

C-2

EXHIBIT C-2
SERVICE PROVIDER DIRECT AGREEMENT

See attached.

SERVICES CONTRACT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

KentuckyWired Operations Company, LLC
("Operations Co")

and

LTS Kentucky Managed Technical Services LLC
("Service Provider")

Dated: September 3, 2015

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SERVICES CONTRACT

THIS SERVICES CONTRACT dated as of September 3, 2015 is entered into:

BETWEEN:

KentuckyWired Operations Company, LLC
(“Operations Co”)

AND:

LTS Kentucky Managed Technical Services LLC
(the “Service Provider”)

WHEREAS:

- A. Operations Co has entered into the Project Implementation Agreement with KentuckyWired Infrastructure Company, Inc. (“Project Co”), pursuant to which Operations Co has agreed, *inter alia*, to perform the Services with respect to the NG-KIH System.
- B. The Service Provider has agreed to perform all of the Service Provider Obligations in accordance with the terms of this Services Contract.
- C. The Service Provider and Operations Co will each perform their respective obligations under this Services Contract in a collaborative manner with each other and with Project Co and the Authority.

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

1. INTERPRETATION AND INTERACTION WITH PROJECT AGREEMENT

1.1 Definitions

In this Services Contract, unless the context otherwise requires, capitalized terms will have the meanings set out in Attachment 1 [Definitions and Interpretation]. Certain words and expressions are defined within the attachments hereto and such definitions will apply, unless the context otherwise requires, in all other parts of this Services Contract whether or not Attachment 1 [Definitions and Interpretation] contains a cross-reference to such definitions.

1.2 Interpretation

Unless the context otherwise requires, this Services Contract will be interpreted and construed in accordance with the provisions set out in Attachment 1 [Definitions and Interpretation].

1.3 Attachments

The attachments hereto and the terms set out therein, together with all exhibits hereto, will be deemed fully a part of this Services Contract.

1.4 Interaction with Project Implementation Agreement

- (a) Notwithstanding any other provision of this Services Contract, to the extent that Operations Co is or becomes obligated under the Project Implementation Agreement to take any action, do anything or perform any obligation in connection with the Project, which pursuant to this Services Contract, is a Service Provider Obligation, but exclusive of the Excluded Obligations, the Service Provider agrees that, except as otherwise specified herein, it will be obligated to take any such action, do any such thing or perform any such obligation under this Services Contract in the manner and to the standard specified herein or, in the absence of any such standard, any standard specified in the Project Implementation Agreement.
- (b) Where Project Co has the right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction under the Project Implementation Agreement in respect of any matter, and Operations Co has a corresponding right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction pursuant to the terms of this Services Contract in respect of the same or substantially the same or similar matter, and where Project Co has exercised its rights in a particular manner, Operations Co shall only be entitled to exercise its discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission or make the relevant determination in a manner that is consistent with the discretion exercised, approval granted or refused, request or submission accepted or refused or determination made or level of satisfaction confirmed by Project Co under the Project Implementation Agreement, subject to any limitations on Operations Co's discretion under the terms of the Senior Financing Agreements.
- (c) Where Project Co asserts or exercises any right against Operations Co in accordance with the Project Implementation Agreement in regard to any matter associated with the Services or the Services Provider, including reductions in or retentions from payments under the Project Implementation Agreement, claims for indemnification and claims for damages for breach of the Project Implementation Agreement (such assertion or exercise of rights by Project Co being referred to as a "Project Co Claim"), any determination made or reached under the Project Implementation Agreement as to the amount, nature and extent of Operation Co's liability in relation to any Project Co Claim shall be binding on the Service Provider, provided that Operations Co may not compromise any Project Co Claim without the prior written consent of the Service Provider, not to be unreasonably withheld or delayed. The Service Provider shall bear and discharge on a current basis, and shall indemnify Operations Co against all Direct Losses reasonably and properly incurred by Operations Co related to any Project Co Claim, except to the extent that (1) such Direct Losses arise from an Operations Co Event of Default or (2) the liability for the relevant Project Co

Claim will be shared by the parties, in which case each party shall bear a fair and reasonable proportion of the related costs and expenses. Direct Losses under this Section 1.4(c) will not include the costs of Operations Co's own personnel, but will include any out-of-pocket expenses of such personnel and costs and expenses of Project Co, the Authority or other Persons where the Service Provider or Operations Co becomes liable to pay the same.

- (d) The parties acknowledge that where the Project Implementation Agreement contemplates meetings between Operations Co and/or Operations Co's Operating Period Representative and Project Co, the Authority and/or the Authority's Operating Period Representative, such provisions generally do not contemplate a right for the Service Provider to attend such meetings. Operations Co will use commercially reasonable efforts to ensure that the Service Provider is included in such meetings where they pertain to the Service Provider Obligations and, where Operations Co is not successful, Operations Co agrees to keep the Service Provider informed of any such discussions or meetings between Project Co, the Authority and Operations Co that impact the Service Provider Obligations, and, to the extent that Operations Co has an opportunity to do so vis-à-vis Project Co and the Authority, put forward comments and questions provided to it by the Service Provider in respect of the subject matter of the relevant discussions or meetings.
- (e) In certain sections of this Services Contract, there are references to or acknowledgements of the Project Agreement, the Project Implementation Agreement or portions thereof and the absence of such a reference or acknowledgement in any other particular section of this Services Contract will not be construed for or against either party in interpreting this Services Contract.

1.5 Communication with the Authority and Third Parties

- (a) To the extent that any written notice, information, consent, claim, request, response, submission or other communication (a "Communication") is required or permitted to be given or made by the Service Provider directly to Project Co, the Authority or any other third party under this Services Contract, the Service Provider will provide a copy of the same to Operations Co at the same time as giving or making the Communication to Project Co, the Authority or such third party. To the extent that any Communication is required or permitted to be given or made by the Service Provider to Operations Co under this Services Contract in respect of which a corresponding Communication must be given by Operations Co to Project Co or the Authority or any other third party under the Project Implementation Agreement, the Service Provider will:
 - (1) make all Communications required to be made by the Service Provider under this Services Contract within the timeframes contemplated herein or, if no timeframe is set forth herein, in a timely manner so as to permit Operations Co to comply with its obligations under this Services Contract and the Project Implementation Agreement; or
 - (2) upon written request from Operations Co, submit the Communication directly to Project Co, the Authority or other third party.

- (b) Except as otherwise set out in this Services Contract, Operations Co hereby gives permission to the Service Provider to provide Communications directly to Project Co and the Authority in respect of day-to-day matters and deliverables in respect of the performance of the Service Provider Obligations, provided that (i) the permission granted under this Section 1.5(b) will not extend to any Material Project Matter and (ii) the Service Provider will not be entitled to provide Communication directly to Project Co or the Authority at any time during the continuance of a Service Provider Event of Default unless Operations Co otherwise consents in writing. Notwithstanding the foregoing, if the Authority requires that all Communications under the Project Agreement be made directly to and from Project Co or Operations Co and does not accept direct Communications from the Service Provider, then Operations Co will provide all such Communications to Project Co or the Authority, as applicable, and, notwithstanding any time period specifically set out in this Services Contract, the Service Provider will provide such Communications directly to Operations Co in a timely manner so as to permit Operations Co to comply with its obligations under this Services Contract and the Project Implementation Agreement.
- (c) Operations Co will make all Communications required to be made by Operations Co to the Service Provider under this Services Contract in a timely manner so as to permit the Service Provider to comply with its obligations under this Services Contract and will consult with the Service Provider in respect of Communications with Project Co or the Authority regarding Material Project Matters and allow the Service Provider reasonable opportunity to participate in such Communications to the extent so permitted by the Authority.

1.6 Equivalent Project Relief

- (a) To the extent any entitlement of Operations Co under the Project Implementation Agreement (including any rights, remedies or relief) is related to the Service Provider Obligations or the rights or obligations of the Service Provider under this Services Contract, the Service Provider will be entitled to receive the benefit of such entitlement from Operations Co (in accordance with and subject to the provisions of Section 1.6(c)), including the benefit of:
 - (1) any indemnification, compensation, damages or other payment of any kind on the same or substantially the same grounds as Operations Co is entitled to indemnification, compensation, damages or other payment of any kind under the Project Implementation Agreement;
 - (2) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Services Contract on the same or substantially the same grounds as Operations Co is entitled to be relieved from performance of equivalent obligations under, or from termination of the Project Implementation Agreement, with reasonable time period and threshold buffers to permit Operations Co time to perform its obligations under the Project Implementation Agreement, and otherwise subject to any express limitations set out in this Services Contract;

- (3) any entitlement of the Service Provider under this Services Contract in respect of which any provision of this Services Contract states that the Pass-Down Provisions are to apply; and
- (4) any certificate, consent or approval granted under this Services Contract, the Project Implementation Agreement, the Project Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Service Provider Obligations, including any entitlement of Operations Co to request or apply for such certificate, consent or approval from Project Co, the Authority or any other Person under this Services Contract, the Project Implementation Agreement or the Project Agreement,

including, for greater certainty, any benefit to Operations Co arising out of any Change implemented or any Change required by Project Co pursuant to the Project Implementation Agreement or any Compensation Event, Excusing Event, Relief Event, Force Majeure Event, Change in Law, Eligible Change in Law Event or remedies or compensation in respect of any Project Co Event of Default (as defined in the Project Implementation Agreement) or any Authority Event of Default (as defined in the Project Agreement) in respect of which Operations Co is entitled to relief, compensation or benefit under the Project Implementation Agreement in respect of Operations Co's obligations that are related to the Service Provider Obligations or the rights or other obligations of the Service Provider under this Services Contract, but excluding:

- (5) any compensation payable to Operations Co under the Project Implementation Agreement in respect of any Senior Debt Service Amount or any other obligation of Project Co or Operations Co under the Senior Financing Agreements; and
- (6) any specific loss, cost or expense incurred by Operations Co to which the relevant compensation expressly relates and which is not included in any amount claimed by the Service Provider.

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

- (b) The Service Provider will not be entitled to any relief from, or waiver in respect of performance of the Service Provider Obligations under this Services Contract other than:
 - (1) in the case of an Operations Co Act, to the extent that it is not caused or contributed by a Service Provider Act;
 - (2) to the extent Operations Co receives Equivalent Project Relief; or
 - (3) to the extent expressly provided for in this Services Contract.
- (c) The Service Provider will be entitled to the benefit of any Equivalent Project Relief that Operations Co is or becomes entitled under the Project

Implementation Agreement only if, when and to the same extent that Operations Co has received Equivalent Project Relief from Project Co under the Project Implementation Agreement. For greater certainty, other than in respect of any Operations Co Act, Operations Co will in no circumstances be required to provide greater relief or compensation to the Service Provider in respect of any matter in respect of which Operations Co is entitled to Equivalent Project Relief than Operations Co has actually received from Project Co under the Project Implementation Agreement.

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

1.7 Enforcement of Parallel Issues

- (a) Operations Co will use all reasonable efforts to preserve, protect and pursue under the Project Implementation Agreement such rights, remedies and relief as may relate to the Service Provider Obligations or the Service Provider's rights hereunder, including any claim for Equivalent Project Relief (a "Parallel Issue") in order to secure a favorable resolution of the Parallel Issue, provided that:
- (1) Operations Co has received written notice from the Service Provider of the Parallel Issue;
 - (2) the Service Provider will not be entitled to recover from Operations Co any Direct Losses or claims arising out of or in connection with Operations Co pursuing resolution of a Parallel Issue on the Service Provider's behalf other than in respect of any Operations Co Act or other than any amounts received from Project Co in respect of such Parallel Issue; and
 - (3) the Service Provider will indemnify Operations Co in respect of any Direct Losses arising out of or in connection with Operations Co pursuing resolution of a Parallel Issue on the Service Provider's behalf in accordance with this Section 1.7(a), including reimbursing Operations Co for any deduction from, reduction of or exercise of set-off, compensation

or similar right against any amount payable by Project Co associated therewith, provided that such indemnification will, unless Operations Co has no entitlement to any amount received in respect of such Parallel Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Issue.

- (b) Operations Co will, at the reasonable request of the Service Provider, pursue the rights, remedies and relief under the Project Implementation Agreement described in Section 1.7(a) of this Services Contract on behalf of the Service Provider in accordance with the reasonable directions of the Service Provider or, alternatively, Operations Co may consent to the Service Provider pursuing such rights, remedies and relief in the name of Operations Co, in either case, to the extent that the relevant rights, remedies or relief relate to the Service Provider Obligations or the Service Provider's rights hereunder and which may, subject to the provisions of Section 9.2 of the Project Implementation Agreement, include the defense of claims where the Service Provider is required to provide an indemnity to Operations Co in accordance with the indemnity provisions in this Services Contract. The Service Provider will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that if the Service Provider is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the parties in proportion to their ultimate entitlements to same. Operations Co's consent under the first sentence of this Section 1.7(b) will not be unreasonably withheld or delayed where the relevant rights, remedies or relief affect only the Service Provider and not Operations Co, any Operations Co Person, the Design-Builder or any Design-Builder Person. For greater certainty, Operations Co will not be obligated to act in accordance with the Service Provider's instructions or allow the Service Provider to pursue claims in Operations Co's name to the extent that the relevant rights, relief and remedies relate to rights or obligations of Operations Co, any Operations Co Person, the Design-Builder or any Design-Builder Person in respect of Project related matters other than the Service Provider Obligations or the Service Provider's rights hereunder or where, acting reasonably, Operations Co has determined (in which case, it will provide the Service Provider with its grounds) that there is no reasonable cause of action for such claims or such claims are frivolous or vexatious or otherwise an abuse of process.
- (c) Operations Co will not enter into any compromise or settlement of a Parallel Issue with Project Co (or with the Authority, when acting on behalf of Project Co) which affects, in any material respect, the Service Provider's rights, remedies or relief hereunder without the prior written consent of the Service Provider, such consent not to be unreasonably withheld or delayed.
- (d) Where Operations Co pursues a Parallel Issue in accordance with this Section 1.7, the Service Provider will be kept informed of Operations Co's progress under this Section 1.7 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Operations Co in accordance with this Section 1.7.
- (e) If Operations Co does not, after having been given written notice in accordance with Section 1.7(a), take steps to pursue such Parallel Issue within 14 Business Days or prior to that date being 5 Business Days prior to the expiration or other

extinguishment of Operations Co's right to pursue such Parallel Issue, the Service Provider may, in the name of and on behalf of Operations Co, pursue such Parallel Issue itself subject to this Section 1.7, at its sole cost and expense, and Operations Co will (at the sole cost and expense of the Service Provider) use reasonable efforts to provide assistance, including providing documents, data and information, as the Service Provider may reasonably request in connection with the pursuit of such Parallel Issue by the Service Provider.

- (f) The Service Provider will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure or, in the absence of such timeframes, as reasonably set by Operations Co, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Operations Co may reasonably request in connection with the pursuit of any Parallel Issue.
- (g) Any claims in respect of a Parallel Issue and any recoveries obtained by Operations Co or the Service Provider in respect of any Parallel Issue under the Project Implementation Agreement will be subject to the provisions of Section 1.6 in respect of Equivalent Project Relief.

1.8 Pass-Down Provisions

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

1.9 Authority Not Directly Liable

The Service Provider acknowledges the provisions of Section 1.9 of the Project Implementation Agreement.

2. GENERAL PROJECT TERMS

2.1 Term and Termination

The Service Provider acknowledges the provisions of Section 2.1 of the Project Implementation Agreement and the provisions of Section 2.1 of the Project Agreement. The term of this Services Contract (the "Term") will commence on the Effective Date and will continue until the later of (i) the Expiration Date, or (ii) the date upon which all of the Service Provider Obligations have been fully discharged, unless earlier terminated:

- (a) upon the Authority terminating the Project Agreement at any time in its discretion, and at its convenience, by notice to Project Co stating that termination is for convenience pursuant to Section 2.1(a) of the Project Agreement;
- (b) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.3 of the Project Agreement in connection with insufficient insurance;

- (c) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 6.4 of the Project Agreement in connection with uncollectible Insurance Receivables;
- (d) upon the Authority electing to terminate the Project Agreement pursuant to Section 6.10 of the Project Agreement in connection with a Principal Insured Risk becoming Uninsurable;
- (e) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.4(c) or 8.4(e) of the Project Agreement, Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 8.4(c) or 8.4(e) of the Project Implementation Agreement or the Service Provider electing to terminate this Services Contract pursuant to Section 8.4(c) or 8.4(e) of this Services Contract, in connection with a Relief Event;
- (f) upon either the Authority or Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 8.6(c) or 8.6(d) of the Project Agreement, Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 8.6(c) or 8.6(d) of the Project Implementation Agreement or the Service Provider electing to terminate this Services Contract pursuant to Section 8.6(c) or 8.6(d) of this Services Contract, in connection with a Force Majeure Event;
- (g) upon the Authority electing to terminate the Project Agreement pursuant to Section 12.4 of the Project Agreement in connection with a Project Co Event of Default (as defined in the Project Agreement) or Project Co electing to terminate the Project Implementation Agreement pursuant to Section 12.4 of the Project Implementation Agreement in connection with an Operations Co Event of Default (as defined in the Project Implementation Agreement);
- (h) by Operations Co pursuant to Section 12.4 in connection with a Service Provider Event of Default;
- (i) upon Project Co (with the prior consent of Operations Co) electing to terminate the Project Agreement pursuant to Section 13.3 of the Project Agreement in connection with an Authority Event of Default (as defined in the Project Agreement) or Operations Co electing to terminate the Project Implementation Agreement pursuant to Section 13.3 of the Project Implementation Agreement in connection with a Project Co Event of Default (as defined in the Project Implementation Agreement);
- (j) by the Service Provider pursuant to Section 13.3 in connection with an Operations Co Event of Default; and
- (k) in the event that the Authority does not accept a Project Co Proposal (as defined in the Project Agreement) and a Preferred Service Tenderer is appointed to provide the Services and undertake the relevant System Refresh, upon the Preferred Service Tenderer assuming the Service Provider Obligations in accordance with Schedule 19 [Market Testing Procedure] to the Project Agreement, including any agreed transition plan.

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

2.2 Document Deliveries

Concurrently with the execution and delivery of this Services Contract:

- (a) the Service Provider will deliver to Operations Co the documents described in Section 2 of Attachment 18 [Completion Documents]; and
- (b) Operations Co will deliver to the Service Provider the documents described in Section 3 of Attachment 18 [Completion Documents].

2.3 Assumption of Risk

Except to the extent expressly allocated to Operations Co or otherwise provided for under this Services Contract, all risks, costs and expenses in relation to the performance by the Service Provider of the Service Provider Obligations are allocated to, and accepted by, the Service Provider as its entire and exclusive responsibility.

2.4 Opportunities

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

2.5 General Duty of the Service Provider to Mitigate

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

2.6 General Duty of Operations Co to Mitigate

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

the Project Implementation Agreement, or the Senior Financing Agreements), provided that such obligation will not require Operations Co to:

- (a) Not used
- (b) Not used.

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

2.7 Representatives

The Service Provider and Project Co will each appoint a representative to act as a single point of contact under this Services Contract.

2.8 Key Individuals

Attached as Attachment 17 [Key Individuals] is a list of persons (the "Key Individuals") that the Service Provider will utilize in performing the Service Provider Obligations. With respect to each of the Key Individuals:

- (a) the Service Provider will use commercially reasonable efforts to retain the Key Individuals to perform the duties for the period described in Attachment 17 [Key Individuals]; and
- (b) if for any reason a Key Individual resigns or is otherwise unavailable to perform the duties described in Attachment 17 [Key Individuals], the Service Provider will use commercially reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Individual, satisfactory to Operations Co, acting reasonably, and the Service Provider will not replace such Key Individual without Operations Co's consent, acting reasonably.

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

2.9 Naming

The Service Provider acknowledges the provisions of Section 2.9 of the Project Agreement.

2.10 Signs

The Service Provider will not erect or maintain any signs on the Lands or the NG-KIH System, other than warning, safety and instructional signs or signs required by applicable Laws, without the written consent of Operations Co.

3. OPERATIONS CO'S GENERAL OBLIGATIONS

3.1 Payments

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

- (a) Not used
- (b) the Monthly Service Payments as set out in Section 10 (Payments);
- (c) the Termination Payments as set out in Attachment 9 [Compensation on Termination];
- (d) amounts owing under Section 6 (Insurance, Damage and Destruction);
- (e) amounts owing under Section 7 (Changes, Minor Works and Innovation Proposals);
- (f) amounts owing under Section 8 (Supervening Events);
- (g) amounts owing under Section 9 (Indemnities and Limits on Liabilities and Remedies); and
- (h) amounts owing pursuant to the final resolution of a Service Provider Dispute in accordance with the Service Provider Dispute Resolution Procedure set out in Attachment 13 [Service Provider Dispute Resolution Procedure],

in accordance with the provisions of this Services Contract and all applicable Laws.

3.2 Limitation on Payments

Other than the payments expressly provided for herein, the Service Provider will have no right to any further payment from Operations Co in connection with the Service Provider Obligations or otherwise in connection with the Project.

3.3 Provision of Lands

Operations Co will make the Lands available for the Project pursuant to the Sub-License in accordance with Attachment 7 [Lands] and the parties' rights and obligations in respect of the Lands are set out in such Attachment 7. The Service Provider acknowledges the provisions of Section 3.3 of, and Schedule 7 [Lands], to the Project Implementation Agreement regarding Operations Co's access to the Lands and the NG-KIH System and agrees that neither the Service Provider nor any Service Provider Person will have any greater rights than are granted to Operations Co under the Project Implementation Agreement. The Service Provider will comply, and will ensure that each Service Provider Person complies, with the terms of the Sub-License (as defined in the Project Implementation Agreement) granted by Project Co to Operations Co. The Sub-License granted by Operations Co to the Service Provider herein will be effective from the date the Sub-License (as defined in the Project Implementation Agreement) granted by Project Co to Operations Co takes effect pursuant to the Project

Implementation Agreement and will expire on the earlier of the date such Sub-License (as defined in the Project Implementation Agreement) terminates pursuant to the Project Implementation Agreement and the Services Contract Termination Date.

3.4 Permitting Assistance

The Service Provider acknowledges the provisions of Section 3.4 of the Project Implementation Agreement and Section 3.4 of the Project Implementation Agreement. To the extent appropriate, Operations Co agrees to take commercially reasonable efforts to enforce its contractual rights under Section 3.4 of the Project Implementation Agreement against Project Co in accordance with the Pass-Down Provisions. The Service Provider agrees that Operations Co will not be responsible for obtaining or for any delay in obtaining or for the failure of the Service Provider to obtain any Service Provider Permit, unless such delay or failure is caused by an Operations Co Act.

3.5 Operations Co's Representations and Warranties

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

- (a) Operations Co is a limited liability company duly created and validly existing under the laws of the State of Delaware and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Services Contract and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Services Contract;
- (b) the execution and delivery of this Services Contract and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Services Contract, and the completion of the transactions contemplated by this Services Contract, have been duly authorized by all necessary action on the part of Operations Co and this Services Contract has been duly executed and delivered by Operations Co and constitutes a legal, valid and binding obligation of Operations Co enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) all required third party consents to the execution by Operations Co of, and performance of its obligations under, this Services Contract have been received/

3.6 Not Used

3.7 Operations Co Common Carrier Covenant

Operations Co covenants not to take or fail to take any action that would result in the designation of the Service Provider or any Service Provider Person as a Common Carrier or in the application of the Common Carrier Regulations to the Service Provider, any Service Provider Person, the NG-KIH System or any part thereof. Operations Co acknowledges the provisions of Section 3.7 of the Project Agreement whereby the Authority acknowledges and agrees that the performance by Project Co or any Project Co Person (as defined in the Project Agreement) of obligations under the Project Agreement, the Project Implementation Agreement

or any Project Contract (as defined in the Project Agreement) does not require any Person, including Project Co or any Project Co Person (as defined in the Project Agreement), to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

3.8 Not Used

3.9 Pole Attachment Agreements

The Service Provider acknowledges the provisions of Section 3.9 of the Project Agreement whereby the Authority has agreed to (a) enter into each Pole Attachment Agreement required for the Project, (b) if applicable, renew each Pole Attachment Agreement no later than the expiration date set out in such Pole Attachment Agreement to ensure continuous operations of the NG-KIH System and (c) appoint Operations Co as its agent or designee pursuant to each Pole Attachment Agreement. During the Operating Period, Operations Co will appoint the Service Provider as its agent or designee pursuant to each Pole Attachment Agreement and the Service Provider shall perform all of Operations Co's obligations and duties in such capacity. The Service Provider will comply with the Authority's obligations under each Pole Attachment Agreement related to the Service Provider Obligations. In addition to the foregoing, the Service Provider will, throughout the Term, pay all Pole Attachment Fees and administer the renewal of each Pole Attachment Agreement in accordance with Appendix 4A [Services Specifications] and Attachment 8 [Payments].

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

3.10 Procurement Protest or Challenge

The Service Provider acknowledges the provisions of Section 3.10 of the Project Agreement and agrees to assist in the defense of any protest or challenge to the procurement process contemplated thereunder to the extent that the Service Provider has the information to do so. The Service Provider will pay any costs incurred in defending the actions of the Service Provider related to the procurement process or to its interests in this Services Contract. Operations Co agrees to enforce its contractual rights under Section 3.10 of the Project Implementation Agreement in accordance with the Pass-Down Provisions.

4. SERVICE PROVIDER'S GENERAL OBLIGATIONS

4.1 General Obligations Re: Project

Subject to and in accordance with the provisions of this Services Contract and all applicable Laws and Permits, the Service Provider will carry out the Service Provider Obligations and will cooperate with Operations Co and, at Operation Co's request, Project Co and/or the Authority in the fulfillment of the purposes and intent of this Services Contract and, to the extent applicable to the Service Provider Obligations, the Project Implementation Agreement and the Project Agreement.

4.2 Records and Reports

The Service Provider will, during the Operating Period, in respect of the Service Provider Obligations, at its own cost and expense, retain and maintain the records and reports referred to in Attachment 14 [Records and Reports] in accordance with such Attachment and in a form that is capable of audit by Operations Co and to enable Operations Co to fulfill its obligations to Project Co under Section 4.2 of the Project Implementation Agreement.

4.3 Project Management Office

The Service Provider will establish and maintain a project management office in Lexington, Kentucky to coordinate its performance of the Service Provider Obligations.

4.4 Service Provider Persons

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

4.5 Use of Service Provider Sub-Contractors

Without limiting Section 4.4, Operations Co acknowledges that the Service Provider may carry out the Service Provider Obligations by contracting such obligations to one or more Service Provider Sub-Contractors. In respect of the Project:

- (a) the Service Provider will not contract with, or allow any of its Service Provider Sub-Contractors to contract with, any Person that is a Restricted Person;
- (b) the Service Provider will not utilize, and will not allow any of its Service Provider Sub-Contractors to utilize, any materials from any Restricted State other than unprocessed raw materials and Non-Operative Components; and
- (c) the Service Provider will ensure that its Service Provider Sub-Contract with Fujitsu Network Communications Inc. and each Service Provider Sub-Contract that, individually or in the aggregate with other Service Provider Sub-Contracts with the same Service Provider Sub-Contractor, has a value in excess of \$3 million (Index Linked) enables Operations Co to comply with the relevant provisions of the Project Implementation Agreement and provides that the relevant Service Provider Sub-Contractor will:
 - (1) be required to provide Service Provider Sub-Contractor warranties and, to the extent possible, supplier warranties directly to Operations Co;
 - (2) be required to contract directly with Operations Co or the nominee of the Senior Secured Creditors upon termination of this Services Contract; and

- (3) not be entitled to terminate or suspend its Service Provider Sub-Contract without first giving Operations Co notice and an opportunity to cure.

Concurrently with the execution of any such Service Provider Sub-Contract, the Service Provider will provide Operations Co with a redacted copy or excerpts of such Service Provider Sub-Contract, in either case sufficient to demonstrate to Operations Co compliance with the requirements of this Section 4.5(c). The Service Provider will not amend the provisions of any such Service Provider Sub-Contract that relate to the requirements of this Section 4.5(c) without the prior written consent of Operations Co.

Notwithstanding the use of Service Provider Sub-Contractors, the Service Provider:

- (d) will not be relieved or excused from any of its obligations or liabilities under this Services Contract; and
- (e) will remain liable to Operations Co for the performance of all the covenants, obligations, agreements and conditions of this Services Contract that are to be performed by the Service Provider.

4.6 Project Contracts under Project Implementation Agreement

The Service Provider acknowledges the provisions of Section 4.6 of the Project Implementation Agreement and agrees that this Services Contract is a Project Contract under the Project Implementation Agreement. Without limiting the generality of the foregoing, the Service Provider acknowledges the obligations of Operations Co pursuant to Sections 4.6(a) through 4.6(d) of the Project Implementation Agreement.

4.7 Costs of Request for Consent

Without fettering Operations Co's discretion as to whether it will exercise any of its rights under Section 4.6 of the Project Implementation Agreement, if the Service Provider requests, or the Service Provider proposes a course of action that makes it necessary for Operations Co to request consent to a proposed course of action pursuant to Section 4.6 of the Project Implementation Agreement, the Service Provider will pay to Operations Co, without duplication, the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with the Authority considering any such request under the Project Agreement. At the time of such request, the Service Provider will make a payment to Operations Co in the amount of \$5,000 (Index Linked) against its obligations under this Section 4.7. After the Authority renders its decision, Operations Co will either refund any overpayment upon receipt of such amount from Project Co or invoice the Service Provider for any additional amounts owing under this Section 4.7 and the Service Provider will promptly pay such amount to Operations Co. The Service Provider will also pay Operations Co's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request from the Service Provider and, if applicable, requesting consent from Project Co and the Authority in connection therewith.

4.8 Not Used

4.9 Not Used

4.10 Service Provider Permits

- (a) Subject to Section 3.9 of the Project Agreement, Section 8 (Supervening Events) and Section 2.1 of Attachment 7 [Lands], the Service Provider shall, at its own cost and risk and in accordance with the Project Schedule obtain, maintain and, as applicable, renew all Service Provider Permits and comply with all Permits in accordance with their terms.
- (b) Where a Service Provider Permit has requirements that may impose any conditions, liabilities or obligations on Project Co, any Project Co Person, on Operations Co or any Operations Co Person, or on the Authority or any Authority Person, the Service Provider shall not obtain, amend or renew (other than upon the same terms and conditions) such Service Provider Permit without the prior written consent of Operations Co, not to be unreasonably withheld or delayed, provided that Operations Co shall not be responsible for obtaining or for the failure of the Service Provider to obtain any Service Provider Permit. The Service Provider acknowledges the provisions of Section 4.10(b) of the Project Implementation Agreement and, to the extent appropriate, Operations Co agrees to take commercially reasonable steps to enforce its contractual rights under Section 4.10(b) of the Project Agreement against Project Co in accordance with the Pass-Down Provisions.
- (c) The Service Provider shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the Authority may request from Project Co under the Project Agreement and as Project Co may request from Operations Co under the Project Implementation Agreement and as the Service Provider may reasonably be able to provide to enable the Authority to demonstrate compliance with any Permit. The Service Provider shall provide or cause to be provided such information, documentation and assistance pursuant to this Section 4.10(c) within 7 Business Days of receipt of Operation Co's, Project Co's or the Authority's request.

4.11 Service Provider's Representations and Warranties

The Service Provider represents and warrants to Operations Co that:

- (a) the Service Provider is:
 - (1) a limited liability company duly created and validly existing under the laws of the State of Delaware and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Services Contract and all other documents, instruments and agreements required to be executed and delivered by the Service Provider pursuant to this Services Contract; and
 - (2) validly registered to conduct business in the Commonwealth of Kentucky;

- (b) the information set out in Attachment 12 [Service Provider's Ownership Information] is true and correct;
- (c) to the Service Provider's knowledge, none of the Service Provider, Persons who control the Service Provider or any Service Provider Person are Restricted Persons;
- (d) the execution and delivery of this Services Contract and all other documents, instruments and agreements required to be executed and delivered by the Service Provider pursuant to this Services Contract, and the completion of the transactions contemplated by this Services Contract, have been duly authorized by all necessary action on the part of the Service Provider, and this Services Contract has been duly executed and delivered by the Service Provider and constitutes a legal, valid and binding obligation of the Service Provider enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (e) all required third party consents to the execution by the Service Provider of, and performance of its obligations under, this Services Contract have been received, other than any Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project.

4.12 Responses to Operations Co, Project Co and Authority Inquiries

Unless otherwise specified in this Services Contract, the Service Provider will respond in writing to all written inquiries received from Operations Co, Project Co or the Authority as soon as reasonably practicable and in any event within 7 Business Days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require, but in all cases within a time frame sufficient to ensure that Operations Co is not placed in breach of the Project Implementation Agreement by the delay of the Service Provider.

4.13 Common Carrier Covenant

The Service Provider covenants not to take or fail to take any action that would result in the designation of Operations Co or any Operations Co Person as a Common Carrier or in the application of the Common Carrier Regulations to Operations Co, any Operations Co Person or the NG-KIH System or any part thereof. The Service Provider acknowledges the provisions of Section 3.7 of the Project Agreement whereby the Authority acknowledges and agrees that the performance by Project Co or any Project Co Person (as defined in the Project Agreement) of obligations under the Project Agreement, the Project Implementation Agreement or any Project Contract (as defined in the Project Agreement) does not require any Person, including Project Co or any Project Co Person (as defined in the Project Agreement), to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

4.14 Operations Co, Project Co and Authority Access During the Operating Period

Without limiting any of the Authority's, Operations Co's or Project Co's rights in respect of the Lands, the Service Provider acknowledges and agrees that each Authority Person and their

respective representatives, Operations Co and each Operations Co Person and Project Co and each Project Co Person will, during the Operating Period, have unrestricted access to the Lands and the NG-KIH System, provided that in providing such unrestricted access, the Service Provider will not be required to act in breach of this Services Contract and provided further that Operations Co and each Operations Co Person will use commercially reasonable efforts to not interfere with or disrupt the Service Provider's ability to perform the Service Provider Obligations.

4.15 Service Provider's Obligations re Third Party Infrastructure Agreements

The Service Provider acknowledges the provisions of Section 4.15 of the Project Agreement and the provisions of Section 4.15 of the Project Implementation Agreement. The Service Provider further acknowledges and agrees that, as of the Effective Date, Project Co has negotiated non-binding term sheets (each, a "Third Party Infrastructure Term Sheet") with the Third Party Infrastructure Providers, copies of which are attached as Attachment 22 [Third Party Infrastructure Term Sheets].

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

During the Operating Period, the Service Provider will use commercially reasonable efforts to manage the Third Party Infrastructure Providers in accordance with the terms of the Third Party Infrastructure Agreements, including, without limitation, any integration activities necessary to integrate the applicable infrastructure of a Third Party Infrastructure Provider into the NG-KIH System, and administer Project Co's rights under the Third Party Infrastructure Agreements so as to mitigate the impact of any failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement or any breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement. Upon request from Operations Co, the Service Provider will promptly submit a detailed description, supported by all such documentation as Operations Co may reasonably require, of the measures and steps taken by the Service Provider to administer Project Co's rights under each of the Third Party Infrastructure Agreements. Operations Co consents to the Service Provider pursuing all rights, remedies and relief under a Third Party Infrastructure Agreement in the name of Project Co.

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

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

In accordance with Section 8.2(h), if the Compensation Event described in (w) of the definition of Compensation Event occurs, the parties will consult with the Authority and Project Co and seek to agree on the steps to be taken by the Service Provider in administering Project Co's rights under the relevant Third Party Infrastructure Agreement. The parties acknowledge and agree that the compensation to which the Service Provider will be entitled in respect of any such Compensation Event will include, as a component of the Service Provider's Direct Losses, the reasonable cost of legal or professional services incurred by the Service Provider in connection with the administration of Project Co's rights; provided, however, that the Service Provider will not be required to pursue any judicial remedies against any Third Party Infrastructure Provider. For certainty, Operations Co will not be required hereunder to pursue any judicial remedies against any Third Party Infrastructure Provider.

4.16 Compliance with Senior Financing Agreements and Project Implementation Agreement

- (a) The Service Provider acknowledges that, pursuant to the Project Implementation Agreement, Operations Co cannot agree to, or permit, any assignment, novation or other transfer of this Services Contract without the prior written consent of the Senior Secured Creditors, and the Service Provider will not require Operations Co to take any action that would breach such restrictions or make any claim against Operations Co in respect of any failure by Operations Co to take any action to the extent that the taking of such action would be limited by such restrictions.
- (b) The Service Provider acknowledges that, pursuant to the Project Implementation Agreement, Operations Co is subject to certain restrictions on its ability to, among other things, vary, alter, amend, supplement, surrender, revise or modify the Project Implementation Agreement, this Services Contract or any other Material Project Contract (as such term is defined in the Senior Financing Agreements) to which the Service Provider is a party or any other documents entered into in connection therewith without the prior written consent of the Senior Secured Creditors, including agreement by Operations Co to Changes above certain thresholds, and, where Operations Co notifies the Service Provider that it is subject to such a restriction, the Service Provider will not require Operations Co to take any action that would breach such restrictions or make any claim against Operations Co in respect of any failure by Operations Co to take any action where the taking of such action would be limited by such restrictions.
- (c) The Service Provider acknowledges that it has been provided with a copy of the Senior Financing Agreements and the Project Implementation Agreement and the Service Provider will not take any action under this Services Contract which would require consent of the Senior Secured Creditors under the Senior Financing Agreements if taken by Operations Co under the Project

Implementation Agreement without Operations Co having first obtained the consent of the Senior Secured Creditors.

- (d) The Service Provider will, at the Service Provider's cost and expense, execute and deliver to the Senior Secured Creditors all such reasonable acknowledgements, agreements, undertakings and other documents as the Senior Secured Creditors may require in connection with their taking security over Operations Co's right, title and interest in and to this Services Contract and the Project, provided that, notwithstanding the foregoing, the execution and delivery of any acknowledgments, agreements, undertakings and other documents that may be required in connection with any Refinancing (as defined in the Project Agreement) shall be at Operations Co's cost and expense.
- (e) The Service Provider will provide all information as Operations Co may reasonably request from time to time in respect of the Service Provider or any of its Affiliates as may be required in order for Operations Co to demonstrate compliance with all applicable anti-money laundering and anti-terrorism financing legislation in the United States and economic sanctions regulations promulgated in the United States to the extent that Operations Co is required to provide such information to the Senior Secured Creditors pursuant to a request under the Senior Financing Agreements.
- (f) The Service Provider acknowledges the provisions of Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement. The Service Provider will provide to Operations Co:
 - (1) promptly so as to permit Operations Co to comply with its obligations under Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement, copies of all notices of the matters described in Sections 4.1(c)(8)(B), (D), (E) and (F) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement to the extent that any such matter relates to the Service Provider, this Services Contract or the Service Provider Obligations; and
 - (2) any additional information related to the Service Provider, this Services Contract or the Service Provider Obligations reasonably requested by Operations Co from time to time and that is required by Operations Co to comply with its reporting obligations pursuant to Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement, including any information required by Operations Co to prepare the quarterly report described in Section 4.1(c)(10) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement,

provided that the above requirements shall not require that the Service Provider produce a separate record or report to the extent that the records and reports referred to in Attachment 14 [Records and Reports] are sufficient for Operations Co to comply with its obligations pursuant to Sections 4.1(c) and (d) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement. If the Service Provider is unable to determine whether a matter described in

Sections 4.1(c)(8)(D), (E) or (F) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement could reasonably be expected to, or does, cause a Material Adverse Effect (as defined in the Collateral Agency and Account Agreement), the Service Provider will consult with Operations Co regarding such matter and Operations Co shall determine (in its sole discretion) whether it is required to report such matter pursuant to Section 4.1(c)(8) of Schedule 15 [Financing Agreement Obligations] to the Project Implementation Agreement. If Operations Co notifies the Service Provider that Operations Co is required to report such matter, the Service Provider will provide a copy of all notices of such matter to Operations Co in accordance with Section 4.16(f)(1). Notwithstanding Section 17.1, Operations Co may disclose any information provided to Operations Co by the Service Provider pursuant to this Section 4.16(f) to the extent required for Operations Co to satisfy its reporting and disclosure obligations under the Project Implementation Agreement.

5. NOT USED

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.10(b), Operations Co or the Service Provider, as applicable, will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Attachment 5 [Insurance Requirements], including as to the required scope and content (including coverage limits and endorsements) of all applicable insurance policies for all applicable periods and ensuring that the Persons required pursuant to Attachment 5 [Insurance Requirements] to be named as named insureds, additional insureds or loss payees are so named. The Service Provider agrees to pay any deductibles in the event of an insured loss whether the insurance is provided by the Service Provider or Operations Co. The Service Provider further agrees to provide any additional documentation required to satisfy the provisions of the Senior Financing Agreements in relation to the insurance to be provided by the Service Provider promptly following notice thereof from Operations Co.

6.2 Damage or Destruction Caused by Service Provider

To the extent that any damage or destruction to any portion of the NG-KIH System is caused or contributed by the Service Provider or any Service Provider Person, the Service Provider will repair, replace or restore (and in the case of material damage, carry out the Reinstatement Works to repair, replace and restore) any damaged or destroyed portions of the NG-KIH System and related assets, at the Service Provider's sole cost and expense, notwithstanding any unavailability of Insurance Proceeds (unless any Insurance Proceeds that would otherwise have been available are not available due to any Operations Co Act, in which case the Service Provider will not be liable for the costs of repair and reinstatement of damage to the extent of such unavailable Insurance Proceeds). For greater certainty and subject to the provisions of the Senior Financing Agreements, to the extent that Insurance Proceeds are available in respect of such damage the Service Provider will be entitled to utilize or be reimbursed from such Insurance Proceeds.

6.3 Insufficient Insurance

The Service Provider acknowledges the provisions of Section 6.3 of the Project Implementation Agreement. If the Authority or Project Co (with the prior consent of Operations Co) elects to terminate the Project Agreement pursuant to Section 6.3 of the Project Agreement, this Services Contract will automatically terminate, in which case Operations Co will, subject to the Pass-Down Provisions, pay compensation to the Service Provider in accordance with Section 5 of Attachment 9 [Compensation on Termination].

6.4 Uncollectible Insurance Receivables

The Service Provider acknowledges the provisions of Section 6.4 of the Project Implementation Agreement. If the Project Agreement is terminated in accordance with Section 6.4 of the Project Agreement, this Services Contract will automatically terminate and Operations Co will, subject to the Pass-Down Provisions, pay compensation to the Service Provider in accordance with Section 5 of Attachment 9 [Compensation on Termination].

6.5 Application of Insurance Proceeds If No Termination

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

- (a) applicable Insurance Proceeds which the Service Provider has received; and
- (b) applicable Insurance Proceeds which the Service Provider is entitled to receive,
- (c) Not used
- (d) Not used

to be applied to the reinstatement of the NG-KIH System in accordance with the terms of this Services Contract.

6.6 Application of Insurance Proceeds In Case of Termination

If this Services Contract has been terminated pursuant to Section 6.3:

- (a) any Insurance Proceeds received prior to the Termination Payment Date by the Service Provider in respect of damage to the NG-KIH System and not already applied to the repair of such damage will be paid to Operations Co (or as Operations Co may direct); and
- (b) on the Termination Payment Date, the Service Provider will assign to Operations Co (or as Operations Co may direct) the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.7 Standards of Repair, Replacement or Restoration

Any repair, replacement or restoration of the NG-KIH System or any part thereof pursuant to the provisions of Section 6.2 will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications (each as defined in the Project Implementation Agreement), subject to any agreement made between the Authority and Project

Co (with the prior written consent of Operations Co pursuant to Section 6.7 of the Project Implementation Agreement and, where possible, in accordance with the Pass-Down Provisions, with input from and the involvement of the Service Provider) to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any repaired, replaced or restored NG-KIH System.

6.8 Mitigation

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

6.9 Risks Becoming Uninsurable

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

6.10 Consequences of Risks Becoming Uninsurable

The Service Provider acknowledges the provisions of Section 6.10 of the Project Implementation Agreement and the provisions of Section 6.10 of the Project Agreement. If the requirements of Section 6.9 of the Project Agreement are satisfied but the Authority and Project Co (with the prior consent of Operations Co pursuant to Section 6.10 of the Project Implementation Agreement) cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the "Uninsurable Risk"):

- (a) if the Uninsurable Risk is third party liability, the Service Provider acknowledges that the Authority shall terminate the Project Agreement, in which case this Services Contract will automatically terminate and the Service Provider will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination]; or
- (b) if the Uninsurable Risk is not third party liability:
 - (1) the Service Provider acknowledges that the Authority may terminate the Project Agreement, in which case this Services Contract will automatically terminate and the Service Provider will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination]; or
 - (2) if and for as long as the Authority has not terminated the Project Agreement under Section 6.10(b)(1) of the Project Agreement:
 - (A) this Services Contract will continue;

- (B) neither the Service Provider nor Operations Co will be obligated by this Services Contract, Project Co will not be obligated by the Project Implementation Agreement, and the Authority will not be obligated by the Project Agreement, to maintain insurance in respect of the Uninsurable Risk and references in this Services Contract to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Attachment 5 [Insurance Requirements] will be construed accordingly;
- (C) the Monthly Service Payments will thereafter be adjusted in accordance with Section 10.3 (Adjustments to Monthly Service Payments) by agreement of the parties, acting reasonably, or, failing such agreement, by the Service Provider Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in the Service Provider's insurance cost as a result of the Service Provider not having to insure against the Uninsurable Risk; and
- (D) subject to the Pass-Down Provisions, the occurrence of the Uninsurable Risk will be deemed to be a Compensation Event unless the Authority terminates the Project Agreement in which case this Services Contract will automatically terminate and the Service Provider will, subject to the Pass-Down Provisions, be entitled to compensation on termination as provided in Section 5 of Attachment 9 [Compensation on Termination].

6.11 Subrogation

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

6.12 Continuing Attempts to Insure Uninsurable Risks

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

6.13 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so and either party becomes aware or is informed by the other party that this is the case (or in the case of Operations Co, is

informed by Project Co pursuant to the Project Implementation Agreement), the party responsible to obtain the insurance under Attachment 5 [Insurance Requirements] will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Services Contract in respect of the risk, and in any case:

- (a) Sections 6.9, 6.10 and 6.12 will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) any resulting adjustment of the Monthly Service Payments to reflect any increase in the Service Provider's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk will be determined in accordance with the Pass-Down Provisions.

7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

7.1 Changes Required by the Authority or Requested by Operations Co

The Service Provider acknowledges that the Authority may require Changes during the Operating Period with respect to the Service Provider Obligations, in accordance with Section 7.1 of, and Schedule 6 [Changes, Minor Works and Innovation Proposals] to, the Project Agreement and, in such cases, the Service Provider will be responsible to fulfill all obligations of Operations Co in respect thereof under the Project Implementation Agreement, to the extent applicable to the Service Provider Obligations, in accordance with Attachment 6 [Changes, Minor Works and Innovation Proposals] and the Pass-Down Provisions. The Service Provider acknowledges that Operations Co may request Operations Co Initiated Changes in accordance with Attachment 6 [Changes, Minor Works and Innovation Proposals].

7.2 Innovation and Value Engineering

The Service Provider may submit an Innovation Proposal during the Operating Period for consideration by Operations Co in accordance with Attachment 6 [Changes, Minor Works and Innovation Proposals]. If approved by Operations Co, such approval not to be unreasonably withheld or delayed, Operations Co shall submit such Innovation Proposal to the Authority for its consideration pursuant to Section 7.2 of the Project Implementation Agreement and Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Implementation Agreement and such submission will be dealt with pursuant to the Pass-Down Provisions. For greater certainty, Innovation Proposals will be approved or rejected by the Authority in accordance with the requirements of Schedule 6 [Changes, Minor Works and Innovation Proposals] to the Project Agreement, and such approval or rejection will be binding on Project Co, Operation Co and the Service Provider.

7.3 Minor Works

The Service Provider acknowledges that the Authority may require Minor Works in accordance with Section 7.3 of the Project Agreement and, in such case, the Service Provider will be responsible to fulfil all obligations of Operations Co thereunder during the Operating Period, or arising as a result of work done to fulfill the Service Provider Obligations by or on behalf of the Service Provider during the Operating Period, in accordance with Attachment 6 [Changes, Minor Works and Innovation Proposals] and the Pass-Down Provisions.

8. SUPERVENING EVENTS

8.1 Supervening Events

The Service Provider acknowledges the provisions of Section 8 of the Project Implementation Agreement and confirms that its rights in relation to Supervening Events, and any claim it may have or make in respect thereof, are subject to the Pass-Down Provisions. If:

- (a) a Compensation Event, Relief Event or Excusing Event occurs, the Service Provider may; or
- (b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may,

apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Services Contract to the extent provided in this Section 8 (Supervening Events) but subject, in each case, to the Pass-Down Provisions where the Applicant is the Service Provider. The "Applicant" means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

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

- (a) as soon as practicable, and in any event within 3 Business Days if the Applicant is the Service Provider or within 5 Business Days if the Applicant is Operations Co, as applicable, after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other party a notice ("**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant's claim. Unless Operations Co advises the Service Provider within 1 Business Day that Operations Co disagrees with a Supervening Event Notice provided by the Service Provider (in which case the parties will attempt to resolve such disagreement immediately and the Service Provider Dispute Resolution Procedure will apply), the Service Provider will forthwith deliver the Supervening Event Notice to Project Co and the Authority within the time frame required by Section 8.2(a) of the Project Agreement;
- (b) within 7 Business Days if the Applicant is the Service Provider or within 10 Business Days if the Applicant is Operations Co, as applicable, after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party:
 - (1) additional details, including available supporting documentation, in support of its claim; and
 - (2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by the Service Provider, if it is the Applicant, as a result of the Supervening Event;

- (c) from time to time thereafter, the Applicant will notify the other party if at any time it receives or becomes aware of any further material information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;
- (d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;
- (e) where Operations Co is claiming the benefit of an Eligible Change in Law Event, the Service Provider will provide Operations Co information reasonably requested in order for Operations Co to make its claim and as Operations Co may require in connection with its discussions with Project Co and the Authority pursuant to the Project Implementation Agreement;
- (f) the Applicant must demonstrate:
 - (1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to have taken provided that, in the case of Operations Co, Operations Co is not required to take any steps that are referred to in Section 2.6(b);
 - (2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss or the need for relief from other obligations under this Services Contract; and
 - (3) in the case of the Service Provider, it has complied with its mitigation obligations pursuant to Section 2.5 and in the case of Operations Co, it has complied with its mitigation obligations pursuant to Section 2.6;
- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Services Contract or, if the Applicant is Operations Co, any Senior Financing Agreement, as a result of the Supervening Event; and
- (h) the Service Provider acknowledges that Project Co and Operations Co will meet with the Authority as required by Section 8.2(h) of the Project Implementation Agreement within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event. The Service Provider acknowledges and agrees that, if Project Co, Operations Co and the Authority, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either the Authority or Project Co (with the prior consent of Operations Co) may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) of the Project Agreement have been satisfied or the extent of relief or compensation to which the affected party is entitled, for resolution in accordance with the Dispute Resolution Procedure pursuant to the Project Agreement. The parties agree to abide by the determination pursuant to the Project Agreement of whether a

Supervening Event has occurred, whether the conditions in Section 8.2(f) of the Project Agreement have been satisfied or the extent of relief or compensation to which the affected party is entitled, and neither party will exercise any rights under this Services Contract nor specifically under the Service Provider Dispute Resolution Procedure to dispute the final determination arising under the Project Agreement in respect thereof, other than in accordance with the Pass-Down Provisions or with respect to a claim in respect of an Operations Co Act.

8.3 Service Provider's Entitlements Upon Occurrence of a Compensation Event

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

- (a) the Service Provider is relieved from any liability or consequence (including termination by Operations Co) under this Services Contract arising from any delay or failure in performing any of its obligations under or in connection with this Services Contract to the extent resulting from the Compensation Event;
- (b) the Monthly Service Payments will be calculated as if the Compensation Event had not occurred based on the Reasonably Expected Performance of the Service Provider, except that any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which the Service Provider would have recovered as a result of the Compensation Event if it had complied with the requirements of this Services Contract or any policy of insurance maintained or required to be maintained under this Services Contract will be deducted therefrom;
- (c) Operations Co will pay to the Service Provider compensation in respect of a Compensation Event calculated on the basis that the Service Provider will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):
 - (1) any Direct Losses (including the amount of any applicable insurance deductibles calculated without netting out Insurance Receivables) resulting from the Compensation Event;
 - (2) any net increase or decrease in the costs of the Service Provider performing its obligations under this Services Contract resulting from the Compensation Event; and
 - (3) the Monthly Service Payments payable to Service Provider, taking into account the adjustments pursuant to Section 8.3(b) above;

except that:

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

- (5) no Indirect Losses will be taken into consideration; and
- (d) concurrent with the first payment of any compensation by Operations Co under Section 8.3(c), the Service Provider will assign to Operations Co (or as Operations Co may direct) its rights to all applicable Insurance Receivables (whether or not the Service Provider has made a claim).
- (e) Not used.

The Service Provider acknowledges the provisions of Section 8.3(e) of the Project Implementation Agreement which provide that if a Compensation Event (as defined in the Project Implementation Agreement) occurs prior to the System Completion Date, and Operations Co has given Project Co a Supervening Event Notice (as defined in the Project Implementation Agreement) related thereto, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and the Longstop Date will be postponed to correspond with such revisions made pursuant to Section 8.3(e) of the Project Implementation Agreement, but the Expiration Date will not be extended.

8.4 Service Provider's Entitlements Upon Occurrence of a Relief Event

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

- (a) the Service Provider is relieved from any liability or consequence (including termination by Operations Co, except as provided for in this Section 8.4) under this Services Contract arising from any delay or failure in performing any of its obligations under this Services Contract to the extent resulting from the Relief Event, except that nothing will affect any entitlement of Operations Co to make Deductions and Operations Co will only be obligated to make the Monthly Service Payments to the extent that the performance or other criteria for Monthly Service Payments are met in accordance with the applicable provisions of this Services Contract notwithstanding the Relief Event;
- (b) the Service Provider acknowledges the provisions of Section 8.4(b) of the Project Implementation Agreement which provide that if a Relief Event (as defined in the Project Implementation Agreement) occurs prior to the System Completion Date, and Operations Co has given Project Co a Supervening Event Notice (as defined in the Project Implementation Agreement) related thereto, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed to correspond with such revisions made pursuant to Section 8.4(b) of the Project Implementation Agreement, but the Expiration Date will not be extended;
- (c) if Operations Co:
 - (1) has become entitled to terminate the Project Implementation Agreement pursuant to Section 8.4(c) of the Project Implementation Agreement and has not exercised its termination right within 60 days after the date upon

which Operations Co became so entitled to terminate the Project Implementation Agreement (the "Relief Event Termination Entitlement Point"); and

- (2) has not agreed to compensate the Service Provider for the reasonable direct costs incurred by the Service Provider from and after the Relief Event Termination Entitlement Point as a result of Operations Co's election not to exercise its termination right under Section 8.4(c) of the Project Implementation Agreement,

the Service Provider may, at any time thereafter so long as such Relief Event is, or such effect is, continuing, terminate this Services Contract by notice to Operations Co;

- (d) if the Authority gives notice to Project Co under Section 8.4(c) of the Project Agreement terminating the Project Agreement, Operations Co will not consent under Section 8.4(d) of the Project Implementation Agreement to Project Co requiring the Project Agreement to continue unless either (1) Operations Co has obtained the Service Provider's prior written consent to do so or (2) Operations Co commits to continue to provide relief to the Service Provider pursuant to this Section 8.4 notwithstanding that Project Co does not provide corresponding relief to Operations Co and without prejudice to the rights of the Service Provider pursuant to Section 8.4(c);
- (e) the Service Provider acknowledges that, if the Service Provider gives notice to Operations Co under Section 8.4(c) terminating this Services Contract and, as a result, Operations Co gives notice to Project Co under Section 8.4(c) of the Project Implementation Agreement terminating the Project Implementation Agreement and Project Co gives notice to the Authority under Section 8.4(c) of the Project Agreement terminating the Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires the Project Agreement to continue, in which case:
 - (1) the Service Provider's termination notice to Operations Co under Section 8.4(c) will be deemed null and void and the Service Provider, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Services Contract;
 - (2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
 - (3) at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing, the Authority may terminate the Project Agreement by notice to Project Co and Operations Co, in which case Operations Co will give notice of such termination to the Service Provider and this Services Contract will terminate automatically; and
 - (4) the Service Provider may, at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing after a further period of 180 days after the date on which the Service Provider delivered the

termination notice to Operations Co referred to in Section 8.4(c), terminate this Services Contract by notice to Operations Co, provided that the parties acknowledge and agree that such notice will not have instantaneous effect in order to enable Operations Co to exercise its own termination right under Section 8.4(e)(4) of the Project Implementation Agreement;

- (f) if the Project Agreement is terminated pursuant to Section 8.4 thereof, this Services Contract will be automatically terminated and in such case, or in the case of termination of this Services Contract pursuant to this Section 8.4, the Service Provider will be entitled to compensation on such termination in accordance with Section 5 of Attachment 9 [Compensation on Termination]; and
- (g) Deductions made while the Service Provider is entitled to relief under this Section 8.4 will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Attachment 4 [Services Protocols and Specifications].

8.5 Service Provider's Entitlements Upon Occurrence of an Excusing Event

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

- (a) the Service Provider is relieved from any liability or consequence (including termination by Operations Co) under this Services Contract arising from any delay or failure in performing any of its obligations to the extent resulting from the Excusing Event; and
- (b) the Monthly Service Payments will be calculated as if the Excusing Event had not occurred based on the Reasonably Expected Performance of the Service Provider, except that any Avoidable Costs and applicable Insurance Proceeds and Insurance Receivables and insurance proceeds which the Service Provider would have recovered if it had complied with the requirements of this Services Contract or any policy of insurance maintained or required to be maintained under this Services Contract will be deducted therefrom.

8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

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

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

(b) the Service Provider acknowledges the provisions of Section 8.6(b) of the Project Implementation Agreement, which provides that if a Force Majeure Event (as defined in the Project Implementation Agreement) occurs prior to the System Completion Date, and Operations Co has given Project Co a Supervening Event Notice (as defined in the Project Implementation Agreement) related thereto, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed to correspond with such revisions made pursuant to Section 8.6(b) of the Project Implementation Agreement, but the Expiration Date will not be extended;

(c) where Operations Co:

(1) has become entitled to terminate the Project Implementation Agreement pursuant to Section 8.6(c) of the Project Implementation Agreement and has not exercised its termination right within 60 days of the date upon which Operations Co became so entitled to terminate the Project Implementation Agreement (the "Force Majeure Event Termination Entitlement Point"); and

(2) has not agreed to compensate the Service Provider for the reasonable direct costs incurred by the Service Provider from and after the Force Majeure Event Termination Entitlement Point as a result of Operations Co's election not to exercise its termination right under Section 8.6(c) of the Project Implementation Agreement,

the Service Provider may, at any time thereafter so long as such Force Majeure Event is, or such effect is, continuing, terminate this Services Contract by notice to Operations Co;

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

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

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

(3) at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing, the Authority may terminate the Project

Agreement by notice to Project Co and Operations Co, in which case Operations Co will give notice of such termination to the Service Provider and this Services Contract will terminate automatically; and

- (4) the Service Provider may at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing after a further period of 180 days after the date on which the Service Provider delivered the termination notice to Operations Co referred to in Section 8.6(c), terminate this Services Contract by notice to Operations Co, provided that the parties acknowledge and agree that such notice will not have instantaneous effect in order to enable Operations Co to exercise its own termination right under Section 8.6(d)(4) of the Project Implementation Agreement;
- (e) if the Project Agreement is terminated pursuant to Section 8.6(c), 8.6(d)(3) or 8.6(d)(4) of the Project Agreement, this Services Contract will be automatically terminated and in such case, or in the case of termination of this Services Contract pursuant to this Section 8.6, the Service Provider will be entitled to compensation on such termination in accordance with Section 5 of Attachment 9 [Compensation on Termination]; and
- (f) Deductions made while the Service Provider is entitled to relief under this Section 8.6 will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Attachment 4 [Services Protocols and Specifications].

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

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

- (a) the Applicant will be entitled to compensation, or an increase or decrease in the Monthly Service Payments, in respect of the Eligible Change in Law Event calculated on the basis that the Service Provider will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):
 - (1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event;
 - (2) any net increase or decrease in the costs of the Service Provider performing the Service Provider Obligations resulting from the Eligible Change in Law Event; and
 - (3) the Monthly Service Payments payable to the Service Provider,except that:
 - (4) any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which the Applicant would have recovered if it had complied with the requirements of this Services Contract or any policy of insurance

maintained or required to be maintained under this Services Contract will be deducted therefrom;

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

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

8.8 Parties' Entitlements Upon Occurrence of a Change in Law

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

- (a) if compliance by the Service Provider with a Change in Law is outside the scope of, or inconsistent with, the Service Provider Obligations under this Services Contract, or would mean a change in the Service Provider Obligations under this Services Contract or a change in the scope or manner of carrying out the Service Provider Obligations, such Change in Law will be deemed to constitute a Change having effect from the time that such Change in Law takes effect, except that the Service Provider will not be entitled to any payment or other compensation other than as set out in Section 8.4, Section 8.5 or Section 8.7;
- (b) except as otherwise provided in this Services Contract, including in Section 8.4, Section 8.5 or Section 8.7, the Service Provider will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and
- (c) nothing in Section 8.4, Section 8.5 or Section 8.7 will be interpreted as relieving the Service Provider of its obligation, following any and all Changes in Law, to perform its obligations under this Services Contract in compliance with all Laws.

8.9 Labor Disputes

If the Service Provider Has Knowledge of an actual or potential labor dispute that may affect any of the Service Provider Obligations, the Service Provider will promptly:

- (a) give notice thereof to Operations Co, including all relevant information related to the dispute of which the Service Provider Has Knowledge;
- (b) use commercially reasonable efforts to mitigate the effects of such labor dispute on the performance of any of the Service Provider Obligations, including by applying for relief to appropriate tribunals or courts if such labor dispute involves workers of the Service Provider and/or a Service Provider Sub-Contractor.

The Service Provider acknowledges that if the labor dispute involves workers of the Service Provider or any Service Provider Sub-Contractor, or of anyone employed by or through them, none of Operations Co, Project Co or the Authority will be required to provide any facilities,

space or assistance in the NG-KIH System or on the Lands for the purposes of such workers or any applicable union.

8.10 Payments in Respect of Supervening Events

Payments between the parties and any adjustments to the Monthly Service Payments in respect of Supervening Events will be made in accordance with Section 10.3. Subject to the Pass-Down Provisions, Operations Co will in no circumstances be required to provide greater relief or compensation to the Service Provider than Operations Co has received from Project Co in respect of the relevant Supervening Event under the Project Implementation Agreement.

8.11 Supervening Events Mitigated by Change

The Service Provider acknowledges the provisions of Section 8.11 of the Project Implementation Agreement and Section 8.11 of the Project Agreement. Nothing in this Services Contract will limit the right of Operations Co, on its own initiative or as a result of the actions of Project Co pursuant to the Project Implementation Agreement or the Authority pursuant to the Project Agreement, to perform or mitigate its obligations in respect of Supervening Events or the consequences of a Supervening Event by requiring a Change or Changes.

8.12 Delay in Notification

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

- (a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Services Contract to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and
- (b) if the period of delay is 12 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.13 Equivalent Project Relief

The Service Provider acknowledges the provisions of Sections 8.13(c), (d) and (e) of the Project Implementation Agreement and shall comply, and enable Operations Co to comply, with those provisions to the extent they relate to the Service Provider or any of the Service Provider Sub-Contractors.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Obligations to Indemnify

- (a) The Service Provider will indemnify and keep Operations Co and each Operations Co Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain arising in connection with any claim made by one or more third parties, including, for the avoidance of doubt, Project Co, any Project Co Indemnified Person (as defined in the Project Implementation Agreement), the Authority, or any Authority Indemnified Person

(as defined in the Project Agreement), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Project Co Indemnified Person (as defined in the Project Implementation Agreement) or any Authority Indemnified Person (as defined in the Project Agreement), arising by reason of any Service Provider Act or any claim alleging infringement by the Service Provider or any Service Provider Sub-Contractor, in relation to the Project, of any Intellectual Property rights of third parties, except in each case to the extent caused, or contributed to, by an Operations Co Act. This Section 9.1(a) may be relied upon by Operations Co Indemnified Persons and may be enforced directly by any of them against the Service Provider in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Service Provider.

- (b) Operations Co will indemnify and keep the Service Provider and each Service Provider Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with any claim made by one or more third parties or any claim for, or in respect of, the death, personal injury, disease or illness of any Person arising by reason of an Operations Co Act, except in each case to the extent caused, or contributed to, by a Service Provider Act. This Section 9.1(b) may be relied upon by Service Provider Indemnified Persons and may be enforced directly by any of them against Operations Co in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and Operations Co.

9.2 Conduct of Third Person Claims

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

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Services Contract in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;
- (b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations and the Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) in defending any claim described in Section 9.2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the

Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;

- (d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b), the Indemnifier will:
 - (1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
 - (3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (e) the Beneficiary may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:
 - (1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b); or
 - (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (3) the Indemnifier fails to comply in any material respect with Section 9.2(d) above,and in the case of (3) above, the Beneficiary may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Services Contract. Otherwise the Beneficiary will not pay or settle such claims without the consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;
- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) above applies. On receipt of such notice, the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3)), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 or its obligation to provide compensation, as the case may be; and
- (g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property (as defined in the

Project Implementation Agreement) rights of any Person, the Service Provider may replace such infringing or allegedly infringing item provided that:

- (1) the replacement is performed without additional cost to Operations Co; and
- (2) the replacement has at least equal quality performance capabilities when used in conjunction with the NG-KIH System.

9.3 General Obligation to Pursue Third Person Recovery

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

- (a) as directed by the Paying Party either:
 - (1) promptly make commercially reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
 - (2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and
- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:
 - (1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and
 - (2) the Liability Payment,

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

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

9.4 Waiver of Remedies

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

9.5 Remedies Cumulative

Subject to Sections 9.6, 9.7 and 9.8:

- (a) the rights and remedies of the parties under this Services Contract are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and
- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.6 Limitation on Operations Co's Remedies

Operations Co's remedies in respect of any failure by the Service Provider to perform the Service Provider Obligations will be limited to Deductions in accordance with Attachment 8 [Payments], provided that nothing in this Section 9.6 will limit Operations Co's right to:

- (a) claim, on or after a termination of this Services Contract, costs, losses, damages and expenses suffered or incurred by Operations Co as a result of rectifying or mitigating the effects of any breach of this Services Contract by the Service Provider except to the extent recovered by Operations Co under this Services Contract or taken into account to reduce any compensation payable by Operations Co pursuant to Attachment 9 [Compensation on Termination];
- (b) make a claim for indemnification pursuant to Section 9.1(a);
- (c) deliver to the Service Provider a Service Provider Dispute Notice or a notice of default or termination pursuant to Section 12 (Service Provider Events of Default) and pursue all remedies in respect thereof;
- (d) pursue any other express remedy available to Operations Co under this Services Contract or any equitable remedy, including injunctive relief and specific performance; or
- (e) enforce, realize or otherwise call upon the Service Provider Parent Guarantee, the Performance Support LC or any other Acceptable Credit Support, or any other security, insurance or other performance support provided by or on behalf of the Service Provider pursuant to this Services Contract.

9.7 Limitation on Service Provider's Remedies

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

- (a) deliver to Operations Co a Service Provider Dispute Notice or a notice of default or termination pursuant to Section 13 (Operations Co Events of Default) and pursue all remedies in respect thereof; or
- (b) pursue any other express remedy available to the Service Provider under this Services Contract or any equitable remedy, including injunctive relief and specific performance.

Without limiting any rights the Service Provider may have against the Design-Builder under the Interface Agreement, all obligations of Operations Co contained in this Services Contract shall be deemed to be the obligations of Operations Co and not of any other Person (including any shareholder, director, officer or employee of Operations Co) in its or his or her individual or personal capacity and no recourse shall be had against such Person other than Operations Co for the payment of any amount under this Services Contract or for any indemnity or any other claim based on this Services Contract.

9.8 Limits on Monetary Compensation

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

9.9 No Liability for Indirect Losses

Unless specifically allowed in this Services Contract, neither party to this Services Contract will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party. For greater certainty, but subject to the Service Provider Liability Cap, the term "Indirect Losses" does not include any losses of third parties of any nature or kind to the extent that Operations Co has been determined to be liable to any such third party for such losses, and such losses shall be considered Direct Losses for the purposes of this Services Contract.

9.10 No Liability for Governmental Activities

None of the Authority, Project Co or Operations Co will be liable to the Service Provider or any Service Provider Person for any Direct Losses suffered or incurred as a result of damage to the NG-KIH System, whether arising from or related to Governmental Activities or otherwise, to the extent that such Direct Losses were directly or indirectly caused or contributed to by any willful misconduct, negligent act or omission or non-compliance with the terms of this Services Contract by the Service Provider or any Service Provider Person and, for greater certainty, the same shall not constitute a Compensation Event.

9.11 Operations Co's Right of Set Off

- (a) Operations Co will have the right to:
- (1) abate payment of any amounts otherwise due to the Service Provider pursuant to the terms of this Services Contract for defective or non-compliant work;
 - (2) set-off against any amounts otherwise due to the Service Provider pursuant to the terms of this Services Contract, any amounts due to Operations Co by the Service Provider pursuant to the terms of this Services Contract; and
 - (3) set-off against any amounts otherwise due to the Service Provider pursuant to the terms of this Services Contract any amounts in respect of liens or third party claims for which Operations Co is responsible under the Project Implementation Agreement to the extent such liens or claims are in respect of acts or omissions of the Service Provider or any Service Provider Person; provided, however, that Operations Co will not be entitled to set-off such amounts against any amounts otherwise due to the Service Provider to the extent that the Service Provider has already paid off, vacated or discharged the lien or claim or is contesting the lien or claim under bona fide proceedings and has put aside adequate financial reserves (other than in circumstances where the existence of any such liens or claims would result in an Operations Co Event of Default under the Project Implementation Agreement or in respect of which any claim or right of set-off in favor of Project Co exists under the Project Implementation Agreement and has been exercised by the Project Co).
- (b) The parties agree that if Project Co exercises any set off right available to it pursuant to the terms of the Project Implementation Agreement in respect of an amount relating to or arising from any act, omission or breach on the part of the Service Provider or any Service Provider Person after a payment is made by Operations Co to the Service Provider pursuant to the terms of this Services Contract, the Service Provider will be obligated to forthwith reimburse Operations Co in an amount equal to the amount set off by Project Co together with interest thereon at the Default Rate from the date of such set off by Project Co and such reimbursement obligation will be secured by the Service Provider Parent Guarantee and the Performance Support LC.

9.12 Service Provider's Right of Set Off

The Service Provider may set off any amounts owing by Operations Co to the Service Provider under this Services Contract against any payments due by the Service Provider to Operations Co under this Services Contract.

9.13 Undisputed Amounts and Interest on Disputed Amounts

Subject to Sections 9.11 and 9.12, a party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Services Contract, but any disputed portion or amount will not be payable until the Service Provider Dispute is resolved in

accordance with the Service Provider Dispute Resolution Procedure. If payment of any amount payable under this Services Contract is delayed while the matter is in Service Provider Dispute, upon resolution of the Service Provider Dispute, interest will be payable on any amount determined payable pursuant to the Service Provider Dispute Resolution Procedure at the Default Rate, compounded monthly, from the time such amount became payable under this Services Contract until paid.

9.14 Interest on Overdue Amounts

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

9.15 Maximum Aggregate Liability

(a) The maximum aggregate liability of the Service Provider for any claims or damages arising directly or indirectly from, or connected with, this Services Contract, including, without limitation, liability for a breach of the Service Provider Obligations or its other obligations under this Services Contract and liability for incurred Deductions, is limited to:

- (1) for claims arising prior to the termination of this Services Contract, 100% of the average annual value of the Monthly Service Payments (as escalated in accordance with Attachment 8 [Payments]) payable during the Operating Period (for greater certainty, prior to any Deductions being levied from such average Monthly Service Payments)(the "Service Provider Pre-Termination Liability Cap"); and
- (2) for claims arising on or after the termination of this Services Contract, 200% of the average annual value of the Monthly Service Payments (as escalated in accordance with Attachment 8 [Payments]) payable during the Operating Period (for greater certainty, prior to any Deductions being levied from such average Monthly Service Payments),

(collectively, the "Service Provider Liability Cap").

For greater certainty, the Service Provider Liability Cap will increase to the extent that the Monthly Service Payments have been increased as a result of a Change under Section 7 (Changes, Minor Works and Innovation Proposals) which changes the scope of the Service Provider Obligations and therefore the amount of such payments for the period following the Change.

(b) The Service Provider Liability Cap will not apply (either in the context of any claim or upon termination of this Services Contract) to:

- (1) any liability of the Service Provider resulting from its abandonment of the provision of the Services;

- (2) any claims arising from, in connection with or as a result of any fraud or criminal act by the Service Provider or any Service Provider Person;
- (3) any claims arising from, in connection with or as a result of any Gross Negligence, fraudulent misrepresentation or willful misconduct by the Service Provider, the Service Provider Guarantor or any Service Provider Person;
- (4) liability for losses relating to any event or circumstance in respect of which the Service Provider is required to maintain insurance or pay deductibles in accordance with this Services Contract up to the amount of the required insurance and deductibles thereon (except to the extent insurance proceeds are not available in respect of such losses as a result of a failure of Operations Co to maintain such insurance);
- (5) any amounts which the Service Provider has recovered from the Design-Builder pursuant to the provisions of the Interface Agreement (or would be recoverable but for the limitation on liability of the Design-Builder to the Service Provider under the Interface Agreement) in respect of claims for which liability has been reallocated to the Design-Builder from the Service Provider;
- (6) any amounts paid pursuant to any indemnity under this Services Contract respecting liability to third parties (other than the Authority, Project Co and the Senior Secured Creditors), including for death, personal injury or damage or loss to property;
- (7) any liabilities arising out of any encumbrances caused by the Service Provider and not removed or paid by the Service Provider in accordance with this Services Contract;
- (8) any amounts paid by the Service Provider that are subsequently repaid to it by Operations Co (including by way of Equivalent Project Relief), received by the Service Provider from insurance proceeds (or that would have been recovered by insurance proceeds up to the amount of the required insurance but in respect of which insurance proceeds are not available due to a failure, act or omission on the part of the Service Provider) or refunded to it by a third party, including the Design-Builder; and
- (9) liability for third-party claims with respect to Intellectual Property relating to the Services.

Until the termination of this Services Contract, the Service Provider will be responsible for any costs of performing the Service Provider Obligations that exceed the amount budgeted therefor in the Financial Model as at the Effective Date (including, for greater certainty, any excess or unanticipated costs incurred, or capital required to be provided by the Service Provider in order to perform the Service Provider Obligations), and such amounts will not be included as part of the Service Provider Liability Cap.

- (c) Operations Co will not be obliged to exhaust its remedies against any insurer before being entitled to make a claim against the Service Provider hereunder.
- (d) In respect of the Service Provider Event of Default listed in Section 12.1(m), the Service Provider may, within 5 Business Days of the occurrence of such Service Provider Event of Default, deliver notice to Operations Co that it wishes to cure such Service Provider Event of Default by re-setting to zero the liabilities of the Service Provider in respect of amounts paid or payable by the Service Provider to Operations Co (including Deductions), with the effect that, from the date of such re-setting, in respect of the applicable period, the Service Provider Pre-Termination Liability Cap will not be considered to have been reduced by any amounts paid or payable by the Service Provider to Operations Co, together with a remedial plan describing the Service Provider's proposed approach to rectifying the service issues that gave rise to such amounts paid or payable by the Service Provider to Operations Co in excess of the applicable threshold set out in Section 12.1(m) (in this paragraph, a "Rectification Plan"). Upon confirmation by Operations Co that the Rectification Plan is in form and substance satisfactory to Operations Co, the liabilities of the Service Provider in respect of amounts paid or payable by the Service Provider to Operations Co for purposes of calculating amounts applicable to the Service Provider Pre-Termination Liability Cap will be re-set to zero, with the effect that, from the date of such re-setting, in respect of the applicable period, the Service Provider Pre-Termination Liability Cap will not be considered to have been reduced by any amounts paid or payable by the Service Provider to Operations Co that were incurred up to the date upon which the Service Provider Events of Default listed in Section 12.1(m) occurred. For greater certainty, if the Service Provider (i) does not deliver a notice that it wishes to cure the Service Provider Event of Default by re-setting its liabilities in accordance with the foregoing; or (ii) fails to provide a Rectification Plan that is in form and substance satisfactory to Operations Co (which shall be subject to the satisfaction of the Secured Creditors' Technical Advisor), Operations Co may terminate this Services Contract in accordance with Section 12.4.

10. PAYMENTS

10.1 Lump Sum Payments

To the extent a party:

- (a) is entitled to payment from the other party under this Services Contract, including in respect of a Change under Section 7 (Changes, Minor Works and Innovation Proposals), a Supervening Event under Section 8 (Supervening Events) or an indemnification claim under Section 9 (Indemnities and Limits on Liabilities and Remedies); or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Services Contract, including in respect of an Innovation Proposal under Section 7 (Changes, Minor Works and Innovation Proposals) or an Eligible Change in Law Event under Section 8 (Supervening Events),

the entitled party may make written demand for such payments from time to time after being entitled to payment and (i) in respect of any Direct Losses, after such Direct Losses have been

incurred and (ii) in respect of any shared benefit, after receipt by the other party of the shared benefit, and such payment will be due and payable within 10 Business Days of delivery of written demand supported by all relevant information. Where the Pass-Down Provisions apply, such amounts shall be due within 3 Business Days of receipt by Operations Co of the corresponding amount from Project Co, or 3 Business Days prior to the date on which the corresponding amount is payable by Operations Co to Project Co under the Project Implementation Agreement, as applicable, unless specific additional timeframes are stipulated for payment of any amounts owing or payable by Operations Co to the Service Provider, or by the Service Provider to Operations Co, as applicable, under this Services Contract.

10.2 Monthly Service Payments

- (a) On a monthly basis Operations Co will pay to the Service Provider the Monthly Service Payments for the performance of the Service Provider Obligations.
- (b) The Monthly Service Payments will be payable to the Service Provider in accordance with Section 9.1 of Attachment 8 [Payments].

10.3 Adjustments to Monthly Service Payments

The Service Provider acknowledges the provisions of Section 10.3 of the Project Implementation Agreement and Section 10.3 of the Project Agreement and agrees that any adjustments to the Monthly Service Payments as a result of adjustments to the payments made by Project Co to Operations Co as a result of any adjustments to the Availability Payments (as defined in the Project Agreement) shall be addressed in accordance with the Pass-Down Provisions.

10.4 Not Used

10.5 Deductions

The Service Provider acknowledges the provisions of Section 10.7 of the Project Implementation Agreement and agrees that the Service Provider will be liable for Deductions (as defined in the Project Agreement) incurred by Project Co under the Project Agreement, subject to the limitation of the Service Provider Liability Cap and other than to the extent that any Deductions are caused by an Operations Co Act. For greater certainty, if, in any month, the aggregate Deductions exceed the Maximum Monthly Service Payment for such month (as calculated in each case prior to any Deductions), the Service Provider will immediately pay the excess to Operations Co, failing which Operations Co will be entitled to draw on the Performance Support LC up to the amount of such excess amount. Unless Operations Co determines that any Deductions (as defined in the Project Agreement) levied against Project Co by the Authority under the Project Agreement were caused by an Operations Co Act, all Deductions (as defined in the Project Agreement) will be levied against the Service Provider by Operations Co under this Services Contract until, and to the extent that, it is either agreed between the parties or determined through the Service Provider Dispute Resolution Procedure that the relevant Deduction (as defined the Project Agreement) was caused by an Operations Co Act.

10.6 Fixed Price

Without prejudice to any express rights of the Service Provider to indemnification or compensation from Operations Co pursuant to the terms of this Services Contract, the Service Provider will perform the Service Provider Obligations on a fixed price basis, subject to Changes, Supervening Events, indexation and other mechanisms which adjust the Monthly Service Payments pursuant to this Services Contract and in accordance with the Pass-Down Provisions and Deductions for which the Service Provider is liable and, in the event that the Monthly Service Payments are insufficient to cover the costs incurred by the Service Provider in respect of the Service Provider Obligations, the Service Provider will be liable to provide all required additional capital necessary to pay such costs and the Service Provider will not be reimbursed for such additional costs by Operations Co, Project Co or the Authority at any time. Amounts paid or payable by the Service Provider in respect of such additional capital will not apply to the Service Provider Liability Cap.

11. OPERATION CO's STEP-IN RIGHTS

11.1 Operations Co's Step-in Rights

The Service Provider (a) acknowledges the provisions of Section 11.1 of the Project Implementation Agreement and the rights of Project Co therein and the provisions of Section 11.1 of the Project Agreement and the rights of the Authority therein and (b) agrees that the Pass-Down Provisions apply to the operation of this Section 11.1. If:

- (a) the Authority determines that a breach by Project Co of any obligation under the Project Agreement is likely to create an immediate and serious threat to the health or safety of any person, any property or the environment; or
- (b) notwithstanding that Project Co is not in breach of its obligations under the Project Agreement, the Authority reasonably considers the circumstances to constitute an Emergency,

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

- (c) Operations Co may require the Service Provider by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs, including, if applicable due to breach of this Services Contract or any Service Provider Sub-Contract, Operations Co may require that the Service Provider or any Service Provider Sub-Contractor suspend its operations in some or all respects on the NG-KIH System, and the Service Provider will use commercially reasonable efforts to comply with Operations Co's requirements as soon as reasonably practicable; or
- (d) the Authority may take such steps as it considers are appropriate pursuant to Section 11.1 of the Project Agreement (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Services to the standards required by the Project Agreement (or as close as possible to those standards as the circumstances permit) and the Service Provider will not inhibit or interfere with the exercise of such rights by the Authority.

The Service Provider will ensure that the provisions contained in all applicable Service Provider Sub-Contracts will not prevent or inhibit the Authority or Operations Co from exercising their rights under this Section 11. Operations Co acknowledges that this Section 11.1 does not create a separate step-in right that can be exercised by Project Co or Operations Co alone in circumstances where the Authority has not asserted its rights pursuant to Section 11.1 of the Project Agreement.

11.2 Operations Co's Rectification Rights

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

- (a) does not confirm, within 3 Business Days of such notice, or such shorter period as is appropriate in the case of an Emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to Operations Co to mitigate, rectify and protect against such circumstances that Operations Co may, within a further 7 Business Days, accept or reject, acting reasonably; or
- (b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as Operations Co, acting reasonably, will stipulate,

then Operations Co or the Authority may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of the Service Provider to provide the relevant Services, but only for so long as the circumstances referred to in Section 11.1(a) or Section 11.1(b) subsist. If the circumstances referred to in Section 11.1(a) or Section 11.1(b) no longer subsist or the Service Provider has proposed a plan acceptable to Operations Co, acting reasonably (and the Authority pursuant to Section 11.2 of the Project Agreement) for mitigating, rectifying and protecting against such circumstances, any suspension of the right and obligation of the Service Provider to provide any Services will cease and such right and obligation will once again be in full force and effect.

11.3 Notice of NG-KIH System Change

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

11.4 Not Used

11.5 Allocation of Costs for Operations Co Actions

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

12. SERVICE PROVIDER EVENTS OF DEFAULT

12.1 Service Provider Events of Default

For the purposes of this Services Contract, "Service Provider Event of Default" means any of the following events or circumstances:

- (a) the occurrence of a Service Provider Material Breach that is not remedied in accordance with Section 12.3, including in accordance with the program for remediation produced by the Service Provider in accordance with Section 12.3, or the occurrence of a Service Provider Material Breach for which a program for remediation has not been produced by the Service Provider in accordance with Section 12.3;
- (b) the occurrence of an Insolvency Event in respect of the Service Provider or the Service Guarantor;
- (c) the Service Provider repudiating this Services Contract, the Interface Agreement, the Service Provider Collateral Agreement or the Service Provider Lenders' Remedies Agreement, or abandoning any of the Service Provider Obligations;
- (d) Not used
- (e) the Service Provider breaches Section 16.1 or Section 16.2;
- (f) the Service Provider breaches its obligations under this Services Contract (other than as a consequence of a breach by Operations Co of its obligations under this Services Contract, a breach by Project Co of its obligations under the Project Implementation Agreement or a breach by the Authority of its obligations under the Project Agreement) which results in a criminal conviction related to health and safety violations against the Service Provider, any Service Provider Person, Project Co, any Project Co Person, Operations Co, any Operations Co Person, the Design-Builder, any DB Person or the Authority (an "H&S Conviction"), except that:

- (1) an H&S Conviction of the Service Provider, a Service Provider Person, Project Co, a Project Co Person, Operations Co, an Operations Co Person, the Design-Builder, any DB Person or the Authority will not constitute a Service Provider Event of Default if, within 45 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Service Provider Person is terminated or the Service Provider takes such other action against each such Service Provider Person as is acceptable to Operations Co acting reasonably; and
- (2) in determining whether to exercise any right of termination for a Service Provider Event of Default pursuant to this Section 12.1(f) Operations Co will:
 - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (B) give all due consideration, where appropriate, to action other than termination of this Services Contract;
- (g) subject to Sections 8.4(g) and 8.6(f), the Service Provider accumulates Deductions of \$4,500,000 (Index Linked) or more in any 12 consecutive month period during the Operating Period;
- (h) the Service Provider or the Service Guarantor making any material representation or warranty in this Services Contract, the Service Provider Lenders' Remedies Agreement or the Service Provider Parent Guarantee that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the Project or the Service Provider Obligations and, in the case of a false or misleading representation or warranty that is capable of being remedied, the Service Provider has not remedied such breach within 7 Business Days following notice from Operations Co;
- (i) the Service Provider Parent Guarantee, the Performance Support LC, or any other Acceptable Credit Support is:
 - (1) not provided or maintained as required under this Services Contract and, in the case of Acceptable Credit Support, is not (X) replaced within the time period set out in Section 17.13(c) in the case of a Ratings Downgrade, (Y) renewed within 10 Business Days after the date required to be renewed pursuant to Section 17.12(b), or (Z) drawn and the proceeds of such draw deposited into a Cash Collateral Account; or
 - (2) withdrawn, terminated or breached (including as a result of non-payment by an issuer of Acceptable Credit Support following demand) or otherwise becomes void, voidable or unenforceable for any reason and, in the case of any Acceptable Credit Support, is not replaced within 10 Business Days;

- (j) the Service Provider Lenders' Remedies Agreement is or becomes wholly or partially void, voidable, unenforceable, invalid or illegal as a result of any act or omission of the Service Provider and such agreement is not replaced by an agreement on substantially similar terms within 20 days of becoming wholly or partially void, voidable, unenforceable, invalid or illegal or such longer period, not exceeding 160 days, reasonably necessary to effect such replacement;
- (k) the occurrence of an Operations Co Event of Default (as defined in the Project Implementation Agreement) under the Project Implementation Agreement that is caused by a Service Provider Event of Default or any other act or omission of the Service Provider or a Service Provider Person or breach by the Service Provider of its obligations hereunder;
- (l) the Service Provider ceasing to perform any Service Provider Obligations which are necessary for the performance by Operations Co of its obligations under the Project Implementation Agreement, except to the extent that such cessation is due to an Operations Co Event of Default;
- (m) the accumulation of liabilities paid or payable by the Service Provider to Operations Co within a twelve month period (including Deductions (as defined in the Project Agreement) incurred by Operations Co under the Project Implementation Agreement for which the Service Provider is responsible under this Services Contract or the Interface Agreement) which are subject to the Service Provider Liability Cap and which amounts exceed, in the aggregate, 75% of the Service Provider Pre-Termination Liability Cap;
- (n) if the Authority requires the suspension or termination and replacement of the Service Provider under Section 12.5 of the Project Agreement; or
- (o) the Service Guarantor repudiates the Service Provider Parent Guarantee,

unless caused by (i) non-compliance by the Authority with any provision of the Project Agreement or any document, instrument or agreement delivered to Project Co as required under the Project Agreement or any negligent act or omission, or any wrongful misconduct, of the Authority or any Authority Person, (ii) non-compliance by Project Co with any provision of the Project Implementation Agreement or any document, instrument or agreement delivered to Operations Co as required under the Project Implementation Agreement or any negligent act or omission, or any wrongful misconduct, of Project Co or any Project Co Person, or (iii) non-compliance by Operations Co with any provision of this Services Contract or any document, instrument or agreement delivered to the Service Provider as required under this Services Contract or any negligent act or omission, or any wrongful misconduct, of Operations Co or any Operations Co Person.

12.2 Notification

The Service Provider will notify Operations Co of the occurrence, and details, of any Service Provider Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Service Provider Event of Default, in either case, promptly and in any event within 2 Business Days from the date that the Service Provider Has Knowledge of its occurrence.

12.3 Service Provider Material Breach Cure and Remedial Program

The Service Provider acknowledges the provisions of Section 12.3 of the Project Agreement and the Authority's rights and discretions provided for therein and the provisions of Section 12.3 of the Project Implementation Agreement and Project Co's rights and discretions provided therein. The Service Provider further acknowledges that where the Authority exercises its rights or its discretion under Section 12.3 of the Project Agreement, Project Co will exercise the same rights or discretions under the Project Implementation Agreement and, to the extent that such circumstance has arisen from an act, omission or breach of this Services Contract, Operations Co will exercise the same rights or discretions under this Services Contract. Further, where a Service Provider Event of Default has resulted in an Operations Co Event of Default under the Project Implementation Agreement, any remedy period or other time period in relation to any rectification measure available to the Service Provider herein will be no greater than 75% of the length of such corresponding time period available to Operations Co pursuant to the Project Implementation Agreement (for greater certainty, if Operations Co has no remedy period under the Project Implementation Agreement with respect to rectification of an Operations Co Event of Default, the Service Provider will have no remedy period hereunder with respect to rectification of the corresponding Service Provider Event of Default). After the occurrence of a Service Provider Material Breach or any Service Provider Event of Default set out in Section 12.1(l) and while it is subsisting, Operations Co may serve a notice on the Service Provider specifying in reasonable detail the type and nature of the Service Provider Material Breach or Service Provider Event of Default and:

- (a) the Service Provider will remedy such Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l) referred to in such notice (if it is continuing) within 35 days of such notice; or
- (b) if either Operations Co (as set out in its notice) or the Service Provider reasonably considers that a Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l) cannot reasonably be remedied within 35 days of such notice, the Service Provider will deliver to Operations Co within 12 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l), which program will specify in reasonable detail the manner in, and the latest date by, which the Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l) is proposed to be remedied.

If the Service Provider puts forward a program in accordance with Section 12.3(b), Operations Co will have 13 Business Days from receipt of the program within which to notify the Service Provider that Operations Co, acting reasonably, does not accept the program. If Operations Co notifies the Service Provider that it does not accept the program as being reasonable or does not respond within 13 Business Days from receipt of the program, the parties will use commercially reasonable efforts within the following 5 Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such 5 Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Service Provider Material Breach or Service Provider Event of Default under Section 12.1(l) in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Service Provider Dispute Resolution Procedure.

12.4 Operations Co Termination Right

The Service Provider acknowledges the provisions of Section 12.4 of the Project Agreement and the Authority's rights and discretions provided therein and the provisions of Section 12.4 of the Project Implementation Agreement and Project Co's rights and discretions provided for therein. The Service Provider further acknowledges that where the Authority exercises its rights or its discretion under Section 12.4 of the Project Agreement, Project Co will exercise the same rights or discretions under the Project Implementation Agreement and Operations Co will exercise the same rights or discretions under this Services Contract. If:

- (a) a Service Provider Material Breach or Service Provider Event of Default set out in Section 12.1(l) is not remedied before the expiration of the period referred to in Section 12.3(a) and no program has been put forward by the Service Provider under Section 12.3(b);
- (b) the Service Provider puts forward a program pursuant to Section 12.3(b) which has been accepted by Operations Co (including after agreement under Section 12.3 to amendments to the program) or has been determined to be reasonable pursuant to the Service Provider Dispute Resolution Procedure and the Service Provider fails to remedy the Service Provider Material Breach before the end date for the program or Service Provider Event of Default, as the case may be;
- (c) any program put forward by the Service Provider pursuant to Section 12.3(b) is rejected by Operations Co as not being reasonable, and, if such rejection is disputed by the Service Provider, the Service Provider Dispute Resolution Procedure does not find against that rejection; or
- (d) any Service Provider Event of Default other than a Service Provider Material Breach or Service Provider Event of Default set out in Section 12.1(l) occurs,

then Operations Co may (if the Service Provider Event of Default continues unwaived and unremedied) terminate this Services Contract by notice to the Service Provider. The right of Operations Co to terminate this Services Contract under this Section 12.4 is in addition, and without prejudice, to any other right which Operations Co may have in connection with the Service Provider's defaults hereunder. For greater certainty and without limitation, if a Service Provider Event of Default resulted in an Operations Co Event of Default (as defined in the Project Implementation Agreement) under the Project Implementation Agreement, Operations Co will be entitled to terminate this Services Contract upon Project Co becoming entitled to terminate the Project Implementation Agreement as a result of the corresponding Operations Co Event of Default.

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

to by the parties or determined in accordance with the Service Provider Dispute Resolution Procedure.

12.5 Replacement of Non-Performing Service Provider

The Service Provider acknowledges the provisions of Section 12.5 of the Project Agreement. If the Authority exercises its right to require Project Co to terminate this Services Contract pursuant to Section 12.5(a) of the Project Agreement, Operations Co shall immediately be entitled to terminate this Services Contract and, for greater certainty, the exercise of such rights by the Authority shall constitute a Service Provider Event of Default pursuant to Section 12.1(n) of this Services Contract and no cure period shall apply to such Service Provider Event of Default.

12.6 Operations Co's Costs

The Service Provider will reimburse Operations Co for any and all reasonable costs incurred by Operations Co in exercising any of its rights (including, but not limited to, any relevant increased administrative expenses, any amounts payable by Operations Co to Project Co pursuant to the Project Implementation Agreement and actual legal expenses) under this Section 12 (Service Provider Events of Default).

12.7 Operations Co Remedies

Without prejudice to the other rights of Operations Co in this Section 12, at any time during which a Service Provider Event of Default is continuing, Operations Co may (i) at the Service Provider's risk and expense, take such steps as Operations Co considers appropriate (or instructed by Project Co to take pursuant to the Project Implementation Agreement), either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of the Service Provider's obligations under this Services Contract or to remedy such Service Provider Event of Default and/or (ii) subject to the Senior Financing Agreements, present for payment all or any security held by Operations Co for the performance of the Service Provider Obligations or draw upon the Performance Support LC or any other Acceptable Credit Support.

13. OPERATIONS CO EVENTS OF DEFAULT

13.1 Operations Co Events of Default

For the purposes of this Services Contract, "Operations Co Event of Default" means any of the following events or circumstances:

- (a) a failure by Operations Co to pay any amount in excess of \$125,000 due and owing to the Service Provider under this Services Contract on the due date and Operations Co has not remedied such failure to pay within 10 Business Days' of notice from the Service Provider, except to the extent that such amount is being disputed in good faith by Operations Co or Operations Co's non-payment is a direct result of any non-payment by Project Co under the Project Implementation Agreement, in which case Operations Co's cure period will extend until the date which is 5 Business Days after all cure periods in respect of Project Co's non-payment under the Project Implementation Agreement have expired and Operations Co is entitled to terminate the Project Implementation Agreement; or

- (b) Not used
- (c) Not used
- (d) Not used
- (e) an occurrence of an Insolvency Event in respect of Operations Co; or
- (f) except as provided in Section 13.1(a) above, a breach by Operations Co of any of its material obligations under this Services Contract and Operations Co has not:
 - (1) cured the breach within forty-five (45) days following notice thereof from the Service Provider pursuant to Section 13.3(c); or
 - (2) where the relevant breach cannot be cured within forty-five (45) days, initiated, within such forty-five (45) day period, a commercially reasonable course of action designed to cure the relevant breach and thereafter diligently pursued such course of action until the relevant breach is cured; or
 - (3) where the relevant breach is incurable, initiated, within forty-five (45) days following notice thereof from the Service Provider pursuant to Section 13.3(c), a commercially reasonable course of action designed to mitigate the consequences of such incurable breach to the maximum extent practicable and thereafter diligently pursued such course of action until the consequences of the incurable breach have been so mitigated.

13.2 Notification

Operations Co will notify the Service Provider of the occurrence, and details, of any Operations Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an Operations Co Event of Default, in either case, promptly and in any event within 2 Business Days from the date that Operations Co Has Knowledge of its occurrence.

13.3 Service Provider's Options

After the occurrence of an Operations Co Event of Default and while an Operations Co Event of Default is continuing but subject to Section 13.5, the Service Provider may, at its option exercise one or more of the following, as applicable:

- (a) Not used
- (b) in the case of an Operations Co Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Services Contract until Operations Co has remedied such Operations Co Event of Default;
- (c) in the case of an Operations Co Event of Default under Sections 13.1(a), 13.1(e) or 13.1(f), serve notice on Operations Co of the occurrence specifying details of such Operations Co Event of Default and if the relevant matter or circumstance

has not been rectified or remedied by Operations Co or otherwise within 45 days of such notice (or in the case of an Operations Co Event of Default under Section 13.1(f) such longer period as is reasonably required for Operations Co to rectify or remedy such Operations Co Event of Default as long as Operations Co is diligently pursuing such rectification or remedy), the Service Provider may serve a further notice on Operations Co terminating this Services Contract with immediate effect, provided that the Service Provider shall not be entitled to terminate this Services Contract in accordance with this Section 13.3(c) as a result of an Operations Co Event of Default under Section 13.1(f) where such Operation Co Event of Default occurs as a direct result of a breach by Project Co of its obligations under the Project Implementation Agreement and Operations Co is diligently pursuing its rights and remedies against Project Co under the Project Implementation Agreement.

- (d) Not used

If Operations Co has become entitled to suspend performance by it of its obligations under the Project Implementation Agreement pursuant to Section 13.3(b) of the Project Implementation Agreement, the Service Provider may, at its option, suspend performance by it of its obligations under this Services Contract for so long as Operations Co remains entitled to suspend performance of its obligations pursuant to Section 13.3(b) of the Project Implementation Agreement.

13.4 Service Provider's Costs

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

13.5 Direct Agreements

The Service Provider's right to exercise any of its remedies pursuant to Section 13.3 or to terminate this Services Contract in accordance with this Section 13 will be subject to the Senior Secured Creditors' rights under the Service Provider Lenders' Remedies Agreement and the Authority's rights under the Service Provider Collateral Agreement.

13.6 No Other Rights to Terminate

The Service Provider will have no right or entitlement to terminate this Services Contract, nor to accept any repudiation of this Services Contract, and will not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Services Contract.

13.7 Termination for Convenience

- (a) Neither party will have the right to terminate this Services Contract for convenience.
- (b) The Service Provider acknowledges the provisions of Section 2.1(a) of the Project Agreement pursuant to which the Authority may, in its sole discretion and for any reason whatsoever, be entitled to terminate the Project Agreement at any

time on written notice to Project Co and Operations Co. Operations Co will provide notice to the Service Provider as soon as reasonably practicable following receipt of notice from the Authority that it is exercising its right to terminate the Project Agreement for convenience. This Services Contract will automatically terminate upon termination of the Project Agreement by the Authority in accordance with Section 2.1 thereof.

13.8 Automatic Termination upon Project Agreement Termination

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

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

If this Services Contract is terminated pursuant to its terms, compensation on termination will be determined and paid in accordance with Attachment 9 [Compensation on Termination].

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

The Service Provider acknowledges the provisions of Section 14.2 of the Project Implementation Agreement. On or promptly after the Services Contract Termination Date:

- (a) Not used
- (b) if the Authority so elects pursuant to Section 14.2(b) of the Project Agreement, the Service Provider acknowledges and agrees that Operations Co will novate or assign this Services Contract being novated or assigned to the Authority and the Service Provider consents to such novation or assignment, provided that if termination of the Project Agreement occurs under Section 13.3 of the Project Agreement, the consent of the Service Provider will be required.
- (c) the Service Provider will offer to sell to Project Co or Operations Co (or as Operations Co may direct), as the case may be, at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, vehicles, spare parts and other moveable property owned by the Service Provider and reasonably required by Project Co, Operations Co or the Authority in connection with the operation of the NG-KIH System or the provision of the Services;
- (d) the Service Provider will deliver to Operations Co (to the extent not already delivered to Operations Co) or as Operations Co may direct:
 - (1) all existing designs, network configurations, plans and other documents produced in connection with the NG-KIH System and in the control of the Service Provider;

- (2) one complete set of existing "as built drawings" showing all alterations made to the NG-KIH System since the commencement of operation of the NG-KIH System; and
- (3) one complete set of existing up to date maintenance, operation and training manuals for the NG-KIH System,

subject to reasonable generally applicable third party licensing terms;

- (e) the Service Provider will use commercially reasonable efforts to ensure that the benefit of existing Project Intellectual Property (as defined in the Project Agreement) of the Service Provider and all warranties in respect of mechanical and electrical equipment used or made available by the Service Provider under this Services Contract and included in the NG-KIH System but not previously assigned or licensed to Operations Co are assigned, licensed or otherwise transferred to Operations Co (or as Operations Co may direct);
- (f) to the extent permitted by Law, the Service Provider will assign to Operations Co (or as Operations Co may direct) all Permits;
- (g) the Service Provider will deliver to Operations Co (or to such Person as Operations Co may direct) all records required to be kept by the Service Provider hereunder (the Service Provider having the right to retain copies thereof) unless such documents are:
 - (1) required by Law to be retained by the Service Provider or a Service Provider Sub-Contractor, in which case complete copies will be delivered to Operations Co (or as Operations Co may direct); or
 - (2) privileged from production pending resolution of any outstanding Service Provider Dispute, in which case such records will be delivered forthwith upon resolution of such Service Provider Dispute, provided that any records that are necessary for the performance of the Service Provider Obligations will be delivered to Operations Co (or as Operations Co may direct) no later than the Termination Payment Date; and
- (h) return to Operations Co, Project Co or the Authority all Confidential Information of Operations Co, Project Co or the Authority, as applicable, within the possession or control of the Service Provider or any Service Provider Sub-Contractor.

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

14.3 Transition Out Arrangements

On the Expiration Date, the Service Provider will:

- (a) on request by Operations Co, for a period not to exceed 6 months after the Services Contract Termination Date:

- (1) co-operate fully with Operations Co, Project Co, the Authority and any successor providing to Operations Co services in the nature of any of the Service Provider Obligations or any part of the Service Provider Obligations to achieve a timely, safe, orderly, effective and efficient transition of the performance of services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any material interruption to the Services or risk to the health and safety of any person; and
 - (2) continue to provide the Service Provider Obligations or any part of the Service Provider Obligations required by Operations Co and Operations Co will pay to Service Provider a reasonable price for such services determined with reference to Service Provider's price for such Services prior to the Services Contract Termination Date;
- (b) subject to Section 14.3(a), as soon as practicable following the Services Contract Termination Date remove all property of the Service Provider or any Service Provider Person that is not acquired by Operations Co or such other Person designated by the Service Provider pursuant to Section 14.2 (or not belonging to Operations Co, Project Co or the Authority) and if it has not done so within 15 Business Days after any notice from Operations Co requiring it to do so Operations Co may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Service Provider;
- (c) subject to Section 14.3(a), on the Services Contract Termination Date deliver to Operations Co:
- (1) all keys, access codes and/or other devices required to access or operate the NG-KIH System in the control of the Service Provider; and
 - (2) any Project Intellectual Property (as defined in the Project Implementation Agreement) of the Service Provider required to be delivered by the Service Provider pursuant to Section 14.2(e);
- (d) subject to Section 14.3(a), as soon as practicable after the Services Contract Termination Date, vacate, and cause the Service Provider Persons to vacate, those parts of the NG-KIH System over which the Service Provider has control and occupation and will leave such parts of the NG-KIH System in a safe, clean and orderly condition; and
- (e) comply with all requirements of Appendix 4B [Handback Requirements].

14.4 Service Provider to Cooperate

The Service Provider acknowledges the provisions of Section 14.4 of the Project Implementation Agreement and agrees that if, in accordance with those Sections, the Authority wishes to conduct a solicitation prior to the Expiration Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiration of this Services Contract, the Service Provider

will prior to the Expiration Date co-operate with Operations Co, Project Co and the Authority fully in such solicitation process including by:

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

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

14.5 Service Provider Materials

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

- (a) all Service Provider Materials so delivered are true, accurate and complete copies of the originals of all such Service Provider Materials;
- (b) with respect to Service Provider Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between the Service Provider and any Persons:
 - (1) all are in good standing and in full force and effect with no amendments and the Service Provider is entitled to all rights and benefits thereunder;
 - (2) the Service Provider has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and
 - (3) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and

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

14.6 Continued Performance

Subject to the Service Provider's rights of suspension under Section 13.3(b) and subject to the provisions of this Section 14 (Procedure on Termination), the parties will continue to perform their obligations under this Services Contract notwithstanding the giving of any notice of default or notice of termination.

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Services Contract, any Service Provider Dispute will be resolved in accordance with, and the parties will comply with, the Service Provider Dispute Resolution Procedure set out in Attachment 13 [Service Provider Dispute Resolution Procedure].

16. ASSIGNMENT

16.1 Limitations on Assignment of Project by Service Provider

The Service Provider will not assign, transfer or otherwise dispose of any interest in this Services Contract without the prior written consent of Operations Co.

The Service Provider acknowledges and agrees that any assignment, transfer, charge, disposition or other alienation by the Service Provider of any of the Service Provider's interest in this Services Contract will be subject to the consent of the Collateral Agent under the Senior Financing Agreements and in accordance with the Service Provider Lenders' Remedies Agreement and Operations Co will not be entitled to consent to any such assignment, transfer, charge, disposition or other alienation where the Collateral Agent has not provided its consent in accordance with the foregoing.

The Service Provider will be responsible for all costs incurred by Operations Co in connection with the Authority providing its consent (pursuant to the Project Agreement) or the Collateral Agent providing its consent to any assignment, transfer, charge, disposition or other alienation by the Service Provider of any of the Service Provider's interest in this Services Contract.

Notwithstanding any other provision of this Services Contract, the Service Provider will not assign, transfer or otherwise dispose of any interest in this Services Contract to a Person who is a Restricted Person.

16.2 Limitations on Change in Control

Notwithstanding any other provision of this Services Contract, the Service Provider will not be, nor will it become at any time, a Restricted Person.

16.3 Not Used

16.4 Limitations on Assignment of Project by Operations Co

Operations Co will not assign, transfer, charge, dispose of or otherwise alienate any interest in this Services Contract without the prior consent of the Service Provider, such consent not to be unreasonably delayed, withheld or conditioned. Notwithstanding the foregoing, Operations Co may assign its right, title and interest in and to this Services Contract, the Interface Agreement, the Service Provider Parent Guarantee, the Performance Support LC and any other Acceptable Credit Support to the Collateral Agent as security for Operations Co's liabilities and obligations under the Senior Financing Agreements or in connection with the exercise of rights of the Senior Secured Creditors under the Senior Financing Agreements, in each case in accordance with the Service Provider Lenders' Remedies Agreement and the Service Provider Collateral Agreement.

16.5 Not Used

17. GENERAL

17.1 Confidentiality

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

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

17.2 Public Communications

Unless expressly provided in this Services Contract or otherwise required by any Law, including the Open Records Act, (but only to that extent), the Service Provider will not make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of Operations Co (which will not be unreasonably withheld or delayed). The parties will comply with Attachment 16 [Communication Roles].

17.3 Law of Agreement

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

17.4 Venue

Any legal actions or proceedings brought by either party hereto against the other party shall be brought in state court in Franklin County, Kentucky. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any

judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

17.5 Entire Agreement, Waivers and Consents in Writing

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

17.6 Notices

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

If to Operations Co:

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

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

If to the Service Provider:

LTS Kentucky Managed Technical Services LLC
188 Columbia Lane E
Shepherdsville, KY 40165

Attention: Jan Summarell
Email: Jan.Summarell@ledcor.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

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

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

17.7 Further Assurances

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

17.8 Counterparts

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

17.9 No Partnership

Nothing contained in this Services Contract nor any action taken pursuant hereto or thereto will be deemed to constitute Operations Co and the Service Provider a partnership, joint venture or any other similar such entity.

17.10 Survival

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

17.11 Service Provider Parent Guarantee

- (a) The Service Provider will deliver the Service Provider Parent Guarantee on the date of this Services Contract and ensure that the Service Provider Parent Guarantee remains in full force and effect until the Expiration Date.
- (b) The Service Provider acknowledges that, pursuant to an assignment by way of security of the Service Provider Parent Guarantee in favor of the Collateral

Agent, the rights of Operations Co under the Service Provider Parent Guarantee will be assigned to the Collateral Agent as security for the obligations of Operations Co under the Senior Financing Agreements.

17.12 Performance Support LC

- (a) On the Effective Date, the Service Provider will procure the issue of and thereafter maintain Acceptable Credit Support in substantially the form attached as Attachment 21 [Form of Performance Support LC] (together with any replacement Acceptable Credit Support delivered in accordance with this Services Contract, the "Performance Support LC") securing the performance of the Service Provider Obligations in an amount equal to 50% of the average annual value of the Monthly Service Payments (as escalated in accordance with Attachment 8 [Payments]) payable during the Operating Period (for greater certainty, prior to any Deductions being levied from such average Monthly Service Payments) (subject to Sections 17.12(b) and (f)(2) the "Required Performance LC Amount").
- (b) From and after the date that is 12 months following the Effective Date, the Required Performance LC Amount shall increase to an amount equal to 100% of the average annual value of the Monthly Service Payments (as escalated in accordance with Attachment 8 [Payments]) payable during the Operating Period (for greater certainty, prior to any Deductions being levied from such average Monthly Service Payments) and, prior to such date, the Service Provider shall procure the delivery to Operations Co of additional Acceptable Credit Support, or increase the face amount of the Performance Support LC, such that the total face amount of Acceptable Credit Support securing the performance of the Service Provider Obligations is equal to the Required Performance LC Amount after giving effect to such increase.
- (c) The Performance LC will be renewed or replaced annually in accordance with paragraph (b).
- (d) The Performance Support LC will be maintained or replaced as follows:
 - (1) within 10 Business Days of any drawing on the Performance Support LC, the Service Provider will either deliver a new Acceptable Credit Support, or an amendment to the current Performance Support LC, such that the amount of the security provided thereby is restored to the Required Performance LC Amount;
 - (2) the Performance Support LC will have a minimum one year term and on each anniversary of the delivery of the Performance Support LC (for the remainder of the Operating Period) the Service Provider will deliver a replacement of such Acceptable Credit Support in an amount equal to the applicable Required Performance LC Amount no less than 20 Business Days prior to such anniversary;
 - (3) the Service Provider will renew the Performance Support LC or cause the issuance of replacement Acceptable Credit Support, for any such expiring Acceptable Credit Support or any other letter of credit required to be

delivered by Service Provider hereunder, not later than 20 Business Days prior to the date of expiration thereof; and

- (4) if the Performance Support LC is not renewed at least 20 Business Days prior to its expiry date, Operations Co will be entitled to draw down the full available amount of such Acceptable Credit Support and deposit the proceeds to a Cash Collateral Account, on the basis that the cash collateral will be released to the Service Provider upon a replacement Acceptable Credit Support being delivered by the Service Provider in accordance with this Services Contract.
- (e) Operations Co may make multiple draws on the Performance Support LC and may draw upon the Performance Support LC or any other Acceptable Credit Support:
- (1) upon the occurrence of any Service Provider Event of Default;
 - (2) if the Service Provider fails to renew the Performance Support LC or such Acceptable Credit Support in accordance with this Services Contract;
 - (3) in accordance with Section 17.13(c) below upon a Ratings Downgrade in respect of the issuer of the Performance Support LC or such Acceptable Credit Support; or
 - (4) as otherwise expressly set out in this Services Contract.
- (f) The Service Provider acknowledges that:
- (1) the Senior Secured Creditors will have a security interest in Operations Co's rights under the Performance Support LC and any Acceptable Credit Support and/or that such rights will be assigned to the Collateral Agent as security for the obligations of Operations Co under the Senior Financing Agreements and consents to same; and
 - (2) the Performance Support LC and the Required Performance LC Amount will be subject to adjustment pursuant to a Change which changes the scope of the Service Provider Obligations and, therefore, the average annual Monthly Service Payment for the period following the Change.

17.13 Acceptable Credit Support Requirements and Cash Collateral Accounts

- (a) The Service Provider acknowledges and agrees that any letter of credit delivered by the Service Provider pursuant to this Services Contract must be Acceptable Credit Support.
- (b) If either party becomes aware that the issuer of Acceptable Credit Support delivered by the Service Provider has fallen below the Required Rating, such party will promptly notify the other in writing of such change.
- (c) In the event an issuer of Acceptable Credit Support experiences a Ratings Downgrade at any time, upon the request of either Operations Co or the Senior

Secured Creditors, such Acceptable Credit Support will be replaced by an unconditional, irrevocable standby letter of credit, in substantially the form set out in Attachment 21 [Form of Performance Support LC], issued by another Institution which meets the Required Rating within 10 Business Days following such request or, if no Institution then meets the Required Rating, as agreed by Operations Co and the Senior Secured Creditors, provided that the first mentioned Acceptable Credit Support may be drawn down if not so replaced within such 10 Business Day period and the proceeds deposited to a Cash Collateral Account on the basis that, subject to Section 17.13(d), the cash collateral would be released to the relevant party who posted such first mentioned Acceptable Credit Support upon the delivery of a replacement unconditional, irrevocable stand by letter of credit that constitutes Acceptable Credit Support.

- (d) Where any cash collateral has been deposited into a Cash Collateral Account, Operations Co will be entitled to draw on such cash collateral in any circumstance in which it would be entitled to draw on the Acceptable Credit Support in respect of which such cash collateral has been received.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Services Contract as of the day and year first above written.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have the authority to bind the company.

**LTS KENTUCKY MANAGED TECHNICAL
SERVICES LLC**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the company.