

- (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 in Section 13.1(a), a breach, or series of breaches, by Project Co of any term, covenant or undertaking to Operations Co, or any representation or warranty made by Project Co to Operations Co in this Project Implementation Agreement is incorrect when made, the consequence of which:
  - (1) has a material adverse effect on the performance of the Design, Construction, Services or System Refresh; or
  - (2) results in any material provision of this Project Implementation Agreement being unenforceable against Project Co,

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

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

### 13.2 Notification

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

### 13.3 Operations Co's Options

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

- (a) in respect of the Design and the Construction prior to the System Completion Date, suspend performance by it of its obligations under this Project Implementation Agreement until such time as Project Co has demonstrated to the reasonable satisfaction of Operations Co that it will perform and is capable of performing its obligations under this Project Implementation Agreement and, if so extended pursuant to Section 13.3(a) of the Project Agreement, the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be extended by the time such suspension is in effect;
- (b) in the case of a Project Co Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Project Implementation Agreement until Project Co has remedied such Project Co Event of Default and, if so extended pursuant to Section 13.3(b) of the Project Agreement, the Target Site

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

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

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

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

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

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

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

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

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



## **14. PROCEDURE ON TERMINATION**

### **14.1 Compensation on Termination**

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

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

On or promptly after the Termination Date:

- (a) if prior to the System Completion Date:
  - (1) in so far as any transfer will be necessary to fully and effectively transfer property to Project Co (or as Project Co may direct), Operations Co will transfer to, and there will vest in, Project Co (or as Project Co may direct) free from all financial encumbrances:
    - (A) such part of the NG-KIH System as has been constructed on or has become affixed to the Lands; and
    - (B) all construction materials on-hand to be affixed to the Lands or otherwise used in the NG-KIH System; and
  - (2) if the Authority so elects pursuant to Section 14.2(a) of the Project Agreement:
    - (A) the construction equipment will remain available to the Authority or Project Co (or as Project Co may direct) for the purposes of completing the Design and Construction; and
    - (B) all other Project related materials will remain available to the Authority or Project Co (or as Project Co may direct) for the purposes of completing the Design and Construction,subject to payment by Project Co of Operations Co's reasonable charges;
- (b) if the Authority so elects pursuant to Section 14.2(b) of the Project Agreement, Operations Co will cause any or all of the Project Contracts to be novated or assigned to Project Co (or as Project Co may direct), provided that:
  - (1) Operations Co will not be obligated to assign to Project Co (or as Project Co may direct) any of Operations Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and
  - (2) if termination occurs under Section 13.3, the consent of the applicable Project Contractor will be required;
- (c) Operations Co will, or will cause any Project Contractor to, offer to sell to the Project Co (or as Project Co may direct) at the Fair Market Value, free from any

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

- (d) Operations Co will deliver to Project Co (or as Project Co may direct) (to the extent not already delivered to Project Co or the Authority):
- (1) all existing designs, network configurations, plans and other documents produced in connection with the NG-KIH System and in the control of Operations Co;
  - (2) one complete set of existing "as built drawings" showing all alterations made to the NG-KIH System since the commencement of operation of the NG-KIH System; and
  - (3) one complete set of existing up to date maintenance, operation and training manuals for the NG-KIH System,
- subject to reasonable generally applicable third party licensing terms;
- (e) Operations Co will use commercially reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical equipment used or made available by Operations Co under this Project Implementation Agreement and included in the NG-KIH System but not previously assigned or licensed to Project Co or the Authority are assigned, licensed or otherwise transferred to Project Co (or as Project Co may direct);
- (f) to the extent permitted by Law, Operations Co will assign to Project Co (or as Project Co may direct) all Permits;
- (g) Operations Co will deliver to Project Co (or as Project Co may direct) all records required to be kept by Operations Co hereunder (Operations Co having the right to retain copies thereof) unless such documents are:
- (1) required by Law to be retained by Operations Co or a Project Contractor or a Sub-Contractor, in which case complete copies will be delivered to Project Co (or as Project Co may direct); or
  - (2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design, Construction, Services or System Refresh will be delivered to Project Co (or as Project Co may direct) no later than the Termination Payment Date; and
- (h) return to Project Co all Confidential Information of Project Co and to the Authority all Confidential Information of the Authority within the possession or control of Operations Co or any Project Contractor or any Sub-Contractor.

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

### **14.3 Transition Out Arrangements**

On the Expiration Date, Operations Co will:

- (a) on request by the Authority under the Project Agreement, for a period not to exceed 6 months after the Expiration Date:
  - (1) co-operate fully with the Authority and any successor providing to the Authority services in the nature of any of the Services or any part of the Services to achieve a timely, safe, orderly, effective and efficient transition of the performance of services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any material interruption to the Services or risk to the health and safety of any person; and
  - (2) continue to provide the Services or any part of the Services required by the Authority and, subject to the Pass-Down Provisions, Project Co will pay to Operations Co a reasonable price for such services determined with reference to Operations Co's price for such Services prior to the Expiration Date;
- (b) subject to Section 14.3(a), as soon as practicable following the Expiration Date remove all property of Operations Co or any Operations Co Person that is not acquired by Project Co or the Authority (or not belonging to Project Co or the Authority) and, if it has not done so within 20 Business Days after any notice from Project Co or the Authority requiring it to do so, Project Co or the Authority may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of Operations Co;
- (c) subject to Section 14.3(a), on the Expiration Date deliver to Project Co (or as Project Co may direct):
  - (1) all keys, access codes and/or other devices required to operate the NG-KIH System in the control of Operations Co; and
  - (2) any Project Intellectual Property required to be delivered by Operations Co pursuant to Section 14.2(e);
- (d) subject to Section 14.3(a), as soon as practicable after the Expiration Date, vacate, and cause the Operations Co Persons to vacate, those parts of the NG-KIH System over which Operations Co has control and occupation and will leave such parts of the NG-KIH System in a safe, clean and orderly condition; and
- (e) comply with all requirements of Appendix 4B [Handback Requirements].

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

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

- (a) providing any information in Operations Co's control or possession which the Authority may reasonably require to conduct such solicitation except that information which is commercially sensitive to Operations Co or an Operations Co Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of Operations Co or an Operations Co Person give that competitor a competitive advantage over Operations Co or the Operations Co Person and thereby prejudice the business of Operations Co or the Operations Co Person); and
- (b) assisting the Authority by providing any participants in such solicitation process with access to the Lands and the NG-KIH System provided such access does not affect the Services in a way that results in any reduction in Operations Co Payments.

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

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

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

- (a) all Operations Co Materials delivered to Project Co or the Authority are true, accurate and complete copies of the originals of all such Operations Co Materials;
- (b) with respect to Operations Co Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between Operations Co and any Persons:
  - (1) all are in good standing and in full force and effect with no amendments and Operations Co is entitled to all rights and benefits thereunder;
  - (2) Operations Co has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto

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

- (3) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and
- (c) other than Operations Co Materials there no other material agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments relating to the Project.

#### **14.6 Continued Performance**

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

### **15. DISPUTE RESOLUTION**

#### **15.1 Procedure**

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

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

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

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

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

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

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

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

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

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

## **16.3 Not Used**

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

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

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

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

## **17. GENERAL**

### **17.1 Confidentiality**

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

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

- (1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
  - (2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Project Implementation Agreement;
  - (3) to the extent any Person is required to disclose such Confidential Information by Law, including the Open Records Act;
  - (4) Not used; or
  - (5) that is known to the recipient of the Confidential Information prior to disclosure to the recipient by the other party or becomes known to the recipient thereafter by way of disclosure to the recipient by any other Person who, to the knowledge of the recipient, is not under any obligation of confidentiality with respect thereto.
- (c) Without prejudice to any other rights and remedies that the other party may have, a party may be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a).
- (d) Operations Co will be fully liable for any breach of confidentiality under this Section 17.1 by any Person to whom Operations Co has disclosed or granted access to Confidential Information under this Section 17.1 to the same extent as if Operations Co itself breached confidentiality under this Section 17.1.

## **17.2 Public Communications**

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

## **17.3 Law of Agreement**

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

## **17.4 Venue**

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



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

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

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

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

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

### **17.6 Notices**

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

If to Project Co:

KentuckyWired Infrastructure Company, LLC



Attention: Lori Hudson Flanery, Director

Email: 

With a copy to:

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

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

If to Operations Co:

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

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

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

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

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

#### **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: Steve Rucker  
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: NICHOLAS HAIN  
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: *Eliot Jamison*  
Title: *Manager*

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

I/We have the authority to bind the company.