PROJECT IMPLEMENTATION AGREEMENT

NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

KentuckyWired Infrastructure Company, Inc.

("Project Co")

and

KentuckyWired Operations Company, LLC

("Operations Co")

Dated: September 3, 2015

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PROJECT IMPLEMENTATION AGREEMENT

THIS PROJECT IMPLEMENTATION AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

KentuckyWired Infrastructure Company, Inc.

("Project Co")

AND:

KentuckyWired Operations Company, LLC

("Operations Co")

WHEREAS:

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

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

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

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

E. Operations Co has agreed to undertake all aspects of the Project (other than the Excluded Obligations) on behalf of Project Co, subject to and in accordance with the terms of this Project Implementation Agreement.

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

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

1. INTERPRETATION AND INTERACTION WITH PROJECT AGREEMENT

1.1 Definitions

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

1.2 Interpretation

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

1.3 Schedules

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

1.4 Interaction with Project Agreement

(a) Notwithstanding any other provision of this Project Implementation Agreement, to the extent that Project Co is or becomes obligated under the Project Agreement to take any action, do anything or perform any obligation in connection with the Project (other than the Excluded Obligations), Operations Co agrees that, except as otherwise specified herein, it will be obligated to take any such action, do any such thing or perform any such obligation under this Project Implementation Agreement in the manner and to the standard specified herein or, in the absence of any such standard, any standard specified in the Project Agreement.

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

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

(d) Where the Project Agreement contemplates meetings between Project Co and/or Project Co's Representatives and the Authority and/or the Authority's Representatives, Project Co will ensure that Operations Co is included in such meetings.

(e) In certain sections of this Project Implementation Agreement, there are references to or acknowledgements of the Project Agreement or portions thereof and the absence of such a reference or acknowledgement in any other particular section of this Project Implementation Agreement will not be construed for or against either party in interpreting this Project Implementation Agreement.

1.5 Communication with the Authority and Third Parties

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

(b) Except as otherwise specifically set out in this Project Implementation Agreement, Project Co hereby gives permission to Operations Co to provide all Communications directly to the Authority.

(c) Project Co will make all Communications required to be made by Project Co to Operations Co under this Project Implementation Agreement in a timely manner so as to permit Operations Co to comply with its obligations under this Project Implementation Agreement and will consult with Operations Co in respect of all Communications with the Authority.

(d) Operations Co will make all Communications required to be made by Operations Co to Project Co under this Project Implementation Agreement in a timely

manner so as to permit Project Co to comply with its obligations under this Project Implementation Agreement.

1.6 Equivalent Project Relief

(a) Except to the extent any entitlement of Project Co under the Project Agreement (including any rights, remedies or relief) does not, in any way, relate to the rights or obligations of Operations Co under this Project Implementation Agreement, Operations Co will be entitled to receive the benefit of such entitlement from Project Co (in accordance with and subject to the provisions of Section 1.6(c)), including the benefit of:

(1) any compensation, damages or other payment of any kind on the same or substantially the same grounds as Project Co is entitled to compensation, damages or other payment of any kind under the Project Agreement, including, without limitation, compensation on termination;

(2) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Project Implementation Agreement on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Project Agreement;

(3) any entitlement of Operations Co under this Project Implementation Agreement in respect of which any provision of this Project Implementation Agreement states that the Pass-Down Provisions are to apply; and

(4) any certificate, consent or approval granted under this Project Implementation Agreement, the Project Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to Operations Co, including any entitlement of Project Co to request or apply for such certificate, consent or approval from the Authority, or any other person under this Project Implementation Agreement or the Project Agreement,

including, for greater certainty, any benefit to Project Co arising out of any Change implemented or any Change required by the Authority pursuant to the Project Agreement or any Supervening Event or remedies or compensation in respect of any Authority Event of Default (as defined in the Project Agreement) in respect of which Project Co is entitled to relief, compensation or benefit under the Project Agreement in respect of Project Co's obligations, but excluding:

(5) any compensation payable to Project Co under the Project Agreement in respect of any Senior Debt Service Amount (except to the extent that Operations Co or any Operations Co Person has previously made payment to Project Co in respect of debt service costs as a result of a Supervening Event) or any other obligation of Project Co under the Senior Financing Agreements; and

(6) any specific loss, cost or expense incurred by Project Co to which the relevant compensation expressly relates and which is not included in any amount claimed by Operations Co.

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

(b) Operations Co will not be entitled to any relief from, or waiver in respect of performance of its obligations under this Project Implementation Agreement other than:

(1) to the extent Project Co receives Equivalent Project Relief; or

(2) to the extent expressly provided for in this Project Implementation Agreement.

(c) Operations Co will be entitled to the benefit of any Equivalent Project Relief to the extent that Project Co is or becomes entitled under the Project Agreement only if, when and to the same extent that Project Co has received Equivalent Project Relief from the Authority under the Project Agreement.

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

1.7 Enforcement of Parallel Issues

(a) Project Co will preserve, protect and pursue under the Project Agreement such rights, remedies and relief as may relate to Operations Co's rights and obligations hereunder, including any claim for Equivalent Project Relief, (a "**Parallel Issue**") in order to secure a favorable resolution of the Parallel Issue, provided that:

(1) Project Co has received written notice from Operations Co of the Parallel Issue;

(2) Operations Co will not be entitled to recover from Project Co any Direct Losses or claims arising out of or in connection with Project Co pursuing resolution of a Parallel Issue on Operations Co's behalf other than any amounts received from the Authority in respect of such Parallel Issue; and

(3) Operations Co will indemnify Project Co in respect of any Direct Losses arising out of or in connection with Project Co pursuing resolution of a Parallel Issue on Operations Co's behalf in accordance with this Section 1.7(a), including reimbursing Project Co for any deduction from, reduction of or exercise of set-off, compensation or similar right against any amount payable by the Authority associated therewith, provided that such indemnification will, unless Project Co has no entitlement to any amount received in respect of such Parallel Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Issue.

(b) Subject to Section 1.7(c), Project Co consents to Operations Co pursuing the rights, remedies and relief under the Project Agreement described in Section 1.7(a) of this Project Implementation Agreement, including, without limitation, any entitlement to compensation on termination, in the name of Project Co, which may, subject to the provisions of Section 9.2 of the Project Agreement, include the defense of claims where Operations Co is required to provide an indemnity to Project Co in accordance with the indemnity provisions in this Project Implementation Agreement. Operations Co will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that, if Operations Co is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the parties in proportion to their ultimate entitlements to same. Project Co will, at the sole cost and expense of Operations Co, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Operations Co may reasonably request in connection with the pursuit of such Parallel Issue by Operations Co.

(c) No later than 7 days following receipt of the notice referred to in Section 1.7(a)(1), Project Co may take conduct of the Parallel Issue and pursue the rights, remedies and relief under the Project Agreement described in Section 1.7(a) of this Project Implementation Agreement on behalf of Operations Co and in accordance with the reasonable directions of Operations Co.

(d) Project Co will not enter into any compromise or settlement of a Parallel Issue with the Authority which affects, in any respect, Operations Co's obligations, rights, remedies or relief hereunder without the prior written consent of Operations Co, in its sole discretion.

(e) Where Project Co pursues a Parallel Issue in accordance with this Section 1.7, Operations Co will be kept informed of Project Co's progress under this Section 1.7 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Project Co in accordance with this Section 1.7.

(f) Operations Co will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure, use commercially reasonable efforts to

provide assistance, including providing documents, data and information, as Project Co may reasonably request in connection with the pursuit of any Parallel Issue.

(g) Any claims in respect of a Parallel Issue and any recoveries obtained by Project Co or Operations Co in respect of any Parallel Issue under the Project Agreement will be subject to the provisions of Section 1.6 in respect of Equivalent Project Relief.

1.8 Pass-Down Provisions

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

1.9 Authority Not Directly Liable

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

2. GENERAL PROJECT TERMS

2.1 Term and Termination

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

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

(b) upon either the Authority or Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.3 of the Project Agreement in connection with insufficient insurance;

(c) upon either the Authority or Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.4 of the Project Agreement in connection with uncollectible Insurance Receivables;

(d) upon the Authority electing to terminate the Project Agreement pursuant to Section 6.10 of the Project Agreement in connection with a Principal Insured Risk becoming Uninsurable;

(e) upon either the Authority or Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.4(c) or 8.4(e) of the Project Agreement, or Operations Co electing to terminate this Project Implementation Agreement pursuant to Section 8.4(c) or 8.4(e), in connection with a Relief Event;

(f) upon either the Authority or Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.6(c) or 8.6(d) of the Project Agreement, or Operations Co electing to terminate this Project Implementation Agreement pursuant to Section 8.6(c) or 8.6(d), in connection with a Force Majeure Event;

(g) upon the Authority electing to terminate the Project Agreement pursuant to Section 12.4 of the Project Agreement in connection with a Project Co Event of Default;

(h) by Project Co pursuant to Section 12.4 in connection with an Operations Co Event of Default;

(i) upon Project Co (at the direction of Operations Co) electing to terminate the Project Agreement pursuant to Section 13.3 of the Project Agreement in connection with an Authority Event of Default; or

(j) by Operations Co electing to terminate this Project Implementation Agreement pursuant to Section 13.3.

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

2.2 Document Deliveries

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

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

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

2.3 Assumption of Risk

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

2.4 Opportunities

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

2.5 General Duty of Operations Co to Mitigate

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

2.6 General Duty of Project Co to Mitigate

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

(a) Not used

(b) Not used

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

2.7 Representatives

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

2.8 Key Individuals

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

(a) Operations Co will use commercially reasonable efforts to retain the Key Individuals to perform the duties for the period described in Schedule 17 [Key Individuals]; and

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

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

2.9 Naming

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

2.10 Signs

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

2.11 Early Works

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

2.12 Performance Security

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

3. PROJECT CO'S GENERAL OBLIGATIONS

3.1 Payments

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

(a) the payments as set out in Section 5.4 (Refinancing Process);

(b) the payments as set out in Section 10 (Payments);

(c) the Termination Payments as set out in Schedule 9 [Compensation on Termination];

(d) amounts owing under Section 3.6 (Purchase of Designated Equipment);

(e) amounts owing under Section 6 (Insurance, Damage and Destruction);

(f) amounts owing under Section 7 (Changes, Minor Works and Innovation Proposals);

(g) amounts owing under Section 8 (Supervening Events);

(h) Not used

(i) amounts owing pursuant to the final resolution of a Dispute in accordance with the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure],

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

3.2 Limitation on Payments

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

3.3 Provision of Lands

Project Co will make the Lands available for the Project pursuant to the Sub-License in accordance with Schedule 7 [Lands] and the parties' rights and obligations in respect of the Lands are set out in such Schedule 7. Operations Co acknowledges the provisions of Section 3.3 of and Schedule 7 [Lands] to the Project Agreement regarding Project Co's access to the Lands and the NG-KIH System and agrees that neither Operations Co nor any Operations Co Person will have any greater rights than are granted to Project Co under the Project Agreement.

Operations Co will comply, and will ensure that each Operations Co Person complies, with the terms of the License granted by the Authority to Project Co. The Sub-License granted by Project Co to Operations Co herein will be effective from the date the License takes effect pursuant to the Project Agreement and will expire on the earlier of the date the License terminates pursuant to the Project Agreement and the Termination Date.

3.4 Permitting Assistance

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

3.5 Project Co's Representations and Warranties

Project Co represents and warrants to Operations Co, as of the Effective Date, that:

(a) Project Co is a non-profit corporation duly created and validly existing under the laws of Kentucky and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Project Implementation Agreement;

(b) the execution and delivery of this Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Project Implementation Agreement, and the completion of the transactions contemplated by this Project Implementation Agreement, have been duly authorized by all necessary action on the part of Project Co, and this Project Implementation Agreement has been duly executed and delivered by Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and

(c) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Project Implementation Agreement have been received.

3.6 Purchase of Designated Equipment

Operations Co acknowledges and agrees that the Authority will purchase the Designated Equipment and arrange for delivery of the Designated Equipment to Project Co (or as Project Co may direct) in accordance with the Designated Equipment Protocol. Project Co will direct the Authority to deliver the Designated Equipment directly to the Design-Builder. Operations Co acknowledges and agrees that, the Authority will, on the System Completion Date, make a payment to Project Co in the amount of $1,354,000, which reflects the difference between the original budget for the Designated Equipment and $28,646,000. Operations Co further acknowledges and agrees that, to the extent that the amount actually paid by the Authority in

respect of Designated Equipment is less than $28,646,000 as a result of a change in the type or quantity of Designated Equipment required by Project Co under the Project Agreement, the Authority will, on the System Completion Date, make a further payment to Project Co in the amount of the difference between $28,646,000 and the amount actually paid by the Authority in respect of Designated Equipment (taking into account changes in the type or quantity of Designated Equipment only). Project Co will, subject to the Pass-Down Provisions, make corresponding payments to Operations Co upon receipt of these payment from the Authority.

3.7 Project Co Common Carrier Covenant

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

3.8 Not Used

3.9 Pole Attachment Agreements

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

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

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

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

(a) the Authority does not execute the finalized Simple Pole Attachment Agreement provided to the Authority by Operations Co within 3 Business Days of receipt thereof; or

(b) a Pole Provider refuses to enter into a Simple Pole Attachment Agreement.

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

Project Co agrees to enforce its contractual rights under Section 3.9 of the Project Agreement against the Authority to ensure that the Authority provides or causes to be provided such information, documentation and assistance as Operations Co may request and as the Authority may reasonably be able to provide to support the negotiation of any Complex Pole Attachment Agreement.

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

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

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

3.10 Procurement Protest or Challenge

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

3.11 Project Co's Obligations re Third Party Infrastructure Agreements

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

4. OPERATIONS CO'S GENERAL OBLIGATIONS

4.1 General Obligations Re: Project

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

4.2 Records and Reports

Operations Co will, at its own cost and expense, retain and maintain the records and reports referred to in Schedule 14 [Records and Reports] in accordance with such Schedule and in a form that is capable of audit by Project Co and to enable Project Co to fulfill its obligations to the Authority under Section 4.2 of the Project Agreement.

4.3 No Other Business

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

4.4 Operations Co Persons

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

4.5 Use of Sub-Contractors

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

(a) Operations Co will not contract with, or allow any of its Project Contractors or any Sub-Contractors to contract with, any Person that is a Restricted Person; and

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

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

(c) will not be relieved or excused from any of its obligations or liabilities under this Project Implementation Agreement; and

(d) will remain liable to Project Co for the performance of all the covenants, obligations, agreements and conditions of this Project Implementation Agreement that are to be performed by Operations Co.

4.6 Project Contracts

Operations Co will not:

(a) terminate, or agree to or permit the termination of, all or any material part of any Project Contract except:

(1) as required to do so by the Authority pursuant to the provisions of the Project Agreement; or

(2) if there is an event of default under a Project Contract and Operations Co terminates it in order to prevent or cure an Operations Co Event of Default;

(b) make, or agree to or permit the making of:

(1) any material amendment of any Project Contract, other than amendments (whether made by Change Certificate or otherwise) that are the direct and reasonable consequence of a Change; or

(2) any departure by any party from any material provision of any Project Contract;

(c) Not used

(d) permit any Project Contractor to assign or transfer to any Person any of such Project Contractor's rights or obligations under a Project Contract other than in accordance with the terms of such Project Contract; or

(e) enter into, or permit the entering into of, any Project Contract other than those entered into on or before the Effective Date,

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

Authority's discretion, it will be reasonable for the Authority to refuse its consent to the proposed course of action if:

(f) the proposed assignee, transferee or party entering into any Project Contract is a Restricted Person; or

(g) the proposed course of action could, in the reasonable opinion of the Authority, have a material adverse effect on the Authority or the Project.

4.7 Costs of Request for Consent

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

4.8 Replacement Project Contract

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

(a) Operations Co will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and

(b) if the Authority and the relevant Project Contractor had entered into a Project Contractor Collateral Agreement with respect to the replaced Project Contract, Operations Co will forthwith enter into, or cause the replacement Project Contractor to enter into, a Project Contractor Collateral Agreement.

4.9 Delivery of Amended Project Contracts

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

4.10 Permits

(a) Subject to Section 3.9, Section 8 (Supervening Events) and Section 2.1 of Schedule 7 [Lands], Operations Co shall, at its own cost and risk and in

accordance with the Project Schedule obtain, maintain and, as applicable, renew all Permits in accordance with Schedule 2 [Design and Construction Protocols] and comply with all Permits in accordance with their terms.

(b) Where a Permit has requirements that may impose any conditions, liabilities or obligations on the Authority or any Authority Person, Operations Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Permit without the prior written consent of the Authority under the Project Agreement. Operations Co acknowledges the provisions of Section 4.10(b) of the Project Agreement and, to the extent appropriate, Project Co agrees to enforce its contractual rights under Section 4.10(b) of the Project Agreement against the Authority in accordance with the Pass-Down Provisions.

(c) Operations Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the Authority may request from Project Co under the Project Agreement and as Operations Co may reasonably be able to provide to enable the Authority to demonstrate compliance with any Permit. Operations Co shall provide or cause to be provided such information, documentation and assistance pursuant to this Section 4.10(c) within 10 Business Days of receipt of the Authority's request.

4.11 Operations Co's Representations and Warranties

Operations Co represents and warrants to Project Co that:

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

(b) the information set out in Schedule 12 [Operations Co's Ownership Information] is true and correct and, except as set out in Schedule 12 [Operations Co's Ownership Information], there is, as at the date of this Project Implementation Agreement, no outstanding offer, agreement or other arrangement pursuant to which:

(1) any Person is obligated to subscribe for or take by means of transfer or by conversion any form of investment, security or voting rights in Operations Co; or

(2) Operations Co's formation documents will be amended or otherwise altered;

(c) to Operations Co's knowledge, none of Operations Co, Persons who control Operations Co, the Project Contractors or the Sub-Contractors are Restricted Persons;

(d) the execution and delivery of this Project Implementation Agreement and all other documents, instruments and agreements required to be executed and

delivered by Operations Co pursuant to this Project Implementation Agreement, and the completion of the transactions contemplated by this Project Implementation Agreement, have been duly authorized by all necessary action on the part of Operations Co, and this Project Implementation Agreement has been duly executed and delivered by Operations Co and constitutes a legal, valid and binding obligation of Operations Co enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application;

(e) all required third party consents to the execution by Operations Co of, and performance of its obligations under, this Project Implementation Agreement have been received, other than any Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project; and

(f) Operations Co is not aware of any representation or warranty made by Project Co under the Financing Documents that is not true and correct in all material respects.

4.12 Responses to Project Co and Authority Inquiries

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

4.13 Operations Co Common Carrier Covenant

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

4.14 Project Co Tax Compliance Covenant

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

4.15 Operations Co's Obligations re Third Party Infrastructure Agreements

Project Co and Operations Co acknowledge and agree that, as of the Effective Date, Project Co has negotiated non-binding term sheets (each, a "**Third Party Infrastructure Term Sheet**") with the Third Party Infrastructure Providers, copies of which are attached as Schedule 20 [Third Party Infrastructure Term Sheets]. Operations Co will be responsible for fulfilling the responsibilities, including ordering and delivery, of Project Co with respect to all Specified Fibers, as defined and contemplated in the Third Party Infrastructure Term Sheet between Project Co and MuniNet Fiber Agency. The parties acknowledge and agree that the Specified Fibers form part of the Designated Equipment.

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

Operations Co will use commercially reasonable efforts to manage the Third Party Infrastructure Providers in accordance with the terms of the Third Party Infrastructure Agreements and enforce its rights under the Third Party Infrastructure Agreements so as to mitigate the impact of any failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement or any breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement. Upon request from the Authority, Operations Co will promptly submit a detailed description, supported by all such documentation as the Authority may reasonably require, of the measures and steps taken by Operations Co to enforce its rights under each of the Third Party Infrastructure Agreements. Project Co consents to Operations Co pursuing all rights, remedies and relief under a Third Party Infrastructure Agreement in the name of Project Co.

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

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

In accordance with Section 8.2(h), if the Compensation Event described in (x) of the definition of Compensation Event occurs, the Authority, Project Co and Operations Co will consult and seek to agree on the steps to be taken by Operations Co in enforcing its rights under the relevant Third Party Infrastructure Agreement. The parties acknowledge and agree that the

compensation to which Operations Co will be entitled in respect of any such Compensation Event will include, as a component of Operations Co's Direct Losses, the reasonable cost of legal or professional services incurred by Operations Co in connection with the enforcement of its rights. Operations Co will not pursue any legal action to enforce its rights under a Third Party Infrastructure Agreement without the prior written consent of the Authority.

5. FINANCING OF THE PROJECT

5.1 Compliance with Financing Agreements

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

5.2 Changes to Financing Agreements

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

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

(b) have the effect of increasing any liability or potential liability of Operations Co other than as contemplated in the Financial Model (unless Operations Co is specifically compensated for such liability or potential liability); or

(c) have any adverse impact on the Operations Co Availability Payment or Project Co's ability to service the Junior Debt.

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

5.3 Restrictions on Refinancing

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

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

(b) have the effect of increasing any liability or potential liability of Operations Co other than as contemplated in the Financial Model (unless Operations Co is specifically compensated for such liability or potential liability); or

(c) have any adverse impact on the Operations Co Availability Payment or Project Co's ability to service the Junior Debt.

5.4 Refinancing Process

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

5.5 Not Used

5.6 Not Used

5.7 Not Used

5.8 Not Used

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

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

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

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

(a) applicable Laws; and

(b) the Authority agreeing to pay to Project Co (pursuant to Section 6.2 of the Project Agreement) and Project Co paying to Operations Co:

(1) the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage required under the Project Agreement for such risk (which, for greater certainty, is the maximum amount of coverage prior to any deductibles for which, as

between Project Co and the Authority, Project Co is responsible pursuant to Schedule 5 [Insurance Requirements] to the Project Agreement); or

(2) if no insurance coverage is required under the Project Agreement for such risk, an amount equal to the total costs of such repair, replacement or restoration,

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

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

6.3 Insufficient Insurance

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

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

(b) the cost to repair, replace or restore those components of the NG-KIH System still under construction exceeds the maximum amount of insurance coverage (which, for greater certainty, is the maximum amount of coverage prior to any deductibles for which Project Co is responsible, as between Project Co and the Authority, pursuant to Schedule 5 [Insurance Requirements] to the Project Agreement) required under the Project Agreement for the risk that caused the destruction; and

(c) none of Project Co or the Authority (pursuant to Section 6.2 of the Project Agreement) or Operations Co has agreed to pay the amount by which the cost to repair, replace or restore those components of the NG-KIH System still under construction exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

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

6.4 Uncollectible Insurance Receivables

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

6.5 Application of Insurance Proceeds If No Termination

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

(a) applicable Insurance Proceeds which Operations Co has received;

(b) applicable Insurance Proceeds which Operations Co is entitled to receive;

(c) amounts which the Authority has agreed to pay Project Co and Project Co has paid Operations Co as contemplated in Section 6.2(b); and

(d) amounts which Operations Co has agreed to pay to cover the amount by which the cost to repair, replace or restore the NG-KIH System exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

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

6.6 Application of Insurance Proceeds In Case of Termination

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

(a) any Insurance Proceeds received prior to the Termination Payment Date by Operations Co in respect of damage to the NG-KIH System and not already applied to the repair of such damage will be paid Project Co (or as Project Co may direct); and

(b) on the Termination Payment Date, Operations Co will assign to Project Co (or as Project Co may direct) the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.7 Standards of Repair, Replacement or Restoration

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

Design and Construction Protocols or the Design and Construction Specifications as they pertain to any repaired, replaced or restored NG-KIH System.

6.8 Mitigation

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

6.9 Risks Becoming Uninsurable

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

6.10 Consequences of Risks Becoming Uninsurable

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

(a) if the Uninsurable Risk is third party liability, Operations Co acknowledges that the Authority shall terminate the Project Agreement, in which case this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; or

(b) if the Uninsurable Risk is not third party liability:

(1) Operations Co acknowledges that the Authority may terminate the Project Agreement, in which case this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; or

(2) if and for as long as the Authority has not terminated this Project Implementation Agreement under Section 6.10(b)(1) of the Project Agreement:

(A) this Project Implementation Agreement will continue;

(B) neither Operations Co nor Project Co will be obligated by this Project Implementation Agreement, and the Authority will not be obligated by the Project Agreement, to maintain insurance in respect of the Uninsurable Risk and references in this Project

Implementation Agreement to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Schedule 5 [Insurance Requirements] will be construed accordingly;

(C) the Operations Co Payments will thereafter be adjusted in accordance with Section 10.3 by agreement of the parties, acting reasonably, or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Operations Co's insurance cost as a result of Operations Co not having to insure against the Uninsurable Risk; and

(D) subject to the Pass-Down Provisions, the occurrence of the Uninsurable Risk will be deemed to be a Compensation Event unless the Authority terminates the Project Agreement in which case this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination].

6.11 Subrogation

If Project Co makes any payment to Operations Co pursuant to the Compensation Event referred to in Section 6.10(b)(2)(D), then the Authority and Project Co, as applicable and to the extent of the amount paid, will be subrogated to Operations Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party. Project Co may assign its rights under this Section 6.11 to the Authority.

6.12 Continuing Attempts to Insure Uninsurable Risks

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

6.13 Uninsurable Risks Becoming Insurable

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

(a) Sections 6.9, 6.10 and 6.12 will no longer apply to the risk so long as it is not an Uninsurable Risk; and

(b) the Operations Co Payments will be adjusted pursuant to Section 10.3 by agreement of the parties and the Authority or, failing such agreement, by the Dispute Resolution Procedure under the Project Agreement, from the date upon which the Uninsurable Risk became insurable, to reflect any increase in Operations Co's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

7.1 Changes Required by the Authority

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

7.2 Innovation and Value Engineering

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

7.3 Minor Works

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

8. SUPERVENING EVENTS

8.1 Supervening Events

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

(a) a Compensation Event, Relief Event or Excusing Event occurs, Operations Co may; or

(b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may,

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

8.2 Procedures Upon the Occurrence of a Supervening Event

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

(a) as soon as practicable, and in any event within 5 Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other party and the Authority a notice ("**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant's claim;

(b) within 10 Business Days after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party and the Authority:

(1) additional details, including available supporting documentation, in support of its claim; and

(2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by Operations Co, if it is the Applicant, as a result of the Supervening Event;

(c) from time to time thereafter, the Applicant will notify the other party and the Authority if at any time it receives or becomes aware of any further material information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other party and the Authority as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;

(d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;

(e) where the Authority is claiming the benefit of an Eligible Change in Law Event under the Project Agreement, Operations Co will provide Project Co and the Authority information reasonably requested in order to make its claim;

(f) the Applicant must demonstrate:

(1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to have taken;

(2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss, a delay in the Project Schedule or the need for relief from other obligations under this Project Implementation Agreement; and

(3) in the case of Operations Co, it has complied with its mitigation obligations pursuant to Section 2.5 and in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.6,

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

(g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to the Project Agreement, this Project Implementation Agreement, any Project Contract or any Senior Financing Agreement as a result of the Supervening Event; and

(h) the Authority, Project Co and Operations Co will meet within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event and if the Authority, Project Co and Operations Co, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, Operations Co acknowledges and agrees that either the Authority or Project Co (at the direction of Operations Co) may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) above have been satisfied or the extent of relief or compensation to which the affected party is entitled for resolution in accordance with the Dispute Resolution Procedure under the Project Agreement. The parties agree to abide by the determination under the Project Agreement of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) above have been satisfied or the extent of relief or compensation to which the affected party is entitled, and neither party will exercise any rights under this Project Implementation Agreement to dispute the final determination arising under the Project Agreement in respect thereof, other than in accordance with the Pass-Down Provisions.

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

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

(a) Operations Co is relieved from any liability or consequence (including termination by Project Co) under this Project Implementation Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Project Implementation Agreement to the extent resulting from the Compensation Event;

(b) the Operations Co Payments will be calculated as if the Compensation Event had not occurred based on the Reasonably Expected Performance of Operations Co, except that any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Operations Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Project Implementation Agreement or any policy of insurance maintained or required to be maintained under this Project Implementation Agreement will be deducted therefrom;

(c) Project Co will pay to Operations Co compensation in respect of a Compensation Event calculated on the basis that Operations Co will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):

(1) any Direct Losses (including the amount of any applicable insurance deductibles calculated without netting out Insurance Receivables) resulting from the Compensation Event;

(2) any net increase or decrease in the costs of Operations Co performing its obligations under this Project Implementation Agreement resulting from the Compensation Event; and

(3) the Operations Co Payments payable to Operations Co, taking into account the adjustments pursuant to Section 8.3(b) above;

except that:

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

(5) no Indirect Losses will be taken into consideration;

(d) concurrent with the first payment of any compensation by Project Co under Section 8.3(c), Operations Co will assign to Project Co (or as Project Co may direct) its rights to all applicable Insurance Receivables (whether or not Operations Co has made a claim); and

(e) if the Compensation Event occurs prior to the System Completion Date, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed if, and only to the extent that, such dates are postponed pursuant to Section 8.3(e) of the Project Agreement, but the Expiration Date will not be extended.

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

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

(a) Operations Co is relieved from any liability or consequence (including termination by Project Co, except as provided for in this Section 8.4) under this Project Implementation Agreement arising from any delay or failure in performing any of its obligations under this Project Implementation Agreement to the extent resulting from the Relief Event, except that nothing will affect any entitlement of Project Co to make Deductions and Project Co will only be obligated to make Operations Co Payments to the extent that the performance or other criteria for Operations Co Payments are met in accordance with the applicable provisions of this Project Implementation Agreement notwithstanding the Relief Event;

(b) if the Relief Event occurs prior to the System Completion Date:

(1) the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed if, and only to the extent that, such dates are postponed pursuant to Section 8.4(b) of the Project Agreement, but the Expiration Date will not be extended;

(2) Not used

(3) Not used

(c) if Project Co has become entitled to terminate the Project Agreement pursuant to Section 8.4(c) thereof:

(1) Operations Co may, at any time thereafter so long as such Relief Event is, or such effect is, continuing, terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement; and

(2) Project Co may not exercise its right to terminate the Project Agreement without the prior written consent of Operations Co, in its sole discretion;

(d) if the Authority gives notice to Project Co under Section 8.4(c) of the Project Agreement terminating the Project Agreement, Project Co will not exercise its option either to accept such notice or to require the Project Agreement to continue without the prior written consent of Operations Co, in its sole discretion;

(e) Operations Co acknowledges and agrees that, if Operations Co gives notice to Project Co under Section 8.4(c) terminating this Project Implementation Agreement and, as a result, Project Co gives notice to the Authority under Section 8.4(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing

on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:

(1) Operations Co's termination notice to Project Co under Section 8.4(c) will be deemed null and void and Operations Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Project Implementation Agreement;

(2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;

(3) at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing, the Authority may terminate the Project Agreement by notice to Project Co, in which case this Project Implementation Agreement will terminate automatically; and

(4) Operations Co may, at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing after a further period of 180 days after the date on which Operations Co delivered the termination notice to Project Co pursuant to Section 8.4(c), terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement;

(f) if the Project Agreement is terminated in accordance with Section 8.4 thereof, this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; and

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

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

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

(a) Operations Co is relieved from any liability or consequence (including termination by Project Co) under this Project Implementation Agreement arising from any delay or failure in performing any of its obligations to the extent resulting from the Excusing Event; and

(b) the Operations Co Payments will be calculated as if the Excusing Event had not occurred based on the Reasonably Expected Performance of Operations Co, except that any Avoidable Costs and applicable Insurance Proceeds and Insurance Receivables and insurance proceeds which Operations Co would have recovered if it had complied with the requirements of this Project Implementation Agreement or any policy of insurance maintained or required to be maintained under this Project Implementation Agreement will be deducted therefrom.

8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

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

(a) the Applicant is relieved from any liability or consequence (including termination by Project Co, except as provided for in this Section 8.6) under this Project Implementation Agreement arising from any delay or failure in performing any of its obligations under this Project Implementation Agreement to the extent resulting from the Force Majeure Event, except that nothing will affect any entitlement of Project Co to make Deductions and Project Co will only be obligated to make Operations Co Payments to the extent that the performance or other criteria for Operations Co Payments are met notwithstanding the Force Majeure Event;

(b) if the Applicant is Operations Co and the Force Majeure Event occurs prior to the System Completion Date, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed if, and only to the extent that, such dates are postponed pursuant to Section 8.6(b) of the Project Agreement, but the Expiration Date will not be extended;

(c) if Project Co has become entitled to terminate the Project Agreement pursuant to Section 8.6(c) thereof:

(1) Operations Co may, at any time thereafter so long as such Force Majeure Event is, or such effect is, continuing, terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement; and

(2) Project Co may not exercise its right to terminate the Project Agreement without the prior written consent of Operations Co, in its sole discretion;

(d) Operations Co acknowledges and agrees that, if Operations Co gives notice to Project Co under Section 8.6(c) terminating this Project Implementation Agreement and, as a result, Project Co gives notice to the Authority under Section 8.6(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:

(1) Operations Co's termination notice to Project Co under Section 8.6(c) will be deemed null and void and Operations Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Project Implementation Agreement;

(2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;

(3) at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing, the Authority may terminate the Project Agreement by notice to Project Co, in which case this Project Implementation Agreement will terminate automatically; and

(4) Operations Co may, at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing after a further period of 180 days after the date on which Operations Co delivered the termination notice to Project Co pursuant to Section 8.6(c), terminate this Project Implementation Agreement by notice to Project Co, in which case Project Co will exercise its right to terminate the Project Agreement;

(e) if the Project Agreement is terminated in accordance with Section 8.6 thereof, this Project Implementation Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; and

(f) Deductions made while Operations Co is entitled to relief under this Section 8.6 will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Schedule 4 [Services Protocols and Specifications].

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

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

(a) the Applicant will be entitled to compensation, or an increase or decrease in the Operations Co Payments, in respect of the Eligible Change in Law Event calculated on the basis that Operations Co will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):

(1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event;

(2) any net increase or decrease in the costs of Operations Co performing the Design, Construction, Services or System Refresh, as applicable, resulting from the Eligible Change in Law Event; and

(3) the Operations Co Payments payable to Operations Co,

except that:

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

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

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

8.8 Parties' Entitlements Upon Occurrence of a Change in Law

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

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

(b) except as otherwise provided in this Project Implementation Agreement, including in Section 8.4, Section 8.5 or Section 8.7, Operations Co will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and

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

8.9 Labor Disputes

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

(a) give notice thereof to Project Co and the Authority, including all relevant information related to the dispute of which Operations Co Has Knowledge; and

(b) use commercially reasonable efforts to mitigate the effects of such labor dispute on the performance of any of the Design, Construction, Services or System Refresh, including by applying for relief to appropriate tribunals or courts if such labor dispute involves workers of Operations Co, a Project Contractor and/or a Sub-Contractor.

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

8.10 Payments in Respect of Supervening Events

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

8.11 Supervening Events Mitigated by Change

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

8.12 Delay in Notification

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

(a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Project Implementation Agreement to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and

(b) if the period of delay is 12 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.13 Equivalent Project Relief

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

(a) any circumstance affecting a Project Contractor or a Sub-Contractor which, if such circumstance had affected Operations Co directly would have given rise to a claim by Operations Co pursuant to Operations Co's Rights, will, for the purpose of this Project Implementation Agreement, be deemed to be a circumstance affecting Operations Co in respect of which Operations Co may claim under and subject to Operations Co's Rights; and

(b) amounts claimed by the Project Contractor or Sub-Contractor against Operations Co in respect of any circumstance referred to in Section 8.13(a) above may be claimed by Operations Co against Project Co under and subject to Operations Co's Rights, but whether or not Project Co is liable for such amounts will be determined under this Project Implementation Agreement as if the circumstance had affected Operations Co directly,

provided that:

(c) all such claims will be made and administered by Operations Co and no Project Contractor or any Sub-Contractor will have any rights against Project Co, including under this Section 8.13;

(d) in no event will the liability of Project Co under this Section 8.13 be greater than it would have been if Operations Co had been directly affected by the circumstance referred to in Section 8.13(a) above; and

(e) in no event will Project Co be liable under this Section 8.13 for any Direct Losses or other compensation that Project Co would not have been liable for if Operations Co had been directly affected by the circumstance referred to in Section 8.13(a) above.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Operations Co Obligations to Indemnify

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

9.2 Conduct of Third Person Claims

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

(a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Project Implementation Agreement in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;

(b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations and the

Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

(c) in defending any claim described in Section 9.2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;

(d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b), the Indemnifier will:

(1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

(2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

(e) the Beneficiary may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b); or

(2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or

(3) the Indemnifier fails to comply in any material respect with Section 9.2(d) above,

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

(f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) above applies. On receipt of such notice, the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

If the Beneficiary gives any notice pursuant to this Section 9.2(f) (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3)), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 or its obligation to provide compensation, as the case may be; and

(g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property rights of any Person, Operations Co may replace such infringing or allegedly infringing item provided that:

(1) the replacement is performed without additional cost to Project Co; and

(2) the replacement has at least equal quality performance capabilities when used in conjunction with the NG-KIH System.

9.3 General Obligation to Pursue Third Person Recovery

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

(a) as directed by the Paying Party either:

(1) promptly make commercially reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or

(2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and

(b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:

(1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and

(2) the Liability Payment,

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

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

9.4 Waiver of Remedies

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

9.5 Remedies Cumulative

Subject to Sections 9.6, 9.7 and 9.8:

(a) the rights and remedies of the parties under this Project Implementation Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;

(b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and

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

9.6 Limitation on Project Co's Remedies

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

(a) to achieve Ring Completion of any Ring by the relevant Target Ring Completion Date or the relevant Outside Ring Completion Date will be limited to Project Co's rights pursuant to Section 11.1 of Schedule 2 [Design and Construction Protocols];

(b) to achieve System Completion by the Target System Completion Date or the Longstop Date will be limited to Project Co's rights pursuant to Section 12.4; and

(c) to perform the Services in accordance with this Project Implementation Agreement will be limited to Deductions in accordance with Schedule 8 [Payments] to the Project Agreement,

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

(d) claim, on or after a termination of this Project Implementation Agreement, costs, losses, damages and expenses suffered or incurred by Project Co as a result of rectifying or mitigating the effects of any breach of this Project Implementation Agreement by Operations Co except to the extent recovered by Project Co under this Project Implementation Agreement or taken into account to reduce any

compensation payable by Project Co pursuant to Schedule 9 [Compensation on Termination];

(e) make a claim for indemnification pursuant to Section 9.1;

(f) deliver to Operations Co a Dispute Notice or a notice of default or termination pursuant to Section 12 (Operations Co Events of Default) and pursue all remedies in respect thereof; or

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

9.7 Limitation on Operations Co's Remedies

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

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

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

9.8 Limits on Monetary Compensation

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

9.9 No Liability for Indirect Losses

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

9.10 No Liability for Governmental Activities

Project Co will not be liable to Operations Co or any Operations Co Person for any Direct Losses suffered or incurred as a result of damage to the NG-KIH System, whether arising from or related to Governmental Activities or otherwise, to the extent that such Direct Losses were directly or indirectly caused or contributed to by any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Implementation Agreement by Operations Co

or any Operations Co Person, including, for greater certainty but without limitation, the failure of Operations Co or any Operations Co Person to comply with the terms of the Design and Construction Plan, and, for greater certainty, the same shall not constitute a Compensation Event.

9.11 Project Co's Right of Set Off

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

9.12 Operations Co's Right of Set Off

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

9.13 Undisputed Amounts and Interest on Disputed Amounts

Subject to Sections 9.11 and 9.12, a party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Project Implementation Agreement, but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure. If payment of any amount payable under this Project Implementation Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure at the Default Rate, compounded monthly, from the time such amount became payable under this Project Implementation Agreement until paid.

9.14 Interest on Overdue Amounts

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

9.15 Reimbursement of Delay Liquidated Damages

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

10. PAYMENTS

10.1 Lump Sum Payments

To the extent a party:

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

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

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

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

10.2 Not Used

10.3 Adjustments to Operations Co Payments

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

10.4 Not Used

10.5 Construction Period Payments

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

(a) any amounts owing to the Design-Builder under the Design-Build Agreement or any other Person under a Sub-Contract entered into by Operations Co in connection with the performance by Operations Co of its obligations under this Project Implementation Agreement;

(b) the budgeted amount of Operations Co's internal operating costs set out in Part A of Schedule 8 [Payments];

(c) subject to the requirements of the Senior Financing Agreements, any amounts in excess of the budgeted amount of Operations Co's internal operating costs required by Operations Co to pay internal operating costs related to the Project,

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

10.6 Operating Period Payments

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

(a) any amounts owing to the Service Provider under the Services Contract or any other Person under a Sub-Contract entered into by Operations Co in connection with the performance by Operations Co of its obligations under this Project Implementation Agreement;

(b) the budgeted amount of Operations Co's internal operating costs set out in Part A of Schedule 8 [Payments];

(c) subject to the requirements of the Senior Financing Agreements, any amounts in excess of the budgeted amount of Operations Co's internal operating costs required by Operations Co to pay internal operating costs related to the Project; and

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

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

10.7 Deductions

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

11. AUTHORITY'S STEP-IN RIGHTS

11.1 Authority's Step-in Rights

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

(a) the Authority reasonably considers that a breach by Project Co of any obligation under the Project Agreement is likely to create an immediate and serious threat to the health or safety of any person, any property or the environment; or

(b) notwithstanding that Project Co is not in breach of its obligations under the Project Agreement, the Authority reasonably considers the circumstances to constitute an Emergency,

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

(c) Project Co may require Operations Co by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs, including, if applicable due to breach of this Project Implementation Agreement, any Project Contract or Sub-Contract, Project Co may require that Operations Co, any Project Contractor or any Sub-Contractor suspend its operations in some or all respects and Operations Co will use commercially reasonable efforts to comply with Project Co's requirements as soon as reasonably practicable; or

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

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

11.2 Authority's Rectification Rights

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

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

(b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as the Authority, under the Project Agreement, will stipulate,

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

11.3 Notice of NG-KIH System Change

Project Co will notify Operations Co of any NG-KIH System Change which the Authority intends to make pursuant to the exercise of the Authority's rights under Section 11.1(d) or Section 11.2 of the Project Agreement and provide Operations Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed NG-KIH System Change. Project Co will ensure that, in making such NG-KIH System Change, the Authority will reasonably consider comments received in a timely manner from Operations Co on the proposed NG-KIH System Change.

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

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

11.5 Allocation of Costs for Authority Actions

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

12. OPERATIONS CO EVENTS OF DEFAULT

12.1 Operations Co Events of Default

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

(a) the occurrence of an Operations Co Material Breach that is not remedied in accordance with Section 12.3, including in accordance with the program for remediation produced by Operations Co in accordance with Section 12.3, or the occurrence of an Operations Co Material Breach for which a program for remediation has not been produced by Operations Co in accordance with Section 12.3;

(b) the occurrence of an Operations Co Insolvency Event;

(c) Operations Co abandons the Project, other than pursuant to its right to suspend performance under Section 13.3 or due to a Supervening Event;

(d) System Completion does not occur on or before the Longstop Date;

(e) Operations Co breaches Section 16.1 or a Change in Control occurs which is prohibited by Section 16.2;

(f) Operations Co breaches its obligations under this Project Implementation Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Implementation Agreement or a breach by the Authority of its obligations under the Project Agreement) which results in a criminal conviction related to health and safety violations against Operations Co, any Operations Co Person, Project Co, any Project Co Person or the Authority (an "**H&S Conviction**"), except that:

(1) an H&S Conviction of Operations Co, an Operations Co Person, Project Co, a Project Co or the Authority will not constitute an Operations Co Event of Default if, within 60 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Operations Co Person is terminated or Operations Co takes such other action against each such Operations Co Person as is acceptable to the Authority under the Project Agreement; and

(2) Project Co will not exercise any right of termination for an Operations Co Event of Default pursuant to this Section 12.1(f) unless the Authority has exercised its right of termination pursuant to Section 12.1(f) of the Project Agreement;

(g) subject to Sections 8.4(g) and 8.6(f), Operations Co accumulates Deductions of $6,500,000 (Index Linked) or more in any 12 consecutive month period during the Operating Period;

(h) Operations Co makes a representation or warranty in the body of this Project Implementation Agreement or Schedules 1 to 20 that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the Project or the Services and, in the case of a false or misleading representation or warranty that is capable of being remedied, Operations Co has not remedied such breach within 10 Business Days following notice from Project Co or the Authority; or

(i) Not used,

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

12.2 Notification

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

12.3 Operations Co Material Breach Cure and Remedial Program

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

(a) Operations Co will remedy such Operations Co Material Breach referred to in such notice (if it is continuing) within 45 days of such notice; or

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

If Operations Co puts forward a program in accordance with Section 12.3(b), Operations Co acknowledges and agrees that the Authority will have 10 Business Days from receipt of the program within which to notify Project Co that the Authority, under the Project Agreement, does not accept the program. If the Authority notifies Project Co that it does not accept the program as being reasonable or does not respond within 10 Business Days from receipt of the program, the Authority and Project Co (in consultation with Operations Co) will use commercially reasonable efforts within the following 5 Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such 5 Business Days, the

question of whether the program (as it may have been amended by agreement) will remedy such Operations Co Material Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either the Authority or Project Co (at the direction of Operations Co) for resolution in accordance with the Dispute Resolution Procedure under the Project Agreement. The parties agree to abide by the determination under the Project Agreement.

12.4 Project Co Termination Right

Operations Co acknowledges the provisions of Section 12.4 of the Project Agreement and the Authority's rights and discretions provided for therein. Project Co will not exercise any of its rights or discretions under this Project Implementation Agreement unless the Authority has exercised its corresponding rights or discretions under the Project Agreement and, where the Authority has exercised its rights or discretion under Section 12.4 of the Project Agreement, Project Co will exercise the same rights or discretions under this Project Implementation Agreement to the extent that such circumstance has arisen from an act, omission or breach of this Project Implementation Agreement by Operations Co. If:

(a) an Operations Co Material Breach is not remedied before the expiration of the period referred to in Section 12.3(a) and no program has been put forward by Operations Co under Section 12.3(b);

(b) Operations Co puts forward a program pursuant to Section 12.3(b) which has been accepted by the Authority (including after agreement under Section 12.3 to amendments to the program) or has been determined to be reasonable pursuant to the Dispute Resolution Procedure under the Project Agreement and Operations Co fails to remedy the Operations Co Material Breach before the end date for the program;

(c) any program put forward by Operations Co pursuant to Section 12.3(b) is rejected by the Authority as not being reasonable, and, if such rejection is disputed by Operations Co, the Dispute Resolution Procedure under the Project Agreement does not find against that rejection; or

(d) any Operations Co Event of Default other than an Operations Co Material Breach occurs,

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

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

deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

12.5 Replacement of Non-Performing Service Provider

(a) As an alternative to termination of this Project Implementation Agreement pursuant to Section 12.4, if:

(1) Project Co has a right to terminate this Project Implementation Agreement due to an Operations Co Event of Default that was caused, or contributed to, by the Service Provider; and

(2) the actions of the Service Provider constitute a breach under the Services Contract that entitles Operations Co to terminate the Service Provider,

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

(b) If Project Co exercises its rights under this Section 12.5, Operations Co shall, within 10 Business Days, put forward a proposal to Project Co and the Authority for the interim management or provision of the Services until such time as a replacement Service Provider can be engaged by Operations Co. If:

(1) Operations Co fails to submit a proposal for the interim management or provision of the Services, or the Authority is of the opinion, under the Project Agreement, that Operations Co's proposal is not reasonably likely to result in adequate provision of the Services; and

(2) the Authority and Project Co (in consultation with Operations Co) cannot agree within a further 3 Business Days to a plan for the interim management or provision of the Services,

then Operations Co acknowledges and agrees that:

(3) the Authority itself may perform, or engage others (including a third party) to perform, the Services;

(4) Operations Co will pay Project Co the amount of all direct costs and expenses reasonably incurred by the Authority in exercising its rights pursuant to Section 12.5(b)(3) of the Project Agreement and an additional mark-up of 5% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights; and

(5) Operations Co shall not be subject to Deductions in respect of those Services that are being performed by the Authority or a third party appointed by the Authority pursuant to Section 12.5(b)(3) of the Project Agreement to the extent and for the duration of time that Operations Co is not performing those Services.

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

(c) Operations Co's appointment of a replacement Service Provider pursuant to this Section 12.5 shall be subject to the following:

(1) the Authority's prior written consent under the Project Agreement as to the suitability of the replacement; and

(2) the replacement Service Provider entering into:

(A) a contract with Operations Co upon the same or substantially similar terms as the Person so replaced; and

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

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

(d) If Operations Co fails to terminate the Service Provider and to secure a replacement Service Provider in accordance with this Section 12.5, Project Co shall be entitled to exercise its termination rights in accordance with Section 12.4.

(e) If Operations Co terminates the Service Provider and secures a replacement Service Provider in accordance with this Section 12.5, any Deductions accrued by Operations Co prior to such replacement will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Schedule 4 [Services Protocols and Specifications].

12.6 The Authority's Costs

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

13. PROJECT CO EVENTS OF DEFAULT

13.1 Project Co Events of Default

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

(a) a failure by Project Co to pay any amount due and owing to Operations Co under this Project Implementation Agreement on the due date (which amount is not

being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days of notice from Operations Co;

(b) except as provided for in Section 13.1(a), a breach, or series of breaches, by Project Co of any term, covenant or undertaking to Operations Co, or any representation or warranty made by Project Co to Operations Co in this Project Implementation Agreement is incorrect when made, the consequence of which:

(1) has a material adverse effect on the performance of the Design, Construction, Services or System Refresh; or

(2) results in any material provision of this Project Implementation Agreement being unenforceable against Project Co,

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

(c) Not used

(d) Project Co breaches Section 16.4; or

(e) the occurrence of a Project Co Insolvency Event.

13.2 Notification

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

13.3 Operations Co's Options

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

(a) in respect of the Design and the Construction prior to the System Completion Date, suspend performance by it of its obligations under this Project Implementation Agreement until such time as Project Co has demonstrated to the reasonable satisfaction of Operations Co that it will perform and is capable of performing its obligations under this Project Implementation Agreement and, if so extended pursuant to Section 13.3(a) of the Project Agreement, the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be extended by the time such suspension is in effect;

(b) in the case of a Project Co Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Project Implementation Agreement until Project Co has remedied such Project Co Event of Default and, if so extended pursuant to Section 13.3(b) of the Project Agreement, the Target Site

Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be extended by the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension;

(c) in the case of a Project Co Event of Default under Sections 13.1(a) or 13.1(b), serve notice on Project Co of the occurrence specifying details of such Project Co Event of Default and if the relevant matter or circumstance has not been rectified or remedied by Project Co or otherwise within 45 days of such notice (or in the case of a Project Co Event of Default under Section 13.1(b) such longer period as is reasonably required for Project Co to rectify or remedy such Project Co Event of Default as long as Project Co is diligently pursuing such rectification or remedy), Operations Co may serve a further notice on Project Co terminating this Project Implementation Agreement with immediate effect; or

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

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

13.4 Operations Co's Costs

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

13.5 Termination for Convenience

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

13.6 Automatic Termination upon Project Agreement Termination

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

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

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

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

On or promptly after the Termination Date:

(a) if prior to the System Completion Date:

(1) in so far as any transfer will be necessary to fully and effectively transfer property to Project Co (or as Project Co may direct), Operations Co will transfer to, and there will vest in, Project Co (or as Project Co may direct) free from all financial encumbrances:

(A) such part of the NG-KIH System as has been constructed on or has become affixed to the Lands; and

(B) all construction materials on-hand to be affixed to the Lands or otherwise used in the NG-KIH System; and

(2) if the Authority so elects pursuant to Section 14.2(a) of the Project Agreement:

(A) the construction equipment will remain available to the Authority or Project Co (or as Project Co may direct) for the purposes of completing the Design and Construction; and

(B) all other Project related materials will remain available to the Authority or Project Co (or as Project Co may direct) for the purposes of completing the Design and Construction,

subject to payment by Project Co of Operations Co's reasonable charges;

(b) if the Authority so elects pursuant to Section 14.2(b) of the Project Agreement, Operations Co will cause any or all of the Project Contracts to be novated or assigned to Project Co (or as Project Co may direct), provided that:

(1) Operations Co will not be obligated to assign to Project Co (or as Project Co may direct) any of Operations Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and

(2) if termination occurs under Section 13.3, the consent of the applicable Project Contractor will be required;

(c) Operations Co will, or will cause any Project Contractor to, offer to sell to the Project Co (or as Project Co may direct) at the Fair Market Value, free from any

security interest all or any part of the stocks of material and other assets, vehicles, spare parts and other moveable property owned by Operations Co or any Project Contractor and reasonably required by Project Co or the Authority in connection with the operation of the NG-KIH System or the provision of the Services;

(d) Operations Co will deliver to Project Co (or as Project Co may direct) (to the extent not already delivered to Project Co or the Authority):

(1) all existing designs, network configurations, plans and other documents produced in connection with the NG-KIH System and in the control of Operations Co;

(2) one complete set of existing "as built drawings" showing all alterations made to the NG-KIH System since the commencement of operation of the NG-KIH System; and

(3) one complete set of existing up to date maintenance, operation and training manuals for the NG-KIH System,

subject to reasonable generally applicable third party licensing terms;

(e) Operations Co will use commercially reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical equipment used or made available by Operations Co under this Project Implementation Agreement and included in the NG-KIH System but not previously assigned or licensed to Project Co or the Authority are assigned, licensed or otherwise transferred to Project Co (or as Project Co may direct);

(f) to the extent permitted by Law, Operations Co will assign to Project Co (or as Project Co may direct) all Permits;

(g) Operations Co will deliver to Project Co (or as Project Co may direct) all records required to be kept by Operations Co hereunder (Operations Co having the right to retain copies thereof) unless such documents are:

(1) required by Law to be retained by Operations Co or a Project Contractor or a Sub-Contractor, in which case complete copies will be delivered to Project Co (or as Project Co may direct); or

(2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design, Construction, Services or System Refresh will be delivered to Project Co (or as Project Co may direct) no later than the Termination Payment Date; and

(h) return to Project Co all Confidential Information of Project Co and to the Authority all Confidential Information of the Authority within the possession or control of Operations Co or any Project Contractor or any Sub-Contractor.

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

14.3 Transition Out Arrangements

On the Expiration Date, Operations Co will:

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

(1) co-operate fully with the Authority and any successor providing to the Authority services in the nature of any of the Services or any part of the Services to achieve a timely, safe, orderly, effective and efficient transition of the performance of services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any material interruption to the Services or risk to the health and safety of any person; and

(2) continue to provide the Services or any part of the Services required by the Authority and, subject to the Pass-Down Provisions, Project Co will pay to Operations Co a reasonable price for such services determined with reference to Operations Co's price for such Services prior to the Expiration Date;

(b) subject to Section 14.3(a), as soon as practicable following the Expiration Date remove all property of Operations Co or any Operations Co Person that is not acquired by Project Co or the Authority (or not belonging to Project Co or the Authority) and, if it has not done so within 20 Business Days after any notice from Project Co or the Authority requiring it to do so, Project Co or the Authority may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of Operations Co;

(c) subject to Section 14.3(a), on the Expiration Date deliver to Project Co (or as Project Co may direct):

(1) all keys, access codes and/or other devices required to operate the NG-KIH System in the control of Operations Co; and

(2) any Project Intellectual Property required to be delivered by Operations Co pursuant to Section 14.2(e);

(d) subject to Section 14.3(a), as soon as practicable after the Expiration Date, vacate, and cause the Operations Co Persons to vacate, those parts of the NG-KIH System over which Operations Co has control and occupation and will leave such parts of the NG-KIH System in a safe, clean and orderly condition; and

(e) comply with all requirements of Appendix 4B [Handback Requirements].

14.4 Operations Co to Cooperate

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

(a) providing any information in Operations Co's control or possession which the Authority may reasonably require to conduct such solicitation except that information which is commercially sensitive to Operations Co or an Operations Co Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of Operations Co or an Operations Co Person give that competitor a competitive advantage over Operations Co or the Operations Co Person and thereby prejudice the business of Operations Co or the Operations Co Person); and

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

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

14.5 Operations Co Materials

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

(a) all Operations Co Materials delivered to Project Co or the Authority are true, accurate and complete copies of the originals of all such Operations Co Materials;

(b) with respect to Operations Co Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between Operations Co and any Persons:

(1) all are in good standing and in full force and effect with no amendments and Operations Co is entitled to all rights and benefits thereunder;

(2) Operations Co has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto

and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and

(3) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and

(c) other than Operations Co Materials there no other material agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments relating to the Project.

14.6 Continued Performance

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

15. DISPUTE RESOLUTION

15.1 Procedure

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

16. ASSIGNMENT/CHANGE IN CONTROL

16.1 Limitations on Assignment of Project by Operations Co

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

(a) as security, substantially in a form approved by the Authority, under the Project Agreement, prior to its grant for any loan made to Project Co under any Senior Financing Agreement;

(b) in connection with the exercise of rights of the Collateral Agent under the Senior Financing Agreements; or

(c) otherwise:

(1) prior to the day (the "**Transfer Restriction Date**") that is one year after the System Completion Date, with the written consent of Project Co, which may be given or withheld in Project Co's discretion; and

(2) after the Transfer Restriction Date, with the written consent of Project Co, which will not be unreasonably withheld or delayed,

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

(d) is not a Restricted Person; and

(e) assumes all the obligations of Operations Co under this Project Implementation Agreement.

16.2 Limitations on Change in Control

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

(a) in connection with the exercise of rights of the Collateral Agent under the Senior Financing Agreements, provided that such Change in Control does not result in a Restricted Person obtaining Control of Operations Co;

(b) arising from any bona fide open market transaction in any shares or other securities of Operations Co or any other Person effected on a recognized public stock exchange;

(c) if Control of Operations Co following the Change in Control is held by:

(1) one or more Affiliates of Operations Co immediately prior to the Change in Control;

(2) one or more funds or other investment vehicles managed by or under common management with one or more of the Investors (or Affiliates thereof) immediately prior to the Change in Control; or

(3) one or more Affiliates of, or funds or other investment vehicles managed by, Macquarie Corporate Holdings Pty Limited or any Affiliate thereof; or

(d) otherwise:

(1) prior to the Transfer Restriction Date, with the written consent of Project Co, which may be given or withheld in Project Co's discretion; or

(2) after the Transfer Restriction Date, with the written consent of Project Co, which will not be unreasonably withheld or delayed.

16.3 Not Used

16.4 Limitations on Assignment of Project by Project Co

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

16.5 Costs of Request for Consent

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

17. GENERAL

17.1 Confidentiality

(a) Subject to Section 17.1(b), each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 will not restrict:

(1) each party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Project Implementation Agreement;

(2) subject to obtaining confidentiality restrictions similar to those set out in this Project Implementation Agreement, Project Co from providing to the Senior Secured Creditors and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements;

(3) subject to obtaining confidentiality restrictions similar to those set out in this Project Implementation Agreement, Operations Co from providing to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Operations Co to perform (or to cause to be performed) its obligations under this Project Implementation Agreement but which Confidential Information is not used by the Project Contractor, its advisors or other third parties, as applicable, for any other purpose; and

(4) Project Co from disclosing or granting access to such information to the Authority, any department of the Commonwealth of Kentucky or any other Governmental Authority which requires the information in relation to the Project.

(b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain

the confidentiality of the Confidential Information does not apply to Confidential Information:

(1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;

(2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Project Implementation Agreement;

(3) to the extent any Person is required to disclose such Confidential Information by Law, including the Open Records Act;

(4) Not used; or

(5) that is known to the recipient of the Confidential Information prior to disclosure to the recipient by the other party or becomes known to the recipient thereafter by way of disclosure to the recipient by any other Person who, to the knowledge of the recipient, is not under any obligation of confidentiality with respect thereto.

(c) Without prejudice to any other rights and remedies that the other party may have, a party may be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a).

(d) Operations Co will be fully liable for any breach of confidentiality under this Section 17.1 by any Person to whom Operations Co has disclosed or granted access to Confidential Information under this Section 17.1 to the same extent as if Operations Co itself breached confidentiality under this Section 17.1.

17.2 Public Communications

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

17.3 Law of Agreement

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

17.4 Venue

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

17.5 Entire Agreement, Waivers and Consents in Writing

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

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

Accordingly, the body of this Project Implementation Agreement and Schedules 1 to 20 expressly supersede the contents of both the RFP and the proposal(s) (including any clarifications, modifications or amendments thereto) submitted in response to either the RFP or the Master Agreement, other than the components of the original proposal required pursuant to Section 6, Item 6.1 (Transmittal Letter), Section 6, Item 6.2 (Disclosure of Violation of Statutes), Section 6, Item 6.3 (Kentucky Tax Registration Application), Section 6, Item 6.4 (Registration with the Secretary of State by a Foreign Entity), Section 6, Item 6.5 (Required Affidavits), Section 6, Item 6.6 (Completed and signed face of solicitation), Section 6, Item 6.7 (Signed face of latest addendum of the solicitation), Section 6, Item 6.8 (EEO Forms), Section 6, Item 6.9 (Vendor Background and Project Resources), Section 6, Item 6.10 (Comparable Experiences), Section 6, Item 6.11 (Financial Viability – Finance Partner and Concessionaire) and Section 6, Item 6.18 (Network Security Plan) of the RFP.

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

17.6 Notices

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

If to Project Co:

KentuckyWired Infrastructure Company, LLC
[redacted]

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

With a copy to:

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

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

If to Operations Co:

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

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

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

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

(a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

(b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:

(1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or

(2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.7 Further Assurances

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

17.8 Counterparts

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

17.9 No Partnership

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

17.10 Survival

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

[signature page follows]

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

KENTUCKYWIRED INFRASTRUCTURE COMPANY, INC.

Per: _____
Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

KENTUCKYWIRED OPERATIONS COMPANY, LLC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the company.

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

KENTUCKYWIRED INFRASTRUCTURE COMPANY, INC.

Per: _____

Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

KENTUCKYWIRED OPERATIONS COMPANY, LLC

Per: _____

Name: ~~Name:~~ NICHOLAS HANN
Title: MANAGER

Per: _____

Name:
Title:

I/We have the authority to bind the company.

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

KENTUCKYWIRED INFRASTRUCTURE COMPANY, INC.

Per: _____

Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

KENTUCKYWIRED OPERATIONS COMPANY, LLC

Per: _____

Name: Elliot Jamison
Title: Manager

Per: _____

Name:
Title:

I/We have the authority to bind the company.

SCHEDULE 1
DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Project Implementation Agreement:

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

"**Affiliate**" in respect of:

(a) a Person (other than Operations Co) means any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person; and

(b) Operations Co means:

(1) any Investor or any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, Operations Co or an Investor; or

(2) any Person owned, in whole or in part, by (i) Operations Co, (ii) any Investor or (iii) any Affiliate of Operations Co under (b)(1) above, whether the ownership interest is direct or indirect and legal, beneficial or equitable, provided that ownership of less than 10% of the equity interest in a Person shall not give rise to Affiliate status;

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

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

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

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

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

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

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

(a) are saved or avoided as a result of the event or circumstance or its effects; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) controlling the decisions made by or on behalf of the relevant Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of the relevant Person, a general partner of the relevant Person or a manager of the relevant Person or otherwise;

(c) holding equity (either beneficially or otherwise) of the relevant Person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of the relevant Person with more than one half of the voting rights; or

(d) having the ability to direct or cause the direction of the management, actions or policies of the relevant Person;

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

(a) any final and non-appealable new Law; or

(b) any final modification (including repeal or appeal) of any Law existing on such date,

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

(c) any lawful requirements of any Governmental Authority in effect on the Effective Date; and

(d) any change in the interpretation of any Law, other than a judgment of a relevant court which changes binding precedent in the Commonwealth of Kentucky;

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

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

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

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

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

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

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

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

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

"**Common Carrier Regulations**" means any applicable Law governing Common Carriers;

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

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

(a) a breach by the Authority of any of its obligations under the Project Agreement, including a failure of the Authority to grant, or cause to be granted, and to maintain, or cause to be maintained, the License as set out in Section 2.1 of Schedule 7 [Lands] to the Project Agreement;

(b) a breach of any representation or warranty by the Authority set out in the Project Agreement;

(c) any misconduct of the Authority or an Authority Person, including unauthorized use of the NG-KIH System;

(d) a negligent act or omission of the Authority or an Authority Person;

(e) the discovery or exacerbation of any:

(1) Hazardous Substances located in, on, below or that have migrated to the Lands; or

(2) Hazardous Substances located in, on, below or that have migrated to any other location at which any aspect of the Project is performed, but only to the extent that Operations Co's Direct Losses related thereto exceed $200,000 in the aggregate over the Term,

in either case, other than Operations Co Hazardous Substances;

(f) if:

(1) the terms and conditions of any Permit, or the refusal to issue a Permit, require (i) the Construction to be performed in a manner that materially differs from the conceptual design prepared by Operations Co as of the Effective Date or (ii) the creation of a new route in connection with the Project that differs from the conceptual design prepared by Operations Co as of the Effective Date and Operations Co's Direct Losses related thereto exceed $25,000 in the aggregate over the Term;

(2) during the Construction Period, any Permit that falls into one of the Permit Classes set out in Appendix 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 commending 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 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.

SCHEDULE 7
LANDS

1. DEFINITIONS

In this Schedule 7, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

"**Charge**" means any charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature whatsoever, including any claims of a Governmental Authority;

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

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

"**Site Locations**" means each of the site locations more particularly described in Appendix 7A [Site Locations]; and

"**Sub-License**" has the meaning set out in Section 2.1(a) of this Schedule 7.

2. PROJECT CO'S AND AUTHORITY'S OBLIGATIONS AND REPRESENTATIONS

2.1 Grant of Sub-License Over Lands

(a) From the Effective Date until the later of:

(1) the Termination Date; and

(2) the date Project Co no longer requires Operations Co to provide the transitional services described in Section 14.3(a) of this Project Implementation Agreement,

Project Co shall grant or shall cause to be granted to Operations Co a non-exclusive sub-license of use and access to, on, under and over the Lands and the NG-KIH System to the extent required by Operations Co to carry out the Project in accordance with this Project Implementation Agreement (the "**Sub-License**").

(b) Operations Co acknowledges the provisions of Section 2.1(b) of Schedule 7 [Lands] to the Project Agreement pursuant to which the Authority will be responsible for ensuring that it has or will have such rights and interests in and to the Lands sufficient to permit the grant of the License (as defined in the Project Agreement) free and clear of all encumbrances, restrictions or limitations, except for any encumbrances, restrictions or limitations which do not adversely affect, financially or otherwise, the License (as defined in the Project Agreement) and the ability of Operations Co to perform any of its obligations under this Project Implementation Agreement, including the ability to conduct the Design or Construction or perform the Services or System Refresh as contemplated by this Project Implementation Agreement. Subject to the Pass-Down Provisions, Operations Co will be entitled to claim a Compensation Event to the extent that

the Authority fails to provide access to the Lands in accordance with the License (as defined in the Project Agreement), whether as a result of the Authority failing to obtain and maintain rights and interests in and to the Lands sufficient to permit the grant of the License as contemplated in Section 2.1(a) of the Project Agreement or otherwise.

(c) With respect to all Site Locations, Operations Co acknowledges and agrees that, pursuant to the Project Agreement, the Authority will, during both the Construction Period and the Operating Period, be responsible for:

(1) obtaining, maintaining and, as applicable, renewing any permits, consents, approvals or other authorizations required from any Governmental Authority related to zoning;

(2) providing all primary power and backup power and, if applicable, water;

(3) providing all building maintenance, janitorial services and HVAC break/fix and maintenance;

(4) performing all landscaping, weed abatement and snow removal; and

(5) providing locks, gates, security and fencing of the Site Location,

in any case, as are required by Operations Co to carry out the Project in accordance with this Project Implementation Agreement.

(d) In consideration for the Sub-License granted in Section 2.1(a), Operations Co will carry out the Design and Construction, subject to and in accordance with this Project Implementation Agreement.

(e) Operations Co may, for the same purposes described in Section 2.1(a), grant a sub-license to any Operations Co Person, provided that any such sub-license will be subject to, and terminate upon, termination of the Sub-License.

2.2 Terms Affecting Sub-License Grant

Without limiting the other provisions of this Schedule 7, the following terms and conditions apply to the Sub-License:

(a) no legal demise or other interest in land, and no interest in the NG-KIH System or any other improvements, is granted to Operations Co or created by this Project Implementation Agreement;

(b) the Sub-License is non-exclusive and no right to exclusive possession of the Lands or the NG-KIH System is granted to Operations Co;

(c) subject to Section 7.10 of Schedule 2 [Design and Construction Protocols] to the Project Agreement, Operations Co acknowledges that the Authority will be entitled at any time and from time to time to grant to Authority Persons and any other persons, including contractors and the general public, access to the Lands and the NG-KIH System; and

(d) Project Co will enforce its rights under the Project Agreement to ensure that Operations Co has access to the Lands as required in accordance with the Site Access Plan.

3. OPERATIONS CO'S OBLIGATIONS AND ACKNOWLEDGMENTS

3.1 As Is Where Is

Subject to the provisions of Section 4.1 of this Schedule 7 and Section 8 (Supervening Events) of this Project Implementation Agreement, Operations Co accepts the Lands and the Sub-License on an "as is, where is" basis.

3.2 Operations Co Not to Encumber

Operations Co will not, without the consent of the Authority:

(a) grant or permit any Charge affecting or against the Lands or the NG-KIH System; or

(b) do or omit to do, or cause, suffer or permit to be done or omitted to be done by any Operations Co Person, anything that would result in any Charge against or affecting the Lands, the NG-KIH System or any asset, matter or thing that may be required to be delivered or transferred to Project Co or the Authority on the Termination Date pursuant to Section 14.2 of this Project Implementation Agreement,

and will, at its own expense, promptly discharge and remove, or cause to be discharged and removed, any such Charge.

3.3 No Restriction on Authority Use or Development

Operations Co acknowledges that the Authority may from time to time without restriction use, develop or re-develop, or permit the use, development or re-development of, the Lands or any portion thereof (including by way of subdivision) for any purpose and by any Person. To the extent such use, development or re-development adversely interferes with the Sub-License or adversely interferes with Operations Co's ability to carry out the Design, Construction, Services and System Refresh, Project Co will enforce its rights under the Project Agreement to ensure that the Authority initiates a Change under the Project Agreement to address such interference.

3.4 Title to NG-KIH System, Lands and Improvements

Neither Operations Co nor any Operations Co Person will acquire any property interest in or title to the NG-KIH System, the Lands or any other improvements to the Lands. Operations Co acknowledges that, as between Project Co, any Project Co Person (as defined in the Project Agreement) and the Authority, title to and ownership of the NG-KIH System, the Lands and all other improvements to the Lands will at all times be vested in the Authority.

3.5 Ad Valorem Taxes, Franchise Fees and Telecommunications Taxes

In the Project Agreement, the Authority acknowledges that none of the Authority, Project Co or any Project Co Person (as defined in the Project Agreement) is subject to ad valorem taxes,

franchise fees or telecommunications taxes, or payments in lieu of ad valorem taxes, franchise fees or telecommunications taxes, in respect of the Lands or the NG-KIH System. Project Co will enforce its rights under the Project Agreement to ensure that the Authority shall, at its own cost, provide or cause to be provided such information, documentation and administrative assistance as Operations Co may request and as the Authority may reasonably be able to provide if any ad valorem taxes, franchise fees or telecommunications taxes, or payments in lieu of ad valorem taxes, franchise fees or telecommunications taxes, are levied against Operations Co or any Operations Co Person by any Governmental Authority in connection with the Lands or the NG-KIH System.

4. HAZARDOUS SUBSTANCES

4.1 Responsibility

Notwithstanding any other provision of this Project Implementation Agreement, Operations Co will not be responsible for any Hazardous Substances on, in, under or adjacent to the Lands or any cost, expense or claim arising therefrom, other than any Operations Co Hazardous Substances.

4.2 Process upon Discovery of Hazardous Substances

Upon the discovery of any Hazardous Substances, Operations Co shall immediately inform Project Co and the Authority and shall comply, and ensure compliance by all Operations Co Persons, with applicable Law:

(a) subject to Section 4.2(b) and the Pass-Down Provisions, at the Authority's cost in respect of the discovery or exacerbation of:

(1) Hazardous Substances located in, on, below or that have migrated to the Lands; and

(2) Hazardous Substances located in, on, below or that have migrated to any other location at which any aspect of the Project is performed, but only to the extent that Operations Co's Direct Losses related thereto exceed $200,000 in the aggregate over the Term; and

(b) at its own cost in respect of any Operations Co Hazardous Substances.

Except to the extent required to prevent or mitigate an Emergency or to comply with applicable Law, Operations Co shall not undertake any significant work in respect of any Hazardous Substances for which the Authority is responsible pursuant to Section 4.2(a) until the Authority has been given a reasonable opportunity to review the nature and extent of the matter and has instructed Operations Co to proceed with such work.

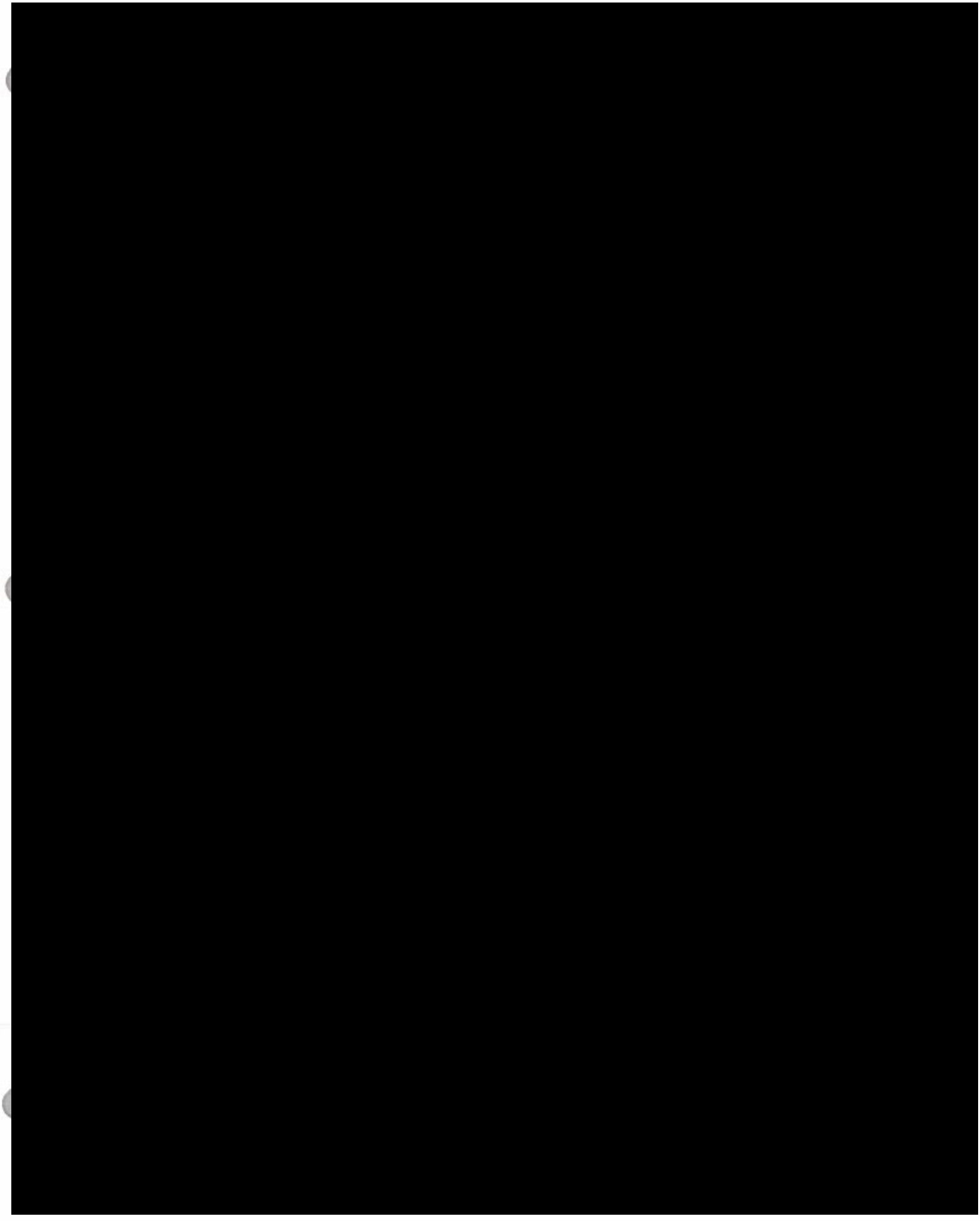
In the event that the Authority wishes Operations Co to perform any additional actions in respect of any Hazardous Substances for which the Authority is responsible pursuant to Section 4.2(a), the Authority shall issue an instruction to Project Co and Operations Co specifying such actions and Operations Co shall, acting as agent for the Authority, promptly and diligently comply with such instruction at the Authority's cost subject to the Pass-Down Provisions.

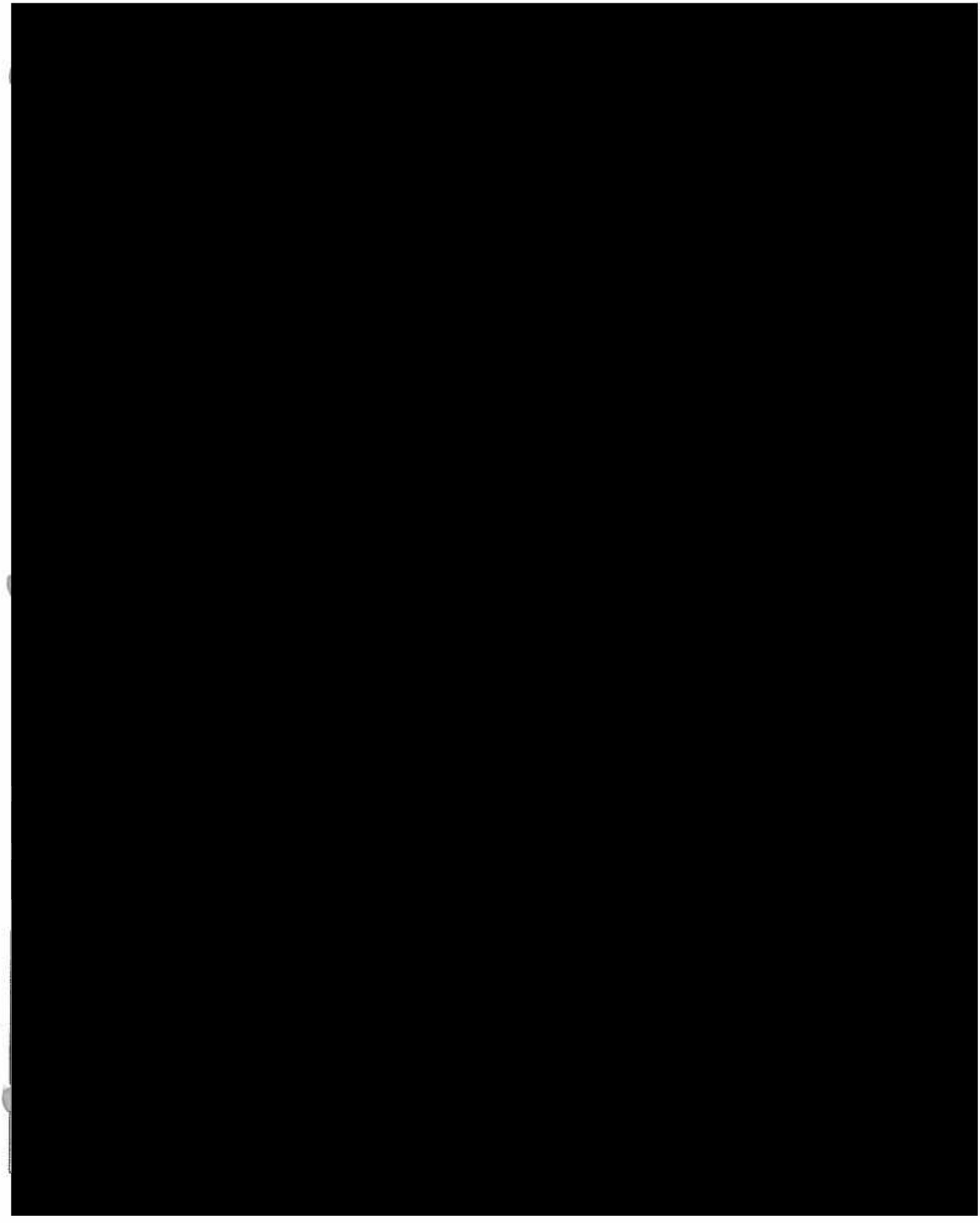
4.3 Restrictions on Use

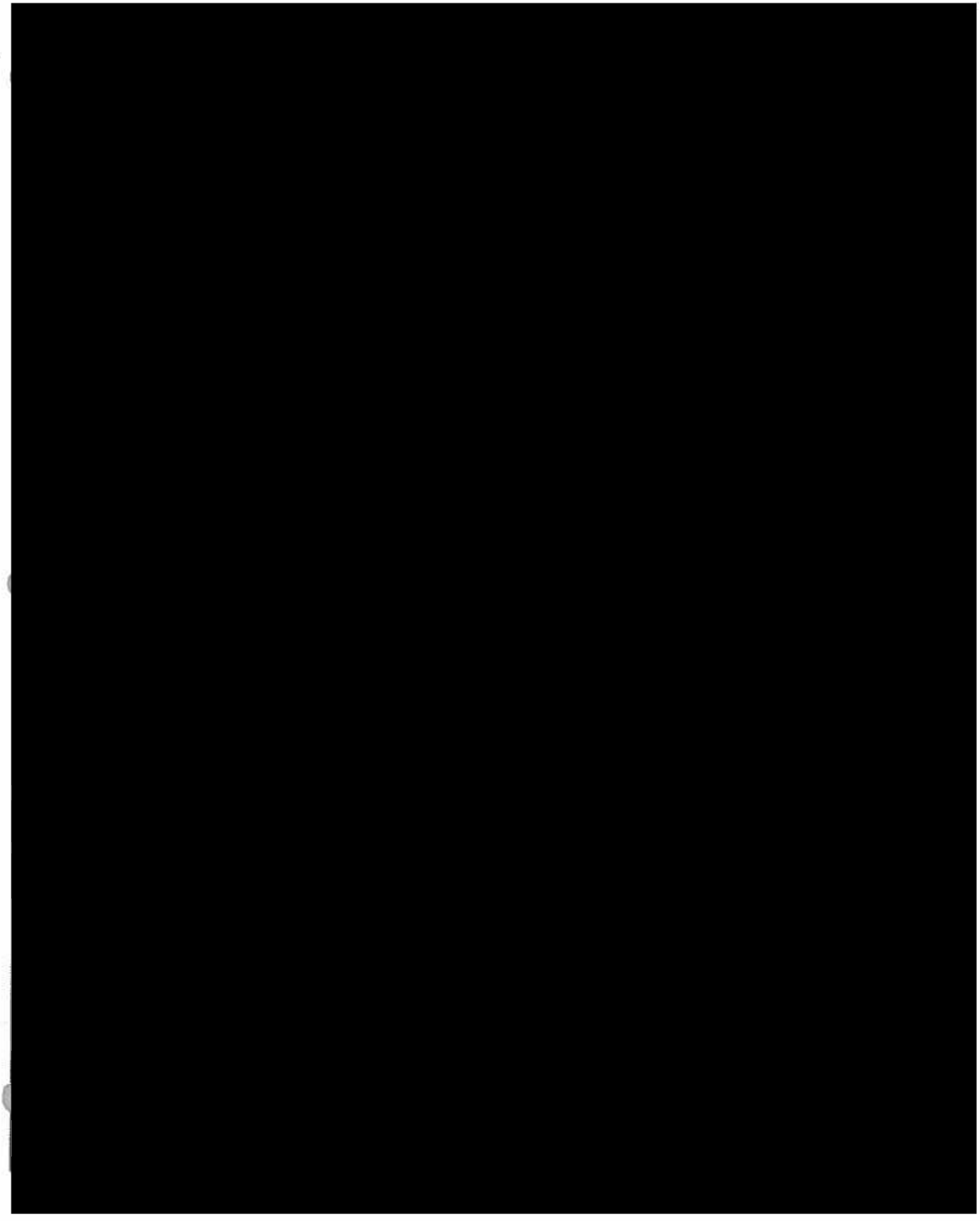
Unless otherwise expressly required or permitted under this Project Implementation Agreement, Operations Co will not install, use or store on the Lands or adjacent property any materials, equipment or apparatus, the installation, use or storage of which is likely to cause or in fact causes the generation, accumulation or migration of any Hazardous Substance in contravention of any applicable Law. Without limiting the generality of the foregoing, Operations Co will not use the Lands to dispose of, handle or treat any Hazardous Substances, in a manner that would cause the Lands, or any adjacent property, to become a contaminated site under applicable Law.

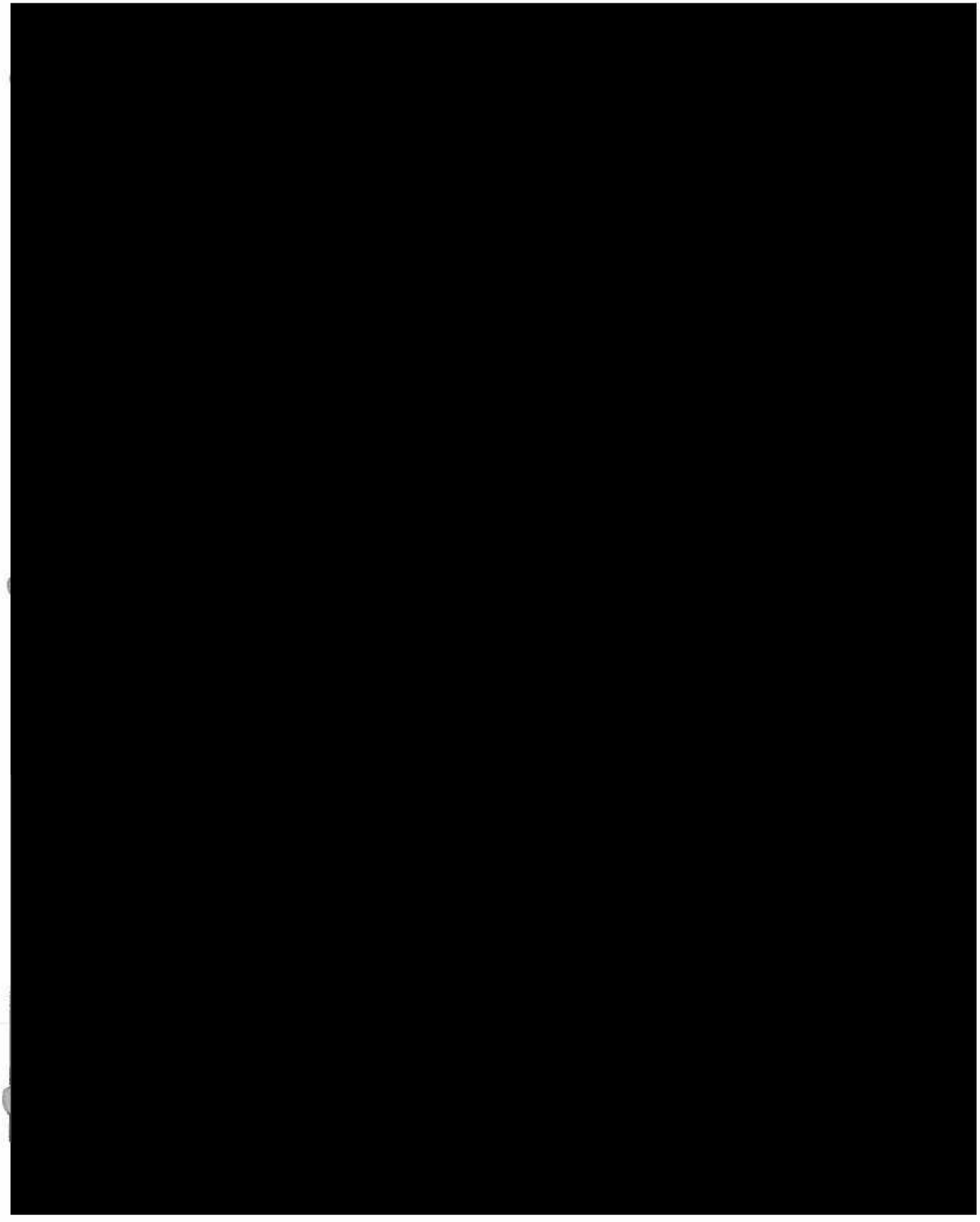
APPENDIX 7A
SITE LOCATIONS

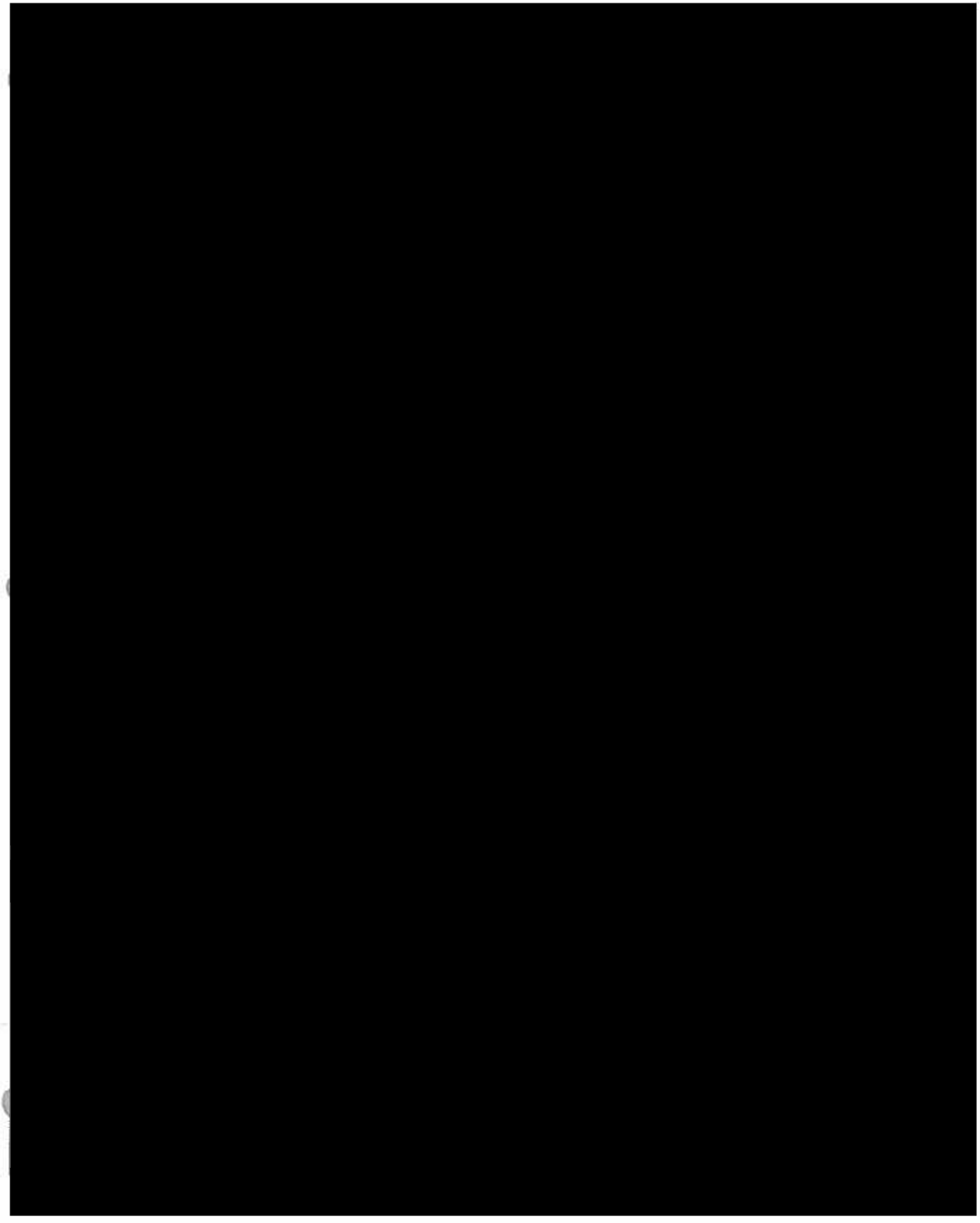
See attached.

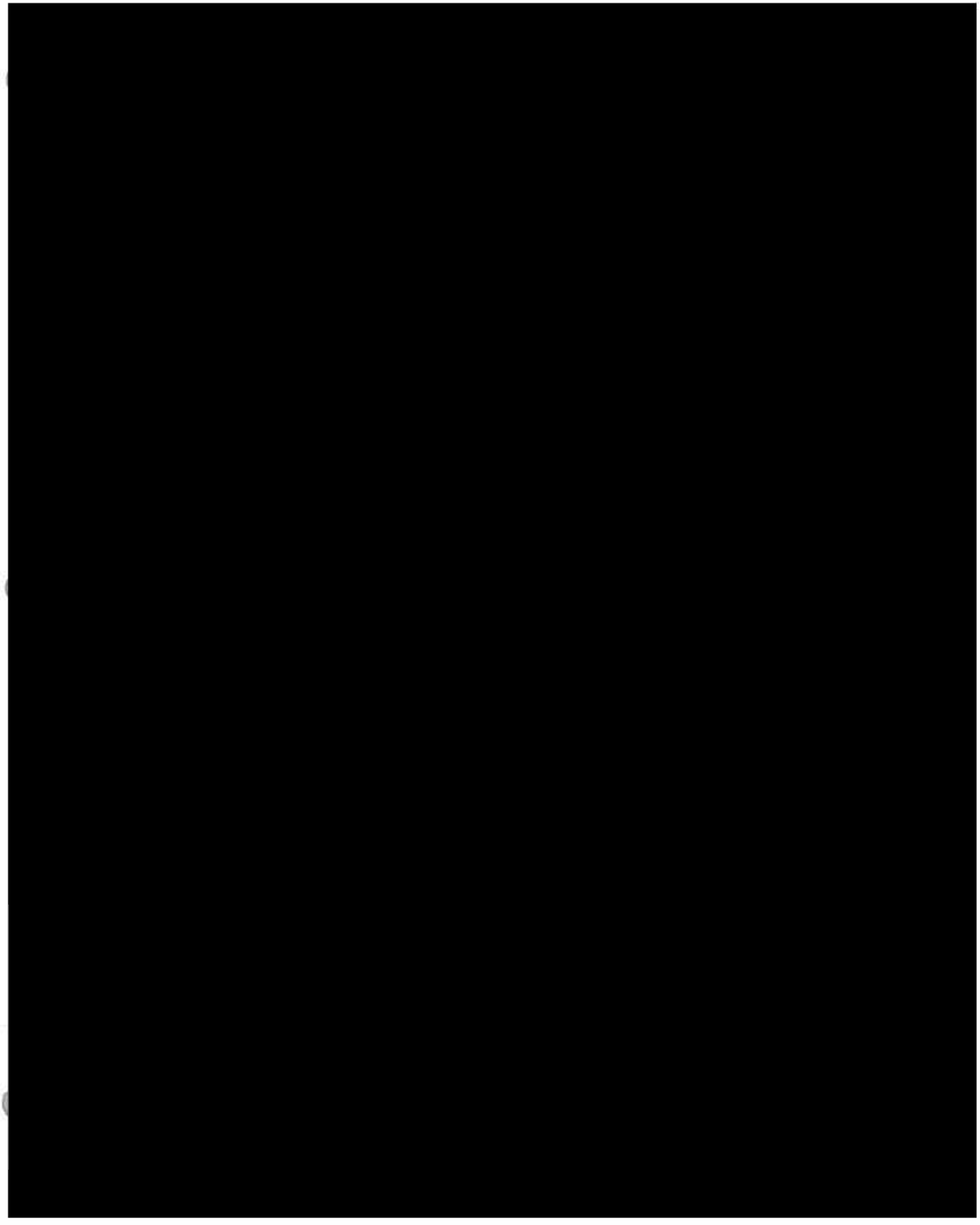


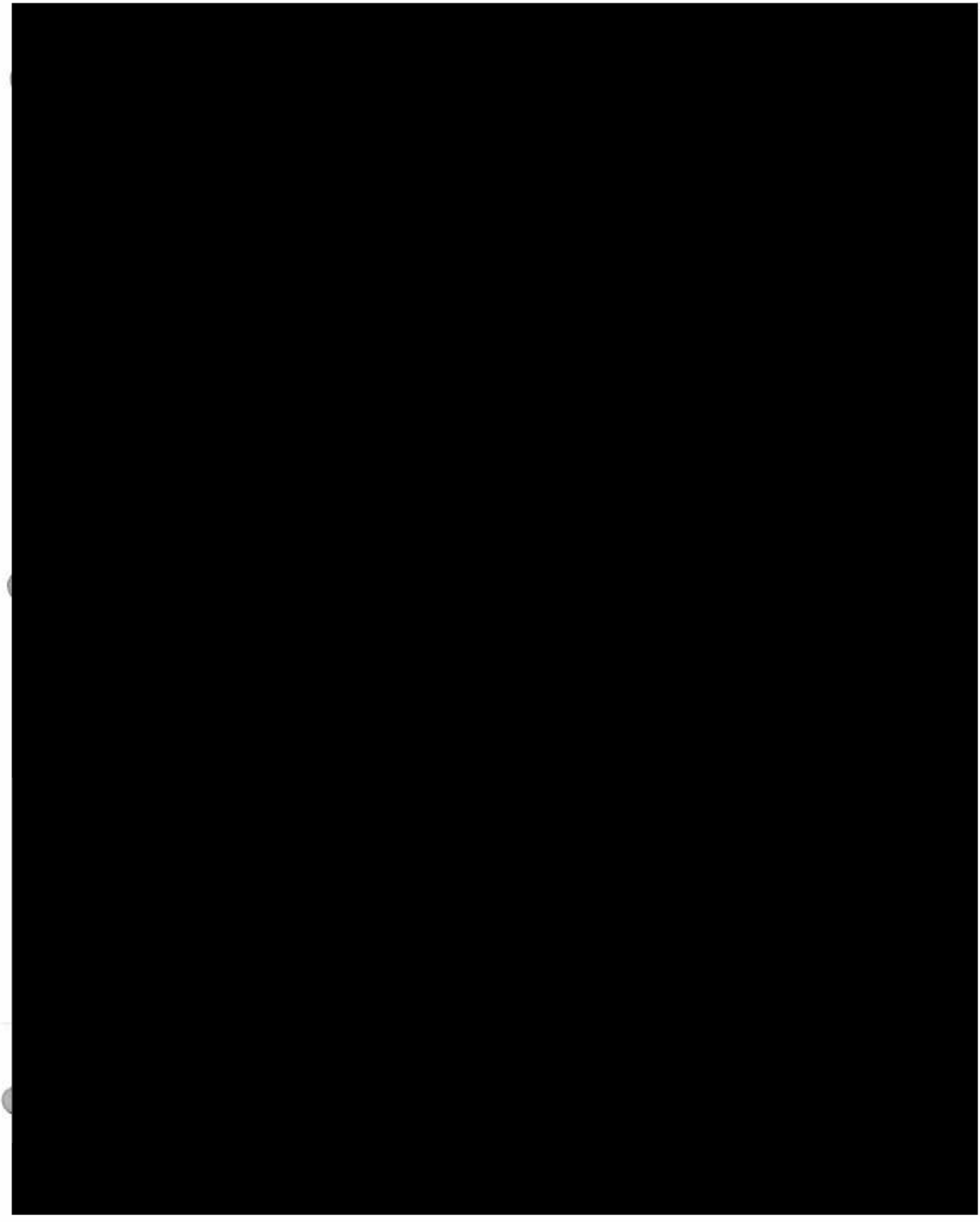


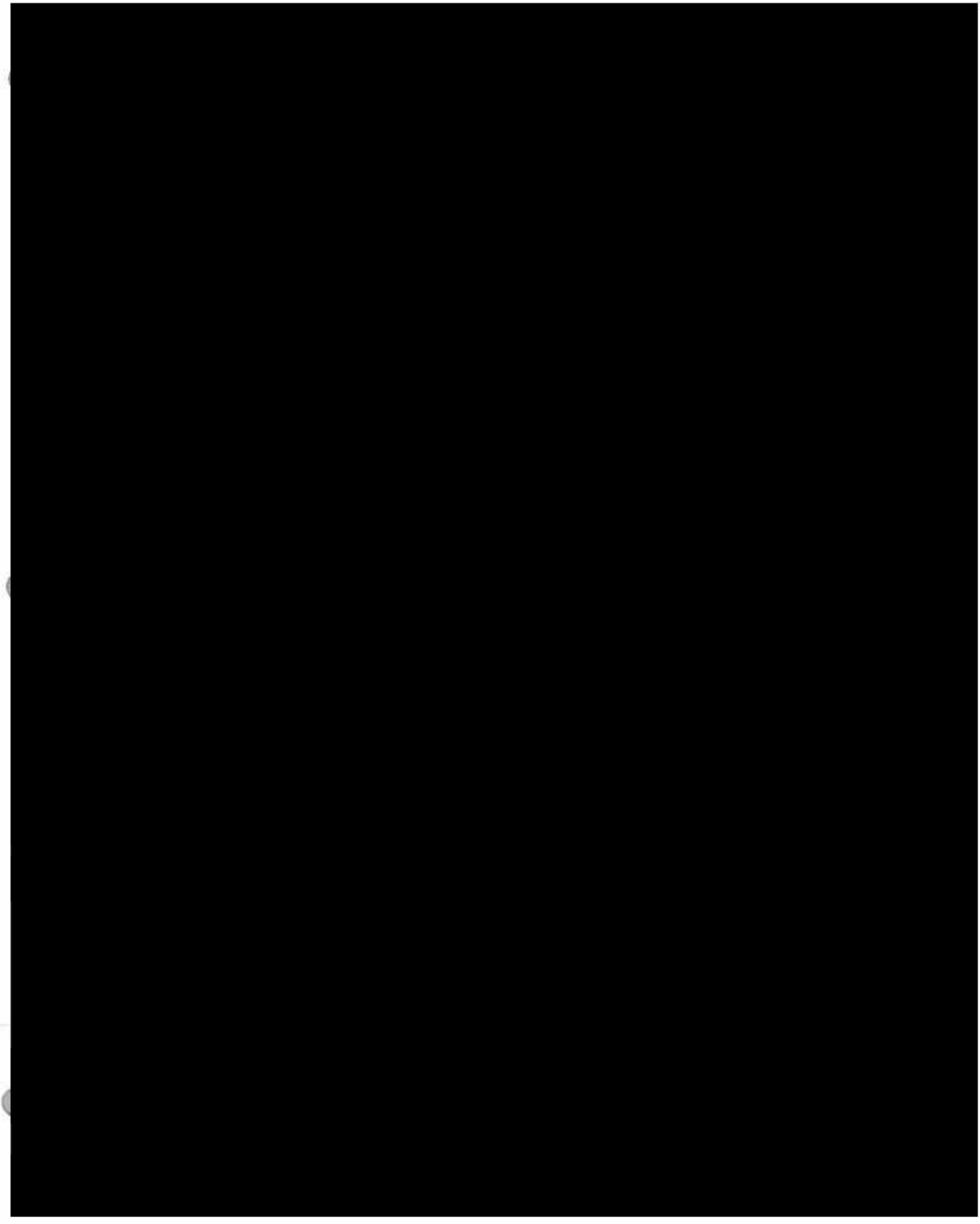


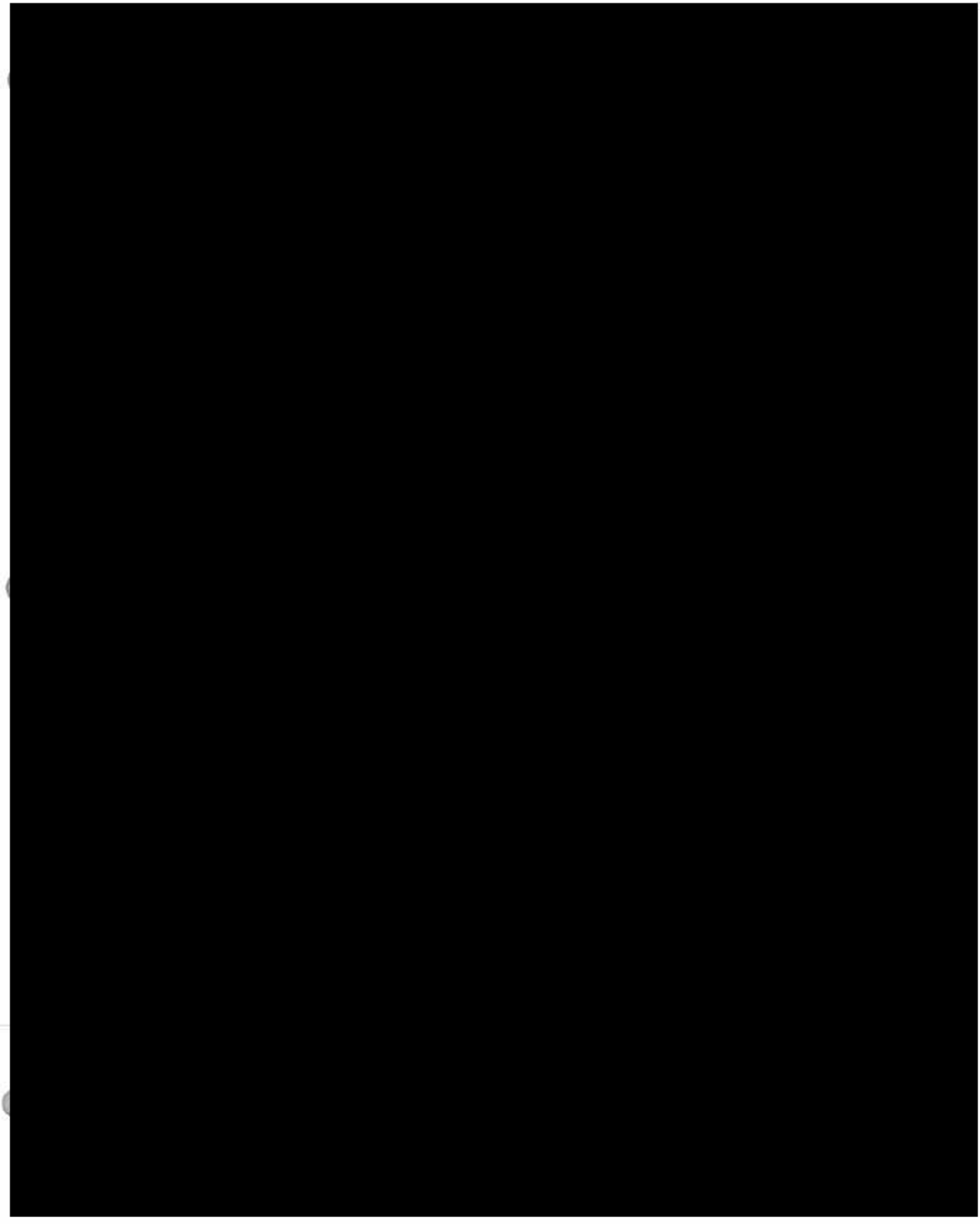












SCHEDULE 8
PAYMENTS

PART A

All internal operating costs of Project Co and Operations Co shown in Part A will be escalated annually at the end of each Fiscal Year after the Base Date by the change percentage in the Materials Inflation Index, starting from the Base Date.

The Materials Inflation Index change percentage for each Fiscal Year will be calculated from the average of the monthly published values, rounded to three decimal places, for the twelve months ending March prior to the start of the relevant Fiscal Year, divided by the average of the monthly published values, rounded to three decimal places, for the twelve months ending in March of the preceding Fiscal Year, and expressed as an annual percentage change, rounded to one decimal place.

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
Financial Close*	14,287,613.52	4,994,706.04
9/30/2015	14,583.33	0.00
10/31/2015	14,583.33	261,603.18
11/30/2015	14,583.33	261,603.18
12/31/2015	14,583.33	261,603.18
1/31/2016	14,583.33	261,603.07
2/29/2016	14,583.33	261,603.07
3/31/2016	14,583.33	168,269.74
4/30/2016	14,583.33	168,269.60
5/31/2016	14,583.33	168,269.60
6/30/2016	14,583.33	168,269.60
7/31/2016	14,947.92	172,476.17
8/31/2016	14,947.92	172,476.17
9/30/2016	14,947.92	153,172.01
10/31/2016	14,947.92	153,171.87
11/30/2016	14,947.92	153,171.87

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
12/31/2016	14,947.92	153,171.87
1/31/2017	14,947.92	153,171.79
2/28/2017	14,947.92	153,171.79
3/31/2017	14,947.92	153,171.79
4/30/2017	14,947.92	153,171.73
5/31/2017	14,947.92	153,171.73
6/30/2017	14,947.92	153,171.73
7/31/2017	14,947.92	153,171.64
8/31/2017	14,947.92	153,171.64
9/30/2017	14,947.92	140,359.14
10/31/2017	14,947.92	140,359.03
11/30/2017	14,947.92	140,359.03
12/31/2017	14,947.92	140,359.03
1/31/2018	14,947.92	140,358.95
2/28/2018	14,947.92	140,358.95
3/31/2018	14,947.92	140,358.95
4/30/2018	14,947.92	140,358.87
5/31/2018	14,947.92	140,358.87
6/30/2018	14,947.92	139,797.41
7/31/2018	14,947.92	139,797.33
8/31/2018	14,947.92	148,651.48
9/30/2018	9,395.83	101,729.03
10/31/2018	9,395.83	101,729.03
11/30/2018	9,395.83	101,729.03
12/31/2018	9,395.83	101,729.03

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
1/31/2019	9,395.83	101,729.03
2/28/2019	9,395.83	101,729.03
3/31/2019	9,395.83	101,729.03
4/30/2019	9,395.83	101,729.03
5/31/2019	9,395.83	101,729.03
6/30/2019	9,395.83	101,729.03
7/31/2019	9,395.83	101,478.34
8/31/2019	9,395.83	101,729.03
9/30/2019	9,395.83	101,729.03
10/31/2019	9,395.83	101,729.03
11/30/2019	9,395.83	101,729.03
12/31/2019	9,395.83	101,729.03
1/31/2020	9,395.83	101,729.03
2/29/2020	9,395.83	101,729.03
3/31/2020	9,395.83	101,729.03
4/30/2020	9,395.83	101,729.03
5/31/2020	9,395.83	101,729.03
6/30/2020	9,395.83	101,729.03
7/31/2020	9,395.83	101,478.34
8/31/2020	9,395.83	123,909.18
9/30/2020	9,395.83	132,950.53
10/31/2020	9,395.83	132,950.53
11/30/2020	9,395.83	132,950.53
12/31/2020	9,395.83	132,950.53
1/31/2021	9,395.83	132,950.53

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
2/28/2021	9,395.83	132,950.53
3/31/2021	9,395.83	132,950.53
4/30/2021	9,395.83	132,950.53
5/31/2021	9,395.83	132,950.53
6/30/2021	9,395.83	132,950.53
7/31/2021	9,395.83	132,158.86
8/31/2021	9,395.83	132,950.53
9/30/2021	9,395.83	132,950.53
10/31/2021	9,395.83	132,950.53
11/30/2021	9,395.83	132,950.53
12/31/2021	9,395.83	132,950.53
1/31/2022	9,395.83	132,950.53
2/28/2022	9,395.83	132,950.53
3/31/2022	9,395.83	132,950.53
4/30/2022	9,395.83	132,950.53
5/31/2022	9,395.83	132,950.53
6/30/2022	9,395.83	132,950.53
7/31/2022	9,395.83	132,158.86
8/31/2022	9,395.83	132,950.53
9/30/2022	9,395.83	132,950.53
10/31/2022	9,395.83	132,950.53
11/30/2022	9,395.83	132,950.53
12/31/2022	9,395.83	132,950.53
1/31/2023	9,395.83	132,950.53
2/28/2023	9,395.83	132,950.53

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
3/31/2023	9,395.83	132,950.53
4/30/2023	9,395.83	132,950.53
5/31/2023	9,395.83	132,950.53
6/30/2023	9,395.83	132,950.53
7/31/2023	9,395.83	132,158.86
8/31/2023	9,395.83	132,950.53
9/30/2023	9,395.83	132,950.53
10/31/2023	9,395.83	132,950.53
11/30/2023	9,395.83	132,950.53
12/31/2023	9,395.83	132,950.53
1/31/2024	9,395.83	132,950.53
2/29/2024	9,395.83	132,950.53
3/31/2024	9,395.83	132,950.53
4/30/2024	9,395.83	132,950.53
5/31/2024	9,395.83	132,950.53
6/30/2024	9,395.83	132,950.53
7/31/2024	9,395.83	132,158.86
8/31/2024	9,395.83	132,950.53
9/30/2024	9,395.83	132,950.53
10/31/2024	9,395.83	132,950.53
11/30/2024	9,395.83	132,950.53
12/31/2024	9,395.83	132,950.53
1/31/2025	9,395.83	132,950.53
2/28/2025	9,395.83	132,950.53
3/31/2025	9,395.83	132,950.53

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
4/30/2025	9,395.83	132,950.53
5/31/2025	9,395.83	132,950.53
6/30/2025	9,395.83	132,950.53
7/31/2025	9,395.83	132,158.86
8/31/2025	9,395.83	132,950.53
9/30/2025	9,395.83	126,564.86
10/31/2025	9,395.83	126,564.86
11/30/2025	9,395.83	126,564.86
12/31/2025	9,395.83	126,564.86
1/31/2026	9,395.83	126,564.86
2/28/2026	9,395.83	126,564.86
3/31/2026	9,395.83	126,564.86
4/30/2026	9,395.83	126,564.86
5/31/2026	9,395.83	126,564.86
6/30/2026	9,395.83	126,564.86
7/31/2026	9,395.83	125,773.20
8/31/2026	9,395.83	126,564.86
9/30/2026	9,395.83	126,564.86
10/31/2026	9,395.83	126,564.86
11/30/2026	9,395.83	126,564.86
12/31/2026	9,395.83	126,564.86
1/31/2027	9,395.83	126,564.86
2/28/2027	9,395.83	126,564.86
3/31/2027	9,395.83	126,564.86
4/30/2027	9,395.83	126,564.86

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
5/31/2027	9,395.83	126,564.86
6/30/2027	9,395.83	126,564.86
7/31/2027	9,395.83	125,773.20
8/31/2027	9,395.83	126,564.86
9/30/2027	9,395.83	126,564.86
10/31/2027	9,395.83	126,564.86
11/30/2027	9,395.83	126,564.86
12/31/2027	9,395.83	126,564.86
1/31/2028	9,395.83	126,564.86
2/29/2028	9,395.83	126,564.86
3/31/2028	9,395.83	126,564.86
4/30/2028	9,395.83	126,564.86
5/31/2028	9,395.83	126,564.86
6/30/2028	9,395.83	126,564.86
7/31/2028	9,395.83	125,773.20
8/31/2028	9,395.83	126,564.86
9/30/2028	9,395.83	126,564.86
10/31/2028	9,395.83	126,564.86
11/30/2028	9,395.83	126,564.86
12/31/2028	9,395.83	126,564.86
1/31/2029	9,395.83	126,564.86
2/28/2029	9,395.83	126,564.86
3/31/2029	9,395.83	126,564.86
4/30/2029	9,395.83	126,564.86
5/31/2029	9,395.83	126,564.86

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
6/30/2029	9,395.83	126,564.86
7/31/2029	9,395.83	125,773.20
8/31/2029	9,395.83	126,564.86
9/30/2029	9,395.83	126,564.86
10/31/2029	9,395.83	126,564.86
11/30/2029	9,395.83	126,564.86
12/31/2029	9,395.83	126,564.86
1/31/2030	9,395.83	126,564.86
2/28/2030	9,395.83	126,564.86
3/31/2030	9,395.83	126,564.86
4/30/2030	9,395.83	126,564.86
5/31/2030	9,395.83	126,564.86
6/30/2030	9,395.83	126,564.86
7/31/2030	9,395.83	125,773.20
8/31/2030	9,395.83	126,564.86
9/30/2030	9,395.83	120,179.20
10/31/2030	9,395.83	120,179.20
11/30/2030	9,395.83	120,179.20
12/31/2030	9,395.83	120,179.20
1/31/2031	9,395.83	120,179.20
2/28/2031	9,395.83	120,179.20
3/31/2031	9,395.83	120,179.20
4/30/2031	9,395.83	120,179.20
5/31/2031	9,395.83	120,179.20
6/30/2031	9,395.83	120,179.20

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
7/31/2031	9,395.83	119,387.53
8/31/2031	9,395.83	120,179.20
9/30/2031	9,395.83	120,179.20
10/31/2031	9,395.83	120,179.20
11/30/2031	9,395.83	120,179.20
12/31/2031	9,395.83	120,179.20
1/31/2032	9,395.83	120,179.20
2/29/2032	9,395.83	120,179.20
3/31/2032	9,395.83	120,179.20
4/30/2032	9,395.83	120,179.20
5/31/2032	9,395.83	120,179.20
6/30/2032	9,395.83	120,179.20
7/31/2032	9,395.83	119,387.53
8/31/2032	9,395.83	120,179.20
9/30/2032	9,395.83	120,179.20
10/31/2032	9,395.83	120,179.20
11/30/2032	9,395.83	120,179.20
12/31/2032	9,395.83	120,179.20
1/31/2033	9,395.83	120,179.20
2/28/2033	9,395.83	120,179.20
3/31/2033	9,395.83	120,179.20
4/30/2033	9,395.83	120,179.20
5/31/2033	9,395.83	120,179.20
6/30/2033	9,395.83	120,179.20
7/31/2033	9,395.83	119,387.53

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
8/31/2033	9,395.83	120,179.20
9/30/2033	9,395.83	120,179.20
10/31/2033	9,395.83	120,179.20
11/30/2033	9,395.83	120,179.20
12/31/2033	9,395.83	120,179.20
1/31/2034	9,395.83	120,179.20
2/28/2034	9,395.83	120,179.20
3/31/2034	9,395.83	120,179.20
4/30/2034	9,395.83	120,179.20
5/31/2034	9,395.83	120,179.20
6/30/2034	9,395.83	120,179.20
7/31/2034	9,395.83	119,387.53
8/31/2034	9,395.83	120,179.20
9/30/2034	9,395.83	120,179.20
10/31/2034	9,395.83	120,179.20
11/30/2034	9,395.83	120,179.20
12/31/2034	9,395.83	120,179.20
1/31/2035	9,395.83	120,179.20
2/28/2035	9,395.83	120,179.20
3/31/2035	9,395.83	120,179.20
4/30/2035	9,395.83	120,179.20
5/31/2035	9,395.83	120,179.20
6/30/2035	9,395.83	120,179.20
7/31/2035	9,395.83	119,387.53
8/31/2035	9,395.83	120,179.20

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
9/30/2035	9,395.83	120,179.20
10/31/2035	9,395.83	120,179.20
11/30/2035	9,395.83	120,179.20
12/31/2035	9,395.83	120,179.20
1/31/2036	9,395.83	120,179.20
2/29/2036	9,395.83	120,179.20
3/31/2036	9,395.83	120,179.20
4/30/2036	9,395.83	120,179.20
5/31/2036	9,395.83	120,179.20
6/30/2036	9,395.83	120,179.20
7/31/2036	9,395.83	119,387.53
8/31/2036	9,395.83	120,179.20
9/30/2036	9,395.83	120,179.20
10/31/2036	9,395.83	120,179.20
11/30/2036	9,395.83	120,179.20
12/31/2036	9,395.83	120,179.20
1/31/2037	9,395.83	120,179.20
2/28/2037	9,395.83	120,179.20
3/31/2037	9,395.83	120,179.20
4/30/2037	9,395.83	120,179.20
5/31/2037	9,395.83	120,179.20
6/30/2037	9,395.83	120,179.20
7/31/2037	9,395.83	119,387.53
8/31/2037	9,395.83	120,179.20
9/30/2037	9,395.83	120,179.20

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
10/31/2037	9,395.83	120,179.20
11/30/2037	9,395.83	120,179.20
12/31/2037	9,395.83	120,179.20
1/31/2038	9,395.83	120,179.20
2/28/2038	9,395.83	120,179.20
3/31/2038	9,395.83	120,179.20
4/30/2038	9,395.83	120,179.20
5/31/2038	9,395.83	120,179.20
6/30/2038	9,395.83	120,179.20
7/31/2038	9,395.83	119,387.53
8/31/2038	9,395.83	120,179.20
9/30/2038	9,395.83	120,179.20
10/31/2038	9,395.83	120,179.20
11/30/2038	9,395.83	120,179.20
12/31/2038	9,395.83	120,179.20
1/31/2039	9,395.83	120,179.20
2/28/2039	9,395.83	120,179.20
3/31/2039	9,395.83	120,179.20
4/30/2039	9,395.83	120,179.20
5/31/2039	9,395.83	120,179.20
6/30/2039	9,395.83	120,179.20
7/31/2039	9,395.83	119,387.53
8/31/2039	9,395.83	120,179.20
9/30/2039	9,395.83	120,179.20
10/31/2039	9,395.83	120,179.20

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
11/30/2039	9,395.83	120,179.20
12/31/2039	9,395.83	120,179.20
1/31/2040	9,395.83	120,179.20
2/29/2040	9,395.83	120,179.20
3/31/2040	9,395.83	120,179.20
4/30/2040	9,395.83	120,179.20
5/31/2040	9,395.83	120,179.20
6/30/2040	9,395.83	120,179.20
7/31/2040	9,395.83	119,387.53
8/31/2040	9,395.83	120,179.20
9/30/2040	9,395.83	120,179.20
10/31/2040	9,395.83	120,179.20
11/30/2040	9,395.83	120,179.20
12/31/2040	9,395.83	120,179.20
1/31/2041	9,395.83	120,179.20
2/28/2041	9,395.83	120,179.20
3/31/2041	9,395.83	120,179.20
4/30/2041	9,395.83	120,179.20
5/31/2041	9,395.83	120,179.20
6/30/2041	9,395.83	120,179.20
7/31/2041	9,395.83	119,387.53
8/31/2041	9,395.83	120,179.20
9/30/2041	9,395.83	120,179.20
10/31/2041	9,395.83	120,179.20
11/30/2041	9,395.83	120,179.20

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
12/31/2041	9,395.83	120,179.20
1/31/2042	9,395.83	120,179.20
2/28/2042	9,395.83	120,179.20
3/31/2042	9,395.83	120,179.20
4/30/2042	9,395.83	120,179.20
5/31/2042	9,395.83	120,179.20
6/30/2042	9,395.83	120,179.20
7/31/2042	9,395.83	119,387.53
8/31/2042	9,395.83	120,179.20
9/30/2042	9,395.83	120,179.20
10/31/2042	9,395.83	120,179.20
11/30/2042	9,395.83	120,179.20
12/31/2042	9,395.83	120,179.20
1/31/2043	9,395.83	120,179.20
2/28/2043	9,395.83	120,179.20
3/31/2043	9,395.83	120,179.20
4/30/2043	9,395.83	120,179.20
5/31/2043	9,395.83	120,179.20
6/30/2043	9,395.83	120,179.20
7/31/2043	9,395.83	119,387.53
8/31/2043	9,395.83	120,179.20
9/30/2043	9,395.83	120,179.20
10/31/2043	9,395.83	120,179.20
11/30/2043	9,395.83	120,179.20
12/31/2043	9,395.83	120,179.20

Month	Budgeted Project Company Internal Costs ($)	Budgeted Operations Company Internal Costs ($)
1/31/2044	9,395.83	120,179.20
2/29/2044	9,395.83	120,179.20
3/31/2044	9,395.83	120,179.20
4/30/2044	9,395.83	120,179.20
5/31/2044	9,395.83	120,179.20
6/30/2044	9,395.83	120,179.20
7/31/2044	9,395.83	119,387.53
8/31/2044	9,395.83	120,179.20
9/30/2044	9,395.83	120,179.20
10/31/2044	9,395.83	120,179.20
11/30/2044	9,395.83	120,179.20
12/31/2044	9,395.83	120,179.20
1/31/2045	9,395.83	120,179.20
2/28/2045	9,395.83	120,179.20
3/31/2045	9,395.83	120,179.20
4/30/2045	9,395.83	120,179.20
5/31/2045	9,395.83	120,179.20
6/30/2045	9,395.83	120,179.20
7/31/2045	9,395.83	119,387.53
8/31/2045	9,395.83	103,950.03
9/30/2045	9,395.83	103,950.03
10/31/2045	9,395.83	103,950.03
11/30/2045	9,395.83	103,950.03
12/31/2045	0.00	0.00

* Internal costs at Financial Close include third party costs, development returns, development cost recovery and project structuring fee.

PART B

Month	Monthly Operations Company Availability Payment ($)
Financial Close	0.00
9/30/2015	0.00
10/31/2015	0.00
11/30/2015	0.00
12/31/2015	0.00
1/31/2016	0.00
2/29/2016	0.00
3/31/2016	0.00
4/30/2016	0.00
5/31/2016	0.00
6/30/2016	0.00
7/31/2016	0.00
8/31/2016	0.00
9/30/2016	0.00
10/31/2016	0.00
11/30/2016	0.00
12/31/2016	0.00
1/31/2017	0.00
2/28/2017	0.00
3/31/2017	0.00
4/30/2017	0.00
5/31/2017	0.00
6/30/2017	0.00
7/31/2017	0.00

Month	Monthly Operations Company Availability Payment ($)
8/31/2017	0.00
9/30/2017	0.00
10/31/2017	0.00
11/30/2017	0.00
12/31/2017	0.00
1/31/2018	0.00
2/28/2018	0.00
3/31/2018	0.00
4/30/2018	0.00
5/31/2018	0.00
6/30/2018	0.00
7/31/2018	0.00
8/31/2018	160,989.57
9/30/2018	160,989.57
10/31/2018	160,109.84
11/30/2018	160,109.84
12/31/2018	160,109.84
1/31/2019	160,109.84
2/28/2019	160,109.84
3/31/2019	160,109.84
4/30/2019	160,109.84
5/31/2019	160,109.84
6/30/2019	160,109.84
7/31/2019	166,994.57
8/31/2019	166,994.57

Month	Monthly Operations Company Availability Payment ($)
9/30/2019	166,994.57
10/31/2019	166,994.57
11/30/2019	166,994.57
12/31/2019	166,994.57
1/31/2020	166,994.57
2/29/2020	166,994.57
3/31/2020	166,994.57
4/30/2020	166,994.57
5/31/2020	166,994.57
6/30/2020	166,994.57
7/31/2020	174,175.33
8/31/2020	174,175.33
9/30/2020	174,175.33
10/31/2020	174,175.33
11/30/2020	174,175.33
12/31/2020	174,175.33
1/31/2021	174,175.33
2/28/2021	174,175.33
3/31/2021	174,175.33
4/30/2021	174,175.33
5/31/2021	174,175.33
6/30/2021	174,175.33
7/31/2021	181,664.87
8/31/2021	181,664.87
9/30/2021	181,664.87

Month	Monthly Operations Company Availability Payment ($)
10/31/2021	181,664.87
11/30/2021	181,664.87
12/31/2021	181,664.87
1/31/2022	181,664.87
2/28/2022	181,664.87
3/31/2022	181,664.87
4/30/2022	181,664.87
5/31/2022	181,664.87
6/30/2022	181,664.87
7/31/2022	189,476.46
8/31/2022	189,476.46
9/30/2022	189,476.46
10/31/2022	189,476.46
11/30/2022	189,476.46
12/31/2022	189,476.46
1/31/2023	189,476.46
2/28/2023	189,476.46
3/31/2023	189,476.46
4/30/2023	189,476.46
5/31/2023	189,476.46
6/30/2023	189,476.46
7/31/2023	197,623.95
8/31/2023	197,623.95
9/30/2023	197,623.95
10/31/2023	197,623.95

Month	Monthly Operations Company Availability Payment ($)
11/30/2023	197,623.95
12/31/2023	197,623.95
1/31/2024	197,623.95
2/29/2024	197,623.95
3/31/2024	197,623.95
4/30/2024	197,623.95
5/31/2024	197,623.95
6/30/2024	197,623.95
7/31/2024	206,121.78
8/31/2024	206,121.78
9/30/2024	206,121.78
10/31/2024	206,121.78
11/30/2024	206,121.78
12/31/2024	206,121.78
1/31/2025	206,121.78
2/28/2025	206,121.78
3/31/2025	206,121.78
4/30/2025	206,121.78
5/31/2025	206,121.78
6/30/2025	206,121.78
7/31/2025	214,985.02
8/31/2025	214,985.02
9/30/2025	214,985.02
10/31/2025	214,985.02
11/30/2025	214,985.02

Month	Monthly Operations Company Availability Payment ($)
12/31/2025	214,985.02
1/31/2026	214,985.02
2/28/2026	214,985.02
3/31/2026	214,985.02
4/30/2026	214,985.02
5/31/2026	214,985.02
6/30/2026	214,985.02
7/31/2026	224,229.37
8/31/2026	224,229.37
9/30/2026	224,229.37
10/31/2026	224,229.37
11/30/2026	224,229.37
12/31/2026	224,229.37
1/31/2027	224,229.37
2/28/2027	224,229.37
3/31/2027	224,229.37
4/30/2027	224,229.37
5/31/2027	224,229.37
6/30/2027	224,229.37
7/31/2027	233,871.23
8/31/2027	233,871.23
9/30/2027	233,871.23
10/31/2027	233,871.23
11/30/2027	233,871.23
12/31/2027	233,871.23

Month	Monthly Operations Company Availability Payment ($)
1/31/2028	233,871.23
2/29/2028	233,871.23
3/31/2028	233,871.23
4/30/2028	233,871.23
5/31/2028	233,871.23
6/30/2028	233,871.23
7/31/2028	243,927.70
8/31/2028	243,927.70
9/30/2028	243,927.70
10/31/2028	243,927.70
11/30/2028	243,927.70
12/31/2028	243,927.70
1/31/2029	243,927.70
2/28/2029	243,927.70
3/31/2029	243,927.70
4/30/2029	243,927.70
5/31/2029	243,927.70
6/30/2029	243,927.70
7/31/2029	254,416.59
8/31/2029	254,416.59
9/30/2029	254,416.59
10/31/2029	254,416.59
11/30/2029	254,416.59
12/31/2029	254,416.59
1/31/2030	254,416.59

Month	Monthly Operations Company Availability Payment ($)
2/28/2030	254,416.59
3/31/2030	254,416.59
4/30/2030	254,416.59
5/31/2030	254,416.59
6/30/2030	254,416.59
7/31/2030	265,356.50
8/31/2030	265,356.50
9/30/2030	265,356.50
10/31/2030	265,356.50
11/30/2030	265,356.50
12/31/2030	265,356.50
1/31/2031	265,356.50
2/28/2031	265,356.50
3/31/2031	265,356.50
4/30/2031	265,356.50
5/31/2031	265,356.50
6/30/2031	265,356.50
7/31/2031	276,766.83
8/31/2031	276,766.83
9/30/2031	276,766.83
10/31/2031	276,766.83
11/30/2031	276,766.83
12/31/2031	276,766.83
1/31/2032	276,766.83
2/29/2032	276,766.83

Month	Monthly Operations Company Availability Payment ($)
3/31/2032	276,766.83
4/30/2032	276,766.83
5/31/2032	276,766.83
6/30/2032	276,766.83
7/31/2032	288,667.80
8/31/2032	288,667.80
9/30/2032	288,667.80
10/31/2032	288,667.80
11/30/2032	288,667.80
12/31/2032	288,667.80
1/31/2033	288,667.80
2/28/2033	288,667.80
3/31/2033	288,667.80
4/30/2033	288,667.80
5/31/2033	288,667.80
6/30/2033	288,667.80
7/31/2033	301,080.52
8/31/2033	301,080.52
9/30/2033	301,080.52
10/31/2033	301,080.52
11/30/2033	301,080.52
12/31/2033	301,080.52
1/31/2034	301,080.52
2/28/2034	301,080.52
3/31/2034	301,080.52

Month	Monthly Operations Company Availability Payment ($)
4/30/2034	301,080.52
5/31/2034	301,080.52
6/30/2034	301,080.52
7/31/2034	314,026.98
8/31/2034	314,026.98
9/30/2034	314,026.98
10/31/2034	314,026.98
11/30/2034	314,026.98
12/31/2034	314,026.98
1/31/2035	314,026.98
2/28/2035	314,026.98
3/31/2035	314,026.98
4/30/2035	314,026.98
5/31/2035	314,026.98
6/30/2035	314,026.98
7/31/2035	327,530.14
8/31/2035	327,530.14
9/30/2035	327,530.14
10/31/2035	327,530.14
11/30/2035	327,530.14
12/31/2035	327,530.14
1/31/2036	327,530.14
2/29/2036	327,530.14
3/31/2036	327,530.14
4/30/2036	327,530.14

Month	Monthly Operations Company Availability Payment ($)
5/31/2036	327,530.14
6/30/2036	327,530.14
7/31/2036	341,613.94
8/31/2036	341,613.94
9/30/2036	341,613.94
10/31/2036	341,613.94
11/30/2036	341,613.94
12/31/2036	341,613.94
1/31/2037	341,613.94
2/28/2037	341,613.94
3/31/2037	341,613.94
4/30/2037	341,613.94
5/31/2037	341,613.94
6/30/2037	341,613.94
7/31/2037	356,303.34
8/31/2037	356,303.34
9/30/2037	356,303.34
10/31/2037	356,303.34
11/30/2037	356,303.34
12/31/2037	356,303.34
1/31/2038	356,303.34
2/28/2038	356,303.34
3/31/2038	356,303.34
4/30/2038	356,303.34
5/31/2038	356,303.34

Month	Monthly Operations Company Availability Payment ($)
6/30/2038	356,303.34
7/31/2038	371,624.38
8/31/2038	371,624.38
9/30/2038	371,624.38
10/31/2038	371,624.38
11/30/2038	371,624.38
12/31/2038	371,624.38
1/31/2039	371,624.38
2/28/2039	371,624.38
3/31/2039	371,624.38
4/30/2039	371,624.38
5/31/2039	371,624.38
6/30/2039	371,624.38
7/31/2039	387,604.23
8/31/2039	387,604.23
9/30/2039	387,604.23
10/31/2039	387,604.23
11/30/2039	387,604.23
12/31/2039	387,604.23
1/31/2040	387,604.23
2/29/2040	387,604.23
3/31/2040	387,604.23
4/30/2040	387,604.23
5/31/2040	387,604.23
6/30/2040	387,604.23

Month	Monthly Operations Company Availability Payment ($)
7/31/2040	404,271.21
8/31/2040	404,271.21
9/30/2040	404,271.21
10/31/2040	404,271.21
11/30/2040	404,271.21
12/31/2040	404,271.21
1/31/2041	404,271.21
2/28/2041	404,271.21
3/31/2041	404,271.21
4/30/2041	404,271.21
5/31/2041	404,271.21
6/30/2041	404,271.21
7/31/2041	421,654.87
8/31/2041	421,654.87
9/30/2041	421,654.87
10/31/2041	421,654.87
11/30/2041	421,654.87
12/31/2041	421,654.87
1/31/2042	421,654.87
2/28/2042	421,654.87
3/31/2042	421,654.87
4/30/2042	421,654.87
5/31/2042	421,654.87
6/30/2042	421,654.87
7/31/2042	439,786.03

Month	Monthly Operations Company Availability Payment ($)
8/31/2042	439,786.03
9/30/2042	439,786.03
10/31/2042	439,786.03
11/30/2042	439,786.03
12/31/2042	439,786.03
1/31/2043	439,786.03
2/28/2043	439,786.03
3/31/2043	439,786.03
4/30/2043	439,786.03
5/31/2043	439,786.03
6/30/2043	439,786.03
7/31/2043	458,696.83
8/31/2043	458,696.83
9/30/2043	458,696.83
10/31/2043	458,696.83
11/30/2043	458,696.83
12/31/2043	458,696.83
1/31/2044	458,696.83
2/29/2044	458,696.83
3/31/2044	458,696.83
4/30/2044	458,696.83
5/31/2044	458,696.83
6/30/2044	458,696.83
7/31/2044	2,803,265.43
8/31/2044	2,803,265.43

Month	Monthly Operations Company Availability Payment ($)
9/30/2044	2,803,265.43
10/31/2044	681,713.40
11/30/2044	681,713.40
12/31/2044	681,713.40
1/31/2045	685,473.39
2/28/2045	685,473.39
3/31/2045	685,473.39
4/30/2045	2,233,140.48
5/31/2045	2,233,140.48
6/30/2045	2,233,140.47
7/31/2045	2,965,537.16
8/31/2045	2,997,127.78
9/30/2045	3,077,856.63
10/31/2045	1,868,515.39
11/30/2045	1,868,514.10
12/31/2045	0.00

SCHEDULE 9
COMPENSATION ON TERMINATION

1. DEFINITIONS

In this Schedule 9, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

"**Employee Information**" means written details related to employees employed by Operations Co, any Project Contractor or Sub-Contractor whose work (or any part of it) is work undertaken for the purposes of the Project, including:

(a) the staffing plan and total number of such employees;

(b) the employment costs for such employees;

(c) the amount of severance payable to such employees used in the calculation of any Employee Payments and all relevant information used in determining such amounts; and

(d) any other information that the Authority or Project Co may reasonably require in relation to the calculation of any Employee Payments in respect of Operations Co, any Project Contractor or Sub-Contractor;

"**Employee Payments**" means any liability that has been reasonably incurred by Operations Co arising as a result of termination of this Project Implementation Agreement under collective agreements, employment agreements or under any other agreements with employees of Operations Co, including severance (whether accrued or not), vacation pay and sick pay accrued but excluding any Distribution;

"**Project Contractor Breakage Costs**" means the amount payable by Project Co to Operations Co under the terms of this Project Implementation Agreement or by Operations Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of this Project Implementation Agreement or such Project Contract as a consequence of the termination of the Project Agreement, including all cancellation fees, restocking costs and demobilization expenses, but reduced (without duplication) to the extent that:

(a) Operations Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;

(b) such amount relates to any agreements or arrangements entered into by Operations Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm's length terms;

(c) such amount is a Distribution; and

(d) such amount includes any loss of overhead or profit of Operations Co, the Service Provider or its Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in this Project Implementation Agreement, Services Contract or applicable Sub-Contract).

2. TERMINATION AT AUTHORITY'S OPTION, FOR AUTHORITY EVENT OF DEFAULT OR FOR PROJECT CO EVENT OF DEFAULT

2.1 Calculation of Termination Payment

If (i) the Authority terminates the Project Agreement pursuant to Section 2.1(a) of the Project Agreement or pursuant to Section 12.4 of the Project Agreement as a result of a Project Co Event of Default (as defined in the Project Agreement) not caused by an Operations Co Event of Default, (ii) Project Co terminates the Project Agreement pursuant to Section 13 of the Project Agreement or (iii) Operations Co terminates this Project Implementation Agreement pursuant to Section 13, Project Co will, subject to the Pass-Down Provisions, if applicable, and subject further to the repayment of the Senior Debt, pay to Operations Co a Termination Payment which will be calculated as the aggregate amount, without duplication, of:

(a) the Employee Payments and the Project Contractor Breakage Costs;

(b) any accrued but unpaid amounts owing and payable by Project Co to Operations Co under this Project Implementation Agreement;

(c) any Insurance Receivables, if and to the extent Operations Co has assigned them to Project Co; and

(d) the aggregate amount for which the then issued and outstanding shares in Operations Co could have been sold for Fair Market Value on the date immediately before the Termination Date based on the assumption that there has been no default by the Authority or Project Co, that the sale is on a going concern basis and that no restrictions exist on the transfer of equity capital,

LESS, to the extent it is a positive amount, the aggregate amount, without duplication, of:

(e) the aggregate of all credit balances in any bank accounts held by or on behalf of Operations Co on the Termination Date that are secured in favor of the Senior Secured Creditors;

(f) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Operations Co will assign any such claims under the Project Contracts or claims against other third parties to Project Co (or as Project Co may direct) and give Project Co reasonable assistance in prosecuting such claims;

(g) the market value of any other assets and rights, including any undrawn performance security, of Operations Co (other than those transferred to the Authority or Project Co pursuant to this Project Implementation Agreement) less liabilities of Operations Co properly incurred in carrying out its obligations under this Project Implementation Agreement as at the Termination Date to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Operations Co arising out of:

(1) agreements or arrangements entered into by Operations Co to the extent that such agreements or arrangements were not entered into in connection with Operations Co's obligations in relation to the Project; or

(2) agreements or arrangements entered into by Operations Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and

(h) any other amounts that Project Co is entitled to set off or deduct pursuant to Section 9.11 of this Project Implementation Agreement,

provided that the Termination Payment will only be payable by Project Co to Operations Co if, and to the extent that, Project Co is paid the corresponding amounts by the Authority pursuant to Section 2 of Schedule 9 [Compensation on Termination] to the Project Agreement.

To the extent that the assets and rights referred to in Section 2.1(g) are not realized and applied pursuant thereto, Operations Co will, on payment of the amount due under this Section 2.1, assign such assets and rights to Project Co or as Project Co may direct.

For clarity, to the extent that the Authority terminates the Project Agreement pursuant to Section 12.4 of the Project Agreement as a result of a Project Co Event of Default (as defined in the Project Agreement) not caused by an Operations Co Event of Default or Operations Co terminates this Project Implementation Agreement pursuant to Section 13 as a result of a Project Co Event of Default not caused by an Authority Event of Default under the Project Agreement, neither the Pass-Down Provisions nor the proviso following Section 2.1(h) will apply to the payment of the Termination Payment by Project Co to Operations Co as calculated in this Section 2.1.

The Termination Payment due to Operations Co under this Section 2.1 will, if applicable, include the balance of the Termination Payment (as defined in the Project Agreement) received by Project Co from the Authority under the Project Agreement after repayment in full of the Senior Debt and the Junior Debt.

2.2 Notice to Project Co

As soon as practicable after termination of the Project Agreement by the Authority pursuant to Section 2.1(a) or Section 12.4 of the Project Agreement or by Project Co pursuant to Section 13 of the Project Agreement or termination of this Project Implementation Agreement by Operations Co pursuant to Section 13, Operations Co will, acting reasonably, notify Project Co of the Termination Payment claimed by Operations Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof. Operations Co will provide to the Authority and Project Co all such documentation and information as may be reasonably required by the Authority or Project Co to substantiate the amount of the Termination Payment, including Employee Information.

3. TERMINATION FOR OPERATIONS CO EVENT OF DEFAULT

3.1 Calculation of Termination Payment

If Project Co terminates this Project Implementation Agreement pursuant to Section 12.4:

(a) if the Termination Payment (as defined in the Project Agreement) received by Project Co from the Authority pursuant to Section 3 of Schedule 9 [Compensation on Termination] to the Project Agreement exceeds the amount required to repay the Senior Debt and the Junior Debt, Project Co will pay to Operations Co a Termination Payment which will be calculated as the aggregate amount, without duplication, of:

(1) the Employee Payments and the Project Contractor Breakage Costs;

(2) any accrued but unpaid amounts owing and payable by Project Co to Operations Co under this Project Implementation Agreement; and

(3) the amount, if any, by which the amount of capital contributed to Operations Co by its equity investors exceeds the amount of all Distributions made by Operations Co to its equity investors; and

(b) if the Termination Payment (as defined in the Project Agreement) received by Project Co from the Authority pursuant to Section 3 of Schedule 9 [Compensation on Termination] to the Project Agreement is less than the amount required to repay the Senior Debt and the Junior Debt, Operations Co will pay to Project Co a Termination Payment equal to the shortfall, up to the amount of the DB Default Termination Payment (as defined in the Design-Build Agreement) or the SP Default Termination Payment (as defined in the Services Contract), as applicable.

3.2 Notice to Project Co

As soon as practicable after termination of this Project Implementation Agreement by Project Co pursuant to Section 12.4, Project Co will notify Operations Co of the amount of the Termination Payment to be received by Project Co from the Authority pursuant to Section 3 of Schedule 9 [Compensation on Termination] to the Project Agreement and, if applicable, Operations Co will notify Project Co of the amount of the DB Default Termination Payment (as defined in the Design-Build Agreement) or the SP Default Termination Payment (as defined in the Services Contract), as applicable. Project Co will provide to Operations Co all such documentation and information as may be reasonably required by Operations Co to substantiate the Termination Payment to be received by Project Co from the Authority pursuant to Section 3 of Schedule 9 [Compensation on Termination] to the Project Agreement. If applicable, Operations Co will provide to the Authority and Project Co all such documentation and information as may be reasonably required by the Authority or Project Co to substantiate the amount of the DB Default Termination Payment (as defined in the Design-Build Agreement) or the SP Default Termination Payment (as defined in the Services Contract), as applicable.

4. NO-FAULT TERMINATION

4.1 Calculation of Termination Payment

If either the Authority or Project Co terminates the Project Agreement pursuant to Section 6.3, Section 6.4, Section 6.10, Section 8.4 or Section 8.6 of the Project Agreement, Project Co will, subject to the Pass-Down Provisions and subject further to the repayment of the Senior Debt, pay to Operations Co a Termination Payment equal to the aggregate of:

(a) the Employee Payments and the Project Contractor Breakage Costs;

(b) any accrued but unpaid amounts owing and payable by Project Co to Operations Co under this Project Implementation Agreement; and

(c) the amount, if any, by which the amount of capital contributed to Operations Co by its equity investors exceeds the amount of all Distributions made by Operations Co to its equity investors,

LESS:

(d) the amount of any Distributions other than those referred to in (c) above; and

(e) any other amounts that Project Co is entitled to set off or deduct pursuant to Section 9.11 of this Project Implementation Agreement,

provided that the Termination Payment will only be payable by Project Co to Operations Co if, and to the extent that, Project Co is paid the corresponding amounts by the Authority pursuant to Section 4 of Schedule 9 [Compensation on Termination] to the Project Agreement.

The Termination Payment due to Operations Co under this Section 4.1 will, if applicable, include the balance of the Termination Payment (as defined in the Project Agreement) received by Project Co from the Authority under the Project Agreement after repayment in full of the Senior Debt and the Junior Debt.

4.2 Notice to Project Co

As soon as practicable after termination of the Project Agreement by either the Authority or Project Co pursuant to Section 6.3, Section 6.4, Section 6.10, Section 8.4 or Section 8.6, Operations Co will, acting reasonably, notify Project Co of the Termination Payment claimed by Operations Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof. Operations Co will provide to the Authority and Project Co all such documentation and information as may be reasonably required by the Authority or Project Co to substantiate the amount of the Termination Payment, including Employee Information.

5. ADJUSTMENTS AND DISPUTES

5.1 Time Related Adjustments

The parties acknowledge and agree that the calculation of any Termination Payment pursuant to Section 2, 3 or 4 of this Schedule 9 is as of an estimated Termination Payment Date and that such estimated date may not be the actual Termination Payment Date for reasons which may include the existence of a Dispute. The parties will act reasonably in adjusting the amount of such calculated Termination Payment to reflect the actual Termination Payment Date.

5.2 Not Used

5.3 Disputes

If:

(a) Project Co does not agree with Operations Co's determination of the Termination Payment under Section 2 or 4 of this Schedule 9, Project Co may, within 30 days of the notice referred to in Section 2.2 or 4.2 of this Schedule 9, as the case may be, refer the matter to the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet; or

(b) Operations Co does not agree with Project Co's determination of the Termination Payment under Section 3 of this Schedule 9, Operations Co may, within 30 days of the notice referred to in Section 3.2 of this Schedule 9 refer the matter to the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet.

If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in (a) or (b) above, as applicable, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Payment as of the estimated Termination Payment Date.

6. PAYMENTS

6.1 Termination Payment Date

The Termination Payment Date for any Termination Payment will be determined as follows:

(a) if the amount is owing by Project Co to Operations Co, within 5 Business Days of the date Project Co receives a corresponding Termination Payment from the Authority under the Project Agreement;

(b) if the amount is owing by Operations Co to Project, within 30 days of the date of determination; and

(c) if the amount thereof is the subject of a Dispute, 30 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet.

6.2 Full Settlement

Any compensation paid by Project Co to Operations Co under this Schedule 9 in the total amount owing hereunder or any agreement or determination that Project Co has no obligation to make any payment to Operations Co under this Schedule 9 will be in full and final settlement of each party's rights and claims against the other for termination of this Project Implementation Agreement and any Project Contract, whether under contract, tort, restitution or otherwise, but without prejudice to:

(a) any antecedent liability of either party to the other that arose prior to the date of termination of this Project Implementation Agreement (but not from the termination itself), to the extent any such liability has not already been taken into account in determining the Termination Payment; and

(b) any liability of either party to the other that may arise after the date of termination of this Project Implementation Agreement (but not from the termination itself), including, for greater certainty, liabilities arising under the provisions of this Project Implementation Agreement which are intended by Section 17.10 of this Project Implementation Agreement to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.

SCHEDULE 10
LENDERS' REMEDIES AGREEMENT

Refer to Schedule 10 to the Project Agreement.

SCHEDULE 11
PROJECT CONTRACTOR COLLATERAL AGREEMENT

Refer to Schedule 11 to the Project Agreement.

SCHEDULE 12
OPERATIONS CO'S OWNERSHIP INFORMATION

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

KentuckyWired Operations Company, LLC

1.	Name:	KentuckyWired Operations Company, LLC
2.	Date of Incorporation:	July 24, 2015
3.	File Number:	5791148
4.	Jurisdiction of Incorporation:	State of Delaware
5.	Member:	KentuckyWired Operations Holding Company, LLC
6.	Manager:	Member managed
7.	Subsidiaries:	None
8.	Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Operations Co:	Refer to Amended and Restated Limited Liability Company Agreement

KentuckyWired Operations Holding Company, LLC

9.	Name:	KentuckyWired Operations Holding Company, LLC
10.	Date of Incorporation:	July 24, 2015
11.	File Number:	5791144
12.	Jurisdiction of Incorporation:	State of Delaware
13.	Members:	Macquarie NG-KIH Holdings, LLC Ledcor US Ventures Inc. First Solutions, LLC
14.	Managers:	Nick Butcher Nick Hann Eliot Jamison Russell Zirnhelt Joe Shelton

15.	Subsidiary:	KentuckyWired Operations Company, LLC
16.	Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of KentuckyWired Operations Holding Company, LLC:	Refer to Amended and Restated Limited Liability Company Agreement

SCHEDULE 13
DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Schedule 13, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

"**Dispute Notice**" has the meaning set out in Section 2.2 of this Schedule 13;

"**Dispute Resolution Procedure**" has the meaning set out in Section 2.1 of this Schedule 13;

"**Referee**" has the meaning set out in Section 2.5 of this Schedule 13;

"**Referee Agreement**" has the meaning set out in Section 2.5(c) of this Schedule 13;

"**Referee Notice**" has the meaning set out in Section 2.5 of this Schedule 13; and

"**Senior Executive**" means an executive who is in a position of authority above that of the party's Representative and, subject only to approval of the board of directors or similar governing body, has full authority to resolve and settle a Dispute.

2. DISPUTE RESOLUTION

2.1 Procedure

Unless both parties otherwise agree, all Disputes will be resolved in accordance with the provisions of this Schedule 13 (the "**Dispute Resolution Procedure**"), provided that the decision of the Independent Certifier that Site Completion has been achieved in respect of any Site is final and binding on the parties solely in respect of determining the commencement of Availability Payments (as defined in the Project Agreement). Except for the foregoing, any other Dispute related to the decision of the Independent Certifier that Site Completion has been achieved in respect of any Site may be the subject of a Dispute and may be subject to the Dispute Resolution Procedure under the Project Agreement.

2.2 Dispute Notice

The Dispute Resolution Procedure may be commenced by either party giving written notice to the other party (the "**Dispute Notice**") briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought.

2.3 Project Representative Negotiation

Within 5 Business Days of one party receiving a Dispute Notice from the other, or such longer period as the parties may agree, a Representative of each party will meet and make good faith efforts to resolve the Dispute by without prejudice negotiations.

2.4 Senior Executive Negotiation

If the Dispute is not resolved pursuant to Section 2.3 of this Schedule 13 within 5 Business Days (or such longer period as the parties may agree) of the first meeting of the Representatives, a

Senior Executive of each party will meet and make good faith efforts to resolve the Dispute by without prejudice negotiations.

2.5 Fast Track Referee Process

If the Dispute is not resolved pursuant to Section 2.4 of this Schedule 13 within 5 Business Days (or such longer period as the parties may agree) of the first meeting of the Senior Executives, either party may, by written notice to the other party (a "**Referee Notice**"), request the appointment of a referee (the "**Referee**") as provided under the terms of this Section 2.5. The Referee will be appointed as an expert to resolve the Dispute and will participate in the resolution of the Dispute as set out below:

(a) if the Referee Notice is given during the Construction Period, then the Independent Certifier will, as of the end of the 2nd Business Day following the delivery of the Referee Notice, be deemed the Referee unless:

(1) within 2 Business Days of the delivery of the Referee Notice, either (i) the parties agree that another person would be more suitable considering the nature of the Dispute, or (ii) either party gives written notice that it objects to the Independent Certifier acting as Referee in relation to the Dispute; or

(2) for any reason the Independent Certifier is unable to perform the duties of the Referee,

and, in either case, the Referee will be appointed in the manner described in Section 2.5(b) of this Schedule 13;

(b) if the Dispute Notice is given during the Operating Period or Section 2.5(a) of this Schedule 13 requires that this Section 2.5(b) applies, the parties will appoint a Referee in the following manner:

(1) within 2 Business Days of the delivery of a Referee Notice, each party will submit in writing to the other party the names of no more than 2 candidates for Referee who are independent of the parties, experienced in the resolution of similar disputes and immediately available to perform the role of Referee in respect of the Dispute at hand;

(2) if a party has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other party; and

(3) if, for any reason, within 3 Business Days of the delivery of a Referee Notice, a Referee has not been appointed, then either party or both parties may apply to a judge of the state court in Franklin County, Kentucky to select a Referee in relation to the Dispute;

(c) the parties will enter into an agreement with the Referee generally in the form attached as Appendix 13A (the "**Referee Agreement**"), such agreement to be entered into no later than 2 Business Days after the Referee's appointment;

(d) the Referee's fees and expenses will be shared equally by Project Co and Operations Co, provided that Project Co will pay the full amount of the Referee's fees and expenses on the day that such fees and expenses are due (including any advances on fees and expenses) in accordance with the Referee Agreement and Operations Co will reimburse Project Co for Operations Co's share of all such fees and expenses within 5 Business Days of receipt of a written demand from Project Co, failing which Project Co will be entitled to deduct the amount of Operations Co's share of the Referee's fees and expenses from amounts otherwise due to Operations Co under the provisions of this Project Implementation Agreement;

(e) the Referee will conduct an impartial review of the Dispute in such manner as the Referee thinks fit, including carrying out on-site inspections and interviews with any persons that the Referee thinks fit;

(f) the parties will comply with all reasonable requests from the Referee for additional information, documents and access to personnel which the Referee considers necessary for the review;

(g) any submission or documentation in respect of the Dispute provided to the Referee by a party will also be provided to the other party;

(h) the Referee may, with the written approval of both parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by either party for him to retain such other professional persons or experts;

(i) the Referee will not be obliged to conduct his inquiries in the presence of the parties or receive submissions from the parties, except to the extent that the Referee thinks fit, and may render his decision notwithstanding the failure of a party to participate in the proceedings;

(j) the Referee will render a brief, written, reasoned and impartial decision on the Dispute, with copies to both parties within 5 Business Days of the signing by the Referee and both parties of the Referee Agreement referred to in Section 2.5(c) of this Schedule 13, or such longer period as agreed to in writing by both parties;

(k) the Referee's decision will be in the form of a proposed determination of the rights of the parties having regard to the Referee's understanding of the relevant contractual provisions, the applicable law and the facts as agreed by the parties or as best the Referee is able to determine them;

(l) each party acknowledges the value of having the Referee render a timely decision regarding the Dispute and, if the Referee is unable to render his decision within the time set or as extended by mutual agreement of the parties, then the parties will request that the Referee provide to the parties within such time such analysis of the Dispute as the Referee is able to make within that time and describe the further work the Referee recommends would be required in order to arrive at a reasoned decision;

(m) subject to the provisions of Section 3.3 of this Schedule 13, a decision of a Referee is not binding on the parties but is intended to assist the parties to reach agreement with respect to the Dispute;

(n) the proceedings under this Section 2.5 will be confidential and all information, data or documentation disclosed or delivered by either party to the Referee as a result of or in connection with his duties as Referee will be treated as confidential and neither of the parties nor the Referee will, except as would be permitted under Section 17 of this Project Implementation Agreement, disclose to any Person any such information, data or documentation unless the parties otherwise agree in writing, provided that nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Referee; and

(o) the proceedings by or before a Referee will be without prejudice in any subsequent proceedings.

2.6 Commencement of Proceedings

If the Dispute is not completely resolved by agreement between the parties within 10 Business Days of the receipt of the Referee's decision or analysis pursuant to Section 2.5 of this Schedule 13 (or such longer period as the parties may agree) or within 10 Business Days of the date on which the Referee's decision or analysis ought to have been received under Section 2.5 of this Schedule 13, either party may, pursuant to KRS 45A.230, present the Dispute to the Secretary of the Finance and Administration Cabinet for resolution. If the Secretary is unable to resolve the Dispute to the mutual satisfaction of the parties within 120 days, the provisions of KRS 45A.235 shall apply and either party may commence proceedings in respect of the Dispute in state court in Franklin County, Kentucky in accordance with KRS 45A.245 and, for clarity, the provisions of Section 17.4 of this Project Implementation Agreement will apply to any such proceedings.

3. GENERAL

3.1 Other Remedies

Nothing contained in this Schedule 13 will preclude a party from initiating a proceeding in state court in Franklin County, Kentucky for the purpose of obtaining an effective emergency or provisional remedy to protect its rights as necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and other orders, whether before or after the Dispute has been initiated by a Dispute Notice.

3.2 Strict Compliance with Time Limits

The parties acknowledge that timely resolution of Disputes is mutually beneficial and the time limits set out in this Schedule 13, or as otherwise agreed by the parties, will therefore be strictly complied with and enforced.

3.3 Interim Decision

If a Dispute occurs then Project Co and Operations Co will in good faith carry out their respective obligations under this Project Implementation Agreement pending resolution of the Dispute pursuant to the Dispute Resolution Procedure. Prior to resolution of the Dispute, Project Co may, in its discretion by written notice to Operations Co, direct Operations Co to proceed in respect of the matter in Dispute or any related matter and Operations Co will comply with and implement the direction. Such direction will be without prejudice to Operations Co's rights to compensation or other rights under this Project Implementation Agreement. Nothing in this Schedule 13 will limit Project Co's right to require a Change.

3.4 Dispute Between the Authority and Project Co

Notwithstanding anything contained in this Schedule 13, if the subject matter of a Dispute between Project Co and Operations Co under this Project Implementation Agreement relates to the same or substantially the same subject matter as a dispute between the Authority and Project Co under the Project Agreement, then the parties agree that, to the extent that the Dispute is dealt with pursuant to the Dispute Resolution Procedure (as defined in the Project Agreement) provided for in the Project Agreement, they will defer to any decision reached pursuant to such Dispute Resolution Procedure and, as applicable, the provisions of Section 1.6 of this Project Implementation Agreement relating to Equivalent Project Relief will apply. Subject to Section 3.1 of this Schedule 13, to the extent that any such Dispute between the Authority and Project Co under the Project Agreement is being pursued, the parties agree that they will not pursue their Dispute under this Schedule 13. To the extent that the subject matter of a Dispute between Project Co and Operations Co under this Project Implementation Agreement would entitle Project Co to initiate a Dispute (as defined in the Project Agreement) with the Authority under the Project Agreement, Project Co will, if directed by Operations Co, refer such matter for resolution pursuant to the Dispute Resolution Procedure (as defined in the Project Agreement) provided for in the Project Agreement, in which case the provisions of Section 1.6 of this Project Implementation Agreement relating to Equivalent Project Relief will apply.

APPENDIX 13A
REFEREE AGREEMENT

BETWEEN:

[Name of Referee] (the "**Referee**")

AND:

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

AND:

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

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

We confirm our agreement for you to review the Dispute(s) described in the Dispute Notice in accordance with the provisions of the Project Implementation Agreement, and to perform the functions of a Referee as described in Section 2.5 of Schedule 13 [Dispute Resolution Procedure] to the Project Implementation Agreement.

A copy of the Project Implementation Agreement and related materials will be forwarded to you shortly.

We confirm that your daily/hourly rate for fees is $ _____. In addition to your invoiced fees, Project Co will pay any and all reasonable disbursements incurred in providing your services. Please submit your invoices on a monthly basis directly to ____ **[Insert name of Project Co's Construction or Operating Period Representative, as applicable]** ("**Project Co's Representative**"). Project Co will make payment within 30 calendar days of receipt.

Please confirm your agreement to the terms as set out in this letter by signing a copy of the enclosed letter and returning it to Project Co's Representative.

Yours truly,

_____ _____

Authorized Signatory of the Referee Date

_____ _____

Authorized Signatory of Project Co Date

_____ _____

Authorized Signatory of Operations Co Date

SCHEDULE 14
RECORDS AND REPORTS

Schedule 14 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to records and reports.

SCHEDULE 15
FINANCING AGREEMENT OBLIGATIONS

1. DEFINITIONS AND INTERPRETATION.

1.1 Definitions. In this Schedule 15, in addition to the terms defined in Schedule 1 [Definitions and Interpretation], capitalized terms shall have the meaning set out in this Schedule 15, or if not defined herein, the meaning set out in Exhibit A to the Collateral Agency and Account Agreement (the "**Collateral Agency Agreement**"), dated as of September 1, 2015, by and among Project Co, each Trustee, the Collateral Agent and the Securities Intermediary.

1.2 Interpretation. Except to the extent the context or the express provisions of this Schedule 15 otherwise require, this Schedule 15 will be interpreted, *mutatis mutandis*, according to (a) the interpretation provisions set forth in Exhibit A to the Collateral Agency Agreement, as such exhibit is amended from time to time in accordance with the Financing Documents, and the interpretation provisions, if any, set forth in the applicable Financing Document to which such provision of this Schedule 15 relates and (b) the interpretation provisions set forth in Schedule 1 [Definitions and Interpretation] of this Project Implementation Agreement, but in each case solely to the extent the application of such provisions does not result in a different outcome than would otherwise apply to Project Co under the Financing Documents. For the avoidance of doubt, each reference to Exhibit A to the Collateral Agency Agreement and any Financing Document in this Schedule 15 shall include all amendments, supplements and modifications thereto. Nothing in this Schedule 15 will be interpreted to create a right of, or otherwise allow, either Project Co or Operations Co to take an action that is otherwise prohibited by the Financing Documents or to fail to take an action that is otherwise required by the Financing Documents, subject in each case to the applicable provisions regarding amendment, waiver and consent as set forth in the applicable Financing Documents.

1.3 Updates to this Schedule 15. It is the intent of the parties that at all times and to the extent applicable each of the Operations Co Financing Rights and Obligations and the Project Co Financing Rights and Obligations, each as defined and used in this Schedule 15, are in all respects equivalent to Project Co's similar rights and obligations or Operations Co's similar rights and obligations under the equivalent provisions of the Financing Documents, as such documents may be amended, modified or supplemented from time to time, without further action of the parties. Notwithstanding the foregoing, the parties hereby agree that from time to time upon mutual agreement of the parties, this Schedule 15 may be updated to expressly reflect (a) any amendments, modifications or supplements to the Financing Documents or (b) the delegation of any rights and obligations under any new Financing Documents between the parties.

2. COPIES OF FINANCING DOCUMENTS; NEW FINANCING DOCUMENTS; AMENDMENTS TO FINANCING DOCUMENTS; COMMUNICATIONS; ENFORCEMENT OF PARALLEL FINANCING ISSUES

2.1 Copies of Financing Documents. Operations Co acknowledges that it has in its possession a copy of each Financing Document in effect as of the Closing Date and the Continuing Disclosure Agreement and is familiar with the terms of each such Financing Document and the Continuing Disclosure Agreement, irrespective of whether Operations Co is a party thereto.

2.2 **New Financing Documents; Amendments to Financing Documents**. Project Co agrees to (a) provide to Operations Co, no later than ten (10) Business Days prior to execution thereof, a draft copy of each amendment, modification or supplement to be entered into by Project Co with respect to each Financing Document to which Operations Co is not a party and each new Financing Document to the extent such amendment, modification or supplement or new Financing Document affects in any respect the Operations Co Financing Rights and Obligations and/or the Project Co Financing Rights and Obligations (other than Excluded Obligations and/or the Excluded Rights), (b) consult with Operations Co regarding the content of each such amendment, modification or supplement or new Financing Document and (c) execute such amendment, modification or supplement or new Financing Document solely upon the prior consent of Operations Co. To the extent Project Co enters into any amendment, modification or supplement with respect to any Financing Document to which Operations Co is not a party or any new Financing Document that relates solely to the Excluded Obligations and/or the Excluded Rights, Project Co shall provide to Operations Co, no later than three (3) Business Days after execution thereof, a copy of such document.

2.3 **Communications**. To the extent that any Communication is required or permitted to be given or made by Operations Co directly to the Senior Bonds Trustee, the Subordinate Bonds Trustee, the Collateral Agent, any other Secured Party or any other third party as part of the Operations Co Financing Rights and Obligations, Operations Co will provide a copy of the same to Project Co at the same time as giving or making the Financing Communication to such party. To the extent that any Communication is required or permitted to be given or made by Project Co directly to the Senior Bonds Trustee, the Subordinate Bonds Trustee, the Collateral Agent or any other Secured Party as part of the Project Co Financing Rights and Obligations, Project Co will provide a copy of the same to Operations Co at the same time as giving or making the Financing Communication to such party. Project Co will (a) make all Communications required to be made by Project Co to Operations Co under this Schedule 15 and the Financing Documents, (b) provide a copy of all Communications made to Project Co (but not Operations Co) by any Secured Party or any third party in connection with any Operations Co Financing Rights and Obligations and (c) cause all Communications to be made by any Secured Party to Operations Co under the Financing Documents to be made, in each case of clauses (a), (b) and (c), in a timely manner so as to permit Operations Co to exercise and comply with the Operations Co Financing Rights and Obligations. Project Co will consult with Operations Co in respect of all Communications made by Project Co to any Secured Party or any other third party, other than Communications with respect to the Excluded Obligations and/or the Excluded Rights.

2.4 **Enforcement of Parallel Financing Issues.**

(a) Project Co will preserve, protect and pursue under the Financing Documents such rights, remedies and relief as may relate to Operations Co Financing Rights and Obligations, including Operations Co's right to receive payments under Sections 10.5 and 10.6 of this Project Implementation Agreement (a "**Parallel Financing Issue**") in order to secure a favorable resolution of the Parallel Financing Issue, provided that:

(1) Project Co has received written notice from Operations Co of the Parallel Financing Issue;

(2) Operations Co will not be entitled to recover from Project Co any Direct Financing Losses or claims arising out of or in connection with Project Co pursuing resolution of a Parallel Financing Issue on Operations Co's behalf other than any amounts received in respect of such Parallel Financing Issue; and

(3) Operations Co will indemnify Project Co in respect of any Direct Financing Losses arising out of or in connection with Project Co pursuing resolution of a Parallel Financing Issue on Operations Co's behalf in accordance with this Section 2.4(a), provided that such indemnification will, unless Project Co has no entitlement to any amount received in respect of such Parallel Financing Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Financing Issue.

(b) Subject to Section 2.4(c), Project Co consents to Operations Co pursuing the rights, remedies and relief under the Financing Documents described in Section 2.4(a) of this Schedule 15 in the name of Project Co, which may, subject to the provisions of the Financing Documents, include the defense of claims where Operations Co is required to provide an indemnity to Project Co in accordance with the indemnity provisions in this Project Implementation Agreement. Operations Co will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that, if Operations Co is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the parties in proportion to their ultimate entitlements to same. Project Co will, at the sole cost and expense of Operations Co, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Operations Co may reasonably request in connection with the pursuit of such Parallel Financing Issue by Operations Co.

(c) No later than 7 days following receipt of the notice referred to in Section 2.4(a)(1), Project Co may take conduct of the Parallel Financing Issue and pursue the rights, remedies and relief under the Financing Documents described in Section 2.4(a) of this Schedule 15 on behalf of Operations Co and in accordance with the reasonable directions of Operations Co.

(d) Project Co will not enter into any compromise or settlement of a Parallel Financing Issue which affects, in any respect, Operations Co's rights, remedies and relief under this Schedule 15, without the prior written consent of Operations Co, in its sole discretion.

(e) Where Project Co pursues a Parallel Financing Issue in accordance with this Section 2.4, Operations Co will be kept informed of Project Co's progress under this Section 2.4 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Project Co in accordance with this Section 2.4.

(f) If Project Co does not, after having been given written notice in accordance with Section 2.4(a), take steps to pursue such Parallel Financing Issue within 2 Business Days or prior to that date being 10 Business Days prior to the expiration or other extinguishment of Project Co's right to pursue such Parallel

Financing Issue, Operations Co may, in the name of and on behalf of Project Co, pursue such Parallel Financing Issue itself subject to this Section 2.4, at its sole cost and expense, and

(g) Operations Co will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Project Co may reasonably request in connection with the pursuit of any Parallel Financing Issue.

(h) Any claims in respect of a Parallel Financing Issue and any recoveries obtained by Project Co or Operations Co in respect of any Parallel Financing Issue under the Financing Documents will be subject to the provisions of Section 2.5 of this Schedule 15 with respect to Equivalent Financing Relief.

2.5 Equivalent Financing Relief.

(a) Except to the extent of any entitlement of Project Co (including any rights, remedies or relief) that relates solely to the Excluded Obligations and Excluded Rights, Operations Co will be entitled to receive the benefit of any such entitlement from Project Co (in accordance with and subject to the provisions of Section 2.5(c)), including the benefit of:

(1) any compensation, damages or other payment of any kind on the same or substantially the same grounds as Project Co is entitled to compensation, damages or other payment of any kind under the Financing Documents;

(2) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Schedule 15 of the Project Implementation Agreement on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Financing Documents;

(3) any entitlement of Operations Co under this Schedule 15 of the Project Implementation Agreement; and

(4) any certificate, consent or approval granted under this Schedule 15, the Financing Documents or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Operations Co Financing Rights and Obligations, including any entitlement of Project Co to request or apply for such certificate, consent or approval, or any other person under this Schedule 15 or the Financing Documents,

but excluding any specific loss, cost or expense incurred by Project Co to which the relevant compensation expressly relates and which is not included in any amount claimed by Operations Co.

Project Co's entitlement under the Financing Documents in respect of the matters set out in this Section 2.5 is referred to in this Schedule 15 as "Equivalent Financing Relief".

(b) Operations Co will not be entitled to any relief from, or waiver in respect of performance of its obligations under this Schedule 15 other than:

(1) to the extent Project Co receives Equivalent Financing Relief; or

(2) to the extent expressly provided for in this Schedule 15.

(c) Operations Co will be entitled to the benefit of any Equivalent Financing Relief to the extent that Project Co is or becomes entitled to such Equivalent Financing Relief only if, when and to the same extent that Project Co has received Equivalent Financing Relief in connection with the Financing Documents.

(d) For purposes of Project Co asserting a claim under the Financing Documents in respect of Equivalent Financing Relief, where Operations Co has suffered Direct Financing Losses or otherwise claims relief in respect of any event or circumstance in respect of which Project Co is entitled to claim Equivalent Financing Relief, Project Co acknowledges that it will be obligated to include such Direct Financing Losses or relief claimed by Operations Co in its claim and to make such claim under the Financing Documents, provided that Operations Co's recourse against Project Co and Project Co's liability to Operations Co in respect of any such Direct Financing Losses or relief will be subject to, and strictly limited by, the provisions of Sections 2.5(a) through 2.5(c) above and that Project Co will not be required to reimburse Operations Co to the extent that such Direct Financing Losses or relief arise as a result of any failure on the part of any party (other than Project Co or Operations Co) to perform its obligations under the Financing Documents, unless and until Project Co has received compensation from or on behalf of such party under the Financing Documents, in which case, the provisions of this Section 2.5 shall apply.

(e) For the purposes of this Schedule 15, "**Direct Financing Losses**" means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs, expenses (including the reasonable cost of legal or professional services), demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:

(1) net of related insurance proceeds and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Schedule 15 or any policy of insurance maintained or required to be maintained under the Project Implementation Agreement and the Financing Documents;

(2) excluding any Indirect Losses, except to the extent included in a third party claim; and

(3) in the case of Operations Co, without limiting the foregoing, including the full amount of the related loss or reduction of any Operations Co Payments, net of Avoidable Costs related to such condition, event or omission.

3. PROJECT CO FINANCING RIGHTS AND OBLIGATIONS.

The rights and obligations set forth in this Section 3 and the rights and obligations of Project Co under Section 2 are collectively referred to herein as the "**Project Co Financing Rights and Obligations**".

3.1 **Excluded Rights and Excluded Obligations.** The rights and obligations set forth in this Section 3.1 are solely for the benefit of, and are the responsibility of, Project Co; the parties hereto expressly agree and acknowledge that to the extent that (i) Project Co is or becomes obligated under the Financing Documents to take any action, do anything or perform any obligation in connection with the following obligations, Project Co is obligated to take any such action, do any such thing or perform any such obligation hereunder in the manner and to the standard specified in the applicable Financing Documents (collectively, the "**Excluded Obligations**") and (ii) Project Co has or is granted under the Financing Documents any entitlement (including, without limitation, any rights, remedies or relief, whether pursuant to the terms of the Financing Documents or any waiver or consent with respect thereto) in connection with the following rights, Project Co is granted the benefit of such entitlements hereunder to the full extent set forth in the Financing Documents, including the benefit of any relief (including the extension of time) from the performance of the Excluded Obligations on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under the Financing Documents (collectively, the "**Excluded Rights**"):

(a) **Debt Service, Indemnifications and Fees, Costs and Expenses.** Project Co shall have the sole responsibility with respect to its financial obligations as Borrower under the Financing Documents, including without limitation:

(1) its obligations to pay debt service under the Senior Loan Agreement and the Subordinate Loan Agreement, and any other Permitted Indebtedness entered into by Project Co from time to time;

(2) its indemnification obligations, including under Section 2.10, Section 7.02 and Section 9.10(b) of the Collateral Agency Agreement, Section 7.02 of the Senior Loan Agreement, Section 7.02 of the Subordinate Loan Agreement, Section 13.18 of the Senior Indenture and Section 13.18 of the Subordinate Indenture; and

(3) its obligations to pay Project Costs, including fees, costs and expenses under Section 7.01 of the Collateral Agency Agreement, Section 4.01(b), Section 6.31 and Section 8.06 of the Senior Loan Agreement, Section 4.01(b), Section 6.31 and Section 8.06 of the Subordinate Loan Agreement, Section 6.1(g) and Section 6.4 of the Senior Indenture and Section 6.1(f) and Section 6.4 of the Subordinate Indenture, other than Operations Co's obligation to pay Project Costs (A) with certain portions of the payments to be made to it under Section 10.5 and 10.6 of this Project Implementation Agreement by the Borrower and (B) with the proceeds of the Capital Contributions to be made to Operations Co pursuant the Capital Contribution Agreement.

For the avoidance of doubt, Operations Co is not an obligor or guarantor with respect to Project Co's debt obligations and its financial obligations to the Secured Parties (and the obligations of Pledgor and the Sponsors) are limited solely to the Operations Co Security Documents and capital contributions securing Operations Co's obligations under this Project Implementation Agreement.

(b) **Drawing of Series 2015B-2 Bonds and Series 2015C Bonds**. Subject to the terms of the Financing Documents, Project Co shall have sole discretion and sole responsibility with respect to its obligations under the Senior Loan Agreement and the Subordinate Loan Agreement to deliver Draw Requests as and when required, so as to ensure Series 2015B-2 Bonds and Series 2015C Bonds are drawn at the times and in the amounts as required or necessary to finance Project Costs.

(c) **Investment of Project Accounts**. Project Co shall have sole discretion regarding exercising its rights under Section 5.08 of the Collateral Agency Agreement to invest and reinvest amounts on deposit in the Project Accounts and shall have sole responsibility with respect to its obligations under Section 5.08 of the Collateral Agency Agreement. Project Co agrees that it shall use commercially reasonable efforts to invest and reinvest amounts on deposit in the Project Accounts to maximize investment returns.

(d) **Continuing Disclosure Agreement**. Project Co shall have sole responsibility with respect to non-compliance with its obligations under the Continuing Disclosure Agreement.

(e) **Refinancing and Additional Bonds**. Project Co shall have sole discretion and sole responsibility with respect to entering into a Refinancing or accepting a loan of the proceeds of Additional Bonds.

3.2 **Other Financing Rights and Obligations of Project Co.** In furtherance of the purposes of this Schedule 15, including the grant and delegation of the Operations Co Financing Rights and Obligations:

(a) **Project Costs of Project Co**. The parties acknowledge that, pursuant and subject to the Pass-Down Provisions of this Project Implementation Agreement, Project Co has passed down its rights and obligations under the Project Agreement to Operations Co and, pursuant to this Schedule 15, subject to the Project Co Financing Rights and Obligations, Project Co has granted rights with respect to, and delegated the administration of, its rights and obligations under the Financing Documents to Operations Co. Project Co acknowledges and agrees that, in furtherance of the foregoing, (1) it will not incur costs with respect to the Project, other than in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs, without the prior written consent of Operations Co, including, without limitation, pursuant to Section 2.06 of the Collateral Agency Agreement; (2) it will pay, or cause payment of, all costs incurred in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs; and (3) it will use commercially reasonable efforts to minimize the costs it incurs in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs.

(b) **Construction Account Withdrawal Certificate**. Project Co hereby agrees to request a requisition under Section 5.03(d) of the Collateral Agency Agreement of the amounts and to the accounts and/or payees set forth in a duly completed and executed Operations Co Construction Account Withdrawal Certificate upon receipt thereof, provided that to the extent such Operations Co Construction Account Withdrawal Certificate does not adequately provide for payment of Project Co's non-profit costs and other costs during the Construction Period payable directly by Project Co, Project Co may include such Project Costs in its Construction Account Withdrawal Certificate.

(c) **Funds Transfer Certificate**. Project Co hereby agrees to instruct the Collateral Agent to transfer under Section 5.09(a) of the Collateral Agency Agreement on each applicable Transfer Date (or such other date in accordance with the Collateral Agency Agreement) at least the amounts set forth in a duly completed and executed Operations Co Funds Transfer Certificate delivered to Project Co prior to such date, provided that to the extent such Operations Co Funds Transfer Certificate does not adequately provide for payment of Project Co's non-profit costs and other costs after the System Completion Date payable at clause *First* of Section 5.02(b) of the Collateral Agency Agreement, Project Co may include such Project Costs in its Funds Transfer Certificate.

(d) **Restricted Payment Release Certificate**. Project Co hereby agrees to execute and deliver to the Collateral Agent as required a duly completed Restricted Payment Release Certificate executed by Operations Co prior to each Transfer Date and each other date as required to make the transfers from the Revenue Account and the Lock-up Account in accordance with the Collateral Agency Agreement.

(e) **Reporting**. Pursuant to Section 6.05(c)(11) of the Senior Loan Agreement and the Subordinate Loan Agreement, Project Co hereby agrees to deliver within ninety (90) days after the end of each fiscal year of Project Co, to the Issuer and each Trustee a certification indicating whether or not Project Co is aware of any condition, event or act which constitutes an "event of default", or which would constitute an "event of default" with the giving of notice or passage of time, or both, under either of the Senior Indenture or the Senior Loan Agreement, or either of the Subordinate Indenture or the Subordinate Loan Agreement, and if it is aware of any such condition, event or act, the remedies Project Co intends to implement to cure such condition, event or act (including a timeline for such efforts), attached to which shall be the similar certification by Operations Co pursuant to Section 4.1(c)(11) of this Schedule 15.

(f) **Project Co Concurrent Obligations**. Project Co hereby agrees that it will perform as set forth in the Project Implementation Agreement and the Financing Documents all of its obligations associated with, in connection with, arising from, or giving rise to, the Operations Co Financing Rights and Obligations, including executing, acknowledging or delivering such documents or taking such actions as Operations Co may request to facilitate its role as administrator under this Schedule 15.

4. OPERATION CO FINANCING RIGHTS AND OBLIGATIONS.

The rights and obligations set forth in this Section 4, including the Pass-Through Financing Rights and Obligations and the Operations Co Concurrent Rights and Obligations, and the rights and obligations of Operations Co under Section 2 are collectively referred to herein as the **"Operations Co Financing Rights and Obligations"**. Operations Co acknowledges and agrees that, pursuant to the Financing Documents to which Project Co is a party, Project Co is subject to certain covenants, restrictions, limitations and other obligations, each as set forth more fully therein, accepted by Project Co in consideration of the loans provided under the Senior Loan Agreement and the Subordinate Loan Agreement and Operations Co acknowledges and agrees that, pursuant to the Financing Documents to which Project Co is a party, Project Co has been granted certain entitlements and benefits, each as set forth more fully therein, with respect to its obligations thereunder.

4.1 Pass-Through Financing Rights and Obligations.

Other than with respect to Project Co's obligations under Section 3 of this Schedule 15, Project Co hereby delegates to Operation Co in its capacity as an administrator, and Operation Co hereby accepts such delegation in its capacity as an administrator of, Project Co's obligations under the Financing Documents to which Project Co is a party and to the extent that Project Co is or becomes obligated under the Financing Documents to take any action, do anything or perform any such obligation, Operations Co agrees that it will be obligated as an administrator to take any such action, do any such thing or perform any such obligation hereunder in the manner and to the standard specified in the applicable Financing Documents; and other than with respect to Project Co's rights under Section 3 of this Schedule 15, Project Co hereby grants to Operation Co in its capacity as an administrator, and Operation Co hereby accepts such grant in its capacity as an administrator of, the benefit of Project Co's rights under the Financing Documents to which Project Co is a party and to the extent that Project Co has or is granted under the Financing Documents any entitlement, including, without limitation, any rights, remedies or relief, whether pursuant to the terms of the Financing Documents or any waiver or consent with respect thereto (other than the Excluded Rights), Project Co agrees that Operations Co shall be granted the benefit of such entitlements hereunder to the full extent set forth in the Financing Documents, including the benefit of any relief (including the extension of time) from the performance of Operations Co's obligations under Section 4 of this Schedule 15 on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under the Financing Documents, including, in each case, without limiting the generality of the foregoing (collectively, the **"Pass-Through Financing Rights and Obligations"**):

(a) **Payment of Project Costs**. Operations Co hereby agrees to pay Project Costs (1) with the payments to be made to it under Sections 10.5 and 10.6(a), (b) and (c) of this Project Implementation Agreement and (2) with the proceeds of the capital contributions to be made to Operations Co pursuant the Capital Contribution Agreement (including any draws from the Capital Contribution Letters of Credit).

(b) **Accounts**. Operations Co shall keep proper records and books of accounts in which complete and correct entries shall be made of its transactions in

accordance with GAAP. Such records and books shall, to the extent permitted by Law, be subject to the inspection of Project Co, solely to the extent required for Project Co to comply with Section 6.05 of the Senior Loan Agreement and Section 6.05 of the Subordinate Loan Agreement. Project Co may take copies and extracts from such books, and records, and Operations Co will from time to time furnish, or cause to be furnished, to Project Co such information and statements as Project Co may reasonably request, all as may be reasonably necessary for the purpose of (1) Issuer or any Trustee determining performance or observance by Project Co of its obligations under the Senior Loan Agreement or the Subordinate Loan Agreement or (2) Project Co determining performance or observance by Operations Co of its obligations under this Schedule 15; provided, that the above requirements shall not require that Operations Co produce a separate record or report to the extent that the records and records referred to in Schedule 14 [Records and Reports] are sufficient to comply with the Financing Documents.

(c) **Reporting**. Pursuant to Section 6.05(c) of the Senior Loan Agreement and Section 6.05(c) of the Subordinate Loan Agreement, Operations Co shall deliver the following information to each Trustee (or other party as specified below):

(1) audited financial statements of Operations Co produced in accordance with GAAP and certified by its auditors within one hundred and twenty (120) days after the end of each fiscal year of Operations Co and unaudited financial statements of Operations Co produced in accordance with GAAP (except for the absence of footnotes and year-end adjustments) certified by the president, CFO or treasurer of Operations Co, within sixty (60) days after the end of each fiscal quarter of Operations Co;

(2) prior to the System Completion Date, monthly progress reports within twenty-eight (28) days of the relevant monthly reporting date, which progress reports shall (i) provide an assessment of the overall progress of the Design and Construction since the date of the last report (or, with respect to the first such report, the Closing Date) and setting forth a reasonable estimate as to the completion date for the applicable work, and (ii) provide a reasonably detailed description of any material delays encountered or anticipated in connection with such work, and a reasonably detailed description of the proposed course of action with respect to such delay;

(3) prompt notice of any proposal to suspend or abandon the Project (except to the extent the suspension is as a result of an emergency or otherwise permitted under the Transaction Documents);

(4) details of any litigation, pending or, if actually known, threatened in writing, by or before any arbitrator or Governmental Authority against Operations Co in connection with the Project in which the amount involved exceeds $5,000,000 and is not covered by insurance;

(5) details of any "event of default" as defined in any Material Project Contract (to which Project Co is a party) or event of which it is actually

aware which with the passing of time or the giving of notice shall become an "event of default" thereunder;

(6) prompt notice, and in no event more than five (5) Business Days after actual knowledge thereof by Operations Co, of any Operations Co Financing Default;

(7) details of any penalties or damages due from or to Operations Co under any Material Project Contract (to which Project Co is a party);

(8) copies of all notices of: (A) termination delivered to Operations Co with respect to any Material Project Contract; (B) any material insurance claims in excess of $5,000,000; (C) the occurrence of any Supervening Event or any other termination or relief event, however defined, under any Material Project Contract; (D) any new or historical Release of Project Co Hazardous Substances (other than previously disclosed in writing by Project Co or Operations Co) that could reasonably be expected to cause or does cause a Material Adverse Effect; (E) any Governmental Approval that will not be granted or renewed at all, or in time to allow continued operation of the Project, or will be granted or renewed on terms materially more burdensome than proposed, or will be terminated, revoked or suspended, and that could be reasonably expected to have a Material Adverse Effect; and (F) the occurrence of any other event or condition which could reasonably be expected to have a Material Adverse Effect;

(9) as soon as available and in any event at least thirty (30) days prior to the beginning of each fiscal year, the Annual Operating Budget for such fiscal year;

(10) not later than sixty (60) days after the end of each fiscal quarter of Project Co occurring after the System Completion Date, Operations Co shall prepare and deliver to Project Co and each Trustee, pursuant to Section 6.17 of the Senior Loan Agreement and Section 6.17 of the Subordinate Loan Agreement, a report showing (a) the operating data for the Project for the previous quarter, including total Project Revenues, total operating, maintenance and capital expenditures incurred and Deductions accumulated during the period, (b) the variances for such periods between the actual Project Revenues and the budgeted Project Revenues, as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more and (c) the variances for such period between the actual routine operating, maintenance and capital expenditures incurred and the budgeted routine operating, maintenance and capital expenditures as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more; and

(11) within ninety (90) days after the end of each fiscal year of Project Co, Operations Co shall furnish to Project Co a certification indicating whether or not Operations Co is aware of any condition, event or act which constitutes an "event of default", or which would constitute an "event of default" with the giving of notice or passage of time, or both, under either

of the Senior Indenture or the Senior Loan Agreement, or either of the Subordinate Indenture or the Subordinate Loan Agreement, and if it is aware of any such condition, event or act that constitutes (or would constitute) an Operations Co Financing Default, the remedies Operations Co intends to implement to cure such condition, event or act (including a timeline for such efforts);

provided, that the above requirements shall not require that Operations Co produce a separate record or report to the extent that the records and records referred to in Schedule 14 [Records and Reports] are sufficient to comply with the Financing Documents.

(d) **Continuing Disclosure Agreement**. Operations Co hereby agrees to provide any information required to be provided by Operations Co under Section 4.1(c) (other than clause (10)) of this Schedule 15 to the Dissemination Agent as required under the Senior Loan Agreement, the Subordinate Loan Agreement and the Continuing Disclosure Agreement and to provide any other information known or in the control of Operations Co that is required to be delivered by Project Co pursuant to the Continuing Disclosure Agreement upon the reasonable request of Project Co.

(e) **Agents and Auditors**. Operations Co hereby agrees to retain on behalf of Project Co, if not retained directly by Project Co, any agents, independent auditors or other third parties required to be retained by Project Co in order to comply with the Financing Documents to which Project Co is a party.

(f) **Sale of Assets**. Pursuant to Section 6.13(b) of the Senior Loan Agreement and Section 6.13(b) of the Subordinate Loan Agreement, Operations Co agrees not to sell, transfer, lease or assign or otherwise dispose of any of the assets of the Project with a fair market value in excess of $5,000,000 per year in the aggregate except for the following:

(1) sales or other dispositions of damaged, obsolete, worn out or defective equipment in the ordinary course of business;

(2) sales or other dispositions in the ordinary course of business or contemplated by or permitted under the Project Agreement and this Project Implementation Agreement;

(3) sales or other dispositions of surplus property not required for the construction or operation of the Project in the ordinary course of business; and

(4) sales that would constitute a Permitted Security Interest.

(g) **Arms Length Transactions**. Pursuant to Section 6.15 of the Senior Loan Agreement and Section 6.15 of the Subordinate Loan Agreement, Operations Co agrees not to enter into any material transactions with any Affiliates (except to the extent such non-arm's-length agreements are contemplated in the Transaction Documents) unless such transaction is fair and commercially reasonable to Operations Co on an arm's length basis and contains terms no

less favorable, taken as a whole, to such entity than those which would be included in an arm's-length transaction with a non-Affiliate.

(h) **Access to the Project**. Pursuant to Section 6.19 of the Senior Loan Agreement and Section 6.19 of the Subordinate Loan Agreement, Operations Co agrees to use its best efforts to give the Trustee, the Issuer and their consultants and representatives access to the Lands and the NG-KIH System, at the sole cost of such Persons, at any reasonable time and as often as may reasonably be requested, and, upon reasonable prior notice to Operations Co, in each case during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by Operations Co or any other party of its obligations with respect to the construction and operation of the Project or the ongoing business of the Lands and the NG-KIH System, and permit the Trustee, the Issuer and their respective consultants and representatives to discuss the Project and the business, accounts, operations, properties and financial and other conditions of Project Co and Operations Co with officers of Project Co and Operations Co and to witness (but not cause) the performance and other tests conducted pursuant to any Material Project Contract, subject in all cases to all applicable confidentiality undertakings and operational or contractual requirements or limitations. Operations Co further agrees to offer all reasonable assistance to such Persons in connection with any such visit.

(i) **Permitted Security Interests**. Pursuant to Section 6.20 of the Senior Loan Agreement and Section 6.20 of the Subordinate Loan Agreement, Operations Co agrees to not create or permit to exist any Security Interest on any property or asset, including its revenues (including accounts receivable) or rights in respect of any thereof, now owned or hereafter acquired by it, except Permitted Security Interests, solely to the extent such unpermitted Security Interest would otherwise cause Project Co to fail to comply with its obligations under Section 6.20 of the Senior Loan Agreement and Section 6.20 of the Subordinate Loan Agreement.

(j) **Rating Agencies**. Pursuant to Section 6.21 of the Senior Loan Agreement and Section 6.21 of the Subordinate Loan Agreement, Operations Co agrees to use commercially reasonable efforts to cooperate with each Nationally Recognized Rating Agency rating the Series 2015 Senior Bonds and, if applicable, any Additional Parity Bonds, in connection with any review which may be undertaken by such Nationally Recognized Rating Agency and facilitate compliance by Project Co with its obligations to enter into and comply with a reasonable and customary "ratings surveillance" agreement with at least one Nationally Recognized Rating Agency rating the Series 2015 Senior Bonds and, if applicable, any Additional Parity Bonds.

(k) **Material Project Contracts**. Pursuant to Section 6.22(a) of the Senior Loan Agreement and Section 6.22(a) of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co has agreed to not amend, assign, waive or modify in any material respect or terminate any Material Project Contracts or enter into any other material agreement (other than in the ordinary course or as set forth in such Section 6.22(a) of the Senior Loan Agreement and Section 6.22(a) of the Subordinate Loan Agreement) without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior

Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds). Notwithstanding the foregoing:

(1) *Change Orders.* Pursuant to Section 6.22(a)(i) of the Senior Loan Agreement and Section 6.22(a)(i) of the Subordinate Loan Agreement, Project Co may enter into change orders or amendments to implement change orders under the Material Project Contracts to which it is a party or new agreements, in each case, required for compliance with the Project Agreement (including, without limitation, with respect to Authority Changes, other written directives issued under the Project Agreement or to implement a System Refresh) or applicable law or regulation. In addition to the foregoing, with respect to the Design-Build Agreement, Project Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Design-Build Agreement if such change order or amendments, as applicable, will not require the payment by Project Co (directly or indirectly through Operations Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, ten million dollars ($10,000,000) in the aggregate; provided, that any change order or amendment to implement change orders, as applicable, the cost of which causes Project Co (directly or indirectly through Operations Co) to exceed the ten million dollars ($10,000,000) threshold with respect to the Design-Build Agreement will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that (A) in its reasonable belief, sufficient funds are available to the Borrower to pay the aggregate amount of Project Costs required to be incurred by the Borrower for the Design and Construction of the Project (including the cost of the change order or amendment to implement change orders at issue); and (B) there is a reasonable expectation of the System Completion Date occurring on or prior to the Bond Holder Long Stop Deadline; and with respect to the Services Contract, the Borrower may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Services Contract if such change order or amendments, as applicable, will not require the payment by the Borrower (directly or indirectly through Operations Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, one million dollars ($1,000,000) in the aggregate. Operations Co agrees to coordinate with Technical Advisor to cause Technical Advisor to provide such certifications as required.

(2) *Permitted Amendments, Waivers and Terminations.* Pursuant to Section 6.22(a)(ii) of the Senior Loan Agreement and Section 6.22(a)(ii) of the Subordinate Loan Agreement, Project Co may amend or waive any Material Project Contract to which it is a party, or terminate any Material

Project Contract to which it is a party (other than the Project Agreement), if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect and, solely with respect to termination of the Implementation Agreement, will not adversely impact the rights of the Senior Secured Parties under the Borrower Direct Agreement. In all cases, if a Material Project Contract or counterparty to a Material Project Contract to which Project Co is a party is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, Operations Co on behalf of Project Co will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any replacement counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced.

(l) **Third Party Infrastructure Agreements**. Pursuant to Section 6.22(a)(iii) of the Senior Loan Agreement and Section 6.22(a)(iii) of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co may enter into agreements or other contractual arrangements with Third Party Infrastructure Providers as contemplated in the Project Agreement without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds, and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds. Operations Co hereby agrees to assist Project Co with negotiating, finalizing and entering into such contractual arrangements with such Third Party Infrastructure Providers in compliance with the terms of the Project Agreement and the parties hereby acknowledge and agree that the rights and obligations under such arrangements, when effective, form part of the Pass-Through Financing Rights and Obligations.

(m) **Performance and Enforcement of the Material Project Contracts**. Pursuant to Sections 6.22(b) of the Senior Loan Agreement and Sections 6.22(b) of the Subordinate Loan Agreement, Operations Co agrees to perform all requirements, duties and obligations under the Material Project Contracts to which it is a party, except where the failure to so perform such requirements, duties and obligations could not reasonably be expected to have a Material Adverse Effect; provided that the parties acknowledge that this provision is solely to facilitate compliance by Project Co and Operations Co with the Financing Documents and shall not otherwise limit or affect or be construed to limit or affect the obligations and liabilities of either Project Co or Operations Co under any Material Project Contract. Pursuant to Sections 6.22(c) of the Senior Loan Agreement and Sections 6.22(c) of the Subordinate Loan Agreement, Operations Co agrees to (i) enforce against the relevant counterparty (other than Operations Co) each covenant or obligation of the Material Project Contract to which it is a party in accordance with its terms and (ii) protect and defend its rights under each Material Project Contract to which it is a party and any matters related thereto, except in each case under clauses (i) and (ii) above, to the extent that failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

(n) **No Distributions or Payments on Subordinate Secured Obligations**. Pursuant to Section 6.23 of the Senior Loan Agreement and Section 6.23 of the

Subordinate Loan Agreement, Operations Co agrees to not deliver an Operations Co Funds Transfer Certificate that requests the transfer of funds:

(1) (A) from the Lock-up Account to any other account or payee or (B) from the Revenue Account at clause *Thirteenth* of Section 5.02(b) of the Collateral Agency Agreement to any account or payee other than to the Lock-up Account, in each case, unless the Restricted Payment Conditions are satisfied or waived in accordance with the terms of the Collateral Agency Agreement; and

(2) to cause the repayment of any Subordinate Secured Obligations from the Revenue Account at clauses *Eighth* or *Ninth* of Section 5.02(b) of the Collateral Agency Agreement unless the Restricted Payment Conditions are satisfied or waived in accordance with the terms of the Collateral Agency Agreement.

(o) **Project Revenues**. Pursuant to Section 6.24 of the Senior Loan Agreement and Section 6.24 of the Subordinate Loan Agreement, Operations Co acknowledges that all Project Revenues received by Project Co shall be applied in accordance with the Financing Documents and agrees to not change the irrevocable instructions of the Authority to deposit all Project Revenues with the Collateral Agent in accordance with the Financing Documents, except to the extent consistent with the terms of the Financing Documents.

(p) **Public Purpose Covenants and First Amendment**. Pursuant to Sections 6.29 and 6.30 of the Senior Loan Agreement and Sections 6.29 and 6.30 of the Subordinate Loan Agreement, solely to the extent required for Project Co to comply with or cause compliance with such covenants, Operations Co agrees to comply with, or cause compliance with, such covenants.

(q) **Refinancing and Additional Bonds**. In each case, solely to the extent required for Project Co to comply with the Financing Documents with respect to any Refinancing of Senior Secured Obligations and/or the issuance of any Additional Senior Bonds, Operations Co agrees to coordinate and facilitate compliance with the applicable conditions (if any) to any such Refinancing and/or issuance of such Additional Senior Bonds pursuant to the definitions of "Other Permitted Senior Secured Indebtedness" and "Other Permitted Senior Secured Indebtedness Conditions" set forth in Exhibit A to the Collateral Agency Agreement.

(r) **Compliance with Laws**. Pursuant to Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co has agreed to obtain on a reasonably timely basis, maintain and comply with, in each case in all material respects, or in the case of such permits as are required to be obtained by Operations Co or other third parties, to the extent possible, use reasonable efforts to cause Operations Co or such other third parties to obtain and thereafter maintain in full force and effect, all required Permits and all applicable Laws except for which failure to comply would not reasonably be expected to have a Material Adverse Effect. Operations Co hereby agrees to coordinate and facilitate Project Co's compliance with Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate

Loan Agreement. Operations Co agrees to comply, *mutatis mutandis*, with Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate Loan Agreement.

(s) **Taxes**. Pursuant to Section 6.11 of the Senior Loan Agreement and Section 6.11 of the Subordinate Loan Agreement, Operations Co agrees to coordinate and facilitate Project Co's obligation to timely pay and discharge all Taxes before they become delinquent unless they are being contested in good faith by appropriate proceedings and Project Co has provided adequate reserves which are maintained in accordance with GAAP or unless the failure to pay and discharge could not reasonably be expected to have a Material Adverse Effect. Operations Co agrees to comply, *mutatis mutandis*, with Section 6.11 of the Senior Loan Agreement and Section 6.11 of the Subordinate Loan Agreement.

(t) **Limitation of Fundamental Changes**. Pursuant to Section 6.13(a) of the Senior Loan Agreement and Section 6.13(a) of the Subordinate Loan Agreement, Operations Co agrees, *mutatis mutandis*, that it shall not merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership, or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of Operations Co, as the case may be.

(u) **Limitations on Indebtedness**. Pursuant to Section 6.27 of the Senior Loan Agreement and Section 6.27 of the Subordinate Loan Agreement, Operations Co agrees that, *mutatis mutandis*, it shall not create, incur or be liable for any Indebtedness, except Permitted Indebtedness.

4.2 Operations Co Concurrent Rights and Obligations.

The parties acknowledge that, pursuant to the Financing Documents to which Project Co is a party, Operations Co has been granted express consent rights and other rights, each as set forth more fully therein, and the parties hereby agree that Operations Co may enforce each such right as if each such right were set forth expressly herein, and the parties further acknowledge that, pursuant to the Financing Documents to which Project Co in a party, Operations Co has express obligations to perform or refrain from performing certain actions, each as set forth more fully therein, and Operations Co hereby agrees to comply with such obligations as if each such obligation were set forth expressly herein, including, in each case, without limiting the generality of the foregoing (collectively, the "**Operations Co Concurrent Rights and Obligations**"):

(a) **Consent to Appointment of Trustees and Other Agents**. To the extent Project Co has a right to consent to the appointment of any successor, replacement, concurrent or new Trustee, Collateral Agent, Securities Intermediary or other agent or advisor pursuant to the terms of the Financing Documents, Project Co agrees not to consent to the appointment of any such agent or advisor without the prior consent of Operations Co (such consent not to be unreasonably withheld or delayed). The parties acknowledge the express rights granted to Operations Co pursuant to Section 2.11(a) (consent rights with respect to appointment of successor Collateral Agents) and Section 5.11(d) (consent rights with respect to appointment of replacement Securities Intermediaries) of the Collateral Agency Agreement, Section 8.4(b) (consent

rights with respect to appointment of successor Trustees) of the Senior Indenture and the definition of "Bond Counsel" therein, and Section 8.4(b) (consent rights with respect to appointment of successor Trustees) of the Subordinate Indenture and the definition of "Bond Counsel" therein, and Operations Co acknowledges its obligations under Section 2.11(b) of the Collateral Agency Agreement to execute and deliver all instruments necessary to appoint any Person as a Co-Collateral Agent or substitute Collateral Agent.

(b) **Refinancing and Additional Bonds**. Reference is hereby made to the provisions of Section 5.3 and Section 5.4 of this Project Implementation Agreement.

(c) **Operations Co Funds Transfer Certificate.** Operations Co acknowledges and agrees to provide to Project Co a duly completed and executed funds transfer certificate, substantially in the form of Exhibit B-2 attached to the Collateral Agency Agreement, setting forth the transfers required from the Revenue Account under Section 5.02(b) of the Collateral Agency Agreement, the Lock-up Account under Section 5.05 of the Collateral Agency Agreement and/or the Insurance Proceeds Account under Section 5.06 of the Collateral Agency Agreement, as applicable, no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn or transferred (or such other time as is sufficient for such transfers to be made on the proposed date). Operations Co agrees to provide to Project Co a written request, setting forth the transfers required from any other Project Account and sufficient in accordance with the terms of the Collateral Agency Agreement, containing the requested transfer amount and payees, by such time as is required for such transfers to be made on the proposed date. Each written request under this Section 4.2(c) is an "**Operations Co Funds Transfer Certificate**". Operations Co shall coordinate with the Technical Advisor in order to cause the Technical Advisor to deliver a duly completed and executed certificate when required to support transfers pursuant to sub-clause (iii) of clause *Third* of Section 5.02(b) of the Collateral Agency Agreement for the payment of excess operating, maintenance and capital expenditures.

(d) **Operations Co Construction Account Withdrawal Certificate**. Operations Co acknowledges and agrees to provide to Project Co a duly completed certificate signed by a Responsible Officer of Operations Co, substantially in the form of Exhibit E-2 attached to the Collateral Agency Agreement (each, an "**Operations Co Construction Account Withdrawal Certificate**"), setting forth the Project Costs to be paid from time to time prior to the System Completion Date in accordance with Section 5.03(d) of the Collateral Agency Agreement, no later than the third (3rd) Business Day prior to the proposed date of disbursement (or such other time as is sufficient for such disbursements to be made on the proposed date). Operations Co shall coordinate with the Technical Advisor in order to cause the Technical Advisor to deliver a duly completed and executed certificate, substantially in the form of Exhibit E-3 attached to the Collateral Agency Agreement, when required to support requisitions for the payment of construction costs; provided that no such certificate shall be required to be delivered for requisitions solely for payment of interest.

(e) **Restricted Payment Release Certificate**. Operations Co agrees to execute and deliver to Project Co as required a duly completed and executed Restricted Payment Release Certificate in accordance with Section 5.05(c) of the Collateral Agency Agreement prior to each Transfer Date and each other date as required to make the transfers from the Revenue Account and the Lock-up Account in accordance with the Collateral Agency Agreement.

(f) **Insurance**. Operations Co shall cause Collateral Agent to be named as an "additional insured" under any insurance policies related to "All Risk" Builder's Risk Insurance" and "Project Finance Commercial General Liability Insurance" (as such terms are used in the Project Agreement, including Schedule 5 thereto) maintained by Operations Co pursuant to Section 6.1 of this Project Implementation Agreement.

(g) **Use of Insurance Proceeds**. Reference is hereby made to the provisions of Section 6.5 of this Project Implementation Agreement. Operations Co shall deposit, or cause to be deposited, to the Insurance Proceeds Account all Insurance Proceeds (other than, for the avoidance of doubt, proceeds received in respect of delayed start-up and business interruption insurance or loss of advance profits insurance) received or entitled to be received by Operations Co. To the extent that, at any time following deposit of Insurance Proceeds into the Insurance Proceeds Account, Project Co has the right to determine whether or not to use such funds to restore the Project because the terms of the Project Agreement, the Project Implementation Agreement and the Financing Documents do not require that the Project be restored or reinstated, Project Co agrees to elect not to restore the affected property only so long as Operations Co has provided its written consent.

(h) **Termination of Project Accounts**. Pursuant to Section 5.10 of the Collateral Agency Agreement, upon the satisfaction in full of the Secured Obligations, Project Co may request that the Collateral Agent close certain Project Accounts and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by Project Co. Project Co agrees not to give any of the foregoing requests or directions without the prior written consent of Operations Co.

(i) **Inadequately Identified Amounts and Other Requests for Instruction**. Pursuant to Section 5.12 of the Collateral Agency Agreement, Project Co has the right to give instructions to the Collateral Agent regarding transfers that have been inadequately identified. Upon receipt of any request from Collateral Agent for instruction from Project Co pursuant to Section 5.12 of the Collateral Agency Agreement or any other request from Collateral Agent to Project Co under the Financing Documents for information, clarification or instruction (other than in connection with the Excluded Rights and/or Excluded Obligations), Project Co shall not provide such information, clarification or instruction without the prior written consent of Operations Co.

(j) **Supplemental Indentures and Amendments to the Financing Documents**. Pursuant to Section 9.02(a) of the Collateral Agency Agreement, Section 9.05 of the Senior Loan Agreement, Section 9.4 and Article X of the Senior Indenture, Section 9.05 of the Subordinate Loan Agreement, and Section 9.4 and Article X

of the Subordinate Indenture, Project Co agrees not to (A) consent to such Supplemental Indentures or any amendment, modification or supplement to the Financing Documents or (B) execute and deliver any amendment, modification or supplement to any of the Financing Documents to which Project Co is a party, in each case, that may adversely affect Operations Co without the prior written consent of Operations Co.

(k) **Additional Senior Bonds**. Pursuant to Section 3.5(d)(3) of the Senior Indenture, no Additional Senior Bonds shall be issued without the written consent of Operations Co, dated the date of issuance of such proposed Additional Senior Bonds, subject to Section 5.3 of this Project Implementation Agreement.

(l) **Material Project Contracts**. Pursuant to Section 6.22(d) of the Senior Loan Agreement and Section 6.22(d) of the Subordinate Loan Agreement, Operations Co acknowledges that it is not permitted to amend, assign, waive or modify in any material respect or terminate any Material Project Contracts or enter into any other material agreement (other than in the ordinary course or as set forth in Section 6.22(d) of the Senior Loan Agreement and Section 6.22(d) of the Subordinate Loan Agreement) without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds). Notwithstanding the foregoing, the parties acknowledge and agree as follows:

(1) *Change Orders relating to the Project Agreement*. Operations Co may enter into change orders or amendments to implement change orders under the Material Project Contracts to which it is a party or new agreements, in each case, required for compliance with the Project Agreement (including, without limitation, with respect to Authority Changes, other written directives issued under the Project Agreement or to implement a System Refresh) or applicable law or regulation. In addition to the foregoing, with respect to the Design-Build Agreement, Operations Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Design-Build Agreement if such change order or amendments, as applicable, will not require the payment by Operations Co (on behalf of Project Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, ten million dollars ($10,000,000) in the aggregate; provided, that any change order or amendment to implement change orders, as applicable, the cost of which causes Operations Co (on behalf of Project Co) to exceed the ten million dollars ($10,000,000) threshold with respect to the Design-Build Agreement will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that (A) in its reasonable belief, sufficient funds are available to the Borrower to pay the aggregate amount of Project Costs required to be incurred by the Borrower for the Design and Construction of the Project (including the

cost of the change order or amendment to implement change orders at issue); and (B) there is a reasonable expectation of the System Completion Date occurring on or prior to the Bond Holder Long Stop Deadline; and with respect to the Services Contract, Operations Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Services Contract if such change order or amendments, as applicable, will not require the payment by Operations Co (on behalf of the Borrower) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, one million dollars ($1,000,000) in the aggregate.

(2) *Permitted Amendments, Waivers and Terminations*. Operations Co may amend or waive any Material Project Contract to which it is a party, or terminate any Material Project Contract to which it is a party (other than this Project Implementation Agreement), if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect. The parties acknowledge and agree that the termination of either the Design-Build Agreement or the Services Contract, as applicable, prior to the satisfaction of the corresponding design, construction or services obligations of Project Co under the Project Agreement, as applicable, is permitted pursuant to Section 6.22(d)(iii) of the Senior Loan Agreement and Section 6.22(d)(iii) of the Subordinate Loan Agreement so long as Operations Co enters into a replacement agreement with an Acceptable Substitute (or another counterparty upon the prior written consent of the Required Owners (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds)). In all cases, if a Material Project Contract or counterparty to a Material Project Contract to which Operations Co is a party is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, Operations Co will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any replacement counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced.

(3) *Acceptable Substitute*. Reference is hereby made to the provisions of Section 4.8 of this Project Implementation Agreement. In each case, solely to the extent required for Project Co to comply with the Financing Documents with respect to replacement contractors for the Design-Builder or the Service Provider, as applicable, and replacement contracts in place of the Design-Build Agreement or the Services Contract, as applicable, Operations Co agrees to (A) contract with replacement contractors that comply with the requirements set forth in the definition of "Acceptable Substitute" set forth in Exhibit A to the Collateral Agency Agreement and (B) submit to the Collateral Agent the certificates and opinions required by the definition of "Acceptable Substitute" set forth in Exhibit A to the Collateral Agency Agreement.

(m) **Wholesaler Arrangements**. Pursuant to Section 6.22(d)(iv) of the Senior Loan Agreement and Section 6.22(d)(iv) of the Subordinate Loan Agreement, Operations Co agrees that it is permitted to enter into the Wholesaler Agreement or other contractual arrangement with the Wholesaler without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if such arrangement:

(1) complies with Section 6.15 of the Senior Loan Agreement and Section 6.15 of the Subordinate Loan Agreement;

(2) does not expressly modify the obligations of Project Co, Operations Co, the Design-Builder and/or the Service Provider under the Material Project Contracts to which such entity is a party with respect to the Project and the Project Agreement;

(3) provides that all amounts payable to Operations Co shall be paid in arrears with customary payment terms, including invoicing;

(4) contains customary indemnity provisions for the benefit of Operations Co; and

(5) would not otherwise cause, or be reasonably expected to cause, a Material Adverse Effect.

(n) **Permitted Change Orders and other Actions with respect to the Wholesaler Arrangements**. Pursuant to Section 6.22(d)(ii) of the Senior Loan Agreement and Section 6.22(d)(ii) of the Subordinate Loan Agreement, Operations Co agrees that it is permitted to enter into change orders or amendments to implement change orders, as applicable, under the Wholesaler Agreement, and initiate Enhancement Requests or amendments to implement Enhancement Requests under the Design-Build Agreement or the Services Contract, as applicable, or enter into new agreements, in each case, with respect to Wholesaler Enhancements or Wholesaler Services, so long as:

(1) the costs of implementing such change order, Enhancement Request or amendment, as applicable, will be paid for by Wholesaler in arrears with customary payment terms, including invoicing; and

(2) such change order, Enhancement Request or amendment, as applicable:

(A) is not contrary to Law;

(B) does not render the insurance policies required under the Project Agreement void or voidable unless the Wholesaler agrees to provide replacement security satisfactory to the Technical Advisor, acting reasonably;

(C) does not cause the revocation of any Permit required by Project Co to perform its obligations under the Project Agreement, which

Permit would not, using reasonable efforts, be capable of amendment or renewal;

(D) does not require a new Permit for Project Co to perform its obligations under the Project Agreement, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable; and

(E) does not cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under the Project Agreement, provided that such Permit was previously required but, at the time of such change order, Enhancement Request or amendment, as applicable, had not been obtained, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable.

Operations Co acknowledges and agrees that the costs of implementing change orders, Enhancement Requests or amendments to implement the foregoing with respect to the Wholesaler Agreement shall not exceed five million dollars ($5,000,000) in the aggregate per fiscal year; provided, that any change order, Enhancement Request or amendment to implement the foregoing, as applicable, the cost of which causes Operations Co to exceed the five million dollars ($5,000,000) threshold will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that such Wholesaler Enhancements and/or Wholesaler Services, as applicable (and the undertakings by Operations Co and the Design-Builder and/or the Service Provider, as applicable, with respect thereto) in its reasonable belief, would not materially and adversely affect the risk allocation and payment regime under the Project Agreement and the Financing Documents with respect to the Design, Construction or Services. Operations Co also hereby agrees that, other than with respect to the foregoing amendments to implement change orders, it may otherwise amend, waive or terminate the Wholesaler Agreement if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect.

4.3 **Other Financing Rights and Obligations of Operations Co.** In furtherance of the purposes of this Schedule 15:

(a) **Investment of Project Accounts**. In accordance with Section 5.08(g) of the Collateral Agency Agreement, Project Co may consult with Operations Co regarding Permitted Investments and its investment strategies for the amounts on deposit in the Project Accounts and Operations Co may suggest Permitted Investments and investment strategies to Project Co to assist Project Co in making its investment decisions.

(b) **Drawing of Series 2015B-2 Bonds and Series 2015C Bonds**. Operations Co agrees to communicate and consult with Project Co regarding expected future Project Costs to facilitate Project Co's compliance with Project Co's obligations

under the Senior Loan Agreement and the Subordinate Loan Agreement to deliver Draw Requests.

(c) **Enforcement of Parallel Financing Issues**. Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Event of Default and, where relevant to such Event of Default, the continuance of such Event of Default, Operations Co shall exercise its rights under Section 2.4 of this Schedule 15 to pursue any rights, remedies or relief under the Financing Documents in the name of Project Co, including the right to enforce any issuance or draw obligations of the Senior Purchaser or the Subordinate Purchasers, at the Collateral Agent's request and in accordance with the Collateral Agent's directions.

(d) **Maintenance of Existence**. Pursuant to Section 6.03 of the Senior Loan Agreement and Section 6.03 of the Subordinate Loan Agreement, Operations Co hereby agrees to (i) maintain (a) its legal existence as a limited liability company, (b) its good standing and qualification to do business in the Authority and in every jurisdiction where such qualification is required by applicable Law and (c) all material rights, franchises, privileges and consents necessary for the maintenance of its existence and (ii) not amend or modify its constitution documentation in a manner that is materially adverse to the Secured Parties.

4.4 **Operations Co Security Documents.** In accordance with Section 3.04 of the Senior Loan Agreement and Section 3.04 of the Subordinate Loan Agreement:

(a) **Operations Co Security Agreement**. Operations Co shall execute and deliver a security agreement in the form of Exhibit A hereto (the "**Operations Co Security Agreement**") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Such Operations Co Security Agreement must be provided by no later than the Closing Date.

(b) **Pledge Agreement**. Operations Co shall cause the Pledgor to execute and deliver a pledge agreement in the form of Exhibit B hereto (the "**Pledge Agreement**") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Such Pledge Agreement must be provided by no later than the Closing Date.

(c) **Operations Co Direct Agreements**. Operations Co shall execute and deliver, and shall cause the Design-Builder and each Design-Builder Guarantor to each execute and deliver, the Design-Builder Direct Agreement in the form of Exhibit C-1 hereto. Operations Co shall execute and deliver, and shall cause the Service Provider and the Service Provider Guarantor to each execute and deliver, the Service Provider Direct Agreement in the form of Exhibit C-2 hereto. Such Design-Builder Direct Agreement and Service Provider Direct Agreement must be provided by no later than the Closing Date.

(d) **Operations Co Operating Account**. Operations Co confirms that an operating account (the "**Operations Co Operating Account**") has been established or shall be established no later than the Closing Date with U.S. Bank National Association, in its capacity as a deposit account bank (the "**Deposit Account Bank**"), and such account shall be maintained in the name of Operations Co.

The Operations Co Operating Account (including any funds on deposit therein from time to time) shall be subject to the Security Interest granted pursuant to the Operations Co Security Agreement and shall constitute part of the Operations Co Collateral. The Operations Co Operating Account shall be subject to an Deposit Account Control Agreement (substantially in the form attached as Exhibit G to the Collateral Agency Agreement) (each a "**Deposit Account Control Agreement**"). Each disbursement of funds from the Construction Account (and any sub-account thereof) in accordance with Section 5.03(d) of the Collateral Agency Agreement that is to be paid to Operations Co directly for the payment or reimbursement of Project Costs shall be made to the Operations Co Operating Account. There shall also be transferred to the Operations Co Operating Account (A) amounts transferred from the Revenue Account in accordance with clause *Third* of Section 5.02(b) of the Collateral Agency Agreement and (B) Capital Contributions in accordance with the Capital Contribution Agreement. Withdrawals from the Operations Co Operating Account will not require compliance with any conditions, other than that Project Revenues on deposit therein must be applied to Project Costs. The Operations Co Operating Account shall at all times be maintained with a single Deposit Account Bank.

(e) **Operations Co Distribution Account**. Operations Co confirms that a distribution account (the "**Operations Co Distribution Account**") has been established or shall be established no later than the Closing Date with U.S. Bank National Association, and such account (with such bank or any replacement or successor institution) shall be maintained in the name of Operations Co. The Operations Co Distribution Account shall not be subject to any Security Interest pursuant to any Operations Co Security Document and shall not (including any funds on deposit therein) constitute any part of the Operations Co Collateral and no Secured Party (including the Collateral Agent) shall have any right with respect thereto. The Operations Co Distribution Account shall be funded with the Operations Co Availability Payments due and owing to Operations Co from time to time under Section 10.6 of this Project Implementation Agreement in accordance with clause *Tenth* of Section 5.02(b) of the Collateral Agency Agreement and Section 5.05(b) of the Collateral Agency Agreement. Operations Co will have the exclusive right to withdraw or otherwise dispose of funds on deposit in the Operations Co Distribution Account to any other account or to such other Person as directed by Operations Co in its sole discretion without any restriction or condition at any time.

(f) **Capital Contribution Agreement and Capital Contribution Letters of Credit**. Operations Co shall execute and deliver, and cause the other parties thereto to execute and deliver, a Capital Contribution Agreement in the form of Exhibit E hereto (the "**Capital Contribution Agreement**") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Operations Co shall cause each Capital Contribution Letter of Credit, each in the form and subject to the requirements set forth in the Capital Contribution Agreement, to be delivered to the Collateral Agent as contemplated in the Capital Contribution Agreement. Such Capital Contribution Agreement and Capital Contribution Letters of Credit must be provided by no later than the Closing Date. The parties hereto agree that, as compensation for providing the Capital Contribution Letters of Credit, Operations Co shall pay to the Sponsors, on a monthly basis commencing on the Closing Date, an amount equal to the

amount for such fees for each such month set forth in the Base Case Model delivered on the Closing Date (the "**Capital Contribution LC Fees**").

(g) **Capital Cash Collateral Accounts**. On behalf of the Sponsors, Operations Co hereby agrees to establish cash collateral accounts (each a "**Capital Cash Collateral Account**") with the Deposit Account Bank and each such Capital Cash Collateral Account shall be maintained in the name of Operations Co. Each Capital Cash Collateral Account (including any funds on deposit therein from time to time) shall be subject to the Security Interest granted pursuant to the Operations Co Security Agreement and shall constitute part of the Operations Co Collateral. Operations Co shall establish a Capital Cash Collateral Account on behalf of a Sponsor prior to any draw on such Sponsor's Capital Contribution Letter of Credit pursuant to Section 2.3(b) or (c) of the Capital Contribution Agreement. Prior to the deposit of any amounts into any Capital Cash Collateral Account, the Collateral Agent, Operations Co and the Deposit Account Bank shall have executed a Deposit Account Control Agreement with respect to the Capital Cash Collateral Account. Amounts deposited in any Capital Cash Collateral Account pursuant to a draw made by the Collateral Agent on such Sponsor's Capital Contribution Letter of Credit pursuant to Section 2.3(b) or (c) of the Capital Contribution Agreement shall constitute cash collateral security for the performance by the Sponsor whose Capital Contribution Letter of Credit was drawn of its obligations under the Capital Contribution Agreement. Amounts shall be transferred from any such Capital Cash Collateral Account in accordance with the terms of the Capital Contribution Agreement.

(h) **Change of Deposit Account Bank**. Operations Co may change the Deposit Account Bank with respect to the Operations Co Operating Account and/or any Capital Cash Collateral Accounts at its sole discretion upon ten (10) Business Days written notice to each Trustee, the Collateral Agent and Project Co, to another bank; provided that such bank shall be organized under the laws of the United States of America or any state thereof with a branch office in the Authority having a combined capital and surplus of not less than $500,000,000. If the Deposit Account Bank at any time gives notice that it no longer wishes to act as a Deposit Account Bank or that it will no longer be subject to the terms of an Deposit Account Control Agreement, or that it will no longer act upon the instructions of Operations Co or the Collateral Agent in accordance with the applicable Deposit Account Control Agreement as a result of its determination that such action would result in the violation of any applicable Law, rule or regulation or for any other reason (a "**Termination Notice**"), Operations Co shall promptly (and, to the extent possible, prior to the effective date of such Termination Notice) appoint a replacement Deposit Account Bank; provided that Operations Co delivers an opinion of counsel to the effect that after the appointment of such replacement Deposit Account Bank, the Collateral Agent will remain perfected in any accounts held thereunder; provided, further, that such bank shall be organized under the laws of the United States of America or any state thereof with a branch office in the Authority having a combined capital and surplus of not less than $500,000,000. Operations Co shall notify each Trustee, the Collateral Agent, and Project Co of any Termination Notice promptly upon receipt thereof by Operations Co. The new Deposit Account Bank shall be required, prior to becoming the Deposit Account Bank, to (i) enter into one or more Deposit Account Control Agreements, substantially in the form of Exhibit G

to the Collateral Agency Agreement or in such other form as may be approved by the Instructing Trustee and the Collateral Agent (such approval not to be unreasonably withheld, delayed or conditioned), with Operations Co and the Collateral Agent and carry out such further acts as the Collateral Agent may reasonably request in order to perfect the security interest of the Collateral Agent in the Operations Co Operating Account and/or any Capital Cash Collateral Account, as applicable, and (ii) agree to provide the reports with respect to such account(s) similar to the reports required to be provided pursuant to Section 2.12(b) and (c) of the Collateral Agency Agreement.

(i) **Further Assurances**. Operations Co will, at Project Co's cost and expense, execute and deliver to the Collateral Agent (with a copy to each Trustee and Project Co) all such reasonable acknowledgements, agreements, undertakings and other documents as the Collateral Agent or Project Co may require in connection with their taking security over Project Co's right, title and interest in and to this Project Implementation Agreement and the Project, including executing and delivering the Lenders' Remedies Agreement in the form of Exhibit D hereto. Such Lenders' Remedies Agreement must be provided by no later than the Closing Date. Operations Co will, at its own cost and expense, execute and deliver to the Collateral Agent (with a copy to each Trustee and Project Co) all such reasonable acknowledgements, agreements, undertakings and other documents as the Collateral Agent or Project Co may require in connection with their taking security over Operations Co's right, title and interest in and to this Project Implementation Agreement, the other Material Project Contracts to which Operations Co is a party and the Project as performance security as set forth herein.

EXHIBIT A

OPERATIONS CO SECURITY AGREEMENT

OPERATIONS CO SECURITY AGREEMENT

Dated as of September 3, 2015

between

KENTUCKYWIRED OPERATIONS COMPANY, LLC, as Operations Co

and U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

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THIS OPERATIONS CO SECURITY AGREEMENT (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Agreement"), dated as of September 3, 2015, is made by and between KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company (the "Operations Co") and U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, together with its successors in such capacity, the "Collateral Agent") for the benefit of the Secured Parties.

RECITALS

WHEREAS, pursuant to that certain Senior Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented, amended and restated and/or otherwise modified from time to time, the "Senior Indenture") between the Kentucky Economic Development Finance Authority, a public body corporate and politic, constituting an instrumentality of the Commonwealth of Kentucky, as Issuer ("Issuer") and U.S. Bank National Association, as trustee, Issuer has authorized the issuance of $_____ aggregate principal amount of Kentucky Economic Development Finance Authority Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015A and Taxable Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015B, the proceeds from the sale of which will be loaned to Borrower pursuant to the terms of that certain Senior Loan Agreement (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Senior Loan Agreement"), dated as of September 1, 2015, between Issuer and Borrower, to be used to finance a portion of the costs of the Project, as hereinafter defined;

WHEREAS, pursuant to that certain Subordinate Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Indenture"), (a) the Issuer has authorized the issuance of not to exceed $_____ Kentucky Economic Development Finance Authority Subordinate Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015C, the proceeds from the sale of which will be loaned to the Borrower pursuant to the terms of a Subordinate Loan Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Loan Agreement"), dated as of September 1, 2015, between the Issuer and the Borrower, to be used to finance a portion of the costs of the Project and (b) the Subordinate Bonds Trustee, on behalf of the Subordinate Secured Parties, has subordinated the Subordinate Secured Obligations and all liens securing the Subordinate Secured Obligations to the payment in full of the Senior Secured Obligations in the manner and to the extent set forth in this Agreement and the Subordinate Indenture;

WHEREAS, pursuant to that certain Project Implementation Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Implementation Agreement"), dated as of September 3, 2015, Borrower has contracted with Operations Co to, among other things, implement Borrower's obligations with respect to the Project pursuant to the Project Agreement and manage the obligations undertaken by the Design-Builder and the Service Provider, respectively, pursuant to the terms of the Design-Build Agreement and Services Contract, respectively;

WHEREAS, Operations Co, through the Implementation Agreement, will derive substantial direct and indirect benefit from the financing arrangements referenced in these recitals; and

WHEREAS, in consideration for the rights granted to Operations Co pursuant to the Implementation Agreement, and as a condition precedent to the above-described financing

transactions, Operations Co has agreed to secure the Secured Obligations (as defined herein) as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereto agree as follows:

SECTION 1 Definitions; Interpretation.

(a) Terms Defined in Collateral Agency Agreement. All capitalized terms used in this Agreement but not otherwise defined herein shall have the respective meanings set forth in Exhibit A to the Collateral Agency and Account Agreement dated as of September 1, 2015 among Borrower, the Senior Bonds Trustee, as defined therein, the Subordinate Bonds Trustee, as defined therein, the Securities Intermediary, as defined therein and Collateral Agent (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Collateral Agency Agreement").

(b) Certain Defined Terms. As used in this Agreement, terms defined in the preamble and recitals hereto shall have the meanings set forth therein and the following terms shall have the following meanings:

"Accession" has the meaning given such term in Section 9-102 of the UCC.

"Account Debtor" shall mean a person obligated on an Account, Chattel Paper or General Intangible.

"Accounts" means any and all accounts, as such term is defined in Section 9-102 of the UCC.

"As-Extracted Collateral" means any and all as-extracted collateral, as such term is defined in Section 9-102 of the UCC.

"Books" means all books, Records and other written, electronic or other documentation in whatever form maintained now or hereafter, including: (i) ledgers; (ii) Records indicating, summarizing, or evidencing assets (including Inventory and Rights to Payment), business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals and spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any contract or agreement with any service bureau, computer or data processing company or other Person charged with preparing or maintaining any books or Records or with credit reporting, including with regard to Accounts.

"Cash Proceeds" has the meaning given such term in Section 9-102 of the UCC.

"Chattel Paper" means any and all chattel paper, as such term is defined in Section 9-102 of the UCC, including all Electronic Chattel Paper.

"Collateral" has the meaning set forth in Section 2 of this Agreement.

"Commercial Tort Claims" means any and all commercial tort claims, as such term is defined in Section 9-102 of the UCC, including any described under the heading "Commercial Tort Claims" in Schedule 1 to this Agreement.

"Commodity Account" means all commodity accounts, as such term is defined in Section 9-102 of the UCC.

"Commodity Contract" means all commodity contracts, as such term is defined in Section 9-102 of the UCC.

"Control Agreement" means any control agreement or other agreement with any Securities Intermediary, bank or other Person establishing the Collateral Agent's control with respect to any Deposit Account, Investment Property or Letter-of-Credit Right, for purposes of UCC Section 9-104, 9-106 or 9-107.

"Deposit Account" means any deposit account, as such term is defined in Section 9-102 of the UCC, whether or not restricted or designated for a particular purpose.

"Documents" means any and all documents, as such term is defined in Section 9-102 of the UCC.

"Electronic Chattel Paper" means any and all electronic chattel paper, as such term is defined in Section 9-102 of the UCC.

"Equipment" means any and all equipment, as such term is defined in Section 9-102 of the UCC, including any and all Fixtures.

"Excluded Contracts" means the Project Agreement and any Third Party Infrastructure Agreements, as each may be amended, supplemented, amended and restated or otherwise modified and in effect from time to time.

"Financial Asset" means all financial assets, as such term is defined in Section 8-102 of the UCC.

"Fixture Filing" means any fixture filing, as such term is defined in Section 9-102 of the UCC.

"Fixtures" means any and all fixtures, as such term is defined in Section 9-102 of the UCC.

"General Intangibles" means any and all general intangibles, as such term is defined in Section 9-102 of the UCC.

"Goods" means any and all goods, as such term is defined in Section 9-102 of the UCC.

"Instruments" means any and all instruments, as such term is defined in Section 9-102 of the UCC.

"Intellectual Property Collateral" means the following properties and assets now or hereafter owned or held by Operations Co or in which Operations Co otherwise has any interest, now existing or hereafter acquired or arising:

(i) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including the patents, patent applications and patent licenses described under the corresponding headings in Schedule 1 to this Agreement), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all copyrights and applications for copyright, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and all other rights and works of authorship (including the copyrights and copyright applications described under the corresponding headings in Schedule 1 to this Agreement), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, and all other rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright;

(iii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including the marks, names, applications and licenses described under the corresponding headings in Schedule 1 to this Agreement), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(iv) all trade secrets, trade dress, trade styles, logos, other source of business identifiers, mask-works, mask-work registrations, mask-work applications, software, confidential and proprietary information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates, catalogs, internet websites, and internet domain names and associated URL addresses;

(v) the entire goodwill of or associated with the businesses now or hereafter conducted by Operations Co connected with and symbolized by any of the aforementioned properties and assets; and

(vi) all accounts, all other proprietary rights, all other intellectual or other similar property and all other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above.

"Inventory" means any and all inventory, as such term is defined in Section 9-102 of the UCC.

"Investment Property" means any investment property, as such term is defined in Section 9-102 of the UCC.

"Letter-of-Credit Rights" means any and all letter-of-credit rights, as such term is defined in Section 9-102 of the UCC.

"Motor Vehicles" means motor vehicles, tractors, trailers and other like property, if the title thereto is governed by a certificate of title or ownership.

"Operations Co Financing Default" has the meaning given to such term in the Collateral Agency Agreement.

"Pledged Agreements" means all contracts and agreements included in the Collateral, as amended, modified, renewed or extended from time to time, including (i) all rights of Operations Co to receive moneys and other payments and distributions due or to become due thereunder or with respect thereto, (ii) all rights of Operations Co to receive proceeds of any insurance, indemnity, warranty, letter of credit or guaranty with respect thereto, (iii) all claims of Operations Co for damages arising out of any breach or default thereunder or in respect thereof; and (iv) the right of Operations Co to terminate, amend, supplement or modify any such agreement, contract, instrument or other document, to perform thereunder and to compel performance and otherwise exercise all rights and remedies thereunder or in respect thereof.

"Proceeds" means all proceeds, as such term is defined in Section 9-102 of the UCC.

"Promissory Note" means any and all promissory notes, as such term is defined in Section 9-102 of the UCC.

"Records" has the meaning given such term in Section 9-102 of the UCC.

"Rights to Payment" means any and all of Operations Co's Accounts and any and all of Operations Co's rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

"Secured Obligations" means all obligations of Operations Co under the Implementation Agreement, the Financing Documents to which it is a party and the Material Project Contracts to which it is a party.

"Securities" means all securities, as such term is defined in Section 8-102 of the UCC, and all stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

"Securities Account" means each securities account, as such term is defined in Section 8-501 of the UCC.

"Securities Intermediary" means each securities intermediary, as such term is defined in Section 8-102 of the UCC.

"Security Entitlement" means all security entitlements, as such term is defined in Section 8-102 of the UCC.

"Supporting Obligations" means all supporting obligations, as such term is defined in Section 9-102 of the UCC.

"UCC" means the Uniform Commercial Code from time to time in effect in the State of New York or, as the context may require, the State of Delaware or, as the context may require, in effect in the State or States in which any Collateral is located.

(c) Interpretation. For purposes of this Agreement, except as otherwise expressly provided and except where the context otherwise requires: (i) the incorporation by reference of definitions or other terms from other agreements shall survive any termination of such agreements until this Agreement is terminated as provided in Section 25 hereof; (ii) any of the terms defined herein may be used in the singular or the plural, depending on the reference; (iii) references in this Agreement to any Article, Section, Schedule or Exhibit shall be to an Article, Section, Schedule or Exhibit, as the case may be, of this Agreement unless otherwise specifically provided; (iv) the use in this Agreement of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter; (v) the terms lease and license shall include sub-lease and sub-license, as applicable; (vi) all references in this Agreement to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to the UCC; (vii) the words "herein," "hereof," "hereto," "hereby," "hereunder" and other words of similar import in this Agreement refer to this Agreement as a whole and not to any particular Article, Section or other subdivision and, if this Agreement has been amended, then such words shall refer to this Agreement as so amended; (viii) the term "money" includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder; and (ix) all references to any contract or agreement in this Agreement shall include all amendments, supplements and modifications thereto.

SECTION 2 Security Interest.

(a) Grant of Security Interest. As security for the full and prompt payment and performance when due of the Secured Obligations, Operations Co hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a Security Interest in and continuing lien on all of Operations Co's right, title and interest in, to and under all of its personal property, tangible and intangible, wherever located and whether now owned, leased or licensed or hereafter acquired, leased or licensed and whether now existing or hereafter arising (subject to Section 2(b) hereof), including Operations Co's right, title and interest in, to and under the following property (collectively, the "Collateral"):

(i) all Accounts;

(ii) all As-Extracted Collateral;

(iii) all Chattel Paper;

(iv) all Commercial Tort Claims;

(v) all Documents;

(vi) all Equipment (including all right, title and interest in and to the Project);

(vii) all Fixtures;

(viii) all General Intangibles;

(ix) all Goods;

(x) all Instruments, including all Promissory Notes;

(xi) all Intellectual Property Collateral;

(xii) all Inventory;

(xiii) to the maximum extent assignable (including by operation of Sections 9-406 et seq. of the UCC, or otherwise) all Permits now or hereafter held in the name, or for the benefit, of Operations Co (provided that any Permit which by its terms or by operation of law would become void, voidable, terminable, or revocable if mortgaged, pledged or assigned hereunder or if a security interest therein was granted hereunder is expressly excepted and excluded from the lien and terms of this Agreement to the extent necessary to avoid such voidness, voidability, terminability or revocability);

(xiv) all money, cash, cash equivalents and Deposit Accounts, including, without limitation, the Operations Co Operating Account, together with all amounts on deposit from time to time in such Deposit Accounts;

(xv) all Investment Property, including all Securities, all Securities Accounts, and all Security Entitlements with respect thereto and Financial Assets carried therein, and all Commodity Accounts and Commodity Contracts;

(xvi) all Letter-of-Credit Rights;

(xvii) all Material Project Contracts to which Operations Co is a party, including, without limitation, the Implementation Agreement;

(xviii) to the maximum extent assignable (including by operation of Sections 9-406 or 9-408 of the UCC, or otherwise), all agreements and contracts (other than agreements and contracts covered by paragraph (viii) or (xvii) above), in each case, to which Operations Co is a party or of which it is a beneficiary (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time), including (i) all contracts and agreements related to the Project to which Operations Co is a party or of which it is a beneficiary and (ii) each and every bond, indemnity, warranty guaranty and other similar document relating to the performance by any party (other than Operations Co) of any of the

foregoing (provided that any such agreement, contract or document which by its terms or by operation of law would become void, voidable, terminable, or revocable if mortgaged, pledged or assigned hereunder or if a security interest therein was granted hereunder is expressly excepted and excluded from the lien and terms of this Agreement to the extent necessary so as to avoid such voidness, avoidability, terminability or revocability); and

(xix) all products, Proceeds, rents and profits of or in respect of any and all of the foregoing, including proceeds of insurance policies and of condemnation proceedings, all collateral security and guarantees given by any Person with respect to any and all of the foregoing, all Accessions to and substitutions and replacements for any of the foregoing, all Supporting Obligations of any and all of the foregoing and all Books.

(b) Excluded Assets. Notwithstanding anything herein to the contrary, in no event shall the Collateral include or the Security Interest granted under Section 2(a) hereof attach to:

(i) the Operations Co Distribution Account or any monies, securities, Instruments or other investments on deposit in such account from time to time;

(ii) to the extent the Borrower has rights to the following or the power to transfer rights in the following, the Excluded Contracts; and

(iii) any agreements or other contractual arrangements with Wholesaler to which Operations Co is a party or of which it is a beneficiary (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time) and each and every bond, indemnity, warranty guaranty and other similar document relating to the performance by any party (other than Operations Co) of any of the foregoing, and all products, Proceeds, rents and profits of or in respect of any and all of the foregoing, including proceeds of insurance policies and of condemnation proceedings, all collateral security and guarantees given by any Person with respect to any and all of the foregoing, all Accessions to and substitutions and replacements for any of the foregoing, all Supporting Obligations of any and all of the foregoing and all Books with respect thereto.

(c) Operations Co Remains Liable. Anything herein to the contrary notwithstanding, (i) Operations Co shall remain liable for all obligations under and in respect of the Collateral and nothing contained herein is intended as or shall be a delegation of duties to Collateral Agent or the other Secured Parties, (ii) Operations Co shall remain liable under each of the agreements included in the Collateral, including the Pledged Agreements to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed in accordance with and pursuant to the terms and provisions thereof, (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release Operations Co from any of its duties or obligations under such Pledged Agreements, and (iv) the Collateral Agent shall not have any obligation or liability under any Pledged Agreements by reason of this Agreement, nor shall the Collateral Agent be obligated to perform any of the obligations or duties of Operations

Co thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

(d) Continuing Security Interest. Operations Co agrees that this Agreement shall create a continuing Security Interest in the Collateral which shall remain in effect until terminated in accordance with Section 25 of this Agreement.

(e) Reserved.

(f) No Fee Interest. Operations Co hereby acknowledges and agrees that the Security Interest created hereby in the Collateral is not, in and of itself, to be construed as a grant of a fee interest (as opposed to security interest) in any copyright, patent or trademark owned by Operations Co.

(g) Security Interest in Amounts Paid. Notwithstanding anything to the contrary in the foregoing, any and all amounts paid or distributed by Operations Co in accordance with the Financing Documents and/or the Project Implementation Agreement (as applicable) shall be free of the Security Interests granted and created herein upon, from and after such payment or distribution.

(h) Use of Proceeds. So long as no Operations Co Financing Default shall have occurred and be continuing, Operations Co shall be entitled to use and, except with respect to Collateral required by this Agreement to be delivered to the Collateral Agent, possess, all Collateral and to exercise its rights, title and interest in all contracts, agreements and licenses, subject to the rights, remedies, powers and privileges of the Collateral Agent under this Agreement. Nothing herein shall limit or restrict the rights of Operations Co in respect of funds available for distributions and other transfers contemplated and permitted pursuant to the Collateral Agency Agreement.

(i) Partial Release. Upon the sale by Operations Co of any assets permitted by, and in accordance with, the Financing Documents, any lien created by this Agreement on such assets shall be released (provided, however that Security Interests granted and created herein shall continue in any proceeds, as defined in the UCC, of such sale, conveyance, transfer, assignment or other disposition) and, upon the written request of Operations Co, Collateral Agent shall execute such documents as Operations Co may reasonably request evidencing such release of such Security Interest.

SECTION 3 Perfection and Priority.

(a) Financing Statements. Operations Co hereby authorizes the Collateral Agent to file at any time and from time to time, any financing statements describing the Collateral, all amendments to financing statements, continuation statements, termination statements, security agreements relating to the Intellectual Property Collateral, assignments, Fixture Filings, affidavits, reports, notices and other documents and instruments, in form reasonably satisfactory to the Collateral Agent, and Operations Co shall execute and deliver to the Collateral Agent such of the foregoing documents as the Collateral Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Collateral Agent's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, Operations Co ratifies and authorizes the filing by the Collateral Agent of any financing statements filed prior to the date hereof in connection with security interests granted hereunder.

(b) Bailees. Any Person (other than the Collateral Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Collateral Agent. At any time and from time to time, the Collateral Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Collateral Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, Operations Co will join with the Collateral Agent in notifying any Person who has possession of any Collateral of the Collateral Agent's security interest therein and will use its commercially reasonable efforts to obtain an acknowledgment from such Person that it is holding the Collateral for the benefit of the Collateral Agent. If such Person fails to deliver such an acknowledgment within fourteen (14) days of request therefor or refuses, at any time, to deliver such an acknowledgment then, upon request by the Collateral Agent, Operations Co shall take possession of such Collateral or deliver the same to another Person and again comply with the last two sentences of this paragraph.

(c) Control. Operations Co will promptly, from time to time, enter into such control agreements, each in form and substance reasonably acceptable to the Collateral Agent, as may be required to perfect the security interest created hereby in any and all Deposit Accounts, Electronic Chattel Paper, Investment Property and Letter-of-Credit Rights, and will promptly furnish to the Collateral Agent true copies thereof.

(d) Intellectual Property Collateral. Operations Co will promptly from time to time upon the request of the Collateral Agent, execute and deliver such short-form security agreements as the Collateral Agent may reasonably deem necessary or advisable to protect the interests of the Collateral Agent in respect of Intellectual Property Collateral.

(e) Motor Vehicles. Operations Co will, promptly upon the reasonable request of the Collateral Agent, cause the Collateral Agent to be listed as the lienholder on any certificate of title or ownership covering any Motor Vehicle (other than Motor Vehicles constituting Inventory) and within ninety (90) days of such request deliver evidence of the same to the Collateral Agent. A request by the Collateral Agent under the preceding sentence shall be deemed reasonable if the relevant Motor Vehicles have an aggregate book value in excess of $100,000.

(f) Books. Operations Co will keep full and accurate Books relating to the Collateral, and stamp or otherwise mark such Books in such manner as the Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement, and permit representatives of the Collateral Agent, upon reasonable notice, at reasonable times during normal business hours to inspect and make abstracts from its Books pertaining to the Collateral subject to all applicable confidentiality undertakings and operational or contractual requirements or limitations; provided, however, that, unless an Operations Co Financing Default has occurred and is continuing, Operations Co shall not be responsible for the cost of any such inspection.

(g) Access; Right of Inspection. Subject in all cases and at all times to the rights of access to the Lands and the NG-KIH System granted to Operations Co pursuant to the Implementation Agreement, the Collateral Agent and its representatives shall, at any reasonable time and as often as may be reasonably requested, and, upon reasonable notice to Operations Co, in each case during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by Operations Co or any other party of its obligations with respect to the construction and operation of the Project, have the

right to enter any premises of Operations Co and inspect any property of Operations Co where any of the Collateral of Operations Co is located for the purpose of inspecting the same, observing its use or otherwise protecting Collateral Agent's interests therein; provided, however, that, unless an Operations Co Financing Default has occurred and is continuing, Operations Co shall not be responsible for the cost of any such inspection.

(h) Further Assurances. Operations Co agrees that from time to time, at its expense, it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any Security Interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Operations Co shall furnish the Collateral Agent with such information regarding the Collateral, including, without limitation, the location thereof, as the Collateral Agent may reasonably request from time to time. Operations Co hereby authorizes the Collateral Agent to modify this Agreement after obtaining Operations Co's approval of or signature to such modification by amending Schedule 1 (as such schedule may be amended or supplemented from time to time) to include reference to any additional information of which Operations Co has given notice to Collateral Agent.

SECTION 4 Representations and Warranties. Operations Co represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, that, as of the date hereof and as of the Financial Close:

(a) Location of Chief Executive Office and Collateral. Operations Co's chief executive office and principal place of business is located at the address set forth, and designated as such, under the corresponding heading in Schedule 1 to this Agreement; and all other locations where Operations Co conducts business or where Collateral is kept are set forth under the heading "Locations of Collateral" in Schedule 1 to this Agreement.

(b) Locations of Books. All locations where Books pertaining to the Rights to Payment are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for Operations Co, are set forth under the heading "Locations of Books, etc." in Schedule 1 to this Agreement.

(c) Jurisdiction of Organization and Names. Operations Co's mailing address, jurisdiction of organization and organizational ID number is set forth under the corresponding heading in Schedule 1 to this Agreement, and Operations Co's exact legal name is as set forth in the first paragraph of this Agreement. Except as set forth under the heading "Historical Matters" in Schedule 1 to this Agreement, Operations Co has not, at any time prior to the date hereof: (i) been known as or used any other corporate, trade or fictitious name; (ii) changed its name, jurisdiction or organization, chief executive office or sole place of business or corporate structure; (iii) been the surviving or resulting entity in a merger or consolidation; (iv) acquired through asset purchase or otherwise any business of any Person; or (v) become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person. Operations Co has been duly organized and is validly existing as a limited liability company solely under the laws of the State of Delaware and remains duly existing as such. Operations Co has not filed any certificate of dissolution or liquidation or any certificate of domestication, transfer or continuance in any other jurisdiction.

(d) Collateral. Operations Co has rights in and, upon compliance with the limitations in the Project Agreement, the power to transfer, the Collateral, and Operations Co is, and, except as permitted by the Financing Documents, will continue to be, the sole owner of the Collateral (or, in the case of after-acquired Collateral, at the time Operations Co acquires rights in such Collateral, will be the sole owner thereof), free from any Security Interest other than Permitted Security Interests.

(e) Enforceability; Priority of Security Interest. (i) This Agreement creates a security interest which is enforceable against the Collateral in which Operations Co now has rights and will create a security interest which is enforceable against the Collateral in which Operations Co hereafter acquires rights at the time Operations Co acquires any such rights and to the extent thereof, in each case to the extent that the same may be created under Article 9 of the UCC by execution and delivery of a written security agreement (the "Article 9 Collateral"); and (ii) the Collateral Agent shall have a perfected and first priority security interest in the Article 9 Collateral in which Operations Co hereafter acquires rights at the time Operations Co acquires any such rights, in each case securing the payment and performance of the Secured Obligations, and in each case to the extent that the same may be perfected by the filing of UCC-1 financing statements.

(f) Other Financing Statements. Other than (i) financing statements related to Permitted Security Interests and (ii) financing statements in favor of the Collateral Agent for the benefit of the Secured Parties, no effective financing statement naming Operations Co as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction.

(g) Rights to Payment. Operations Co has not assigned any of its rights under the Rights to Payment except to the Collateral Agent pursuant to the Financing Documents.

(h) Inventory. No Inventory is stored with any bailee, warehouseman or similar Person or on any premises leased to Operations Co, nor has any Inventory been consigned to Operations Co or consigned by Operations Co to any Person or is held by Operations Co for any Person under any "bill and hold" or other arrangement, except in each case as set forth under the heading "Inventory Matters" in Schedule 1 to this Agreement.

(i) Intellectual Property.

(i) Except as set forth under the heading "Intellectual Property" in Schedule 1 to this Agreement, Operations Co does not own, possess or use under any licensing arrangement, any patents, copyrights, trademarks, service marks or trade names, nor is there currently pending before any Governmental Authority any application for registration of any patent, copyright, trademark, service mark or trade name;

(ii) All patents, copyrights, trademarks, service marks and trade names are subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(iii) No infringement or unauthorized use presently is being made of any Intellectual Property Collateral by any Person; and

(iv) Operations Co is the sole and exclusive owner of the Intellectual Property Collateral and the use of such Intellectual Property Collateral by Operations Co has not and does not infringe or violate any right, privilege or license agreement of or with any other Person.

(j) Investment Property; Instruments; and Chattel Paper. All Securities Accounts of Operations Co and other Investment Property of Operations Co are set forth under the corresponding headings in Schedule 1 to this Agreement, and all Instruments and Chattel Paper held by Operations Co are also set forth under the corresponding headings in Schedule 1 to this Agreement.

(k) Control Agreements. No Control Agreements exist with respect to any Collateral other than any Control Agreements in favor of the Collateral Agent.

(l) Letter-of-Credit Rights. Operations Co does not have any Letter-of-Credit Rights except as set forth in Schedule 1 to this Agreement.

(m) Commercial Tort Claims. Operations Co does not have any Commercial Tort Claims except as set forth in Schedule 1 to this Agreement.

(n) Leases. Operations Co is not, and will not become, a lessee under any real property lease or other agreement governing the location of Collateral at the premises of another Person pursuant to which the lessor or such other Person may obtain any rights in any of the Collateral, and no such lease or other such agreement now prohibits, restrains, impairs or will prohibit, restrain or impair such Operations Co's right to remove any Collateral from the premises at which such Collateral is situated, except for restrictions in favor of the Collateral Agent.

SECTION 5 Covenants. So long as any of the Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted) remain unsatisfied, and without limiting any restrictions or prohibitions set forth in the other Financing Documents with respect to any of the following, Operations Co agrees that:

(a) Change in Name, Identity or Structure. Operations Co will give at least thirty (30) days' prior written notice to the Collateral Agent of (i) any change in its name, (ii) any change in its jurisdiction of organization, (iii) any change in its registration as an organization (or any new such registration); and (iv) any changes in its identity or structure which might make any financing statement filed pursuant to this Agreement seriously incorrect or misleading; provided that Operations Co shall not change its jurisdiction of organization to a jurisdiction outside of the United States and shall not make any of the changes in clauses (i) through (iv) of this Section unless it shall have taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's Security Interest in the Collateral intended to be granted herein.

(b) Expenses. Operations Co will pay all expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral.

(c) Leased Premises; Collateral Held by Warehouseman, Bailee, Etc. Operations Co will use its commercially reasonable efforts to obtain from each Person from whom Operations Co leases any premises, and from each other Person at whose premises any Collateral is at any time present (including any bailee, warehouseman or similar Person), any such collateral access, subordination, landlord waiver, bailment, consent and estoppel agreements as the Collateral Agent may require. If any such Person fails to deliver such an agreement, in form and substance reasonably satisfactory to the Collateral Agent, within fourteen (14) days of request therefor or refuses, at any time, to deliver such an agreement

then, upon request by the Collateral Agent, Operations Co shall take possession of such Collateral or deliver the same to another Person and again comply with this paragraph.

(d) Instruments, Investment Property, Etc. Operations Co will (i) promptly deliver to the Collateral Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property, all letters of credit, and all other Rights to Payment at any time evidenced by promissory notes, trade acceptances or other instruments (other than checks and other payment instruments received in the ordinary course of business, each of which shall be promptly deposited with the Collateral Agent in accordance with the Financing Documents), in each case in which Operations Co has rights or the power to transfer rights, (ii) cause any Securities Intermediaries to show on their books that the Collateral Agent is the entitlement holder with respect to any Investment Property, and/or (at Operations Co's option) obtain Control Agreements in favor of the Collateral Agent from such Securities Intermediaries, in form and substance satisfactory to the Collateral Agent, with respect to any Investment Property, as requested by Collateral Agent, and (iii) provide such notice, obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights, as the Collateral Agent shall reasonably specify; in the case of each of clauses (i), (ii) and (iii) in order to create, perfect and/or maintain the validity, perfection or priority of, provide notice of, and/or protect, the Collateral Agent's Security Interest hereunder or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder.

(e) Inventory. Operations Co will:

(i) (A) if no Operations Co Financing Default shall have occurred and be continuing, within fifteen (15) days after written request by the Collateral Agent, or (B) if an Operations Co Financing Default shall have occurred and is continuing, within five (5) days after written request by the Collateral Agent, furnish to the Collateral Agent a report of all Inventory in which Operations Co has rights or the power to transfer rights; and

(ii) except as otherwise permitted by the Financing Documents, not (A) store any Inventory in which Operations Co has rights or the power to transfer rights with a bailee, warehouseman or similar Person or on premises leased to, or otherwise not owned in fee simple by, Operations Co, without complying with Section 5(c) hereof with respect thereto nor (B) dispose of any such Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or similar basis, nor acquire any Inventory from any Person on any such basis, without in each case giving the Collateral Agent prior written notice thereof.

(f) Equipment. Operations Co will (i) if no Operations Co Financing Default shall have occurred and be continuing, within fifteen (15) days after written request by the Collateral Agent, or (ii) if an Operations Co Financing Default shall have occurred and is continuing, within five (5) days after written request by the Collateral Agent, deliver to the Collateral Agent a report with respect to all Equipment in which Operations Co has rights or the power to transfer rights.

(g) Intellectual Property Collateral. Operations Co will:

(i) not allow or suffer any Intellectual Property Collateral to become abandoned, nor any registration thereof to be terminated, forfeited, expired or dedicated to the public, except as shall be reasonable and appropriate in accordance with prudent business practice;

(ii) promptly give the Collateral Agent notice of any rights Operations Co may obtain to any new patentable inventions, material copyrightable works or other new Intellectual Property Collateral prior to the filing of any application for registration thereof; and

(iii) diligently prosecute all applications for patents, copyrights and trademarks, and file and prosecute any and all continuations, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Intellectual Property Collateral.

(h) Notices, Reports and Information. Operations Co will promptly notify the Collateral Agent of any other modifications of or additions to the information contained in Schedule 1 to this Agreement.

(i) Chattel Paper. Operations Co will not create any Chattel Paper without placing a legend on the Chattel Paper reasonably acceptable to the Collateral Agent indicating that the Collateral Agent has a security interest in the Chattel Paper. Operations Co will give the Collateral Agent prompt notice if Operations Co at any time holds or acquires an interest in any Chattel Paper, including any Electronic Chattel Paper. Operations Co shall promptly take all actions necessary so that the Collateral Agent has "control" of all Electronic Chattel Paper constituting Collateral in accordance with Section 9-105 of the UCC.

(j) Commercial Tort Claims. Operations Co will give the Collateral Agent notice within ten (10) Business Days if at any time Operations Co obtains knowledge that it holds or has any Commercial Tort Claim in an amount (taking the greater of the aggregate claimed damages thereunder or the reasonably estimated value thereof) of $5,000,000 or more.

(k) Letter-of-Credit Rights. Operations Co will give the Collateral Agent notice within ten (10) Business Days if Operations Co shall at any time hold or acquire any Letter-of-Credit Rights in respect of a letter of credit with a stated amount of $5,000,000 or more.

(l) Pledged Agreements. Operations Co will furnish to the Collateral Agent promptly upon written request therefor copies of the Pledged Agreements.

(m) Timing and Notice. With respect to any Collateral in existence on the date hereof, Operations Co shall comply with the requirements of Section 5(c), (d), (g), (h) and (i) on the date hereof and, with respect to any Collateral hereafter owned or acquired, Operations Co shall comply with such requirements within 20 days of Operations Co acquiring rights therein. Operations Co shall promptly inform the Collateral Agent of its acquisition of any Collateral for which any action is required by Section 5 hereof. Upon Operations Co obtaining knowledge thereof, it shall promptly notify the Collateral Agent in writing of any event that may have a material adverse effect on the value of the Collateral or any portion thereof, the ability of Operations Co or the Collateral Agent to dispose of the Collateral or any portion thereof, or the rights and remedies of the Collateral Agent in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any portion thereof.

SECTION 6 Investment Property and Instruments. At the request of the Collateral Agent, upon the occurrence and during the continuance of any Operations Co Financing Default, the Collateral Agent shall be entitled to receive all distributions and payments of any nature with respect to any Investment Property or Instruments, and all such distributions or payments

received by Operations Co shall be held in trust for the Collateral Agent and, in accordance with the Collateral Agent's instructions, remitted to the Collateral Agent or deposited to an account with the Collateral Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). Following the occurrence and during the continuance of an Operations Co Financing Default any such distributions and payments with respect to any Investment Property held in any Securities Account shall be held and retained in such Securities Account, in each case as part of the Collateral hereunder. Additionally, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Operations Co Financing Default, following prior written notice to Operations Co, to vote and to give consents, ratifications and waivers with respect to any Investment Property and Instruments, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Collateral Agent were the absolute owner thereof; provided that the Collateral Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to Operations Co or any other Person for any failure to do so or delay in doing so.

SECTION 7 Authorization; Collateral Agent Appointed Attorney-in-Fact. The Collateral Agent shall have the right, but not the obligation, to, in the name of Operations Co, or in the name of the Collateral Agent or otherwise, without notice to or assent by Operations Co, and Operations Co hereby constitutes and appoints the Collateral Agent (and any of the Collateral Agent's officers or employees or agents designated by the Collateral Agent) as Operations Co's true and lawful attorney-in-fact, with full power and authority in the place and stead of Operations Co to:

(i) file any financing statements, including any amendments to financing statements and any continuation statements, and execute and file and/or record, as applicable, any and all such other documents and instruments, which the Collateral Agent may deem necessary or reasonably advisable to perfect or continue perfected, maintain the priority of or provide notice of the Collateral Agent's security interest in the Collateral;

(ii) take possession of and endorse any notes, acceptances, checks, drafts, money orders or other forms of payment or security constituting, and collect any Proceeds of any, Collateral;

(iii) sign and endorse any invoice or bill of lading relating to any of the Collateral, warehouse or storage receipts, drafts against customers or other obligors, assignments, notices of assignment, verifications and notices to customers or other obligors, in each case in respect of the Collateral;

(iv) send requests for verification of Rights to Payment to the customers or other obligors of Operations Co;

(v) contact, or direct Operations Co to contact, any or all Account Debtors and other obligors on the Rights to Payment and instruct such Account Debtors and other obligors to make all payments directly to the Collateral Agent;

(vi) notify each Person maintaining lockbox or similar arrangements for the payment of the Rights to Payment to remit all amounts representing collections on the Rights to Payment directly to the Collateral Agent;

(vii) ask, demand, collect, receive and give acquittances and receipts for any and all Rights to Payment, enforce payment or any other rights in respect of the Rights to Payment and other Collateral, grant consents, agree to any amendments, modifications or waivers of the agreements and documents governing the Rights to Payment and other Collateral, and otherwise file any claims, take any action or institute, defend, settle or adjust any actions, suits or proceedings with respect to the Collateral, as the Collateral Agent may deem necessary or desirable to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of the Collateral Agent with respect to the Collateral;

(viii) execute any and all applications, documents, papers and instruments necessary for the Collateral Agent to use the Intellectual Property Collateral and grant or issue any exclusive or non-exclusive license or sublicense with respect to any Intellectual Property Collateral;

(ix) execute any and all endorsements, assignments or other documents and instruments necessary to sell, lease, assign, convey or otherwise transfer title in or dispose of the Collateral;

(x) execute and deliver to any Securities Intermediary or other Person any entitlement order or other notice, document or instrument which the Collateral Agent may reasonably deem necessary or advisable to maintain, protect, realize upon and preserve the Deposit Accounts and Investment Property and the Collateral Agent's security interest therein;

(xi) execute any and all such other documents and instruments, and do any and all acts and things for and on behalf of Operations Co, which the Collateral Agent may deem necessary or in its reasonable judgment advisable to maintain, protect, realize upon and preserve the Collateral and to accomplish the purposes of this Agreement; and

(xii) act pursuant to (and in accordance with) Section 2.11(b) of the Collateral Agency Agreement.

Operations Co also hereby acknowledges and consents to the authorization and direction of the Senior Bonds Trustee and the Subordinate Bonds Trustee on behalf of the Secured Parties with respect to the Collateral Agent pursuant to Section 2.01 of the Collateral Agency Agreement. The Collateral Agent agrees that, except upon the occurrence and during the continuance of an Operations Co Financing Default, it shall not exercise the power of attorney, or any rights granted to the Collateral Agent, pursuant to clauses (ii) through (xiv). The foregoing power of attorney is coupled with an interest and irrevocable so long as the Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted) have not been paid and performed in full. Operations Co hereby ratifies, to the extent permitted by law, all that the Collateral Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 7.

SECTION 8 Collateral Agent Performance of Operations Co Obligations. The Collateral Agent may perform or pay any obligation which Operations Co has agreed to perform or pay under or in connection with this Agreement if Operations Co fails to do so when required hereunder, and Operations Co shall reimburse the Collateral Agent on demand for any reasonable amounts paid by the Collateral Agent pursuant to this Section 8.

SECTION 9 Collateral Agent's Duties. Notwithstanding any provision contained in this Agreement, the Collateral Agent shall have no duty to exercise any of the rights, privileges or

powers afforded to it and shall not be responsible to Operations Co or any other Person for any failure to do so or delay in doing so. Beyond the exercise of reasonable care to assure the safe custody of Collateral in the Collateral Agent's possession and the accounting for moneys actually received by the Collateral Agent hereunder, the Collateral Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral. The provisions of Section 9.10 of the Collateral Agency Agreement ("Collateral Agent's Rights") are incorporated herein by reference as if such Section were set forth herein in its entirety.

SECTION 10 Remedies. For the avoidance of doubt, any action by Collateral Agent under this Section 10 shall be taken at the direction of the Instructing Trustee (acting in accordance with Section 2.19 of the Collateral Agency Agreement) in good faith, in a commercially reasonable manner and in compliance with the applicable terms of the UCC.

(a) Remedies. Upon the occurrence and during the continuance of any Operations Co Financing Default, the Collateral Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Indentures, the Senior Loan Agreement or any other Financing Document, all rights and remedies of a secured party under the UCC and other applicable laws. Without limiting the generality of the foregoing, Operations Co agrees that:

(i) The Collateral Agent may peaceably and without notice enter any premises of Operations Co, take possession of any Collateral, remove or dispose of all or part of the Collateral on any premises of Operations Co or elsewhere, or, in the case of Equipment, render it nonfunctional, and otherwise collect, receive, appropriate and realize upon all or any part of the Collateral, and demand, give receipt for, settle, renew, extend, exchange, compromise, adjust, or sue for all or any part of the Collateral, as the Collateral Agent may determine.

(ii) The Collateral Agent may require Operations Co to assemble all or any part of the Collateral and make it available to the Collateral Agent, at any place and time reasonably designated by the Collateral Agent.

(iii) The Collateral Agent may use or transfer any of Operations Co's rights and interests in any Intellectual Property Collateral, by license, by sublicense or otherwise, on such conditions and in such manner as the Collateral Agent may determine.

(iv) The Collateral Agent may secure the appointment of a receiver of the Collateral or any part thereof (to the extent and in the manner provided by applicable law).

(v) The Collateral Agent may withdraw (or cause to be withdrawn) any and all funds from any Deposit Accounts or Securities Accounts.

(vi) The Collateral Agent may sell, resell, lease, license, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable storage, preparation and/or processing (utilizing in connection therewith any of Operations Co's assets, without charge to, or liability of, the Collateral Agent therefor) at public or private sale, by one or more contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as the Collateral Agent deems advisable; provided, however, that Operations Co shall be credited with the net proceeds of sale only when such proceeds are finally collected by the Collateral Agent. The Collateral Agent shall have the right upon any such public sale, and, to the extent not prohibited by law, upon any such private sale, to purchase the whole or any part

of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption Operations Co hereby releases, to the extent permitted by law. The Collateral Agent shall give Operations Co such notice of any public or private sale as may be required by the UCC or other applicable law. Operations Co agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Operations Co of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Operations Co agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Operations Co hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. Operations Co recognizes that the Collateral Agent may be unable to make a public sale of any or all of the Investment Property, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale.

(vii) Neither the Collateral Agent nor any Secured Party shall have any obligation to clean up or otherwise prepare the Collateral for sale. The Collateral Agent has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and the Collateral Agent may release, modify or waive any Collateral provided by any other Person to secure any of the Secured Obligations, all without affecting the Collateral Agent's rights against Operations Co. Operations Co waives any right it may have to require the Collateral Agent to pursue any third Person for any of the Secured Obligations. The Collateral Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If the Collateral Agent sells any of the Collateral upon credit, Operations Co will be credited only with payments actually made by the purchaser, received by the Collateral Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and Operations Co shall be credited with the proceeds of the sale as and when received and applied.

(b) Proceeds Account. To the extent that any of the Secured Obligations may be contingent, unmatured or unliquidated (including with respect to undrawn amounts under any letters of credit) at such time as there may exist an Operations Co Financing Default, the Collateral Agent may, at its election, (i) retain the proceeds of any sale, collection, disposition or other realization upon the Collateral (or any portion thereof) in a special purpose non-interest-bearing restricted deposit account (the "Proceeds Account") created and maintained by the Collateral Agent for such purpose (which shall constitute a Deposit Account included within the Collateral hereunder) until such time as the Collateral Agent may elect to apply such proceeds to the Secured Obligations; (ii) in any manner elected by the Collateral Agent, estimate the

liquidated amount of any such contingent, unmatured or unliquidated claims and apply the proceeds of the Collateral against such amount; or (iii) otherwise proceed in any manner permitted by applicable Law and not prohibited by the Financing Documents. Operations Co agrees that the Proceeds Account shall be a blocked account and that upon the irrevocable deposit of funds into the Proceeds Account, Operations Co shall not have any right of withdrawal with respect to such funds. Accordingly, Operations Co irrevocably waives until the termination of this Agreement in accordance with Section 25 the right to make any withdrawal from the Proceeds Account and the right to instruct the Collateral Agent to honor drafts against the Proceeds Account.

(c) Application of Proceeds. The provisions of Section 6.06 of the Collateral Agency Agreement ("Application of Proceeds") are incorporated herein by reference as if such Section were set forth herein in its entirety, mutatis mutandis.

(d) Remedies of the Secured Parties. The provisions of Section 6.04 ("Remedies of the Secured Parties") of the Collateral Agency Agreement are incorporated herein by reference as if such Section were set forth herein in its entirety, mutatis mutandis.

(e) Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent, during the continuance of an Operations Co Financing Default, to exercise rights and remedies under Section 10 hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, Operations Co hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license to use, assign, license or sublicense any of the Intellectual Property now owned or hereafter acquired by Operations Co, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof subject to all applicable confidentiality undertakings and operational or contractual requirements or limitations.

SECTION 11 Certain Waivers.

(a) Operations Co waives, to the fullest extent permitted by law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Collateral or other collateral or security for the Secured Obligations; (ii) any right to require the Collateral Agent (A) to proceed against any Person, (B) to exhaust any other collateral or security for any of the Secured Obligations, (C) to pursue any remedy in Collateral Agent's power, or (D) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral; and (iii) all claims, damages, and demands against the Collateral Agent arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral in compliance with all material applicable legal requirements.

SECTION 12 Notices. All notices or other communications hereunder shall be given in the manner and to the addresses specified in the Collateral Agency Agreement. All such notices and other communications shall be effective as and when specified in the Collateral Agency Agreement.

SECTION 13 Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

SECTION 14 Survival of Provisions. All representations and warranties contained herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement. All statements contained in any certificate or other instrument delivered by or on behalf of Operations Co pursuant to this Agreement shall be deemed representations and warranties of Operations Co under this Agreement.

SECTION 15 No Waiver; Cumulative Remedies. No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Collateral Agent.

SECTION 16 Costs and Expenses; Indemnification; Other Charges. Reference is hereby made to Article VII of the Collateral Agency Agreement with respect to Operations Co's obligations set forth therein.

SECTION 17 Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

SECTION 18 Governing Law; Consent to Jurisdiction. Reference is made to Section 5-1401 of the New York General Obligations Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles thereof that would result in the application of any law other than the law of the State of New York, except as required by mandatory provisions of law relating to the law governing perfection or the effect of perfection of the security interests hereunder. Each of the parties hereto hereby (i) irrevocably consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect, in any suit, action or proceeding arising out of or relating to this Agreement and (ii) waives, to the fullest extent permitted by law, the right to move or dismiss or transfer any action brought in such court on the basis of any objection to personal jurisdiction, venue or inconvenient forum.

SECTION 19 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR RELATING TO OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT.

SECTION 20 Amendment or Waiver. Except as otherwise provided herein, neither this Agreement nor any of the terms hereof may be amended, changed or waived unless such amendment, change or waiver is in writing and signed by Operations Co and the Collateral Agent and then any such waiver or consent shall be effective only in the specific instance and for the specified purpose for which given.

SECTION 21 Entire Agreement. This Agreement, including any agreement, document or instrument attached hereto or referred to herein, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior agreements and understandings of the parties hereto in respect to the subject matter hereof.

SECTION 22 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

SECTION 23 Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and/or by facsimile or electronic mail, and all of said counterparts taken together shall be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or "pdf" signature page shall constitute an original for purposes hereof.

SECTION 24 No Inconsistent Requirements. Operations Co acknowledges that this Agreement and the other Financing Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and each shall be performed and satisfied in accordance with its respective terms.

SECTION 25 Termination. Upon payment and performance in full of all Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted), the Collateral Agent shall promptly execute and deliver to Operations Co such documents and instruments reasonably requested by Operations Co as shall be necessary to evidence termination of all security interests given by Operations Co to the Collateral Agent hereunder and shall return any Collateral in its possession to Operations Co.

SECTION 26 Reinstatement. Following the Termination Date, this Agreement, any Security Interest created hereunder and the obligations of Operations Co hereunder shall continue to be effective or be automatically be reinstated, as the case may be, if and to the extent that for any reason any payment by or on behalf of Operations Co in respect of the Secured Obligations is rescinded or must otherwise be restored by any holder of the Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise and Operations Co agrees that it will indemnify the Collateral Agent on demand for all reasonable costs and expenses (including fees and expenses of counsel, whether incurred in a third party action or in an action to enforce this Agreement) incurred by the Collateral Agent in connection with such rescission or restoration.

SECTION 27 Limitation of Liability. No claim shall be made by Operations Co against the Collateral Agent or any of its affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Financing Documents or any act or omission or event occurring in connection therewith; and Operations Co hereby waives, releases and agrees not to sue upon any such claim for any such

damages, whether or not accrued and whether or not known or suspected to exist in its favor; nothing in this Section 27 shall limit or affect or be construed to limit or affect the obligations and liabilities of the Collateral Agent arising from any liability pursuant to any applicable Law for such fraudulent actions, gross negligence, bad faith or willful misconduct of the Collateral Agent. Additionally:

(a) No covenant, agreement or obligation contained herein or in any Operations Co Security Document shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of Operations Co in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this Agreement or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Financing Documents, the Secured Parties will have full recourse to Operations Co and all of its assets and properties for the respective liabilities and obligations of Operations Co under the Financing Documents, but in no event will the Authority or any Affiliates of Operations Co or any officer, director or holder of any interest in Operations Co, the Authority or any Affiliates of Operations Co be liable or obligated for such liabilities and obligations of Operations Co, other than to the extent arising directly as a result of Pledgor's pledge of its ownership interests in Operations Co pursuant to the Pledge Agreement and the Pledgor and each Sponsors' obligations under the Capital Contribution Agreement, as applicable.

(c) Notwithstanding anything in paragraph (b) above of this Section 27, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of the Authority or any Affiliate of Operations Co (1) arising under any Financing Document or Project Contract to which the Authority or such Affiliate of Operations Co is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of the Authority or any Affiliate of Operations Co.

SECTION 28 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Collateral Agent, for the benefit of the Secured Parties, and Operations Co and the respective successors and permitted assigns of the foregoing, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that, subject to Section 6.04 of the Collateral Agency Agreement, the Secured Parties shall be express third party beneficiaries of this Agreement.

SECTION 29 PATRIOT Act Notification. The Collateral Agent hereby notifies Operations Co that pursuant to the requirements of the USA PATRIOT ACT, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "PATRIOT Act"), the Collateral Agent may be required to obtain, verify and record information that identifies Operations Co, which information includes the name, address, tax identification number and other information regarding Operations Co that will allow the Collateral Agent to identify Operations Co in accordance with the PATRIOT Act.

[*Remainder of page intentionally left blank; signatures follow.*]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

OPERATIONS CO:

KENTUCKYWIRED OPERATIONS COMPANY, LLC

By: _____
Name:
Title:

COLLATERAL AGENT:

U.S. BANK NATIONAL ASSOCIATION, AS COLLATERAL AGENT

By: _____
Name:
Title:

Schedule 1 to Operations Company Security Agreement
dated as of September 3, 2015
by and between KENTUCKYWIRED OPERATIONS COMPANY, LLC
and
U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

Operations Co's mailing address, jurisdiction of organization and organizational ID number (Section 4(c))

Historical Matters (Section 4(c))

Address of Operations Co's Chief Executive Office and Principal Place of Business (Section 4(a))

All other Locations where Operations Co conducts Business or where Collateral is kept (Section 4(a))

Locations of Books, etc. (Section 4(b))

Inventory Matters (Section 4(h))

Intellectual Property (Section 4(j))

- Patents
- Patent Applications
- Patent Licenses
- Copyrights
- Copyright Applications
- Trademarks and Service marks
- Trade Names
- Applications for Registration of Trademarks, Service Marks and Trade Names
- Licenses

Securities Accounts (Section 4(j))

Investment Property (Section 4(j))

Instruments (Section 4(j))

Chattel Paper (Section 4(j))

Letter-of-Credit Rights (Section 4(l))

Commercial Tort Claims (Section 4(m))

EXHIBIT B

PLEDGE AGREEMENT

OPERATIONS CO PLEDGE AGREEMENT

Dated as of September 3, 2015

between

KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC, as Pledgor

and

U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

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THIS PLEDGE AGREEMENT (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Agreement"), dated as of September 3, 2015, is made by and between KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC, a Delaware limited liability company ("Pledgor") and U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, together with its successors in such capacity, "Collateral Agent") for the benefit of the Secured Parties, as hereinafter defined.

RECITALS

WHEREAS, Pledgor is the sole member of KentuckyWired Operations Company, LLC, a Delaware limited liability company ("Operations Co");

WHEREAS, pursuant to that certain Senior Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented, amended and restated and/or otherwise modified from time to time, the "Senior Indenture") between the Kentucky Economic Development Finance Authority, a public body corporate and politic, constituting an instrumentality of the Commonwealth of Kentucky, as Issuer ("Issuer") and U.S. Bank National Association, as trustee, Issuer has authorized the issuance of $_____ aggregate principal amount of Kentucky Economic Development Finance Authority Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015A and Taxable Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015B, the proceeds from the sale of which will be loaned to Borrower pursuant to the terms of that certain Senior Loan Agreement (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Senior Loan Agreement"), dated as of September 1, 2015, between Issuer and Borrower, to be used to finance a portion of the costs of the Project, as hereinafter defined;

WHEREAS, pursuant to that certain Subordinate Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Indenture"), (a) the Issuer has authorized the issuance of not to exceed $_____ Kentucky Economic Development Finance Authority Subordinate Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015C, the proceeds from the sale of which will be loaned to the Borrower pursuant to the terms of a Subordinate Loan Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Loan Agreement"), dated as of September 1, 2015, between the Issuer and the Borrower, to be used to finance a portion of the costs of the Project and (b) the Subordinate Bonds Trustee, on behalf of the Subordinate Secured Parties, has subordinated the Subordinate Secured Obligations and all liens securing the Subordinate Secured Obligations to the payment in full of the Senior Secured Obligations in the manner and to the extent set forth in this Agreement and the Subordinate Indenture;

WHEREAS, pursuant to that certain Project Implementation Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Implementation Agreement"), dated as of September 3, 2015, Borrower has contracted with Operations Co to, among other things, implement Borrower's obligations with respect to the Project pursuant to the Project Agreement and manage the obligations undertaken by the Design-Builder and the Service Provider, respectively, pursuant to the terms of the Design-Build Agreement and Services Contract, respectively;

WHEREAS, Pledgor, through Operations Co and the Implementation Agreement, will derive substantial direct and indirect benefit from the financing arrangements referenced in these recitals; and

WHEREAS, in consideration for the rights granted to Operations Co pursuant to the Implementation Agreement, and as a condition precedent to the above-described financing transactions, Pledgor has agreed to secure the Secured Obligations (as defined herein) as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereto agree as follows:

Section 1. Definitions; Interpretation.

(a) Terms Defined in Collateral Agency Agreement. All capitalized terms used in this Agreement but not otherwise defined herein shall have the respective meanings set forth in Exhibit A to the Collateral Agency and Account Agreement dated as of September 1, 2015 among Borrower, the Senior Bonds Trustee, as defined therein, the Subordinate Bonds Trustee, as defined therein, the Securities Intermediary, as defined therein and Collateral Agent (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Collateral Agency Agreement").

(b) Certain Defined Terms. As used in this Agreement, terms defined in the preamble and recitals hereto shall have the meanings set forth therein and the following terms shall have the following meanings:

"Books" means all books, Records and other written, electronic or other documentation in whatever form maintained now or hereafter, including: (i) ledgers; (ii) Records indicating, summarizing, or evidencing assets, business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals, and spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any contract or agreement with any service bureau, computer or data processing company or other Person charged with preparing or maintaining any books or Records or with credit reporting.

"Certificates" means any and all certificates, documents and instruments which evidence Pledged Collateral.

"Instrument" has the meaning given such term in Section 9-102 of the UCC.

"Operations Co Financing Default" has the meaning given to such term in the Collateral Agency Agreement.

"Organizational Documents" means the Certificate of Formation and Limited Liability Company Agreement of Operations Co, as the same may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the Financing Documents.

"Payment Intangible" has the meaning given such term in Section 9-102 of the UCC.

"Pledged Collateral" has the meaning set forth in Section 2 of this Agreement.

"Pledged Indebtedness" has the meaning set forth in Section 2 of this Agreement.

"Pledged Interests" has the meaning set forth in Section 2 of this Agreement.

"Proceeds" means all proceeds, as such term is defined in Section 9-102 of the UCC.

"Promissory Note" means any and all promissory notes, as such term is defined in Section 9-102 of the UCC.

"Records" has the meaning given such term in Section 9-102 of the UCC.

"Secured Obligations" means all obligations of Operations Co under the Implementation Agreement, the Financing Documents to which it is a party and the Material Project Contracts to which it is a party.

"Securities" means all securities, as such term is defined in Section 8-102 of the UCC, and all stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

"Supporting Obligations" means all supporting obligations, as such term is defined in Section 9-102 of the UCC.

"UCC" means the Uniform Commercial Code from time to time in effect in the State of New York or, as the context may require, the State of Delaware or, as the context may require, in effect in the State or States in which any Pledged Collateral is located.

(c) Interpretation. This Agreement and all terms and provisions hereof shall be liberally construed to provide to the Collateral Agent, for the benefit of the Secured Parties, the collateral security provided for herein. For purposes of this Agreement, except as otherwise expressly provided and except where the context otherwise requires: (i) the incorporation by reference of definitions or other terms from other agreements shall survive any termination of such agreements until this Agreement is terminated as provided in Section 26 hereof; (ii) any of the terms defined herein may be used in the singular or the plural, depending on the reference; (iii) references in this Agreement to any Article, Section, Schedule or Exhibit shall be to an Article, Section, Schedule or Exhibit, as the case may be, of this Agreement unless otherwise specifically provided; (iv) the use in this Agreement of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter; (v) the terms lease and license shall include sub-lease and sub-license, as applicable; (vi) all references in this Agreement to provisions of the UCC shall

include all successor provisions under any subsequent version or amendment to the UCC; (vii) the words "herein," "hereof," "hereto," "hereby," "hereunder" and other words of similar import in this Agreement refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and, if this Agreement has been amended, such words shall refer to this Agreement as so amended; (viii) the term "money" includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder; and (ix) all references to any contract or agreement in this Agreement shall include all amendments, supplements and modifications thereto.

Section 2. Pledge.

(a) Pledge. As security for the full and prompt payment and performance when due of the Secured Obligations, Pledgor hereby pledges, collaterally assigns, and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and continuing first priority Security Interest in, all of Pledgor's right, title and interest in, to and under the following, whether now owned or hereafter acquired by Pledgor and whether now or hereafter existing and wherever located (all of Pledgor's right, title and interest in, to and under the following, whether now owned or hereafter acquired and whether now or hereafter existing and wherever located, collectively the "Pledged Collateral"):

(i) all of its (A) ownership or profit interests, Securities or shares of capital stock in or issued by Operations Co, of whatever class or character, whether voting or nonvoting and whether or not outstanding on any date of determination, (B) claims, powers, privileges, benefits, remedies, voting rights, options or rights of any nature whatsoever now existing or which hereafter may be issued or granted by Operations Co to Pledgor while this Agreement is in effect, (C) all ownership or profit interests, Securities, shares of capital stock, moneys or property representing dividends or interest on any of the items described in this paragraph, or representing a distribution in respect of the same, or resulting from a split-up, revision, reclassification or other like change of any of the same or otherwise received in exchange therefor, and any warrants, rights or options issued to the holders of, or otherwise in respect of, the same and (D) all options, warrants and rights to acquire, exercisable for or exchangeable or convertible into any of the items described in clause (A), (B), (C) or (D) of this definition and all income, dividends (cash and non-cash), distributions (cash and non-cash), cash, securities, instruments, stock splits, reclassifications, rights, subscription warrants and other property or proceeds from time to time received, receivable or otherwise distributed or issued to the holders of, in respect of, or in exchange for, all or any part of the foregoing and all Certificates evidencing all or any part of the foregoing or ownership of the same, including, as of the date hereof, the shares of stock of Operations Co evidenced by the Certificate issued to Pledgor identified in Schedule 1 hereto, and all Proceeds of all of the foregoing (collectively, the "Pledged Interests"); provided, however, that, without affecting the obligations of Pledgor under any provision prohibiting such action hereunder or under the Financing Documents, in the event of any consolidation or merger in which Operations Co is not the surviving entity, all limited liability company interest or other ownership, membership or profit interests, Securities or shares of capital stock in or issued by the successor entity formed by or resulting from such consolidation or merger, of whatever class or character, whether voting or nonvoting and whether or not outstanding on any date of determination, shall also constitute Pledged Interests under this Agreement;

(ii) any Indebtedness owed to Pledgor by Operations Co from time to time, now existing or hereafter arising, whether as a result of "shareholder loans" or "member loans" or otherwise, including any Instruments or Payment Intangibles evidencing or relating to such Indebtedness (collectively, the "Pledged Indebtedness");

(iii) all right, title and interest of Pledgor in, to and under any policy of insurance payable by reason of loss or damage to the Pledged Interests or Pledged Indebtedness; and

(iv) all Proceeds, products and accessions and additions of and to, and substitutions for, any and all of the property of Pledgor described in the preceding clauses of this Section 2 (including all causes of action, claims and warranties now or hereafter held by Pledgor in respect of any of the items listed above), including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Interests, and any property into which any of the Pledged Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in respect of any of the Pledged Interests, and any and all Proceeds, Certificates, and, to the extent related to any property described in said clauses or such Proceeds, all Books;

provided, however, that any and all amounts paid or distributed to the Pledgor in accordance with the Financing Documents shall be free of the Security Interests granted and created herein upon, from and after such payment or distribution.

(b) Continuing Assignment and Security Interest. This Agreement shall create a continuing assignment of and security interest in the Pledged Collateral and shall (i) remain in full force and effect until the payment and satisfaction in full of the Secured Obligations, (ii) be binding upon Pledgor, its successors and assigns, and (iii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent, for the benefit of the Secured Parties.

(c) Security Interest Absolute. All rights of the Collateral Agent and the security interests hereunder, and all obligations of Pledgor hereunder, shall be absolute and unconditional irrespective of: (i) any lack of validity or enforceability of the Financing Documents or any agreement or instrument relating thereto; (ii) the failure of the Collateral Agent (A) to assert any claim or demand or to enforce any right or remedy against Borrower, any affiliate of Borrower, Operations Co, any Pledgor or any other Person under the provisions of the Financing Documents or otherwise or (B) to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Secured Obligations; (iii) any change in the time, manner or place of payment or performance of, or in any other term of the Secured Obligations (including any increase in the amount thereof), or any other amendment or waiver of or any consent to any departure from the Financing Documents; (iv) any reduction, limitation, impairment or termination of any of the Secured Obligations for any reason other than the payment or performance in full thereof or the written agreement of the Collateral Agent to reduce or terminate the Secured Obligations in full, but including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and Pledgor hereby waives any right to or claim of, any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, non-genuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting (other than the repayment or performance in full of), any Secured Obligation; (v) any amendment to, rescission, waiver, or other modification of,

or any consent to departure from, any of the terms of the Financing Documents; (vi) any exchange, surrender, release or non-perfection of any Pledged Collateral, or any release, amendment or waiver or addition of or consent to departure from any security interest held by the Collateral Agent securing any of the Secured Obligations; (vii) any bankruptcy or insolvency of Operations Co, Pledgor or any other Person; or (viii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Pledgor (other than the defense of payment).

Section 3. Security for Secured Obligations. The Security Interest granted under this Agreement secures, and the Pledged Collateral is collateral security for, the prompt and complete payment and performance in full when due of all of the Secured Obligations now existing or hereafter arising.

Section 4. Representations and Warranties. Pledgor hereby represents and warrants as of the date hereof and as of the Financial Close as follows:

(a) Pledged Interests; Pledged Indebtedness; Ownership. As of the date of this Agreement, the Pledged Interests evidenced by the Certificates identified in Schedule 1 hereto constitute, and from and after the date hereof, the Pledged Interests pledged hereunder will at all times constitute, all of the issued and outstanding shares of stock or other ownership interests of any class or character of Operations Co and constitute all of Pledgor's interest in Operations Co. The Pledged Interests as of the date of this Agreement are described on Schedule 1 attached hereto. Pledgor is the record and beneficial owner of the Pledged Interests as of the Closing Date. There is no Pledged Indebtedness as of the Closing Date.

(b) No Outstanding Warrants, Options, Etc. There are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Interests.

(c) Creation; Perfection.

(i) This Agreement creates a valid and enforceable Security Interest in the Pledged Collateral securing the Secured Obligations. Upon the delivery to Collateral Agent pursuant to this Agreement of the Certificates evidencing the Pledged Interests, together with stock or transfer powers relating thereto duly executed in blank, the Security Interest granted pursuant to this Agreement will constitute a perfected first priority Security Interest on and security interest in the Pledged Interests enforceable as such against all creditors of Pledgor and any Persons purporting to purchase any Pledged Interests from Pledgor. The Pledged Collateral is not subject to any Security Interests other than the Security Interest created by this Agreement and Permitted Security Interests. Pledgor has requested that the pledge and grant of a security interest in the Pledged Collateral be duly registered on the books and records of Operations Co, and Operations Co has duly registered such pledge and grant of a security interest on its books and records.

(ii) On the date hereof and at all times hereafter, the Pledged Interests will constitute securities governed by Article 8 of the UCC.

(iii) On the date hereof, for purposes of "control" under UCC Section 9-106(a) and UCC Section 8-106(b)(1), the Pledged Interests are a "certificated security in registered form" as defined in UCC Section 8-102(4) and (13), and have been delivered to the Collateral Agent, together with an undated stock or transfer power covering each such Certificate duly executed in blank in the form of Exhibit B attached hereto.

(d) Organization, Etc. Pledgor is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware, and has all requisite power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged in.

(i) Schedule 2 attached hereto correctly sets forth Pledgor's full and correct legal name, type of organization, jurisdiction of organization, organizational number, if any, and chief executive office as of the date hereof.

(ii) Pledgor has not previously (except as permitted hereunder) (A) changed its location (as defined in Section 9-307 of the UCC), (B) changed its name, or (C) become a "new debtor" (as defined in the UCC) with respect to a currently effective security agreement entered into by another Person.

(e) Power to Pledge. Pledgor has the full power and authority to pledge all of the Pledged Collateral pursuant to this Agreement and to execute and deliver this Agreement and perform its obligations hereunder.

(f) Enforceability. The execution, delivery and performance by Pledgor of this Agreement have been duly authorized by all necessary action of Pledgor. This Agreement has been duly executed and delivered by Pledgor and constitutes the legal, valid and binding obligation of Pledgor, enforceable against Pledgor in accordance with its terms, except as the enforceability hereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by the application of general principles of equity (regardless of whether such proceeding is considered in a proceeding in equity or at law).

(g) No Governmental Approvals; No Other Approvals. Other than (x) the filing of financing statements in the office of the Delaware Secretary of State with respect to the perfection of the security interest created hereunder, (y) the approval of the members of Pledgor, which have been obtained as of the date hereof and (z) any consent of the Authority or the Borrower to the extent required by the Project Agreement and/or the Implementation Agreement in respect of any such matters, no consent, authorization, approval, or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or any other Person (including, without limitation, any stockholder or creditor of Pledgor or Operations Co) is required for (i) the grant by Pledgor of the Security Interest granted hereby, (ii) the perfection of the Security Interest created hereby, (iii) the execution, delivery or performance by Pledgor of this Agreement and the transactions contemplated hereby or (iv) the exercise by the Collateral Agent of the rights and remedies hereunder including, without limitation, the assignment and transfer by Pledgor of any of the Collateral to, or at the direction of, Collateral Agent or the subsequent transfer thereof by Collateral Agent pursuant to the terms hereof.

(h) No Conflicts. The execution, delivery, and performance by Pledgor of this Agreement and the transactions contemplated hereby do not and will not (i) contravene the certificate of formation or limited liability company agreement of Pledgor or the Organizational Documents; (ii) violate or cause Pledgor to violate any Law in effect on the date hereof; (iii) cause or result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Pledgor or Operations Co is a party or by which either of them or their properties may be bound or affected, except as could not reasonably be expected to have a Material Adverse Effect; or (iv) result in, or require, the creation or imposition of any Security Interest upon or with respect to any of the properties now owned or hereafter acquired by Pledgor (except the Security Interests created by this Agreement and Permitted Security Interests).

(i) No Proceedings. There is no pending or, to the knowledge of Pledgor after due inquiry, threatened action or proceeding at law or in equity against or affecting Pledgor or Operations Co before any court, arbitrator or any other Governmental Authority which may, individually or in the aggregate, materially adversely affect the ability of Pledgor to perform its obligations under this Agreement.

(j) Organizational Documents; Certificates. The Organizational Documents, true and correct copies of which have been certified to Collateral Agent by Operations Co on the date hereof, contain the entire agreement of Operations Co with respect to the subject matter thereof. Other than the Certificates which have been delivered to Collateral Agent by Pledgor hereunder, as of the date hereof, there exist no certificates, instruments or writings representing any Pledged Interests. On the date hereof, the Pledged Interests evidenced by the Certificate issued to Pledgor and identified in Schedule 1 hereto are, and during the term hereof all other Pledged Interests will be, duly authorized, validly issued, fully paid and non-assessable.

Section 5. Further Assurances; Covenants. In furtherance of the grant of the pledge and security interest pursuant to Section 2 hereof, Pledgor hereby agrees with the Collateral Agent until the payment and satisfaction in full of the Secured Obligations as follows:

(a) Pledgor shall, if any interests, shares, securities, monies, property, options, rights or other assets required to be pledged by Pledgor under Section 2 hereof are received by Pledgor and are "certificated securities" as defined in UCC Section 8-102(4), forthwith (i) immediately transfer and deliver to the Collateral Agent such interests, shares of stock or securities so received by Pledgor (together with delivery of the Certificates for any such membership interests, shares and securities, each duly endorsed in blank or accompanied by undated stock or transfer powers or assignments of membership interest, as applicable, duly executed in blank), all of which thereafter shall be held by the Collateral Agent in accordance with the terms hereof as part of the Pledged Collateral, (ii) if requested by the Collateral Agent, file a financing statement(s) in the office of the Delaware Secretary of State with respect to the perfection of the security interest in such Pledged Collateral, and (iii) take such other action as the Collateral Agent shall deem necessary or shall reasonably deem appropriate in order to ensure the validity, perfection and first priority of the Security Interest created hereunder in such interests, shares, securities, monies, property, options, rights or other assets referred to in such Section 2.

(b) Without limiting the provisions of any Financing Document or of the Organizational Documents requiring ownership interests in Operations Co to be certificated, Pledgor shall, if any interests, shares, securities, monies, property, options, rights or other assets required to be pledged by Pledgor under Section 2 hereof are received by Pledgor and

are "uncertificated securities" as defined in UCC Section 8-102(18), forthwith either (i) enter into an agreement whereby Operations Co agrees to comply with instructions originated by the Collateral Agent without further consent by Pledgor, for purposes of control under UCC Section 8-106(c)(2), (ii) "deliver" the uncertificated security to the Collateral Agent pursuant to UCC Section 8-301(b)(1) by having Operations Co register the Collateral Agent as the registered owner of such security for purposes of control under UCC Section 8-106(c)(1), or (iii) take such other action as the Collateral Agent shall reasonably deem appropriate in order to ensure the validity, perfection and first priority of the Security Interest created hereunder in such interests, shares, securities, monies, property, options, rights or other assets referred to in such Section 2.

(c) From time to time, at the expense of Pledgor, Pledgor will promptly execute and deliver all further instruments and documents, and take all further action, that the Collateral Agent may reasonably request, in order to perfect, ensure the continued perfection of and protect the pledge, assignment and security interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to the Pledged Collateral. Without limiting the generality of the foregoing, Pledgor will (i) if any Pledged Collateral shall be evidenced by a promissory note or other instrument, deliver and pledge to the Collateral Agent hereunder such note or instrument duly endorsed or accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Collateral Agent; and (ii) execute and file such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices as the Collateral Agent may reasonably request in order to perfect and preserve the assignment and security interest granted or purported to be granted hereby, including, upon the occurrence and during the continuance of an Operations Co Financing Default, causing any or all of the Pledged Collateral to be transferred of record into the name of the Collateral Agent or its nominee.

(d) Pledgor shall keep full and accurate records relating to the Pledged Collateral, which records shall be maintained at its chief executive office set forth on Schedule 2 hereto.

(e) Pledgor shall, promptly upon request, provide to the Collateral Agent all information and evidence that the Collateral Agent may reasonably request concerning the Pledged Collateral to enable the Collateral Agent to enforce the provisions of this Agreement.

(f) Pledgor hereby authorizes the Collateral Agent to file one or more financing or continuation statements, and amendments thereto, or similar documents, relating to all or any part of the Pledged Collateral without the signature of Pledgor in the office of the Delaware Secretary of State and in any other jurisdictions and with any other filing offices as the Collateral Agent may, in its reasonable discretion, determine are necessary or advisable to perfect the security interest granted herein. Such financing statements may describe the Pledged Collateral in the same manner as described herein or may contain an indication or description of Pledged Collateral that describes such property in any other manner as the Collateral Agent may, in its reasonable discretion, determine is advisable or prudent to ensure the perfection of the security interest in the Pledged Collateral granted herein.

(g) Pledgor shall pay all filing, registration and recording fees or refiling, re-registration and re-recording fees, and all expenses incident to the execution and acknowledgment of this Agreement, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with

the execution and delivery of this Agreement, any agreement supplemental hereto and any instruments or documents delivered pursuant to or in connection with this Agreement.

(h) Pledgor shall permit representatives of the Collateral Agent, upon reasonable notice to (i) inspect and make abstracts from its Books and Records pertaining to the Pledged Collateral, and (ii) except for those relating to dividends, distributions and capital contributions made in accordance with the Collateral Agency Agreement, receive copies of all communications and remittances relating to the Pledged Collateral, all in such manner as the Collateral Agent may reasonably require.

(i) Without the prior express written consent of the Collateral Agent, Pledgor shall not consent to any amendment or repeal of the Organizational Documents, or to the admission of any new stockholder of Operations Co unless (i) in each case, the same is not prohibited by the Organizational Documents or the Project Documents and is not materially adverse to the Secured Parties and (ii) in the case of the admission of a new stockholder, such new stockholder shall become a party to, and agree to be bound by, this Agreement with respect to its respective ownership interests in Operations Co and any of its other assets which would constitute Pledged Collateral hereunder if then held by Pledgor). The Pledgor shall promptly notify the Collateral Agent in writing if for any reason the Pledged Interests shall cease to be Securities for purposes of the UCC in any applicable jurisdiction.

Section 6. Special Provisions Relating to the Pledged Collateral. Pledgor hereby further agrees with the Collateral Agent until the payment and satisfaction in full of the Secured Obligations as follows:

(a) Except as may otherwise be permitted by the Financing Documents, Pledgor shall not cause, suffer or permit the sale, assignment, conveyance, pledge or other transfer of all or any portion of Pledgor's ownership interests in Operations Co or any other portion of the Pledged Collateral. Pledgor shall provide the Collateral Agent with at least fifteen (15) Business Days' prior written notice of any permitted sale, assignment, conveyance, pledge or other transfer of all or any portion of Pledgor's shares of stock in Operations Co or any other portion of the Pledged Collateral. In connection with, and as a condition to the effectiveness of, any permitted sale, assignment, conveyance, pledge or other transfer of all or any portion of Pledgor's shares of stock in Operations Co or any other portion of the Pledged Collateral, the transferee shall execute and deliver to the Collateral Agent a counterpart of this agreement with respect to the Pledged Collateral transferred to it, together with the original membership interest certificate issued to such transferee and duly executed documents in the forms of Exhibit A and Exhibit B hereto.

(b) So long as no Operations Co Financing Default shall have occurred and be continuing, Pledgor shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral for all purposes, provided that Pledgor agrees that it will not vote the Pledged Collateral, exercise rights or take any other action in any manner that would impair the Security Interest of the Collateral Agent in the Pledged Collateral or the rights of the Collateral Agent therein or with respect thereto or that is inconsistent with the terms of this Agreement or the Financing Documents.

(c) Unless and until an Operations Co Financing Default has occurred and is continuing, Pledgor shall be entitled to receive and retain any and all dividends, distributions, Proceeds and other cash amounts payable under or in respect of the Pledged Collateral in each case to the extent permitted by the Financing Documents.

(d) If any Operations Co Financing Default shall have occurred, then so long as such Operations Co Financing Default shall continue, and whether or not the Collateral Agent exercises any available right to declare any of the Secured Obligations due and payable or seeks or pursues any other relief or remedy available to it under applicable Law or under this Agreement or the Financing Documents, all dividends, distributions, Proceeds and other cash amounts payable under or in respect of the Pledged Collateral received after such Operations Co Financing Default has occurred shall be paid directly to the Collateral Agent and retained by it as part of the Pledged Collateral.

(e) In furtherance of the security interest provided for in this Agreement, Pledgor shall execute and deliver to the Collateral Agent a proxy in the form attached hereto as Exhibit A and a stock or transfer power in the form attached hereto as Exhibit B with respect to the Pledged Interests, provided that such proxy may only be exercised by the Collateral Agent following an Operations Co Financing Default.

(f) All Pledged Interests in which Pledgor shall hereafter grant a security interest pursuant to Section 2 of this Agreement shall be duly authorized, validly issued, and fully paid.

Section 7. Affirmative Covenants. Pledgor agrees that, until the payment and satisfaction in full of the Secured Obligations:

(a) Compliance with Laws. Pledgor will comply in all material respects with all applicable Laws except where the failure to do so would not reasonably be expected to adversely affect the existence, validity, perfection or priority of the Security Interest created hereunder, the enforceability of this Agreement or the rights of the Collateral Agent under this Agreement.

(b) Taxes. Pledgor shall timely pay and discharge all Taxes before they become delinquent unless they are being contested in good faith by appropriate proceedings and Pledgor has provided adequate reserves which are maintained in accordance with GAAP or unless the failure to pay and discharge would not reasonably be expected to adversely affect the existence, validity, perfection or priority of the Security Interest created hereunder, the enforceability of this Agreement or the rights of the Collateral Agent under this Agreement.

(c) Ownership. Pledgor shall, until the payment and satisfaction in full of the Secured Obligations, defend its title to the Pledged Collateral and the interest of the Collateral Agent in the Pledged Collateral against the claims and demands of all persons whomsoever.

Section 8. Negative Covenants. Pledgor agrees that, until the payment and satisfaction in full of the Secured Obligations:

(a) Security Interests; Subordination. Pledgor will not create, incur, assume or suffer to exist any Security Interest, other than Permitted Security Interests and the Security Interests contemplated hereby, upon any of the Pledged Collateral. Except to the extent permitted by the Financing Documents, Pledgor will not permit any Pledged Indebtedness to be subordinated in right of payment to any other indebtedness.

(b) Name, Location and Other Changes. Except upon twenty (20) days' prior written notice to Collateral Agent and Collateral Agent's receipt of copies of all additional filed financing statements and other executed and, where applicable, filed documents as may

be necessary or reasonably requested by Collateral Agent to maintain the validity, perfection and priority of the security interests provided for herein, Pledgor shall not (i) change its name, identity or organizational structure, (ii) change the location of its chief executive office from that specified on Schedule 2 hereto or (iii) reorganize, reincorporate or re-form under the laws of another jurisdiction.

(c) Asset Dispositions. Except as permitted by the Senior Loan Agreement, Pledgor will not dispose of, lease, contribute or otherwise convey, or grant options, warrants or other rights with respect to any Pledged Collateral (including its ownership interests in Operations Co) to any Person.

Section 9. Collateral Agent Appointed Attorney-in-Fact. Pledgor hereby irrevocably appoints the Collateral Agent as Pledgor's attorney-in-fact (which appointment as attorney-in-fact shall be coupled with an interest), with full authority in the place and stead of Pledgor and in the name of Pledgor or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Pledged Collateral, to elect remedies under the Pledged Collateral, receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection therewith, to vote, demand, receive and enforce Pledgor's rights with respect to the Pledged Collateral, to give appropriate receipts, releases and satisfaction for and on behalf of and in the name of Pledgor or, at the option of the Collateral Agent, in the name of the Collateral Agent, with the same force and effect as Pledgor could do if this Agreement had not been made, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection thereof or to enforce compliance with the terms and conditions of this Agreement and to act pursuant to (and in accordance with) Section 2.11(b) of the Collateral Agency Agreement; provided, however, that the Collateral Agent shall not exercise any of the aforementioned rights unless an Event of Default has occurred and is continuing. This power of attorney is a power coupled with an interest and cannot be revoked. Notwithstanding the foregoing, the Collateral Agent shall not be obligated to exercise any right or duty as attorney-in-fact, and shall have no duties to Pledgor in connection therewith. Pledgor also hereby acknowledges and consents to the authorization and direction of the Senior Bonds Trustee and the Subordinate Bonds Trustee on behalf of the Secured Parties with respect to the Collateral Agent pursuant to Section 2.01 of the Collateral Agency Agreement.

Section 10. Collateral Agent May Perform. If Pledgor fails to perform any agreement contained herein, the Collateral Agent may, but shall not be obligated to, itself perform or cause performance of this Agreement and the expenses of the Collateral Agent incurred in connection therewith shall be payable by Pledgor within ten (10) Business Days after demand for all such fees, costs and expenses.

Section 11. The Collateral Agent's Duties. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Pledged Collateral and shall not impose any duty upon the Collateral Agent or any of its designated agents to exercise any such powers. Except for the safe custody of any Pledged Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Pledged Collateral and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if the Pledged

Collateral is accorded treatment that is substantially equivalent to that which the Collateral Agent accords its own property, it being expressly agreed, to the maximum extent permitted by applicable Laws, that the Collateral Agent shall have no responsibility for (a) taking any necessary steps to preserve rights against any parties with respect to any Pledged Collateral, or (b) taking any action to protect against any diminution in value of the Pledged Collateral, but, in each case, the Collateral Agent may do so and all expenses reasonably incurred in connection therewith shall be part of the Secured Obligations. The provisions of Section 9.10 of the Collateral Agency Agreement ("Collateral Agent's Rights") are incorporated herein by reference as if such Section were set forth herein in its entirety.

Section 12. Rights and Remedies.

(a) Without limiting the provisions of Section 6(d) of this Agreement, if and for so long as any Operations Co Financing Default shall have occurred and be continuing, all payments thereafter received by Pledgor under or in connection with the Pledged Collateral shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of Pledgor and shall be forthwith paid over to the Collateral Agent in the same form as so received (with any necessary endorsement).

(b) Without limiting the provisions of Section 6(d) of this Agreement, if and for so long as any Operations Co Financing Default shall have occurred and be continuing, (i) the Collateral Agent shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral and (ii) all payments thereafter made to Pledgor in respect of the Pledged Collateral and received by the Collateral Agent in accordance with the provisions of this Agreement or otherwise, and all proceeds of the Pledged Collateral received by the Collateral Agent pursuant to paragraph (c) below, may (x) be held by the Collateral Agent as collateral for the Secured Obligations and/or (y) then or at any time thereafter during the continuance of such Operations Co Financing Default, be applied thereto in accordance with the provisions of the Financing Documents.

(c) If (i) any Operations Co Financing Default shall have occurred and be continuing and (ii) any of the Secured Obligations shall have been declared to be, or shall have become, due and payable then, in addition to any other rights and remedies provided for herein or that may otherwise be available, the Collateral Agent may, without any further demand, advertisement or notice (except as expressly provided for below in this Section 12(c)), exercise all the rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Pledged Collateral), and in addition, (x) may apply the moneys, if any, then held by it as part of the Pledged Collateral, for the purposes and in the order provided in the Financing Documents and (y) if there shall be no such moneys or the moneys so applied shall be insufficient to satisfy in full all Secured Obligations, may sell the Pledged Collateral, or any part thereof, as hereinafter provided in this Section 12(c) and otherwise to the fullest extent permitted by law. The Pledged Collateral may be sold in one or more sales, at public or private sale, conducted by any officer or agent of, or auctioneer or attorney for, the Collateral Agent, at the Collateral Agent's place of business or elsewhere, for cash, upon credit or for other property, for immediate or future delivery, and at such price or prices and on such terms as the Collateral Agent shall deem commercially reasonable. The Collateral Agent or any Secured Party may be the purchaser of any or all of the Pledged Collateral so sold at a public sale and, to the extent permitted by law, at a private sale, and thereafter hold the same, absolutely, free from any right or claim of whatsoever kind, and, prior to the payment and satisfaction in full of the Secured Obligations, the obligations of Pledgor to the Collateral Agent may be applied as a credit against the purchase price. The Collateral Agent may at any such sale restrict the prospective bidders

or purchasers as to their number, nature of business and investment intention; provided that Operations Co and/or Pledgor may bid and purchase the Pledged Collateral at such sale. Upon any public or private sale the Collateral Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Pledged Collateral so sold. Each purchaser (including the Collateral Agent or any Secured Party) at any sale shall hold the Pledged Collateral so sold, absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, of Pledgor, and Pledgor hereby specifically waives, to the full extent it may lawfully do so, all rights of redemption, stay or appraisal that it has or may have under any rule of law or statute now existing or hereafter adopted. The Collateral Agent shall give Pledgor at least ten (10) days' notice (which shall constitute reasonable notification) of any such public or private sale. Such notice shall state the time and place fixed for such sale. Any sale shall be held at such time or times within ordinary business hours as the Collateral Agent shall fix in the notice of such sale. At any such sale the Pledged Collateral may be sold in one lot as an entirety or in separate parcels. The Collateral Agent shall not be obligated to make any sale pursuant to any such notice. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for such sale, and any such sale may be made at any time or place to which the same may be so adjourned without further notice or publication. In case of any sale of all or any part of the Pledged Collateral on credit or for future delivery, the Pledged Collateral so sold may be retained by the Collateral Agent until the full selling price is paid by the purchaser thereof, but the Collateral Agent shall not incur any liability in case of the failure of such purchaser to take up and pay for the Pledged Collateral so sold, and, in case of any such failure, such Pledged Collateral may again be sold pursuant to the provisions hereof. All cash proceeds of any such sale, and any other realization upon all or any part of the Pledged Collateral, shall be held or applied by the Collateral Agent in the manner provided in the Financing Documents.

(d) Pledgor hereby agrees that in respect of any sale of the Pledged Collateral pursuant to the terms hereof, the Collateral Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may deem necessary in order to avoid any violation of applicable Laws, or in order to obtain any required approval of the sale or of the purchase by any Governmental Authority or official, and Pledgor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Collateral Agent be liable or accountable to Pledgor for any discount allowed by reason of the fact that such Pledged Collateral is sold in compliance with any such limitation or restriction.

(e) Instead of exercising the power of sale provided in Section 12(c) above, the Collateral Agent, acting in accordance with the Financing Documents, may proceed by a suit or suits at law or in equity to foreclose the pledge and security interest under this Agreement and sell the Pledged Collateral or any portion thereof under a judgment or decree of a court or courts of competent jurisdiction; provided that Operations Co and/or Pledgor may bid for and purchase the Pledged Collateral at such sale.

(f) The Collateral Agent as attorney-in-fact pursuant to Section 9 of this Agreement may, in the name and stead of Pledgor, make and execute all conveyances, assignments and transfers of the Pledged Collateral sold pursuant to Section 12(c) or Section 12(e) above, and Pledgor hereby ratifies and confirms all that the Collateral Agent, as said attorney-in-fact, shall do by virtue hereof. Nevertheless, Pledgor shall, if so requested by the Collateral Agent, ratify and confirm any sale or sales by executing and delivering to the Collateral Agent, or to such purchaser or purchasers, all such instruments as may, in the reasonable judgment of the Collateral Agent, be advisable for the purpose.

(g) The receipt of the Collateral Agent for the purchase money paid at any sale made by it shall be a sufficient discharge therefor to any purchaser of the Pledged Collateral, or any portion thereof, sold as aforesaid; and no such purchaser (or the representatives or assigns of such purchaser), after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money or any part thereof or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(h) The Collateral Agent shall incur no liability as a result of the manner of sale of the Pledged Collateral, or any part thereof, at any private sale conducted in a commercially reasonable manner. So long as a sale is conducted in a commercially reasonable manner, Pledgor hereby waives, to the full extent permitted by applicable law, any claims against the Collateral Agent arising by reason of the fact that the price at which the Pledged Collateral, or any part thereof, may have been sold at private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Collateral Agent accepts the first offer received that the Collateral Agent in good faith deems to be commercially reasonable under the circumstances and does not offer the Pledged Collateral to more than one offeree. To the fullest extent permitted by law, Pledgor shall have the burden of proving that any such sale of the Pledged Collateral was conducted in a commercially unreasonable manner.

(i) Each and every right and remedy of the Collateral Agent shall, to the extent permitted by law, be cumulative and shall be in addition to any other remedy given hereunder or under the Financing Documents or now or hereafter existing at law or in equity or otherwise.

(j) All costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Collateral Agent in connection with exercising any actions taken under this Section 12 shall constitute Secured Obligations secured by the Pledged Collateral and shall be payable in accordance with Section 7.01 of the Collateral Agency Agreement.

(k) For the avoidance of doubt, any action by Collateral Agent under this Section 12 shall be taken at the direction of the Instructing Trustee (acting in accordance with Section 2.19 of the Collateral Agency Agreement) in good faith, in a commercially reasonable manner and in compliance with the applicable terms of the UCC.

Section 13. Certain Waivers.

(a) No delay or omission to exercise any right, power or remedy accruing to the Collateral Agent upon the occurrence and during the continuance of any Operations Co Financing Default shall impair any such right, power or remedy of the Collateral Agent, nor shall it be construed to be a waiver of any such Operations Co Financing Default or similar breach or default thereafter occurring or an acquiescence therein, nor shall any waiver of any other breach or default under this Agreement or any other Financing Document be deemed a waiver of any other breach or default theretofore or thereafter occurring. Each and every Operations Co Financing Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by the Collateral Agent.

(b) Pledgor hereby waives and relinquishes, to the maximum extent permitted by applicable Law, all rights and remedies accorded to pledgors, sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including: (i) any right to require the Collateral Agent at any time to pursue any other remedy in the Collateral Agent's power before proceeding against Pledgor; (ii) any defense that may arise by reason of the incapacity, lack of power or authority, dissolution, merger, termination or disability of Pledgor, Operations Co, Borrower or any other Person or the failure of the Collateral Agent to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Pledgor, Operations Co, Borrower or any other Person; (iii) any right to require the Collateral Agent to give any notices of any kind, including notices of nonpayment, nonperformance, protest, dishonor, default, delinquency or acceleration, or to make any presentments, demands or protests, except as set forth herein or in the other Financing Documents; (iv) any right under any law purporting to reduce Pledgor's obligations hereunder if the Secured Obligations are reduced other than as a result of payment of such Secured Obligations; (v) any defense based on the repudiation of any Financing Document by Borrower, Operations Co or any other Person, the failure by the Collateral Agent to enforce any claim against Pledgor, Operations Co, Borrower or any other Person or the unenforceability in whole or in part of any Financing Document; (vi) any right to insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by Pledgor of its obligations under, or the enforcement by the Collateral Agent of, this Agreement; (vii) any defense based upon an election of remedies by the Collateral Agent, including an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Pledgor, the right of Pledgor to proceed against Operations Co or Borrower or the failure by Operations Co or Borrower to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Financing Documents; (viii) any defense, setoff or counterclaim which may at any time be available to or asserted by Operations Co or Borrower against the Collateral Agent or any other Person under the Financing Documents; (ix) any duty on the part of the Collateral Agent to disclose to Pledgor any facts the Collateral Agent may now or hereafter know about Operations Co or Borrower, regardless of whether the Collateral Agent has reason to believe that any such facts materially increase the risk beyond that which Pledgor intends to assume, or has reason to believe that such facts are unknown to Pledgor, or has a reasonable opportunity to communicate such facts to Pledgor; and (x) any defense based on any change in the time, manner or place of any payment under, or in any other term of, the Financing Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Financing Documents.

(c) To the extent permitted by Law, Pledgor waives the posting of any bond otherwise required of the Collateral Agent in connection with any judicial process or proceeding to obtain possession of, replevy, attach, or levy upon any Pledged Collateral, to enforce any judgment or other security for the Secured Obligations, to enforce any judgment or other court order entered in favor of the Collateral Agent, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other agreement or document between Pledgor and the Collateral Agent. Pledgor further agrees that upon the occurrence and during the continuation of an Operations Co Financing Default, the Collateral Agent may elect to non-judicially or judicially foreclose against any real or personal property security it holds for the Secured Obligations or any part thereof, or to exercise any other remedy against Operations Co, Borrower or any other Person, any security or any guarantor, in each case in accordance with the Financing Documents, even if the effect of that action is to deprive

Pledgor of the right to collect reimbursement from Operations Co, Borrower or any other Person for any sums paid by Pledgor to the Collateral Agent for the benefit of the Secured Parties.

(d) Until the payment and satisfaction in full of the Secured Obligations, (i) Pledgor shall have no right of subrogation and Pledgor waives all rights to enforce any remedy which the Collateral Agent may now have or hereafter have against Operations Co or Borrower, and waives the benefit of, and all rights to participate in, any security now or hereafter held by the Collateral Agent from Operations Co and Borrower and (ii) Pledgor waives any claim, right or remedy which Pledgor may now have or hereafter acquire against Operations Co or Borrower that arises hereunder and/or from the performance of Pledgor's contribution, indemnification, or participation in any claim, right or remedy of the Collateral Agent against Operations Co or Borrower, or any security which the Collateral Agent now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. Any amount paid to Pledgor on account of any such subrogation rights prior to the payment and satisfaction in full of the Secured Obligations shall be held in trust for the benefit of the Collateral Agent and shall immediately thereafter be paid to the Collateral Agent for the benefit of the Secured Parties.

Section 14. Addresses for Notices.

(a) All notices or other communications to the Collateral Agent hereunder shall be given in the manner and to the addresses specified in the Collateral Agency Agreement. All such notices and other communications to the Collateral Agent shall be effective as and when specified in the Collateral Agency Agreement.

(b) All notices and other communications provided to Pledgor hereunder shall be in writing and addressed, delivered or transmitted to Pledgor at its "Address for Notices" specified below Pledgor's name on the signature pages hereof or at such other address or facsimile number as may be designated by Pledgor from time to time in a written notice to the Collateral Agent. Any notice to Pledgor (other than a facsimile) shall be sent by pre-paid nationally recognized overnight courier service and shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when transmitted (if confirmed); provided, however, that any notice delivered by facsimile shall be effective (i) if received before 2:00 p.m. (recipient's time), as of the Business Day on which it is received, (ii) if received on or after 2:00 p.m. (recipient's time) on any day, as of the next succeeding Business Day, and (iii) if a copy of such notice is mailed by pre-paid nationally recognized overnight courier service and received on the following day by the recipient thereof.

Section 15. Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 16. Survival of Provisions. All representations and warranties contained herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement. All statements contained in any certificate or other instrument delivered by or on behalf of Pledgor pursuant to this Agreement shall be deemed representations and warranties of Pledgor under this Agreement.

Section 17. No Waiver; Cumulative Remedies. No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder

shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Collateral Agent.

Section 18. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

Section 19. Governing Law; Consent to Jurisdiction. Reference is made to Section 5-1401 of the New York General Obligations Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles thereof that would result in the application of any law other than the law of the State of New York, except as required by mandatory provisions of law relating to the law governing perfection or the effect of perfection of the security interests hereunder. Each of the parties hereto hereby (i) irrevocably consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect, in any suit, action or proceeding arising out of or relating to this Agreement and (ii) waives, to the fullest extent permitted by law, the right to move or dismiss or transfer any action brought in such court on the basis of any objection to personal jurisdiction, venue or inconvenient forum.

Section 20. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR RELATING TO OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT.

Section 21. Amendment or Waiver. Except as otherwise provided herein, neither this Agreement nor any of the terms hereof may be amended, changed or waived unless such amendment, change or waiver is in writing and signed by Pledgor and the Collateral Agent and then any such waiver or consent shall be effective only in the specific instance and for the specified purpose for which given.

Section 22. Entire Agreement. This Agreement, including any agreement, document or instrument attached hereto or referred to herein, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior agreements and understandings of the parties hereto in respect to the subject matter hereof.

Section 23. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 24. Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and/or by facsimile or electronic mail, and all of said counterparts taken together shall be deemed to constitute one and the same

instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or "pdf" signature page shall constitute an original for purposes hereof.

Section 25. No Inconsistent Requirements. The Pledgor acknowledges that this Agreement and the other Financing Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and each shall be performed and satisfied in accordance with its respective terms.

Section 26. Termination. Upon payment and performance in full of all Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted), the Collateral Agent shall promptly execute and deliver to Pledgor such documents and instruments reasonably requested by Pledgor as shall be necessary to evidence termination of all security interests and proxies given by Pledgor to the Collateral Agent hereunder and shall return any Pledged Collateral in its possession to Pledgor.

Section 27. Reinstatement. Following the Termination Date, this Agreement, the Security Interest created hereunder and the obligations of Pledgor hereunder shall continue to be effective or be automatically reinstated, as the case may be, if and to the extent that for any reason any payment by or on behalf of Pledgor in respect of the Secured Obligations is rescinded or must otherwise be restored by any holder of the Secured Obligations, whether as result of any proceedings in bankruptcy or reorganization or otherwise.

Section 28. Limitation of Liability. No claim shall be made by Pledgor against the Collateral Agent or any of its affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Financing Documents or any act or omission or event occurring in connection therewith; and Pledgor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. Additionally:

(a) No covenant, agreement or obligation contained herein or in any Operations Co Security Document shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of Operations Co in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this Agreement or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Financing Documents, the Secured Parties will have full recourse to Operations Co and all of its assets and properties for the respective liabilities and obligations of Operations Co under the Financing Documents, but in no event will the Authority or any Affiliates of Operations Co or any officer, director or holder of any interest in Operations Co, the Authority or any Affiliates of Operations Co be liable or obligated for such liabilities and obligations of Operations Co, other than to the extent arising directly as a result of Pledgor's pledge of its ownership interests in Operations Co pursuant to

this Agreement and the Pledgor and each Sponsors' obligations under the Capital Contribution Agreement, as applicable.

(c) Notwithstanding anything in paragraph (b) above of this Section 28, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of the Authority or any Affiliate of Operations Co (1) arising under any Financing Document or Project Contract to which the Authority or such Affiliate of Operations Co is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of the Authority or any Affiliate of Operations Co.

Section 29. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Collateral Agent, for the benefit of the Secured Parties, and Pledgor and the respective successors and permitted assigns of the foregoing, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that, subject to Section 6.04 of the Collateral Agency Agreement, the Secured Parties shall be express third party beneficiaries of this Agreement.

Section 30. PATRIOT Act Notification. The Collateral Agent hereby notifies Pledgor that pursuant to the requirements of the USA PATRIOT ACT, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "PATRIOT Act"), the Collateral Agent may be required to obtain, verify and record information that identifies Pledgor, which information includes the name, address, tax identification number and other information regarding Pledgor that will allow the Collateral Agent to identify Pledgor in accordance with the PATRIOT Act.

[*Remainder of page intentionally left blank; signatures follow.*]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, have caused this Agreement to be duly executed and delivered as of the date first above written.

PLEDGOR:

KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC

By: _____
Name: _____
Title: _____

Address for Notices:

_____
_____
_____
Facsimile: _____

With a copy to:

_____
_____
_____
Facsimile: _____

U.S. BANK NATIONAL ASSOCIATION, as
Collateral Agent

By: _____
Name: _____
Title: _____

EXHIBIT A

IRREVOCABLE PROXY

The undersigned hereby (i) appoints U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, the "Collateral Agent") for the benefit of the Secured Parties (as defined in the Pledge Agreement) under the Pledge Agreement, (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Pledge Agreement") dated as of September ___, 2015 by and between KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC ("Pledgor") and the Collateral Agent, to act as proxy following the occurrence and during the continuance of an Operations Co Financing Default (as defined in the Pledge Agreement), with full power of substitution, and (ii) authorizes the Collateral Agent, following the occurrence and during the continuance of such Operations Co Financing Default, to represent and vote all of the membership and other interests in KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company, owned by the undersigned on the date of exercise hereof, at any meeting or at any time chosen by the Collateral Agent in its sole discretion.

Date: _____, 2015

PLEDGOR:

KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC

By:_____
Name:
Title:

EXHIBIT B

TRANSFER POWER

FOR VALUE RECEIVED, the undersigned (the "Assignor") hereby assigns, conveys, sells and transfers unto

_____
(Please insert taxpayer identification number of Assignee)

_____
(Please print name and address of Assignee)

all rights and interests of the Assignor in KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company ("Operations Co") held by it and represented by Certificate Number ___, and does hereby irrevocably constitute and appoint _____ as its attorney-in-fact to transfer such rights and interests on the books of Operations Co with full power of substitution in the premises

Dated: _____

KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC

By: _____
Name:
Title:

Schedule 1

Pledged Interests

Issuer:	KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company
Certificate No.:	1
Percentage Ownership:	100% of the ownership interests of KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company
Registered Owner:	KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC

Schedule 2

Organization of Pledgor

Pledgor's Legal Name:

KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC

Type, Jurisdiction of Organization and Organizational Number, if any:

Limited Liability Company

Delaware

Organizational Number: 5791144

Chief Executive Office:

[*ADDRESS*]

EXHIBIT C-1

DESIGN-BUILDER DIRECT AGREEMENT

See attached.

DESIGN-BUILD AGREEMENT

NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

KentuckyWired Operations Company, LLC

("Operations Co")

and

NG-KIH Design-Build LLC

("Design-Builder")

Dated: September 3, 2015

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DESIGN-BUILD AGREEMENT

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

BETWEEN:

KentuckyWired Operations Company, LLC

("Operations Co")

AND:

NG-KIH Design-Build LLC

(the "**Design-Builder**")

WHEREAS:

A. Operations Co has entered into the Project Implementation Agreement with KentuckyWired Infrastructure Company, Inc. ("**Project Co**"), pursuant to which Operations Co has agreed, *inter alia*, to undertake the Design and Construction of the NG-KIH System.

B. The Design-Builder has agreed to undertake all aspects of the Design and Construction of the NG-KIH System on behalf of Operations Co, subject to and in accordance with the terms of this Design-Build Agreement.

C. The Design-Builder and Operations Co will each perform their respective obligations under this Design-Build Agreement in a collaborative manner with each other and with Project Co and the Authority.

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

1. INTERPRETATION AND INTERACTION WITH PROJECT AGREEMENT

1.1 Definitions

In this Design-Build Agreement, unless the context otherwise requires, capitalized terms will have the meanings set out in Attachment 1 [Definitions and Interpretation]. Certain words and expressions are defined within the attachments hereto and such definitions will apply, unless the context otherwise requires, in all other parts of this Design-Build Agreement whether or not Attachment 1 [Definitions and Interpretation] contains a cross-reference to such definitions.

1.2 Interpretation

Unless the context otherwise requires, this Design-Build Agreement will be interpreted and construed in accordance with the provisions set out in Attachment 1 [Definitions and Interpretation].

compromise any Project Co Claim without the prior written consent of the Design-Builder, not to be unreasonably withheld or delayed. The Design-Builder shall bear and discharge on a current basis, and shall indemnify Operations Co against all Direct Losses reasonably and properly incurred by Operations Co related to any Project Co Claim, except to the extent that (1) such Direct Losses arise from an Operations Co Event of Default or (2) the liability for the relevant Project Co Claim will be shared by the parties, in which case each party shall bear a fair and reasonable proportion of the related costs and expenses. Direct Losses under this Section 1.4(c) will not include the costs of Operations Co's own personnel, but will include any out-of-pocket expenses of such personnel and costs and expenses of Project Co, the Authority or other Persons where the Design-Builder or Operations Co becomes liable to pay the same.

(d) The parties acknowledge that where the Project Implementation Agreement contemplates meetings between Operations Co and/or Operations Co's Design and Construction Representative and Project Co, the Authority and/or the Authority's Design and Construction Representative, such provisions generally do not contemplate a right for the Design-Builder to attend such meetings. Where possible, the DB Representative will attend such meetings unless Operations Co advises otherwise. However, in either case, Operations Co will use commercially reasonable efforts to ensure that the Design-Builder is included in such meetings where they pertain to the DB Obligations and, where Operations Co is not successful, Operations Co agrees to keep the Design-Builder informed of any such discussions or meetings between Project Co, the Authority and Operations Co that impact the DB Obligations, and, to the extent that Operations Co has an opportunity to do so vis-à-vis Project Co and the Authority, put forward comments and questions provided to it by the Design-Builder in respect of the subject matter of the relevant discussions or meetings.

(e) In certain sections of this Design-Build Agreement, there are references to or acknowledgements of the Project Agreement, the Project Implementation Agreement or portions thereof and the absence of such a reference or acknowledgement in any other particular section of this Design-Build Agreement will not be construed for or against either party in interpreting this Design-Build Agreement.

1.5 Communication with the Authority and Third Parties

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

(1) make all Communications required to be made by the Design-Builder under this Design-Build Agreement within the timeframes contemplated herein or, if no timeframe is set forth herein, in a timely manner so as to permit Operations Co to comply with its obligations under this Design-Build Agreement and the Project Implementation Agreement; or

(2) upon written request from Operations Co, submit the Communication directly to Project Co, the Authority or other third party.

(b) Except as otherwise set out in this Design-Build Agreement, Operations Co hereby gives permission to the Design-Builder to provide Communications directly to Project Co and the Authority in respect of day-to-day matters and deliverables in respect of the performance of the DB Obligations, provided that (i) the permission granted under this Section 1.5(b) will not extend to any Material Project Matter and (ii) the Design-Builder will not be entitled to provide any Communication directly to Project Co or the Authority at any time during the continuance of a DB Event of Default unless Operations Co otherwise consents in writing. Notwithstanding the foregoing, if the Authority requires that all Communications under the Project Agreement be made directly to and from Project Co or Operations Co and does not accept direct Communications from the Design-Builder, then Operations Co will provide all such Communications to Project Co or the Authority, as applicable, and, notwithstanding any time period specifically set out in this Design-Build Agreement, the Design-Builder will provide such Communications directly to Operations Co in a timely manner so as to permit Operations Co to comply with its obligations under this Design-Build Agreement and the Project Implementation Agreement.

(c) Operations Co will make all Communications required to be made by Operations Co to the Design-Builder under this Design-Build Agreement in a timely manner so as to permit the Design-Builder to comply with its obligations under this Design-Build Agreement and will consult with the Design-Builder in respect of Communications with Project Co or the Authority regarding Material Project Matters and allow the Design-Builder reasonable opportunity to participate in such Communications to the extent so permitted by the Authority.

1.6 Equivalent Project Relief

(a) To the extent any entitlement of Operations Co under the Project Implementation Agreement (including any rights, remedies or relief) is related to the DB Obligations or the rights or obligations of the Design-Builder under this Design-Build Agreement, the Design-Builder will be entitled to receive the benefit of such entitlement from Operations Co (in accordance with and subject to the provisions of Section 1.6(c)), including the benefit of:

(1) any indemnification, compensation, damages or other payment of any kind on the same or substantially the same grounds as Operations Co is entitled to indemnification, compensation, damages or other payment of any kind under the Project Implementation Agreement;

(2) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Design-Build Agreement

on the same or substantially the same grounds as Operations Co is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Project Implementation Agreement, with reasonable time period and threshold buffers to permit Operations Co time to perform its obligations under the Project Implementation Agreement, and otherwise subject to any express limitations set out in this Design-Build Agreement;

(3) any entitlement of the Design-Builder under this Design-Build Agreement in respect of which any provision of this Design-Build Agreement states that the Pass-Down Provisions are to apply; and

(4) any certificate, consent or approval granted under this Design-Build Agreement, the Project Implementation Agreement, the Project Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to the DB Obligations, including any entitlement of Operations Co to request or apply for such certificate, consent or approval from Project Co, the Authority or any other Person under this Design-Build Agreement, the Project Implementation Agreement or the Project Agreement,

including, for greater certainty, any benefit to Operations Co arising out of any Change implemented or any Change required by Project Co pursuant to the Project Implementation Agreement or any Compensation Event, Relief Event, Force Majeure Event, Change in Law, Eligible Change in Law Event or remedies or compensation in respect of any Project Co Event of Default (as defined in the Project Implementation Agreement) or any Authority Event of Default (as defined in the Project Agreement) in respect of which Operations Co is entitled to relief, compensation or benefit under the Project Implementation Agreement in respect of Operations Co's obligations that are related to the DB Obligations or the rights or other obligations of the Design-Builder under this Design-Build Agreement, but excluding:

(5) any compensation payable to Operations Co under the Project Implementation Agreement in respect of any Senior Debt Service Amount (except to the extent that the Design-Builder has previously made payment to Operations Co in respect of increased debt service costs as a result of a Supervening Event, in which case Operations Co will reimburse the Design-Builder in accordance with Section 9.15(c)) or any other obligation of Project Co or Operations Co under the Senior Financing Agreements; and

(6) any specific loss, cost or expense incurred by Operations Co to which the relevant compensation expressly relates and which is not included in any amount claimed by the Design-Builder.

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

(b) The Design-Builder will not be entitled to any relief from, or waiver in respect of performance of the DB Obligations under this Design-Build Agreement other than:

(1) in the case of an Operations Co Act, to the extent that it is not caused or contributed to by a Design-Builder Act;

(2) to the extent Operations Co receives Equivalent Project Relief; or

(3) to the extent expressly provided for in this Design-Build Agreement.

(c) The Design-Builder will be entitled to the benefit of any Equivalent Project Relief to the extent that Operations Co is or becomes entitled under the Project Implementation Agreement only if, when and to the same extent that Operations Co has received Equivalent Project Relief from Project Co under the Project Implementation Agreement. For greater certainty, other than in respect of any Operations Co Act, Operations Co will in no circumstances be required to provide greater relief or compensation to the Design-Builder in respect of any matter in respect of which Operations Co is entitled to Equivalent Project Relief than Operations Co has actually received from Project Co under the Project Implementation Agreement.

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

1.7 Enforcement of Parallel Issues

(a) Operations Co will use all reasonable efforts to preserve, protect and pursue under the Project Implementation Agreement such rights, remedies and relief as may relate to the DB Obligations or the Design-Builder's rights hereunder, including any claim for Equivalent Project Relief (a "**Parallel Issue**") in order to secure a favorable resolution of the Parallel Issue, provided that:

(1) Operations Co has received written notice from the Design-Builder of the Parallel Issue;

(2) the Design-Builder will not be entitled to recover from Operations Co any Direct Losses or claims arising out of or in connection with Operations Co pursuing resolution of a Parallel Issue on the Design-Builder's behalf other than in respect of any Operations Co Act or other than any amounts received from Project Co in respect of such Parallel Issue; and

(3) the Design-Builder will indemnify Operations Co in respect of any Direct Losses arising out of or in connection with Operations Co pursuing resolution of a Parallel Issue on the Design-Builder's behalf in accordance with this Section 1.7(a), including reimbursing Operations Co for any deduction from, reduction of or exercise of set-off, compensation or similar right against any amount payable by Project Co associated therewith, provided that such indemnification will, unless Operations Co has no entitlement to any amount received in respect of such Parallel Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Issue.

(b) Operations Co will, at the reasonable request of the Design-Builder, pursue the rights, remedies and relief under the Project Implementation Agreement described in Section 1.7(a) of this Design-Build Agreement on behalf of the Design-Builder in accordance with the reasonable directions of the Design-Builder or, alternatively, Operations Co may consent to the Design-Builder pursuing such rights, remedies and relief in the name of Operations Co, in either case, to the extent that the relevant rights, remedies or relief relate to the DB Obligations or the Design-Builder's rights hereunder and which may, subject to the provisions of Section 9.2 of the Project Implementation Agreement, include the defense of claims where the Design-Builder is required to provide an indemnity to Operations Co in accordance with the indemnity provisions in this Design-Build Agreement. The Design-Builder will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that, if the Design-Builder is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the parties in proportion to their ultimate entitlements to same. Operations Co's consent under the first sentence of this Section 1.7(b) will not be unreasonably withheld or delayed where the relevant rights, remedies or relief affect only the Design-Builder and not Operations Co, any Operations Co Person, the Service Provider or any Service Provider Person. For greater certainty, Operations Co will not be obligated to act in accordance with the Design-Builder's instructions or allow the Design-Builder to pursue claims in Operations Co's name to the extent that the relevant rights, relief and remedies relate to rights or obligations of Operations Co, any Operations Co Person, the Service Provider or any Service Provider Person in respect of Project related matters other than the DB Obligations or the Design-Builder's rights hereunder or where, acting reasonably, Operations Co has determined (in which case it will provide the Design-Builder with its grounds) that there is no reasonable cause of action for such claims or such claims are frivolous or vexatious or otherwise an abuse of process.

(c) Operations Co will not enter into any compromise or settlement of a Parallel Issue with Project Co (or with the Authority, when acting on behalf of Project Co) which affects, in any material respect, the DB Obligations or the Design-Builder's

rights, remedies or relief hereunder without the prior written consent of the Design-Builder, such consent not to be unreasonably withheld or delayed.

(d) Where Operations Co pursues a Parallel Issue in accordance with this Section 1.7, the Design-Builder will be kept informed of Operations Co's progress under this Section 1.7 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Operations Co in accordance with this Section 1.7.

(e) If Operations Co does not, after having been given written notice in accordance with Section 1.7(a), take steps to pursue such Parallel Issue within 14 Business Days or prior to that date being 5 Business Days prior to the expiration or other extinguishment of Operations Co's right to pursue such Parallel Issue, the Design-Builder may, in the name of and on behalf of Operations Co, pursue such Parallel Issue itself subject to this Section 1.7, at its sole cost and expense, and Operations Co will (at the sole cost and expense of the Design-Builder) use reasonable efforts to provide assistance, including providing documents, data and information, as the Design-Builder may reasonably request in connection with the pursuit of such Parallel Issue by the Design-Builder.

(f) The Design-Builder will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure or, in the absence of such timeframes, as reasonably set by Operations Co, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Operations Co may reasonably request in connection with the pursuit of any Parallel Issue.

(g) Any claims in respect of a Parallel Issue and any recoveries obtained by Operations Co or the Design-Builder in respect of any Parallel Issue under the Project Implementation Agreement will be subject to the provisions of Section 1.6 in respect of Equivalent Project Relief.

1.8 Pass-Down Provisions

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

1.9 Authority Not Directly Liable

The Designer-Builder acknowledges the provisions of Section 1.9 of the Project Implementation Agreement.

2. GENERAL PROJECT TERMS

2.1 Term and Termination

The Design-Builder acknowledges the provisions of Section 2.1 of the Project Implementation Agreement and the provisions of Section 2.1 of the Project Agreement. The term of this Design-

Build Agreement (the "**Term**") will commence on the Effective Date and will continue to the Expiration Date unless earlier terminated:

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

(b) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.3 of the Project Agreement in connection with insufficient insurance;

(c) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.4 of the Project Agreement in connection with uncollectible Insurance Receivables;

(d) upon the Authority electing to terminate the Project Agreement pursuant to Section 6.10 of the Project Agreement in connection with a Principal Insured Risk becoming Uninsurable;

(e) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.4(c) or 8.4(e) of the Project Agreement, Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 8.4(c) or 8.4(e) of the Project Implementation Agreement or the Design-Builder electing to terminate this Design-Build Agreement pursuant to Section 8.4(c) or 8.4(e) of this Design-Build Agreement, in connection with a Relief Event;

(f) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.6(c) or 8.6(d) of the Project Agreement, Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 8.6(c) or 8.6(d) of the Project Implementation Agreement or the Design-Builder electing to terminate this Design-Build Agreement pursuant to Section 8.6(c) or 8.6(d) of this Design-Build Agreement, in connection with a Force Majeure Event;

(g) upon the Authority electing to terminate the Project Agreement pursuant to Section 12.4 of the Project Agreement in connection with a Project Co Event of Default (as defined in the Project Agreement) or Project Co electing to terminate the Project Implementation Agreement pursuant to Section 12.4 of the Project Implementation Agreement in connection with an Operations Co Event of Default (as defined in the Project Implementation Agreement);

(h) by Operations Co pursuant to Section 12.4 in connection with a DB Event of Default;

(i) upon Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 13.3 of the Project Agreement in connection with an Authority Event of Default or Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 13.3 of the Project Implementation Agreement in connection with a Project Co Event of Default (as defined in the Project Implementation Agreement); or

(j) by the Design-Builder electing to terminate this Design-Build Agreement pursuant to Section 13.3 in connection with an Operations Co Event of Default.

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

2.2 Document Deliveries

Concurrently with the execution and delivery of this Design-Build Agreement:

(a) the Design-Builder will deliver to Operations Co the documents described in Section 2 of Attachment 18 [Completion Documents]; and

(b) Operations Co will deliver to the Design-Builder the documents described in Section 3 of Attachment 18 [Completion Documents].

2.3 Assumption of Risk

Except to the extent expressly allocated to Operations Co or otherwise provided for under this Design-Build Agreement, all risks, costs and expenses in relation to the performance by the Design-Builder of the DB Obligations are allocated to, and accepted by, the Design-Builder as its entire and exclusive responsibility.

2.4 Opportunities

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

2.5 General Duty of the Design-Builder to Mitigate

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

2.6 General Duty of Operations Co to Mitigate

In all cases where Operations Co is entitled to receive from the Design-Builder any compensation, costs or damages, but not in any other case, Operations Co will use all commercially reasonable efforts (including enforcing its rights against Project Co pursuant to Section 2.6 of the Project Implementation Agreement) to mitigate such amount required to be

paid by the Design-Builder to Operations Co under this Design-Build Agreement (except where Operations Co is unable to do so under the Project Implementation Agreement, including as a result of a circumstance where Project Co is not required to mitigate pursuant to Section 2.6(a) of the Project Implementation Agreement, or the Senior Financing Agreements).

(a) Not used

(b) Not used

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

2.7 Representatives

The Design-Builder will appoint a DB Representative in accordance with, and with the rights and responsibilities as set out in, Section 2 of Attachment 2 [Design and Construction Protocols], and such appointment will be subject to the written approval of Operations Co, including any changes thereto.

2.8 Key Individuals

Attached as Attachment 17 [Key Individuals] is a list of persons (the "**Key Individuals**") that the Design-Builder will utilize in performing the DB Obligations. With respect to each of the Key Individuals:

(a) the Design-Builder will use commercially reasonable efforts to retain the Key Individuals to perform the duties for the period described in Attachment 17 [Key Individuals]; and

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

2.9 Naming

The Design-Builder acknowledges the provisions of Section 2.9 of the Project Agreement.

2.10 Signs

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

2.11 Early Works

The Design-Builder acknowledges Section 2.11 of the Project Implementation Agreement and acknowledges and agrees that the early works undertaken pursuant to the Master Agreement (as defined in the Project Agreement) (the "**Early Works**") terminated on the Effective Date and that the Early Works performed prior to the Effective Date are deemed to have been undertaken by the Design-Builder pursuant to this Design-Build Agreement. The Design-Builder accepts and assumes the risk, responsibility and liability for and in respect of the performance of the Early Works in accordance with the provisions of this Design-Build Agreement.

3. OPERATIONS CO'S GENERAL OBLIGATIONS

3.1 Payments

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

(a) the payments set out in Section 10 (Payments);

(b) Not used

(c) the Termination Payments as set out in Attachment 9 [Compensation on Termination];

(d) amounts owing under Section 3.6 (Purchase of Designated Equipment);

(e) amounts owing under Section 6 (Insurance, Damage and Destruction);

(f) amounts owing under Section 7 (Changes and Innovation Proposals);

(g) amounts owing under Section 8 (Supervening Events);

(h) amounts owing under Section 9 (Indemnities and Limits on Liabilities and Remedies); and

(i) amounts owing pursuant to the final resolution of a DB Dispute in accordance with the DB Dispute Resolution Procedure set out in Attachment 13 [Dispute Resolution Procedure],

in accordance with the provisions of this Design-Build Agreement and all applicable Laws.

3.2 Limitation on Payments

Other than the payments expressly provided for herein, the Design-Builder will have no right to any further payment from Operations Co in connection with the DB Obligations or otherwise in connection with the Project.

3.3 Provision of Lands

Operations Co will make the Lands available for the Project pursuant to the Sub-License in accordance with Attachment 7 [Lands] and the parties' rights and obligations in respect of the

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

3.4 Permitting Assistance

The Design-Builder acknowledges the provisions of Section 3.4 of the Project Implementation Agreement and Section 3.4 of the Project Agreement. To the extent appropriate, Operations Co agrees to take commercially reasonable efforts to enforce its contractual rights under Section 3.4 of the Project Implementation Agreement against Project Co in accordance with the Pass-Down Provisions. The Design-Builder agrees that Operations Co will not be responsible for obtaining or for any delay in obtaining or for the failure of the Design-Builder to obtain any DB Permit, unless such delay or failure is caused by an Operations Co Act.

3.5 Operations Co's Representations and Warranties

Operations Co represents and warrants to the Design-Builder, as of the Effective Date, that:

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

(b) the execution and delivery of this Design-Build Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Design-Build Agreement, and the completion of the transactions contemplated by this Design-Build Agreement, have been duly authorized by all necessary action on the part of Operations Co, and this Design-Build Agreement has been duly executed and delivered by Operations Co and constitutes a legal, valid and binding obligation of Operations Co enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and

(c) all required third party consents to the execution by Operations Co of, and performance of its obligations under, this Design-Build Agreement have been received.

3.6 Purchase of Designated Equipment

The Design-Builder acknowledges and agrees that the Authority will purchase the Designated Equipment and arrange for delivery of the Designated Equipment in accordance with the Designated Equipment Protocol. To the extent that the amount actually paid by the Authority in respect of Designated Equipment is less than $28,646,000 as a result of a change in the type or quantity of Designated Equipment required by the Design-Builder, subject to the Pass-Down Provisions, Operations Co will, on the System Completion Date, make a payment to the Design-Builder in the amount of the difference between $28,646,000 and the amount actually paid by the Authority in respect of the Designated Equipment (taking into account changes in the type or quantity of Designated Equipment only).

3.7 Operations Co Common Carrier Covenant

Operations Co covenants not to take or fail to take any action that would result in the designation of the Design-Builder or any DB Person as a Common Carrier or in the application of the Common Carrier Regulations to the Design-Builder, any DB Person the NG-KIH System or any part thereof. Operations Co acknowledges the provisions of Section 3.7 of the Project Agreement whereby the Authority acknowledges and agrees that the performance by Project Co or any Project Co Person (as defined in the Project Agreement) of obligations under the Project Agreement, the Project Implementation Agreement or any Project Contract (as defined in the Project Agreement) does not require any Person, including Project Co or any Project Co Person (as defined in the Project Agreement), to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

3.8 Not Used

3.9 Pole Attachment Agreements

The Design-Builder acknowledges the provisions of Section 3.9 of the Project Agreement whereby the Authority has agreed to (a) enter into each Pole Attachment Agreement required for the Project, (b) if applicable, renew each Pole Attachment Agreement no later than then expiration date set out in such Pole Attachment Agreement to ensure continuous operations of the NG-KIH System and (c) appoint Operations Co as its agent or designee pursuant to each Pole Attachment Agreement. During the Construction Period, Operations Co will appoint the Design-Builder as its agent or designee pursuant to each Pole Attachment Agreement and the Design-Builder shall perform all of Operations Co's obligations and duties in such capacity. The Design-Builder will comply with the Authority's obligations under each Pole Attachment Agreement related to the DB Obligations. Notwithstanding the foregoing, the parties acknowledge and agree that the payment of all Pole Attachment Fees and the administration of the renewal of each Pole Attachment Agreement will be performed by the Service Provider in accordance with the Services Contract and do not form part of the DB Obligations.

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

For clarity, the Design-Builder will not be entitled to claim a Compensation Event in respect of any delay in obtaining a fully executed Simple Pole Attachment Agreement from each Pole

Provider (other than a Material Telecommunications Company) during the Construction Period unless:

(a) the Authority does not execute the finalized Simple Pole Attachment Agreement provided to the Authority by the Design-Builder within 3 Business Days of receipt thereof; or

(b) a Pole Provider refuses to enter into a Simple Pole Attachment Agreement.

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

Operations Co agrees to use commercially reasonable efforts to cause Project Co to enforce its contractual rights under Section 3.9 of the Project Implementation Agreement against Project Co to ensure that Project Co causes the Authority to provide or cause to be provided such information, documentation and assistance as the Design-Builder may request and as the Authority may reasonably be able to provide to support the negotiation of any Complex Pole Attachment Agreement.

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

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

If the Design-Builder and the Targeted Pole Provider have negotiated an Amended Pole Attachment Agreement, the Design-Builder will submit a Pole Attachment Proposal in accordance with Section 5 of Attachment 6 [Changes and Innovation Proposals]. The parties acknowledge that the Authority has agreed under the Project Agreement that it will not enter into an Amended Pole Attachment Agreement until it has completed the process set out in Section 5 of Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement.

3.10 Procurement Protest or Challenge

The Design-Builder acknowledges the provisions of Section 3.10 of the Project Agreement and agrees to assist in the defense of any protest or challenge to the procurement process contemplated thereunder to the extent that it has the information to do so. The Design-Builder will pay any costs incurred in defending the actions of the Design-Builder related to the procurement process or to its interests in this Design-Build Agreement. Operations Co agrees to enforce its contractual rights under Section 3.10 of the Project Implementation Agreement in accordance with the Pass-Down Provisions.

4. DESIGN-BUILDER'S GENERAL OBLIGATIONS

4.1 General Obligations Re: Project

Subject to and in accordance with the provisions of this Design-Build Agreement and all applicable Laws and Permits, the Design-Builder will carry out the DB Obligations and will cooperate with Operations Co and, at Operations Co's request, Project Co and/or the Authority in the fulfillment of the purposes and intent of this Design-Build Agreement and, to the extent applicable to the DB Obligations, the Project Implementation Agreement and the Project Agreement.

4.2 Records and Reports

The Design-Builder will, at its own cost and expense, retain and maintain the records and reports referred to in Attachment 14 [Records and Reports] in accordance with such Attachment and in a form that is capable of audit by Operations Co and to enable Operations Co to fulfill its obligations to Project Co under Section 4.2 of the Project Implementation Agreement.

4.3 Project Management Office

The Design-Builder will establish and maintain a project management office in Lexington, Kentucky to coordinate its performance of the Design and Construction.

4.4 DB Persons

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

4.5 Use of DB Sub-Contractors

Without limiting Section 4.4, Operations Co acknowledges that the Design-Builder may carry out some, but not all, of the DB Obligations by contracting such obligations to one or more DB Sub-Contractors. In respect of the Project:

(a) the Design-Builder will not contract with, or allow any of its DB Sub-Contractors to contract with, any Person that is a Restricted Person;

(b) the Design-Builder will not utilize, and will not allow any of its DB Sub-Contractors to utilize, any materials from any Restricted State other than unprocessed raw materials and Non-Operative Components; and

(c) the Design-Builder will ensure that its DB Sub-Contract with Fujitsu Network Communications Inc. and each DB Sub-Contract that, individually or in the aggregate with other DB Sub-Contracts with the same DB Sub-Contractor, has a value in excess of $30 million enables Operations Co to comply with the relevant provisions of the Project Implementation Agreement and provides that the relevant DB Sub-Contractor will:

(1) be required to provide DB Sub-Contractor warranties and, to the extent possible, supplier warranties directly to Operations Co;

(2) be required to contract directly with Operations Co or the nominee of the Senior Secured Creditors upon termination of this Design-Build Agreement; and

(3) not be entitled to terminate or suspend its DB Sub-Contract without first giving Operations Co notice and an opportunity to cure.

Concurrently with the execution of any such DB Sub-Contract, the Design-Builder will provide Operations Co with a redacted copy or excerpts of such DB Sub-Contract, in either case sufficient to demonstrate to Operations Co compliance with the requirements of this Section 4.5(c). The Design-Builder will not amend the provisions of any such DB Sub-Contract that relate to the requirements of this Section 4.5(c) without the prior written consent of Operations Co.

Notwithstanding the use of DB Sub-Contractors, the Design-Builder:

(d) will not be relieved or excused from any of its obligations or liabilities under this Design-Build Agreement; and

(e) will remain liable to Operations Co for the performance of all the covenants, obligations, agreements and conditions of this Design-Build Agreement that are to be performed by the Design-Builder.

4.6 Project Contracts under Project Implementation Agreement

The Design-Builder acknowledges the provisions of Section 4.6 of the Project Implementation Agreement and agrees that this Design-Build Agreement is a Project Contract under the Project Implementation Agreement. Without limiting the generality of the foregoing, the Design-Builder acknowledges the obligations of Operations Co pursuant to Sections 4.6(a) through 4.6(d) of the Project Implementation Agreement.

4.7 Costs of Request for Consent

Without fettering Operations Co's discretion as to whether it will exercise any of its rights under Section 4.6 of the Project Implementation Agreement, if the Design-Builder requests, or the Design-Builder proposes a course of action that makes it necessary for Operations Co to request consent to a proposed course of action pursuant to Section 4.6 of the Project

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

4.8 Not Used

4.9 Not Used

4.10 DB Permits

(a) Subject to Section 3.9 of the Project Agreement, Section 8 (Supervening Events) and Section 2.1 of Attachment 7 [Lands], the Design-Builder shall, at its own cost and risk and in accordance with the Project Schedule obtain, maintain and, as applicable, renew all DB Permits in accordance with Attachment 2 [Design and Construction Protocols] and comply with all Permits in accordance with their terms.

(b) Where a DB Permit has requirements that may impose any conditions, liabilities or obligations on the Authority or any Authority Person, on Project Co or any Project Co Person or on Operations Co or any Operations Co Person, the Design-Builder shall not obtain, amend or renew (other than upon the same terms and conditions) such DB Permit without the prior written consent of Operations Co, not to be unreasonably withheld or delayed, provided that Operations Co shall not be responsible for obtaining or for the failure of the Design-Builder to obtain any DB Permit. The Design-Builder acknowledges the provisions of Section 4.10(b) of the Project Implementation Agreement and, to the extent appropriate, Operations Co agrees to take commercially reasonable steps to enforce its contractual rights under Section 4.10(b) of the Project Agreement against Project Co in accordance with the Pass-Down Provisions.

(c) The Design-Builder shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the Authority may request from Project Co under the Project Agreement and as Project Co may request from Operations Co under the Project Implementation Agreement and as the Design-Builder may reasonably be able to provide to enable the Authority to demonstrate compliance with any Permit. The Design-Builder shall provide or cause to be provided such information, documentation and assistance pursuant to this Section 4.10(c) within 7 Business Days of receipt of Operations Co's, Project Co's or the Authority's request.

4.11 Design-Builder's Representations and Warranties

The Design-Builder represents and warrants to Operations Co that:

(a) the Design-Builder is:

(1) a limited liability company duly created and validly existing under the laws of the State of Delaware and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Design-Build Agreement and all other documents, instruments and agreements required to be executed and delivered by the Design-Builder pursuant to this Design-Build Agreement; and

(2) validly registered to conduct business in the Commonwealth of Kentucky;

(b) the information set out in Attachment 12 [Design-Builder's Ownership Information] is true and correct;

(c) to the Design-Builder's knowledge, none of the Design-Builder, Persons who control the Design-Builder, or any DB Person are Restricted Persons;

(d) the execution and delivery of this Design-Build Agreement and all other documents, instruments and agreements required to be executed and delivered by the Design-Builder pursuant to this Design-Build Agreement, and the completion of the transactions contemplated by this Design-Build Agreement, have been duly authorized by all necessary action on the part of the Design-Builder, and this Design-Build Agreement has been duly executed and delivered by the Design-Builder and constitutes a legal, valid and binding obligation of the Design-Builder enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and

(e) all required third party consents to the execution by the Design-Builder of, and performance of its obligations under, this Design-Build Agreement have been received, other than any Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project.

4.12 Responses to Operations Co, Project Co and Authority Inquiries

Unless otherwise specified in this Design-Build Agreement, the Design-Builder will respond in writing to all written inquiries received from Operations Co, Project Co or the Authority as soon as reasonably practicable and in any event within 7 Business Days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require, but in all cases within a time frame sufficient to ensure that Operations Co is not placed in breach of the Project Implementation Agreement by the delay of the Design-Builder.

4.13 Design-Builder Common Carrier Covenant

The Design-Builder covenants not to take or fail to take any action that would result in the designation of Operations Co or any Operations Co Person as a Common Carrier or in the application of the Common Carrier Regulations to Operations Co, any Operations Co Person or the NG-KIH System or any part thereof. The Design-Builder acknowledges the provisions of Section 3.7 of the Project Agreement whereby the Authority acknowledges and agrees that the performance by Project Co or any Project Co Person (as defined in the Project Agreement) of obligations under the Project Agreement, the Project Implementation Agreement or any Project Contract (as defined in the Project Agreement) does not require any Person, including Project Co or any Project Co Person (as defined in the Project Agreement), to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

4.14 Compliance with Senior Financing Agreements and Project Implementation Agreement

(a) The Design-Builder acknowledges that, pursuant to the Project Implementation Agreement, Operations Co cannot agree to, or permit, any assignment, novation or other transfer of this Design-Build Agreement without the prior written consent of the Senior Secured Creditors, and the Design-Builder will not require Operations Co to take any action that would breach such restrictions or make any claim against Operations Co in respect of any failure by Operations Co to take any action to the extent that the taking of such action would be limited by such restrictions.

(b) The Design-Builder acknowledges that, pursuant to the Project Implementation Agreement, Operations Co is subject to certain restrictions on its ability to, among other things, vary, alter, amend, supplement, surrender, revise or modify the Project Implementation Agreement, this Design-Build Agreement or any other Material Project Contract (as such term is defined in the Senior Financing Agreements) to which the Design-Builder is a party or any other documents entered into in connection therewith without the prior written consent of the Senior Secured Creditors, including agreement by Operations Co to Changes above certain thresholds, and, where Operations Co notifies the Design-Builder that it is subject to such a restriction, the Design-Builder will not require Operations Co to take any action that would breach such restrictions or make any claim against Operations Co in respect of any failure by Operations Co to take any action where the taking of such action would be limited by such restrictions.

(c) The Design-Builder acknowledges that it has been provided with a copy of the Senior Financing Agreements and the Project Implementation Agreement and the Design-Builder will not take any action under this Design-Build Agreement which would require consent of the Senior Secured Creditors under the Senior Financing Agreements if taken by Operations Co under the Project Implementation Agreement without Operations Co having first obtained the consent of the Senior Secured Creditors.

(d) The Design-Builder will, at the Design-Builder's cost and expense, execute and deliver to the Senior Secured Creditors all such reasonable acknowledgements,

agreements, undertakings and other documents as the Senior Secured Creditors may require in connection with their taking security over Operations Co's right, title and interest in and to this Design-Build Agreement and the Project, provided that, notwithstanding the foregoing, the execution and delivery of any acknowledgements, agreements, undertakings and other documents that may be required in connection with any Refinancing (as defined in the Project Agreement) shall be at Operations Co's cost and expense.

(e) The Design-Builder will provide all information as Operations Co may reasonably request from time to time in respect of the Design-Builder or any of its Affiliates as may be required in order for Operations Co to demonstrate compliance with all applicable anti-money laundering and anti-terrorism financing legislation in the United States and economic sanctions regulations promulgated in the United States to the extent that Operations Co is required to provide such information to the Senior Secured Creditors pursuant to a request under the Senior Financing Agreements.

(f) The Design-Builder acknowledges the provisions of Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement. The Design-Builder will provide to Operations Co:

(1) prior to the System Completion Date, monthly progress reports within 20 days following the last day of the preceding month (beginning with the month ending October 31, 2015), which progress reports shall (i) provide an assessment of the overall progress of the Design and Construction since the date of the last report (or, with respect to the first such report, the Effective Date) and setting forth a reasonable estimate as to the completion date for the applicable work, and (ii) provide a reasonably detailed description of any material delays encountered or anticipated in connection with such work, and a reasonably detailed description of the proposed course of action with respect to such delay;

(2) promptly so as to permit Operations Co to comply with its obligations under Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement, copies of all notices of the matters described in Sections 4.1(c)(8)(B), (D), (E) and (F) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement to the extent that any such matter relates to the Design-Builder, this Design-Build Agreement or the DB Obligations; and

(3) any additional information related to the Design-Builder, this Design-Builder Agreement or the DB Obligations reasonably requested by Operations Co from time to time and that is required by Operations Co to comply with its reporting obligations pursuant to Sections 4.1(c) and (d) of the Project Implementation Agreement,

provided that the above requirements shall not require that the Design-Builder produce a separate record or report to the extent that the records and reports referred to in Attachment 15 [Records and Reports] are sufficient for Operations Co to comply with its obligations pursuant to Sections 4.1(c) and (d) of Schedule

15 [Financing Agreement Obligations] to the Project Implementation Agreement. If the Design-Builder is unable to determine whether a matter described in Sections 4.1(c)(8)(D), (E) or (F) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement could reasonably be expected to, or does, cause a Material Adverse Effect (as defined in the Collateral Agency and Account Agreement), the Design-Builder will consult with Operations Co regarding such matter and Operations Co shall determine (in its sole discretion) whether it is required to report such matter pursuant to Section 4.1(c)(8) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement. If Operations Co notifies the Design-Builder that Operations Co is required to report such matter, the Design-Builder will provide a copy of all notices of such matter to Operations Co in accordance with Section 4.14(f)(2). Notwithstanding Section 17.1, Operations Co may disclose any information provided to Operations Co by the Design-Builder pursuant to this Section 4.14(f) to the extent required for Operations Co to satisfy its reporting and disclosure obligations under the Project Implementation Agreement.

4.15 Design-Builder's Obligations re Third Party Infrastructure Agreements

The Design-Builder acknowledges the provisions of Section 4.15 of the Project Agreement and the provisions of Section 4.15 of the Project Implementation Agreement. The Design-Builder further acknowledges and agrees that, as of the Effective Date, Project Co has negotiated non-binding term sheets (each, a "**Third Party Infrastructure Term Sheet**") with the Third Party Infrastructure Providers, copies of which are attached as Attachment 23 [Third Party Infrastructure Term Sheets]. The Design-Builder will be responsible for fulfilling the responsibilities, including ordering and delivery, of Project Co with respect to all Specified Fibers, as defined and contemplated in the Third Party Infrastructure Term Sheet between Project Co and MuniNet Fiber Agency. The parties acknowledge and agree that the Specified Fibers form part of the Designated Equipment.

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

During the Construction Period, the Design-Builder will use commercially reasonable efforts to manage the Third Party Infrastructure Providers in accordance with the terms of the Third Party Infrastructure Agreements, including, without limitation, any integration activities necessary to integrate the applicable infrastructure of a Third Party Infrastructure Provider into the NG-KIH System, and administer Project Co's rights under the Third Party Infrastructure Agreements so as to mitigate the impact of any failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement or any breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement. Upon request from Operations Co, the Design-Builder will promptly submit a detailed description, supported by all such documentation as Operations Co may reasonably require, of the measures and steps taken by the Design-Builder to administer Project Co's rights under each of the Third Party Infrastructure Agreements. Operations Co consents to the Design-Builder

pursuing all rights, remedies and relief under a Third Party Infrastructure Agreement in the name of Project Co.

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

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

In accordance with Section 8.2(h), if the Compensation Event described in (x) of the definition of Compensation Event occurs, the parties will consult with the Authority and Project Co and seek to agree on the steps to be taken by the Design-Builder in administering Project Co's rights under the relevant Third Party Infrastructure Agreement. The parties acknowledge and agree that the compensation to which the Design-Builder will be entitled in respect of any such Compensation Event will include, as a component of the Design-Builder's Direct Losses, the reasonable cost of legal or professional services incurred by the Design-Builder in connection with the administration of Project Co's rights; provided, however, that the Design-Builder will not be required to pursue any judicial remedies against any Third Party Infrastructure Provider. For certainty, Operations Co will not be required hereunder to pursue any judicial remedies against any Third Party Infrastructure Provider.

4.16 Construction Budgets

The Design-Builder acknowledges and agrees that it has been made aware of the provisions of the Senior Financing Agreements in relation to the preparation of Construction Budgets and agrees to provide such information as Operations Co may require, on request by Operations Co, in order to comply with such provisions. The Design-Builder will also be responsible to prepare all Construction Budgets as reasonably required by Operations Co.

4.17 Remedial Plan

The Design-Builder acknowledges and agrees that it has been made aware of the provisions of the Senior Financing Agreements in relation to the preparation of remedial plans. If:

(a) in any certificate delivered by the Secured Creditors' Technical Advisor in accordance with the Senior Financing Agreements, the Secured Creditors' Technical Advisor opines that the Design and Construction are not progressing such that System Completion will be achieved by the DB Longstop Date and that a remedial plan is required; or

(b) at any time, the Design-Builder reasonably anticipates that System Completion will not occur by the DB Longstop Date, the Design-Builder will immediately notify Operations Co of such occurrence,

within 20 Business Days of such certificate or notice, as the case may be, the Design-Builder will submit to Operations Co and the Secured Creditors' Technical Advisor:

(1) a report identifying the reasons for the delay; and

(2) a remedial plan showing the steps that are to be taken by the Design-Builder to achieve System Completion by the DB Longstop Date.

The Design-Builder will proceed to carry out the remedial plan as approved by the Secured Creditors' Technical Advisor and will ensure that System Completion will occur on or prior to the DB Longstop Date.

If the Design-Builder has delivered a remedial plan that is not acceptable to the Secured Creditors' Technical Advisor, the Design-Builder will submit a replacement remedial plan within 10 Business Days after receipt of notice that it is not acceptable (which notice will include reasons therefor). If such replacement remedial plan is not acceptable to the Secured Creditors' Technical Advisor, the Design-Builder shall negotiate in good faith with Operations Co and the Secured Creditors' Technical Advisor to agree on a replacement remedial plan and shall take such other reasonable steps as may be required under the Senior Financing Agreements with respect to any replacement remedial plan.

5. NOT USED

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.10(b), Operations Co or the Design-Builder, as applicable, will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Attachment 5 [Insurance Requirements], including as to the required scope and content (including coverage limits and endorsements) of all applicable insurance policies for all applicable periods and ensuring that the persons required pursuant to Attachment 5 [Insurance Requirements] to be named as named insureds, additional insureds or loss payees are so named. The Design-Builder agrees to pay any deductibles and shall be responsible for any waiting period in the event of an insured loss whether the insurance is provided by the Design-Builder or Operations Co. The Design-Builder further agrees to provide any additional documentation required to satisfy the provisions of the Senior Financing Agreements in relation to the insurance to be provided by the Design-Builder promptly following notice thereof from Operations Co.

6.2 Design-Builder's Obligations - Damage or Destruction

The Design-Builder acknowledges the provisions of Section 6.2 of the Project Implementation Agreement. Without prejudice to Section 8 (Supervening Events) or the Design-Builder's rights under the Interface Agreement, if the NG-KIH System is completely or substantially destroyed during the Construction Period, the Design-Builder will repair, replace or restore those

components of the NG-KIH System still under construction (other than any such damage or destruction caused by an Operations Co Act) in accordance with the Design and Construction Specifications, subject only to:

(a) applicable Laws; and

(b) Project Co paying to Operations Co (pursuant to Section 6.2 of the Project Implementation Agreement) and Operations Co paying to the Design-Builder:

(1) the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage required under the Project Implementation Agreement for such risk (which, for greater certainty, is the maximum amount of coverage prior to any deductibles for which, as between Operations Co and Project Co, Operations Co is responsible pursuant to Schedule 5 [Insurance Requirements] to the Project Implementation Agreement); or

(2) if no insurance coverage is required under the Project Implementation Agreement for such risk, an amount equal to the total costs of such repair, replacement or restoration,

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

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

6.3 Insufficient Insurance

The Design-Builder acknowledges the provisions of Section 6.3 of the Project Implementation Agreement. If:

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

(b) the cost to repair, replace or restore those components of the NG-KIH System still under construction exceeds the maximum amount of insurance coverage required under the Project Implementation Agreement for the risk that caused the destruction; and

(c) none of Project Co or the Authority (pursuant to Section 6.3 of the Project Agreement), Operations Co (pursuant to Section 6.3 of the Project Implementation Agreement) or the Design-Builder has agreed to pay the amount by which the cost to repair, replace or restore those components of the NG-KIH

System still under construction exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

and the Authority or Project Co (with the prior consent of Operations Co) elects to terminate the Project Agreement pursuant to Section 6.3 of the Project Agreement, this Design-Build Agreement will automatically terminate, in which case Operations Co will, subject to the Pass-Down Provisions, pay compensation to the Design-Builder in accordance with Section 5 of Attachment 9 [Compensation on Termination].

6.4 Uncollectible Insurance Receivables

The Design-Builder acknowledges the provisions of Section 6.4 of the Project Implementation Agreement. If the Project Agreement is terminated in accordance with Section 6.4 of the Project Agreement, this Design-Build Agreement will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, pay compensation to the Design-Builder in accordance with Section 5 of Attachment 9 [Compensation on Termination].

6.5 Application of Insurance Proceeds If No Termination

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

(a) applicable Insurance Proceeds which the Design-Builder has received;

(b) applicable Insurance Proceeds which the Design-Builder is entitled to receive;

(c) amounts which the Authority has agreed to pay Project Co, Project Co has paid Operations Co and Operations Co has paid the Design-Builder as contemplated in Section 6.2(b); and

(d) amounts which the Design-Builder has agreed to pay to cover the amount by which the cost to repair, replace or restore the NG-KIH System exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

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

6.6 Application of Insurance Proceeds In Case of Termination

If this Design-Build Agreement has been terminated pursuant to Section 6.3:

(a) any Insurance Proceeds received prior to the Termination Payment Date by the Design-Builder in respect of damage to the NG-KIH System and not already applied to the repair of such damage will be paid to Operations Co (or as Operations Co may direct); and

(b) on the Termination Payment Date, the Design-Builder will assign to Operations Co (or as Operations Co may direct) the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.7 Standards of Repair, Replacement or Restoration

Any repair, replacement or restoration of the NG-KIH System or any part thereof pursuant to the provisions of Section 6.2 will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications, subject to any agreement made between the Authority and Project Co (with the prior written consent of Operations Co pursuant to Section 6.7 of the Project Implementation Agreement and, where possible, in accordance with the Pass-Down Provisions, with input from and the involvement of the Design-Builder) to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any repaired, replaced or restored NG-KIH System.

6.8 Mitigation

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

6.9 Risks Becoming Uninsurable

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

6.10 Consequences of Risks Becoming Uninsurable

The Design-Builder acknowledges the provisions of Section 6.10 of the Project Implementation Agreement and the provisions of Section 6.10 of the Project Agreement. If the requirements of Section 6.9 of the Project Agreement are satisfied but the Authority and Project Co (with the prior consent of Operations Co pursuant to Section 6.10 of the Project Implementation Agreement) cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the "**Uninsurable Risk**"):

(a) if the Uninsurable Risk is third party liability, the Design-Builder acknowledges that the Authority shall terminate the Project Agreement, in which case this Design-Build Agreement will automatically terminate and the Design-Builder will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination]; or

(b) if the Uninsurable Risk is not third party liability:

(1) the Design-Builder acknowledges that the Authority may terminate the Project Agreement, in which case this Design-Build Agreement will automatically terminate and the Design-Builder will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination]; or

(2) if and for as long as the Authority has not terminated the Project Agreement under Section 6.10(b)(1) of the Project Agreement:

(A) this Design-Build Agreement will continue;

(B) neither the Design-Builder nor Operations Co will be obligated by this Design-Build Agreement, Project Co will not be obligated by the Project Implementation Agreement, and the Authority will not be obligated by the Project Agreement, to maintain insurance in respect of the Uninsurable Risk and references in this Design-Build Agreement to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Attachment 5 [Insurance Requirements] will be construed accordingly;

(C) an appropriate adjustment to the payment or payments to be paid in accordance with Section 10.1 will be made by agreement of the parties, acting reasonably, or, failing such agreement, by the DB Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in the Design-Builder's insurance cost as a result of the Design-Builder not having to insure against the Uninsurable Risk; and

(D) subject to the Pass-Down Provisions, the occurrence of the Uninsurable Risk will be deemed to be a Compensation Event unless the Authority terminates the Project Agreement in which case this Design-Build Agreement will automatically terminate and the Design-Builder will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination].

6.11 Subrogation

If Operations Co makes any payment to the Design-Builder pursuant to the Compensation Event referred to in Section 6.10(b)(2)(D), then the Authority, Project Co and Operations Co, as applicable and to the extent of the amount paid, will be subrogated to the Design-Builder's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party. Operations Co may assign its rights under this Section 6.11 to Project Co or the Authority.

6.12 Continuing Attempts to Insure Uninsurable Risks

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

6.13 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so and either party becomes aware or is informed by the other party that this is the case (or in the case of Operations Co, is informed by Project Co pursuant to the Project Implementation Agreement), the party responsible to obtain the insurance under Attachment 5 [Insurance Requirements] will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Design-Build Agreement in respect of the risk, and in any case:

(a) Sections 6.9, 6.10 and 6.12 will no longer apply to the risk so long as it is not an Uninsurable Risk; and

(b) the parties will agree upon an appropriate adjustment to the payment or payments to be paid pursuant to Section 10.1 or, failing such agreement, by the DB Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became insurable, to reflect any increase in the Design-Builder's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

7. CHANGES AND INNOVATION PROPOSALS

7.1 Changes Required by the Authority or Requested by Operations Co

The Design-Builder acknowledges that the Authority may require Changes during the Construction Period in accordance with Section 7.1 of, and Schedule 6 [Changes, Minor Works and Innovation Proposals] to, the Project Agreement and, in such cases, the Design-Builder will be responsible to fulfill all obligations of Operations Co in respect thereof under the Project Implementation Agreement, to the extent applicable to the DB Obligations, in accordance with Attachment 6 [Changes and Innovation Proposals] and the Pass-Down Provisions. The Design-Builder acknowledges that Operations Co may request Operations Co Initiated Changes in accordance with Attachment 6 [Changes and Innovation Proposals].

7.2 Innovation and Value Engineering

The Design-Builder may submit an Innovation Proposal during the Construction Period for consideration by Operations Co in accordance with Attachment 6 [Changes and Innovation Proposals]. If approved by Operations Co, such approval not to be unreasonably withheld or delayed, Operations Co shall submit such Innovation Proposal to the Authority for its consideration pursuant to Section 7.2 of the Project Implementation Agreement and Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement and such submission will be dealt with pursuant to the Pass-Down Provisions. For greater certainty, Innovation Proposals will be approved or rejected by the Authority in accordance with the requirements of Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement, and such approval or rejection will be binding on Project Co, Operations Co and the Design-Builder.

7.3 Not Used

8. SUPERVENING EVENTS

8.1 Supervening Events

The Design-Builder acknowledges the provisions of Section 8 of the Project Implementation Agreement and confirms that its rights in relation to Supervening Events, and any claim it may have or make in respect thereof, are subject to the Pass-Down Provisions. If:

(a) a Compensation Event or Relief Event occurs, the Design-Builder may; or

(b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may,

apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Design-Build Agreement to the extent provided in this Section 8 (Supervening Events) but subject, in each case, to the Pass-Down Provisions where the Applicant is the Design-Builder. The "**Applicant**" means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

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

(a) as soon as practicable, and in any event within 3 Business Days if the Applicant is the Design-Builder or within 5 Business Days if the Applicant is Operations Co, as applicable, after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other party a notice ("**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant's claim. Unless Operations Co advises the Design-Builder within 1 Business Day that Operations Co disagrees with a Supervening Event Notice provided by the Design-Builder (in which case the parties will attempt to resolve such disagreement immediately and the DB Dispute Resolution Procedure will apply), the Design-Builder will forthwith deliver the Supervening Event Notice to Project Co and the Authority within the time frame required by Section 8.2(a) of the Project Agreement;

(b) within 7 Business Days if the Applicant is the Design-Builder or within 10 Business Days if the Applicant is Operations Co, as applicable, after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party:

(1) additional details, including available supporting documentation, in support of its claim; and

(2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by the Design-Builder, if it is the Applicant, as a result of the Supervening Event;

(c) from time to time thereafter, the Applicant will notify the other party if at any time it receives or becomes aware of any further material information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;

(d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;

(e) where Operations Co is claiming the benefit of an Eligible Change in Law Event, the Design-Builder will provide Operations Co information reasonably requested in order for Operations Co to make its claim and as Operations Co may require in connection with its discussions with Project Co and the Authority pursuant to the Project Implementation Agreement;

(f) the Applicant must demonstrate:

(1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to have taken;

(2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss, a delay in the Project Schedule or the need for relief from other obligations under this Design-Build Agreement; and

(3) in the case of the Design-Builder, it has complied with its mitigation obligations pursuant to Section 2.5 and in the case of Operations Co, it has complied with its mitigation obligations pursuant to Section 2.6,

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

(g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Design-Build Agreement or, if the Applicant is Operations Co, any Senior Financing Agreement, as a result of the Supervening Event; and

(h) the Design-Builder acknowledges that Project Co and Operations Co will meet with the Authority as required by Section 8.2(h) of the Project Implementation Agreement within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event. The Design-Builder acknowledges and agrees that, if Project Co, Operations Co and the

Authority, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either the Authority or Project Co (with the prior consent of Operations Co) may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) of the Project Agreement have been satisfied or the extent of relief or compensation to which the affected party is entitled for resolution in accordance with the Dispute Resolution Procedure pursuant to the Project Agreement. The parties agree to abide by the determination pursuant to the Project Agreement of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) of the Project Agreement have been satisfied or the extent of relief or compensation to which the affected party is entitled, and neither party will exercise any rights under this Design-Build Agreement nor specifically under the DB Dispute Resolution Procedure to dispute the final determination arising under the Project Agreement in respect thereof, other than in accordance with the Pass-Down Provisions or with respect to a claim in respect of an Operations Co Act.

8.3 Design-Builder's Entitlements Upon Occurrence of a Compensation Event

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

(a) the Design-Builder is relieved from any liability or consequence (including termination by Operations Co) under this Design-Build Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Design-Build Agreement to the extent resulting from the Compensation Event (without prejudice to the Design-Builder's obligation to pay Delay Liquidated Damages);

(b) Not used

(c) Operations Co will pay to the Design-Builder compensation in respect of a Compensation Event calculated on the basis that the Design-Builder will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):

(1) any Direct Losses (including the amount of any applicable insurance deductibles calculated without netting out Insurance Receivables) resulting from the Compensation Event; and

(2) any net increase or decrease in the costs of the Design-Builder performing its obligations under this Design-Build Agreement resulting from the Compensation Event;

(3) Not used

except that:

(4) any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which the Design-Builder would have recovered as a result of

the Compensation Event if it had complied with the requirements of this Design-Build Agreement or any policy of insurance maintained or required to be maintained under this Design-Build Agreement or under the Project Implementation Agreement will be deducted therefrom; and

(5) no Indirect Losses will be taken into consideration;

(d) concurrent with the first payment of any compensation by Operations Co under Section 8.3(c), the Design-Builder will assign to Operations Co (or as Operations Co may direct) its rights to all applicable Insurance Receivables (whether or not the Design-Builder has made a claim); and

(e) if the Compensation Event occurs prior to the System Completion Date, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and the DB Longstop Date will be postponed if, but only to the extent that, such dates are postponed pursuant to Section 8.3(e) of the Project Implementation Agreement.

8.4 Design-Builder's Entitlements Upon Occurrence of a Relief Event

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

(a) the Design-Builder is relieved from any liability or consequence (including termination by Operations Co, except as provided for in this Section 8.4) under this Design-Build Agreement arising from any delay or failure in performing any of its obligations under this Design-Build Agreement to the extent resulting from the Relief Event (without prejudice to the Design-Builder's obligation to pay Delay Liquidated Damages);

(b) if the Relief Event occurs prior to the System Completion Date:

(1) the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and the DB Longstop Date will be postponed if, but only to the extent that, such dates are postponed pursuant to Section 8.4(b) of the Project Implementation Agreement;

(2) Not used

(3) Not used

(c) if Operations Co:

(1) has become entitled to terminate the Project Implementation Agreement pursuant to Section 8.4(c) of the Project Implementation Agreement and has not exercised its termination right within 60 days after the date upon which Operations Co became so entitled to terminate the Project

Implementation Agreement (the "**Relief Event Termination Entitlement Point**"); and

(2) has not agreed to compensate the Design-Builder for the reasonable direct costs incurred by the Design-Builder from and after the Relief Event Termination Entitlement Point as a result of Operations Co's election not to exercise its termination right under Section 8.4(c) of the Project Implementation Agreement,

the Design-Builder may, at any time thereafter so long as such Relief Event is, or such effect is, continuing, terminate this Design-Build Agreement by notice to Operations Co;

(d) if the Authority gives notice to Project Co under Section 8.4(c) of the Project Agreement terminating the Project Agreement, Operations Co will not consent under Section 8.4(d) of the Project Implementation Agreement to Project Co requiring the Project Agreement to continue unless either (1) Operations Co has obtained the Design-Builder's prior written consent to do so or (2) Operations Co commits to continue to provide relief to the Design-Builder pursuant to this Section 8.4 notwithstanding that Project Co does not provide corresponding relief to Operations Co and without prejudice to the rights of the Design-Builder pursuant to Section 8.4(c);

(e) the Design-Builder acknowledges that, if the Design-Builder gives notice to Operations Co under Section 8.4(c) terminating this Design-Build Agreement and, as a result, Operations Co gives notice to Project Co under Section 8.4(c) of the Project Implementation Agreement terminating the Project Implementation Agreement and Project Co gives notice to the Authority under Section 8.4(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:

(1) the Design-Builder's termination notice to Operations Co under Section 8.4(c) will be deemed null and void and the Design-Builder, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Design-Build Agreement;

(2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;

(3) at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing, the Authority may terminate the Project Agreement by notice to Project Co and Operations Co, in which case Operations Co will give notice of such termination to the Design-Builder and this Design-Build Agreement will terminate automatically; and

(4) the Design-Builder may, at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing after a further period of 180 days after the date on which the Design-Builder delivered the termination notice to Operations Co referred to in Section 8.4(c),

terminate this Design-Build Agreement by notice to Operations Co, provided that the parties acknowledge and agree that such notice will not have instantaneous effect in order to enable Operations Co to exercise its own termination right under Section 8.4(e)(4) of the Project Implementation Agreement;

(f) if the Project Agreement is terminated pursuant to Section 8.4 thereof, this Design-Build Agreement will be automatically terminated and in such case, or in the case of termination of this Design-Build Agreement pursuant to this Section 8.4, the Design-Builder will be entitled to compensation on such termination in accordance with Section 5 of Attachment 9 [Compensation on Termination].

(g) Not used

8.5 Not Used

8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

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

(a) the Applicant is relieved from any liability or consequence (including termination by Operations Co, except as provided for in this Section 8.6) under this Design-Build Agreement arising from any delay or failure in performing any of its obligations under this Design-Build Agreement as a result of the Force Majeure Event (without prejudice to the Design-Builder's obligation to pay Delay Liquidated Damages);

(b) if the Applicant is the Design-Builder and the Force Majeure Event occurs prior to the System Completion Date, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and the DB Longstop Date will be postponed if, but only to the extent that, such dates are postponed pursuant to Section 8.6(b) of the Project Implementation Agreement;

(c) where Operations Co:

(1) has become entitled to terminate the Project Implementation Agreement pursuant to Section 8.6(c) of the Project Implementation Agreement and has not exercised its termination right within 60 days of the date upon which Operations Co became so entitled to terminate the Project Implementation Agreement (the "**Force Majeure Event Termination Entitlement Point**"); and

(2) has not agreed to compensate the Design-Builder for the reasonable direct costs incurred by the Design-Builder from and after the Force Majeure Event Termination Entitlement Point as a result of Operations Co's election not to exercise its termination right under Section 8.6(c) of the Project Implementation Agreement,

the Design-Builder may, at any time thereafter so long as such Force Majeure Event is, or such effect is, continuing, terminate this Design-Build Agreement by notice to Operations Co;

(d) the Design-Builder acknowledges that if the Design-Builder gives notice to Operations Co under Section 8.6(c) terminating this Design-Build Agreement and as a result Operations Co gives notice to Project Co under Section 8.6(c) of the Project Implementation Agreement terminating the Project Implementation Agreement and Project Co gives notice to the Authority under Section 8.6(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:

(1) the Design-Builder's termination notice to Operations Co under Section 8.6(c) will be deemed null and void and the Design-Builder, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Design-Build Agreement;

(2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date on which the Force Majeure Event first occurred;

(3) at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing, the Authority may terminate the Project Agreement by notice to Project Co and Operations Co, in which case Operations Co will give notice of such termination to the Design-Builder and this Design-Build Agreement will terminate automatically; and

(4) the Design-Builder may at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing after a further period of 180 days after the date on which the Design-Builder delivered the termination notice to Operations Co referred to in Section 8.6(c), terminate this Design-Build Agreement by notice to Operations Co, provided that the parties acknowledge and agree that such notice will not have instantaneous effect in order to enable Operations Co to exercise its own termination right under Section 8.6(d)(4) of the Project Implementation Agreement;

(e) if the Project Agreement is terminated pursuant to Section 8.6(c), 8.6(d)(3) or 8.6(d)(4) of the Project Agreement, this Design-Build Agreement will be automatically terminated and in such case, or in the case of termination of this Design-Build Agreement pursuant to this Section 8.6, the Design-Builder will be entitled to compensation on such termination in accordance with Section 5 of Attachment 9 [Compensation on Termination].

(f) Not used

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

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

(a) the Applicant will be entitled to compensation in respect of the Eligible Change in Law Event calculated on the basis that the Design-Builder will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):

(1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event;

(2) any net increase or decrease in the costs of the Design-Builder performing the Design and Construction resulting from the Eligible Change in Law Event,

(3) Not used

except that:

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

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

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

8.8 Parties' Entitlements Upon Occurrence of a Change in Law

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

(a) if compliance by the Design-Builder with a Change in Law is outside the scope of, or inconsistent with, the DB Obligations under this Design-Build Agreement, or would mean a change in the DB Obligations under this Design-Build Agreement or a change in the scope or manner of carrying out the DB Obligations, such Change in Law will be deemed to constitute a Change having effect from the time that such Change in Law takes effect, except that the

Design-Builder will not be entitled to any payment or other compensation other than as set out in Section 8.4 or Section 8.7;

(b) except as otherwise provided in this Design-Build Agreement, including in Section 8.4 or Section 8.7, the Design-Builder will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and

(c) nothing in Section 8.4 or Section 8.7 will be interpreted as relieving the Design-Builder of its obligation, following any and all Changes in Law, to perform its obligations under this Design-Build Agreement in compliance with all Laws.

8.9 Labor Disputes

If the Design-Builder Has Knowledge of an actual or potential labor dispute that may affect any of the DB Obligations, the Design-Builder will promptly:

(a) give notice thereof to Operations Co, including all relevant information related to the dispute of which the Design-Builder Has Knowledge; and

(b) use commercially reasonable efforts to mitigate the effects of such labor dispute on the performance of any of the DB Obligations, including by applying for relief to appropriate tribunals or courts if such labor dispute involves workers of the Design-Builder and/or a DB Sub-Contractor.

The Design-Builder acknowledges that if the labor dispute involves workers of the Design-Builder or any DB Sub-Contractor, or of anyone employed by or through them, none of Operations Co, Project Co or the Authority will be required to provide any facilities, space or assistance in the NG-KIH System or on the Lands for the purposes of such workers or any applicable union.

8.10 Payments in Respect of Supervening Events

Payments between the parties in respect of Supervening Events will be made in accordance with Section 10.1. Operations Co will in no circumstances be required to provide greater relief or compensation to the Design-Builder than Operations Co has received from Project Co in respect of the relevant Supervening Event under the Project Implementation Agreement.

8.11 Supervening Events Mitigated by Change

The Design-Builder acknowledges the provisions of Section 8.11 of the Project Implementation Agreement and Section 8.11 of the Project Agreement. Nothing in this Design-Build Agreement will limit the right of Operations Co, on its own initiative or as a result of the actions of Project Co pursuant to the Project Implementation Agreement or the Authority pursuant to the Project Agreement, to perform or mitigate its obligations in respect of Supervening Events or the consequences of a Supervening Event by requiring a Change or Changes.

8.12 Delay in Notification

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

(a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Design-Build Agreement to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and

(b) if the period of delay is 12 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.13 Equivalent Project Relief

The Design-Builder acknowledges the provisions of Sections 8.13(c), (d) and (e) of the Project Implementation Agreement and shall comply, and enable Operations Co to comply, with those provisions to the extent they relate to the Design-Builder or any of the DB Sub-Contractors.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Obligations to Indemnify

(a) The Design-Builder will indemnify and keep Operations Co and each Operations Co Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with any claim made by one or more third parties, including, for the avoidance of doubt, Project Co, any Project Co Indemnified Person (as defined in the Project Implementation Agreement), the Authority or any Authority Indemnified Person (as defined in the Project Agreement), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Project Co Indemnified Person (as defined in the Project Implementation Agreement) or any Authority Indemnified Person (as defined in the Project Agreement), arising by reason of a Design-Builder Act or any claim alleging infringement by the Design-Builder or any DB Sub-Contractor, in relation to the Project, of any Intellectual Property rights of third parties, except in each case to the extent caused, or contributed to, by an Operations Co Act. This Section 9.1(a) may be relied upon by Operations Co Indemnified Persons and may be enforced directly by any of them against the Design-Builder in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Design-Builder.

(b) Operations Co will indemnify and keep the Design-Builder and each DB Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with any claim made by one or more third parties or any claim for, or in respect of, the death, personal injury, disease or illness of any Person arising by reason of an Operations Co Act, except in each case to the extent caused, or contributed to, by a Design-Builder Act. This Section 9.1(b) may be relied upon by DB Indemnified Persons and may be enforced directly by any of them against Operations Co in the same manner

and for the same purpose as if pursuant to a contractual indemnity directly between them and Operations Co.

9.2 Conduct of Third Person Claims

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

(a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Design-Build Agreement in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;

(b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations and the Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

(c) in defending any claim described in Section 9.2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;

(d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b), the Indemnifier will:

(1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

(2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

(e) the Beneficiary may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b); or

(2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or

(3) the Indemnifier fails to comply in any material respect with Section 9.2(d) above,

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

(f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) above applies. On receipt of such notice, the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3)), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 or its obligation to provide compensation, as the case may be; and

(g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property (as defined in the Project Implementation Agreement) rights of any Person, the Design-Builder may replace such infringing or allegedly infringing item provided that:

(1) the replacement is performed without additional cost to Operations Co; and

(2) the replacement has at least equal quality performance capabilities when used in conjunction with the NG-KIH System.

9.3 General Obligation to Pursue Third Person Recovery

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

(a) as directed by the Paying Party either:

(1) promptly make commercially reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or

(2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and

(b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:

(1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and

(2) the Liability Payment,

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

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

9.4 Waiver of Remedies

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

9.5 Remedies Cumulative

Subject to Sections 9.6, 9.7 and 9.8:

(a) the rights and remedies of the parties under this Design-Build Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;

(b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and

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

9.6 Limitation on Operations Co's Remedies

Operations Co's remedies in respect of any failure by the Design-Builder:

(a) to achieve Ring Completion of any Ring by the relevant Target Ring Completion Date or the relevant Outside Ring Completion Date will be limited to Operations Co's rights pursuant to Section 11.1 of Attachment 2 [Design and Construction Protocols];

(b) to achieve System Completion by the Target System Completion Date or the DB Longstop Date will be limited to Operations Co's rights pursuant to Section 9.15 and Section 12.4,

(c) Not used

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

(d) claim, on or after a termination of this Design-Build Agreement, costs, losses, damages and expenses suffered or incurred by Operations Co as a result of rectifying or mitigating the effects of any breach of this Design-Build Agreement by the Design-Builder except to the extent recovered by Operations Co under this Design-Build Agreement or taken into account to reduce any compensation payable by Operations Co pursuant to Attachment 9 [Compensation on Termination];

(e) make a claim for indemnification pursuant to Section 9.1;

(f) deliver to the Design-Builder a DB Dispute Notice or a notice of default or termination pursuant to Section 12 (DB Events of Default) and pursue all remedies in respect thereof;

(g) pursue any other express remedy available to Operations Co under this Design-Build Agreement or any equitable remedy, including injunctive relief and specific performance; or

(h) enforce, realize or otherwise call upon the DB Parent Guarantees, the DB Liquid Performance Support or any other Acceptable Credit Support or any other security, bond, insurance or other performance support provided by or on behalf of the Design-Builder pursuant to this Design-Build Agreement.

The Design-Builder will not be liable to pay, and Operations Co will not be entitled to exercise any remedies against the Design-Builder in respect of, increased debt service costs as a result of a delay in receipt of the Milestone Payment or to Site Completion of any Site, Ring Completion of any Ring or System Completion other than any Delay Liquidated Damages payable by the Design-Builder pursuant to Section 9.15 and any amounts payable by the Design-Builder in accordance with Section 11.1 of Attachment 2 [Design and Construction Protocols].

9.7 Limitation on Design-Builder's Remedies

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

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

(b) pursue any other express remedy available to the Design-Builder under this Design-Build Agreement or any equitable remedy, including injunctive relief and specific performance.

Without limiting any rights the Design-Builder may have against the Service Provider under the Interface Agreement, all obligations of Operations Co contained in this Design-Build Agreement shall be deemed to be the obligations of Operations Co and not of any other Person (including any shareholder, director, officer or employee of Operations Co) in its or his or her individual or personal capacity and no recourse shall be had against such Person other than Operations Co for the payment of any amount under this Design-Build Agreement or for any indemnity or any other claim based on this Design-Build Agreement.

9.8 Limits on Monetary Compensation

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

9.9 No Liability for Indirect Losses

Unless specifically allowed in this Design-Build Agreement, neither party to this Design-Build Agreement will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party. For greater certainty, but subject to the DB Liability Cap, the term "Indirect Losses" does not include any losses of third parties of any nature or kind to the extent that Operations Co has been determined to be liable to any such third party for such losses, and such losses shall be considered Direct Losses for the purposes of this Design-Build Agreement.

9.10 No Liability for Governmental Activities

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

or any DB Person to comply with the terms of the Design and Construction Plan, and, for greater certainty, the same shall not constitute a Compensation Event.

9.11 Operations Co's Right of Set Off

Operations Co may set off any amounts owing by the Design-Builder to Operations Co under this Design-Build Agreement against any payments due by Operations Co to the Design-Builder under this Design-Build Agreement.

The parties agree that if Project Co exercises any set off right available to it pursuant to the terms of the Project Implementation Agreement in respect of an amount relating to or arising from any act, omission or breach on the part of the Design-Builder or any DB Person after a payment is made by Operations Co to the Design-Builder pursuant to the terms of this Design-Build Agreement, the Design-Builder will be obligated to forthwith reimburse Operations Co in an amount equal to the amount set off by Project Co, and such reimbursement obligation will be secured by the DB Parent Guarantees and the DB Liquid Performance Support.

9.12 Design-Builder's Right of Set Off

The Design-Builder may set off any amounts owing by Operations Co to the Design-Builder under this Design-Build Agreement against any payments due by the Design-Builder to Operations Co under this Design-Build Agreement.

9.13 Undisputed Amounts and Interest on Disputed Amounts

Subject to Sections 9.11 and 9.12, a party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Design-Build Agreement, but any disputed portion or amount will not be payable until the DB Dispute is resolved in accordance with the DB Dispute Resolution Procedure. If payment of any amount payable under this Design-Build Agreement is delayed while the matter is in DB Dispute, upon resolution of the DB Dispute, interest will be payable on any amount determined payable pursuant to the DB Dispute Resolution Procedure at the Default Rate, compounded monthly, from the time such amount became payable under this Design-Build Agreement until paid.

9.14 Interest on Overdue Amounts

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

9.15 Delay Liquidated Damages

(a) The Design-Builder will pay Operations Co monthly:

(1) as a genuine pre-estimate of the damages suffered by Operations Co as a result of a delay by the Design-Builder in achieving Ring Availability for Ring 1B by the Original Target Ring Availability Date for Ring 1B, other

than a delay which is a direct result of one or more Relief Events, damages in an amount equal to $594.600 per day; and

(2) as a genuine pre-estimate of the damages suffered by Operations Co as a result of a delay by the Design-Builder in achieving the Target Adjusted Site Count for such month, damages in an amount (only if such amount is positive for such month) equal to:

(A) (the Target Adjusted Site Count for such month – the Actual Adjusted Site Count for such month) x the Adjusted Escalated Site Value for such month if the delay is a direct result of one or more Relief Events; or

(B) (the Target Adjusted Site Count for such month – the Actual Adjusted Site Count for such month) x the Escalated Site Value for such month in all other circumstances.

(collectively, "**Delay Liquidated Damages**"), except where the applicable delay was caused by an Operations Co Act. Any Delay Liquidated Damages payable in respect of a month will be paid by the Design-Builder to Operations Co on or before the next Scheduled Progress Payment Invoice Date following the end of such month. If, in respect of any Delay Liquidated Damages paid by the Design-Builder pursuant to Section 9.15(a)(2)(A), the relevant delay is subsequently determined not to have been a direct result of a Relief Event, the Design-Builder shall pay to Operations Co promptly, and in any event within 3 Business Days following such determination, an amount equal to the difference between:

(3) the total amount of Delay Liquidated Damages in respect of such delay calculated pursuant to Section 9.15(a)(2)(B); and

(4) the amount paid by the Design-Builder to Operations Co pursuant to Section 9.15(a)(2)(A) in respect of such delay.

Worked examples of the calculation of Delay Liquidated Damages are set out in Attachment 25 [Site Values for Delay Liquidated Damages].

(b) From and after the date that is 12 months following the Original Target Ring Availability Date for Ring 1B, Operations Co will be entitled to withhold the full amount of the Milestone Payment from the next payment(s) due by Operations Co to the Design-Builder under this Design-Build Agreement. Operations Co will pay to the Design-Builder any amount so withheld within 5 Business Days following receipt by Operations Co of the Milestone Payment from Project Co.

(c) Operations Co will reimburse the Design-Builder in respect of any Delay Liquidated Damages paid by the Design-Builder pursuant to Section 9.15(a) in respect of a Supervening Event to the extent that:

(1) Operations Co receives Insurance Proceeds from any advance loss of profits insurance policy for the loss of revenue arising from an event that delays the receipt of the Milestone Payment or the receipt of any portion of the Availability Payment payable to Project Co under the Project

Agreement (but not to the extent of any deductible or waiting period in respect of the relevant period of delay) where such Insurance Proceeds cover the same period of delay; and

(2) Operations Co received any compensation in respect of such Supervening Event from Project Co,

within 5 Business Days of receipt by Operations Co of any such Insurance Proceeds or compensation from Project Co, as the case may be.

(d) Payment by the Design-Builder of Delay Liquidated Damages and any other amount contemplated in this Section 9.15 is subject to the limitation of liability under this Design-Build Agreement, including the Delay LD Subcap, but neither such payment nor the existence of any limitations of liability under this Design-Build Agreement will relieve the Design-Builder of its obligations to carry out and complete the other DB Obligations.

9.16 Maximum Aggregate Liability

(a) Subject to Section 9.16(b), the maximum aggregate liability of the Design-Builder under this Design-Build Agreement (including for Delay Liquidated Damages and indemnities under this Design-Build Agreement) will not exceed 40% of the Contract Price (the "**DB Liability Cap**").

(b) The DB Liability Cap will not apply (either in the context of any claim or upon termination of this Design-Build Agreement) in respect of:

(1) any liability of the Design-Builder resulting from its abandonment of the Design and Construction;

(2) any claims arising from, in connection with or as a result of any fraud or criminal act by the Design-Builder or any DB Person;

(3) any claims arising from, in connection with or as a result of any Gross Negligence, fraudulent misrepresentation or willful misconduct by the Design-Builder, a DB Guarantor or any DB Person;

(4) liability for losses relating to any event or circumstance in respect of which the Design-Builder is required to maintain insurance or pay deductibles in accordance with this Design-Build Agreement up to the amount of the required insurance and deductibles thereon (except to the extent insurance proceeds are not available in respect of such losses as a result of a failure of Operations Co to maintain such insurance);

(5) any amounts which the Design-Builder has recovered from the Service Provider pursuant to the provisions of the Interface Agreement (or would be recoverable but for the limitation on liability of the Service Provider to the Design-Builder under the Interface Agreement) in respect of claims for which liability has been reallocated to the Service Provider from the Design-Builder;

(6) any amounts paid pursuant to an indemnity under this Design-Build Agreement respecting liability to third parties (other than the Authority, Project Co and the Senior Secured Creditors), including for death, personal injury or damage or loss to property;

(7) any liabilities arising out of any encumbrances caused by the Design-Builder and not removed or paid by the Design-Builder in accordance with this Design-Build Agreement;

(8) any amounts paid by the Design-Builder that are subsequently repaid to it by Operations Co (including by way of Equivalent Project Relief), received by the Design-Builder from insurance proceeds (or that would have been recovered by insurance proceeds up to the amount of the required insurance but in respect of which insurance proceeds are not available due to a failure, act or omission on the part of the Design-Builder) or refunded to it by a third party, including the Service Provider;

(9) any Cost Overruns incurred by the Design-Builder in carrying out the Design and Construction; and

(10) liability for third party claims with respect to Intellectual Property relating to the Design and Construction.

Operations Co will not be obliged to exhaust its remedies against any insurer before being entitled to make a claim against the Design-Builder hereunder.

(c) The Design-Builder's maximum aggregate liability for Delay Liquidated Damages under this Design-Build Agreement will be limited to 10% of the Contract Price (the "**Delay LD Subcap**"). For greater certainty, the Delay LD Subcap is a subset of the DB Liability Cap and the Delay LD Subcap and the DB Liability Cap are not additive.

9.17 Design-Builder Warranties

(a) The Design-Builder represents, warrants and covenants that the Design and Construction will be free of any Deficiencies, other than any Site Completion Deficiencies that are to be corrected by the Design-Builder in accordance with Section 13.4 of Attachment 2 [Design and Construction Protocols].

(b) The Design-Builder will, at its expense, correct and make good all Deficiencies and Site Completion Deficiencies that are discovered during the Warranty Period.

(c) The Design-Builder will, at its expense, correct and make good all Deficiencies in respect of corrective work performed by the Design-Builder pursuant to Section 9.17(b) that are discovered during the Extended Warranty Period.

(d) If the Design-Builder identifies any Deficiency or Site Completion Deficiency it will promptly notify Operations Co. If directed by Operations Co as a result of such notice, or if the Design-Builder otherwise identifies or receives notice of a Deficiency or Site Completion Deficiency, the Design-Builder will expeditiously and diligently correct any such Deficiency or Site Completion Deficiency. If the

Design-Builder does not promptly and diligently, and in any event within 30 days of a request by Operations Co (or such other period of time as may be acceptable to Operations Co, acting reasonably), remedy a Deficiency or Site Completion Deficiency pursuant to Section 9.17(b) or Section 9.17(c), as the case may be, Operations Co, after notice to the Design-Builder, will have the right to perform or have performed by third parties the necessary remedy, and the Design-Builder will reimburse Operations Co for all reasonable costs and expenses in respect of the exercise of Operations Co's rights hereunder within 5 Business Days of demand by Operations Co.

(e) While rectifying Deficiencies, Site Completion Deficiencies or otherwise accessing a Site after the Site Completion Date for that Site, the Design-Builder will comply with any reasonable Site safety, security and access requirements of Operations Co and the Service Provider, including reasonable directions necessary to minimize disruption to the Services.

(f) Subject to Section 9.6, the sole obligations of the Design-Builder with respect to Deficiencies and Site Completion Deficiencies are set out in this Design-Build Agreement and the Interface Agreement, and the remedies of Operations Co with respect to any Deficiencies and Site Completion Deficiencies are limited to enforcement of the obligations of the Design-Builder under this Design-Build Agreement and the Interface Agreement.

10. PAYMENTS

10.1 Lump Sum Payments

To the extent a party:

(a) is entitled to payment from the other party under this Design-Build Agreement, including in respect of a Change under Section 7 (Changes and Innovation Proposals), a Supervening Event under Section 8 (Supervening Events) or an indemnification claim under Section 9 (Indemnities and Limits on Liabilities and Remedies); or

(b) is entitled to share in a benefit and to receive payment from the other party under this Design-Build Agreement, including in respect of an Innovation Proposal under Section 7 (Changes and Innovation Proposals) or an Eligible Change in Law Event under Section 8 (Supervening Events),

the entitled party may make written demand for such payments from time to time after being entitled to payment and (i) in respect of any Direct Losses, after such Direct Losses have been incurred, and (ii) in respect of any shared benefit, after receipt by the other party of the shared benefit, and such payment will be due and payable within 10 Business Days of delivery of written demand supported by all relevant information. Where the Pass-Down Provisions apply, such amounts shall be due within 3 Business Days of receipt by Operations Co of the corresponding amount from Project Co or 3 Business Days prior to the date on which the corresponding amount is payable by Operations Co to Project Co under the Project Implementation Agreement, as applicable, unless specific additional timeframes are stipulated for payment of any amounts owing or payable by Operations Co to the Design-Builder, or by the Design-Builder to Operations Co, as applicable, under this Design-Build Agreement.

10.2 Not Used

10.3 Not Used

10.4 Not Used

10.5 Contract Price

(a) The Design-Builder will perform the DB Obligations for a contract price of $274,849,304, as amended as a result of Changes, Compensation Events and any other mechanisms specified herein which explicitly adjust the price (the "**Contract Price**").

(b) The Contract Price is not subject to change except to the extent expressly provided in this Design-Build Agreement.

(c) The Contract Price is inclusive of all Taxes. All Taxes levied against Design-Builder's income, capital or activities will be the sole responsibility of Design-Builder.

(d) The Design-Builder is undertaking the DB Obligations on a fixed price basis, subject to Changes, Supervening Events and other mechanisms which adjust the Contract Price pursuant to this Design-Build Agreement and in accordance with the Pass-Down Provisions, and, in the event that scheduled payments under this Design-Build Agreement in respect of the DB Obligations are insufficient to cover the costs incurred by the Design-Builder in respect of such obligations, the Design-Builder will be liable to provide all required additional capital necessary to fund such costs and the Design-Builder will not be reimbursed for such additional costs by Operations Co, Project Co or the Authority at any time, and the requirement of the Design-Builder to provide such additional capital will not constitute liabilities of the Design-Builder to Operations Co to which the DB Liability Cap applies.

10.6 Mobilization Payment

Operations Co will pay to the Design-Builder an amount equal to $45,254,080 within 5 Business Days following the Effective Date.

10.7 Progress Payments

Subject to Section 10.9, Operations Co will pay monthly progress payments (each, a "**Progress Payment**") to the Design-Builder on account of completed Design and Construction work in accordance with the Scheduled Progress Payment Invoice Dates and the process set out in Section 10.9. Operations Co's obligation to make Progress Payments will be subject to the provisions of this Section 10.

10.8 Early Completion Payments

Subject to the Pass-Down Provisions, Operations Co will pay to the Design-Builder on a monthly basis, as an early completion payment (the "**Early Completion Payment**") for the Design-Builder achieving an Actual Adjusted Site Count in excess of the Target Adjusted Site

Count specified for such month in Attachment 24 [Target Adjusted Site Count], an amount (only if such amount is positive for such month) equal to 58.72% x ((the Actual Adjusted Site Count for such month – the Target Adjusted Site Count for such month) x the Escalated Site Value for such month). Any Early Completion Payment will be payable by Operations Co on the next Progress Payment Date following the end of the relevant month. Worked examples of the calculation of Early Completion Payments are set out in Attachment 25 [Site Values for Delay Liquidated Damages].

10.9 Application for Payments

(a) On each Scheduled Progress Payment Invoice Date, the Design-Builder will deliver to Operations Co, Project Co and the Secured Creditors' Technical Advisor a draft application for a Progress Payment (an "**Application for Payment**") in respect of the preceding calendar month and specifying the payment required in respect of such portion of the Design and Construction work for such period. Each Application for Payment will be substantially in the form attached hereto as Attachment 20 [Form of Application for Payment] and will contain a detailed breakdown and description of all Design and Construction completed to the end of the preceding month, separately itemize construction costs and applicable taxes, the requested amount of the relevant Progress Payment and such other evidence as is reasonably necessary to enable the Secured Creditors' Technical Advisor to assess the Application for Payment. The sum of:

(1) the amount of the Progress Payment requested by the Design-Builder in respect of any Scheduled Progress Payment Invoice Date in an Application for Payment; and

(2) the aggregate amount of all Progress Payments paid to the Design-Builder prior to such Scheduled Progress Payment Invoice Date,

will not exceed the amount set out opposite such Scheduled Progress Payment Invoice Date in Attachment 19 [Payment Schedule] under the heading "Cumulative Amount" (the "**Drawdown Cap**").

(b) The Design-Builder will co-operate and, if requested by Operations Co, meet with the Secured Creditors' Technical Advisor to reach agreement on a final Application for Payment not later than 10 days after the delivery of the Application for Payment to Operations Co, Project Co and the Secured Creditors' Technical Advisor. Operations Co may, by request to the Design-Builder, be included in the discussions regarding settlement of the Application for Payment. If the Secured Creditors' Technical Advisor requests, the Design-Builder will arrange with the Secured Creditors' Technical Advisor to provide an opportunity for the Secured Creditors' Technical Advisor to inspect the Design and Construction work and to attend at Design-Builder's accounts payable office to review such documentation as the Secured Creditors' Technical Advisor may reasonably request.

(c) The Design-Builder will submit to the Secured Creditors' Technical Advisor the final Application for Payment no later than the date which is 15 days following the relevant Scheduled Progress Payment Invoice Date, in the amount originally

requested by the Design-Builder or such lesser amount as may be acceptable to the Secured Creditors' Technical Advisor, and the applicable Progress Payment shall be paid to the Design-Builder on or before the date that is 6 Business Days following such submission of the final Application for Payment (such date, a "**Progress Payment Date**"). For certainty, certification of the final Application for Payment by the Secured Creditors' Technical Advisor in accordance with the terms of the Collateral Agency and Account Agreement shall be a condition to the payment to the Design-Builder of the applicable Progress Payment; provided, further, that upon a determination by the Secured Creditors' Technical Advisor that the System Completion Date will not occur on or before the DB Longstop Date, the applicable Progress Payment will only be payable to the Design-Builder so long as the Design-Builder has provided to the Secured Creditors' Technical Advisor a remedial plan demonstrating that the System Completion Date can be achieved on or before the DB Longstop Date, and the Secured Creditors' Technical Advisor is reasonably satisfied with such plan, which satisfaction must be evidenced by certification thereof in the certificate of the Secured Creditors' Technical Advisor.

(d) Operations Co will have no obligation to pay or be responsible in any way for payments to DB Sub-Contractors.

(e) No Progress Payments or partial or entire use of the NG-KIH System or the Lands by Operations Co, Project Co or the Authority will constitute an acceptance by Operations Co of the Design and Construction work, as being in accordance with this Design-Build Agreement.

(f) If the Secured Creditors' Technical Advisor or the Authority has determined that there has been defective or non-compliant Design or Construction work by the Design-Builder, Operations Co will have the right to abate payments for such work and set-off for any amounts owed by the Design-Builder to Operations Co in accordance with Section 9.11. Operations Co will also be entitled to set-off for amounts in respect of liens or third party claims for which Operations Co is responsible under the Project Implementation Agreement or applicable Laws to the extent such liens or claims are in respect of acts or omissions of the Design-Builder or any DB Person; provided, that Operations Co will not be entitled to set-off to the extent that the Design-Builder or a DB Person has already satisfied, vacated or discharged or withdrawn the lien or claim or is contesting the lien or claim under bona fide proceedings and has paid into court and satisfied, vacated or discharged or withdrawn such lien or claim (other than in circumstances where the existence of any such liens or claims would result in an Operations Co Event of Default (as defined in the Project Implementation Agreement) under the Project Implementation Agreement or in respect of which any claim or right of set-off in favor of Project Co exists under the Project Implementation Agreement and has been exercised by Project Co).

(g) In the event of a disagreement as to the value or existence of any defects or deficiencies, or costs to remedy a DB Event of Default, the matter will be finally resolved in accordance with Section 15, and Operations Co will pay the Design-Builder the portion of any Progress Payment that is not in dispute, with the amount in dispute to be paid upon correction or completion of such defect or

deficient work, or remedying of the DB Event of Default, to the satisfaction of Operations Co or as otherwise determined in accordance with Section 15.

(h) Notwithstanding any other provision hereof, Operations Co will be entitled to withhold all or a portion of any Progress Payment if a DB Event of Default has occurred and is continuing as of the relevant Progress Payment Date for so long as such DB Event of Default remains uncured, and Section 9.14 will not apply in respect of such Progress Payment so withheld.

10.10 Payments Subject to Pass-Down Provisions

For certainty, any payment agreed to be made to the Design-Builder by Operations Co hereunder that will be funded by Operations Co indirectly from the Availability Payments or Milestone Payment payable by the Authority to Project Co pursuant to the Project Agreement will be subject to the Pass-Down Provisions.

11. OPERATIONS CO'S STEP-IN RIGHTS

11.1 Operations Co's Step-in Rights

The Design-Builder (a) acknowledges the provisions of Section 11.1 of the Project Implementation Agreement and the rights of Project Co therein and the provisions of Section 11.1 of the Project Agreement and the rights of the Authority therein and (b) agrees that the Pass-Down Provisions apply to the operation of this Section 11.1. If:

(a) the Authority determines that a breach by Project Co of any obligation under the Project Agreement is likely to create an immediate and serious threat to the health or safety of any person, any property or the environment; or

(b) notwithstanding that Project Co is not in breach of its obligations under the Project Agreement, the Authority reasonably considers the circumstances to constitute an Emergency,

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

(c) Operations Co may require the Design-Builder by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs, including, if applicable due to breach of this Design-Build Agreement or any DB Sub-Contract, Operations Co may require that the Design-Builder or any DB Sub-Contractor suspend its operations in some or all respects and the Design-Builder will use commercially reasonable efforts to comply with Operations Co's requirements as soon as reasonably practicable; or

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

The Design-Builder will ensure that the provisions contained in all applicable DB Sub-Contracts will not prevent or inhibit the Authority or Operations Co from exercising their rights under this Section 11. Operations Co acknowledges that this Section 11.1 does not create a separate step-in right that can be exercised by Project Co or Operations Co alone in circumstances where the Authority has not asserted its rights pursuant to Section 11.1 of the Project Agreement.

11.2 Operations Co's Rectification Rights

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

(a) does not confirm, within 3 Business Days of such notice, or such shorter period as is appropriate in the case of an Emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to Operations Co to mitigate, rectify and protect against such circumstances that Operations Co may, within a further 7 Business Days, accept or reject, acting reasonably; or

(b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as Operations Co, acting reasonably, will stipulate,

then Operations Co or the Authority may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of the Design-Builder to perform the Design or Construction, but only for so long as the circumstances referred to in Section 11.1(a) or Section 11.1(b) subsist. If the circumstances referred to in Section 11.1(a) or Section 11.1(b) no longer subsist or the Design-Builder has proposed a plan acceptable to Operations Co, acting reasonably (and the Authority pursuant to Section 11.2 of the Project Agreement) for mitigating, rectifying and protecting against such circumstances, any suspension of the right and obligation of the Design-Builder to perform any Design or Construction will cease and such right and obligation will once again be in full force and effect.

11.3 Notice of NG-KIH System Change

Operations Co will notify the Design-Builder of any NG-KIH System Change which the Authority intends to make (or which Project Co advises Operations Co that the Authority intends to make) pursuant to the exercise of the Authority's rights under Section 11.1(d) or Section 11.2 of the Project Agreement and provide the Design-Builder a reasonable opportunity, taking into account all the circumstances, to comment on the proposed NG-KIH System Change. Operations Co will reasonably consider comments received in a timely manner from the Design-Builder on the proposed NG-KIH System Change and, subject to the Pass-Down Provisions, will use commercially reasonable efforts to have Project Co and the Authority consider such comments.

11.4 No Effect on Design-Builder's Design and Construction Responsibility

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

11.5 Allocation of Costs for Operations Co Actions

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

12. DB EVENTS OF DEFAULT

12.1 DB Events of Default

For the purposes of this Design-Build Agreement, "**DB Event of Default**" means any of the following events or circumstances:

(a) the occurrence of a DB Material Breach that is not remedied in accordance with Section 12.3, including in accordance with the program for remediation produced by the Design-Builder in accordance with Section 12.3, or the occurrence of a DB Material Breach for which a program for remediation has not been produced by the Design-Builder in accordance with Section 12.3;

(b) subject to the Acceptable Remaining Party Principle, the occurrence of an Insolvency Event in respect of the Design-Builder or a DB Guarantor;

(c) the Design-Builder repudiates this Design-Build Agreement, the Interface Agreement, the DB Collateral Agreement or the DB Lenders' Remedies Agreement, or abandons the Project, other than pursuant to its right to suspend performance under Section 13.3 or due to a Supervening Event;

(d) System Completion does not occur on or before the DB Longstop Date;

(e) the Design-Builder breaches Section 16.1 or Section 16.2;

(f) the Design-Builder breaches its obligations under this Design-Build Agreement (other than as a consequence of a breach by Operations Co of its obligations under this Design-Build Agreement, a breach by Project Co of its obligations under the Project Implementation Agreement or a breach by the Authority of its obligations under the Project Agreement) which results in a criminal conviction

related to health and safety violations against the Design-Builder, any DB Person, Project Co, any Project Co Person, Operations Co, any Operations Co Person, the Service Provider, any Service Provider Person or the Authority (an "**H&S Conviction**"), except that:

(1) an H&S Conviction of the Design-Builder, a DB Person, Project Co, a Project Co Person, Operations Co, an Operations Co Person, the Service Provider, a Service Provider Person or the Authority will not constitute a DB Event of Default if, within 45 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant DB Person is terminated or the Design-Builder takes such other action against each such DB Person as is acceptable to Operations Co acting reasonably; and

(2) in determining whether to exercise any right of termination for a DB Event of Default pursuant to this Section 12.1(f) Operations Co will:

(A) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person committing the act leading to the H&S Conviction; and

(B) give all due consideration, where appropriate, to action other than termination of this Design-Build Agreement;

(g) Not used

(h) the Design-Builder making any material representation or warranty in this Design-Build Agreement, the DB Lenders' Remedies Agreement or any Parent Guarantee that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the DB Obligations and, in the case of a false or misleading representation or warranty that is capable of being remedied, the Design-Builder has not remedied such breach within 7 Business Days following notice from Operations Co;

(i) Not used

(j) the accumulation of Delay Liquidated Damages in excess of the Delay LD Subcap in Section 9.16(c) that would be payable by the Design-Builder if not for such Delay LD Subcap;

(k) the accumulation of damages or other amounts, including Delay Liquidated Damages, in excess of the DB Liability Cap in Section 9.16(a) that would be payable by the Design-Builder if not for such DB Liability Cap;

(l) any DB Parent Guarantee or the DB Liquid Performance Support is:

(1) not provided or maintained as required under this Design-Build Agreement and, in the case of the DB Liquid Performance Support, is not (X) replaced within the time period set out in Section 17.13(c) in the case of a Ratings Downgrade, (Y) renewed within 20 Business Days after the

date required to be renewed pursuant to Section 17.13(b), or (Z) drawn and the proceeds of such draw deposited into a Cash Collateral Account; or

(2) withdrawn, terminated or breached (including as a result of non-payment by an issuer of Acceptable Credit Support following demand) or otherwise becomes void, voidable or unenforceable for any reason and, in the case of the DB Liquid Performance Support or any other Acceptable Credit Support, is not replaced within 10 Business Days;

(m) the DB Lenders' Remedies Agreement is or becomes wholly or partially void, voidable, unenforceable, invalid or illegal as a result of any act or omission of the Design-Builder and such agreement is not replaced by an agreement on substantially similar terms within 20 days of becoming wholly or partially void, voidable, unenforceable, invalid or illegal or such longer period, not exceeding 160 days, reasonably necessary to effect such replacement;

(n) the occurrence of an Operations Co Event of Default (as defined in the Project Implementation Agreement) under the Project Implementation Agreement that is caused by a DB Event of Default or any other act or omission of the Design-Builder or a DB Person or breach by the Design-Builder of its obligations hereunder; or

(o) subject to the Acceptable Remaining Party Principle, a DB Guarantor repudiates its DB Parent Guarantee,

unless caused by (i) non-compliance by the Authority with any provision of the Project Agreement or any document, instrument or agreement delivered to Project Co as required under the Project Agreement or any negligent act or omission, or any wrongful misconduct, of the Authority or any Authority Person, (ii) non-compliance by Project Co with any provision of the Project Implementation Agreement or any document, instrument or agreement delivered to Operations Co as required under the Project Implementation Agreement or any negligent act or omission, or any wrongful misconduct, of Project Co or any Project Co Person or (iii) non-compliance by Operations Co with any provision of this Design-Build Agreement or any document, instrument or agreement delivered to the Design-Builder as required under this Design-Build Agreement or any negligent act or omission, or any wrongful misconduct, of Operations Co or any Operations Co Person.

12.2 Notification

The Design-Builder will notify Operations Co of the occurrence, and details, of any DB Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a DB Event of Default, in either case, promptly and in any event within 2 Business Days from the date that the Design-Builder Has Knowledge of its occurrence.

12.3 DB Material Breach Cure and Remedial Program

The Design-Builder acknowledges the provisions of Section 12.3 of the Project Agreement and the Authority's rights and discretions provided for therein and the provisions of Section 12.3 of the Project Implementation Agreement and Project Co's rights and discretions provided for therein. The Design-Builder further acknowledges that where the Authority exercises its rights

or its discretion under Section 12.3 of the Project Agreement, Project Co will exercise the same rights or discretions under the Project Implementation Agreement and, to the extent that such circumstance has arisen from an act, omission or breach of this Design-Build Agreement by the Design-Builder, Operations Co will exercise the same rights or discretions under this Design-Build Agreement. After the occurrence of a DB Material Breach and while it is subsisting, Operations Co may serve a notice on the Design-Builder specifying in reasonable detail the type and nature of the DB Material Breach and:

(a) the Design-Builder will remedy such DB Material Breach referred to in such notice (if it is continuing) within 35 days of such notice; or

(b) if either Operations Co (as set out in its notice) or the Design-Builder reasonably considers that a DB Material Breach cannot reasonably be remedied within 35 days of such notice, the Design-Builder will deliver to Operations Co within 12 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the DB Material Breach, which program will specify in reasonable detail the manner in, and the latest date by, which the DB Material Breach is proposed to be remedied.

If the Design-Builder puts forward a program in accordance with Section 12.3(b), Operations Co will have 13 Business Days from receipt of the program within which to notify the Design-Builder that Operations Co, acting reasonably, does not accept the program. If Operations Co notifies the Design-Builder that it does not accept the program as being reasonable or does not respond within 13 Business Days from receipt of the program, the parties will use all commercially reasonable efforts within the following 5 Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such 5 Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such DB Material Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the DB Dispute Resolution Procedure.

12.4 Operations Co Termination Right

The Design-Builder acknowledges the provisions of Section 12.4 of the Project Agreement and the Authority's rights and discretions provided for therein and the provisions of Section 12.4 of the Project Implementation Agreement and Project Co's rights and discretions provided for therein. The Design-Builder further acknowledges that where the Authority exercises its rights or its discretion under Section 12.4 of the Project Agreement, Project Co will exercise the same rights and discretions under the Project Implementation Agreement and Operations Co will exercise the same rights or discretions under this Design-Build Agreement to the extent that such circumstance has arisen from an act, omission or breach of this Design-Build Agreement by the Design-Builder. If:

(a) a DB Material Breach is not remedied before the expiration of the period referred to in Section 12.3(a) and no program has been put forward by the Design-Builder under Section 12.3(b);

(b) the Design-Builder puts forward a program pursuant to Section 12.3(b) which has been accepted by Operations Co (including after agreement under Section 12.3 to amendments to the program) or has been determined to be reasonable pursuant to the DB Dispute Resolution Procedure and the Design-Builder fails to

remedy the DB Material Breach before the end date for the program, as the case may be;

(c) any program put forward by the Design-Builder pursuant to Section 12.3(b) is rejected by Operations Co as not being reasonable, and, if such rejection is disputed by the Design-Builder, the DB Dispute Resolution Procedure does not find against that rejection; or

(d) any DB Event of Default other than a DB Material Breach occurs,

then Operations Co may (if the DB Event of Default continues unwaived and unremedied) terminate this Design-Build Agreement by notice to the Design-Builder. The right of Operations Co to terminate this Design-Build Agreement under this Section 12.4 is in addition, and without prejudice, to any other right which Operations Co may have in connection with the Design-Builder's defaults hereunder. For greater certainty and without limitation, if a DB Event of Default resulted in an Operations Co Event of Default (as defined in the Project Implementation Agreement) under the Project Implementation Agreement, Operations Co will be entitled to terminate this Design-Build Agreement upon Project Co becoming entitled to terminate the Project Implementation Agreement as a result of the corresponding Operations Co Event of Default.

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

12.5 Not used

12.6 Operations Co's Costs

The Design-Builder will reimburse Operations Co for any and all reasonable costs incurred by Operations Co in exercising any of its rights (including, but not limited to, any relevant increased administrative expenses, any amounts payable by Operations Co to Project Co pursuant to the Project Implementation Agreement and actual legal expenses) under this Section 12 (Design-Builder Events of Default).

12.7 Operations Co Remedies

Without prejudice to the other rights of Operations Co in this Section 12, at any time during which a DB Event of Default is continuing, Operations Co may (i) at the Design-Builder's risk and expense, take such steps as Operations Co considers appropriate (or instructed by Project Co to take pursuant to the Project Implementation Agreement), either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of the Design-Builder's obligations under this Design-Build Agreement or to remedy such DB Event of Default, and/or (ii) subject to the Senior Financing Agreements, present for payment all or any

security held by Operations Co for the performance of the DB Obligations or draw upon the DB Liquid Performance Support.

13. OPERATIONS CO EVENTS OF DEFAULT

13.1 Operations Co Events of Default

For the purposes of this Design-Build Agreement, "**Operations Co Event of Default**" means any of the following events or circumstances:

(a) a failure by Operations Co to pay any amount in excess of $125,000 due and owing to the Design-Builder under this Design-Build Agreement on the due date and Operations Co has not remedied such failure to pay within 10 Business Days' of notice from the Design-Builder, except to the extent that such amount is being disputed in good faith by Operations Co or Operations Co's non-payment is a direct result of any non-payment by Project Co under the Project Implementation Agreement, in which case Operations Co's cure period will extend until the date which is 5 Business Days after all cure periods in respect of Project Co's non-payment under the Project Implementation Agreement have expired and Operations Co is entitled to terminate the Project Implementation Agreement;

(b) Not used

(c) Not used

(d) Not used

(e) the occurrence of an Insolvency Event in respect of Operations Co; or

(f) except as provided in Section 13.1(a) above, a breach by Operations Co of any of its material obligations under this Design-Build Agreement and Operations Co has not:

(1) cured the breach within forty-five (45) days following notice of the occurrence thereof from the Design-Builder pursuant to Section 13.3(c); or

(2) where the relevant breach cannot be cured within forty-five (45) days, initiated, within such forty-five (45) day period, a commercially reasonable course of action designed to cure the relevant breach and thereafter diligently pursued such course of action until the relevant breach is cured; or

(3) where the relevant breach is incurable, initiated, within forty-five (45) days following notice of the occurrence thereof from the Design-Builder pursuant to Section 13.3(c), a commercially reasonable course of action designed to mitigate the consequences of such incurable breach to the maximum extent practicable and thereafter diligently pursued such course of action until the consequences of the incurable breach have been so mitigated.

13.2 Notification

Operations Co will notify the Design-Builder of the occurrence, and details, of any Operations Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an Operations Co Event of Default, in either case, promptly and in any event within 2 Business Days from the date that Operations Co Has Knowledge of its occurrence.

13.3 Design-Builder's Options

After the occurrence of an Operations Co Event of Default and while an Operations Co Event of Default is continuing but subject to Section 13.5, the Design-Builder may, at its option exercise one or more of the following, as applicable:

(a) in respect of the Design and the Construction prior to the System Completion Date, suspend performance by it of its obligations under this Design-Build Agreement until such time as Operations Co has demonstrated to the reasonable satisfaction of the Design-Builder that it will perform and is capable of performing its obligations under this Design-Build Agreement and, if so extended under the Project Implementation Agreement pursuant to Section 13.3(a) thereof, the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and DB Longstop Date will be extended by the time such suspension is in effect;

(b) in the case of an Operations Co Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Design-Build Agreement until Operations Co has remedied such Operations Co Event of Default and, if so extended under the Project Implementation Agreement pursuant to Section 13.3(b) thereof, the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and DB Longstop Date will be extended by the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension; or

(c) in the case of an Operations Co Event of Default under Sections 13.1(a), 13.1(e) or 13.1(f), serve notice on Operations Co of the occurrence specifying details of such Operations Co Event of Default and if the relevant matter or circumstance has not been rectified or remedied by Operations Co or otherwise within 45 days of such notice (or in the case of an Operations Co Event of Default under Section 13.1(f) such longer period as is reasonably required for Operations Co to rectify or remedy such Operations Co Event of Default as long as Operations Co is diligently pursuing such rectification or remedy), the Design-Builder may serve a further notice on Operations Co terminating this Design-Build Agreement with immediate effect, provided that the Design-Builder shall not be entitled to terminate this Design-Build Agreement in accordance with this Section 13.3(c) as a result of an Operations Co Event of Default under Section 13.1(f) where such Operations Co Event of Default occurs as a direct result of a breach by Project Co of its obligations under the Project Implementation Agreement and Operations Co is diligently pursuing its rights and remedies against Project Co under the Project Implementation Agreement.

(d) Not used

If Operations Co has become entitled to suspend performance by it of its obligations under the Project Implementation Agreement pursuant to Section 13.3(b) of the Project Implementation Agreement, the Design-Builder may, at its option, suspend performance by it of its obligations under this Design-Build Agreement for so long as Operations Co remains entitled to suspend performance of its obligations pursuant to Section 13.3(b) of the Project Implementation Agreement and, if so extended under the Project Implementation Agreement pursuant to Section 13.3(b) thereof, the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and DB Longstop Date will be extended by the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension.

13.4 Design-Builder's Costs

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

13.5 Direct Agreements

The Design-Builder's right to exercise any of its remedies pursuant to Section 13.3 or to terminate this Design-Build Agreement in accordance with this Section 13 will be subject to the Senior Secured Creditors' rights under the DB Lenders' Remedies Agreement and the Authority's rights under the DB Collateral Agreement.

13.6 No Other Rights to Terminate

The Design-Builder will have no right or entitlement to terminate this Design-Build Agreement, nor to accept any repudiation of this Design-Build Agreement, and will not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Design-Build Agreement.

13.7 Termination for Convenience

(a) Neither party will have the right to terminate this Design-Build Agreement for convenience.

(b) The Design-Builder acknowledges the provisions of Section 2.1(a) of the Project Agreement pursuant to which the Authority may, in its sole discretion and for any reason whatsoever, be entitled to terminate the Project Agreement at any time on written notice to Project Co and Operations Co. Operations Co will provide notice to the Design-Builder as soon as reasonably practicable following receipt of notice from the Authority that it is exercising its right to terminate the Project Agreement for convenience. This Design-Build Agreement will automatically terminate upon termination of the Project Agreement by the Authority in accordance with Section 2.1 thereof.

13.8 Automatic Termination upon Project Agreement Termination

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

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

If this Design-Build Agreement is terminated pursuant to its terms, compensation on termination will be determined and paid in accordance with Attachment 9 [Compensation on Termination].

14.2 Transfer to Operations Co of Assets, Contracts, etc.

The Design-Builder acknowledges the provisions of Section 14.2 of the Project Implementation Agreement. On or promptly after the DB Agreement Termination Date:

(a) if prior to the System Completion Date:

(1) in so far as any transfer will be necessary to fully and effectively transfer property to Operations Co (or as Operations Co may direct), the Design-Builder will transfer to, and there will vest in Operations Co (or Operations Co may direct) free from all financial encumbrances:

(A) such part of the NG-KIH System as has been constructed on or has become affixed to the Lands; and

(B) all construction materials on-hand to be affixed to the Lands or otherwise used in the NG-KIH System; and

(2) if the Authority so elects pursuant to Section 14.2(a) of the Project Agreement:

(A) the construction equipment will remain available to the Authority, Project Co or Operations Co (or as Operations Co may direct) for the purposes of completing the Design and Construction; and

(B) all other Project related materials will remain available to the Authority, Project Co or Operations Co (or as Operations Co may direct) for the purposes of completing the Design and Construction,

subject to payment by Operations Co of the Design-Builder's reasonable charges;

(b) if the Authority so elects pursuant to Section 14.2(b) of the Project Agreement, the Design-Builder acknowledges and agrees that Operations Co will novate or assign this Design-Build Agreement to the Authority, provided that if termination

of the Project Agreement occurs under Section 13.3 of the Project Agreement, the consent of the Design-Builder will be required;

(1) Not used

(2) Not used

(c) the Design-Builder will offer to sell to Project Co or Operations Co (or as Operations Co may direct), as the case may be, at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, vehicles, spare parts and other moveable property owned by the Design-Builder and reasonably required by Project Co, Operations Co or the Authority in connection with the operation of the NG-KIH System or the provision of the Services;

(d) the Design-Builder will deliver to Operations Co (to the extent not already delivered to Operations Co) or as Operations Co may direct:

(1) all existing designs, network configurations, plans and other documents produced in connection with the NG-KIH System and in the control of the Design-Builder;

(2) one complete set of existing "as built drawings"; and

(3) Not used

subject to reasonable generally applicable third party licensing terms;

(e) the Design-Builder will use commercially reasonable efforts to ensure that the benefit of existing Project Intellectual Property (as defined in the Project Agreement) of the Design-Builder and all warranties in respect of mechanical and electrical equipment used or made available by the Design-Builder under this Design-Build Agreement and included in the NG-KIH System but not previously assigned or licensed to Operations Co are assigned, licensed or otherwise transferred to Operations Co (or as Operations Co may direct);

(f) to the extent permitted by Law, the Design-Builder will assign to Operations Co (or as Operations Co may direct) all Permits;

(g) the Design-Builder will deliver to Operations Co (or to such Person as Operations Co may direct) all records required to be kept by the Design-Builder hereunder (the Design-Builder having the right to retain copies thereof) unless such documents are:

(1) required by Law to be retained by the Design-Builder or a DB Sub-Contractor, in which case complete copies will be delivered to Operations Co (or as Operations Co may direct); or

(2) privileged from production pending resolution of any outstanding DB Dispute, in which case such records will be delivered forthwith upon resolution of such DB Dispute, provided that any records that are

necessary for the performance of the DB Obligations will be delivered to Operations Co (or as Operations Co may direct) no later than the Termination Payment Date; and

(h) return to Operations Co, Project Co or the Authority all Confidential Information of Operations Co, Project Co or the Authority, as applicable, within the possession or control of the Design-Builder or any DB Sub-Contractor.

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

14.3 Not Used

14.4 Not Used

14.5 DB Materials

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

(a) all DB Materials so delivered are true, accurate and complete copies of the originals of all such DB Materials;

(b) with respect to DB Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between the Design-Builder and any Persons:

(1) all are in good standing and in full force and effect with no amendments and the Design-Builder is entitled to all rights and benefits thereunder;

(2) the Design-Builder has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and

(3) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and

(c) other than DB Materials there are no other material agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments relating to the Project.

14.6 Continued Performance

Subject to the Design-Builder's rights of suspension under Sections 13.3(a) and 13.3(b) and subject to the provisions of this Section 14 (Procedure on Termination), the parties will continue to perform their obligations under this Design-Build Agreement notwithstanding the giving of any notice of default or notice of termination.

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Design-Build Agreement, any DB Dispute will be resolved in accordance with, and the parties will comply with, the DB Dispute Resolution Procedure set out in Attachment 13 [DB Dispute Resolution Procedure].

16. ASSIGNMENT

16.1 Limitations on Assignment of Project by Design-Builder

The Design-Builder will not assign, transfer or otherwise dispose of any interest in this Design-Build Agreement without the prior written consent of Operations Co.

The Design-Builder acknowledges and agrees that any assignment, transfer or disposition by the Design-Builder of any of the Design-Builder's interest in this Design-Build Agreement will be subject to the consent of the Senior Secured Creditors under the Senior Financing Agreements and in accordance with the DB Lenders' Remedies Agreement and Operations Co will not be entitled to consent to any such assignment, transfer or other, disposition where the Senior Secured Creditors have not provided their consent in accordance with the foregoing.

The Design-Builder will be responsible for all costs incurred by Operations Co in connection with the Authority providing its consent (pursuant to the Project Agreement) or the Senior Secured Creditors providing their consent to any assignment, transfer or other disposition by the Design-Builder of any of the Design-Builder's interest in this Design-Build Agreement.

Notwithstanding any other provision of this Design-Build Agreement, the Design-Builder will not assign, transfer or otherwise dispose of any interest in this Design-Build Agreement to a Person who is a Restricted Person.

16.2 Limitations on Change in Control

Notwithstanding any other provision of this Design-Build Agreement, the Design-Builder will not be, nor will it become at any time, a Restricted Person.

16.3 Not Used

16.4 Limitations on Assignment of Project by Operations Co

Operations Co will not assign, transfer, or otherwise dispose of any interest in this Design-Build Agreement without the prior consent of the Design-Builder, such consent not to be unreasonably delayed, withheld or conditioned. Notwithstanding the foregoing, Operations Co may assign its right, title and interest in and to this Design-Build Agreement, the Interface

Agreement, the DB Parent Guarantees, the DB Liquid Performance Support and any other Acceptable Credit Support to the Collateral Agent as security for Operations Co's liabilities and obligations under the Senior Financing Agreements or in connection with the exercise of rights of the Senior Secured Creditors under the Senior Financing Agreements, in each case in accordance with the DB Lenders' Remedies Agreement and the DB Collateral Agreement.

16.5 Not Used

17. GENERAL

17.1 Confidentiality

(a) Subject to Section 17.1(b), each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 will not restrict:

(1) each party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Design-Build Agreement and provided further that Operations Co may, subject to obtaining confidentiality restrictions similar to those set out in this Design-Build Agreement:

(A) provide to the Senior Secured Creditors and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and

(B) provide to the Service Provider and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable the Design-Builder to perform (or to cause to be performed) its obligations under this Design-Build Agreement but which Confidential Information is not used by the Service Provider, its advisors, or other third parties, as applicable, for any other purpose; and

(2) Operations Co from disclosing or granting access to such information to Project Co, the Authority, any department of the Commonwealth of Kentucky or any other Governmental Authority which requires the information in relation to the Project; or

(b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;

(2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Design-Build Agreement;

(3) to the extent any Person is required to disclose such Confidential Information by Law, including the Open Records Act;

(4) Not used; or

(5) that is known to the recipient of the Confidential Information prior to disclosure to the recipient by the other party or becomes known to the recipient thereafter by way of disclosure to the recipient by any other Person who, to the knowledge of the recipient, is not under any obligation of confidentiality with respect thereto.

(c) Without prejudice to any other rights and remedies that the other party may have, a party may be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a).

(d) The Design-Builder will be fully liable for any breach of confidentiality under this Section 17.1 by any Person to whom the Design-Builder has disclosed or granted access to Confidential Information under this Section 17.1 to the same extent as if the Design-Builder itself breached confidentiality under this Section 17.1.

17.2 Public Communications

Unless expressly provided in this Design-Build Agreement or otherwise required by any Law, including the Open Records Act, (but only to that extent), the Design-Builder will not make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of Operations Co (which will not be unreasonably withheld or delayed). The parties will comply with Attachment 16 [Communication Roles].

17.3 Law of Agreement

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

17.4 Venue

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

17.5 Entire Agreement, Waivers and Consents in Writing

This Design-Build Agreement and the instruments and documents to be executed and delivered pursuant to this Design-Build Agreement constitute the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between the parties hereto with respect to all matters contained herein or therein and, except as

stated herein or in the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties. In addition, no waiver of any provision of this Design-Build Agreement and no consent required pursuant to the terms of this Design-Build Agreement is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

17.6 Notices

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

if to Operations Co:

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

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

if to the Design-Builder:

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

Attention: Dean Siegrist
Email: siegristDA@bv.com

with a copy to:

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

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

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

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

(a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business

hours, upon the commencement of business hours on the next Business Day; and

(b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:

(1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or

(2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.7 Further Assurances

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

17.8 Counterparts

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

17.9 No Partnership

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

17.10 Survival

Notwithstanding any other provision of this Design-Build Agreement, the provisions of Section 8 (Supervening Events) (if and to the extent a Compensation Event relates to a claim made by a third party against the Design-Builder after the Termination Date), Section 9 (Indemnities and Limits on Liabilities and Remedies), Section 14 (Procedure on Termination), Section 15 (Dispute Resolution), Section 17.1, Attachment 9 [Compensation on Termination] and Attachment 13 [DB Dispute Resolution Procedure] will survive the expiry or any earlier termination of this Design-Build Agreement.

17.11 DB Parent Guarantees

(a) The Design-Builder will deliver the DB Parent Guarantees on the date of this Design-Build Agreement and ensure that the DB Parent Guarantees remain in full force and effect until the Expiration Date.

(b) The Design-Builder acknowledges that pursuant to an assignment by way of security of the DB Parent Guarantees in favor of the Collateral Agent, the rights of Operations Co under the DB Parent Guarantees will be assigned to the Collateral Agent as security for the obligations of Operations Co under the Senior Financing Agreements.

17.12 DB Liquid Performance Support

(a) The Design-Builder will, or will cause one of its Affiliates to, provide liquid security in the form of a combination of (1) Acceptable Credit Support and (2) cash collateral (collectively, the "**DB Liquid Performance Support**") in an aggregate amount equal to 10% of the Contract Price (the "**Required Amount**"). The Design-Builder will have the right to vary the relative portions of the DB Liquid Performance Support comprised of Acceptable Credit Support and cash collateral from time to time provided that the aggregate amount of such liquid security will never be less than the Required Amount (net of any amounts previously drawn by Operations Co against such liquid security). To the extent that any portion of the DB Liquid Performance Support is provided by way of cash collateral, such cash collateral will be maintained in a Cash Collateral Account. Where cash collateral has been posted in accordance with the foregoing, Operations Co will be entitled to draw on such cash collateral in any circumstance in respect of which it would be entitled to draw on any Acceptable Credit Support provided by the Design-Builder.

(b) On the System Completion Date, the Required Amount will be reduced to an amount equal to 1% of the Contract Price and the DB Liquid Performance Support will remain in place at such reduced amount during the Warranty Period.

(c) On the first day after the expiry of the Warranty Period, the Required Amount shall be further reduced to an amount equal to the aggregate of the amount, if any, of the outstanding warranty claims by Operations Co against the Design-Builder.

(d) For greater certainty, after the expiry of the Warranty Period and all warranty claims being rectified or paid by the Design-Builder, the DB Liquid Performance Support shall be released to the Design-Builder or returned to the Design-Builder for cancellation.

(e) Operations Co may make multiple draws on the DB Liquid Performance Support and may draw on the DB Liquid Performance Support:

(1) upon the occurrence of any DB Event of Default;

(2) upon any failure on the part of the Design-Builder to pay Delay Liquidated Damages when due; or

(3) in accordance with Section 17.13(d).

(f) The Design-Builder acknowledges that the Senior Secured Creditors will have a security interest in Operations Co's rights under the DB Liquid Performance Support and/or that such rights will be assigned to the Collateral Agent as

security for the obligations of Operations Co under the Senior Financing Agreements and consents to same.

17.13 Acceptable Credit Support Requirements

(a) The Design-Builder acknowledges and agrees that any letter of credit delivered by the Design-Builder pursuant to this Design-Build Agreement must be Acceptable Credit Support.

(b) The Design-Builder will renew any letter of credit delivered hereunder or cause the issuance of a replacement letter of credit for any such expiring letter of credit not later than 20 Business Days prior to the date of expiration thereof.

(c) In the event an issuer of Acceptable Credit Support experiences a Ratings Downgrade at any time, upon the request of either Operations Co or the Senior Secured Creditors, such Acceptable Credit Support will be replaced by an unconditional, irrevocable standby letter of credit, in substantially the form set out in Attachment 21 [Form of DB Liquid Performance Support], issued by another Institution which meets the Required Rating within 10 Business Days following such request or, if no Institution then meets the Required Rating, as agreed by Operations Co and the Senior Secured Creditors, provided that the first mentioned Acceptable Credit Support may be drawn down if not so replaced by the end of such 10 Business Day period and the proceeds deposited to a Cash Collateral Account on the basis that, subject to Sections 17.13(d) and 17.13(e), the cash collateral would be released to the relevant party who posted such first mentioned Acceptable Credit Support upon the delivery of a replacement unconditional, irrevocable stand by letter of credit that constitutes Acceptable Credit Support.

(d) If the Design-Builder fails to deliver a replacement letter of credit or replacement letters of credit by the end of the 10 Business Day period set out in Section 17.13(c) or if the Design-Builder fails to renew any letter of credit in accordance with Section 17.13(b), Operations Co will be entitled to immediately draw down the full available amount of such letter of credit and deposit the proceeds to a Cash Collateral Account. Operations Co will be entitled to withdraw funds from the Cash Collateral Account in any circumstance in respect of which Operations Co would be entitled to draw on the Acceptable Credit Support in respect of which such cash collateral has been received.

(e) If the Design-Builder, subsequent to Operations Co drawing down any letter of credit in accordance with Section 17.13(c) or 17.13(d), delivers a replacement letter of credit or letters of credit which constitute Acceptable Credit Support and in substantially the form attached as Attachment 21 [Form of DB Liquid Performance Support] to this Design-Build Agreement, Operations Co will release from the Cash Collateral Account to the Design-Builder the lesser of (i) all amounts standing to the credit of the Cash Collateral Account and (ii) the aggregate face amount of such letter of credit or letters of credit.

[signature page follows]

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

KENTUCKYWIRED OPERATIONS COMPANY, LLC

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the Company

NG-KIH DESIGN-BUILD LLC

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the Company

EXHIBIT C-2

SERVICE PROVIDER DIRECT AGREEMENT

See attached.

SERVICES CONTRACT

NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

KentuckyWired Operations Company, LLC

("Operations Co")

and

LTS Kentucky Managed Technical Services LLC

("Service Provider")

Dated: September 3, 2015

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SERVICES CONTRACT

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

BETWEEN:

KentuckyWired Operations Company, LLC

("**Operations Co**")

AND:

LTS Kentucky Managed Technical Services LLC

(the "**Service Provider**")

WHEREAS:

A. Operations Co has entered into the Project Implementation Agreement with KentuckyWired Infrastructure Company, Inc. ("**Project Co**"), pursuant to which Operations Co has agreed, *inter alia*, to perform the Services with respect to the NG-KIH System.

B. The Service Provider has agreed to perform all of the Service Provider Obligations in accordance with the terms of this Services Contract.

C. The Service Provider and Operations Co will each perform their respective obligations under this Services Contract in a collaborative manner with each other and with Project Co and the Authority.

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

1. INTERPRETATION AND INTERACTION WITH PROJECT AGREEMENT

1.1 Definitions

In this Services Contract, unless the context otherwise requires, capitalized terms will have the meanings set out in Attachment 1 [Definitions and Interpretation]. Certain words and expressions are defined within the attachments hereto and such definitions will apply, unless the context otherwise requires, in all other parts of this Services Contract whether or not Attachment 1 [Definitions and Interpretation] contains a cross-reference to such definitions.

1.2 Interpretation

Unless the context otherwise requires, this Services Contract will be interpreted and construed in accordance with the provisions set out in Attachment 1 [Definitions and Interpretation].

1.3 Attachments

The attachments hereto and the terms set out therein, together with all exhibits hereto, will be deemed fully a part of this Services Contract.

1.4 Interaction with Project Implementation Agreement

(a) Notwithstanding any other provision of this Services Contract, to the extent that Operations Co is or becomes obligated under the Project Implementation Agreement to take any action, do anything or perform any obligation in connection with the Project, which pursuant to this Services Contract, is a Service Provider Obligation, but exclusive of the Excluded Obligations, the Service Provider agrees that, except as otherwise specified herein, it will be obligated to take any such action, do any such thing or perform any such obligation under this Services Contract in the manner and to the standard specified herein or, in the absence of any such standard, any standard specified in the Project Implementation Agreement.

(b) Where Project Co has the right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction under the Project Implementation Agreement in respect of any matter, and Operations Co has a corresponding right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction pursuant to the terms of this Services Contract in respect of the same or substantially the same or similar matter, and where Project Co has exercised its rights in a particular manner, Operations Co shall only be entitled to exercise its discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission or make the relevant determination in a manner that is consistent with the discretion exercised, approval granted or refused, request or submission accepted or refused or determination made or level of satisfaction confirmed by Project Co under the Project Implementation Agreement, subject to any limitations on Operations Co's discretion under the terms of the Senior Financing Agreements.

(c) Where Project Co asserts or exercises any right against Operations Co in accordance with the Project Implementation Agreement in regard to any matter associated with the Services or the Services Provider, including reductions in or retentions from payments under the Project Implementation Agreement, claims for indemnification and claims for damages for breach of the Project Implementation Agreement (such assertion or exercise of rights by Project Co being referred to as a "**Project Co Claim**"), any determination made or reached under the Project Implementation Agreement as to the amount, nature and extent of Operation Co's liability in relation to any Project Co Claim shall be binding on the Service Provider, provided that Operations Co may not compromise any Project Co Claim without the prior written consent of the Service Provider, not to be unreasonably withheld or delayed. The Service Provider shall bear and discharge on a current basis, and shall indemnify Operations Co against all Direct Losses reasonably and properly incurred by Operations Co related to any Project Co Claim, except to the extent that (1) such Direct Losses arise from an Operations Co Event of Default or (2) the liability for the relevant Project Co

Claim will be shared by the parties, in which case each party shall bear a fair and reasonable proportion of the related costs and expenses. Direct Losses under this Section 1.4(c) will not include the costs of Operations Co's own personnel, but will include any out-of-pocket expenses of such personnel and costs and expenses of Project Co, the Authority or other Persons where the Service Provider or Operations Co becomes liable to pay the same.

(d) The parties acknowledge that where the Project Implementation Agreement contemplates meetings between Operations Co and/or Operations Co's Operating Period Representative and Project Co, the Authority and/or the Authority's Operating Period Representative, such provisions generally do not contemplate a right for the Service Provider to attend such meetings. Operations Co will use commercially reasonable efforts to ensure that the Service Provider is included in such meetings where they pertain to the Service Provider Obligations and, where Operations Co is not successful, Operations Co agrees to keep the Service Provider informed of any such discussions or meetings between Project Co, the Authority and Operations Co that impact the Service Provider Obligations, and, to the extent that Operations Co has an opportunity to do so vis-à-vis Project Co and the Authority, put forward comments and questions provided to it by the Service Provider in respect of the subject matter of the relevant discussions or meetings.

(e) In certain sections of this Services Contract, there are references to or acknowledgements of the Project Agreement, the Project Implementation Agreement or portions thereof and the absence of such a reference or acknowledgement in any other particular section of this Services Contract will not be construed for or against either party in interpreting this Services Contract.

1.5 Communication with the Authority and Third Parties

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

(1) make all Communications required to be made by the Service Provider under this Services Contract within the timeframes contemplated herein or, if no timeframe is set forth herein, in a timely manner so as to permit Operations Co to comply with its obligations under this Services Contract and the Project Implementation Agreement; or

(2) upon written request from Operations Co, submit the Communication directly to Project Co, the Authority or other third party.

(b) Except as otherwise set out in this Services Contract, Operations Co hereby gives permission to the Service Provider to provide Communications directly to Project Co and the Authority in respect of day-to-day matters and deliverables in respect of the performance of the Service Provider Obligations, provided that (i) the permission granted under this Section 1.5(b) will not extend to any Material Project Matter and (ii) the Service Provider will not be entitled to provide Communication directly to Project Co or the Authority at any time during the continuance of a Service Provider Event of Default unless Operations Co otherwise consents in writing. Notwithstanding the foregoing, if the Authority requires that all Communications under the Project Agreement be made directly to and from Project Co or Operations Co and does not accept direct Communications from the Service Provider, then Operations Co will provide all such Communications to Project Co or the Authority, as applicable, and, notwithstanding any time period specifically set out in this Services Contract, the Service Provider will provide such Communications directly to Operations Co in a timely manner so as to permit Operations Co to comply with its obligations under this Services Contract and the Project Implementation Agreement.

(c) Operations Co will make all Communications required to be made by Operations Co to the Service Provider under this Services Contract in a timely manner so as to permit the Service Provider to comply with its obligations under this Services Contract and will consult with the Service Provider in respect of Communications with Project Co or the Authority regarding Material Project Matters and allow the Service Provider reasonable opportunity to participate in such Communications to the extent so permitted by the Authority.

1.6 Equivalent Project Relief

(a) To the extent any entitlement of Operations Co under the Project Implementation Agreement (including any rights, remedies or relief) is related to the Service Provider Obligations or the rights or obligations of the Service Provider under this Services Contract, the Service Provider will be entitled to receive the benefit of such entitlement from Operations Co (in accordance with and subject to the provisions of Section 1.6(c)), including the benefit of:

(1) any indemnification, compensation, damages or other payment of any kind on the same or substantially the same grounds as Operations Co is entitled to indemnification, compensation, damages or other payment of any kind under the Project Implementation Agreement;

(2) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Services Contract on the same or substantially the same grounds as Operations Co is entitled to be relieved from performance of equivalent obligations under, or from termination of the Project Implementation Agreement, with reasonable time period and threshold buffers to permit Operations Co time to perform its obligations under the Project Implementation Agreement, and otherwise subject to any express limitations set out in this Services Contract;

(3) any entitlement of the Service Provider under this Services Contract in respect of which any provision of this Services Contract states that the Pass-Down Provisions are to apply; and

(4) any certificate, consent or approval granted under this Services Contract, the Project Implementation Agreement, the Project Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Service Provider Obligations, including any entitlement of Operations Co to request or apply for such certificate, consent or approval from Project Co, the Authority or any other Person under this Services Contract, the Project Implementation Agreement or the Project Agreement,

including, for greater certainty, any benefit to Operations Co arising out of any Change implemented or any Change required by Project Co pursuant to the Project Implementation Agreement or any Compensation Event, Excusing Event, Relief Event, Force Majeure Event, Change in Law, Eligible Change in Law Event or remedies or compensation in respect of any Project Co Event of Default (as defined in the Project Implementation Agreement) or any Authority Event of Default (as defined in the Project Agreement) in respect of which Operations Co is entitled to relief, compensation or benefit under the Project Implementation Agreement in respect of Operations Co's obligations that are related to the Service Provider Obligations or the rights or other obligations of the Service Provider under this Services Contract, but excluding:

(5) any compensation payable to Operations Co under the Project Implementation Agreement in respect of any Senior Debt Service Amount or any other obligation of Project Co or Operations Co under the Senior Financing Agreements; and

(6) any specific loss, cost or expense incurred by Operations Co to which the relevant compensation expressly relates and which is not included in any amount claimed by the Service Provider.

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

(b) The Service Provider will not be entitled to any relief from, or waiver in respect of performance of the Service Provider Obligations under this Services Contract other than:

(1) in the case of an Operations Co Act, to the extent that it is not caused or contributed by a Service Provider Act;

(2) to the extent Operations Co receives Equivalent Project Relief; or

(3) to the extent expressly provided for in this Services Contract.

(c) The Service Provider will be entitled to the benefit of any Equivalent Project Relief that Operations Co is or becomes entitled under the Project

Implementation Agreement only if, when and to the same extent that Operations Co has received Equivalent Project Relief from Project Co under the Project Implementation Agreement. For greater certainty, other than in respect of any Operations Co Act, Operations Co will in no circumstances be required to provide greater relief or compensation to the Service Provider in respect of any matter in respect of which Operations Co is entitled to Equivalent Project Relief than Operations Co has actually received from Project Co under the Project Implementation Agreement.

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

1.7 Enforcement of Parallel Issues

(a) Operations Co will use all reasonable efforts to preserve, protect and pursue under the Project Implementation Agreement such rights, remedies and relief as may relate to the Service Provider Obligations or the Service Provider's rights hereunder, including any claim for Equivalent Project Relief (a "**Parallel Issue**") in order to secure a favorable resolution of the Parallel Issue, provided that:

(1) Operations Co has received written notice from the Service Provider of the Parallel Issue;

(2) the Service Provider will not be entitled to recover from Operations Co any Direct Losses or claims arising out of or in connection with Operations Co pursuing resolution of a Parallel Issue on the Service Provider's behalf other than in respect of any Operations Co Act or other than any amounts received from Project Co in respect of such Parallel Issue; and

(3) the Service Provider will indemnify Operations Co in respect of any Direct Losses arising out of or in connection with Operations Co pursuing resolution of a Parallel Issue on the Service Provider's behalf in accordance with this Section 1.7(a), including reimbursing Operations Co for any deduction from, reduction of or exercise of set-off, compensation

or similar right against any amount payable by Project Co associated therewith, provided that such indemnification will, unless Operations Co has no entitlement to any amount received in respect of such Parallel Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Issue.

(b) Operations Co will, at the reasonable request of the Service Provider, pursue the rights, remedies and relief under the Project Implementation Agreement described in Section 1.7(a) of this Services Contract on behalf of the Service Provider in accordance with the reasonable directions of the Service Provider or, alternatively, Operations Co may consent to the Service Provider pursuing such rights, remedies and relief in the name of Operations Co, in either case, to the extent that the relevant rights, remedies or relief relate to the Service Provider Obligations or the Service Provider's rights hereunder and which may, subject to the provisions of Section 9.2 of the Project Implementation Agreement, include the defense of claims where the Service Provider is required to provide an indemnity to Operations Co in accordance with the indemnity provisions in this Services Contract. The Service Provider will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that if the Service Provider is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the parties in proportion to their ultimate entitlements to same. Operations Co's consent under the first sentence of this Section 1.7(b) will not be unreasonably withheld or delayed where the relevant rights, remedies or relief affect only the Service Provider and not Operations Co, any Operations Co Person, the Design-Builder or any Design-Builder Person. For greater certainty, Operations Co will not be obligated to act in accordance with the Service Provider's instructions or allow the Service Provider to pursue claims in Operations Co's name to the extent that the relevant rights, relief and remedies relate to rights or obligations of Operations Co, any Operations Co Person, the Design-Builder or any Design-Builder Person in respect of Project related matters other than the Service Provider Obligations or the Service Provider's rights hereunder or where, acting reasonably, Operations Co has determined (in which case, it will provide the Service Provider with its grounds) that there is no reasonable cause of action for such claims or such claims are frivolous or vexatious or otherwise an abuse of process.

(c) Operations Co will not enter into any compromise or settlement of a Parallel Issue with Project Co (or with the Authority, when acting on behalf of Project Co) which affects, in any material respect, the Service Provider's rights, remedies or relief hereunder without the prior written consent of the Service Provider, such consent not to be unreasonably withheld or delayed.

(d) Where Operations Co pursues a Parallel Issue in accordance with this Section 1.7, the Service Provider will be kept informed of Operations Co's progress under this Section 1.7 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Operations Co in accordance with this Section 1.7.

(e) If Operations Co does not, after having been given written notice in accordance with Section 1.7(a), take steps to pursue such Parallel Issue within 14 Business Days or prior to that date being 5 Business Days prior to the expiration or other

extinguishment of Operations Co's right to pursue such Parallel Issue, the Service Provider may, in the name of and on behalf of Operations Co, pursue such Parallel Issue itself subject to this Section 1.7, at its sole cost and expense, and Operations Co will (at the sole cost and expense of the Service Provider) use reasonable efforts to provide assistance, including providing documents, data and information, as the Service Provider may reasonably request in connection with the pursuit of such Parallel Issue by the Service Provider.

(f) The Service Provider will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure or, in the absence of such timeframes, as reasonably set by Operations Co, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Operations Co may reasonably request in connection with the pursuit of any Parallel Issue.

(g) Any claims in respect of a Parallel Issue and any recoveries obtained by Operations Co or the Service Provider in respect of any Parallel Issue under the Project Implementation Agreement will be subject to the provisions of Section 1.6 in respect of Equivalent Project Relief.

1.8 Pass-Down Provisions

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

1.9 Authority Not Directly Liable

The Service Provider acknowledges the provisions of Section 1.9 of the Project Implementation Agreement.

2. GENERAL PROJECT TERMS

2.1 Term and Termination

The Service Provider acknowledges the provisions of Section 2.1 of the Project Implementation Agreement and the provisions of Section 2.1 of the Project Agreement. The term of this Services Contract (the "**Term**") will commence on the Effective Date and will continue until the later of (i) the Expiration Date, or (ii) the date upon which all of the Service Provider Obligations have been fully discharged, unless earlier terminated:

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

(b) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.3 of the Project Agreement in connection with insufficient insurance;

(c) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.4 of the Project Agreement in connection with uncollectible Insurance Receivables;

(d) upon the Authority electing to terminate the Project Agreement pursuant to Section 6.10 of the Project Agreement in connection with a Principal Insured Risk becoming Uninsurable;

(e) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.4(c) or 8.4(e) of the Project Agreement, Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 8.4(c) or 8.4(e) of the Project Implementation Agreement or the Service Provider electing to terminate this Services Contract pursuant to Section 8.4(c) or 8.4(e) of this Services Contract, in connection with a Relief Event;

(f) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.6(c) or 8.6(d) of the Project Agreement, Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 8.6(c) or 8.6(d) of the Project Implementation Agreement or the Service Provider electing to terminate this Services Contract pursuant to Section 8.6(c) or 8.6(d) of this Services Contract, in connection with a Force Majeure Event;

(g) upon the Authority electing to terminate the Project Agreement pursuant to Section 12.4 of the Project Agreement in connection with a Project Co Event of Default (as defined in the Project Agreement) or Project Co electing to terminate the Project Implementation Agreement pursuant to Section 12.4 of the Project Implementation Agreement in connection with an Operations Co Event of Default (as defined in the Project Implementation Agreement);

(h) by Operations Co pursuant to Section 12.4 in connection with a Service Provider Event of Default;

(i) upon Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 13.3 of the Project Agreement in connection with an Authority Event of Default (as defined in the Project Agreement) or Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 13.3 of the Project Implementation Agreement in connection with a Project Co Event of Default (as defined in the Project Implementation Agreement);

(j) by the Service Provider pursuant to Section 13.3 in connection with an Operations Co Event of Default; and

(k) in the event that the Authority does not accept a Project Co Proposal (as defined in the Project Agreement) and a Preferred Service Tenderer is appointed to provide the Services and undertake the relevant System Refresh, upon the Preferred Service Tenderer assuming the Service Provider Obligations in accordance with Schedule 19 [Market Testing Procedure] to the Project Agreement, including any agreed transition plan.

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

2.2 Document Deliveries

Concurrently with the execution and delivery of this Services Contract:

(a) the Service Provider will deliver to Operations Co the documents described in Section 2 of Attachment 18 [Completion Documents]; and

(b) Operations Co will deliver to the Service Provider the documents described in Section 3 of Attachment 18 [Completion Documents].

2.3 Assumption of Risk

Except to the extent expressly allocated to Operations Co or otherwise provided for under this Services Contract, all risks, costs and expenses in relation to the performance by the Service Provider of the Service Provider Obligations are allocated to, and accepted by, the Service Provider as its entire and exclusive responsibility.

2.4 Opportunities

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

2.5 General Duty of the Service Provider to Mitigate

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

2.6 General Duty of Operations Co to Mitigate

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

the Project Implementation Agreement, or the Senior Financing Agreements), provided that such obligation will not require Operations Co to:

(a) Not used

(b) Not used.

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

2.7 Representatives

The Service Provider and Project Co will each appoint a representative to act as a single point of contact under this Services Contract.

2.8 Key Individuals

Attached as Attachment 17 [Key Individuals] is a list of persons (the "**Key Individuals**") that the Service Provider will utilize in performing the Service Provider Obligations. With respect to each of the Key Individuals:

(a) the Service Provider will use commercially reasonable efforts to retain the Key Individuals to perform the duties for the period described in Attachment 17 [Key Individuals]; and

(b) if for any reason a Key Individual resigns or is otherwise unavailable to perform the duties described in Attachment 17 [Key Individuals], the Service Provider will use commercially reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Individual, satisfactory to Operations Co, acting reasonably, and the Service Provider will not replace such Key Individual without Operations Co's consent, acting reasonably.

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

2.9 Naming

The Service Provider acknowledges the provisions of Section 2.9 of the Project Agreement.

2.10 Signs

The Service Provider will not erect or maintain any signs on the Lands or the NG-KIH System, other than warning, safety and instructional signs or signs required by applicable Laws, without the written consent of Operations Co.

3. OPERATIONS CO'S GENERAL OBLIGATIONS

3.1 Payments

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

(a) Not used

(b) the Monthly Service Payments as set out in Section 10 (Payments);

(c) the Termination Payments as set out in Attachment 9 [Compensation on Termination];

(d) amounts owing under Section 6 (Insurance, Damage and Destruction);

(e) amounts owing under Section 7 (Changes, Minor Works and Innovation Proposals);

(f) amounts owing under Section 8 (Supervening Events);

(g) amounts owing under Section 9 (Indemnities and Limits on Liabilities and Remedies); and

(h) amounts owing pursuant to the final resolution of a Service Provider Dispute in accordance with the Service Provider Dispute Resolution Procedure set out in Attachment 13 [Service Provider Dispute Resolution Procedure],

in accordance with the provisions of this Services Contract and all applicable Laws.

3.2 Limitation on Payments

Other than the payments expressly provided for herein, the Service Provider will have no right to any further payment from Operations Co in connection with the Service Provider Obligations or otherwise in connection with the Project.

3.3 Provision of Lands

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

Implementation Agreement and will expire on the earlier of the date such Sub-License (as defined in the Project Implementation Agreement) terminates pursuant to the Project Implementation Agreement and the Services Contract Termination Date.

3.4 Permitting Assistance

The Service Provider acknowledges the provisions of Section 3.4 of the Project Implementation Agreement and Section 3.4 of the Project Implementation Agreement. To the extent appropriate, Operations Co agrees to take commercially reasonable efforts to enforce its contractual rights under Section 3.4 of the Project Implementation Agreement against Project Co in accordance with the Pass-Down Provisions. The Service Provider agrees that Operations Co will not be responsible for obtaining or for any delay in obtaining or for the failure of the Service Provider to obtain any Service Provider Permit, unless such delay or failure is caused by an Operations Co Act.

3.5 Operations Co's Representations and Warranties

Operations Co represents and warrants to the Service Provider, as of the Effective Date, that:

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

(b) the execution and delivery of this Services Contract and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Services Contract, and the completion of the transactions contemplated by this Services Contract, have been duly authorized by all necessary action on the part of Operations Co and this Services Contract has been duly executed and delivered by Operations Co and constitutes a legal, valid and binding obligation of Operations Co enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and

(c) all required third party consents to the execution by Operations Co of, and performance of its obligations under, this Services Contract have been received/

3.6 Not Used

3.7 Operations Co Common Carrier Covenant

Operations Co covenants not to take or fail to take any action that would result in the designation of the Service Provider or any Service Provider Person as a Common Carrier or in the application of the Common Carrier Regulations to the Service Provider, any Service Provider Person, the NG-KIH System or any part thereof. Operations Co acknowledges the provisions of Section 3.7 of the Project Agreement whereby the Authority acknowledges and agrees that the performance by Project Co or any Project Co Person (as defined in the Project Agreement) of obligations under the Project Agreement, the Project Implementation Agreement

or any Project Contract (as defined in the Project Agreement) does not require any Person, including Project Co or any Project Co Person (as defined in the Project Agreement), to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

3.8 Not Used

3.9 Pole Attachment Agreements

The Service Provider acknowledges the provisions of Section 3.9 of the Project Agreement whereby the Authority has agreed to (a) enter into each Pole Attachment Agreement required for the Project, (b) if applicable, renew each Pole Attachment Agreement no later than the expiration date set out in such Pole Attachment Agreement to ensure continuous operations of the NG-KIH System and (c) appoint Operations Co as its agent or designee pursuant to each Pole Attachment Agreement. During the Operating Period, Operations Co will appoint the Service Provider as its agent or designee pursuant to each Pole Attachment Agreement and the Service Provider shall perform all of Operations Co's obligations and duties in such capacity. The Service Provider will comply with the Authority's obligations under each Pole Attachment Agreement related to the Service Provider Obligations. In addition to the foregoing, the Service Provider will, throughout the Term, pay all Pole Attachment Fees and administer the renewal of each Pole Attachment Agreement in accordance with Appendix 4A [Services Specifications] and Attachment 8 [Payments].

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

3.10 Procurement Protest or Challenge

The Service Provider acknowledges the provisions of Section 3.10 of the Project Agreement and agrees to assist in the defense of any protest or challenge to the procurement process contemplated thereunder to the extent that the Service Provider has the information to do so. The Service Provider will pay any costs incurred in defending the actions of the Service Provider related to the procurement process or to its interests in this Services Contract. Operations Co agrees to enforce its contractual rights under Section 3.10 of the Project Implementation Agreement in accordance with the Pass-Down Provisions.

4. SERVICE PROVIDER'S GENERAL OBLIGATIONS

4.1 General Obligations Re: Project

Subject to and in accordance with the provisions of this Services Contract and all applicable Laws and Permits, the Service Provider will carry out the Service Provider Obligations and will cooperate with Operations Co and, at Operation Co's request, Project Co and/or the Authority in the fulfillment of the purposes and intent of this Services Contract and, to the extent applicable to the Service Provider Obligations, the Project Implementation Agreement and the Project Agreement.

4.2 Records and Reports

The Service Provider will, during the Operating Period, in respect of the Service Provider Obligations, at its own cost and expense, retain and maintain the records and reports referred to in Attachment 14 [Records and Reports] in accordance with such Attachment and in a form that is capable of audit by Operations Co and to enable Operations Co to fulfill its obligations to Project Co under Section 4.2 of the Project Implementation Agreement.

4.3 Project Management Office

The Service Provider will establish and maintain a project management office in Lexington, Kentucky to coordinate its performance of the Service Provider Obligations.

4.4 Service Provider Persons

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

4.5 Use of Service Provider Sub-Contractors

Without limiting Section 4.4, Operations Co acknowledges that the Service Provider may carry out the Service Provider Obligations by contracting such obligations to one or more Service Provider Sub-Contractors. In respect of the Project:

(a) the Service Provider will not contract with, or allow any of its Service Provider Sub-Contractors to contract with, any Person that is a Restricted Person;

(b) the Service Provider will not utilize, and will not allow any of its Service Provider Sub-Contractors to utilize, any materials from any Restricted State other than unprocessed raw materials and Non-Operative Components; and

(c) the Service Provider will ensure that its Service Provider Sub-Contract with Fujitsu Network Communications Inc. and each Service Provider Sub-Contract that, individually or in the aggregate with other Service Provider Sub-Contracts with the same Service Provider Sub-Contractor, has a value in excess of $3 million (Index Linked) enables Operations Co to comply with the relevant provisions of the Project Implementation Agreement and provides that the relevant Service Provider Sub-Contractor will:

(1) be required to provide Service Provider Sub-Contractor warranties and, to the extent possible, supplier warranties directly to Operations Co;

(2) be required to contract directly with Operations Co or the nominee of the Senior Secured Creditors upon termination of this Services Contract; and

(3) not be entitled to terminate or suspend its Service Provider Sub-Contract without first giving Operations Co notice and an opportunity to cure.

Concurrently with the execution of any such Service Provider Sub-Contract, the Service Provider will provide Operations Co with a redacted copy or excerpts of such Service Provider Sub-Contract, in either case sufficient to demonstrate to Operations Co compliance with the requirements of this Section 4.5(c). The Service Provider will not amend the provisions of any such Service Provider Sub-Contract that relate to the requirements of this Section 4.5(c) without the prior written consent of Operations Co.

Notwithstanding the use of Service Provider Sub-Contractors, the Service Provider:

(d) will not be relieved or excused from any of its obligations or liabilities under this Services Contract; and

(e) will remain liable to Operations Co for the performance of all the covenants, obligations, agreements and conditions of this Services Contract that are to be performed by the Service Provider.

4.6 Project Contracts under Project Implementation Agreement

The Service Provider acknowledges the provisions of Section 4.6 of the Project Implementation Agreement and agrees that this Services Contract is a Project Contract under the Project Implementation Agreement. Without limiting the generality of the foregoing, the Service Provider acknowledges the obligations of Operations Co pursuant to Sections 4.6(a) through 4.6(d) of the Project Implementation Agreement.

4.7 Costs of Request for Consent

Without fettering Operations Co's discretion as to whether it will exercise any of its rights under Section 4.6 of the Project Implementation Agreement, if the Service Provider requests, or the Service Provider proposes a course of action that makes it necessary for Operations Co to request consent to a proposed course of action pursuant to Section 4.6 of the Project Implementation Agreement, the Service Provider will pay to Operations Co, without duplication, the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with the Authority considering any such request under the Project Agreement. At the time of such request, the Service Provider will make a payment to Operations Co in the amount of $5,000 (Index Linked) against its obligations under this Section 4.7. After the Authority renders its decision, Operations Co will either refund any overpayment upon receipt of such amount from Project Co or invoice the Service Provider for any additional amounts owing under this Section 4.7 and the Service Provider will promptly pay such amount to Operations Co. The Service Provider will also pay Operations Co's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request from the Service Provider and, if applicable, requesting consent from Project Co and the Authority in connection therewith.

4.8 Not Used

4.9 Not Used

4.10 Service Provider Permits

(a) Subject to Section 3.9 of the Project Agreement, Section 8 (Supervening Events) and Section 2.1 of Attachment 7 [Lands], the Service Provider shall, at its own cost and risk and in accordance with the Project Schedule obtain, maintain and, as applicable, renew all Service Provider Permits and comply with all Permits in accordance with their terms.

(b) Where a Service Provider Permit has requirements that may impose any conditions, liabilities or obligations on Project Co, any Project Co Person, on Operations Co or any Operations Co Person, or on the Authority or any Authority Person, the Service Provider shall not obtain, amend or renew (other than upon the same terms and conditions) such Service Provider Permit without the prior written consent of Operations Co, not to be unreasonably withheld or delayed, provided that Operations Co shall not be responsible for obtaining or for the failure of the Service Provider to obtain any Service Provider Permit. The Service Provider acknowledges the provisions of Section 4.10(b) of the Project Implementation Agreement and, to the extent appropriate, Operations Co agrees to take commercially reasonable steps to enforce its contractual rights under Section 4.10(b) of the Project Agreement against Project Co in accordance with the Pass-Down Provisions.

(c) The Service Provider shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the Authority may request from Project Co under the Project Agreement and as Project Co may request from Operations Co under the Project Implementation Agreement and as the Service Provider may reasonably be able to provide to enable the Authority to demonstrate compliance with any Permit. The Service Provider shall provide or cause to be provided such information, documentation and assistance pursuant to this Section 4.10(c) within 7 Business Days of receipt of Operation Co's, Project Co's or the Authority's request.

4.11 Service Provider's Representations and Warranties

The Service Provider represents and warrants to Operations Co that:

(a) the Service Provider is:

(1) a limited liability company duly created and validly existing under the laws of the State of Delaware and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Services Contract and all other documents, instruments and agreements required to be executed and delivered by the Service Provider pursuant to this Services Contract; and

(2) validly registered to conduct business in the Commonwealth of Kentucky;

(b) the information set out in Attachment 12 [Service Provider's Ownership Information] is true and correct;

(c) to the Service Provider's knowledge, none of the Service Provider, Persons who control the Service Provider or any Service Provider Person are Restricted Persons;

(d) the execution and delivery of this Services Contract and all other documents, instruments and agreements required to be executed and delivered by the Service Provider pursuant to this Services Contract, and the completion of the transactions contemplated by this Services Contract, have been duly authorized by all necessary action on the part of the Service Provider, and this Services Contract has been duly executed and delivered by the Service Provider and constitutes a legal, valid and binding obligation of the Service Provider enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and

(e) all required third party consents to the execution by the Service Provider of, and performance of its obligations under, this Services Contract have been received, other than any Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project.

4.12 Responses to Operations Co, Project Co and Authority Inquiries

Unless otherwise specified in this Services Contract, the Service Provider will respond in writing to all written inquiries received from Operations Co, Project Co or the Authority as soon as reasonably practicable and in any event within 7 Business Days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require, but in all cases within a time frame sufficient to ensure that Operations Co is not placed in breach of the Project Implementation Agreement by the delay of the Service Provider.

4.13 Common Carrier Covenant

The Service Provider covenants not to take or fail to take any action that would result in the designation of Operations Co or any Operations Co Person as a Common Carrier or in the application of the Common Carrier Regulations to Operations Co, any Operations Co Person or the NG-KIH System or any part thereof. The Service Provider acknowledges the provisions of Section 3.7 of the Project Agreement whereby the Authority acknowledges and agrees that the performance by Project Co or any Project Co Person (as defined in the Project Agreement) of obligations under the Project Agreement, the Project Implementation Agreement or any Project Contract (as defined in the Project Agreement) does not require any Person, including Project Co or any Project Co Person (as defined in the Project Agreement), to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

4.14 Operations Co, Project Co and Authority Access During the Operating Period

Without limiting any of the Authority's, Operations Co's or Project Co's rights in respect of the Lands, the Service Provider acknowledges and agrees that each Authority Person and their

respective representatives, Operations Co and each Operations Co Person and Project Co and each Project Co Person will, during the Operating Period, have unrestricted access to the Lands and the NG-KIH System, provided that in providing such unrestricted access, the Service Provider will not be required to act in breach of this Services Contract and provided further that Operations Co and each Operations Co Person will use commercially reasonable efforts to not interfere with or disrupt the Service Provider's ability to perform the Service Provider Obligations.

4.15 Service Provider's Obligations re Third Party Infrastructure Agreements

The Service Provider acknowledges the provisions of Section 4.15 of the Project Agreement and the provisions of Section 4.15 of the Project Implementation Agreement. The Service Provider further acknowledges and agrees that, as of the Effective Date, Project Co has negotiated non-binding term sheets (each, a "**Third Party Infrastructure Term Sheet**") with the Third Party Infrastructure Providers, copies of which are attached as Attachment 22 [Third Party Infrastructure Term Sheets].

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

During the Operating Period, the Service Provider will use commercially reasonable efforts to manage the Third Party Infrastructure Providers in accordance with the terms of the Third Party Infrastructure Agreements, including, without limitation, any integration activities necessary to integrate the applicable infrastructure of a Third Party Infrastructure Provider into the NG-KIH System, and administer Project Co's rights under the Third Party Infrastructure Agreements so as to mitigate the impact of any failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement or any breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement. Upon request from Operations Co, the Service Provider will promptly submit a detailed description, supported by all such documentation as Operations Co may reasonably require, of the measures and steps taken by the Service Provider to administer Project Co's rights under each of the Third Party Infrastructure Agreements. Operations Co consents to the Service Provider pursuing all rights, remedies and relief under a Third Party Infrastructure Agreement in the name of Project Co.

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

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

In accordance with Section 8.2(h), if the Compensation Event described in (w) of the definition of Compensation Event occurs, the parties will consult with the Authority and Project Co and seek to agree on the steps to be taken by the Service Provider in administering Project Co's rights under the relevant Third Party Infrastructure Agreement. The parties acknowledge and agree that the compensation to which the Service Provider will be entitled in respect of any such Compensation Event will include, as a component of the Service Provider's Direct Losses, the reasonable cost of legal or professional services incurred by the Service Provider in connection with the administration of Project Co's rights; provided, however, that the Service Provider will not be required to pursue any judicial remedies against any Third Party Infrastructure Provider. For certainty, Operations Co will not be required hereunder to pursue any judicial remedies against any Third Party Infrastructure Provider.

4.16 Compliance with Senior Financing Agreements and Project Implementation Agreement

(a) The Service Provider acknowledges that, pursuant to the Project Implementation Agreement, Operations Co cannot agree to, or permit, any assignment, novation or other transfer of this Services Contract without the prior written consent of the Senior Secured Creditors, and the Service Provider will not require Operations Co to take any action that would breach such restrictions or make any claim against Operations Co in respect of any failure by Operations Co to take any action to the extent that the taking of such action would be limited by such restrictions.

(b) The Service Provider acknowledges that, pursuant to the Project Implementation Agreement, Operations Co is subject to certain restrictions on its ability to, among other things, vary, alter, amend, supplement, surrender, revise or modify the Project Implementation Agreement, this Services Contract or any other Material Project Contract (as such term is defined in the Senior Financing Agreements) to which the Service Provider is a party or any other documents entered into in connection therewith without the prior written consent of the Senior Secured Creditors, including agreement by Operations Co to Changes above certain thresholds, and, where Operations Co notifies the Service Provider that it is subject to such a restriction, the Service Provider will not require Operations Co to take any action that would breach such restrictions or make any claim against Operations Co in respect of any failure by Operations Co to take any action where the taking of such action would be limited by such restrictions.

(c) The Service Provider acknowledges that it has been provided with a copy of the Senior Financing Agreements and the Project Implementation Agreement and the Service Provider will not take any action under this Services Contract which would require consent of the Senior Secured Creditors under the Senior Financing Agreements if taken by Operations Co under the Project

Implementation Agreement without Operations Co having first obtained the consent of the Senior Secured Creditors.

(d) The Service Provider will, at the Service Provider's cost and expense, execute and deliver to the Senior Secured Creditors all such reasonable acknowledgements, agreements, undertakings and other documents as the Senior Secured Creditors may require in connection with their taking security over Operations Co's right, title and interest in and to this Services Contract and the Project, provided that, notwithstanding the foregoing, the execution and delivery of any acknowledgments, agreements, undertakings and other documents that may be required in connection with any Refinancing (as defined in the Project Agreement) shall be at Operations Co's cost and expense.

(e) The Service Provider will provide all information as Operations Co may reasonably request from time to time in respect of the Service Provider or any of its Affiliates as may be required in order for Operations Co to demonstrate compliance with all applicable anti-money laundering and anti-terrorism financing legislation in the United States and economic sanctions regulations promulgated in the United States to the extent that Operations Co is required to provide such information to the Senior Secured Creditors pursuant to a request under the Senior Financing Agreements.

(f) The Service Provider acknowledges the provisions of Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement. The Service Provider will provide to Operations Co:

(1) promptly so as to permit Operations Co to comply with its obligations under Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement, copies of all notices of the matters described in Sections 4.1(c)(8)(B), (D), (E) and (F) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement to the extent that any such matter relates to the Service Provider, this Services Contract or the Service Provider Obligations; and

(2) any additional information related to the Service Provider, this Services Contract or the Service Provider Obligations reasonably requested by Operations Co from time to time and that is required by Operations Co to comply with its reporting obligations pursuant to Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement, including any information required by Operations Co to prepare the quarterly report described in Section 4.1(c)(10) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement,

provided that the above requirements shall not require that the Service Provider produce a separate record or report to the extent that the records and reports referred to in Attachment 14 [Records and Reports] are sufficient for Operations Co to comply with its obligations pursuant to Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement. If the Service Provider is unable to determine whether a matter described in

Sections 4.1(c)(8)(D), (E) or (F) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement could reasonably be expected to, or does, cause a Material Adverse Effect (as defined in the Collateral Agency and Account Agreement), the Service Provider will consult with Operations Co regarding such matter and Operations Co shall determine (in its sole discretion) whether it is required to report such matter pursuant to Section 4.1(c)(8) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement. If Operations Co notifies the Service Provider that Operations Co is required to report such matter, the Service Provider will provide a copy of all notices of such matter to Operations Co in accordance with Section 4.16(f)(1). Notwithstanding Section 17.1, Operations Co may disclose any information provided to Operations Co by the Service Provider pursuant to this Section 4.16(f) to the extent required for Operations Co to satisfy its reporting and disclosure obligations under the Project Implementation Agreement.

5. NOT USED

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.10(b), Operations Co or the Service Provider, as applicable, will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Attachment 5 [Insurance Requirements], including as to the required scope and content (including coverage limits and endorsements) of all applicable insurance policies for all applicable periods and ensuring that the Persons required pursuant to Attachment 5 [Insurance Requirements] to be named as named insureds, additional insureds or loss payees are so named. The Service Provider agrees to pay any deductibles in the event of an insured loss whether the insurance is provided by the Service Provider or Operations Co. The Service Provider further agrees to provide any additional documentation required to satisfy the provisions of the Senior Financing Agreements in relation to the insurance to be provided by the Service Provider promptly following notice thereof from Operations Co.

6.2 Damage or Destruction Caused by Service Provider

To the extent that any damage or destruction to any portion of the NG-KIH System is caused or contributed by the Service Provider or any Service Provider Person, the Service Provider will repair, replace or restore (and in the case of material damage, carry out the Reinstatement Works to repair, replace and restore) any damaged or destroyed portions of the NG-KIH System and related assets, at the Service Provider's sole cost and expense, notwithstanding any unavailability of Insurance Proceeds (unless any Insurance Proceeds that would otherwise have been available are not available due to any Operations Co Act, in which case the Service Provider will not be liable for the costs of repair and reinstatement of damage to the extent of such unavailable Insurance Proceeds). For greater certainty and subject to the provisions of the Senior Financing Agreements, to the extent that Insurance Proceeds are available in respect of such damage the Service Provider will be entitled to utilize or be reimbursed from such Insurance Proceeds.

6.3 Insufficient Insurance

The Service Provider acknowledges the provisions of Section 6.3 of the Project Implementation Agreement. If the Authority or Project Co (with the prior consent of Operations Co) elects to terminate the Project Agreement pursuant to Section 6.3 of the Project Agreement, this Services Contract will automatically terminate, in which case Operations Co will, subject to the Pass-Down Provisions, pay compensation to the Service Provider in accordance with Section 5 of Attachment 9 [Compensation on Termination].

6.4 Uncollectible Insurance Receivables

The Service Provider acknowledges the provisions of Section 6.4 of the Project Implementation Agreement. If the Project Agreement is terminated in accordance with Section 6.4 of the Project Agreement, this Services Contract will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, pay compensation to the Service Provider in accordance with Section 5 of Attachment 9 [Compensation on Termination].

6.5 Application of Insurance Proceeds If No Termination

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

(a) applicable Insurance Proceeds which the Service Provider has received; and

(b) applicable Insurance Proceeds which the Service Provider is entitled to receive,

(c) Not used

(d) Not used

to be applied to the reinstatement of the NG-KIH System in accordance with the terms of this Services Contract.

6.6 Application of Insurance Proceeds In Case of Termination

If this Services Contract has been terminated pursuant to Section 6.3:

(a) any Insurance Proceeds received prior to the Termination Payment Date by the Service Provider in respect of damage to the NG-KIH System and not already applied to the repair of such damage will be paid to Operations Co (or as Operations Co may direct); and

(b) on the Termination Payment Date, the Service Provider will assign to Operations Co (or as Operations Co may direct) the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.7 Standards of Repair, Replacement or Restoration

Any repair, replacement or restoration of the NG-KIH System or any part thereof pursuant to the provisions of Section 6.2 will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications (each as defined in the Project Implementation Agreement), subject to any agreement made between the Authority and Project

Co (with the prior written consent of Operations Co pursuant to Section 6.7 of the Project Implementation Agreement and, where possible, in accordance with the Pass-Down Provisions, with input from and the involvement of the Service Provider) to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any repaired, replaced or restored NG-KIH System.

6.8 Mitigation

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

6.9 Risks Becoming Uninsurable

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

6.10 Consequences of Risks Becoming Uninsurable

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

(a) if the Uninsurable Risk is third party liability, the Service Provider acknowledges that the Authority shall terminate the Project Agreement, in which case this Services Contract will automatically terminate and the Service Provider will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination]; or

(b) if the Uninsurable Risk is not third party liability:

(1) the Service Provider acknowledges that the Authority may terminate the Project Agreement, in which case this Services Contract will automatically terminate and the Service Provider will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination]; or

(2) if and for as long as the Authority has not terminated the Project Agreement under Section 6.10(b)(1) of the Project Agreement:

(A) this Services Contract will continue;

(B) neither the Service Provider nor Operations Co will be obligated by this Services Contract, Project Co will not be obligated by the Project Implementation Agreement, and the Authority will not be obligated by the Project Agreement, to maintain insurance in respect of the Uninsurable Risk and references in this Services Contract to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Attachment 5 [Insurance Requirements] will be construed accordingly;

(C) the Monthly Service Payments will thereafter be adjusted in accordance with Section 10.3 (Adjustments to Monthly Service Payments) by agreement of the parties, acting reasonably, or, failing such agreement, by the Service Provider Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in the Service Provider's insurance cost as a result of the Service Provider not having to insure against the Uninsurable Risk; and

(D) subject to the Pass-Down Provisions, the occurrence of the Uninsurable Risk will be deemed to be a Compensation Event unless the Authority terminates the Project Agreement in which case this Services Contract will automatically terminate and the Service Provider will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination].

6.11 Subrogation

If Operations Co makes any payment to the Service Provider pursuant to the Compensation Event referred to in Section 6.10(b)(2)(D), then the Authority, Project Co and Operations Co, as applicable and to the extent of the amount paid, will be subrogated to the Service Provider's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party. Operations Co may assign its rights under this Section 6.11 to Project Co or the Authority.

6.12 Continuing Attempts to Insure Uninsurable Risks

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

6.13 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so and either party becomes aware or is informed by the other party that this is the case (or in the case of Operations Co, is

informed by Project Co pursuant to the Project Implementation Agreement), the party responsible to obtain the insurance under Attachment 5 [Insurance Requirements] will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Services Contract in respect of the risk, and in any case:

(a) Sections 6.9, 6.10 and 6.12 will no longer apply to the risk so long as it is not an Uninsurable Risk; and

(b) any resulting adjustment of the Monthly Service Payments to reflect any increase in the Service Provider's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk will be determined in accordance with the Pass-Down Provisions.

7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

7.1 Changes Required by the Authority or Requested by Operations Co

The Service Provider acknowledges that the Authority may require Changes during the Operating Period with respect to the Service Provider Obligations, in accordance with Section 7.1 of, and Schedule 6 [Changes, Minor Works and Innovation Proposals] to, the Project Agreement and, in such cases, the Service Provider will be responsible to fulfill all obligations of Operations Co in respect thereof under the Project Implementation Agreement, to the extent applicable to the Service Provider Obligations, in accordance with Attachment 6 [Changes, Minor Works and Innovation Proposals] and the Pass-Down Provisions. The Service Provider acknowledges that Operations Co may request Operations Co Initiated Changes in accordance with Attachment 6 [Changes, Minor Works and Innovation Proposals].

7.2 Innovation and Value Engineering

The Service Provider may submit an Innovation Proposal during the Operating Period for consideration by Operations Co in accordance with Attachment 6 [Changes, Minor Works and Innovation Proposals]. If approved by Operations Co, such approval not to be unreasonably withheld or delayed, Operations Co shall submit such Innovation Proposal to the Authority for its consideration pursuant to Section 7.2 of the Project Implementation Agreement and Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Implementation Agreement and such submission will be dealt with pursuant to the Pass-Down Provisions. For greater certainty, Innovation Proposals will be approved or rejected by the Authority in accordance with the requirements of Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement, and such approval or rejection will be binding on Project Co, Operation Co and the Service Provider.

7.3 Minor Works

The Service Provider acknowledges that the Authority may require Minor Works in accordance with Section 7.3 of the Project Agreement and, in such case, the Service Provider will be responsible to fulfil all obligations of Operations Co thereunder during the Operating Period, or arising as a result of work done to fulfill the Service Provider Obligations by or on behalf of the Service Provider during the Operating Period, in accordance with Attachment 6 [Changes, Minor Works and Innovation Proposals] and the Pass-Down Provisions.

8. SUPERVENING EVENTS

8.1 Supervening Events

The Service Provider acknowledges the provisions of Section 8 of the Project Implementation Agreement and confirms that its rights in relation to Supervening Events, and any claim it may have or make in respect thereof, are subject to the Pass-Down Provisions. If:

(a) a Compensation Event, Relief Event or Excusing Event occurs, the Service Provider may; or

(b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may,

apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Services Contract to the extent provided in this Section 8 (Supervening Events) but subject, in each case, to the Pass-Down Provisions where the Applicant is the Service Provider. The "**Applicant**" means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

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

(a) as soon as practicable, and in any event within 3 Business Days if the Applicant is the Service Provider or within 5 Business Days if the Applicant is Operations Co, as applicable, after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other party a notice ("**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant's claim. Unless Operations Co advises the Service Provider within 1 Business Day that Operations Co disagrees with a Supervening Event Notice provided by the Service Provider (in which case the parties will attempt to resolve such disagreement immediately and the Service Provider Dispute Resolution Procedure will apply), the Service Provider will forthwith deliver the Supervening Event Notice to Project Co and the Authority within the time frame required by Section 8.2(a) of the Project Agreement;

(b) within 7 Business Days if the Applicant is the Service Provider or within 10 Business Days if the Applicant is Operations Co, as applicable, after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party:

(1) additional details, including available supporting documentation, in support of its claim; and

(2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by the Service Provider, if it is the Applicant, as a result of the Supervening Event;

(c) from time to time thereafter, the Applicant will notify the other party if at any time it receives or becomes aware of any further material information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;

(d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;

(e) where Operations Co is claiming the benefit of an Eligible Change in Law Event, the Service Provider will provide Operations Co information reasonably requested in order for Operations Co to make its claim and as Operations Co may require in connection with its discussions with Project Co and the Authority pursuant to the Project Implementation Agreement;

(f) the Applicant must demonstrate:

(1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to have taken provided that, in the case of Operations Co, Operations Co is not required to take any steps that are referred to in Section 2.6(b);

(2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss or the need for relief from other obligations under this Services Contract; and

(3) in the case of the Service Provider, it has complied with its mitigation obligations pursuant to Section 2.5 and in the case of Operations Co, it has complied with its mitigation obligations pursuant to Section 2.6;

(g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Services Contract or, if the Applicant is Operations Co, any Senior Financing Agreement, as a result of the Supervening Event; and

(h) the Service Provider acknowledges that Project Co and Operations Co will meet with the Authority as required by Section 8.2(h) of the Project Implementation Agreement within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event. The Service Provider acknowledges and agrees that, if Project Co, Operations Co and the Authority, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either the Authority or Project Co (with the prior consent of Operations Co) may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) of the Project Agreement have been satisfied or the extent of relief or compensation to which the affected party is entitled, for resolution in accordance with the Dispute Resolution Procedure pursuant to the Project Agreement. The parties agree to abide by the determination pursuant to the Project Agreement of whether a

Supervening Event has occurred, whether the conditions in Section 8.2(f) of the Project Agreement have been satisfied or the extent of relief or compensation to which the affected party is entitled, and neither party will exercise any rights under this Services Contract nor specifically under the Service Provider Dispute Resolution Procedure to dispute the final determination arising under the Project Agreement in respect thereof, other than in accordance with the Pass-Down Provisions or with respect to a claim in respect of an Operations Co Act.

8.3 Service Provider's Entitlements Upon Occurrence of a Compensation Event

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

(a) the Service Provider is relieved from any liability or consequence (including termination by Operations Co) under this Services Contract arising from any delay or failure in performing any of its obligations under or in connection with this Services Contract to the extent resulting from the Compensation Event;

(b) the Monthly Service Payments will be calculated as if the Compensation Event had not occurred based on the Reasonably Expected Performance of the Service Provider, except that any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which the Service Provider would have recovered as a result of the Compensation Event if it had complied with the requirements of this Services Contract or any policy of insurance maintained or required to be maintained under this Services Contract will be deducted therefrom;

(c) Operations Co will pay to the Service Provider compensation in respect of a Compensation Event calculated on the basis that the Service Provider will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):

(1) any Direct Losses (including the amount of any applicable insurance deductibles calculated without netting out Insurance Receivables) resulting from the Compensation Event;

(2) any net increase or decrease in the costs of the Service Provider performing its obligations under this Services Contract resulting from the Compensation Event; and

(3) the Monthly Service Payments payable to Service Provider, taking into account the adjustments pursuant to Section 8.3(b) above;

except that:

(4) any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which the Service Provider would have recovered as a result of the Compensation Event if it had complied with the requirements of this Services Contract or any policy of insurance maintained or required to be maintained under this Services Contract will be deducted therefrom; and

(5) no Indirect Losses will be taken into consideration; and

(d) concurrent with the first payment of any compensation by Operations Co under Section 8.3(c), the Service Provider will assign to Operations Co (or as Operations Co may direct) its rights to all applicable Insurance Receivables (whether or not the Service Provider has made a claim).

(e) Not used.

The Service Provider acknowledges the provisions of Section 8.3(e) of the Project Implementation Agreement which provide that if a Compensation Event (as defined in the Project Implementation Agreement) occurs prior to the System Completion Date, and Operations Co has given Project Co a Supervening Event Notice (as defined in the Project Implementation Agreement) related thereto, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and the Longstop Date will be postponed to correspond with such revisions made pursuant to Section 8.3(e) of the Project Implementation Agreement, but the Expiration Date will not be extended.

8.4 Service Provider's Entitlements Upon Occurrence of a Relief Event

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

(a) the Service Provider is relieved from any liability or consequence (including termination by Operations Co, except as provided for in this Section 8.4) under this Services Contract arising from any delay or failure in performing any of its obligations under this Services Contract to the extent resulting from the Relief Event, except that nothing will affect any entitlement of Operations Co to make Deductions and Operations Co will only be obligated to make the Monthly Service Payments to the extent that the performance or other criteria for Monthly Service Payments are met in accordance with the applicable provisions of this Services Contract notwithstanding the Relief Event;

(b) the Service Provider acknowledges the provisions of Section 8.4(b) of the Project Implementation Agreement which provide that if a Relief Event (as defined in the Project Implementation Agreement) occurs prior to the System Completion Date, and Operations Co has given Project Co a Supervening Event Notice (as defined in the Project Implementation Agreement) related thereto, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed to correspond with such revisions made pursuant to Section 8.4(b) of the Project Implementation Agreement, but the Expiration Date will not be extended;

(c) if Operations Co:

(1) has become entitled to terminate the Project Implementation Agreement pursuant to Section 8.4(c) of the Project Implementation Agreement and has not exercised its termination right within 60 days after the date upon

which Operations Co became so entitled to terminate the Project Implementation Agreement (the "**Relief Event Termination Entitlement Point**"); and

(2) has not agreed to compensate the Service Provider for the reasonable direct costs incurred by the Service Provider from and after the Relief Event Termination Entitlement Point as a result of Operations Co's election not to exercise its termination right under Section 8.4(c) of the Project Implementation Agreement,

the Service Provider may, at any time thereafter so long as such Relief Event is, or such effect is, continuing, terminate this Services Contract by notice to Operations Co;

(d) if the Authority gives notice to Project Co under Section 8.4(c) of the Project Agreement terminating the Project Agreement, Operations Co will not consent under Section 8.4(d) of the Project Implementation Agreement to Project Co requiring the Project Agreement to continue unless either (1) Operations Co has obtained the Service Provider's prior written consent to do so or (2) Operations Co commits to continue to provide relief to the Service Provider pursuant to this Section 8.4 notwithstanding that Project Co does not provide corresponding relief to Operations Co and without prejudice to the rights of the Service Provider pursuant to Section 8.4(c);

(e) the Service Provider acknowledges that, if the Service Provider gives notice to Operations Co under Section 8.4(c) terminating this Services Contract and, as a result, Operations Co gives notice to Project Co under Section 8.4(c) of the Project Implementation Agreement terminating the Project Implementation Agreement and Project Co gives notice to the Authority under Section 8.4(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:

(1) the Service Provider's termination notice to Operations Co under Section 8.4(c) will be deemed null and void and the Service Provider, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Services Contract;

(2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;

(3) at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing, the Authority may terminate the Project Agreement by notice to Project Co and Operations Co, in which case Operations Co will give notice of such termination to the Service Provider and this Services Contract will terminate automatically; and

(4) the Service Provider may, at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing after a further period of 180 days after the date on which the Service Provider delivered the

termination notice to Operations Co referred to in Section 8.4(c), terminate this Services Contract by notice to Operations Co, provided that the parties acknowledge and agree that such notice will not have instantaneous effect in order to enable Operations Co to exercise its own termination right under Section 8.4(e)(4) of the Project Implementation Agreement;

(f) if the Project Agreement is terminated pursuant to Section 8.4 thereof, this Services Contract will be automatically terminated and in such case, or in the case of termination of this Services Contract pursuant to this Section 8.4, the Service Provider will be entitled to compensation on such termination in accordance with Section 5 of Attachment 9 [Compensation on Termination]; and

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

8.5 Service Provider's Entitlements Upon Occurrence of an Excusing Event

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

(a) the Service Provider is relieved from any liability or consequence (including termination by Operations Co) under this Services Contract arising from any delay or failure in performing any of its obligations to the extent resulting from the Excusing Event; and

(b) the Monthly Service Payments will be calculated as if the Excusing Event had not occurred based on the Reasonably Expected Performance of the Service Provider, except that any Avoidable Costs and applicable Insurance Proceeds and Insurance Receivables and insurance proceeds which the Service Provider would have recovered if it had complied with the requirements of this Services Contract or any policy of insurance maintained or required to be maintained under this Services Contract will be deducted therefrom.

8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

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

(a) the Applicant is relieved from any liability or consequence (including termination by Operations Co, except as provided for in this Section 8.6) under this Services Contract arising from any delay or failure in performing any of its obligations under this Services Contract to the extent resulting from the Force Majeure Event, except that nothing will affect any entitlement of Operations Co to make Deductions and Operations Co will only be obligated to make the Monthly Service Payments to the extent that the performance or other criteria for Monthly Service Payments are met notwithstanding the Force Majeure Event;

(b) the Service Provider acknowledges the provisions of Section 8.6(b) of the Project Implementation Agreement, which provides that if a Force Majeure Event (as defined in the Project Implementation Agreement) occurs prior to the System Completion Date, and Operations Co has given Project Co a Supervening Event Notice (as defined in the Project Implementation Agreement) related thereto, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed to correspond with such revisions made pursuant to Section 8.6(b) of the Project Implementation Agreement, but the Expiration Date will not be extended;

(c) where Operations Co:

(1) has become entitled to terminate the Project Implementation Agreement pursuant to Section 8.6(c) of the Project Implementation Agreement and has not exercised its termination right within 60 days of the date upon which Operations Co became so entitled to terminate the Project Implementation Agreement (the "**Force Majeure Event Termination Entitlement Point**"); and

(2) has not agreed to compensate the Service Provider for the reasonable direct costs incurred by the Service Provider from and after the Force Majeure Event Termination Entitlement Point as a result of Operations Co's election not to exercise its termination right under Section 8.6(c) of the Project Implementation Agreement,

the Service Provider may, at any time thereafter so long as such Force Majeure Event is, or such effect is, continuing, terminate this Services Contract by notice to Operations Co;

(d) the Service Provider acknowledges that if the Service Provider gives notice to Operations Co under Section 8.6(c) terminating this Services Contract and as a result Operations Co gives notice to Project Co under Section 8.6(c) of the Project Implementation Agreement terminating the Project Implementation Agreement and Project Co gives notice to the Authority under Section 8.6(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:

(1) the Service Provider's termination notice to Operations Co under Section 8.6(c) will be deemed null and void and the Service Provider, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Services Contract;

(2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date on which the Force Majeure Event first occurred;

(3) at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing, the Authority may terminate the Project

Agreement by notice to Project Co and Operations Co, in which case Operations Co will give notice of such termination to the Service Provider and this Services Contract will terminate automatically; and

(4) the Service Provider may at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing after a further period of 180 days after the date on which the Service Provider delivered the termination notice to Operations Co referred to in Section 8.6(c), terminate this Services Contract by notice to Operations Co, provided that the parties acknowledge and agree that such notice will not have instantaneous effect in order to enable Operations Co to exercise its own termination right under Section 8.6(d)(4) of the Project Implementation Agreement;

(e) if the Project Agreement is terminated pursuant to Section 8.6(c), 8.6(d)(3) or 8.6(d)(4) of the Project Agreement, this Services Contract will be automatically terminated and in such case, or in the case of termination of this Services Contract pursuant to this Section 8.6, the Service Provider will be entitled to compensation on such termination in accordance with Section 5 of Attachment 9 [Compensation on Termination]; and

(f) Deductions made while the Service Provider is entitled to relief under this Section 8.6 will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Attachment 4 [Services Protocols and Specifications].

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

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

(a) the Applicant will be entitled to compensation, or an increase or decrease in the Monthly Service Payments, in respect of the Eligible Change in Law Event calculated on the basis that the Service Provider will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):

(1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event;

(2) any net increase or decrease in the costs of the Service Provider performing the Service Provider Obligations resulting from the Eligible Change in Law Event; and

(3) the Monthly Service Payments payable to the Service Provider,

except that:

(4) any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which the Applicant would have recovered if it had complied with the requirements of this Services Contract or any policy of insurance

maintained or required to be maintained under this Services Contract will be deducted therefrom;

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

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

8.8 Parties' Entitlements Upon Occurrence of a Change in Law

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

(a) if compliance by the Service Provider with a Change in Law is outside the scope of, or inconsistent with, the Service Provider Obligations under this Services Contract, or would mean a change in the Service Provider Obligations under this Services Contract or a change in the scope or manner of carrying out the Service Provider Obligations, such Change in Law will be deemed to constitute a Change having effect from the time that such Change in Law takes effect, except that the Service Provider will not be entitled to any payment or other compensation other than as set out in Section 8.4, Section 8.5 or Section 8.7;

(b) except as otherwise provided in this Services Contract, including in Section 8.4, Section 8.5 or Section 8.7, the Service Provider will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and

(c) nothing in Section 8.4, Section 8.5 or Section 8.7 will be interpreted as relieving the Service Provider of its obligation, following any and all Changes in Law, to perform its obligations under this Services Contract in compliance with all Laws.

8.9 Labor Disputes

If the Service Provider Has Knowledge of an actual or potential labor dispute that may affect any of the Service Provider Obligations, the Service Provider will promptly:

(a) give notice thereof to Operations Co, including all relevant information related to the dispute of which the Service Provider Has Knowledge;

(b) use commercially reasonable efforts to mitigate the effects of such labor dispute on the performance of any of the Service Provider Obligations, including by applying for relief to appropriate tribunals or courts if such labor dispute involves workers of the Service Provider and/or a Service Provider Sub-Contractor.

The Service Provider acknowledges that if the labor dispute involves workers of the Service Provider or any Service Provider Sub-Contractor, or of anyone employed by or through them, none of Operations Co, Project Co or the Authority will be required to provide any facilities,

space or assistance in the NG-KIH System or on the Lands for the purposes of such workers or any applicable union.

8.10 Payments in Respect of Supervening Events

Payments between the parties and any adjustments to the Monthly Service Payments in respect of Supervening Events will be made in accordance with Section 10.3. Subject to the Pass-Down Provisions, Operations Co will in no circumstances be required to provide greater relief or compensation to the Service Provider than Operations Co has received from Project Co in respect of the relevant Supervening Event under the Project Implementation Agreement.

8.11 Supervening Events Mitigated by Change

The Service Provider acknowledges the provisions of Section 8.11 of the Project Implementation Agreement and Section 8.11 of the Project Agreement. Nothing in this Services Contract will limit the right of Operations Co, on its own initiative or as a result of the actions of Project Co pursuant to the Project Implementation Agreement or the Authority pursuant to the Project Agreement, to perform or mitigate its obligations in respect of Supervening Events or the consequences of a Supervening Event by requiring a Change or Changes.

8.12 Delay in Notification

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

(a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Services Contract to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and

(b) if the period of delay is 12 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.13 Equivalent Project Relief

The Service Provider acknowledges the provisions of Sections 8.13(c), (d) and (e) of the Project Implementation Agreement and shall comply, and enable Operations Co to comply, with those provisions to the extent they relate to the Service Provider or any of the Service Provider Sub-Contractors.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Obligations to Indemnify

(a) The Service Provider will indemnify and keep Operations Co and each Operations Co Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain arising in connection with any claim made by one or more third parties, including, for the avoidance of doubt, Project Co, any Project Co Indemnified Person (as defined in the Project Implementation Agreement), the Authority, or any Authority Indemnified Person

(as defined in the Project Agreement), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Project Co Indemnified Person (as defined in the Project Implementation Agreement) or any Authority Indemnified Person (as defined in the Project Agreement), arising by reason of any Service Provider Act or any claim alleging infringement by the Service Provider or any Service Provider Sub-Contractor, in relation to the Project, of any Intellectual Property rights of third parties, except in each case to the extent caused, or contributed to, by an Operations Co Act. This Section 9.1(a) may be relied upon by Operations Co Indemnified Persons and may be enforced directly by any of them against the Service Provider in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Service Provider.

(b) Operations Co will indemnify and keep the Service Provider and each Service Provider Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with any claim made by one or more third parties or any claim for, or in respect of, the death, personal injury, disease or illness of any Person arising by reason of an Operations Co Act, except in each case to the extent caused, or contributed to, by a Service Provider Act. This Section 9.1(b) may be relied upon by Service Provider Indemnified Persons and may be enforced directly by any of them against Operations Co in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and Operations Co.

9.2 Conduct of Third Person Claims

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

(a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Services Contract in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;

(b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations and the Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

(c) in defending any claim described in Section 9.2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the

Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;

(d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b), the Indemnifier will:

(1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

(2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

(e) the Beneficiary may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b); or

(2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or

(3) the Indemnifier fails to comply in any material respect with Section 9.2(d) above,

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

(f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) above applies. On receipt of such notice, the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3)), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 or its obligation to provide compensation, as the case may be; and

(g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property (as defined in the

Project Implementation Agreement) rights of any Person, the Service Provider may replace such infringing or allegedly infringing item provided that:

(1) the replacement is performed without additional cost to Operations Co; and

(2) the replacement has at least equal quality performance capabilities when used in conjunction with the NG-KIH System.

9.3 General Obligation to Pursue Third Person Recovery

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

(a) as directed by the Paying Party either:

(1) promptly make commercially reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or

(2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and

(b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:

(1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and

(2) the Liability Payment,

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

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

9.4 Waiver of Remedies

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

9.5 Remedies Cumulative

Subject to Sections 9.6, 9.7 and 9.8:

(a) the rights and remedies of the parties under this Services Contract are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;

(b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and

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

9.6 Limitation on Operations Co's Remedies

Operations Co's remedies in respect of any failure by the Service Provider to perform the Service Provider Obligations will be limited to Deductions in accordance with Attachment 8 [Payments], provided that nothing in this Section 9.6 will limit Operations Co's right to:

(a) claim, on or after a termination of this Services Contract, costs, losses, damages and expenses suffered or incurred by Operations Co as a result of rectifying or mitigating the effects of any breach of this Services Contract by the Service Provider except to the extent recovered by Operations Co under this Services Contract or taken into account to reduce any compensation payable by Operations Co pursuant to Attachment 9 [Compensation on Termination];

(b) make a claim for indemnification pursuant to Section 9.1(a);

(c) deliver to the Service Provider a Service Provider Dispute Notice or a notice of default or termination pursuant to Section 12 (Service Provider Events of Default) and pursue all remedies in respect thereof;

(d) pursue any other express remedy available to Operations Co under this Services Contract or any equitable remedy, including injunctive relief and specific performance; or

(e) enforce, realize or otherwise call upon the Service Provider Parent Guarantee, the Performance Support LC or any other Acceptable Credit Support, or any other security, insurance or other performance support provided by or on behalf of the Service Provider pursuant to this Services Contract.

9.7 Limitation on Service Provider's Remedies

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

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

(b) pursue any other express remedy available to the Service Provider under this Services Contract or any equitable remedy, including injunctive relief and specific performance.

Without limiting any rights the Service Provider may have against the Design-Builder under the Interface Agreement, all obligations of Operations Co contained in this Services Contract shall be deemed to be the obligations of Operations Co and not of any other Person (including any shareholder, director, officer or employee of Operations Co) in its or his or her individual or personal capacity and no recourse shall be had against such Person other than Operations Co for the payment of any amount under this Services Contract or for any indemnity or any other claim based on this Services Contract.

9.8 Limits on Monetary Compensation

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

9.9 No Liability for Indirect Losses

Unless specifically allowed in this Services Contract, neither party to this Services Contract will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party. For greater certainty, but subject to the Service Provider Liability Cap, the term "Indirect Losses" does not include any losses of third parties of any nature or kind to the extent that Operations Co has been determined to be liable to any such third party for such losses, and such losses shall be considered Direct Losses for the purposes of this Services Contract.

9.10 No Liability for Governmental Activities

None of the Authority, Project Co or Operations Co will be liable to the Service Provider or any Service Provider Person for any Direct Losses suffered or incurred as a result of damage to the NG-KIH System, whether arising from or related to Governmental Activities or otherwise, to the extent that such Direct Losses were directly or indirectly caused or contributed to by any willful misconduct, negligent act or omission or non-compliance with the terms of this Services Contract by the Service Provider or any Service Provider Person and, for greater certainty, the same shall not constitute a Compensation Event.

9.11 Operations Co's Right of Set Off

(a) Operations Co will have the right to:

(1) abate payment of any amounts otherwise due to the Service Provider pursuant to the terms of this Services Contract for defective or non-compliant work;

(2) set-off against any amounts otherwise due to the Service Provider pursuant to the terms of this Services Contract, any amounts due to Operations Co by the Service Provider pursuant to the terms of this Services Contract; and

(3) set-off against any amounts otherwise due to the Service Provider pursuant to the terms of this Services Contract any amounts in respect of liens or third party claims for which Operations Co is responsible under the Project Implementation Agreement to the extent such liens or claims are in respect of acts or omissions of the Service Provider or any Service Provider Person; provided, however, that Operations Co will not be entitled to set-off such amounts against any amounts otherwise due to the Service Provider to the extent that the Service Provider has already paid off, vacated or discharged the lien or claim or is contesting the lien or claim under bona fide proceedings and has put aside adequate financial reserves (other than in circumstances where the existence of any such liens or claims would result in an Operations Co Event of Default under the Project Implementation Agreement or in respect of which any claim or right of set-off in favor of Project Co exists under the Project Implementation Agreement and has been exercised by the Project Co).

(b) The parties agree that if Project Co exercises any set off right available to it pursuant to the terms of the Project Implementation Agreement in respect of an amount relating to or arising from any act, omission or breach on the part of the Service Provider or any Service Provider Person after a payment is made by Operations Co to the Service Provider pursuant to the terms of this Services Contract, the Service Provider will be obligated to forthwith reimburse Operations Co in an amount equal to the amount set off by Project Co together with interest thereon at the Default Rate from the date of such set off by Project Co and such reimbursement obligation will be secured by the Service Provider Parent Guarantee and the Performance Support LC.

9.12 Service Provider's Right of Set Off

The Service Provider may set off any amounts owing by Operations Co to the Service Provider under this Services Contract against any payments due by the Service Provider to Operations Co under this Services Contract.

9.13 Undisputed Amounts and Interest on Disputed Amounts

Subject to Sections 9.11 and 9.12, a party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Services Contract, but any disputed portion or amount will not be payable until the Service Provider Dispute is resolved in

accordance with the Service Provider Dispute Resolution Procedure. If payment of any amount payable under this Services Contract is delayed while the matter is in Service Provider Dispute, upon resolution of the Service Provider Dispute, interest will be payable on any amount determined payable pursuant to the Service Provider Dispute Resolution Procedure at the Default Rate, compounded monthly, from the time such amount became payable under this Services Contract until paid.

9.14 Interest on Overdue Amounts

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

9.15 Maximum Aggregate Liability

(a) The maximum aggregate liability of the Service Provider for any claims or damages arising directly or indirectly from, or connected with, this Services Contract, including, without limitation, liability for a breach of the Service Provider Obligations or its other obligations under this Services Contract and liability for incurred Deductions, is limited to:

(1) for claims arising prior to the termination of this Services Contract, 100% of the average annual value of the Monthly Service Payments (as escalated in accordance with Attachment 8 [Payments]) payable during the Operating Period (for greater certainty, prior to any Deductions being levied from such average Monthly Service Payments)(the "**Service Provider Pre-Termination Liability Cap**"); and

(2) for claims arising on or after the termination of this Services Contract, 200% of the average annual value of the Monthly Service Payments (as escalated in accordance with Attachment 8 [Payments]) payable during the Operating Period (for greater certainty, prior to any Deductions being levied from such average Monthly Service Payments),

(collectively, the "**Service Provider Liability Cap**").

For greater certainty, the Service Provider Liability Cap will increase to the extent that the Monthly Service Payments have been increased as a result of a Change under Section 7 (Changes, Minor Works and Innovation Proposals) which changes the scope of the Service Provider Obligations and therefore the amount of such payments for the period following the Change.

(b) The Service Provider Liability Cap will not apply (either in the context of any claim or upon termination of this Services Contract) to:

(1) any liability of the Service Provider resulting from its abandonment of the provision of the Services;

(2) any claims arising from, in connection with or as a result of any fraud or criminal act by the Service Provider or any Service Provider Person;

(3) any claims arising from, in connection with or as a result of any Gross Negligence, fraudulent misrepresentation or willful misconduct by the Service Provider, the Service Provider Guarantor or any Service Provider Person;

(4) liability for losses relating to any event or circumstance in respect of which the Service Provider is required to maintain insurance or pay deductibles in accordance with this Services Contract up to the amount of the required insurance and deductibles thereon (except to the extent insurance proceeds are not available in respect of such losses as a result of a failure of Operations Co to maintain such insurance);

(5) any amounts which the Service Provider has recovered from the Design-Builder pursuant to the provisions of the Interface Agreement (or would be recoverable but for the limitation on liability of the Design-Builder to the Service Provider under the Interface Agreement) in respect of claims for which liability has been reallocated to the Design-Builder from the Service Provider;

(6) any amounts paid pursuant to any indemnity under this Services Contract respecting liability to third parties (other than the Authority, Project Co and the Senior Secured Creditors), including for death, personal injury or damage or loss to property;

(7) any liabilities arising out of any encumbrances caused by the Service Provider and not removed or paid by the Service Provider in accordance with this Services Contract;

(8) any amounts paid by the Service Provider that are subsequently repaid to it by Operations Co (including by way of Equivalent Project Relief), received by the Service Provider from insurance proceeds (or that would have been recovered by insurance proceeds up to the amount of the required insurance but in respect of which insurance proceeds are not available due to a failure, act or omission on the part of the Service Provider) or refunded to it by a third party, including the Design-Builder; and

(9) liability for third-party claims with respect to Intellectual Property relating to the Services.

Until the termination of this Services Contract, the Service Provider will be responsible for any costs of performing the Service Provider Obligations that exceed the amount budgeted therefor in the Financial Model as at the Effective Date (including, for greater certainty, any excess or unanticipated costs incurred, or capital required to be provided by the Service Provider in order to perform the Service Provider Obligations), and such amounts will not be included as part of the Service Provider Liability Cap.

(c) Operations Co will not be obliged to exhaust its remedies against any insurer before being entitled to make a claim against the Service Provider hereunder.

(d) In respect of the Service Provider Event of Default listed in Section 12.1(m), the Service Provider may, within 5 Business Days of the occurrence of such Service Provider Event of Default, deliver notice to Operations Co that it wishes to cure such Service Provider Event of Default by re-setting to zero the liabilities of the Service Provider in respect of amounts paid or payable by the Service Provider to Operations Co (including Deductions), with the effect that, from the date of such re-setting, in respect of the applicable period, the Service Provider Pre-Termination Liability Cap will not be considered to have been reduced by any amounts paid or payable by the Service Provider to Operations Co, together with a remedial plan describing the Service Provider's proposed approach to rectifying the service issues that gave rise to such amounts paid or payable by the Service Provider to Operations Co in excess of the applicable threshold set out in Section 12.1(m) (in this paragraph, a "**Rectification Plan**"). Upon confirmation by Operations Co that the Rectification Plan is in form and substance satisfactory to Operations Co, the liabilities of the Service Provider in respect of amounts paid or payable by the Service Provider to Operations Co for purposes of calculating amounts applicable to the Service Provider Pre-Termination Liability Cap will be re-set to zero, with the effect that, from the date of such re-setting, in respect of the applicable period, the Service Provider Pre-Termination Liability Cap will not be considered to have been reduced by any amounts paid or payable by the Service Provider to Operations Co that were incurred up to the date upon which the Service Provider Events of Default listed in Section 12.1(m) occurred. For greater certainty, if the Service Provider (i) does not deliver a notice that it wishes to cure the Service Provider Event of Default by re-setting its liabilities in accordance with the foregoing; or (ii) fails to provide a Rectification Plan that is in form and substance satisfactory to Operations Co (which shall be subject to the satisfaction of the Secured Creditors' Technical Advisor), Operations Co may terminate this Services Contract in accordance with Section 12.4.

10. PAYMENTS

10.1 Lump Sum Payments

To the extent a party:

(a) is entitled to payment from the other party under this Services Contract, including in respect of a Change under Section 7 (Changes, Minor Works and Innovation Proposals), a Supervening Event under Section 8 (Supervening Events) or an indemnification claim under Section 9 (Indemnities and Limits on Liabilities and Remedies); or

(b) is entitled to share in a benefit and to receive payment from the other party under this Services Contract, including in respect of an Innovation Proposal under Section 7 (Changes, Minor Works and Innovation Proposals) or an Eligible Change in Law Event under Section 8 (Supervening Events),

the entitled party may make written demand for such payments from time to time after being entitled to payment and (i) in respect of any Direct Losses, after such Direct Losses have been

incurred and (ii) in respect of any shared benefit, after receipt by the other party of the shared benefit, and such payment will be due and payable within 10 Business Days of delivery of written demand supported by all relevant information. Where the Pass-Down Provisions apply, such amounts shall be due within 3 Business Days of receipt by Operations Co of the corresponding amount from Project Co, or 3 Business Days prior to the date on which the corresponding amount is payable by Operations Co to Project Co under the Project Implementation Agreement, as applicable, unless specific additional timeframes are stipulated for payment of any amounts owing or payable by Operations Co to the Service Provider, or by the Service Provider to Operations Co, as applicable, under this Services Contract.

10.2 Monthly Service Payments

(a) On a monthly basis Operations Co will pay to the Service Provider the Monthly Service Payments for the performance of the Service Provider Obligations.

(b) The Monthly Service Payments will be payable to the Service Provider in accordance with Section 9.1 of Attachment 8 [Payments].

10.3 Adjustments to Monthly Service Payments

The Service Provider acknowledges the provisions of Section 10.3 of the Project Implementation Agreement and Section 10.3 of the Project Agreement and agrees that any adjustments to the Monthly Service Payments as a result of adjustments to the payments made by Project Co to Operations Co as a result of any adjustments to the Availability Payments (as defined in the Project Agreement) shall be addressed in accordance with the Pass-Down Provisions.

10.4 Not Used

10.5 Deductions

The Service Provider acknowledges the provisions of Section 10.7 of the Project Implementation Agreement and agrees that the Service Provider will be liable for Deductions (as defined in the Project Agreement) incurred by Project Co under the Project Agreement, subject to the limitation of the Service Provider Liability Cap and other than to the extent that any Deductions are caused by an Operations Co Act. For greater certainty, if, in any month, the aggregate Deductions exceed the Maximum Monthly Service Payment for such month (as calculated in each case prior to any Deductions), the Service Provider will immediately pay the excess to Operations Co, failing which Operations Co will be entitled to draw on the Performance Support LC up to the amount of such excess amount. Unless Operations Co determines that any Deductions (as defined in the Project Agreement) levied against Project Co by the Authority under the Project Agreement were caused by an Operations Co Act, all Deductions (as defined in the Project Agreement) will be levied against the Service Provider by Operations Co under this Services Contract until, and to the extent that, it is either agreed between the parties or determined through the Service Provider Dispute Resolution Procedure that the relevant Deduction (as defined the Project Agreement) was caused by an Operations Co Act.

10.6 Fixed Price

Without prejudice to any express rights of the Service Provider to indemnification or compensation from Operations Co pursuant to the terms of this Services Contract, the Service Provider will perform the Service Provider Obligations on a fixed price basis, subject to Changes, Supervening Events, indexation and other mechanisms which adjust the Monthly Service Payments pursuant to this Services Contract and in accordance with the Pass-Down Provisions and Deductions for which the Service Provider is liable and, in the event that the Monthly Service Payments are insufficient to cover the costs incurred by the Service Provider in respect of the Service Provider Obligations, the Service Provider will be liable to provide all required additional capital necessary to pay such costs and the Service Provider will not be reimbursed for such additional costs by Operations Co, Project Co or the Authority at any time. Amounts paid or payable by the Service Provider in respect of such additional capital will not apply to the Service Provider Liability Cap.

11. OPERATION CO's STEP-IN RIGHTS

11.1 Operations Co's Step-in Rights

The Service Provider (a) acknowledges the provisions of Section 11.1 of the Project Implementation Agreement and the rights of Project Co therein and the provisions of Section 11.1 of the Project Agreement and the rights of the Authority therein and (b) agrees that the Pass-Down Provisions apply to the operation of this Section 11.1. If:

(a) the Authority determines that a breach by Project Co of any obligation under the Project Agreement is likely to create an immediate and serious threat to the health or safety of any person, any property or the environment; or

(b) notwithstanding that Project Co is not in breach of its obligations under the Project Agreement, the Authority reasonably considers the circumstances to constitute an Emergency,

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

(c) Operations Co may require the Service Provider by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs, including, if applicable due to breach of this Services Contract or any Service Provider Sub-Contract, Operations Co may require that the Service Provider or any Service Provider Sub-Contractor suspend its operations in some or all respects on the NG-KIH System, and the Service Provider will use commercially reasonable efforts to comply with Operations Co's requirements as soon as reasonably practicable; or

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

The Service Provider will ensure that the provisions contained in all applicable Service Provider Sub-Contracts will not prevent or inhibit the Authority or Operations Co from exercising their rights under this Section 11. Operations Co acknowledges that this Section 11.1 does not create a separate step-in right that can be exercised by Project Co or Operations Co alone in circumstances where the Authority has not asserted its rights pursuant to Section 11.1 of the Project Agreement.

11.2 Operations Co's Rectification Rights

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

(a) does not confirm, within 3 Business Days of such notice, or such shorter period as is appropriate in the case of an Emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to Operations Co to mitigate, rectify and protect against such circumstances that Operations Co may, within a further 7 Business Days, accept or reject, acting reasonably; or

(b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as Operations Co, acting reasonably, will stipulate,

then Operations Co or the Authority may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of the Service Provider to provide the relevant Services, but only for so long as the circumstances referred to in Section 11.1(a) or Section 11.1(b) subsist. If the circumstances referred to in Section 11.1(a) or Section 11.1(b) no longer subsist or the Service Provider has proposed a plan acceptable to Operations Co, acting reasonably (and the Authority pursuant to Section 11.2 of the Project Agreement) for mitigating, rectifying and protecting against such circumstances, any suspension of the right and obligation of the Service Provider to provide any Services will cease and such right and obligation will once again be in full force and effect.

11.3 Notice of NG-KIH System Change

Operations Co will notify the Service Provider of any NG-KIH System Change which the Authority intends to make (or which Project Co advises Operations Co that the Authority intends to make) pursuant to the exercise of the Authority's rights under Section 11.1(d) or Section 11.2 of the Project Agreement and provide the Service Provider a reasonable opportunity, taking into account all the circumstances, to comment on the proposed NG-KIH System Change. Operations Co will reasonably consider comments received in a timely manner from the Service Provider on the proposed NG-KIH System Change and, subject to the Pass-Down Provisions, will use commercially reasonable efforts to have Project Co and the Authority consider such comments.

11.4 Not Used

11.5 Allocation of Costs for Operations Co Actions

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

12. SERVICE PROVIDER EVENTS OF DEFAULT

12.1 Service Provider Events of Default

For the purposes of this Services Contract, "**Service Provider Event of Default**" means any of the following events or circumstances:

(a) the occurrence of a Service Provider Material Breach that is not remedied in accordance with Section 12.3, including in accordance with the program for remediation produced by the Service Provider in accordance with Section 12.3, or the occurrence of a Service Provider Material Breach for which a program for remediation has not been produced by the Service Provider in accordance with Section 12.3;

(b) the occurrence of an Insolvency Event in respect of the Service Provider or the Service Guarantor;

(c) the Service Provider repudiating this Services Contract, the Interface Agreement, the Service Provider Collateral Agreement or the Service Provider Lenders' Remedies Agreement, or abandoning any of the Service Provider Obligations;

(d) Not used

(e) the Service Provider breaches Section 16.1 or Section 16.2;

(f) the Service Provider breaches its obligations under this Services Contract (other than as a consequence of a breach by Operations Co of its obligations under this Services Contract, a breach by Project Co of its obligations under the Project Implementation Agreement or a breach by the Authority of its obligations under the Project Agreement) which results in a criminal conviction related to health and safety violations against the Service Provider, any Service Provider Person, Project Co, any Project Co Person, Operations Co, any Operations Co Person, the Design-Builder, any DB Person or the Authority (an "**H&S Conviction**"), except that:

(1) an H&S Conviction of the Service Provider, a Service Provider Person, Project Co, a Project Co Person, Operations Co, an Operations Co Person, the Design-Builder, any DB Person or the Authority will not constitute a Service Provider Event of Default if, within 45 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Service Provider Person is terminated or the Service Provider takes such other action against each such Service Provider Person as is acceptable to Operations Co acting reasonably; and

(2) in determining whether to exercise any right of termination for a Service Provider Event of Default pursuant to this Section 12.1(f) Operations Co will:

(A) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person committing the act leading to the H&S Conviction; and

(B) give all due consideration, where appropriate, to action other than termination of this Services Contract;

(g) subject to Sections 8.4(g) and 8.6(f), the Service Provider accumulates Deductions of $4,500,000 (Index Linked) or more in any 12 consecutive month period during the Operating Period:

(h) the Service Provider or the Service Guarantor making any material representation or warranty in this Services Contract, the Service Provider Lenders' Remedies Agreement or the Service Provider Parent Guarantee that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the Project or the Service Provider Obligations and, in the case of a false or misleading representation or warranty that is capable of being remedied, the Service Provider has not remedied such breach within 7 Business Days following notice from Operations Co;

(i) the Service Provider Parent Guarantee, the Performance Support LC, or any other Acceptable Credit Support is:

(1) not provided or maintained as required under this Services Contract and, in the case of Acceptable Credit Support, is not (X) replaced within the time period set out in Section 17.13(c) in the case of a Ratings Downgrade, (Y) renewed within 10 Business Days after the date required to be renewed pursuant to Section 17.12(b), or (Z) drawn and the proceeds of such draw deposited into a Cash Collateral Account; or

(2) withdrawn, terminated or breached (including as a result of non-payment by an issuer of Acceptable Credit Support following demand) or otherwise becomes void, voidable or unenforceable for any reason and, in the case of any Acceptable Credit Support, is not replaced within 10 Business Days;

(j) the Service Provider Lenders' Remedies Agreement is or becomes wholly or partially void, voidable, unenforceable, invalid or illegal as a result of any act or omission of the Service Provider and such agreement is not replaced by an agreement on substantially similar terms within 20 days of becoming wholly or partially void, voidable, unenforceable, invalid or illegal or such longer period, not exceeding 160 days, reasonably necessary to effect such replacement;

(k) the occurrence of an Operations Co Event of Default (as defined in the Project Implementation Agreement) under the Project Implementation Agreement that is caused by a Service Provider Event of Default or any other act or omission of the Service Provider or a Service Provider Person or breach by the Service Provider of its obligations hereunder;

(l) the Service Provider ceasing to perform any Service Provider Obligations which are necessary for the performance by Operations Co of its obligations under the Project Implementation Agreement, except to the extent that such cessation is due to an Operations Co Event of Default;

(m) the accumulation of liabilities paid or payable by the Service Provider to Operations Co within a twelve month period (including Deductions (as defined in the Project Agreement) incurred by Operations Co under the Project Implementation Agreement for which the Service Provider is responsible under this Services Contract or the Interface Agreement) which are subject to the Service Provider Liability Cap and which amounts exceed, in the aggregate, 75% of the Service Provider Pre-Termination Liability Cap;

(n) if the Authority requires the suspension or termination and replacement of the Service Provider under Section 12.5 of the Project Agreement; or

(o) the Service Guarantor repudiates the Service Provider Parent Guarantee,

unless caused by (i) non-compliance by the Authority with any provision of the Project Agreement or any document, instrument or agreement delivered to Project Co as required under the Project Agreement or any negligent act or omission, or any wrongful misconduct, of the Authority or any Authority Person, (ii) non-compliance by Project Co with any provision of the Project Implementation Agreement or any document, instrument or agreement delivered to Operations Co as required under the Project Implementation Agreement or any negligent act or omission, or any wrongful misconduct, of Project Co or any Project Co Person, or (iii) non-compliance by Operations Co with any provision of this Services Contract or any document, instrument or agreement delivered to the Service Provider as required under this Services Contract or any negligent act or omission, or any wrongful misconduct, of Operations Co or any Operations Co Person.

12.2 Notification

The Service Provider will notify Operations Co of the occurrence, and details, of any Service Provider Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Service Provider Event of Default, in either case, promptly and in any event within 2 Business Days from the date that the Service Provider Has Knowledge of its occurrence.

12.3 Service Provider Material Breach Cure and Remedial Program

The Service Provider acknowledges the provisions of Section 12.3 of the Project Agreement and the Authority's rights and discretions provided for therein and the provisions of Section 12.3 of the Project Implementation Agreement and Project Co's rights and discretions provided therein. The Service Provider further acknowledges that where the Authority exercises its rights or its discretion under Section 12.3 of the Project Agreement, Project Co will exercise the same rights or discretions under the Project Implementation Agreement and, to the extent that such circumstance has arisen from an act, omission or breach of this Services Contract, Operations Co will exercise the same rights or discretions under this Services Contract. Further, where a Service Provider Event of Default has resulted in an Operations Co Event of Default under the Project Implementation Agreement, any remedy period or other time period in relation to any rectification measure available to the Service Provider herein will be no greater than 75% of the length of such corresponding time period available to Operations Co pursuant to the Project Implementation Agreement (for greater certainty, if Operations Co has no remedy period under the Project Implementation Agreement with respect to rectification of an Operations Co Event of Default, the Service Provider will have no remedy period hereunder with respect to rectification of the corresponding Service Provider Event of Default). After the occurrence of a Service Provider Material Breach or any Service Provider Event of Default set out in Section 12.1(l) and while it is subsisting, Operations Co may serve a notice on the Service Provider specifying in reasonable detail the type and nature of the Service Provider Material Breach or Service Provider Event of Default and:

(a) the Service Provider will remedy such Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l) referred to in such notice (if it is continuing) within 35 days of such notice; or

(b) if either Operations Co (as set out in its notice) or the Service Provider reasonably considers that a Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l) cannot reasonably be remedied within 35 days of such notice, the Service Provider will deliver to Operations Co within 12 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l), which program will specify in reasonable detail the manner in, and the latest date by, which the Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l) is proposed to be remedied.

If the Service Provider puts forward a program in accordance with Section 12.3(b), Operations Co will have 13 Business Days from receipt of the program within which to notify the Service Provider that Operations Co, acting reasonably, does not accept the program. If Operations Co notifies the Service Provider that it does not accept the program as being reasonable or does not respond within 13 Business Days from receipt of the program, the parties will use commercially reasonable efforts within the following 5 Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such 5 Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l) in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Service Provider Dispute Resolution Procedure.

12.4 Operations Co Termination Right

The Service Provider acknowledges the provisions of Section 12.4 of the Project Agreement and the Authority's rights and discretions provided therein and the provisions of Section 12.4 of the Project Implementation Agreement and Project Co's rights and discretions provided for therein. The Service Provider further acknowledges that where the Authority exercises its rights or its discretion under Section 12.4 of the Project Agreement, Project Co will exercise the same rights or discretions under the Project Implementation Agreement and Operations Co will exercise the same rights or discretions under this Services Contract. If:

(a) a Service Provider Material Breach or Service Provider Event of Default set out in Section 12.1(l) is not remedied before the expiration of the period referred to in Section 12.3(a) and no program has been put forward by the Service Provider under Section 12.3(b);

(b) the Service Provider puts forward a program pursuant to Section 12.3(b) which has been accepted by Operations Co (including after agreement under Section 12.3 to amendments to the program) or has been determined to be reasonable pursuant to the Service Provider Dispute Resolution Procedure and the Service Provider fails to remedy the Service Provider Material Breach before the end date for the program or Service Provider Event of Default, as the case may be;

(c) any program put forward by the Service Provider pursuant to Section 12.3(b) is rejected by Operations Co as not being reasonable, and, if such rejection is disputed by the Service Provider, the Service Provider Dispute Resolution Procedure does not find against that rejection; or

(d) any Service Provider Event of Default other than a Service Provider Material Breach or Service Provider Event of Default set out in Section 12.1(l) occurs,

then Operations Co may (if the Service Provider Event of Default continues unwaived and unremedied) terminate this Services Contract by notice to the Service Provider. The right of Operations Co to terminate this Services Contract under this Section 12,4 is in addition, and without prejudice, to any other right which Operations Co may have in connection with the Service Provider's defaults hereunder. For greater certainty and without limitation, if a Service Provider Event of Default resulted in an Operations Co Event of Default (as defined in the Project Implementation Agreement) under the Project Implementation Agreement, Operations Co will be entitled to terminate this Services Contract upon Project Co becoming entitled to terminate the Project Implementation Agreement as a result of the corresponding Operations Co Event of Default.

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

to by the parties or determined in accordance with the Service Provider Dispute Resolution Procedure.

12.5 Replacement of Non-Performing Service Provider

The Service Provider acknowledges the provisions of Section 12.5 of the Project Agreement. If the Authority exercises its right to require Project Co to terminate this Services Contract pursuant to Section 12.5(a) of the Project Agreement, Operations Co shall immediately be entitled to terminate this Services Contract and, for greater certainty, the exercise of such rights by the Authority shall constitute a Service Provider Event of Default pursuant to Section 12.1(n) of this Services Contract and no cure period shall apply to such Service Provider Event of Default.

12.6 Operations Co's Costs

The Service Provider will reimburse Operations Co for any and all reasonable costs incurred by Operations Co in exercising any of its rights (including, but not limited to, any relevant increased administrative expenses, any amounts payable by Operations Co to Project Co pursuant to the Project Implementation Agreement and actual legal expenses) under this Section 12 (Service Provider Events of Default).

12.7 Operations Co Remedies

Without prejudice to the other rights of Operations Co in this Section 12, at any time during which a Service Provider Event of Default is continuing, Operations Co may (i) at the Service Provider's risk and expense, take such steps as Operations Co considers appropriate (or instructed by Project Co to take pursuant to the Project Implementation Agreement), either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of the Service Provider's obligations under this Services Contract or to remedy such Service Provider Event of Default and/or (ii) subject to the Senior Financing Agreements, present for payment all or any security held by Operations Co for the performance of the Service Provider Obligations or draw upon the Performance Support LC or any other Acceptable Credit Support.

13. OPERATIONS CO EVENTS OF DEFAULT

13.1 Operations Co Events of Default

For the purposes of this Services Contract, "**Operations Co Event of Default**" means any of the following events or circumstances:

(a) a failure by Operations Co to pay any amount in excess of $125,000 due and owing to the Service Provider under this Services Contract on the due date and Operations Co has not remedied such failure to pay within 10 Business Days' of notice from the Service Provider, except to the extent that such amount is being disputed in good faith by Operations Co or Operations Co's non-payment is a direct result of any non-payment by Project Co under the Project Implementation Agreement, in which case Operations Co's cure period will extend until the date which is 5 Business Days after all cure periods in respect of Project Co's non-payment under the Project Implementation Agreement have expired and Operations Co is entitled to terminate the Project Implementation Agreement; or

(b) Not used

(c) Not used

(d) Not used

(e) an occurrence of an Insolvency Event in respect of Operations Co; or

(f) except as provided in Section 13.1(a) above, a breach by Operations Co of any of its material obligations under this Services Contract and Operations Co has not:

(1) cured the breach within forty-five (45) days following notice thereof from the Service Provider pursuant to Section 13.3(c); or

(2) where the relevant breach cannot be cured within forty-five (45) days, initiated, within such forty-five (45) day period, a commercially reasonable course of action designed to cure the relevant breach and thereafter diligently pursued such course of action until the relevant breach is cured; or

(3) where the relevant breach is incurable, initiated, within forty-five (45) days following notice thereof from the Service Provider pursuant to Section 13.3(c), a commercially reasonable course of action designed to mitigate the consequences of such incurable breach to the maximum extent practicable and thereafter diligently pursued such course of action until the consequences of the incurable breach have been so mitigated.

13.2 Notification

Operations Co will notify the Service Provider of the occurrence, and details, of any Operations Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an Operations Co Event of Default, in either case, promptly and in any event within 2 Business Days from the date that Operations Co Has Knowledge of its occurrence.

13.3 Service Provider's Options

After the occurrence of an Operations Co Event of Default and while an Operations Co Event of Default is continuing but subject to Section 13.5, the Service Provider may, at its option exercise one or more of the following, as applicable:

(a) Not used

(b) in the case of an Operations Co Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Services Contract until Operations Co has remedied such Operations Co Event of Default;

(c) in the case of an Operations Co Event of Default under Sections 13.1(a), 13.1(e) or 13.1(f), serve notice on Operations Co of the occurrence specifying details of such Operations Co Event of Default and if the relevant matter or circumstance

has not been rectified or remedied by Operations Co or otherwise within 45 days of such notice (or in the case of an Operations Co Event of Default under Section 13.1(f) such longer period as is reasonably required for Operations Co to rectify or remedy such Operations Co Event of Default as long as Operations Co is diligently pursuing such rectification or remedy), the Service Provider may serve a further notice on Operations Co terminating this Services Contract with immediate effect, provided that the Service Provider shall not be entitled to terminate this Services Contract in accordance with this Section 13.3(c) as a result of an Operations Co Event of Default under Section 13.1(f) where such Operation Co Event of Default occurs as a direct result of a breach by Project Co of its obligations under the Project Implementation Agreement and Operations Co is diligently pursuing its rights and remedies against Project Co under the Project Implementation Agreement.

(d) Not used

If Operations Co has become entitled to suspend performance by it of its obligations under the Project Implementation Agreement pursuant to Section 13.3(b) of the Project Implementation Agreement, the Service Provider may, at its option, suspend performance by it of its obligations under this Services Contract for so long as Operations Co remains entitled to suspend performance of its obligations pursuant to Section 13.3(b) of the Project Implementation Agreement.

13.4 Service Provider's Costs

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

13.5 Direct Agreements

The Service Provider's right to exercise any of its remedies pursuant to Section 13.3 or to terminate this Services Contract in accordance with this Section 13 will be subject to the Senior Secured Creditors' rights under the Service Provider Lenders' Remedies Agreement and the Authority's rights under the Service Provider Collateral Agreement.

13.6 No Other Rights to Terminate

The Service Provider will have no right or entitlement to terminate this Services Contract, nor to accept any repudiation of this Services Contract, and will not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Services Contract.

13.7 Termination for Convenience

(a) Neither party will have the right to terminate this Services Contract for convenience.

(b) The Service Provider acknowledges the provisions of Section 2.1(a) of the Project Agreement pursuant to which the Authority may, in its sole discretion and for any reason whatsoever, be entitled to terminate the Project Agreement at any

time on written notice to Project Co and Operations Co. Operations Co will provide notice to the Service Provider as soon as reasonably practicable following receipt of notice from the Authority that it is exercising its right to terminate the Project Agreement for convenience. This Services Contract will automatically terminate upon termination of the Project Agreement by the Authority in accordance with Section 2.1 thereof.

13.8 Automatic Termination upon Project Agreement Termination

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

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

If this Services Contract is terminated pursuant to its terms, compensation on termination will be determined and paid in accordance with Attachment 9 [Compensation on Termination].

14.2 Transfer to Operations Co of Assets, Contracts, etc.

The Service Provider acknowledges the provisions of Section 14.2 of the Project Implementation Agreement. On or promptly after the Services Contract Termination Date:

(a) Not used

(b) if the Authority so elects pursuant to Section 14.2(b) of the Project Agreement, the Service Provider acknowledges and agrees that Operations Co will novate or assign this Services Contract being novated or assigned to the Authority and the Service Provider consents to such novation or assignment, provided that if termination of the Project Agreement occurs under Section 13.3 of the Project Agreement, the consent of the Service Provider will be required.

(c) the Service Provider will offer to sell to Project Co or Operations Co (or as Operations Co may direct), as the case may be, at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, vehicles, spare parts and other moveable property owned by the Service Provider and reasonably required by Project Co, Operations Co or the Authority in connection with the operation of the NG-KIH System or the provision of the Services;

(d) the Service Provider will deliver to Operations Co (to the extent not already delivered to Operations Co) or as Operations Co may direct:

(1) all existing designs, network configurations, plans and other documents produced in connection with the NG-KIH System and in the control of the Service Provider;

(2) one complete set of existing "as built drawings" showing all alterations made to the NG-KIH System since the commencement of operation of the NG-KIH System; and

(3) one complete set of existing up to date maintenance, operation and training manuals for the NG-KIH System,

subject to reasonable generally applicable third party licensing terms;

(e) the Service Provider will use commercially reasonable efforts to ensure that the benefit of existing Project Intellectual Property (as defined in the Project Agreement) of the Service Provider and all warranties in respect of mechanical and electrical equipment used or made available by the Service Provider under this Services Contract and included in the NG-KIH System but not previously assigned or licensed to Operations Co are assigned, licensed or otherwise transferred to Operations Co (or as Operations Co may direct);

(f) to the extent permitted by Law, the Service Provider will assign to Operations Co (or as Operations Co may direct) all Permits;

(g) the Service Provider will deliver to Operations Co (or to such Person as Operations Co may direct) all records required to be kept by the Service Provider hereunder (the Service Provider having the right to retain copies thereof) unless such documents are:

(1) required by Law to be retained by the Service Provider or a Service Provider Sub-Contractor, in which case complete copies will be delivered to Operations Co (or as Operations Co may direct); or

(2) privileged from production pending resolution of any outstanding Service Provider Dispute, in which case such records will be delivered forthwith upon resolution of such Service Provider Dispute, provided that any records that are necessary for the performance of the Service Provider Obligations will be delivered to Operations Co (or as Operations Co may direct) no later than the Termination Payment Date; and

(h) return to Operations Co, Project Co or the Authority all Confidential Information of Operations Co, Project Co or the Authority, as applicable, within the possession or control of the Service Provider or any Service Provider Sub-Contractor.

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

14.3 Transition Out Arrangements

On the Expiration Date, the Service Provider will:

(a) on request by Operations Co, for a period not to exceed 6 months after the Services Contract Termination Date:

(1) co-operate fully with Operations Co, Project Co, the Authority and any successor providing to Operations Co services in the nature of any of the Service Provider Obligations or any part of the Service Provider Obligations to achieve a timely, safe, orderly, effective and efficient transition of the performance of services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any material interruption to the Services or risk to the health and safety of any person; and

(2) continue to provide the Service Provider Obligations or any part of the Service Provider Obligations required by Operations Co and Operations Co will pay to Service Provider a reasonable price for such services determined with reference to Service Provider's price for such Services prior to the Services Contract Termination Date;

(b) subject to Section 14.3(a), as soon as practicable following the Services Contract Termination Date remove all property of the Service Provider or any Service Provider Person that is not acquired by Operations Co or such other Person designated by the Service Provider pursuant to Section 14.2 (or not belonging to Operations Co, Project Co or the Authority) and if it has not done so within 15 Business Days after any notice from Operations Co requiring it to do so Operations Co may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Service Provider;

(c) subject to Section 14.3(a), on the Services Contract Termination Date deliver to Operations Co:

(1) all keys, access codes and/or other devices required to access or operate the NG-KIH System in the control of the Service Provider; and

(2) any Project Intellectual Property (as defined in the Project Implementation Agreement) of the Service Provider required to be delivered by the Service Provider pursuant to Section 14.2(e);

(d) subject to Section 14.3(a), as soon as practicable after the Services Contract Termination Date, vacate, and cause the Service Provider Persons to vacate, those parts of the NG-KIH System over which the Service Provider has control and occupation and will leave such parts of the NG-KIH System in a safe, clean and orderly condition; and

(e) comply with all requirements of Appendix 4B [Handback Requirements].

14.4 Service Provider to Cooperate

The Service Provider acknowledges the provisions of Section 14.4 of the Project Implementation Agreement and agrees that if, in accordance with those Sections, the Authority wishes to conduct a solicitation prior to the Expiration Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiration of this Services Contract, the Service Provider

will prior to the Expiration Date co-operate with Operations Co, Project Co and the Authority fully in such solicitation process including by:

(a) providing any information in the Service Provider's control or possession which the Authority may reasonably require to conduct such solicitation except that information which is commercially sensitive to the Service Provider or a Service Provider Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Service Provider or a Service Provider Person give that competitor a competitive advantage over the Service Provider or the Service Provider Person and thereby prejudice the business of the Service Provider or the Service Provider Person); and

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

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

14.5 Service Provider Materials

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

(a) all Service Provider Materials so delivered are true, accurate and complete copies of the originals of all such Service Provider Materials;

(b) with respect to Service Provider Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between the Service Provider and any Persons:

(1) all are in good standing and in full force and effect with no amendments and the Service Provider is entitled to all rights and benefits thereunder;

(2) the Service Provider has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and

(3) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and

(c) other than Service Provider Materials there are no other material agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments relating to the Project.

14.6 Continued Performance

Subject to the Service Provider's rights of suspension under Section 13.3(b) and subject to the provisions of this Section 14 (Procedure on Termination), the parties will continue to perform their obligations under this Services Contract notwithstanding the giving of any notice of default or notice of termination.

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Services Contract, any Service Provider Dispute will be resolved in accordance with, and the parties will comply with, the Service Provider Dispute Resolution Procedure set out in Attachment 13 [Service Provider Dispute Resolution Procedure].

16. ASSIGNMENT

16.1 Limitations on Assignment of Project by Service Provider

The Service Provider will not assign, transfer or otherwise dispose of any interest in this Services Contract without the prior written consent of Operations Co.

The Service Provider acknowledges and agrees that any assignment, transfer, charge, disposition or other alienation by the Service Provider of any of the Service Provider's interest in this Services Contract will be subject to the consent of the Collateral Agent under the Senior Financing Agreements and in accordance with the Service Provider Lenders' Remedies Agreement and Operations Co will not be entitled to consent to any such assignment, transfer, charge, disposition or other alienation where the Collateral Agent has not provided its consent in accordance with the foregoing.

The Service Provider will be responsible for all costs incurred by Operations Co in connection with the Authority providing its consent (pursuant to the Project Agreement) or the Collateral Agent providing its consent to any assignment, transfer, charge, disposition or other alienation by the Service Provider of any of the Service Provider's interest in this Services Contract.

Notwithstanding any other provision of this Services Contract, the Service Provider will not assign, transfer or otherwise dispose of any interest in this Services Contract to a Person who is a Restricted Person.

16.2 Limitations on Change in Control

Notwithstanding any other provision of this Services Contract, the Service Provider will not be, nor will it become at any time, a Restricted Person.

16.3 Not Used

16.4 Limitations on Assignment of Project by Operations Co

Operations Co will not assign, transfer, charge, dispose of or otherwise alienate any interest in this Services Contract without the prior consent of the Service Provider, such consent not to be unreasonably delayed, withheld or conditioned. Notwithstanding the foregoing, Operations Co may assign its right, title and interest in and to this Services Contract, the Interface Agreement, the Service Provider Parent Guarantee, the Performance Support LC and any other Acceptable Credit Support to the Collateral Agent as security for Operations Co's liabilities and obligations under the Senior Financing Agreements or in connection with the exercise of rights of the Senior Secured Creditors under the Senior Financing Agreements, in each case in accordance with the Service Provider Lenders' Remedies Agreement and the Service Provider Collateral Agreement.

16.5 Not Used

17. GENERAL

17.1 Confidentiality

(a) Subject to Section 17.1(b), each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 will not restrict:

(1) each party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Services Contract and provided further that Operations Co may, subject to obtaining confidentiality restrictions similar to those set out in this Services Contract:

(A) provide to the Senior Secured Creditors and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and

(B) provide to the Design-Builder and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable the Service Provider to perform (or to cause to be performed) its obligations under this Services Contract but which Confidential Information is not used by the Design-Builder, its advisors, or other third parties, as applicable, for any other purpose; and

(2) Operations Co from disclosing or granting access to such information to Project Co, the Authority, any department of the Commonwealth of Kentucky or any other Governmental Authority which requires the information in relation to the Project.

(b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;

(2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Services Contract;

(3) to the extent any Person is required to disclose such Confidential Information by Law, including the Open Records Act;

(4) **Not used**; or

(5) that is known to the recipient of the Confidential Information prior to disclosure to the recipient by the other party or becomes known to the recipient thereafter by way of disclosure to the recipient by any other Person who, to the knowledge of the recipient, is not under any obligation of confidentiality with respect thereto.

(c) Without prejudice to any other rights and remedies that the other party may have, a party may be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a).

(d) The Service Provider will be fully liable for any breach of confidentiality under this Section 17.1 by any Person to whom the Service Provider has disclosed or granted access to Confidential Information under this Section 17.1 to the same extent as if the Service Provider itself breached confidentiality under this Section 17.1.

17.2 Public Communications

Unless expressly provided in this Services Contract or otherwise required by any Law, including the Open Records Act, (but only to that extent), the Service Provider will not make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of Operations Co (which will not be unreasonably withheld or delayed). The parties will comply with Attachment 16 [Communication Roles].

17.3 Law of Agreement

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

17.4 Venue

Any legal actions or proceedings brought by either party hereto against the other party shall be brought in state court in Franklin County, Kentucky. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any

judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

17.5 Entire Agreement, Waivers and Consents in Writing

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

17.6 Notices

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

If to Operations Co:

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

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

If to the Service Provider:

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

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

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

(a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

(b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:

(1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or

(2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.7 Further Assurances

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

17.8 Counterparts

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

17.9 No Partnership

Nothing contained in this Services Contract nor any action taken pursuant hereto or thereto will be deemed to constitute Operations Co and the Service Provider a partnership, joint venture or any other similar such entity.

17.10 Survival

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

17.11 Service Provider Parent Guarantee

(a) The Service Provider will deliver the Service Provider Parent Guarantee on the date of this Services Contract and ensure that the Service Provider Parent Guarantee remains in full force and effect until the Expiration Date.

(b) The Service Provider acknowledges that, pursuant to an assignment by way of security of the Service Provider Parent Guarantee in favor of the Collateral

Agent, the rights of Operations Co under the Service Provider Parent Guarantee will be assigned to the Collateral Agent as security for the obligations of Operations Co under the Senior Financing Agreements.

17.12 Performance Support LC

(a) On the Effective Date, the Service Provider will procure the issue of and thereafter maintain Acceptable Credit Support in substantially the form attached as Attachment 21 [Form of Performance Support LC] (together with any replacement Acceptable Credit Support delivered in accordance with this Services Contract, the "**Performance Support LC**") securing the performance of the Service Provider Obligations in an amount equal to 50% of the average annual value of the Monthly Service Payments (as escalated in accordance with Attachment 8 [Payments]) payable during the Operating Period (for greater certainty, prior to any Deductions being levied from such average Monthly Service Payments) (subject to Sections 17.12(b) and (f)(2) the "**Required Performance LC Amount**").

(b) From and after the date that is 12 months following the Effective Date, the Required Performance LC Amount shall increase to an amount equal to 100% of the average annual value of the Monthly Service Payments (as escalated in accordance with Attachment 8 [Payments]) payable during the Operating Period (for greater certainty, prior to any Deductions being levied from such average Monthly Service Payments) and, prior to such date, the Service Provider shall procure the delivery to Operations Co of additional Acceptable Credit Support, or increase the face amount of the Performance Support LC, such that the total face amount of Acceptable Credit Support securing the performance of the Service Provider Obligations is equal to the Required Performance LC Amount after giving effect to such increase.

(c) The Performance LC will be renewed or replaced annually in accordance with paragraph (b).

(d) The Performance Support LC will be maintained or replaced as follows:

(1) within 10 Business Days of any drawing on the Performance Support LC, the Service Provider will either deliver a new Acceptable Credit Support, or an amendment to the current Performance Support LC, such that the amount of the security provided thereby is restored to the Required Performance LC Amount;

(2) the Performance Support LC will have a minimum one year term and on each anniversary of the delivery of the Performance Support LC (for the remainder of the Operating Period) the Service Provider will deliver a replacement of such Acceptable Credit Support in an amount equal to the applicable Required Performance LC Amount no less than 20 Business Days prior to such anniversary;

(3) the Service Provider will renew the Performance Support LC or cause the issuance of replacement Acceptable Credit Support, for any such expiring Acceptable Credit Support or any other letter of credit required to be

delivered by Service Provider hereunder, not later than 20 Business Days prior to the date of expiration thereof; and

(4) if the Performance Support LC is not renewed at least 20 Business Days prior to its expiry date, Operations Co will be entitled to draw down the full available amount of such Acceptable Credit Support and deposit the proceeds to a Cash Collateral Account, on the basis that the cash collateral will be released to the Service Provider upon a replacement Acceptable Credit Support being delivered by the Service Provider in accordance with this Services Contract.

(e) Operations Co may make multiple draws on the Performance Support LC and may draw upon the Performance Support LC or any other Acceptable Credit Support:

(1) upon the occurrence of any Service Provider Event of Default;

(2) if the Service Provider fails to renew the Performance Support LC or such Acceptable Credit Support in accordance with this Services Contract;

(3) in accordance with Section 17.13(c) below upon a Ratings Downgrade in respect of the issuer of the Performance Support LC or such Acceptable Credit Support; or

(4) as otherwise expressly set out in this Services Contract.

(f) The Service Provider acknowledges that:

(1) the Senior Secured Creditors will have a security interest in Operations Co's rights under the Performance Support LC and any Acceptable Credit Support and/or that such rights will be assigned to the Collateral Agent as security for the obligations of Operations Co under the Senior Financing Agreements and consents to same; and

(2) the Performance Support LC and the Required Performance LC Amount will be subject to adjustment pursuant to a Change which changes the scope of the Service Provider Obligations and, therefore, the average annual Monthly Service Payment for the period following the Change.

17.13 Acceptable Credit Support Requirements and Cash Collateral Accounts

(a) The Service Provider acknowledges and agrees that any letter of credit delivered by the Service Provider pursuant to this Services Contract must be Acceptable Credit Support.

(b) If either party becomes aware that the issuer of Acceptable Credit Support delivered by the Service Provider has fallen below the Required Rating, such party will promptly notify the other in writing of such change.

(c) In the event an issuer of Acceptable Credit Support experiences a Ratings Downgrade at any time, upon the request of either Operations Co or the Senior

Secured Creditors, such Acceptable Credit Support will be replaced by an unconditional, irrevocable standby letter of credit, in substantially the form set out in Attachment 21 [Form of Performance Support LC], issued by another Institution which meets the Required Rating within 10 Business Days following such request or, if no Institution then meets the Required Rating, as agreed by Operations Co and the Senior Secured Creditors, provided that the first mentioned Acceptable Credit Support may be drawn down if not so replaced within such 10 Business Day period and the proceeds deposited to a Cash Collateral Account on the basis that, subject to Section 17.13(d), the cash collateral would be released to the relevant party who posted such first mentioned Acceptable Credit Support upon the delivery of a replacement unconditional, irrevocable stand by letter of credit that constitutes Acceptable Credit Support.

(d) Where any cash collateral has been deposited into a Cash Collateral Account, Operations Co will be entitled to draw on such cash collateral in any circumstance in which it would be entitled to draw on the Acceptable Credit Support in respect of which such cash collateral has been received.

[signature page follows]

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

KENTUCKYWIRED OPERATIONS COMPANY, LLC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have the authority to bind the company.

LTS KENTUCKY MANAGED TECHNICAL SERVICES LLC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the company.

EXHIBIT D

LENDERS' REMEDIES AGREEMENT

See attached.

Execution Version

LENDERS' REMEDIES AGREEMENT

NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

The Commonwealth of Kentucky

(the "Authority")

and

U.S. Bank National Association

(the "Collateral Agent")

and

KentuckyWired Infrastructure Company, Inc.

("Project Co")

and

KentuckyWired Operations Company, LLC

("Operations Co")

Dated: September 3, 2015

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LENDERS' REMEDIES AGREEMENT

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

BETWEEN:

The Commonwealth of Kentucky

(the "**Authority**")

AND:

U.S. Bank National Association

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

AND:

KentuckyWired Infrastructure Company, Inc.

("**Project Co**")

AND:

KentuckyWired Operations Company, LLC

("**Operations Co**")

WHEREAS:

A. The Authority and Project Co have entered into the Project Agreement (as defined below).

B. Project Co and Operations Co have entered into the Project Implementation Agreement (as defined below).

C. Pursuant to the Senior Financing Agreements, the Senior Secured Creditors have agreed, subject to the terms and conditions contained therein, to make available to Project Co the credit facility specified therein to finance certain costs to be incurred and expenditures to be made by Project Co in connection with the Project.

D. It is a condition precedent to the obligations of the Senior Secured Creditors under the Senior Financing Agreements that this Lenders' Remedies Agreement be executed and delivered by the parties.

E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Lenders' Remedies Agreement. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Lenders' Remedies Agreement.

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

1. INTERPRETATION

1.1 Definitions

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

"**Antecedent Liabilities**" means, as at any time:

(a) all amounts due and payable by Project Co to the Authority under the Project Agreement or by Operations Co to Project Co under the Project Implementation Agreement, as applicable, at such time; and

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

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

"**Bankruptcy Proceedings**" means:

(a) any:

(1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;

(2) appointment of an Insolvency Officer in connection with;

(3) order or resolution passed in connection with; or

(4) formal agreement reached regarding,

a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co or Operations Co (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or

(b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of Project Co or Operations Co or any other similar process or event occurring in relation to Project Co's or Operations Co's assets in any other jurisdiction;

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

"**Collateral Agent's Withdrawal Notice**" has the meaning set out in Section 3.4;

"**Deficiency**" has the meaning set out in Section 9.4(b);

"**Discharged Obligations**" has the meaning set out in Section 6.4;

"**Discharged Rights**" has the meaning set out in Section 6.4;

"**Event of Default**" has the meaning set out in the Collateral Agency and Account Agreement;

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

"**Indicative Notice Period**" means:

(a) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:

(1) the Step-In Date;

(2) the date of delivery of a Collateral Agent's Withdrawal Notice; and

(3) 45 Business Days following the date of delivery of such Indicative Step-In Notice; or

(b) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:

(1) the date on which any transfer in accordance with Section 6.1 becomes effective;

(2) the date of delivery of a Collateral Agent's Withdrawal Notice; and

(3) 45 Business Days following the date of delivery of such Indicative Transfer Notice;

"**Indicative Step-In Notice**" has the meaning given to it in Section 3.3;

"**Indicative Transfer Notice**" has the meaning given to it in Section 3.3;

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

"**Insurance Proceeds Account**" has the meaning given to it in the Collateral Agency and Account Agreement;

"**Lenders' Remedies Agreement**" means this lenders' remedies agreement, as amended, supplemented or restated from time to time;

"**Liability Report**" has the meaning given in Section 3.5;

"**Material Antecedent Liabilities**" means Antecedent Liabilities that are:

(a) financial liabilities; or

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

"**New Agreements**" has the meaning given in Section 10.2;

"**Notice Period**" means:

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

(b) in respect of an Operations Co Financing Default, the Indicative Notice Period;

"**Operations Co Event of Default**" has the meaning set out in the Project Implementation Agreement;

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

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

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

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

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

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

"**Reported Antecedent Liabilities**" means the Antecedent Liabilities identified in the Liability Report;

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

"**Security Documents**" has the meaning as set out in the Collateral Agency and Account Agreement;

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

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

"**Senior Secured Creditors' Representative**" means:

(a) the Collateral Agent;

(b) a receiver or receiver and manager of Operations Co appointed under or in connection with the Security Documents; or

(c) any other Person approved by the Authority (such approval not to be unreasonably withheld or delayed);

"**Step-In Date**" means 5 Business Days after delivery of a Step-In Notice;

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

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

(a) the Step-Out Date;

(b) the date of any transfer under Section 6;

(c) the date of any termination under Section 4.5; and

(d) the Expiration Date;

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

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

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

(a) having the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Project Implementation Agreement;

(b) employing or contracting for the services of persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Operations Co under the Project Implementation Agreement; and

(c) not being a Restricted Person;

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

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

(a) the Step-In Date;

(b) the date of service of a Revocation of Termination Notice; and

(c) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a)) set out in the Termination Notice.

1.2 Construction and Interpretation

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

(a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Lenders' Remedies Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;

(b) the table of contents, headings and sub-headings, marginal notes and references to them in this Lenders' Remedies Agreement are for convenience of reference only, do not constitute a part of this Lenders' Remedies Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Lenders' Remedies Agreement;

(c) each reference in this Lenders' Remedies Agreement to "Section" is to a section of this Lenders' Remedies Agreement;

(d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Lenders' Remedies Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, replaced, novated or assigned, and a reference to an "amendment" and similar terms (including "amend" and "amended") include a reference to supplement,

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

(e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;

(f) each reference to time of day is a reference to Eastern Standard time or Eastern Daylight time, as the case may be;

(g) words importing the singular include the plural and vice versa;

(h) words importing a particular gender include all genders;

(i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;

(j) unless the context otherwise requires, each reference to "parties" means the parties to this Lenders' Remedies Agreement and each reference to a "party" means any one of the parties to this Lenders' Remedies Agreement, provided however that a reference to a third party does not mean a party to this Lenders' Remedies Agreement;

(k) all monetary amounts are expressed in U.S. Dollars;

(l) the words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively;

(m) any consent contemplated to be given under this Lenders' Remedies Agreement must be in writing;

(n) general words are not given a restrictive meaning:

(1) if they are introduced by the word "other", by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or

(2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;

(o) the expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of any party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation;

(p) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP;

(q) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day; and

(r) in the event that any provision of this Lenders' Remedies Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Lenders' Remedies Agreement for any party, the provision shall be fully severable and shall not affect the remaining provisions of this Lenders' Remedies Agreement, and this Lenders' Remedies Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein. The parties shall promptly meet and endeavor in good faith to negotiate new provisions to eliminate such illegality, invalidity or unenforceability as much is as possible and to restore this Lenders' Remedies Agreement as nearly as possible to its original intent and effect.

1.3 Law of Agreement

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

1.4 Venue

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

2. CONSENT TO SECURITY

2.1 Consent

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

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

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

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

2.2 No Notice of Other Security

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

2.3 Authority Obligations

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

2.4 Rights not Prejudiced

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

3. NOTICES

3.1 Termination Notice

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

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

(b) the specific grounds for termination.

3.2 Notice of Operations Co Financing Default

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

3.3 Indicative Notice

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

3.4 Collateral Agent's Withdrawal Notice

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

3.5 Notice of Antecedent Liabilities

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

(a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and

(b) any financial liabilities of which the Authority or Project Co, as applicable, is aware (after reasonable inquiry) that will fall due under the Project Agreement or the Project Implementation Agreement, as applicable, on or after the date of

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

(1) in the case of a Termination Notice, the proposed Termination Date set out in that notice; and

(2) in the case of an Indicative Notice, 20 Business Days after the date of delivery of the Indicative Notice.

3.6 Subsequent Authority Notice of Liabilities

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

3.7 No Right to Terminate

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

3.8 Payments to Account Designated by Collateral Agent

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

3.9 Operations Co to Pursue Remedies

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

4. STEP-IN

4.1 Step-In Notice

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

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

4.2 Contents of Step-In Notice

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

(a) state that it intends to exercise its step-in rights under this Lenders' Remedies Agreement; and

(b) identify the Appointed Representative.

4.3 One Step-In Period

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

4.4 Appointed Representative Rights

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

4.5 Authority Right to Terminate

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

(a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the Authority or Project Co, as applicable, on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;

(b) if amounts, of which the Authority or Project Co, as applicable, was not aware (after reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:

(1) if notice of the liability is given to the Collateral Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date or, if the due date for payment thereof is after the Step-In Date, the due date;

(2) if notice of the liability is given to the Collateral Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by the Authority or Project Co, as applicable, acting reasonably, when it gives such notice or as stated by the Collateral Agent, acting reasonably, by notice to the Authority or Project Co, as applicable, within 5 Business Days of receipt of the notice from the Authority or Project Co, as applicable), 20 Business Days after the Step-In Date or, if later, the due date; or

(3) otherwise, 20 Business Days after delivery of the notice or, if later, the due date;

(c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement (other than a Project Co Insolvency Event) or the Project Implementation Agreement (other than an Operations Co Insolvency Event), provided that, for the purposes of termination under the Project Agreement or the Project Implementation Agreement, as applicable, any Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;

(d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement or the Project Implementation Agreement, as applicable, but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities; or

(e) if the System Completion Date does not occur on or before the date that is 6 months after the Longstop Date.

5. STEP-OUT

5.1 Step-Out Notice

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

5.2 Expiration of Step-In Period

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

(a) the rights of the Authority or Project Co, as applicable, against the Appointed Representative and the rights of the Appointed Representative against the Authority or Project Co, as applicable, will be cancelled; and

(b) the Authority or Project Co, as applicable, will no longer deal with the Appointed Representative and will deal with Project Co in connection with the Project Agreement or Operations Co in connection with the Project Implementation Agreement, as applicable.

5.3 Project Co and Operations Co Remain Bound

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

6. SENIOR SECURED CREDITOR REPLACEMENT OF OPERATIONS CO

6.1 Operations Co Transfer Notice

Subject to Section 6.2, at any time:

(a) during a Termination Notice Period;

(b) during an Indicative Notice Period; or

(c) during a Step-In Period,

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

6.2 Authority Consent

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

6.3 Withholding of Consent

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

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

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

6.4 Terms of Transfer

Upon the transfer referred to in Section 6.1 becoming effective:

(a) Operations Co and Project Co will be released from their obligations under the Project Implementation Agreement to each other, including with respect to indemnification under the Project Implementation Agreement whether arising prior to or after such transfer (the "**Discharged Obligations**");

(b) the Suitable Substitute Operations Co and Project Co will assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Operations Co instead of Operations Co;

(c) the rights of Operations Co against Project Co under the Project Implementation Agreement and vice versa (the "**Discharged Rights**") will be cancelled;

(d) the Suitable Substitute Operations Co and Project Co will acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Operations Co instead of Operations Co;

(e) any subsisting ground for termination of the Project Agreement by the Authority or the Project Implementation Agreement by Project Co will be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;

(f) the Authority and Project Co will enter into a lenders' remedies agreement with the Suitable Substitute Operations Co and a representative of Senior Secured Creditors lending to the Suitable Substitute Operations Co on substantially the same terms as this Lenders' Remedies Agreement; and

(g) any Deductions that arose prior to that time will not be taken into account after the transfer for the purposes of Section 12.1(g) of the Project Agreement and the Project Implementation Agreement and Section 6.4 of Schedule 4 to the Project Agreement and the Project Implementation Agreement.

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

7. INSURANCE

7.1 Release of Insurance Proceeds

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

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

8. COVENANTS

8.1 Authority Covenants

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

(a) as soon as is reasonably practicable, at Operations Co's or the Collateral Agent's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Operations Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Lenders' Remedies Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Operations Co reasonably requires;

(b) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:

(1) appoint an Insolvency Officer;

(2) commence any Bankruptcy Proceedings;

(3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and will, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;

(4) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by Project Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Secured Creditor in respect of any monies owing to it by Project Co for or on account of Project Co's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or

(5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.1(b)(1), (2), (3) or (4) above;

(c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the Authority and a third party, the effect of which would be reasonably likely to render the Authority unable to satisfy its obligations under the Project Agreement; and

(d) not issue a Step-In Notice or Proposed Transfer Notice (as defined in the Design-Builder Collateral Agreement or the Service Provider Collateral Agreement, as applicable) under the Design-Builder Collateral Agreement or the Service

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

8.2 Project Co Covenants

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

(a) as soon as is reasonably practicable, at Operations Co's or the Collateral Agent's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Operations Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Lenders' Remedies Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Operations Co reasonably requires;

(b) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:

(1) appoint an Insolvency Officer;

(2) commence any Bankruptcy Proceedings;

(3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and will, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;

(4) without prejudice to its rights of set-off under the Project Implementation Agreement, including rights to take amounts owing by Operations Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Secured Creditor in respect of any monies owing to it by Operations Co for or on account of Operations Co's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or

(5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.2(b)(1), 8.2(b)(2), 8.2(b)(3) or 8.2(b)(4) above; and

(c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between Project Co and a third party, the effect of which would be reasonably likely to render Project Co unable to satisfy its obligations under the Project Implementation Agreement.

8.3 Collateral Agent Covenants

The Collateral Agent will promptly:

(a) notify the Authority when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event will so notify no later than 20 Business Days after its occurrence;

(b) prior to the taking of any such action, notify the Authority of any decision by the Senior Secured Creditors to take action under any acceleration rights, security enforcement rights, step-in rights or transfer rights provisions of the Collateral Agency and Account Agreement, including those rights under Section 13.2 (Rights and Remedies Upon Default) of the Collateral Agency and Account Agreement, together with reasonable details of any such action;

(c) unless notice is already provided under the above provisions, notify the Authority of any decision by the Senior Secured Creditors to:

(1) appoint an Insolvency Officer;

(2) commence any Bankruptcy Proceedings;

(3) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or

(4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in Sections 8.3(c)(1), (2) or (3) above; and

(d) upon request by the Authority, cause all security on any real or personal property comprised in the NG-KIH System to be promptly discharged and released on the date requested by the Authority (which will be on or after the Termination Date).

8.4 Operations Co Covenant

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

9. STEP-IN RIGHTS UNDER PROJECT CONTRACTS

9.1 Priority of Step-In Rights under Project Contracts

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

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

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

9.2 Step-in from Termination Date

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

9.3 Release of Security

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

9.4 Retention of Security for Deficiency

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

(a) the Senior Secured Creditors will not, and will not be entitled to, exercise any rights or enforce any security in respect of any such claim during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and

(b) the rights in relation to the security retained by the Senior Secured Creditors pursuant to this Section 9.4 may only be exercised if and to the extent that the Termination Payment actually paid by the Authority pursuant to Section 2 or Section 3 of Schedule 9 to the Project Agreement is less than the Senior Debt (the amount by which the Termination Payment is (or, in the reasonable opinion of the Collateral Agent, is likely to be) less than the Senior Debt being herein referred to as the "**Deficiency**").

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

9.5 Assignment of Project Contracts by Senior Secured Creditors

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

10. NEW AGREEMENTS

10.1 Applicability of Section 10

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

10.2 Termination of Project Implementation Agreement and Replacement with New Agreements

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

10.3 Deliveries to Project Co

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

10.4 Authority to Enter into New Agreements

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

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

10.5 Conditions to New Agreements Becoming Effective

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

(a) pay to Project Co:

(1) any and all sums which would, at the time of the execution of the New Agreements, be due under the Project Implementation Agreement but for such termination; and

(2) the amount of any compensation on termination previously paid by Project Co under the Project Implementation Agreement, with interest thereon at the Prime Rate from the date the compensation on termination was paid until so reimbursed;

(b) otherwise fully remedy any existing Operations Co Event of Default under the Project Implementation Agreement (provided, however, that any Operations Co Insolvency Event need not be remedied and with respect to any Operations Co Event of Default which cannot be cured until the Collateral Agent or other Senior Secured Creditors' Representative obtains possession, custody and control of the Project, it shall have such time, after it obtains such possession, custody and control as is necessary using all reasonable efforts to cure such Operations Co Event of Default); and

(c) without duplication of amounts previously paid by Operations Co, pay to Project Co all reasonable costs, fees and expenses incurred by Project Co in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy or related proceeding, (iii) the recovery of possession, custody and control of the Project, (iv) all Project Co activities during its period of possession, custody and control of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, minus the lesser of (A) the foregoing clause (iv) amount and (B) the amount of the Operations Co Payments, if any, that would have been paid during such period had the Project Implementation Agreement not been terminated and had there been no adjustments to such Operations Co Payments, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or other Senior Secured Creditors' Representative, Project Co will provide a written, documented statement of such costs, fees and expenses.

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

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

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

10.7 Terms of New Agreements

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

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties by the Authority

The Authority represents and warrants to the Collateral Agent that:

(a) the Authority has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Lenders' Remedies Agreement or the Project Agreement;

(b) the execution and delivery of this Lenders' Remedies Agreement, the Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Lenders' Remedies Agreement or the Project Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement and the Project Agreement, have been duly authorized by all necessary action on the part of the Authority, and this Lenders' Remedies Agreement and the Project Agreement have been duly executed and delivered by the Authority and constitute legal, valid and binding obligations of the Authority enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application;

(c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Authority Event of Default, the Authority is not aware of any Project Co Event of Default and there exists no event or condition of which the Authority is aware that would, with the giving of notice or passage of time or both, constitute an Authority Event of Default or a Project Co Event of Default;

(d) the execution and delivery by the Authority of this Lenders' Remedies Agreement, and the performance by the Authority of its obligations hereunder, will not conflict with any Laws applicable to the Authority that are valid and in effect on the date of execution and delivery; and

(e) as of the date of the execution of this Lenders' Remedies Agreement, there is no action, suit, proceeding, investigation or litigation pending and served on the

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

11.2 Representations and Warranties by Project Co

Project Co represents and warrants to the Collateral Agent that:

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

(b) the execution and delivery of this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Lenders' Remedies Agreement, the Project Agreement or the Project Implementation Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement, the Project Agreement and the Project Implementation Agreement, have been duly authorized by all necessary action on the part of Project Co, and this Lenders' Remedies Agreement, the Project Agreement and the Project Implementation Agreement have been duly executed and delivered by Project Co and constitute legal, valid and binding obligations of Project Co enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and

(c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Project Co Event of Default, Project Co is not aware of any Authority Event of Default or Operations Co Event of Default and there exists no event or condition of which Project Co is aware that would, with the giving of notice or passage of time or both, constitute a Project Co Event of Default, an Authority Event of Default or an Operations Co Event of Default.

11.3 Representations and Warranties by Operations Co

Operations Co represents and warrants to the Collateral Agent that:

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

(b) the execution and delivery of this Lenders' Remedies Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Lenders' Remedies Agreement or the Project Implementation Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement and the Project Implementation Agreement, have been duly authorized by all necessary action on the part of Operations Co, and this Lenders' Remedies Agreement and the Project Implementation Agreement have been duly executed and delivered by Operations Co and constitute legal, valid and binding obligations of Operations Co enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and

(c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Operations Co Event of Default, Operations Co is not aware of any Project Co Event of Default and there exists no event or condition of which Operations Co is aware that would, with the giving of notice or passage of time or both, constitute an Operations Co Event of Default or an Project Co Event of Default.

11.4 Representations and Warranties by the Collateral Agent

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

(a) the Collateral Agent has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement and all other documents, instruments and agreements required to be executed and delivered by the Collateral Agent pursuant to this Lenders' Remedies Agreement;

(b) this Lenders' Remedies Agreement has been duly executed and delivered by the Collateral Agent and constitutes a legal, valid and binding obligation of the Collateral Agent enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and

(c) the Collateral Agent:

(1) has no ownership interest in any other party to this Lenders' Remedies Agreement or either Project Contractor; and

(2) does not Control, is not Controlled by and is not under common Control with any other party to this Lenders' Remedies Agreement or either Project Contractor.

12. ASSIGNMENT

12.1 Restriction on Assignment

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

12.2 Assignment by Collateral Agent

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

12.3 Assignment by Senior Secured Creditors

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

12.4 Assignment by Authority

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

12.5 New Agreement

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

13. GENERAL

13.1 Term

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

(a) the Senior Debt Discharge Date; and

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

13.2 Conflict or Inconsistency

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

13.3 Entire Agreement

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

13.4 Waiver

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

13.5 Counterparts

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

13.6 Confidentiality

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

13.7 Notices

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

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary

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

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

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

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

If to the Collateral Agent:

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

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

If to Project Co:

KentuckyWired Infrastructure Company, LLC
[redacted]

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

with a copy to:

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

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

If to Operations Co:

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

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

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

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

(a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

(b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:

(1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or

(2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

13.8 No Partnership or Agency

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

13.9 Remedies Cumulative

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

13.10 Disputes

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

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

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

THE COMMONWEALTH OF KENTUCKY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Commonwealth.

U.S. BANK NATIONAL ASSOCIATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

KENTUCKYWIRED INFRASTRUCTURE COMPANY, INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

KENTUCKYWIRED OPERATIONS COMPANY, LLC

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the corporation.

EXHIBIT E

CAPITAL CONTRIBUTION AGREEMENT

See attached.

CAPITAL CONTRIBUTION AGREEMENT

KentuckyWired Operations Holding Company, LLC

and

KentuckyWired Operations Company, LLC

and

Macquarie NG-KIH Holdings, LLC

and

Ledcor US Ventures Inc.

and

First Solutions LLC

and

U.S. Bank National Association

Dated: September 3, 2015

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CAPITAL CONTRIBUTION AGREEMENT

THIS CAPITAL CONTRIBUTION AGREEMENT (this "**Agreement**") is dated as of September 3, 2015 and made among:

KentuckyWired Operations Holding Company, LLC, a limited liability company organized and existing under the laws of Delaware ("**Operations Holdco**"); KentuckyWired Operations Company, LLC, a limited liability company organized and existing under the laws of Delaware ("**Operations Co**"); Macquarie NG-KIH Holdings, LLC, a limited liability company organized and existing under the laws of Delaware (the "**Macquarie Sponsor**"); Ledcor US Ventures Inc., a corporation incorporated and existing under the laws of Nevada (the "**Ledcor Sponsor**"); First Solutions LLC, a limited liability company formed and existing under the laws of Idaho (the "**First Solutions Sponsor**", each of the Macquarie Sponsor, the Ledcor Sponsor and the First Solutions Sponsor, and each of their respective permitted successors and assigns, a "**Sponsor**" and together, the "**Sponsors**"); and U.S Bank National Association, a national banking association, in its capacity as collateral agent for, and acting for the benefit of, the Secured Parties (as defined below) (the "**Collateral Agent**").

RECITALS

A. Pursuant to that certain Project Agreement, dated as of September 3, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "**Project Agreement**"), between the Borrower and the Commonwealth of Kentucky, the Borrower has agreed to design, build, finance, operate and maintain the NG-KIH System.

B. Pursuant to that certain Senior Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "**Senior Indenture**"), between the Kentucky Economic Development Finance Authority, as issuer (the "**Issuer**"), and U.S. Bank National Association, as trustee, the Issuer has authorized the issuance of up to $289,946,000 in aggregate principal amount of Kentucky Economic Development Finance Authority Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015A and Taxable Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015B, the proceeds from the sale of which will be loaned to the Borrower pursuant to the terms of a senior loan agreement, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "**Senior Loan Agreement**"), among the Issuer and the Borrower to be used to finance a portion of the costs of the Project.

C. Pursuant to that certain Subordinate Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "**Subordinate Indenture**"), between the Issuer and U.S. Bank National Association, as trustee, the Issuer has authorized the issuance of up to $15,229,110 in aggregate principal amount of Kentucky Economic Development Finance Authority Subordinate Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015C, the proceeds from the sale of which will be loaned to the Borrower pursuant to the terms of a subordinate loan agreement, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "**Subordinate Loan Agreement**"), among the Issuer and the Borrower to be used to finance a portion of the costs of the Project.

D. Pursuant to that certain Collateral Agency and Account Agreement, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time,

the "**Collateral Agency Agreement**"), among, *inter alios*, the Collateral Agent and the Borrower, the Collateral Agent has been appointed as collateral agent by or on behalf of the parties named as "**Secured Parties**" thereunder to act on behalf, and for the benefit, of the Secured Parties with respect to the Collateral, subject to the terms and conditions of the Financing Documents.

E. Pursuant to that certain Project Implementation Agreement, dated as of September 3, 2015, between the Borrower and Operations Co, Operations Co has agreed to design, build, operate and maintain the NG-KIH System on behalf of the Borrower.

F. As of the date hereof, Operations Holdco is the direct holder of 100% of the outstanding membership interests of Operations Co.

G. As of the date hereof, the Macquarie Sponsor is the direct holder of 75% of the outstanding membership interests of Operations Holdco, the Ledcor Sponsor is the direct holder of 15% of the outstanding membership interests of Operations Holdco and the First Solutions Sponsor is the direct holder of 10% of the outstanding membership interests of Operations Holdco.

H. It is a condition precedent to the financing arrangements contemplated by the Senior Indenture, the Senior Loan Agreement, the Subordinate Indenture, the Subordinate Loan Agreement and the other Financing Documents that this Agreement has been executed and delivered by the Parties.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

All capitalized terms used herein (including the recitals) but not otherwise defined herein shall have the respective meanings given to such terms in Exhibit A to the Collateral Agency Agreement. The rules of interpretation set forth in Exhibit A to the Collateral Agency Agreement shall apply to this Agreement. In addition, the terms set forth below shall have the following meanings:

"**Additional Capital Contribution**" has the meaning set forth in Section 2.2.

"**Agreement**" has the meaning set forth in the preamble.

"**Available Funding Commitment**" means, with respect to each Sponsor, an amount equal to such Sponsor's Total Funding Commitment Amount less the amount of any and all Capital Contributions previously made or deemed to have been made by such Sponsor in accordance with the terms of this Agreement.

"**Borrower**" means KentuckyWired Infrastructure Company, Inc., a non-profit corporation incorporated under the laws of Kentucky.

"**Capital Contribution**" has the meaning set forth in Section 2.1 (for the avoidance of doubt, including amounts drawn from the Capital Contribution Letters of Credit and deposited into the Operations Co Operating Account as set forth in Section 2.3(a) and amounts transferred from the Capital Contribution Cash Collateral Account to the Operations Co Operating Account as set forth in Section 2.3(d)).

"**Capital Contribution Cash Collateral Account**" has the meaning set forth in Schedule 15 to the Project Implementation Agreement.

"**Capital Contribution LC Fees**" has the meaning set forth in Schedule 15 to the Project Implementation Agreement.

"**Capital Contribution Letter of Credit**" has the meaning set forth in Section 2.3(a).

"**Collateral Agency Agreement**" has the meaning set forth in the recitals.

"**Collateral Agent**" has the meaning set forth in the preamble.

"**Contribution Notice**" means a notice to be delivered by Operations Co to the Sponsors, Operations Holdco and the Collateral Agent indicating that a Capital Contribution is required to be made by the Sponsors by a certain date (such date to be at least five (5) Business Days after the date of delivery of such Contribution Notice) in accordance with Section 2.1(a) of this Agreement.

"**Contribution Percentage**" means, with respect to the Macquarie Sponsor, 75%, with respect to the Ledcor Sponsor, 15% and, with respect to the First Solutions Sponsor, 10%, or such other percentage as results following a transfer of any membership interests in Operations Holdco by a member of Operations Holdco to the extent permitted or otherwise waived under the Operations Holdco LLC Agreement, the Project Agreement and the Financing Documents.

"**Defaulting Sponsor**" has the meaning set forth in Section 2.6(a).

"**Dollars**" means the lawful currency of the United States of America.

"**First Solutions Sponsor**" has the meaning set forth in the preamble.

"**Initial Capital Contribution Amount**" means $4,200,714.67.

"**Issuer**" has the meaning set forth in the recitals.

"**Ledcor Sponsor**" has the meaning set forth in the preamble.

"**Macquarie Sponsor**" has the meaning set forth in the preamble.

"**Operations Co**" has the meaning set forth in the preamble.

"**Operations Co Financing Default**" has the meaning set forth in the Collateral Agency Agreement.

"**Operations Co Operating Account**" has the meaning set forth in the Collateral Agency Agreement.

"**Operations Holdco**" has the meaning set forth in the preamble.

"**Operations Holdco LLC Agreement**" means that certain Amended and Restated Limited Liability Company Agreement of Operations Holdco, dated as of August 27, 2015, as the same may be amended, restated or otherwise modified from time to time.

"**Party**" means a party to this Agreement.

"**Project Agreement**" has the meaning set forth in the recitals.

"**Release Date**" means the earlier of (i) the date on which the Senior Indenture has been discharged in accordance with Section 11.1 thereof and the Senior Secured Obligations have been paid in full and the Subordinate Indenture has been discharged in accordance with Section 11.1 thereof and the Subordinate Secured Obligations have been paid in full and (ii) the System Completion Date (after giving effect to any Sponsor's obligations contemplated to be performed by such Sponsor in Section 2.1(d) on such date).

"**Replacement Capital Contribution Letter of Credit**" has the meaning set forth in Section 2.3(b).

"**Secured Parties**" has the meaning set forth in the recitals.

"**Senior Indenture**" has the meaning set forth in the recitals.

"**Senior Loan Agreement**" has the meaning set forth in the recitals.

"**Sponsor**" has the meaning set forth in the preamble.

"**Subordinate Indenture**" has the meaning set forth in the recitals.

"**Subordinate Loan Agreement**" has the meaning set forth in the recitals.

"**Total Funding Commitment Amount**" means, with respect to the Macquarie Sponsor, $4,895,071.17, with respect to the Ledcor Sponsor, $979,014.23, and with respect to the First Solutions Sponsor, $652,676.16.

2. SPONSORS' OBLIGATIONS REGARDING CAPITAL CONTRIBUTIONS

2.1 Capital Contributions

Each Sponsor hereby commits and undertakes to make, or to cause any of its Affiliates to make on its behalf, one or more cash capital contributions to Operations Holdco (each a "**Capital Contribution**") in the manner and at such times as contemplated in this Section 2.1, as follows; provided, however, that notwithstanding anything in this Section 2.1 to the contrary, in no event shall the obligation of any Sponsor under this Section 2.1 exceed either alone or in the aggregate with such Sponsor's previous Capital Contributions, such Sponsor's Total Funding Commitment Amount.

(a) On or prior to the Closing Date, each Sponsor shall make, or cause to be made through any of its Affiliates, a Capital Contribution in an amount equal to such Sponsor's Contribution Percentage of the Initial Capital Contribution Amount.

(b) From time to time following the Closing Date and prior to the System Completion Date and not later than 5 Business Days following receipt of a Contribution Notice from Operations Co, each Sponsor shall make, or cause to be made through any of its Affiliates, a Capital Contribution in an amount equal to such

Sponsor's Contribution Percentage of the amount set forth in any such Contribution Notice. Operations Co shall deliver a Contribution Notice if, and only to the extent that, the amounts available in the Operations Co Operating Account are insufficient to pay Project Costs due and owing at such time or projected to become due and payable within the next 30 days; provided, however, that Operations Co shall not deliver a Contribution Notice, and the Sponsors shall not be required to make Capital Contributions pursuant to this Section 2.1(a), prior to the issuance of all of the Subordinate Bonds pursuant to the Subordinate Indenture.

(c) Upon the occurrence and during the continuance of an Operations Co Financing Default prior to the System Completion Date, each Sponsor will promptly, and in any event within 5 Business Days following notice from the Collateral Agent, make a Capital Contribution in an amount equal to such Sponsor's Available Funding Commitment as of such date.

(d) On the System Completion Date, Operations Co shall provide each Sponsor with notice that System Completion has occurred. Each Sponsor agrees that, upon receipt of such notice from Operations Co, it will promptly, and in any event within 5 Business Days following such notice, make a Capital Contribution in an amount equal to such Sponsor's Available Funding Commitment as of such date.

(e) Each Sponsor shall deposit all Capital Contributions made by such Sponsor pursuant to this Section 2.1 into the Operations Co Operating Account and such deposit shall be deemed to be a contribution by such Sponsor to Operations Holdco and a contribution by Operations Holdco to Operations Co in an amount equal to such Capital Contribution. Each of Operations Holdco and Operations Co hereby irrevocably directs each Sponsor to deposit all Capital Contributions made by such Sponsor pursuant to this Section 2.1 to the Operations Co Operating Account. A Capital Contribution shall be deemed to be made by a Sponsor pursuant to this Section 2.1 only upon deposit of the relevant funds by such Sponsor in the Operations Co Operating Account.

2.2 Additional Capital Contributions

Notwithstanding any of the foregoing, but subject to the limitations contained in the Operations Holdco LLC Agreement, each Sponsor retains the option to contribute additional funds to the capital of Operations Holdco at any time (each such contribution, an "**Additional Capital Contribution**") and Operations Holdco may, in its sole discretion, retain such Additional Capital Contribution or contribute it to Operations Co.

2.3 Capital Contribution Letters of Credit Requirements

(a) The obligations of each Sponsor under Section 2.1 shall, as of and following the Closing Date, be secured by one or more Acceptable Letters of Credit for which such Sponsor is the account party (or for which such Sponsor shall cause its applicable Affiliate to be the account party), which shall have reimbursement obligations that are not recourse to the Borrower, Operations Holdco or Operations Co, substantially in the form attached hereto as Attachment A (or such other form reasonably acceptable to the Collateral Agent) (each a "**Capital Contribution Letter of Credit**") for the obligations of such Sponsor under

Section 2.1, in a face amount equal to its Available Funding Commitment as of the date of delivery of such Capital Contribution Letter of Credit. For certainty, the face amount of the Capital Contribution Letter of Credit delivered by each Sponsor on the Closing Date shall be equal to such Sponsor's Available Funding Commitment after giving effect to the Capital Contribution made by such Sponsor pursuant to Section 2.1(a).

Unless a Sponsor has performed its obligation to contribute capital under Section 2.1 within 5 Business Days of the due date for such performance, the Collateral Agent shall draw on the Capital Contribution Letter of Credit issued on behalf of such Sponsor for the purposes of satisfying the obligations of such Sponsor set forth in Section 2.1 and shall deposit the proceeds of such draw in the Operations Co Operating Account. Amounts drawn from a Capital Contribution Letter of Credit and deposited into the Operations Co Operating Account to satisfy the obligations of a Sponsor under Section 2.1 shall be deemed to be a Capital Contribution under this Agreement.

(b) In the event that the issuer of a Capital Contribution Letter of Credit fails to satisfy the requirements of an Acceptable Bank and upon receipt of a notice to that effect from Operations Co (with a copy to the Collateral Agent), the Sponsor on whose behalf such Capital Contribution Letter of Credit has been issued shall be required to replace such Capital Contribution Letter of Credit with a Capital Contribution Letter of Credit from an Acceptable Bank in the face amount of such Sponsor's Available Funding Commitment as of such date (each a "**Replacement Capital Contribution Letter of Credit**") within 30 days after notice of such failure. In the event that such Sponsor fails to provide such Replacement Capital Contribution Letter of Credit within such period, the Collateral Agent shall draw on the full undrawn amount of such Capital Contribution Letter of Credit and deposit the proceeds of such draw in the Capital Contribution Cash Collateral Account.

(c) In the event that a Capital Contribution Letter of Credit issued on behalf of a Sponsor with respect to its obligations under Section 2.1 expires prior to the System Completion Date (or, if earlier, prior to the satisfaction of the obligations of such Sponsor under this Agreement) such Sponsor shall replace such Capital Contribution Letter of Credit with a Replacement Capital Contribution Letter of Credit at least 30 days prior to the stated expiry date of the existing Capital Contribution Letter of Credit and such Replacement Capital Contribution Letter of Credit shall be in an amount equal to at least the amount of such Sponsor's Available Funding Commitment as of such date; provided; however, that if the Sponsor fails to provide such Replacement Capital Contribution Letter of Credit the Collateral Agent shall draw on the existing Capital Contribution Letter of Credit of such Sponsor and deposit the proceeds of such draw in the Capital Contribution Cash Collateral Account.

(d) Amounts deposited in the Capital Contribution Cash Collateral Account pursuant to a draw made by the Collateral Agent on a Capital Contribution Letter of Credit pursuant to Section 2.3(b) or (c) shall constitute cash collateral security for the performance by the Sponsor whose Capital Contribution Letter of Credit was drawn of its obligations under this Agreement. The Collateral Agent shall transfer to the Operations Co Operating Account cash collateral security deposited in the

Capital Contribution Cash Collateral Account only at such times and in such amounts as the Collateral Agent would have been entitled to draw on the Capital Contribution Letter of Credit of the relevant Sponsor under Section 2.3(a), and any such transfer shall be deemed to be a Capital Contribution by the relevant Sponsor.

(e) In the event that the applicable Sponsor shall have, following a drawing on a Letter of Credit under either Section 2.3(b) or Section 2.3(c), delivered a Replacement Capital Contribution Letter of Credit, then, upon the written request of such Sponsor, the Collateral Agent shall transfer the previously drawn amounts (up to the face amount of the Replacement Capital Contribution Letter of Credit delivered by such Sponsor) from the Capital Contribution Cash Collateral Account to the applicable Sponsor.

(f) In the event that the Collateral Agent is entitled to draw on a Capital Contribution Letter of Credit pursuant to Section 2.3(a), (b) or (c), or to transfer funds from the Capital Contribution Cash Collateral Account to the Operations Co Operating Account pursuant to Section 2.3(d), and the Collateral Agent fails to do so, Operations Co shall have the right to direct to Collateral Agent to draw on the relevant Capital Contribution Letter of Credit or make such transfer by providing a written direction to the Collateral Agent instructing it to make such draw or transfer and specifying the amount to be drawn or transferred, as the case may be, and the Collateral Agent shall comply with such direction from Operations Co.

(g) A Sponsor shall be entitled to replace its relevant Capital Contribution Letter of Credit at any time and from time to time upon written notice to the Collateral Agent with a Replacement Capital Contribution Letter of Credit in an aggregate face amount equal to such Sponsor's Available Funding Commitment as of such date of replacement. The Collateral Agent agrees to promptly (and in any event within 3 Business Days) return the replaced Capital Contribution Letter of Credit to the relevant Sponsor marked cancelled or otherwise terminate such Capital Contribution Letter of Credit in accordance with the terms thereof. In lieu of any such replacement, a Sponsor may request in writing that the Collateral Agent request a reduction in the face amount thereof to an amount equal to such Sponsor's Available Funding Commitment at such time (as set forth in such written notice) in accordance with the terms thereof, and the Collateral Agent shall promptly deliver such request to the relevant issuing bank, with a copy to such Sponsor.

(h) Operations Co shall pay each Sponsor monthly its relevant portion of the Capital Contribution LC Fees.

(i) The Collateral Agent shall transfer to each applicable Sponsor monthly all interest earned on any cash collateral of such Sponsor in the Capital Contribution Cash Collateral Account.

(j) For the avoidance of doubt, in the event of a transfer of a Sponsor's Capital Contribution Letter of Credit in accordance with the terms hereof and thereof, any transfer fee payable to the relevant Acceptable Bank in respect of such transfer shall be payable by such Sponsor.

(k) Prior to the deposit of any amounts into the Capital Contribution Cash Collateral Account, the Collateral Agent, Operations Co and the applicable Deposit Account Bank (as defined in the Collateral Agency Agreement) shall have executed an account control agreement in the form attached as Exhibit G to the Collateral Agency Agreement with respect to the Capital Contribution Cash Collateral Account.

2.4 Benefit of Capital Contributions

This Agreement is not intended for the benefit of any Person other than Operations Holdco, Operations Co, the Borrower, the Collateral Agent and the Secured Creditors, and does not, and shall not be deemed to, confer upon any such other Person any benefits, rights or remedies hereunder. No creditor of Operations Holdco or Operations Co or the Borrower (other than the Collateral Agent acting on behalf of the Secured Parties) shall have the right or standing to enforce this Agreement or any obligation created hereby.

2.5 Nature of Obligations

(a) Subject to Section 4.5 and Section 4.16, the obligation of each Sponsor to make Capital Contributions hereunder shall be irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any Financing Document or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for the Capital Contributions or any Secured Obligation, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 2.5(a) that the obligation of each Sponsor hereunder shall be absolute and unconditional under any and all circumstances (other than as contemplated in this Agreement).

(b) To the greatest extent permitted by applicable law, the obligations of each Sponsor to make Capital Contributions hereunder shall not be subject to any abatement, reduction, limitation, impairment, termination, set-off, defense, counterclaim or recoupment whatsoever or any right to any thereof. Without limiting the generality of the foregoing, and except as otherwise expressly provided herein, each Sponsor agrees that, to the greatest extent permitted by applicable law, the occurrence of any one or more of the following (with or without notice to any of the Sponsors) shall not alter or impair the liability of each Sponsor hereunder, which shall remain absolute and unconditional (other than as contemplated in this Agreement) as described above:

(i) at any time or from time to time, the time for any performance of or compliance with any Secured Obligation shall be extended, or such performance or compliance shall be waived;

(ii) any Financing Document or any Secured Obligation being or becoming illegal, invalid or ineffective in any respect;

(iii) any Secured Obligation shall be accelerated or modified, supplemented or amended in any respect, or any right under any Financing Document or any other agreement or instrument referred to herein or therein shall be

waived or any guarantee of any Secured Obligation or any security therefor shall be released or exchanged in whole or in part;

(iv) any Lien granted to, or in favor of, the Collateral Agent or any other Secured Party as security for any Capital Contribution or any Secured Obligation shall fail to be perfected;

(v) a Bankruptcy Event of the Borrower, Operations Co, the Sponsors or any Affiliate thereof or any other Person shall occur, except upon the effectiveness of any transfer of the applicable membership interest of such Sponsor to the extent permitted or otherwise waived under the terms of the Operations Holdco LLC Agreement, the Project Agreement and the Financing Documents;

(vi) this Agreement or any other Financing Document, or any other agreement referred to herein or therein, shall be rejected in any bankruptcy of the Borrower, Operations Co, the Sponsors or any Affiliate thereof (nothing herein being a concession that any Secured Obligation hereunder or thereunder is properly classifiable as an executory obligation);

(vii) Operations Co shall fail to pay any fee or provide other consideration to the Sponsors or any Affiliate thereof in consideration of its entering into, or any failure of consideration related to, this Agreement or any other Financing Document, or making any Capital Contribution;

(viii) any Operations Co Financing Default shall occur or be continuing or any other default or event of default shall occur or be continuing under any Financing Document as a result thereof or otherwise;

(ix) any Taxes that may have been payable in respect of the transactions contemplated by the Financing Documents shall fail to be paid or the Financing Documents shall fail to be registered with any Governmental Authority;

(x) any change shall occur in the scope of the Project or in the economic viability of the Project;

(xi) any substitution, release or exchange of the Collateral shall occur;

(xii) any exercise of remedies by the Collateral Agent or any Secured Party pursuant to the terms of any Financing Document (including, without limitation, the transfer of all or any portion of any of the Borrower's or Operations Co's assets to a successor entity or other party in accordance with the terms of the Transaction Documents in connection with any such exercise of remedies) or any failure by the Collateral Agent or any Secured Party to exercise any right or pursue any remedy it might have against the Borrower, Operations Co or any other party to any Financing Document; or

(xiii) any other circumstances (including any statute of limitations) shall arise or exist, whether or not similar to the foregoing, that might otherwise constitute a defense available to, or a legal or equitable discharge of, any Sponsor's obligations under this Agreement (other than compliance in full with the terms of this Agreement and any discharge contemplated hereby).

(c) Except with respect to the delivery of a Contribution Notice or any other notice expressly contemplated hereunder, each Sponsor hereby expressly waives, to the greatest extent permitted by applicable law, diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Collateral Agent or any other Secured Party exhaust any right, power or remedy or proceed against the Borrower under any Financing Document or any other Person under this Agreement or any Financing Document or any other agreement or instrument referred to herein or therein, or against any other Person under any guarantee of, or security for, any Secured Obligation, which could be interpreted to be a condition precedent or prerequisite to the obligations of each of the Sponsors under this Agreement.

(d) Each Sponsor hereby irrevocably waives, to the greatest extent that it may do so under applicable law, any defense based on the adequacy of a remedy at law which may be asserted as a bar to the remedy of specific performance in any action brought against such Sponsor for specific performance of this Agreement by the Collateral Agent.

(e) All Capital Contributions or other payments required to be made pursuant to the terms of this Agreement shall be made free and clear of, and without deduction for, any and all present or future Taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

2.6 Defaulting Sponsor

(a) If (i) a Sponsor fails to make a payment due by it in accordance with the provisions of Section 2.1; and (ii) payment is not made by the issuer of such Sponsor's relevant Capital Contribution Letter of Credit, if any, following a demand by the Collateral Agent pursuant to Section 2.3, such Sponsor shall be a "**Defaulting Sponsor**" for the purposes of this Agreement.

(b) Where a Sponsor is a Defaulting Sponsor, each other Sponsor shall have the right, but not the obligation, to provide payment of the relevant Capital Contribution on behalf of the Defaulting Sponsor, provided that they exercise such option by providing notice to the Collateral Agent within 2 Business Days of the relevant Sponsor becoming a Defaulting Sponsor.

(c) The Collateral Agent acknowledges that any such payment(s) pursuant to Section 2.6(b) shall be deemed to satisfy the Defaulting Sponsor's obligations under this Agreement in respect of any non-payment referred to in Section 2.6(a) and shall not give rise to an Operations Co Financing Default or any other default or event of default under any Financing Document.

3. REPRESENTATIONS AND WARRANTIES

3.1 Sponsor Representations

Each Sponsor, severally on its own behalf, hereby represents and warrants to the Collateral Agent and the other Secured Parties, as the date hereof, that:

(a) it is duly formed, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization;

(b) it has full power and authority to conduct its business as now conducted and as proposed to be conducted by it and to execute, deliver and perform its obligations under this Agreement;

(c) all necessary action on its part required to authorize the execution, delivery and performance of this Agreement has been duly and effectively taken;

(d) this Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law), except to the extent such relief has been lawfully waived pursuant to the terms of this Agreement;

(e) none of the execution, delivery or performance by it of this Agreement violates or constitutes a default or requires consent (except for such consents that have been obtained) by any other Person under any material law applicable to such Person or the Project, or any other material contractual obligation to which it is a party;

(f) no material consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority is required to be obtained by it in connection with the execution, delivery, performance, validity or enforceability of this Agreement, other than those consents, authorizations and filings which have been obtained and which are in full force and effect or those acts which have been done;

(g) neither it nor any of its property enjoys any right of immunity from set-off, suit or execution in respect of its assets or its obligations under this Agreement;

(h) it has not taken any action, nor to the best of its knowledge, after due inquiry, have any other steps been taken or legal proceedings been started or threatened against it, that could reasonably be expected to have a material and adverse effect on the financial condition, results of operations or business of the Sponsor or the ability of the Sponsor to perform its obligations under this Agreement, or result in its bankruptcy;

(i) it is not an "**Investment Company**" within the meaning of the Investment Company Act of 1940, as amended; and

(j) it is not insolvent.

3.2 Secured Party Reliance

Each Sponsor acknowledges that it has made the representations and warranties in Section 3.1 with the intention of inducing (i) the Collateral Agent to enter into this Agreement and (ii) each Secured Party to enter into the Financing Documents to which it is a party and that the Collateral Agent has entered into this Agreement on the basis of and in full reliance on such representations and warranties.

3.3 Rights Not Prejudiced

The rights and remedies of the Collateral Agent and all of the other Secured Parties in relation to any misrepresentation or breach of warranty on the part of any Sponsor shall not be prejudiced by any investigation by or on behalf of the Collateral Agent or such Secured Party into the affairs of such Sponsor, by the execution of this Agreement or by any act or thing (other than a waiver in writing by the Collateral Agent or such Secured Party of such misrepresentation or breach, and in such case only in respect of such misrepresentation or breach) which may be done by or on behalf of the Collateral Agent or such Secured Party in connection with this Agreement and which might prejudice such rights or remedies.

4. MISCELLANEOUS

4.1 Costs, Fees and Expenses

Each Sponsor shall pay to or, as the case may be, reimburse the Collateral Agent the costs and expenses reasonably incurred by the Collateral Agent in relation to the enforcement or protection of its rights under this Agreement against such Sponsor, including reasonable legal and other professional fees and any Taxes, duties, fees or other charges payable by the Collateral Agent with respect thereto.

4.2 Notices

(a) **Communications in Writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by mail, e-mail or courier service.

(b) **Address and Delivery**

Any notice, demand or information report to be made by one party to another under or in connection with this Agreement shall be sent or delivered by mail, e-mail or courier service and all such notices and communications shall, when mailed, e-mailed or sent by courier, be effective when deposited in the mail or overnight courier, as the case may be, or sent by e-mail. All notices and other communications shall be in writing and addressed to such party at the address of such other party as identified with its name below (or such other address as such other party may previously have specified to the other party in writing):

For Macquarie Sponsor:

Macquarie NG-KIH Holdings, LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
E-mail: Nick.Hann@Macquarie.com

For Ledcor Sponsor:

Ledcor US Ventures Inc.
6405 Mira Mesa Blvd., Suite 100
San Diego, CA 92121

Attention : Tom Lofaro
Email: Tom.Lofaro@Ledcor.com

For First Solutions Sponsor:

First Solutions, LLC
663 Main Avenue East
Twin Falls, ID
83301

Attention : Joe Shelton
Email: [redacted]

For Operations Co:

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

Attention: Nicholas Hann
E-mail: Nick.Hann@Macquarie.com

For Operations Holdco:

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

Attention: Nicholas Hann
E-mail: Nick.Hann@Macquarie.com

For the Collateral Agent:

U.S. Bank National Association
Global Corporate Trust Services

One Financial Square
Louisville, KY 40202

Attention: Amy Anders
Email: amy.anders@usbank.com

(c) **Notification of Address and Fax Number**

Promptly upon a change of its address and/or e mail address, the relevant Party shall notify the other Parties of the same in writing.

(d) **Language**

Any notice given under or in connection with this Agreement must be in English. All other documents provided under or in connection with this Agreement must be in English or, if not in English and if so required by the Collateral Agent, accompanied by an accurate translation at the respective Party's cost and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

4.3 Amendments and Waivers

No amendment or waiver of any provision of this Agreement shall be effective unless in writing, signed by all Parties.

4.4 Successors and Assigns Generally

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, provided that (i) the Collateral Agent may not assign its rights or obligations hereunder unless such assignment is in accordance with the Financing Documents, and (ii) Operations Co or any Sponsor may not assign or otherwise transfer its rights or obligations hereunder except that a Sponsor may assign its rights and obligations hereunder, including all or a portion of its Total Funding Commitment Amount, to any Person if (i) such transfer is otherwise permitted under the terms of the Operations Holdco LLC Agreement, the other Financing Documents and the Project Agreement, (ii) such transferee satisfies the requirements of Section 2.3 with respect to the Total Funding Commitment Amount assigned to, and assumed by, such Person and (iii) such transferee shall have executed a counterpart to this Agreement and such other documentation as the parties determine necessary to evidence such transferee's assumption of any portion of a transferor's Total Funding Commitment Amount. In the event of any such assignment by a Sponsor, any such transferee shall become a "**Sponsor**" under this Agreement with the same force and effect as if it were an original signatory hereto.

(b) Notwithstanding the foregoing and for the avoidance of doubt, each Sponsor may transfer its direct or indirect ownership interests in Operations Holdco to any Person at any time, subject only to the terms of the Operations Holdco LLC Agreement, the Financing Documents and the Project Agreement.

4.5 Several Liability

The obligations of the Sponsors under this Agreement are several and not joint or joint and several and no Sponsor shall be liable for any obligation of another Sponsor or any other Person.

4.6 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent or any Secured Party, any right or remedy under the Financing Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

4.7 Severability

If any provision of this Agreement shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Any provision of this Agreement that is unenforceable in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

4.8 Counterparts

This Agreement may be executed in counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall constitute an original, but all counterparts shall together constitute one and the same instrument.

4.9 Reinstatement

This Agreement and the obligations of the relevant Sponsor hereunder shall automatically be reinstated if, and to the extent that, for any reason any payment made pursuant to this Agreement is rescinded or must otherwise be restored by the Collateral Agent, any other Secured Party or Operations Co, whether as a result of any proceedings under any bankruptcy of a Sponsor or any other Person or otherwise and Operations Co shall indemnify the Collateral Agent and each other Secured Party on demand for all reasonable costs and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Collateral Agent or any other Secured Party in connection with such rescission or restoration; provided that the Parties shall not be liable in any manner for any indirect, special, punitive, incidental or consequential loss or damage of any kind.

4.10 No Subrogation

To the greatest extent permitted by applicable law, until the date on which the Senior Indenture has been terminated in accordance with Section 11.1 thereof and the Senior Secured Obligations have been paid in full and the Subordinate Indenture has been terminated in accordance with Section 11.1 thereof and the Subordinate Secured Obligations have been paid in full, no Sponsor shall exercise any claim, right or remedy that it may now have or may hereafter acquire against Operations Co or any other Sponsor arising under or in connection with this Agreement (whether in respect of Capital Contributions made hereunder or otherwise), including any claim, right or remedy of subrogation, contribution, reimbursement, exoneration, indemnification or participation arising under contract, by law or otherwise; provided that nothing

contained herein shall limit or reduce any right or remedy that Operations Co may have against any Sponsor or that any Sponsor may have against another Sponsor pursuant to the terms of the Operations Holdco LLC Agreement. If, notwithstanding the preceding sentence, any amount shall be paid to a Sponsor on account of such subrogation rights at any time prior to the date on which the Senior Indenture has been terminated in accordance with Section 11.1 thereof and the Senior Secured Obligations have been paid in full and the Subordinate Indenture has been terminated in accordance with Section 11.1 thereof and the Subordinate Secured Obligations have been repaid in full, such amount shall be held by such Sponsor in trust for the Collateral Agent, segregated from other funds of such Sponsor and be turned over to the Collateral Agent in the exact form received by such Sponsor (duly endorsed by such Sponsor to the Collateral Agent, if required), to be applied as provided herein.

4.11 Consent to Security Agreement

Each Sponsor acknowledges and consents to, the security assignment of this Agreement by Operations Co of their respective rights hereunder to the Collateral Agent in accordance with the Security Agreements.

4.12 Enforcement

Each Sponsor agrees that the Collateral Agent (to the extent so entitled under the Financing Documents), upon the occurrence and during the continuance of an Operations Co Financing Default continuing for 30 consecutive days or more, shall be entitled to exercise any and all rights of Operations Co under this Agreement in accordance with the terms hereof, and each Sponsor shall comply in all respects with such exercise. In the foregoing circumstance, the Collateral Agent shall, in accordance with and subject to the terms and conditions of the Financing Documents, and except as expressly provided hereunder, have the full right and power to enforce directly against any Sponsor all obligations of such Sponsor under this Agreement and otherwise to exercise all remedies hereunder and to make all demands and give all notices (including any Contribution Notice) and make all requests required or permitted to be made (in its own name or in the name of Operations Co) under this Agreement. If any Sponsor shall receive inconsistent directions from Operations Co and the Collateral Agent, it shall comply with the directions from the Collateral Agent unless contrary to the terms hereof.

4.13 Survival

The provisions of this Section 4 shall survive the termination of this Agreement.

4.14 Governing Law

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York. Each of the Parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect, in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

4.15 Term of Agreement

Subject to Section 4.9, this Agreement shall be deemed to be executed by the parties hereto and effective on the Closing Date and continue in full force until the Release Date.

4.16 No Other Obligation

Other than as provided in this Agreement, no Sponsor shall be liable for any amounts payable by the Borrower or Operations Co under any Financing Documents, and none of the Collateral Agent or any of the other Secured Parties shall seek a money judgment or deficiency or personal judgment against any Sponsor for payment of any amounts payable by the Borrower or Operations Co pursuant to any Financing Documents. No property or assets of any Sponsor, other than as specifically provided in this Agreement or in connection with the obligations of each Sponsor provided herein or in any other Financing Document, shall be sold, levied upon or otherwise used to satisfy any judgment rendered in connection with any action brought against the Borrower or Operations Co with respect to any Financing Documents. Notwithstanding anything to the contrary set forth herein or in any other Financing Document, in no event shall the liability of any Sponsor exceed the amount of its Total Funding Commitment at any time provided that no such limit on liability shall apply in respect of such Sponsor's obligations under Section 4.1 or in respect of any liability arising from any willful default of its obligations under this Agreement or fraud.

4.17 Rights of the Collateral Agent

All rights, privileges, indemnities, benefits and protections given to the Collateral Agent in the Senior Indenture and the Subordinate Indenture shall, subject to the terms and conditions hereof, apply to all actions taken by the Collateral Agent pursuant to this Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed in their respective names as of the Closing Date.

KENTUCKYWIRED OPERATIONS HOLDING COMPANY, LLC, a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

KENTUCKYWIRED OPERATIONS COMPANY, LLC, a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

MACQUARIE NG-KIH HOLDINGS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

LEDCOR US VENTURES INC., a Nevada Corporation, as a Sponsor

By: _____
Name:
Title:

By: _____
Name:
Title:

FIRST SOLUTIONS LLC, an Idaho limited liability company, as a Sponsor

By: _____
Name:
Title:

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, a national banking association, as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTACHMENT A
FORM OF CAPITAL CONTRIBUTION LETTER OF CREDIT

Date:	■
From:	**[Insert name and address of issuing bank]**
To:	U.S. Bank National Association, as collateral agent Global Corporate Trust Services One Financial Square Louisville, Kentucky 40202 (the "**Beneficiary**")
Applicant:	**[Name]** **[Address]** (the "**Applicant**")
Standby Letter of Credit No.:	■
Amount:	**US$■**

We, **[name of bank]**, having our business address at **[address]** (the "**Bank**") hereby issue this Standby Letter of Credit, in favor of the Beneficiary and for the account of the Applicant, for drawing(s) in an aggregate amount of US$■ (the "**Letter of Credit**"), for the purpose of affording the Beneficiary security to ensure performance by the Applicant of its obligations under a capital contribution agreement dated on or about September 3, 2015, between KentuckyWired Operations Holding Company, LLC, KentuckyWired Operations Company, LLC, Macquarie NG-KIH Holdings, LLC, Ledcor US Ventures Inc., First Solutions LLC and U.S. Bank National Association, as collateral agent, as amended from time to time (the "**Capital Contribution Agreement**").

The Beneficiary may draw on this Letter of Credit in accordance with the terms set out herein, in full or in part.

The Bank irrevocably and unconditionally undertakes to pay to the Beneficiary any sum or sums not exceeding the available balance under this Letter of Credit upon presentation to the Bank of a dated draw certificate in the form of Annex 1 hereto, which forms an integral part of this Letter of Credit, duly completed and signed by one (1) authorized signatory or duly appointed attorney of the Beneficiary and presented for payment at the Bank at **[address]** Attention: ■ on or before our close of business on ■ (the "**Expiry Date**") or any extended expiry date as set out below.

It is a condition of this Letter of Credit that it will be considered automatically extended without amendment for additional one (1) year periods from the current or any future expiry date, unless at least sixty (60) days prior to any expiry date, the Bank notifies the Beneficiary in writing by overnight courier service at the above-mentioned addresses that it elects not to so extend this Letter of Credit for any such additional period. Upon receipt of such notice, the Beneficiary may draw on this Letter of Credit by making a written demand.

Notwithstanding the foregoing, in no event will this Letter of Credit extend beyond ■ (the "**Final Expiry Date**").

The Bank hereby agrees that it will honor a demand for payment by the Beneficiary, presented in compliance with the term of this Letter of Credit, without enquiring whether the Beneficiary has a right as between itself and the Applicant to make such demand, and without recognizing any claim of the Applicant. The Capital Contribution Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

Partial drawings and multiple presentations are permitted hereunder. However, the aggregate of such drawings shall not exceed the amount set forth in this Letter of Credit, as such amount may be reduced from time to time pursuant to Reduction Certificates.

Upon receipt by the Bank of a certificate in the form of Annex 2 hereto duly completed and signed one (1) authorized signatory of the Applicant and one (1) authorized signatory the Beneficiary (each a "**Reduction Certificate**"), the amount of this Letter of Credit shall be reduced by the amount set forth in such Reduction Certificate.

This Letter of Credit is transferable in full and not in part. Any transfer made hereunder must conform strictly to the terms hereof and to the conditions of Rule 6 of the International Standby Practices fixed by the International Chamber of Commerce, Publication No. 590. Should the Beneficiary wish to effect a transfer under this Letter of Credit, such transfer will be subject to the return to the Bank of the original credit instrument, accompanied by the Bank's form of transfer, properly completed and signed by an authorized signatory of the Beneficiary and payment of the Bank's transfer fee. Such transfer form is available upon request.

All of the Bank's fees are for the account of the Applicant. All payments made by the Bank under this Letter of Credit shall be made free, clear of and without any deduction or withholding for or on account of any setoff, counterclaim or tax unless and to the extent that the Bank is required by law to make payment subject to the deduction or withholding of tax.

The original of this Letter of Credit, including any amendments, shall accompany any drawing. In case of a partial drawing of this Letter of Credit, the original of this Letter of Credit will be duly endorsed by the Bank and returned to the Beneficiary.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of the Bank under this Letter of Credit is the individual obligation of the Bank, and is in no way contingent upon reimbursement with respect thereto.

Except with respect to any transfer referred to above, this Letter of Credit may not be modified or revoked without the express written consent of the Beneficiary.

The original of this Letter of Credit shall be delivered to the Beneficiary at the address specified on the first page of this Letter of Credit.

This Letter of Credit is subject to and shall be governed by the International Standby Practices International Chamber of Commerce Publication No. 590 ("**ISP98**") and, as to matters not governed by ISP98, the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in the State of New York, will control.

[ISSUING BANK'S NAME]

Per: _____

Name:
Title:

Annex 1 – Form of Draw Certificate

Standby Letter of Credit No. _____

[Date]

To: **[insert name and address of issuing bank]**

From: **[insert name and address of Beneficiaries]**

Subject: This is the form of draw certificate specified in our Standby Letter of Credit No. _____ issued on **[date]** (the "**Letter of Credit**")

Re: Capital Contribution Agreement dated on or about September 3, 2015, between KentuckyWired Operations Holding Company, LLC, KentuckyWired Operations Company, LLC, Macquarie NG-KIH Holdings, LLC, Ledcor US Ventures Inc., First Solutions LLC and U.S. Bank National Association, as collateral agent (the "**Capital Contribution Agreement**")

Dear Sirs,

We, the undersigned, being authorized officers or duly appointed attorneys of **[a Beneficiary]/ [the Beneficiaries]** under the Letter of Credit hereby demand you to forthwith pay the amount of **[currency and amount in figures and letters]** to:

[Name of Bank]

[Account Number]

[Account Name]

We certify that the **[Beneficiary has]/[Beneficiaries have]** have become entitled to draw on the Letter of Credit under the terms of Section ■ of the Capital Contribution Agreement.

[■ Beneficiary]

Per:

_____
Name:
Title:

Annex 2 – Form of Reduction Certificate

Standby Letter of Credit No. _____

[Date]

To: **[insert name and address of issuing bank]**

From: U.S. Bank National Association
[Address]

and

[insert name and address of Applicant]

Subject: This is the form of reduction certificate specified in our Standby Letter of Credit No. _____ issued on **[date]** (the "**Letter of Credit**")

Re: Capital Contribution Agreement dated on or about September 3, 2015, between KentuckyWired Operations Holding Company, LLC, KentuckyWired Operations Company, LLC, Macquarie NG-KIH Holdings, LLC, Ledcor US Ventures Inc., First Solutions LLC and U.S. Bank National Association, as collateral agent (the "**Capital Contribution Agreement**")

Dear Sirs,

In accordance with the terms of the Letter of Credit, we hereby request the Bank to reduce the undrawn amount of the Letter of Credit by the amount of **[currency and amount in figures and letters]**.

U.S. BANK NATIONAL ASSOCIATION

Per: _____
Name:
Title:

[Applicant]

Per: _____
Name:
Title:

Annex 3 – Form of Transfer

Standby Letter of Credit No. _____

[Date]

To: **[insert name and address of issuing bank]**

From: U.S. Bank National Association
[Address]

and

[insert name and address of Applicant]

Subject: This is the form of transfer specified in our Standby Letter of Credit No. _____ issued on **[date]** (the "**Letter of Credit**")

Re: Capital Contribution Agreement dated on or about September 3, 2015, between KentuckyWired Operations Holding Company, LLC, KentuckyWired Operations Company, LLC, Macquarie NG-KIH Holdings, LLC, Ledcor US Ventures Inc., First Solutions LLC and U.S. Bank National Association, as collateral agent (the "**Capital Contribution Agreement**")

Dear Sirs,

For value received, we, the undersigned, being authorized officers of the undersigned Beneficiary under the Letter of Credit, hereby irrevocably transfer to:

Name of Transferee: _____ (the "**Transferee**")

Address of Transferee: _____

_____

_____

Other Transferee Information: _____

all rights of the undersigned Beneficiary to draw under the Letter of Credit in its entirety .

The original of this Letter of Credit is returned herewith, and we ask you to issue a replacement for the undrawn amount or endorse the transfer on the reverse thereof and forward it directly to the Transferee with you customary notice of transfer.

By this transfer, all rights of the undersigned Beneficiary in the Letter of Credit are transferred to the Transferee, and the Transferee shall have rights as a Beneficiary thereof, including rights relating to any amendments no existing or hereafter made.

U.S. BANK NATIONAL ASSOCIATION

Per: _____
Name:
Title:

SCHEDULE 16
COMMUNICATION ROLES

Schedule 16 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to communications.

SCHEDULE 17
KEY INDIVIDUALS

Name of Key Individual	Capacity	Applicable Period of Term
Operations Co:		
Mike Lee	Project Co Lead	Construction Period and Operating Period
Shaun Greffard	Project Co's Design and Construction Representative	Effective Date to System Completion
Trent Edwards	Project Co's Operating Period Representative	Construction Period and Operating Period
Design-Builder:		
Dean Siegrist	Design-Builder Representative	Effective Date to System Completion
Barry Baker	Construction Lead	Effective Date to System Completion
Max Comstock	Design Lead	Effective Date to System Completion
Service Provider:		
Trent Edwards	Service Provider Representative	Operating Period
Harminder Gill	Service Provider Product Solutions Manager	Operating Period
Todd Richard	Service Provider Design Support	Construction Period and Operating Period
Jan Summarell	Operations Team Lead	Operating Period

SCHEDULE 18
COMPLETION DOCUMENTS

1. GENERAL

In this Schedule 18, "certified" will mean that the relevant document is certified (for and on behalf of the relevant corporation or other entity and without personal liability) by an authorized signatory, director or authorized signatory of the relevant corporation or other entity as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate.

2. DOCUMENTS TO BE DELIVERED BY OPERATIONS CO

Unless an original document is specifically referred to below, Operations Co will deliver to Project Co a certified copy of each of the following documents in accordance with Section 2.2(a) of this Project Implementation Agreement:

(a) an original of this Project Implementation Agreement, executed by Operations Co;

(b) an original of the Lenders' Remedies Agreement, executed by the parties to such agreement (other than the Authority and Project Co);

(c) the Design-Build Agreement, executed by the parties to such agreement;

(d) the Services Contract, executed by the parties to such agreement;

(e) the following documents executed by the parties thereto:

(1) from the Design-Builder:

(A) a letter of credit as security for the Design-Builder's obligations; and

(B) a guarantee from each of Ledcor Contractors Group Inc. and BVH, Inc. with respect to the Design-Build Agreement; and

(2) from the Service Provider:

(A) a letter of credit as security for the Service Provider's obligations; and

(B) a guarantee from Ledcor Contractors Group Inc. with respect to the Services Contract,

in each case, which performance and other security will provide for a novation or assignment to the Authority if the Authority exercises its rights under the Design-Builder Collateral Agreement or the Service Provider Collateral Agreement, as applicable;

(f) an original of the Design-Builder Collateral Agreement, executed by the parties to such agreement (other than the Authority and Project Co);

(g) an original of the opinion of counsel to the Design-Builder in respect of the Design-Build Agreement and the Design-Builder Collateral Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;

(h) an original of the opinion of counsel to each of Ledcor Contractors Group Inc. and BVH, Inc. in respect of the guarantee given in support of the Design-Build Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;

(i) an original of the Service Provider Collateral Agreement, executed by the parties to such agreement (other than the Authority and Project Co);

(j) an original of the opinion of counsel to the Service Provider in respect of the Services Contract and the Service Provider Collateral Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;

(k) an original of the opinion of counsel to Ledcor Contractors Group Inc. in respect of the guarantee given in support of the Services Contract, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;

(l) the interface agreement between the Design-Builder, the Service Provider and Operations Co, executed by the parties to such agreement;

(m) a certificate of an authorized signatory of Operations Co certifying true copies of the following:

(1) an authorizing resolution of the board of directors of Operations Co;

(2) incumbency of the authorized signatories of Operations Co; and

(3) the constating documents of Operations Co;

(n) a certificate from Operations Co certifying that no injunction or restraining order or other decision, ruling or order of a court or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on the ability of Operations Co to perform its obligations under this Project Implementation Agreement;

(o) a certificate of an authorized signatory of each of the Design-Builder, Ledcor Contractors Group Inc. and BVH, Inc. certifying true copies of the following:

(1) an authorizing resolution of the board of directors of the Design-Builder, Ledcor Contractors Group Inc. or BVH, Inc., as applicable;

(2) incumbency of the authorized signatories of the Design-Builder, Ledcor Contractors Group Inc. or BVH, Inc., as applicable; and

(3) the constating documents of the Design-Builder, Ledcor Contractors Group Inc. or BVH, Inc., as applicable;

(p) a certificate of an authorized signatory of each of the Service Provider and Ledcor Contractors Group Inc. certifying true copies of the following:

(1) an authorizing resolution of the board of directors of the Service Provider or Ledcor Contractors Group Inc., as applicable;

(2) incumbency of the authorized signatories of the Service Provider or Ledcor Contractors Group Inc., as applicable; and

(3) the constating documents of the Service Provider or Ledcor Contractors Group Inc., as applicable;

(q) a certificate of good standing for Operations Co;

(r) a statement of registration in the Commonwealth of Kentucky for Operations Co, the Design-Builder and the Service Provider;

(s) a copy of an insurance binder or certificates of insurance for all policies required to be taken out by or on behalf of Operations Co for the Construction Period in accordance with this Project Implementation Agreement;

(t) an original notice of appointment of Representatives to be appointed by Operations Co under this Project Implementation Agreement;

(u) an original of the opinion from counsel to Operations Co that Operations Co exists, has the power and capacity to enter into this Project Implementation Agreement, the Lenders' Remedies Agreement, the Design-Builder Collateral Agreement and the Service Provider Collateral Agreement, and that such documents have been duly authorized, executed and delivered by Operations Co, create valid and binding obligations, and are enforceable against Operations Co in accordance with their terms, in a form acceptable to the Authority and its counsel, acting reasonably, and including originals of relevant certificates and other documents relied upon by Operations Co's counsel; and

(v) such other documents as the parties may agree, each acting reasonably.

3. DOCUMENTS TO BE DELIVERED BY PROJECT CO

Unless an original document is specifically referred to below, Project Co will deliver to Operations Co a certified copy of each of the following documents in accordance with Section 2.2(b) of this Project Implementation Agreement:

(a) an original of this Project Implementation Agreement, executed by Project Co;

(b) an original copy of the Lenders' Remedies Agreement, executed by the Authority and Project Co;

(c) an original of the Design-Builder Collateral Agreement, executed by the Authority and Project Co;

(d) an original of the Service Provider Collateral Agreement, executed by the Authority and Project Co;

(e) a certificate of an authorized signatory of Project Co certifying true copies of the following:

(1) an authorizing resolution of the board of directors of Project Co;

(2) incumbency of the authorized signatories of Project Co; and

(3) the constating documents of Project Co;

(f) a certificate from Project Co certifying that no injunction or restraining order or other decision, ruling or order of a court or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on the ability of Project Co to perform its obligations under this Project Implementation Agreement;

(g) an original notice of appointment of the Representatives to be appointed by Project Co under this Project Implementation Agreement;

(h) an original of the opinion from counsel to Project Co that Project Co has the power and capacity to enter into this Project Implementation Agreement, the Lenders' Remedies Agreement, the Design-Builder Collateral Agreement and the Service Provider Collateral Agreement, and that such documents have been duly authorized, executed and delivered by Project Co, create valid and binding obligations, and are enforceable against Project Co in accordance with their terms, in a form acceptable to Operations Co and its counsel, acting reasonably, and including originals of relevant certificates and other documents relied upon by Project Co's counsel; and

(i) such other documents as the parties may agree, each acting reasonably.

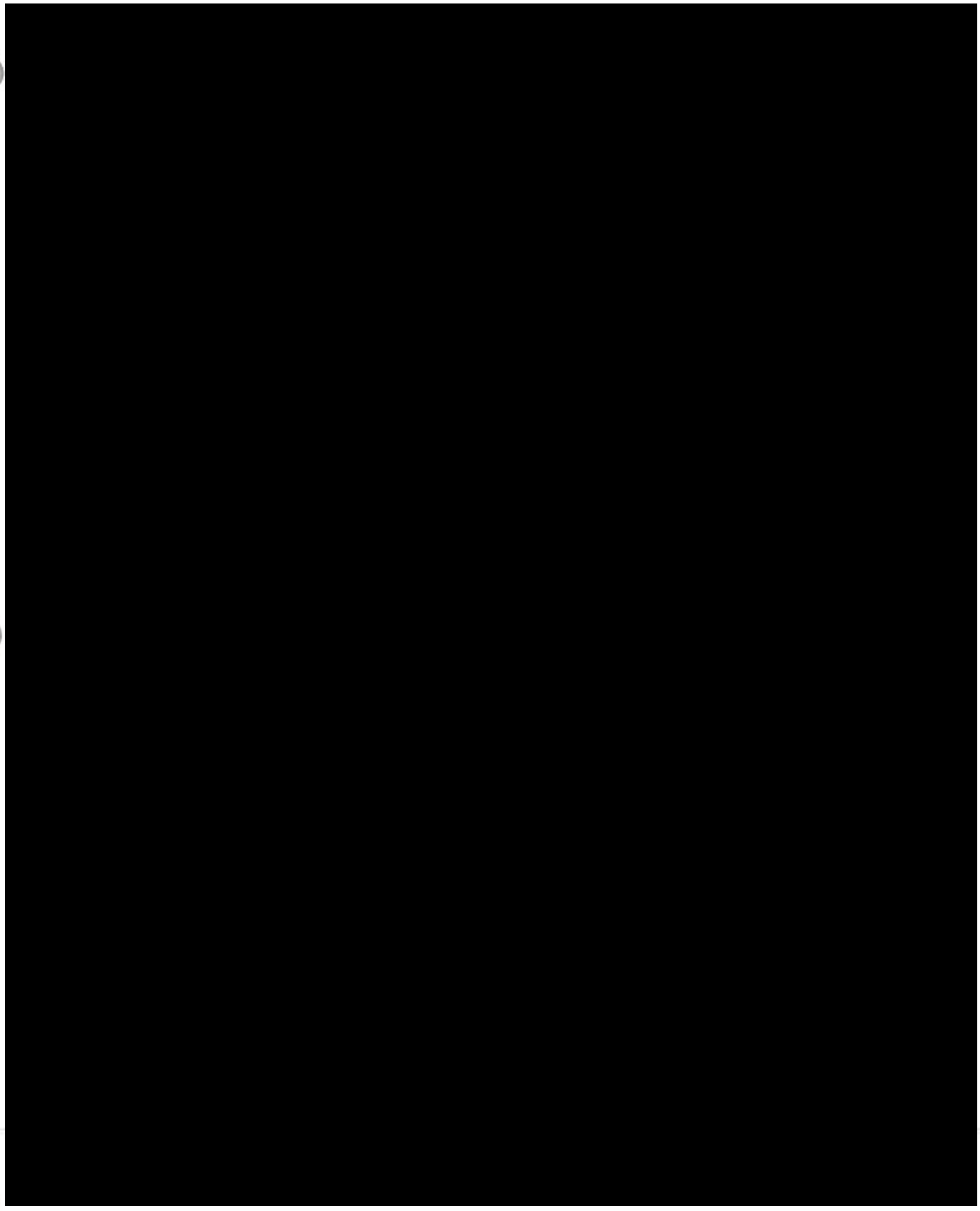
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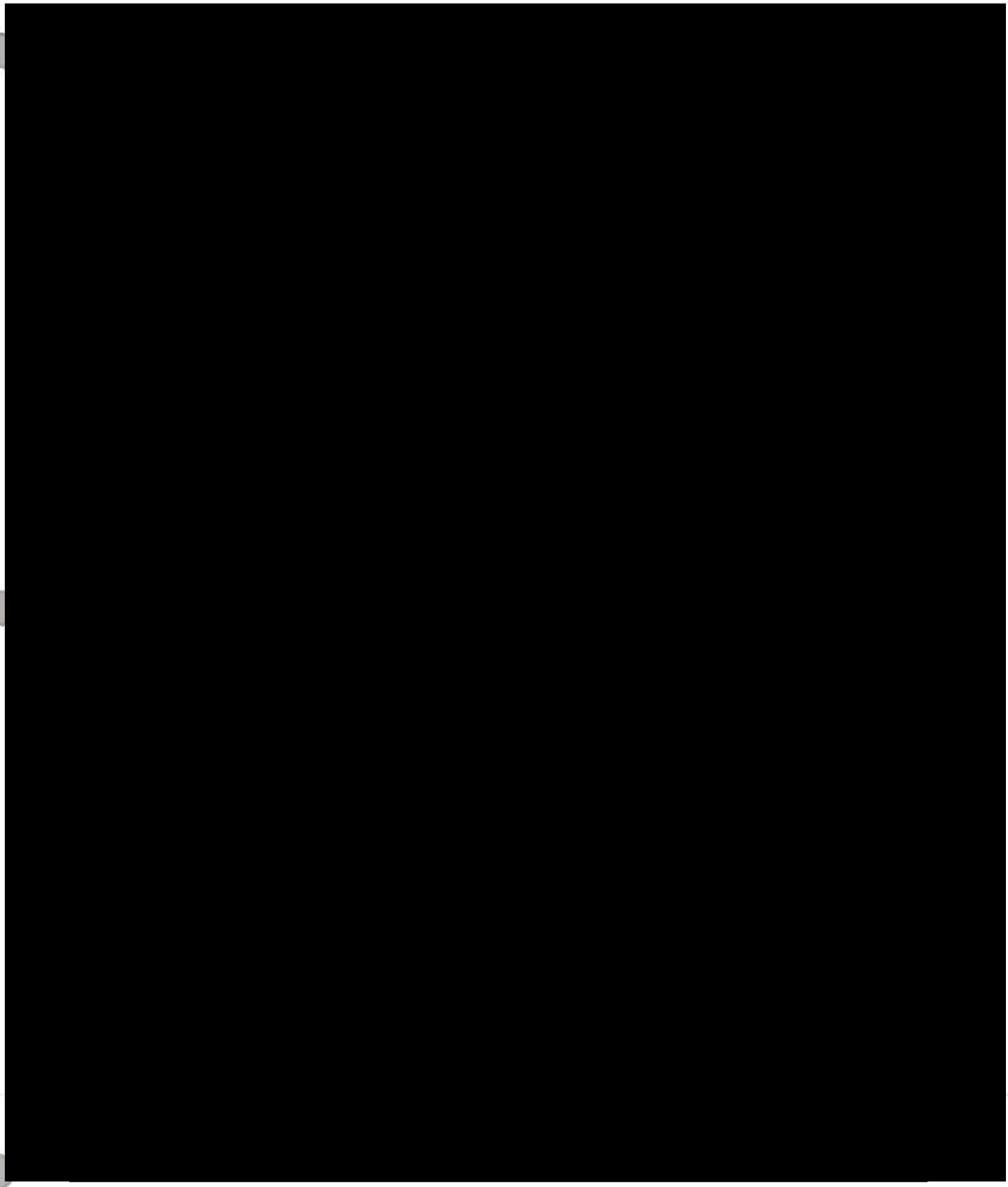
Schedule 19 to the Project Agreement is incorporated by reference with necessary amendments to reflect that Operations Co, rather than Project Co, will have the benefit of all rights and will be assuming all obligations related to Market Testing.

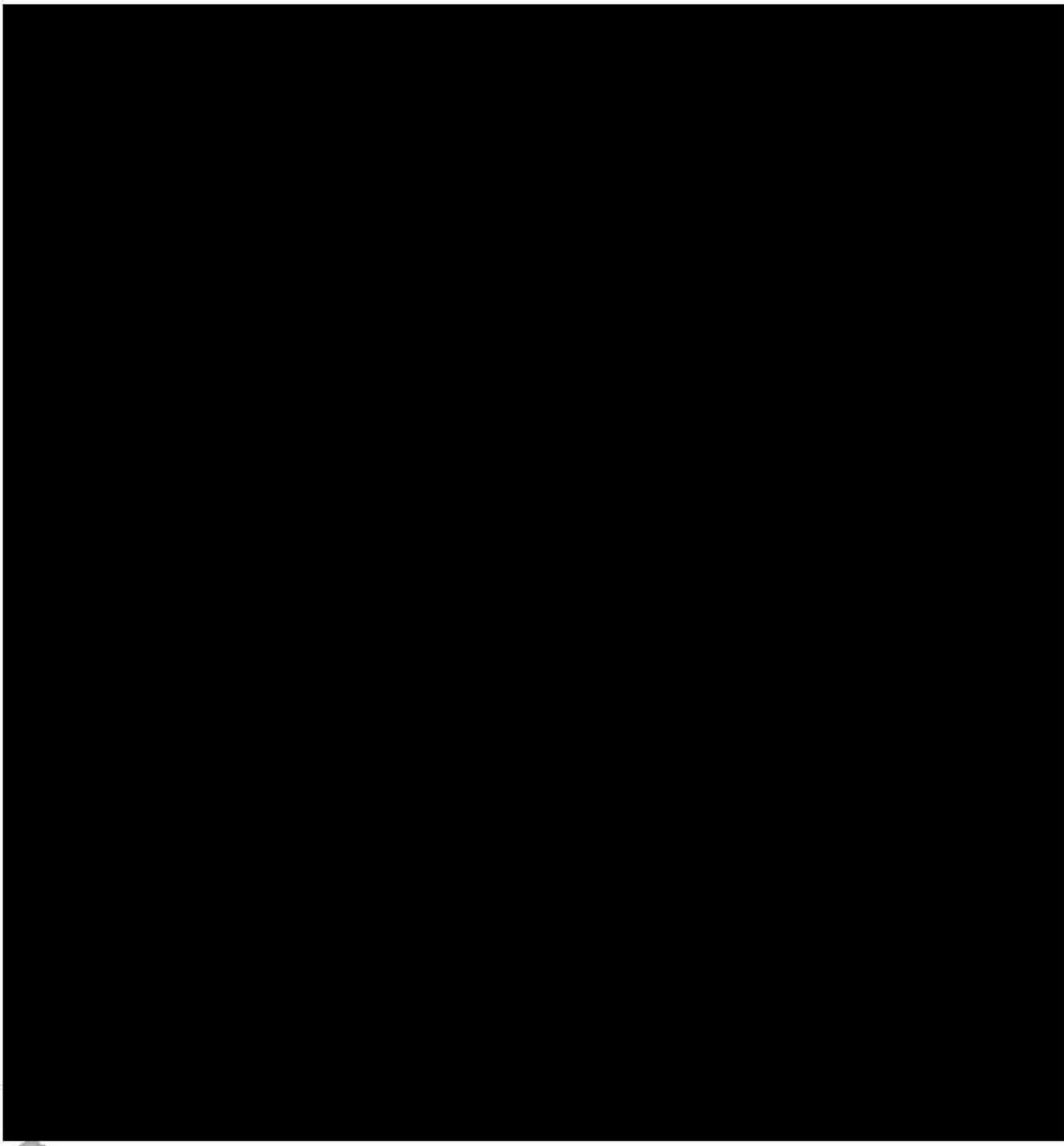
SCHEDULE 20
THIRD PARTY INFRASTRUCTURE TERM SHEETS

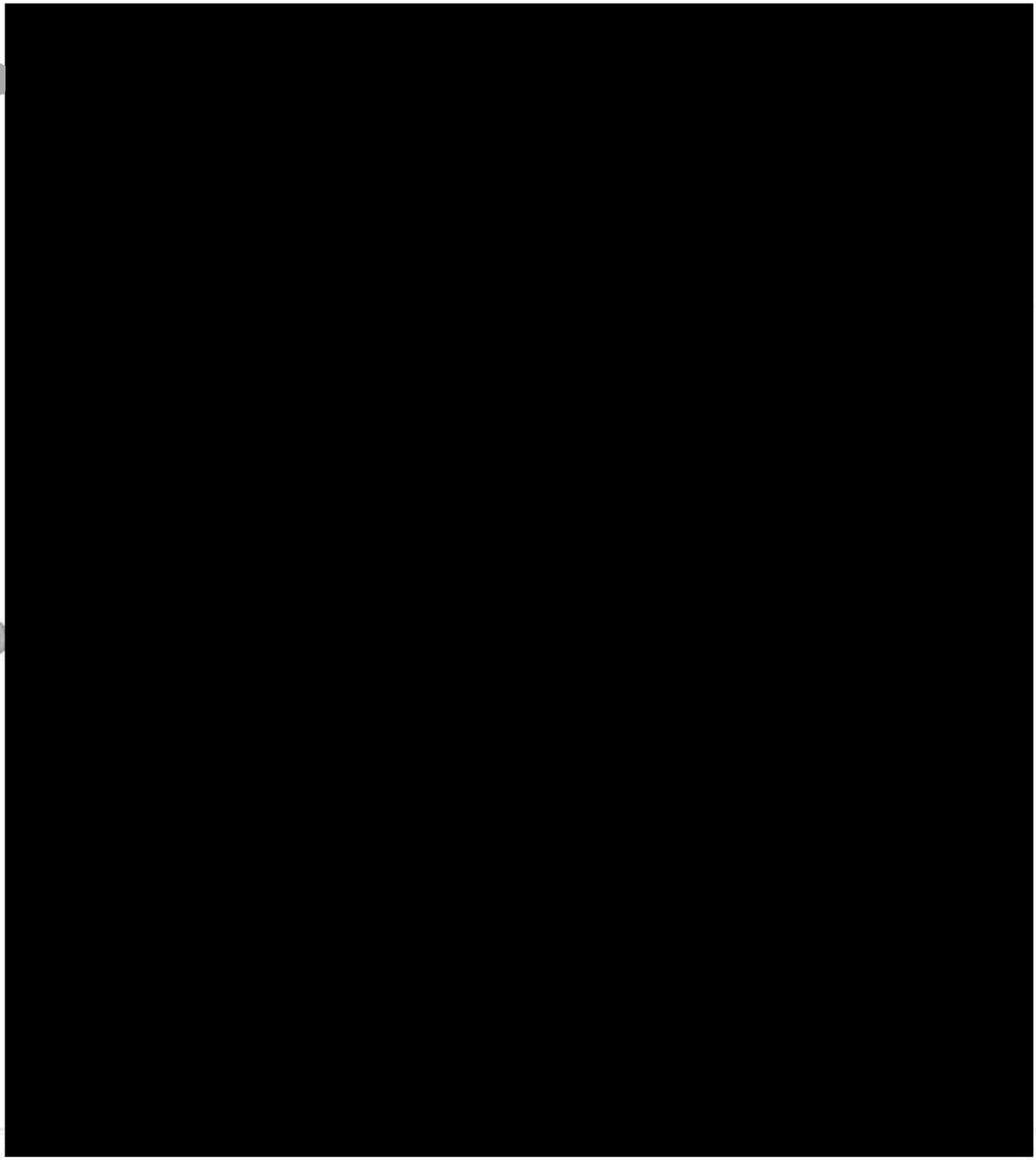
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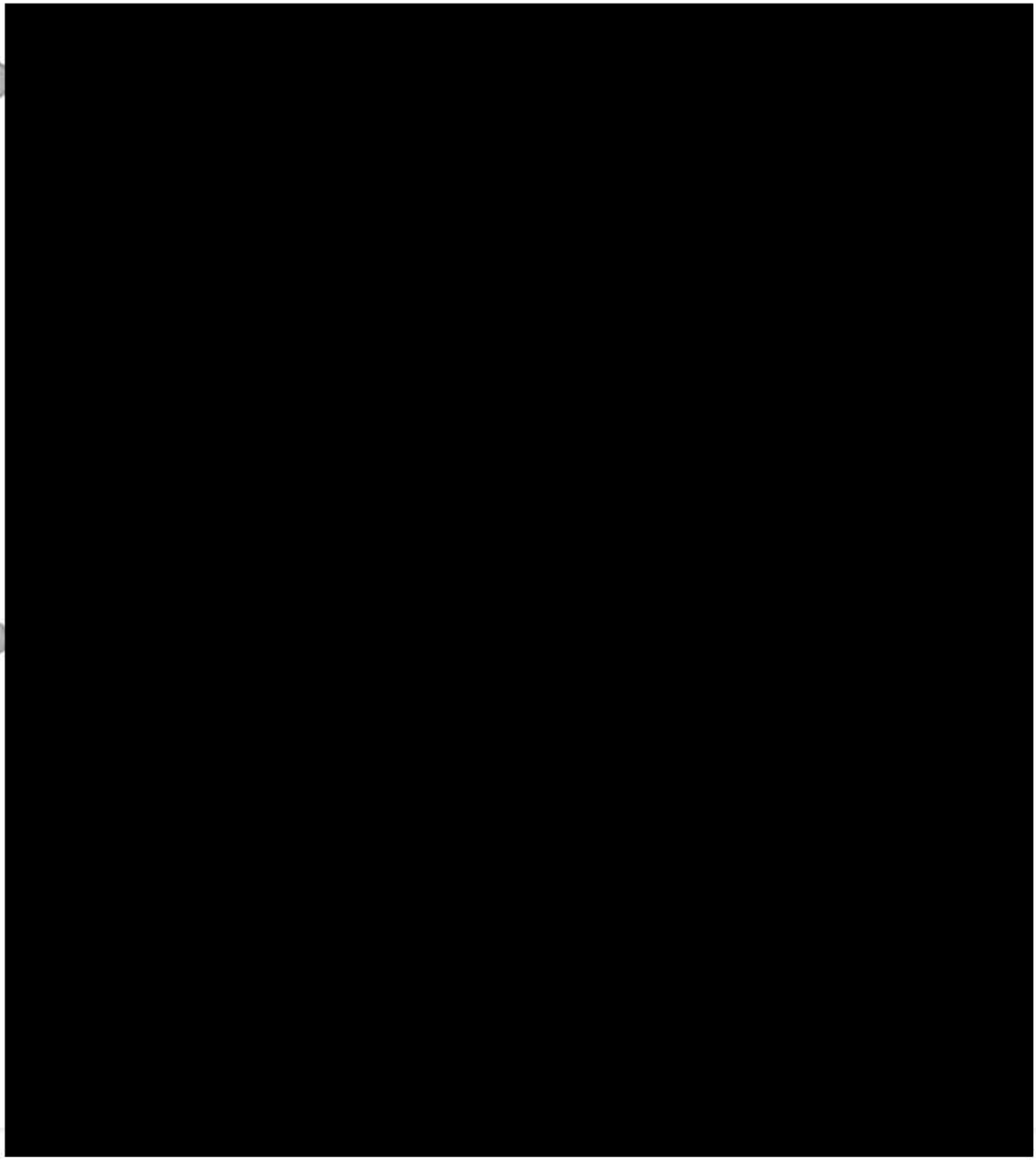
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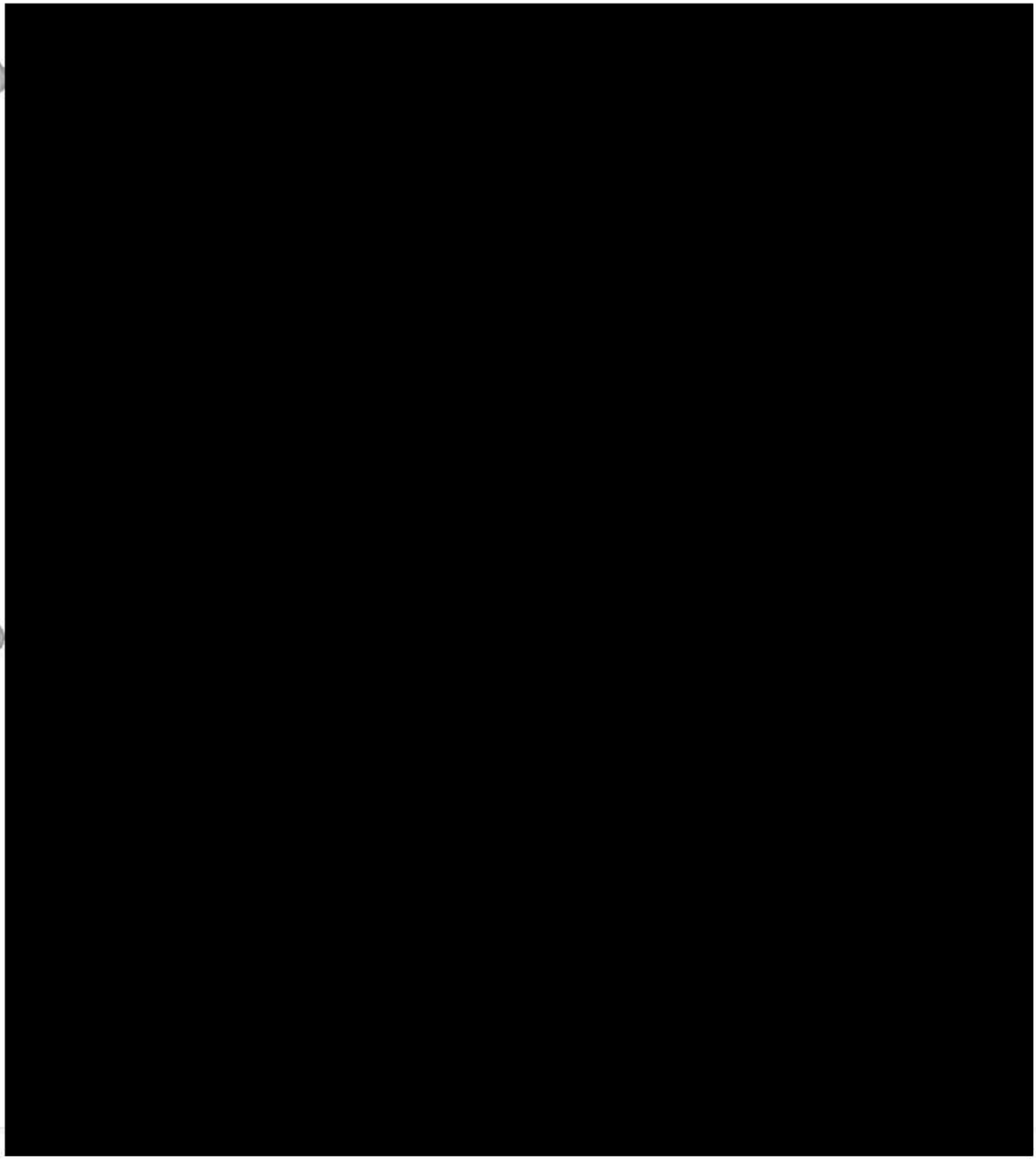




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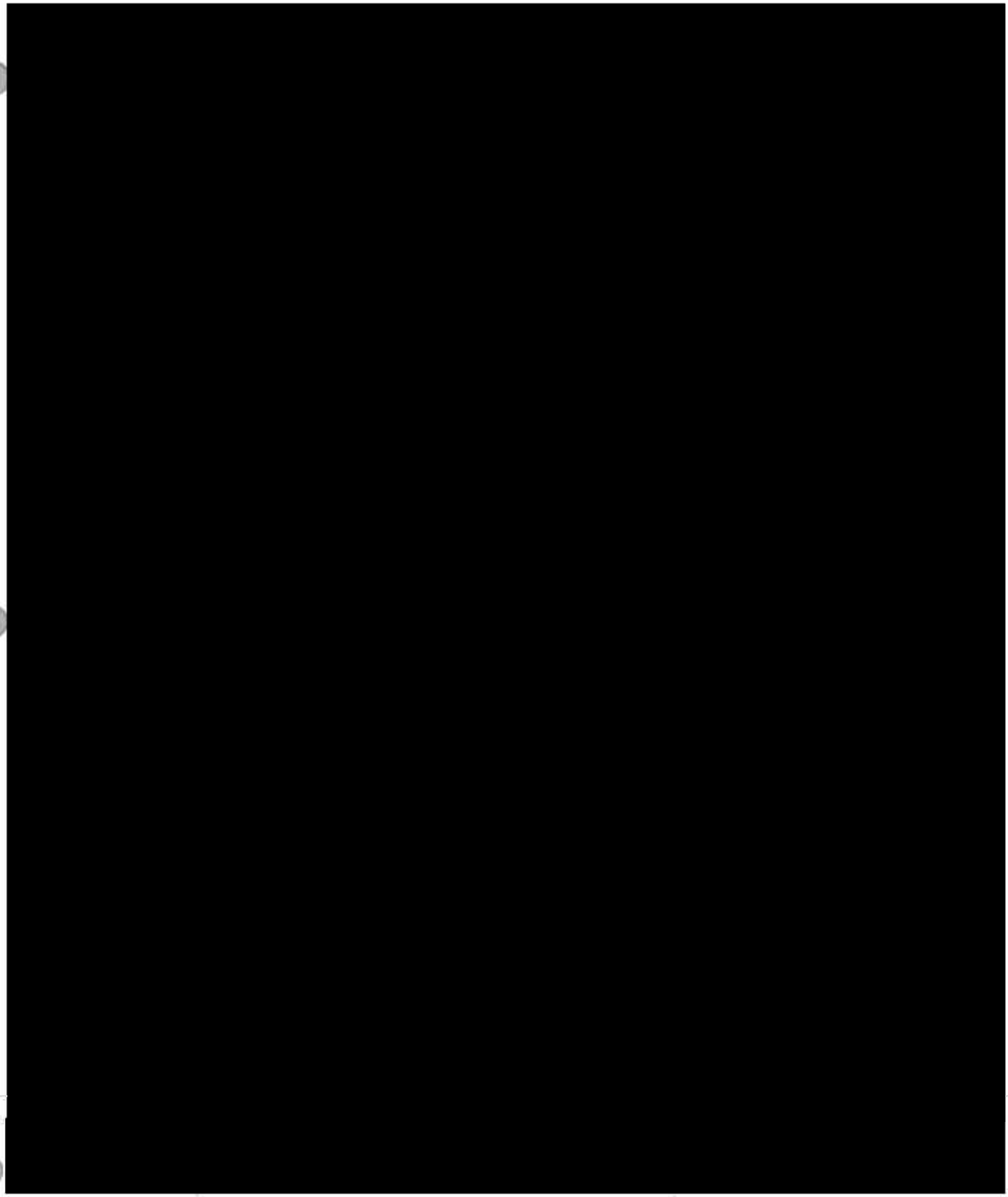
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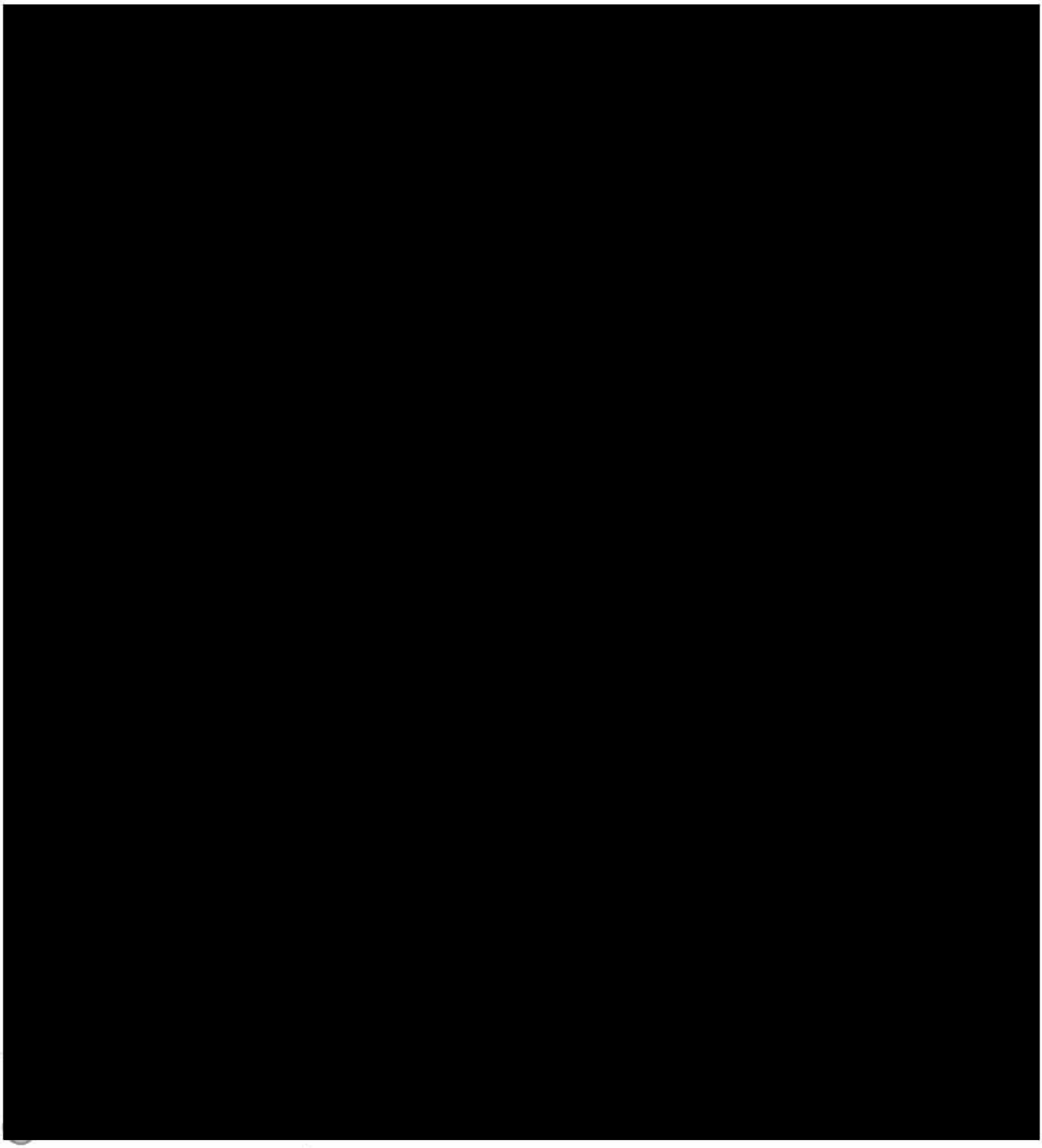
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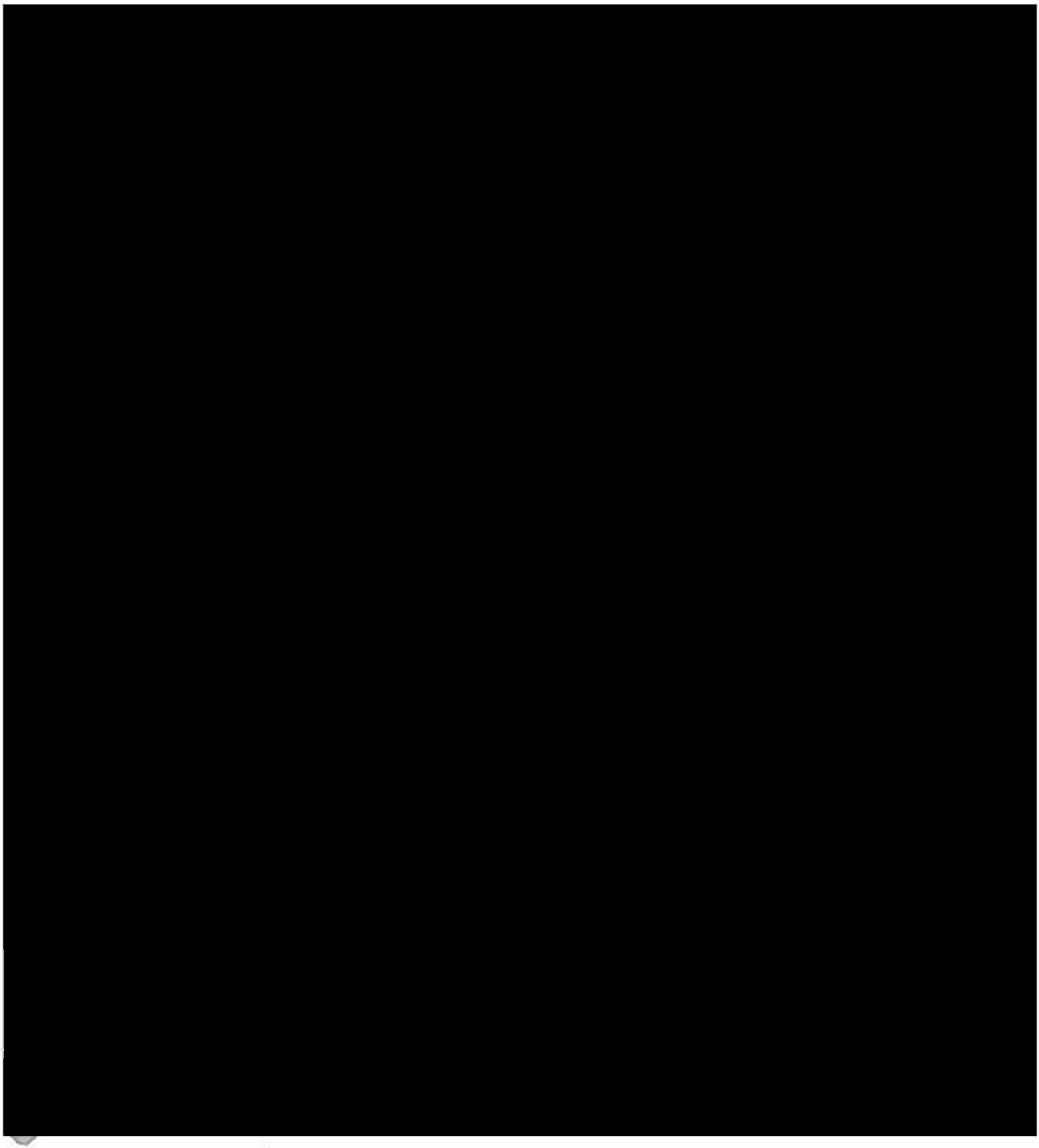


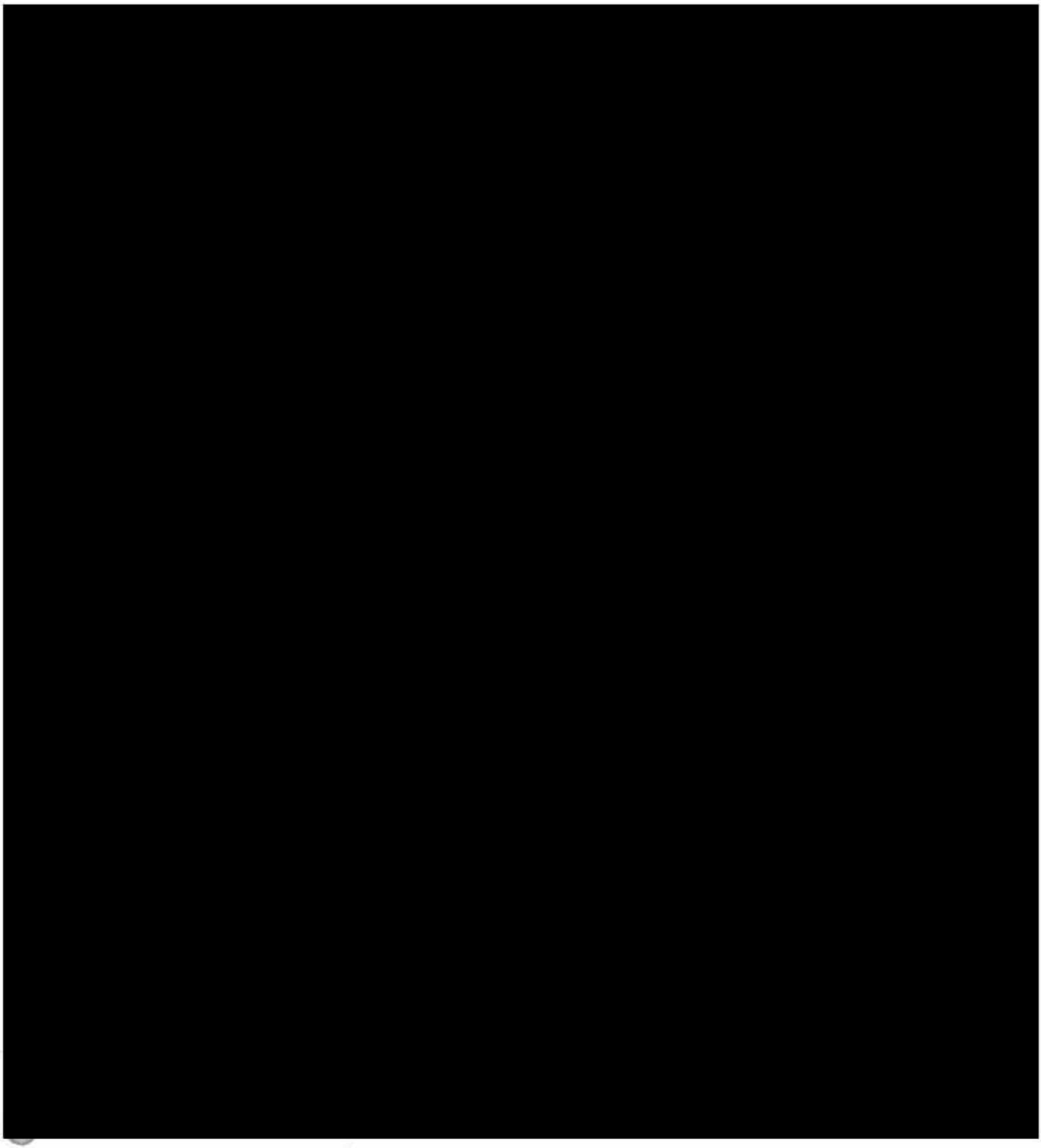
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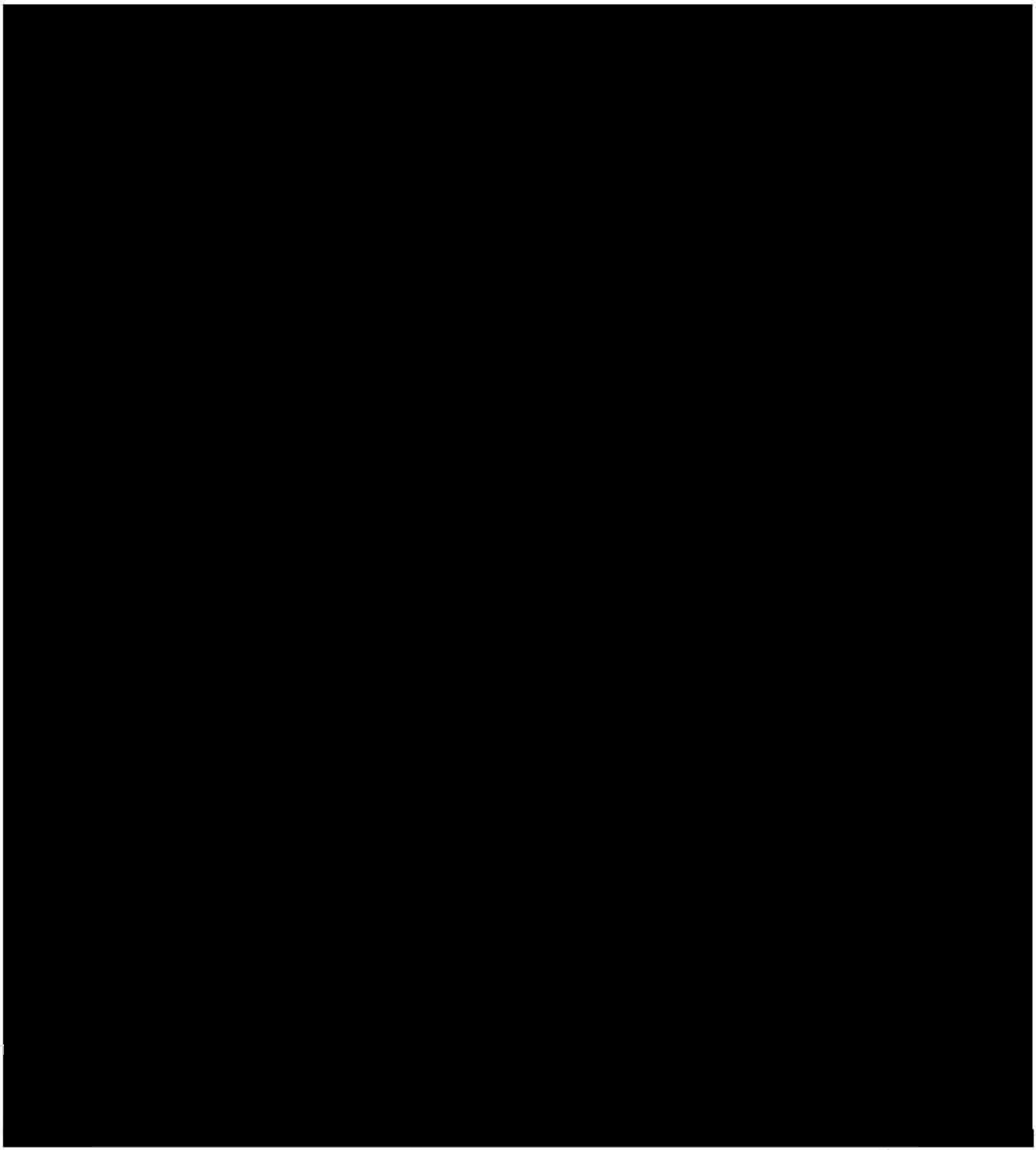
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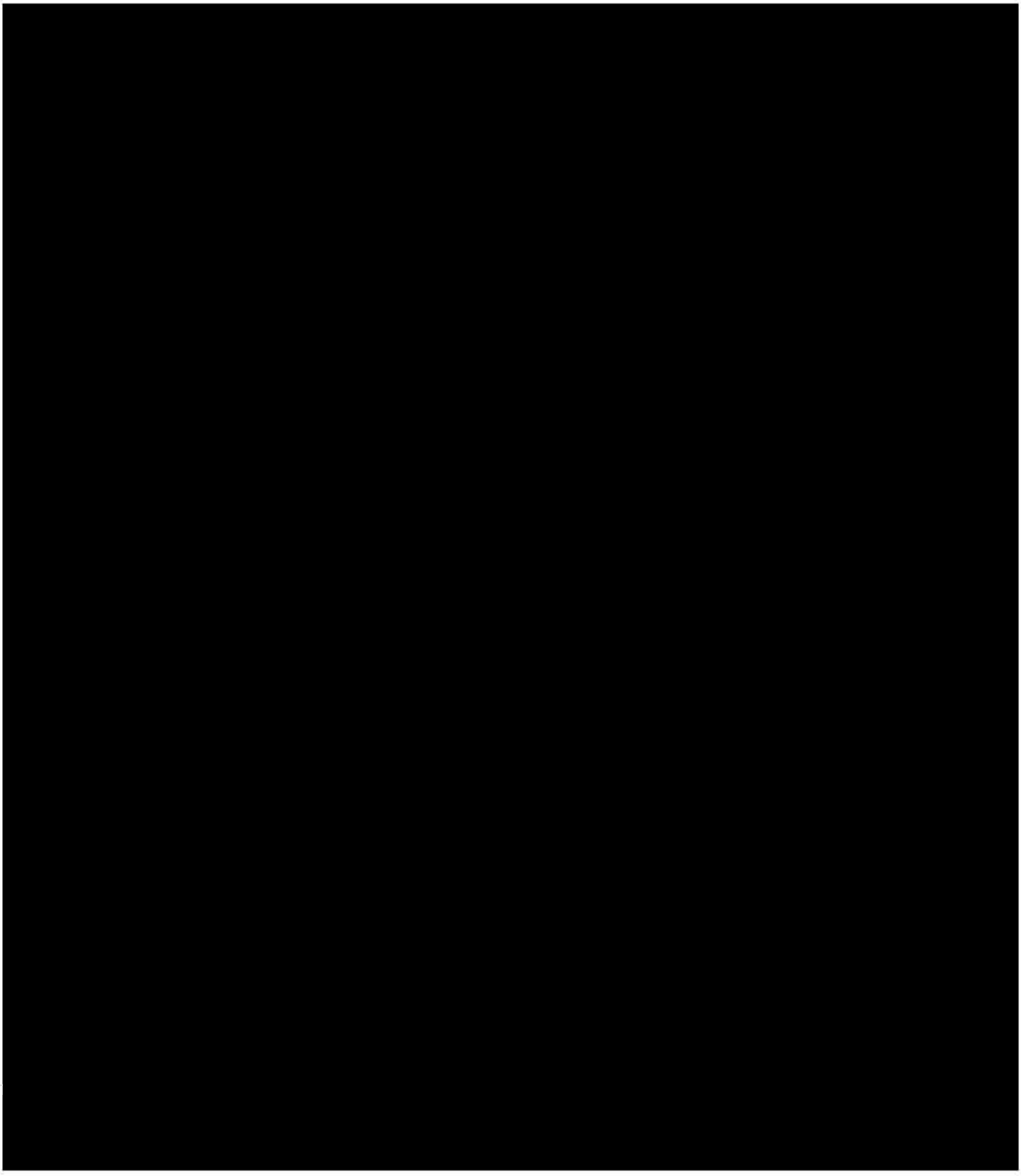


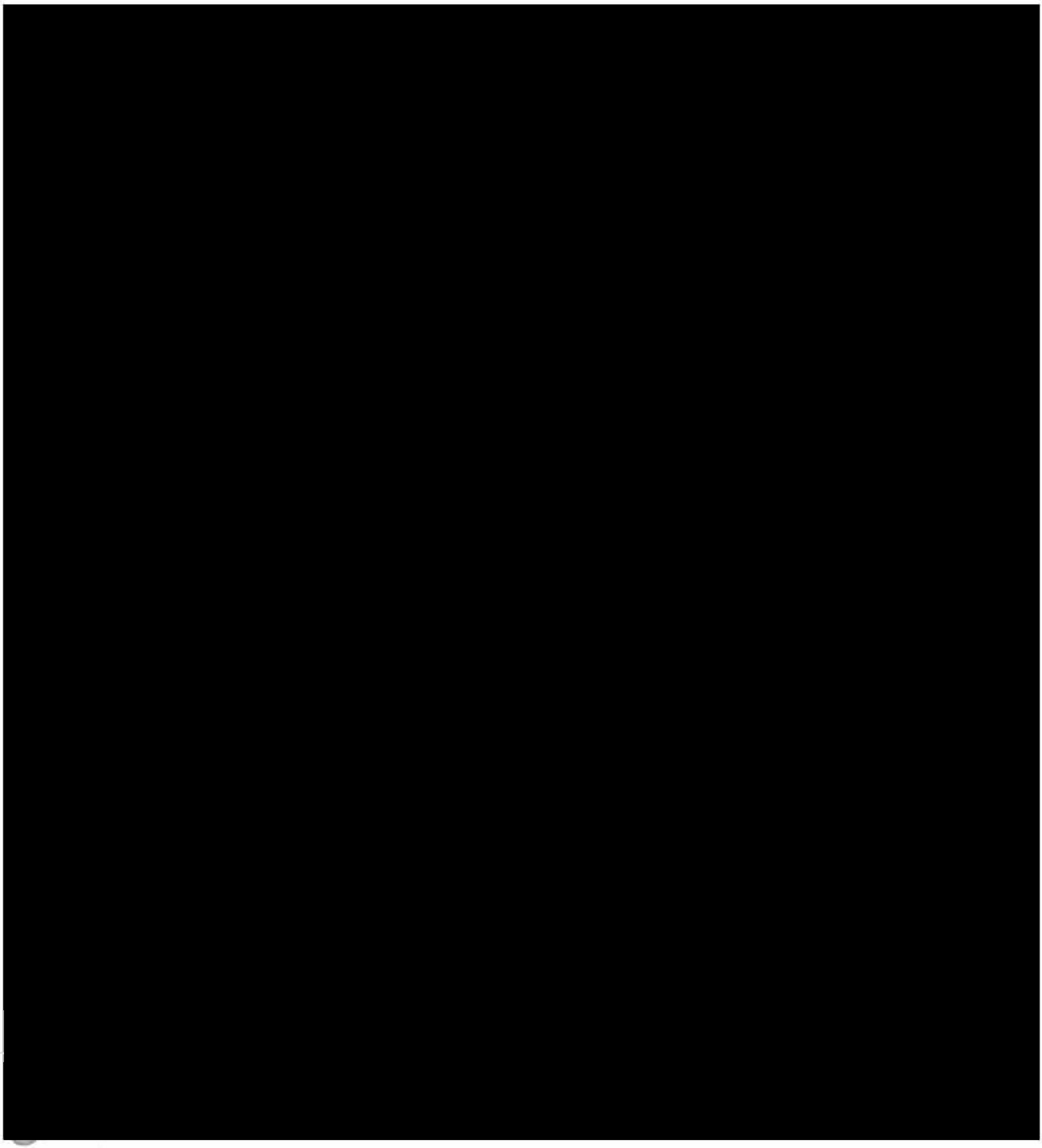


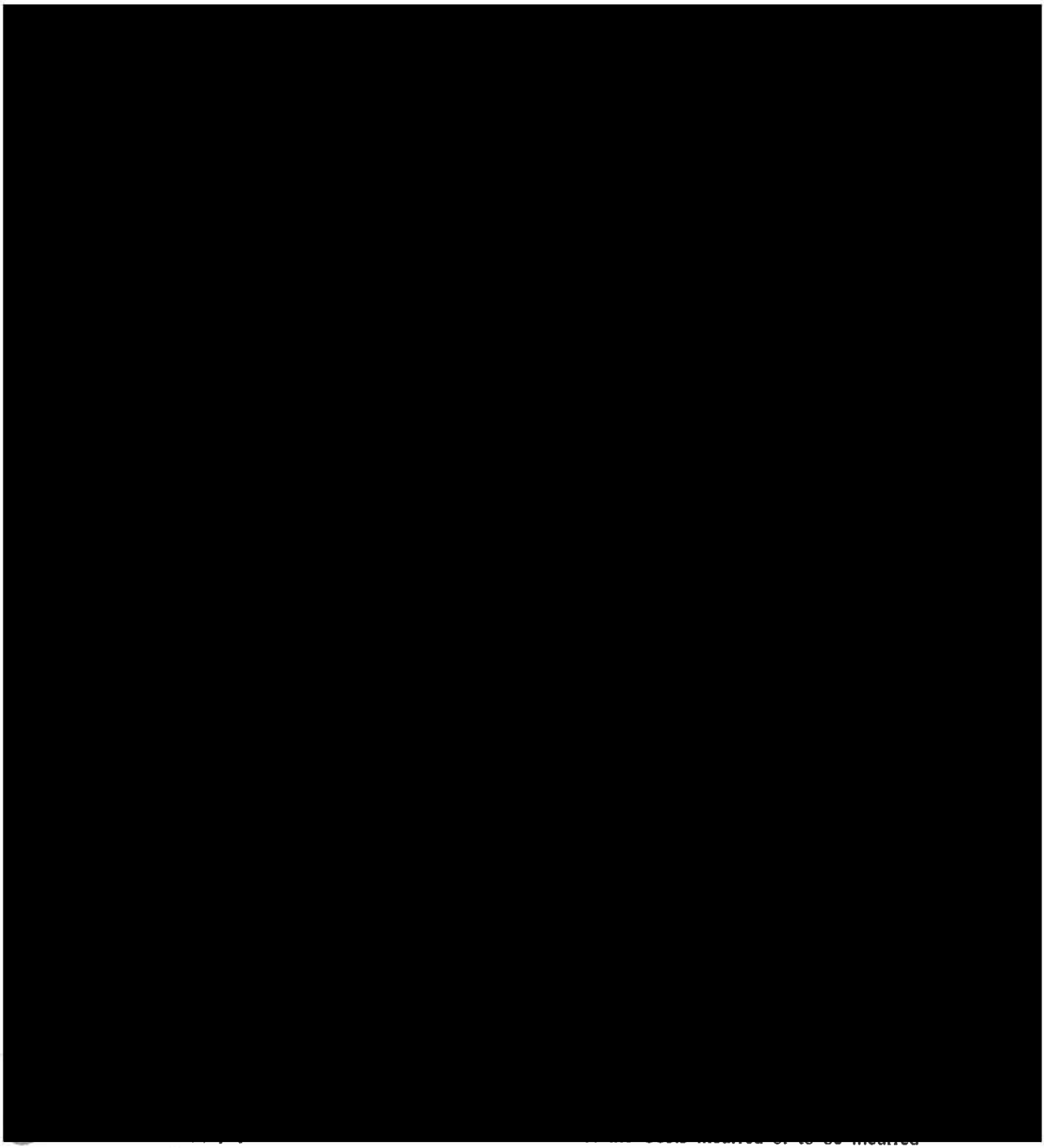


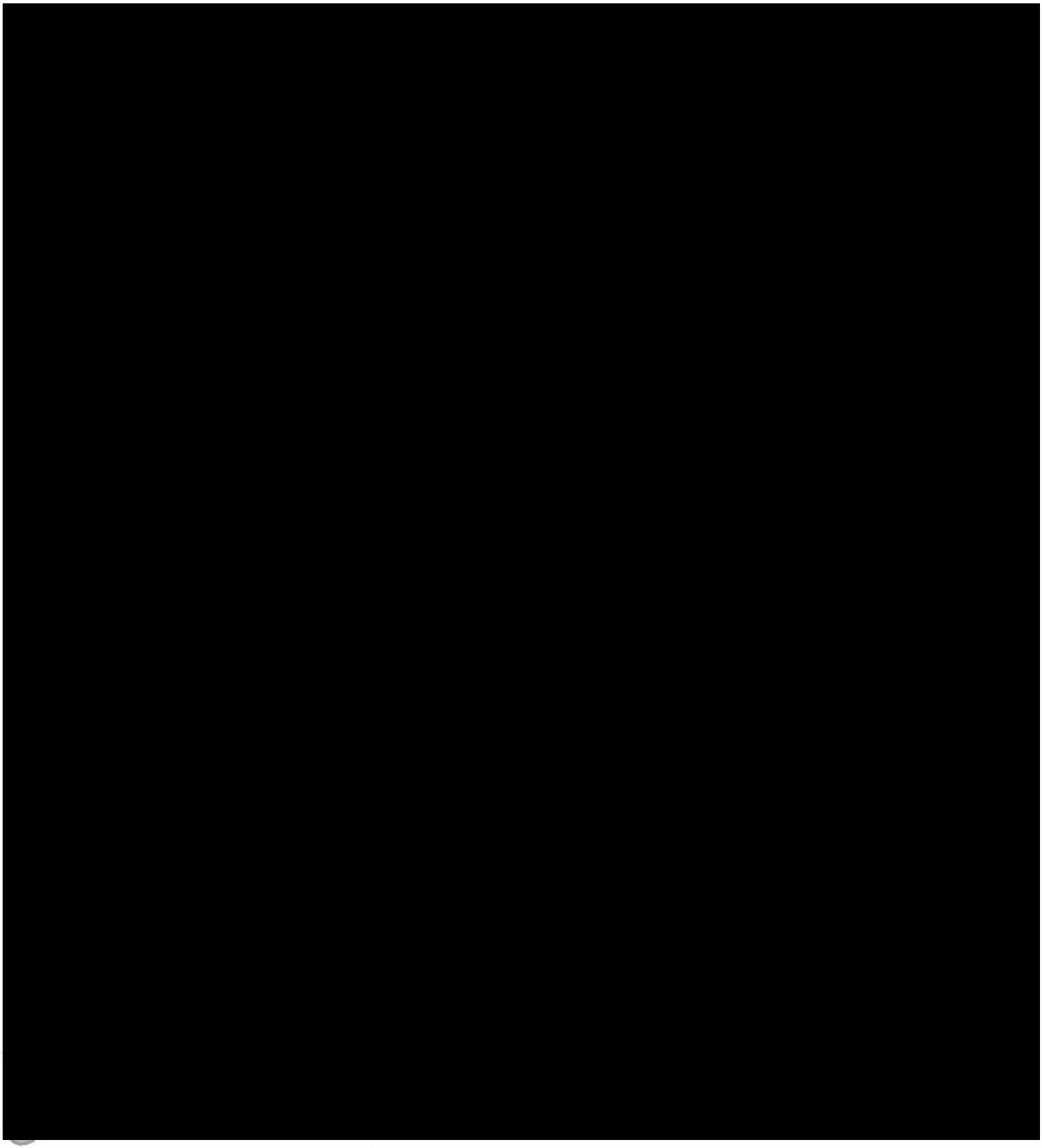


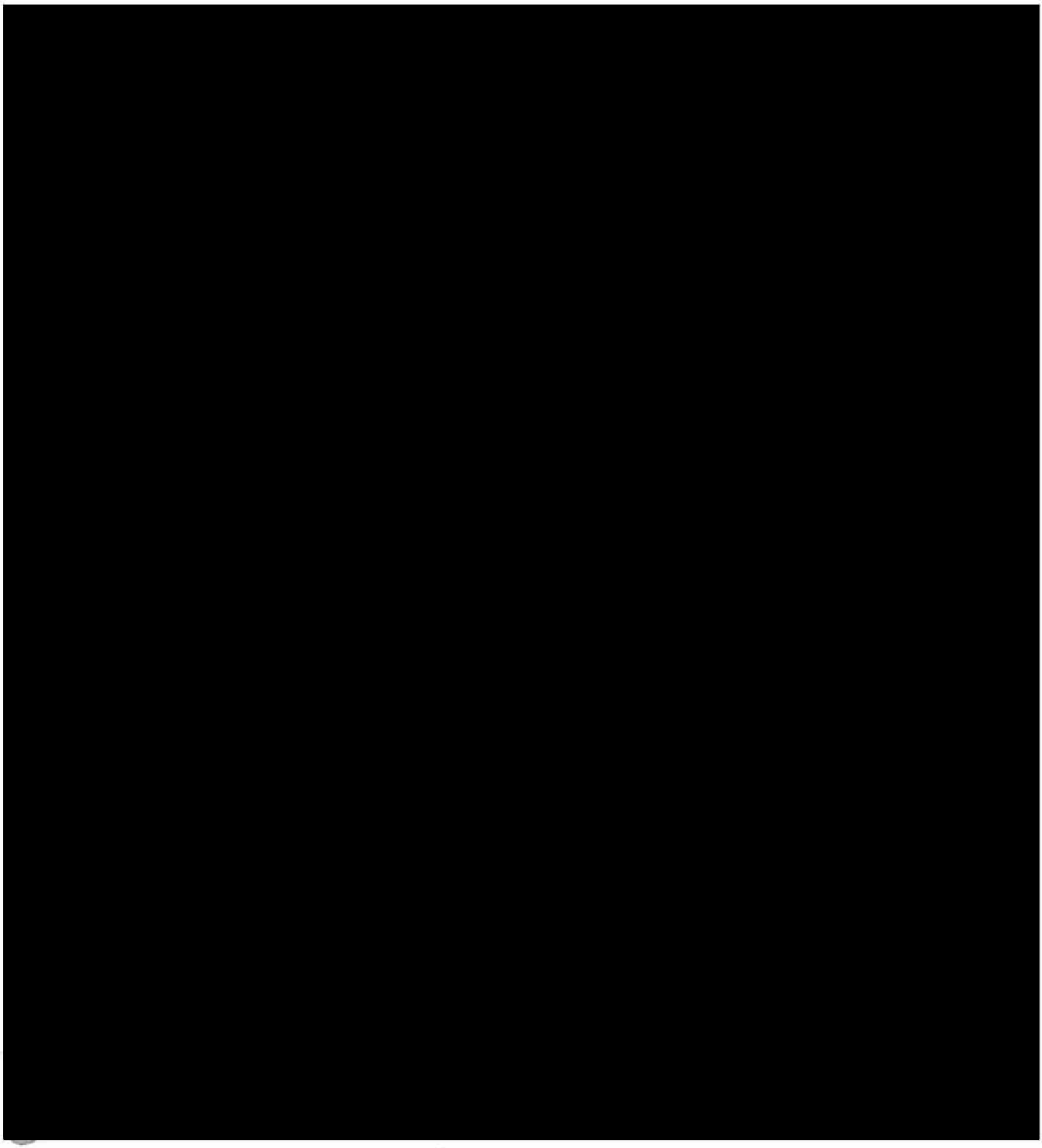


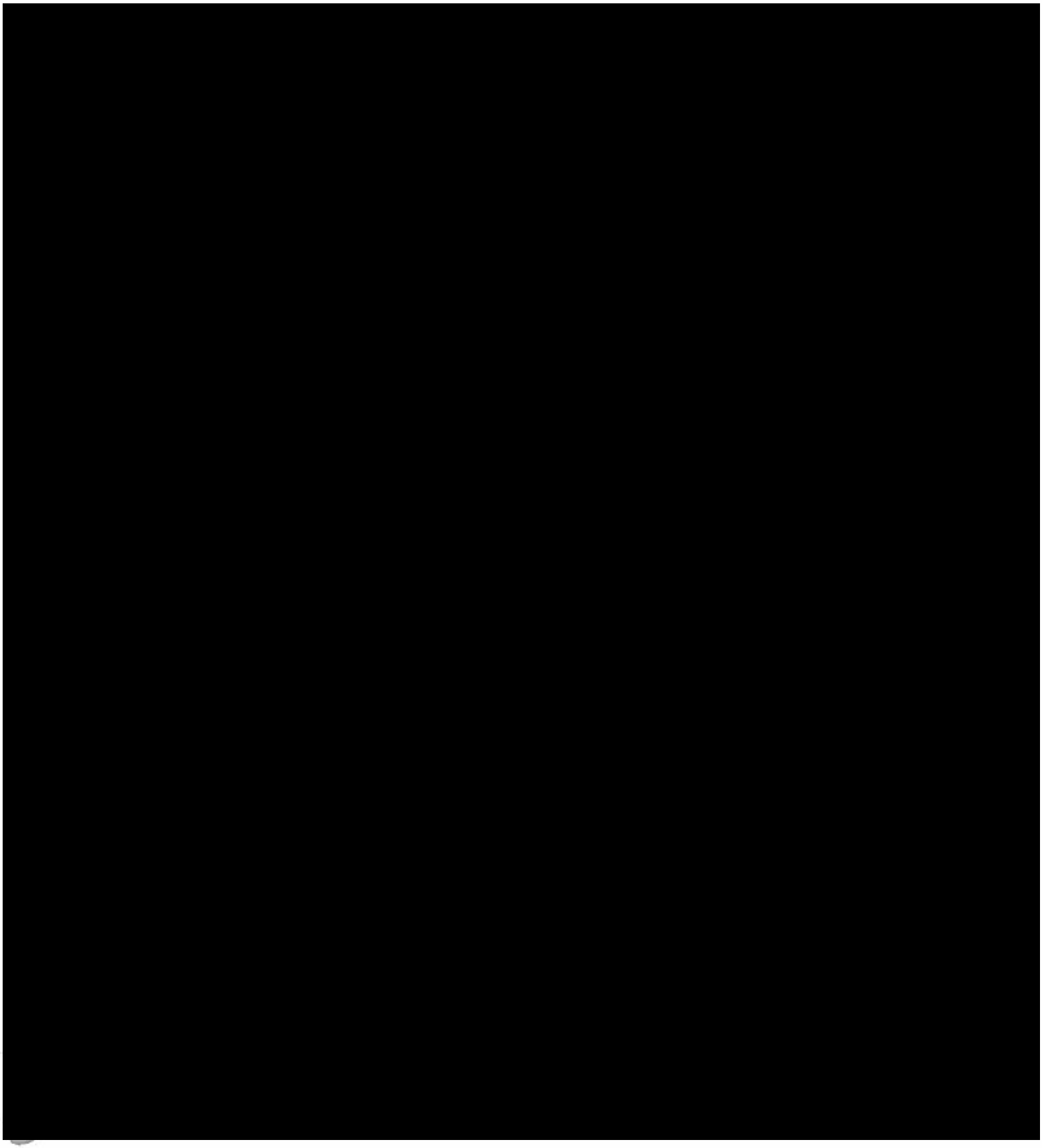


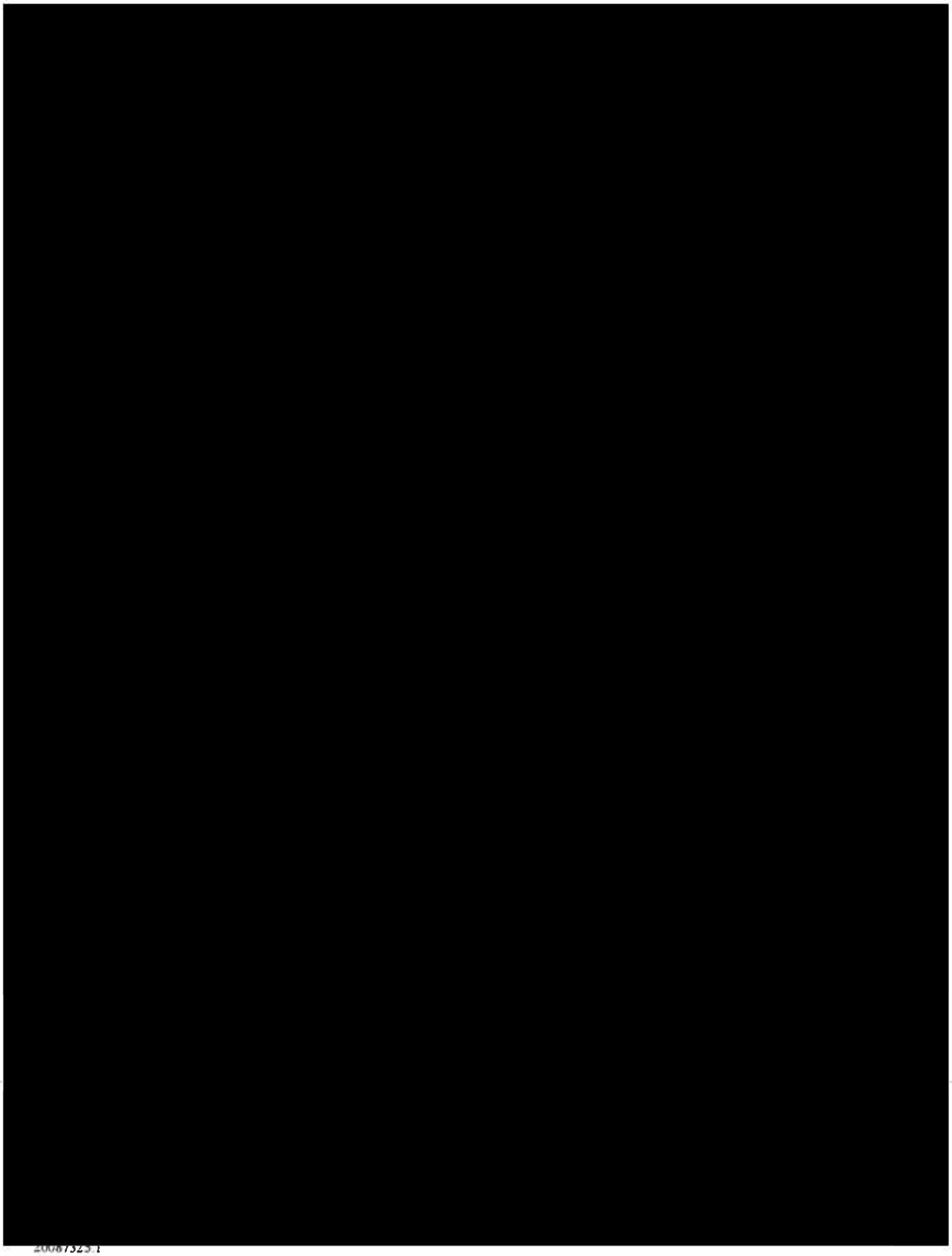


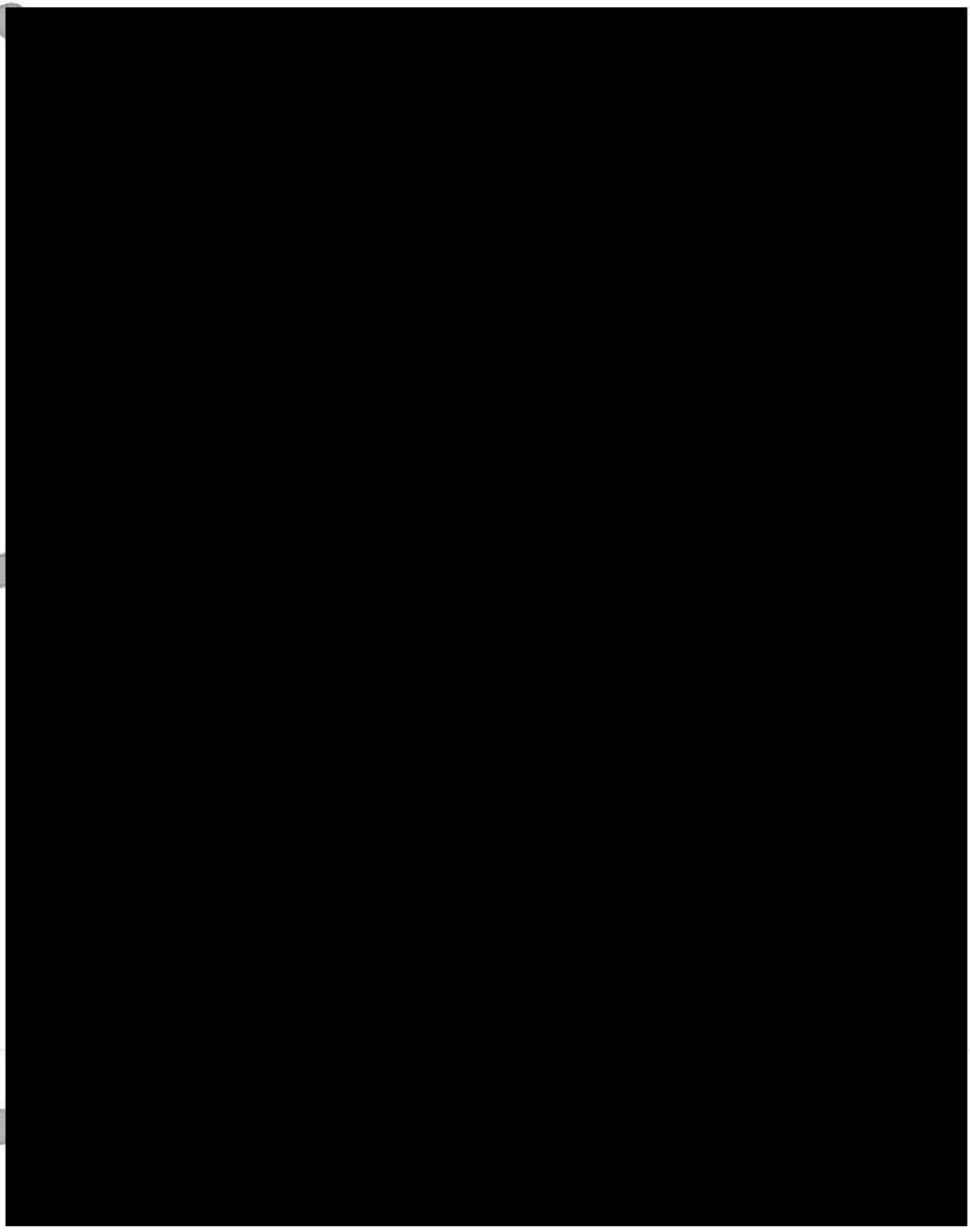


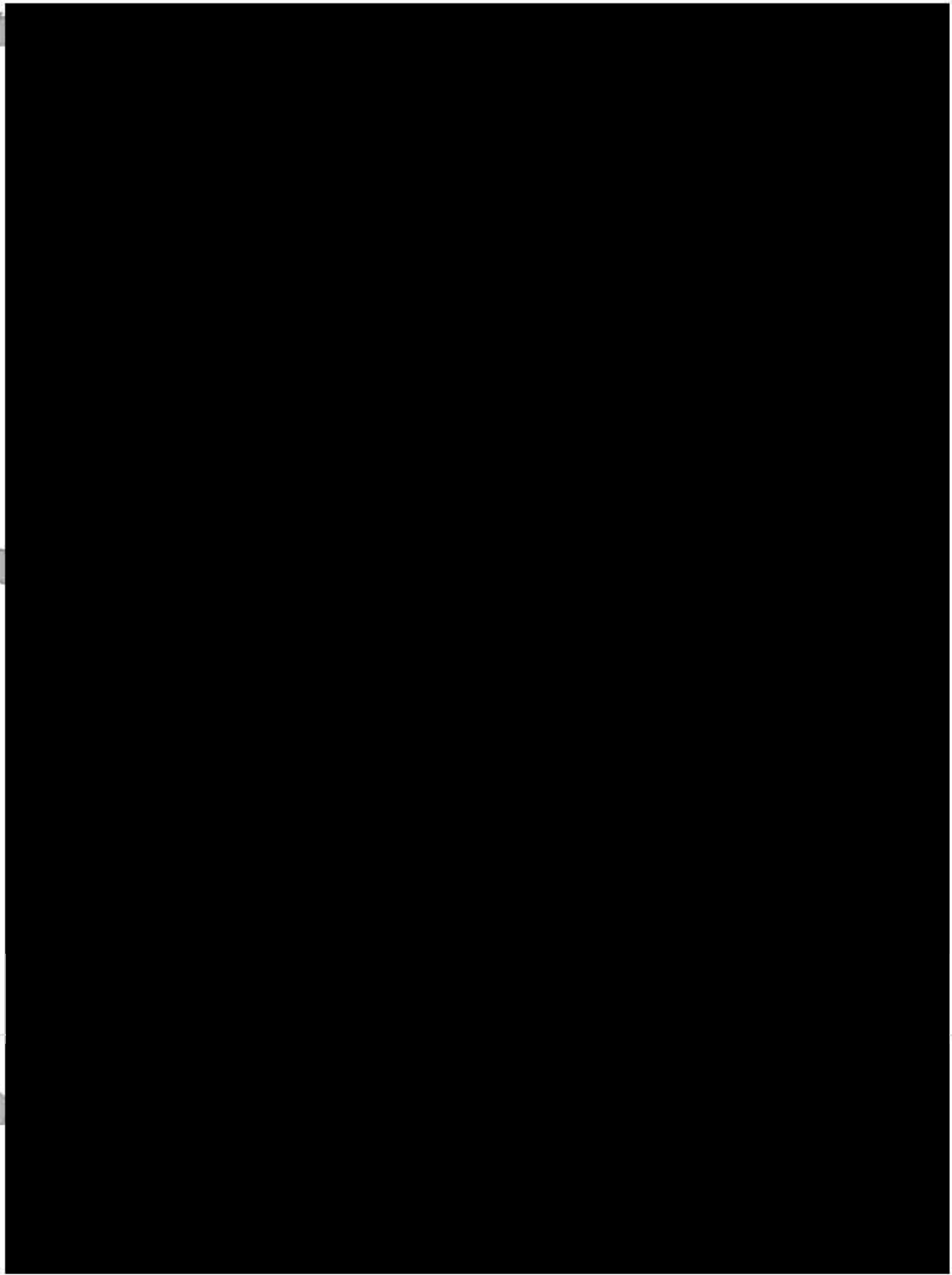


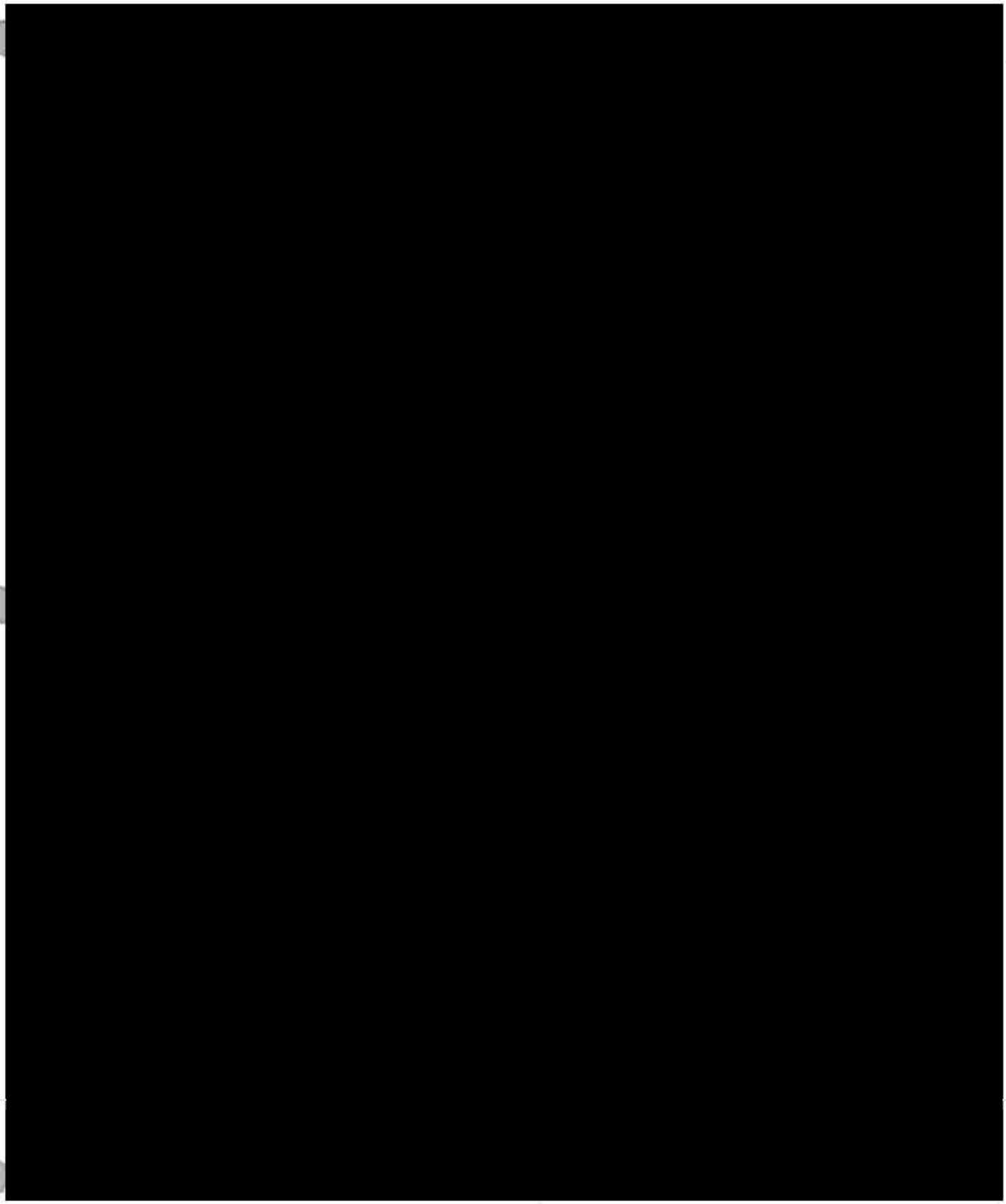


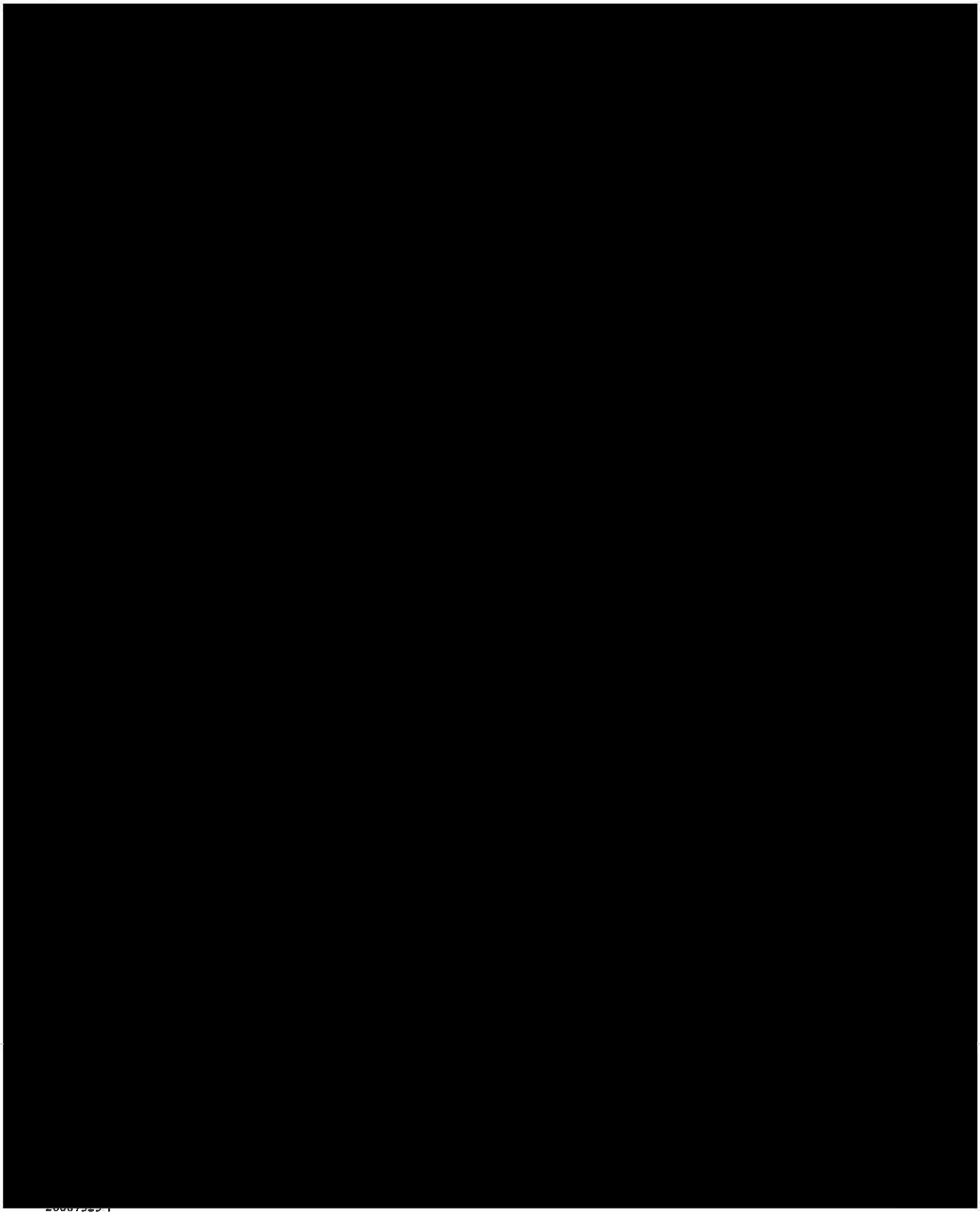


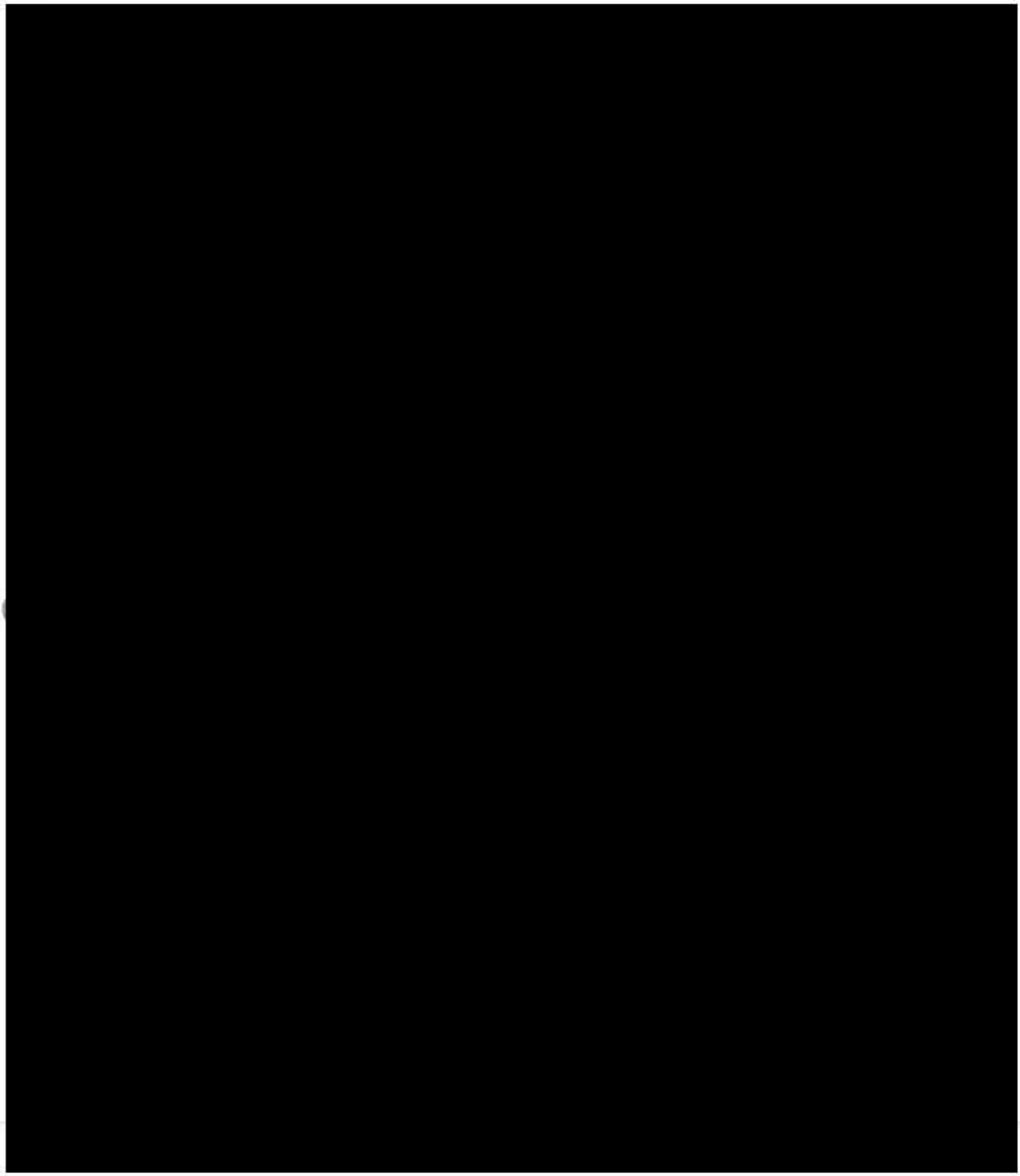


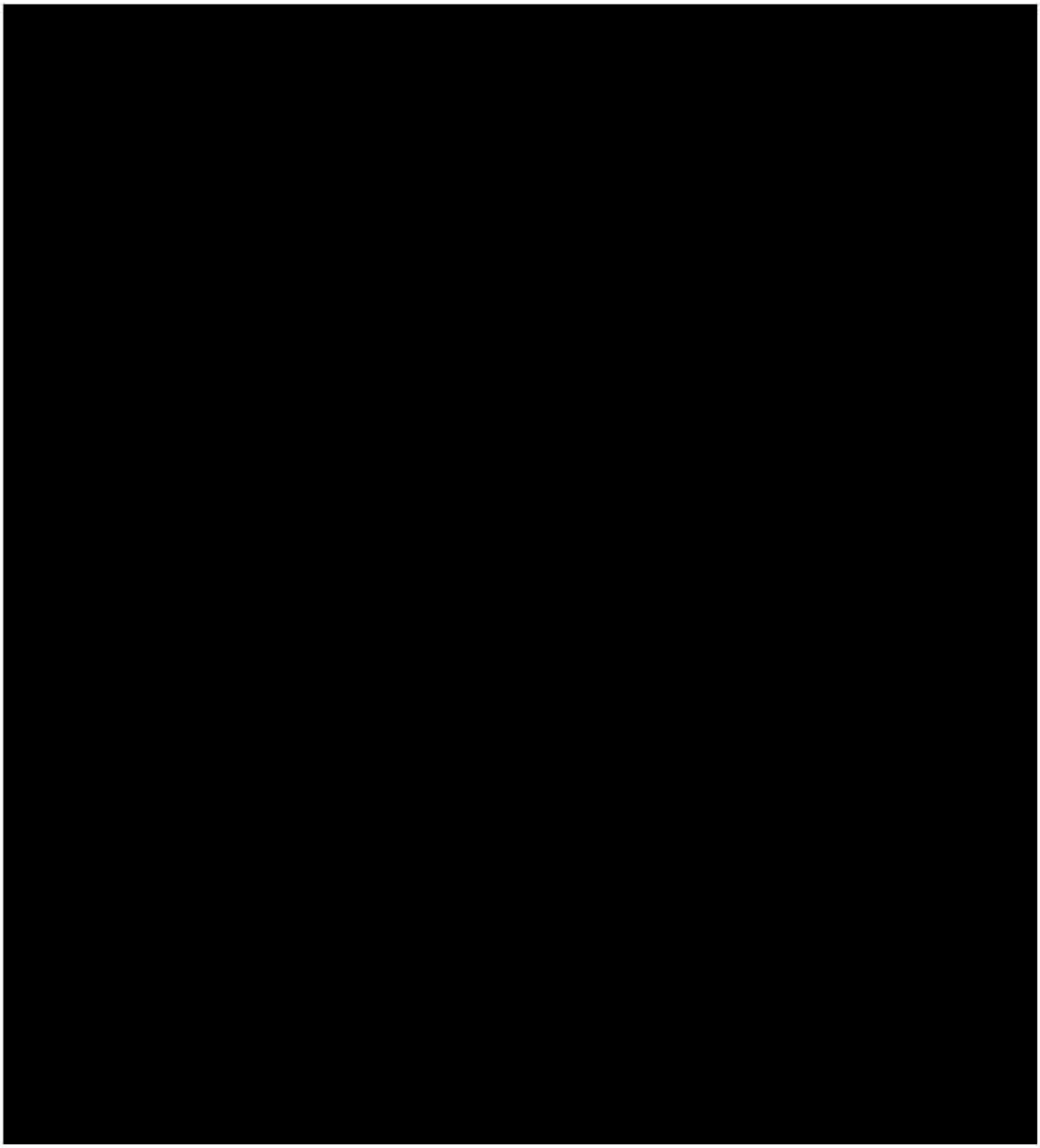


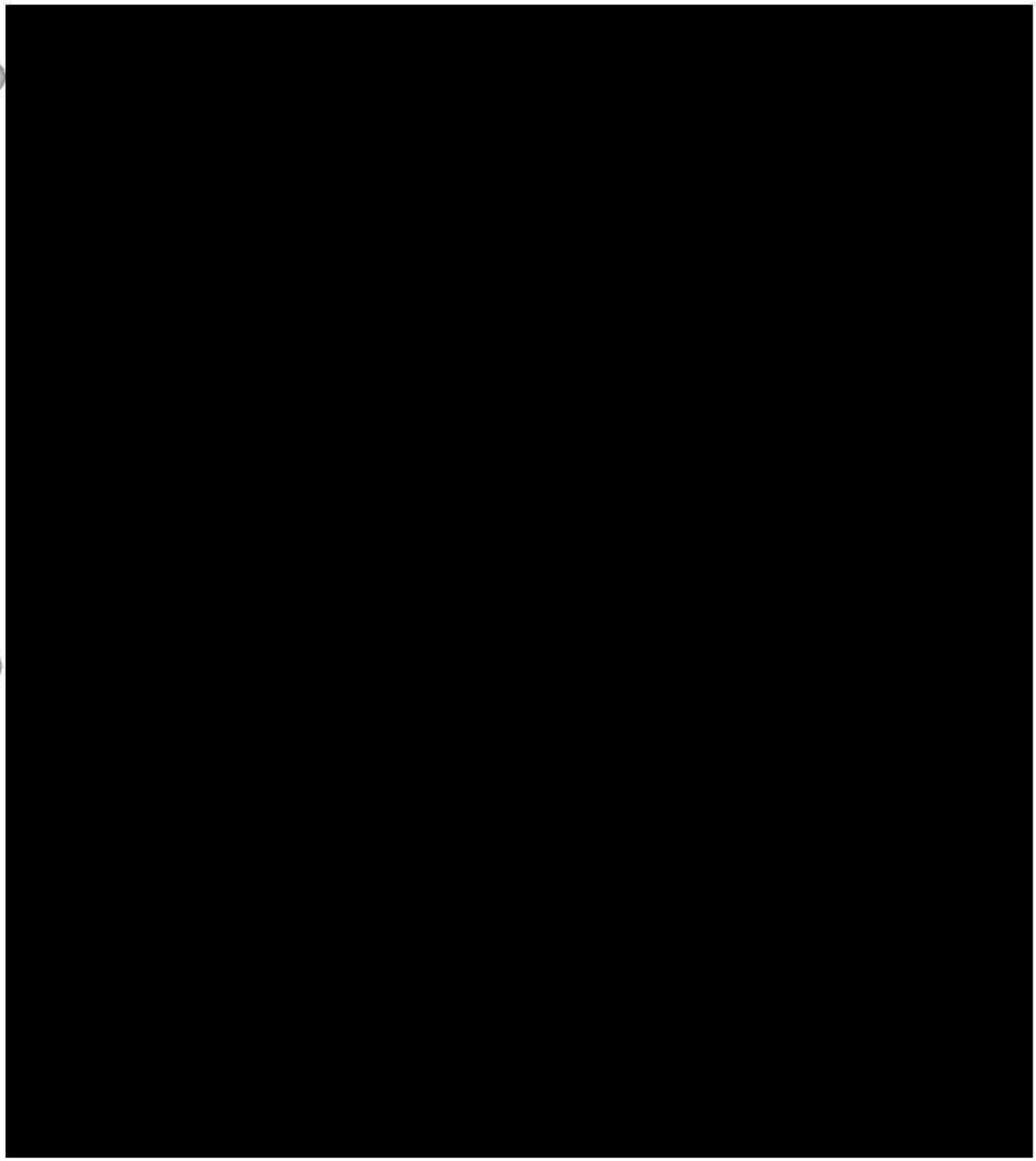


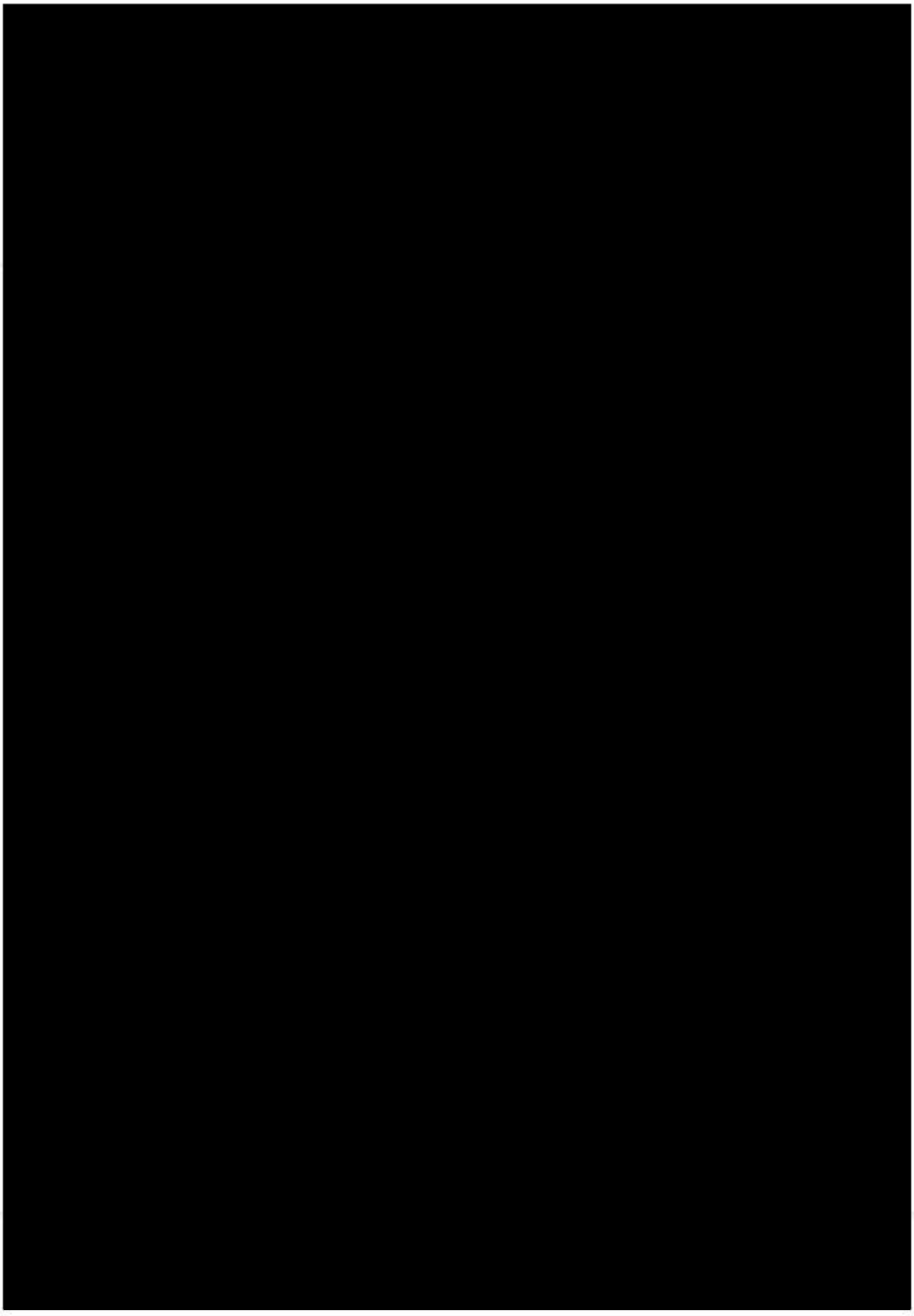


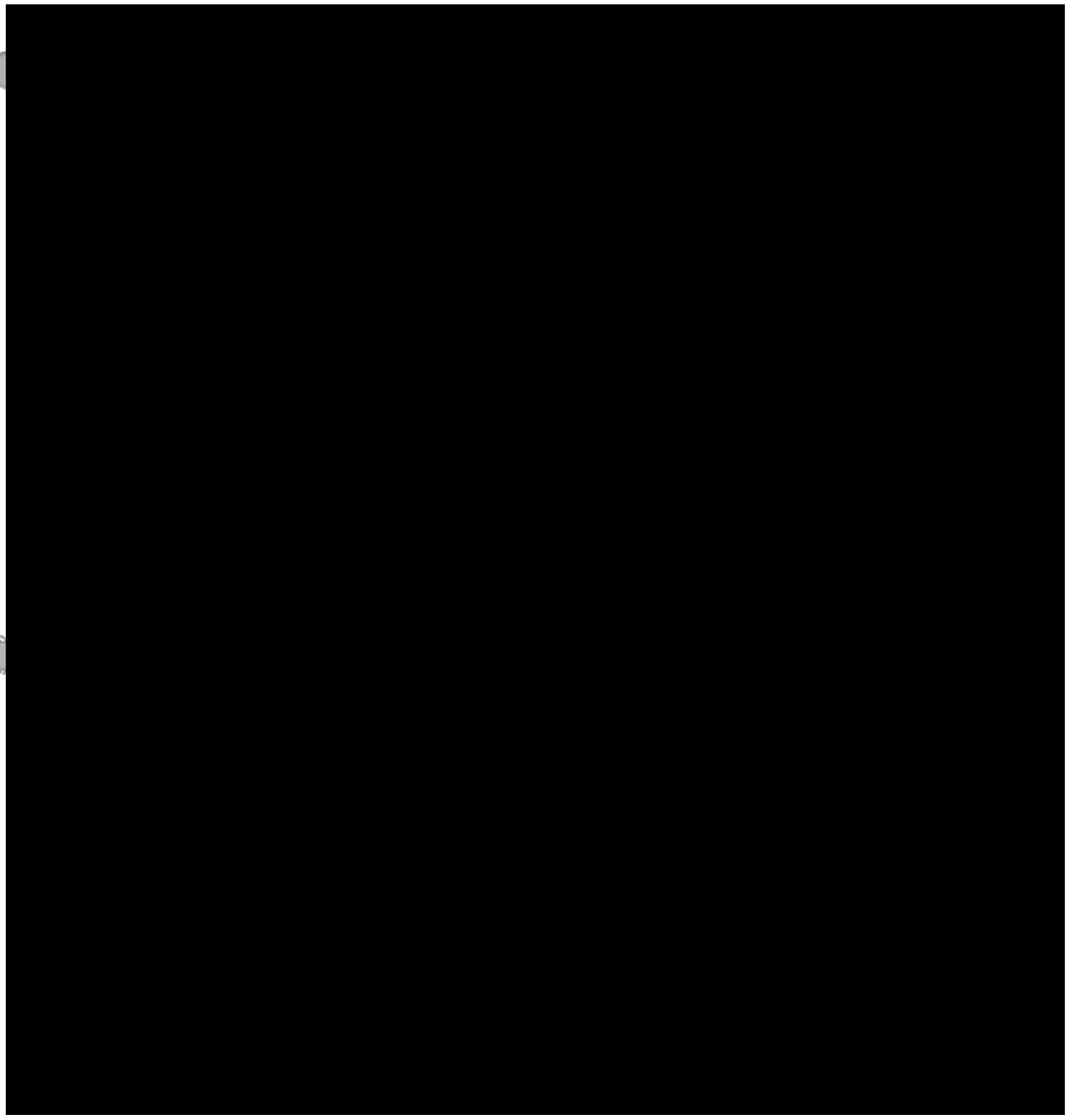


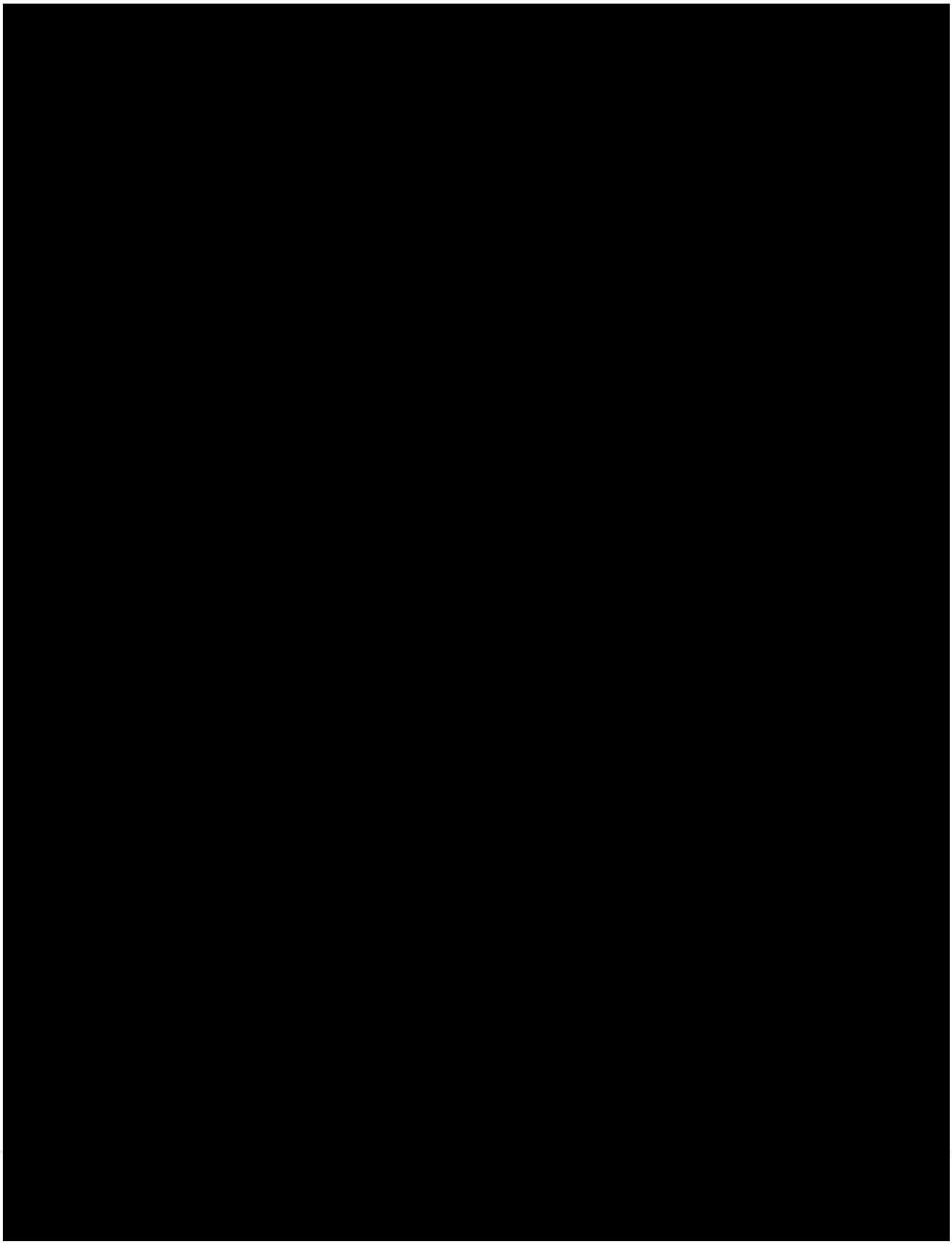


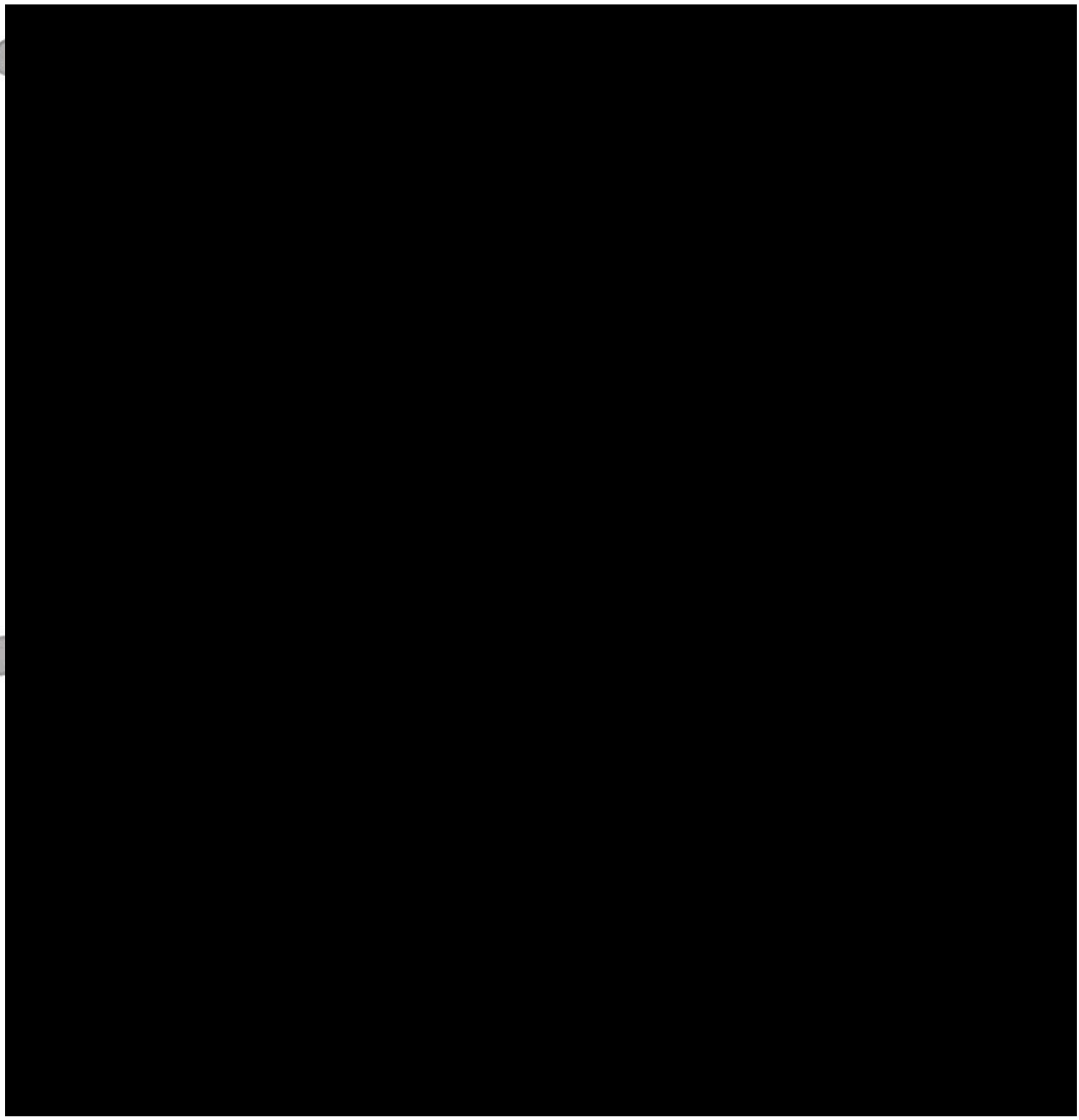


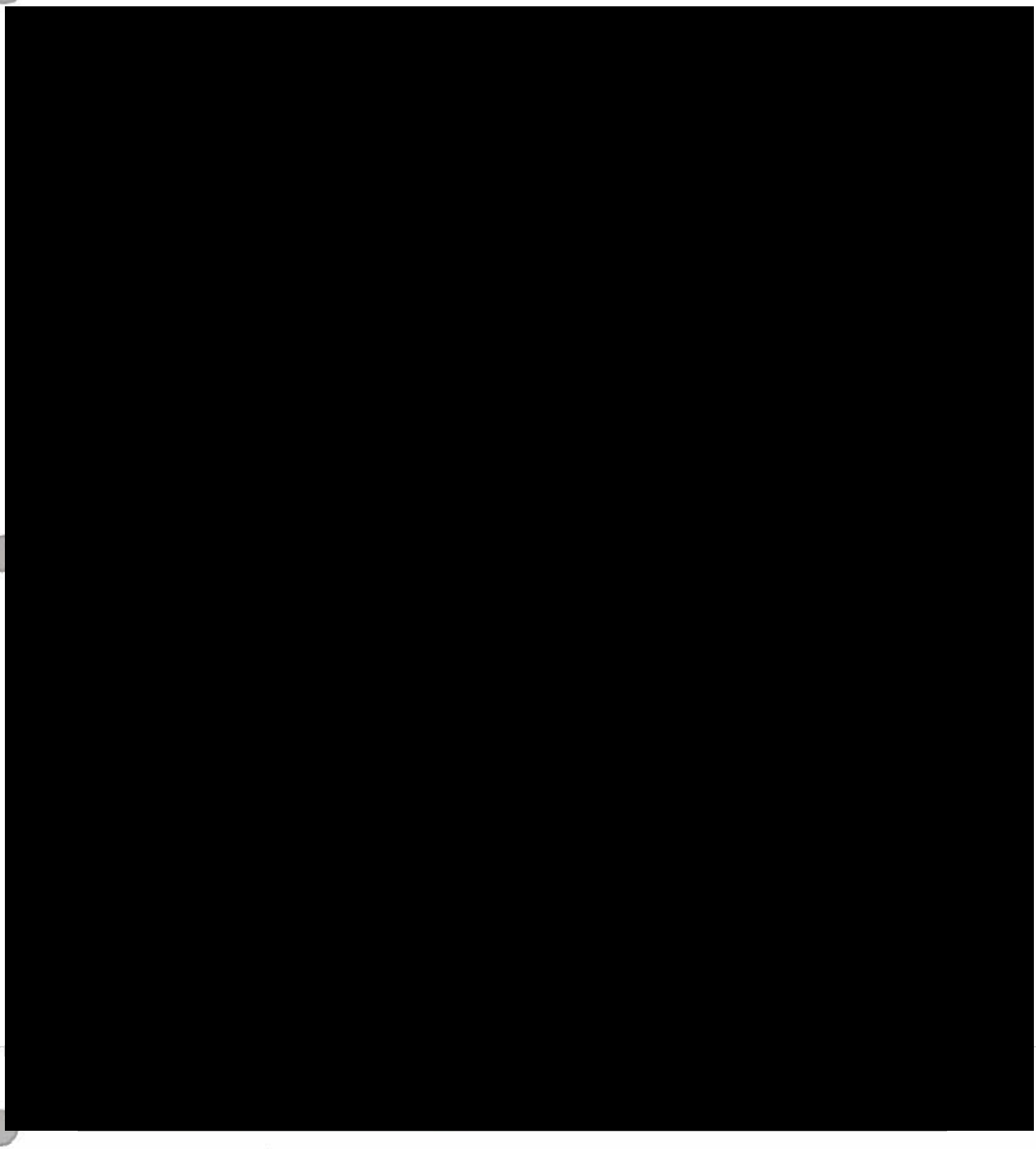


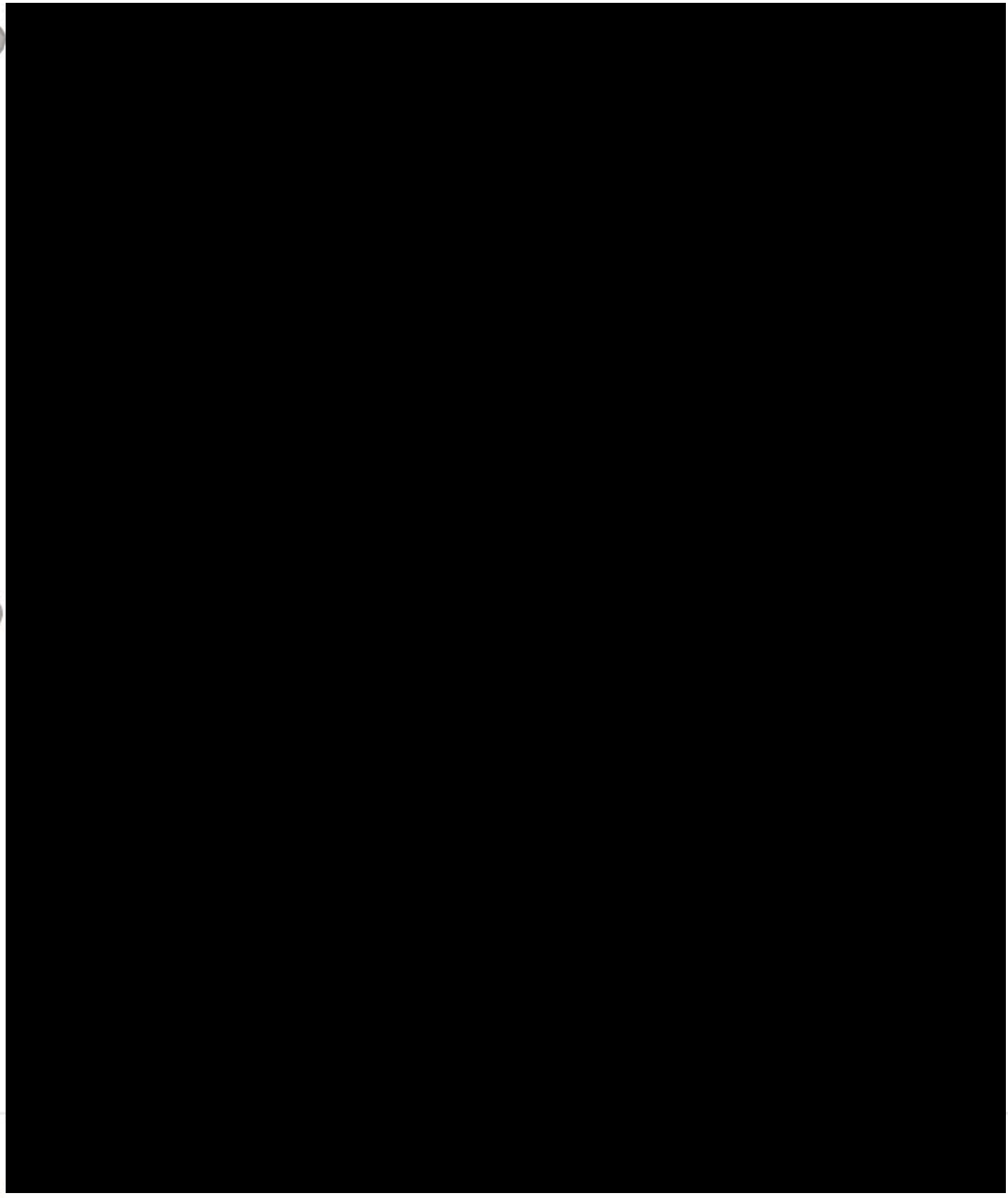








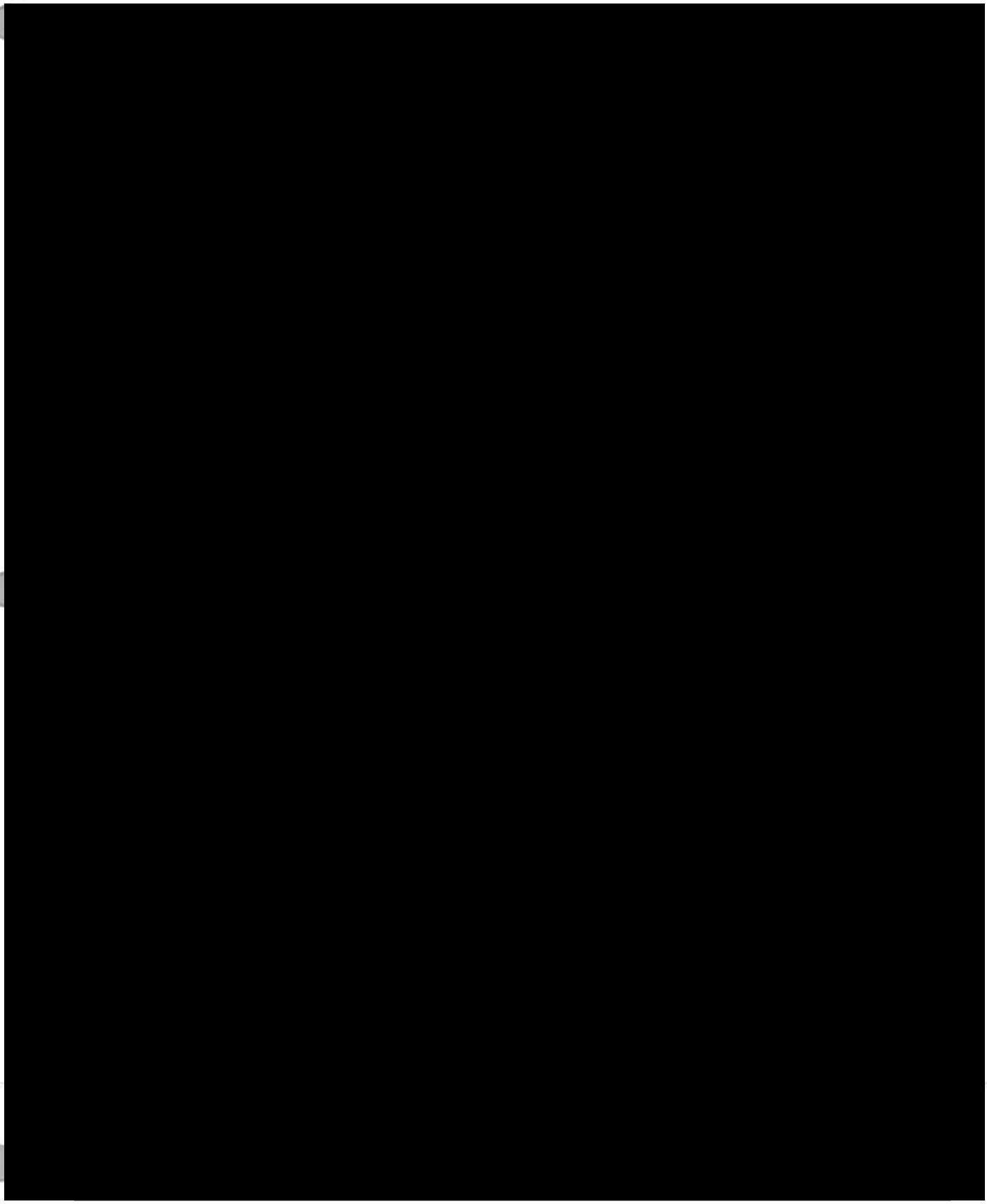




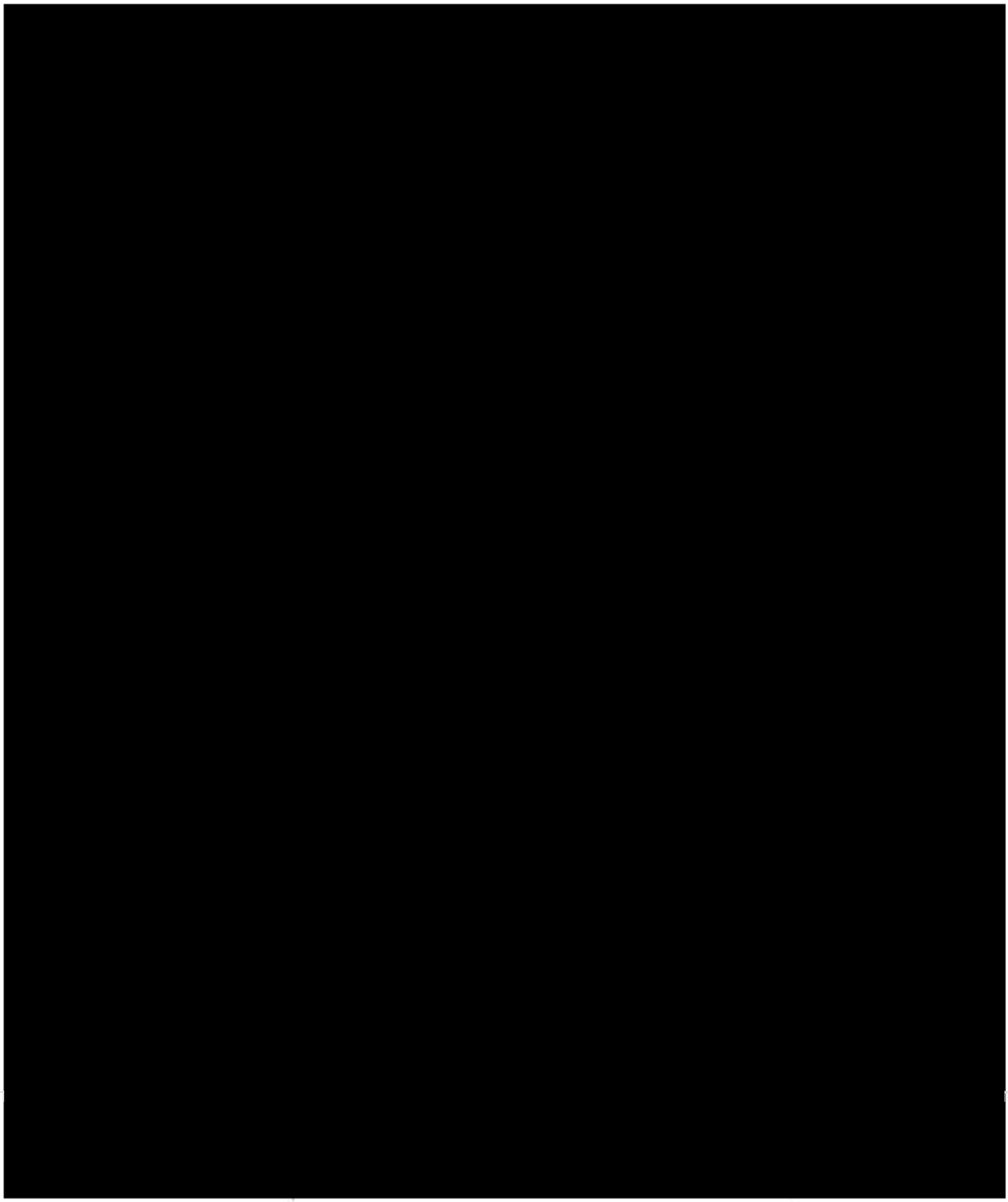
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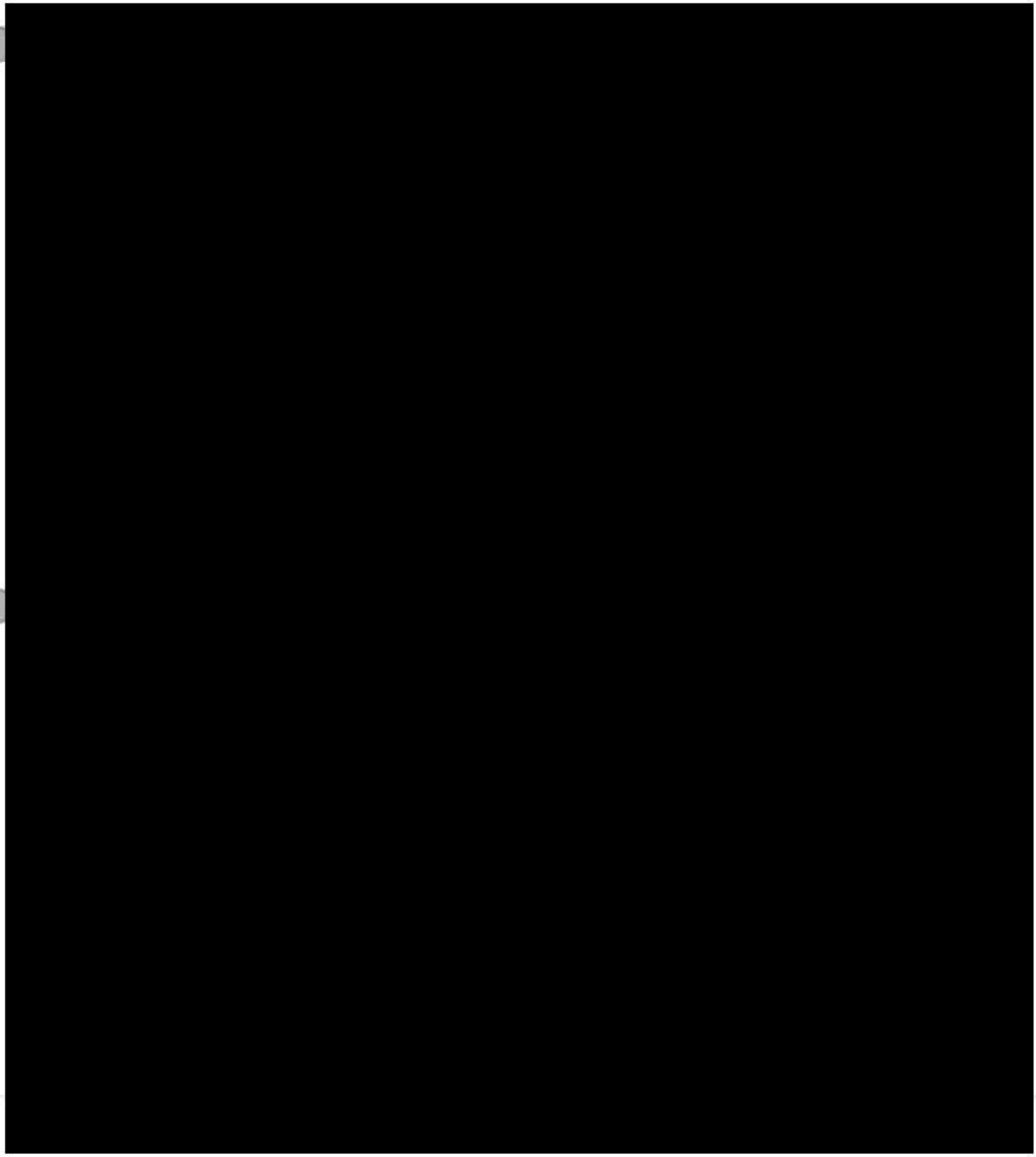
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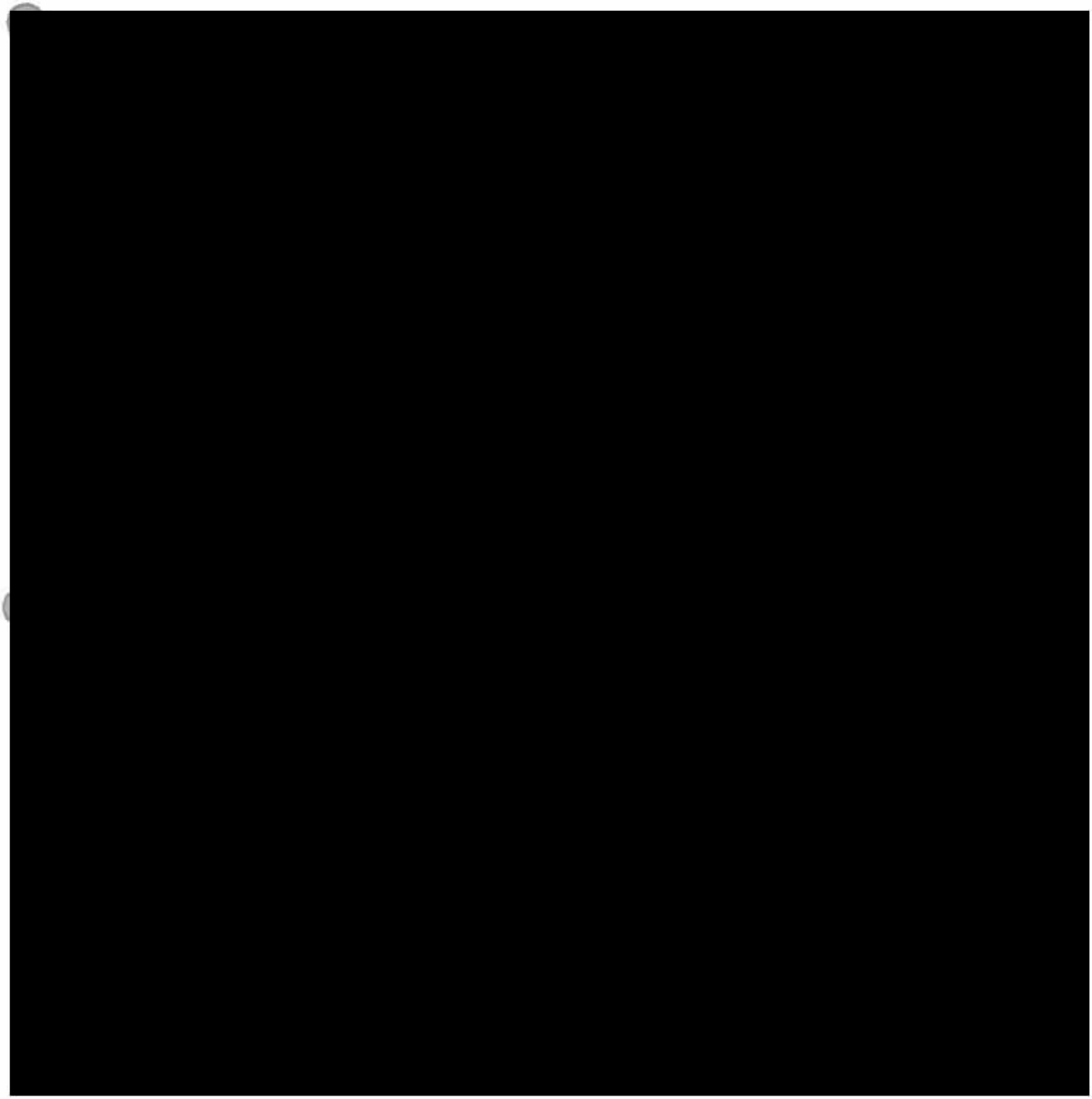
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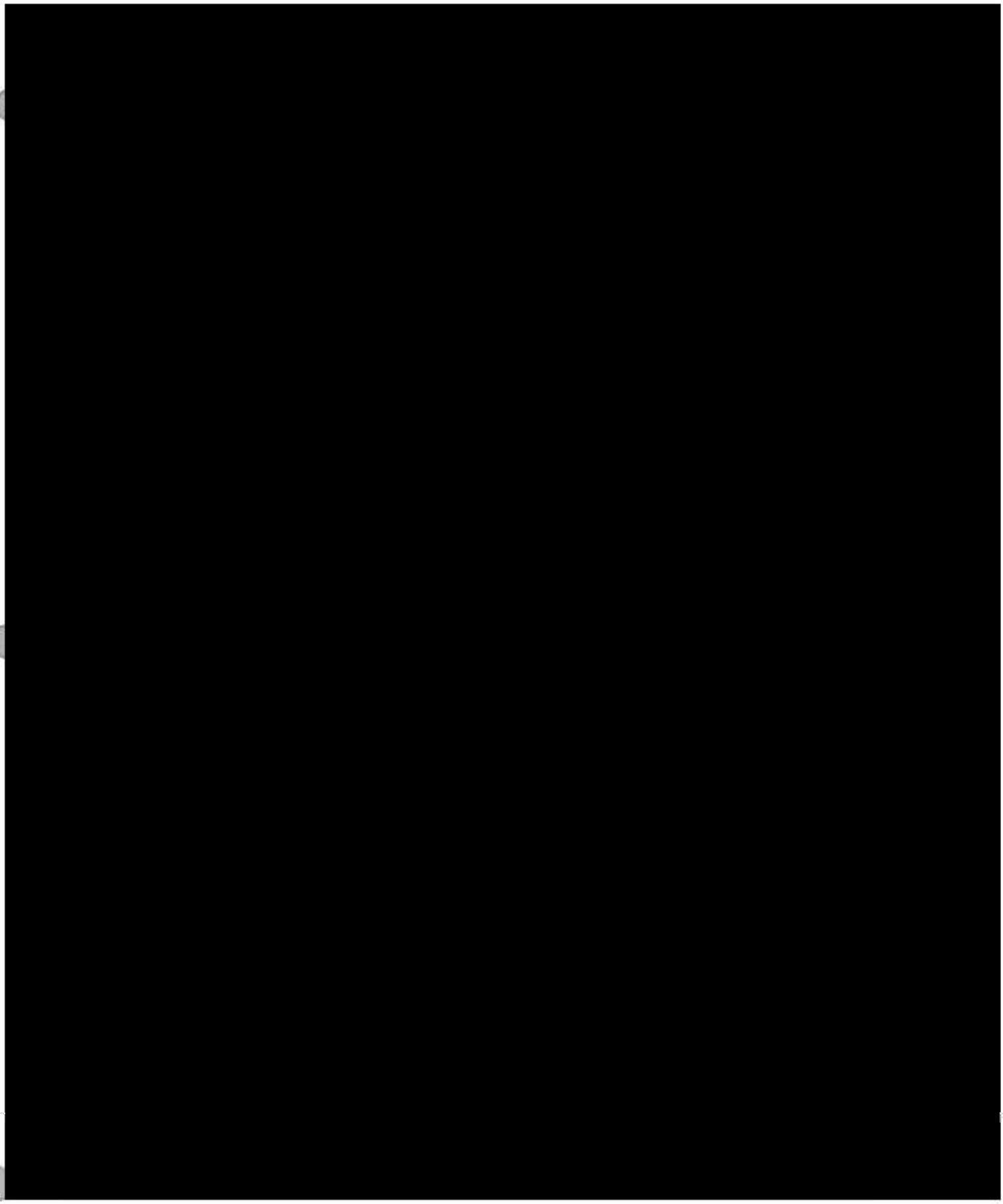


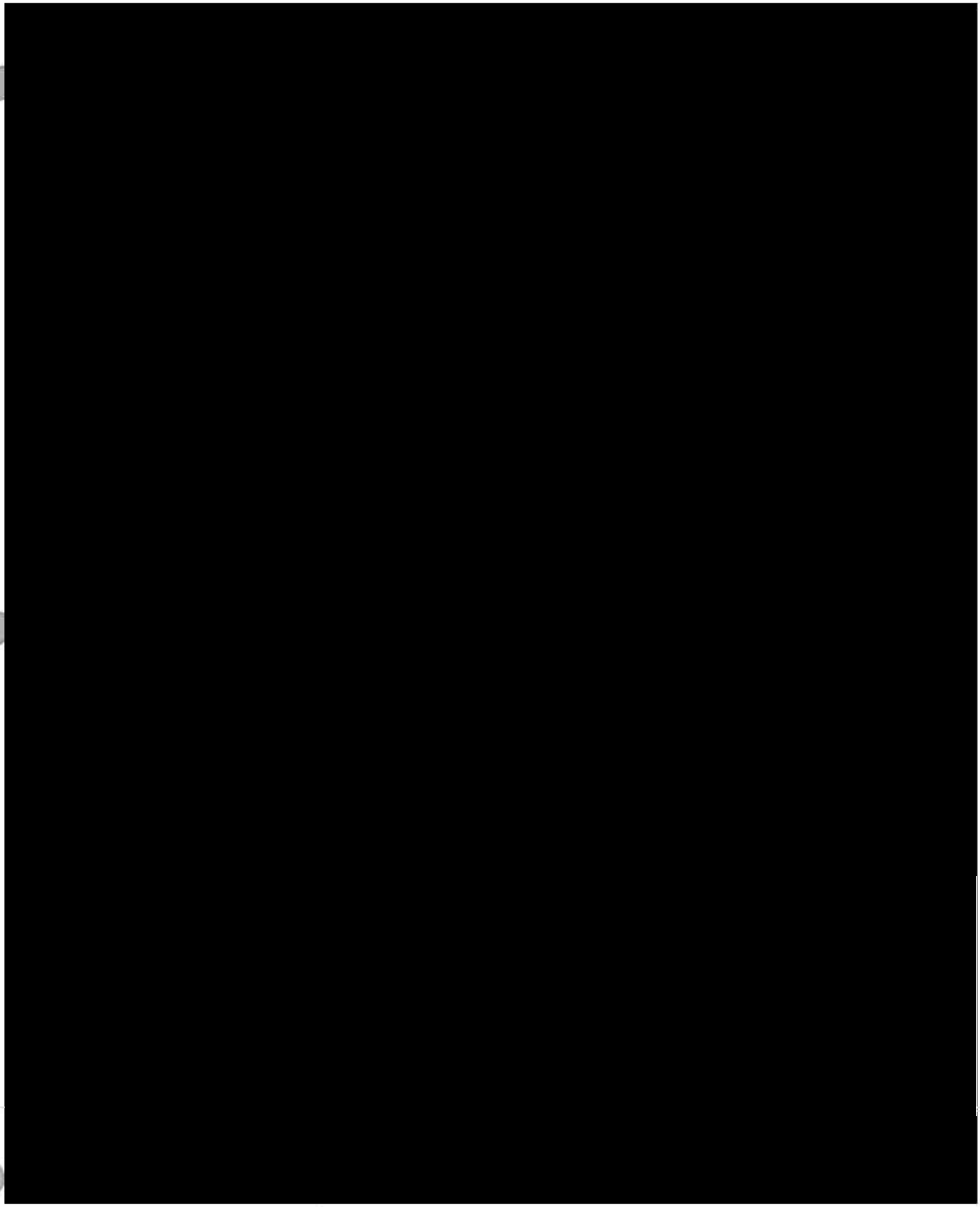


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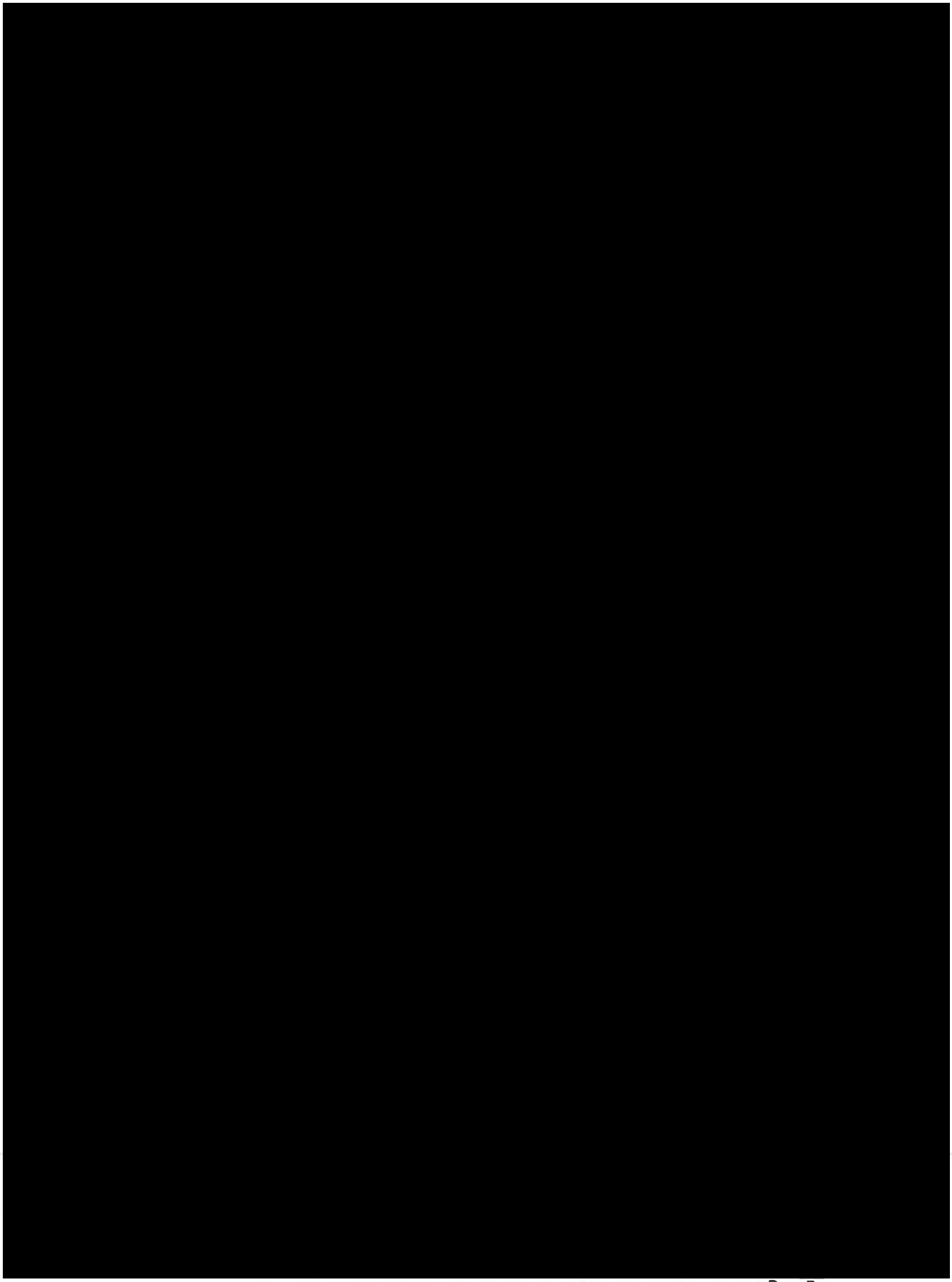
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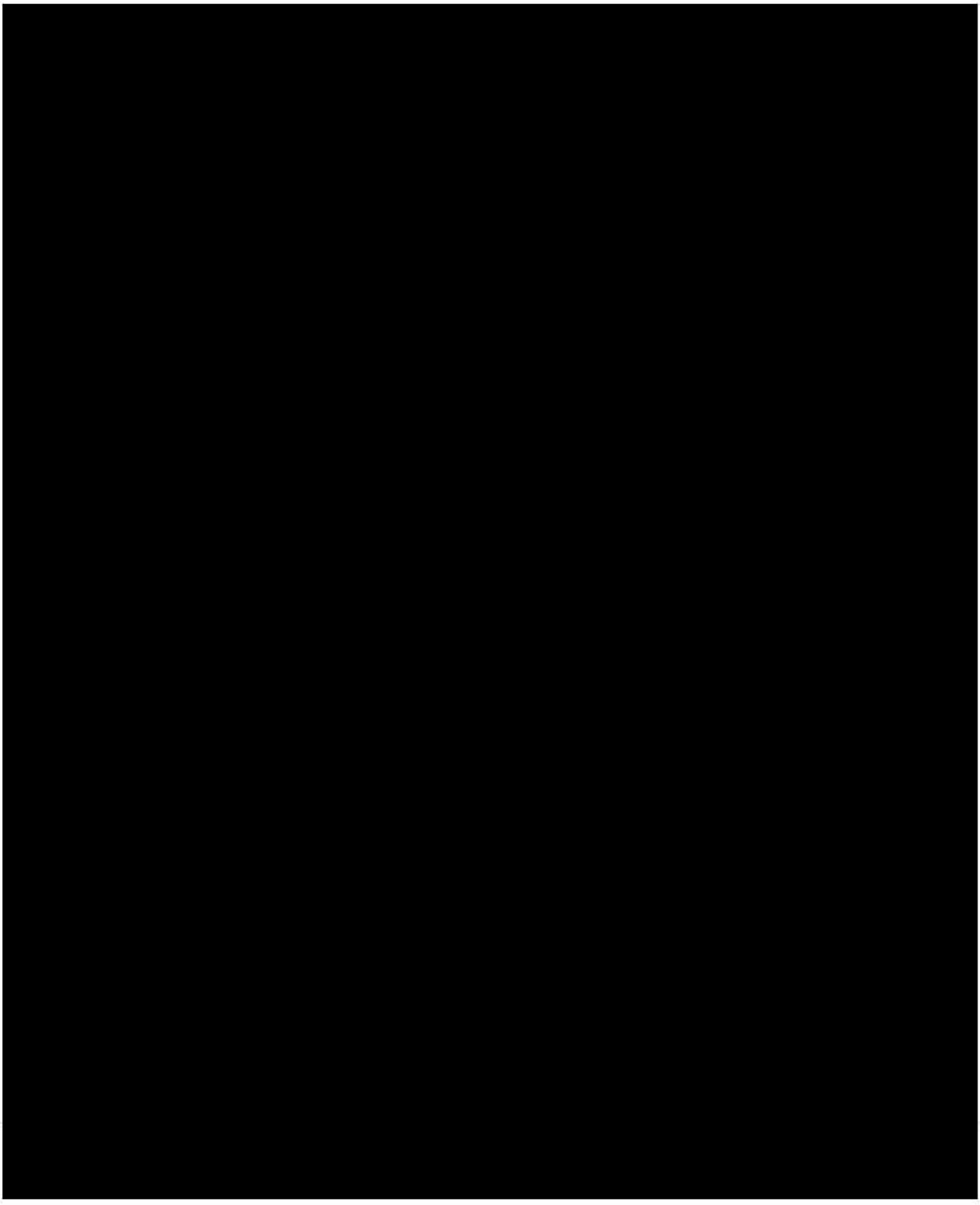




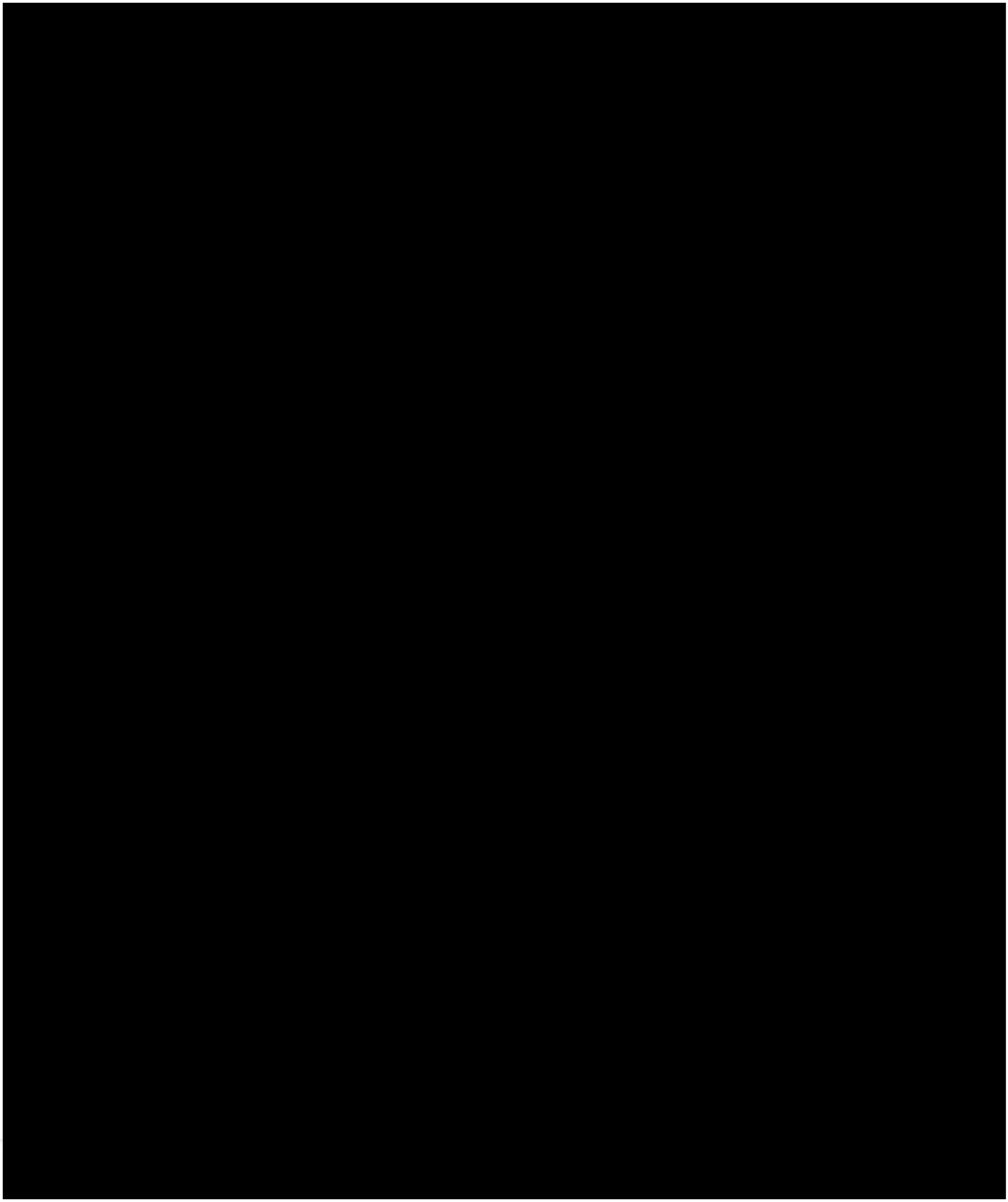
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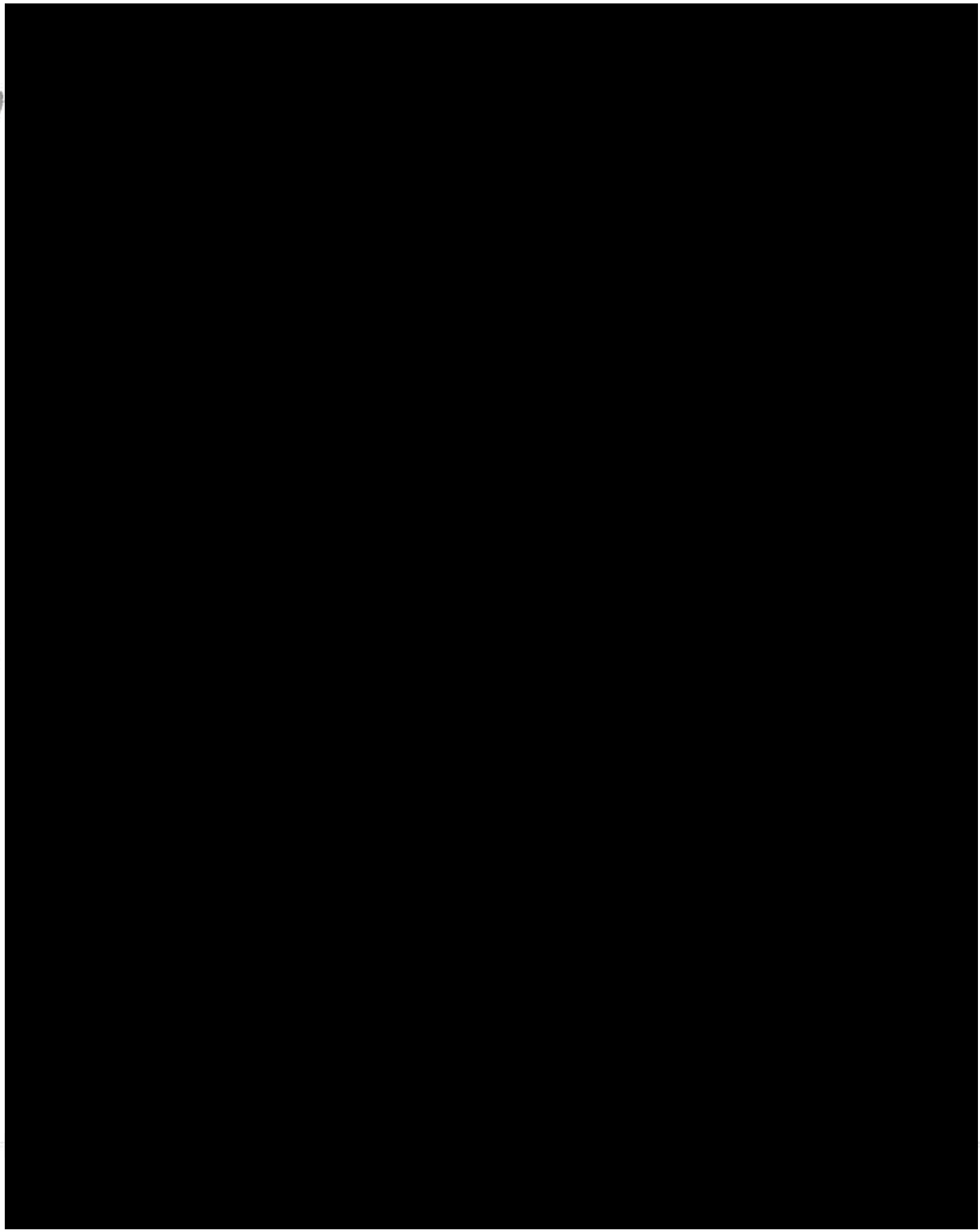


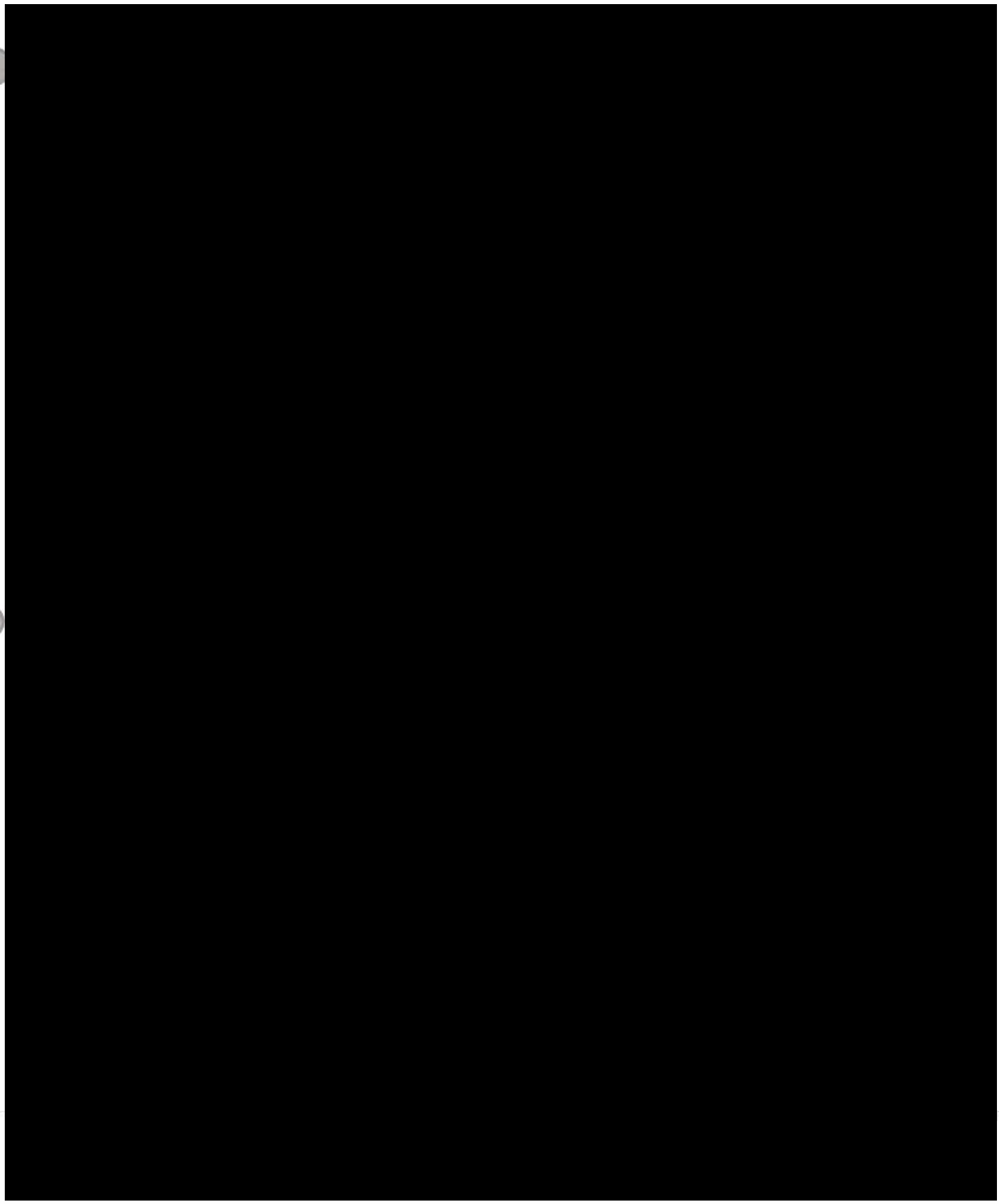
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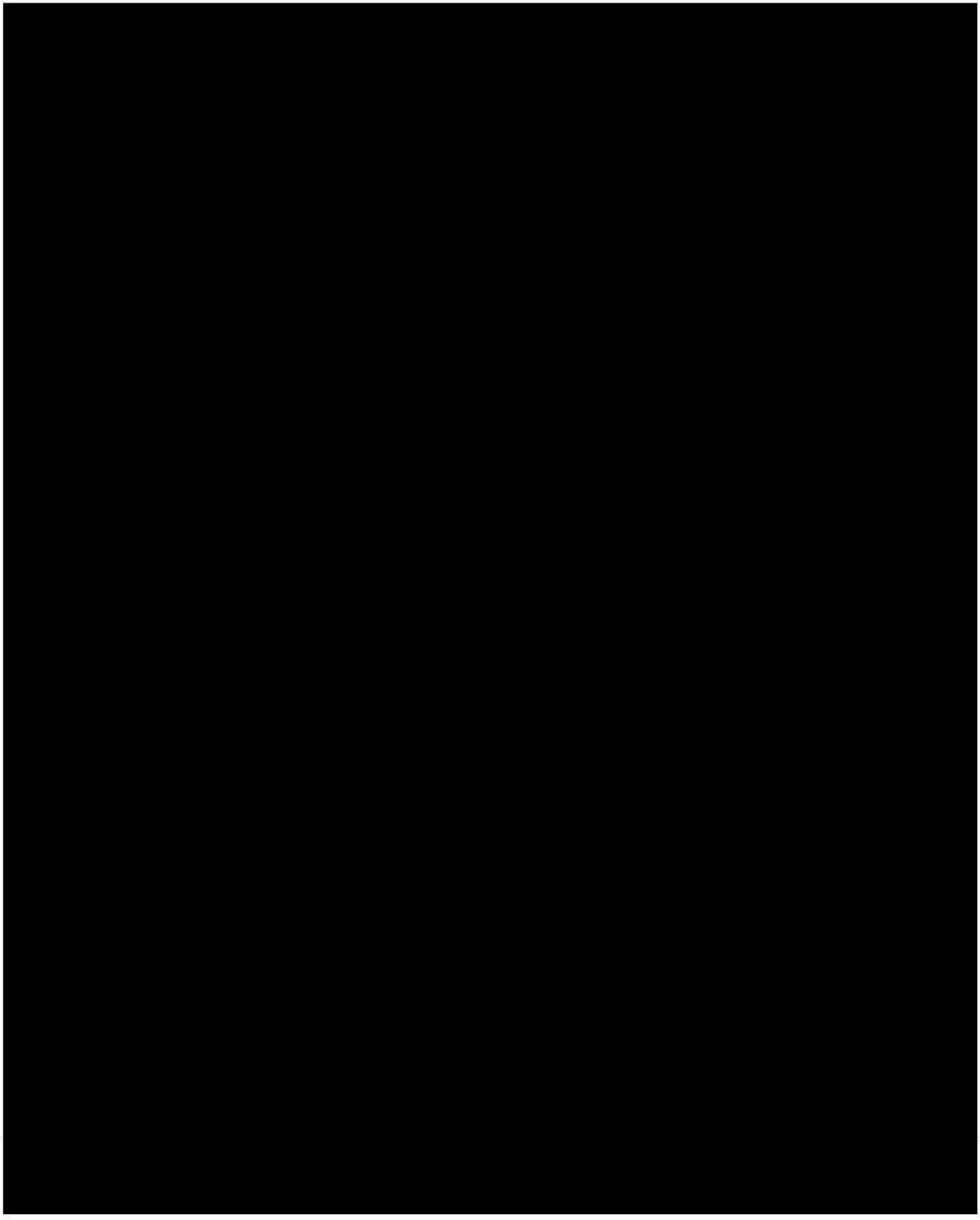


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SCHEDULE 21
MASTER AGREEMENT

See attached.

ATTACHMENT A

AMENDED AND RESTATED MASTER AGREEMENT

FOR

NEXT GENERATION

KENTUCKY INFORMATION HIGHWAY (NG-KIH) INITIATIVE CONCESSIONAIRE PARTNER

BETWEEN

THE COMMONWEALTH OF KENTUCKY Finance and Administration Cabinet

AND

MACQUARIE INFRASTRUCTURE DEVELOPMENTS LLC
Level 16, 125 West 55th Street
New York, New York 10019

Contact Person:
Nicholas Hann
Senior Managing Director
Suite 2400
550 Burrard Street Vancouver BC V6C 2B5
Canada
Telephone: 604-605-1779 Fax: 604-605-1634
Nicholas.hann@macquarie.com

MA 758 1500000563

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Attachment A - Master Agreement
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Attachment F – Phase 2 Early works
Attachment G – Insurance
Attachment H – Design and Construction Protocols
Attachment I – Site Locations

WHEREAS, pursuant to KRS 45A.605, the Commonwealth of Kentucky, by and through the Finance and Administration Cabinet (the "Commonwealth"), has the authority to enter into contracts for the development of an information highway on behalf of state agencies and other specified entities;

WHEREAS, the Commonwealth has established networks for the use of state government, institutions of higher learning, K-12 education and local governments;

WHEREAS, the Commonwealth, through its government agencies, educational entities, local government and other stakeholders, supports the finance, design, construction, operation, maintenance and refreshing of the Next Generation Kentucky Information Highway middle mile infrastructure ("NG-KIH" or "Project") to serve the public sector, private interests and Kentucky's citizens;

WHEREAS, the NG-KIH will consist of a statewide dark fiber middle-mile network constructed to provide communication services based on an optical fiber backbone which will improve the quality, reliability, and access to network services across the Commonwealth;

WHEREAS, the Commonwealth issued RFP 758 1500000003-5 ("RFP" or "Solicitation") through a competitive bidding process to select a long-term vendor/partner to assist with this Project;

WHEREAS, Macquarie Infrastructure Developments, LLC ("Contractor"), having acknowledged and accepted, as of the date of submission of Contractor's proposal, the initial terms and scope of the Project as set forth in the RFP, as amended, bid upon the Solicitation and continues to design and develop all aspects of the Project in cooperation with the Commonwealth;

WHEREAS, Contractor has extensive experience in the design, implementation, financing and operation of complex public-private telecommunications projects and was awarded the contract;

WHEREAS, this Agreement is an amendment and restatement of that certain Master Agreement for Next Generation Kentucky Information Highway Initiative Concessionaire Partner between the Commonwealth and the Contractor dated December 19, 2014 to reflect, among other amendments, the inclusion of LTS as a contributor to the Work Product, to establish an Interim Milestone availability proposal and to reflect the terms and conditions applicable to certain early works (Phase 1), which will form part of the scope of the Concession Agreement, but will be performed by LTS and OCI (or through a joint venture entity once formed between LTS and OCI or any of their affiliates) (individually or collectively referred to herein as the "DB

Contractors") in advance of the effective date of the Concession Agreement in order to maintain the anticipated project schedule;

WHEREAS, the Commonwealth and the Contractor have agreed to further amend this Agreement to reflect the terms and conditions applicable to certain further early works (Phase 2), which will form part of the scope of the Concession Agreement, but will be performed by the DB Contractors in advance of the effective date of the Concession Agreement in order to maintain the anticipated project schedule;

WHEREAS, following execution of the Master Agreement executed December 19, 2014, with feedback from placement agents and underwriters, a viable financing plan utilizing tax-exempt and taxable municipal securities was identified as an alternative to the corporate (taxable) financing that had previously been the basis of the Contractor's financial plan;

WHEREAS, in connection with the adoption of this financial plan, the Commonwealth and the Contractor agree to enter into this Fourth Amended and Restated Master Agreement;

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Commonwealth and Contractor (collectively referred to as "Parties"), hereby covenant and agree as follows:

This Amended and Restated Master Agreement ("Agreement") is entered into, by and between the Commonwealth and Contractor.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

The purpose of this Agreement is to engage Contractor to explore the feasibility of the finance, design, construction, operation, maintenance, and refreshing of the NG-KIH initiative (the feasibility phase being the "Initial Project" and the ultimate implementation of the NG-KIH under the Concession Agreement being the "Project") and to exclusively negotiate the Concession Agreement between the Parties governing the Project.

II. Contract Components and Order of Precedence

The Commonwealth's acceptance of Contractor's proposal in response to Solicitation RFP 758 1500000003, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid agreement between the Parties consisting of the following:

A. procurement statutes, regulations and policies (adopted as regulations or otherwise incorporated therein pursuant to KRS Chapter 13A);
B. any written agreements between the Parties;

C. any addenda to Solicitation RFP 758 1500000003;
D. Solicitation RFP 758 1500000003 and all attachments;
E. any Best and Final Offer;
F. any clarifications concerning the Contractor's proposal in response to Solicitation RFP 758 1500000003;
G. Contractor's proposal, as finally amended and agreed to, in response to Solicitation RFP 758 1500000003.

In the event of any conflict between or among the provisions contained in the foregoing, the order of precedence shall be as enumerated above. With respect to items C, D, E, F and G above, the Solicitation and associated RFP process is complete and there will be no further amendments thereto.

III. Negotiated Items

1. *Definitions* as used herein, capitalized terms shall have the meanings set forth in Attachment C or as further defined in the Agreement.

2. *Milestones*

- **The Parties agree to work cooperatively and in good faith to achieve three (3) Milestones, as further defined in Attachment D: (1) Guaranteed Maximum Pricing; (2) Interim Milestone; and (3) Financial Close Milestone.**

The indicative timeline for the Milestones is as follows:

- Contractor shall deliver a Guaranteed Maximum Pricing proposal on or before March 28, 2015, or such later date as the Parties agree, acting reasonably. The Commonwealth acknowledges receipt of such proposal on such date;

- Contractor shall deliver an Interim Milestone availability payment proposal on May 31, 2015, or such later date as the Parties agree, acting reasonably; and

- The Parties shall seek to achieve the Financial Close Milestone within two (2) months of the Contractor's delivery to the Commonwealth of the Interim Milestone availability payment proposal and the Financial Close Milestone Workplan, or such longer period as the Parties agree, acting reasonably.

a. The Parties agree to work cooperatively and in good faith to finalize the scope, budget, deliverables and time line, as may be applicable, for each Milestone as described in the "Milestone Workplan." The Milestone Workplans are set forth at Attachment D. However, the

Parties agree to negotiate in good faith as to the final Milestone Workplan for each Milestone.

b. At or prior to the conclusion of the previous Milestone, Contractor shall submit the Milestone Workplan for the subsequent Milestone, or in the case of the Financial Close Milestone, the Financial Close Milestone deliverables as set forth in Attachment D (the "Deliverables"), to the Commonwealth for approval. Within ten (10) days of the Commonwealth's receipt of the Milestone Workplan or the Deliverables, the Commonwealth must either formally accept or reject the Milestone Workplan or the Deliverables, as applicable. During this ten (10) day review period, the Contractor may, in consultation with the Commonwealth, continue developing plans and taking reasonable and appropriate actions to advance to the next Milestone, however it is under no obligation to do so. If the Commonwealth accepts the Milestone Workplan, then the Commonwealth shall provide Contractor with a notice that it may proceed based on the Milestone Workplan (the "Notice to Proceed"). If the Commonwealth does not formally accept or reject the Milestone Workplan within ten (10) days, then Contractor may, in its sole discretion, either (a) continue to develop the Project and work toward Financial Close or (b) treat inaction as a "Default" subject to cure as set forth in Section III.8. of this Agreement. In the event that Contractor continues to develop the Project in its sole discretion, all provisions of this Agreement continue in full force and effect. In the case of the Deliverables, if the Commonwealth accepts the Deliverables, then the Commonwealth shall provide Contractor with notice that it accepts all Deliverables and request executed versions of all executable Deliverables. If the Commonwealth does not formally accept or reject the Deliverables within ten (10) days, then Contractor may, in its sole discretion, treat inaction as a "Default" subject to cure as set forth in Section III.8. of this Agreement. Should the Commonwealth not formally accept or reject a proposed Milestone Workplan or the Deliverables within ten (10) days of receipt, such Milestone Workplan or Deliverables shall be subject to change, including without limitation the proposed financial close schedule, construction schedule, and any cost proposals. Furthermore, should the Commonwealth accept or not formally reject a proposed Milestone Workplan or the Deliverables within ten (10) days of receipt, the project proposals therein, including the price and schedule proposals, shall supersede prior milestone proposals. The Commonwealth acknowledges that the GMP Milestone was submitted and delivered in compliance with the obligations and requirements set out in this Agreement.

c. At the conclusion of the GMP Milestone, Contractor shall submit a summary of the conclusions and results of the Milestone ("Working

Assumptions"). The Parties acknowledge that these Working Assumptions are the basis for the subsequent Milestones and commit to apply the Working Assumptions to the subsequent Milestones and the Concession Agreement.

d. For purposes of workload planning, the Commonwealth shall use good faith efforts to accommodate and adapt to Contractor's proposed Milestone Workplan, within the practical limitations on availability of the Commonwealth's personnel appropriate for performing the types of services in question. Contractor shall accommodate and adapt its proposed Milestone Workplan to the practical limitations on availability of personnel of the Commonwealth.

e. Upon Completion of each Milestone set forth in the Milestone Workplan in Attachment D, the Commonwealth and Contractor agree to review this Agreement to determine if any amendments or modifications are necessary.

f. Contractor agrees that the costs of each Milestone shall not exceed the Total Costs as set forth in Attachment D. Provided, however, subsequent Milestone budgets may be amended by mutual agreement of the Parties.

3. *Open Book Process*

The Parties commit to an Open Book Process for developing the costs and financing terms for the Project. Contractor will share the proposals it receives from third parties and will provide the Commonwealth the opportunity to review, comment on and reasonably approve all Costs. Contractor intends to run competitive best value processes for selection of legal, technical and other advisors and for selection of lenders or other debt providers.

4. *Contractor's Obligations*

Contractor shall:

a. use commercially reasonable efforts to achieve each Milestone in accordance with the Milestone Workplan;

b. design the Initial Project and each Milestone, as applicable, in accordance herewith and all applicable laws, regulations and ordinances;

c. advance all incurred External Costs and incurred Internal Costs as set forth in the Milestone Workplan;

d. In the event that Contractor will not be able to achieve a Milestone in accordance with the budget and/or schedule set forth in the Milestone Workplan, provide reasonable notice of not less than seven (7) days to the Commonwealth and negotiate in good faith with the Commonwealth as to a revised budget and/or schedule;

e. Conduct a weekly conference call to provide the Commonwealth with progress reports regarding the current Milestone;

f. Ensure that there is sufficient auditing capability to track actions taken by Contractor and its staff; and

g. As needed, but at least at the beginning and conclusion of each Milestone, attend in-person meetings with Commonwealth representatives at a mutually agreed upon location.

5. *Commonwealth's Obligations*

The Commonwealth shall:

a. Provide Contractor with support as mutually agreed upon and reasonably necessary for Contractor to achieve the Milestones, including without limitation providing reasonable access to Commonwealth staff, key stakeholders, permitting agencies, and other relevant parties;

b. Provide any relevant information requested by Contractor or its subcontractors;

c. Provide timely feedback on all plans and proposals submitted to the Commonwealth by Contractor, including without limitation the Milestone Workplan;

d. In the event of termination as provided herein, reimburse Contractor; pursuant to this Agreement and 200 Ky. Admin. Reg. 5:312.

e. In the event that Contractor will not be able to achieve a Milestone in accordance with the budget and/or schedule set forth in the Milestone Workplan, negotiate in good faith with the Contractor as to a revised budget and/or schedule;

f. Participate in weekly conference calls regarding Milestone progress reports;

g. As needed, but at least at the beginning and conclusion of each Milestone, attend in-person meetings with Contractor representatives at a mutually agreed upon location;

6. *Work Product/Ownership*

a. Upon the earlier of Financial Close or a termination prior to Financial Close, the Commonwealth will assume ownership of all Work Product so that future development of the NG-KIH can be leveraged from the analysis already undertaken, but not for any commercial sale to third parties. "Work Product" refers to all materials presented by Contractor and its subcontractors to the Commonwealth, except for the Models, plans, specifications and related design information created by Fujitsu Network Communications, Inc. and its affiliates (collectively, "FNC"), Overland Contracting, Inc. and its affiliates (collectively "OCI") and LTS Managed Technical Services, LLC and its affiliates (collectively "LTS") (the "FNC Design", "OCI Design" and "LTS Design", respectively). Further, Work Product includes, but is not limited to, all network design and engineering information, contract drafts, reports from third party advisors, cost estimates, and financial models, etc. Contractor shall be granted a non-exclusive license to use such Work Product after the transfer of ownership (subject to any lawful public disclosure requirements). Furthermore, following a termination prior to Financial Close, the Commonwealth shall not be permitted to provide such Work Product to another concessionaire for use in a "Similar Project," subject to the Parties' negotiations. The Commonwealth acknowledges and agrees that in the event that the Commonwealth provides the Work Product to a third party, the Contractor, FNC, OCI and LTS, as applicable, shall not be liable for and the Commonwealth expressly waives any claim for any fees, penalties, claims, obligations, damages, costs, expenses, fines, demands and causes of action arising in connection with or related to the Commonwealth's or such third party's use of the Work Product.

b. Prior to the earlier of Financial Close or termination, all Work Product, and all copies thereof, shall remain exclusively the property of Contractor and its subcontractors, including FNC, OCI and LTS, as applicable, notwithstanding any delivery of copies thereof to the Commonwealth.

c. Contractor may prepare one or more financial models in connection with this Agreement and/or the Initial Project ("Models"). The Models may include financial models developed for consideration and potential use by the Contractor, Commonwealth and capital providers and advisers to the Project. The Models are anticipated to show forward estimates of future cash flows and are based on Contractor's best understanding of future outcomes at the current time.

While the Models will be prepared in good faith, unless and until expressly included within the Concession Agreement, neither Contractor nor any of its affiliates, nor their respective directors, officers, employees, advisors or agents, nor any other person, have made, or are making, any representation or warranty as to the completeness, accuracy, reliability or appropriateness of the Models or any of their respective contents or outputs, and no legal or other commitments or obligations shall arise by reason of the provision of the Models or their respective contents, or any outputs derived. The information contained in the Models will not be independently verified by Contractor. Accordingly, neither Contractor nor any of its affiliates, nor their respective directors, officers, employees, advisors or agents, nor any other person, shall be liable for any direct, indirect or consequential loss suffered by any person as a result of relying on any statement in or omission from the Models or any other information provided in connection therewith.

d. Notwithstanding any other provision in this Agreement, Contractor, FNC, OCI and LTS, respectively, will retain all of their respective intellectual property rights in relation to the Models and the underlying technology and engineering specifications set forth in the FNC Design, OCI Design and LTS Design, as applicable, including patent, trademark, copyright and rights to confidential information, but excluding any agency or other third party intellectual property rights. However, Contractor and any of its subcontractors, as applicable, will grant the Commonwealth a royalty-free, perpetual, irrevocable license to use the Models, and such technology. As set forth in the Solicitation, Contractor, FNC, OCI, LTS and any other subcontractors agree to maintain an archival copy in data store of any software or other intellectual property, as applicable, that shall be available to the Commonwealth in the event the Contractor, FNC, OCI, LTS or any other subcontractors are unable to continue the business for financial or other business reasons.

e. The Commonwealth may insert other variables or assumptions to consider alternative scenarios or outcomes. However, Contractor will not be responsible for failure of a Model or for output errors resulting from incorrect or inappropriate inputs by Commonwealth. Notwithstanding the foregoing, the Commonwealth may not use, reproduce or adapt any Model other than in relation to the Initial Project, including all expansions thereto, without Contractor's prior written consent. In addition, data, outcomes and estimates and forecasts contained in or derived from Models shall only be disseminated beyond the Commonwealth's directors, officers, employees and advisors of the Initial Project in accordance with a joint and collaborative plan derived by the mutual cooperation of

the parties. Contractor does not represent that estimates or forecasts derived from any Model will actually be achieved or that the assumptions, variables and other inputs used in any Model are reasonable, reliable or accurate.

f. The Models may contain forward-looking statements, forecasts, estimates, projections and opinions ("Forward Statements"). No representation is made or will be made that any Forward Statements will be achieved or will prove correct. Actual future results and operations could vary materially from the Forward Statements. Similarly no representation is given that the assumptions disclosed in the Models upon which Forward Statements may be based are reasonable. The Commonwealth acknowledges that circumstances may change and the contents of the Models may become outdated as a result.

g. In further consideration of Contractor allowing the Commonwealth access to the Models and the information contained therein, the Commonwealth agrees that the Commonwealth will make no claim against Contractor, its partners (including LTS, OCI and FNC), employees or affiliates, that relates in any way to any Model, any information contained therein, or the Commonwealth' access to any Model.

h. The Commonwealth shall not disclose records identified and prominently marked as such by Contractor as proprietary or constituting trade secrets, including without limitation the Models, or any information related thereto, in response to a request made pursuant to the Open Records Act as such records are exempt under KRS 61.878(1)(c). The Commonwealth shall assert such exemption in response to any request for disclosure of the records identified by Contractor as proprietary or constituting trade secrets, including without limitation the Models, or any information related thereto. Furthermore, the Commonwealth shall give Contractor reasonable notice of any such record request and give the Contractor the right to defend its information against disclosure. The Commonwealth and Contractor shall cooperate with each other and participate if requested by the other in any appeal based upon an exemption contained within KRS 68.878(1)(c).

7. *Web-Based Data Site*

A secure web-based data site will be used as an electronic repository of the Work Product and Models, and will be available to approved transaction participants, including anyone the Commonwealth reasonably approves to receive any portion of the Work Product and Models for use in connection with the Project. This will be the means by which all Work Product and Models will be transmitted and made available to the Commonwealth. All

Work Product and Models will be made available in real-time subject to reasonable practicalities. The web-based data site shall be constructed, administered and hosted by Contractor.

The Commonwealth shall not disclose records identified by Contractor and prominently marked as such by Contractor as proprietary or constituting trade secrets, including without limitation the Models, or any information related thereto, in response to a request made pursuant to the Open Records Act as such records are exempt under KRS 61.878(1)(c). The Commonwealth shall assert such exemption in response to any request for disclosure of the records identified by Contractor as proprietary or constituting trade secrets, including without limitation the Models, or any information related thereto. Furthermore, the Commonwealth shall give Contractor reasonable notice of any such record request and give the Contractor the right to defend its information against disclosure. The Commonwealth and the Contractor shall cooperate with each other and participate if requested by the other Party in any appeal based upon an exemption contained within KRS 68.878(1)(c).

8. *Right to Cure*

In the event of the occurrence and continuance of a Default by either Party, the Commonwealth or Contractor, as applicable, may in writing request a thirty (30) day period in which to cure the Default. If the Party is unable to cure the Default within that period, the Default may be considered as a basis to terminate this Agreement as set forth in Section III.26.

9. *No Third Party Beneficiaries*

Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

10. *No Joint Venture, Partnership or Alter Ego; Independent Contractor*

Nothing contained in this Agreement, any document executed in connection herewith or any other Agreement with any other party shall be construed as making the Parties joint partners, joint venturers or alter egos of each other or any other entity. Contractor shall at all times remain an independent contractor of Commonwealth.

11. *Notice, Confirmation of Force Majeure Event; Suspension of Performance*

Upon giving written notice to the other Party, a Party affected by a Force Majeure Event shall be released without any liability on its part from the

performance of its obligations under this Agreement, but only to the extent and only for the period that its performance of such obligations is prevented by a Force Majeure Event. Such notice shall include a description of the nature of the Force Majeure Event, and its cause and possible consequences. The Party claiming a Force Majeure Event shall promptly notify the other party of the termination of such event.

The Party invoking the Force Majeure Event shall provide to the other Party confirmation of the existence of the circumstances constituting a Force Majeure Event. Such evidence may consist of a statement or certificate of an appropriate governmental department or agency where available, or a statement describing in detail the facts claimed to constitute a Force Majeure Event.

During the period that the performance by one of the Parties of its obligations under this Agreement has been suspended by reason of a Force Majeure Event, the other Party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

12. *Letter of Credit*

Upon Financial Close, with regards to Contractor's performance, Contractor will provide a letter of credit with commercially reasonable terms ("Letter of Credit") or at the option of the Contractor an alternative security package, in form and substance reasonably acceptable to the Commonwealth. The alternative security package shall also provide that the Commonwealth is a co-obligee in addition to the lenders provided therein.

a. From Financial Close until completion of the Project, the Contractor shall provide the alternative security package referenced in III.12, for at a minimum, an amount equal to $10,000,000.00.

b. The Letter of Credit shall be in the form of an irrevocable letter of credit from an approved bank, as may amended in the Concession Agreement, and must be presentable for payment in New York City. The Letter of Credit shall only be transferable in its entirety (but not in part) to the lenders, the collateral agent or agencies of the Commonwealth. The Commonwealth shall only provide a Transfer Letter of Credit to the issuing bank for transfers to agencies of the Commonwealth, the collateral agent or lenders, as may be modified in the Concession Agreement.

c. The Letter of Credit (or a replacement letter of credit provided prior to the expiration or termination of the Letter of Credit)

shall be in full force and effect from the date provided to Commonwealth until the applicable date referenced in Section III. The Commonwealth, or the subsequent beneficiary, shall provide a Reduction Notice to the issuing bank of the Letter of Credit, with a copy to Contractor, in the commercial customary form within two business days of the Substantial Completion Date and the Final Acceptance Date, respectively, adjusting the amount of the Letter of Credit as provided in Section III.

d. The Letter of Credit may be drawn upon by Commonwealth, or subsequent beneficiary, in Dollars in the United States of America from time to time (a) to the extent amounts are due and owing under the Concession Agreement from Contractor to the Commonwealth under Section III as may be amended in the Concession Agreement, (b) at any time when there are fewer than thirty (30) days remaining prior to the expiration of such Letter of Credit and the expiring letter of credit has not been replaced by a new letter of credit to be effective no later than such expiration; provided that a letter of credit is still required to be in place under this Section, as may be amended in the Concession Agreement, (c) at any time when the credit rating of the institution providing the Letter of Credit has been downgraded (or withdrawn) such that it no longer qualifies as an approved bank, and Contractor has not replaced such Letter of Credit with a new letter of credit from an approved bank within 15 business days after the date of the relevant downgrade or (d) at any time, if a Contractor Default has occurred and is continuing.

e. Contractor's sole remedy in connection with an improper draw on the Letter of Credit shall be to obtain from the Commonwealth, or subsequent beneficiary, a refund of the proceeds of such improper draw and the reasonable costs Contractor incurs as a result of such improper draw; provided that at the time of such refund Contractor increases the amount of the Letter of Credit to the amount then required under applicable provisions of the Concession Agreement. Contractor acknowledges that an improper draw on the Letter of Credit could not under any circumstances cause Contractor injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Contractor covenants (a) not to request or instruct the issuer of the Letter of Credit to refrain from paying any legitimate sight draft presented with respect to the Letter of Credit and (b) not to commence or pursue any legal proceeding seeking, and Contractor irrevocably waives and relinquishes

any right, to enjoin, restrain, prevent, stop or delay any legitimate draw on the Letter of Credit.

f. To the extent the Commonwealth, or subsequent beneficiary, draws on the Letter of Credit under the circumstances set forth in Section III. and the basis for such draw is subsequently cured, The Commonwealth, or subsequent beneficiary, shall return to Contractor the funds so drawn (to the extent not applied as part of such cure) and the Letter of Credit will be restored for the full amount of such draw prior to the return of such funds, if such Letter of Credit was not already replaced as part of the cure.

13. *Agreement Claims*

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

14. *Limitation of Liability*

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245.

15. *Changes and Modifications to the Agreement*

Pursuant to KRS 45A.210 (1) and 200 KAR 5:311, no modification or change of any provision in this Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to this Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memoranda of understanding, written clarifications, and/or correspondence shall not be construed as amendments to this Agreement. The Parties shall establish a detailed change order process prior to Financial Close to accommodate any required changes to the Project, and such change order process shall also be part of the Concession Agreement.

If the Contractor finds at any time that existing conditions make modification of this Agreement necessary, it shall promptly report such matters to the Commonwealth for consideration and decision.

16. *Changes in Scope*

The Commonwealth may, at any time by written order, make changes within the general scope of this Agreement. No changes in scope are to be conducted except with the approval of the Commonwealth.

Notwithstanding the foregoing, Contractor shall not be bound by any unilateral material changes in scope, and any change in scope, unilateral or agreed upon, must provide for additional compensation to the Contractor, in form and substance, as mutually agreed to by the Parties in writing.

17. *Assignment*

This Agreement shall not be assigned in whole or in part without the prior written consent of the non-assigning Party. Notwithstanding the foregoing, the Commonwealth consents to Contractor assigning its rights and obligations hereunder to an appropriate Affiliate or a special purpose entity to carry out the terms of this Agreement, provided that the Contractor requires the Affiliate to be bound by the terms of this Agreement pursuant to a written agreement.. In the event of the Affiliate transferee's insolvency, involuntary or voluntary bankruptcy, dissolution or the termination of this Agreement for Contractor's failure to perform, the Commonwealth may step in and assume responsibility for, and control of, the Project, subject to coordination with secured lenders in connection with the exercise of remedies upon default. The Parties will develop detailed default and termination provisions with respect to the foregoing sentence in the Concession Agreement.

18. *Payment*

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Commonwealth's designated representative.

19. *Contractor Cooperation in Related Efforts*

The Commonwealth may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will materially interfere with the performance of work by any other contractor or by Commonwealth employees. The Commonwealth shall ensure that such other contractor or its employees will not commit or permit any act that will materially interfere with Contractor's work performance.

20. *Contractor Affiliation*

"Affiliate" shall mean an entity that controls or is under common control with Contractor together with any fund or investment vehicle managed or advised by any such entity, or a fund or investment vehicle which has delegated to any such entity responsibility for the management of its interest in the Project. If any Affiliate directly involved in the Project shall take any action related to this Agreement that, if done by the Contractor, would constitute a material breach of this Agreement and would also materially impair Contractor's or the Commonwealth's ability to perform the Agreement, the same shall be deemed a breach by Contractor. Actions by Affiliates that do not relate to or adversely impact the Parties' rights and obligations under this Agreement shall not be considered breaches.

21. *Commonwealth Property*

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Agreement. The Contractor shall reimburse the Commonwealth for its actual loss or damage, normal wear and tear excepted.

22. *Confidentiality of Agreement Terms*

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of this Agreement shall be received in strict confidence and shall not be disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of this Agreement by all Parties, terms of this Agreement become available to the public, pursuant to the provisions of the Kentucky Revised Statutes, subject to any exemptions to disclosure set forth in KRS 61.878, which the Commonwealth agrees to assert

The Contractor shall have an appropriate agreement with its subcontractors extending these confidentiality requirements to all subcontractors' employees.

23. *Confidential Information*

a. If either Party provides or has provided Confidential Information prominently designated as such to the other Party, the receiving Party shall hold such information in confidence and shall afford it the same care and protection that it affords to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party, except as otherwise provided below. All Confidential Information shall be used by the receiving Party only for the intended purposes set forth in this

Agreement. Except as otherwise required by law, after the receiving Party's need for Confidential Information has expired, or upon the reasonable request of the disclosing Party, or promptly following the termination or expiration of this Agreement, the receiving Party shall destroy or return to the disclosing Party all Confidential Information, including all copies of such information, and all notes, summaries, or other writings reflecting Confidential Information. The receiving Party shall not reproduce Confidential Information, except to the extent reasonably necessary to perform under this Agreement, or as otherwise may be permitted in writing by the disclosing Party.

b. Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

i. Information which the Commonwealth has released in writing from being maintained in confidence;

ii. Information which at the time of disclosure is in the public domain by having been printed an published and available to the public in libraries or other public places where such data is usually collected; or

iii. Information, which, after disclosure, becomes part of the public domain as defined above, thorough no act of the Contractor.

24. *Permits, Licenses, Taxes and Commonwealth Registration*

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Agreement is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Agreement. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Agreement and the transaction contemplated hereby. Any other taxes levied upon this Agreement, the transaction, or the

equipment or services delivered pursuant hereto shall be borne by the Contractor, or as otherwise mutually agreed to in the Concession Agreement.

25. *Provisions for Termination of the Contract*

This Agreement shall be subject to the termination provisions set forth in 200 Ky. Admin. Reg. 5:312.

26. *Reimbursement of Costs*

In the event of a termination that does not arise from a material default solely by Contractor, in accordance with 200 Ky. Admin. Reg. 5:312 the Contractor may request reimbursement of its costs. Provided, however, the costs Contractor may recover shall not exceed the Total Costs set forth in Exhibit A. The Parties agree to establish a cost process to be utilized during each Milestone to permit the Parties to monitor the costs incurred.

27. *Bankruptcy*

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Agreement may be subject to the rights of a trustee in bankruptcy to assume or assign this Agreement. The trustee shall not have the right to assume or assign this Agreement unless the trustee (a) promptly cures all defaults under this Agreement; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

28. *Conformance with Commonwealth & Federal Laws/Regulations*

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245.

29. *Access to Records*

Contractor constitutes a "contractor," as defined in KRS 45A.030 (9) and agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Agreement for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process, including without limitation items identified as proprietary or confidential, including

without limitation the Models, Work Product, trade secrets, any information related to the web-based secure data site and all other Confidential Information, shall not be deemed as directly pertinent to this Agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c), or any other applicable exemption contained with KRS 61.878. The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Open Records Act, KRS 61.870 to 61.884, including the exemption from disclosure contained in KRS 61.878, which the Commonwealth agrees to assert.

In the event of a dispute between Contractor and the contracting agency, the Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See Attachment B).

30. *Prohibitions of Certain Conflicts of Interest*

In accordance with KRS 45A.340, the Parties mutually represent and warrant, and each of the Parties rely upon such representation and warranty, that to the best of their respective knowledge neither party presently has any actual identifiable interest and shall not acquire any actual identifiable interest, which would directly conflict with the performance of their respective obligations under this Agreement.

The Parties further mutually represent and warrant that in the performance of the Agreement, no person having any such interest shall be employed by either party. In accordance with KRS 45A.340 and KRS 11A.040 (4), the Parties both agree that they shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement to voluntarily acquire any ownership interest, direct or indirect, in this Agreement prior to the completion of this Agreement.

31. *Intentionally Left Blank*

32. *Agencies to Be Served*

This Agreement shall be for use by all Agencies of the Commonwealth of Kentucky as defined in 45A.605.

33. *Extending the Contract Use to Other Agencies*

The Commonwealth reserves the right, with the consent of the Contractor, to offer this Agreement to other state agencies and stakeholders.

34. *Term of Agreement*

The term of this Agreement shall begin on December 19, 2014, and at Financial Close shall continue upon completion of the Concession Agreement for a period of thirty (30) years.

Notwithstanding the foregoing, if the Commonwealth fails to approve any Milestone Work Plan as envisioned in Section III.2.c., or fails to consummate Financial Close on agreed upon terms, Contractor may terminate this Agreement, subject to Section III.8., and seek reimbursement for Costs in accordance with Section III.27.

Upon final termination of the Concession Agreement, Contractor shall provide all relevant data in a form that can be practically converted to any subsequent system of the Commonwealth's reasonable choice in accordance with the Concession Agreement. The Commonwealth and Contractor will cooperate to this end with any subsequent vendor of the Commonwealth's choice, in a timely and efficient manner.

35. *Notices*

All programmatic communications with regard to day-to-day performance under this Agreement are to be made to the agency technical contact(s) identified below.

Mike Hayden, Director
Finance and Administration Cabinet
Room 456
Capitol Annex
Frankfort, KY 40601
502-564-782-2535
mike.hayden@ky.gov

All communications of a contractual or legal nature are to be made to the Commonwealth buyer. The Commonwealth reserves the right to change the contacts throughout the life cycle of any agreement awarded as a result of this RFP.

Stephanie R. Williams, CPPO, CPPS, MPA
Assistant Director
Finance and Administration Cabinet
Office of Procurement Services (OPS)
Division of Technology Services Procurement
(502) 564-8621
stephanier.williams@ky.gov

36. *Subcontractors*

Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. Contractor shall be solely responsible for performance of the entire Agreement whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between Contractor and any subcontractor. Any issues that arise as a result of this relationship shall be resolved by Contractor. All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

37. *Reporting Requirements*

In conjunction with and in addition to all specific reports and notices required in the Agreement, the Contractor shall be required to provide the following reporting to the Commonwealth:

a. Weekly progress reports regarding the current Milestone, including but not limited to, a report of any material events, developments or circumstances arising in relation to issues identified by the Commonwealth, including but not limited to, the Project schedule and budget, since the last weekly report;

b. On a frequency to be reasonably determined by the Commonwealth, provide reports detailing the fulfillment of all contractual obligations to include, but not be limited to, acquisition of required insurances, mandated licenses and permits, executed financial documentation, and audited financial model;

c. On a frequency to be reasonably determined by the Commonwealth, provide compliance reports itemizing safeguards in place to ensure adherence to the NIST Special Publication 800-53 Security Control Framework;

d. Such other periodic reports as the Commonwealth may from time to time reasonably require; and

e. Throughout each Milestone, a response delivered in a timely manner to any inquiry reasonably made by the Commonwealth in relation to any aspect of the relevant business of the Contractor, the Project, the O&M, or this Agreement.

Provided that, to the extent that such reporting includes sensitive data, as defined by the enterprise standards, it must be delivered to the Commonwealth in a confidential manner. All electronic transmissions of sensitive data must, at a minimum, comply with the Commonwealth Office of Technology Enterprise Standard 5100 documented at https://Ootsource.kv.Oov/docushare/dsweb/Get/Document-30111 0/.

The Parties agree that this is not an extensive list of reporting requirements governing the entire Agreement. The Parties agree further that future reporting requirements will be addressed by the Commonwealth and Contractor as the need arises based on the Milestone objectives agreed to by both Parties. Specific metrics and deliverables requisite to achieve the corresponding reporting will be implemented at that time.

IV. PHASE 1 EARLY WORKS

1. *Phase 1 Early Works*

The Commonwealth hereby authorizes the Contractor to engage the DB Contractors to proceed with the Phase 1 Early Works in an amount not to exceed the Phase 1 Early Works Price and in accordance with the other terms and conditions set out in this Section IV. The scope of the Phase 1 Early Works will not be modified without the agreement in writing of the Commonwealth and the Contractor. The Commonwealth acknowledges that the DB Contractors may sub-contract certain aspects of the Phase 1 Early Works.

2. *Phase 1 Early Works Term*

The Phase 1 Early Works will be performed from June 15, 2015, to July 15, 2015 (the "Phase 1 Early Works Term").

3. *Applicable Terms*

Notwithstanding any provision to the contrary, the Commonwealth and the Contractor acknowledge and agree that only the following Sections in this Agreement will be applicable to the Phase 1 Early Works: Section III.5(d), III.6(h), III.8 (excluding a payment breach), III.9-11, III.13, III.15 (excluding the last sentence of the first paragraph), III.16, III.17, III.18, III.19, III.21, III.22-25, III.26, III.27, III.28, III.29, III.30, III.35, III.36, Section V, Section VI and Schedule C [Definitions] to the extent that capitalized terms used in this Section IV are not otherwise defined in this Section IV.

4. *Access*

The Commonwealth hereby permits the Contractor to provide the DB Contractors a non-exclusive license to access any of the lands that the Commonwealth owns or controls, including any right-of-ways, in order to complete any of the Phase 1 Early Works.

5. *Representation by the Commonwealth*

The Commonwealth represents and warrants to the Contractor that as of the date of this Agreement the Commonwealth has the power, capacity and authority to

enter into this Agreement and to observe and perform all the covenants, agreements, terms and conditions to be observed and performed by the Commonwealth in accordance with the terms of this Agreement.

6. *Termination*

Upon the occurrence of Financial Close:

a. This Section IV of the Agreement will be deemed to be terminated and of no force and effect; and

b. all Early Works undertaken under this Agreement in advance of Financial Close will be deemed to have been undertaken by or on behalf of the Concessionaire pursuant to the Concession Agreement.

7. *Termination of the Project*

If for any reason prior to Financial Close the Commonwealth gives written notice to the Contractor that Financial Close will not be achieved, or Financial Close has not occurred by September 10, 2015, or that either the Commonwealth or the Contractor is terminating its efforts to achieve Financial Close, then upon such notice this Section IV will be deemed to be terminated and of no force and effect (except for payment obligations arising out of such termination) and the Contractor will immediately, in consultation with the Commonwealth, take all reasonable steps to ensure that the DB Contractors wind up all outstanding Phase 1 Early Works at minimum cost.

8. *The Commonwealth's Discretion to Terminate all or a portion of the Phase 1 Early Works*

At any time prior to Financial Close, and for any reason, the Commonwealth may direct the Contractor, upon five (5) days' written notice, to cease the undertaking of some or all of the Phase 1 Early Works, in which event the Contractor will immediately, in consultation with the Commonwealth, take all reasonable steps to wind up such Early Works at minimum cost.

9. *Ownership of Phase 1 Early Works After Termination*

If the Phase 1 Early Works are terminated for any reason prior to Financial Close, then the Commonwealth will be entitled to the full benefit of any Phase 1 Early Works for which the Commonwealth has made payment pursuant to this Agreement, including:

a. any design drawings, calculations, survey mapping, and other design and routing information; and

b. any contractual rights for the procurement of fiber and/or cable (collectively, the "Early Works Product")

and in that event the Contractor will use reasonable efforts to obtain from the DB Contractor a formal assignment, transfer or other documentation, if applicable, or take other steps as the Commonwealth may reasonably request in order for the Commonwealth to obtain and receive such benefit. The transfer and delivery of the Early Works Product shall be on an 'as is where is basis' and the Contractor will prepare the Early Works Product in good faith based on the information that is available to the Contractor at the time the Early Works Product is prepared.

10. Limitation of Liability

Notwithstanding any provision to the contrary in this Section IV or any other applicable provision in this Agreement, and specifically in relation to the Phase 1 Early Works, the Commonwealth will only be required to pay the Phase 1 Early Works Price and those other applicable payments on termination set out in Section IV paragraph 12 of this Agreement to the Contractor. For clarity, such amounts will not exceed the Phase 1 Early Works Price and the Demobilization Threshold but will be in addition to the Total Costs set forth in Exhibit A. If the Phase 1 Early Works are terminated for any reason prior to Financial Close, the Contractor's liability will be limited to the Phase 1 Early Works Price.

11. Payment – Termination by Financial Close

If the Phase 1 Early Works are terminated upon reaching Financial Close as provided by paragraph 6 of this Section IV, then no payment will be required under this Agreement, and the payment obligations under the Concession Agreement shall apply.

12. Payment – Termination other than by Financial Close

If the Phase 1 Early Works are terminated other than due to the occurrence of Financial Close, the Commonwealth will pay to the Contractor (and the Contractor will immediately pay to the DB Contractors) an amount calculated based on the portion of the Phase 1 Early Works Price attributable to the portion of the Phase 1 Early Works that has been completed plus a reasonable amount for demobilization costs and termination costs to subcontractors, the amount of such demobilization costs and termination costs not to exceed 7.5% of the Phase 1 Early Works Price (the "Demobilization Threshold").

The Contractor will pass through the itemized invoice that it receives from the DB Contractor to the Commonwealth for the amount payable under this paragraph 12 (if any), and provide reasonable supporting documentation for the Commonwealth to consider pursuant to 200 KAR 5:312. The Commonwealth will approve and pay the Contractor (and the Contractor will immediately pay the DB Contractor) within 30 days after receipt of the invoice. The Commonwealth

acknowledges that if a portion of the invoice provided by the Contractor is in dispute, the Commonwealth will approve and pay the undisputed portion of the invoice within the 30 days. Notwithstanding any provision to the contrary in this Section IV or any other applicable provision in this Agreement, and specifically in relation to the Phase 1 Early Works, this paragraph 12 will apply in the event of termination for any reason of this Agreement prior to Financial Close.

The Commonwealth acknowledges and agrees that if Phase 1 Early Works is terminated early subject to this paragraph 12 or some or all of the scope of the Phase 1 Early Works cease in accordance with Section IV paragraph 8, then schedule and costs associated with any of the Milestones or proposals as set forth in this Agreement may be subject to change, subject to the Commonwealth's approval of such changes, not to be unreasonably withheld, and subject to such changes being as a direct result of changes to or termination of the Phase 1 Early Works. Should the Commonwealth not approve proposed changes to schedule and costs contemplated in this paragraph 12, and prepared by the Contractor acting reasonably, then paragraph 7 of this Section IV shall apply. In the event that the Commonwealth intends to terminate the Phase 1 Early Works pursuant to this paragraph 12 or cease some or all of the Phase 1 Early Works in accordance with Section IV paragraph 8, it shall provide notice to the Contractor. Within three (3) Business Days of receipt of such notice from the Commonwealth, the Contractor will provide the Commonwealth with an estimate of the impact on the schedule and costs associated with the termination of the Phase 1 Early Works pursuant to this paragraph 12 or cease some or all of the Phase 1 Early Works in accordance with Section IV paragraph 8.

13. Monthly Payment Certificates

Each of the DB Contractors will, within 10 days after the end of each month, provide the Commonwealth a statement of the Phase 1 Early Works completed for that month and the relevant amount that would be payable under paragraph 12 of this Section IV in respect of such Phase 1 Early Works, calculated based on the portion of the Phase 1 Early Works Price attributable to the portion of the Phase 1 Early Works that has been completed. For greater certainty, this paragraph 13 does not require payment by the Commonwealth.

V. Phase 2 Early Works

1. Phase 2 Early Works

The Commonwealth hereby authorizes the Contractor to engage the DB Contractors to proceed with the Phase 2 Early Works in an amount not to exceed the Phase 2 Early Works Price and in accordance with the other terms and conditions set out in this Section V. The Phase 2 Early Works will be performed in accordance with the requirements set out in Attachment H [Design and Construction Protocols]. The scope of the Phase 2 Early Works will not be modified without the agreement in writing of the Commonwealth and the

Contractor. The Commonwealth acknowledges that the DB Contractors may sub-contract certain aspects of the Phase 2 Early Works. The Commonwealth further acknowledges that a component of the Phase 2 Early Works is the pole make-ready applications which will require the Commonwealth to enter into various pole attachment agreements in order to further the make-ready construction required that is also part of the Phase 2 Early Works. The Commonwealth agrees to execute any pole attachment agreement that the Contractor provides to the Commonwealth within 3 Business Days of receiving such agreements.

2. *Phase 2 Early Works Term*

The Phase 2 Early Works will be performed from July 16, 2015 to September 3, 2015 (the "Phase 2 Early Works Term").

3. *Applicable Terms*

Notwithstanding any provision to the contrary, the Commonwealth and the Contractor acknowledge and agree that Section IV.3 (and specifically only those sections referenced therein), IV.4, IV.6, IV.7 (and the reference to Section IV therein will also be a reference to this Section V), IV.8, IV.9, and IV.11 will be applicable to Phase 2 Early Works. References in such sections to Phase 1 Early Works will also be read to include Phase 2 Early Works.

4. Access

The Commonwealth hereby permits the Contractor to provide the DB Contractors a non-exclusive license to access any of the lands that the Commonwealth owns or controls, including any right-of-ways, in order to complete any of the Phase 2 Early Works.

5. *Limitation of Liability*

Notwithstanding any provision to the contrary in this Section V or any other applicable provision in this Agreement, and specifically in relation to the Phase 2 Early Works, the Commonwealth will only be required to pay the Phase 2 Early Works Price and those other applicable payments on termination set out in Section V, paragraph 6 of this Agreement to the Contractor. For clarity, such amounts will not exceed the Phase 2 Early Works Price and the Demobilization Phase 2 Threshold but will be in addition to the Total Costs set forth in Exhibit A.

If the Phase 2 Early Works are terminated for any reason prior to Financial Close, the Contractor's liability will be limited to Phase 2 Early Works Price.

Neither party will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party in relation to the Phase 2 Early Works.

6. *Payment – Termination other than Financial Close*

If the Phase 2 Early Works are terminated other than due to the occurrence of Financial Close, the Commonwealth will pay to the Contractor, into a client account specified by the Contractor, (and the Contractor will immediately pay to the DB Contractors) an amount calculated based on the portion of the Phase 2 Early Works Price attributable to the portion of the Phase 2 Early Works that has been completed plus a reasonable amount for demobilization costs and termination costs to subcontractors, the amount of such demobilization costs and termination costs not to exceed 7.5% of the Phase 2 Early Works Price (the "Demobilization Phase 2 Threshold").

The Contractor will pass through the itemized invoice that it receives from the DB Contractor to the Commonwealth for the amount payable under this paragraph 5 (if any), and provide reasonable supporting documentation for the Commonwealth to consider pursuant to 200 KAR 5:312. The Commonwealth will approve and pay the Contractor (and the Contractor will immediately pay the DB Contractor) within 30 days after receipt of the invoice. The Commonwealth acknowledges that if a portion of the invoice provided by the Contractor is in dispute, the Commonwealth will approve and pay the undisputed portion of the invoice within the 30 days. Notwithstanding any provision to the contrary in this Section V or any other applicable provision in this Agreement, and specifically in relation to the Phase 2 Early Works, this paragraph 6 will apply in the event of termination for any reason of this Agreement prior to Financial Close.

The Commonwealth acknowledges and agrees that if Phase 2 Early Works is terminated early subject to this paragraph 6 or some or all of the scope of the Phase 2 Early Works cease in accordance with Section IV paragraph 8, then schedule and costs associated with any of the Milestones or proposals as set forth in this Agreement may be subject to change, subject to the Commonwealth's approval of such changes, not to be unreasonably withheld, and subject to such changes being as a direct result of changes to or termination of the Phase 2 Early Works. Should the Commonwealth not approve proposed changes to schedule and costs contemplated in this paragraph 6, and prepared by the Contractor acting reasonably, then paragraph 7 of Section IV shall apply. In the event that the Commonwealth intends to terminate the Phase 2 Early Works pursuant to this paragraph 6 or cease some or all of the Phase 2 Early Works in accordance with Section IV paragraph 8, it shall provide notice to the Contractor. Within three (3) Business Days of receipt of such notice from the Commonwealth, the Contractor will provide the Commonwealth with an estimate of the impact on the schedule and costs associated with the termination of the Phase 2 Early Works pursuant to this paragraph 6 or cease some or all of the Phase 2 Early Works in accordance with Section IV paragraph 8.

7. Monthly Payment Certificates

Each of the DB Contractors will, within 10 days after the end of each month, provide the Commonwealth a statement of the Phase 2 Early Works completed for that month and the relevant amount that would be payable under paragraph 7 of this Section V in respect of such Phase 2 Early Works, calculated based on the portion of the Phase 2 Early Works Price attributable to the portion of the Phase 2 Early Works that has been completed. For greater certainty, this paragraph 7 does not require payment by the Commonwealth.

8. Insurance

The Contractor will require the DB Contractors to place the insurance coverage described in Attachment G [Insurance] in the amounts and on the terms stated in Attachment G and for the Phase 2 Early Works Term.

VI. Relationship of the Parties

The Contractor agrees to cooperate and support the Commonwealth's efforts to procure financing for the Project. The Commonwealth acknowledges and agrees that (i) any discussions, communications, conferences, negotiations and undertakings by the Contractor in connection with the financing of the Project will be effected and negotiated in an arm's length commercial transaction between the Commonwealth, Project Co and the Contractor, (ii) in connection with any offer or sale of municipal securities to finance the Project and with the process leading to such transaction, the Contractor is acting solely as a principal and is not the agent or fiduciary of the Commonwealth or Project Co., and (iii) the Commonwealth has its own and legal and financial advisors. The Contractor intends to be a purchaser of a portion of the bonds and has financial and other interests that differ from those of the Commonwealth and Project Co. It is expressly understood and agreed between the Commonwealth and the Contractor that the Contractor is not acting as an underwriter or selling agent for the Commonwealth or Project Co in connection with any issuance or sale of municipal securities.

VII. Entire Agreement

This Agreement and the attached Exhibits to this Agreement constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

VII. Approvals

This Agreement is subject to the terms and conditions as stated. By executing this Agreement, the parties verify that they are authorized to bind this Agreement and that they accept the terms of this Agreement.

This Agreement may be executed electronically in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

This Agreement is invalid until properly approved and executed by the Finance and Administration Cabinet.

1st Party: MACQUARIE INFRASTRUCTURE DEVELOPMENTS LLC, as Contracting Agent ("Contractor ")

Nick Butcher Printed name	Manager Title
N J Butcher Signature	September 1, 2015 Date
Andrew Ancone Printed name	Manager Title
A F Ancone Signature	September 1, 2015 Date

2nd Party: COMMONWEALTH OF KENTUCKY, FINANCE AND ADMINISTRATION CABINET ("Commonwealth")

Lori Hudson Flanery Printed name	Secretary, Finance Cabinet Title
Lori Hudson Flanery Signature	September 2, 2015 Date

Approved by the Finance and Administration Cabinet, Office of Procurement Services

Donald R. Speer
Printed name

Executive Director
Title

Donald R Speer
Signature

9/2/15
Date

Approved as to form and legality

Geri Gingsby

ATTACHMENT B

SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

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

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

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

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

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

II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.

III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.

V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

ATTACHMENT C DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Project Co" means KentuckyWired Infrastructure Company, LLC.

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT D

MILESTONE WORKPLAN

Milestone	Details
I-Guaranteed Maximum Price ("GMP")	Contractor will provide the Commonwealth a not-to-exceed dollar amount of the availability payment required for the NGKIH. The availability payment will be based on a detailed list of Working Assumptions. The scope items for this Milestone will be: • Engage all necessary advisors for this Milestone; • List of Working Assumptions on which the not-to exceed availability payment is based, including the actions that the Parties can take, individually or together, to reduce the GMP; • Negotiated, detailed term sheet for the Concession Agreement; • Proposed detailed scope, schedule and budget to reach Commercial Close; • Provide the Commonwealth a proposal summarizing the above deliverables and providing a not-to-exceed availability payment; • For the avoidance of doubt the Working Assumptions will include reasonable assumptions regarding the financing terms, including interest rates, applicable to debt sourced for the Project but changes in the financing terms, including the interest rates, post the GMP will result in upward or downward adjustments to the not to exceed GMP; and • Commonwealth to confirm that it has the legal authority to enter into the transaction. This Milestone has been completed.
II - Interim Milestone	During this Milestone, the Contractor will work to provide the Commonwealth an updated availability payment that reflects the viability of third-party transactions, if such transactions are viable from both a risk and cost perspective, and incorporates refinements to the greenfield project proposal, based on diligence completed at such time The scope items for this Milestone will be: • Refine greenfield project proposal through continued diligence and design work; • Pursue third party contracts which improve the affordability of the project; • Engage all necessary advisors for the Initial Project; • Proposed detailed scope, schedule and budget to reach Financial Close

	Contractor's obligations under the Milestone will be considered complete once Contractor submits an updated availability payment estimate to the Commonwealth, which includes evidence, including without limitation letters of intent, term sheets, etc., reasonably satisfactory to the Commonwealth of any third party transaction to be considered as part of the updated availability payment.
III - Financial Close Milestone ("FC")	During this Milestone, final, executable contracts (including the Concession Agreement, DB Contract and O&M Contract and Interface Agreement) will be negotiated and provided to the Commonwealth, and all financing will be arranged for the transaction. The deliverables for this Milestone will be: • Due diligence reports from Contractor advisors; • Executable fixed price, date certain, design-build agreement (the "DB Contract"); • Executable fixed price long-term operating, maintenance and refresh agreement (the "O&M Contract"); • Executable Concession Agreement, including without limitation a performance standards regime, and project design build schedule; • Detailed term sheet of a Wholesaler Agreement, including without limitation a revenue sharing mechanism; • Executable financing documentation; • Audited financial model; and • Proof of required insurances. Contractor's obligations under this Milestone will be complete once the Contractor has satisfied the above deliverables.

EXHIBIT A
MILESTONE BUDGETS
(assuming Tax Exempt Financing)

External Costs	GMP (actual)	Interim Milestone	To FC	At FC	Total
Project Counsel	160	450	368	545	1,523
Local Counsel	28	100	100	100	328
Underwriters' Counsel	-	100	250	-	350
Sponsors' Bond Counsel	-	55	275	-	330
Issuer Bond Counsel	-	-	100	-	100
Subcontractor Counsel (Ledcor)	-	120	120	-	240
Lenders' Technical Advisor	-	150	50	-	200
Sponsors Insurance	-	40	-	(40)	0
Lenders Insurance	-	20	-	-	20
Rating Agencies	-	300	-	210	510
Tax Advisor	-	75	75	-	150
Accounting Advisor	-	25	25	-	50
Model Audit	-	-	65	-	65
Stakeholder Relations	25	25	-	150	200
Out of Pockets	82	60	60	-	202
Contingency	-	184	103	-	287
External Total	**295**	**1,704**	**1,591**	**965**	**4,554**

Internal Costs	(actual)	Milestone	To FC	At FC	Total
Macquarie	(5)	250	300	-	545
First Solutions	100	255	170	-	525
Ledcor	-	205	205	-	410
Fujitsu	100	151	227	-	477
Black & Veatch	200	536	528	-	1,264
Internal Total	**395**	**1,397**	**1,430**	**-**	**3,221**
Total Cost	**690**	**3,101**	**3,020**	**965**	**7,775**

- Fiber Order 104 miles
- Purchase Orders for Make Ready Materials

- Subcontracts with contractors
- Confirmed delivery dates for long lead items

Phase 1 Early Works Price

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

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

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

Attachment F
Phase 2 Early Works

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

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

Deliverables:

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

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

Deliverables:

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

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

Deliverables:

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

Phase 2 Early Works Price

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

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

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

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

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

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

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

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

Commercial General Liability Insurance

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

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

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

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

Worker's Compensation

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

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

Employer's Liability

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

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

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

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

Automobile Liability

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

- coverage in the amount of $1,000,000 combined single limit, inclusive of defense, for accidental death, bodily injury, and property damage liability arising from the ownership, maintenance or use of all owned, non-owned, and hired vehicles used in the performance of the Design and Construction, including loading and unloading; and

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

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

Excess Liability

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

Professional Liability

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

- coverage in an amount of not less than $15,000,000 per claim and in the aggregate (inclusive of defense and related costs and supplementary payments) for all architectural, engineering, land surveying, environmental, landscape architectural, interior design /space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier subject to the following principle extensions:

- primary insurance extension;

- include as insureds any present or former partner, executive officer, director, shareholder of any named insured while acting within their scope of duties for the named insured;

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

Contractors Pollution Liability

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

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

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

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

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

Employee Dishonesty (Crime)

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

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

Attachment H

Design and Construction Protocols

1. RESPONSIBILITIES

1.1 Phase 1 Early Works and Phase 2 Early Works Responsibility

Notwithstanding any other provision of this Agreement, Contractor will:

(a) have complete responsibility for and control over the Phase 1 Early Works and the Phase 2 Early Works; and

(b) perform and complete the Phase 1 Early Works and the Phase 2 Early Works in accordance with this Attachment H.

1.2 Grant of License by Client

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

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

1.3 TERMS AFFECTING THE LICENSE GRANT

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

(a) no legal demise or other interest in land, and no interest in the NG-KIH System or any other improvements, is granted to Contractor or created by this Agreement; and

(b) the License is non-exclusive and no right to exclusive possession of the Lands or the NG-KIH System is granted to Contractor.

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

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

1.5 Compliance with Laws

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

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

(a) Contractor is responsible to obtain all Permits that are required for the performance of the Phase 1 Early Works and the Phase 2 Early Works.

(b) Contractor assumes all risk and costs arising in relation to all Permits arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits or amendments to Permits as may be required.

(c) Client will provide Contractor with such information within the Client's possession, and co-operate with Contractor, as Contractor reasonably requires in relation to all Permits.

2. DESIGN

2.1 Additional Design Considerations

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

(a) is so qualified;

(b) includes (as required by applicable Law or Customary Industry Practice) licensed or registered professional engineers and architects;

(c) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Attachment H; and

(d) has sufficient expertise and experience designing, constructing, operating and maintaining infrastructure in similar environmental and geotechnical conditions as in the Lands.

3. MAKE-READY CONSTRUCTION

3.1 Skilled Workers

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

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

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

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

3.3 Existing Utilities and Services

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

3.4 Route and Lands Issues

Contractor will:

(a) perform all Phase 1 Early Works and Phase 2 Early Works activities within lands for which the Contractor has been granted the License in accordance with this Attachment or for which Contractor has otherwise obtained sufficient rights of access;

(b) if the Contractor performs any Phase 1 Early Works or Phase 2 Early Works-related activities outside of the Lands, without limiting any other provisions of this Agreement, will comply with all relevant Laws.

3.5 Safety

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

3.6 Protection of the Environment and Property

Contractor will:

(a) follow all environmental protection requirements and restrictions while performing the Phase 1 Early Works and Phase 2 Early Works; and

(b) protect the Client's property (and any third party's property) from damage caused by the Phase 1 Early Works and Phase 2 Early Works, including buildings, roadways, drainage systems, landscaping, surfaces, services and infrastructure.

4. QUALITY ASSURANCE

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

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