedule 3 [Design and Construction Specifications] and;
  - (1) pursuant to Section 2.13 (Turn-Up and Test Services) of Schedule 3, the Independent Certifier has received a turn-up and test package, including an MOP, Site turn-up and test results and Site acceptance test results; and
  - (2) (2) pursuant to Section 2.14 (Service Migration) of Schedule 3, the Independent Certifier has received a service migration package, including network discovery data, network analysis data and the service migration method of procedure;
- (c) all necessary Permits have been issued for the use and operation of the Site; and
- (d) Operations Co has delivered to Project Co and the Authority a report confirming completion of all Commissioning scheduled in the Commissioning Plan to be completed before Site Completion in respect of the Site,

provided that, for clarity, the Sites in the Ring 4 Gap do not require redundancy or Site Migration to achieve Site Completion. For the Service Level 4 Sites, Site Completion means the fiber has successfully completed Optical Time Domain Reflectometer (OTDR) testing from end to end measured to the relevant termination points;

**“Site Completion Date”** means the date when all criteria for Site Completion that have not been waived in writing have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols];

**“Site Completion Deficiency”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Site Locations”** has the meaning set out in Schedule 7 [Lands];

**“Site Multiplier”** has the meaning set out in the Project Agreement;

**“Site Value”** has the meaning set out in the Project Agreement;

**“Sub-Contract”** means any contract entered into by a Project Contractor (except Project Contracts), or a sub-contractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Operations Co’s obligations under this Project Implementation Agreement, as amended or replaced from time to time;

“**Sub-Contractor**” means any Person that enters into a Sub-Contract;

“**Sub-License**” has the meaning set out in Schedule 7 [Lands];

“**Submittals**” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“**Submittal Schedule**” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“**Suitable Substitute Operations Co**” has the meaning given to it in the Lenders’ Remedies Agreement;

“**Supervening Event**” means any of a Compensation Event, Relief Event, Excusing Event, Force Majeure Event or Eligible Change in Law Event;

“**Supervening Event Notice**” has the meaning set out in Section 8.2(a);

“**System Completion**” means that Site Completion has been achieved for all Sites;

“**System Completion Date**” means the date that System Completion has been achieved;

“**System Outage**” means an Outage that is not an Equipment-Only Outage;

“**System Refresh**” means the First System Refresh and the Second System Refresh;

“**System Refresh Baseline Requirements**” has the meaning set out in Schedule 19 [Market Testing Procedure];

“**Target Ring Completion Dates**” means:

- (a) July 30, 2020 in respect of Ring 1A;
- (b) August 3, 2020 in respect of Ring 1B;
- (c) August 5, 2020 in respect of Ring 2;
- (d) August 24, 2020 in respect of Ring 3;
- (e) October 29, 2020 in respect of Ring 4; and
- (f) August 17, 2020 in respect of Ring 5,

as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), and “**Target Ring Completion Date**” means any one of them;

“**Target Site Completion Dates**” means the dates, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Operations Co estimates that Site Completion for each Site will occur, and “**Target Site Completion Date**” means any one of them;

**“Target Site Migration Dates”** means the dates, as set out in Appendix 7A, that Operations Co estimates that Site Migration for each Site will occur, and **“Target Site Migration Date”** means any one of them;

**“Target System Completion Date”** means October 29, 2020, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]);

**“Targeted Pole Provider”** has the meaning set out in Section 3.9;

**“Tax”** or **“Taxes”** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

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

**“Termination Date”** means the earlier of the Expiration Date or the date of earlier termination referred to in Section 2.1;

**“Termination Notice”** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**“Termination Payment”** means the amount, if any, owing by Project Co to Operations Co pursuant to Schedule 9 [Compensation on Termination];

**“Termination Payment Date”** means the date on which Project Co must make the Termination Payment as provided for in Schedule 9 [Compensation on Termination];

**“Third Party Infrastructure Agreement”** means, as applicable, each Third Party Infrastructure Term Sheet or definitive contractual agreement entered into by the Authority and a Third Party Infrastructure Provider as described in Schedule 20 [Third Party Infrastructure Agreements];

**“Third Party Infrastructure Providers”** means MuniNet Fiber Agency, Cincinnati Bell Telephone Company LLC, East Kentucky Network LLC, Bluegrass Network LLC, Brandenburg Utilities and Owensboro Municipal Utility, and **“Third Party Infrastructure Provider”** means any of them;

**“Third Party Infrastructure Term Sheet”** has the meaning set out in Section 4.15;

**“Transfer Restriction Date”** has the meaning set out in Section 16.1(c)(1);

**“Uninsurable”** means, in relation to a risk:

- (a) insurance as required under this Project Implementation Agreement is not available in respect of the Project with Qualified Insurers; or
- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Project Implementation Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in the United States are not generally insuring against such risk with Qualified Insurers,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Implementation Agreement by Operations Co or any Operations Co Person;

**“Uninsurable Risk”** has the meaning set out in Section 6.10;

**“Unplanned Maintenance”** means unanticipated maintenance on the NG-KIH System that is required in a timely manner and is conducted in accordance with the standards set out in the Operations and Maintenance Plan and in full compliance with all manufacturers’ recommendations;

**“Updated Project Schedule”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Utility Company”** means any Person, except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) below, a city, who owns, controls, operates or manages any facility used or to be used for or in connection with:

- (a) the generation, production, transmission or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses;
- (b) the production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power or other uses;
- (c) the transporting or conveying of gas, crude oil or other fluid substance by pipeline to or for the public, for compensation;
- (d) the diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation;
- (e) the transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation; or
- (f) the collection, transmission or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

**“Veteran-Owned Business Enterprise”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Wavelength”** means an unique optical channel defined by the wavelength of operation; and

**“Women-Owned Business Enterprise”** has the meaning set out in Schedule 2 [Design and Construction Protocols].

## 2. INTERPRETATION

This Project Implementation Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Implementation Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Implementation Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Project Implementation Agreement are for convenience of reference only, do not constitute a part of this Project Implementation Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Project Implementation Agreement;
- (c) each reference to a Section, Schedule, Appendix or Attachment is a reference to a Section of, Schedule to, Appendix to a Schedule to this Project Implementation Agreement; or each Attachment to an Appendix, and each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached following by an alphabetical designator in sequence (for example, Appendix 4B [Handback Requirements] means the second Appendix attached to Schedule 4 [Services Protocols and Specifications]). A Schedule includes all of the Appendices attached to that Schedule. An Appendix includes all the Attachments attached to that Appendix;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Project Implementation Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, replaced, novated or assigned, and a reference to an “amendment” and similar terms (including “amend” and “amended”) include a reference to supplement, alteration, substitute, variation, change and any other modification and similar terms;
- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision;

- (f) each reference to time of day is a reference to Eastern Standard Time or Eastern Daylight Time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Project Implementation Agreement and each reference to a “party” means any one of the parties to this Project Implementation Agreement, provided however that a reference to a third party does not mean a party to this Project Implementation Agreement;
- (k) all monetary amounts are expressed in U.S. Dollars;
- (l) whenever this Project Implementation Agreement obliges a party (the “**Payor**”) to pay any amount to the other party (the “**Payee**”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
  - (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including when the payment is made to an Affiliate of the Payee), so much of them as are proper and reasonable; and
  - (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (m) each requirement for a thing or action to be “in accordance with” or “in compliance with” any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (n) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (o) whenever the terms “will” or “shall” are used in this Project Implementation Agreement in relation to Operations Co or Project Co they shall be construed and interpreted as synonymous and to read “Operations Co shall” or “Project Co shall”, as the case may be;

- (p) when a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to provide reasons unless specifically required under the provisions of this Project Implementation Agreement;
- (q) any consent contemplated to be given under this Project Implementation Agreement must be in writing;
- (r) general words are not given a restrictive meaning:
  - (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
  - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (s) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (t) the expression “all commercially reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person’s own benefit;
- (u) the expressions “by Operations Co” and “by or through Operations Co” and expressions of like import are synonymous and mean by Operations Co or by anyone employed by or through Operations Co, including Operations Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- (v) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;
- (w) Not used
- (x) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (y) in the event that any provision of this Project Implementation Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Project Implementation Agreement for either party, the provision shall be fully severable and shall not affect the remaining provisions of this Project Implementation Agreement, and this Project Implementation Agreement shall be construed and enforced as if the illegal, invalid or unenforceable

provision had not been included therein. The parties shall promptly meet and endeavor in good faith to negotiate new provisions to eliminate such illegality, invalidity or unenforceability as much as possible and to restore this Project Implementation Agreement as nearly as possible to its original intent and effect; and

- (z) to the extent permitted by applicable Law, each release, waiver of liability and indemnity in this Project Implementation Agreement expressed to be given in favor of a party is and will be interpreted as having been given in favor of and may be enforced by that party and, in the case of Project Co, by Project Co Persons, and, in the case of Operations Co, by Operations Co Persons.

### **3. ORDER OF PRECEDENCE**

In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Implementation Agreement, the provisions will prevail in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions establishing the higher quality, manner or method of performing the Design, Construction or Services, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;
- (b) the provisions of the main body of this Project Implementation Agreement will prevail over any of the Schedules hereto other than Schedule 11 [Project Contractor Collateral Agreement] or Schedule 10 [Lenders' Remedies Agreement];
- (c) the provisions of the main body of this Project Implementation Agreement and all Schedules will prevail over Schedule 21 [Master Agreement];
- (d) the provisions of the Lenders' Remedies Agreement will prevail over the Project Contractor Collateral Agreements; and
- (e) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design, Construction, Services or System Refresh, the provision that applies to the specific part of the Design, Construction, Services or System Refresh shall prevail for that specific part of the Design, Construction, Services or System Refresh.

### **4. NOT USED**

**SCHEDULE 2  
DESIGN AND CONSTRUCTION PROTOCOLS**

Schedule 2 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Design and Construction.

**SCHEDULE 3  
DESIGN AND CONSTRUCTION SPECIFICATIONS**

Schedule 3 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Design and Construction.

**SCHEDULE 4  
SERVICES PROTOCOLS AND SPECIFICATIONS**

Schedule 4 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Services.

**SCHEDULE 5  
INSURANCE REQUIREMENTS**

Schedule 5 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to insurance.

**SCHEDULE 6  
CHANGES, MINOR WORKS AND INNOVATION PROPOSALS**

Schedule 6 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Changes, Minor Works and Innovation Proposals.

## SCHEDULE 7 LANDS

### 1. DEFINITIONS

In this Schedule 7, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

**“Charge”** means any charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature whatsoever, including any claims of a Governmental Authority;

**“Field Locations”** has the meaning set out in Appendix 4A [Services Specifications];

**“Lands”** means the real property and interests therein, including, without limitation, easements and other rights of access to such real property in, to, on, above, within, over, below, under or through which a portion of the NG-KIH System will be constructed, including, without limitation, all Site Locations and all Field Locations;

**“Notify and Go Approach”** has the meaning set out in Section 3.6 of this Schedule 7;

**“Notify and Go Properties”** has the meaning set out in Section 3.6 of this Schedule 7;

**“Refused Access Notification”** has the meaning set out in Section 3.6(d) of this Schedule 7;

**“Site Locations”** means each of the site locations more particularly described in Appendix 7A [Site Locations]; and

**“Sub-License”** has the meaning set out in Section 2.1(a) of this Schedule 7.

### 2. PROJECT CO'S AND AUTHORITY'S OBLIGATIONS AND REPRESENTATIONS

#### 2.1 Grant of Sub-License Over Lands

(a) From the Effective Date until the later of:

(1) the Termination Date; and

(2) the date Project Co no longer requires Operations Co to provide the transitional services described in Section 14.3(a) of this Project Implementation Agreement,

Project Co shall grant or shall cause to be granted to Operations Co a non-exclusive sub-license of use and access in, to, on, above, within, over, below, under or through the Lands and the NG-KIH System to the extent required by Operations Co to carry out the Project in accordance with this Project Implementation Agreement (the **“Sub-License”**).

(b) Operations Co acknowledges the provisions of Section 2.1(b) of Schedule 7 [Lands] to the Project Agreement pursuant to which the Authority, except as expressly provided in Schedule 7 [Lands] to the Project Agreement, will be solely responsible for ensuring that it has or will have such rights and interests in, to,

Amended and Restated Schedule 7  
Lands  
NG-KIH Project Implementation Agreement

on, above, within, over, below, under or through the Lands sufficient to permit the grant of the License (as defined in the Project Agreement) free and clear of all encumbrances, restrictions or limitations, except for any encumbrances, restrictions or limitations which do not adversely affect, financially or otherwise, the License (as defined in the Project Agreement) and the ability of Operations Co to perform any of its obligations under this Project Implementation Agreement, including the ability to conduct the Design or Construction of the NG-KIH System or perform the Services or System Refresh as contemplated by this Project Implementation Agreement. With respect to each parcel comprising a portion of the Lands, the Authority represents and warrants that, prior to the Construction of any of the NG-KIH System thereon, the Authority will possess rights of access thereto sufficient (as determined by the Authority) to permit the grant of the License as contemplated in Section 2.1(a) of Schedule 7 [Lands] to the Project Agreement. Subject to the Pass-Down Provisions, Operations Co will be entitled to claim a Compensation Event under subsection (a) of the definition of Compensation Event in Schedule 1 [Definitions and Interpretation] to the extent that the Authority fails to provide access to the Lands in accordance with the License (as defined in the Project Agreement), whether as a result of the Authority failing to obtain and maintain such rights and interests in and to the Lands sufficient to permit the grant of the License (as defined in the Project Agreement) as contemplated in Section 2.1(a) of Schedule 7 [Lands] to the Project Agreement or otherwise.

(c) With respect to all Site Locations, Operations Co acknowledges and agrees that, pursuant to the Project Agreement, the Authority will, during both the Construction Period and the Operating Period, be responsible for:

- (1) obtaining, maintaining and, as applicable, renewing any permits, consents, approvals or other authorizations required from any Governmental Authority related to zoning;
- (2) providing all primary power and backup power and, if applicable, water;
- (3) providing all building maintenance, janitorial services and HVAC break/fix and maintenance;
- (4) performing all landscaping, weed abatement and snow removal; and
- (5) providing locks, gates, security and fencing of the Site Location,

in any case, as are required by Operations Co to carry out the Project in accordance with this Project Implementation Agreement.

(d) In consideration for the Sub-License granted in Section 2.1(a), Operations Co will carry out the Design and Construction, subject to and in accordance with this Project Implementation Agreement.

(e) Operations Co may, for the same purposes described in Section 2.1(a), grant a sub-license to any Operations Co Person, provided that any such sub-license will be subject to, and terminate upon, termination of the Sub-License.

## **2.2 Authority Assistance with Acquisition of Underground Rights in the Design of the NG-KIH System**

Operations Co acknowledges the provisions of Section 2.2 of Schedule 7 [Lands] to the Project Agreement pursuant to which the Authority and Project Co acknowledge and agree that the preferred location for installation of the NG-KIH System is on existing aerial facilities on the Lands. Where circumstances make installation on such aerial facilities commercially, physically or technologically impracticable, the Design may allow for a limited portion of the NG-KIH System to be located underground in conduit and/or in similar facilities. All circumstances in which underground conduit and/or similar underground facilities are required by Operations Co's Design of the NG-KIH System shall be specifically identified to the Authority on or before December 19, 2018. Operations Co acknowledges that the Authority shall review the proposed underground conduit and/or similar facilities to determine whether the proposed underground conduit and/or similar facilities are necessary and in compliance with prevailing Kentucky law (in each case, as determined by the Authority) and agrees that the Authority shall render its determination within ninety (90) days of receipt of the proposed underground conduit and/or similar facilities unless, in the determination of the Authority, additional time is required for its determination. If the Authority requires additional time to render its determination, the Authority shall so notify Project Co in writing stating the basis for the additional time, but in no event shall such additional time exceed twenty (20) Business Days. At the request of Operations Co, Project Co may dispute the Authority's determination as to the necessity and legal compliance of the proposed underground conduit and/or similar facilities through the Dispute Resolution Procedure set forth in Schedule 13 [Dispute Resolution Procedure] to the Project Agreement, so long as Operations Co requests that Project Co initiate the Dispute Resolution Procedure within five (5) days of the Authority's notification.

With regard to all underground conduit and/or similar facilities, Operations Co acknowledges and agrees that:

- (a) subject to the procedures outlined in Section 2.3(b), Operations Co is responsible for obtaining any easement and/or other permit(s) necessary or useful in connection with such underground conduit and/or similar facilities; and
- (b) subject to the Pass-Down Provisions, Project Co is responsible for reimbursement to Operations Co of all payments to private landowners in obtaining such easements through a Compensation Event under subsection (aa) of the definition of Compensation Event in Schedule 1 [Definitions and Interpretation].

To the extent Operations Co is unable to obtain any such easement and/or other permits after using commercially reasonable efforts pursuant to the criteria described in Section 2.3(b), the Authority has agreed under the Project Agreement to use commercially reasonable efforts to obtain such easements and/or other permits, including without limitation through condemnation actions, pursuant to the procedures described in Section 2.3(b)(8).

Any costs incurred or expended (including the costs of any survey or any condemnation action (including attorneys' costs and fees)) by the Authority in its efforts to obtain such easements and/or other permits shall be shared, subject to the Pass Down Provisions, between the Authority and Operations Co as set forth in the table below:

Condemnation Costs Table		
Amount Range	Authority	Operations Co
\$0 - \$100,000	0%	100%
\$100,000 - \$200,000	50%	50%
\$200,000 - above	100%	0%

Except as otherwise provided in Section 2.3(b), any and all delay caused by, associated with or related to obtaining access to underground conduit and/or similar facilities shall be exclusively owned by Operations Co and shall not provide schedule relief or serve as a basis for a Compensation Event.

### **2.3 Acquisition of Underground Rights upon NG-KIH Design Changes**

Operations Co acknowledges the provisions of Section 2.3 of Schedule 7 [Lands] to the Project Agreement pursuant to which the Authority and Project Co acknowledge that change(s) in circumstance may require updating the current NG-KIH System Design and further acknowledge that if either party causes and/or requests a change in the current NG-KIH System Design, said party is solely responsible for the costs associated with obtaining any access to Lands required by such change.

If Operations Co causes and/or requests a change to the NG-KIH System Design, Section 2.2 shall apply regardless of whether the Design change contemplates an above ground or underground installation.

Operations Co acknowledges that, if the Authority requests a change to the NG-KIH System Design pursuant to the Project Agreement which requires an underground conduit and/or similar facility, as mutually agreed by the Authority and Project Co, the following shall apply:

- (a) The Authority may, at its option, first pursue underground rights on its own behalf. In doing so the Authority is solely responsible for all costs associated therewith. The Authority may also request, upon written request from the Authority to Project Co, which request Project Co will provide to Operations Co, that Operations Co pursue obtaining underground rights on the Authority's behalf, at the Authority's sole cost, subject to the procedures and criteria set forth in Section 2.3(b).
- (b) Upon written request, Operations Co shall use commercially reasonable efforts to secure, on the Authority's behalf, such underground rights in accordance with the following procedures and criteria:
  - (1) If ownership of a parcel is (x) disputed or unable to be verified by the applicable property value administrator, or (y) held by a married individual and Operations Co cannot through commercially reasonable efforts secure the spouse's signature, then immediately upon notice thereof to

the Authority and Project Co, Operations Co shall not be further responsible for acquiring underground rights relating to that parcel.

- (2) If ownership of a parcel is held by five (5) or more individuals or entities and the transfer of any interest therein requires the signature of all such individuals and entities, Project Co shall, subject to the Pass-Down Provisions, compensate Operations Co for all reasonable, documented out-of-pocket costs associated with securing more than one (1) individual's signature.
- (3) If, for a particular parcel, the property owner is (x) unresponsive after three (3) attempts, at least one (1) of which was in person, or (y) unable or unwilling to grant the requested underground rights within ten (10) days after a final compensation offer is made in accordance with these procedures, then immediately upon notice thereof to the Authority and Project Co, Operations Co shall not be further responsible for acquiring underground rights relating to that parcel.
- (4) In negotiating and contracting with parcel owners on behalf of the Authority, Operations Co shall use such form documentation as may be provided to it, or otherwise approved, by the Authority. Where a parcel owner requests modification of such form documentation, such requests shall be submitted by Operations Co to the Authority for approval. Operations Co acknowledges that the Authority shall approve or otherwise respond to such requests within ten (10) Business Days and shall make its authorized counsel available for discussion if requested. In the event the Authority does not resolve such requests within twenty (20) Business Days, Operations Co shall not be further responsible for acquiring underground rights relating to that parcel.
- (5) In negotiating with parcel owners, Operations Co may use its reasonable discretion in offering up to \$1.00 per foot (length), not to exceed \$2,500 per parcel without the prior written approval of the Authority. Offers exceeding \$1.00 per foot or \$2,500 per parcel must be pre-approved in writing by the Authority. In such case, the Authority will provide Project Co the requested approval or an approved "not to exceed" value within five (5) Business Days of Project Co's request. In the event the Authority does not approve the offer or provide an approved "not to exceed" value within ten (10) Business Days, Operations Co shall not be further responsible for acquiring underground rights relating to that parcel. Upon reaching agreement with a parcel owner and execution by the parcel owner of the required documentation, Operations Co will compensate the parcel owner directly and shall, subject to the Pass-Down Provisions, be promptly reimbursed by Project Co upon submission of written evidence of such payment.
- (6) Operations Co shall remit two (2) partially executed originals of the required documentation to the Authority. The Authority shall counter-sign such originals and return both to Project Co within ten (10) Business Days of its receipt thereof. Upon receipt of the duly executed originals,

Operations Co shall record the same in the appropriate jurisdiction. Operations Co shall, subject to the Pass Down Provisions, be promptly reimbursed by Project Co for all recording costs plus three percent (3%) upon submission of written evidence of such costs.

- (7) Where underground rights are required with regard to school property or city, county or other governmental agency property, the Authority shall provide commercially reasonable assistance upon the written request of Operations Co.
- (8) Parcels for which Operations Co has completed its responsibilities hereunder without acquiring the requested underground rights shall become the sole responsibility of the Authority, which shall promptly commence acquisition of the necessary underground rights by other means, including, without limitation, condemnation. The failure of the Authority to acquire sufficient underground rights for a parcel within sixty (60) days following completion of Operations Co's responsibilities, and each failure of the Authority to meet any other timelines under this Section 2.3(b), shall constitute Compensation Events under subsection (a) of the definition of Compensation Event in Schedule 1 [Definitions and Interpretation] and, subject to the Pass Down Provisions, Operations Co shall receive appropriate compensation and schedule relief.

#### **2.4 Terms Affecting Sub-License Grant**

Without limiting the other provisions of this Schedule 7, the following terms and conditions apply to the Sub-License:

- (a) no legal demise or other interest in land, and no interest in the NG-KIH System or any other improvements, is granted to Operations Co or created by this Project Implementation Agreement;
- (b) the Sub-License is non-exclusive and no right to exclusive possession of the Lands or the NG-KIH System is granted to Operations Co;
- (c) subject to Section 7.10 of Schedule 2 [Design and Construction Protocols] to the Project Agreement, Operations Co acknowledges that the Authority will be entitled at any time and from time to time to grant to Authority Persons and any other persons, including contractors and the general public, access to the Lands and the NG-KIH System; and
- (d) Project Co will enforce its rights under the Project Agreement to ensure that Operations Co has access to the Lands as required in accordance with the Site Access Plan.

### **3. OPERATIONS CO'S OBLIGATIONS AND ACKNOWLEDGMENTS**

#### **3.1 As Is Where Is**

Subject to the provisions of Section 4.1 of this Schedule 7 and Section 8 (Supervening Events) of this Project Implementation Agreement, Operations Co accepts the Lands and the Sub-License on an "as is, where is" basis.

#### **3.2 Operations Co Not to Encumber**

Operations Co will not, without the consent of the Authority:

- (a) grant or permit any Charge affecting or against the Lands or the NG-KIH System; or
- (b) do or omit to do, or cause, suffer or permit to be done or omitted to be done by any Operations Co Person, anything that would result in any Charge against or affecting the Lands, the NG-KIH System or any asset, matter or thing that may be required to be delivered or transferred to Project Co or the Authority on the Termination Date pursuant to Section 14.2 of this Project Implementation Agreement,

and will, at its own expense, promptly discharge and remove, or cause to be discharged and removed, any such Charge.

#### **3.3 No Restriction on Authority Use or Development**

Operations Co acknowledges that the Authority may from time to time without restriction use, develop or re-develop, or permit the use, development or re-development of, the Lands or any portion thereof (including by way of subdivision) for any purpose and by any Person. To the extent such use, development or re-development adversely interferes with the Sub-License or adversely interferes with Operations Co's ability to carry out the Design, Construction, Services and System Refresh, Project Co will enforce its rights under the Project Agreement to ensure that the Authority initiates a Change under the Project Agreement to address such interference.

#### **3.4 Title to NG-KIH System, Lands and Improvements**

Neither Operations Co nor any Operations Co Person will acquire any property interest in or title to the NG-KIH System, the Lands or any other improvements to the Lands. Operations Co acknowledges that, as between Project Co, any Project Co Person (as defined in the Project Agreement) and the Authority, title to and ownership of the NG-KIH System, the Lands and all other improvements to the Lands will at all times be vested in the Authority.

#### **3.5 Ad Valorem Taxes, Franchise Fees and Telecommunications Taxes**

In the Project Agreement, the Authority acknowledges that none of the Authority, Project Co or any Project Co Person (as defined in the Project Agreement) is subject to ad valorem taxes, franchise fees or telecommunications taxes, or payments in lieu of ad valorem taxes, franchise fees or telecommunications taxes, in respect of the Lands or the NG-KIH System. Project Co will enforce its rights under the Project Agreement to ensure that the Authority shall, at its own cost, provide or cause to be provided such information, documentation and administrative

Amended and Restated Schedule 7  
Lands  
NG-KIH Project Implementation Agreement

assistance as Operations Co may request and as the Authority may reasonably be able to provide if any ad valorem taxes, franchise fees or telecommunications taxes, or payments in lieu of ad valorem taxes, franchise fees or telecommunications taxes, are levied against Operations Co or any Operations Co Person by any Governmental Authority in connection with the Lands or the NG-KIH System.

### 3.6 Notify and Go Approach

Operations Co acknowledges that the Authority may direct Project Co to proceed with Construction or other aspects of the Project on one or more parcels of the Lands by designating such parcels "**Notify and Go Properties**". Such designation shall constitute the Authority's representation to Project Co that the Authority has determined it possesses lawful and sufficient rights of access for contractual or other reasons. Upon receiving notice of such designation by the Authority, Operations Co will, and will cause all Operations Co Persons to, implement the following approach (the "**Notify and Go Approach**") prior to accessing such Notify and Go Properties for purposes of carrying out the Construction or any other aspect of the Project in accordance with this Project Implementation Agreement:

- (a) No later than:
  - (1) five (5) days prior to commencement of Construction on Ring 1A, Ring 1B and Ring 2; or
  - (2) thirty (30) days prior to commencement of Construction on Ring 3, Ring 4 and Ring 5 or any other work requiring access to any such Notify and Go Properties,

Operations Co or the relevant Operations Co Person will send a letter to impacted landowners substantially in the form attached as Appendix 7B [Notify and Go Letter] explaining that the Project is coming to the area. The Authority will be listed as the entity to call for further information. If the landowner cannot be identified or contact information cannot be located, Operations Co or the relevant Operations Co Person will physically and conspicuously post the letter on or about the impacted property.

- (b) Subject to Section 3.6(c) of this Schedule 7, Operations Co or the relevant Operations Co Person shall proceed with work on the relevant Notify and Go Properties.
- (c) If a landowner prohibits access to the relevant Notify and Go Properties or access cannot be gained to the relevant Notify and Go Properties using commercially reasonable efforts due to a locked gate or any other restriction, Operations Co or the relevant Operations Co Person will suspend work on the relevant Notify and Go Properties until access is secured by the Authority (provided that there shall not be a Compensation Event or schedule relief until the time periods set forth in Section 3.6(e) have expired).
- (d) Within five (5) Business Days of any denial of access or failure to gain access, Operations Co or the relevant Operations Co Person shall complete and submit to the Authority (via the DMS) a notification detailing the commercially

reasonable efforts undertaken by Operations Co or the relevant Operations Co Person to attempt to gain access to the Notify and Go Properties in question (each, a “Refused Access Notification”).

- (e) Upon receipt of a Refused Access Notification, the Authority shall procure access to the Notify and Go Properties through condemnation proceeding or any other means it determines in its sole discretion. In respect of the first one hundred (100) Refused Access Notifications, the Authority shall have sixty (60) calendar days from receipt of the Refused Access Notification to procure access to the relevant Notify and Go Properties. In respect of all subsequent Refused Access Notifications, the Authority shall have thirty (30) calendar days to procure access to the relevant Notify and Go Properties. For purpose of this Section 3.6(e), “access” shall mean that Operations Co or the relevant Operations Co Person shall have the legal right to access the relevant Notify and Go Properties to the extent required by Operations Co to carry out the Project in accordance with this Project Implementation Agreement.
- (f) Subject to the Pass-Down Provisions, any failure by the Authority to meet any timeline under this Section 3.6 shall constitute a Compensation Event under subsection (a) of the definition of Compensation Event in Schedule 1 [Definitions and Interpretation] and Operations Co shall receive appropriate compensation and schedule relief.

#### **4. HAZARDOUS SUBSTANCES**

##### **4.1 Responsibility**

Notwithstanding any other provision of this Project Implementation Agreement, Operations Co will not be responsible for any Hazardous Substances on, in, under or adjacent to the Lands or any cost, expense or claim arising therefrom, other than any Operations Co Hazardous Substances.

##### **4.2 Process upon Discovery of Hazardous Substances**

Upon the discovery of any Hazardous Substances, Operations Co shall immediately inform Project Co and the Authority and shall comply, and ensure compliance by all Operations Co Persons, with applicable Law:

- (a) subject to Section 4.2(b) and the Pass-Down Provisions, at the Authority’s cost in respect of the discovery or exacerbation of:
  - (1) Hazardous Substances located in, on, below or that have migrated to the Lands; and
  - (2) Hazardous Substances located in, on, below or that have migrated to any other location at which any aspect of the Project is performed, but only to the extent that Operations Co’s Direct Losses related thereto exceed \$200,000 in the aggregate over the Term; and
- (b) at its own cost in respect of any Operations Co Hazardous Substances.

Except to the extent required to prevent or mitigate an Emergency or to comply with applicable Law, Operations Co shall not undertake any significant work in respect of any Hazardous Substances for which the Authority is responsible pursuant to Section 4.2(a) until the Authority has been given a reasonable opportunity to review the nature and extent of the matter and has instructed Operations Co to proceed with such work.

In the event that the Authority wishes Operations Co to perform any additional actions in respect of any Hazardous Substances for which the Authority is responsible pursuant to Section 4.2(a), the Authority shall issue an instruction to Project Co and Operations Co specifying such actions and Operations Co shall, acting as agent for the Authority, promptly and diligently comply with such instruction at the Authority's cost subject to the Pass-Down Provisions.

#### **4.3 Restrictions on Use**

Unless otherwise expressly required or permitted under this Project Implementation Agreement, Operations Co will not install, use or store on the Lands or adjacent property any materials, equipment or apparatus, the installation, use or storage of which is likely to cause or in fact causes the generation, accumulation or migration of any Hazardous Substance in contravention of any applicable Law. Without limiting the generality of the foregoing, Operations Co will not use the Lands to dispose of, handle or treat any Hazardous Substances, in a manner that would cause the Lands, or any adjacent property, to become a contaminated site under applicable Law.

**APPENDIX 7A  
SITE LOCATIONS**

Refer to Aconex Document Reference Number CN-000508 as at December 6, 2018.

**APPENDIX 7B  
NOTIFY AND GO LETTER**

See attached.

**SCHEDULE 8  
PAYMENTS**

**PART A**

All internal operating costs of Project Co and Operations Co shown in Part A will be escalated annually at the end of each Fiscal Year after the Base Date by the change percentage in the Materials Inflation Index, starting from the Base Date.

The Materials Inflation Index change percentage for each Fiscal Year will be calculated from the average of the monthly published values, rounded to three decimal places, for the twelve months ending March prior to the start of the relevant Fiscal Year, divided by the average of the monthly published values, rounded to three decimal places, for the twelve months ending in March of the preceding Fiscal Year, and expressed as an annual percentage change, rounded to one decimal place.

Month	Budgeted Project Company Internal Costs (Base \$)	Budgeted Operations Company Internal Costs (Base \$)
31-Jan-19	9,592.02	150,623.51
28-Feb-19	9,592.02	150,623.51
31-Mar-19	9,592.02	594,369.30
30-Apr-19	9,592.02	269,720.71
31-May-19	9,592.02	150,623.51
30-Jun-19	9,592.02	150,623.51
31-Jul-19	9,592.02	150,624.23
31-Aug-19	9,592.02	150,623.71
30-Sep-19	9,592.02	286,372.46
31-Oct-19	9,592.02	150,623.71
30-Nov-19	9,592.02	150,623.71
31-Dec-19	9,592.02	150,623.71
31-Jan-20	9,592.02	150,623.71
29-Feb-20	9,592.02	150,623.71
31-Mar-20	9,592.02	150,623.71
30-Apr-20	9,592.02	150,623.71
31-May-20	9,592.02	150,624.06
30-Jun-20	9,592.02	150,624.06
31-Jul-20	9,592.02	150,368.14
31-Aug-20	9,592.02	150,533.02
30-Sep-20	9,592.02	224,512.59
31-Oct-20	9,592.02	159,763.16
30-Nov-20	9,592.02	157,727.51
31-Dec-20	9,592.02	157,727.51
31-Jan-21	9,592.02	157,727.51
28-Feb-21	9,592.02	157,727.51
31-Mar-21	9,592.02	157,727.51
30-Apr-21	9,592.02	157,701.88
31-May-21	9,592.02	135,726.55
30-Jun-21	9,592.02	135,726.55

<b>Month</b>	<b>Budgeted Project Company Internal Costs (Base \$)</b>	<b>Budgeted Operations Company Internal Costs (Base \$)</b>
31-Jul-21	9,592.02	134,918.35
31-Aug-21	9,592.02	135,726.55
30-Sep-21	9,592.02	135,726.55
31-Oct-21	9,592.02	135,726.55
30-Nov-21	9,592.02	135,726.55
31-Dec-21	9,592.02	135,726.55
31-Jan-22	9,592.02	135,726.55
28-Feb-22	9,592.02	135,726.55
31-Mar-22	9,592.02	135,726.55
30-Apr-22	9,592.02	135,726.55
31-May-22	9,592.02	135,726.55
30-Jun-22	9,592.02	135,726.55
31-Jul-22	9,592.02	134,918.35
31-Aug-22	9,592.02	135,726.55
30-Sep-22	9,592.02	135,726.55
31-Oct-22	9,592.02	135,726.55
30-Nov-22	9,592.02	135,726.55
31-Dec-22	9,592.02	135,726.55
31-Jan-23	9,592.02	135,726.55
28-Feb-23	9,592.02	135,726.55
31-Mar-23	9,592.02	135,726.55
30-Apr-23	9,592.02	135,726.55
31-May-23	9,592.02	135,726.55
30-Jun-23	9,592.02	135,726.55
31-Jul-23	9,592.02	134,918.35
31-Aug-23	9,592.02	135,726.55
30-Sep-23	9,592.02	135,726.55
31-Oct-23	9,592.02	135,726.55
30-Nov-23	9,592.02	135,726.55
31-Dec-23	9,592.02	135,726.55
31-Jan-24	9,592.02	135,726.55
29-Feb-24	9,592.02	135,726.55
31-Mar-24	9,592.02	135,726.55
30-Apr-24	9,592.02	135,726.55
31-May-24	9,592.02	135,726.55
30-Jun-24	9,592.02	135,726.55
31-Jul-24	9,592.02	134,918.35
31-Aug-24	9,592.02	135,726.55
30-Sep-24	9,592.02	135,726.55
31-Oct-24	9,592.02	135,726.55
30-Nov-24	9,592.02	135,726.55
31-Dec-24	9,592.02	135,726.55
31-Jan-25	9,592.02	135,726.55
28-Feb-25	9,592.02	135,726.55
31-Mar-25	9,592.02	135,726.55

Schedule 8 - Payments  
NG-KIH Project Implementation Agreement

<b>Month</b>	<b>Budgeted Project Company Internal Costs (Base \$)</b>	<b>Budgeted Operations Company Internal Costs (Base \$)</b>
30-Apr-25	9,592.02	135,726.55
31-May-25	9,592.02	135,726.55
30-Jun-25	9,592.02	135,726.55
31-Jul-25	9,592.02	134,918.35
31-Aug-25	9,592.02	135,726.55
30-Sep-25	9,592.02	129,207.55
31-Oct-25	9,592.02	129,207.55
30-Nov-25	9,592.02	129,207.55
31-Dec-25	9,592.02	129,207.55
31-Jan-26	9,592.02	129,207.55
28-Feb-26	9,592.02	129,207.55
31-Mar-26	9,592.02	129,207.55
30-Apr-26	9,592.02	129,207.55
31-May-26	9,592.02	129,207.55
30-Jun-26	9,592.02	129,207.55
31-Jul-26	9,592.02	128,399.35
31-Aug-26	9,592.02	129,207.55
30-Sep-26	9,592.02	129,207.55
31-Oct-26	9,592.02	129,207.55
30-Nov-26	9,592.02	129,207.55
31-Dec-26	9,592.02	129,207.55
31-Jan-27	9,592.02	129,207.55
28-Feb-27	9,592.02	129,207.55
31-Mar-27	9,592.02	129,207.55
30-Apr-27	9,592.02	129,207.55
31-May-27	9,592.02	129,207.55
30-Jun-27	9,592.02	129,207.55
31-Jul-27	9,592.02	128,399.35
31-Aug-27	9,592.02	129,207.55
30-Sep-27	9,592.02	129,207.55
31-Oct-27	9,592.02	129,207.55
30-Nov-27	9,592.02	129,207.55
31-Dec-27	9,592.02	129,207.55
31-Jan-28	9,592.02	129,207.55
29-Feb-28	9,592.02	129,207.55
31-Mar-28	9,592.02	129,207.55
30-Apr-28	9,592.02	129,207.55
31-May-28	9,592.02	129,207.55
30-Jun-28	9,592.02	129,207.55
31-Jul-28	9,592.02	128,399.35
31-Aug-28	9,592.02	129,207.55
30-Sep-28	9,592.02	129,207.55
31-Oct-28	9,592.02	129,207.55
30-Nov-28	9,592.02	129,207.55
31-Dec-28	9,592.02	129,207.55

Schedule 8 - Payments  
NG-KIH Project Implementation Agreement

<b>Month</b>	<b>Budgeted Project Company Internal Costs (Base \$)</b>	<b>Budgeted Operations Company Internal Costs (Base \$)</b>
31-Jan-29	9,592.02	129,207.55
28-Feb-29	9,592.02	129,207.55
31-Mar-29	9,592.02	129,207.55
30-Apr-29	9,592.02	129,207.55
31-May-29	9,592.02	129,207.55
30-Jun-29	9,592.02	129,207.55
31-Jul-29	9,592.02	128,399.35
31-Aug-29	9,592.02	129,207.55
30-Sep-29	9,592.02	129,207.55
31-Oct-29	9,592.02	129,207.55
30-Nov-29	9,592.02	129,207.55
31-Dec-29	9,592.02	129,207.55
31-Jan-30	9,592.02	129,207.55
28-Feb-30	9,592.02	129,207.55
31-Mar-30	9,592.02	129,207.55
30-Apr-30	9,592.02	129,207.55
31-May-30	9,592.02	129,207.55
30-Jun-30	9,592.02	129,207.55
31-Jul-30	9,592.02	128,399.35
31-Aug-30	9,592.02	129,207.55
30-Sep-30	9,592.02	122,688.55
31-Oct-30	9,592.02	122,688.55
30-Nov-30	9,592.02	122,688.55
31-Dec-30	9,592.02	122,688.55
31-Jan-31	9,592.02	122,688.55
28-Feb-31	9,592.02	122,688.55
31-Mar-31	9,592.02	122,688.55
30-Apr-31	9,592.02	122,688.55
31-May-31	9,592.02	122,688.55
30-Jun-31	9,592.02	122,688.55
31-Jul-31	9,592.02	121,880.36
31-Aug-31	9,592.02	122,688.55
30-Sep-31	9,592.02	122,688.55
31-Oct-31	9,592.02	122,688.55
30-Nov-31	9,592.02	122,688.55
31-Dec-31	9,592.02	122,688.55
31-Jan-32	9,592.02	122,688.55
29-Feb-32	9,592.02	122,688.55
31-Mar-32	9,592.02	122,688.55
30-Apr-32	9,592.02	122,688.55
31-May-32	9,592.02	122,688.55
30-Jun-32	9,592.02	122,688.55
31-Jul-32	9,592.02	121,880.36
31-Aug-32	9,592.02	122,688.55
30-Sep-32	9,592.02	122,688.55

Schedule 8 - Payments  
NG-KIH Project Implementation Agreement

Month	Budgeted Project Company Internal Costs (Base \$)	Budgeted Operations Company Internal Costs (Base \$)
31-Oct-32	9,592.02	122,688.55
30-Nov-32	9,592.02	122,688.55
31-Dec-32	9,592.02	122,688.55
31-Jan-33	9,592.02	122,688.55
28-Feb-33	9,592.02	122,688.55
31-Mar-33	9,592.02	122,688.55
30-Apr-33	9,592.02	122,688.55
31-May-33	9,592.02	122,688.55
30-Jun-33	9,592.02	122,688.55
31-Jul-33	9,592.02	121,880.36
31-Aug-33	9,592.02	122,688.55
30-Sep-33	9,592.02	122,688.55
31-Oct-33	9,592.02	122,688.55
30-Nov-33	9,592.02	122,688.55
31-Dec-33	9,592.02	122,688.55
31-Jan-34	9,592.02	122,688.55
28-Feb-34	9,592.02	122,688.55
31-Mar-34	9,592.02	122,688.55
30-Apr-34	9,592.02	122,688.55
31-May-34	9,592.02	122,688.55
30-Jun-34	9,592.02	122,688.55
31-Jul-34	9,592.02	121,880.36
31-Aug-34	9,592.02	122,688.55
30-Sep-34	9,592.02	122,688.55
31-Oct-34	9,592.02	122,688.55
30-Nov-34	9,592.02	122,688.55
31-Dec-34	9,592.02	122,688.55
31-Jan-35	9,592.02	122,688.55
28-Feb-35	9,592.02	122,688.55
31-Mar-35	9,592.02	122,688.55
30-Apr-35	9,592.02	122,688.55
31-May-35	9,592.02	122,688.55
30-Jun-35	9,592.02	122,688.55
31-Jul-35	9,592.02	121,880.36
31-Aug-35	9,592.02	122,688.55
30-Sep-35	9,592.02	122,688.55
31-Oct-35	9,592.02	122,688.55
30-Nov-35	9,592.02	122,688.55
31-Dec-35	9,592.02	122,688.55
31-Jan-36	9,592.02	122,688.55
29-Feb-36	9,592.02	122,688.55
31-Mar-36	9,592.02	122,688.55
30-Apr-36	9,592.02	122,688.55
31-May-36	9,592.02	122,688.55
30-Jun-36	9,592.02	122,688.55

Schedule 8 - Payments  
 NG-KIH Project Implementation Agreement

<b>Month</b>	<b>Budgeted Project Company Internal Costs (Base \$)</b>	<b>Budgeted Operations Company Internal Costs (Base \$)</b>
31-Jul-36	9,592.02	121,880.36
31-Aug-36	9,592.02	122,688.55
30-Sep-36	9,592.02	122,688.55
31-Oct-36	9,592.02	122,688.55
30-Nov-36	9,592.02	122,688.55
31-Dec-36	9,592.02	122,688.55
31-Jan-37	9,592.02	122,688.55
28-Feb-37	9,592.02	122,688.55
31-Mar-37	9,592.02	122,688.55
30-Apr-37	9,592.02	122,688.55
31-May-37	9,592.02	122,688.55
30-Jun-37	9,592.02	122,688.55
31-Jul-37	9,592.02	121,880.36
31-Aug-37	9,592.02	122,688.55
30-Sep-37	9,592.02	122,688.55
31-Oct-37	9,592.02	122,688.55
30-Nov-37	9,592.02	122,688.55
31-Dec-37	9,592.02	122,688.55
31-Jan-38	9,592.02	122,688.55
28-Feb-38	9,592.02	122,688.55
31-Mar-38	9,592.02	122,688.55
30-Apr-38	9,592.02	122,688.55
31-May-38	9,592.02	122,688.55
30-Jun-38	9,592.02	122,688.55
31-Jul-38	9,592.02	121,880.36
31-Aug-38	9,592.02	122,688.55
30-Sep-38	9,592.02	122,688.55
31-Oct-38	9,592.02	122,688.55
30-Nov-38	9,592.02	122,688.55
31-Dec-38	9,592.02	122,688.55
31-Jan-39	9,592.02	122,688.55
28-Feb-39	9,592.02	122,688.55
31-Mar-39	9,592.02	122,688.55
30-Apr-39	9,592.02	122,688.55
31-May-39	9,592.02	122,688.55
30-Jun-39	9,592.02	122,688.55
31-Jul-39	9,592.02	121,880.36
31-Aug-39	9,592.02	122,688.55
30-Sep-39	9,592.02	122,688.55
31-Oct-39	9,592.02	122,688.55
30-Nov-39	9,592.02	122,688.55
31-Dec-39	9,592.02	122,688.55
31-Jan-40	9,592.02	122,688.55
29-Feb-40	9,592.02	122,688.55
31-Mar-40	9,592.02	122,688.55

Schedule 8 - Payments  
NG-KIH Project Implementation Agreement

Month	Budgeted Project Company Internal Costs (Base \$)	Budgeted Operations Company Internal Costs (Base \$)
30-Apr-40	9,592.02	122,688.55
31-May-40	9,592.02	122,688.55
30-Jun-40	9,592.02	122,688.55
31-Jul-40	9,592.02	121,880.36
31-Aug-40	9,592.02	122,688.55
30-Sep-40	9,592.02	122,688.55
31-Oct-40	9,592.02	122,688.55
30-Nov-40	9,592.02	122,688.55
31-Dec-40	9,592.02	122,688.55
31-Jan-41	9,592.02	122,688.55
28-Feb-41	9,592.02	122,688.55
31-Mar-41	9,592.02	122,688.55
30-Apr-41	9,592.02	122,688.55
31-May-41	9,592.02	122,688.55
30-Jun-41	9,592.02	122,688.55
31-Jul-41	9,592.02	121,880.36
31-Aug-41	9,592.02	122,688.55
30-Sep-41	9,592.02	122,688.55
31-Oct-41	9,592.02	122,688.55
30-Nov-41	9,592.02	122,688.55
31-Dec-41	9,592.02	122,688.55
31-Jan-42	9,592.02	122,688.55
28-Feb-42	9,592.02	122,688.55
31-Mar-42	9,592.02	122,688.55
30-Apr-42	9,592.02	122,688.55
31-May-42	9,592.02	122,688.55
30-Jun-42	9,592.02	122,688.55
31-Jul-42	9,592.02	121,880.36
31-Aug-42	9,592.02	122,688.55
30-Sep-42	9,592.02	122,688.55
31-Oct-42	9,592.02	122,688.55
30-Nov-42	9,592.02	122,688.55
31-Dec-42	9,592.02	122,688.55
31-Jan-43	9,592.02	122,688.55
28-Feb-43	9,592.02	122,688.55
31-Mar-43	9,592.02	122,688.55
30-Apr-43	9,592.02	122,688.55
31-May-43	9,592.02	122,688.55
30-Jun-43	9,592.02	122,688.55
31-Jul-43	9,592.02	121,880.36
31-Aug-43	9,592.02	122,688.55
30-Sep-43	9,592.02	122,688.55
31-Oct-43	9,592.02	122,688.55
30-Nov-43	9,592.02	122,688.55
31-Dec-43	9,592.02	122,688.55

<b>Month</b>	<b>Budgeted Project Company Internal Costs (Base \$)</b>	<b>Budgeted Operations Company Internal Costs (Base \$)</b>
31-Jan-44	9,592.02	122,688.55
29-Feb-44	9,592.02	122,688.55
31-Mar-44	9,592.02	122,688.55
30-Apr-44	9,592.02	122,688.55
31-May-44	9,592.02	122,688.55
30-Jun-44	9,592.02	122,688.55
31-Jul-44	9,592.02	121,880.36
31-Aug-44	9,592.02	122,688.55
30-Sep-44	9,592.02	122,688.55
31-Oct-44	9,592.02	122,688.55
30-Nov-44	9,592.02	122,688.55
31-Dec-44	9,592.02	122,688.55
31-Jan-45	9,592.02	122,688.55
28-Feb-45	9,592.02	122,688.55
31-Mar-45	9,592.02	122,688.55
30-Apr-45	9,592.02	122,688.55
31-May-45	9,592.02	122,688.55
30-Jun-45	9,592.02	122,688.55
31-Jul-45	9,592.02	121,880.36
31-Aug-45	9,592.02	106,120.52
30-Sep-45	9,592.02	106,120.52
31-Oct-45	9,592.02	106,120.52
30-Nov-45	9,592.02	106,120.52
31-Dec-45	-	-

**PART B**

<b>Month</b>	<b>Monthly Operations Company Availability Payment</b>
31-Jan-19	169,404.94
28-Feb-19	169,404.94
31-Mar-19	169,404.94
30-Apr-19	169,404.94
31-May-19	169,404.94
30-Jun-19	169,404.94
31-Jul-19	176,522.04
31-Aug-19	176,522.04
30-Sep-19	176,522.04
31-Oct-19	176,522.04
30-Nov-19	176,522.04
31-Dec-19	176,522.04
31-Jan-20	176,522.04
29-Feb-20	176,522.04
31-Mar-20	176,522.04
30-Apr-20	176,522.04
31-May-20	176,522.04
30-Jun-20	176,522.04
31-Jul-20	183,940.99
31-Aug-20	183,940.99
30-Sep-20	183,940.99
31-Oct-20	183,940.99
30-Nov-20	183,940.99
31-Dec-20	183,940.99
31-Jan-21	183,940.99
28-Feb-21	183,940.99
31-Mar-21	183,940.99
30-Apr-21	183,940.99
31-May-21	183,940.99
30-Jun-21	183,940.99
31-Jul-21	191,674.67
31-Aug-21	191,674.67
30-Sep-21	191,674.67
31-Oct-21	191,674.67
30-Nov-21	191,674.67
31-Dec-21	191,674.67
31-Jan-22	191,674.67
28-Feb-22	191,674.67
31-Mar-22	191,674.67
30-Apr-22	191,674.67
31-May-22	191,674.67
30-Jun-22	191,674.67
31-Jul-22	199,736.51
31-Aug-22	199,736.51

<b>Month</b>	<b>Monthly Operations Company Availability Payment</b>
30-Sep-22	199,736.51
31-Oct-22	199,736.51
30-Nov-22	199,736.51
31-Dec-22	199,736.51
31-Jan-23	199,736.51
28-Feb-23	199,736.51
31-Mar-23	199,736.51
30-Apr-23	199,736.51
31-May-23	199,736.51
30-Jun-23	199,736.51
31-Jul-23	208,140.50
31-Aug-23	208,140.50
30-Sep-23	208,140.50
31-Oct-23	208,140.50
30-Nov-23	208,140.50
31-Dec-23	208,140.50
31-Jan-24	208,140.50
29-Feb-24	208,140.50
31-Mar-24	208,140.50
30-Apr-24	208,140.50
31-May-24	208,140.50
30-Jun-24	208,140.50
31-Jul-24	216,901.24
31-Aug-24	216,901.24
30-Sep-24	216,901.24
31-Oct-24	216,901.24
30-Nov-24	216,901.24
31-Dec-24	216,901.24
31-Jan-25	216,901.24
28-Feb-25	216,901.24
31-Mar-25	216,901.24
30-Apr-25	216,901.24
31-May-25	216,901.24
30-Jun-25	216,901.24
31-Jul-25	226,033.96
31-Aug-25	226,033.96
30-Sep-25	226,033.96
31-Oct-25	226,033.96
30-Nov-25	226,033.96
31-Dec-25	226,033.96
31-Jan-26	226,033.96
28-Feb-26	226,033.96
31-Mar-26	226,033.96
30-Apr-26	226,033.96
31-May-26	226,033.96
30-Jun-26	226,033.96

Schedule 8 - Payments  
 NG-KIH Project Implementation Agreement

<b>Month</b>	<b>Monthly Operations Company Availability Payment</b>
31-Jul-26	235,554.54
31-Aug-26	235,554.54
30-Sep-26	235,554.54
31-Oct-26	235,554.54
30-Nov-26	235,554.54
31-Dec-26	235,554.54
31-Jan-27	235,554.54
28-Feb-27	235,554.54
31-Mar-27	235,554.54
30-Apr-27	235,554.54
31-May-27	235,554.54
30-Jun-27	235,554.54
31-Jul-27	245,479.53
31-Aug-27	245,479.53
30-Sep-27	245,479.53
31-Oct-27	245,479.53
30-Nov-27	245,479.53
31-Dec-27	245,479.53
31-Jan-28	245,479.53
29-Feb-28	245,479.53
31-Mar-28	245,479.53
30-Apr-28	245,479.53
31-May-28	245,479.53
30-Jun-28	245,479.53
31-Jul-28	255,826.21
31-Aug-28	255,826.21
30-Sep-28	255,826.21
31-Oct-28	255,826.21
30-Nov-28	255,826.21
31-Dec-28	255,826.21
31-Jan-29	255,826.21
28-Feb-29	255,826.21
31-Mar-29	255,826.21
30-Apr-29	255,826.21
31-May-29	255,826.21
30-Jun-29	255,826.21
31-Jul-29	266,612.56
31-Aug-29	266,612.56
30-Sep-29	266,612.56
31-Oct-29	266,612.56
30-Nov-29	266,612.56
31-Dec-29	266,612.56
31-Jan-30	266,612.56
28-Feb-30	266,612.56
31-Mar-30	266,612.56
30-Apr-30	266,612.56

Month	Monthly Operations Company Availability Payment
31-May-30	266,612.56
30-Jun-30	266,612.56
31-Jul-30	277,857.37
31-Aug-30	277,857.37
30-Sep-30	277,857.37
31-Oct-30	277,857.37
30-Nov-30	277,857.37
31-Dec-30	277,857.37
31-Jan-31	277,857.37
28-Feb-31	277,857.37
31-Mar-31	277,857.37
30-Apr-31	277,857.37
31-May-31	277,857.37
30-Jun-31	277,857.37
31-Jul-31	289,580.22
31-Aug-31	289,580.22
30-Sep-31	289,580.22
31-Oct-31	289,580.22
30-Nov-31	289,580.22
31-Dec-31	289,580.22
31-Jan-32	289,580.22
29-Feb-32	289,580.22
31-Mar-32	289,580.22
30-Apr-32	289,580.22
31-May-32	289,580.22
30-Jun-32	289,580.22
31-Jul-32	301,801.53
31-Aug-32	301,801.53
30-Sep-32	301,801.53
31-Oct-32	301,801.53
30-Nov-32	301,801.53
31-Dec-32	301,801.53
31-Jan-33	301,801.53
28-Feb-33	301,801.53
31-Mar-33	301,801.53
30-Apr-33	301,801.53
31-May-33	301,801.53
30-Jun-33	301,801.53
31-Jul-33	314,542.59
31-Aug-33	314,542.59
30-Sep-33	314,542.59
31-Oct-33	314,542.59
30-Nov-33	314,542.59
31-Dec-33	314,542.59
31-Jan-34	314,542.59
28-Feb-34	314,542.59

<b>Month</b>	<b>Monthly Operations Company Availability Payment</b>
31-Mar-34	314,542.59
30-Apr-34	314,542.59
31-May-34	314,542.59
30-Jun-34	314,542.59
31-Jul-34	327,825.60
31-Aug-34	327,825.60
30-Sep-34	327,825.60
31-Oct-34	327,825.60
30-Nov-34	327,825.60
31-Dec-34	327,825.60
31-Jan-35	327,825.60
28-Feb-35	327,825.60
31-Mar-35	327,825.60
30-Apr-35	327,825.60
31-May-35	327,825.60
30-Jun-35	327,825.60
31-Jul-35	341,673.73
31-Aug-35	341,673.73
30-Sep-35	341,673.73
31-Oct-35	341,673.73
30-Nov-35	341,673.73
31-Dec-35	341,673.73
31-Jan-36	341,673.73
29-Feb-36	341,673.73
31-Mar-36	341,673.73
30-Apr-36	341,673.73
31-May-36	341,673.73
30-Jun-36	341,673.73
31-Jul-36	356,111.12
31-Aug-36	356,111.12
30-Sep-36	356,111.12
31-Oct-36	356,111.12
30-Nov-36	356,111.12
31-Dec-36	356,111.12
31-Jan-37	356,111.12
28-Feb-37	356,111.12
31-Mar-37	356,111.12
30-Apr-37	356,111.12
31-May-37	356,111.12
30-Jun-37	356,111.12
31-Jul-37	371,162.94
31-Aug-37	371,162.94
30-Sep-37	371,162.94
31-Oct-37	371,162.94
30-Nov-37	371,162.94
31-Dec-37	371,162.94

Month	Monthly Operations Company Availability Payment
31-Jan-38	371,162.94
28-Feb-38	371,162.94
31-Mar-38	371,162.94
30-Apr-38	371,162.94
31-May-38	371,162.94
30-Jun-38	371,162.94
31-Jul-38	386,855.48
31-Aug-38	386,855.48
30-Sep-38	386,855.48
31-Oct-38	386,855.48
30-Nov-38	386,855.48
31-Dec-38	386,855.48
31-Jan-39	386,855.48
28-Feb-39	386,855.48
31-Mar-39	386,855.48
30-Apr-39	386,855.48
31-May-39	386,855.48
30-Jun-39	386,855.48
31-Jul-39	403,216.10
31-Aug-39	403,216.10
30-Sep-39	403,216.10
31-Oct-39	403,216.10
30-Nov-39	403,216.10
31-Dec-39	403,216.10
31-Jan-40	403,216.10
29-Feb-40	403,216.10
31-Mar-40	403,216.10
30-Apr-40	403,216.10
31-May-40	403,216.10
30-Jun-40	403,216.10
31-Jul-40	420,273.38
31-Aug-40	420,273.38
30-Sep-40	420,273.38
31-Oct-40	420,273.38
30-Nov-40	420,273.38
31-Dec-40	420,273.38
31-Jan-41	420,273.38
28-Feb-41	420,273.38
31-Mar-41	420,273.38
30-Apr-41	420,273.38
31-May-41	420,273.38
30-Jun-41	420,273.38
31-Jul-41	438,057.10
31-Aug-41	438,057.10
30-Sep-41	438,057.10
31-Oct-41	438,057.10

Month	Monthly Operations Company Availability Payment
30-Nov-41	438,057.10
31-Dec-41	438,057.10
31-Jan-42	438,057.10
28-Feb-42	438,057.10
31-Mar-42	438,057.10
30-Apr-42	438,057.10
31-May-42	438,057.10
30-Jun-42	438,057.10
31-Jul-42	456,598.31
31-Aug-42	456,598.31
30-Sep-42	456,598.31
31-Oct-42	456,598.31
30-Nov-42	456,598.31
31-Dec-42	456,598.31
31-Jan-43	456,598.31
28-Feb-43	456,598.31
31-Mar-43	456,598.31
30-Apr-43	456,598.31
31-May-43	456,598.31
30-Jun-43	456,598.31
31-Jul-43	475,929.42
31-Aug-43	475,929.42
30-Sep-43	475,929.42
31-Oct-43	475,929.42
30-Nov-43	475,929.42
31-Dec-43	475,929.42
31-Jan-44	475,929.42
29-Feb-44	475,929.42
31-Mar-44	475,929.42
30-Apr-44	475,929.42
31-May-44	475,929.42
30-Jun-44	475,929.42
31-Jul-44	2,820,928.83
31-Aug-44	2,820,928.83
30-Sep-44	2,820,928.83
31-Oct-44	699,376.80
30-Nov-44	699,376.80
31-Dec-44	699,376.80
31-Jan-45	703,136.79
28-Feb-45	703,136.79
31-Mar-45	703,136.79
30-Apr-45	1,763,501.02
31-May-45	2,250,803.88
30-Jun-45	2,250,803.87
31-Jul-45	2,226,602.98
31-Aug-45	3,015,232.77

<b>Month</b>	<b>Monthly Operations Company Availability Payment</b>
30-Sep-45	3,082,678.97
31-Oct-45	1,886,620.38
30-Nov-45	1,484,195.93
31-Dec-45	-

**SCHEDULE 9  
COMPENSATION ON TERMINATION**

**1. DEFINITIONS**

In this Schedule 9, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

**“Employee Information”** means written details related to employees employed by Operations Co, any Project Contractor or Sub-Contractor whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;
- (b) the employment costs for such employees;
- (c) the amount of severance payable to such employees used in the calculation of any Employee Payments and all relevant information used in determining such amounts; and
- (d) any other information that the Authority or Project Co may reasonably require in relation to the calculation of any Employee Payments in respect of Operations Co, any Project Contractor or Sub-Contractor;

**“Employee Payments”** means any liability that has been reasonably incurred by Operations Co arising as a result of termination of this Project Implementation Agreement under collective agreements, employment agreements or under any other agreements with employees of Operations Co, including severance (whether accrued or not), vacation pay and sick pay accrued but excluding any Distribution;

**“Project Contractor Breakage Costs”** means the amount payable by Project Co to Operations Co under the terms of this Project Implementation Agreement or by Operations Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of this Project Implementation Agreement or such Project Contract as a consequence of the termination of the Project Agreement, including all cancellation fees, restocking costs and demobilization expenses, but reduced (without duplication) to the extent that:

- (a) Operations Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by Operations Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm’s length terms;
- (c) such amount is a Distribution; and
- (d) such amount includes any loss of overhead or profit of Operations Co, the Service Provider or its Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in this Project Implementation Agreement, Services Contract or applicable Sub-Contract).

## **2. TERMINATION AT AUTHORITY'S OPTION, FOR AUTHORITY EVENT OF DEFAULT OR FOR PROJECT CO EVENT OF DEFAULT**

### **2.1 Calculation of Termination Payment**

If (i) the Authority terminates the Project Agreement pursuant to Section 2.1(a) of the Project Agreement or pursuant to Section 12.4 of the Project Agreement as a result of a Project Co Event of Default (as defined in the Project Agreement) not caused by an Operations Co Event of Default, (ii) Project Co terminates the Project Agreement pursuant to Section 13 of the Project Agreement or (iii) Operations Co terminates this Project Implementation Agreement pursuant to Section 13, Project Co will, subject to the Pass-Down Provisions, if applicable, and subject further to the repayment of the Senior Debt, pay to Operations Co a Termination Payment which will be calculated as the aggregate amount, without duplication, of:

- (a) the Employee Payments and the Project Contractor Breakage Costs;
- (b) any accrued but unpaid amounts owing and payable by Project Co to Operations Co under this Project Implementation Agreement;
- (c) any Insurance Receivables, if and to the extent Operations Co has assigned them to Project Co; and
- (d) the aggregate amount for which the then issued and outstanding shares in Operations Co could have been sold for Fair Market Value on the date immediately before the Termination Date based on the assumption that there has been no default by the Authority or Project Co, that the sale is on a going concern basis and that no restrictions exist on the transfer of equity capital,

LESS, to the extent it is a positive amount, the aggregate amount, without duplication, of:

- (e) the aggregate of all credit balances in any bank accounts held by or on behalf of Operations Co on the Termination Date that are secured in favor of the Senior Secured Creditors;
- (f) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Operations Co will assign any such claims under the Project Contracts or claims against other third parties to Project Co (or as Project Co may direct) and give Project Co reasonable assistance in prosecuting such claims;
- (g) the market value of any other assets and rights, including any undrawn performance security, of Operations Co (other than those transferred to the Authority or Project Co pursuant to this Project Implementation Agreement) less liabilities of Operations Co properly incurred in carrying out its obligations under this Project Implementation Agreement as at the Termination Date to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Operations Co arising out of:

- (1) agreements or arrangements entered into by Operations Co to the extent that such agreements or arrangements were not entered into in connection with Operations Co's obligations in relation to the Project; or
- (2) agreements or arrangements entered into by Operations Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and
- (h) any other amounts that Project Co is entitled to set off or deduct pursuant to Section 9.11 of this Project Implementation Agreement,

provided that the Termination Payment will only be payable by Project Co to Operations Co if, and to the extent that, Project Co is paid the corresponding amounts by the Authority pursuant to Section 2 of Schedule 9 [Compensation on Termination] to the Project Agreement.

To the extent that the assets and rights referred to in Section 2.1(g) are not realized and applied pursuant thereto, Operations Co will, on payment of the amount due under this Section 2.1, assign such assets and rights to Project Co or as Project Co may direct.

For clarity, to the extent that the Authority terminates the Project Agreement pursuant to Section 12.4 of the Project Agreement as a result of a Project Co Event of Default (as defined in the Project Agreement) not caused by an Operations Co Event of Default or Operations Co terminates this Project Implementation Agreement pursuant to Section 13 as a result of a Project Co Event of Default not caused by an Authority Event of Default under the Project Agreement, neither the Pass-Down Provisions nor the proviso following Section 2.1(h) will apply to the payment of the Termination Payment by Project Co to Operations Co as calculated in this Section 2.1.

The Termination Payment due to Operations Co under this Section 2.1 will, if applicable, include the balance of the Termination Payment (as defined in the Project Agreement) received by Project Co from the Authority under the Project Agreement after repayment in full of the Senior Debt and the Junior Debt.

## **2.2 Notice to Project Co**

As soon as practicable after termination of the Project Agreement by the Authority pursuant to Section 2.1(a) or Section 12.4 of the Project Agreement or by Project Co pursuant to Section 13 of the Project Agreement or termination of this Project Implementation Agreement by Operations Co pursuant to Section 13, Operations Co will, acting reasonably, notify Project Co of the Termination Payment claimed by Operations Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof. Operations Co will provide to the Authority and Project Co all such documentation and information as may be reasonably required by the Authority or Project Co to substantiate the amount of the Termination Payment, including Employee Information.

## **3. TERMINATION FOR OPERATIONS CO EVENT OF DEFAULT**

### **3.1 Calculation of Termination Payment**

If Project Co terminates this Project Implementation Agreement pursuant to Section 12.4:

- (a) if the Termination Payment (as defined in the Project Agreement) received by Project Co from the Authority pursuant to Section 3 of Schedule 9 [Compensation on Termination] to the Project Agreement exceeds the amount required to repay the Senior Debt and the Junior Debt, Project Co will pay to Operations Co a Termination Payment which will be calculated as the aggregate amount, without duplication, of:
- (1) the Employee Payments and the Project Contractor Breakage Costs;
  - (2) any accrued but unpaid amounts owing and payable by Project Co to Operations Co under this Project Implementation Agreement; and
  - (3) the amount, if any, by which the amount of capital contributed to Operations Co by its equity investors exceeds the amount of all Distributions made by Operations Co to its equity investors; and
- (b) if the Termination Payment (as defined in the Project Agreement) received by Project Co from the Authority pursuant to Section 3 of Schedule 9 [Compensation on Termination] to the Project Agreement is less than the amount required to repay the Senior Debt and the Junior Debt, Operations Co will pay to Project Co a Termination Payment equal to the shortfall, up to the amount of the DB Default Termination Payment (as defined in the Design-Build Agreement) or the SP Default Termination Payment (as defined in the Services Contract), as applicable.

### **3.2 Notice to Project Co**

As soon as practicable after termination of this Project Implementation Agreement by Project Co pursuant to Section 12.4, Project Co will notify Operations Co of the amount of the Termination Payment to be received by Project Co from the Authority pursuant to Section 3 of Schedule 9 [Compensation on Termination] to the Project Agreement and, if applicable, Operations Co will notify Project Co of the amount of the DB Default Termination Payment (as defined in the Design-Build Agreement) or the SP Default Termination Payment (as defined in the Services Contract), as applicable. Project Co will provide to Operations Co all such documentation and information as may be reasonably required by Operations Co to substantiate the Termination Payment to be received by Project Co from the Authority pursuant to Section 3 of Schedule 9 [Compensation on Termination] to the Project Agreement. If applicable, Operations Co will provide to the Authority and Project Co all such documentation and information as may be reasonably required by the Authority or Project Co to substantiate the amount of the DB Default Termination Payment (as defined in the Design-Build Agreement) or the SP Default Termination Payment (as defined in the Services Contract), as applicable.

## **4. NO-FAULT TERMINATION**

### **4.1 Calculation of Termination Payment**

If either the Authority or Project Co terminates the Project Agreement pursuant to Section 6.3, Section 6.4, Section 6.10, Section 8.4 or Section 8.6 of the Project Agreement, Project Co will, subject to the Pass-Down Provisions and subject further to the repayment of the Senior Debt, pay to Operations Co a Termination Payment equal to the aggregate of:

- (a) the Employee Payments and the Project Contractor Breakage Costs;
- (b) any accrued but unpaid amounts owing and payable by Project Co to Operations Co under this Project Implementation Agreement; and
- (c) the amount, if any, by which the amount of capital contributed to Operations Co by its equity investors exceeds the amount of all Distributions made by Operations Co to its equity investors,

LESS:

- (d) the amount of any Distributions other than those referred to in (c) above; and
- (e) any other amounts that Project Co is entitled to set off or deduct pursuant to Section 9.11 of this Project Implementation Agreement,

provided that the Termination Payment will only be payable by Project Co to Operations Co if, and to the extent that, Project Co is paid the corresponding amounts by the Authority pursuant to Section 4 of Schedule 9 [Compensation on Termination] to the Project Agreement.

The Termination Payment due to Operations Co under this Section 4.1 will, if applicable, include the balance of the Termination Payment (as defined in the Project Agreement) received by Project Co from the Authority under the Project Agreement after repayment in full of the Senior Debt and the Junior Debt.

#### **4.2 Notice to Project Co**

As soon as practicable after termination of the Project Agreement by either the Authority or Project Co pursuant to Section 6.3, Section 6.4, Section 6.10, Section 8.4 or Section 8.6, Operations Co will, acting reasonably, notify Project Co of the Termination Payment claimed by Operations Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof. Operations Co will provide to the Authority and Project Co all such documentation and information as may be reasonably required by the Authority or Project Co to substantiate the amount of the Termination Payment, including Employee Information.

### **5. ADJUSTMENTS AND DISPUTES**

#### **5.1 Time Related Adjustments**

The parties acknowledge and agree that the calculation of any Termination Payment pursuant to Section 2, 3 or 4 of this Schedule 9 is as of an estimated Termination Payment Date and that such estimated date may not be the actual Termination Payment Date for reasons which may include the existence of a Dispute. The parties will act reasonably in adjusting the amount of such calculated Termination Payment to reflect the actual Termination Payment Date.

#### **5.2 Not Used**

#### **5.3 Disputes**

If:

- (a) Project Co does not agree with Operations Co's determination of the Termination Payment under Section 2 or 4 of this Schedule 9, Project Co may, within 30 days of the notice referred to in Section 2.2 or 4.2 of this Schedule 9, as the case may be, refer the matter to the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet; or
- (b) Operations Co does not agree with Project Co's determination of the Termination Payment under Section 3 of this Schedule 9, Operations Co may, within 30 days of the notice referred to in Section 3.2 of this Schedule 9 refer the matter to the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet.

If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in (a) or (b) above, as applicable, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Payment as of the estimated Termination Payment Date.

## **6. PAYMENTS**

### **6.1 Termination Payment Date**

The Termination Payment Date for any Termination Payment will be determined as follows:

- (a) if the amount is owing by Project Co to Operations Co, within 5 Business Days of the date Project Co receives a corresponding Termination Payment from the Authority under the Project Agreement;
- (b) if the amount is owing by Operations Co to Project, within 30 days of the date of determination; and
- (c) if the amount thereof is the subject of a Dispute, 30 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet.

### **6.2 Full Settlement**

Any compensation paid by Project Co to Operations Co under this Schedule 9 in the total amount owing hereunder or any agreement or determination that Project Co has no obligation to make any payment to Operations Co under this Schedule 9 will be in full and final settlement of each party's rights and claims against the other for termination of this Project Implementation Agreement and any Project Contract, whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the date of termination of this Project Implementation Agreement (but not from the termination itself), to the extent any such liability has not already been taken into account in determining the Termination Payment; and

- (b) any liability of either party to the other that may arise after the date of termination of this Project Implementation Agreement (but not from the termination itself), including, for greater certainty, liabilities arising under the provisions of this Project Implementation Agreement which are intended by Section 17.10 of this Project Implementation Agreement to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.

**SCHEDULE 10  
LENDERS' REMEDIES AGREEMENT**

Refer to Schedule 10 to the Project Agreement.

**SCHEDULE 11  
PROJECT CONTRACTOR COLLATERAL AGREEMENT**

Refer to Schedule 11 to the Project Agreement.

**SCHEDULE 12  
OPERATIONS CO'S OWNERSHIP INFORMATION**

Operations Co represents and warrants that the following information is true and correct as of the date of this Project Implementation Agreement:

**KentuckyWired Operations Company, LLC**

- |    |   |   |
|----|---|---|
| 1. | Name:   | KentuckyWired Operations Company, LLC                             |
| 2. | Date of Incorporation:  | July 24, 2015   |
| 3. | File Number:  | 5791148   |
| 4. | Jurisdiction of Incorporation:  | State of Delaware   |
| 5. | Member:   | KentuckyWired Operations Holding Company, LLC                     |
| 6. | Manager:  | Member managed  |
| 7. | Subsidiaries:   | None  |
| 8. | Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Operations Co: | Refer to Amended and Restated Limited Liability Company Agreement |

**KentuckyWired Operations Holding Company, LLC**

- |     |                                |  |
|-----|--------------------------------|--|
| 9.  | Name:                          | KentuckyWired Operations Holding Company, LLC  |
| 10. | Date of Incorporation:         | July 24, 2015  |
| 11. | File Number:                   | 5791144  |
| 12. | Jurisdiction of Incorporation: | State of Delaware  |
| 13. | Members:                       | Macquarie PPP Investment (U.S.) Limited Partnership<br>Ledcor US Ventures Inc.<br>First Solutions, LLC |
| 14. | Managers:                      | Moira Turnbull-Fox<br>Paul Huebener<br>Andrew Ancone<br>Russell Zirnhelt                               |

Amended and Restated Schedule 12  
Operations Co's Ownership Information  
NG-KIH Project Implementation Agreement

Joe Shelton

15. Subsidiary: KentuckyWired Operations Company, LLC

16. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of KentuckyWired Operations Holding Company, LLC: Refer to Amended and Restated Limited Liability Company Agreement

**SCHEDULE 13  
DISPUTE RESOLUTION PROCEDURE**

**1. DEFINITIONS**

In this Schedule 13, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**Dispute Notice**” has the meaning set out in Section 2.2 of this Schedule 13;

“**Dispute Resolution Procedure**” has the meaning set out in Section 2.1 of this Schedule 13;

“**Referee**” has the meaning set out in Section 2.5 of this Schedule 13;

“**Referee Agreement**” has the meaning set out in Section 2.5(c) of this Schedule 13;

“**Referee Notice**” has the meaning set out in Section 2.5 of this Schedule 13; and

“**Senior Executive**” means an executive who is in a position of authority above that of the party’s Representative and, subject only to approval of the board of directors or similar governing body, has full authority to resolve and settle a Dispute.

**2. DISPUTE RESOLUTION**

**2.1 Procedure**

Unless both parties otherwise agree, all Disputes will be resolved in accordance with the provisions of this Schedule 13 (the “**Dispute Resolution Procedure**”), provided that the decision of the Independent Certifier that Site Completion has been achieved in respect of any Site is final and binding on the parties solely in respect of determining the commencement of Availability Payments (as defined in the Project Agreement). Except for the foregoing, any other Dispute related to the decision of the Independent Certifier that Site Completion has been achieved in respect of any Site may be the subject of a Dispute and may be subject to the Dispute Resolution Procedure under the Project Agreement.

**2.2 Dispute Notice**

The Dispute Resolution Procedure may be commenced by either party giving written notice to the other party (the “**Dispute Notice**”) briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought.

**2.3 Project Representative Negotiation**

Within 5 Business Days of one party receiving a Dispute Notice from the other, or such longer period as the parties may agree, a Representative of each party will meet and make good faith efforts to resolve the Dispute by without prejudice negotiations.

**2.4 Senior Executive Negotiation**

If the Dispute is not resolved pursuant to Section 2.3 of this Schedule 13 within 5 Business Days (or such longer period as the parties may agree) of the first meeting of the Representatives, a

Senior Executive of each party will meet and make good faith efforts to resolve the Dispute by without prejudice negotiations.

## 2.5 Fast Track Referee Process

If the Dispute is not resolved pursuant to Section 2.4 of this Schedule 13 within 5 Business Days (or such longer period as the parties may agree) of the first meeting of the Senior Executives, either party may, by written notice to the other party (a "**Referee Notice**"), request the appointment of a referee (the "**Referee**") as provided under the terms of this Section 2.5. The Referee will be appointed as an expert to resolve the Dispute and will participate in the resolution of the Dispute as set out below:

- (a) if the Referee Notice is given during the Construction Period, then the Independent Certifier will, as of the end of the 2nd Business Day following the delivery of the Referee Notice, be deemed the Referee unless:
  - (1) within 2 Business Days of the delivery of the Referee Notice, either (i) the parties agree that another person would be more suitable considering the nature of the Dispute, or (ii) either party gives written notice that it objects to the Independent Certifier acting as Referee in relation to the Dispute; or
  - (2) for any reason the Independent Certifier is unable to perform the duties of the Referee,

and, in either case, the Referee will be appointed in the manner described in Section 2.5(b) of this Schedule 13;

- (b) if the Dispute Notice is given during the Operating Period or Section 2.5(a) of this Schedule 13 requires that this Section 2.5(b) applies, the parties will appoint a Referee in the following manner:
  - (1) within 2 Business Days of the delivery of a Referee Notice, each party will submit in writing to the other party the names of no more than 2 candidates for Referee who are independent of the parties, experienced in the resolution of similar disputes and immediately available to perform the role of Referee in respect of the Dispute at hand;
  - (2) if a party has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other party; and
  - (3) if, for any reason, within 3 Business Days of the delivery of a Referee Notice, a Referee has not been appointed, then either party or both parties may apply to a judge of the state court in Franklin County, Kentucky to select a Referee in relation to the Dispute;
- (c) the parties will enter into an agreement with the Referee generally in the form attached as Appendix 13A (the "**Referee Agreement**"), such agreement to be entered into no later than 2 Business Days after the Referee's appointment;

- (d) the Referee's fees and expenses will be shared equally by Project Co and Operations Co, provided that Project Co will pay the full amount of the Referee's fees and expenses on the day that such fees and expenses are due (including any advances on fees and expenses) in accordance with the Referee Agreement and Operations Co will reimburse Project Co for Operations Co's share of all such fees and expenses within 5 Business Days of receipt of a written demand from Project Co, failing which Project Co will be entitled to deduct the amount of Operations Co's share of the Referee's fees and expenses from amounts otherwise due to Operations Co under the provisions of this Project Implementation Agreement;
- (e) the Referee will conduct an impartial review of the Dispute in such manner as the Referee thinks fit, including carrying out on-site inspections and interviews with any persons that the Referee thinks fit;
- (f) the parties will comply with all reasonable requests from the Referee for additional information, documents and access to personnel which the Referee considers necessary for the review;
- (g) any submission or documentation in respect of the Dispute provided to the Referee by a party will also be provided to the other party;
- (h) the Referee may, with the written approval of both parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by either party for him to retain such other professional persons or experts;
- (i) the Referee will not be obliged to conduct his inquiries in the presence of the parties or receive submissions from the parties, except to the extent that the Referee thinks fit, and may render his decision notwithstanding the failure of a party to participate in the proceedings;
- (j) the Referee will render a brief, written, reasoned and impartial decision on the Dispute, with copies to both parties within 5 Business Days of the signing by the Referee and both parties of the Referee Agreement referred to in Section 2.5(c) of this Schedule 13, or such longer period as agreed to in writing by both parties;
- (k) the Referee's decision will be in the form of a proposed determination of the rights of the parties having regard to the Referee's understanding of the relevant contractual provisions, the applicable law and the facts as agreed by the parties or as best the Referee is able to determine them;
- (l) each party acknowledges the value of having the Referee render a timely decision regarding the Dispute and, if the Referee is unable to render his decision within the time set or as extended by mutual agreement of the parties, then the parties will request that the Referee provide to the parties within such time such analysis of the Dispute as the Referee is able to make within that time and describe the further work the Referee recommends would be required in order to arrive at a reasoned decision;

- (m) subject to the provisions of Section 3.3 of this Schedule 13, a decision of a Referee is not binding on the parties but is intended to assist the parties to reach agreement with respect to the Dispute;
- (n) the proceedings under this Section 2.5 will be confidential and all information, data or documentation disclosed or delivered by either party to the Referee as a result of or in connection with his duties as Referee will be treated as confidential and neither of the parties nor the Referee will, except as would be permitted under Section 17 of this Project Implementation Agreement, disclose to any Person any such information, data or documentation unless the parties otherwise agree in writing, provided that nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Referee; and
- (o) the proceedings by or before a Referee will be without prejudice in any subsequent proceedings.

## **2.6 Commencement of Proceedings**

If the Dispute is not completely resolved by agreement between the parties within 10 Business Days of the receipt of the Referee's decision or analysis pursuant to Section 2.5 of this Schedule 13 (or such longer period as the parties may agree) or within 10 Business Days of the date on which the Referee's decision or analysis ought to have been received under Section 2.5 of this Schedule 13, either party may, pursuant to KRS 45A.230, present the Dispute to the Secretary of the Finance and Administration Cabinet for resolution. If the Secretary is unable to resolve the Dispute to the mutual satisfaction of the parties within 120 days, the provisions of KRS 45A.235 shall apply and either party may commence proceedings in respect of the Dispute in state court in Franklin County, Kentucky in accordance with KRS 45A.245 and, for clarity, the provisions of Section 17.4 of this Project Implementation Agreement will apply to any such proceedings.

## **3. GENERAL**

### **3.1 Other Remedies**

Nothing contained in this Schedule 13 will preclude a party from initiating a proceeding in state court in Franklin County, Kentucky for the purpose of obtaining an effective emergency or provisional remedy to protect its rights as necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and other orders, whether before or after the Dispute has been initiated by a Dispute Notice.

### **3.2 Strict Compliance with Time Limits**

The parties acknowledge that timely resolution of Disputes is mutually beneficial and the time limits set out in this Schedule 13, or as otherwise agreed by the parties, will therefore be strictly complied with and enforced.

### **3.3 Interim Decision**

If a Dispute occurs then Project Co and Operations Co will in good faith carry out their respective obligations under this Project Implementation Agreement pending resolution of the Dispute pursuant to the Dispute Resolution Procedure. Prior to resolution of the Dispute, Project Co may, in its discretion by written notice to Operations Co, direct Operations Co to proceed in respect of the matter in Dispute or any related matter and Operations Co will comply with and implement the direction. Such direction will be without prejudice to Operations Co's rights to compensation or other rights under this Project Implementation Agreement. Nothing in this Schedule 13 will limit Project Co's right to require a Change.

### **3.4 Dispute Between the Authority and Project Co**

Notwithstanding anything contained in this Schedule 13, if the subject matter of a Dispute between Project Co and Operations Co under this Project Implementation Agreement relates to the same or substantially the same subject matter as a dispute between the Authority and Project Co under the Project Agreement, then the parties agree that, to the extent that the Dispute is dealt with pursuant to the Dispute Resolution Procedure (as defined in the Project Agreement) provided for in the Project Agreement, they will defer to any decision reached pursuant to such Dispute Resolution Procedure and, as applicable, the provisions of Section 1.6 of this Project Implementation Agreement relating to Equivalent Project Relief will apply. Subject to Section 3.1 of this Schedule 13, to the extent that any such Dispute between the Authority and Project Co under the Project Agreement is being pursued, the parties agree that they will not pursue their Dispute under this Schedule 13. To the extent that the subject matter of a Dispute between Project Co and Operations Co under this Project Implementation Agreement would entitle Project Co to initiate a Dispute (as defined in the Project Agreement) with the Authority under the Project Agreement, Project Co will, if directed by Operations Co, refer such matter for resolution pursuant to the Dispute Resolution Procedure (as defined in the Project Agreement) provided for in the Project Agreement, in which case the provisions of Section 1.6 of this Project Implementation Agreement relating to Equivalent Project Relief will apply.

**APPENDIX 13A  
REFEREE AGREEMENT**

**BETWEEN:**

**[Name of Referee] (the "Referee")**

**AND:**

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

**AND:**

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

We write to confirm your appointment as a Referee under the project implementation agreement dated September 3, 2015 between Project Co and Operations Co (the "**Project Implementation Agreement**"). The terms of your appointment are as contained in Section 2.5 of Schedule 13 [Dispute Resolution Procedure] to the Project Implementation Agreement.

We confirm our agreement for you to review the Dispute(s) described in the Dispute Notice in accordance with the provisions of the Project Implementation Agreement, and to perform the functions of a Referee as described in Section 2.5 of Schedule 13 [Dispute Resolution Procedure] to the Project Implementation Agreement.

A copy of the Project Implementation Agreement and related materials will be forwarded to you shortly.

We confirm that your daily/hourly rate for fees is \$ \_\_\_\_\_. In addition to your invoiced fees, Project Co will pay any and all reasonable disbursements incurred in providing your services. Please submit your invoices on a monthly basis directly to \_\_\_\_\_ **[Insert name of Project Co's Construction or Operating Period Representative, as applicable]** ("**Project Co's Representative**"). Project Co will make payment within 30 calendar days of receipt.

Please confirm your agreement to the terms as set out in this letter by signing a copy of the enclosed letter and returning it to Project Co's Representative.

Yours truly,

\_\_\_\_\_  
Authorized Signatory of the Referee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signatory of Project Co

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signatory of Operations Co

\_\_\_\_\_  
Date

**SCHEDULE 14  
RECORDS AND REPORTS**

Schedule 14 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to records and reports.

**SCHEDULE 15  
FINANCING AGREEMENT OBLIGATIONS**

**1. DEFINITIONS AND INTERPRETATION.**

**1.1 Definitions.** In this Schedule 15, in addition to the terms defined in Schedule 1 [Definitions and Interpretation], capitalized terms shall have the meaning set out in this Schedule 15, or if not defined herein, the meaning set out in Exhibit A to the Collateral Agency and Account Agreement (the "**Collateral Agency Agreement**"), dated as of September 1, 2015, by and among Project Co, each Trustee, the Collateral Agent and the Securities Intermediary.

**1.2 Interpretation.** Except to the extent the context or the express provisions of this Schedule 15 otherwise require, this Schedule 15 will be interpreted, *mutatis mutandis*, according to (a) the interpretation provisions set forth in Exhibit A to the Collateral Agency Agreement, as such exhibit is amended from time to time in accordance with the Financing Documents, and the interpretation provisions, if any, set forth in the applicable Financing Document to which such provision of this Schedule 15 relates and (b) the interpretation provisions set forth in Schedule 1 [Definitions and Interpretation] of this Project Implementation Agreement, but in each case solely to the extent the application of such provisions does not result in a different outcome than would otherwise apply to Project Co under the Financing Documents. For the avoidance of doubt, each reference to Exhibit A to the Collateral Agency Agreement and any Financing Document in this Schedule 15 shall include all amendments, supplements and modifications thereto. Nothing in this Schedule 15 will be interpreted to create a right of, or otherwise allow, either Project Co or Operations Co to take an action that is otherwise prohibited by the Financing Documents or to fail to take an action that is otherwise required by the Financing Documents, subject in each case to the applicable provisions regarding amendment, waiver and consent as set forth in the applicable Financing Documents.

**1.3 Updates to this Schedule 15.** It is the intent of the parties that at all times and to the extent applicable each of the Operations Co Financing Rights and Obligations and the Project Co Financing Rights and Obligations, each as defined and used in this Schedule 15, are in all respects equivalent to Project Co's similar rights and obligations or Operations Co's similar rights and obligations under the equivalent provisions of the Financing Documents, as such documents may be amended, modified or supplemented from time to time, without further action of the parties. Notwithstanding the foregoing, the parties hereby agree that from time to time upon mutual agreement of the parties, this Schedule 15 may be updated to expressly reflect (a) any amendments, modifications or supplements to the Financing Documents or (b) the delegation of any rights and obligations under any new Financing Documents between the parties.

**2. COPIES OF FINANCING DOCUMENTS; NEW FINANCING DOCUMENTS; AMENDMENTS TO FINANCING DOCUMENTS; COMMUNICATIONS; ENFORCEMENT OF PARALLEL FINANCING ISSUES**

**2.1 Copies of Financing Documents.** Operations Co acknowledges that it has in its possession a copy of each Financing Document in effect as of the Closing Date and the Continuing Disclosure Agreement and is familiar with the terms of each such Financing

Document and the Continuing Disclosure Agreement, irrespective of whether Operations Co is a party thereto.

**2.2 New Financing Documents; Amendments to Financing Documents.** Project Co agrees to (a) provide to Operations Co, no later than ten (10) Business Days prior to execution thereof, a draft copy of each amendment, modification or supplement to be entered into by Project Co with respect to each Financing Document to which Operations Co is not a party and each new Financing Document to the extent such amendment, modification or supplement or new Financing Document affects in any respect the Operations Co Financing Rights and Obligations and/or the Project Co Financing Rights and Obligations (other than Excluded Obligations and/or the Excluded Rights), (b) consult with Operations Co regarding the content of each such amendment, modification or supplement or new Financing Document and (c) execute such amendment, modification or supplement or new Financing Document solely upon the prior consent of Operations Co. To the extent Project Co enters into any amendment, modification or supplement with respect to any Financing Document to which Operations Co is not a party or any new Financing Document that relates solely to the Excluded Obligations and/or the Excluded Rights, Project Co shall provide to Operations Co, no later than three (3) Business Days after execution thereof, a copy of such document.

**2.3 Communications.** To the extent that any Communication is required or permitted to be given or made by Operations Co directly to the Senior Bonds Trustee, the Subordinate Bonds Trustee, the Collateral Agent, any other Secured Party or any other third party as part of the Operations Co Financing Rights and Obligations, Operations Co will provide a copy of the same to Project Co at the same time as giving or making the Financing Communication to such party. To the extent that any Communication is required or permitted to be given or made by Project Co directly to the Senior Bonds Trustee, the Subordinate Bonds Trustee, the Collateral Agent or any other Secured Party as part of the Project Co Financing Rights and Obligations, Project Co will provide a copy of the same to Operations Co at the same time as giving or making the Financing Communication to such party. Project Co will (a) make all Communications required to be made by Project Co to Operations Co under this Schedule 15 and the Financing Documents, (b) provide a copy of all Communications made to Project Co (but not Operations Co) by any Secured Party or any third party in connection with any Operations Co Financing Rights and Obligations and (c) cause all Communications to be made by any Secured Party to Operations Co under the Financing Documents to be made, in each case of clauses (a), (b) and (c), in a timely manner so as to permit Operations Co to exercise and comply with the Operations Co Financing Rights and Obligations. Project Co will consult with Operations Co in respect of all Communications made by Project Co to any Secured Party or any other third party, other than Communications with respect to the Excluded Obligations and/or the Excluded Rights.

**2.4 Enforcement of Parallel Financing Issues.**

(a) Project Co will preserve, protect and pursue under the Financing Documents such rights, remedies and relief as may relate to Operations Co Financing Rights and Obligations, including Operations Co's right to receive payments under Sections 10.5 and 10.6 of this Project Implementation Agreement (a "**Parallel Financing Issue**") in order to secure a favorable resolution of the Parallel Financing Issue, provided that:

Amended and Restated Schedule 15  
Financing Agreement Obligations  
NG-KIH Project Implementation Agreement

- (1) Project Co has received written notice from Operations Co of the Parallel Financing Issue;
  - (2) Operations Co will not be entitled to recover from Project Co any Direct Financing Losses or claims arising out of or in connection with Project Co pursuing resolution of a Parallel Financing Issue on Operations Co's behalf other than any amounts received in respect of such Parallel Financing Issue; and
  - (3) Operations Co will indemnify Project Co in respect of any Direct Financing Losses arising out of or in connection with Project Co pursuing resolution of a Parallel Financing Issue on Operations Co's behalf in accordance with this Section 2.4(a), provided that such indemnification will, unless Project Co has no entitlement to any amount received in respect of such Parallel Financing Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Financing Issue.
- (b) Subject to Section 2.4(c), Project Co consents to Operations Co pursuing the rights, remedies and relief under the Financing Documents described in Section 2.4(a) of this Schedule 15 in the name of Project Co, which may, subject to the provisions of the Financing Documents, include the defense of claims where Operations Co is required to provide an indemnity to Project Co in accordance with the indemnity provisions in this Project Implementation Agreement. Operations Co will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that, if Operations Co is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the parties in proportion to their ultimate entitlements to same. Project Co will, at the sole cost and expense of Operations Co, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Operations Co may reasonably request in connection with the pursuit of such Parallel Financing Issue by Operations Co.
- (c) No later than 7 days following receipt of the notice referred to in Section 2.4(a)(1), Project Co may take conduct of the Parallel Financing Issue and pursue the rights, remedies and relief under the Financing Documents described in Section 2.4(a) of this Schedule 15 on behalf of Operations Co and in accordance with the reasonable directions of Operations Co.
- (d) Project Co will not enter into any compromise or settlement of a Parallel Financing Issue which affects, in any respect, Operations Co's rights, remedies and relief under this Schedule 15, without the prior written consent of Operations Co, in its sole discretion.
- (e) Where Project Co pursues a Parallel Financing Issue in accordance with this Section 2.4, Operations Co will be kept informed of Project Co's progress under this Section 2.4 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Project Co in accordance with this Section 2.4.

- (f) If Project Co does not, after having been given written notice in accordance with Section 2.4(a), take steps to pursue such Parallel Financing Issue within 2 Business Days or prior to that date being 10 Business Days prior to the expiration or other extinguishment of Project Co's right to pursue such Parallel Financing Issue, Operations Co may, in the name of and on behalf of Project Co, pursue such Parallel Financing Issue itself subject to this Section 2.4, at its sole cost and expense, and
- (g) Operations Co will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Project Co may reasonably request in connection with the pursuit of any Parallel Financing Issue.
- (h) Any claims in respect of a Parallel Financing Issue and any recoveries obtained by Project Co or Operations Co in respect of any Parallel Financing Issue under the Financing Documents will be subject to the provisions of Section 2.5 of this Schedule 15 with respect to Equivalent Financing Relief.

## **2.5 Equivalent Financing Relief.**

- (a) Except to the extent of any entitlement of Project Co (including any rights, remedies or relief) that relates solely to the Excluded Obligations and Excluded Rights, Operations Co will be entitled to receive the benefit of any such entitlement from Project Co (in accordance with and subject to the provisions of Section 2.5(c)), including the benefit of:
  - (1) any compensation, damages or other payment of any kind on the same or substantially the same grounds as Project Co is entitled to compensation, damages or other payment of any kind under the Financing Documents;
  - (2) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Schedule 15 of the Project Implementation Agreement on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Financing Documents;
  - (3) any entitlement of Operations Co under this Schedule 15 of the Project Implementation Agreement; and
  - (4) any certificate, consent or approval granted under this Schedule 15, the Financing Documents or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Operations Co Financing Rights and Obligations, including any entitlement of Project Co to request or apply for such certificate, consent or approval, or any other person under this Schedule 15 or the Financing Documents,

but excluding any specific loss, cost or expense incurred by Project Co to which the relevant compensation expressly relates and which is not included in any amount claimed by Operations Co.

Project Co's entitlement under the Financing Documents in respect of the matters set out in this Section 2.5 is referred to in this Schedule 15 as "Equivalent Financing Relief".

- (b) Operations Co will not be entitled to any relief from, or waiver in respect of performance of its obligations under this Schedule 15 other than:
  - (1) to the extent Project Co receives Equivalent Financing Relief; or
  - (2) to the extent expressly provided for in this Schedule 15.
- (c) Operations Co will be entitled to the benefit of any Equivalent Financing Relief to the extent that Project Co is or becomes entitled to such Equivalent Financing Relief only if, when and to the same extent that Project Co has received Equivalent Financing Relief in connection with the Financing Documents.
- (d) For purposes of Project Co asserting a claim under the Financing Documents in respect of Equivalent Financing Relief, where Operations Co has suffered Direct Financing Losses or otherwise claims relief in respect of any event or circumstance in respect of which Project Co is entitled to claim Equivalent Financing Relief, Project Co acknowledges that it will be obligated to include such Direct Financing Losses or relief claimed by Operations Co in its claim and to make such claim under the Financing Documents, provided that Operations Co's recourse against Project Co and Project Co's liability to Operations Co in respect of any such Direct Financing Losses or relief will be subject to, and strictly limited by, the provisions of Sections 2.5(a) through 2.5(c) above and that Project Co will not be required to reimburse Operations Co to the extent that such Direct Financing Losses or relief arise as a result of any failure on the part of any party (other than Project Co or Operations Co) to perform its obligations under the Financing Documents, unless and until Project Co has received compensation from or on behalf of such party under the Financing Documents, in which case, the provisions of this Section 2.5 shall apply.
- (e) For the purposes of this Schedule 15, "**Direct Financing Losses**" means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs, expenses (including the reasonable cost of legal or professional services), demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:
  - (1) net of related insurance proceeds and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Schedule 15 or any policy of insurance maintained or required to be maintained under the Project Implementation Agreement and the Financing Documents;

- (2) excluding any Indirect Losses, except to the extent included in a third party claim; and
- (3) in the case of Operations Co, without limiting the foregoing, including the full amount of the related loss or reduction of any Operations Co Payments, net of Avoidable Costs related to such condition, event or omission.

### 3. PROJECT CO FINANCING RIGHTS AND OBLIGATIONS.

The rights and obligations set forth in this Section 3 and the rights and obligations of Project Co under Section 2 are collectively referred to herein as the "**Project Co Financing Rights and Obligations**".

**3.1 Excluded Rights and Excluded Obligations.** The rights and obligations set forth in this Section 3.1 are solely for the benefit of, and are the responsibility of, Project Co; the parties hereto expressly agree and acknowledge that to the extent that (i) Project Co is or becomes obligated under the Financing Documents to take any action, do anything or perform any obligation in connection with the following obligations, Project Co is obligated to take any such action, do any such thing or perform any such obligation hereunder in the manner and to the standard specified in the applicable Financing Documents (collectively, the "**Excluded Obligations**") and (ii) Project Co has or is granted under the Financing Documents any entitlement (including, without limitation, any rights, remedies or relief, whether pursuant to the terms of the Financing Documents or any waiver or consent with respect thereto) in connection with the following rights, Project Co is granted the benefit of such entitlements hereunder to the full extent set forth in the Financing Documents, including the benefit of any relief (including the extension of time) from the performance of the Excluded Obligations on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under the Financing Documents (collectively, the "**Excluded Rights**"):

- (a) **Debt Service, Indemnifications and Fees, Costs and Expenses.** Project Co shall have the sole responsibility with respect to its financial obligations as Borrower under the Financing Documents, including without limitation:
  - (1) its obligations to pay debt service under the Senior Loan Agreement and the Subordinate Loan Agreement, and any other Permitted Indebtedness entered into by Project Co from time to time;
  - (2) its indemnification obligations, including under Section 2.10, Section 7.02 and Section 9.10(b) of the Collateral Agency Agreement, Section 7.02 of the Senior Loan Agreement, Section 7.02 of the Subordinate Loan Agreement, Section 13.18 of the Senior Indenture and Section 13.18 of the Subordinate Indenture; and
  - (3) its obligations to pay Project Costs, including fees, costs and expenses under Section 7.01 of the Collateral Agency Agreement, Section 4.01(b), Section 6.31 and Section 8.06 of the Senior Loan Agreement, Section 4.01(b), Section 6.31 and Section 8.06 of the Subordinate Loan

Agreement, Section 6.1(g) and Section 6.4 of the Senior Indenture and Section 6.1(f) and Section 6.4 of the Subordinate Indenture, other than Operations Co's obligation to pay Project Costs (A) with certain portions of the payments to be made to it under Section 10.5 and 10.6 of this Project Implementation Agreement by the Borrower and (B) with the proceeds of the Capital Contributions to be made to Operations Co pursuant the Capital Contribution Agreement.

For the avoidance of doubt, Operations Co is not an obligor or guarantor with respect to Project Co's debt obligations and its financial obligations to the Secured Parties (and the obligations of Pledgor and the Sponsors) are limited solely to the Operations Co Security Documents and capital contributions securing Operations Co's obligations under this Project Implementation Agreement.

- (b) **Drawing of Series 2015B-2 Bonds and Series 2015C Bonds.** Subject to the terms of the Financing Documents, Project Co shall have sole discretion and sole responsibility with respect to its obligations under the Senior Loan Agreement and the Subordinate Loan Agreement to deliver Draw Requests as and when required, so as to ensure Series 2015B-2 Bonds and Series 2015C Bonds are drawn at the times and in the amounts as required or necessary to finance Project Costs.
- (c) **Investment of Project Accounts.** Project Co shall have sole discretion regarding exercising its rights under Section 5.08 of the Collateral Agency Agreement to invest and reinvest amounts on deposit in the Project Accounts and shall have sole responsibility with respect to its obligations under Section 5.08 of the Collateral Agency Agreement. Project Co agrees that it shall use commercially reasonable efforts to invest and reinvest amounts on deposit in the Project Accounts to maximize investment returns.
- (d) **Continuing Disclosure Agreement.** Project Co shall have sole responsibility with respect to non-compliance with its obligations under the Continuing Disclosure Agreement.
- (e) **Refinancing and Additional Bonds.** Project Co shall have sole discretion and sole responsibility with respect to entering into a Refinancing or accepting a loan of the proceeds of Additional Bonds.

**3.2 Other Financing Rights and Obligations of Project Co.** In furtherance of the purposes of this Schedule 15, including the grant and delegation of the Operations Co Financing Rights and Obligations:

- (a) **Project Costs of Project Co.** The parties acknowledge that, pursuant and subject to the Pass-Down Provisions of this Project Implementation Agreement, Project Co has passed down its rights and obligations under the Project Agreement to Operations Co and, pursuant to this Schedule 15, subject to the Project Co Financing Rights and Obligations, Project Co has granted rights with respect to, and delegated the administration of, its rights and obligations under the Financing Documents to Operations Co. Project Co acknowledges and

agrees that, in furtherance of the foregoing, (1) it will not incur costs with respect to the Project, other than in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs, without the prior written consent of Operations Co, including, without limitation, pursuant to Section 2.06 of the Collateral Agency Agreement; (2) it will pay, or cause payment of, all costs incurred in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs; and (3) it will use commercially reasonable efforts to minimize the costs it incurs in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs.

- (b) **Construction Account Withdrawal Certificate.** Project Co hereby agrees to request a requisition under Section 5.03(d) of the Collateral Agency Agreement of the amounts and to the accounts and/or payees set forth in a duly completed and executed Operations Co Construction Account Withdrawal Certificate upon receipt thereof, provided that to the extent such Operations Co Construction Account Withdrawal Certificate does not adequately provide for payment of Project Co's non-profit costs and other costs during the Construction Period payable directly by Project Co, Project Co may include such Project Costs in its Construction Account Withdrawal Certificate.
- (c) **Funds Transfer Certificate.** Project Co hereby agrees to instruct the Collateral Agent to transfer under Section 5.09(a) of the Collateral Agency Agreement on each applicable Transfer Date (or such other date in accordance with the Collateral Agency Agreement) at least the amounts set forth in a duly completed and executed Operations Co Funds Transfer Certificate delivered to Project Co prior to such date, provided that to the extent such Operations Co Funds Transfer Certificate does not adequately provide for payment of Project Co's non-profit costs and other costs after the System Completion Date payable at clause *First* of Section 5.02(b) of the Collateral Agency Agreement, Project Co may include such Project Costs in its Funds Transfer Certificate.
- (d) **Restricted Payment Release Certificate.** Project Co hereby agrees to execute and deliver to the Collateral Agent as required a duly completed Restricted Payment Release Certificate executed by Operations Co prior to each Transfer Date and each other date as required to make the transfers from the Revenue Account and the Lock-up Account in accordance with the Collateral Agency Agreement.
- (e) **Reporting.** Pursuant to Section 6.05(c)(11) of the Senior Loan Agreement and the Subordinate Loan Agreement, Project Co hereby agrees to deliver within ninety (90) days after the end of each fiscal year of Project Co, to the Issuer and each Trustee a certification indicating whether or not Project Co is aware of any condition, event or act which constitutes an "event of default", or which would constitute an "event of default" with the giving of notice or passage of time, or both, under either of the Senior Indenture or the Senior Loan Agreement, or either of the Subordinate Indenture or the Subordinate Loan Agreement, and if it is aware of any such condition, event or act, the remedies Project Co intends to implement to cure such condition, event or act (including a timeline for such efforts), attached to which shall be the similar certification by Operations Co pursuant to Section 4.1(c)(11) of this Schedule 15.

- (f) **Project Co Concurrent Obligations.** Project Co hereby agrees that it will perform as set forth in the Project Implementation Agreement and the Financing Documents all of its obligations associated with, in connection with, arising from, or giving rise to, the Operations Co Financing Rights and Obligations, including executing, acknowledging or delivering such documents or taking such actions as Operations Co may request to facilitate its role as administrator under this Schedule 15.

#### 4. OPERATION CO FINANCING RIGHTS AND OBLIGATIONS.

The rights and obligations set forth in this Section 4, including the Pass-Through Financing Rights and Obligations and the Operations Co Concurrent Rights and Obligations, and the rights and obligations of Operations Co under Section 2 are collectively referred to herein as the "**Operations Co Financing Rights and Obligations**". Operations Co acknowledges and agrees that, pursuant to the Financing Documents to which Project Co is a party, Project Co is subject to certain covenants, restrictions, limitations and other obligations, each as set forth more fully therein, accepted by Project Co in consideration of the loans provided under the Senior Loan Agreement and the Subordinate Loan Agreement and Operations Co acknowledges and agrees that, pursuant to the Financing Documents to which Project Co is a party, Project Co has been granted certain entitlements and benefits, each as set forth more fully therein, with respect to its obligations thereunder.

##### 4.1 Pass-Through Financing Rights and Obligations.

Other than with respect to Project Co's obligations under Section 3 of this Schedule 15, Project Co hereby delegates to Operation Co in its capacity as an administrator, and Operation Co hereby accepts such delegation in its capacity as an administrator of, Project Co's obligations under the Financing Documents to which Project Co is a party and to the extent that Project Co is or becomes obligated under the Financing Documents to take any action, do anything or perform any such obligation, Operations Co agrees that it will be obligated as an administrator to take any such action, do any such thing or perform any such obligation hereunder in the manner and to the standard specified in the applicable Financing Documents; and other than with respect to Project Co's rights under Section 3 of this Schedule 15, Project Co hereby grants to Operation Co in its capacity as an administrator, and Operation Co hereby accepts such grant in its capacity as an administrator of, the benefit of Project Co's rights under the Financing Documents to which Project Co is a party and to the extent that Project Co has or is granted under the Financing Documents any entitlement, including, without limitation, any rights, remedies or relief, whether pursuant to the terms of the Financing Documents or any waiver or consent with respect thereto (other than the Excluded Rights), Project Co agrees that Operations Co shall be granted the benefit of such entitlements hereunder to the full extent set forth in the Financing Documents, including the benefit of any relief (including the extension of time) from the performance of Operations Co's obligations under Section 4 of this Schedule 15 on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under the Financing Documents, including, in each case, without limiting the generality of the foregoing (collectively, the "**Pass-Through Financing Rights and Obligations**"):

- (a) **Payment of Project Costs.** Operations Co hereby agrees to pay Project Costs (1) with the payments to be made to it under Sections 10.5 and 10.6(a), (b) and (c) of this Project Implementation Agreement and (2) with the proceeds of the capital contributions to be made to Operations Co pursuant the Capital Contribution Agreement (including any draws from the Capital Contribution Letters of Credit).
- (b) **Accounts.** Operations Co shall keep proper records and books of accounts in which complete and correct entries shall be made of its transactions in accordance with GAAP. Such records and books shall, to the extent permitted by Law, be subject to the inspection of Project Co, solely to the extent required for Project Co to comply with Section 6.05 of the Senior Loan Agreement and Section 6.05 of the Subordinate Loan Agreement. Project Co may take copies and extracts from such books, and records, and Operations Co will from time to time furnish, or cause to be furnished, to Project Co such information and statements as Project Co may reasonably request, all as may be reasonably necessary for the purpose of (1) Issuer or any Trustee determining performance or observance by Project Co of its obligations under the Senior Loan Agreement or the Subordinate Loan Agreement or (2) Project Co determining performance or observance by Operations Co of its obligations under this Schedule 15; provided, that the above requirements shall not require that Operations Co produce a separate record or report to the extent that the records and records referred to in Schedule 14 [Records and Reports] are sufficient to comply with the Financing Documents.
- (c) **Reporting.** Pursuant to Section 6.05(c) of the Senior Loan Agreement and Section 6.05(c) of the Subordinate Loan Agreement, Operations Co shall deliver the following information to each Trustee (or other party as specified below):
- (1) audited financial statements of Operations Co produced in accordance with GAAP and certified by its auditors within one hundred and twenty (120) days after the end of each fiscal year of Operations Co and unaudited financial statements of Operations Co produced in accordance with GAAP (except for the absence of footnotes and year-end adjustments) certified by the president, CFO or treasurer of Operations Co, within sixty (60) days after the end of each fiscal quarter of Operations Co;
  - (2) prior to the System Completion Date, monthly progress reports to be delivered to the Dissemination Agent within twenty-eight (28) days of the last day of the preceding month beginning with the month ending October 31, 2015, which progress reports shall (i) provide an assessment of the overall progress of the Design and Construction since the date of the last report and setting forth a reasonable estimate as to the completion date for the applicable work, and (ii) provide a reasonably detailed description of any material delays encountered or anticipated in connection with such work, and a reasonably detailed description of the proposed course of action with respect to such delay;

- (3) prompt notice of any proposal to suspend or abandon the Project (except to the extent the suspension is as a result of an emergency or otherwise permitted under the Transaction Documents);
- (4) details of any litigation, pending or, if actually known, threatened in writing, by or before any arbitrator or Governmental Authority against Operations Co in connection with the Project in which the amount involved exceeds \$5,000,000 and is not covered by insurance;
- (5) details of any "event of default" as defined in any Material Project Contract (to which Project Co is a party) or event of which it is actually aware which with the passing of time or the giving of notice shall become an "event of default" thereunder;
- (6) prompt notice, and in no event more than five (5) Business Days after actual knowledge thereof by Operations Co, of any Operations Co Financing Default;
- (7) details of any penalties or damages due from or to Operations Co under any Material Project Contract (to which Project Co is a party);
- (8) copies of all notices of: (A) termination delivered to Operations Co with respect to any Material Project Contract; (B) any material insurance claims in excess of \$5,000,000; (C) the occurrence of any Supervening Event or any other termination or relief event, however defined, under any Material Project Contract; (D) any new or historical Release of Project Co Hazardous Substances (other than previously disclosed in writing by Project Co or Operations Co) that could reasonably be expected to cause or does cause a Material Adverse Effect; (E) any Governmental Approval that will not be granted or renewed at all, or in time to allow continued operation of the Project, or will be granted or renewed on terms materially more burdensome than proposed, or will be terminated, revoked or suspended, and that could be reasonably expected to have a Material Adverse Effect; and (F) the occurrence of any other event or condition which could reasonably be expected to have a Material Adverse Effect;
- (9) as soon as available and in any event at least thirty (30) days prior to the beginning of each fiscal year, the Annual Operating Budget for such fiscal year;
- (10) not later than sixty (60) days after the end of each fiscal quarter of Project Co occurring after the System Completion Date, Operations Co shall prepare and deliver to Project Co and each Trustee, pursuant to Section 6.17 of the Senior Loan Agreement and Section 6.17 of the Subordinate Loan Agreement, a report showing (a) the operating data for the Project for the previous quarter, including total Project Revenues, total operating, maintenance and capital expenditures incurred and Deductions accumulated during the period, (b) the variances for such periods between the actual Project Revenues and the budgeted Project Revenues, as shown in the Annual Operating Budget, together with a

brief narrative explanation of the reasons for any such variance of 20% or more and (c) the variances for such period between the actual routine operating, maintenance and capital expenditures incurred and the budgeted routine operating, maintenance and capital expenditures as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more; and

- (11) within ninety (90) days after the end of each fiscal year of Project Co, Operations Co shall furnish to Project Co a certification indicating whether or not Operations Co is aware of any condition, event or act which constitutes an "event of default", or which would constitute an "event of default" with the giving of notice or passage of time, or both, under either of the Senior Indenture or the Senior Loan Agreement, or either of the Subordinate Indenture or the Subordinate Loan Agreement, and if it is aware of any such condition, event or act that constitutes (or would constitute) an Operations Co Financing Default, the remedies Operations Co intends to implement to cure such condition, event or act (including a timeline for such efforts);

provided, that the above requirements shall not require that Operations Co produce a separate record or report to the extent that the records and records referred to in Schedule 14 [Records and Reports] are sufficient to comply with the Financing Documents.

- (d) **Continuing Disclosure Agreement.** Operations Co hereby agrees to provide any information required to be provided by Operations Co under Section 4.1(c) (other than clause (10)) of this Schedule 15 to the Dissemination Agent as required under the Senior Loan Agreement, the Subordinate Loan Agreement and the Continuing Disclosure Agreement and to provide any other information known or in the control of Operations Co that is required to be delivered by Project Co pursuant to the Continuing Disclosure Agreement upon the reasonable request of Project Co.
- (e) **Agents and Auditors.** Operations Co hereby agrees to retain on behalf of Project Co, if not retained directly by Project Co, any agents, independent auditors or other third parties required to be retained by Project Co in order to comply with the Financing Documents to which Project Co is a party.
- (f) **Sale of Assets.** Pursuant to Section 6.13(b) of the Senior Loan Agreement and Section 6.13(b) of the Subordinate Loan Agreement, Operations Co agrees not to sell, transfer, lease or assign or otherwise dispose of any of the assets of the Project with a fair market value in excess of \$5,000,000 per year in the aggregate except for the following:
- (1) sales or other dispositions of damaged, obsolete, worn out or defective equipment in the ordinary course of business;
  - (2) sales or other dispositions in the ordinary course of business or contemplated by or permitted under the Project Agreement and this Project Implementation Agreement;

- (3) sales or other dispositions of surplus property not required for the construction or operation of the Project in the ordinary course of business; and
- (4) sales that would constitute a Permitted Security Interest.
- (g) **Arms Length Transactions.** Pursuant to Section 6.15 of the Senior Loan Agreement and Section 6.15 of the Subordinate Loan Agreement, Operations Co agrees not to enter into any material transactions with any Affiliates (except to the extent such non-arm's-length agreements are contemplated in the Transaction Documents) unless such transaction is fair and commercially reasonable to Operations Co on an arm's length basis and contains terms no less favorable, taken as a whole, to such entity than those which would be included in an arm's-length transaction with a non-Affiliate.
- (h) **Access to the Project.** Pursuant to Section 6.19 of the Senior Loan Agreement and Section 6.19 of the Subordinate Loan Agreement, Operations Co agrees to use its best efforts to give the Trustee, the Issuer and their consultants and representatives access to the Lands and the NG-KIH System, at the sole cost of such Persons, at any reasonable time and as often as may reasonably be requested, and, upon reasonable prior notice to Operations Co, in each case during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by Operations Co or any other party of its obligations with respect to the construction and operation of the Project or the ongoing business of the Lands and the NG-KIH System, and permit the Trustee, the Issuer and their respective consultants and representatives to discuss the Project and the business, accounts, operations, properties and financial and other conditions of Project Co and Operations Co with officers of Project Co and Operations Co and to witness (but not cause) the performance and other tests conducted pursuant to any Material Project Contract, subject in all cases to all applicable confidentiality undertakings and operational or contractual requirements or limitations. Operations Co further agrees to offer all reasonable assistance to such Persons in connection with any such visit.
- (i) **Permitted Security Interests.** Pursuant to Section 6.20 of the Senior Loan Agreement and Section 6.20 of the Subordinate Loan Agreement, Operations Co agrees to not create or permit to exist any Security Interest on any property or asset, including its revenues (including accounts receivable) or rights in respect of any thereof, now owned or hereafter acquired by it, except Permitted Security Interests, solely to the extent such unpermitted Security Interest would otherwise cause Project Co to fail to comply with its obligations under Section 6.20 of the Senior Loan Agreement and Section 6.20 of the Subordinate Loan Agreement.
- (j) **Rating Agencies.** Pursuant to Section 6.21 of the Senior Loan Agreement and Section 6.21 of the Subordinate Loan Agreement, Operations Co agrees to use commercially reasonable efforts to cooperate with each Nationally Recognized Rating Agency rating the Series 2015 Senior Bonds and, if applicable, any Additional Parity Bonds, in connection with any review which may be undertaken by such Nationally Recognized Rating Agency and facilitate compliance by

Project Co with its obligations to enter into and comply with a reasonable and customary “ratings surveillance” agreement with at least one Nationally Recognized Rating Agency rating the Series 2015 Senior Bonds and, if applicable, any Additional Parity Bonds.

(k) **Material Project Contracts.** Pursuant to Section 6.22(a) of the Senior Loan Agreement and Section 6.22(a) of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co has agreed to not amend, assign, waive or modify in any material respect or terminate any Material Project Contracts or enter into any other material agreement (other than in the ordinary course or as set forth in such Section 6.22(a) of the Senior Loan Agreement and Section 6.22(a) of the Subordinate Loan Agreement) without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds). Notwithstanding the foregoing:

(1) *Change Orders.* Pursuant to Section 6.22(a)(i) of the Senior Loan Agreement and Section 6.22(a)(i) of the Subordinate Loan Agreement, Project Co may enter into change orders or amendments to implement change orders under the Material Project Contracts to which it is a party or new agreements, in each case, required for compliance with the Project Agreement (including, without limitation, with respect to Authority Changes, other written directives issued under the Project Agreement or to implement a System Refresh) or applicable law or regulation. In addition to the foregoing, with respect to the Design-Build Agreement, Project Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Design-Build Agreement if such change order or amendments, as applicable, will not require the payment by Project Co (directly or indirectly through Operations Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, ten million dollars (\$10,000,000) in the aggregate; provided, that any change order or amendment to implement change orders, as applicable, the cost of which causes Project Co (directly or indirectly through Operations Co) to exceed the ten million dollars (\$10,000,000) threshold with respect to the Design-Build Agreement will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that (A) in its reasonable belief, sufficient funds are available to the Borrower to pay the aggregate amount of Project Costs required to be incurred by the Borrower for the Design and Construction of the Project (including the cost of the change order or amendment to implement change orders at issue); and (B) there is a reasonable expectation of the System Completion Date occurring on or prior to the Bond Holder Long Stop Deadline; and with respect to the Services Contract, the Borrower may enter into change orders or amendments to

implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Services Contract if such change order or amendments, as applicable, will not require the payment by the Borrower (directly or indirectly through Operations Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, one million dollars (\$1,000,000) in the aggregate. Operations Co agrees to coordinate with Technical Advisor to cause Technical Advisor to provide such certifications as required.

- (2) *Permitted Amendments, Waivers and Terminations.* Pursuant to Section 6.22(a)(ii) of the Senior Loan Agreement and Section 6.22(a)(ii) of the Subordinate Loan Agreement, Project Co may amend or waive any Material Project Contract to which it is a party, or terminate any Material Project Contract to which it is a party (other than the Project Agreement), if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect and, solely with respect to termination of the Implementation Agreement, will not adversely impact the rights of the Senior Secured Parties under the Borrower Direct Agreement. In all cases, if a Material Project Contract or counterparty to a Material Project Contract to which Project Co is a party is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, Operations Co on behalf of Project Co will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any replacement counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced.
- (l) **Third Party Infrastructure Agreements.** Pursuant to Section 6.22(a)(iii) of the Senior Loan Agreement and Section 6.22(a)(iii) of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co may enter into agreements or other contractual arrangements with Third Party Infrastructure Providers as contemplated in the Project Agreement without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds, and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds. Operations Co hereby agrees to assist Project Co with negotiating, finalizing and entering into such contractual arrangements with such Third Party Infrastructure Providers in compliance with the terms of the Project Agreement and the parties hereby acknowledge and agree that the rights and obligations under such arrangements, when effective, form part of the Pass-Through Financing Rights and Obligations.
- (m) **Performance and Enforcement of the Material Project Contracts.** Pursuant to Sections 6.22(b) of the Senior Loan Agreement and Sections 6.22(b) of the Subordinate Loan Agreement, Operations Co agrees to perform all requirements, duties and obligations under the Material Project Contracts to which it is a party, except where the failure to so perform such requirements, duties and obligations could not reasonably be expected to have a Material Adverse Effect; provided that the parties acknowledge that this provision is solely to facilitate compliance

by Project Co and Operations Co with the Financing Documents and shall not otherwise limit or affect or be construed to limit or affect the obligations and liabilities of either Project Co or Operations Co under any Material Project Contract. Pursuant to Sections 6.22(c) of the Senior Loan Agreement and Sections 6.22(c) of the Subordinate Loan Agreement, Operations Co agrees to (i) enforce against the relevant counterparty (other than Operations Co) each covenant or obligation of the Material Project Contract to which it is a party in accordance with its terms and (ii) protect and defend its rights under each Material Project Contract to which it is a party and any matters related thereto, except in each case under clauses (i) and (ii) above, to the extent that failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

- (n) **No Distributions or Payments on Subordinate Secured Obligations.** Pursuant to Section 6.23 of the Senior Loan Agreement and Section 6.23 of the Subordinate Loan Agreement, Operations Co agrees to not deliver an Operations Co Funds Transfer Certificate that requests the transfer of funds:
- (1) (A) from the Lock-up Account to any other account or payee or (B) from the Revenue Account at clause *Thirteenth* of Section 5.02(b) of the Collateral Agency Agreement to any account or payee other than to the Lock-up Account, in each case, unless the Restricted Payment Conditions are satisfied or waived in accordance with the terms of the Collateral Agency Agreement; and
  - (2) to cause the repayment of any Subordinate Secured Obligations from the Revenue Account at clauses *Eighth* or *Ninth* of Section 5.02(b) of the Collateral Agency Agreement unless the Restricted Payment Conditions are satisfied or waived in accordance with the terms of the Collateral Agency Agreement.
- (o) **Project Revenues.** Pursuant to Section 6.24 of the Senior Loan Agreement and Section 6.24 of the Subordinate Loan Agreement, Operations Co acknowledges that all Project Revenues received by Project Co shall be applied in accordance with the Financing Documents and agrees to not change the irrevocable instructions of the Authority to deposit all Project Revenues with the Collateral Agent in accordance with the Financing Documents, except to the extent consistent with the terms of the Financing Documents.
- (p) **Public Purpose Covenants and First Amendment.** Pursuant to Sections 6.29 and 6.30 of the Senior Loan Agreement and Sections 6.29 and 6.30 of the Subordinate Loan Agreement, solely to the extent required for Project Co to comply with or cause compliance with such covenants, Operations Co agrees to comply with, or cause compliance with, such covenants.
- (q) **Refinancing and Additional Bonds.** In each case, solely to the extent required for Project Co to comply with the Financing Documents with respect to any Refinancing of Senior Secured Obligations and/or the issuance of any Additional Senior Bonds, Operations Co agrees to coordinate and facilitate compliance with the applicable conditions (if any) to any such Refinancing and/or issuance of

such Additional Senior Bonds pursuant to the definitions of "Other Permitted Senior Secured Indebtedness" and "Other Permitted Senior Secured Indebtedness Conditions" set forth in Exhibit A to the Collateral Agency Agreement.

- (r) **Compliance with Laws.** Pursuant to Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co has agreed to obtain on a reasonably timely basis, maintain and comply with, in each case in all material respects, or in the case of such permits as are required to be obtained by Operations Co or other third parties, to the extent possible, use reasonable efforts to cause Operations Co or such other third parties to obtain and thereafter maintain in full force and effect, all required Permits and all applicable Laws except for which failure to comply would not reasonably be expected to have a Material Adverse Effect. Operations Co hereby agrees to coordinate and facilitate Project Co's compliance with Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate Loan Agreement. Operations Co agrees to comply, *mutatis mutandis*, with Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate Loan Agreement.
- (s) **Taxes.** Pursuant to Section 6.11 of the Senior Loan Agreement and Section 6.11 of the Subordinate Loan Agreement, Operations Co agrees to coordinate and facilitate Project Co's obligation to timely pay and discharge all Taxes before they become delinquent unless they are being contested in good faith by appropriate proceedings and Project Co has provided adequate reserves which are maintained in accordance with GAAP or unless the failure to pay and discharge could not reasonably be expected to have a Material Adverse Effect. Operations Co agrees to comply, *mutatis mutandis*, with Section 6.11 of the Senior Loan Agreement and Section 6.11 of the Subordinate Loan Agreement.
- (t) **Limitation of Fundamental Changes.** Pursuant to Section 6.13(a) of the Senior Loan Agreement and Section 6.13(a) of the Subordinate Loan Agreement, Operations Co agrees, *mutatis mutandis*, that it shall not merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership, or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of Operations Co, as the case may be.
- (u) **Limitations on Indebtedness.** Pursuant to Section 6.27 of the Senior Loan Agreement and Section 6.27 of the Subordinate Loan Agreement, Operations Co agrees that, *mutatis mutandis*, it shall not create, incur or be liable for any Indebtedness, except Permitted Indebtedness.

#### 4.2 Operations Co Concurrent Rights and Obligations.

The parties acknowledge that, pursuant to the Financing Documents to which Project Co is a party, Operations Co has been granted express consent rights and other rights, each as set forth more fully therein, and the parties hereby agree that Operations Co may enforce each such right as if each such right were set forth expressly herein, and the parties further acknowledge that, pursuant to the Financing Documents to which

Project Co in a party, Operations Co has express obligations to perform or refrain from performing certain actions, each as set forth more fully therein, and Operations Co hereby agrees to comply with such obligations as if each such obligation were set forth expressly herein, including, in each case, without limiting the generality of the foregoing (collectively, the "**Operations Co Concurrent Rights and Obligations**"):

- (a) **Consent to Appointment of Trustees and Other Agents.** To the extent Project Co has a right to consent to the appointment of any successor, replacement, concurrent or new Trustee, Collateral Agent, Securities Intermediary or other agent or advisor pursuant to the terms of the Financing Documents, Project Co agrees not to consent to the appointment of any such agent or advisor without the prior consent of Operations Co (such consent not to be unreasonably withheld or delayed). The parties acknowledge the express rights granted to Operations Co pursuant to Section 2.11(a) (consent rights with respect to appointment of successor Collateral Agents) and Section 5.11(d) (consent rights with respect to appointment of replacement Securities Intermediaries) of the Collateral Agency Agreement, Section 8.4(b) (consent rights with respect to appointment of successor Trustees) of the Senior Indenture and the definition of "Bond Counsel" therein, and Section 8.4(b) (consent rights with respect to appointment of successor Trustees) of the Subordinate Indenture and the definition of "Bond Counsel" therein, and Operations Co acknowledges its obligations under Section 2.11(b) of the Collateral Agency Agreement to execute and deliver all instruments necessary to appoint any Person as a Co-Collateral Agent or substitute Collateral Agent.
- (b) **Refinancing and Additional Bonds.** Reference is hereby made to the provisions of Section 5.3 and Section 5.4 of this Project Implementation Agreement.
- (c) **Operations Co Funds Transfer Certificate.** Operations Co acknowledges and agrees to provide to Project Co a duly completed and executed funds transfer certificate, substantially in the form of Exhibit B-2 attached to the Collateral Agency Agreement, setting forth the transfers required from the Revenue Account under Section 5.02(b) of the Collateral Agency Agreement, the Lock-up Account under Section 5.05 of the Collateral Agency Agreement and/or the Insurance Proceeds Account under Section 5.06 of the Collateral Agency Agreement, as applicable, no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn or transferred (or such other time as is sufficient for such transfers to be made on the proposed date). Operations Co agrees to provide to Project Co a written request, setting forth the transfers required from any other Project Account and sufficient in accordance with the terms of the Collateral Agency Agreement, containing the requested transfer amount and payees, by such time as is required for such transfers to be made on the proposed date. Each written request under this Section 4.2(c) is an "**Operations Co Funds Transfer Certificate**". Operations Co shall coordinate with the Technical Advisor in order to cause the Technical Advisor to deliver a duly completed and executed certificate when required to support transfers pursuant to sub-clause (iii) of clause *Third* of Section 5.02(b) of the Collateral Agency Agreement for the payment of excess operating, maintenance and capital expenditures.

- (d) **Operations Co Construction Account Withdrawal Certificate.** Operations Co acknowledges and agrees to provide to Project Co a duly completed certificate signed by a Responsible Officer of Operations Co, substantially in the form of Exhibit E-2 attached to the Collateral Agency Agreement (each, an “**Operations Co Construction Account Withdrawal Certificate**”), setting forth the Project Costs to be paid from time to time prior to the System Completion Date in accordance with Section 5.03(d) of the Collateral Agency Agreement, no later than the third (3<sup>rd</sup>) Business Day prior to the proposed date of disbursement (or such other time as is sufficient for such disbursements to be made on the proposed date). Operations Co shall coordinate with the Technical Advisor in order to cause the Technical Advisor to deliver a duly completed and executed certificate, substantially in the form of Exhibit E-3 attached to the Collateral Agency Agreement, when required to support requisitions for the payment of construction costs; provided that no such certificate shall be required to be delivered for requisitions solely for payment of interest.
- (e) **Restricted Payment Release Certificate.** Operations Co agrees to execute and deliver to Project Co as required a duly completed and executed Restricted Payment Release Certificate in accordance with Section 5.05(c) of the Collateral Agency Agreement prior to each Transfer Date and each other date as required to make the transfers from the Revenue Account and the Lock-up Account in accordance with the Collateral Agency Agreement.
- (f) **Insurance.** Operations Co shall cause Collateral Agent to be named as an "additional insured" under any insurance policies related to “All Risk” Builder's Risk Insurance” and “Project Finance Commercial General Liability Insurance” (as such terms are used in the Project Agreement, including Schedule 5 thereto) maintained by Operations Co pursuant to Section 6.1 of this Project Implementation Agreement.
- (g) **Use of Insurance Proceeds.** Reference is hereby made to the provisions of Section 6.5 of this Project Implementation Agreement. Operations Co shall deposit, or cause to be deposited, to the Insurance Proceeds Account all Insurance Proceeds (other than, for the avoidance of doubt, proceeds received in respect of delayed start-up and business interruption insurance or loss of advance profits insurance) received or entitled to be received by Operations Co. To the extent that, at any time following deposit of Insurance Proceeds into the Insurance Proceeds Account, Project Co has the right to determine whether or not to use such funds to restore the Project because the terms of the Project Agreement, the Project Implementation Agreement and the Financing Documents do not require that the Project be restored or reinstated, Project Co agrees to elect not to restore the affected property only so long as Operations Co has provided its written consent.
- (h) **Termination of Project Accounts.** Pursuant to Section 5.10 of the Collateral Agency Agreement, upon the satisfaction in full of the Secured Obligations, Project Co may request that the Collateral Agent close certain Project Accounts and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by Project Co. Project Co

agrees not to give any of the foregoing requests or directions without the prior written consent of Operations Co.

- (i) **Inadequately Identified Amounts and Other Requests for Instruction.** Pursuant to Section 5.12 of the Collateral Agency Agreement, Project Co has the right to give instructions to the Collateral Agent regarding transfers that have been inadequately identified. Upon receipt of any request from Collateral Agent for instruction from Project Co pursuant to Section 5.12 of the Collateral Agency Agreement or any other request from Collateral Agent to Project Co under the Financing Documents for information, clarification or instruction (other than in connection with the Excluded Rights and/or Excluded Obligations), Project Co shall not provide such information, clarification or instruction without the prior written consent of Operations Co.
- (j) **Supplemental Indentures and Amendments to the Financing Documents.** Pursuant to Section 9.02(a) of the Collateral Agency Agreement, Section 9.05 of the Senior Loan Agreement, Section 9.4 and Article X of the Senior Indenture, Section 9.05 of the Subordinate Loan Agreement, and Section 9.4 and Article X of the Subordinate Indenture, Project Co agrees not to (A) consent to such Supplemental Indentures or any amendment, modification or supplement to the Financing Documents or (B) execute and deliver any amendment, modification or supplement to any of the Financing Documents to which Project Co is a party, in each case, that may adversely affect Operations Co without the prior written consent of Operations Co.
- (k) **Additional Senior Bonds.** Pursuant to Section 3.5(d)(3) of the Senior Indenture, no Additional Senior Bonds shall be issued without the written consent of Operations Co, dated the date of issuance of such proposed Additional Senior Bonds, subject to Section 5.3 of this Project Implementation Agreement.
- (l) **Material Project Contracts.** Pursuant to Section 6.22(d) of the Senior Loan Agreement and Section 6.22(d) of the Subordinate Loan Agreement, Operations Co acknowledges that it is not permitted to amend, assign, waive or modify in any material respect or terminate any Material Project Contracts or enter into any other material agreement (other than in the ordinary course or as set forth in Section 6.22(d) of the Senior Loan Agreement and Section 6.22(d) of the Subordinate Loan Agreement) without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds). Notwithstanding the foregoing, the parties acknowledge and agree as follows:
  - (1) *Change Orders relating to the Project Agreement.* Operations Co may enter into change orders or amendments to implement change orders under the Material Project Contracts to which it is a party or new agreements, in each case, required for compliance with the Project Agreement (including, without limitation, with respect to Authority Changes, other written directives issued under the Project Agreement or to implement a System Refresh) or applicable law or regulation. In addition to the foregoing, with respect to the Design-Build Agreement,

Operations Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Design-Build Agreement if such change order or amendments, as applicable, will not require the payment by Operations Co (on behalf of Project Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, ten million dollars (\$10,000,000) in the aggregate; provided, that any change order or amendment to implement change orders, as applicable, the cost of which causes Operations Co (on behalf of Project Co) to exceed the ten million dollars (\$10,000,000) threshold with respect to the Design-Build Agreement will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that (A) in its reasonable belief, sufficient funds are available to the Borrower to pay the aggregate amount of Project Costs required to be incurred by the Borrower for the Design and Construction of the Project (including the cost of the change order or amendment to implement change orders at issue); and (B) there is a reasonable expectation of the System Completion Date occurring on or prior to the Bond Holder Long Stop Deadline; and with respect to the Services Contract, Operations Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Services Contract if such change order or amendments, as applicable, will not require the payment by Operations Co (on behalf of the Borrower) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, one million dollars (\$1,000,000) in the aggregate.

- (2) *Permitted Amendments, Waivers and Terminations.* Operations Co may amend or waive any Material Project Contract to which it is a party, or terminate any Material Project Contract to which it is a party (other than this Project Implementation Agreement), if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect. The parties acknowledge and agree that the termination of either the Design-Build Agreement or the Services Contract, as applicable, prior to the satisfaction of the corresponding design, construction or services obligations of Project Co under the Project Agreement, as applicable, is permitted pursuant to Section 6.22(d)(iii) of the Senior Loan Agreement and Section 6.22(d)(iii) of the Subordinate Loan Agreement so long as Operations Co enters into a replacement agreement with an Acceptable Substitute (or another counterparty upon the prior written consent of the Required Owners (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds)). In all cases, if a Material Project Contract or counterparty to a Material Project Contract to which Operations Co is a party is replaced and a direct agreement

existed with respect to such Material Project Contract prior to its replacement, Operations Co will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any replacement counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced.

- (3) *Acceptable Substitute.* Reference is hereby made to the provisions of Section 4.8 of this Project Implementation Agreement. In each case, solely to the extent required for Project Co to comply with the Financing Documents with respect to replacement contractors for the Design-Builder or the Service Provider, as applicable, and replacement contracts in place of the Design-Build Agreement or the Services Contract, as applicable, Operations Co agrees to (A) contract with replacement contractors that comply with the requirements set forth in the definition of "Acceptable Substitute" set forth in Exhibit A to the Collateral Agency Agreement and (B) submit to the Collateral Agent the certificates and opinions required by the definition of "Acceptable Substitute" set forth in Exhibit A to the Collateral Agency Agreement.

- (m) **Wholesaler Arrangements.** Pursuant to Section 6.22(d)(iv) of the Senior Loan Agreement and Section 6.22(d)(iv) of the Subordinate Loan Agreement, Operations Co agrees that it is permitted to enter into the Wholesaler Agreement or other contractual arrangement with the Wholesaler without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if such arrangement:

- (1) complies with Section 6.15 of the Senior Loan Agreement and Section 6.15 of the Subordinate Loan Agreement;
- (2) does not expressly modify the obligations of Project Co, Operations Co, the Design-Builder and/or the Service Provider under the Material Project Contracts to which such entity is a party with respect to the Project and the Project Agreement;
- (3) provides that all amounts payable to Operations Co shall be paid in arrears with customary payment terms, including invoicing;
- (4) contains customary indemnity provisions for the benefit of Operations Co; and
- (5) would not otherwise cause, or be reasonably expected to cause, a Material Adverse Effect.

- (n) **Permitted Change Orders and other Actions with respect to the Wholesaler Arrangements.** Pursuant to Section 6.22(d)(ii) of the Senior Loan Agreement and Section 6.22(d)(ii) of the Subordinate Loan Agreement, Operations Co agrees that it is permitted to enter into change orders or amendments to implement change orders, as applicable, under the Wholesaler Agreement, and

initiate Enhancement Requests or amendments to implement Enhancement Requests under the Design-Build Agreement or the Services Contract, as applicable, or enter into new agreements, in each case, with respect to Wholesaler Enhancements or Wholesaler Services, so long as:

- (1) the costs of implementing such change order, Enhancement Request or amendment, as applicable, will be paid for by Wholesaler in arrears with customary payment terms, including invoicing; and
- (2) such change order, Enhancement Request or amendment, as applicable:
  - (A) is not contrary to Law;
  - (B) does not render the insurance policies required under the Project Agreement void or voidable unless the Wholesaler agrees to provide replacement security satisfactory to the Technical Advisor, acting reasonably;
  - (C) does not cause the revocation of any Permit required by Project Co to perform its obligations under the Project Agreement, which Permit would not, using reasonable efforts, be capable of amendment or renewal;
  - (D) does not require a new Permit for Project Co to perform its obligations under the Project Agreement, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable; and
  - (E) does not cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under the Project Agreement, provided that such Permit was previously required but, at the time of such change order, Enhancement Request or amendment, as applicable, had not been obtained, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable.

Operations Co acknowledges and agrees that the costs of implementing change orders, Enhancement Requests or amendments to implement the foregoing with respect to the Wholesaler Agreement shall not exceed five million dollars (\$5,000,000) in the aggregate per fiscal year; provided, that any change order, Enhancement Request or amendment to implement the foregoing, as applicable, the cost of which causes Operations Co to exceed the five million dollars (\$5,000,000) threshold will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that such Wholesaler Enhancements and/or Wholesaler Services, as applicable (and the undertakings by Operations Co and the Design-Builder and/or the Service Provider, as applicable, with respect thereto) in its reasonable belief, would not materially and adversely affect the risk

allocation and payment regime under the Project Agreement and the Financing Documents with respect to the Design, Construction or Services. Operations Co also hereby agrees that, other than with respect to the foregoing amendments to implement change orders, it may otherwise amend, waive or terminate the Wholesaler Agreement if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect.

**4.3 Other Financing Rights and Obligations of Operations Co.** In furtherance of the purposes of this Schedule 15:

- (a) **Investment of Project Accounts.** In accordance with Section 5.08(g) of the Collateral Agency Agreement, Project Co may consult with Operations Co regarding Permitted Investments and its investment strategies for the amounts on deposit in the Project Accounts and Operations Co may suggest Permitted Investments and investment strategies to Project Co to assist Project Co in making its investment decisions.
- (b) **Drawing of Series 2015B-2 Bonds and Series 2015C Bonds.** Operations Co agrees to communicate and consult with Project Co regarding expected future Project Costs to facilitate Project Co's compliance with Project Co's obligations under the Senior Loan Agreement and the Subordinate Loan Agreement to deliver Draw Requests.
- (c) **Enforcement of Parallel Financing Issues.** Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Event of Default and, where relevant to such Event of Default, the continuance of such Event of Default, Operations Co shall exercise its rights under Section 2.4 of this Schedule 15 to pursue any rights, remedies or relief under the Financing Documents in the name of Project Co, including the right to enforce any issuance or draw obligations of the Senior Purchaser or the Subordinate Purchasers, at the Collateral Agent's request and in accordance with the Collateral Agent's directions.
- (d) **Maintenance of Existence.** Pursuant to Section 6.03 of the Senior Loan Agreement and Section 6.03 of the Subordinate Loan Agreement, Operations Co hereby agrees to (i) maintain (a) its legal existence as a limited liability company, (b) its good standing and qualification to do business in the Authority and in every jurisdiction where such qualification is required by applicable Law and (c) all material rights, franchises, privileges and consents necessary for the maintenance of its existence and (ii) not amend or modify its constitution documentation in a manner that is materially adverse to the Secured Parties.

**4.4 Operations Co Security Documents.** In accordance with Section 3.04 of the Senior Loan Agreement and Section 3.04 of the Subordinate Loan Agreement:

- (a) **Operations Co Security Agreement.** Operations Co shall execute and deliver a security agreement in the form of Exhibit A hereto (the "**Operations Co Security Agreement**") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Such Operations Co Security Agreement must be provided by no later than the Closing Date.

- (b) **Pledge Agreement.** Operations Co shall cause the Pledgor to execute and deliver a pledge agreement in the form of Exhibit B hereto (the "**Pledge Agreement**") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Such Pledge Agreement must be provided by no later than the Closing Date.
- (c) **Operations Co Direct Agreements.** Operations Co shall execute and deliver, and shall cause the Design-Builder and each Design-Builder Guarantor to each execute and deliver, the Design-Builder Direct Agreement in the form of Exhibit C-1 hereto. Operations Co shall execute and deliver, and shall cause the Service Provider and the Service Provider Guarantor to each execute and deliver, the Service Provider Direct Agreement in the form of Exhibit C-2 hereto. Such Design-Builder Direct Agreement and Service Provider Direct Agreement must be provided by no later than the Closing Date.
- (d) **Operations Co Operating Account.** Operations Co confirms that an operating account (the "**Operations Co Operating Account**") has been established or shall be established no later than the Closing Date with U.S. Bank National Association, in its capacity as a deposit account bank (the "**Deposit Account Bank**"), and such account shall be maintained in the name of Operations Co. The Operations Co Operating Account (including any funds on deposit therein from time to time) shall be subject to the Security Interest granted pursuant to the Operations Co Security Agreement and shall constitute part of the Operations Co Collateral. The Operations Co Operating Account shall be subject to an Deposit Account Control Agreement (substantially in the form attached as Exhibit G to the Collateral Agency Agreement) (each a "**Deposit Account Control Agreement**"). Each disbursement of funds from the Construction Account (and any sub-account thereof) in accordance with Section 5.03(d) of the Collateral Agency Agreement that is to be paid to Operations Co directly for the payment or reimbursement of Project Costs shall be made to the Operations Co Operating Account. There shall also be transferred to the Operations Co Operating Account (A) amounts transferred from the Revenue Account in accordance with clause *Third* of Section 5.02(b) of the Collateral Agency Agreement and (B) Capital Contributions in accordance with the Capital Contribution Agreement. Withdrawals from the Operations Co Operating Account will not require compliance with any conditions, other than that Project Revenues on deposit therein must be applied to Project Costs. The Operations Co Operating Account shall at all times be maintained with a single Deposit Account Bank.
- (e) **Operations Co Distribution Account.** Operations Co confirms that a distribution account (the "**Operations Co Distribution Account**") has been established or shall be established no later than the Closing Date with U.S. Bank National Association, and such account (with such bank or any replacement or successor institution) shall be maintained in the name of Operations Co. The Operations Co Distribution Account shall not be subject to any Security Interest pursuant to any Operations Co Security Document and shall not (including any funds on deposit therein) constitute any part of the Operations Co Collateral and no Secured Party (including the Collateral Agent) shall have any right with respect thereto. The Operations Co Distribution Account shall be funded with the Operations Co Availability Payments due and owing to Operations Co from time

to time under Section 10.6 of this Project Implementation Agreement in accordance with clause *Tenth* of Section 5.02(b) of the Collateral Agency Agreement and Section 5.05(b) of the Collateral Agency Agreement. Operations Co will have the exclusive right to withdraw or otherwise dispose of funds on deposit in the Operations Co Distribution Account to any other account or to such other Person as directed by Operations Co in its sole discretion without any restriction or condition at any time.

- (f) **Capital Contribution Agreement and Capital Contribution Letters of Credit.** Operations Co shall execute and deliver, and cause the other parties thereto to execute and deliver, a Capital Contribution Agreement in the form of Exhibit E hereto (the "**Capital Contribution Agreement**") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Operations Co shall cause each Capital Contribution Letter of Credit, each in the form and subject to the requirements set forth in the Capital Contribution Agreement, to be delivered to the Collateral Agent as contemplated in the Capital Contribution Agreement. Such Capital Contribution Agreement and Capital Contribution Letters of Credit must be provided by no later than the Closing Date. The parties hereto agree that, as compensation for providing the Capital Contribution Letters of Credit, Operations Co shall pay to the Sponsors, on a monthly basis commencing on the Closing Date, an amount equal to the amount for such fees for each such month set forth in the Base Case Model delivered on the Closing Date (the "**Capital Contribution LC Fees**").
- (g) **Capital Cash Collateral Accounts.** On behalf of the Sponsors, Operations Co hereby agrees to establish cash collateral accounts (each a "**Capital Cash Collateral Account**") with the Deposit Account Bank and each such Capital Cash Collateral Account shall be maintained in the name of Operations Co. Each Capital Cash Collateral Account (including any funds on deposit therein from time to time) shall be subject to the Security Interest granted pursuant to the Operations Co Security Agreement and shall constitute part of the Operations Co Collateral. Operations Co shall establish a Capital Cash Collateral Account on behalf of a Sponsor prior to any draw on such Sponsor's Capital Contribution Letter of Credit pursuant to Section 2.3(b) or (c) of the Capital Contribution Agreement. Prior to the deposit of any amounts into any Capital Cash Collateral Account, the Collateral Agent, Operations Co and the Deposit Account Bank shall have executed a Deposit Account Control Agreement with respect to the Capital Cash Collateral Account. Amounts deposited in any Capital Cash Collateral Account pursuant to a draw made by the Collateral Agent on such Sponsor's Capital Contribution Letter of Credit pursuant to Section 2.3(b) or (c) of the Capital Contribution Agreement shall constitute cash collateral security for the performance by the Sponsor whose Capital Contribution Letter of Credit was drawn of its obligations under the Capital Contribution Agreement. Amounts shall be transferred from any such Capital Cash Collateral Account in accordance with the terms of the Capital Contribution Agreement.
- (h) **Change of Deposit Account Bank.** Operations Co may change the Deposit Account Bank with respect to the Operations Co Operating Account and/or any Capital Cash Collateral Accounts at its sole discretion upon ten (10) Business Days written notice to each Trustee, the Collateral Agent and Project Co, to

another bank; provided that such bank shall be organized under the laws of the United States of America or any state thereof with a branch office in the Authority having a combined capital and surplus of not less than \$500,000,000. If the Deposit Account Bank at any time gives notice that it no longer wishes to act as a Deposit Account Bank or that it will no longer be subject to the terms of an Deposit Account Control Agreement, or that it will no longer act upon the instructions of Operations Co or the Collateral Agent in accordance with the applicable Deposit Account Control Agreement as a result of its determination that such action would result in the violation of any applicable Law, rule or regulation or for any other reason (a "**Termination Notice**"), Operations Co shall promptly (and, to the extent possible, prior to the effective date of such Termination Notice) appoint a replacement Deposit Account Bank; provided that Operations Co delivers an opinion of counsel to the effect that after the appointment of such replacement Deposit Account Bank, the Collateral Agent will remain perfected in any accounts held thereunder; provided, further, that such bank shall be organized under the laws of the United States of America or any state thereof with a branch office in the Authority having a combined capital and surplus of not less than \$500,000,000. Operations Co shall notify each Trustee, the Collateral Agent, and Project Co of any Termination Notice promptly upon receipt thereof by Operations Co. The new Deposit Account Bank shall be required, prior to becoming the Deposit Account Bank, to (i) enter into one or more Deposit Account Control Agreements, substantially in the form of Exhibit G to the Collateral Agency Agreement or in such other form as may be approved by the Instructing Trustee and the Collateral Agent (such approval not to be unreasonably withheld, delayed or conditioned), with Operations Co and the Collateral Agent and carry out such further acts as the Collateral Agent may reasonably request in order to perfect the security interest of the Collateral Agent in the Operations Co Operating Account and/or any Capital Cash Collateral Account, as applicable, and (ii) agree to provide the reports with respect to such account(s) similar to the reports required to be provided pursuant to Section 2.12(b) and (c) of the Collateral Agency Agreement.

- (i) **Further Assurances.** Operations Co will, at Project Co's cost and expense, execute and deliver to the Collateral Agent (with a copy to each Trustee and Project Co) all such reasonable acknowledgements, agreements, undertakings and other documents as the Collateral Agent or Project Co may require in connection with their taking security over Project Co's right, title and interest in and to this Project Implementation Agreement and the Project, including executing and delivering the Lenders' Remedies Agreement in the form of Exhibit D hereto. Such Lenders' Remedies Agreement must be provided by no later than the Closing Date. Operations Co will, at its own cost and expense, execute and deliver to the Collateral Agent (with a copy to each Trustee and Project Co) all such reasonable acknowledgements, agreements, undertakings and other documents as the Collateral Agent or Project Co may require in connection with their taking security over Operations Co's right, title and interest in and to this Project Implementation Agreement, the other Material Project Contracts to which Operations Co is a party and the Project as performance security as set forth herein.

**EXHIBIT A**  
**OPERATIONS CO SECURITY AGREEMENT**

---

**OPERATIONS CO SECURITY AGREEMENT**

Dated as of September 3, 2015

between

KENTUCKYWIRE OPERATIONS COMPANY, LLC, as Operations Co

and U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

Amended and Restated Schedule 15 (Exhibit A)  
Operations Co Security Agreement  
NG-KIH Project Implementation Agreement

## Table of Contents

	Page
SECTION 1	DEFINITIONS; INTERPRETATION ..... 2
(a)	Terms Defined in Collateral Agency Agreement..... 2
(b)	Certain Defined Terms ..... 2
(c)	Interpretation..... 6
SECTION 2	SECURITY INTEREST ..... 6
(a)	Grant of Security Interest ..... 6
(b)	Excluded Assets ..... 8
(c)	Operations Co Remains Liable ..... 8
(d)	Continuing Security Interest ..... 9
(e)	Reserved ..... 9
(f)	No Fee Interest ..... 9
(g)	Security Interest in Amounts Paid ..... 9
(h)	Use of Proceeds ..... 9
(i)	Partial Release ..... 9
SECTION 3	PERFECTION AND PRIORITY..... 9
(a)	Financing Statements ..... 9
(b)	Bailees.....10
(c)	Control.....10
(d)	Intellectual Property Collateral .....10
(e)	Motor Vehicles .....10
(f)	Books.....10
(g)	Access; Right of Inspection.....10
(h)	Further Assurances.....11
SECTION 4	REPRESENTATIONS AND WARRANTIES.....11
(a)	Location of Chief Executive Office and Collateral.....11
(b)	Locations of Books.....11
(c)	Jurisdiction of Organization and Names.....11
(d)	Collateral .....12
(e)	Enforceability; Priority of Security Interest.....12
(f)	Other Financing Statements .....12
(g)	Rights to Payment.....12

Table of Contents  
(continued)

	Page
(h) Inventory .....	12
(i) Intellectual Property .....	12
(j) Investment Property; Instruments; and Chattel Paper .....	13
(k) Control Agreements .....	13
(l) Letter-of-Credit Rights.....	13
(m) Commercial Tort Claims.....	13
(n) Leases .....	13
SECTION 5 COVENANTS .....	13
(a) Change in Name, Identity or Structure .....	13
(b) Expenses .....	13
(c) Leased Premises; Collateral Held by Warehouseman, Bailee, Etc.....	13
(d) Instruments, Investment Property, Etc .....	14
(e) Inventory .....	14
(f) Equipment.....	14
(g) Intellectual Property Collateral .....	14
(h) Notices, Reports and Information.....	15
(i) Chattel Paper.....	15
(j) Commercial Tort Claims.....	15
(k) Letter-of-Credit Rights.....	15
(l) Pledged Agreements .....	15
(m) Timing and Notice.....	15
SECTION 6 INVESTMENT PROPERTY AND INSTRUMENTS .....	15
SECTION 7 AUTHORIZATION; COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT .....	16
SECTION 8 COLLATERAL AGENT PERFORMANCE OF OPERATIONS CO OBLIGATIONS .....	17
SECTION 9 COLLATERAL AGENT'S DUTIES .....	17
SECTION 10 REMEDIES .....	18
(a) Remedies .....	18
(b) Proceeds Account.....	19
(c) Application of Proceeds .....	20
(d) Remedies of the Secured Parties.....	20

Table of Contents  
(continued)

	Page
(e) Grant of Intellectual Property License .....	20
SECTION 11 CERTAIN WAIVERS.....	20
SECTION 12 NOTICES.....	20
SECTION 13 CAPTIONS .....	20
SECTION 14 SURVIVAL OF PROVISIONS .....	21
SECTION 15 NO WAIVER; CUMULATIVE REMEDIES .....	21
SECTION 16 COSTS AND EXPENSES; INDEMNIFICATION; OTHER CHARGES.....	21
SECTION 17 SUCCESSORS AND ASSIGNS.....	21
SECTION 18 GOVERNING LAW; CONSENT TO JURISDICTION .....	21
SECTION 19 WAIVER OF JURY TRIAL .....	21
SECTION 20 AMENDMENT OR WAIVER .....	21
SECTION 21 ENTIRE AGREEMENT .....	22
SECTION 22 SEVERABILITY .....	22
SECTION 23 COUNTERPARTS .....	22
SECTION 24 NO INCONSISTENT REQUIREMENTS .....	22
SECTION 25 TERMINATION .....	22
SECTION 26 REINSTATEMENT.....	22
SECTION 27 LIMITATION OF LIABILITY.....	22
SECTION 28 NO THIRD PARTY BENEFICIARIES.....	23
SECTION 29 PATRIOT ACT NOTIFICATION .....	23

THIS OPERATIONS CO SECURITY AGREEMENT (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Agreement"), dated as of September 3, 2015, is made by and between KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company (the "Operations Co") and U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, together with its successors in such capacity, the "Collateral Agent") for the benefit of the Secured Parties.

### **RECITALS**

WHEREAS, pursuant to that certain Senior Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented, amended and restated and/or otherwise modified from time to time, the "Senior Indenture") between the Kentucky Economic Development Finance Authority, a public body corporate and politic, constituting an instrumentality of the Commonwealth of Kentucky, as Issuer ("Issuer") and U.S. Bank National Association, as trustee, Issuer has authorized the issuance of \$ \_\_\_\_\_ aggregate principal amount of Kentucky Economic Development Finance Authority Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015A and Taxable Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015B, the proceeds from the sale of which will be loaned to Borrower pursuant to the terms of that certain Senior Loan Agreement (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Senior Loan Agreement"), dated as of September 1, 2015, between Issuer and Borrower, to be used to finance a portion of the costs of the Project, as hereinafter defined;

WHEREAS, pursuant to that certain Subordinate Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Indenture"), (a) the Issuer has authorized the issuance of not to exceed \$ \_\_\_\_\_ Kentucky Economic Development Finance Authority Subordinate Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015C, the proceeds from the sale of which will be loaned to the Borrower pursuant to the terms of a Subordinate Loan Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Loan Agreement"), dated as of September 1, 2015, between the Issuer and the Borrower, to be used to finance a portion of the costs of the Project and (b) the Subordinate Bonds Trustee, on behalf of the Subordinate Secured Parties, has subordinated the Subordinate Secured Obligations and all liens securing the Subordinate Secured Obligations to the payment in full of the Senior Secured Obligations in the manner and to the extent set forth in this Agreement and the Subordinate Indenture;

WHEREAS, pursuant to that certain Project Implementation Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Implementation Agreement"), dated as of September 3, 2015, Borrower has contracted with Operations Co to, among other things, implement Borrower's obligations with respect to the Project pursuant to the Project Agreement and manage the obligations undertaken by the Design-Builder and the Service Provider, respectively, pursuant to the terms of the Design-Build Agreement and Services Contract, respectively;

WHEREAS, Operations Co, through the Implementation Agreement, will derive substantial direct and indirect benefit from the financing arrangements referenced in these recitals; and

WHEREAS, in consideration for the rights granted to Operations Co pursuant to the Implementation Agreement, and as a condition precedent to the above-described financing transactions, Operations Co has agreed to secure the Secured Obligations (as defined herein) as set forth herein.

## AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereto agree as follows:

### SECTION 1 Definitions; Interpretation.

(a) Terms Defined in Collateral Agency Agreement. All capitalized terms used in this Agreement but not otherwise defined herein shall have the respective meanings set forth in Exhibit A to the Collateral Agency and Account Agreement dated as of September 1, 2015 among Borrower, the Senior Bonds Trustee, as defined therein, the Subordinate Bonds Trustee, as defined therein, the Securities Intermediary, as defined therein and Collateral Agent (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Collateral Agency Agreement").

(b) Certain Defined Terms. As used in this Agreement, terms defined in the preamble and recitals hereto shall have the meanings set forth therein and the following terms shall have the following meanings:

"Accession" has the meaning given such term in Section 9-102 of the UCC.

"Account Debtor" shall mean a person obligated on an Account, Chattel Paper or General Intangible.

"Accounts" means any and all accounts, as such term is defined in Section 9-102 of the UCC.

"As-Extracted Collateral" means any and all as-extracted collateral, as such term is defined in Section 9-102 of the UCC.

"Books" means all books, Records and other written, electronic or other documentation in whatever form maintained now or hereafter, including: (i) ledgers; (ii) Records indicating, summarizing, or evidencing assets (including Inventory and Rights to Payment), business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals and spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any contract or agreement with any service bureau, computer or data processing company or other Person charged with preparing or maintaining any books or Records or with credit reporting, including with regard to Accounts.

"Cash Proceeds" has the meaning given such term in Section 9-102 of the UCC.

"Chattel Paper" means any and all chattel paper, as such term is defined in Section 9-102 of the UCC, including all Electronic Chattel Paper.

Amended and Restated Schedule 15 (Exhibit A)  
Operations Co Security Agreement  
NG-KIH Project Implementation Agreement

“Collateral” has the meaning set forth in Section 2 of this Agreement.

“Commercial Tort Claims” means any and all commercial tort claims, as such term is defined in Section 9-102 of the UCC, including any described under the heading “Commercial Tort Claims” in Schedule 1 to this Agreement.

“Commodity Account” means all commodity accounts, as such term is defined in Section 9-102 of the UCC.

“Commodity Contract” means all commodity contracts, as such term is defined in Section 9-102 of the UCC.

“Control Agreement” means any control agreement or other agreement with any Securities Intermediary, bank or other Person establishing the Collateral Agent’s control with respect to any Deposit Account, Investment Property or Letter-of-Credit Right, for purposes of UCC Section 9-104, 9-106 or 9-107.

“Deposit Account” means any deposit account, as such term is defined in Section 9-102 of the UCC, whether or not restricted or designated for a particular purpose.

“Documents” means any and all documents, as such term is defined in Section 9-102 of the UCC.

“Electronic Chattel Paper” means any and all electronic chattel paper, as such term is defined in Section 9-102 of the UCC.

“Equipment” means any and all equipment, as such term is defined in Section 9-102 of the UCC, including any and all Fixtures.

“Excluded Contracts” means the Project Agreement and any Third Party Infrastructure Agreements, as each may be amended, supplemented, amended and restated or otherwise modified and in effect from time to time.

“Financial Asset” means all financial assets, as such term is defined in Section 8-102 of the UCC.

“Fixture Filing” means any fixture filing, as such term is defined in Section 9-102 of the UCC.

“Fixtures” means any and all fixtures, as such term is defined in Section 9-102 of the UCC.

“General Intangibles” means any and all general intangibles, as such term is defined in Section 9-102 of the UCC.

“Goods” means any and all goods, as such term is defined in Section 9-102 of the UCC.

“Instruments” means any and all instruments, as such term is defined in Section 9-102 of the UCC.

“Intellectual Property Collateral” means the following properties and assets now or hereafter owned or held by Operations Co or in which Operations Co otherwise has any interest, now existing or hereafter acquired or arising:

(i) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including the patents, patent applications and patent licenses described under the corresponding headings in Schedule 1 to this Agreement), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all copyrights and applications for copyright, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and all other rights and works of authorship (including the copyrights and copyright applications described under the corresponding headings in Schedule 1 to this Agreement), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, and all other rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright;

(iii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including the marks, names, applications and licenses described under the corresponding headings in Schedule 1 to this Agreement), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(iv) all trade secrets, trade dress, trade styles, logos, other source of business identifiers, mask-works, mask-work registrations, mask-work applications, software, confidential and proprietary information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates, catalogs, internet websites, and internet domain names and associated URL addresses;

(v) the entire goodwill of or associated with the businesses now or hereafter conducted by Operations Co connected with and symbolized by any of the aforementioned properties and assets; and

(vi) all accounts, all other proprietary rights, all other intellectual or other similar property and all other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above.

“Inventory” means any and all inventory, as such term is defined in Section 9-102 of the UCC.

“Investment Property” means any investment property, as such term is defined in Section 9-102 of the UCC.

“Letter-of-Credit Rights” means any and all letter-of-credit rights, as such term is defined in Section 9-102 of the UCC.

“Motor Vehicles” means motor vehicles, tractors, trailers and other like property, if the title thereto is governed by a certificate of title or ownership.

“Operations Co Financing Default” has the meaning given to such term in the Collateral Agency Agreement.

“Pledged Agreements” means all contracts and agreements included in the Collateral, as amended, modified, renewed or extended from time to time, including (i) all rights of Operations Co to receive moneys and other payments and distributions due or to become due thereunder or with respect thereto, (ii) all rights of Operations Co to receive proceeds of any insurance, indemnity, warranty, letter of credit or guaranty with respect thereto, (iii) all claims of Operations Co for damages arising out of any breach or default thereunder or in respect thereof; and (iv) the right of Operations Co to terminate, amend, supplement or modify any such agreement, contract, instrument or other document, to perform thereunder and to compel performance and otherwise exercise all rights and remedies thereunder or in respect thereof.

“Proceeds” means all proceeds, as such term is defined in Section 9-102 of the UCC.

“Promissory Note” means any and all promissory notes, as such term is defined in Section 9-102 of the UCC.

“Records” has the meaning given such term in Section 9-102 of the UCC.

“Rights to Payment” means any and all of Operations Co’s Accounts and any and all of Operations Co’s rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

“Secured Obligations” means all obligations of Operations Co under the Implementation Agreement, the Financing Documents to which it is a party and the Material Project Contracts to which it is a party.

“Securities” means all securities, as such term is defined in Section 8-102 of the UCC, and all stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

“Securities Account” means each securities account, as such term is defined in Section 8-501 of the UCC.

“Securities Intermediary” means each securities intermediary, as such term is defined in Section 8-102 of the UCC.

“Security Entitlement” means all security entitlements, as such term is defined in Section 8-102 of the UCC.

“Supporting Obligations” means all supporting obligations, as such term is defined in Section 9-102 of the UCC.

“UCC” means the Uniform Commercial Code from time to time in effect in the State of New York or, as the context may require, the State of Delaware or, as the context may require, in effect in the State or States in which any Collateral is located.

(c) Interpretation. For purposes of this Agreement, except as otherwise expressly provided and except where the context otherwise requires: (i) the incorporation by reference of definitions or other terms from other agreements shall survive any termination of such agreements until this Agreement is terminated as provided in Section 25 hereof; (ii) any of the terms defined herein may be used in the singular or the plural, depending on the reference; (iii) references in this Agreement to any Article, Section, Schedule or Exhibit shall be to an Article, Section, Schedule or Exhibit, as the case may be, of this Agreement unless otherwise specifically provided; (iv) the use in this Agreement of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter; (v) the terms lease and license shall include sub-lease and sub-license, as applicable; (vi) all references in this Agreement to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to the UCC; (vii) the words “herein,” “hereof,” “hereto,” “hereby,” “hereunder” and other words of similar import in this Agreement refer to this Agreement as a whole and not to any particular Article, Section or other subdivision and, if this Agreement has been amended, then such words shall refer to this Agreement as so amended; (viii) the term “money” includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder; and (ix) all references to any contract or agreement in this Agreement shall include all amendments, supplements and modifications thereto.

## SECTION 2 Security Interest.

(a) Grant of Security Interest. As security for the full and prompt payment and performance when due of the Secured Obligations, Operations Co hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a Security Interest in and continuing lien on all of Operations Co’s right, title and interest in, to and under all of its personal property, tangible and intangible, wherever located and whether now owned, leased or licensed or hereafter acquired, leased or licensed and whether now existing or hereafter arising (subject to Section 2(b) hereof), including Operations Co’s right, title and interest in, to and under the following property (collectively, the “Collateral”):

Amended and Restated Schedule 15 (Exhibit A)  
Operations Co Security Agreement  
NG-KIH Project Implementation Agreement

- (i) all Accounts;
- (ii) all As-Extracted Collateral;
- (iii) all Chattel Paper;
- (iv) all Commercial Tort Claims;
- (v) all Documents;
- (vi) all Equipment (including all right, title and interest in and to the Project);
- (vii) all Fixtures;
- (viii) all General Intangibles;
- (ix) all Goods;
- (x) all Instruments, including all Promissory Notes;
- (xi) all Intellectual Property Collateral;
- (xii) all Inventory;
- (xiii) to the maximum extent assignable (including by operation of Sections 9-406 et seq. of the UCC, or otherwise) all Permits now or hereafter held in the name, or for the benefit, of Operations Co (provided that any Permit which by its terms or by operation of law would become void, voidable, terminable, or revocable if mortgaged, pledged or assigned hereunder or if a security interest therein was granted hereunder is expressly excepted and excluded from the lien and terms of this Agreement to the extent necessary to avoid such voidness, voidability, terminability or revocability);
- (xiv) all money, cash, cash equivalents and Deposit Accounts, including, without limitation, the Operations Co Operating Account, together with all amounts on deposit from time to time in such Deposit Accounts;
- (xv) all Investment Property, including all Securities, all Securities Accounts, and all Security Entitlements with respect thereto and Financial Assets carried therein, and all Commodity Accounts and Commodity Contracts;
- (xvi) all Letter-of-Credit Rights;
- (xvii) all Material Project Contracts to which Operations Co is a party, including, without limitation, the Implementation Agreement;
- (xviii) to the maximum extent assignable (including by operation of Sections 9-406 or 9-408 of the UCC, or otherwise), all agreements and contracts (other than agreements and contracts covered by paragraph (viii) or (xvii) above), in each case, to which Operations Co is a party or of

Amended and Restated Schedule 15 (Exhibit A)  
Operations Co Security Agreement  
NG-KIH Project Implementation Agreement

which it is a beneficiary (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time), including (i) all contracts and agreements related to the Project to which Operations Co is a party or of which it is a beneficiary and (ii) each and every bond, indemnity, warranty guaranty and other similar document relating to the performance by any party (other than Operations Co) of any of the foregoing (provided that any such agreement, contract or document which by its terms or by operation of law would become void, voidable, terminable, or revocable if mortgaged, pledged or assigned hereunder or if a security interest therein was granted hereunder is expressly excepted and excluded from the lien and terms of this Agreement to the extent necessary so as to avoid such voidness, avoidability, terminability or revocability); and

- (xix) all products, Proceeds, rents and profits of or in respect of any and all of the foregoing, including proceeds of insurance policies and of condemnation proceedings, all collateral security and guarantees given by any Person with respect to any and all of the foregoing, all Accessions to and substitutions and replacements for any of the foregoing, all Supporting Obligations of any and all of the foregoing and all Books.

(b) Excluded Assets. Notwithstanding anything herein to the contrary, in no event shall the Collateral include or the Security Interest granted under Section 2(a) hereof attach to:

- (i) the Operations Co Distribution Account or any monies, securities, Instruments or other investments on deposit in such account from time to time;
- (ii) to the extent the Borrower has rights to the following or the power to transfer rights in the following, the Excluded Contracts; and
- (iii) any agreements or other contractual arrangements with Wholesaler to which Operations Co is a party or of which it is a beneficiary (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time) and each and every bond, indemnity, warranty guaranty and other similar document relating to the performance by any party (other than Operations Co) of any of the foregoing, and all products, Proceeds, rents and profits of or in respect of any and all of the foregoing, including proceeds of insurance policies and of condemnation proceedings, all collateral security and guarantees given by any Person with respect to any and all of the foregoing, all Accessions to and substitutions and replacements for any of the foregoing, all Supporting Obligations of any and all of the foregoing and all Books with respect thereto.

(c) Operations Co Remains Liable. Anything herein to the contrary notwithstanding, (i) Operations Co shall remain liable for all obligations under and in respect of the Collateral and nothing contained herein is intended as or shall be a delegation of duties to Collateral Agent or the other Secured Parties, (ii) Operations Co shall remain liable under each of the agreements included in the Collateral, including the Pledged Agreements to perform all of its duties and

obligations thereunder to the same extent as if this Agreement had not been executed in accordance with and pursuant to the terms and provisions thereof, (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release Operations Co from any of its duties or obligations under such Pledged Agreements, and (iv) the Collateral Agent shall not have any obligation or liability under any Pledged Agreements by reason of this Agreement, nor shall the Collateral Agent be obligated to perform any of the obligations or duties of Operations Co thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

(d) Continuing Security Interest. Operations Co agrees that this Agreement shall create a continuing Security Interest in the Collateral which shall remain in effect until terminated in accordance with Section 25 of this Agreement.

(e) Reserved.

(f) No Fee Interest. Operations Co hereby acknowledges and agrees that the Security Interest created hereby in the Collateral is not, in and of itself, to be construed as a grant of a fee interest (as opposed to security interest) in any copyright, patent or trademark owned by Operations Co.

(g) Security Interest in Amounts Paid. Notwithstanding anything to the contrary in the foregoing, any and all amounts paid or distributed by Operations Co in accordance with the Financing Documents and/or the Project Implementation Agreement (as applicable) shall be free of the Security Interests granted and created herein upon, from and after such payment or distribution.

(h) Use of Proceeds. So long as no Operations Co Financing Default shall have occurred and be continuing, Operations Co shall be entitled to use and, except with respect to Collateral required by this Agreement to be delivered to the Collateral Agent, possess, all Collateral and to exercise its rights, title and interest in all contracts, agreements and licenses, subject to the rights, remedies, powers and privileges of the Collateral Agent under this Agreement. Nothing herein shall limit or restrict the rights of Operations Co in respect of funds available for distributions and other transfers contemplated and permitted pursuant to the Collateral Agency Agreement.

(i) Partial Release. Upon the sale by Operations Co of any assets permitted by, and in accordance with, the Financing Documents, any lien created by this Agreement on such assets shall be released (provided, however that Security Interests granted and created herein shall continue in any proceeds, as defined in the UCC, of such sale, conveyance, transfer, assignment or other disposition) and, upon the written request of Operations Co, Collateral Agent shall execute such documents as Operations Co may reasonably request evidencing such release of such Security Interest.

### SECTION 3 Perfection and Priority.

(a) Financing Statements. Operations Co hereby authorizes the Collateral Agent to file at any time and from time to time, any financing statements describing the Collateral, all amendments to financing statements, continuation statements, termination statements, security agreements relating to the Intellectual Property Collateral, assignments, Fixture Filings, affidavits, reports, notices and other documents and instruments, in form reasonably satisfactory

to the Collateral Agent, and Operations Co shall execute and deliver to the Collateral Agent such of the foregoing documents as the Collateral Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Collateral Agent's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, Operations Co ratifies and authorizes the filing by the Collateral Agent of any financing statements filed prior to the date hereof in connection with security interests granted hereunder.

(b) Bailees. Any Person (other than the Collateral Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Collateral Agent. At any time and from time to time, the Collateral Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Collateral Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, Operations Co will join with the Collateral Agent in notifying any Person who has possession of any Collateral of the Collateral Agent's security interest therein and will use its commercially reasonable efforts to obtain an acknowledgment from such Person that it is holding the Collateral for the benefit of the Collateral Agent. If such Person fails to deliver such an acknowledgment within fourteen (14) days of request therefor or refuses, at any time, to deliver such an acknowledgment then, upon request by the Collateral Agent, Operations Co shall take possession of such Collateral or deliver the same to another Person and again comply with the last two sentences of this paragraph.

(c) Control. Operations Co will promptly, from time to time, enter into such control agreements, each in form and substance reasonably acceptable to the Collateral Agent, as may be required to perfect the security interest created hereby in any and all Deposit Accounts, Electronic Chattel Paper, Investment Property and Letter-of-Credit Rights, and will promptly furnish to the Collateral Agent true copies thereof.

(d) Intellectual Property Collateral. Operations Co will promptly from time to time upon the request of the Collateral Agent, execute and deliver such short-form security agreements as the Collateral Agent may reasonably deem necessary or advisable to protect the interests of the Collateral Agent in respect of Intellectual Property Collateral.

(e) Motor Vehicles. Operations Co will, promptly upon the reasonable request of the Collateral Agent, cause the Collateral Agent to be listed as the lienholder on any certificate of title or ownership covering any Motor Vehicle (other than Motor Vehicles constituting Inventory) and within ninety (90) days of such request deliver evidence of the same to the Collateral Agent. A request by the Collateral Agent under the preceding sentence shall be deemed reasonable if the relevant Motor Vehicles have an aggregate book value in excess of \$100,000.

(f) Books. Operations Co will keep full and accurate Books relating to the Collateral, and stamp or otherwise mark such Books in such manner as the Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement, and permit representatives of the Collateral Agent, upon reasonable notice, at reasonable times during normal business hours to inspect and make abstracts from its Books pertaining to the Collateral subject to all applicable confidentiality undertakings and operational or contractual requirements or limitations; provided, however, that, unless an Operations Co Financing Default

has occurred and is continuing, Operations Co shall not be responsible for the cost of any such inspection.

(g) Access; Right of Inspection. Subject in all cases and at all times to the rights of access to the Lands and the NG-KIH System granted to Operations Co pursuant to the Implementation Agreement, the Collateral Agent and its representatives shall, at any reasonable time and as often as may be reasonably requested, and, upon reasonable notice to Operations Co, in each case during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by Operations Co or any other party of its obligations with respect to the construction and operation of the Project, have the right to enter any premises of Operations Co and inspect any property of Operations Co where any of the Collateral of Operations Co is located for the purpose of inspecting the same, observing its use or otherwise protecting Collateral Agent's interests therein; provided, however, that, unless an Operations Co Financing Default has occurred and is continuing, Operations Co shall not be responsible for the cost of any such inspection.

(h) Further Assurances. Operations Co agrees that from time to time, at its expense, it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any Security Interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Operations Co shall furnish the Collateral Agent with such information regarding the Collateral, including, without limitation, the location thereof, as the Collateral Agent may reasonably request from time to time. Operations Co hereby authorizes the Collateral Agent to modify this Agreement after obtaining Operations Co's approval of or signature to such modification by amending Schedule 1 (as such schedule may be amended or supplemented from time to time) to include reference to any additional information of which Operations Co has given notice to Collateral Agent.

SECTION 4 Representations and Warranties. Operations Co represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, that, as of the date hereof and as of the Financial Close:

(a) Location of Chief Executive Office and Collateral. Operations Co's chief executive office and principal place of business is located at the address set forth, and designated as such, under the corresponding heading in Schedule 1 to this Agreement; and all other locations where Operations Co conducts business or where Collateral is kept are set forth under the heading "Locations of Collateral" in Schedule 1 to this Agreement.

(b) Locations of Books. All locations where Books pertaining to the Rights to Payment are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for Operations Co, are set forth under the heading "Locations of Books, etc." in Schedule 1 to this Agreement.

(c) Jurisdiction of Organization and Names. Operations Co's mailing address, jurisdiction of organization and organizational ID number is set forth under the corresponding heading in Schedule 1 to this Agreement, and Operations Co's exact legal name is as set forth in the first paragraph of this Agreement. Except as set forth under the heading "Historical

Matters” in Schedule 1 to this Agreement, Operations Co has not, at any time prior to the date hereof: (i) been known as or used any other corporate, trade or fictitious name; (ii) changed its name, jurisdiction or organization, chief executive office or sole place of business or corporate structure; (iii) been the surviving or resulting entity in a merger or consolidation; (iv) acquired through asset purchase or otherwise any business of any Person; or (v) become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person. Operations Co has been duly organized and is validly existing as a limited liability company solely under the laws of the State of Delaware and remains duly existing as such. Operations Co has not filed any certificate of dissolution or liquidation or any certificate of domestication, transfer or continuance in any other jurisdiction.

(d) Collateral. Operations Co has rights in and, upon compliance with the limitations in the Project Agreement, the power to transfer, the Collateral, and Operations Co is, and, except as permitted by the Financing Documents, will continue to be, the sole owner of the Collateral (or, in the case of after-acquired Collateral, at the time Operations Co acquires rights in such Collateral, will be the sole owner thereof), free from any Security Interest other than Permitted Security Interests.

(e) Enforceability; Priority of Security Interest. (i) This Agreement creates a security interest which is enforceable against the Collateral in which Operations Co now has rights and will create a security interest which is enforceable against the Collateral in which Operations Co hereafter acquires rights at the time Operations Co acquires any such rights and to the extent thereof, in each case to the extent that the same may be created under Article 9 of the UCC by execution and delivery of a written security agreement (the “Article 9 Collateral”); and (ii) the Collateral Agent shall have a perfected and first priority security interest in the Article 9 Collateral in which Operations Co hereafter acquires rights at the time Operations Co acquires any such rights, in each case securing the payment and performance of the Secured Obligations, and in each case to the extent that the same may be perfected by the filing of UCC-1 financing statements.

(f) Other Financing Statements. Other than (i) financing statements related to Permitted Security Interests and (ii) financing statements in favor of the Collateral Agent for the benefit of the Secured Parties, no effective financing statement naming Operations Co as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction.

(g) Rights to Payment. Operations Co has not assigned any of its rights under the Rights to Payment except to the Collateral Agent pursuant to the Financing Documents.

(h) Inventory. No Inventory is stored with any bailee, warehouseman or similar Person or on any premises leased to Operations Co, nor has any Inventory been consigned to Operations Co or consigned by Operations Co to any Person or is held by Operations Co for any Person under any “bill and hold” or other arrangement, except in each case as set forth under the heading “Inventory Matters” in Schedule 1 to this Agreement.

(i) Intellectual Property.

(i) Except as set forth under the heading “Intellectual Property” in Schedule 1 to this Agreement, Operations Co does not own, possess or use under any licensing arrangement, any patents, copyrights, trademarks, service marks or trade names, nor is there

currently pending before any Governmental Authority any application for registration of any patent, copyright, trademark, service mark or trade name;

(ii) All patents, copyrights, trademarks, service marks and trade names are subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(iii) No infringement or unauthorized use presently is being made of any Intellectual Property Collateral by any Person; and

(iv) Operations Co is the sole and exclusive owner of the Intellectual Property Collateral and the use of such Intellectual Property Collateral by Operations Co has not and does not infringe or violate any right, privilege or license agreement of or with any other Person.

(j) Investment Property; Instruments; and Chattel Paper. All Securities Accounts of Operations Co and other Investment Property of Operations Co are set forth under the corresponding headings in Schedule 1 to this Agreement, and all Instruments and Chattel Paper held by Operations Co are also set forth under the corresponding headings in Schedule 1 to this Agreement.

(k) Control Agreements. No Control Agreements exist with respect to any Collateral other than any Control Agreements in favor of the Collateral Agent.

(l) Letter-of-Credit Rights. Operations Co does not have any Letter-of-Credit Rights except as set forth in Schedule 1 to this Agreement.

(m) Commercial Tort Claims. Operations Co does not have any Commercial Tort Claims except as set forth in Schedule 1 to this Agreement.

(n) Leases. Operations Co is not, and will not become, a lessee under any real property lease or other agreement governing the location of Collateral at the premises of another Person pursuant to which the lessor or such other Person may obtain any rights in any of the Collateral, and no such lease or other such agreement now prohibits, restrains, impairs or will prohibit, restrain or impair such Operations Co's right to remove any Collateral from the premises at which such Collateral is situated, except for restrictions in favor of the Collateral Agent.

SECTION 5 Covenants. So long as any of the Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted) remain unsatisfied, and without limiting any restrictions or prohibitions set forth in the other Financing Documents with respect to any of the following, Operations Co agrees that:

(a) Change in Name, Identity or Structure. Operations Co will give at least thirty (30) days' prior written notice to the Collateral Agent of (i) any change in its name, (ii) any change in its jurisdiction of organization, (iii) any change in its registration as an organization (or any new such registration); and (iv) any changes in its identity or structure which might make any financing statement filed pursuant to this Agreement seriously incorrect or misleading; provided that Operations Co shall not change its jurisdiction of organization to a jurisdiction outside of the United States and shall not make any of the changes in clauses (i) through (iv) of this Section unless it shall have taken all actions necessary or advisable to maintain the

continuous validity, perfection and the same or better priority of the Collateral Agent's Security Interest in the Collateral intended to be granted herein.

(b) Expenses. Operations Co will pay all expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral.

(c) Leased Premises; Collateral Held by Warehouseman, Bailee, Etc. Operations Co will use its commercially reasonable efforts to obtain from each Person from whom Operations Co leases any premises, and from each other Person at whose premises any Collateral is at any time present (including any bailee, warehouseman or similar Person), any such collateral access, subordination, landlord waiver, bailment, consent and estoppel agreements as the Collateral Agent may require. If any such Person fails to deliver such an agreement, in form and substance reasonably satisfactory to the Collateral Agent, within fourteen (14) days of request therefor or refuses, at any time, to deliver such an agreement then, upon request by the Collateral Agent, Operations Co shall take possession of such Collateral or deliver the same to another Person and again comply with this paragraph.

(d) Instruments, Investment Property, Etc. Operations Co will (i) promptly deliver to the Collateral Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property, all letters of credit, and all other Rights to Payment at any time evidenced by promissory notes, trade acceptances or other instruments (other than checks and other payment instruments received in the ordinary course of business, each of which shall be promptly deposited with the Collateral Agent in accordance with the Financing Documents), in each case in which Operations Co has rights or the power to transfer rights, (ii) cause any Securities Intermediaries to show on their books that the Collateral Agent is the entitlement holder with respect to any Investment Property, and/or (at Operations Co's option) obtain Control Agreements in favor of the Collateral Agent from such Securities Intermediaries, in form and substance satisfactory to the Collateral Agent, with respect to any Investment Property, as requested by Collateral Agent, and (iii) provide such notice, obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights, as the Collateral Agent shall reasonably specify; in the case of each of clauses (i), (ii) and (iii) in order to create, perfect and/or maintain the validity, perfection or priority of, provide notice of, and/or protect, the Collateral Agent's Security Interest hereunder or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder.

(e) Inventory. Operations Co will:

(i) (A) if no Operations Co Financing Default shall have occurred and be continuing, within fifteen (15) days after written request by the Collateral Agent, or (B) if an Operations Co Financing Default shall have occurred and is continuing, within five (5) days after written request by the Collateral Agent, furnish to the Collateral Agent a report of all Inventory in which Operations Co has rights or the power to transfer rights; and

(ii) except as otherwise permitted by the Financing Documents, not (A) store any Inventory in which Operations Co has rights or the power to transfer rights with a bailee, warehouseman or similar Person or on premises leased to, or otherwise not owned in fee simple by, Operations Co, without complying with Section 5(c) hereof with respect thereto nor (B) dispose of any such Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on

approval, consignment or similar basis, nor acquire any Inventory from any Person on any such basis, without in each case giving the Collateral Agent prior written notice thereof.

(f) Equipment. Operations Co will (i) if no Operations Co Financing Default shall have occurred and be continuing, within fifteen (15) days after written request by the Collateral Agent, or (ii) if an Operations Co Financing Default shall have occurred and is continuing, within five (5) days after written request by the Collateral Agent, deliver to the Collateral Agent a report with respect to all Equipment in which Operations Co has rights or the power to transfer rights.

(g) Intellectual Property Collateral. Operations Co will:

(i) not allow or suffer any Intellectual Property Collateral to become abandoned, nor any registration thereof to be terminated, forfeited, expired or dedicated to the public, except as shall be reasonable and appropriate in accordance with prudent business practice;

(ii) promptly give the Collateral Agent notice of any rights Operations Co may obtain to any new patentable inventions, material copyrightable works or other new Intellectual Property Collateral prior to the filing of any application for registration thereof; and

(iii) diligently prosecute all applications for patents, copyrights and trademarks, and file and prosecute any and all continuations, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Intellectual Property Collateral.

(h) Notices, Reports and Information. Operations Co will promptly notify the Collateral Agent of any other modifications of or additions to the information contained in Schedule 1 to this Agreement.

(i) Chattel Paper. Operations Co will not create any Chattel Paper without placing a legend on the Chattel Paper reasonably acceptable to the Collateral Agent indicating that the Collateral Agent has a security interest in the Chattel Paper. Operations Co will give the Collateral Agent prompt notice if Operations Co at any time holds or acquires an interest in any Chattel Paper, including any Electronic Chattel Paper. Operations Co shall promptly take all actions necessary so that the Collateral Agent has "control" of all Electronic Chattel Paper constituting Collateral in accordance with Section 9-105 of the UCC.

(j) Commercial Tort Claims. Operations Co will give the Collateral Agent notice within ten (10) Business Days if at any time Operations Co obtains knowledge that it holds or has any Commercial Tort Claim in an amount (taking the greater of the aggregate claimed damages thereunder or the reasonably estimated value thereof) of \$5,000,000 or more.

(k) Letter-of-Credit Rights. Operations Co will give the Collateral Agent notice within ten (10) Business Days if Operations Co shall at any time hold or acquire any Letter-of-Credit Rights in respect of a letter of credit with a stated amount of \$5,000,000 or more.

(l) Pledged Agreements. Operations Co will furnish to the Collateral Agent promptly upon written request therefor copies of the Pledged Agreements.

(m) Timing and Notice. With respect to any Collateral in existence on the date hereof, Operations Co shall comply with the requirements of Section 5(c), (d), (g), (h) and (i) on the date hereof and, with respect to any Collateral hereafter owned or acquired, Operations Co shall comply with such requirements within 20 days of Operations Co acquiring rights therein. Operations Co shall promptly inform the Collateral Agent of its acquisition of any Collateral for which any action is required by Section 5 hereof. Upon Operations Co obtaining knowledge thereof, it shall promptly notify the Collateral Agent in writing of any event that may have a material adverse effect on the value of the Collateral or any portion thereof, the ability of Operations Co or the Collateral Agent to dispose of the Collateral or any portion thereof, or the rights and remedies of the Collateral Agent in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any portion thereof.

**SECTION 6** Investment Property and Instruments. At the request of the Collateral Agent, upon the occurrence and during the continuance of any Operations Co Financing Default, the Collateral Agent shall be entitled to receive all distributions and payments of any nature with respect to any Investment Property or Instruments, and all such distributions or payments received by Operations Co shall be held in trust for the Collateral Agent and, in accordance with the Collateral Agent's instructions, remitted to the Collateral Agent or deposited to an account with the Collateral Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). Following the occurrence and during the continuance of an Operations Co Financing Default any such distributions and payments with respect to any Investment Property held in any Securities Account shall be held and retained in such Securities Account, in each case as part of the Collateral hereunder. Additionally, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Operations Co Financing Default, following prior written notice to Operations Co, to vote and to give consents, ratifications and waivers with respect to any Investment Property and Instruments, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Collateral Agent were the absolute owner thereof; provided that the Collateral Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to Operations Co or any other Person for any failure to do so or delay in doing so.

**SECTION 7** Authorization; Collateral Agent Appointed Attorney-in-Fact. The Collateral Agent shall have the right, but not the obligation, to, in the name of Operations Co, or in the name of the Collateral Agent or otherwise, without notice to or assent by Operations Co, and Operations Co hereby constitutes and appoints the Collateral Agent (and any of the Collateral Agent's officers or employees or agents designated by the Collateral Agent) as Operations Co's true and lawful attorney-in-fact, with full power and authority in the place and stead of Operations Co to:

(i) file any financing statements, including any amendments to financing statements and any continuation statements, and execute and file and/or record, as applicable, any and all such other documents and instruments, which the Collateral Agent may deem necessary or reasonably advisable to perfect or continue perfected, maintain the priority of or provide notice of the Collateral Agent's security interest in the Collateral;

(ii) take possession of and endorse any notes, acceptances, checks, drafts, money orders or other forms of payment or security constituting, and collect any Proceeds of any, Collateral;

(iii) sign and endorse any invoice or bill of lading relating to any of the Collateral, warehouse or storage receipts, drafts against customers or other obligors, assignments, notices of assignment, verifications and notices to customers or other obligors, in each case in respect of the Collateral;

(iv) send requests for verification of Rights to Payment to the customers or other obligors of Operations Co;

(v) contact, or direct Operations Co to contact, any or all Account Debtors and other obligors on the Rights to Payment and instruct such Account Debtors and other obligors to make all payments directly to the Collateral Agent;

(vi) notify each Person maintaining lockbox or similar arrangements for the payment of the Rights to Payment to remit all amounts representing collections on the Rights to Payment directly to the Collateral Agent;

(vii) ask, demand, collect, receive and give acquittances and receipts for any and all Rights to Payment, enforce payment or any other rights in respect of the Rights to Payment and other Collateral, grant consents, agree to any amendments, modifications or waivers of the agreements and documents governing the Rights to Payment and other Collateral, and otherwise file any claims, take any action or institute, defend, settle or adjust any actions, suits or proceedings with respect to the Collateral, as the Collateral Agent may deem necessary or desirable to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of the Collateral Agent with respect to the Collateral;

(viii) execute any and all applications, documents, papers and instruments necessary for the Collateral Agent to use the Intellectual Property Collateral and grant or issue any exclusive or non-exclusive license or sublicense with respect to any Intellectual Property Collateral;

(ix) execute any and all endorsements, assignments or other documents and instruments necessary to sell, lease, assign, convey or otherwise transfer title in or dispose of the Collateral;

(x) execute and deliver to any Securities Intermediary or other Person any entitlement order or other notice, document or instrument which the Collateral Agent may reasonably deem necessary or advisable to maintain, protect, realize upon and preserve the Deposit Accounts and Investment Property and the Collateral Agent's security interest therein;

(xi) execute any and all such other documents and instruments, and do any and all acts and things for and on behalf of Operations Co, which the Collateral Agent may deem necessary or in its reasonable judgment advisable to maintain, protect, realize upon and preserve the Collateral and to accomplish the purposes of this Agreement; and

(xii) act pursuant to (and in accordance with) Section 2.11(b) of the Collateral Agency Agreement.

Operations Co also hereby acknowledges and consents to the authorization and direction of the Senior Bonds Trustee and the Subordinate Bonds Trustee on behalf of the Secured Parties with respect to the Collateral Agent pursuant to Section 2.01 of the Collateral Agency Agreement. The Collateral Agent agrees that, except upon the occurrence and during the continuance of an

Amended and Restated Schedule 15 (Exhibit A)  
Operations Co Security Agreement  
NG-KIH Project Implementation Agreement

Operations Co Financing Default, it shall not exercise the power of attorney, or any rights granted to the Collateral Agent, pursuant to clauses (ii) through (xiv). The foregoing power of attorney is coupled with an interest and irrevocable so long as the Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted) have not been paid and performed in full. Operations Co hereby ratifies, to the extent permitted by law, all that the Collateral Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 7.

**SECTION 8 Collateral Agent Performance of Operations Co Obligations.** The Collateral Agent may perform or pay any obligation which Operations Co has agreed to perform or pay under or in connection with this Agreement if Operations Co fails to do so when required hereunder, and Operations Co shall reimburse the Collateral Agent on demand for any reasonable amounts paid by the Collateral Agent pursuant to this Section 8.

**SECTION 9 Collateral Agent's Duties.** Notwithstanding any provision contained in this Agreement, the Collateral Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to Operations Co or any other Person for any failure to do so or delay in doing so. Beyond the exercise of reasonable care to assure the safe custody of Collateral in the Collateral Agent's possession and the accounting for moneys actually received by the Collateral Agent hereunder, the Collateral Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral. The provisions of Section 9.10 of the Collateral Agency Agreement ("Collateral Agent's Rights") are incorporated herein by reference as if such Section were set forth herein in its entirety.

**SECTION 10 Remedies.** For the avoidance of doubt, any action by Collateral Agent under this Section 10 shall be taken at the direction of the Instructing Trustee (acting in accordance with Section 2.19 of the Collateral Agency Agreement) in good faith, in a commercially reasonable manner and in compliance with the applicable terms of the UCC.

(a) **Remedies.** Upon the occurrence and during the continuance of any Operations Co Financing Default, the Collateral Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Indentures, the Senior Loan Agreement or any other Financing Document, all rights and remedies of a secured party under the UCC and other applicable laws. Without limiting the generality of the foregoing, Operations Co agrees that:

(i) The Collateral Agent may peaceably and without notice enter any premises of Operations Co, take possession of any Collateral, remove or dispose of all or part of the Collateral on any premises of Operations Co or elsewhere, or, in the case of Equipment, render it nonfunctional, and otherwise collect, receive, appropriate and realize upon all or any part of the Collateral, and demand, give receipt for, settle, renew, extend, exchange, compromise, adjust, or sue for all or any part of the Collateral, as the Collateral Agent may determine.

(ii) The Collateral Agent may require Operations Co to assemble all or any part of the Collateral and make it available to the Collateral Agent, at any place and time reasonably designated by the Collateral Agent.

(iii) The Collateral Agent may use or transfer any of Operations Co's rights and interests in any Intellectual Property Collateral, by license, by sublicense or otherwise, on such conditions and in such manner as the Collateral Agent may determine.

(iv) The Collateral Agent may secure the appointment of a receiver of the Collateral or any part thereof (to the extent and in the manner provided by applicable law).

(v) The Collateral Agent may withdraw (or cause to be withdrawn) any and all funds from any Deposit Accounts or Securities Accounts.

(vi) The Collateral Agent may sell, resell, lease, license, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable storage, preparation and/or processing (utilizing in connection therewith any of Operations Co's assets, without charge to, or liability of, the Collateral Agent therefor) at public or private sale, by one or more contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as the Collateral Agent deems advisable; provided, however, that Operations Co shall be credited with the net proceeds of sale only when such proceeds are finally collected by the Collateral Agent. The Collateral Agent shall have the right upon any such public sale, and, to the extent not prohibited by law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption Operations Co hereby releases, to the extent permitted by law. The Collateral Agent shall give Operations Co such notice of any public or private sale as may be required by the UCC or other applicable law. Operations Co agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Operations Co of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Operations Co agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Operations Co hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. Operations Co recognizes that the Collateral Agent may be unable to make a public sale of any or all of the Investment Property, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale.

(vii) Neither the Collateral Agent nor any Secured Party shall have any obligation to clean up or otherwise prepare the Collateral for sale. The Collateral Agent has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and the Collateral Agent may release, modify or waive any Collateral provided by any other Person to secure any of the Secured Obligations, all without affecting the Collateral Agent's rights against Operations Co. Operations Co waives any right it may have to require the Collateral Agent to pursue any third Person for any of the Secured Obligations. The Collateral Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may

specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If the Collateral Agent sells any of the Collateral upon credit, Operations Co will be credited only with payments actually made by the purchaser, received by the Collateral Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and Operations Co shall be credited with the proceeds of the sale as and when received and applied.

(b) Proceeds Account. To the extent that any of the Secured Obligations may be contingent, unmatured or unliquidated (including with respect to undrawn amounts under any letters of credit) at such time as there may exist an Operations Co Financing Default, the Collateral Agent may, at its election, (i) retain the proceeds of any sale, collection, disposition or other realization upon the Collateral (or any portion thereof) in a special purpose non-interest-bearing restricted deposit account (the "Proceeds Account") created and maintained by the Collateral Agent for such purpose (which shall constitute a Deposit Account included within the Collateral hereunder) until such time as the Collateral Agent may elect to apply such proceeds to the Secured Obligations; (ii) in any manner elected by the Collateral Agent, estimate the liquidated amount of any such contingent, unmatured or unliquidated claims and apply the proceeds of the Collateral against such amount; or (iii) otherwise proceed in any manner permitted by applicable Law and not prohibited by the Financing Documents. Operations Co agrees that the Proceeds Account shall be a blocked account and that upon the irrevocable deposit of funds into the Proceeds Account, Operations Co shall not have any right of withdrawal with respect to such funds. Accordingly, Operations Co irrevocably waives until the termination of this Agreement in accordance with Section 25 the right to make any withdrawal from the Proceeds Account and the right to instruct the Collateral Agent to honor drafts against the Proceeds Account.

(c) Application of Proceeds. The provisions of Section 6.06 of the Collateral Agency Agreement ("Application of Proceeds") are incorporated herein by reference as if such Section were set forth herein in its entirety, mutatis mutandis.

(d) Remedies of the Secured Parties. The provisions of Section 6.04 ("Remedies of the Secured Parties") of the Collateral Agency Agreement are incorporated herein by reference as if such Section were set forth herein in its entirety, mutatis mutandis.

(e) Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent, during the continuance of an Operations Co Financing Default, to exercise rights and remedies under Section 10 hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, Operations Co hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license to use, assign, license or sublicense any of the Intellectual Property now owned or hereafter acquired by Operations Co, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof subject to all applicable confidentiality undertakings and operational or contractual requirements or limitations.

## SECTION 11 Certain Waivers.

(a) Operations Co waives, to the fullest extent permitted by law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights,

if any, of marshalling of the Collateral or other collateral or security for the Secured Obligations; (ii) any right to require the Collateral Agent (A) to proceed against any Person, (B) to exhaust any other collateral or security for any of the Secured Obligations, (C) to pursue any remedy in Collateral Agent's power, or (D) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral; and (iii) all claims, damages, and demands against the Collateral Agent arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral in compliance with all material applicable legal requirements.

SECTION 12 Notices. All notices or other communications hereunder shall be given in the manner and to the addresses specified in the Collateral Agency Agreement. All such notices and other communications shall be effective as and when specified in the Collateral Agency Agreement.

SECTION 13 Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

SECTION 14 Survival of Provisions. All representations and warranties contained herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement. All statements contained in any certificate or other instrument delivered by or on behalf of Operations Co pursuant to this Agreement shall be deemed representations and warranties of Operations Co under this Agreement.

SECTION 15 No Waiver; Cumulative Remedies. No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Collateral Agent.

SECTION 16 Costs and Expenses; Indemnification; Other Charges. Reference is hereby made to Article VII of the Collateral Agency Agreement with respect to Operations Co's obligations set forth therein.

SECTION 17 Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

SECTION 18 Governing Law; Consent to Jurisdiction. Reference is made to Section 5-1401 of the New York General Obligations Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles thereof that would result in the application of any law other than the law of the State of New York, except as required by mandatory provisions of law relating to the law governing perfection or the effect of perfection of the security interests hereunder. Each of the parties hereto hereby (i) irrevocably consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in

the Southern District of New York, as any party may elect, in any suit, action or proceeding arising out of or relating to this Agreement and (ii) waives, to the fullest extent permitted by law, the right to move or dismiss or transfer any action brought in such court on the basis of any objection to personal jurisdiction, venue or inconvenient forum.

**SECTION 19 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR RELATING TO OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT.

**SECTION 20 Amendment or Waiver.** Except as otherwise provided herein, neither this Agreement nor any of the terms hereof may be amended, changed or waived unless such amendment, change or waiver is in writing and signed by Operations Co and the Collateral Agent and then any such waiver or consent shall be effective only in the specific instance and for the specified purpose for which given.

**SECTION 21 Entire Agreement.** This Agreement, including any agreement, document or instrument attached hereto or referred to herein, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior agreements and understandings of the parties hereto in respect to the subject matter hereof.

**SECTION 22 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

**SECTION 23 Counterparts.** This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and/or by facsimile or electronic mail, and all of said counterparts taken together shall be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or "pdf" signature page shall constitute an original for purposes hereof.

**SECTION 24 No Inconsistent Requirements.** Operations Co acknowledges that this Agreement and the other Financing Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and each shall be performed and satisfied in accordance with its respective terms.

**SECTION 25 Termination.** Upon payment and performance in full of all Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted), the Collateral Agent shall promptly execute and deliver to Operations Co such documents and instruments reasonably requested by Operations Co as shall be necessary to evidence termination of all security interests given by Operations Co to the Collateral Agent hereunder and shall return any Collateral in its possession to Operations Co.

SECTION 26 Reinstatement. Following the Termination Date, this Agreement, any Security Interest created hereunder and the obligations of Operations Co hereunder shall continue to be effective or be automatically be reinstated, as the case may be, if and to the extent that for any reason any payment by or on behalf of Operations Co in respect of the Secured Obligations is rescinded or must otherwise be restored by any holder of the Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise and Operations Co agrees that it will indemnify the Collateral Agent on demand for all reasonable costs and expenses (including fees and expenses of counsel, whether incurred in a third party action or in an action to enforce this Agreement) incurred by the Collateral Agent in connection with such rescission or restoration.

SECTION 27 Limitation of Liability. No claim shall be made by Operations Co against the Collateral Agent or any of its affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Financing Documents or any act or omission or event occurring in connection therewith; and Operations Co hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; nothing in this Section 27 shall limit or affect or be construed to limit or affect the obligations and liabilities of the Collateral Agent arising from any liability pursuant to any applicable Law for such fraudulent actions, gross negligence, bad faith or willful misconduct of the Collateral Agent. Additionally:

(a) No covenant, agreement or obligation contained herein or in any Operations Co Security Document shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of Operations Co in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this Agreement or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Financing Documents, the Secured Parties will have full recourse to Operations Co and all of its assets and properties for the respective liabilities and obligations of Operations Co under the Financing Documents, but in no event will the Authority or any Affiliates of Operations Co or any officer, director or holder of any interest in Operations Co, the Authority or any Affiliates of Operations Co be liable or obligated for such liabilities and obligations of Operations Co, other than to the extent arising directly as a result of Pledgor's pledge of its ownership interests in Operations Co pursuant to the Pledge Agreement and the Pledgor and each Sponsors' obligations under the Capital Contribution Agreement, as applicable.

(c) Notwithstanding anything in paragraph (b) above of this Section 27, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of the Authority or any Affiliate of Operations Co (1) arising under any Financing Document or Project Contract to which the Authority or such Affiliate of Operations Co is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of the Authority or any Affiliate of Operations Co.

SECTION 28 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Collateral Agent, for the benefit of the Secured Parties, and Operations Co and the respective successors and permitted assigns of the foregoing, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that, subject to Section 6.04 of the Collateral Agency Agreement, the Secured Parties shall be express third party beneficiaries of this Agreement.

SECTION 29 PATRIOT Act Notification. The Collateral Agent hereby notifies Operations Co that pursuant to the requirements of the USA PATRIOT ACT, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "PATRIOT Act"), the Collateral Agent may be required to obtain, verify and record information that identifies Operations Co, which information includes the name, address, tax identification number and other information regarding Operations Co that will allow the Collateral Agent to identify Operations Co in accordance with the PATRIOT Act.

*[Remainder of page intentionally left blank; signatures follow.]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

**OPERATIONS Co:**

**KENTUCKYWIRED OPERATIONS COMPANY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**COLLATERAL AGENT:**

**U.S. BANK NATIONAL ASSOCIATION, AS  
COLLATERAL AGENT**

By: \_\_\_\_\_  
Name:  
Title:

Schedule 1 to Operations Company Security Agreement  
dated as of September 3, 2015  
by and between KENTUCKYWIRED OPERATIONS COMPANY, LLC  
and  
U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

Operations Co's mailing address, jurisdiction of organization and organizational ID number  
(Section 4(c))

Historical Matters (Section 4(c))

Address of Operations Co's Chief Executive Office and Principal Place of Business  
(Section 4(a))

All other Locations where Operations Co conducts Business or where Collateral is kept  
(Section 4(a))

Locations of Books, etc. (Section 4(b))

Inventory Matters (Section 4(h))

Intellectual Property (Section 4(i))

Patents

Patent Applications

Patent Licenses

Copyrights

Copyright Applications

Trademarks and Service marks

Trade Names

Applications for Registration of Trademarks, Service Marks and Trade Names

Licenses

Securities Accounts (Section 4(j))

Investment Property (Section 4(j))

Instruments (Section 4(j))

Chattel Paper (Section 4(j))

Letter-of-Credit Rights (Section 4(l))

Commercial Tort Claims (Section 4(m))

**EXHIBIT B**  
**PLEDGE AGREEMENT**

OPERATIONS CO PLEDGE AGREEMENT

Dated as of September 3, 2015

between

KENTUCKYWIRE OPERATIONS HOLDING COMPANY, LLC, as Pledgor

and

U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

Amended and Restated Schedule 15 (Exhibit B)  
Pledge Agreement  
NG-KIH Project Implementation Agreement

Table of Contents

	Page
SECTION 1. DEFINITIONS; INTERPRETATION .....	5
SECTION 2. PLEDGE .....	7
SECTION 3. SECURITY FOR SECURED OBLIGATIONS .....	9
SECTION 4. REPRESENTATIONS AND WARRANTIES .....	9
SECTION 5. FURTHER ASSURANCES; COVENANTS .....	11
SECTION 6. SPECIAL PROVISIONS RELATING TO THE PLEDGED COLLATERAL .....	13
SECTION 7. AFFIRMATIVE COVENANTS .....	14
SECTION 8. NEGATIVE COVENANTS.....	14
SECTION 9. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.....	15
SECTION 10. COLLATERAL AGENT MAY PERFORM .....	15
SECTION 11. THE COLLATERAL AGENT'S DUTIES .....	16
SECTION 12. RIGHTS AND REMEDIES .....	16
SECTION 13. CERTAIN WAIVERS.....	19
SECTION 14. ADDRESSES FOR NOTICES.....	20
SECTION 15. CAPTIONS .....	21
SECTION 16. SURVIVAL OF PROVISIONS .....	21
SECTION 17. NO WAIVER; CUMULATIVE REMEDIES .....	21
SECTION 18. SUCCESSORS AND ASSIGNS.....	21
SECTION 19. GOVERNING LAW; CONSENT TO JURISDICTION .....	21
SECTION 20. WAIVER OF JURY TRIAL .....	21
SECTION 21. AMENDMENT OR WAIVER .....	21
SECTION 22. ENTIRE AGREEMENT .....	22
SECTION 23. SEVERABILITY .....	22
SECTION 24. COUNTERPARTS .....	22
SECTION 25. NO INCONSISTENT REQUIREMENTS .....	22
SECTION 26. TERMINATION .....	22
SECTION 27. REINSTATEMENT.....	22
SECTION 28. LIMITATION OF LIABILITY.....	22
SECTION 29. NO THIRD PARTY BENEFICIARIES.....	23
SECTION 30. PATRIOT ACT NOTIFICATION .....	23

THIS PLEDGE AGREEMENT (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Agreement"), dated as of September 3, 2015, is made by and between KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC, a Delaware limited liability company ("Pledgor") and U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, together with its successors in such capacity, "Collateral Agent") for the benefit of the Secured Parties, as hereinafter defined.

### **RECITALS**

WHEREAS, Pledgor is the sole member of KentuckyWired Operations Company, LLC, a Delaware limited liability company ("Operations Co");

WHEREAS, pursuant to that certain Senior Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented, amended and restated and/or otherwise modified from time to time, the "Senior Indenture") between the Kentucky Economic Development Finance Authority, a public body corporate and politic, constituting an instrumentality of the Commonwealth of Kentucky, as Issuer ("Issuer") and U.S. Bank National Association, as trustee, Issuer has authorized the issuance of \$\_\_\_\_\_ aggregate principal amount of Kentucky Economic Development Finance Authority Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015A and Taxable Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015B, the proceeds from the sale of which will be loaned to Borrower pursuant to the terms of that certain Senior Loan Agreement (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Senior Loan Agreement"), dated as of September 1, 2015, between Issuer and Borrower, to be used to finance a portion of the costs of the Project, as hereinafter defined;

WHEREAS, pursuant to that certain Subordinate Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Indenture"), (a) the Issuer has authorized the issuance of not to exceed \$\_\_\_\_\_ Kentucky Economic Development Finance Authority Subordinate Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015C, the proceeds from the sale of which will be loaned to the Borrower pursuant to the terms of a Subordinate Loan Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Loan Agreement"), dated as of September 1, 2015, between the Issuer and the Borrower, to be used to finance a portion of the costs of the Project and (b) the Subordinate Bonds Trustee, on behalf of the Subordinate Secured Parties, has subordinated the Subordinate Secured Obligations and all liens securing the Subordinate Secured Obligations to the payment in full of the Senior Secured Obligations in the manner and to the extent set forth in this Agreement and the Subordinate Indenture;

WHEREAS, pursuant to that certain Project Implementation Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Implementation Agreement"), dated as of September 3, 2015, Borrower has contracted with Operations Co to, among other things, implement Borrower's obligations with respect to the Project pursuant to the Project Agreement and manage the obligations undertaken by the Design-Builder and the Service Provider, respectively, pursuant to the terms of the Design-Build Agreement and Services Contract, respectively;

WHEREAS, Pledgor, through Operations Co and the Implementation Agreement, will derive substantial direct and indirect benefit from the financing arrangements referenced in these recitals; and

WHEREAS, in consideration for the rights granted to Operations Co pursuant to the Implementation Agreement, and as a condition precedent to the above-described financing transactions, Pledgor has agreed to secure the Secured Obligations (as defined herein) as set forth herein.

## **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing, and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereto agree as follows:

### Section 1. Definitions; Interpretation.

(a) Terms Defined in Collateral Agency Agreement. All capitalized terms used in this Agreement but not otherwise defined herein shall have the respective meanings set forth in Exhibit A to the Collateral Agency and Account Agreement dated as of September 1, 2015 among Borrower, the Senior Bonds Trustee, as defined therein, the Subordinate Bonds Trustee, as defined therein, the Securities Intermediary, as defined therein and Collateral Agent (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Collateral Agency Agreement").

(b) Certain Defined Terms. As used in this Agreement, terms defined in the preamble and recitals hereto shall have the meanings set forth therein and the following terms shall have the following meanings:

"Books" means all books, Records and other written, electronic or other documentation in whatever form maintained now or hereafter, including: (i) ledgers; (ii) Records indicating, summarizing, or evidencing assets, business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals, and spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any contract or agreement with any service bureau, computer or data processing company or other Person charged with preparing or maintaining any books or Records or with credit reporting.

"Certificates" means any and all certificates, documents and instruments which evidence Pledged Collateral.

"Instrument" has the meaning given such term in Section 9-102 of the UCC.

"Operations Co Financing Default" has the meaning given to such term in the Collateral Agency Agreement.

"Organizational Documents" means the Certificate of Formation and Limited Liability Company Agreement of Operations Co, as the same may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the Financing Documents.

Amended and Restated Schedule 15 (Exhibit B)  
Pledge Agreement  
NG-KIH Project Implementation Agreement

“Payment Intangible” has the meaning given such term in Section 9-102 of the UCC.

“Pledged Collateral” has the meaning set forth in Section 2 of this Agreement.

“Pledged Indebtedness” has the meaning set forth in Section 2 of this Agreement.

“Pledged Interests” has the meaning set forth in Section 2 of this Agreement.

“Proceeds” means all proceeds, as such term is defined in Section 9-102 of the UCC.

“Promissory Note” means any and all promissory notes, as such term is defined in Section 9-102 of the UCC.

“Records” has the meaning given such term in Section 9-102 of the UCC.

“Secured Obligations” means all obligations of Operations Co under the Implementation Agreement, the Financing Documents to which it is a party and the Material Project Contracts to which it is a party.

“Securities” means all securities, as such term is defined in Section 8-102 of the UCC, and all stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

“Supporting Obligations” means all supporting obligations, as such term is defined in Section 9-102 of the UCC.

“UCC” means the Uniform Commercial Code from time to time in effect in the State of New York or, as the context may require, the State of Delaware or, as the context may require, in effect in the State or States in which any Pledged Collateral is located.

(c) Interpretation. This Agreement and all terms and provisions hereof shall be liberally construed to provide to the Collateral Agent, for the benefit of the Secured Parties, the collateral security provided for herein. For purposes of this Agreement, except as otherwise expressly provided and except where the context otherwise requires: (i) the incorporation by reference of definitions or other terms from other agreements shall survive any termination of such agreements until this Agreement is terminated as provided in Section 26 hereof; (ii) any of the terms defined herein may be used in the singular or the plural, depending on the reference; (iii) references in this Agreement to any Article, Section, Schedule or Exhibit shall be to an Article, Section, Schedule or Exhibit, as the case may be, of this Agreement unless otherwise specifically provided; (iv) the use in this Agreement of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be

Amended and Restated Schedule 15 (Exhibit B)  
Pledge Agreement  
NG-KIH Project Implementation Agreement

deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter; (v) the terms lease and license shall include sub-lease and sub-license, as applicable; (vi) all references in this Agreement to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to the UCC; (vii) the words “herein,” “hereof,” “hereto,” “hereby,” “hereunder” and other words of similar import in this Agreement refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and, if this Agreement has been amended, such words shall refer to this Agreement as so amended; (viii) the term “money” includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder; and (ix) all references to any contract or agreement in this Agreement shall include all amendments, supplements and modifications thereto.

## Section 2. Pledge.

(a) Pledge. As security for the full and prompt payment and performance when due of the Secured Obligations, Pledgor hereby pledges, collaterally assigns, and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and continuing first priority Security Interest in, all of Pledgor’s right, title and interest in, to and under the following, whether now owned or hereafter acquired by Pledgor and whether now or hereafter existing and wherever located (all of Pledgor’s right, title and interest in, to and under the following, whether now owned or hereafter acquired and whether now or hereafter existing and wherever located, collectively the “Pledged Collateral”):

(i) all of its (A) ownership or profit interests, Securities or shares of capital stock in or issued by Operations Co, of whatever class or character, whether voting or nonvoting and whether or not outstanding on any date of determination, (B) claims, powers, privileges, benefits, remedies, voting rights, options or rights of any nature whatsoever now existing or which hereafter may be issued or granted by Operations Co to Pledgor while this Agreement is in effect, (C) all ownership or profit interests, Securities, shares of capital stock, moneys or property representing dividends or interest on any of the items described in this paragraph, or representing a distribution in respect of the same, or resulting from a split-up, revision, reclassification or other like change of any of the same or otherwise received in exchange therefor, and any warrants, rights or options issued to the holders of, or otherwise in respect of, the same and (D) all options, warrants and rights to acquire, exercisable for or exchangeable or convertible into any of the items described in clause (A), (B), (C) or (D) of this definition and all income, dividends (cash and non-cash), distributions (cash and non-cash), cash, securities, instruments, stock splits, reclassifications, rights, subscription warrants and other property or proceeds from time to time received, receivable or otherwise distributed or issued to the holders of, in respect of, or in exchange for, all or any part of the foregoing and all Certificates evidencing all or any part of the foregoing or ownership of the same, including, as of the date hereof, the shares of stock of Operations Co evidenced by the Certificate issued to Pledgor identified in Schedule 1 hereto, and all Proceeds of all of the foregoing (collectively, the “Pledged Interests”); provided, however, that, without affecting the obligations of Pledgor under any provision prohibiting such action hereunder or under the Financing Documents, in the event of any consolidation or merger in which Operations Co is not the surviving entity, all limited liability company interest or other ownership, membership or profit interests, Securities or shares

of capital stock in or issued by the successor entity formed by or resulting from such consolidation or merger, of whatever class or character, whether voting or nonvoting and whether or not outstanding on any date of determination, shall also constitute Pledged Interests under this Agreement;

(ii) any Indebtedness owed to Pledgor by Operations Co from time to time, now existing or hereafter arising, whether as a result of “shareholder loans” or “member loans” or otherwise, including any Instruments or Payment Intangibles evidencing or relating to such Indebtedness (collectively, the “Pledged Indebtedness”);

(iii) all right, title and interest of Pledgor in, to and under any policy of insurance payable by reason of loss or damage to the Pledged Interests or Pledged Indebtedness; and

(iv) all Proceeds, products and accessions and additions of and to, and substitutions for, any and all of the property of Pledgor described in the preceding clauses of this Section 2 (including all causes of action, claims and warranties now or hereafter held by Pledgor in respect of any of the items listed above), including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Interests, and any property into which any of the Pledged Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in respect of any of the Pledged Interests, and any and all Proceeds, Certificates, and, to the extent related to any property described in said clauses or such Proceeds, all Books;

provided, however, that any and all amounts paid or distributed to the Pledgor in accordance with the Financing Documents shall be free of the Security Interests granted and created herein upon, from and after such payment or distribution.

(b) Continuing Assignment and Security Interest. This Agreement shall create a continuing assignment of and security interest in the Pledged Collateral and shall (i) remain in full force and effect until the payment and satisfaction in full of the Secured Obligations, (ii) be binding upon Pledgor, its successors and assigns, and (iii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent, for the benefit of the Secured Parties.

(c) Security Interest Absolute. All rights of the Collateral Agent and the security interests hereunder, and all obligations of Pledgor hereunder, shall be absolute and unconditional irrespective of: (i) any lack of validity or enforceability of the Financing Documents or any agreement or instrument relating thereto; (ii) the failure of the Collateral Agent (A) to assert any claim or demand or to enforce any right or remedy against Borrower, any affiliate of Borrower, Operations Co, any Pledgor or any other Person under the provisions of the Financing Documents or otherwise or (B) to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Secured Obligations; (iii) any change in the time, manner or place of payment or performance of, or in any other term of the Secured Obligations (including any increase in the amount thereof), or any other amendment or waiver of or any consent to any departure from the Financing Documents; (iv) any reduction, limitation, impairment or termination of any of the Secured Obligations for any reason other than the payment or performance in full thereof or the written agreement of the Collateral Agent to

reduce or terminate the Secured Obligations in full, but including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Pledgor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, non-genuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting (other than the repayment or performance in full of), any Secured Obligation; (v) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of the Financing Documents; (vi) any exchange, surrender, release or non-perfection of any Pledged Collateral, or any release, amendment or waiver or addition of or consent to departure from any security interest held by the Collateral Agent securing any of the Secured Obligations; (vii) any bankruptcy or insolvency of Operations Co, Pledgor or any other Person; or (viii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Pledgor (other than the defense of payment).

Section 3. Security for Secured Obligations. The Security Interest granted under this Agreement secures, and the Pledged Collateral is collateral security for, the prompt and complete payment and performance in full when due of all of the Secured Obligations now existing or hereafter arising.

Section 4. Representations and Warranties. Pledgor hereby represents and warrants as of the date hereof and as of the Financial Close as follows:

(a) Pledged Interests; Pledged Indebtedness; Ownership. As of the date of this Agreement, the Pledged Interests evidenced by the Certificates identified in Schedule 1 hereto constitute, and from and after the date hereof, the Pledged Interests pledged hereunder will at all times constitute, all of the issued and outstanding shares of stock or other ownership interests of any class or character of Operations Co and constitute all of Pledgor's interest in Operations Co. The Pledged Interests as of the date of this Agreement are described on Schedule 1 attached hereto. Pledgor is the record and beneficial owner of the Pledged Interests as of the Closing Date. There is no Pledged Indebtedness as of the Closing Date.

(b) No Outstanding Warrants, Options, Etc. There are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Interests.

(c) Creation; Perfection.

(i) This Agreement creates a valid and enforceable Security Interest in the Pledged Collateral securing the Secured Obligations. Upon the delivery to Collateral Agent pursuant to this Agreement of the Certificates evidencing the Pledged Interests, together with stock or transfer powers relating thereto duly executed in blank, the Security Interest granted pursuant to this Agreement will constitute a perfected first priority Security Interest on and security interest in the Pledged Interests enforceable as such against all creditors of Pledgor and any Persons purporting to purchase any Pledged Interests from Pledgor. The Pledged Collateral is not subject to any Security Interests other than the Security Interest created by this Agreement and Permitted Security Interests. Pledgor has requested that the pledge and grant of a security interest in the Pledged Collateral be duly registered on the books and records of

Operations Co, and Operations Co has duly registered such pledge and grant of a security interest on its books and records.

(ii) On the date hereof and at all times hereafter, the Pledged Interests will constitute securities governed by Article 8 of the UCC.

(iii) On the date hereof, for purposes of “control” under UCC Section 9-106(a) and UCC Section 8-106(b)(1), the Pledged Interests are a “certificated security in registered form” as defined in UCC Section 8-102(4) and (13), and have been delivered to the Collateral Agent, together with an undated stock or transfer power covering each such Certificate duly executed in blank in the form of Exhibit B attached hereto.

(d) Organization, Etc. Pledgor is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware, and has all requisite power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged in.

(i) Schedule 2 attached hereto correctly sets forth Pledgor’s full and correct legal name, type of organization, jurisdiction of organization, organizational number, if any, and chief executive office as of the date hereof.

(ii) Pledgor has not previously (except as permitted hereunder) (A) changed its location (as defined in Section 9-307 of the UCC), (B) changed its name, or (C) become a “new debtor” (as defined in the UCC) with respect to a currently effective security agreement entered into by another Person.

(e) Power to Pledge. Pledgor has the full power and authority to pledge all of the Pledged Collateral pursuant to this Agreement and to execute and deliver this Agreement and perform its obligations hereunder.

(f) Enforceability. The execution, delivery and performance by Pledgor of this Agreement have been duly authorized by all necessary action of Pledgor. This Agreement has been duly executed and delivered by Pledgor and constitutes the legal, valid and binding obligation of Pledgor, enforceable against Pledgor in accordance with its terms, except as the enforceability hereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors’ rights generally and by the application of general principles of equity (regardless of whether such proceeding is considered in a proceeding in equity or at law).

(g) No Governmental Approvals; No Other Approvals. Other than (x) the filing of financing statements in the office of the Delaware Secretary of State with respect to the perfection of the security interest created hereunder, (y) the approval of the members of Pledgor, which have been obtained as of the date hereof and (z) any consent of the Authority or the Borrower to the extent required by the Project Agreement and/or the Implementation Agreement in respect of any such matters, no consent, authorization, approval, or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or any other Person (including, without limitation, any stockholder or creditor of Pledgor or Operations Co) is required for (i) the grant by Pledgor of the Security Interest granted hereby, (ii) the perfection of the Security Interest created hereby, (iii) the execution, delivery or performance by Pledgor of

Amended and Restated Schedule 15 (Exhibit B)  
Pledge Agreement  
NG-KIH Project Implementation Agreement

this Agreement and the transactions contemplated hereby or (iv) the exercise by the Collateral Agent of the rights and remedies hereunder including, without limitation, the assignment and transfer by Pledgor of any of the Collateral to, or at the direction of, Collateral Agent or the subsequent transfer thereof by Collateral Agent pursuant to the terms hereof.

(h) No Conflicts. The execution, delivery, and performance by Pledgor of this Agreement and the transactions contemplated hereby do not and will not (i) contravene the certificate of formation or limited liability company agreement of Pledgor or the Organizational Documents; (ii) violate or cause Pledgor to violate any Law in effect on the date hereof; (iii) cause or result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Pledgor or Operations Co is a party or by which either of them or their properties may be bound or affected, except as could not reasonably be expected to have a Material Adverse Effect; or (iv) result in, or require, the creation or imposition of any Security Interest upon or with respect to any of the properties now owned or hereafter acquired by Pledgor (except the Security Interests created by this Agreement and Permitted Security Interests).

(i) No Proceedings. There is no pending or, to the knowledge of Pledgor after due inquiry, threatened action or proceeding at law or in equity against or affecting Pledgor or Operations Co before any court, arbitrator or any other Governmental Authority which may, individually or in the aggregate, materially adversely affect the ability of Pledgor to perform its obligations under this Agreement.

(j) Organizational Documents; Certificates. The Organizational Documents, true and correct copies of which have been certified to Collateral Agent by Operations Co on the date hereof, contain the entire agreement of Operations Co with respect to the subject matter thereof. Other than the Certificates which have been delivered to Collateral Agent by Pledgor hereunder, as of the date hereof, there exist no certificates, instruments or writings representing any Pledged Interests. On the date hereof, the Pledged Interests evidenced by the Certificate issued to Pledgor and identified in Schedule 1 hereto are, and during the term hereof all other Pledged Interests will be, duly authorized, validly issued, fully paid and non-assessable.

Section 5. Further Assurances; Covenants. In furtherance of the grant of the pledge and security interest pursuant to Section 2 hereof, Pledgor hereby agrees with the Collateral Agent until the payment and satisfaction in full of the Secured Obligations as follows:

(a) Pledgor shall, if any interests, shares, securities, monies, property, options, rights or other assets required to be pledged by Pledgor under Section 2 hereof are received by Pledgor and are "certificated securities" as defined in UCC Section 8-102(4), forthwith (i) immediately transfer and deliver to the Collateral Agent such interests, shares of stock or securities so received by Pledgor (together with delivery of the Certificates for any such membership interests, shares and securities, each duly endorsed in blank or accompanied by undated stock or transfer powers or assignments of membership interest, as applicable, duly executed in blank), all of which thereafter shall be held by the Collateral Agent in accordance with the terms hereof as part of the Pledged Collateral, (ii) if requested by the Collateral Agent, file a financing statement(s) in the office of the Delaware Secretary of State with respect to the perfection of the security interest in such Pledged Collateral, and (iii) take such other action as the Collateral Agent shall deem necessary or shall reasonably deem appropriate in order to ensure the validity, perfection and first priority of the Security Interest created hereunder in such

interests, shares, securities, monies, property, options, rights or other assets referred to in such Section 2.

(b) Without limiting the provisions of any Financing Document or of the Organizational Documents requiring ownership interests in Operations Co to be certificated, Pledgor shall, if any interests, shares, securities, monies, property, options, rights or other assets required to be pledged by Pledgor under Section 2 hereof are received by Pledgor and are “uncertificated securities” as defined in UCC Section 8-102(18), forthwith either (i) enter into an agreement whereby Operations Co agrees to comply with instructions originated by the Collateral Agent without further consent by Pledgor, for purposes of control under UCC Section 8-106(c)(2), (ii) “deliver” the uncertificated security to the Collateral Agent pursuant to UCC Section 8-301(b)(1) by having Operations Co register the Collateral Agent as the registered owner of such security for purposes of control under UCC Section 8-106(c)(1), or (iii) take such other action as the Collateral Agent shall reasonably deem appropriate in order to ensure the validity, perfection and first priority of the Security Interest created hereunder in such interests, shares, securities, monies, property, options, rights or other assets referred to in such Section 2.

(c) From time to time, at the expense of Pledgor, Pledgor will promptly execute and deliver all further instruments and documents, and take all further action, that the Collateral Agent may reasonably request, in order to perfect, ensure the continued perfection of and protect the pledge, assignment and security interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to the Pledged Collateral. Without limiting the generality of the foregoing, Pledgor will (i) if any Pledged Collateral shall be evidenced by a promissory note or other instrument, deliver and pledge to the Collateral Agent hereunder such note or instrument duly endorsed or accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Collateral Agent; and (ii) execute and file such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices as the Collateral Agent may reasonably request in order to perfect and preserve the assignment and security interest granted or purported to be granted hereby, including, upon the occurrence and during the continuance of an Operations Co Financing Default, causing any or all of the Pledged Collateral to be transferred of record into the name of the Collateral Agent or its nominee.

(d) Pledgor shall keep full and accurate records relating to the Pledged Collateral, which records shall be maintained at its chief executive office set forth on Schedule 2 hereto.

(e) Pledgor shall, promptly upon request, provide to the Collateral Agent all information and evidence that the Collateral Agent may reasonably request concerning the Pledged Collateral to enable the Collateral Agent to enforce the provisions of this Agreement.

(f) Pledgor hereby authorizes the Collateral Agent to file one or more financing or continuation statements, and amendments thereto, or similar documents, relating to all or any part of the Pledged Collateral without the signature of Pledgor in the office of the Delaware Secretary of State and in any other jurisdictions and with any other filing offices as the Collateral Agent may, in its reasonable discretion, determine are necessary or advisable to perfect the security interest granted herein. Such financing statements may describe the Pledged Collateral in the same manner as described herein or may contain an indication or

description of Pledged Collateral that describes such property in any other manner as the Collateral Agent may, in its reasonable discretion, determine is advisable or prudent to ensure the perfection of the security interest in the Pledged Collateral granted herein.

(g) Pledgor shall pay all filing, registration and recording fees or refiling, re-registration and re-recording fees, and all expenses incident to the execution and acknowledgment of this Agreement, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, any agreement supplemental hereto and any instruments or documents delivered pursuant to or in connection with this Agreement.

(h) Pledgor shall permit representatives of the Collateral Agent, upon reasonable notice to (i) inspect and make abstracts from its Books and Records pertaining to the Pledged Collateral, and (ii) except for those relating to dividends, distributions and capital contributions made in accordance with the Collateral Agency Agreement, receive copies of all communications and remittances relating to the Pledged Collateral, all in such manner as the Collateral Agent may reasonably require.

(i) Without the prior express written consent of the Collateral Agent, Pledgor shall not consent to any amendment or repeal of the Organizational Documents, or to the admission of any new stockholder of Operations Co unless (i) in each case, the same is not prohibited by the Organizational Documents or the Project Documents and is not materially adverse to the Secured Parties and (ii) in the case of the admission of a new stockholder, such new stockholder shall become a party to, and agree to be bound by, this Agreement with respect to its respective ownership interests in Operations Co and any of its other assets which would constitute Pledged Collateral hereunder if then held by Pledgor). The Pledgor shall promptly notify the Collateral Agent in writing if for any reason the Pledged Interests shall cease to be Securities for purposes of the UCC in any applicable jurisdiction.

Section 6. Special Provisions Relating to the Pledged Collateral. Pledgor hereby further agrees with the Collateral Agent until the payment and satisfaction in full of the Secured Obligations as follows:

(a) Except as may otherwise be permitted by the Financing Documents, Pledgor shall not cause, suffer or permit the sale, assignment, conveyance, pledge or other transfer of all or any portion of Pledgor's ownership interests in Operations Co or any other portion of the Pledged Collateral. Pledgor shall provide the Collateral Agent with at least fifteen (15) Business Days' prior written notice of any permitted sale, assignment, conveyance, pledge or other transfer of all or any portion of Pledgor's shares of stock in Operations Co or any other portion of the Pledged Collateral. In connection with, and as a condition to the effectiveness of, any permitted sale, assignment, conveyance, pledge or other transfer of all or any portion of Pledgor's shares of stock in Operations Co or any other portion of the Pledged Collateral, the transferee shall execute and deliver to the Collateral Agent a counterpart of this agreement with respect to the Pledged Collateral transferred to it, together with the original membership interest certificate issued to such transferee and duly executed documents in the forms of Exhibit A and Exhibit B hereto.

(b) So long as no Operations Co Financing Default shall have occurred and be continuing, Pledgor shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral for all purposes, provided that Pledgor agrees

that it will not vote the Pledged Collateral, exercise rights or take any other action in any manner that would impair the Security Interest of the Collateral Agent in the Pledged Collateral or the rights of the Collateral Agent therein or with respect thereto or that is inconsistent with the terms of this Agreement or the Financing Documents.

(c) Unless and until an Operations Co Financing Default has occurred and is continuing, Pledgor shall be entitled to receive and retain any and all dividends, distributions, Proceeds and other cash amounts payable under or in respect of the Pledged Collateral in each case to the extent permitted by the Financing Documents.

(d) If any Operations Co Financing Default shall have occurred, then so long as such Operations Co Financing Default shall continue, and whether or not the Collateral Agent exercises any available right to declare any of the Secured Obligations due and payable or seeks or pursues any other relief or remedy available to it under applicable Law or under this Agreement or the Financing Documents, all dividends, distributions, Proceeds and other cash amounts payable under or in respect of the Pledged Collateral received after such Operations Co Financing Default has occurred shall be paid directly to the Collateral Agent and retained by it as part of the Pledged Collateral.

(e) In furtherance of the security interest provided for in this Agreement, Pledgor shall execute and deliver to the Collateral Agent a proxy in the form attached hereto as Exhibit A and a stock or transfer power in the form attached hereto as Exhibit B with respect to the Pledged Interests, provided that such proxy may only be exercised by the Collateral Agent following an Operations Co Financing Default.

(f) All Pledged Interests in which Pledgor shall hereafter grant a security interest pursuant to Section 2 of this Agreement shall be duly authorized, validly issued, and fully paid.

Section 7. Affirmative Covenants. Pledgor agrees that, until the payment and satisfaction in full of the Secured Obligations:

(a) Compliance with Laws. Pledgor will comply in all material respects with all applicable Laws except where the failure to do so would not reasonably be expected to adversely affect the existence, validity, perfection or priority of the Security Interest created hereunder, the enforceability of this Agreement or the rights of the Collateral Agent under this Agreement.

(b) Taxes. Pledgor shall timely pay and discharge all Taxes before they become delinquent unless they are being contested in good faith by appropriate proceedings and Pledgor has provided adequate reserves which are maintained in accordance with GAAP or unless the failure to pay and discharge would not reasonably be expected to adversely affect the existence, validity, perfection or priority of the Security Interest created hereunder, the enforceability of this Agreement or the rights of the Collateral Agent under this Agreement.

(c) Ownership. Pledgor shall, until the payment and satisfaction in full of the Secured Obligations, defend its title to the Pledged Collateral and the interest of the Collateral Agent in the Pledged Collateral against the claims and demands of all persons whomsoever.

Section 8. Negative Covenants. Pledgor agrees that, until the payment and satisfaction in full of the Secured Obligations:

Amended and Restated Schedule 15 (Exhibit B)  
Pledge Agreement  
NG-KIH Project Implementation Agreement

(a) Security Interests; Subordination. Pledgor will not create, incur, assume or suffer to exist any Security Interest, other than Permitted Security Interests and the Security Interests contemplated hereby, upon any of the Pledged Collateral. Except to the extent permitted by the Financing Documents, Pledgor will not permit any Pledged Indebtedness to be subordinated in right of payment to any other indebtedness.

(b) Name, Location and Other Changes. Except upon twenty (20) days' prior written notice to Collateral Agent and Collateral Agent's receipt of copies of all additional filed financing statements and other executed and, where applicable, filed documents as may be necessary or reasonably requested by Collateral Agent to maintain the validity, perfection and priority of the security interests provided for herein, Pledgor shall not (i) change its name, identity or organizational structure, (ii) change the location of its chief executive office from that specified on Schedule 2 hereto or (iii) reorganize, reincorporate or re-form under the laws of another jurisdiction.

(c) Asset Dispositions. Except as permitted by the Senior Loan Agreement, Pledgor will not dispose of, lease, contribute or otherwise convey, or grant options, warrants or other rights with respect to any Pledged Collateral (including its ownership interests in Operations Co) to any Person.

Section 9. Collateral Agent Appointed Attorney-in-Fact. Pledgor hereby irrevocably appoints the Collateral Agent as Pledgor's attorney-in-fact (which appointment as attorney-in-fact shall be coupled with an interest), with full authority in the place and stead of Pledgor and in the name of Pledgor or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Pledged Collateral, to elect remedies under the Pledged Collateral, receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection therewith, to vote, demand, receive and enforce Pledgor's rights with respect to the Pledged Collateral, to give appropriate receipts, releases and satisfaction for and on behalf of and in the name of Pledgor or, at the option of the Collateral Agent, in the name of the Collateral Agent, with the same force and effect as Pledgor could do if this Agreement had not been made, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection thereof or to enforce compliance with the terms and conditions of this Agreement and to act pursuant to (and in accordance with) Section 2.11(b) of the Collateral Agency Agreement; provided, however, that the Collateral Agent shall not exercise any of the aforementioned rights unless an Event of Default has occurred and is continuing. This power of attorney is a power coupled with an interest and cannot be revoked. Notwithstanding the foregoing, the Collateral Agent shall not be obligated to exercise any right or duty as attorney-in-fact, and shall have no duties to Pledgor in connection therewith. Pledgor also hereby acknowledges and consents to the authorization and direction of the Senior Bonds Trustee and the Subordinate Bonds Trustee on behalf of the Secured Parties with respect to the Collateral Agent pursuant to Section 2.01 of the Collateral Agency Agreement.

Section 10. Collateral Agent May Perform. If Pledgor fails to perform any agreement contained herein, the Collateral Agent may, but shall not be obligated to, itself perform or cause performance of this Agreement and the expenses of the Collateral Agent incurred in connection

therewith shall be payable by Pledgor within ten (10) Business Days after demand for all such fees, costs and expenses.

Section 11. The Collateral Agent's Duties. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Pledged Collateral and shall not impose any duty upon the Collateral Agent or any of its designated agents to exercise any such powers. Except for the safe custody of any Pledged Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Pledged Collateral and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if the Pledged Collateral is accorded treatment that is substantially equivalent to that which the Collateral Agent accords its own property, it being expressly agreed, to the maximum extent permitted by applicable Laws, that the Collateral Agent shall have no responsibility for (a) taking any necessary steps to preserve rights against any parties with respect to any Pledged Collateral, or (b) taking any action to protect against any diminution in value of the Pledged Collateral, but, in each case, the Collateral Agent may do so and all expenses reasonably incurred in connection therewith shall be part of the Secured Obligations. The provisions of Section 9.10 of the Collateral Agency Agreement ("Collateral Agent's Rights") are incorporated herein by reference as if such Section were set forth herein in its entirety.

Section 12. Rights and Remedies.

(a) Without limiting the provisions of Section 6(d) of this Agreement, if and for so long as any Operations Co Financing Default shall have occurred and be continuing, all payments thereafter received by Pledgor under or in connection with the Pledged Collateral shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of Pledgor and shall be forthwith paid over to the Collateral Agent in the same form as so received (with any necessary endorsement).

(b) Without limiting the provisions of Section 6(d) of this Agreement, if and for so long as any Operations Co Financing Default shall have occurred and be continuing, (i) the Collateral Agent shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral and (ii) all payments thereafter made to Pledgor in respect of the Pledged Collateral and received by the Collateral Agent in accordance with the provisions of this Agreement or otherwise, and all proceeds of the Pledged Collateral received by the Collateral Agent pursuant to paragraph (c) below, may (x) be held by the Collateral Agent as collateral for the Secured Obligations and/or (y) then or at any time thereafter during the continuance of such Operations Co Financing Default, be applied thereto in accordance with the provisions of the Financing Documents.

(c) If (i) any Operations Co Financing Default shall have occurred and be continuing and (ii) any of the Secured Obligations shall have been declared to be, or shall have become, due and payable then, in addition to any other rights and remedies provided for herein or that may otherwise be available, the Collateral Agent may, without any further demand, advertisement or notice (except as expressly provided for below in this Section 12(c)), exercise all the rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Pledged Collateral), and in addition, (x) may apply the moneys, if any, then held by it as part of the Pledged Collateral, for the purposes and in the order provided in the Financing Documents and (y) if there shall be no such moneys or the moneys so applied shall

be insufficient to satisfy in full all Secured Obligations, may sell the Pledged Collateral, or any part thereof, as hereinafter provided in this Section 12(c) and otherwise to the fullest extent permitted by law. The Pledged Collateral may be sold in one or more sales, at public or private sale, conducted by any officer or agent of, or auctioneer or attorney for, the Collateral Agent, at the Collateral Agent's place of business or elsewhere, for cash, upon credit or for other property, for immediate or future delivery, and at such price or prices and on such terms as the Collateral Agent shall deem commercially reasonable. The Collateral Agent or any Secured Party may be the purchaser of any or all of the Pledged Collateral so sold at a public sale and, to the extent permitted by law, at a private sale, and thereafter hold the same, absolutely, free from any right or claim of whatsoever kind, and, prior to the payment and satisfaction in full of the Secured Obligations, the obligations of Pledgor to the Collateral Agent may be applied as a credit against the purchase price. The Collateral Agent may at any such sale restrict the prospective bidders or purchasers as to their number, nature of business and investment intention; provided that Operations Co and/or Pledgor may bid and purchase the Pledged Collateral at such sale. Upon any public or private sale the Collateral Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Pledged Collateral so sold. Each purchaser (including the Collateral Agent or any Secured Party) at any sale shall hold the Pledged Collateral so sold, absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, of Pledgor, and Pledgor hereby specifically waives, to the full extent it may lawfully do so, all rights of redemption, stay or appraisal that it has or may have under any rule of law or statute now existing or hereafter adopted. The Collateral Agent shall give Pledgor at least ten (10) days' notice (which shall constitute reasonable notification) of any such public or private sale. Such notice shall state the time and place fixed for such sale. Any sale shall be held at such time or times within ordinary business hours as the Collateral Agent shall fix in the notice of such sale. At any such sale the Pledged Collateral may be sold in one lot as an entirety or in separate parcels. The Collateral Agent shall not be obligated to make any sale pursuant to any such notice. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for such sale, and any such sale may be made at any time or place to which the same may be so adjourned without further notice or publication. In case of any sale of all or any part of the Pledged Collateral on credit or for future delivery, the Pledged Collateral so sold may be retained by the Collateral Agent until the full selling price is paid by the purchaser thereof, but the Collateral Agent shall not incur any liability in case of the failure of such purchaser to take up and pay for the Pledged Collateral so sold, and, in case of any such failure, such Pledged Collateral may again be sold pursuant to the provisions hereof. All cash proceeds of any such sale, and any other realization upon all or any part of the Pledged Collateral, shall be held or applied by the Collateral Agent in the manner provided in the Financing Documents.

(d) Pledgor hereby agrees that in respect of any sale of the Pledged Collateral pursuant to the terms hereof, the Collateral Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may deem necessary in order to avoid any violation of applicable Laws, or in order to obtain any required approval of the sale or of the purchase by any Governmental Authority or official, and Pledgor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Collateral Agent be liable or accountable to Pledgor for any discount allowed by reason of the fact that such Pledged Collateral is sold in compliance with any such limitation or restriction.

(e) Instead of exercising the power of sale provided in Section 12(c) above, the Collateral Agent, acting in accordance with the Financing Documents, may proceed by a suit

or suits at law or in equity to foreclose the pledge and security interest under this Agreement and sell the Pledged Collateral or any portion thereof under a judgment or decree of a court or courts of competent jurisdiction; provided that Operations Co and/or Pledgor may bid for and purchase the Pledged Collateral at such sale.

(f) The Collateral Agent as attorney-in-fact pursuant to Section 9 of this Agreement may, in the name and stead of Pledgor, make and execute all conveyances, assignments and transfers of the Pledged Collateral sold pursuant to Section 12(c) or Section 12(e) above, and Pledgor hereby ratifies and confirms all that the Collateral Agent, as said attorney-in-fact, shall do by virtue hereof. Nevertheless, Pledgor shall, if so requested by the Collateral Agent, ratify and confirm any sale or sales by executing and delivering to the Collateral Agent, or to such purchaser or purchasers, all such instruments as may, in the reasonable judgment of the Collateral Agent, be advisable for the purpose.

(g) The receipt of the Collateral Agent for the purchase money paid at any sale made by it shall be a sufficient discharge therefor to any purchaser of the Pledged Collateral, or any portion thereof, sold as aforesaid; and no such purchaser (or the representatives or assigns of such purchaser), after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money or any part thereof or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(h) The Collateral Agent shall incur no liability as a result of the manner of sale of the Pledged Collateral, or any part thereof, at any private sale conducted in a commercially reasonable manner. So long as a sale is conducted in a commercially reasonable manner, Pledgor hereby waives, to the full extent permitted by applicable law, any claims against the Collateral Agent arising by reason of the fact that the price at which the Pledged Collateral, or any part thereof, may have been sold at private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Collateral Agent accepts the first offer received that the Collateral Agent in good faith deems to be commercially reasonable under the circumstances and does not offer the Pledged Collateral to more than one offeree. To the fullest extent permitted by law, Pledgor shall have the burden of proving that any such sale of the Pledged Collateral was conducted in a commercially unreasonable manner.

(i) Each and every right and remedy of the Collateral Agent shall, to the extent permitted by law, be cumulative and shall be in addition to any other remedy given hereunder or under the Financing Documents or now or hereafter existing at law or in equity or otherwise.

(j) All costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Collateral Agent in connection with exercising any actions taken under this Section 12 shall constitute Secured Obligations secured by the Pledged Collateral and shall be payable in accordance with Section 7.01 of the Collateral Agency Agreement.

(k) For the avoidance of doubt, any action by Collateral Agent under this Section 12 shall be taken at the direction of the Instructing Trustee (acting in accordance with Section 2.19 of the Collateral Agency Agreement) in good faith, in a commercially reasonable manner and in compliance with the applicable terms of the UCC.

### Section 13. Certain Waivers.

(a) No delay or omission to exercise any right, power or remedy accruing to the Collateral Agent upon the occurrence and during the continuance of any Operations Co Financing Default shall impair any such right, power or remedy of the Collateral Agent, nor shall it be construed to be a waiver of any such Operations Co Financing Default or similar breach or default thereafter occurring or an acquiescence therein, nor shall any waiver of any other breach or default under this Agreement or any other Financing Document be deemed a waiver of any other breach or default theretofore or thereafter occurring. Each and every Operations Co Financing Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by the Collateral Agent.

(b) Pledgor hereby waives and relinquishes, to the maximum extent permitted by applicable Law, all rights and remedies accorded to pledgors, sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including: (i) any right to require the Collateral Agent at any time to pursue any other remedy in the Collateral Agent's power before proceeding against Pledgor; (ii) any defense that may arise by reason of the incapacity, lack of power or authority, dissolution, merger, termination or disability of Pledgor, Operations Co, Borrower or any other Person or the failure of the Collateral Agent to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Pledgor, Operations Co, Borrower or any other Person; (iii) any right to require the Collateral Agent to give any notices of any kind, including notices of nonpayment, nonperformance, protest, dishonor, default, delinquency or acceleration, or to make any presentments, demands or protests, except as set forth herein or in the other Financing Documents; (iv) any right under any law purporting to reduce Pledgor's obligations hereunder if the Secured Obligations are reduced other than as a result of payment of such Secured Obligations; (v) any defense based on the repudiation of any Financing Document by Borrower, Operations Co or any other Person, the failure by the Collateral Agent to enforce any claim against Pledgor, Operations Co, Borrower or any other Person or the unenforceability in whole or in part of any Financing Document; (vi) any right to insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by Pledgor of its obligations under, or the enforcement by the Collateral Agent of, this Agreement; (vii) any defense based upon an election of remedies by the Collateral Agent, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Pledgor, the right of Pledgor to proceed against Operations Co or Borrower or the failure by Operations Co or Borrower to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Financing Documents; (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Operations Co or Borrower against the Collateral Agent or any other Person under the Financing Documents; (ix) any duty on the part of the Collateral Agent to disclose to Pledgor any facts the Collateral Agent may now or hereafter know about Operations Co or Borrower, regardless of whether the Collateral Agent has reason to believe that any such facts materially increase the risk beyond that which Pledgor intends to assume, or has reason to believe that such facts are unknown to Pledgor, or has a reasonable opportunity to communicate such facts to Pledgor; and (x) any defense based on any change in the time, manner or place of any payment under, or in any other term of, the Financing Documents or any other amendment,

renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Financing Documents.

(c) To the extent permitted by Law, Pledgor waives the posting of any bond otherwise required of the Collateral Agent in connection with any judicial process or proceeding to obtain possession of, replevy, attach, or levy upon any Pledged Collateral, to enforce any judgment or other security for the Secured Obligations, to enforce any judgment or other court order entered in favor of the Collateral Agent, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other agreement or document between Pledgor and the Collateral Agent. Pledgor further agrees that upon the occurrence and during the continuation of an Operations Co Financing Default, the Collateral Agent may elect to non-judicially or judicially foreclose against any real or personal property security it holds for the Secured Obligations or any part thereof, or to exercise any other remedy against Operations Co, Borrower or any other Person, any security or any guarantor, in each case in accordance with the Financing Documents, even if the effect of that action is to deprive Pledgor of the right to collect reimbursement from Operations Co, Borrower or any other Person for any sums paid by Pledgor to the Collateral Agent for the benefit of the Secured Parties.

(d) Until the payment and satisfaction in full of the Secured Obligations, (i) Pledgor shall have no right of subrogation and Pledgor waives all rights to enforce any remedy which the Collateral Agent may now have or hereafter have against Operations Co or Borrower, and waives the benefit of, and all rights to participate in, any security now or hereafter held by the Collateral Agent from Operations Co and Borrower and (ii) Pledgor waives any claim, right or remedy which Pledgor may now have or hereafter acquire against Operations Co or Borrower that arises hereunder and/or from the performance of Pledgor's contribution, indemnification, or participation in any claim, right or remedy of the Collateral Agent against Operations Co or Borrower, or any security which the Collateral Agent now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. Any amount paid to Pledgor on account of any such subrogation rights prior to the payment and satisfaction in full of the Secured Obligations shall be held in trust for the benefit of the Collateral Agent and shall immediately thereafter be paid to the Collateral Agent for the benefit of the Secured Parties.

#### Section 14. Addresses for Notices.

(a) All notices or other communications to the Collateral Agent hereunder shall be given in the manner and to the addresses specified in the Collateral Agency Agreement. All such notices and other communications to the Collateral Agent shall be effective as and when specified in the Collateral Agency Agreement.

(b) All notices and other communications provided to Pledgor hereunder shall be in writing and addressed, delivered or transmitted to Pledgor at its "Address for Notices" specified below Pledgor's name on the signature pages hereof or at such other address or facsimile number as may be designated by Pledgor from time to time in a written notice to the Collateral Agent. Any notice to Pledgor (other than a facsimile) shall be sent by pre-paid nationally recognized overnight courier service and shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when transmitted (if confirmed); provided, however, that any notice delivered by facsimile shall be effective (i) if received before 2:00 p.m. (recipient's time), as of the Business Day on which it is received, (ii) if received on or after 2:00 p.m. (recipient's time) on any day, as of the next succeeding Business Day, and (iii) if

a copy of such notice is mailed by pre-paid nationally recognized overnight courier service and received on the following day by the recipient thereof.

Section 15. Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 16. Survival of Provisions. All representations and warranties contained herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement. All statements contained in any certificate or other instrument delivered by or on behalf of Pledgor pursuant to this Agreement shall be deemed representations and warranties of Pledgor under this Agreement.

Section 17. No Waiver; Cumulative Remedies. No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Collateral Agent.

Section 18. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

Section 19. Governing Law; Consent to Jurisdiction. Reference is made to Section 5-1401 of the New York General Obligations Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles thereof that would result in the application of any law other than the law of the State of New York, except as required by mandatory provisions of law relating to the law governing perfection or the effect of perfection of the security interests hereunder. Each of the parties hereto hereby (i) irrevocably consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect, in any suit, action or proceeding arising out of or relating to this Agreement and (ii) waives, to the fullest extent permitted by law, the right to move or dismiss or transfer any action brought in such court on the basis of any objection to personal jurisdiction, venue or inconvenient forum.

Section 20. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR RELATING TO OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT.

Section 21. Amendment or Waiver. Except as otherwise provided herein, neither this Agreement nor any of the terms hereof may be amended, changed or waived unless such amendment, change or waiver is in writing and signed by Pledgor and the Collateral Agent and

then any such waiver or consent shall be effective only in the specific instance and for the specified purpose for which given.

Section 22. Entire Agreement. This Agreement, including any agreement, document or instrument attached hereto or referred to herein, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior agreements and understandings of the parties hereto in respect to the subject matter hereof.

Section 23. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 24. Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and/or by facsimile or electronic mail, and all of said counterparts taken together shall be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or "pdf" signature page shall constitute an original for purposes hereof.

Section 25. No Inconsistent Requirements. The Pledgor acknowledges that this Agreement and the other Financing Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and each shall be performed and satisfied in accordance with its respective terms.

Section 26. Termination. Upon payment and performance in full of all Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted), the Collateral Agent shall promptly execute and deliver to Pledgor such documents and instruments reasonably requested by Pledgor as shall be necessary to evidence termination of all security interests and proxies given by Pledgor to the Collateral Agent hereunder and shall return any Pledged Collateral in its possession to Pledgor.

Section 27. Reinstatement. Following the Termination Date, this Agreement, the Security Interest created hereunder and the obligations of Pledgor hereunder shall continue to be effective or be automatically reinstated, as the case may be, if and to the extent that for any reason any payment by or on behalf of Pledgor in respect of the Secured Obligations is rescinded or must otherwise be restored by any holder of the Secured Obligations, whether as result of any proceedings in bankruptcy or reorganization or otherwise.

Section 28. Limitation of Liability. No claim shall be made by Pledgor against the Collateral Agent or any of its affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Financing Documents or any act or omission or event occurring in connection therewith; and Pledgor hereby waives, releases and agrees not to sue upon any such claim for any such

damages, whether or not accrued and whether or not known or suspected to exist in its favor. Additionally:

(a) No covenant, agreement or obligation contained herein or in any Operations Co Security Document shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of Operations Co in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this Agreement or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Financing Documents, the Secured Parties will have full recourse to Operations Co and all of its assets and properties for the respective liabilities and obligations of Operations Co under the Financing Documents, but in no event will the Authority or any Affiliates of Operations Co or any officer, director or holder of any interest in Operations Co, the Authority or any Affiliates of Operations Co be liable or obligated for such liabilities and obligations of Operations Co, other than to the extent arising directly as a result of Pledgor's pledge of its ownership interests in Operations Co pursuant to this Agreement and the Pledgor and each Sponsors' obligations under the Capital Contribution Agreement, as applicable.

(c) Notwithstanding anything in paragraph (b) above of this Section 28, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of the Authority or any Affiliate of Operations Co (1) arising under any Financing Document or Project Contract to which the Authority or such Affiliate of Operations Co is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of the Authority or any Affiliate of Operations Co.

Section 29. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Collateral Agent, for the benefit of the Secured Parties, and Pledgor and the respective successors and permitted assigns of the foregoing, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that, subject to Section 6.04 of the Collateral Agency Agreement, the Secured Parties shall be express third party beneficiaries of this Agreement.

Section 30. PATRIOT Act Notification. The Collateral Agent hereby notifies Pledgor that pursuant to the requirements of the USA PATRIOT ACT, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "PATRIOT Act"), the Collateral Agent may be required to obtain, verify and record information that identifies Pledgor, which information includes the name, address, tax identification number and other information regarding Pledgor that will allow the Collateral Agent to identify Pledgor in accordance with the PATRIOT Act.

*[Remainder of page intentionally left blank; signatures follow.]*

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, have caused this Agreement to be duly executed and delivered as of the date first above written.

PLEDGOR:

KENTUCKYWIRE OPERATIONS HOLDING  
COMPANY, LLC

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

Name: \_\_\_\_\_

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

Address for Notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

With a copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Collateral Agent

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

Name: \_\_\_\_\_

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

EXHIBIT A

IRREVOCABLE PROXY

The undersigned hereby (i) appoints U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, the "Collateral Agent") for the benefit of the Secured Parties (as defined in the Pledge Agreement) under the Pledge Agreement, (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Pledge Agreement") dated as of September \_\_, 2015 by and between KENTUCKYWIRE OPERATIONS HOLDING COMPANY, LLC ("Pledgor") and the Collateral Agent, to act as proxy following the occurrence and during the continuance of an Operations Co Financing Default (as defined in the Pledge Agreement), with full power of substitution, and (ii) authorizes the Collateral Agent, following the occurrence and during the continuance of such Operations Co Financing Default, to represent and vote all of the membership and other interests in KENTUCKYWIRE OPERATIONS COMPANY, LLC, a Delaware limited liability company, owned by the undersigned on the date of exercise hereof, at any meeting or at any time chosen by the Collateral Agent in its sole discretion.

Date: \_\_\_\_\_, 2015

PLEDGOR:

KENTUCKYWIRE OPERATIONS HOLDING COMPANY, LLC

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

Name:

Title:

EXHIBIT B

TRANSFER POWER

FOR VALUE RECEIVED, the undersigned (the "Assignor") hereby assigns, conveys, sells and transfers unto

\_\_\_\_\_  
(Please insert taxpayer identification number of Assignee)

\_\_\_\_\_  
(Please print name and address of Assignee)

all rights and interests of the Assignor in KENTUCKYWIRE OPERATIONS COMPANY, LLC, a Delaware limited liability company ("Operations Co") held by it and represented by Certificate Number \_\_\_\_, and does hereby irrevocably constitute and appoint \_\_\_\_\_ as its attorney-in-fact to transfer such rights and interests on the books of Operations Co with full power of substitution in the premises

Dated: \_\_\_\_\_

KENTUCKYWIRE OPERATIONS HOLDING COMPANY, LLC

By: \_\_\_\_\_  
Name:  
Title:

Schedule 1

Pledged Interests

Issuer: KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company

Certificate No.: 1

Percentage Ownership: 100% of the ownership interests of KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company

Registered Owner: KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC

Schedule 2

Organization of Pledgor

Pledgor's Legal Name:

KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC

Type, Jurisdiction of Organization and Organizational Number, if any:

Limited Liability Company

Delaware

Organizational Number: 5791144

Chief Executive Office:

[ADDRESS]

C-1

**EXHIBIT C-1**  
**DESIGN-BUILDER DIRECT AGREEMENT**

See attached.

Amended and Restated Schedule 15 (Exhibit C-1)  
Design-Builder Direct Agreement  
NG-KIH Project Implementation Agreement

C-2

**EXHIBIT C-2**  
**SERVICE PROVIDER DIRECT AGREEMENT**

See attached.

Amended and Restated Schedule 15 (Exhibit C-2)  
Service Provider Direct Agreement  
NG-KIH Project Implementation Agreement

D-1

**EXHIBIT D**  
**LENDERS' REMEDIES AGREEMENT**

See attached.

Amended and Restated Schedule 15 (Exhibit D)  
Lenders' Remedies Agreement  
NG-KIH Project Implementation Agreement

E-1

**EXHIBIT E**  
**CAPITAL CONTRIBUTION AGREEMENT**

See attached.

Amended and Restated Schedule 15 (Exhibit E)  
Capital Contribution Agreement  
NG-KIH Project Implementation Agreement

**SCHEDULE 16  
COMMUNICATION ROLES**

Schedule 16 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to communications.

**SCHEDULE 17  
KEY INDIVIDUALS**

<b>Name of Key Individual</b>	<b>Capacity</b>	<b>Applicable Period of Term</b>
<b>Operations Co:</b>		
Robert Morphonios	Project Co Lead	Construction Period and Operating Period
Tom Snyder	Project Co's Design and Construction Representative	Construction Period and Operating Period
Tom Snyder	Project Co's Operating Period Representative	Construction Period and Operating Period
<b>Design-Builder:</b>		
Michael Murray	Design-Builder Representative	To System Completion
Allen Hemrich	Construction Lead	To System Completion
Tom Reaves	Design Lead	To System Completion
<b>Service Provider:</b>		
Trent Edwards	Service Provider Representative	Construction Period and Operating Period
Allen Hemrich	Operations Vice President	Construction Period and Operating Period
Harminder Gill	Service Provider Design Support	Construction Period and Operating Period
John Colder	Operations Team Lead	Construction Period and Operating Period

**SCHEDULE 18  
COMPLETION DOCUMENTS**

**1. GENERAL**

In this Schedule 18, “certified” will mean that the relevant document is certified (for and on behalf of the relevant corporation or other entity and without personal liability) by an authorized signatory, director or authorized signatory of the relevant corporation or other entity as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate.

**2. DOCUMENTS TO BE DELIVERED BY OPERATIONS CO**

Unless an original document is specifically referred to below, Operations Co delivered to Project Co a certified copy of each of the following documents in accordance with Section 2.2(a) of this Project Implementation Agreement:

- (a) an original of this Project Implementation Agreement, executed by Operations Co;
- (b) an original of the Lenders’ Remedies Agreement, executed by the parties to such agreement (other than the Authority and Project Co);
- (c) the Design-Build Agreement, executed by the parties to such agreement;
- (d) the Services Contract, executed by the parties to such agreement;
- (e) the following documents executed by the parties thereto:
  - (1) from the Design-Builder:
    - (A) a letter of credit as security for the Design-Builder’s obligations; and
    - (B) a guarantee from each of Ledcor Contractors Group Inc. and BVH, Inc. with respect to the Design-Build Agreement; and
  - (2) from the Service Provider:
    - (A) a letter of credit as security for the Service Provider’s obligations; and
    - (B) a guarantee from Ledcor Contractors Group Inc. with respect to the Services Contract,

in each case, which performance and other security will provide for a novation or assignment to the Authority if the Authority exercises its rights under the Design-Builder Collateral Agreement or the Service Provider Collateral Agreement, as applicable;

- (f) an original of the Design-Builder Collateral Agreement, executed by the parties to such agreement (other than the Authority and Project Co);
- (g) an original of the opinion of counsel to the Design-Builder in respect of the Design-Build Agreement and the Design-Builder Collateral Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;
- (h) an original of the opinion of counsel to each of Ledcor Contractors Group Inc. and BVH, Inc. in respect of the guarantee given in support of the Design-Build Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;
- (i) an original of the Service Provider Collateral Agreement, executed by the parties to such agreement (other than the Authority and Project Co);
- (j) an original of the opinion of counsel to the Service Provider in respect of the Services Contract and the Service Provider Collateral Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;
- (k) an original of the opinion of counsel to Ledcor Contractors Group Inc. in respect of the guarantee given in support of the Services Contract, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;
- (l) the interface agreement between the Design-Builder, the Service Provider and Operations Co, executed by the parties to such agreement;
- (m) a certificate of an authorized signatory of Operations Co certifying true copies of the following:
  - (1) an authorizing resolution of the board of directors of Operations Co;
  - (2) incumbency of the authorized signatories of Operations Co; and
  - (3) the constating documents of Operations Co;
- (n) a certificate from Operations Co certifying that no injunction or restraining order or other decision, ruling or order of a court or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on the ability of Operations Co to perform its obligations under this Project Implementation Agreement;
- (o) a certificate of an authorized signatory of each of the Design-Builder, Ledcor Contractors Group Inc. and BVH, Inc. certifying true copies of the following:
  - (1) an authorizing resolution of the board of directors of the Design-Builder, Ledcor Contractors Group Inc. or BVH, Inc., as applicable;
  - (2) incumbency of the authorized signatories of the Design-Builder, Ledcor Contractors Group Inc. or BVH, Inc., as applicable; and

- (3) the constating documents of the Design-Builder, Leducor Contractors Group Inc. or BVH, Inc., as applicable;
- (p) a certificate of an authorized signatory of each of the Service Provider and Leducor Contractors Group Inc. certifying true copies of the following:
  - (1) an authorizing resolution of the board of directors of the Service Provider or Leducor Contractors Group Inc., as applicable;
  - (2) incumbency of the authorized signatories of the Service Provider or Leducor Contractors Group Inc., as applicable; and
  - (3) the constating documents of the Service Provider or Leducor Contractors Group Inc., as applicable;
- (q) a certificate of good standing for Operations Co;
- (r) a statement of registration in the Commonwealth of Kentucky for Operations Co, the Design-Builder and the Service Provider;
- (s) a copy of an insurance binder or certificates of insurance for all policies required to be taken out by or on behalf of Operations Co for the Construction Period in accordance with this Project Implementation Agreement;
- (t) an original notice of appointment of Representatives to be appointed by Operations Co under this Project Implementation Agreement;
- (u) an original of the opinion from counsel to Operations Co that Operations Co exists, has the power and capacity to enter into this Project Implementation Agreement, the Lenders' Remedies Agreement, the Design-Builder Collateral Agreement and the Service Provider Collateral Agreement, and that such documents have been duly authorized, executed and delivered by Operations Co, create valid and binding obligations, and are enforceable against Operations Co in accordance with their terms, in a form acceptable to the Authority and its counsel, acting reasonably, and including originals of relevant certificates and other documents relied upon by Operations Co's counsel; and
- (v) such other documents as the parties agreed, each acting reasonably.

### **3. DOCUMENTS TO BE DELIVERED BY PROJECT CO**

Unless an original document is specifically referred to below, Project Co delivered to Operations Co a certified copy of each of the following documents in accordance with Section 2.2(b) of this Project Implementation Agreement:

- (a) an original of this Project Implementation Agreement, executed by Project Co;
- (b) an original copy of the Lenders' Remedies Agreement, executed by the Authority and Project Co;

- (c) an original of the Design-Builder Collateral Agreement, executed by the Authority and Project Co;
- (d) an original of the Service Provider Collateral Agreement, executed by the Authority and Project Co;
- (e) a certificate of an authorized signatory of Project Co certifying true copies of the following:
  - (1) an authorizing resolution of the board of directors of Project Co;
  - (2) incumbency of the authorized signatories of Project Co; and
  - (3) the constating documents of Project Co;
- (f) a certificate from Project Co certifying that no injunction or restraining order or other decision, ruling or order of a court or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on the ability of Project Co to perform its obligations under this Project Implementation Agreement;
- (g) an original notice of appointment of the Representatives to be appointed by Project Co under this Project Implementation Agreement;
- (h) an original of the opinion from counsel to Project Co that Project Co has the power and capacity to enter into this Project Implementation Agreement, the Lenders' Remedies Agreement, the Design-Builder Collateral Agreement and the Service Provider Collateral Agreement, and that such documents have been duly authorized, executed and delivered by Project Co, create valid and binding obligations, and are enforceable against Project Co in accordance with their terms, in a form acceptable to Operations Co and its counsel, acting reasonably, and including originals of relevant certificates and other documents relied upon by Project Co's counsel; and
- (i) such other documents as the parties agreed, each acting reasonably.

**SCHEDULE 19  
MARKET TESTING PROCEDURE**

Schedule 19 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Market Testing.

**SCHEDULE 20  
THIRD PARTY INFRASTRUCTURE AGREEMENTS**

Means the following agreements:

1. Agreement between MuniNet Fiber Agency and the Commonwealth of Kentucky in respect of Project A dated January 31, 2018
2. Dark Fiber Indefeasible Right of Use Agreement between Cincinnati Bell Telephone Company LLC and the Commonwealth of Kentucky dated May 26, 2016
3. Dark Fiber Indefeasible Right of Use Agreement between East Kentucky Network LLC and the Commonwealth of Kentucky dated August 25, 2016
4. Dark Fiber Indefeasible Right of Use Agreement between Bluegrass Network LLC and the Commonwealth of Kentucky dated April 20, 2017
5. Dark Fiber Indefeasible Right of Use Agreement between Brandenburg Utilities and the Commonwealth of Kentucky dated October 27, 2017.
6. Dark Fiber Indefeasible Right of Use Agreement between Owensboro Municipal Utility and the Commonwealth of Kentucky dated January 10, 2018.

**SCHEDULE 21  
MASTER AGREEMENT**

See attached.

**SCHEDULE 22  
APPROVED CHANGE CERTIFICATES AND DIRECTIVES**

The following Change Certificates and Change Directives have been issued by the Authority on or before October 31, 2018:

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
R1a-0539	R1a-0539-003-CC	Approved	NG-KIH Design-Build LLC	09/02/2016	09/02/2016
R1b-0085	R1b-0085-002-CC	Approved	NG-KIH Design-Build LLC	09/02/2016	09/02/2016
R1b-1636	R1b-1636-003-CC	Approved	NG-KIH Design-Build LLC	09/02/2016	09/02/2016
R1a-0264	R1a-0264-002-CC	Approved	NG-KIH Design-Build LLC	13/03/2016	13/03/2016
R1a-0425	R1a-0425-002-CC	Approved	NG-KIH Design-Build LLC	13/03/2016	14/03/2016
R1a-0430	R1a-0430-002-CC	Approved	NG-KIH Design-Build LLC	13/03/2016	14/03/2016
R1b-0052_1688	R1b-0052_1688-002-CC	Approved	NG-KIH Design-Build LLC	13/03/2016	14/03/2016
R1b-0291	R1b-0291-002-CC	Approved	NG-KIH Design-Build LLC	14/03/2016	14/03/2016
R1b-0541	R1b-0541-002-CC	Approved	NG-KIH Design-Build LLC	14/03/2016	14/03/2016
R1b-0591	R1b-0591-002-CC	Approved	NG-KIH Design-Build LLC	13/03/2016	14/03/2016
R1b-0596	R1b-0596-002-CC	Approved	NG-KIH Design-Build LLC	14/03/2016	14/03/2016
R4-0458	R4-0458-002-CC	Approved	NG-KIH Design-Build LLC	14/03/2016	14/03/2016
R1a-0674	R1a-0674-002-CC	Approved	NG-KIH Design-Build LLC	16/03/2016	16/03/2016
R1b-0610	R1b-0610-002-CC	Approved	NG-KIH Design-Build LLC	16/03/2016	16/03/2016
R1b-0656	R1b-0656-002-CC	Approved	NG-KIH Design-Build LLC	16/03/2016	17/03/2016
R1b-0762	R1b-0762-002-CC	Approved	NG-KIH Design-Build LLC	23/03/2016	23/03/2016
R1a-0576	R1a-0576-002-CC	Approved	NG-KIH Design-Build LLC	23/03/2016	24/03/2016
R1a-1279	R1a-1279-002-CC	Approved	NG-KIH Design-Build LLC	24/03/2016	24/03/2016

Amended and Restated Schedule 22  
Approved Change Certificates and Directives  
NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
R1a-1714	R1a-1714-002-CC	Approved	NG-KIH Design-Build LLC	24/03/2016	24/03/2016
R3-1421	R3-1421-002-CC	Approved	NG-KIH Design-Build LLC	23/03/2016	24/03/2016
R5-0739	R5-0739-002-CC	Approved	NG-KIH Design-Build LLC	21/03/2016	28/03/2016
R1a-0184	R1a-0184-002-CC	Approved	NG-KIH Design-Build LLC	14/03/2016	30/03/2016
R1a-0554	R1a-0554-002-CC	Approved	NG-KIH Design-Build LLC	14/03/2016	30/03/2016
R1a-0319	R1a-0319-002-CC	Approved	NG-KIH Design-Build LLC	31/03/2016	31/03/2016
R1b-0412	R1b-0412-002-CC	Approved	NG-KIH Design-Build LLC	31/03/2016	31/03/2016
R1a-0751	R1a-0751-002-CC	Approved	NG-KIH Design-Build LLC	31/03/2016	01/04/2016
R1a-0983	R1a-0983-002-CC	Approved	NG-KIH Design-Build LLC	04/04/2016	04/04/2016
R1a-1095	R1a-1095-002-CC	Approved	NG-KIH Design-Build LLC	04/04/2016	04/04/2016
R1a-1117	R1a-1117-002-CC	Approved	NG-KIH Design-Build LLC	04/04/2016	04/04/2016
R1a-1415	R1a-1415-003-CC	Approved	NG-KIH Design-Build LLC	04/04/2016	04/04/2016
R1b-0038	R1b-0038-002-CC	Approved	NG-KIH Design-Build LLC	31/03/2016	04/04/2016
R1b-0105	R1b-0105-002-CC	Approved	NG-KIH Design-Build LLC	31/03/2016	04/04/2016
R3-0777	R3-0777-002-CC	Approved	NG-KIH Design-Build LLC	04/04/2016	04/04/2016
R4-0460	R4-0460-002-CC	Approved	NG-KIH Design-Build LLC	31/03/2016	04/04/2016
R1a-1248	R1a-1248-002-CC	Approved	NG-KIH Design-Build LLC	04/04/2016	05/04/2016
R4-1213	R4-1213-002-CC	Approved	NG-KIH Design-Build LLC	04/04/2016	05/04/2016
R1b-1133	R1b-1133-002-CC	Approved	NG-KIH Design-Build LLC	11/04/2016	11/04/2016
R1b-1379	R1b-1379-002-CC	Approved	NG-KIH Design-Build LLC	11/04/2016	12/04/2016
PCI-040	R4-0726-003-CC	Approved	NG-KIH Design-Build LLC	11/04/2016	13/04/2016

Amended and Restated Schedule 22  
 Approved Change Certificates and Directives  
 NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
R1a-0643_1169	R1a-0643_1169-002-CC	Approved	NG-KIH Design-Build LLC	13/04/2016	14/04/2016
R1b-0363	R1b-0363-002-CC	Approved	NG-KIH Design-Build LLC	13/04/2016	14/04/2016
R3-1406	R3-1406-002-CC	Approved	NG-KIH Design-Build LLC	19/04/2016	19/04/2016
R1a-0729	R1a-0729-002-CC	Approved	NG-KIH Design-Build LLC	22/04/2016	25/04/2016
R3-1123	R3-1123-001-CC	Approved	NG-KIH Design-Build LLC	22/04/2016	25/04/2016
R5-1262	R5-1262-001-CC	Approved	NG-KIH Design-Build LLC	22/04/2016	25/04/2016
R1b-0179	R1b-0179-002-CC	Approved	NG-KIH Design-Build LLC	24/05/2016	25/05/2016
R1a-0195	R1a-0195-001-CC	Approved	NG-KIH Design-Build LLC	04/06/2016	06/06/2016
KIH-04CTM-PI-00145	R4-0205 Other	Approved	NG-KIH Design-Build LLC	22/06/2016	26/06/2016
R1a-1111	R1a-1111-002-CC	Approved	NG-KIH Design-Build LLC	04/04/2016	19/08/2016
CO-000002	DEL Change Report - Fiber Distribution Panels	Approved	NG-KIH Design-Build LLC	25/08/2016	25/08/2016
CO-000004	DEL Change Report-Fiber 432 Ct	Approved	NG-KIH Design-Build LLC	25/08/2016	25/08/2016
PCI-009-001	LFUCG Change Certificate	Approved	NG-KIH Design-Build LLC	01/09/2016	01/09/2016
PCI-028	R1b-0277-001-CC	Approved	NG-KIH Design-Build LLC	19/09/2016	19/09/2016
R1a-0525	R1a-0525-004-Relocation	Approved	NG-KIH Design-Build LLC	20/09/2016	21/09/2016
R4-1144	R4-1144-002-Relocate	Approved	NG-KIH Design-Build LLC	20/09/2016	21/09/2016
R1a-0092	R1a-0092-003 Relocation	Approved	NG-KIH Design-Build LLC	22/09/2016	22/09/2016
CR-000020	R1b-1110-002-Delete	Approved	NG-KIH Design-Build LLC	20/09/2016	22/09/2016
CO-000003	DEL Change Report-Strand-8-30-16	Approved	NG-KIH Design-Build LLC	03/10/2016	04/10/2016

Amended and Restated Schedule 22  
Approved Change Certificates and Directives  
NG-KIH Project Implementation Agreement

Document No.	Title	Status	Originating Organization	KCNA Approval	KWOC Approval
PCI-018	R1b-1404-001Remove	Approved	NG-KIH Design-Build LLC	03/10/2016	04/10/2016
ZAYO-MUNINET	ZAYO-MUNINET Change Report	Approved	NG-KIH Design-Build LLC	04/10/2016	05/10/2016
CR-000021	R1a-0361-005	Approved	NG-KIH Design-Build LLC	06/10/2016	10/10/2016
PCI-012	R1a-1219-001 Delete	Approved	NG-KIH Design-Build LLC	07/10/2016	10/10/2016
R1a-1719	R1a-1719-001-DBRC	Approved	NG-KIH Design-Build LLC	07/10/2016	10/10/2016
R1a-1175	Change Request-003	Approved	NG-KIH Design-Build LLC	10/10/2016	11/10/2016
PCI-039	CM-R4-1423-001-Add Chg-PCI	Approved	NG-KIH Design-Build LLC	10/10/2016	11/10/2016
CR-000018	R1a-0545-001-Move-PCI	Approved	NG-KIH Design-Build LLC	10/10/2016	11/10/2016
R2-0402	R2-0402-001-DBRC	Approved	NG-KIH Design-Build LLC	10/10/2016	11/10/2016
CD-R1A-0715	CD-R1A-0715-001	Approved	NG-KIH Design-Build LLC	20/10/2016	21/10/2016
CR-000008	R1a-0248-002	Approved	NG-KIH Design-Build LLC	20/10/2016	21/10/2016
CD-R1A-0222	CD-R1A-0222	Approved	NG-KIH Design-Build LLC	27/10/2016	02/11/2016
CD-R1A-0248	CD-R1A-0248	Approved	NG-KIH Design-Build LLC	27/10/2016	03/11/2016
R1a-1073	R1a-1073-002	Approved	NG-KIH Design-Build LLC	04/11/2016	10/11/2016
KIH-04CTM-CP-00021	EKN Consolidated Change Certificate Rev 3	Approved	NG-KIH Design-Build LLC	05/12/2016	06/12/2016
KIH-04CTM-CE-00004	Jackson Energy PAP 2_3_16 signed 12_28_16.xlsx	Approved	NG-KIH Design-Build LLC	03/02/2016	28/12/2016
DEL Change Report for 72 ct. fiber	DEL Change Report for 72 ct. fiber	Approved	NG-KIH Design-Build LLC	10/01/2017	10/01/2017
DEL Change Report- Optical Enclosure	DEL Change Report- Optical Enclosure	Approved	NG-KIH Design-Build LLC	10/01/2017	10/01/2017
DEL Update- Add 3/8' Strand	DEL Update- Add 3/8' Strand	Approved	NG-KIH Design-Build LLC	10/01/2017	10/01/2017

Amended and Restated Schedule 22  
Approved Change Certificates and Directives  
NG-KIH Project Implementation Agreement

Document No.	Title	Status	Originating Organization	KCNA Approval	KWOC Approval
KIH-04CTM-CE-00005	Change Certificate - City of Pikeville 3rd Party	Approved	NG-KIH Design-Build LLC	17/01/2017	18/01/2017
PCI-008	Pikeville 3rd Party	Approved	NG-KIH Design-Build LLC	17/01/2017	18/01/2017
City of Louisville CC	Change Certificate - City of Louisville	Approved	NG-KIH Design-Build LLC	08/02/2017	08/02/2017
KIH-04CTM-CP-00001	Muninet A Pre-Deal LOE	Approved	NG-KIH Design-Build LLC	05/04/2017	06/04/2017
KIH-04CTM-CE-00006	Muninet A Pre-Deal Support Change Certificate	Approved	NG-KIH Design-Build LLC	05/04/2017	06/04/2017
KIH-04CTM-CE-00007	Muninet B Pre-Deal LOE Certificate	Approved	NG-KIH Design-Build LLC	11/04/2017	12/04/2017
KIH-04CTM-CE-00008	BGN Consolidated Change Certificate	Approved	NG-KIH Design-Build LLC	17/05/2017	17/05/2017
KIH-04CTM-CD-00031	R4-0257- Delete	Approved	NG-KIH Design-Build LLC	17/05/2018	18/05/2017
R3-0256	R3-0256-Add	Approved	NG-KIH Design-Build LLC	25/05/2017	25/05/2017
R1A-0198	R1A-0198-Move	Approved	NG-KIH Design-Build LLC	30/05/2017	30/05/2017
R1A-0263	R1A-0263-Admin	Approved	NG-KIH Design-Build LLC	26/05/2017	30/05/2017
KIH-04CTM-PI-00212	R1a-0521 Move	Approved	NG-KIH Design-Build LLC	26/05/2017	30/05/2017
KIH-04CTM-PI-00242	R1a-0630 Move	Approved	NG-KIH Design-Build LLC	26/05/2017	30/05/2017
KIH-04CTM-PI-00257	R1a-0857 Move	Approved	NG-KIH Design-Build LLC	30/05/2017	30/05/2017
KIH-04CTM-PI-00193	R1b-0370 Admin	Approved	NG-KIH Design-Build LLC	26/05/2017	30/05/2017
KIH-04CTM-PI-00194	R1b-0374 Admin	Approved	NG-KIH Design-Build LLC	26/05/2017	30/05/2017
KIH-04CTM-PI-00295	R1b-1646 Delete	Approved	NG-KIH Design-Build LLC	30/05/2017	30/05/2017
KIH-04CTM-PI-00186	R3-0337-Admin	Approved	NG-KIH Design-Build LLC	26/05/2017	30/05/2017
KIH-04CTM-PI-00260	R4-0987 Admin	Approved	NG-KIH Design-Build LLC	30/05/2017	30/05/2017
KIH-04CTM-PI-00208	R4-0447 Admin	Approved	NG-KIH Design-Build LLC	30/05/2017	30/05/2017
KIH-04CTM-CP-00004	Bulk Settlement Change Report	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00136	R1a-0194	Approved	NG-KIH Design-Build LLC	31/05/2017	31/05/2017

Amended and Restated Schedule 22  
 Approved Change Certificates and Directives  
 NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00190	R1a-0334 Move	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00201	R1a-0424 Move	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00211	R1a-0486 Move	Approved	NG-KIH Design-Build LLC	31/05/2017	31/05/2017
KIH-04CTM-PI-00213	R1a-0544 Move	Approved	NG-KIH Design-Build LLC	31/05/2017	31/05/2017
KIH-04CTM-PI-00235	R1a-0614 Add	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00241	R1a-0669 Move	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00267	R1a-1101 Move	Approved	NG-KIH Design-Build LLC	31/05/2017	31/05/2017
KIH-04CTM-PI-00278	R1a-1182 Move	Approved	NG-KIH Design-Build LLC	31/05/2017	31/05/2017
KIH-04CTM-PI-00322	R1a-1411 Delete	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00323	R1a-1416 Move	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00172	R1b-0290 Move	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00271	R1b-1125 Admin	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00359	R4-0193 Delete	Approved	NG-KIH Design-Build LLC	30/05/2017	31/05/2017
KIH-04CTM-PI-00200	R5-0376 Admin	Approved	NG-KIH Design-Build LLC	31/05/2017	31/05/2017
KIH-04CTM-PI-00189	R1a-0335-Move	Approved	NG-KIH Design-Build LLC	31/05/2017	01/06/2017
KIH-04CTM-PI-00285	R1a-1255 Move	Approved	NG-KIH Design-Build LLC	31/05/2017	01/06/2017
KIH-04CTM-PI-00288	R1a-1616 Move	Approved	NG-KIH Design-Build LLC	31/05/2017	01/06/2017
KIH-04CTM-PI-00289	R1b-1215 Move	Approved	NG-KIH Design-Build LLC	31/05/2017	01/06/2017
KIH-04CTM-PI-00294	R1b-1603 Move	Approved	NG-KIH Design-Build LLC	31/05/2017	01/06/2017
KIH-04CTM-PI-00137	R5-0289 Add	Approved	NG-KIH Design-Build LLC	01/06/2017	01/06/2017
KIH-04CTM-PI-00244	R1a-0719 Move	Approved	NG-KIH Design-Build LLC	26/05/2017	02/06/2017
KIH-04CTM-PI-00284	R1a-1220 Move	Approved	NG-KIH Design-Build LLC	05/06/2017	05/06/2017

Amended and Restated Schedule 22  
Approved Change Certificates and Directives  
NG-KIH Project Implementation Agreement

Document No.	Title	Status	Originating Organization	KCNA Approval	KWOC Approval
CD-R1A-1171	CD-R1A-1171-001-name change only	Approved	NG-KIH Design-Build LLC	05/04/2017	07/06/2017
KIH-04CTM-PI-00321	R1a-1226 Move	Approved	NG-KIH Design-Build LLC	06/06/2017	07/06/2017
KIH-04CTM-PI-00286	R1a-1275 Move	Approved	NG-KIH Design-Build LLC	06/06/2017	07/06/2017
KIH-04CTM-PI-00327	R1a-1739 Add	Approved	NG-KIH Design-Build LLC	06/06/2017	07/06/2017
KIH-04CTM-PI-00329	R1b-1335 Move	Approved	NG-KIH Design-Build LLC	06/06/2017	07/06/2017
R1b-0711	R1b-0711-001-CC	Approved	NG-KIH Design-Build LLC	07/06/2016	08/06/2017
KIH-04CTM-PI-00274	R1b-1021 Move	Approved	NG-KIH Design-Build LLC	07/06/2017	08/06/2017
KIH-04CTM-PI-00263	R1b-1051 Move	Approved	NG-KIH Design-Build LLC	07/06/2017	08/06/2017
KIH-04CTM-PI-00236	R1b-0617 Other	Approved	NG-KIH Design-Build LLC	08/06/2017	09/06/2017
KIH-04CTM-PI-00279	R1b-1180 Move	Approved	NG-KIH Design-Build LLC	08/06/2017	09/06/2017
KIH-04CTM-PI-00358	R1a-1593 Add	Approved	NG-KIH Design-Build LLC	08/06/2017	12/06/2017
KIH-04CTM-PI-00176	R1b-0310-Move	Approved	NG-KIH Design-Build LLC	09/06/2017	12/06/2017
KIH-04CTM-PI-00177	R1b-0325-Move	Approved	NG-KIH Design-Build LLC	09/06/2017	12/06/2017
KIH-04CTM-PI-00195	R1b-0382 Move	Approved	NG-KIH Design-Build LLC	09/06/2017	12/06/2017
KIH-04CTM-PI-00196	R1b-0400 Move	Approved	NG-KIH Design-Build LLC	09/06/2017	12/06/2017
KIH-04CTM-PI-00202	R1b-0413 Move	Approved	NG-KIH Design-Build LLC	09/06/2017	12/06/2017
KIH-04CTM-PI-00203	R1b-0445 Move	Approved	NG-KIH Design-Build LLC	09/06/2017	12/06/2017
KIH-04CTM-PI-00217	R1b-0523 Move	Approved	NG-KIH Design-Build LLC	09/06/2017	12/06/2017
KIH-04CTM-PI-00219	R1b-0553 Move	Approved	NG-KIH Design-Build LLC	09/06/2017	12/06/2017
KIH-04CTM-PI-00296	R1b-1647 Move	Approved	NG-KIH Design-Build LLC	14/06/2017	15/06/2017
KIH-04CTM-PI-00268	R4-1104 Other	Approved	NG-KIH Design-Build LLC	14/06/2017	15/06/2017
KIH-04CTM-PI-00320	R1a 1740 Add	Approved	NG-KIH Design-Build LLC	14/06/2017	16/06/2017

Amended and Restated Schedule 22  
Approved Change Certificates and Directives  
NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00170	R2-0316 Move	Approved	NG-KIH Design-Build LLC	16/06/2017	16/06/2017
KIH-04CTM-PI-00239	R2-0649 Move	Approved	NG-KIH Design-Build LLC	16/06/2017	16/06/2017
KIH-04CTM-CP-00007	R2-1209-Move	Approved	NG-KIH Design-Build LLC	16/06/2017	16/06/2017
KIH-04CTM-PI-00304	R2-1347 Move	Approved	NG-KIH Design-Build LLC	16/06/2017	16/06/2017
KIH-04CTM-CP-00008	CRD Portion #3 Pre-Engineering Report, Ring 2	Approved	NG-KIH Design-Build LLC	21/06/2017	21/06/2017
KIH-04CTM-PI-00169	R1b-0313 Move	Approved	NG-KIH Design-Build LLC	21/06/2017	21/06/2017
KIH-04CTM-PI-00174	R2-0272 Move	Approved	NG-KIH Design-Build LLC	21/06/2017	21/06/2017
KIH-04CTM-PI-00251	R4-0760 Move	Approved	NG-KIH Design-Build LLC	20/06/2017	21/06/2017
KIH-04CTM-PI-00147	R1a-0211 Delete	Approved	NG-KIH Design-Build LLC	22/06/2017	26/06/2017
KIH-04CTM-PI-00175	R1a-0322 Delete	Approved	NG-KIH Design-Build LLC	23/06/2017	26/06/2017
KIH-04CTM-PI-00293	R1b-1359 Delete	Approved	NG-KIH Design-Build LLC	23/06/2017	26/06/2017
KIH-04CTM-PI-00179	R2-0317-Move	Approved	NG-KIH Design-Build LLC	24/06/2017	26/06/2017
KIH-04CTM-PI-00205	R2-0417 Move	Approved	NG-KIH Design-Build LLC	24/06/2017	26/06/2017
KIH-04CTM-PI-00148	R4-0215 Move	Approved	NG-KIH Design-Build LLC	22/06/2016	26/06/2017
KIH-04CTM-PI-00149	R4-0217 Move	Approved	NG-KIH Design-Build LLC	22/06/2016	26/06/2017
KIH-04CTM-PI-00150	R4-0220 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	26/06/2017
KIH-04CTM-PI-00226	R4-0498 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	26/06/2017
KIH-04CTM-PI-00227	R4-0513 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	26/06/2017
KIH-04CTM-PI-00233	R4-0601 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	26/06/2017
KIH-04CTM-PI-00252	R5-0706 Other	Approved	NG-KIH Design-Build LLC	23/06/2017	26/06/2017
KIH-04CTM-PI-00287	R1a-1405 Move	Approved	NG-KIH Design-Build LLC	23/06/2017	27/06/2017
KIH-04CTM-PI-00151	R2-0231 Move	Approved	NG-KIH Design-Build LLC	24/06/2017	27/06/2017

Amended and Restated Schedule 22  
 Approved Change Certificates and Directives  
 NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00187	R2-0342-Move	Approved	NG-KIH Design-Build LLC	24/06/2017	27/06/2017
KIH-04CTM-PI-00197	R2-0368 Move	Approved	NG-KIH Design-Build LLC	26/06/2017	27/06/2017
KIH-04CTM-PI-00220	R2-0469 Move	Approved	NG-KIH Design-Build LLC	24/06/2017	27/06/2017
KIH-04CTM-PI-00277	R2-1024 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00281	R2-1199 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00299	R2-1245 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00303	R2-1339 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00167	R3-0300 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00152	R4-0235 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00155	R4-0245 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00182	R4-0346-Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00228	R4-0551 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00229	R4-0562 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-PI-00238	R4-0644 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	27/06/2017
KIH-04CTM-CP-00006	R2-0771-Move	Approved	NG-KIH Design-Build LLC	27/06/2017	28/06/2017
KIH-04CTM-PI-00156	R4-0246 Move	Approved	NG-KIH Design-Build LLC	26/06/2017	28/06/2017
KIH-04CTM-PI-00230	R4-0588 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	28/06/2017
KIH-04CTM-PI-00231	R4-0593 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	28/06/2017
KIH-04CTM-PI-00249	R4-0742 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	28/06/2017
KIH-04CTM-PI-00265	R4-1068 Move	Approved	NG-KIH Design-Build LLC	25/06/2017	28/06/2017
KIH-04CTM-PI-00337	R4-1203 Move	Approved	NG-KIH Design-Build LLC	28/06/2017	28/06/2017
KIH-04CTM-PI-00313	R4-1443 Add	Approved	NG-KIH Design-Build LLC	27/06/2017	28/06/2017

Amended and Restated Schedule 22  
 Approved Change Certificates and Directives  
 NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00345	R4-1701-Move	Approved	NG-KIH Design-Build LLC	27/06/2017	28/06/2017
KIH-04CTM-PI-00162	R5-0288 Move	Approved	NG-KIH Design-Build LLC	27/06/2017	28/06/2017
KIH-04CTM-PI-00181	R5-0341-Move	Approved	NG-KIH Design-Build LLC	27/06/2017	28/06/2017
KIH-04CTM-PI-00210	R5-0427 Move	Approved	NG-KIH Design-Build LLC	27/06/2017	28/06/2017
KIH-04CTM-PI-00270	R5-1116 Move	Approved	NG-KIH Design-Build LLC	27/06/2017	28/06/2017
KIH-04CTM-PI-00319	R5-1624 Move	Approved	NG-KIH Design-Build LLC	27/06/2017	28/06/2017
KIH-04CTM-PI-00154	R2-0242 Other	Approved	NG-KIH Design-Build LLC	23/06/2017	29/06/2017
KIH-04CTM-PI-00248	R4-0692 Move	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00273	R1a-0682 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00256	R1a-0775 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00215	R1b-0502 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00216	R1b-0504 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00333	R1b-1678 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00222	R3-0482 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00056	R3-0586 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00310	R3-1350 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00315	R3-1622 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-PI-00243	R4-0657 Delete	Approved	NG-KIH Design-Build LLC	30/06/2017	30/06/2017
KIH-04CTM-CP-00005	R1A-1012 Site Delete	Approved	NG-KIH Design-Build LLC	27/06/2017	05/07/2017
KIH-04CTM-PI-00301	R2-1265 Move	Approved	NG-KIH Design-Build LLC	30/06/2017	05/07/2017
KIH-04CTM-PI-00253	R5-0740 Move	Approved	NG-KIH Design-Build LLC	30/06/2017	05/07/2017
KIH-04CTM-PI-00158	R4-0257-Move	Approved	NG-KIH Design-Build LLC	11/07/2017	11/07/2017

Amended and Restated Schedule 22  
 Approved Change Certificates and Directives  
 NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00325	R1a-1735 Add	Approved	NG-KIH Design-Build LLC	12/07/2017	12/07/2017
KIH-04CTM-PI-00326	R1a-1736 Add	Approved	NG-KIH Design-Build LLC	12/07/2017	12/07/2017
KIH-04CTM-PI-00276	R3-1121 Move	Approved	NG-KIH Design-Build LLC	12/07/2017	12/07/2017
KIH-04CTM-PI-00282	R3-1166 Move	Approved	NG-KIH Design-Build LLC	12/07/2017	12/07/2017
KIH-04CTM-PI-00250	R4-0743 Move	Approved	NG-KIH Design-Build LLC	12/07/2017	12/07/2017
KIH-04CTM-PI-00173	R1b-0271 Move	Approved	NG-KIH Design-Build LLC	12/07/2017	13/07/2017
KIH-04CTM-PI-00185	R3-0338-Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00184	R3-0340-Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00221	R3-0477 Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00223	R3-0524 Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00308	R3-1208 Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00165	R4-0294 Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00166	R4-0295 Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00180	R4-0330-Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00225	R4-0479 Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00264	R4-1057 Move	Approved	NG-KIH Design-Build LLC	13/07/2017	13/07/2017
KIH-04CTM-PI-00188	R1a-0345-Move	Approved	NG-KIH Design-Build LLC	13/07/2017	14/07/2017
KIH-04CTM-PI-00207	R3-0446 Move	Approved	NG-KIH Design-Build LLC	14/07/2017	14/07/2017
KIH-04CTM-PI-00159	R4-0268 Move	Approved	NG-KIH Design-Build LLC	14/07/2017	14/07/2017
KIH-04CTM-CD-00018	CD- R3-0732-001 Delete	Approved	NG-KIH Design-Build LLC	17/07/2017	18/07/2017
KIH-04CTM-PI-00311	R3-1354 Move	Approved	NG-KIH Design-Build LLC	17/07/2017	18/07/2017
KIH-04CTM-CD-00019	CD - R4-0292-001 - BGN Site Delete	Approved	NG-KIH Design-Build LLC	17/07/2017	18/07/2017

Amended and Restated Schedule 22  
 Approved Change Certificates and Directives  
 NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00309	R3-1277 Move	Approved	NG-KIH Design-Build LLC	17/07/2017	18/07/2017
KIH-04CTM-PI-00336	R3-1299 Move	Approved	NG-KIH Design-Build LLC	17/07/2017	18/07/2017
KIH-04CTM-PI-00346	R3-1761 Add	Approved	NG-KIH Design-Build LLC	17/07/2017	18/07/2017
KIH-04CTM-PI-00146	R4-0206 Other	Approved	NG-KIH Design-Build LLC	17/07/2017	18/07/2017
KIH-04CTM-PI-00199	R2-0404 Other	Approved	NG-KIH Design-Build LLC	21/07/2017	21/07/2017
KIH-04CTM-ES-00006	Richmond Preliminary Estimate	Approved	NG-KIH Design-Build LLC	20/07/2017	21/07/2017
KIH-04CTM-PI-00139	R1b-0200 Move	Approved	NG-KIH Design-Build LLC	23/07/2017	24/07/2017
KIH-04CTM-PI-00142	R1b-0201 Move	Approved	NG-KIH Design-Build LLC	23/07/2017	24/07/2017
KIH-04CTM-PI-00144	R1b-0204 Move	Approved	NG-KIH Design-Build LLC	23/07/2017	24/07/2017
KIH-04CTM-PI-00191	R1b-0353-Move	Approved	NG-KIH Design-Build LLC	23/07/2017	24/07/2017
KIH-04CTM-PI-00246	R1b-0763 Move	Approved	NG-KIH Design-Build LLC	23/07/2017	24/07/2017
KIH-04CTM-CP-00013	R1b-1281 Move	Approved	NG-KIH Design-Build LLC	23/07/2017	24/07/2017
KIH-04CTM-PI-00334	R1b-1725 Add	Approved	NG-KIH Design-Build LLC	23/07/2017	24/07/2017
KIH-04CTM-CP-00009	LFUCG Phase 2 Revised Change Report	Approved	NG-KIH Design-Build LLC	25/07/2017	25/07/2017
KIH-04CTM-CD-00020	Change Directive R1A-1590-002	Approved	NG-KIH Design-Build LLC	25/07/2017	25/07/2017
KIH-04CTM-PI-00143	R1b-0203 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00178	R1b-0329-Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00290	R1b-1228 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00292	R1b-1288 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00297	R1b-1656 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00240	R2-0654 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00266	R2-1075 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017

Amended and Restated Schedule 22  
Approved Change Certificates and Directives  
NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00269	R2-1114 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00280	R2-1178 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00298	R2-1207 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00300	R2-1247 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00302	R2-1330 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00306	R2-1360 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00171	R4-0208 Delete	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00272	R4-1126 Move	Approved	NG-KIH Design-Build LLC	24/07/2007	25/07/2017
KIH-04CTM-PI-00283	R4-1130 Move	Approved	NG-KIH Design-Build LLC	24/07/2017	25/07/2017
KIH-04CTM-PI-00314	R4-1618 Move	Approved	NG-KIH Design-Build LLC	24/07/2007	25/07/2017
KIH-04CTM-PI-00341	R2-1682 Move	Approved	NG-KIH Design-Build LLC	25/07/2017	26/07/2017
KIH-04CTM-PI-00355	R3-1690 Add	Approved	NG-KIH Design-Build LLC	25/07/2017	26/07/2017
KIH-04CTM-PI-00343	R4-1758 Add	Approved	NG-KIH Design-Build LLC	25/07/2017	26/07/2017
KIH-04CTM-PI-00352	R5-1661 Add	Approved	NG-KIH Design-Build LLC	25/07/2017	26/07/2017
KIH-04CTM-PI-00344	R5-1771 Other	Approved	NG-KIH Design-Build LLC	25/07/2017	26/07/2017
KIH-04CTM-PI-00209	R1b-0452 Move	Approved	NG-KIH Design-Build LLC	25/07/2017	27/07/2017
KIH-04CTM-PI-00204	R1b-0465 Move	Approved	NG-KIH Design-Build LLC	26/07/2017	27/07/2017
KIH-04CTM-PI-00206	R2-0431 Move	Approved	NG-KIH Design-Build LLC	26/07/2017	27/07/2017
KIH-04CTM-PI-00361	'R1b-1221 Move	Approved	NG-KIH Design-Build LLC	27/07/2017	28/07/2017
KIH-04CTM-PI-00349	R5-1734 Add	Approved	NG-KIH Design-Build LLC	27/07/2017	28/07/2017
KIH-04CTM-PI-00234	R1b-0609 Admin	Approved	NG-KIH Design-Build LLC	26/07/2017	30/07/2017
KIH-04CTM-PI-00331	R1b-1670 Delete	Approved	NG-KIH Design-Build LLC	30/07/2017	31/07/2017

Amended and Restated Schedule 22  
 Approved Change Certificates and Directives  
 NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00332	R1b-1677 Delete	Approved	NG-KIH Design-Build LLC	29/07/2017	31/07/2017
KIH-04CTM-PI-00247	R4-0687 Delete	Approved	NG-KIH Design-Build LLC	13/07/2017	31/07/2017
KIH-04CTM-PI-00340	R1b-1779 Add	Approved	NG-KIH Design-Build LLC	01/08/2017	01/08/2017
KIH-04CTM-PI-00214	R1b-0470 Move	Approved	NG-KIH Design-Build LLC	02/08/2017	03/08/2017
KIH-04CTM-PI-00153	R2-0240 Other	Approved	NG-KIH Design-Build LLC	02/08/2017	03/08/2017
KIH-04CTM-PI-00157	R4-0254 Other	Approved	NG-KIH Design-Build LLC	8/2/2017	03/08/2017
KIH-04CTM-PI-00254	R4-0772 Move	Approved	NG-KIH Design-Build LLC	02/08/2017	03/08/2017
KIH-04CTM-PI-00192	R1b-0359-Move	Approved	NG-KIH Design-Build LLC	04/08/2017	04/08/2017
KIH-04CTM-PI-00218	R1b-0532 Move	Approved	NG-KIH Design-Build LLC	04/08/2017	04/08/2017
KIH-04CTM-PI-00237	R1b-0626 Delete	Approved	NG-KIH Design-Build LLC	04/08/2017	04/08/2017
KIH-04CTM-PI-00245	R1b-0679 Delete	Approved	NG-KIH Design-Build LLC	04/08/2017	04/08/2017
KIH-04CTM-PI-00330	R1b-1666 Move	Approved	NG-KIH Design-Build LLC	04/08/2017	04/08/2017
KIH-04CTM-PI-00224	R3-0573 Move	Approved	NG-KIH Design-Build LLC	04/08/2017	04/08/2017
KIH-04CTM-PI-00183	R4-0331-Move	Approved	NG-KIH Design-Build LLC	04/08/2017	04/08/2017
KIH-04CTM-CD-00021	CD R1B-0199 & 0990-001-EKN Swap	Approved	NG-KIH Design-Build LLC	07/08/2017	08/08/2017
KIH-04CTM-PI-00259	R1b-0978 Add	Approved	NG-KIH Design-Build LLC	17/08/2017	08/08/2017
KIH-04CTM-PI-00328	R1b-1260 Move	Approved	NG-KIH Design-Build LLC	07/08/2017	08/08/2017
R2-0180	R2-0180-Other	Approved	NG-KIH Design-Build LLC	07/08/2017	08/08/2017
KIH-04CTM-PI-00307	R2-1426 Move	Approved	NG-KIH Design-Build LLC	07/08/2017	08/08/2017
KIH-04CTM-CP-00017	Revision 451 1759 Bulk Settlement	Approved	NG-KIH Design-Build LLC	17/08/2017	18/08/2017
KIH-04CTM-CP-00015	Richmond Change Report	Approved	NG-KIH Design-Build LLC	25/08/2017	25/08/2017
KIH-04CTM-CP-00018	R1b-0679- Site Add	Approved	NG-KIH Design-Build LLC	28/08/2017	01/09/2017

Amended and Restated Schedule 22  
Approved Change Certificates and Directives  
NG-KIH Project Implementation Agreement

Document No.	Title	Status	Originating Organization	KCNA Approval	KWOC Approval
KIH-04CTM-CD-00035	R3-1690 Delete	Approved	NG-KIH Design-Build LLC	11/10/2017	12/10/2017
CD-R1A-0517	CD-R1A-0517	Approved	NG-KIH Design-Build LLC	16/10/2016	17/10/2017
KIH-04CTM-CD-00027	CD - R3-0233-001	Approved	NG-KIH Design-Build LLC	23/10/2017	23/10/2017
KIH-04CTM-CD-00028	CD-R1a- 0701- Delete	Approved	NG-KIH Design-Build LLC	11/10/2017	24/10/2017
CBTS Consolidated CR	CBTS Consolidated Change Report	Approved	NG-KIH Design-Build LLC	28/10/2016	28/10/2017
KIH-04CTM-CD-00034	R1A-0416- Delete-1781- Add	Approved	NG-KIH Design-Build LLC	23/10/2017	02/11/2017
KIH-04CTM-CD-00045	MRE Engineering - MuniNet - West KY RECC	Cancelled	NG-KIH Design-Build LLC	15/11/2017	15/11/2017
KIH-04CTM-CD-00039	R1a-0354 Admin Change	Approved	NG-KIH Design-Build LLC	17/11/2017	17/11/2017
KIH-04CTM-CD-00048	CD-R1b-1704 Address Update	Approved	NG-KIH Design-Build LLC	27/11/2017	27/11/2017
KIH-04CTM-PI-00365	Brandenburg Backbone.CHW.10.4.17	Approved	NG-KIH Design-Build LLC	30/11/2017	01/12/2017
KIH-04CTM-CE-00011	MRE West KY RECC Routes	Approved	NG-KIH Design-Build LLC	01/12/2017	01/12/2017
KIH-04CTM-CD-00041	CD Rev 7a 8.25.17	Approved	NG-KIH Design-Build LLC	04/12/2017	05/12/2017
KIH-04CTM-CE-00012	Revised 7a Change Certificate Document	Approved	NG-KIH Design-Build LLC	04/12/2017	05/12/2017
KIH-04CTM-PI-00372	Muninet Project A	Approved	NG-KIH Design-Build LLC	04/01/2018	08/01/2018
KIH-04CTM-PI-00368	PCI-R1A-1782-001-Site Add	Approved	NG-KIH Design-Build LLC	13/01/2018	16/01/2018
KIH-04CTM-PI-00370	PCI- Owensboro Municipal Utilites (OMU)	Approved	NG-KIH Design-Build LLC	26/01/2018	29/01/2018
KIH-04CTM-CP-00019	Windstream Conduit DT Lexington- 10.23.17 R1	Approved	NG-KIH Design-Build LLC	15/03/2018	16/03/2018
KIH-04CTM-CD-00032	R1A-1153-Delete	Approved	NG-KIH Design-Build LLC	05/04/2018	05/04/2018
KIH-04CTM-CD-00033	R1B-1133- DELETE	Approved	NG-KIH Design-Build LLC	05/04/2018	05/04/2018
KIH-04CTM-CD-00055	CD-KCTCS Network Discovery NDA	Approved	NG-KIH Design-Build LLC	05/04/2018	09/04/2018
KIH-04CTM-CE-00013	MuniNet B Change Certificate	Approved	NG-KIH Design-Build LLC	09/05/2018	09/05/2018
KIH-04CTM-CP-00020	Muninet B Gibson Electric R2	Approved	NG-KIH Design-Build LLC	09/05/2018	09/05/2018

Amended and Restated Schedule 22  
 Approved Change Certificates and Directives  
 NG-KIH Project Implementation Agreement

Document No.	Title	Status	Originating Organization	KCNA Approval	KWOC Approval
KIH-04CTM-PI-00397	PCI - City of Louisville Fiber - Rev 2	Approved	NG-KIH Design-Build LLC	09/05/2018	10/05/2018
KIH-04CTM-CE-00014	Richmond Site 2000 Add Change Certificate	Approved	NG-KIH Design-Build LLC	09/05/2018	10/05/2018
KIH-04CTM-PI-00363	3rd Party Last Mile Off Net Service Delivery Design Review	Approved	NG-KIH Design-Build LLC	11/05/2018	14/05/2018
KIH-04CTM-CD-00052	CD-R2-1356-Relocate Bldg. Entry	Approved	NG-KIH Design-Build LLC	17/05/2018	18/05/2018
KIH-04CTM-CD-00038	EKN IRU Lateral Fiber Terminations into Nodes	Approved	NG-KIH Design-Build LLC	17/05/2018	18/05/2018
KIH-04CTM-CD-00029	R1A-0261- Delete	Approved	NG-KIH Design-Build LLC	17/05/2018	18/05/2018
KIH-04CTM-CD-00037	CD- R1A-0658-001- Rack Mount Equipment	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-CD-00056	CD- R1b-1770-002 Site Delete	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-CD-00057	CD- R3-0446-001 Site Delete	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-CD-00054	CD-R1A-0697- Site Delete	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-CD-00046	CD-R2-1410-Site Delete	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-CD-00026	CD-R4-0207-001	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-PI-00384	CD-R4-0230- Site Delete	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-CD-00044	CD-Site 1380-Site Delete	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-PI-00386	PCI- R1A-1732 Chg. Port Assign. Speed	Approved	NG-KIH Design-Build LLC	18/05/2018	22/05/2018
KIH-04CTM-CE-00016	Approved PCI-R1A00761- NODE Add	Approved	NG-KIH Design-Build LLC	25/05/2018	25/05/2018
KIH-04CTM-CD-00023	CD R1a-1737 KSP Post 12	Approved	NG-KIH Design-Build LLC	25/05/2018	25/05/2018
KIH-04CTM-CD-00043	CD R4-1608-001-Site Delete	Approved	NG-KIH Design-Build LLC	25/05/2018	25/05/2018
KIH-04CTM-CD-00053	CD-R1a-0761-entry redesign	Approved	NG-KIH Design-Build LLC	23/05/2018	25/05/2018
KIH-04CTM-CD-00047	CD-R3-0256-Site Move	Approved	NG-KIH Design-Build LLC	25/05/2018	25/05/2018
KIH-04CTM-CD-00049	CD-R3-1277-Site Delete	Approved	NG-KIH Design-Build LLC	25/05/2018	25/05/2018
KIH-04CTM-CD-00050	CD-R3-1643-Site Delete	Approved	NG-KIH Design-Build LLC	25/05/2018	25/05/2018

Amended and Restated Schedule 22  
Approved Change Certificates and Directives  
NG-KIH Project Implementation Agreement

<b>Document No.</b>	<b>Title</b>	<b>Status</b>	<b>Originating Organization</b>	<b>KCNA Approval</b>	<b>KWOC Approval</b>
KIH-04CTM-PI-00383	R1A-0761- Node Add	Approved	NG-KIH Design-Build LLC	25/05/2018	25/05/2018
KIH-04CTM-PI-00382	R1A-1788-Site Add	Approved	NG-KIH Design-Build LLC	26/05/2018	25/05/2018
KIH-04CTM-CD-00040	R1a-0253 Other	Approved	NG-KIH Design-Build LLC	25/05/2018	29/05/2018
KIH-04CTM-CE-00003	EKN Consolidated Change Report - Approved Change Certificate MSH 12-05-16 FINAL	Approved	NG-KIH Design-Build LLC	02/06/2018	04/06/2018
KIH-04CTM-CD-00042	CD R4-0496-001 - Delete Site 0496	Approved	NG-KIH Design-Build LLC	02/06/2018	06/06/2018
KIH-04CTM-PI-00387	PCI- R4-0254 Chg. Port Assign. Speed	Approved	NG-KIH Design-Build LLC	12/06/2018	15/06/2018
KIH-04CTM-PI-00388	PCI-R1A-0248 Chg. Port Speed	Approved	NG-KIH Design-Build LLC	12/06/2018	15/06/2018
KIH-04CTM-PI-00389	PCI-R1B-0250 Chg. Port Speed	Approved	NG-KIH Design-Build LLC	12/06/2018	15/06/2018
KIH-04CTM-PI-00390	PCI-R1A-0252	Cancelled	NG-KIH Design-Build LLC	12/06/2018	15/06/2018
KIH-04CTM-PI-00391	PCI-R1B-0247	Approved	NG-KIH Design-Build LLC	12/06/2018	15/06/2018
KIH-04CTM-PI-00396	PCI-R4-0251-002 - Chg Port Assign. Speed	Approved	NG-KIH Design-Build LLC	12/06/2018	15/06/2018
KIH-04CTM-PI-00376	PCI - 102 Library Sites - Building Entry Only	Approved	NG-KIH Design-Build LLC	15/06/2018	18/06/2018
KIH-04CTM-CE-00017	R1A-0252-002	Approved	NG-KIH Design-Build LLC	12/06/2018	28/06/2018
KIH-04CTM-PI-00402	Site Add 1790-003	Approved	NG-KIH Design-Build LLC	06/08/2018	06/08/2018
KIH-04CTM-PI-00400	Oldham County 432 Overbuild	Approved	NG-KIH Design-Build LLC	24/08/2018	27/08/2018
KIH-04CTM-CE-00018	Approved -0247 SLA Move Change Certificate	Approved	NG-KIH Design-Build LLC	07/09/2018	13/09/2018