

SCHEDULE 10
LENDERS' REMEDIES AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

The Commonwealth of Kentucky
(the "Authority")
and
U.S. Bank National Association
(the "Collateral Agent")
and
KentuckyWired Infrastructure Company, Inc.
("Project Co")
and
KentuckyWired Operations Company, LLC
("Operations Co")

Dated: September 3, 2015

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**SCHEDULE 10
LENDERS' REMEDIES AGREEMENT**

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

BETWEEN:

The Commonwealth of Kentucky

(the "**Authority**")

AND:

U.S. Bank National Association

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

AND:

KentuckyWired Infrastructure Company, Inc.

("Project Co")

AND:

KentuckyWired Operations Company, LLC

("Operations Co")

WHEREAS:

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

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

1. INTERPRETATION

1.1 Definitions

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

"Antecedent Liabilities" means, as at any time:

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

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

"Bankruptcy Proceedings" means:

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

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

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

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

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

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

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

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

“Indicative Notice Period” means:

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

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

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

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

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

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

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

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

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

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

“Notice Period” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

“Senior Secured Creditors’ Representative” means:

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Construction and Interpretation

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

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

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

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

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

1.3 Law of Agreement

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

1.4 Venue

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

2. CONSENT TO SECURITY

2.1 Consent

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

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

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

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

2.2 No Notice of Other Security

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

2.3 Authority Obligations

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

2.4 Rights not Prejudiced

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

3. NOTICES

3.1 Termination Notice

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

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

3.2 Notice of Operations Co Financing Default

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

3.3 Indicative Notice

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

3.4 Collateral Agent's Withdrawal Notice

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

3.5 Notice of Antecedent Liabilities

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

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

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

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

3.6 Subsequent Authority Notice of Liabilities

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

3.7 No Right to Terminate

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

3.8 Payments to Account Designated by Collateral Agent

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

3.9 Operations Co to Pursue Remedies

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

4. STEP-IN

4.1 Step-In Notice

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

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

4.2 Contents of Step-In Notice

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

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

4.3 One Step-In Period

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

4.4 Appointed Representative Rights

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

4.5 Authority Right to Terminate

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

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

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

5. STEP-OUT

5.1 Step-Out Notice

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

5.2 Expiration of Step-In Period

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

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

5.3 Project Co and Operations Co Remain Bound

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

6. SENIOR SECURED CREDITOR REPLACEMENT OF OPERATIONS CO

6.1 Operations Co Transfer Notice

Subject to Section 6.2, at any time:

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

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

6.2 Authority Consent

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

6.3 Withholding of Consent

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

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

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

6.4 Terms of Transfer

Upon the transfer referred to in Section 6.1 becoming effective:

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

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

7. INSURANCE

7.1 Release of Insurance Proceeds

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

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

8. COVENANTS

8.1 Authority Covenants

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

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

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

8.2 Project Co Covenants

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

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

8.3 Collateral Agent Covenants

The Collateral Agent will promptly:

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

8.4 Operations Co Covenant

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

9. STEP-IN RIGHTS UNDER PROJECT CONTRACTS

9.1 Priority of Step-In Rights under Project Contracts

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

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

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

9.2 Step-in from Termination Date

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

9.3 Release of Security

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

9.4 Retention of Security for Deficiency

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

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

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

9.5 Assignment of Project Contracts by Senior Secured Creditors

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

10. NEW AGREEMENTS

10.1 Applicability of Section 10

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

10.2 Termination of Project Implementation Agreement and Replacement with New Agreements

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

10.3 Deliveries to Project Co

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

10.4 Authority to Enter into New Agreements

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

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

10.5 Conditions to New Agreements Becoming Effective

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

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

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

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

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

10.7 Terms of New Agreements

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

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties by the Authority

The Authority represents and warrants to the Collateral Agent that:

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

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

11.2 Representations and Warranties by Project Co

Project Co represents and warrants to the Collateral Agent that:

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

11.3 Representations and Warranties by Operations Co

Operations Co represents and warrants to the Collateral Agent that:

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

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

11.4 Representations and Warranties by the Collateral Agent

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

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

12. ASSIGNMENT

12.1 Restriction on Assignment

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

12.2 Assignment by Collateral Agent

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

12.3 Assignment by Senior Secured Creditors

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

12.4 Assignment by Authority

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

12.5 New Agreement

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

13. GENERAL

13.1 Term

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

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

13.2 Conflict or Inconsistency

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

13.3 Entire Agreement

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

13.4 Waiver

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

13.5 Counterparts

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

13.6 Confidentiality

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

13.7 Notices

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

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary

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

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

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

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

If to the Collateral Agent:


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

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

If to Project Co:

KentuckyWired Infrastructure Company, LLC



Attention: Lori Hudson Flanery, Director
Email: 

with a copy to:

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

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

If to Operations Co:

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

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

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

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

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

13.8 No Partnership or Agency

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

13.9 Remedies Cumulative

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

13.10 Disputes

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

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

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

THE COMMONWEALTH OF KENTUCKY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Commonwealth.

U.S. BANK NATIONAL ASSOCIATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

KENTUCKYWIRED INFRASTRUCTURE COMPANY, INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the corporation.

SCHEDULE 11
DESIGN-BUILDER COLLATERAL AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

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

Dated: September 3, 2015

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**SCHEDULE 11
DESIGN-BUILDER COLLATERAL AGREEMENT**

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

BETWEEN:

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

AND:

NG-KIH Design-Build LLC
(the “**Design-Builder**”)

AND:

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

AND:

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

WHEREAS:

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

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

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

1. INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Construction and Interpretation

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

1.3 Law of Agreement

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

1.4 Venue

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

2. TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Termination Notice

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

2.2 Survival of Design-Build Agreement

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

2.3 Suspension Notice

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

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

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

(b) both:

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

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

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

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

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

3.2 Lenders' Step-In Rights

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

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

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

3.3 Notice of Obligations and Step-In Undertaking

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

3.4 Update of Obligations

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

3.5 Delivery of Step-In Undertaking

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

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

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

3.6 Limits on Authority Liability on Step-In

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

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

3.7 Non-Delivery of the Step-In Undertaking

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

3.8 Effect of Step-In Undertaking

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

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

3.9 Step-Out

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

3.10 Effect of Step-Out

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

3.11 Payment by Operations Co

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

4. TRANSFER

4.1 Proposed Substitute

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

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

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

4.2 Consent to Transfer

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

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

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

4.3 Grant of Consent

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

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

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

4.4 Consent Withheld

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

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

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

4.5 Implementation of Transfer

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

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

4.6 Effect of Transfer

On and after the Transfer Effective Date:

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

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

4.7 Termination After Transfer

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

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

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

5. RIGHTS AND OBLIGATIONS UNDER THE DESIGN-BUILD AGREEMENT

5.1 Rights of Termination

If:

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

the Design-Builder may:

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

5.2 Operations Co's Obligations to Continue

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

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

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

6. REVOCATION OF NOTICES

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

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

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

7.2 Restriction on Assignment

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

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

8. GENERAL

8.1 Notices

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

If to the Authority:

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

Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

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

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

If to the Design-Builder:

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

Attention: Dean Siegrist
Email: siegristDA@bv.com

with a copy to:

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

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

If to Project Co:

KentuckyWired Infrastructure Company, LLC

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

with a copy to:

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

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

If to Operations Co:

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

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

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

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

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

8.2 Entire Agreement

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

8.3 Waiver

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

8.4 No Partnership or Agency

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

8.5 Conflicting Agreements

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

8.6 Remedies Cumulative

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

8.7 Counterparts

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

8.8 Disputes

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

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

THE COMMONWEALTH OF KENTUCKY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Commonwealth.

NG-KIH DESIGN-BUILD LLC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the corporation.

**SCHEDULE 12
PROJECT CO'S OWNERSHIP INFORMATION**

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

1. Name: KentuckyWired Infrastructure Company, Inc.
2. Date of Incorporation: June 24, 2015
3. Incorporation Number: 0925724.09
4. Jurisdiction of Incorporation: Commonwealth of Kentucky
5. Members: None
6. Directors: Lori Hudson Flanery
Steve Rucker
Robin Fields Kinney
7. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co: Refer to Articles of Incorporation and Bylaws

**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. 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.

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 the Authority and Project Co, provided that the Authority 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 Project Co will reimburse the Authority for Project Co's share of all such fees and expenses within 5 Business Days of receipt of a written demand from the Authority, failing which the Authority will be entitled to deduct the amount of Project Co's share of the Referee's fees and expenses from amounts otherwise due to Project Co under the provisions of this Project 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 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 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 the Authority and Project Co will in good faith carry out their respective obligations under this Project Agreement pending resolution of the Dispute pursuant to the Dispute Resolution Procedure. Prior to resolution of the Dispute, the Authority may, in its discretion by written notice to Project Co, direct Project Co to proceed in respect of the matter in Dispute or any related matter and Project Co will comply with and implement the direction. Such direction will be without prejudice to Project Co's rights to compensation or other rights under this Project Agreement. Nothing in this Schedule 13 will limit the Authority's right to require a Change.

**APPENDIX 13A
REFEREE AGREEMENT**

BETWEEN:

[Name of Referee] (the "Referee")

AND:

The Commonwealth of Kentucky (the "Authority")

AND:

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

We write to confirm your appointment as a Referee under the project agreement dated September 3, 2015 between the Authority and Project Co (the "**Project Agreement**"). The terms of your appointment are as contained in Section 2.5 of Schedule 13 [Dispute Resolution Procedure] to the Project 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 Agreement, and to perform the functions of a Referee as described in Section 2.5 of Schedule 13 [Dispute Resolution Procedure] to the Project Agreement.

A copy of the Project 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, the Authority 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 Authority's Construction or Operating Period Representative, as applicable]** (the "**Authority's Representative**"). The Authority 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 the Authority's Representative.

Yours truly,

Authorized Signatory of the Referee

Date

Authorized Signatory of the Authority

Date

Authorized Signatory of Project Co

Date

**SCHEDULE 14
RECORDS AND REPORTS**

1. GENERAL REQUIREMENTS

- (a) Project Co will retain and maintain all the records (including superseded records) referred to in Section 2 of this Schedule 14 as follows:
- (1) in accordance with this Schedule 14 and other applicable terms of this Project Agreement;
 - (2) in an organized manner;
 - (3) in a form that is capable of audit;
 - (4) in accordance with the requirements of Customary Industry Practice;
 - (5) having due regard to the guidelines and policies of the Authority related to the retention of records, including any requirements of the Authority's records retention policy for state agencies that are applicable to the Project, provided by the Authority to Project Co and Operations Co;
 - (6) in accordance with Project Co's normal business practices; and
 - (7) in accordance with GAAP.

The parties acknowledge and agree that this Schedule 14 is comprehensive of Project Co's record keeping and reporting obligations under this Project Agreement.

- (b) If specifically requested by the Authority, acting reasonably, in respect of certain records, Project Co will retain and maintain for inspection original records in hard copy form at an agreed location in Kentucky. Project Co will maintain all other records electronically in readable and accessible form on the DMS (as defined below), subject to archiving in accordance with any requirements of the Authority's records retention policy for state agencies that are applicable to the Project and Customary Industry Practice.
- (c) Any drawings or plans required to be made or supplied pursuant to this Project Agreement will be of a size appropriate to show the detail to be depicted clearly without magnifying aids. If, by prior agreement with Project Co and Operations Co, the Authority has agreed to accept microfilm, microfiche or other electronic storage media (which must include secure back up facilities), Project Co will make or supply, or have made or supplied, drawings and other documents in such agreed upon form.
- (d) Project Co will retain and maintain all records referred to in Section 2 of this Schedule 14 in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Project Agreement.

- (e) Project Co will retain and maintain all records referred to in Section 2 of this Schedule 14 until the Termination Date.
- (f) If the Authority gives notice to Project Co and Operations Co that the Authority wishes to receive any of the records on the Termination Date, then Project Co will, at the cost and expense of the Authority, deliver or cause to be delivered such records to the Authority electronically (unless hard copies were specifically requested by the Authority in accordance with Section 1.2(b)) and otherwise in the manner as the Authority specifies, acting reasonably.
- (g) Project Co will provide a comprehensive computerized document management system ("**DMS**") that will include:
 - (1) records and information related to the Design, Construction and Services delivered under this Project Agreement;
 - (2) ten licenses for access by the Authority (through online web access or other access acceptable to the Authority) to all information required to be provided by Project Co to the Authority, such that the Authority will be able to read, copy, download and search all such information without payment, subject to archiving in accordance with any requirements of the Authority's records retention policy for state agencies that are applicable to the Project and Customary Industry Practice;
 - (3) file index or layout describing the logical locations and separation of information within the DMS, as well as formal instructions on accessing and navigating the DMS;
 - (4) software necessary to operate the DMS and which interfaces with the Authority's information technology systems, provided that any changes required and resulting from an upgrade to, or change by, the Authority to its systems will be paid for by the Authority;
 - (5) backup and storage in safe custody of the data, materials and documents in accordance with Customary Industry Practice; and
 - (6) records and details of specific license requirements.

The Authority acknowledges and agrees that the DMS contemplated in this Schedule 14 satisfies the requirements of the Master Agreement with respect to the establishment of a web-based data site.

- (h) Within 20 Business Days after the end of each Contract Year, Project Co will deliver to the Authority a report, in form and substance satisfactory to the Authority, acting reasonably, detailing, to the best of Project Co's knowledge at the time of any such report:
 - (1) any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against the Authority or that may be owing by the Authority to Project Co; and

- (2) any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that a third party (excluding Operations Co and the Project Contractors) has or may have against Project Co or Operations Co or that may be owing by Project Co or Operations Co to a third party (excluding Operations Co and the Project Contractors).

The parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report will not limit either party's rights or remedies against the other party as contemplated by this Project Agreement.

- (i) Project Co will provide to the Authority:
 - (1) not later than 120 days after the end of each fiscal year of Project Co, a copy of Project Co's audited financial statements prepared in accordance with GAAP, consistently applied;
 - (2) not later than 120 days after the end of each fiscal year of Operations Co, a copy of Operations Co's audited financial statements prepared in accordance with GAAP, consistently applied;
 - (3) not later than 45 Business Days after the end of each fiscal quarter of Project Co, a copy of Project Co's unaudited quarterly financial statements; and
 - (4) not later than 45 Business Days after the end of each fiscal quarter of Operations Co, a copy of Operations Co's unaudited quarterly financial statements,

together with copies of all related directors' and auditors' reports and all other notices and circulars to shareholders or partners, all of which documents will be treated by the Authority as Confidential Information of Project Co or Operations Co, as applicable.

- (j) The Authority and its employees, agents and other representatives may, at any time at the Authority's expense, conduct an audit, examination or investigation of all the records (including superseded records) referred to in this Schedule 14. Project Co will make available its facilities and records and provide reasonable assistance, including providing copies, in the conduct of and, without limiting Schedule 6 [Changes, Minor Works and Innovation Proposals], implement any recommendations from the Authority arising from the audit, examination or investigation.

2. RECORDS TO BE KEPT

Project Co will retain, and will require Operations Co and its Project Contractors to retain, the following:

- (a) this Project Agreement, the Project Implementation Agreement, the Project Contracts, the Senior Financing Agreements and all other documents and instruments in respect of any financing, including all amendments to such agreements;

- (b) the Financial Model, including the following in respect of the Financial Model:
 - (1) all prior versions;
 - (2) all amendments and modifications;
 - (3) all related or incidental reports; and
 - (4) written operating instructions in sufficient detail to allow the Authority to access and review all formulas, coding, data and other inputs;
- (c) the as-built drawings, plan, records and other Design and Construction documentation described in Schedule 2 [Design and Constructions Protocols] and Schedule 3 [Design and Construction Specifications], including any revisions or amendments to such documents, including up-to-date CAD drawings for the NG-KIH System and all Services, linked to, and compatible with, the Authority's information systems;
- (d) all documents relating to the appointment and supervision of Project Co's Design and Construction Representative and the Independent Certifier;
- (e) all documents relating to all Permits, including applications, refusals and appeals;
- (f) all notices, reports, test reports, results and certificates relating to the Design, and Construction, including as described in Schedule 2 [Design and Construction Protocols] or in Schedule 3 [Design and Construction Specifications];
- (g) all records relating to any inspections of the NG-KIH System conducted under applicable Laws or by or for any Governmental Authority;
- (h) all orders or other requirements issued to Project Co or Operations Co by any Governmental Authority;
- (i) all operation and maintenance manuals, procedures, guidelines, policies and other similar records in respect of the NG-KIH System, including all information electronically and manually recorded by the NOC;
- (j) all testing certificates in respect of maintenance of the NG-KIH System and its equipment and appropriate documentation and records (in particular those relating to any aspects of safety or statutory compliance) relating thereto;
- (k) all records of telephone calls, emails and other notices delivered to the NOC and all responses from the NOC in respect of such notices;
- (l) all electronically and manually recorded information with respect to the provision of the Services;
- (m) all electronically and manually recorded information with respect to actions initiated by Project Co, Operations Co or the Service Provider to respond to and rectify Outages;

- (n) all electronically or manually recorded reports and information related to safety and security of Sites, including the date and time of such incidents;
- (o) a comprehensive electronic inventory control system and asset register that provides up-to-date records for all NG-KIH System equipment;
- (p) comprehensive maintenance records for the NG-KIH System, including the date, time and scope of each such activity;
- (q) all Performance Monitoring Reports and the information and data used to prepare such reports;
- (r) all certificates, permits, licenses, registrations or warranties related to the provision of the Services;
- (s) all documents relating to Supervening Events claimed by Project Co under this Project Agreement and the consequences thereof;
- (t) all notices delivered to or received from the Authority's Representative;
- (u) all documents relating to a referral to the Dispute Resolution Procedure;
- (v) all documents submitted in connection with any Change;
- (w) all documents relating to a Change in Control of Project Co or Operations Co;
- (x) all documents relating to a Refinancing (other than an Exempt Refinancing);
- (y) all tax invoices, assessments, returns and other records applicable to the Project (other than any income tax records for Project Co or Operations Co or records pertaining to other taxes personal to Project Co or Operations Co);
- (z) all records required by Law (including in relation to health and safety matters) to be maintained by Project Co or Operations Co with respect to the Design, Construction and Services;
- (aa) all documents relating to insurance and insurance claims, including details of any approach of the insurance market to establish whether an Uninsurable Risk remains Uninsurable in accordance with Section 6.12 of this Project Agreement;
- (bb) a written register of all claims and incidents that might reasonably result in a claim under any of the policies of insurance required by this Project Agreement, excluding any Protected Personal Information, in accordance with Section 4.8 of Schedule 5 [Insurance Requirements] to this Project Agreement;
- (cc) all information related to worker's compensation claims arising from the Project, including the number of claims made, the number of claims paid and the amount of each claim, excluding any Protected Personal Information;
- (dd) the financial accounts of Project Co and Operations Co referred to in Section 1(i) of this Schedule 14; and

- (ee) all other documents, records, notices or certificates required to be produced or maintained by Project Co or Operations Co pursuant to the express terms of this Project Agreement, the Project Implementation Agreement or any Project Contract.