

**SCHEDULE 1  
DEFINITIONS AND INTERPRETATION**

**1. DEFINITIONS**

In this Project Implementation Agreement:

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

**"Affiliate"** in respect of:

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

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

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

**"Applicant"** has the meaning set out in Section 8.1;

**"Authority"** means the Commonwealth of Kentucky;

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

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

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

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

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

**"Base Date"** means June 30, 2016;

**"Beneficiary"** has the meaning set out in Section 9.2;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Collateral Agent"** means U.S. Bank National Association;

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

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

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

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

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

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

- (a) a breach by the Authority of any of its obligations under the Project Agreement, including a failure of the Authority to grant, or cause to be granted, and to maintain, or cause to be maintained, the License as set out in Section 2.1 of Schedule 7 [Lands] to the Project Agreement;
- (b) a breach of any representation or warranty by the Authority set out in the Project Agreement;
- (c) any misconduct of the Authority or an Authority Person, including unauthorized use of the NG-KIH System;
- (d) a negligent act or omission of the Authority or an Authority Person;
- (e) the discovery or exacerbation of any:
  - (1) Hazardous Substances located in, on, below or that have migrated to the Lands; or
  - (2) Hazardous Substances located in, on, below or that have migrated to any other location at which any aspect of the Project is performed, but only to the extent that Operations Co’s Direct Losses related thereto exceed \$200,000 in the aggregate over the Term,in either case, other than Operations Co Hazardous Substances;
- (f) if:
  - (1) the terms and conditions of any Permit, or the refusal to issue a Permit, require (i) the Construction to be performed in a manner that materially differs from the conceptual design prepared by Operations Co as of the Effective Date or (ii) the creation of a new route in connection with the Project that differs from the conceptual design prepared by Operations Co as of the Effective Date and Operations Co’s Direct Losses related thereto exceed \$25,000 in the aggregate over the Term;
  - (2) during the Construction Period, any Permit that falls into one of the Permit Classes set out in Appendix 2E [Expected Permit Timing] is not received within the Permit Delivery Time Period associated with the relevant Permit Class or, if a Permit (other than a Simple Pole Attachment

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

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

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

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

for each single event;

- (w) during the Construction Period, an injunction or other order of a court of competent jurisdiction resulting from a challenge to, or an expropriation that materially adversely interferes with, Operations Co's right to access any lands, easements or other property (including, without limitation, access to the poles owned by any Utility Company);
- (x) a failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement, a breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement, a negligent act or omission of a Third Party Infrastructure Provider or the bankruptcy or insolvency of a Third Party Infrastructure Provider;
- (y) any change to the Site Access Plan that impacts the Project Schedule;
- (z) during the Construction Period, without limiting Operations Co's obligation to provide stand-by power facilities for the NG-KIH System in accordance with the Design and Construction Specifications, a failure by any Utility Company, local authority or other like body to perform works (which includes the approval of any application for work and the remediation of any pole violations not caused by Operations Co) or provide services required to be provided by them, or requested of them, in a reasonably timely manner, or any unreasonable interference with the Construction by any such body as a result of maintenance or other work and, with respect to any make-ready work required to be performed by any Utility Company, local authority or other like body, a reasonably timely manner is deemed to mean approval of an application for make-ready work (without a restriction on the timing to commence such work) within 30 calendar days of receipt by the Utility Company, local authority or other like body of a complete and accurate application from Operations Co and, if any of them require the self-performance of the make-ready work, then completion of such work within 5 weeks (for a Utility Company, local authority or other like body, other than a telecom carrier) and 12 weeks (for a telecom carrier) of the approval of the quote by Operations Co;
- (aa) Operations Co is required to obtain an easement or other right of access to any lands (other than the Lands) from a private landowner to carry out the Project in accordance with this Project Implementation Agreement, provided that the costs related thereto exceed \$200,000 in the aggregate over the Term;
- (bb) any Dispute in respect of a Change Directive issued pursuant to Section 4.15 (Project Co's Obligations re Third Party Infrastructure Agreements) of the Project Agreement;
- (cc) a failure by the Authority to provide a sufficiently detailed description of each Site Location so as to enable Operations Co to carry out its obligations under this

Project Implementation Agreement by the date reasonably required by Operations Co in accordance with the Project Schedule; or

- (dd) any other event which is expressly stated in the Project Agreement to constitute a Compensation Event,

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

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

**"Confidential Information"** means:

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

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

**"Construction Period"** means:

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

**"Contract Year"** means each of:

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



- (c) the period from the July 1 immediately prior to the Termination Date to and including the Termination Date;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and, in calculating any amount of any additional Capital Expenditure, labor or similar cost claimed by Operations Co under this definition of **"Direct Losses"**, Operations Co will be entitled to add to such amounts the mark-ups referred to in Section 2.11 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

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

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

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

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

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

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

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

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

**"Effective Date"** means the date of this Project Implementation Agreement;

**"Eligible Change in Law Event"** means the occurrence of:

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

**"Emergency"** means any situation, event or circumstance that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the carrying out by Operations Co of Minor Works required by the Authority in accordance with the Project Agreement;
- (b) compliance by Operations Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (c) a Change in Law during the Operating Period;
- (d) without limiting Operations Co's obligation to provide stand-by power facilities for the NG-KIH System in accordance with the Design and Construction Specifications:
  - (1) a failure or shortage of power;
  - (2) a failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner; or

- (3) any unreasonable interference with the Services by any Utility Company, local authority or other like body as a result of maintenance or other work;
- (e) a failure or underperformance of the telecommunications infrastructure that permits the transmission of data between the NG-KIH System and other internet networks, provided that such telecommunications infrastructure is owned and operated by a third party that is not an Affiliate of Operations Co;
- (f) a cyber attack, cyber security failure or denial of service impacting the NG-KIH System;
- (g) any vandalism or theft of any component of the NG-KIH System;
- (h) an industry-wide shortage of key materials or equipment necessary for the performance by Operations Co of its obligations under this Project Implementation Agreement;
- (i) an injunction or other order of a court of competent jurisdiction resulting from a challenge to the procurement process pursuant to which Project Co was selected to enter into the Project Agreement or to the Authority's or Project Co's right to proceed with the Project or any aspect thereof;
- (j) the First System Refresh is not complete by the date that is 11 years from the Effective Date or the Second System Refresh is not complete by the date that is 21 years from the Effective Date, in each case, in accordance with the System Refresh Baseline Requirements or such other requirements as may be agreed by the parties from time to time or the Authority does not initiate the Market Testing Procedure or complete the Market Testing Procedure in accordance with Schedule 19 [Market Testing Procedure] to the Project Agreement;
- (k) an injunction or other order of a court of competent jurisdiction resulting from a challenge to, or an expropriation that materially adversely interferes with, Project Co's right to access any lands, easements or other property (including, without limitation, access to the poles owned by any Utility Company);
- (l) unauthorized access by any Person to a Site or the NG-KIH System; or
- (m) any other event which is expressly stated in the Project Agreement to constitute an Excusing Event,

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

**"Exempt Refinancing"** means:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:

- (1) breach of representations, warranties, covenants or undertakings;
  - (2) movement of monies between the Project Accounts (as defined in the Financing Agreements) in accordance with the terms of the Financing Agreements;
  - (3) late or non-provision of information or consents;
  - (4) amendments to the Project Implementation Agreement, Project Contracts or Financing Agreements;
  - (5) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements);
  - (6) restrictions imposed by the Secured Creditors on the dates at which the financing provided by the Secured Creditors under the Financing Agreements can be advanced to Project Co under the Financing Agreements, and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Secured Creditors to the Authority prior to being given;
  - (7) changes to milestones for drawdown set out in the Financing Agreements and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Secured Creditors to the Authority prior to being given;
  - (8) failure by Project Co to obtain any consents from Governmental Authorities required by the Financing Agreements; or
  - (9) voting by the Secured Creditors and the voting arrangements between the Secured Creditors in respect of the levels of approval required by them under the Financing Agreements;
- (c) an amendment or variation of an agreement approved by the Authority as part of any Change; or
- (d) a Qualifying Bank Transaction;

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

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

**"Federal Permit"** means any Permit set out in Part 2 of Appendix 2E [Expected Permit Timing];

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

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

**"Financing Agreements"** means the Senior Financing Agreements and the Junior Financing Agreements;

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

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

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Implementation Agreement by Operations Co or an Operations Co Person; or
- (c) pressure waves caused by devices traveling at supersonic speeds,

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

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

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

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

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

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

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

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

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

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

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

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

**"Has Knowledge", "Have Knowledge" or "Having Knowledge"** means:

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

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

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

**"IEEE"** means the Institute of Electrical and Electronics Engineers;

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

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

**"Indemnifier"** has the meaning set out in Section 9.2;

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

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



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

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

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

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

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

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

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

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

**"Insurance Proceeds Account"** has the meaning set out in Schedule 10 [Lenders' Remedies Agreement];

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

- (a) any policy of insurance maintained by the Authority or Project Co solely for the benefit of the Authority or Project Co; and

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

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

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;
- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Open Records Act"** means KRS 61.870 through KRS 61.884;

**"Operating Period"** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Operations Co

and, if such proceedings are commenced against Operations Co and are disputed by Operations Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted;

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

**"Operations Co Material Breach" means:**

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

- (c) except as provided above, a breach (other than a breach for which a Deduction can be made), or series of breaches (other than a series of breaches for which Deductions can be made), by Operations Co of its obligations under this Project Implementation Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Implementation Agreement or a breach by the Authority of its obligations under the Project Agreement), which results in:
- (1) a risk to the safety of the public;
  - (2) a risk of material liability of the Authority or Project Co to third Persons or other material financial loss to the Authority or Project Co;
  - (3) a material adverse effect on the performance of the Design, Construction, Services or System Refresh and, as a result thereof, the Authority is reasonably likely to be materially deprived of the benefit of the Project Agreement or Project Co is reasonably likely to be materially deprived of the benefit of this Project Implementation Agreement ; or
  - (4) any material provision of this Project Implementation Agreement being unenforceable against Operations Co and, as a result thereof, the Authority is reasonably likely to be materially deprived of the benefit of the Project Agreement or Project Co is reasonably likely to be materially deprived of the benefit of this Project Implementation Agreement,

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

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

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

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

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

**“Operations Co Person”** means:

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

- (c) any invitee of Operations Co or any of the Operations Co Persons referred to in (a) or (b) above who enters upon the Lands,

but specifically excludes any Third Party Infrastructure Provider;

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

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

**"Operations Co's Rights"** has the meaning set out in Section 8.13;

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Project Co"** means KentuckyWired Infrastructure Company, Inc.;

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

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

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

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

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

**"Project Co Person"** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Refinancing"** means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which the Authority, with the consent or at the request of Project Co, grants rights to any Person under an agreement similar to the Lenders' Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders' Remedies Agreement entered into on the Effective Date;
- (c) any amendment, variation, novation, supplement or replacement of any Senior Debt, Junior Debt or Financing Agreement;
- (d) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement;
- (e) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Agreements, Senior Debt or Junior Debt

or the creation or granting of any other form of benefit or interest in the Financing Agreements, the Senior Debt, the Junior Debt or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or

- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Project Co's ability to carry out any of the actions referred to in (a) through (e) above,

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

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

- (a) which specifically applies to:
  - (1) the Project or telecommunications-related projects procured and contracted on a basis similar to the Project;
  - (2) Project Co, Operations Co or Persons that have contracted on similar telecommunications-related projects procured and contracted with the Authority or another statutory or public body on a basis similar to the Project; or
  - (3) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar telecommunications-related projects procured and contracted on a basis similar to the Project and not other Persons;
- (b) which principally affects or principally relates to the design, provision, operation or maintenance of telecommunications infrastructure and associated services; or
- (c) which results in the designation of Project Co or any Project Co Person (as defined in the Project Agreement) as a Common Carrier or in the application of the Common Carrier Regulations to Project Co, any Project Co Person (as defined in the Project Agreement) or the NG-KIH System or any part thereof,

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

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

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

- (a) an earthquake, tornado, hurricane, fire, wind storm, ice storm, mud slide, rock slide, flood, explosion, lightning or any other act of God, in each case, to the extent it does not constitute a Compensation Event;
- (b) ionizing radiation to the extent it does not constitute a Force Majeure Event;
- (c) a lawful or unlawful strike, lockout, job action or other labor dispute generally affecting the construction, telecommunications maintenance or management industry or a significant sector thereof;
- (d) during the Construction Period, any delay of more than 3 days in respect of any critical path matter in the Project Schedule caused by compliance by Operations Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) an unreasonable delay in the payment of any Insurance Receivables;
- (g) any accidental loss of or physical damage to the NG-KIH System or any portion thereof, except any portion of the NG-KIH System that has not been properly marked and GPS located by Operations Co in accordance with the Design and Construction Specifications, or any roads servicing the Lands;
- (h) a blockade or embargo to the extent it does not constitute a Force Majeure Event;
- (i) during the Construction Period, an industry-wide shortage of key materials or equipment necessary for the performance by Operations Co of its obligations under this Project Implementation Agreement, which shortage has an impact on any critical path matter in the Project Schedule;
- (j) during the Construction Period, an injunction or other order of a court of competent jurisdiction resulting from a challenge to the procurement process pursuant to which Project Co was selected to enter into the Project Agreement or to the Authority's or Project Co's right to proceed with the Project or any aspect thereof; or
- (k) any other event which is stated in the Project Agreement to constitute a Relief Event,

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

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

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

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

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

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

- (a) has, directly or indirectly, its/his/her principal or controlling office in a country or state that is a Restricted State;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms;
- (c) is or has been involved in the promotion, support, financing or carrying out of terrorism;
- (d) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanors) less than 5 years prior to the date at which the determination of whether the Person falls within this definition is being made;
- (e) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent or are in financial distress;
- (f) is subject to any claim of the Authority in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in the Authority's view, in either case, be reasonably likely to materially affect the ability of Operations Co to perform its obligations under this Project Implementation Agreement;
- (g) has been suspended or debarred by the United States Government or under the Kentucky Revised Statutes Chapter 45A and the applicable administrative regulations; or
- (h) is prohibited from holding a contract with the Commonwealth of Kentucky under Kentucky Revised Statutes Chapter 45A and the applicable administrative regulations; and

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

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

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

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

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

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

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

**"Ring Completion"** means that Site Completion has been achieved for all Sites on a Ring;

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

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

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

**"Secured Creditors"** means the Senior Secured Creditors and the Junior Secured Creditors;

**"Secured Creditors' Technical Advisor"** has the meaning set out in the Collateral Agency and Account Agreement;

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

**"Senior Financing Agreements"** means:

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



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

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

**“Senior Secured Creditors”** means U.S. Bank National Association, in its capacity as trustee pursuant to the Senior Indenture (on behalf of itself and the holders of the Series 2015 Senior Bonds and any Additional Senior Bonds issued pursuant to the Senior Indenture) and any holders of (and any representatives of) any Other Permitted Senior Secured Indebtedness (as defined in the Collateral Agency and Account Agreement);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Sub-Contract"** means any contract entered into by a Project Contractor (except Project Contracts), or a sub-contractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Operations Co's obligations under this Project Implementation Agreement, as amended or replaced from time to time;

**"Sub-Contractor"** means any Person that enters into a Sub-Contract;

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

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

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

**"Suitable Substitute Operations Co"** has the meaning given to it in the Lenders' Remedies Agreement;

**"Supervening Event"** means any of a Compensation Event, Relief Event, Excusing Event, Force Majeure Event or Eligible Change in Law Event;

**"Supervening Event Notice"** has the meaning set out in Section 8.2(a);

**"System Completion"** means that Site Completion has been achieved for all Sites;

**"System Completion Date"** means the date that System Completion has been achieved;

**"System Outage"** means an Outage that is not an Equipment-Only Outage;

**"System Refresh"** means the First System Refresh and the Second System Refresh;

**"System Refresh Baseline Requirements"** has the meaning set out in Schedule 19 [Market Testing Procedure];

**"Target Ring Completion Dates"** means the dates, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Operations Co estimates that Ring Completion for each Ring will occur, and **"Target Ring Completion Date"** means any one of them;

**"Target Site Completion Dates"** means the dates, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Operations Co estimates that Site Completion for each Site will occur, and **"Target Site Completion Date"** means any one of them;

**"Target System Completion Date"** means the date, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Operations Co estimates System Completion will occur;

**"Targeted Pole Provider"** has the meaning set out in Section 3.9;

**"Tax" or "Taxes"** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

**"Term"** has the meaning set out in Section 2.1;

**"Termination Date"** means the earlier of the Expiration Date or the date of earlier termination referred to in Section 2.1;

**"Termination Notice"** has the meaning set out in Schedule 15 [Financing Agreement Obligations];

**"Termination Payment"** means the amount, if any, owing by Project Co to Operations Co pursuant to Schedule 9 [Compensation on Termination];

**"Termination Payment Date"** means the date on which Project Co must make the Termination Payment as provided for in Schedule 9 [Compensation on Termination];

**"Third Party Infrastructure Agreement"** means, as applicable, each Third Party Infrastructure Term Sheet or definitive contractual agreement entered into by Project Co and a Third Party Infrastructure Provider;

**"Third Party Infrastructure Providers"** means MuniNet Fiber Agency and Cincinnati Bell Telephone Company LLC, and **"Third Party Infrastructure Provider"** means either of them;

**"Third Party Infrastructure Term Sheet"** has the meaning set out in Section 4.15;

**"Transfer Restriction Date"** has the meaning set out in Section 16.1(c)(1);

**"Uninsurable"** means, in relation to a risk:

- (a) insurance as required under this Project Implementation Agreement is not available in respect of the Project with Qualified Insurers; or
- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Project Implementation Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in the United States are not generally insuring against such risk with Qualified Insurers,

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

**"Uninsurable Risk"** has the meaning set out in Section 6.10;

**"Unplanned Maintenance"** means unanticipated maintenance on the NG-KIH System that is required in a timely manner and is conducted in accordance with the standards set out in the Operations and Maintenance Plan and in full compliance with all manufacturers' recommendations;

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

**"Utility Company"** means any Person, except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) below, a city, who owns, controls, operates or manages any facility used or to be used for or in connection with:

- (a) the generation, production, transmission or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses;
- (b) the production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power or other uses;
- (c) the transporting or conveying of gas, crude oil or other fluid substance by pipeline to or for the public, for compensation;
- (d) the diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation;
- (e) the transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation; or
- (f) the collection, transmission or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

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

**"Wavelength"** means an unique optical channel defined by the wavelength of operation; and

**"Women-Owned Business Enterprise"** has the meaning set out in Schedule 2 [Design and Construction Protocols].

## 2. INTERPRETATION

This Project Implementation Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Implementation Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Implementation Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Project Implementation Agreement are for convenience of reference only, do not constitute a part of this Project Implementation Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Project Implementation Agreement;
- (c) each reference to a Section, Schedule, Appendix or Attachment is a reference to a Section of, Schedule to, Appendix to a Schedule to this Project Implementation Agreement; or each Attachment to an Appendix, and each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached following by an alphabetical designator in sequence (for example, Appendix 4B [Handback Requirements] means the second Appendix attached to Schedule 4 [Services Protocols and Specifications]). A Schedule includes all of the Appendices attached to that Schedule. An Appendix includes all the Attachments attached to that Appendix;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Project Implementation Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, replaced, novated or assigned, and a reference to an "amendment" and similar terms (including "amend" and "amended") include a reference to supplement, alteration, substitute, variation, change and any other modification and similar terms;
- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision;
- (f) each reference to time of day is a reference to Eastern Standard Time or Eastern Daylight Time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;

- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) unless the context otherwise requires, each reference to "parties" means the parties to this Project Implementation Agreement and each reference to a "party" means any one of the parties to this Project Implementation Agreement, provided however that a reference to a third party does not mean a party to this Project Implementation Agreement;
- (k) all monetary amounts are expressed in U.S. Dollars;
- (l) whenever this Project Implementation Agreement obliges a party (the "Payor") to pay any amount to the other party (the "Payee") in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
  - (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis (including when the payment is made to an Affiliate of the Payee), so much of them as are proper and reasonable; and
  - (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (m) each requirement for a thing or action to be "in accordance with" or "in compliance with" any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (n) the words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively;
- (o) whenever the terms "will" or "shall" are used in this Project Implementation Agreement in relation to Operations Co or Project Co they shall be construed and interpreted as synonymous and to read "Operations Co shall" or "Project Co shall", as the case may be;
- (p) when a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to provide reasons unless specifically required under the provisions of this Project Implementation Agreement;
- (q) any consent contemplated to be given under this Project Implementation Agreement must be in writing;
- (r) general words are not given a restrictive meaning;

- (1) if they are introduced by the word "other", by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
- (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (s) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (t) the expression "all commercially reasonable efforts" and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person's own benefit;
- (u) the expressions "by Operations Co" and "by or through Operations Co" and expressions of like import are synonymous and mean by Operations Co or by anyone employed by or through Operations Co, including Operations Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- (v) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;
- (w) Not used
- (x) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (y) in the event that any provision of this Project Implementation Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Project Implementation Agreement for either party, the provision shall be fully severable and shall not affect the remaining provisions of this Project Implementation Agreement, and this Project Implementation Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein. The parties shall promptly meet and endeavor in good faith to negotiate new provisions to eliminate such illegality, invalidity or unenforceability as much as is as possible and to restore this Project Implementation Agreement as nearly as possible to its original intent and effect; and
- (z) to the extent permitted by applicable Law, each release, waiver of liability and indemnity in this Project Implementation Agreement expressed to be given in favor of a party is and will be interpreted as having been given in favor of and



may be enforced by that party and, in the case of Project Co, by Project Co Persons, and, in the case of Operations Co, by Operations Co Persons.

### **3. ORDER OF PRECEDENCE**

In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Implementation Agreement, the provisions will prevail in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions establishing the higher quality, manner or method of performing the Design, Construction or Services, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;
- (b) the provisions of the main body of this Project Implementation Agreement will prevail over any of the Schedules hereto other than Schedule 11 [Project Contractor Collateral Agreement] or Schedule 10 [Lenders' Remedies Agreement];
- (c) the provisions of the main body of this Project Implementation Agreement and all Schedules will prevail over Schedule 21 [Master Agreement];
- (d) the provisions of the Lenders' Remedies Agreement will prevail over the Project Contractor Collateral Agreements; and
- (e) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design, Construction, Services or System Refresh, the provision that applies to the specific part of the Design, Construction, Services or System Refresh shall prevail for that specific part of the Design, Construction, Services or System Refresh.

### **4. NOT USED**

**SCHEDULE 2  
DESIGN AND CONSTRUCTION PROTOCOLS**

Schedule 2 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Design and Construction.

**SCHEDULE 3  
DESIGN AND CONSTRUCTION SPECIFICATIONS**

Schedule 3 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Design and Construction.

**SCHEDULE 4  
SERVICES PROTOCOLS AND SPECIFICATIONS**

Schedule 4 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Services.

**SCHEDULE 5  
INSURANCE REQUIREMENTS**

Schedule 5 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to insurance.

**SCHEDULE 6  
CHANGES, MINOR WORKS AND INNOVATION PROPOSALS**

Schedule 6 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Changes, Minor Works and Innovation Proposals.