

**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.

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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;