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**FIRST AMENDED AND RESTATED  
LONG-TERM LEASE AND CONCESSION AGREEMENT FOR  
THE OHIO STATE UNIVERSITY UTILITY SYSTEM**

dated as of

July 20, 2018

by and between

THE OHIO STATE UNIVERSITY

and

OHIO STATE ENERGY PARTNERS LLC

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**FIRST AMENDED AND RESTATED  
LONG-TERM LEASE AND CONCESSION AGREEMENT FOR  
THE OHIO STATE UNIVERSITY UTILITY SYSTEM**

THIS FIRST AMENDED AND RESTATED LONG-TERM LEASE AND CONCESSION AGREEMENT FOR THE OHIO STATE UNIVERSITY UTILITY SYSTEM (this "Agreement") is made and entered into as of this 20<sup>th</sup> day of July, 2018, by and between The Ohio State University (the "University") and Ohio State Energy Partners LLC, a Delaware limited liability company (the "Concessionaire").

**RECITALS**

WHEREAS, the Parties (as defined herein) entered into that certain Long-Term Lease and Concession Agreement for the Ohio State University Utility System dated as of April 10, 2017 (the "Signing Date"), as amended by that certain First Amendment dated as of May 23, 2017 and that certain Second Amendment dated as of July 6, 2017 (as so amended, the "Original Agreement"); and

WHEREAS, pursuant to the Original Agreement, the Parties closed on the Transaction (as defined herein) on July 6, 2017 (the "Closing Date"); and

WHEREAS, the University has a long-term commitment to sustainability and the reduction of its impact on the environment, and the Transaction is a critical component of that commitment; and

WHEREAS, pursuant to Ohio Rev. Code Ann. § 3345.11 and under the terms and conditions of that certain resolution adopted by the Board of Trustees of the University (the "Board") on April 7, 2017 and attached hereto as Schedule 1, the University was authorized to close on the Transaction, which it subsequently did; and

WHEREAS, as a result of the Parties' closing of the Transaction, since the Closing Date the Concessionaire has leased the Utility Facilities from the University, and has obtained a grant from the University of the exclusive right to operate, maintain, possess, control and improve the Utility System (as defined herein) for the Term (as defined herein) in connection therewith, all as hereinafter provided; and

WHEREAS, as a result of the Parties' closing of the Transaction, since the Closing Date the University has leased the Utility Facilities to the Concessionaire and has granted the Concessionaire the exclusive right to operate, maintain and improve the Utility System for the Term in connection therewith, all as hereinafter provided; and

WHEREAS, the Concessionaire agrees to continue to lease the Utility Facilities and to operate, maintain and improve the Utility System in accordance with the provisions of this Agreement, including the Performance Standards (as defined herein); and

WHEREAS, the Concessionaire agrees to continue to provide the Utility Services (as defined herein) to the University pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Parties desire to amend and restate the Original Agreement as hereinafter set forth.

NOW THEREFORE, for and in consideration of the promises, the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree to amend and restate the Original Agreement in its entirety to read as follows:

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

**Section 1.1. Definitions.** Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

“10-Year ECM Costs” means the lesser of (1) the Approved costs for items identified as ECMs as of June 30, 2028 and (2) the actual, out-of-pocket costs incurred by the Concessionaire during the Term for such ECMs as of June 30, 2028.

“10-Year EUI Reduction” means the percentage reduction in the Energy Use Intensity score from the beginning of the Fiscal Year ending on June 30, 2017 through the end of the Fiscal Year ending on June 30, 2028.

“AAA” means the American Arbitration Association.

“AA-Compensation” has the meaning ascribed thereto in Section 14.1(b).

“AA-Dispute Notice” has the meaning ascribed thereto in Section 14.1(c).

“AA-Notice” has the meaning ascribed thereto in Section 14.1(c).

“AA-Preliminary Notice” has the meaning ascribed thereto in Section 14.1(c).

“Actual Knowledge of the University” means the actual, current knowledge of the University’s Chief Financial Officer, Senior Energy Adviser, Associate Vice President of Facilities, Operations and Development and University Engineer on any date which a relevant representation or warranty is made, with the duty for each of the foregoing to inquire of his or her direct reports within 5 Business Days prior to the date of such representation or warranty regarding the relevant matter, but without any other duty of inquiry or investigation.

“Additional Coverages” has the meaning ascribed thereto in Section 13.3(n).

“Adjusted for Inflation” means adjusted by the arithmetic average of the percentage increases, if any, or decreases, if any, in the CPI Index during the most recent 3 adjustment periods as specified herein.

“Adverse Action” has the meaning ascribed thereto in Section 14.1(a).

“Affiliate”, when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries (i) has a 50% or more voting or economic interest in such specified Person or (ii) controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor, supervisor, sponsor or trustee pursuant to relevant contractual arrangements) such specified Person, provided that a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing, supervising, sponsoring or advising such fund or trust and a limited partner in a managed fund or trust shall be deemed to be an Affiliate of such fund or trust and of the Person managing, supervising, sponsoring or advising such fund or trust).

“Agreement” has the meaning ascribed thereto in the preamble hereto (including all Schedules referred to herein), as amended from time to time in accordance with the terms hereof.

“Approved Five-Year Plan” means the Five-Year Plan then in effect pursuant to Section 7.3.

“Approval”, “Approved”, “Approves”, “Approved by the University” and similar expressions mean approved or consented to by the University in accordance with the provisions of Section 1.15.

“Assignment and Assumption Agreement” has the meaning ascribed thereto in Section 19.8(c).

“Assumed Liabilities” has the meaning ascribed thereto in Section 3.2(d).

“Audit and Review” and similar expressions mean, with respect to any matter or thing relating to the Utility System, the Utility System Operations or this Agreement, the performance by or on behalf of the University of such reviews, investigations, inspections and audits relating to such matter or thing as the University may reasonably determine to be necessary in the circumstances, conducted in each case in accordance with Prudent Industry Practices, if any, or as required by Law, but in accordance with the provisions of this Agreement.

“Authorization” means any approval, certificate of approval, certification, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, franchise, notarization or other requirement of any Person that applies to the Utility System or is reasonably required from time to time for the Utility System Operations, including any of the foregoing issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any applicable Law.

“Bank Rate” means the 3-month LIBOR (or any successor rate thereto) as reported in the *Wall Street Journal* (or any successor thereof).

“Barclays” has the meaning ascribed thereto in Section 9.1(k).

“Benchmark Interest Rate” has the meaning ascribed thereto in Section 2.2(c).

“Bid Date” means March 17, 2017.

“Board” has the meaning ascribed thereto in the Recitals to this Agreement.

“Breakage Costs” means any breakage costs, make-whole premium payments, termination payments or other prepayment amounts (including debt premiums and interest rate hedge termination costs) that are required to be paid by the Concessionaire with respect to Leasehold Mortgage Debt as a result of the early repayment (including, following acceleration) of such Leasehold Mortgage Debt prior to its scheduled maturity date.

“Business Day” means any Day that is neither a Saturday, a Sunday nor a Day observed as a holiday by the University; provided, that solely with respect to the timing of any payment obligation under this Agreement, a Business Day shall also not be a Day on which banks that are members of the United States federal reserve system are permitted or required to be closed.

“Capital Improvement” means (i) any improvement to or replacement or expansion of the components of the Utility Facilities, which may include an ECM, and (ii) any ECM that is on the Non-Utility Campus, in each case that is capital in nature, as determined in accordance with GAAP.

“Capped O&M Ceiling” has the meaning ascribed thereto in Schedule 5.

“Capped O&M Costs” means the following out-of-pocket operating and maintenance costs and expenses incurred by the Concessionaire (which costs and expenses shall include payments due and payable by the Concessionaire to the Operator or other Contractors pursuant to an Operating Agreement or similar agreement) or the Operator in operating the Utility System and complying with their respective obligations under this Agreement: (i) the charges as described in Section 3.9(a); (ii) the professional expenses, salaries, employee benefits and bonuses paid or granted to employees and contractors of the Concessionaire or the Operator to perform any of the Utility System Operations and including the costs of issuing and administering requests for proposals in connection with the procurement of subcontractors; (iii) the cost of the supplies (other than Supplies) reasonably necessary to operate and manage the Utility System and used exclusively in connection therewith, specifically, (1) office supplies, (2) motor vehicle supplies, (3) safety supplies, (4) uniforms, (5) computer supplies, (6) telecommunication equipment, (7) measuring and testing equipment and instruments, (8) radios, pagers, cell phones and similar communication equipment, (9) gas containers and (10) hand tools; (iv) postage and delivery charges; (v) long-distance and local telephone call charges; (vi) internet access charges; (vii) repair and maintenance of any of the Utility System Assets or Utility Facilities to the extent incurred in accordance with Prudent Industry Practices; (viii) legal fees directly related to the operation of the Utility System and specifically excluding those associated with the negotiation of this Agreement or the McCracken Sublease, any amendment or modification thereto or any dispute with the University in connection with this Agreement, the McCracken Sublease, the Utility System Operations or the Transaction; (ix) design, energy auditing and engineering services (other than in connection with any University Directive); (x) janitorial services for the Utility Facilities; (xi) seminar and training costs for employees of the

Concessionaire or the Operator; (xii) service vehicles exclusively used in the performance of Utility System Operations; (xiii) insurance charges for the insurance that the Concessionaire is required to carry pursuant to Article 13; (xiv) lease and rental charges other than any payments paid by the Concessionaire to the University for the lease of the Utility System; (xv) the costs of performing inspections required by the Performance Standards; (xvi) the costs incurred in connection with utility coordination pursuant to Section 3.9(b); (xvii) the costs of compliance with the Title V Permit; (xviii) any cost that would otherwise be deemed a Capital Improvement that the Concessionaire elects not to deem a Capital Improvement, which prior to the Signing Date, the University included in its “repair and restoration” line item in its budget; (xix) other selling, general and administrative expenses but only to the extent that such expenses would be properly included in a cost of service rate regulated by the Federal Energy Regulatory Commission and are not Uncapped O&M Costs; (xx) the costs of audits of buildings or other improvements on the Columbus Campus to determine what ECMs may be appropriate for such buildings or other improvements; (xxi) payments to the Operator pursuant to the agreement between the Concessionaire and the Operator to operate the Utility System pursuant to this Agreement; (xxii) the costs for the Operator to be a member of OUPS and any other regulatory program, to the extent required by Law or this Agreement; and (xxiii) the costs for any Authorizations for the Concessionaire or Operator to perform the Utility System Operations, to the extent required by Law; provided that, in no event, shall Capped O&M Costs include any costs or expenses incurred by the Concessionaire or the Operator that result from the negligence or willful misconduct of the Concessionaire or the Operator.

“Capped O&M Index” has the meaning ascribed thereto in Schedule 5.

“Cash Deposit” has the meaning ascribed thereto in Section 2.3(a).

“Casualty Cost” has the meaning ascribed thereto in Section 13.4(a)(ii).

“Change in Control” means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, any of (i) a change in ownership so that 50% or more of the direct or indirect voting or economic interests in such Person (calculated as of the Signing Date) is transferred to a Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person (calculated as of the Signing Date), whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to a Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; provided, however, that notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a Change in Control for the purposes of this Agreement:

- (a) Transfers of direct or indirect ownership interests in the Concessionaire between or among Persons that are majority-owned Affiliates of each other or Persons who are under common control, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;

- (b) Transfers of equity of the Concessionaire or of the direct or indirect owners of the Concessionaire pursuant to bona fide open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange, Toronto Stock Exchange or comparable U.S. or foreign securities exchange, including any such transactions involving an initial or “follow on” public offering of direct or indirect equity holders of the Concessionaire; provided that no Person (that is not an Equity Participant or its beneficial owner having ownership interests in the Concessionaire as of the Signing Date) or group of Persons acting in concert (that is not an Equity Participant or its beneficial owner having ownership interests in the Concessionaire as of the Signing Date) acquires securities such that such Person or group of Persons beneficially owns more than 50% of the publicly traded securities of the Concessionaire;
- (c) Transfers of direct or indirect ownership interests in the Concessionaire by any Equity Participant or its beneficial owners to any Person so long as the Equity Participants or their respective beneficial owners having ownership interests in the Concessionaire as of the Signing Date together retain, in the aggregate, (1) 50% or more of the direct or indirect voting or economic interests in the Concessionaire or (2) the power to directly or indirectly direct or cause the direction of management and policy of the Concessionaire, whether through ownership of voting securities, contract or management agreement or common directors, officers or trustees or otherwise;
- (d) Any change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the University under this Agreement so long as (1) no Change in Control occurs with respect to the Concessionaire, and (2) the Concessionaire remains obligated under this Agreement;
- (e) The creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire’s economic interest under this Agreement to another entity so long as (1) no Change in Control occurs with respect to the Concessionaire, and (2) the Concessionaire remains obligated under this Agreement;
- (f) Transfers of direct or indirect ownership interests in the Concessionaire (1) between or among investment funds, including funds that invest in infrastructure, and investors therein; provided that following such Transfer such direct or indirect ownership interests remain under the same common ownership, management or control as existed prior to such Transfer, or (2) from investment funds, including infrastructure funds, or investors therein, to any Person; provided that such direct or indirect ownership interests, following consummation of such Transfer, remain under the same management or control that existed prior to such Transfer, it being understood that ownership interests shall be deemed to be controlled by a Person if controlled in any manner

whatsoever that results in control in fact, whether directly or indirectly, and whether through share ownership, a trust, a contract or otherwise; and

- (g) Mergers between an Equity Participant and a third party, provided that, immediately prior to such merger, the equity interests of both parties are publicly traded in open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange, Toronto Stock Exchange or comparable U.S. or foreign securities exchange.

“Chapter 153” means Ohio Rev. Code Ann. Chapter 153 and, where applicable, Sections 9.32 through 9.335 of the Ohio Rev. Code Ann.

“Claim” means any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to a payment obligation under Section 12.1 or Section 12.2.

“Closing” has the meaning ascribed thereto in Section 2.2(a).

“Closing Consideration” has the meaning ascribed thereto in Section 2.1.

“Closing Date” has the meaning ascribed thereto in the Recitals to this Agreement.

“Closing Date L/C Facility” has the meaning ascribed thereto in Section 19.10.

“Closing Deposit” has the meaning ascribed thereto in Section 2.3(a).

“Closing Period” means the period between Signing Date up to the Time of Closing.

“Code” means the Internal Revenue Code of 1986, as amended from time to time. Any reference in this Agreement to a particular provision of the Code shall be interpreted to include a reference to any corresponding provision of any successor statutes.

“Columbus Campus” means (i) the real property shown on Appendix 2 of Schedule 16 and (ii) the improvements located thereon that are owned and/or leased by the University and listed or depicted on Appendix 1 and Appendix 2 of Schedule 16, as such real property and improvements may be modified pursuant to the terms and conditions of this Agreement.

“Comparable Utility Systems” means with respect to any component of the Utility System, a utility system producing and/or delivering any of the Utilities (whether privately or publicly owned) that is located at a large university, is used in connection with providing such utility services to such university, its employees, customers and visitors and is reasonably comparable to the relevant component of the Utility System in terms of physical structure, capacity, utilization and the nature of the services provided, provided that the University and the Concessionaire may designate by written agreement one or more utility systems as “Comparable Utility Systems”.

“Compensation Calculation Date” means (i) every 3rd June 30 during the Term, commencing as of June 30, 2020, (ii) the date of removal of the Operator pursuant to Section

3.3(c)(ii), (iii) the first June 30 after any date on which one Party notifies the other Party that it, in good faith, believes that the Concession and KPI Compensation Balance would exceed \$5,000,000 if calculated on the date of such notice and (iv) the End Date.

“Compensation Calculation Measuring Period” means (i) with respect to the first Compensation Calculation Date, the period commencing on (a) the Closing Date, for Concession Compensation and (b) the Day immediately following the Post-Closing Transition Period, for KPI Compensation, and, in each case expiring on such Compensation Calculation Date, and (ii) with respect to each subsequent Compensation Calculation Date, the period between such Compensation Calculation Date and the immediately preceding Compensation Calculation Date.

“Compensation Event” means (i) subject to Article 5, the Concessionaire’s compliance with or the implementation of any University Directive or any modified or changed Performance Standard subject to Section 6.3(b), provided that it shall not be a Compensation Event if the costs or reduction in revenue incurred in connection therewith will be recovered by the Concessionaire pursuant to the calculation and payment of the Utility Fee; (ii) the occurrence of an Adverse Action; (iii) the occurrence of an event causing a delay described in the definition of “Delay Event” but only to the extent that the Utility Fee is reduced by a Delay Event caused by such event pursuant to Section 15.1(c); (iv) the occurrence of those certain events described under Section 3.7(a) and Section 3.7(e) which are expressly identified as requiring the payment of Concession Compensation; (v) the University distributing or permitting any third party to distribute on the Columbus Campus, any Utility, except as permitted by Section 3.21; (vi) the Concessionaire incurring any Losses as a result of failing to obtain, or being unreasonably delayed in obtaining, or failing to promptly renew or maintain in good standing, an Authorization from the University that is necessary to comply with Law, despite the Concessionaire’s use of its reasonable best efforts to obtain, promptly renew or maintain in good standing such Authorization, and such failure or delay could not have been reasonably prevented by commercially reasonable technical, scheduling or other measures of the Concessionaire; (vii) any action of the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission, or their respective successors, that subjects the Concessionaire to such agency’s regulatory jurisdiction due solely to the Utility System Operations performed in accordance with this Agreement and has a material adverse effect on the fair market value of the Concessionaire Interest (whether as a result of a decrease in the Utility Fee or other revenues or increased expenses that cannot be recovered pursuant to this Agreement or both), except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the agency’s action) or such action is otherwise permitted under this Agreement, and such designation as a Compensation Event shall be the Concessionaire’s sole right and remedy with respect to any action by the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission subjecting a Person to its jurisdiction in connection with the Utility System; or (viii) the occurrence of any other event that under the terms of this Agreement expressly requires the payment of Concession Compensation.

“Concession Compensation” means any compensation payable by the University to the Concessionaire in order to restore the Concessionaire to the same economic position the Concessionaire would have enjoyed if the applicable Compensation Event had not occurred, which Concession Compensation for any Compensation Calculation Date shall be equal to the sum of (i) all Losses for the applicable Compensation Calculation Measuring Period (including

increased O&M Costs (which, for the avoidance of doubt, shall be regardless of the Capped O&M Ceiling) and financing costs but excluding any costs and expenses (including O&M Costs) that the Concessionaire is able to recover through the payment of the Utility Fee) plus (ii) the actual and estimated net losses of the Utility Fee for the applicable Compensation Calculation Measuring Period that is reasonably attributable to such Compensation Event; provided, however, that with respect to clause (ii), the amount of such actual and estimated net losses that may be claimed at any Compensation Calculation Date shall not exceed the amount of actual and estimated net losses of the Utility Fee suffered during, and attributable only to, such Compensation Calculation Measuring Period (including the inability to make Capital Improvements that the University had Approved); provided, further, that with respect to clause (ii), the amount of such actual and estimated net losses reasonably attributable to such Compensation Event and suffered during, and attributable only to, a future Compensation Calculation Measuring Period may be claimed as Concession Compensation for such future Compensation Calculation Measuring Period only during such future Compensation Calculation Measuring Period in accordance with Article 15. Concession Compensation, if any, shall be paid in accordance with Article 15 and shall not be subject to any limitations on the amount of the Utility Fee including the Capped O&M Ceiling. If the Concessionaire is required to provide its own capital for a Capital Improvement with respect to compliance with any Compensation Event that is not recoverable by the Concessionaire pursuant to the Utility Fee, then the Concession Compensation, shall, in addition to the components described above, take into account a return on such capital equal to the Return on Equity Factor.

“Concession and KPI Compensation Balance” means, at each Compensation Calculation Date, (i) Concession Compensation due and payable with respect to such Compensation Calculation Measuring Period pursuant to the terms of this Agreement less (ii) the sum of all KPI Compensation due and payable with respect to such Compensation Calculation Measuring Period pursuant to the terms of this Agreement, plus (iii) the Concession and KPI Compensation Balance (which may be negative) for the preceding Compensation Calculation Measuring Period if carried forward pursuant to Section 15.3(e).

“Concessionaire” has the meaning ascribed thereto in the preamble to this Agreement.

“Concessionaire Compressed Air System” has the meaning ascribed thereto in Section 3.25.

“Concessionaire Default” has the meaning ascribed thereto in Section 16.1(a).

“Concessionaire Interest” means the interest of the Concessionaire in the Utility System created by this Agreement and the rights and obligations of the Concessionaire under this Agreement.

“Concessionaire Required Coverages” has the meaning ascribed thereto in Section 13.1.

“Concessionaire’s Parent” shall mean the Person, if any, that directly owns, and only owns, 100% of the shares of capital stock, units, partnership or membership interests, other equity interests and equity securities, to the extent applicable, of the Concessionaire.

“Consent” means any approval, consent, ratification, waiver, exemption, franchise, license, permit, novation, certificate of occupancy or other authorization of any Person, including any Consent issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any applicable Law.

“Contractor” means, with respect to a Person, any contractor with whom such Person contracts to perform work or supply materials or labor in relation to the Utility System, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor. For the avoidance of doubt, the Operator (if other than the Concessionaire) shall be a Contractor of the Concessionaire.

“Contracts Assignment Agreement” has the meaning ascribed thereto in Section 2.5(e).

“CPI Index” means the “Consumer Price Index – Midwest Urban, All Items” (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the CPI Index is changed so that the base year of the CPI Index changes, the CPI Index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; provided further, that if the CPI Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

“Credit Rating Agencies” means Standard & Poor’s Rating Services, Fitch Investors Service, Inc. and Moody’s Investor Services, or their successors, provided that if any of the foregoing and any of their successors cease to exist, the University shall, by written notice to the Concessionaire, identify other credit rating agencies as the “Credit Rating Agencies” that, at such time, are Nationally Recognized Statistical Rating Organizations as determined and defined by the United States Securities and Exchange Commission or their equivalents.

“Day” means a calendar day, beginning at midnight in the eastern time zone of the United States coinciding with the calendar day.

“Defending Party” has the meaning ascribed thereto in Section 12.4(c).

“Delay Event” means (i) an event of Force Majeure that interrupts, limits or otherwise adversely affects the performance of the Concessionaire’s obligations hereunder or the Concessionaire’s use of all or any material part of the Utility System; (ii) a failure to obtain, or delay in obtaining, any Authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by technical and scheduling measures or other reasonable measures of the Concessionaire); (iii) the enactment of a new Law or the modification, amendment or change in enforcement or interpretation of a Law (including a change in the application or implementation thereof by any Governmental Authority) arising after the Setting Date; (iv) a delay caused by the performance of works (including the activities authorized by Section 3.7) carried out by the University or at its direction or, for purposes of Delay Events only (and not Compensation Events), by any other Person not acting under the authority or direction of the Concessionaire or the Operator; (v) a delay caused by a failure by the University to perform or observe any of its covenants or obligations under this Agreement;

(vi) a delay caused by the presence in, on, under, over or around the Utility System of Hazardous Substances, which in each case results in or would result in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement and which was not caused by the Concessionaire, the Operator or any of their respective Representatives; (vii) a delay in providing the Utility Services caused by (A) the failure of a third party to provide any of the inputs into the Utility System that would be included in the definition of “Supplies” or (B) the failure of the University to provide any of the inputs into the Utility System that would be included in the definition of “Supplies”; (viii) subject to Section 9.4(a), a delay caused by a breach by the University of its representations and warranties set forth herein; (ix) a writ, decree or injunction that precludes or prevents the performance of the Concessionaire’s obligations hereunder or the Concessionaire’s use of all or any material part of the Utility System; (x) the discovery at or about the site of construction required or permitted to be undertaken pursuant to this Agreement of legally protected plant or animal species or archaeological, paleontological or cultural resources; or (xi) a written notice from a Governmental Authority requiring the Concessionaire specifically to cease all or a material part of the Utility System Operations due to a failure to comply with applicable Law and such failure is because the Utility System Operations are not in compliance with Law due directly and primarily to the fact that the University unreasonably withheld its Approval to a Capital Improvement, ECM or Material Change that, if Approved, would have caused the Utility Systems Operations to comply with the relevant Law to which such notice, requirement or direction from a Governmental Authority relates. For the avoidance of doubt, a Delay Event shall not include any event of which the consequence is otherwise specifically dealt with in this Agreement or arises by reason of (A) the negligence or intentional misconduct of the Concessionaire, the Operator or any of their respective Representatives, (B) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement, (C) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire or its Representatives to supply materials or services for or in connection with the Utility System Operations or any strike, labor dispute or labor protest pertaining to the Concessionaire, in all cases to the extent that such strike, dispute or protest (1) is not of general application and (2) is caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire or its Representatives or (D) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire, unless such lack or insufficiency of funds or such failure is caused by another relevant Delay Event.

“Delay Event Dispute Notice” has the meaning ascribed thereto in Section 15.1(e).

“Delay Event Notice” has the meaning ascribed thereto in Section 15.1(e).

“Delay Event Remedy” has the meaning ascribed thereto in Section 15.1(d).

“Depositary” means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire, that enters into an agreement with the Concessionaire to serve as depositary pursuant to this Agreement, provided that such Depositary shall have an office, branch, agency or representative located in the City of Columbus, Ohio; provided, however, that so long as a Leasehold Mortgage is in effect, the Depositary under Section 13.4 shall be the institution acting as the collateral agent or depositary under the financing secured by such Leasehold Mortgage,

whether or not it has an office, branch, agency or representative located in the City of Columbus, Ohio.

“Design-Build ECM” means any ECM to the Non-Utility Campus, which involves any construction, addition, alteration, structural or other improvement or heating, cooling or ventilating plants or other equipment installed or material supplied therefor, the estimated cost of which amounts to \$200,000 (or the threshold established by Section 153.53 of the Ohio Rev. Code Ann.) or more.

“Designated Senior Person” means such individual who is designated as such from time to time by each Party for the purposes of Article 18 by written notice to the other Party, which may be changed at any time by written notice from such Party to the other Party. Initially, the Designated Senior Person for the University will be the Senior Vice President for Business and Finance, and the Designated Senior Person for the Concessionaire will be Andre Cangucu.

“Direct Claim” means any Claim by an Obligee against an Obligor that does not result from a Third Party Claim.

“Disclosure Schedules” means the following Schedules: Schedule 3, Schedule 4, Schedule 6, Schedule 9, Schedule 10, Schedule 11, Schedule 12, Schedule 14, Schedule 16, Schedule 17, and Schedule 20.

“Dispute Notice” has the meaning ascribed thereto in Section 15.3(b).

“Document” has the meaning ascribed thereto in Section 1.15(b).

“EAC” means the Energy Advisory Committee formed by the University to provide input to the University with respect to the operation and use of the Utility Facilities. The membership and voting procedures of the EAC shall be determined by the University, in its sole discretion, provided that at least one member shall be a Representative of the Concessionaire.

“East Regional Chilled Water Plant” means the building and associated improvements identified on Part IV of Schedule 3.

“ECM” means any energy conservation measure on the Columbus Campus intended to increase the efficiency of the Utility System or reduce the Energy Use Intensity (which energy conservation measure may or may not be considered a Capital Improvement).

“Eligible Investments” means any one or more of the following obligations or securities: (i) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal funds or bankers’ acceptances issued by any Institutional Lender (provided that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such Institutional Lender at the time of such investment or contractual commitment providing for such investment have been rated “A” (or the equivalent) or higher by a Credit Rating Agency or any other demand or time deposit or certificate of deposit fully insured by the Federal Deposit Insurance Corporation); (iii) commercial paper (including both non-interest-bearing discount

obligations and interest-bearing obligations payable on demand or on a specified date not more than one Year after the date of issuance thereof) which has been rated “A” (or the equivalent) or higher by a Credit Rating Agency at the time of such investment; (iv) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated “A” (or the equivalent) or higher by a Credit Rating Agency; and (v) other investments then customarily accepted by the University in similar circumstances; provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such instrument or security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

“Emergency” means (i) an Unplanned Outage or (ii) a situation that is urgent and calls for immediate action, which, if such action is not taken, is reasonably likely to result in imminent harm or physical damage to any or all of the Utility System or any Person, including the University or the Concessionaire.

“Encumbrance” means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, servitude, option, reservation, lease, claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Law, judicial process, contract, agreement or otherwise created.

“End Date” means the date on which this Agreement expires or is terminated.

“Energy Use Intensity” has the meaning ascribed thereto in Schedule 19.

“Environment” means soil, surface waters, ground waters, land, stream sediments, surface or subsurface strata and ambient air.

“Environmental Laws” means any Laws applicable to the Utility System or Utility System Operations regulating or imposing liability or standards of conduct concerning or relating to (i) the regulation, use or protection of human health or the Environment or (ii) the presence of or regulation, use or exposure to Hazardous Substances.

“Equity Participant” means any Person who holds directly any shares of capital stock, units, partnership or membership interests, other equity interests or equity securities of the Concessionaire.

“Escrow Agent” means a bank, trust company or national banking association selected by the University to hold the Cash Deposit.

“Excluded Liabilities” has the meaning ascribed thereto in Section 3.2(d).

“Extended Term” has the meaning ascribed thereto in Section 16.5(b).

“Extension Option” means the Concessionaire’s right, subject to Section 16.5, to elect to extend the term of its lease of the Utility System Land and the Utility Facilities pursuant to

Section 2.1(b)(i) and its non-exclusive license pursuant to Section 2.1(b)(ii), which right, if exercised, shall automatically extend the term during which the Concessionaire shall have the exclusive right and obligation to provide the Utility Services to the Columbus Campus pursuant to Section 2.1(b)(iii), and shall have the effect of extending the Term with such modifications as set forth in Section 16.5.

“Extension Purchase Option” has the meaning ascribed thereto in Section 16.5(a).

“Fiscal Year” means the period from July 1 to June 30, provided that if the University adjusts its fiscal year during the Term, the Fiscal Year shall be adjusted to be the same as the University’s fiscal year.

“Five-Year Plan” means the budget and plan prepared by the Concessionaire in accordance with Section 7.3 for the operation of the Utility System, the reduction of Energy Use Intensity, and the performance of its obligations under this Agreement in respect of (i) the period consisting of the first partial Fiscal Year of the Term and the first 5 full Fiscal Years of the Term, (ii) any given period of exactly 5 full Fiscal Years during the Term or (iii) if fewer than 5 full Fiscal Years remain in the Term, the remaining full and partial Fiscal Years of the Term.

“Fixed Fee” has the meaning ascribed thereto in Schedule 5.

“Force Majeure” means any event beyond the reasonable control of the Concessionaire and the University that delays, interrupts or limits the performance of the affected Party’s obligations hereunder, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tornado, flooding, earthquake or other natural disaster, riot or other public disorder, epidemic, quarantine restriction, strike, labor dispute or other labor protest, stop-work order or injunction issued by a Governmental Authority, a governmental embargo or unavailability of supplies or products for the construction, operation, maintenance, repair, replacement and renovation of the Utility System.

“Forecast Utility Fee” has the meaning ascribed thereto in Section 7.1(a).

“GAAP” means U.S. generally accepted accounting principles, consistently applied.

“Gashouses” means the buildings and associated improvements identified on Part IX of Schedule 3.

“Generator Plant” means the buildings and associated improvements identified on Part X of Schedule 3.

“Governmental Authority” means any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, which shall not include the University.

“Hazardous Substance” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos, lead-based paint and urea formaldehyde foam insulation).

“Initial Five-Year Plan” means the Five-Year Plan in respect of the period set forth in clause (i) of the definition of “Five-Year Plan”.

“Initial Term Expiration Date” has the meaning ascribed thereto in Section 16.5(a).

“Institutional Lender” means (i) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (ii) any (a) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (b) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America, (c) pension fund, foundation or university or college or other endowment fund or (d) investment bank, pension advisory firm, mutual fund, investment company or money management firm, (iii) any “qualified institutional buyer” under Rule 144(A) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms or (iv) any other financial institution or entity designated by the Concessionaire and Approved by the University (provided that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the University); provided, however, that each such entity (other than entities described in clause (iii) of this definition) or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$500,000,000, which shall include, in the case of an investment or advisory firm, assets controlled by it or under management.

“Intellectual Property Escrow” has the meaning ascribed thereto in Section 3.11(h)(ii).

“Intellectual Property Escrow Agent” has the meaning ascribed thereto in Section 3.11(h)(ii).

“Key Performance Indicators” means those requirements and standards for the operation of the Utility System as set forth on Schedule 15.

“KPI Compensation” means the amount of compensation due from the Concessionaire to the University for a KPI Event, which amount for each KPI Event is set forth in Schedule 15.

“KPI Event” has the meaning set forth in Schedule 15, unless such KPI Event is due to a Delay Event, a Compensation Event, a breach of this Agreement by the University, the negligence or willful misconduct of the University or its Representatives, grantees, tenants,

contractors, mortgagees, licensees, concessionaires and others claiming by, through, or under the University, or otherwise excused pursuant to this Agreement.

“Law” means any order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, statute, code, rule or regulation of any Governmental Authority.

“Leasehold Mortgage” means any lease, indenture, mortgage, deed of trust, pledge or other security agreement or arrangement, including a securitization transaction with respect to the Utility Fee or any part thereof, encumbering any or all of the Concessionaire Interest or the shares or equity interests in the capital of the Concessionaire and any of its subsidiaries or any cash reserves or deposits held in the name of the Concessionaire, in each case that satisfies all of the conditions in Section 19.1.

“Leasehold Mortgage Debt” means any bona fide debt (including principal, accrued interest, original issue discount and customary lender or financial insurer, agent and trustee fees, costs, premiums, expenses, indemnities and reimbursement obligations (whether liquidated or contingent) with respect thereto, and including all payment obligations under interest rate hedging agreements with respect thereto and reimbursement obligations with respect thereto to any financial insurer) and/or an assignment in connection with a securitization transaction secured by a Leasehold Mortgage relating to the Utility System and granted to a Person pursuant to an agreement entered into prior to the occurrence of any Adverse Action, University Default or any event of termination, cancellation, rescinding or voiding referred to in Section 16.4 giving rise to the payment of amounts for or in respect of termination under this Agreement. For the purposes of determining the Utility System Concession Value, Leasehold Mortgage Debt shall not include (i) debt from an Affiliate of the Concessionaire or the Operator, unless such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith; (ii) any increase in debt to the extent such increase is the result of an agreement or other arrangement entered into after the Concessionaire was aware (or should have been aware, using reasonable due diligence) of the prospective occurrence of an event giving rise to the payment of the Utility System Concession Value; or (iii) any debt with respect to which the Leasehold Mortgagee did not provide the University with notice of its Leasehold Mortgage in accordance in all material respects with the Leasehold Mortgagee Notice Requirements.

“Leasehold Mortgagee” means the holder or beneficiary of a Leasehold Mortgage or a trustee or agent acting on behalf of such holder or beneficiary, including the Lessor in a lease or Leveraged Lease.

“Leasehold Mortgagee Notice Requirements” means the delivery by a holder or beneficiary of a Leasehold Mortgage to the University, not later than 10 Days after the execution and delivery of such Leasehold Mortgage by the Concessionaire, of a true and complete copy of the executed original of such Leasehold Mortgage, together with a notice containing the name and post office address of the holder of such Leasehold Mortgage, which may be an agent on behalf of the provider of the Leasehold Mortgage Debt.

“Leasehold Mortgagee’s Notice” has the meaning ascribed thereto in Section 19.7(a).

“Lessor” means a Leasehold Mortgagee that has purchased all or a portion of the Concessionaire Interest and leased that interest in the Concessionaire Interest to the Concessionaire.

“Letter of Credit” means a committed, irrevocable, unconditional, commercial letter of credit, in favor of the University, in form and content reasonably acceptable to the University, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that the University has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other Document, which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association or the Clearing House Interbank Payments System and that has a current credit rating of A2 or better by Standard & Poor’s Ratings Services and an equivalent credit rating by another Credit Rating Agency (or such other commercial bank or trust company reasonably acceptable to the University and Approved by the University prior to the submission of the letter of credit) or such other commercial bank or trust company that is Approved by the University, and (ii) provides for the continuance of such letter of credit for a period of at least one Year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located (a) at a specified street address within the City of Columbus, Ohio or other location acceptable to the University or (b) at a facsimile number located within the United States.

“Leveraged Lease” means a lease, sublease, concession, management agreement, operating agreement or other similar arrangement in which the Lessor has borrowed a portion of the purchase price of the interest in the Concessionaire Interest acquired by the Lessor and granted to the lenders of those funds a security interest in that interest.

“LIBOR” means the London Interbank Offered Rate.

“Loss” means, with respect to any Person, any loss, claim, liability, damage, penalty, amount paid pursuant to a settlement, charge or out-of-pocket and documented cost or expense (including fees and expenses of counsel and any Tax losses) actually suffered or incurred by such Person but excluding any punitive, special, exemplary, indirect and consequential damages and any contingent liability until such liability becomes actual.

“Major KPI Event” means a KPI Event which obligates the Concessionaire to pay KPI Compensation to the University, with respect to that KPI Event only, in an amount equal to the greater of (i) \$10,000,000 and (ii) 10% of the Utility Fee.

“Material Adverse Effect” means a material adverse effect (after taking into account contemporaneous material positive effects) on the business, operations, financial condition or results of operations of the Utility System taken as a whole or on the ability of the University to consummate the Transaction or perform any material obligation hereunder; provided, however, that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States of America or any international market and including changes in interest rates); (iii) conditions affecting the financial services or

utility industries generally; (iv) any existing event or occurrence of which the Concessionaire has actual knowledge as of the Setting Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the Transaction (except for any litigation relating thereto or to this Agreement (or the matters contemplated herein)); and (vi) negligence, intentional misconduct or bad faith of the Concessionaire or its Representatives.

“Material Change” means any material change in the dimensions, character, quality or location of any part of the Utility System that would not be considered Capital Improvements or ECMs.

“McCracken Power Plant” means the building and associated improvements identified on Part II of Schedule 3.

“McCracken Sublease” means the sublease of certain space within the McCracken Power Plant for office and ancillary uses unrelated to the Utility System or Utility System Operations by the University in substantially the form attached hereto as Schedule 18.

“Memorandum of Lease” has the meaning ascribed thereto in Section 2.8.

“New Agreement” has the meaning ascribed thereto in Section 19.5(a).

“New Approved Capital Improvement” has the meaning ascribed thereto in Schedule 5.

“New Approved Capital Improvement Cost” has the meaning ascribed thereto in Schedule 5.

“Non-Construction ECM” means any ECM to the Non-Utility Campus which does not involve construction, addition, alteration, structural or other improvement or heating, cooling or ventilating plants or other equipment installed or material supplied therefor, the estimated cost of which amounts to \$200,000 (or the threshold established by Section 153.53 of the Ohio Rev. Code Ann.) or more.

“Non-Utility Campus” means the Columbus Campus other than Utility System Land and Utility Facilities.

“Notice” has the meaning ascribed thereto in Section 22.1.

“Notice Period” has the meaning ascribed thereto in Section 12.4(b).

“O&M Costs” means, in the aggregate, the Capped O&M Costs and the Uncapped O&M Costs.

“Obligation Payment” has the meaning ascribed thereto in Section 12.7.

“Obligee” means any Person entitled to the benefit of a payment obligation under Article 12.

“Obligor” means any Person obligated to meet a payment obligation under Article 12.

“OFAC” has the meaning ascribed thereto in Section 17.1(h).

“Offsets” has the meaning ascribed thereto in Section 12.11(a).

“Ongoing Utility System Projects” means those projects that the University was undertaking with respect to the Utility System as of the Closing Date that are listed on Schedule 11, provided that the University may, if it completes any such projects prior to the Time of Closing, provide the Concessionaire notice thereof and amend Schedule 11 accordingly.

“Operating Agreement” means any material agreement, contract or commitment to which the Concessionaire is a party or otherwise relating to the Utility System Operations as in force from time to time (including any warranties or guaranties), but excluding any Leasehold Mortgage and financing documents related thereto.

“Operations Plan” has the meaning ascribed thereto in Schedule 2.

“Operator” has the meaning ascribed thereto in Section 3.3(a).

“Operator Evaluation Period” means, as applicable, (i) the period commencing on the Day immediately following the Post-Closing Transition Period and ending on the 5-year anniversary thereof or (ii) each subsequent 5-year period after the period described in clause (i). For the avoidance of doubt, such 5-year periods are fixed periods, rather than rolling periods.

“OSU Substation” means the building and associated improvements identified on Part V of Schedule 3.

“OUPS” has the meaning ascribed thereto in Section 3.3(e).

“Parking Agreement” has the meaning ascribed thereto in Section 21.1.

“Party” means a party to this Agreement and “Parties” means both of them.

“Performance Standards” means the standards, specifications, policies, procedures and processes that apply to the operation of, maintenance of, rehabilitation of and Capital Improvements to the Utility System set forth in Schedule 2 and its appendices (as may be modified pursuant to the terms hereof), including any plans submitted by the Concessionaire to the University as required therein. To the extent that any term or provision set forth in Schedule 2 or incorporated by reference in Schedule 2 conflicts with any term or provision specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision.

“Permitted Concessionaire Encumbrance” means, with respect to the Concessionaire Interest: (i) any Encumbrance that is being contested in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (ii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person, (B) statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to

secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of all or any part of the Utility System Operations and are either (x) not delinquent or (y) which are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other like Encumbrances arising in the ordinary course of business of all or any part of the Utility System or the Concessionaire's performance of any of its rights or obligations hereunder, and either (A) are not delinquent or (B) are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iv) any right reserved to or vested in any Governmental Authority or the University by any statutory provision or under common law (it being understood and agreed that nothing in this clause (iv) shall limit or otherwise affect the University's obligations or the Concessionaire's rights hereunder); (v) any other Encumbrance permitted hereunder (including any Leasehold Mortgage (and financing statements or other means of perfection relating thereto)); (vi) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Utility System; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the University or any Person claiming through the University; (viii) any Encumbrance, security interest or pledge imposed upon the Concessionaire and any Affiliate as to the Concessionaire's and any Affiliate's assets arising from borrowings, financings, leases or similar transactions in the ordinary course of business; (ix) any Encumbrances in existence as of the Closing not caused by the Concessionaire, the Operator or any of their respective Representatives; and (x) any amendment, extension, renewal or replacement of any of the foregoing.

"Permitted University Encumbrance" means: (i) the Concessionaire Interest; (ii) any Encumbrance that is being contested, or being caused to be contested, by the University in accordance with Section 3.5(b) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other like Encumbrances arising in the University's performance of any of its rights or obligations hereunder, and either (A) are not delinquent or (B) are being contested, or are being caused to be contested, by the University in accordance with Section 3.5(b) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iv) any easement, covenant, condition, right-of-way or servitude (or other similar reservation, right and restriction) or other defects and irregularities in the title to the applicable assets that do not materially interfere with the Utility System Operations or the rights and benefits of the Concessionaire under this Agreement or materially impair the value of the Concessionaire Interest from and after the Closing Date; (v) any zoning, building, environmental, health, safety or other Law; (vi) the police and regulatory powers of the State of Ohio, City of Columbus, Ohio and Franklin County, Ohio with respect to the Utility System, and the regulation of the use of the Public Way (it being understood and agreed that nothing in this clause (vi) shall prevent any exercise of such powers being an Adverse Action if it meets the definition thereof); (vii) any right reserved to or vested in any Governmental Authority by any statutory provision or under common law (it being understood and agreed that nothing in this clause (vii) shall prevent any exercise of such right being an Adverse Action if it

meets the definition thereof); (viii) any other Encumbrance permitted hereunder; (ix) any Encumbrances created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; (x) any rights reserved to or vested in the University by any statutory provision (it being understood and agreed that nothing in this definition shall limit or otherwise affect the University's obligations or the Concessionaire's rights hereunder); (xi) any of the Encumbrances set forth on Schedule 10; and (xii) any amendment, extension, renewal or replacement of any of the foregoing.

“Person” means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority. Person shall include the University.

“Planned Outage” has the meaning ascribed thereto in Schedule 2.

“Post-Closing Transition Period” means the period from the Closing Date to the date that is 6 months after the Closing Date, provided that the Concessionaire may terminate the Post-Closing Transition Period earlier on written notice to the University.

“Property Taxes” means any ad valorem property Tax attributable to the Utility System or the Concessionaire Interest, including an ad valorem tax on real property and improvements, buildings, structures, fixtures and all tangible personal property.

“Proprietary Intellectual Property” has the meaning ascribed thereto in Section 3.11(h)(i).

“Prorated Items” means all revenues, charges, costs and expenses with respect to Assumed Liabilities.

“Prudent Industry Practices” means, at a particular time, those practices, methods, standards and acts which are engaged in and generally accepted by prudent providers of services of the kind contemplated by this Agreement in the United States, taking into account practices, methods and acts in use at Comparable Utility Systems or individual utility facilities forming part of Comparable Utility Systems, life-cycle maintenance costs and considerations, and the design, engineering, construction, testing, operation and maintenance requirements set out in this Agreement, and which, in the exercise of reasonable judgment at the time the decision was made, could reasonably have been expected to achieve the desired result consistent with applicable Law, safety, reliability, efficiency and expedition. “Prudent Industry Practices” is not intended to be limited to the optimum practice or method to the exclusion of all others, but rather to be a spectrum of reasonable practices, methods, standards and acts.

“Public Way” means the streets, alleys, driveways and sidewalks owned by (or for the benefit of) the University, all as may be further described in Appendix X to Schedule 2.

“Quarter” means each calendar quarter of each Fiscal Year of the Term.

“Reconciliation Statement” has the meaning ascribed thereto in Section 7.1(b).

“Recovery Period” means the 20-year period over which the Concessionaire shall recover the cost of a New Approved Capital Improvement in the Utility Fee pursuant to Schedule 5, as such period may be adjusted pursuant to Section 4.3.

“Release” means depositing, spilling, leaking, pumping, pouring, emitting, discarding, abandoning, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substances into the Environment.

“Repetitive Failure” means a Repetitive Non-Major KPI Event or a Repetitive Performance Standards Failure.

“Repetitive Non-Major KPI Event” means, during any given Operator Evaluation Period, the occurrence of a KPI Event for a particular Key Performance Indicator 3 or more times during such Operator Evaluation Period.

“Repetitive Performance Standards Failure” means, during any given Operator Evaluation Period, if the Concessionaire fails, or causes a failure, to comply with or meet a distinct requirement of the Performance Standards (provided that the University shall have provided separate written notices for each such failure) 3 or more times during such Operator Evaluation Period.

“Representative” means, with respect to any Person, any director, officer, employee, official, partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, Contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative”. For the avoidance of doubt, the Operator (if other than the Concessionaire) shall be deemed a Representative of the Concessionaire.

“Required Coverages” has the meaning ascribed thereto in Section 13.2.

“Residual Asset Value” means \$1, which is the residual value of the Utility System and the Utility Facilities existing as of the Closing Date (without regard to any Capital Improvements undertaken after the Closing Date), solely for the purposes of Section 16.5.

“Restoration” has the meaning ascribed thereto in Section 13.4(a)(ii).

“Restoration Funds” has the meaning ascribed thereto in Section 13.4(a)(iii).

“Return on Equity Factor” has the meaning ascribed thereto in Schedule 5.

“Reversion Date” means the Business Day immediately following the End Date.

“Revised Proration Statement” has the meaning ascribed thereto in Section 2.2(b)(ii).

“Schedule” means a schedule attached hereto and incorporated in this Agreement, unless otherwise expressly indicated by the terms of this Agreement.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Senior Officials” has the meaning ascribed thereto in Section 3.3(c)(i)(A).

“Setting Date” means the Day that is 10 Business Days prior to the Bid Date.

“Signing Date” has the meaning ascribed thereto in the Recitals to this Agreement.

“Smith Substation” means the building and associated improvements identified on Part VI of Schedule 3.

“South Campus Central Chiller Plant” means the building and associated improvements identified on Part III of Schedule 3.

“Supplies” has the meaning ascribed thereto in Section 7.4(a).

“Supply Contract” has the meaning ascribed thereto in Section 7.4(a).

“Supply Costs” means all out-of-pocket costs incurred in the procurement of Supplies (including any transmission costs, riders or other similar costs reasonably necessary to procure Supplies).

“Target” has the meaning ascribed thereto in Schedule 15.

“Tax” means any federal, state, local or foreign income, gross receipts, commercial activity, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

“Tax-Advantaged Bond” means any bond that is (i) a bond the interest on which is excluded from gross income for purposes of the Code, (ii) a “Build America Bond” as defined in Section 54AA of the Code, or (iii) a “qualified tax credit bond” as defined in Section 54A of the Code.

“Term” has the meaning ascribed thereto in Section 2.1.

“Termination Damages” has the meaning ascribed thereto in Section 14.2(a).

“Third Party Agreement” has the meaning ascribed thereto in Section 3.18.

“Third Party Claim” means any Claim asserted against an Obligee by any Person who is not a Party or an Affiliate of such a Party.

“Time of Closing” means 11:00 a.m. Eastern Time on the Closing Date.

“Title Commitment” has the meaning ascribed thereto in Section 2.4(a)(iii).

“Title Company” means First American Title Insurance Company.

“Title V Permit” has the meaning ascribed thereto in Section 11.13.

“Transaction” has the meaning ascribed thereto in Section 2.1.

“Transfer” means to sell, convey, assign, lease, sublease, mortgage, encumber, transfer or otherwise dispose of.

“Transferee” means any Person who obtains the Concessionaire Interest pursuant to a Transfer.

“Tunnels” means the tunnels and other underground passageways where Utility System Assets or Utility Facilities are located as identified on Schedule 17, which Tunnels, for the avoidance of doubt, are not part of the Utility System. To the extent that additional tunnels where Utility System Assets or Utility Facilities are located are identified by the Concessionaire or the University after the Signing Date, the definition of “Tunnels” shall include those later-identified tunnels. For the avoidance of doubt, all vaults and trench-boxes not exclusively used in connection with the Utility System shall be treated as Tunnels.

“Unassigned Contracts” has the meaning ascribed thereto in Section 2.5(e).

“Uncapped O&M Costs” means the sum of: (i) the following specifically identified out-of-pocket operating and maintenance costs and expenses incurred by the Concessionaire (which costs and expenses shall include payments due and payable by the Concessionaire to the Operator or other Contractors pursuant to an Operating Agreement or similar agreement) or the Operator in operating the Utility System and complying with their respective obligations under this Agreement: (a) costs incurred due to a Delay Event, provided that for events described in clause (iii) of the definition of “Delay Event”, Uncapped O&M Costs shall only include those costs (which are not Capital Improvements) necessary to bring the Utility System into compliance with the applicable Law and not the ongoing costs associated therewith, (b) costs incurred to modify the location or configuration of the Utility System as directed by the University pursuant to Section 3.23 (but only to the extent such costs are not costs incurred to make a Capital Improvement), (c) costs incurred by the Concessionaire pursuant to Section 4.3(c)(ii) if the relevant proposed Capital Improvement, ECM or Material Change is not Approved by the University, (d) costs incurred to disconnect real property from the Utility System if required pursuant to Section 5.3(a), (e) costs incurred in connection with a modification to the Performance Standards pursuant to Section 6.3(a), (f) costs incurred to perform the obligations set forth in Section 7.6 or Section 7.7, but only to the extent such costs were Approved by the University prior to being incurred, (g) costs incurred to pay Property Taxes, if such costs are included in Uncapped O&M Costs pursuant to Section 3.8, (h) costs incurred in connection with Supply procurement assistance under Section 7.4(a) or Section 7.4(b), but only to the extent such costs were Approved by the University prior to being incurred, (i) costs incurred as a direct result of the Concessionaire’s failure to comply with Law if the sole reason for such failure is that the University failed to be reasonable in its Approval of all possible Capital Improvements, ECMs or Material Changes that would cure or prevent such failure to comply with such Law, (j) costs incurred in connection with assistance for the regional campuses

under Section 7.5(b), or (k) costs incurred to make time-sensitive repairs or improvements to (A) the Utility System or (B) University-owned property related to, but not a part of, the Utility System, in each case to the extent such repairs or improvements (1) are not Capital Improvements, (2) were not contemplated in the most recently approved Five-Year Plan, (3) were either (x) made in the Concessionaire's good-faith belief that they were being made to the Utility System or (y) made in the Concessionaire's good-faith belief that the repair was the best first response to an Emergency, and (4) have been Approved by the University in its sole discretion; and (ii) an amount equal to the sum of (a) the federal income Taxes that the Concessionaire would pay on funds received in respect of the Variable Fee Component assuming the highest corporate income tax rate and (b) the Taxes that the Concessionaire would pay on funds received in respect of the Variable Fee Component to the State of Ohio for the commercial activity Tax imposed by the State of Ohio pursuant to Ohio Rev. Code Ann. § 5751 *et seq.*, in each case regardless of the amount of such Taxes actually paid by the Concessionaire; provided that, in no event, shall Uncapped O&M Costs include any costs or expenses incurred by the Concessionaire that result from the negligence or willful misconduct of the Concessionaire or the Operator.

“University” has the meaning ascribed thereto in the preamble to this Agreement.

“University Default” has the meaning ascribed thereto in Section 16.2(a).

“University Directive” means a written order or directive prepared by or on behalf of the University in conformity with the requirements and limitations of this Agreement directing the Concessionaire, to the extent permitted hereby, other than pursuant to Section 3.23, to (i) add to, or perform work in respect of, the Utility System in addition to that provided for in this Agreement (including (a) work within the Columbus Campus on utility facilities, energy equipment or ECMs that are not and will not be considered part of the Utility System in accordance with the definition thereof and (b) taking control of the internal University billing system for Utilities) or (ii) change the dimensions, character, quantity, quality, description, location or position of any part of the Utility System or make other changes to the Utility System; provided that, notwithstanding the foregoing, (1) as part of any such order or directive or as a separate order or directive, the University may cause certain personal property to be deemed Utility System Assets and part of the Utility System even if such personal property is beyond the line of demarcation for the applicable Utility as set forth in the Performance Standards and may cause the Concessionaire to purchase and/or install such personal property, provided that if any such personal property would be beyond the line of demarcation for the applicable Utility as set forth in the Performance Standards, such order or directive may only be issued with the approval of the Concessionaire, acting reasonably, (2) any such order or directive can include the design, demolition, project management, construction, repair, replacement, remodeling, renovation, reconstruction, enlargement, addition, alteration, painting, or structural or other improvements not included in the Utility Facilities but related thereto, such as repairing Tunnels that house Utility Facilities, provided that such work must be part of a larger project (as determined by the University in its reasonable discretion) for which the Utility System is the primary driver of such project (as determined by the University in its reasonable discretion), (3) the University may, in any such order or directive, direct the manner and means by which the Concessionaire performs a University Directive, and (4) no such order or directive may in any event order or direct the Concessionaire to do any act that is not technically feasible or could

reasonably be expected to violate any applicable Law, contravene any Consent or Authorization issued by a Governmental Authority, cause a material insured risk to become uninsurable or cause the Concessionaire to fail to be in compliance with this Agreement.

“University Liaison” means the University’s Senior Director – Comprehensive Energy Management, who is Scott Potter as of the date hereof, or such other Person as may be identified by the University to the Concessionaire in writing.

“University Required Coverages” has the meaning ascribed thereto in Section 13.2.

“University Utility System Employees” means those Persons employed by the University immediately prior to the Closing whose duties directly relate to the operation or maintenance of the Utility System.

“University’s Option” has the meaning ascribed thereto in Section 19.7(a).

“Unplanned Outage” has the meaning ascribed thereto in Schedule 2.

“Unrecovered Balance” has the meaning ascribed thereto in Schedule 5.

“Utility” means any of the following specific individual utility services: (i) electricity, (ii) steam and condensate, (iii) chilled water, (iv) natural gas and (v) geothermal power, and “Utilities” means each of them.

“Utility Facilities” means the improvements and equipment (a) constituting part of or located on the Columbus Campus, including those identified in Schedule 3, that are directly and exclusively involved in the generation, distribution and return of the Utilities and the operation and maintenance of the Utility System and that are not beyond the line of demarcation for each Utility as set forth in the Performance Standards, including the distribution pipes carrying the Utilities, the trench-boxes and vaults exclusively used in connection with the Utilities, the McCracken Power Plant, the South Campus Central Chiller Plant, the East Regional Chilled Water Plant, the OSU Substation, the Smith Substation, the West Campus Substation, the Gashouses, the Generator Plant, the Water Treatment Plant, the geothermal wells, and electric distribution wires or (b) located on Utility System Land; provided that the definition of “Utility Facilities” does not include (i) any improvements or equipment that are beyond the line of demarcation for each Utility as set forth in the Performance Standards, except for those areas expressly set forth in the Performance Standards as being within said line of demarcation or (ii) any cameras or other public safety equipment installed, maintained or used by the Department of Public Safety.

“Utility Fee” means the fee established as compensation for the Utility Services, as set forth on Schedule 5 and as may be adjusted pursuant to the terms of this Agreement.

“Utility Services” means the services to be provided by the Concessionaire as grantee of the concession under this Agreement.

“Utility System” means (A) the personal property, improvements, fixtures and equipment owned and operated by the University prior to the Time of Closing to provide the Utilities on the

Columbus Campus, specifically limited to (i) the Utility System Assets, (ii) the computer systems and software set forth on Schedule 12, (iii) the Utility Facilities and (iv) the Utility System Land; provided, however, that the “Utility System” shall not include, other than expressly referred to above, (x) any utility distribution facilities or other equipment that is beyond the line of demarcation for each Utility, as set forth in the Performance Standards, (y) any interest in the Public Way or similar real property or (z) any utility facilities in a building that is not a building leased by the Concessionaire, up to the Utility System point of demarcation for such building, as described in the Performance Standards; and (B) from and after the Time of Closing, such Utility System as it is reconfigured, replaced, improved or relocated by the Concessionaire or the Operator pursuant to the terms of this Agreement.

“Utility System Assets” means (i) as of the time immediately prior to the Time of Closing, the personal property of the University used in connection with operations of the Utility System and identified on Part I of Schedule 3 as “Personal Property” and (ii) from and after the Time of Closing, the personal property of the Concessionaire or the Operator used in connection with the operations of the Utility System.

“Utility System Concession Value” means, at any given date, the fair market value of the Concessionaire Interest at the time of the occurrence of the relevant Adverse Action or University Default or any event of termination, cancellation, rescinding or voiding referred to in Section 16.4 (but excluding the effect of such Adverse Action, University Default or event described in Section 16.4), as determined pursuant to a written appraisal prepared in conformity with the Uniform Standards of Professional Appraisal Practice as set forth by the Appraisal Standards Board, or its successor organization, by an independent third party appraiser that is nationally recognized in appraising similar assets and that is acceptable to the University and the Concessionaire; provided, however, that the Utility System Concession Value shall in no event be less than the amount of all Leasehold Mortgage Debt (including Breakage Costs) on the End Date. If the Parties fail to agree upon such a single appraiser within 30 Days after a Party requests the appointment thereof, then the University and the Concessionaire shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select a third independent third party appraiser to make the appraisal referred to above. The University shall pay the reasonable costs and expenses of any appraisal.

“Utility System Contracts” means the agreements to which the University is a party relating to the operations of the Utility System that are set forth on Schedule 4 and that will be assigned to the Concessionaire at the Time of Closing or thereafter.

“Utility System Land” means those parcels of real property described in Schedule 3 for McCracken Power Plant, South Campus Central Chiller Plant, the East Regional Chilled Water Plant, the OSU Substation, the Smith Substation, the West Campus Substation, the Water Treatment Plant, the Generator Plant, the Gashouses and certain other land as identified on Schedule 3 and further described in the Memorandum of Lease.

“Utility System Operations” means the operation, management and maintenance of the Utility System and all other actions relating to the Utility System that are performed by or on behalf of the Concessionaire pursuant to this Agreement.

“Utility System Purposes” means the use of the Utility System to provide Utility Services in support of the University by providing utility services to University facilities on the Columbus Campus, including to students, faculty, administrators, employees and invitees of the University thereon and others providing services to the University, subject to the rights of the Concessionaire under Section 3.15(c).

“Variable Fee Component” has the meaning ascribed thereto in Schedule 5.

“Visionary Project” has the meaning ascribed thereto in Section 20.1(a)(i).

“VP Advisory Committee” has the meaning ascribed thereto in Section 20.1(a)(ii).

“VP Development Costs Payments” has the meaning ascribed thereto in Section 20.1(a)(i).

“Wage and Hour Laws” has the meaning ascribed thereto in Section 11.3.

“Water Treatment Plant” means the building and associated improvements identified on Part VIII of Schedule 3.

“West Campus Substation” means the building and associated improvements identified on Part VII of Schedule 3.

“Year” means the calendar year.

“Zone Leaders” means those individuals identified on <https://fod.osu.edu/sites/default/files/services.pdf> or as otherwise identified by the University in writing.

**Section 1.2. Number and Gender.** In this Agreement, words in the singular include the plural and vice versa and words in one gender include all genders.

**Section 1.3. Headings.** The division of this Agreement into articles, sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

**Section 1.4. References to this Agreement.** The words “herein”, “hereby”, “hereof”, “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole, including the Schedules, and not to any particular portion of it. The words “Article”, “Section”, “paragraph”, “sentence”, “clause” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause or schedule of or to this Agreement.

**Section 1.5. References to Any Person.** A reference in this Agreement to any Person at any time refers to such Person’s permitted successors and assignees.

**Section 1.6. Meaning of Including.** In this Agreement, the words “include”, “includes” or “including” mean “include without limitation”, “includes without limitation” and

“including without limitation”, respectively, and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

**Section 1.7. Meaning of Discretion.** In this Agreement, unless otherwise modified, the word “discretion” with respect to any Person means the sole and absolute discretion of such Person.

**Section 1.8. Meaning of Notice.** In this Agreement, the word “notice” means “written notice”, unless specified otherwise.

**Section 1.9. Consents and Approvals.** Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

**Section 1.10. Trade Meanings.** Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

**Section 1.11. Laws.** Unless specified otherwise, references to a Law are considered to be a reference to (i) such Law as it may be amended from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter.

**Section 1.12. Currency.** Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

**Section 1.13. Generally Accepted Accounting Principles.** All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with GAAP.

**Section 1.14. Calculation of Time.** For purposes of this Agreement, a period of Days shall be deemed to begin on the first Day after the event that began the period and to end at 5:00 p.m., which time shall be determined by the time in the City of Columbus, Ohio on the last Day of the period. If, however, the last Day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m., which time shall be determined by the time in the City of Columbus, Ohio on the next Business Day.

**Section 1.15. Approvals, Consents and Performance by the University.**

- (a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the University of or to any action, Person, Document, or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (1) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as reasonably determined by

the University, (2) clearly set forth the matter in respect of which such approval or consent is being sought, (3) form the sole subject matter of the correspondence containing such request for approval or consent, and (4) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably withheld, conditioned or delayed or is subject to the discretion of the University); (iii) the University shall advise the Concessionaire by written notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the University acting reasonably, of the information or documentation provided; (iv) unless a time period is specifically set forth elsewhere herein, the University shall, within 10 Business Days after receipt of the Concessionaire's request, (1) provide the responding notice mentioned in clause (iii) of this Section 1.15(a) or (2) if the University determines in its sole direction that additional time to consider such request would be appropriate due to the request's complexity or interrelationship with larger University issues, advise the Concessionaire by written notice of a reasonable timeframe (not to exceed 91 Days) in which the University will provide the responding notice mentioned in clause (iii) of this Section 1.15(a), which written notice shall extend the timeframe for Approval of the request to the timeframe set forth in such notice; (v) if the responding notice mentioned in clause (iii) of this Section 1.15(a) indicates that the University does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of the University set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 1.15 shall again apply; (vi) if the disapproval or withholding of consent mentioned in clause (iii) of this Section 1.15(a) is subsequently determined pursuant to Article 18 to have been improperly withheld or conditioned by the University, such approval or consent shall be deemed to have been given on the date by which such approval or consent should have been provided; provided that, to the extent any deadlines for performing work are determined by reference to the date of consent or approval, such consent or approval shall be deemed to have been given on the date of determination rather than the date such consent or approval should have been provided; and (vii) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 18. The Concessionaire shall submit any request for approval or consent to the University Liaison, who will direct such request to the appropriate committee, Person or group within the University.

- (b) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an approval or consent by the University is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended,

supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further Approval in accordance with the provisions of this Section 1.15.

**Section 1.16. Incorporation of Schedules.** The Schedules are integral to, and are made a part of, this Agreement. In the event of any conflict between the terms of this Agreement and the terms of the Schedules, the terms of this Agreement shall control.

**Section 1.17. References to Agreements Generally.** References to agreements (including this Agreement) and other contractual instruments shall be deemed to include all amendments, restatements, extensions and other modifications to such instruments.

**Section 1.18. Cost Responsibilities.** In this Agreement, the phrases “at Concessionaire’s sole cost and expense”, “at Concessionaire’s cost and expense”, “the Concessionaire shall be responsible for providing”, “the Concessionaire shall pay” and similar phrases and provisions that require the Concessionaire to take certain actions or perform certain services, shall not mean that such costs or expenses, or the costs and expenses associated with such actions or activities, are necessarily subject to recovery as part of the Utility Fee or otherwise in accordance with this Agreement. The inclusion of such costs and expenses in the Utility Fee shall be determined in accordance with Schedule 5.

**Section 1.19. Out-of-Pocket Costs.** In this Agreement, any reference to “out-of-pocket” or “out of pocket” costs or expenses of the Concessionaire or Operator and similar phrases and provisions shall mean the reasonable, incremental actual costs paid by the Concessionaire or Operator to a third party that (i) is not an Affiliate of the Concessionaire, the Operator or any Equity Participant or (ii) is an Affiliate of the Concessionaire, the Operator or any Equity Participant, provided that the payments to such Affiliate are on arms’ length terms consistent with those terms offered by unaffiliated third parties for similar goods or services.

## ARTICLE 2

### THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS

**Section 2.1. Grant of Concession.** Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing, (a) the Concessionaire paid the University the exact amount of \$1,015,000,000 in cash (the “Closing Consideration”) in accordance with Section 2.2(a) as adjusted pursuant to the terms hereof, (b) the University (i) demised and leased the Utility System Land and the Utility Facilities to the Concessionaire free and clear of Encumbrances other than Permitted University Encumbrances and on an exclusive basis, other than as expressly provided in this Agreement, for and during the term (the “Term”) commencing on the Closing Date and expiring on the 50th anniversary of the Closing Date (or such later date as may be required to effect a Delay Event Remedy but subject to earlier termination as provided in this Agreement), provided that such demise and lease of the Utility Facilities other than those located on the Utility System Land shall not prevent the University from using, occupying, developing, leasing or otherwise enjoying the real property and the improvements other than the Utility Facilities on which the Utility Facilities are located without the payment of any fee, charge or rent to the Concessionaire, (ii) granted the Concessionaire a non-exclusive license during the Term, appurtenant to the leasehold interest described in clause (i) above, to access (A)

the Tunnels, (B) the Public Way and (C) the basement of Park-Stradley Hall and the well fields under Hale Green and South Oval where certain geothermal equipment and improvements identified on Part XII of Schedule 3 are located, in each case solely in order to operate, maintain, repair, replace, improve and service the Utility Facilities located therein to the extent permitted or required under this Agreement, (iii) granted the Concessionaire, free and clear of any Encumbrances (other than Permitted University Encumbrances) an exclusive right for and during the Term to operate the Utility System (and any expansions, improvements or replacements thereto) and to provide Utility Services on the Columbus Campus (except as expressly provided herein), and in connection therewith (A) to use, possess, control, operate, manage, modify, maintain and rehabilitate the Utility System; and (B) to charge the Utility Fee; and (iv) assign, transfer and otherwise convey to the Concessionaire by bill of sale each of the Utility System Assets identified on Schedule 3, free and clear of any Encumbrances (other than Permitted University Encumbrances) and the Concessionaire shall accept each such demise, lease, grant, assignment, transfer and conveyance and (c) the University and the Concessionaire executed the McCracken Sublease (collectively, the "Transaction").

## **Section 2.2. Closing.**

- (a) The closing of the Transaction (the "Closing") took place on the Closing Date. The Closing was held at the offices of Jones Day, 325 John H. McConnell Blvd., Suite 600, Columbus, Ohio, 43215. At the Time of Closing, the Concessionaire delivered or caused to be delivered to the University same-day funds by wire transfer in the amount of the Closing Consideration (as adjusted pursuant to Section 2.2(c) and plus or minus, as appropriate, any adjustment in accordance with Section 2.2(b)), and upon receipt of such payment the Transaction was effective. The Concessionaire wired the Closing Consideration to bank account(s) and in increments designated by the University. Upon receipt of the funds described in the preceding sentences in this Section 2.2(a), the University canceled and returned the Closing Deposit and the Cash Deposit in accordance with the Concessionaire's instructions.
- (b) All Prorated Items were prorated between the University and the Concessionaire as of 11:59 p.m. on the Day immediately preceding the Closing Date based upon the actual number of Days in the month and a 365-Day year and the required payment resulting from such proration shall be added to or subtracted from the Closing Consideration as follows:
  - (i) At least 5 Days prior to the Closing, the University provided to the Concessionaire an itemized statement of such Prorated Items, estimated in good faith as of the Closing and reasonably based on relevant billing information from third parties or (in the absence of such information) the University's financial statements as of June 30, 2016, and such statement shall be the basis of proration of any Prorated Items at the Closing and any resulting adjustment to the Closing Consideration in accordance with this Section 2.2(b);

- (ii) Within 45 Business Days after the Closing, the University provided to the Concessionaire a revised good-faith accounting of such Prorated Items as of the Closing in the form of an itemized statement of such Prorated Items (the “Revised Proration Statement”);
  - (iii) Within 15 Business Days after the Concessionaire’s receipt of the Revised Proration Statement, the Concessionaire reviewed the Revised Proration Statement and notified the University of any adjustments made by the Concessionaire to the Revised Proration Statement in good faith;
  - (iv) To the extent the University disagreed with any of the Concessionaire’s adjustments to the Revised Proration Statement, the University provided notice to the Concessionaire within 15 Business Days after the University’s receipt of the Concessionaire’s adjustments; and
  - (v) Upon final resolution with respect to the proration of each such Prorated Item (whether by agreement of the Parties or in accordance with Article 18), the Party that is determined to owe money pursuant to the proration of that Prorated Item shall pay to the other party the amount owed within 10 Business Days of such determination.
- (c) Using the LIBOR swap spot curve (the “Benchmark Interest Rate”) as provided by Bloomberg as of 10:00 a.m. Eastern Time on March 15, 2017 through 9:45 a.m. Eastern Time on May 24, 2017, the amount of the Closing Consideration was decreased by \$815,000 for every 1 basis point increase in the applicable 30-year, mid-market Benchmark Interest Rate; during the same period, the amount of the Closing Consideration was increased by \$815,000 for every 1 basis point decrease in the applicable 30-year, mid-market Benchmark Interest Rate; provided that any such protection may not exceed 25 basis points without the prior written consent of the University or the Concessionaire, as the case may be. Any change to the Benchmark Interest Rate, regardless of its impact on the Closing Consideration, shall not excuse any Party’s performance under this Agreement, including the obligation to complete the Closing in accordance with Section 2.4. Furthermore, the Concessionaire and the University agree that any adjustment resulting from this Section 2.2(c) will be to provide a neutral hedge to the Concessionaire’s initial debt structure and shall not be applied to any speculative positions on interest rate movements generally resulting from the Concessionaire’s initial debt structure.

### **Section 2.3. Deposit.**

- (a) The University acknowledges receipt from the Concessionaire of a combination of cash (the “Cash Deposit”) and one or more Letters of Credit with a term of at least 210 Days from the Signing Date (the “Closing Deposit”), in an amount equal to \$75,000,000, to be held by the University for the sole purpose described in Section 2.3(b). The University shall deposit any Cash Deposit with the

Escrow Agent, which shall invest such amount in Eligible Investments pending the Closing.

- (b) If the University terminates this Agreement pursuant to Section 2.4(d)(iv) (including as a result of the failure of the Concessionaire to pay the Closing Consideration at the Closing in accordance with the terms hereof so long as said failure is not the result of the University's actions or omissions), then the University shall be entitled to (i) retain the Cash Deposit and all interest accrued thereon and, (ii) without notice to the Concessionaire, immediately draw the full amount of the Closing Deposit upon presentation of a sight draft and a certificate confirming that the University has the right to draw under the Closing Deposit in the amount of such sight draft, and the University shall be entitled to retain the Cash Deposit and all of the proceeds of the Closing Deposit, in each case as the sole remedy or right of the University against the Concessionaire hereunder (provided that this limitation shall not apply in the event of fraud or intentional misrepresentation of the Concessionaire); provided, however, that if this Agreement is terminated for any other reason prior to Closing, the University shall return any Cash Deposit and the interest earned thereon in accordance with the Concessionaire's reasonable instructions, and deliver, in accordance with the Concessionaire's reasonable instructions, the Closing Deposit and agree to cancel the Closing Deposit, in each case, immediately following any such termination. The Concessionaire acknowledges that the loss the University will incur in the event of a termination under Section 2.4(d)(iv) is difficult to ascertain, and that the University's right to retain the Cash Deposit and to draw the Closing Deposit as set forth above is based on the Parties' reasonable estimate – taking into account the magnitude of the Transaction and the other relevant considerations – as to such loss and is not intended as, and does not constitute, a penalty. Except in cases involving fraud or willful breach by the Concessionaire, the right of the University to retain the Cash Deposit or to draw the Closing Deposit is intended to be, and shall constitute, liquidated damages, and any payment thereof to the University shall terminate the University's rights and remedies in all respects.
- (c) At the Closing, upon the satisfaction of the conditions set forth in Section 2.4(a), Section 2.4(b) and Section 2.4(c), the Concessionaire shall be entitled to, as applicable, (i) with respect to the Cash Deposit, a full return of the Cash Deposit, if any, and all investment earnings accrued thereupon or apply the Cash Deposit (including any accrued interest) as a credit against the Closing Consideration and (ii) with respect to the Closing Deposit, a return of the Closing Deposit, its cancellation or its application as a credit against the Closing Consideration, in any case as directed by the Concessionaire prior to Closing.

#### **Section 2.4. Conditions Precedent; Termination.**

- (a) *Conditions for the Benefit of the Concessionaire.* The Concessionaire shall be obligated to complete the Closing only if each of the following conditions has

been satisfied in full at or before the Time of Closing, unless waived by the Concessionaire, which the Concessionaire acknowledges were satisfied:

- (i) the representations and warranties of the University set forth in Section 9.1 shall be true and correct in all material respects on and as of the Signing Date and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except that (A) representations and warranties that by their terms speak only as of the Signing Date or some other date need to be true and correct only as of such date and (B) those representations and warranties which are subject to a materiality or a Material Adverse Effect qualifier in Section 9.1 shall be true and correct in all respects on and as of the Signing Date and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date;
- (ii) the University shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the University at or prior to the Time of Closing;
- (iii) the University shall have obtained and delivered to the Concessionaire, at the expense of the Concessionaire, a commitment effective at the Time of Closing for a leasehold title policy or policies, in form and substance reasonably acceptable to the Concessionaire (which will include an endorsement with the terms of the leasehold coverage), proposing to insure the leasehold interest of the Concessionaire in the Utility System Land, to the extent of such leasehold interest, subject only to (A) Permitted University Encumbrances, (B) Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv), clause (vii) and clause (ix) of the definition of “Permitted Concessionaire Encumbrances” as it pertains to clause (iii) and clause (v) of this Section 2.4(a)) and (C) any Encumbrances the Concessionaire is required to remove pursuant to Section 3.5(a) (the “Title Commitment”) from the Title Company, from which Title Company the Concessionaire shall purchase any leasehold or other title insurance that it elects to purchase in connection with the Transaction;
- (iv) the University shall have delivered to the Concessionaire a legal opinion of outside counsel to the University, in substantially the form attached hereto as Schedule 7;
- (v) the University shall have executed and delivered to the Concessionaire (A) the assignments, transfers and conveyances contemplated by Section 2.1, and (B) the consents and estoppel certificates contemplated by Section 10.2 and the consent agreement contemplated by Section 19.1(i);
- (vi) there shall not have occurred a material casualty loss, destruction or damage to the Utility System; provided, however, that as used in this

Section 2.4(a)(vi), a material casualty loss, destruction or damage to the Utility System means the casualty, loss, damage or destruction of the Utility System such that its annualized aggregated delivery capacity (calculated in British Thermal Units) for the electricity, steam and natural gas portions of the Utility System has been reduced by at least 10% since the Setting Date;

- (vii) from the Setting Date through and including the Time of Closing, no action or event has transpired that would have constituted an Adverse Action had it occurred during the Term;
  - (viii) all material Authorizations set forth on Schedule 20 are in full force and effect and shall be transferred to the Concessionaire as of the Time of Closing; and
  - (ix) the University shall have delivered to the Concessionaire a certificate confirming that each of the conditions set forth in Section 2.4(a)(i) through Section 2.4(a)(viii) has been satisfied in full by the University (except for any condition that has been waived by the Concessionaire) at or before the Time of Closing.
- (b) *Conditions for the Benefit of the University.* The University shall be obligated to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by the University, which the University acknowledges were satisfied:
- (i) the representations and warranties of the Concessionaire set forth in Section 9.2 shall be true and correct in all material respects on and as of the Signing Date and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except that (A) representations and warranties that by their terms speak only as of the Signing Date or some other date need to be true and correct only as of such date and (B) those representations and warranties which are subject to a materiality or a Material Adverse Effect qualifier in Section 9.2 shall be true and correct in all respects on and as of the Signing Date and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date;
  - (ii) the Concessionaire shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the Concessionaire at or prior to the Time of Closing (including the obligation of the Concessionaire to pay the Closing Consideration at the Closing in accordance with the terms hereof);
  - (iii) the Concessionaire shall have delivered to the University a legal opinion of outside counsel to the Concessionaire, substantially in the form attached hereto as Schedule 8;

- (iv) all Leasehold Mortgage Debt issued on or before Closing shall have a credit rating of at least investment grade as determined by at least one of the Credit Rating Agencies; and
  - (v) the Concessionaire shall have delivered to the University a certificate confirming that each of the conditions set forth in Section 2.4(b)(i) through Section 2.4(b)(iv) has been satisfied in full by the Concessionaire (except for any condition that has been waived by the University) at or before the Time of Closing.
- (c) *Mutual Conditions.* In addition, the University and the Concessionaire shall be obligated to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by both the University and the Concessionaire, which the Parties acknowledge were satisfied:
- (i) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the consummation of the Transaction; and
  - (ii) there shall be no action taken, or any Law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction that, in any such case, has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Governmental Authority conditioning or restricting the consummation of the Transaction in a manner that would impose a material impairment on the Transaction or make the consummation of the Transaction illegal.
- (d) *Termination.* This Agreement may be terminated at any time prior to the Closing:
- (i) by mutual consent of the University and the Concessionaire in a written instrument;
  - (ii) by either the University or the Concessionaire, upon notice to the other Party, if any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction, and such order, decree, ruling or other action has become final and nonappealable; provided, however, that the right to terminate this Agreement under this Section 2.4(d)(ii) shall not be available to any Party whose failure to comply with any provision of this Agreement or other conduct has been the cause of, or results in such action;
  - (iii) by the Concessionaire, upon written notice to the University, if any condition set forth in Section 2.4(a) is not satisfied at the Time of Closing;

provided, however, that the Concessionaire shall not have the right to terminate this Agreement under this Section 2.4(d)(iii) if (A) the Concessionaire shall have theretofore waived such condition, (B) the Concessionaire's failure to comply with any provision of this Agreement or other conduct has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied or (C) any condition set forth in Section 2.4(b) is not satisfied at the Time of Closing;

(iv) by the University, upon written notice to the Concessionaire, if any condition set forth in Section 2.4(b) is not satisfied at the Time of Closing; provided, however, that the University shall not have the right to terminate this Agreement under this Section 2.4(d)(iv) if (A) the University shall have theretofore waived such condition, (B) the University's failure to comply with any provision of this Agreement or other conduct has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied or (C) any condition set forth in Section 2.4(a) is not satisfied at the Time of Closing; or

(v) by either the University or the Concessionaire upon notice to the other Party if the Closing has not occurred within 5 Business Days after the Closing Date or such later date agreed to in writing by the Parties, provided that if the Closing has not occurred due to a Party's failure to satisfy the conditions precedent for the Closing for which such Party is responsible pursuant to this Section 2.4, that Party may not terminate this Agreement pursuant to this Section 2.4(d)(v).

(e) *Effect of Termination.* In the event of termination of this Agreement by either the University or the Concessionaire as provided in Section 2.4(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the University or the Concessionaire or their respective Representatives, except as set forth in Section 2.3(b), this Section 2.4(e), Article 12, Article 18 and Article 19. In the event that the Concessionaire terminates this Agreement pursuant to Section 2.4(d)(iii) as a result of the failure of the University to satisfy any condition set forth in Section 2.4(a) (excluding Section 2.4(a)(vi) and Section 2.4(a)(vii), but, with respect to the exclusion of Section 2.4(a)(vii), only to the extent the event described in Section 2.4(a)(vii) was not an action taken by the University), the University will compensate the Concessionaire for up to \$2,500,000 of reasonable and documented out-of-pocket costs as well as reasonable internal costs (calculated based on the market rate for such costs) incurred by the Concessionaire or the Operator in connection with the Transaction. In the event of any termination pursuant to Section 2.4(d)(i), Section 2.4(d)(ii), Section 2.4(d)(iii) or Section 2.4(d)(v), the Cash Deposit and all investment earnings accrued thereon shall be paid to the Concessionaire, and the Closing Deposit shall be returned undrawn to the Concessionaire marked canceled, as applicable.

## Section 2.5. Covenants.

- (a) *Cooperation.* During the Closing Period, the Parties shall cooperate with each other in order to permit the Closing to be consummated on the Closing Date.
- (b) *Reasonable Efforts.* During the Closing Period, each Party shall use all reasonable efforts (i) to take, or cause to be taken, all actions necessary to comply promptly with all requirements under this Agreement and all legal requirements which may be imposed on such Party to consummate the Transaction as promptly as practicable, including making any necessary filings, and (ii) to obtain (and to cooperate with the other Party to obtain) any Consent of any Governmental Authority or any other public or private third party which is required to be obtained or made by such Party in connection with the consummation of the Transaction. Each Party shall promptly cooperate with and promptly furnish information to the other Party at such other Party's reasonable request in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.
- (c) *Injunctions.* If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Time of Closing which would prohibit or materially restrict or hinder the Closing, each Party shall use all reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction or order, in each case as promptly as possible and, in any event, prior to the Time of Closing.
- (d) *Operation of the Utility System.* During the Closing Period, the University shall operate the Utility System in the ordinary course in a manner consistent with past practice, which shall include using all reasonable efforts to preserve the goodwill of the Utility System and to maintain good business relationships with Persons having business dealings with respect to the Utility System, to maintain the Utility System in its existing operating condition and repair in accordance with past practice (ordinary wear and tear excepted), to perform (or cause to be performed) in all material respects all of the University's obligations under the Utility System Contracts, not to incur any Encumbrances on the Utility System (other than Permitted University Encumbrances) that are not satisfied by the Closing Date, and to cause the Utility System to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings), all to the end that the Utility System as a going concern shall be unimpaired and delivered to the Concessionaire at the Time of Closing in a condition not materially worse than the condition as of the Setting Date, except for any damage by casualty or condemnation. The University, shall, up to and including the Time of Closing, be entitled to all of the cash or cash equivalents in or generated by the Utility System. The Concessionaire acknowledges that all receivables related to the Utility System in existence at the Time of Closing shall remain the property of the University and the Concessionaire shall promptly transfer to the

University any such receivables, existing up to and including the Time of Closing, received after the Closing Date. Without limiting the foregoing, the University shall not (i) terminate, amend, modify or agree to a waiver of the terms of any Authorization related to the Utility System after the Signing Date and before the Time of Closing, (ii) amend, modify, terminate or execute any Utility System Contracts other than Supply Contracts, provided that the University shall provide the Concessionaire written notice of termination or material modification of any Supply Contract at least 30 Days prior to the effective date of such termination or material modification or (iii) commence any Material Changes to the Utility System that are not Ongoing Utility System Projects, in either case without the Concessionaire's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary in this Agreement, the University shall, on behalf of the Concessionaire, operate and maintain the Utility System through 11:59 p.m. on the Closing Date, so as to facilitate the transition of the operation of the Utility System in a timely and orderly manner. The Concessionaire shall remain fully liable under this Agreement to perform the Utility Services after the Time of Closing.

- (e) *Utility System Contracts.* Subject to the remainder of this Section 2.5(e), the Utility System Contracts shall be assigned by the University to, and assumed by, the Concessionaire at the Time of Closing. All other contracts, including those listed on Schedule 6, related to the operation of the Utility System shall either be retained by the University following the Closing Date (so long as such retained contracts do not interfere with the operation of the Utility System) or be terminated by the University, effective at the Time of Closing; provided, however, that any liability under or related to any contract related to the Utility System (other than the Utility System Contracts) that is retained by the University following the Closing Date or terminated by the University on the Closing Date (including any liability resulting from the termination thereof), and any liability under or related to any Utility System Contract attributable to periods prior to the effectiveness of the assignment thereof to the Concessionaire, shall be solely for the account of the University. Notwithstanding the foregoing, the Parties hereby acknowledge and agree that consents to the assignment of certain Utility System Contracts may not be received on or before the Time of Closing (the "Unassigned Contracts"), which Unassigned Contracts have been noted as such on Exhibit 1 of the Assignment and Assumption of Contracts dated July 6, 2017 by and between the University and the Concessionaire (the "Contracts Assignment Agreement"). The Parties agree that each Unassigned Contract shall not be deemed assigned to the Concessionaire until such time as the consent to the assignment has been obtained from the counterparty to such Unassigned Contract, at which time the Unassigned Contract will be automatically assigned by the University to the Concessionaire pursuant to the Contracts Assignment Agreement. The Parties acknowledge and agree that all Unassigned Contracts have been assigned to the Concessionaire following Closing.

- (f) *Disclosure of Changes.*
- (i) During the Closing Period, each Party shall immediately disclose in writing to the other Party any matter which becomes known to it which is inconsistent in any material respect with any of the representations or warranties contained in Article 9. No such disclosure, however, shall cure any misrepresentation or breach of warranty for the purposes of Section 2.4 or Article 12; and
  - (ii) During the Closing Period, the University may supplement or amend the Disclosure Schedules hereto, including one or more supplements or amendments to correct any matter which would constitute a breach of any representation, warranty, covenant or obligation contained herein. No such supplement or amendment shall be deemed to cure any breach for purposes of Section 2.4(a) or, subject to the following sentence, for any other purpose. Notwithstanding the previous sentence, if the Closing occurs, then, subsequent to the Closing, any such supplement or amendment provided to the Concessionaire at least 10 Business Days prior to the Closing with respect to any representation or warranty contained in Section 9.1(d), Section 9.1(i), or Section 9.1(j) relating to a matter arising after the Signing Date but before the Closing will be effective to cure and correct for all purposes any inaccuracy in, or breach of, such representation or warranty which would exist if the University had not made such supplement or amendment, and all references to any Disclosure Schedule hereto which is supplemented or amended as provided in this Section 2.5(f)(ii) shall (subject to the foregoing limitation) for all purposes after the Closing be deemed to be a reference to such Disclosure Schedule as so supplemented or amended. The Concessionaire acknowledges that the University supplemented and amended the Disclosure Schedules by delivery of written notice on June 20, 2017 and June 21, 2017.
- (g) *Access to Information and Pre-Closing Inspections.* During the Closing Period, but subject to confidentiality obligations binding on the University with respect to any Person (provided that the University has disclosed to the Concessionaire the existence of the applicable Document that is subject to such confidentiality limitation in order to enable the Concessionaire to evaluate the materiality and significance of the lack of disclosure based on such limitations), the University shall (i) give the Concessionaire and its Representatives reasonable access during normal business hours and on reasonable notice to the Utility System to perform inspections on the Utility System, subject to the University's policies and regulations regarding safety and security and any other reasonable conditions imposed by the University, (ii) permit the Concessionaire and its Representatives to make such inspections as they may reasonably request in order to facilitate the transition of the use, operation, possession and control of the Utility System to the Concessionaire and (iii) furnish the Concessionaire and its Representatives with such financial and operating data and other information that is available with respect to the Utility System as they may from time to time reasonably

request; provided that no inspections or the results thereof shall permit the Concessionaire to terminate this Agreement. The Concessionaire shall hold and will cause its Representatives to hold in strict confidence all Documents and information concerning the Utility System to the extent and in accordance with the terms and conditions of the confidentiality agreement between the University and the Concessionaire in connection with the Transaction. After the Closing Date, the Concessionaire shall, at the request of the University, in connection with claims or actions brought by or against third parties based upon events or circumstances concerning the Utility System, (A) provide reasonable assistance in the collection of information or Documents and (B) make the Concessionaire's employees available when reasonably requested by the University; provided, however, that the University shall reimburse the Concessionaire for all out-of-pocket and documented costs and expenses incurred by the Concessionaire in providing said assistance and will not unduly interfere with Concessionaire's operations.

- (h) *Transition.* During the Closing Period, the Parties shall cooperate with each other to ensure the orderly transition of control, possession, custody, operation, management and maintenance of the Utility System at the Time of Closing and to provide the services required to be performed under this Agreement. Such cooperation shall include the University making its employees reasonably available to the Concessionaire to assist in such transition at no out-of-pocket cost to the University. In order to assure such orderly transition and to provide information and Documents related to the Utility System Operations to the Concessionaire, the University shall use commercially reasonable efforts to exercise its rights under existing service agreements with service providers. After the Closing, the Parties shall continue to cooperate to ensure the orderly transition of control, custody, operation, management and maintenance of the Utility System, provided that no University employees shall work to operate the Utility System after the Closing, except to the extent expressly agreed by the University and the Concessionaire.
- (i) *Casualty Loss Prior to Closing.* If between the Setting Date and the Time of Closing, a casualty loss, destruction or damage to the Utility System has occurred, unless this Agreement has been terminated under Section 2.4(d), then the University shall, at its option, either (i) promptly and diligently repair and rebuild the affected parts of the Utility System to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage, provided that if the affected parts of the Utility System cannot prior to the Closing Date be repaired or rebuilt to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage, the University shall make such repairs or restoration as can reasonably be completed prior to the Closing Date and shall provide to the Concessionaire a plan for the completion of such repairs or restoration following the Time of Closing at the University's expense and shall then complete such repairs or restoration in accordance with such plan, or (ii) authorize the Concessionaire to repair the Utility System and assign to the Concessionaire all

insurance and other proceeds (if any) payable by third-party insurers or other third parties in respect of such casualty loss, destruction or damage and enforce (with the cooperation of the Concessionaire) all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers, the costs of which shall not be included in the Variable Fee Component or the Utility Fee; provided that if no insurance exists or such insurance proceeds are not sufficient to repair and rebuild the affected parts of the Utility System to its prior condition, then the University shall reimburse the Concessionaire for that amount representing the difference between the out-of-pocket cost to repair and the amount of any insurance proceeds received by the Concessionaire. It shall not be a Concessionaire Default for the inability of the Concessionaire to meet any obligation hereunder as a direct result of such casualty loss, destruction or damage unless the University has elected to authorize the Concessionaire to repair the Utility System pursuant to clause (ii) of this Section 2.5(i) and the Concessionaire is not diligently repairing or restoring the Utility System. The Parties acknowledge and agree that no such casualty loss, destruction or damage occurred during the Closing Period.

- (j) *Policies of Insurance.* During the Closing Period, the University shall continue in force all applicable policies of insurance maintained by the University in respect of the Utility System. Except to the extent the University is required to maintain such policies of insurance in accordance with Article 13, at the Time of Closing, all such policies of insurance shall terminate and the Concessionaire shall be responsible for obtaining insurance for the Utility System in accordance with the terms hereof.
  
- (k) *Employees.* Prior to the Time of Closing, the Concessionaire shall use its best efforts to or cause the Operator to interview all University Utility System Employees who apply for a position with the Concessionaire or the Operator, as the case may be. If either the Concessionaire or the Operator makes any offer of employment to any such individual, such offer shall contain only the terms and conditions of employment that the Concessionaire or the Operator, as the case may be, deems to be appropriate in its discretion, except that the Concessionaire or the Operator, as the case may be, shall include wages, benefits and other terms and conditions of employment that are at a minimum, comparable to other similarly-situated employees of the Concessionaire or the Operator, as the case may be, reasonably adjusted based upon the metropolitan statistical area of Columbus, Ohio. All employment offers will comply with the requirements of Ohio Rev. Code Ann. § 145.01(A)(2), to the extent it is applicable to such employee. Pursuant to Ohio Rev. Code Ann. § 145.037, any employees of the Concessionaire or the Operator shall not be “public employees” for purposes of Ohio Rev. Code Ann. § 145, except to the extent such employees are “public employees” pursuant to Ohio Rev. Code Ann. § 145.01(A)(2). For any employees who elect to, and have a right to, continue to participate in the public employees retirement system pursuant to Ohio Rev. Code Ann. § 145.034, and are not otherwise excluded from participation in such retirement system by the State of Ohio’s public employee retirement board, the Concessionaire shall

directly pay the employer contribution rate for such employee's earnable salary. Any and all employees of the Concessionaire and the Operator shall have met all reasonable background inspection and security requirements of the University, as promulgated from time to time. Nothing in this Agreement shall be construed or is otherwise intended to create joint employment by the University and the Concessionaire and/or the Operator, as the case may be, of the employees of the Concessionaire or the Operator; the Concessionaire or the Operator, as the case may be, shall have the right and obligation to supervise and direct the work of its employees.

- (l) *Office / Storage Space.* To the extent requested by the Concessionaire in writing prior to the Closing Date, the Parties shall use reasonable efforts to enter into a commercially reasonable lease agreement prior to the Closing Date with respect to the lease of office and/or storage space by the University to the Concessionaire within a location on the Columbus Campus at the University rental rates as established by the University Department of Planning and Real Estate (PARE) from time to time, subject to availability of such space as determined by the University in its sole discretion; provided, however, that the execution and delivery of such lease agreement shall not be a condition precedent to Closing.
  
- (m) *Ongoing Utility System Projects.* The University shall continue the construction of the Ongoing Utility System Projects, in accordance with applicable Law, until they have been completed in substantial accordance with the plans for such Ongoing Utility System Projects as of the Setting Date, provided that the University may, upon written notice to the Concessionaire, abandon or modify any or all Ongoing Utility System Projects. To the extent that the construction or completion of any Ongoing Utility System Project requires access to any of the Utility System, the Concessionaire hereby grants a non-exclusive license to the University to so access the Utility System as necessary to complete such Ongoing Utility System Projects. Upon completion of an Ongoing Utility System Project, the University shall (i) deliver the Concessionaire written notice thereof, and, at such time, that Ongoing Utility System Project shall become part of the Utility System and the Concessionaire shall be granted a leasehold interest therein and (ii) either (A) assign the Concessionaire (or one or more third parties at the Concessionaire's direction,) all contractors' warranties held by the University with respect to such Ongoing Utility System Project or (B) to the extent the University chooses not to so assign such warranties or such warranties are not so assignable, cooperate with the Concessionaire to provide the benefit of such warranties to the Concessionaire (or one or more third parties at the Concessionaire's direction). The University shall name the Concessionaire as an additional insured on its insurance policies with respect to those Ongoing Utility System Projects. If the University elects to abandon an Ongoing Utility System Project, the Capped O&M Index shall be increased by the additional annual O&M Costs that the Concessionaire is required to incur due to the abandonment of such Ongoing Utility System Project, provided the Concessionaire provides reasonable proof of such additional O&M Costs and that such O&M Costs were

unavoidable. For the avoidance of doubt, Ongoing Utility System Projects shall not be considered New Approved Capital Improvements.

**Section 2.6. Intended Treatment for Federal and State Income Tax Purposes.**

(a) *Tax Treatment.*

- (i) The Parties intend for United States federal and state income Tax purposes that (A) the Closing Consideration will be treated as a payment and consideration for (I) the sale of the Utility System Assets and Utility Facilities, (II) a lease of the Utility System Land to the Concessionaire and (III) the grant to the Concessionaire of the exclusive right to provide the Utility Services to the Columbus Campus in accordance with this Agreement; and (B) the Utility Fee is a separate fee and payment from the Closing Consideration and is not a payment for the sale of assets and lease described in Section 2.6(a)(i)(A) or otherwise but is in consideration of the services provided hereunder by the Concessionaire to the University.
- (ii) Notwithstanding Section 2.6(a)(i), this Section 2.6 only sets forth the intentions and agreements of the Parties with respect to United States federal and state income Tax purposes, and no provision of this Agreement is intended to, or shall in any way, transfer any fee interest in real property or improvements comprising the Utility System to the Concessionaire for purposes of the provisions of the Ohio Revised Code governing legal title to real property or the common law of Ohio or any other purpose whatsoever other than for United States federal and state income Tax purposes as described above.
- (iii) The Parties believe that the Closing Consideration is a reasonable payment for the sale and lease of the assets and the grant of the right referred to in Section 2.6(a)(i)(A) based on the fair market value of those assets and such right and that the Utility Fee is a reasonable fee based upon the fair market value of the services provided hereunder by the Concessionaire to the University with respect to operating, maintaining and improving the Utility System and is in consideration thereof.
- (iv) Subject to and consistent with Section 2.6(b) and Section 2.6(c), the University and the Concessionaire agree that the Closing Consideration will be allocated among the assets and rights that the Concessionaire is obtaining the use of pursuant to this Agreement using the residual allocation provisions of Section 1060 of the Code as provided therein and otherwise consistent in all respects with the schedule referenced in Section 2.6(c).
- (v) Any Concession Compensation paid to the Concessionaire hereunder shall be deemed an adjustment to the Utility Fee for tax purposes and shall not

be deemed to be an adjustment to the Closing Consideration related to the sale and lease of the assets described in Section 2.6(a)(i)(A).

- (vi) The Parties intend that this Agreement will be treated as a service contract pursuant to Section 7701 of the Code with respect to the services provided hereunder by the Concessionaire to the University with respect to the Utility System, and the Parties shall use commercially reasonable efforts to cause such treatment under Section 7701 of the Code and shall not file any tax returns inconsistent with such treatment, except as required by Law.
  - (vii) The Parties intend that the University shall be considered the owner of all Capital Improvements made pursuant to this Agreement for GAAP accounting purposes, provided that the Parties intend that the Concessionaire shall be treated as having a depreciable interest in all such Capital Improvements made by the Concessionaire during the Term for federal and state income Tax purposes.
- (b) *Payment.* For purposes of Section 467 of the Code, and the Treasury Regulations promulgated thereunder, on the Bid Date the Concessionaire has provided to the University a schedule, which will be for federal income tax purposes only, (i) allocating the Closing Consideration attributable to the lease of the Utility System Land and the Utility Facilities described in Section 2.6(a)(i)(A)(II) in equal amounts for each annual rental period; and (ii) demonstrating that such amounts bear “adequate interest” within the meaning of Treasury Regulation Section 1.467-2(b)(1)(ii) for each rental period, and prior to the execution of this Agreement, the University and the Concessionaire have agreed on such schedule, which shall not thereafter be modified or altered by the Concessionaire without the Approval of the University. Such schedule shall constitute a specific allocation of such amounts for purposes of Section 467 of the Code. The University and the Concessionaire hereby agree to reasonably cooperate to modify the schedule referred to above if the amount of rental payments on which such schedule is based changes after the date such schedule is Approved or there is any other modification to the lease after the date thereof for which it would be advisable in the Concessionaire’s reasonable discretion (after good faith consultation and discussion with the University) to modify such schedule. Notwithstanding the foregoing allocation, all such rental payments shall for all purposes other than federal income tax purposes constitute a rental paid under a triple net lease which is non-refundable. If the University files a tax return for federal income tax purposes, the University shall, for federal income tax purposes only, treat the Closing Consideration in a manner consistent with the allocation set forth in this Section 2.6(b).
- (c) *Allocation.* The Concessionaire has provided to the University, on the Bid Date, a schedule reflecting a reasonable allocation of the Closing Consideration (and all other capitalized costs) among the acquired assets in accordance with Section 1060 of the Code and the applicable Treasury Regulations for the University’s

Approval, and prior to the execution of this Agreement, the University and the Concessionaire have agreed on such schedule, which shall not thereafter be modified or altered by the Concessionaire without the Approval of the University. The University shall file all federal and state income tax returns in a manner consistent with the allocation set forth in the schedule agreed to by the Parties. Each of the Concessionaire and the University acknowledges that the leasing of certain assets included in the Utility System as provided under this Agreement may result in the transfer of the tax ownership of such assets from the University to the Concessionaire. Notwithstanding anything to the contrary in this Agreement, the Parties agree that the schedule attached hereto as Schedule 23 is the agreed schedule referenced in this Section 2.6(c), which schedule shall not hereafter be modified or altered except by mutual agreement of the Parties, unless required by applicable Law or a Governmental Authority.

**Section 2.7. Closing Deliveries.** At the Time of Closing, each Party shall execute and deliver all assets, agreements, bills of sale, assignments, endorsements, instruments and Documents as are reasonably necessary in the opinion of the other Party to effect the Transaction (and in form and substance that are reasonably satisfactory to such other Party).

**Section 2.8. Memorandum of Lease.** At the Time of Closing, the Parties executed and delivered a memorandum of lease (the “Memorandum of Lease”) in the form attached hereto as Schedule 13, which was recorded in the Franklin County Recorder’s Office. To the extent that changes are made to this Agreement with respect to the Term, leased property or other material matters set forth in the recorded Memorandum of Lease, the Parties shall timely execute, deliver and record an amendment to the recorded Memorandum of Lease reflecting such changes. The Parties agree not to record this Agreement itself.

**Section 2.9. No Return of Closing Consideration.** The Concessionaire shall have no right to have the Closing Consideration returned to it or refunded at any time after Closing, provided that, for the avoidance of doubt, this Section 2.9 shall not prohibit, preclude or adversely affect the Concessionaire’s rights to compensation expressly set forth herein, including the right to receive the full Utility System Concession Value in those instances expressly set forth herein.

**Section 2.10. Amended and Restated Bill of Sale.** The Parties acknowledge and agree that, in connection with the Closing, the University executed and delivered a Bill of Sale for the Utility System Assets as listed on Schedule 3 of the Original Agreement. On the date hereof, the University delivered to the Concessionaire an Amended and Restated Bill of Sale accurately listing all the Utility System Assets as of the Closing Date, which shall be deemed to have been conveyed to the Concessionaire as of the Closing Date.

### ARTICLE 3 TERMS OF THE CONCESSION

**Section 3.1. Quiet Enjoyment and Present Condition.**

- (a) *Quiet Enjoyment.* The University agrees that, subject to the University's remedies upon a Concessionaire Default, the Concessionaire shall, at all times during the Term, be entitled to and shall have quiet enjoyment of the Utility System and the rights and privileges granted to the Concessionaire hereunder, subject to the provisions contained in this Agreement and the rights of other parties to use the Tunnels. The University and the Concessionaire acknowledge that the Concessionaire's rights to use, control and possess the Utility System and to collect and retain the Utility Fee are subject to the right of the University, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the Utility System is used and operated as required by this Agreement. Any entry by the University or its Representatives onto the Utility System required or permitted under this Agreement shall not constitute a reentry, trespass or a breach of the covenant for quiet enjoyment contained in this Agreement. The University shall, at all times during the Term, defend its fee or leasehold interest title, as the case may be, to the Utility System, the Concessionaire's leasehold interest in and to the Utility System and the rights granted to the Concessionaire hereunder, or any portion thereof, against any Person claiming any interest adverse to the University or the Concessionaire in the Utility System, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Concessionaire, its Affiliates or their respective Representatives.
- (b) *Present Condition.* Subject to Section 2.5(i) and except as specifically set forth herein, the Concessionaire understands, agrees and acknowledges that the Concessionaire (i) by the execution of the Original Agreement, agreed to accept the Utility System "AS IS" at the Time of Closing and (ii) has inspected the Utility System and is aware of its condition and acknowledges that the University neither has made nor is making any representation or warranty, other than as expressly set forth herein, express or implied, regarding the condition of the Utility System (or any part thereof) or its suitability for the Concessionaire's proposed use, provided that nothing in this Section 3.1(b) shall preclude the Concessionaire from making repairs or replacements or Capital Improvements to the Utility System in accordance with the terms of this Agreement (including, for the avoidance of doubt, the provisions regarding Approval of Capital Improvements set forth in Section 4.3 and the provisions regarding inclusion of New Approved Capital Improvements and O&M Costs in the calculation of the Utility Fee in accordance with Schedule 5) as a result of the Utility System's condition at the Time of Closing.
- (c) *Legal Title to Real Property and Improvements.* For the avoidance of doubt, and notwithstanding anything to the contrary contained in Section 2.6, all real estate and improvements now or hereafter forming part of the Utility System shall be the fee-owned property of and owned solely by the University for GAAP and state law purposes and are subject to the terms and conditions of this Agreement.

### Section 3.2. Utility System Operations.

- (a) *Use.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, (i) be responsible for all aspects of the Utility System Operations, including providing the Utilities from temporary sources for construction projects and special events as identified by the University and (ii) maintain and operate the Utility System and cause the Utility System Operations to be performed in accordance with the provisions of this Agreement, including the Performance Standards, Prudent Industry Practices and applicable Law. In connection with such maintenance, the Concessionaire may contract with a third party for certain tasks, such as janitorial services. Except for such additional purposes permitted pursuant to Section 3.15(c), the Concessionaire shall, at all times during the Term, cause the Utility System to be used exclusively for the Utility System Purposes and continuously open and operational for the Utility System Purposes in accordance with the Performance Standards. Notwithstanding the foregoing, the Concessionaire may cease keeping the Utility System or a portion thereof continuously open and operational for the Utility System Purposes (A) as specifically permitted under this Agreement, (B) as required by applicable Law, (C) as necessary to comply with any other requirement of this Agreement (including closures related to the performance of Capital Improvements or maintenance or repair activities as required by the Performance Standards), (D) as necessary for a Delay Event or (E) as necessary for temporary closures required to address Emergencies or public safety; provided, however, that in the event of any temporary suspension of Utility System Operations pursuant to any of clauses (A) through (E) of this Section 3.2(a), such suspension shall be limited as much as practicable so as to allow all other Utility System Operations to continue.
- (b) *Columbus Campus.* Notwithstanding anything to the contrary contained herein, the Concessionaire shall operate the Utility System and provide the Utility Services in a manner that does not interfere with or impair the operation of the Columbus Campus, including any special events conducted on the Columbus Campus. Except in the case of an Emergency, if the Concessionaire, in performing the Utility System Operations, determines it is reasonably necessary to disturb any portion of the Columbus Campus including the Tunnels but excluding the Utility System Land, it shall, to the extent possible given the circumstances, provide the University at least 10 Business Days' prior written notice and the Concessionaire shall comply with any reasonable requirements or restrictions on such disturbance imposed by the University, including limiting the time in which the Concessionaire can so disturb the portion of the Columbus Campus to specific hours. In accessing any portion of the Columbus Campus pursuant to its rights hereunder, the Concessionaire shall also abide by any restrictions and requirements generally imposed by the University on such access, as communicated to the Concessionaire from time to time. To the extent that, in operating and maintaining the Utility System, the Concessionaire damages any portion of the University's real or personal property, including the landscape of the Columbus Campus, the University's outdoor lighting, traffic

signals, irrigation equipment and communications equipment and such damage was not (i) Approved by the University in accordance with this Agreement or (ii) included as part of the scope of work Approved by the University related to such operations and maintenance, the Concessionaire shall promptly cause such property to be repaired to substantially the same or better condition that existed prior to such damage, and the cost incurred therewith shall not be included in O&M Costs or otherwise recovered as a part of the Utility Fee.

- (c) *Costs and Expenses.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, pay or cause to be paid all costs and expenses of the Utility System Operations as and when the same are due and payable.
  
- (d) *Assumed Liabilities and Excluded Liabilities.* The Concessionaire agrees to assume and discharge or perform when due all debts, liabilities and obligations whatsoever relating to the Utility System or the Utility System Operations that occur, arise out of or relate to, or are based on facts or actions occurring during the Term but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by the University of any covenant, representation or warranty set forth in this Agreement (collectively, the “Assumed Liabilities”); provided, however, that the Assumed Liabilities shall not include, and the University shall perform or cause to be performed and discharge or cause to be discharged as and when due, any debts, liabilities and obligations (i) with respect to the University’s obligations under this Agreement, (ii) arising out of the Utility System or any Utility System Operations (including with respect to any Utility System Contracts) prior to the Time of Closing, (iii) except as expressly set forth in Section 2.5(k), resulting from any employee of the Concessionaire or the Operator that was previously a University Utility System Employee being a “carry over employee” under any Law of the State of Ohio, (iv) arising under any Environmental Law and related to (1) the ownership, operation or condition of the Utility System prior to the Time of Closing or (2) the Release on or from, presence on or in, or other existence on the Utility System or its subsurface of any Hazardous Substance at any time prior to the Time of Closing and including (A) the abatement, handling, disposal or removal of any asbestos present at the Time of Closing in the Utility System as required by any Environmental Law in connection with the repair, maintenance, operation or construction activities permitted or required to be performed under this Agreement and (B) any known or unknown environmental conditions relating to the Utility System or its subsurface that existed prior to the Time of Closing the manifestation of which occurs following the Time of Closing, which environmental obligations the University shall perform and discharge when due, except in any case to the extent exacerbated by the Concessionaire or its Representatives or caused by any action of the Concessionaire or its Representatives, (v) arising out of the University’s rights under this Agreement to test, inspect, audit, repair, maintain or operate the Utility System without impairment of the University’s remedies for a Concessionaire Default and (vi) with respect to the Ongoing Utility System

Projects that have not yet become a part of the Utility System (collectively, the “Excluded Liabilities”).

- (e) *Right of Entry and Access to the Public Way.* Subject to Section 3.19, the University hereby grants to the Concessionaire and its Representatives a license to enter upon, in, under, over and across the Public Way to such extent and at such times as shall be necessary or desirable for the Concessionaire to access the Utility System in order to conduct Utility System Operations, including operating, maintaining, inspecting, repairing and managing Utility System properties, including the Utility System Assets and all supporting structures and appurtenances thereto, and installing monitoring or observation technology or equipment reasonably necessary for Utility System Operations. The rights granted pursuant to this Section 3.2(e) do not include the right to block, impede or otherwise obstruct traffic on the Public Way, and the Concessionaire shall, enter, access and perform work in, on or over the Public Way in accordance with the Performance Standards. The rights granted to the Concessionaire under this Section 3.2(e) neither create an interest in real property nor do they create a priority in favor of the Concessionaire over any other user of such areas and are subject to the Performance Standards and all provisions of Law relating to the conduct of a private business or franchise in the Public Way.
- (f) *Mapping and Marking.* During the Term, the Concessionaire shall be responsible for marking and mapping all portions of the Utility System in accordance with the Performance Standards.
- (g) *ECM Provider.* The Concessionaire shall use ENGIE Services Inc. as its sole and exclusive advisor providing advice and support to the Concessionaire, in the Concessionaire’s capacity as the design-builder pursuant to Section 4.3(g)(iii), and the Concessionaire may change such Person only with the Approval of the University.
- (h) *Deemed Planned Outage.* The Concessionaire shall have the right to propose to shut down a portion of the Utility System such that such portion shall not transmit Utilities provided by that portion of the Utility System if the Concessionaire reasonably believes that such a shutdown will avoid additional costs in excess of the costs of such shutdown or lengthier shutdowns of the Utility System or a portion thereof later. If the applicable Zone Leader or the supervisor of such Zone Leader agrees to such shut down (which agreement must be in writing or by e-mail from such Zone Leader or such supervisor), then it shall be treated as a Planned Outage. If the applicable Zone Leader or the supervisor of such Zone Leader does not agree to such shutdown, then the Concessionaire may escalate to the University Liaison, and if the University Liaison agrees (which agreement must be in writing or by e-mail from the University Liaison), then it shall be deemed a Planned Outage. The University Liaison may make this determination in its sole discretion. If none of the applicable Zone Leader, the supervisor of such Zone Leader, or the University

Liaison approves such a shutdown, then it will be considered an Unplanned Outage if the Concessionaire elects to proceed with such shutdown.

- (i) *Emergency Shutdown.* If there is a circumstance where the continued operation of a portion of the Utility System creates an Emergency (other than an Unplanned Outage), then the Concessionaire shall have the right, directly or through its automatic protection system or the Operator, to shut down the applicable portion of the Utility System to address such circumstance, provided that the Concessionaire shall comply with the provisions of Section 8.1 and Item 5 of Part II of Schedule 2, as if such a shutdown were an Unplanned Outage. The Concessionaire shall perform the corrective action to address such circumstance as soon as reasonably practicable. Within 10 Business Days after the shutdown and repair of the applicable portion of the Utility System, the Concessionaire shall provide the University with pertinent information on such circumstance and such other relevant information within the Concessionaire's possession or control that is requested by the University, and the University shall determine, in its reasonable judgment, whether such shutdown shall constitute an Unplanned Outage for purposes of determining the applicable Key Performance Indicator. For the avoidance of doubt, such determination shall not affect the Concessionaire's obligation to treat such shutdown as an Unplanned Outage for purposes of compliance with Item 5 of Part II of Schedule 2.

### **Section 3.3. Operator.**

- (a) *Engagement.* The Utility System Operations shall, at all times during the Term, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how to perform the Utility System Operations in accordance with this Agreement and Prudent Industry Practices (an "Operator") who may be (but is not required to be) the Concessionaire itself. The Operator on the first Day of the Term and through the date hereof is ENGIE Services Inc. The Concessionaire shall not engage or appoint a replacement Operator unless the University has Approved such Operator; provided, however, that a Change in Control of an Operator shall be deemed to be the appointment of a replacement Operator subject to the University's Approval; provided, further, that for purposes of this Section 3.3(a), the definition of "Equity Participant" and clauses (a) through (g) of the definition of "Change in Control" shall be read and apply as though "Operator" were substituted for "Concessionaire"; provided, further, that if the University does not provide the Concessionaire with the relevant Approval, the Concessionaire shall be entitled to appoint an interim Operator for a period of up to 180 Days from the date of appointment of such interim Operator. This interim Operator may be selected without Approval by the University so long as the Concessionaire reasonably determines that the interim Operator meets the following criteria: (A) the interim Operator has experience in operating Comparable Utility Systems and (B) the interim Operator (or any guarantor of its obligations) has a tangible net worth reasonably sufficient to carry out its obligations and responsibilities as Operator. The Concessionaire shall not extend

the term of any interim Operator beyond 6 consecutive months or appoint a successor interim Operator after such 6-month period. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of the Concessionaire, and any delegation to an Operator shall not relieve the Concessionaire of any obligations, duties or liability hereunder. The Concessionaire shall immediately notify the University upon the termination or resignation of an Operator. The rights of the Operator regarding the continued operation of the Utility System shall terminate without penalty at the election of the University or the Operator upon 5 Business Days' notice to such Operator or the University, as applicable, upon the termination of this Agreement. Except as otherwise expressly set forth herein, the Operator shall have no interest in or rights under this Agreement or the Utility System unless the Operator is the Concessionaire itself.

(b) *Approval.* The University's Approval of a proposed replacement Operator may be withheld only if the University reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law or such proposed Operator is not capable of performing the Utility System Operations in accordance with this Agreement and Prudent Industry Practices, which determination shall be based solely upon one or more of the following factors: (i) the ability of the Operator to operate the Utility System in a manner that complies with the Performance Standards; (ii) the financial strength, capitalization and integrity of the proposed Operator, its direct or indirect beneficial owners and some or all of their respective Affiliates providing a guaranty of the Operator's obligations; (iii) the experience of the proposed Operator in operating Comparable Utility Systems; (iv) the background and reputation of the proposed Operator, its direct or indirect beneficial owners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and (v) the proposed terms of the engagement of the Operator.

(c) *Removal.*

(i) If the Operator fails to operate the Utility System in compliance with the Performance Standards or fails to meet the Target for any Key Performance Indicator, and

(A) such failure is the material breach of a material requirement of the Performance Standards other than a requirement that is also a Key Performance Indicator, the University may provide written notice to the Operator and the Concessionaire setting forth such failure. If the Operator does not cure such failure within 30 Days of said written notice (or, if such cure or correction cannot reasonably be accomplished during such 30-Day period, within such longer period as is reasonably required to accomplish such cure or

correction, provided the Concessionaire has commenced such cure or correction within 30 Days of said written notice and diligently prosecutes the same to completion), then (i) the University may, upon notice to the Concessionaire, (A) cure any such failure and (B) the Concessionaire shall reimburse the University any and all costs related to such cure and/or correction; and (ii) the University may direct that the Concessionaire remove the Operator pursuant to the written order of senior University officials designated by the Board in writing for such purpose or otherwise with respect to assessing the performance of the Operator (the “Senior Officials”); or

- (B) such failure results in an Emergency, then the University may, upon notice to the Concessionaire, (i) immediately cure any such failure after endeavoring to provide the Concessionaire notice appropriate under the circumstances (which may include telephone notice) and (ii) the Concessionaire shall reimburse the University any and all costs related to such cure and/or correction.
- (ii) Notwithstanding the foregoing, if (A) within any Operator Evaluation Period, at least 3 Repetitive Failures occur, (B) a Major KPI Event for the same Key Performance Indicator occurs for 3 consecutive Fiscal Years or (C) 3 Major KPI Events occur in any given Fiscal Year, the University, in addition to its right to KPI Compensation, may direct that the Concessionaire remove the Operator pursuant to the written order of the Senior Officials.
- (iii) The University shall provide the Concessionaire and the Operator with no less than 30 Days’ prior written notice of the time, date, place and subject matter of any meeting of the Senior Officials at which a resolution to remove the Operator will be considered, and both the Concessionaire and the Operator shall be afforded a reasonable opportunity to present testimony and evidence at such meeting and to present to the Senior Officials written objections to any proposed removal determination. Any written order of the Senior Officials removing the Operator shall contain written determinations as to the reasons for removal of the Operator. Within 45 Days following the effective date of such resolution, the Concessionaire shall remove the then current Operator and replace such Operator with either (A) a new Operator that is Approved by the University pursuant to Section 3.3(b) or (B) to the extent the Concessionaire was not the removed Operator, the Concessionaire.
- (d) *Sole Remedy.* Other than the University’s right to KPI Compensation pursuant to Article 15, notwithstanding anything to the contrary contained herein, the University’s right to remove the Operator pursuant to Section 3.3(c) shall constitute the Concessionaire’s sole and exclusive liability and the University’s sole and exclusive remedy relating to a failure to meet a requirement of the

Performances Standards, a KPI Event or a breach of Section 5.4(a) or Section 7.5(a).

- (e) *OUPS Membership.* The Concessionaire shall cause the Operator, at all times from and after 5 Business Days after Closing, to maintain an active membership in the Ohio Utility Protection Service (“OUPS”) pursuant to Ohio Rev. Code Ann. § 3781.26(A) and to abide by all requirements described therein, and the University shall use commercially reasonable efforts to assist in connection with applications related to such membership. While it is recommended that the Operator maintain full voting membership, or any successor form of membership, in OUPS, such membership shall at no time be less than a limited basis membership, or any successor form of membership. If the University reasonably expects to incur any out-of-pocket costs in connection with providing assistance to the Operator as provided in the preceding sentence, it shall have no obligation to provide such assistance until the Concessionaire or the Operator commits to the prompt reimbursement of such out-of-pocket costs in writing.

#### **Section 3.4. Authorizations; Qualifications.**

- (a) *Compliance.* The Concessionaire shall obtain, comply with, promptly renew and maintain in good standing all Authorizations, and the University shall use commercially reasonable efforts to assist the Concessionaire in obtaining, complying with, renewing and maintaining in good standing all such Authorizations, including those that the University was not required to obtain in connection with its operation of the Utility System prior to the Time of Closing. If the University reasonably expects to incur any out-of-pocket costs in connection with providing assistance to the Concessionaire as provided in the preceding sentence, it shall have no obligation to provide such assistance until the Concessionaire commits to the prompt reimbursement of such out-of-pocket costs in writing. Nothing in this Agreement, including Section 2.1, shall be deemed to waive or modify any Authorization required to be obtained by the Concessionaire or any other Person in connection with the Utility System, the Utility System Operations or any activities generating the Utility Fee.
- (b) *Qualifications.* The Concessionaire shall, at all times during the Term, maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Utility System Operations, including all rights, franchises, licenses, privileges and qualifications required in connection with the Utility System Operations.

#### **Section 3.5. No Encumbrances.**

- (a) *By the Concessionaire.* The Concessionaire shall not do any act or thing that will create any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Utility System and shall promptly remove any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Utility System, unless the Encumbrance came into existence as a result of an act

of or omission by the University or a Person claiming through it which in turn was not caused by an act or omission of the Concessionaire. The Concessionaire shall not be deemed to be in default hereunder if the Concessionaire continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; provided that the Concessionaire has (i) given advance notification to the University that it is the intent of the Concessionaire to contest the validity or collection thereof or cause such contest and (ii) unless a bond or other security is provided in connection with such proceedings, given a satisfactory indemnity to the University or deposited with the University a Letter of Credit, indemnity bond, surety bond, cash or Eligible Investment reasonably satisfactory to the University in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the University may reasonably estimate to be payable by the Concessionaire at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; provided, however, that unless the Concessionaire is required by GAAP to maintain any security in favor of a purported beneficiary of such Encumbrance, in the event such Letter of Credit bond, cash or Eligible Investment shall be so deposited, the same shall be held by the University until such claim or other imposition shall have been released and discharged and shall thereupon be promptly returned to the Concessionaire, less any amounts reasonably expended by the University to procure such release or discharge or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the University by virtue of the contest of such Encumbrance.

- (b) *By the University.* The University shall not do any act or thing that will create any Encumbrance (other than a Permitted University Encumbrance) against the Utility System and shall promptly remove any Encumbrance (other than a Permitted University Encumbrance) against the Utility System that came into existence as a result of an act of or omission by the University or a Person claiming through the University. The University shall not be deemed to be in default hereunder if the University continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; provided that the University has given advance notification to the Concessionaire that it is the intent of the University to contest the validity or collection thereof or cause such contest.
- (c) *Removal.* Each Party, if requested by the other Party and at such other Party's costs and expense, shall use its reasonable efforts to assist such other Party in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by such other Party (other than a Permitted University Encumbrance or a Permitted Concessionaire Encumbrance); provided that nothing herein shall obligate the University to waive, modify or otherwise limit or affect the enforcement by the University of any applicable rule, procedure or policy of the University whether or not with respect to the Utility System.

**Section 3.6. Single Purpose Covenants; Credit Rating.** Subject to Section 3.15(c), the Concessionaire shall, at all times during the Term, (i) be formed and organized solely for the purpose of (A) owning the Concessionaire Interest, (B) owning, operating, improving, using, possessing and otherwise dealing with the Utility System, (C) collecting from the University the Utility Fee in consideration of providing the services hereunder to the University, (D) financing its interest in the Utility System, and (E) carrying out the Utility Services and other activities permitted pursuant to this Agreement (and any activities reasonably incidental thereto), (ii) not engage in any business unrelated to clause (i) above, (iii) not have any assets other than those related to its activities in accordance with clauses (i) and (ii) above, (iv) except as appropriate for Tax reporting purposes, maintain its own separate books and records and its own accounts, (v) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence, (vi) not guarantee or otherwise obligate itself with respect to the debts of any other Person, (vii) except as expressly permitted hereby or by any Leasehold Mortgage, or in connection in the ordinary course of business of the Utility System, not pledge its assets for the benefit of any other Person, and (viii) maintain adequate capital in light of its contemplated business operations. In addition, if any Leasehold Mortgage Debt is issued or refinanced after the Closing Date, at the time of such issuance, refinancing or entry, such Leasehold Mortgage Debt shall have an investment grade credit rating, as determined by at least one of the Credit Rating Agencies, and shall provide written evidence of such rating to the University at the same time as such issuance, refinance or entry.

**Section 3.7. Rights of the University to Access and Perform Work on the Utility System and Utilize Space for Energy Resources and Research Purposes.**

- (a) *Reservation of Rights.* The University reserves (for itself and any of its Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires and others claiming by, through or under the University) and shall, at all times during the Term, have the right to enter the Utility Facilities and have access to the Utility System in response to any of the following events or circumstances or for any of the following purposes, provided that (x) with respect to Section 3.7(a)(i) and Section 3.7(a)(ii), such right is to be exercised at all reasonable times upon reasonable prior notice to the Concessionaire, (y) with respect to Section 3.7(a)(iii), such right is to be exercised at all reasonable times upon reasonable prior notice to the Concessionaire if practicable under the circumstances, and (z) with respect to Section 3.7(a)(iv), Section 3.7(a)(v) and Section 3.7(a)(vi), such right is to be exercised at all reasonable times with the University to request, with reasonable prior notice, the Concessionaire's consent to the exercise of such right, which consent shall not be unreasonably withheld, conditioned or delayed, provided that if the Concessionaire has not responded to such request within 5 Business Days, it shall be deemed to have consented to such exercise:
- (i) to inspect the Utility System or determine whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law pursuant to Section 8.3;

- (ii) if a Concessionaire Default then exists, subject to the cure rights of any Leasehold Mortgagee under Section 19.3, to make any necessary repairs to the Utility System and perform any work therein pursuant to Section 16.1(b)(iii) in accordance with Prudent Industry Practices;
- (iii) in the event of an Emergency or danger that threatens to cause injury to individuals (or damage to property) or to materially impair the continuous operation of the Utility System and if the Concessionaire is not then taking all necessary steps to rectify or deal with said Emergency or danger, to take actions as may be reasonably necessary to rectify such Emergency or danger in accordance with Prudent Industry Practices, in which event the University shall promptly give the Concessionaire written notice of such measures taken by the University;
- (iv) at its own cost and expense, to (A) install, design, manage, maintain, repair and rehabilitate any existing or future safety measures for the Columbus Campus (whether provided by the University or third parties at the University's instruction) in, on, under, across, over or through the Utility System (including surveillance equipment and other safety equipment), (B) grant easements and rights on, over, under or within the Utility System for the benefit of suppliers or owners of any such measures and (C) use the Utility System in connection with any such installation, design, management, maintenance, repair or rehabilitation (provided that notwithstanding the foregoing clauses (A), (B) and (C), the Concessionaire shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate safety measures for its own account (and not for lease, resale or service to third parties) to the extent that the said safety measures are necessary for the Utility System Operations or as otherwise permitted under this Agreement);
- (v) at its own cost and expense, to (A) install, design, manage, maintain, repair and rehabilitate any existing or future utilities or similar services (whether provided by the University or third parties at the University's instruction) that are not part of the Utility System and do not provide Utilities in, on, under, across, over or through the Utility System (including water lines, sewer lines, fiber optic cable, other communications and other equipment), and (B) grant easements and rights on, over, under or within the Utility System for the benefit of suppliers or owners of any such utilities or services that are not part of the Utility System (provided that notwithstanding the foregoing clauses (A) and (B), the Concessionaire shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account (and not for lease, resale or service to third parties) to the extent that the said utilities or services are necessary for the Utility System Operations); and

- (vi) at its own cost and expense (except as otherwise expressly provided in this Agreement) and solely in accordance with the terms hereof, to do any other act or thing that the University may be obligated to do or have a right to do under this Agreement;

provided, however, that the University shall (A) not be obligated to make any payments to the Concessionaire for such access (other than Concession Compensation to the extent required hereunder) and the University shall use reasonable efforts to minimize interference with the Utility System Operations in connection with any entry on the Utility System pursuant to this Section 3.7(a), (B) not have access to any software or other intangibles of the Concessionaire and (C) comply with the Concessionaire's reasonable safety protocols and requirements to the extent provided in writing in advance to the University. The University shall pay to the Concessionaire the Concession Compensation resulting from any entry to or action on the Utility System pursuant to clauses (iv), (v) and (vi) of this Section 3.7(a) in accordance with Section 15.3.

- (b) *Access Rights.* The University and any of its Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires and others claiming by, through or under the University, during the progress of any work referred to in this Section 3.7 shall have all necessary easement and access rights to the Utility System. To the extent that the University undertakes work or repairs in the Utility System under this Section 3.7 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and professional manner, in accordance with any applicable Performance Standards and in such a manner as not to unreasonably interfere with the Concessionaire's conduct of business in or use of such space.
- (c) *Renewable and Other Energy Resources.* The Concessionaire and the University recognize the value of exploring the use of renewable energy, energy storage and other energy resources, and, consistent therewith, the University reserves the right to use portions of the Utility System for the installation, operation, replacement and repair of energy apparatus, equipment, or improvements, including solar panels as well as collection and distribution facilities in accordance with Prudent Industry Practices and applicable Law. With respect to the installation or replacement of any such energy apparatus, equipment, or improvement, if such energy apparatus, equipment, or improvement is not being installed or replaced for a pilot program or was not donated or granted to the University, then the University shall provide the Concessionaire with written notice that it intends to install or replace such energy apparatus, equipment, or improvement, which notice shall include the plans, specifications, schedule (including the liquidated damages for failure to meet such schedule) and cost therefor, and the Concessionaire shall have the right to elect to install or replace such energy apparatus, equipment, or improvement in accordance with the notice provided by the University by providing written notice of such election to the University within 15 Business Days of receipt of the University's written notice. If the Concessionaire so elects to install or replace such energy apparatus,

equipment, or improvement, (i) it shall do so in accordance with the terms and conditions of the University's notice, (ii) to the extent such energy apparatus, equipment, or improvement is a Capital Improvement, it shall, to the extent the costs therefor are incurred by the Concessionaire, be deemed to be a Capital Improvement Approved in accordance with Section 4.3(c)(i) (including the budgeted costs and liquidated damages set forth in such notice), and, once installed, shall be deemed part of the Utility System and (iii) to the extent such energy apparatus, equipment, or improvement involves construction activities, the Concessionaire shall comply with the Wage and Hour Laws, if applicable, and Chapter 153 if the estimated cost of such construction (inclusive of professional fees and expenses for services associated with the preparation of plans, permit costs, testing costs and other fees associated with the work, plus a contingency reserve) is equal to or more than the threshold as determined pursuant to Ohio Rev. Code Ann. § 153.53. The Concessionaire shall not subdivide the construction activities into component parts or separate projects in order to avoid the thresholds set forth in this Section 3.7(c). If the Concessionaire fails to respond within 15 Business Days of receipt of the University's written notice, it shall be deemed to have elected not to install or replace such energy apparatus, equipment, or improvement, and the University shall have the right to install or replace such energy apparatus, equipment, or improvement in accordance with this Section 3.7(c). Any such access contemplated by this Section 3.7(c) shall comply with the access right requirements set forth above in Section 3.7(b). In connection therewith, upon the request of the University, the Concessionaire agrees that it shall cause any such energy apparatus, equipment, or improvement to be connected to, or become part of, the Utility System in a manner that complies with the Concessionaire's reasonable interconnection and generation standards and is in accordance with Prudent Industry Practices and applicable Law, and that the Concessionaire will use any energy resources generated or stored by such apparatus, equipment, or improvement in the operation of the Utility System to the extent such energy is made available for use in the Utility System. To the extent the costs incurred for such interconnection (including any costs of installation, operation, replacement and repair) do not qualify as O&M Costs, such costs shall be reimbursed to the Concessionaire as Concession Compensation.

- (d) *Effect of Reservation.* Any reservation of a right by the University and any of its Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires and others claiming by, through or under the University to enter the Utility System and to make or perform any repairs, alterations, Restoration or other work in, to, above, or about the Utility System which is the Concessionaire's obligation pursuant to this Agreement, shall not be deemed to (i) impose any obligation on the University to do so, (ii) render the University liable to the Concessionaire or any other Person for the failure to do so or (iii) relieve the Concessionaire from any obligation to indemnify the University as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the University to do any work required to be performed by the Concessionaire hereunder and performance of any such work by the

University and any of its Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires and others claiming by, through or under the University shall not constitute a waiver of the Concessionaire's default in failing to perform the same.

- (e) *Energy Research and Education.* The Concessionaire acknowledges that energy research and education is a significant focus of the University. The University and its energy industry research partners recognize the value of conducting applied energy research in real-world settings, and, consistent therewith, the University reserves the right to use portions of the Utility Facilities for the installation, evaluation, testing, operation, and replacement of energy apparatus, equipment, or improvements to serve research and academic purposes. Any such access contemplated by this Section 3.7(e) shall (i) comply with the access right requirements set forth above in Section 3.7(b), (ii) be in accordance with Prudent Industry Practices and applicable Law and (iii) comply with the Concessionaire's reasonable safety protocols and procedures to the extent provided in writing in advance to the University. In connection therewith, upon the request of the University, the Concessionaire agrees that it shall cooperate and take all reasonable actions to cause any such energy research apparatus, equipment, or improvement to be connected to the Utility Systems, including associated data collection apparatus, equipment, or improvement, in a manner that complies with the Concessionaire's reasonable interconnection standards, provided that the University shall maintain any information received by the University in connection therewith confidential in accordance with Section 8.2(b) if the Concessionaire has identified such information as a trade secret. To the extent the costs incurred for such connections do not qualify as O&M Costs, such costs shall be reimbursed to the Concessionaire as Concession Compensation. The Concessionaire also acknowledges that as part of the University's research, the University may request information regarding the Utility System, which information shall be provided pursuant to Section 3.12(a).

**Section 3.8. Payment of Taxes.** The Concessionaire shall pay when due all Taxes payable during the Term in respect of the use of, operations at, occupancy of or conduct of business in or from the Utility System, including any Property Taxes in respect of the Utility System, subject to this Section 3.8. The Parties acknowledge that, as of the Bid Date, the Utility System is exempt from Property Taxes. To the extent the Utility System or any portion thereof becomes not exempt from any Property Taxes due to any cause other than acts or omissions of the Concessionaire or its Representatives (other than those actions or inactions that the Concessionaire is directed or obligated to take pursuant to this Agreement, including in order to comply with the Performance Standards, and the execution of this Agreement), the actual costs of any resulting Property Taxes payable during the Term shall be included in Uncapped O&M Costs. The Concessionaire shall use commercially reasonable efforts to reduce the amount of Taxes required to be paid by it or the University. The University reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid by the Concessionaire and which are not being contested by the Concessionaire, and the amount so paid by the University shall be deemed additional consideration hereunder, due and payable by the Concessionaire within 20 Business Days after written demand by the University. The

Concessionaire may contest any Taxes for which it is responsible pursuant to this Section 3.8 provided that (i) no such contest may involve a reasonable possibility of forfeiture or sale of the Utility System, and (ii) upon the final determination of any such contest, if the Concessionaire has not already done so, the Concessionaire shall pay any amount found to be due, together with any costs, penalties and interest. The University shall, at no out-of-pocket cost to the University, reasonably cooperate with the Concessionaire in any reasonable attempt by the Concessionaire to reduce or eliminate the Concessionaire's Tax liability.

### **Section 3.9. Utilities.**

- (a) *Charges.* Unless otherwise directed by the University in writing, the Concessionaire shall ensure that contracts for utilities (other than those utilities subject to a Supply Contract and water, which is addressed in Section 7.4(d)) provide that invoices for all charges (including all applicable Taxes and fees) for such utilities and services used in the Utility System Operations during the Term are remitted to the Concessionaire, which the Concessionaire shall pay and shall be included as Capped O&M Costs. The University shall pay, and the Concessionaire shall not be responsible for, stormwater charges assessed by the City of Columbus, Ohio, except to the extent that such stormwater charges increase as a result of an action or inaction of the Concessionaire (other than those actions or inactions that the Concessionaire is directed or obligated to take or omit pursuant to this Agreement, including in order to comply with the Performance Standards), as determined by the University in its reasonable discretion. Upon request of the University, the Concessionaire shall forward to the University, within 15 Days following the respective due dates, official receipts, photocopies thereof or other evidence satisfactory to the University, of the payment required to be made by the Concessionaire in accordance with this Section 3.9. The University does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of utility services in and of itself shall never be deemed an Adverse Action or an eviction or disturbance of the Concessionaire's use of the Utility System or any part thereof, or render the University liable to the Concessionaire for damages or, unless the same constitutes a Delay Event, relieve the Concessionaire from performance of the Concessionaire's obligations under this Agreement.
- (b) *Utility Coordination.* Subject to Section 7.4, the Concessionaire shall coordinate all Utility System Operations with utilities and Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and other apparatus in, on, under, over, adjacent to or otherwise interconnecting with the Utility System. The Concessionaire shall notify the University in writing prior to communicating with any such utilities or Persons and shall take the University's direction in connection therewith, provided such direction is in accordance with Prudent Industry Practices and applicable Law. If the Concessionaire follows the direction of the University pursuant to the immediately preceding sentence, it

shall be deemed to have satisfied its obligations with respect to this Section 3.9(b) solely with respect to the matter to which such direction by the University relates. In connection with its obligations under this Section 3.9(b), the Concessionaire shall cause provision to be made for the removal or temporary or permanent relocation and restoration of utilities and other services and any lines, equipment, cables, systems and other apparatus not used in connection with Utility System Operations that intersect, interfere with, interface with or otherwise affect the Utility System Operations and shall arrange for temporary rights of entry and access to utilities and other services to be made available that are necessary in connection with the Utility System Operations or as may exist under this Agreement or applicable Law; provided that the University shall cooperate with the Concessionaire with respect to the Concessionaire's obligations under this Section 3.9(b).

- (c) *No Interference.* The Parties understand and agree that nothing in Section 3.9(b) is in any way intended to interfere with the Utility System Operations by the Concessionaire, and the University shall cooperate with the Concessionaire in minimizing any effect that the obligations of the Concessionaire under Section 3.9(b) and this Section 3.9(c) may have on the Utility System Operations, including reasonable efforts to schedule any such works outside of the academic term or on weekends.
- (d) *Sewer Credits.* The Concessionaire shall cause, at all times during the Term, the points of interaction between the Utility System and the City of Columbus' sewer system to be monitored by deduct meters and shall provide to the University the information from such meters promptly after it becomes available, in a format reasonably acceptable to the University.
- (e) *Communications Systems.* To the extent that the Concessionaire utilizes or connects with the University's communications systems, the Concessionaire shall be responsible for the operation and maintenance of its telecommunications systems up until the point of connection with the University's system in accordance with the Performance Standards.

### **Section 3.10. Notices of Defaults and Claims.**

- (a) *Notice by the Concessionaire.* The Concessionaire shall promptly give notice to the University (i) if the Concessionaire becomes aware that a Concessionaire Default has occurred under this Agreement (provided, however, that the failure to give such notice shall not constitute an independent Concessionaire Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the Concessionaire pertaining to the Utility System, the Utility System Operations or the University (whether or not such claim, proceeding or litigation is covered by insurance) of which the Concessionaire is aware (other than as a result of a notice to the Concessionaire from the University). The Concessionaire shall provide the University with all reasonable

information requested by it from time to time concerning the status of such claims, proceedings or litigation.

- (b) *Notice by the University.* The University shall promptly give notice to the Concessionaire (i) if the University becomes aware that a University Default has occurred under this Agreement (provided, however, that the failure to give such notice shall not constitute an independent University Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the University pertaining to the Utility System, the Utility System Operations or the Concessionaire (whether or not such claim, proceeding or litigation is covered by insurance) of which the University is aware (other than as a result of a notice to the University from the Concessionaire). The University shall provide the Concessionaire with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

### **Section 3.11. Intellectual Property.**

- (a) Subject to Section 3.11(h), the Concessionaire shall promptly deliver to the University copies of all Proprietary Intellectual Property owned by the Concessionaire which it uses in relation to the Utility System or the Utility System Operations prior to its use in connection with the Utility System or the Utility System Operations. Except as otherwise provided herein, all Proprietary Intellectual Property shall remain exclusively the property of the Concessionaire or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to the University.
- (b) The University shall have and is hereby granted a perpetual, nonexclusive, transferable (subject to Section 3.11(d)), royalty-free, irrevocable, worldwide, fully paid-up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of the Concessionaire used solely or primarily in connection with the Utility System, Utility System Operations, Capital Improvements, ECMs and Material Changes; provided, that the University shall have the right to exercise such license only at the following times:
  - (i) From and after the expiration or earlier termination of the Term for any reason whatsoever;
  - (ii) During any time that the University is exercising its rights to remedy a Concessionaire Default under this Agreement for so long as such Concessionaire Default is continuing and has not been cured; and
  - (iii) During any time that the Leasehold Mortgagee (or its designee or nominee) has replaced the Concessionaire pursuant to Section 19.8(d) of this Agreement.
- (c) The University shall have no right to sell any Proprietary Intellectual Property of the Concessionaire or its Affiliates or Contractors or use, reproduce, modify,

adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any purpose other than as set forth in Section 3.11(b), and must ensure that any Person to which it discloses any Proprietary Intellectual Property of the Concessionaire pursuant to the licenses granted under this Section 3.11 agrees to be bound by reasonable confidentiality obligations on access to and use of confidential and proprietary information.

- (d) The right to transfer the license is limited to any Person that succeeds to the University's interests in all or any portion of the Utility System, or to the power and authority of the University generally or with respect to all or any portion of the Utility System. The license is divisible in the event of a transfer of or with respect to a portion of the Utility System.
- (e) The right to sublicense is limited to any Representatives that are retained by or on behalf of the University in connection with the Utility System or the Utility System Operations. All such sublicenses shall be subject to Section 3.11(f).
- (f) The University shall:
  - (i) Not disclose any Proprietary Intellectual Property of the Concessionaire to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of the University relating thereto, except to the extent such disclosure is required by Law;
  - (ii) Enter into a commercially reasonable confidentiality agreement if reasonably requested by the Concessionaire with respect to the licensed Proprietary Intellectual Property; and
  - (iii) Include in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of the Concessionaire and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.
- (g) The Concessionaire shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses. The following provisions shall apply with respect to any Proprietary Intellectual Property owned by a Person, including the Concessionaire's Affiliates, other than the Concessionaire, except for mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to the University using commercially reasonable efforts:
  - (i) For such Proprietary Intellectual Property used exclusively or primarily in connection with the Utility System, Utility System Operations, Capital

Improvements, ECMs or Material Changes or which is not commercially available, the Concessionaire shall obtain from the owner of such Proprietary Intellectual Property, concurrently with the execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property, whichever comes first, both for the Concessionaire and the University a perpetual, non-exclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up license to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Utility System, Utility System Operations, Capital Improvements, ECMs or Material Changes or any ancillary use thereto.

- (ii) For such Proprietary Intellectual Property not used exclusively or primarily in connection with the Utility System, Utility System Operations, Capital Improvements, ECMs or Material Changes and which is commercially available, the Concessionaire shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Utility System, to the extent commercially reasonably available, both for the Concessionaire and the University, nonexclusive and transferable license to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Utility System, Utility System Operations, Capital Improvements, ECMs or Material Changes or any ancillary use thereto.
- (iii) The limitations on sale, transfer, sublicensing and disclosure by the University set forth in this Section 3.11 shall also apply to the University's licenses in such Proprietary Intellectual Property.
- (iv) For Proprietary Intellectual Property subject to Section 3.11(g)(i), the Concessionaire shall also either cause to be delivered to the University copies of such Proprietary Intellectual Property or obtain from such owner consent to have the relevant Proprietary Intellectual Property deposited into an Intellectual Property Escrow, which Intellectual Property Escrow shall be released under similar circumstances as described in Section 3.11(h).

(h) *Intellectual Property Escrow.*

- (i) The University and the Concessionaire acknowledge that the Concessionaire and its Contractors that supply software, including related modifications, updates, revisions, replacements and upgrades, specifications, plans, drawings, information, documentation and any other intellectual property (including business systems and patents) (collectively, such "Proprietary Intellectual Property") with respect to the Utility System, may not wish to deliver this Proprietary Intellectual

Property directly to the University, as public disclosure could deprive the Concessionaire and/or its Contractors of commercial value. The Concessionaire further acknowledges that the University nevertheless must be given access to such Proprietary Intellectual Property at any time, and that such Proprietary Intellectual Property owned by the Concessionaire if not delivered to the University in accordance with Section 3.11(a) shall be released from the Intellectual Property Escrow and delivered to the University in any of the following circumstances:

- (A) this Agreement is terminated for Concessionaire Default;
  - (B) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Concessionaire occurs;
  - (C) the Concessionaire is dissolved or liquidated; or
  - (D) the Concessionaire fails or ceases to provide services as necessary to permit continued use of such Proprietary Intellectual Property pursuant to the license or any sublicense thereof.
- (ii) In lieu of delivering such Proprietary Intellectual Property directly to the University, the Concessionaire may elect to deposit it with a neutral custodian. In such event, the Concessionaire shall (a) select, subject to the University's prior Approval, one or more escrow companies or other neutral custodian (each an "Intellectual Property Escrow Agent") engaged in the business of receiving and maintaining escrows of Proprietary Intellectual Property, and (b) establish one or more escrows (each an "Intellectual Property Escrow") with the Intellectual Property Escrow Agent on terms and conditions reasonably acceptable to the University and the Concessionaire for the deposit, retention, upkeep and release of such Proprietary Intellectual Property. The location of such escrows for deposit of materials in physical form (if any) is limited to Columbus, Ohio or another location the University Approves in writing in its sole discretion. Intellectual Property Escrows also may include Affiliates and Contractors as parties and may include deposit of such Proprietary Intellectual Property owned by Affiliates and Contractors. The University shall not be responsible for the fees and costs of the Intellectual Property Escrow Agent, and the Concessionaire shall not be permitted to include the costs thereof as an O&M Cost.
- (iii) If the Concessionaire elects to deliver such Proprietary Intellectual Property to an Intellectual Property Escrow, the Concessionaire shall make such delivery to the Intellectual Property Escrow Agent not later than the time such Proprietary Intellectual Property is used in connection with the Utility System or Utility System Operations.

- (iv) The University shall be a named, intended third-party beneficiary of each escrow agreement and each Intellectual Property Escrow with direct rights of enforcement against the Concessionaire and the Intellectual Property Escrow Agent. Each escrow agreement shall provide that neither the Concessionaire nor the Intellectual Property Escrow Agent shall have any right to amend or supplement it, or waive any provision thereof, without the University's prior Approval, which may be withheld in its sole discretion.
- (v) Intellectual Property Escrows shall provide rights for verification of each deposit into the Intellectual Property Escrow including an inventory of items deposited and completion of an escrow deposit questionnaire by the Concessionaire, which is reasonably acceptable to the University, and which will be promptly delivered to the University.
- (vi) The Intellectual Property Escrows shall survive Closing and expiration or earlier termination of this Agreement regardless of the reason, until such time as both Parties mutually agree, in their respective sole discretion, that the Proprietary Intellectual Property contained therein is of no further use or benefit to the Project.
- (i) The University acknowledges that the Proprietary Intellectual Property may also be assigned as security to a Leasehold Mortgagee and that each of the University and such Leasehold Mortgagee shall be entitled to use the Proprietary Intellectual Property in enforcing their respective security as provided herein.
- (j) The University agrees that if it uses any Proprietary Intellectual Property (i) it shall bear all risks associated with the use of the Proprietary Intellectual Property, (ii) it may not rely on the Proprietary Intellectual Property, and (iii) under no circumstances will the Concessionaire be liable in any way with respect to the University's use of, or for any loss or damage of any kind incurred as a result of the use of, the Proprietary Intellectual Property.

### **Section 3.12. Use of Information and Records.**

- (a) Unless prohibited by applicable Law and to the extent reasonably necessary, the University shall be entitled to access all reasonable records, electronic data and other information collected and retained by the Concessionaire with respect to the Utility System and the Utility System Operations, including utility usage data, consumption pattern information and other utility data, and the Concessionaire shall maintain such records, data and other information in a format that is readily accessible to the University in order to facilitate the University's efforts with respect to energy efficiency, sustainability, environmental impact and research. The University shall use commercially reasonable efforts to provide at least 2 Business Days' written notice prior to accessing such records. The Concessionaire shall maintain all records related to the operation and maintenance of the Utility System for at least 36 months after

such records are created. The University covenants and agrees that it will implement safeguards to protect against the disclosure or misuse of any such Concessionaire information that is in its care or custody and will promptly inform the Concessionaire if there is any breach or suspected breach of security related to such information, subject to Section 8.2(b).

- (b) Unless prohibited by applicable Law, the Concessionaire shall be entitled to access all reasonable records, electronic data and other information collected and retained by the University to the extent reasonably required for, and only for the purpose of, the Concessionaire's performance of its obligations under this Agreement and the Performance Standards, including the maintenance of any Authorization. The University shall promptly make such records, data and information available to the Concessionaire as reasonably requested by the Concessionaire. Unless disclosure is required by applicable Law, the Concessionaire shall keep confidential any information obtained from the University or its Representatives. The Concessionaire covenants and agrees that it will implement safeguards to protect against the disclosure or misuse of any such University information that is in its care or custody and will promptly inform the University if there is any breach or suspected breach of security related to such information. If any information obtained from the University or its Representatives is provided by the Concessionaire, or the University on behalf of the Concessionaire, to any third party, including any equity member of the Concessionaire, the Operator or any Contractor, then (i) the Concessionaire shall cause such third party to comply with the provisions of this Section 3.12(b) and (ii) the Concessionaire shall be liable for the disclosure or use of such information by such third party as if the Concessionaire had disclosed or used it.

**Section 3.13. Standard of Operation and Maintenance of the Utility System.** At all times during the Term, the Concessionaire shall be required to maintain and operate the Utility System in accordance with the Performance Standards and Prudent Industry Practices.

**Section 3.14. Payments by the University.** The Concessionaire acknowledges and agrees that if the University is required under applicable Law of general application to withhold a portion of any payment that the University is obligated to make to the Concessionaire under this Agreement and to pay such amount to a Governmental Authority, the University will be deemed to have satisfied such payment obligation to the Concessionaire to the extent of such withholding by the University and payment to the appropriate Governmental Authority. If any such withheld amounts are permitted to be paid to the Concessionaire, the University shall pay such amounts to the Concessionaire whenever permitted by Law. Any items and payment amounts that, to the Actual Knowledge of the University 10 Business Days prior to the Closing Date, it is legally required to withhold from the Concessionaire as of the Closing Date will be listed in Schedule 14 and agreed to by the Concessionaire, acting reasonably, prior to Closing as a condition of Closing, provided that regardless of whether any payment is listed on Schedule 14, the University shall always have the right to withhold payments pursuant to this Section 3.14 if required by Law and shall not be in breach of this Agreement. Prior to withholding any portion of any payment hereunder, the University shall give reasonable prior notice to the Concessionaire of the proposed withholding, and the Concessionaire shall promptly notify the

University of any challenge by the Concessionaire to such proposed withholding. For the avoidance of doubt, any payment obligation of a University's department, office or center required by this Agreement is a payment obligation of the University for purposes of this Agreement, and the University shall either cause such department, officer or center to pay the payment obligation or shall satisfy the payment obligation itself.

**Section 3.15. Naming and Signage Rights, Other Revenue Activities and Commercial Advertisements and Activities.**

- (a) Due to the importance of having uniform signage on the Columbus Campus for safety and aesthetic purposes, the Concessionaire shall have no right to name or modify the name of the Utility System or any portion thereof or, unless required to do so by applicable Law, to install signage of any kind thereon, without the University's Approval, which may be withheld in its sole discretion.
- (b) The University shall have the right, in its discretion, to install, replace, display and maintain signage (i) that relates to identification or naming of the Utility System, the Utility Facilities, portions thereof, or surrounding areas or (ii) for informational or educational purposes; provided that (A) the Concessionaire shall have no obligation under the Performance Standards to replace or maintain any signage installed by the University for advertising purposes, and (B) the University shall not install any signage that relates to naming of the Utility System, the Utility Facilities, portions thereof, or surrounding areas for a Person that competes directly with the Concessionaire or the Operator.
- (c) The Concessionaire shall be entitled to investigate opportunities to develop additional sources of revenue in connection with the Utility System, including providing utility services to customers other than the University and making market-based sales of electricity, provided that the Concessionaire shall not perform any such revenue producing activities unless and until: (i) the Concessionaire provides reasonable proof to the University for the University's Approval that such activities will not adversely affect (A) the University or its students, employees or Representatives, including causing any increase in costs to the University pursuant to Article 7, or (B) the ability of the Concessionaire and its Affiliates to comply with the terms and conditions of this Agreement; (ii) the University is granted the right to receive a portion of the gross revenue from such additional sources of revenue to compensate the University for the unreimbursed actual costs incurred by the University with respect to such additional sources of revenue; (iii) the Concessionaire has received all relevant Authorizations from Governmental Authorities; and (iv) the Concessionaire provides reasonable proof to the University for the University's Approval that such activities will comply with Prudent Industry Practices and applicable Laws. For the avoidance of doubt, notwithstanding the foregoing, the University shall not incur any costs in connection with such additional sources of revenues unless such costs are fully reimbursed by the Concessionaire.

- (d) Notwithstanding anything to the contrary contained herein, due to the importance to the University of having uniform nutritional choices on the Columbus Campus, the University hereby reserves the right to install and operate vending machines in any portion of the Utility System and to access the Utility System for the purposes thereof, and the University shall be entitled to the revenue generated by such vending machines.
- (e) The University and the Concessionaire executed on the Closing Date a trademark license agreement in the form attached hereto as Schedule 24.
- (f) In the event that any revenue is generated by the University's participation in any demand response or related capacity performance programs, then those revenues that accrue to the University shall be shared with the Concessionaire as follows:
  - (i) for the period from June 2018 through May 2021, the revenue generated from: (1) the first 10 megawatts of performance on an annual basis (each year calculated from June 1 to May 31) shall be 100% retained by the University and (2) any megawatts beyond the first 10 megawatts of performance on an annual basis shall be split 75% to the University and 25% to the Concessionaire; and
  - (ii) from June 2021 through the remainder of the Term, the revenue generated from: (1) the first 10 megawatts of performance on an annual basis (each year calculated from June 1 to May 31) shall be split 90% to the University and 10% to the Concessionaire, (2) the 11th through the 24th megawatt of performance shall be split 75% to the University and 25% to the Concessionaire and (3) any megawatts beyond the first 24 megawatts of performance on an annual basis shall be split 50% to the University and 50% to the Concessionaire.

The above revenue sharing shall not apply to any revenue generated by any future combined heat and power plant or new renewable generation facilities constructed on the Columbus Campus. Any megawatts of performance generated by such combined heat and power plant or similar power source shall not be included in the calculations in Section 3.15(f)(i)-(ii).

The University shall pay over to the Concessionaire its share of the revenue pursuant to this Section 3.15(f) within 30 Days after receipt, provided that the University shall have the right to offset any such revenues against any payments due from the Concessionaire to the University.

**Section 3.16. Reversion of Utility System.** On the Reversion Date, the Concessionaire shall surrender and deliver to the University all of its rights, title and interest in the Utility System (including all improvements to the Utility System, the Utility System Assets and all tangible and intangible personal property of the Concessionaire (including inventories) that is included in the Utility System and used in connection with the Utility System Operations) subject, however, as to any intellectual property included in the Utility System, to any

restrictions or prohibitions to disclosure, transfer or sharing thereof and any other rights of third parties with respect thereto, all in accordance with the provisions of Section 16.3. With respect to any third party or proprietary software utilized by the Concessionaire in the operation of the metered Utility System at the time of the Reversion Date, the Concessionaire and the University will negotiate in good faith appropriate license rights and terms for the University's continued use of the software following reversion, except as otherwise set forth in Section 3.11(g).

**Section 3.17. Police, Fire, Emergency and Public Safety Access Rights.** Notwithstanding any other provision of this Agreement, at all times during the Term and without notice or compensation to the Concessionaire (i) any police, fire and emergency services and any other security or emergency personnel retained by or on behalf of the University shall have access, as required by such services or personnel, to the Utility System; (ii) the University shall have access to the Utility System as necessary for the protection of public safety; and (iii) any Governmental Authority with jurisdiction over the Utility System shall have access to the Utility System as necessary for inspection, emergency management and homeland security purposes, including the prevention of or response to a public safety emergency (so long as any exercise of such jurisdiction, to the extent effected by the University, shall be strictly in accordance with the terms hereof).

**Section 3.18. Negotiations with Third Parties.** Prior to entering into any agreement with any third party, including any Governmental Authority, in connection with the Utility System Operations (a "Third Party Agreement") that extends or could extend beyond the Term or pursuant to which the University may incur any liability whatsoever thereunder, the Concessionaire shall submit such Third Party Agreement for Approval by the University (which Approval may be withheld, conditioned, or delayed in the sole discretion of the University) prior to the execution and delivery thereof (except with respect to Third Party Agreements the absence of which may cause the Concessionaire or Utility System Operations to fail to be in compliance with applicable Law or this Agreement, in which case the Concessionaire may enter into such Third Party Agreement upon notice to the University provided that the Concessionaire indemnifies the University for any Losses relating thereto).

**Section 3.19. Administration of the Public Way.** The Concessionaire acknowledges and accepts that the University holds and administers the Public Way for the non-discriminatory benefit of all Persons and interests, including the Concessionaire and the Concessionaire Interest. The rights granted to the Concessionaire under this Agreement do not create a priority in favor of the Concessionaire over any other user of the Public Way, and such rights are subject to the Performance Standards and all provisions of Law.

**Section 3.20. Rights to Adjacent Space.** The University hereby reserves, and is not demising or leasing to the Concessionaire, the right or easement to construct and reconstruct and forever maintain the air rights with respect to the Utility Facilities and other property within the Utility System and the right to construct, use or occupy any of the space not directly occupied by the Utility System, including (i) any and all space located above, below or adjacent to any such property, and (ii) any and all space located above, below or adjacent to any improvements within the Utility System as of the Signing Date, provided that such construction, use or occupancy does not materially impair the Utility System Operations. For the avoidance of doubt, to the extent that any Utility Facility is buried below the surface of any part of the Columbus Campus,

the University shall have the right to construct any building, structure or other improvement on that part of Columbus Campus, provided such construction does not damage or alter such buried Utility Facilities. The University's exercise of its rights hereunder shall not be subject to any of the terms and conditions of Section 3.7(a).

**Section 3.21. Sole Utility Provider.** The University covenants that, during the Term, it will not, and it will not contract or agree with any third party to, provide any Utility or Utility Services on the Columbus Campus, except in the following circumstances: (i) as of the Bid Date, a third party is providing the relevant Utility or Utility Services to a portion of that Columbus Campus, in which case the University may continue to have that third party or a successor thereto or a replacement thereof provide such Utility or Utility Services during the Term on only that portion of the Columbus Campus; (ii) as of the Bid Date, any district utility systems within the Columbus Campus which are generating or distributing Utilities beyond the lines of demarcation identified in the Performance Standards; or (iii) the University installs systems, equipment or materials for the distribution of Utilities beyond the lines of demarcation identified in the Performance Standards, which shall be performed by or on behalf of the University. For the avoidance of doubt, if the University does not own or lease a building, facility, other improvement or land within the Columbus Campus, the University shall have no obligation with respect to causing the Concessionaire to be the sole provider of Utilities or Utility Services with respect to such building, facility, other improvement or land, and there shall be no Concession Compensation payable in connection therewith, except as expressly set forth in Section 5.3.

**Section 3.22. Repair and Maintenance of the Tunnels.** The Concessionaire covenants that, during the Term, it shall cause any intentional or unintentional damage to the Tunnels or the Release of any Hazardous Substances in the Tunnels caused, directly or indirectly, by the Concessionaire, the Operator or any of their respective Representatives or the Utility System to be promptly restored and repaired to the same or better condition that existed prior to such damage. The Concessionaire or the Operator shall contract with a Contractor to perform such restoration or repair, which Contractor must either be on a list of pre-approved contractors provided by the University or otherwise Approved by the University in its sole discretion. To the extent that the Concessionaire or the Operator becomes aware of any repair or maintenance that needs to be performed in connection with the Tunnels that is not the Concessionaire's responsibility hereunder, it shall promptly provide notice thereof to the University or a person or department designated by the University. Other than the Concessionaire's responsibilities pursuant to this Section 3.22 and the Performance Standards and its responsibility to maintain any Utility Facility or any other portion of the Utility System, the University shall be responsible for the repair and maintenance of the Tunnels and the equipment therein in accordance with Prudent Industry Practices. Except to the extent caused by any act or omission of the Concessionaire, the Operator or any of their respective Representatives, the University shall manage, remediate or otherwise address the presence or potential presence of any Hazardous Substances in the Tunnels in accordance with applicable Laws (including Environmental Laws) and Prudent Industry Practices. If the University fails to repair and maintain the Tunnels in accordance with Prudent Industry Practices and such failure creates an Emergency, the Concessionaire shall have the right to take such action as is necessary to remedy such Emergency, and the out-of-pocket cost thereof shall be Concession Compensation, provided that

the Concessionaire shall, where practical, provide the University advance written notice of such action.

**Section 3.23. Adjustments to the Location or Configuration of the Utility System.**

The University shall have the right, upon notice to the Concessionaire, to cause the Concessionaire to alter the location or configuration of the Utility System or to designate alternative real property for the Utility System Land to the extent the University deems it necessary or useful in the operation and use of the Columbus Campus. To the extent such alteration or designation of alternative real property is a Capital Improvement, it shall be considered a New Approved Capital Improvement for a budgeted cost and an increase in the Capped O&M Index reasonably approved by the Concessionaire and the University, but, to the extent such alteration or designation of alternative real property is not a Capital Improvement, the costs incurred by the Concessionaire or the Operator as a result of the University's exercise of its right under this Section 3.23 shall be considered an Uncapped O&M Cost in accordance with the definition thereof. If the University directs the Concessionaire to relocate the Utility System to a location to which it does not have a right to access pursuant to this Agreement, the University shall grant occupancy rights to the Concessionaire sufficient for the Concessionaire to meet its obligations hereunder. If the University designates alternative real property for the Utility System Land, then, upon such designation, (i) such alternative real property shall be deemed Utility System Land for purposes of this Agreement, (ii) the Concessionaire shall return the prior Utility System Land and all improvements and Utility Facilities thereon to the University in the condition required under Section 16.3, at no additional cost to the University, other than out-of-pocket costs incurred by the Concessionaire in connection with such transfer (including the cost of recording the conveyance documentation and the cost of a title policy for the alternative real property for the Utility System Land in the event that the Concessionaire received a title policy with respect to the original Utility System Land), and (iii) in accordance with the University's designation of alternative real property, the Concessionaire shall relocate the Utility Facilities then existing on the prior Utility System Land to the alternative real property. The Concessionaire shall have the right to amend the Memorandum of Lease to reflect any changes resulting from the University's exercise of its right under this Section 3.23, and the University shall reasonably cooperate in such amendment and shall pay the out-of-pocket costs incurred by the Concessionaire in connection therewith.

**Section 3.24. Sales to Individual Customers on the Columbus Campus.** The Concessionaire shall not be permitted to sell any compressed natural gas or other fuels to individual customers on the Columbus Campus. To the extent that the Concessionaire supplies natural gas or other fuels to the University for distribution to individual customers, the University shall control the distribution of such natural gas or other fuels. The Concessionaire shall have no interests or rights to charge or collect any payments from the University or such individual customers for the provision of such natural gas or other fuels.

**Section 3.25. Compressed Air.** Notwithstanding the fact that compressed air is not a Utility, the Concessionaire shall be responsible for operating, maintaining, repairing and replacing, as necessary, the compressed air generators located in McCracken Power Plant as of the Signing Date and the distribution system attached thereto up to and including until the 3" and 4" shut-off valves located inside McCracken Power Plant, just before the pipelines enter the north McCracken Power Plant Tunnel (the "Concessionaire Compressed Air System") until such

time as the University provides the Concessionaire notice to the contrary, such that the Concessionaire Compressed Air System is operated in accordance with the Performance Standards for the Concessionaire Compressed Air System. In connection therewith, the Concessionaire shall promptly install air meters to the Concessionaire Compressed Air System after the Closing Date, the cost of which shall be Approved by the University in advance and shall be a New Approved Capital Improvement Cost. The University shall be responsible for the operation, maintenance, repair and replacement of any portion of the compressed air system on the Columbus Campus that is not part of the Concessionaire Compressed Air System.

**Section 3.26. University Business Continuity Plan.** The Concessionaire shall reasonably cooperate with the University in connection with the University's business continuity plan and shall attend any University meetings regarding such plan if requested by the University.

**Section 3.27. Utility System Tours.** The Concessionaire shall provide tours of the Utility System or any portion thereof to the University and its Representatives upon reasonable request by the University, provided that (i) the Concessionaire shall have the right to refuse to give any tour if such tour would unreasonably interfere with the operation of the Utility System or any of the Concessionaire's other obligations hereunder and (ii) all tour participants shall be required to comply with the Concessionaire's reasonable safety protocols and requirements to the extent provided in writing to the University.

**Section 3.28. Uniforms.** To aid the University's provision of security and safety measures to the Columbus Campus, Concessionaire and Operator personnel working on the Columbus Campus shall wear a uniform that is standard across the Utility System and clearly identifies such personnel as Concessionaire and Operator personnel.

**Section 3.29. Gashouses.** Prior to engaging in any formal or informal discussions regarding the operation, location or management of the Gashouses with any third party that is not an Affiliate of the Concessionaire, the Concessionaire or the Operator shall provide the University with the opportunity to participate in such discussions, which shall be held at times and places that are reasonably acceptable to the University, provided that the right to participate in such discussions shall not grant the University any rights or responsibilities other than those expressly set forth in this Agreement. In addition thereto, the Concessionaire shall promptly provide the University with copies of any written correspondence regarding same with such third parties after it receives or sends such correspondence.

**Section 3.30. Concessionaire's Parent Requirements.** The Concessionaire agrees that, throughout the Term, to the extent that Ohio State Energy Partners Holdings LLC owns an interest in the Concessionaire, it shall be a breach of this Agreement, subject to cure pursuant to Section 16.1(a)(i), if Ohio State Energy Partners Holdings LLC (i) is not formed and organized solely for the purpose of (A) owning the Concessionaire and (B) financing its interest in the Concessionaire and the Concessionaire's interest in the Utility System; (ii) engages in any business unrelated to clause (i) above; (iii) has any assets other than those related to its activities in accordance with clauses (i) and (ii) above; (iv) except as appropriate for Tax reporting purposes, does not maintain its own separate books and records and its own accounts; (v) does not observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence; (vi) guarantees or otherwise

obligates itself with respect to the debts of any other Person; (vii) except as expressly permitted hereby or by any Leasehold Mortgage, or in connection in the ordinary course of business of the Utility System, pledges its assets for the benefit of any other Person; or (viii) does not maintain adequate capital in light of its contemplated business operations.

#### **ARTICLE 4 CAPITAL IMPROVEMENTS, ECMS AND MATERIAL CHANGES**

**Section 4.1. Concessionaire Responsibility for Capital Improvements.** Other than the Ongoing Utility System Projects, the Concessionaire shall be responsible for all Capital Improvements with respect to the Utility System required to be completed during the Term in accordance with the terms of this Agreement, including as required by the Performance Standards.

**Section 4.2. Authorizations Related to Capital Improvements.** The Concessionaire's obligation to perform Capital Improvements shall be subject to the issuance by Governmental Authorities and the University of any and all Authorizations required to be issued by such parties with respect thereto, and the University agrees (i) not to unreasonably withhold, condition or delay the issuance of any Authorization to be issued by the University for an Approved Capital Improvement and (ii) to use its reasonable efforts to assist the Concessionaire in obtaining any Authorizations required to be issued by Governmental Authorities. Without limiting the generality of the foregoing, the University agrees that it will reasonably assist and cooperate with the Concessionaire in obtaining any and all Authorizations (including any required rights of access over real property that is owned or controlled by the University) in order for the Concessionaire to perform an Approved Capital Improvement, which assistance shall include providing the Concessionaire reasonable access to the areas of the Columbus Campus where the Approved Capital Improvement will be located, subject to the reasonable conditions and restrictions of the University.

#### **Section 4.3. Approval of Capital Improvements, ECMs and Material Changes.**

- (a) The Concessionaire shall not have the right to make any (i) Capital Improvements, (ii) ECMs on the Utility System Land, Utility Facilities or Non-Utility Campus, or (iii) Material Changes, except those Capital Improvements, ECMs or Material Changes which are Approved pursuant to Section 4.3(c).
- (b) The Concessionaire shall have the right to request Approval of (I) a proposed Capital Improvement, ECM or Material Change or (II) a change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change at any time (and shall identify whether an item requested for Approval or any portion thereof is a Capital Improvement, ECM or Material Change or a combination thereof and allocate any portion of the proposed cost that is intended to reduce the Energy Use Intensity), but the University shall not be obligated to consider any such requests for Approval except those requests (i) (A) contained in a proposed Five-Year Plan submitted in accordance with Section 7.3(b) after review thereof by the EAC and (B) proposed to be commenced in the first full Fiscal Year in such proposed Five-Year Plan; (ii)

required to address an Emergency, a change in Law or a change in a Performance Standard; (iii) required in connection with a University Directive; or (iv) required due to Force Majeure, all of which the University shall consider in good faith.

- (c) The Concessionaire shall request Approval of one or more proposed Capital Improvements, ECMs or Material Changes or Approval of a proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change by (1) submitting a request to the University, or an office or person designated by the University Liaison, containing a detailed description of each proposed Capital Improvement, ECM or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change or (2) submitting a proposed Five-Year Plan in accordance with Section 7.3(b) after review thereof by the EAC containing a detailed description of each proposed Capital Improvement, ECM or Material Change proposed to be commenced in the first full Fiscal Year in such proposed Five-Year Plan or each proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, provided that, in each case, such detailed description shall include: (A) total costs for construction and installation thereof; (B) forecasted annual operations and maintenance costs therefor; (C) any proposed modification to the Recovery Period (if applicable) for such Capital Improvement, regardless of whether the Recovery Period would otherwise extend beyond the Term; (D) in the case of a proposed ECM, projected savings calculations and payback schedules, inclusive of O&M Costs, associated with such ECM, including a breakdown of costs and savings by individual ECM; (E) an explanation of all relevant assumptions, variables, and data sources, used to develop the proposal; (F) in the case of a proposed ECM, an explanation of the reasoning behind the prioritization of any ECM proposals; and (G) the proposed schedules, process, and other technical and logistics details associated with the proposed Capital Improvement, ECM, and/or Material Change proposal, including any liquidated damages if the Concessionaire fails to meet the proposed schedule; provided that, to the extent any of the details set out in clauses (A) through (G) above are unavailable or inapplicable, the Concessionaire shall describe the reason for such unavailability or inapplicability. To the extent the University elects to, or is required to, consider a request for Approval of a proposed Capital Improvement, ECM or Material Change or a change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, the University shall review such request and, in its sole discretion:
- (i) Approve such request in accordance with the terms of such request after having undertaken all such necessary action and secured all authorizations, consents and approvals required to be obtained with respect to such Approval at such time, unless the Concessionaire's written request submitted to the University explicitly requested that the University respond only pursuant to Sections 4.3(c)(ii), (iii) or (iv); or

- (ii) provide a written response requiring that the Concessionaire (1) perform additional work with respect to such proposed Capital Improvement, ECM, or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change to provide further information regarding the scope, design or cost thereof and/or multiple alternative designs therefor to the University, which additional work may include procuring design services or a quotation for a guaranteed maximum price or lump sum contract from a contractor or multiple contractors for the proposed Capital Improvement, ECM, or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change or procuring any details set out in clauses (A) through (G) of Section 4.3(c) that were previously unavailable, provided that the cost of such additional work shall be subject to the University's prior Approval, and (2) after performing such additional work, submit a revised request for Approval by the University pursuant to this Section 4.3(c), which revised request, if the initial request was made in connection with the submission of a proposed Five-Year Plan, the University shall consider with respect to the same proposed Five-Year Plan, if submitted within 15 Days before the commencement of the first Fiscal Year of such Five-Year Plan; or
- (iii) (1) provide the Concessionaire with comments on such proposed Capital Improvement, ECM or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, including comments on any details provided in the Concessionaire's proposal, which may include comments from the University intended to align the proposal with the larger Columbus Campus capital improvement plans existing at such time or disagreeing with its characterization as a Capital Improvement, ECM or Material Change or the amount of the cost thereof allocated to reduce Energy Use Intensity, and (2) require that the Concessionaire incorporate such comments and submit a revised request for Approval pursuant to this Section 4.3(c); provided that if the University elects to exercise its rights under this Section 4.3(c)(iii), then the Concessionaire shall have the right, upon written notice to the University, to withdraw its request for Approval; or
- (iv) (1) reject such proposed Capital Improvement, ECM or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change and (2) if such proposed Capital Improvement, ECM or Material Change or change to the scope of a previously Approved Capital Improvement, ECM or Material Change is necessary to comply with Prudent Industry Practices, applicable Law, or the Performance Standards, provide the Concessionaire with a reasonably detailed explanation for such rejection, provided that the University shall not be permitted to reject such proposal under this Section 4.3(c)(iv) if (w) such proposal is required to cause the Utility System to comply with any

new Law or change in Law existing as of the Setting Date and the Concessionaire has received written notice from the applicable Governmental Authority that the Utility System is not in compliance therewith, (x) the Concessionaire has reasonably investigated any potential alternatives to such proposal and provided the University with reasonable evidence of such investigation, (y) the Concessionaire has discussed in good faith with the University and reasonably considered any potential viable alternatives to such proposal and (z) the University has provided no reasonable alternative that would address such new or changed Law that the University has confirmed that it would Approve.

Notwithstanding anything to the contrary in the foregoing, if a single request for Approval pursuant to this Section 4.3(c) includes multiple discrete proposed Capital Improvements, ECMs or Material Changes or changes in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, the University shall have the right to provide different responses with respect to each proposal included in such request.

- (d) To the extent a proposed Capital Improvement, ECM or Material Change or a proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change is Approved, the Concessionaire shall be obligated to complete such Capital Improvement, ECM or Material Change in the timeframe set forth in the Approval thereof, which timeframe may not be more stringent than the schedule included in the Concessionaire's most recent request for Approval thereof. As a condition of its Approval of any proposed Capital Improvement, ECM or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, the University may require certain payments of liquidated damages by the Concessionaire to the University if the Concessionaire does not meet such timeframe, but only to the extent such liquidated damages are proposed in the Concessionaire's most recent request for Approval thereof.
- (e) To the extent a proposed Capital Improvement or proposed change in a previously Approved scope or cost of a Capital Improvement is Approved, the Concessionaire shall have the right to (i) deem the cost of such Capital Improvement (up to the Approved amount) or the change in such cost (up to the Approved amount), as applicable, a New Approved Capital Improvement Cost in accordance with Schedule 5 and (ii) include the out-of-pocket costs incurred by the Concessionaire in connection with preparing and submitting a revised request for Approval of such Capital Improvement pursuant to Section 4.3(c)(ii) (if applicable) as part of such New Approved Capital Improvement Cost. The Approved out-of-pocket costs incurred by the Concessionaire pursuant to Section 4.3(c)(ii)(1) in connection with a proposed Capital Improvement or a proposed change in the scope or cost of a previously Approved Capital Improvement that is not Approved shall be included in Uncapped O&M Costs. For any proposed Material Change or ECM that is not a Capital Improvement or any proposed change in the scope or cost of a previously Approved Material Change or ECM

that is not a Capital Improvement, the out-of-pocket costs incurred by the Concessionaire pursuant to Section 4.3(c)(ii) shall be included in Uncapped O&M Costs (whether or not such ECM or Material Change or change in the scope or cost of such previously Approved ECM or Material Change is Approved).

- (f) After Approval of a proposed Capital Improvement, ECM or Material Change or a proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, the Concessionaire shall make such Capital Improvement, ECM or Material Change in accordance with this Agreement, including but not limited to the Wage and Hour Laws specified in Section 11.3.
- (g) The Concessionaire may perform Design-Build ECMs and Non-Construction ECMs on the Non-Utility Campus only in accordance with the terms and conditions of this Section 4.3(g).
  - (i) For any Approved Non-Construction ECM, the Concessionaire may implement such Approved Non-Construction ECM in accordance with this Agreement.
  - (ii) The Concessionaire shall perform, or contract for the performance of, energy audits or any testing or investigation necessary to develop any ECM. The Concessionaire shall share the results of any such audit, testing or investigation with the University promptly after the Concessionaire's receipt thereof.
  - (iii) The Concessionaire may perform Design-Build ECMs on the Non-Utility Campus only as specified in this Section 4.3(g)(iii). For purposes of any proposed Design-Build ECM, the University and the Concessionaire agree as follows:
    - (A) The University, on the Closing Date, selected the Concessionaire as a "design-build firm" in accordance with, and as defined in, Chapter 153.
    - (B) Pursuant to a separate assignment agreement on substantially the terms set forth in this Section 4.3(g)(iii)(B), the Concessionaire may assign to the ECM provider the Concessionaire's obligations with respect to Design-Build ECMs under this Agreement provided that: (1) the Concessionaire shall remain liable to the University for the performance of any assigned obligations under this Agreement; (2) the ECM provider shall agree to perform such obligations in compliance with this Agreement; and (3) no such assignment shall result in or be deemed to create any obligation of the University to pay any fee or other compensation for designing and implementing any Design-Build ECM

directly or indirectly (other than payments to the Concessionaire required under this Agreement) to such ECM provider.

- (h) The Concessionaire shall have the right, as its sole remedy, with respect to any Approvals or rejections by the University pursuant to this Section 4.3, to submit a claim through the procedures set forth in Article 18 that the University unreasonably withheld, conditioned or delayed its Approval of a proposed Capital Improvement, ECM or Material Change or a proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, notwithstanding that the University is not required to be reasonable in granting or withholding its Approval under this Section 4.3, and the Concessionaire shall have no further remedy with respect to any such Approvals or rejections by the University. If it is determined pursuant to Article 18 that the University unreasonably withheld, conditioned or delayed its Approval of a proposed Capital Improvement, ECM or Material Change or a proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, (i) the University and the Concessionaire shall cooperate in good faith to make any reasonably necessary adjustments to the Key Performance Indicators, the Performance Standards and the requirements of Section 7.5(a) associated with such proposed Capital Improvement, ECM or Material Change and (ii) if the proposed Capital Improvement, ECM or Material Change or the proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change was intended to cause the Utility System or Utility System Operations to comply with Law or to remedy an Emergency (other than an Unplanned Outage), then the University shall waive any claim for a Concessionaire Default for failure to comply with such Law or failure to remedy such Emergency (other than an Unplanned Outage) to the extent such failure would not have occurred but for the University having unreasonably withheld, conditioned or delayed its Approval, provided the Concessionaire shall diligently attempt, in good faith, to develop and implement an alternative solution to cause the Utility System or the Utility System Operations to comply with the applicable Law or to cause such Emergency (other than an Unplanned Outage) to be remedied.
- (i) Notwithstanding anything to the contrary contained in this Section 4.3, to the extent that the Concessionaire incurs any out-of-pocket costs as O&M Costs, it shall have the right to request that the University Approve those costs as a Capital Improvement and that those costs be considered as such, and such request shall be considered a request for Approval of a proposed Capital Improvement.

**Section 4.4. Recovery Period of Capital Improvements.** If the Recovery Period of a Capital Improvement is for a period of time beyond the Term, then, at the time such Capital Improvement is Approved in accordance with Section 4.3(c) or the University directs the Concessionaire to construct such Capital Improvement as a University Directive, the Concessionaire may elect to either (i) construct such Capital Improvement, in which case the Recovery Period shall be utilized for purposes of calculating the Utility Fee in accordance with

Schedule 5, subject to Section 15.3(g) or (ii) not construct such Capital Improvement. If the Concessionaire elects to not construct the Capital Improvement, then the University shall have the right to fund the cost of constructing such Capital Improvement and not include the cost of such Capital Improvement as a New Approved Capital Improvement, but the Capped O&M Index shall be increased by the Approved operation and maintenance cost for such Capital Improvement.

**Section 4.5. University's Capital Plan.** The Concessionaire shall reasonably cooperate with the University in the development, modification, and discussions of the University's capital plans and energy conservation initiatives, including participating with the University's capital planning and capital plan forecasting processes, attending planning meetings, and, as requested by the University, attending and participating in University meetings related to the University's capital plans.

## **ARTICLE 5 MODIFICATIONS**

**Section 5.1. University Directives.** The University may, at any time during the Term, issue a University Directive to the Concessionaire, which may include (i) the construction of Capital Improvements and the addition to or removal from the Utility System of buildings or other improvements owned, leased or operated by the University or its Affiliates or (ii) the design, demolition, project management, construction, repair, replacement, remodeling, renovation, reconstruction, enlargement, addition, alteration, painting, or structural or other improvements not included in the Utility Facilities but related thereto. No University Directive shall have the effect of reducing the components of the Variable Fee Component or Fixed Fee. Subject to the Concessionaire having obtained (with the cooperation of the University) all relevant Authorizations from all relevant Governmental Authorities required for the relevant work, the Concessionaire shall perform the work required to implement such University Directive. Utility Facilities constructed as the result of a University Directive shall be (a) deemed to be part of the Utility System for purposes of this Agreement and (b) included in the Utility System to be operated by the Concessionaire under the terms of this Agreement. To the extent any University Directive requires the construction of a Capital Improvement, the cost of such Capital Improvement shall be included as a New Approved Capital Improvement Cost up to the Approved cost of such Capital Improvement set forth in the University Directive. To the extent any University Directive requires the construction of anything other than a Capital Improvement, the costs associated therewith shall be Uncapped O&M Costs in accordance with the definition thereof. In addition, with respect to any University Directive, the Concessionaire and the University shall determine in good faith the forecasted annual ongoing operations and maintenance costs associated with such University Directive, and the Capped O&M Index shall be increased by such amount. Notwithstanding the foregoing, the Concessionaire and the University may mutually agree on another form or method of compensation to the Concessionaire as a result of a University Directive.

**Section 5.2. Performance of Modifications.** Subject to the other provisions of this Article 5, the Concessionaire shall ensure that University Directives are performed in a good and professional manner and diligently complied with and implemented in accordance with Prudent Industry Practices.

### **Section 5.3. Addition, Removal and Lease of Property.**

- (a) If, after the Closing Date, the University sells, conveys, leases for a period of time longer than the remaining Term or otherwise transfers ownership of any real property within the Columbus Campus to a third party unaffiliated with the University, then, contemporaneously with such transfer, the Concessionaire shall disconnect such real property from the Utility System and shall not be permitted to serve such real property, except if Approved in accordance with Section 3.15(c). If such disconnection causes a Capital Improvement that is or had been a New Approved Capital Improvement to be removed from the Utility System, the Capital Improvement shall continue to be included in the Variable Fee Component in accordance with this Agreement as if not removed from the Utility System. The Concessionaire shall reasonably cooperate with the University and the transferee of such real property in such disconnection. In connection therewith, the University and the Concessionaire shall cooperate in good faith to make any reasonably necessary adjustments to the Key Performance Indicators and the Performance Standards as a result of such sale, conveyance or lease.
- (b) Due to the fact that the Concessionaire is agreeing to service the Columbus Campus throughout the Term, if, after the Closing Date, the University currently or thereafter leases, sub-leases, or otherwise provides a leasehold interest in real property served by the Utility System for less than or equal to the period of time remaining in the Term to a third party unaffiliated with the University, then, to the extent that it would not be prohibited by Law, the Concessionaire shall continue to provide Utilities to such real property in accordance with this Agreement, and the University shall remain obligated to pay the Utility Fee attributable to such real property. The Concessionaire is only entitled to the continued receipt of the Utility Fee attributable to such real property and shall have no interests or rights to charge or collect additional payments from the University, the lessees or sub-lessees for the provision of Utilities to such real property.
- (c) The University, at its sole discretion, may, pursuant to a University Directive, cause the Concessionaire to provide Utility Services to any portion of the Columbus Campus not served by the Utility System at that time and may expand the definition of the Columbus Campus.

### **Section 5.4. Networked Smart Meters.**

- (a) Within 51 months after the Closing Date, the Concessionaire shall, at its sole cost and expense, which cost and expense shall not be recoverable by the Concessionaire as an O&M Cost or otherwise included in the Utility Fee, deploy a system to meter and display, in real-time, the usage of electricity; natural gas; chilled water; steam; geothermal energy; and heating hot water used for building space conditioning for all buildings listed on Appendix 1 to Schedule 19. The Concessionaire shall deploy to all buildings listed on Appendix 1 to Schedule 19 networked smart meters for the entire Utility System for electricity; natural gas;

chilled water; steam; geothermal energy; and heating hot water used for building space conditioning, such that all such smart meters, at the time of initial installation: (i) meet applicable industry standards for revenue grade meters; (ii) communicate electronically in real-time to metering data collection systems that are accessible to the University; (iii) communicate electronically to a Concessionaire-provided public interface system (e.g., a “dashboard”) to display near real-time data of building specific data as described in more detail in Section 5.4(c); (iv) are capable of calculating and communicating instantaneous and totalized data; (v) meet utility grade custody transfer requirements; (vi) operate independently from the building control systems and control system components; (vii) have defined calibration and preventive maintenance schedules and sequences; (viii) are installed with proper security measures and in locations to prevent unauthorized access; (ix) are powered from a dedicated electrical circuit; (x) maintain all settings and values after power loss and return to service when power is restored; and (xi) are capable of restoring programmed values through software interface upon equipment failure. The Concessionaire shall ensure that such networked smart meters are all accessible on a master system, which shall be readily accessible to the University. The Concessionaire shall be responsible for the operation, maintenance, and replacement of all such smart meters, regardless of location, in accordance with this Agreement. For the avoidance of doubt, the operation, repair and maintenance of the networked smart meters described in this Section 5.4 after their installation shall be Capped O&M Costs, to the extent such costs are included in the definition of “Capped O&M Costs”. For the further avoidance of doubt, any required replacement of any such smart meters during the Term following their initial deployment in accordance with this Section 5.4(a) shall be Capital Improvements (subject to the University’s right to Approve such Capital Improvements in accordance with Section 4.3).

- (b) The requirements of Section 5.4(a) notwithstanding, if the existing configuration of the steam, natural gas, chilled water, electricity, geothermal energy, or heating hot water distribution systems serving the building(s) subject to the smart meter requirements set forth in Section 5.4(a) on the Closing Date makes the installation of a specific meter therefor impracticable or unreasonably expensive, or where a specific meter installation would unduly increase future operations and maintenance costs, or where a specific meter installation would require extraordinary disruption to University operations, all as determined by the University in its reasonable discretion, the Concessionaire shall provide the University with written notice thereof and shall propose specific alternatives. Such alternatives must meet as many of the requirements of Section 5.4(a)(i)-(xi) as is reasonably possible, but, at a minimum, must communicate the actual, or a reasonable substitute of the, real-time steam, natural gas, chilled-water, electricity, geothermal energy, or heating hot water instant and totalized loads into applicable metering data collections systems accessible to the University and the public dashboard, as the case may be, of the subject building or section of the subject building. The alternatives are subject to the University’s Approval, which may not be unreasonably withheld. If the Concessionaire fails to provide

an alternative acceptable to the University within a reasonable timeframe, then the University may direct the Concessionaire to implement an alternative at the Concessionaire's sole cost and expense. Nothing in this Section 5.4(b) will be grounds for delaying the application of the Key Performance Indicator and KPI Compensation for Key Performance Indicators related to the smart meters described herein, as set forth in Section 6 of Schedule 15.

- (c) The Concessionaire shall develop and deploy a digital dashboard to display the Columbus Campus building energy usage data in real-time, which dashboard shall have a web-based interactive public interface that will display individual building data.
- (d) For buildings on the Columbus Campus that are not connected to the Utility System and are served by third party utility provider commercial electricity and/or natural gas accounts, the Concessionaire shall take the measures necessary to obtain the real-time electricity and/or natural gas usage data (or if such real-time data is not available, then such data as is close to real-time as is practicable) from such buildings and integrate that data into the total Columbus Campus dashboard.
- (e) The Concessionaire shall perform the work under this Section 5.4 in a good and workmanlike manner, consistent with the standards of skill and care exercised by entities licensed to perform (where required) and regularly performing comparable work in the same or similar locality under the same or similar circumstances. The Concessionaire warrants that all materials and equipment furnished shall be new and of good quality, that the work shall be free from defects not inherent in the quality required or permitted, and that the work shall conform to the requirements of this Agreement. In performing the work under this Section 5.4, the Concessionaire shall comply with all terms and conditions of this Agreement and all relevant Laws, including but not limited to, the Wage and Hour Laws.
- (f) Relative to the determination of the Key Performance Indicator and KPI Compensation for Key Performance Indicators related to the smart meters described herein, as set forth in Section 6 of Schedule 15, the Concessionaire shall, within 30 Days after the Closing Date, provide to the University (i) the proposed total out-of-pocket costs for installing all such smart meters, (ii) the proposed Engineering Progress Curve for the installation of such smart meters, (iii) the proposed Construction and Project Management Progress Curve for the installation of such smart meters and (iv) by utility meter type, and by building, as set forth on Appendix 1 of Schedule 19, the number of smart meters that the Concessionaire shall install pursuant to, and in accordance with, this Section 5.4, such that smart meters are deployed to all buildings listed on Appendix 1 of Schedule 19 and otherwise meet the requirements of Section 5.4(a). At the request of the University, delivered within 30 Days after receipt thereof, the Concessionaire shall collaborate in good faith with the University to modify the proposed Engineering Progress Curve and the proposed Construction and Project

Management Progress Curve. In any case, within 60 Days after receipt of the proposed Engineering Progress Curve and the proposed Construction and Project Management Progress Curve, the University, in its sole discretion, will set the Engineering Progress Curve and the Construction and Project Management Progress Curve and provide notice of the same to the Concessionaire.

## **ARTICLE 6 PERFORMANCE STANDARDS**

**Section 6.1. Compliance with Performance Standards.** The Concessionaire shall, at all times during the Term, cause the Utility System Operations to comply with and implement the Performance Standards in all material respects (including any changes or modifications to the Performance Standards pursuant to the terms of this Agreement); provided that the Concessionaire shall have a reasonable period of time to comply with the introduction of changes or modifications to the Performance Standards that are made from time to time in accordance with the terms of this Agreement. The Concessionaire shall have in place during the Term an Operations Plan. Except as specifically set forth herein, the Concessionaire shall perform all work required to comply with and implement the Performance Standards (including the Capital Improvements described therein) as part of the Utility System Operations and at its sole cost and expense.

**Section 6.2. Proposed Performance Standards.** If the Concessionaire, at its cost and expense, wishes to implement and use performance standards for the operation of the Utility System other than the Performance Standards, the Concessionaire must provide notice of such proposed performance standards to the University for Approval. The Concessionaire's proposed performance standards must be accompanied by an explanation of the Concessionaire's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concessionaire's proposed performance standards are reasonably designed to achieve or improve upon the intent of the applicable Performance Standards and are in compliance with Prudent Industry Practices and applicable Laws. The University may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the University to determine if the Concessionaire's proposed performance standards are reasonably designed to achieve or improve upon the objectives of the applicable Performance Standards. Until the University provides its Approval for the implementation of the Concessionaire's proposed performance standards, the Concessionaire shall not implement the proposed performance standards and shall implement and comply with the Performance Standards. The Concessionaire's proposed performance standards shall be deemed incorporated into the Performance Standards upon Approval by the University in accordance with the terms hereof. It shall be unreasonable for the University to withhold its Approval if the proposed performance standards are reasonably designed to achieve or improve upon the intent of the applicable Performance Standards in a manner that does not unreasonably increase the cost to the University. If the University refuses to Approve any proposed performance standards and the Concessionaire disagrees with such refusal, the Concessionaire's sole remedy shall be to submit such dispute to the procedures set forth in Article 18.

**Section 6.3. Modified Performance Standards.**

- (a) The Parties acknowledge that the services provided hereunder by the Concessionaire to the University may impact the quality of life on the Columbus Campus. Because of the importance to the University of maintaining high standards with respect to such campus life, the University shall have the right, at any time during the Term, to modify or change the Performance Standards upon notice to the Concessionaire to (i) comply with any new Law or change in Law applicable to the Utility System Operations or (ii) conform the Performance Standards to standards or practices generally adopted with respect to Comparable Utility Systems or Prudent Industry Practices; any such modification shall not constitute a Compensation Event. In the event the University modifies the Performance Standards in accordance with the immediately preceding sentence, the Concessionaire shall promptly perform all work required to implement and shall comply with all such modifications and changes and in no event shall the Concessionaire be excused from compliance with any such modification or change, except as otherwise expressly provided in this Agreement, the cost of which shall be included in Uncapped O&M Costs (but only to the extent of the costs incurred to cause the Utility System to initially comply with such modification or change) or New Approved Capital Improvement Costs (if such modifications or changes are Capital Improvements); provided that the cost of ongoing compliance with any such modification or change may be included in Capped O&M Costs, if such costs would be included in the definition thereof. If (x) any such modification or change is a New Approved Capital Improvement, then the Concessionaire and the University shall determine in good faith the forecasted annual operations and maintenance costs for such New Approved Capital Improvement or (y) such modification or change is not a New Approved Capital Improvement but the Concessionaire and the University determine, in good faith, that it will require additional ongoing Capped O&M Costs after the completion of such modification or change, then, in each case, the Capped O&M Index shall increase by such amount. The Concessionaire shall have the right to challenge, pursuant to Article 18, any modified Performance Standard on the grounds that it does not meet the requirement of this Section 6.3(a). In connection with a change in the Performance Standard under this Section 6.3(a), the University and the Concessionaire shall cooperate in good faith to make any reasonably necessary adjustments to the Key Performance Indicators and any other Performance Standards as a result thereof.
- (b) If, during the Term, the University is of the opinion that a modification or change to the Performance Standards is necessary or desirable but such modification or change is not required by Section 6.3(a), the University may upon reasonable written notice to the Concessionaire modify or change the Performance Standards; provided, however, that any such change(s) or modification(s) in the aggregate in a Fiscal Year shall constitute a Compensation Event only if such change(s) or modification(s) (i) are not in response to any action or omission on the part of the Concessionaire or the Operator and (ii) result in an increase, during any Fiscal Year, in operating expenses attributable to compliance with such change(s) or modification(s) (taking into account all such previous changes or modifications applicable in such Fiscal Year or any previous Fiscal Year) in

excess of \$100,000 (annually Adjusted for Inflation from the Year in which the Closing Date occurred) which cannot be charged through to the University as part of O&M Costs or recovered as a New Approved Capital Improvement Cost. At the University's request, the Concessionaire shall perform all work required to implement and shall comply with all such modifications and changes, and in no event shall the Concessionaire be excused from compliance with any such modification or change.

- (c) The University shall have the right to undertake the work necessary to ensure implementation of and compliance with any such modification or change to the Performance Standards if the Concessionaire fails to do so within a reasonable period of time; provided, however, that to the extent that such work is undertaken by the University, the Concessionaire shall pay to the University within 10 Business Days following demand therefor, or the University may offset from amounts owing to the Concessionaire in connection with such modification or change, (i) with respect to changes pursuant to Section 6.3(a) all costs to comply with such Performance Standard and (ii) with respect to Section 6.3(b), the costs of the portion of the work performed in order to comply with the Performance Standards existing immediately prior to such modification or change, and the University shall be responsible only for the incremental costs of the additional work required in order to implement such proposed modification or change to the Performance Standards and, without duplication with the foregoing, the Concession Compensation with respect to such modification or change.

## ARTICLE 7

### UTILITY FEE, FIVE-YEAR PLAN, ENERGY SUPPLY AND ENERGY USE INTENSITY REDUCTION

#### **Section 7.1. Utility Fee.**

- (a) As compensation for the services provided hereunder by the Concessionaire to the University in connection with the Utility System, the University shall pay to the Concessionaire the Utility Fee for each Fiscal Year or portion thereof during the Term as determined in accordance with the formula described in Schedule 5 and in the manner set forth in this Section 7.1. At least 180 Days prior to the commencement of any Fiscal Year during the Term, the Concessionaire shall provide a forecast of the Utility Fee to the University for the upcoming Fiscal Year (the "Forecast Utility Fee"), provided that the Concessionaire shall, (i) on or before 90 Days prior to the commencement of any Fiscal Year and (ii) again at least 1 Day and no more than 30 Days prior to the commencement of such Fiscal Year, adjust such Forecast Utility Fee as necessary. The University shall pay the Forecast Utility Fee in 12 equal monthly installments, payable on the first Day of every month during the Fiscal Year. The Forecast Utility Fee for the first Fiscal Year of the Term shall be \$54,200,000 prorated based on the number of Days remaining in the first Fiscal Year after the Closing and payable in equal monthly installments over the number of months remaining in such Fiscal Year.

- (b) Within 60 Days after the end of each Fiscal Year, the Concessionaire shall deliver to the University a statement (the “Reconciliation Statement”) which states the actual Utility Fee for the preceding Fiscal Year and provides a detailed accounting of each component of the Utility Fee calculated in a form and with such detail as may be reasonably requested by the University for the determination of the Utility Fee set forth in the Reconciliation Statement. If the Reconciliation Statement reveals that the Utility Fee for a Fiscal Year is more than the Forecast Utility Fee for that Fiscal Year, the University agrees to pay the Concessionaire the difference in a lump sum within 30 Days after receipt of the Reconciliation Statement. If the Reconciliation Statement reveals that the Utility Fee for such Fiscal Year is less than the Forecast Utility Fee for that Fiscal Year, the Concessionaire will pay the University the difference in a lump sum within 30 Days after receipt of the Reconciliation Statement.
- (c) The records that the Concessionaire maintains with respect to the calculation of the actual Utility Fee shall be retained by the Concessionaire for a period of 5 Fiscal Years following the Fiscal Year to which such Utility Fee applied. The University shall have the right, through its Representatives, to examine, copy and audit such records at reasonable times, upon not less than 5 Business Days’ prior notice, at such place within the City of Columbus as the Concessionaire shall reasonably designate from time to time for the keeping of such records. All costs of any such audit shall be borne by the University; provided, however, that if such audit establishes that the Utility Fee for the applicable Fiscal Year was lower than the final determination thereof as set forth in the Reconciliation Statement, by at least 1.0%, then the Concessionaire shall pay the cost of such audit. If, as a result of such audit, it is determined that the University has overpaid the Concessionaire on account of the Utility Fee, then the Concessionaire shall reimburse the University for the payments due within 30 Days after such determination. If the Concessionaire disputes the results of an audit conducted pursuant to this Section 7.1(c), the Concessionaire’s sole remedy shall be to submit such dispute to the procedures set forth in Article 18.
- (d) In addition, if an audit conducted pursuant to Section 7.1(c) establishes that the Utility Fee for the applicable Fiscal Year was lower than the final determination thereof, as set forth in the Reconciliation Statement, by at least 5.0%, then in addition to paying the cost of such audit and reimbursing the University for the payments in accordance with Section 7.1(c), the Concessionaire shall pay, as liquidated damages, 3 times the amount of the difference between the Utility Fee and the amount set forth in the Reconciliation Statement. The University and the Concessionaire agree that it would be impracticable and extremely difficult to fix the actual damage to the University if the actual Utility Fee was lower than the amount shown in the Reconciliation Statement by at least 5.0%. The University and the Concessionaire therefore agree that, in such instance, 3 times the amount of the difference between the Utility Fee and the amount set forth in the Reconciliation Statement is a reasonable estimate of the University’s damages and that the University shall be entitled to said sum as liquidated damages. If the Concessionaire disputes the results of an audit conducted pursuant to Section

7.1(c), the Concessionaire's sole remedy shall be to submit such dispute to the procedures set forth in Article 18.

**Section 7.2. Updates to the Utility Fee and O&M Costs.**

- (a) The Parties acknowledge the importance of documenting and discussing best practices and Prudent Industry Practices for Comparable Utility Systems to determine whether the Parties should consider modifying the Performance Standards or the components of the Utility Fee. In connection therewith, the University has formed an EAC to liaise with the Concessionaire so that the University and the Concessionaire have an open dialogue with respect to such matters.
- (b) The EAC shall meet during the 4th Fiscal Year of the Term and at least every 5 Fiscal Years thereafter during the Term (provided that the University shall have the right to reasonably cause the EAC to meet more frequently) to assess the methodology of calculating the Utility Fee, including the determination of the adjustment to the Return on Equity Factor, and the Concessionaire may, through its Representative(s) on the EAC, at such meeting propose any changes in the methodology of the Utility Fee. The University and the Concessionaire shall consider, in good faith, any adjustments to the Utility Fee recommended by the EAC or the Concessionaire's Representative(s) at an EAC meeting. The obligation of the University and the Concessionaire is to consider any such changes in good faith and no change may be made to the methodology of calculating the Utility Fee without the written consent of both Parties.
- (c) The EAC shall meet during the 9th Fiscal Year of the Term and at least every 10 Fiscal Years thereafter during the Term (provided that the University shall have the right to reasonably cause the EAC to meet more frequently) to conduct a full review of the categories of O&M Costs and the components thereof being included in the Utility Fee and the Capped O&M Ceiling and to determine if such categories of O&M Costs, the components of each category of O&M Costs or the Capped O&M Ceiling should be adjusted, and the Concessionaire may, through its Representative(s) on the EAC, at such meeting, propose any changes to the categories of O&M Costs and the components thereof being included in the Utility Fee and the Capped O&M Index. The University and the Concessionaire shall consider, in good faith, any adjustments to the categories of O&M Costs recommended by the EAC or the Concessionaire's Representative(s) at an EAC meeting. The obligation of the University and the Concessionaire is to consider any such changes in good faith and no change to the categories of O&M Costs may be made without the written consent of both Parties.
- (d) If either Party believes that the other Party did not consider any recommendation under Section 7.2(b) or Section 7.2(c) in good faith, such Party may submit such claim of bad faith to the dispute resolution process set forth in Article 18.

### **Section 7.3. Five-Year Plan.**

- (a) The Concessionaire shall submit to the University a proposed Initial Five-Year Plan on or before the first December 30 following the Closing Date and shall thereafter submit to the University a proposed Five-Year Plan at least 180 Days prior to the end of each Fiscal Year during the Term. Each proposed Five-Year Plan shall include the Capital Improvements, ECMs and Material Changes (and shall identify whether an item requested for Approval is a Capital Improvement, ECM or Material Change or a combination thereof) that the Concessionaire proposes to make in each Fiscal Year in such proposed Five-Year Plan as well as anticipated O&M Costs, delineated between Capped O&M Costs and Uncapped O&M Costs, and anticipated Supply Costs for each such Fiscal Year. The initial Five-Year Plan can include, and the University will consider in accordance with Section 4.3, proposed Capital Improvements and Material Changes to the Utility System to address any conditions of the Utility System existing prior to the Closing Date. Each proposed Five-Year Plan shall be submitted in a format reasonably acceptable to the University as of the date of submission.
- (b) The University shall convene the EAC after receipt of the proposed Five-Year Plan. The EAC shall review and provide comments to the Concessionaire on such proposed Five-Year Plan within 30 Days after receipt by the University thereof. The EAC's comments on such proposed Five-Year Plan shall not be binding on the University. The Concessionaire shall incorporate those comments from the EAC that the Concessionaire elects to incorporate and shall then submit its proposed Five-Year Plan to the University at least 120 Days prior to the end of the Fiscal Year (or, in the case of the proposed Initial Five-Year Plan, as soon as reasonably practicable after receipt of the EAC's comments).
- (c) The University shall review and provide comments to the Concessionaire on the proposed Five-Year Plan, provided that to the extent pertaining to proposed Capital Improvements, ECMs or Material Changes relating to the first full Fiscal Year in the proposed Five-Year Plan, such review and comments shall be conducted and provided in accordance with Section 4.3(c), and provided further that, subject to Section 7.3(d), if the University shall have previously Approved any such Capital Improvement, ECM or Material Change included in the proposed Five-Year Plan, the University shall not have the right to modify or rescind such prior Approval to the extent of such prior Approval. The Concessionaire shall promptly incorporate and use the University's comments on the proposed Five-Year Plan to prepare a revised version thereof and submit such revised version to the University. This process shall continue until the University Approves the proposed Five-Year Plan.
- (d) The proposed Five-Year Plan Approved by the University shall become the Approved Five-Year Plan as of the commencement of the first Fiscal Year in such proposed Five-Year Plan (or, in the case of a proposed Initial Five-Year Plan, as of the date of the University's Approval); provided, however, that no portion of an Approved Five-Year Plan related to the 2nd through 5th full Fiscal

Years therein shall be deemed Approved by the University, except to the extent that a Capital Improvement, ECM or Material Change is scheduled pursuant to such Approved Five-Year Plan to be started in the first full Fiscal Year and completed in the 2nd through 5th full Fiscal Years therein. For the avoidance of doubt, the Approval of a Five-Year Plan that includes a Capital Improvement, ECM or Material Change that is not scheduled to be commenced until the 2<sup>nd</sup> Fiscal Year therein at the earliest shall not be deemed an Approval of such Capital Improvement, ECM or Material for purposes of Article 4.

- (e) If the Concessionaire does not accommodate or otherwise resolve any comment provided by the University pursuant to Section 7.3(c), the Concessionaire shall deliver to the University, within 10 Days after receipt of the University's comments, a written explanation as to why accommodation or other resolution of such comment would not allow the Concessionaire to meet the requirements of Section 3.2(a)(ii). The explanation shall include the facts, analyses and reasons that support the conclusion regarding such comment. Any dispute between the Concessionaire and the University over such comment shall be resolved pursuant to the procedures set forth in Article 18.
- (f) If a proposed Five-Year Plan or a portion thereof is not Approved by the commencement of the first Fiscal Year in such proposed Five-Year Plan, the Approved Five-Year Plan or relevant portion thereof shall continue in effect until a new proposed Five-Year Plan is Approved, provided that in the case of the proposed Initial Five-Year Plan, no Approved Five-Year Plan shall be in effect until the proposed Initial Five-Year Plan is Approved, and provided further that nothing in this Section 7.3 shall permit the Concessionaire to make a Capital Improvement, ECM or Material Change except if it is Approved in accordance with Section 4.3(c). Until the initial Five-Year Plan is Approved following the Closing Date, the Concessionaire shall operate the Utility System in accordance with this Agreement and otherwise in substantially the same manner it had been operated immediately prior to Closing provided that nothing in this Section 7.3 shall permit the Concessionaire to make a Capital Improvement, ECM or Material Change except if it is Approved in accordance with Section 4.3(c).
- (g) For the avoidance of doubt, the Concessionaire's right to receive the Utility Fee, subject to the limitations contained herein and in Schedule 5, shall not be modified or superseded by the Approved Five-Year Plan.
- (h) Except as otherwise provided in Section 7.3(c), the contents of any Approved Five-Year Plan shall not be binding on any future Five-Year Plan.
- (i) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that all payments to the Operator pursuant to any agreement between the Concessionaire and the Operator to operate the Utility System that have been previously Approved by the University on or prior to the Closing Date, shall be deemed Approved and shall require no further Approval for any Five-Year Plan, provided that such payments do not materially differ

from the payments or payment mechanics that were Approved by the University in its Approval of the Operator or otherwise.

#### **Section 7.4. Energy and Water Supply.**

- (a) The Concessionaire shall assist the University with the procurement of sufficient electricity, natural gas or other energy supply inputs necessary to fully operate the Utility System as set forth in the Performance Standards (the “Supplies”). At the University’s direction, assistance may include, but not be limited to, identification and development of Supply procurement opportunities, provision of market analysis and advice regarding the same, acting on behalf of the University to negotiate or assist in negotiating Supply purchases, acting on behalf of the University or assisting the University in the operation of bidding mechanisms to procure competitive retail Supplies. The University shall be responsible for paying all Supply Costs directly to the vendor of such Supplies. The University, in connection with its commitment to sustainability, minimization of environmental impact, responsible energy procurement, and its rights and responsibilities as the energy Supply customer of record, shall enter into any contracts with a third party for providing Supplies to the Utility System (each, a “Supply Contract”). The University shall determine the types and sources of the Supplies and the appropriate entity (among the Concessionaire, the Operator and the University) to execute each Supply Contract, with the Concessionaire or Operator executing pursuant to a power of attorney. In any case, regardless of which entity executes a Supply Contract, the University will be considered as the exclusive customer of the Supplies procured pursuant to this Section 7.4(a) or used for the operation of the Utility System. Notwithstanding the foregoing, the Parties acknowledge that as of the Time of Closing, there shall be in place certain Supply Contracts to provide Supplies as described in Schedule 6, and the Concessionaire’s obligations under this Section 7.4(a) with respect to the Supplies which are the subject of such Supply Contract shall be met by managing those Supply Contracts until their expiration or termination, at which time the Concessionaire shall be responsible for assisting the University with the procurement of those Supplies for the Columbus Campus as provided herein immediately following the expiration or termination of those Supply Contracts. For the avoidance of doubt, if the third-party supplier of the Supplies fails to deliver such Supplies pursuant to the applicable Supply Contract, (i) such failure shall be a Delay Event (except with respect to any failure to deliver Supplies on University locations outside of the Columbus Campus) and (ii) the Concessionaire acting on behalf of the University shall use commercially reasonable efforts to cause such third-party supplier to deliver such Supplies as soon as reasonably practicable, and (iii) as necessary, assist the University with the prompt replacement of such third-party supplier.
- (b) The Concessionaire shall, upon written notice from the University, be responsible for assisting the University with the procurement, billing and/or management of Supplies to the University or its Affiliates on University locations outside of the Columbus Campus, and such assistance with the

procurement, billing and/or management of Supplies shall be deemed part of the Utility System Operations. For clarification purposes, the Concessionaire shall be responsible for assisting the University with the management of Supplies under any existing Supply Contract described in Schedule 6 as provided in Section 7.4(a).

- (c) The Concessionaire shall ensure that Supply Contracts provide that invoices are remitted to the Concessionaire, if so requested by the University in writing, or to such other entity as identified by the University. Promptly after receipt of such an invoice for Supply Costs from a third party but in no event more than 5 Business Days after receipt thereof, the Concessionaire shall forward the Supplier's invoice to the University, and the Concessionaire shall have no obligation to pay such Supply Costs.
- (d) The University shall supply to the Utility System, the water reasonably necessary for the Concessionaire to operate the Utility System and perform its obligations hereunder. The water supplied to the Utility System may be supplied through either a public water system or other private water source. All water supplied to the Utility System shall be of a quality that meets or exceeds the standards required by the United States Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*) and the State of Ohio Safe Drinking Water Standards (Ohio Rev. Code. Ann. § 6109). Any failure to provide water to the Utility System by the University shall not be deemed a University Default; however, failure to provide sufficient water shall be a Delay Event. The Concessionaire acknowledges that the University receives and pays for the water used to supply the Utility System from a third party, which, as of the Bid Date, is the City of Columbus.

#### **Section 7.5. Energy Use Intensity Reduction.**

- (a) The Concessionaire shall cause the Energy Use Intensity for the Fiscal Year ending on June 30, 2028 to be equal to or less than 75% of the Energy Use Intensity for the Fiscal Year ending on June 30, 2017. Throughout the Term, the Concessionaire shall also cause, at the end of each Fiscal Year, the arithmetic average Energy Use Intensity for that Fiscal Year and the immediately preceding 2 Fiscal Years to be the same or less than the arithmetic average Energy Use Intensity for the 3 immediately preceding Fiscal Years, provided that the University hereby waives any rights or remedies it may have under this Agreement for the Concessionaire's failure to do so in the first 2 Fiscal Years after the Fiscal Year in which the Closing took place. For exemplary purposes only, the Concessionaire shall, in Fiscal Year 2021, cause the arithmetic average Energy Use Intensity for Fiscal Years 2019 through 2021 to be the same or less than the arithmetic average Energy Use Intensity for Fiscal Years 2018 through 2020. To the extent that the Concessionaire elects to use Capital Improvements or ECMs to meet the requirements in this Section 7.5(a), any such Capital Improvement or ECM shall be subject to Article 4 and no Capital Improvement or ECM may be constructed or implemented without the Approval of the University pursuant to Section 4.3. The EAC shall meet at least every 10 Fiscal

Years, commencing on the 8th Fiscal Year of the Term, to discuss and agree upon any additional energy conservation measures that the Concessionaire will be directed to take by the University and to discuss the University's overall energy usage and ECMs.

- (b) Within 2 Years after the Closing Date, the University shall have the right to request in writing that the Concessionaire diligently prepare and provide to the University a detailed study with recommendations and proposals for opportunities to reduce the energy use intensity of certain regional campuses owned by the University, and the Concessionaire shall in good faith discuss with the University the Concessionaire implementing such recommendations and proposals.
- (c) Within 60 Days after the determination of the Energy Use Intensity for the Fiscal Year ending on June 30, 2028, the University shall pay to the Concessionaire the first installment of the EUI bonus pursuant to the table on Schedule 21, if applicable. Such bonus, if any, shall be equal to the amount shown in the cell of the table on Schedule 21, where the column heading is the number closest to and greater than the 10-Year ECM Costs and the row heading is a number closest to and less than the 10-Year EUI Reduction. The EUI bonus will be paid in 10 equal annual installments. After the first installment paid in accordance with Schedule 21, each subsequent installment will be paid to the Concessionaire on or before June 30 of each of the next nine years.

**Section 7.6. CHP Feasibility Study.** At the reasonable request of the University, the Concessionaire shall promptly conduct a detailed feasibility study and recommendation regarding the construction of a combined heat and power plant as part of the Utility System and provide such study and recommendation to the University to the extent the University Approves the O&M Costs related thereto in advance.

**Section 7.7. Water Conservation Feasibility Study.** At the reasonable request of the University, the Concessionaire shall promptly conduct and provide to the University a detailed feasibility study and recommendation regarding opportunities for the University to reduce its consumption of water in the Utility System on the Columbus Campus to the extent the University Approves the O&M Costs related thereto in advance.

## ARTICLE 8 REPORTING; AUDITS; INSPECTIONS

### Section 8.1. Reports.

- (a) *Incident Management and Notifications.* The Concessionaire shall (i) provide notice to the University of all Emergencies as promptly as possible, and, in any event, not later than 6 hours after the Concessionaire or the Operator becomes aware of the Emergency, and (ii) promptly provide notice to the University of all material accidents and incidents occurring with respect to the Utility System and of all claims in excess of \$25,000 annually made by or against the

Concessionaire or potential claims in excess of \$25,000 annually that the Concessionaire reasonably expects to make against, or to be made against it by, third parties.

- (b) *Environmental Incident Management and Notifications.* The Concessionaire shall provide notice to the University as promptly as possible, and, in any event, not later than 6 hours after the Concessionaire becomes aware of the Release (accidental or otherwise) of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Substances occurring with respect to the Utility System or otherwise on the Columbus Campus, which notice shall include the time of such Release, the agencies involved, the damage that has occurred and the remedial action taken. The Concessionaire shall be financially responsible and shall pay the costs and expenses of any remediation required as a result of any such Release of Hazardous Substances caused by the willful misconduct or negligent action of, or permitted by the negligent inaction of, the Concessionaire or any of its Representatives, which costs shall not be recoverable by the Concessionaire as part of the Utility Fee or otherwise pursuant to this Agreement. The Concessionaire shall not be financially responsible for the actions or inactions of third parties except for (i) those actions or inactions with respect to which the Concessionaire or any of its Representatives shall have had prior knowledge of and could have used commercially reasonable efforts to prevent or mitigate and (ii) those actions or inactions consented to by the Concessionaire or any of its Representatives.
- (c) *Financial Reports.* The Concessionaire shall deliver to the University within 120 Days after the end of each Fiscal Year a copy of the audited balance sheets of the Concessionaire at the end of each such Fiscal Year and the related audited statements of income, changes in equity and cash flows for such Fiscal Year, including, in each case, the notes thereto, together with the report thereon of the independent certified public accountants of the Concessionaire, in each case in a manner and containing information consistent with the Concessionaire's current practices and certified by the Concessionaire's chief financial officer that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements, all in accordance with International Financial Reporting Standards (IFRS), consistently applied. Contemporaneously with the delivery of the foregoing financial statements, the Concessionaire shall also deliver to the University a letter prepared and signed by the Concessionaire's independent certified public accountants providing a reasonably detailed explanation as to the changes that would be required in the foregoing financial statements if they had been prepared in accordance with GAAP or, if there would be no such changes, confirming the same. The Concessionaire shall make representatives of such independent certified public accountants reasonably available to the University to discuss the contents of such letter and any such differences. The Concessionaire's independent certified public accountants shall be subject to the University's Approval, provided the University's Approval shall not be required if the

independent certified public accountants are KPMG, PriceWaterhouseCoopers, Ernst & Young, and Deloitte Touche Tohmatsu (or their respective successors-in-interest).

- (d) *Regular Reports.* The Concessionaire shall deliver to the University all reports and information as set forth in the Performance Standards in the time and format described in the Performance Standards.

## **Section 8.2. Information.**

- (a) *Furnish Information.* At the request of the University, the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times during the Term not more frequently than once each Quarter: (i) make available or cause to be made available (and, if requested by the University, furnish or cause to be furnished) to the University all information relating to the Utility System Operations, this Agreement or the Utility System as may be specified in such request and as shall be in the possession or control of the Concessionaire or its Representatives, and (ii) permit the University, after giving 10 Business Days' prior notice to the Concessionaire (which notice shall identify the Persons the University requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview) to request the Concessionaire's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, to discuss the obligations of the Concessionaire under this Agreement with any of the directors, officers, employees or managers of the Concessionaire, the Operator or their respective Representatives at times and places on the Columbus Campus acceptable to all attendees (it being agreed that the Concessionaire shall have the right to be present during any such discussions with the Operator or Representatives of the Concessionaire or the Operator), for the purpose of enabling the University to determine whether the Concessionaire is in compliance with this Agreement. For the avoidance of doubt, this Section 8.2(a) does not impose a requirement to retain information not otherwise retained in the normal course of business or required to be retained by applicable Law.
- (b) *Confidentiality.* Unless disclosure is required by applicable Law, the University shall keep confidential any information obtained from the Concessionaire or its Representatives that constitutes a "trade secret" as defined in Ohio Rev. Code Ann. § 1333.61. In the event that the Concessionaire seeks to defend an action seeking the disclosure of information that the Concessionaire determines to be confidential pursuant to this Section 8.2(b), the University shall use commercially reasonable efforts to cooperate in such action at no out-of-pocket cost to the University, provided that the University shall not be required to institute any legal action against the requesting party. Notwithstanding anything to the contrary herein, the University and the Concessionaire may disclose the United States federal tax treatment and tax structure of the Transaction.

### **Section 8.3. Inspection, Audit and Review Rights of the University.**

- (a) *Audit Right.* In addition to the rights set out in Section 7.1(c) and Section 8.2, the University may, at all reasonable times, upon 10 Business Days' prior notice, cause a Representative designated by it to carry out an Audit and Review of the information required to be maintained or delivered by the Concessionaire under this Agreement in connection with the performance of the Utility System Operations for the purpose of verifying the information contained therein verifying Utility System Operations and to otherwise track utility usage patterns and shall be entitled to make copies thereof and to take extracts therefrom, at the University's expense but, in any event, subject to Section 8.2(b). The Concessionaire shall, at reasonable times, make available or cause to be made available to the University or its designated Representative such information and material as may reasonably be required by the University or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by the University in connection with the same; provided, however, that such Audit and Review rights are limited to one Audit and Review per Fiscal Year.
- (b) *Inspection Right.* The University and its Representatives shall, at all reasonable times and upon reasonable prior notice and subject to the Concessionaire's reasonable safety requirements and protocols, have access to the Utility System and every part thereof, and the Concessionaire, at the reasonable cost and expense of the Concessionaire, shall and shall cause its Representatives to furnish the University with every reasonable assistance for inspecting the Utility System and the Utility System Operations for the purpose of Auditing the information relating to the Utility System Operations or ascertaining compliance with this Agreement and applicable Law subject to reasonable restrictions on access to confidential and proprietary information as determined by the Concessionaire.
- (c) *Tests.* The University and its Representatives shall, with the prior consent of the Concessionaire, which consent shall not be unreasonably withheld, conditioned or delayed, be entitled, at the sole cost and expense of the University and at any time and from time to time, to perform or cause to be performed, in accordance with Prudent Industry Practices, any test, study or investigation in connection with the Utility System or the Utility System Operations as the University may reasonably determine to be necessary in the circumstances, and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause its Representatives to, furnish the University or its Representatives with reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.
- (d) *No Waiver.* Failure by the University or its Representatives to inspect, review, test or Audit the Concessionaire's responsibilities under this Agreement or any part thereof, or the performance by the Concessionaire of the Utility Services, or the information relating to the Utility System Operations, shall not constitute a

waiver of any of the rights of the University hereunder or any of the obligations or liabilities of the Concessionaire hereunder. Inspection, review, testing or Audit not followed by a notice of Concessionaire Default shall not constitute a waiver of any Concessionaire Default or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.

- (e) *No Undue Interference.* In the course of performing its inspections, reviews, tests and Audits hereunder, the University shall minimize the effect and duration of any disruption to or impairment of the Utility System Operations or the Concessionaire's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews, tests and Audits being performed, except as necessary in the case of investigations of possible criminal conduct or University ordinance violations.

**Section 8.4. Audits, Assistance, Inspections and Approvals.** Wherever in this Agreement reference is made to the University or its Representatives providing assistance, services, Approvals or consents to or on behalf of the Concessionaire or its Representatives or to the University or its Representatives performing an Audit or inspecting, testing, reviewing or examining the Utility System, the Utility System Operations or any part thereof or the books, records, Documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or its Representatives, such undertaking by the University or its Representatives shall not relieve or exempt the Concessionaire from, or represent a waiver of, any requirement, liability, Concessionaire Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on the University or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

## **ARTICLE 9 REPRESENTATIONS AND WARRANTIES**

**Section 9.1. Representations and Warranties of the University.** The University made the following representations and warranties to the Concessionaire as of the Signing Date and acknowledges that the Concessionaire and its Representatives relied upon such representations and warranties in entering into the Original Agreement:

- (a) *Organization.* The University is an instrumentality of the State of Ohio duly organized and existing under the laws of the State of Ohio.
- (b) *Power and Authority.* The University has (i) duly authorized and approved the execution and delivery of the Original Agreement and (ii) duly authorized and approved the performance by the University of its obligations contained in the Original Agreement. The University has the power and authority to enter into the Original Agreement and to do all acts and things and execute and deliver all other documents as are required thereunder to be done, observed or performed by it in accordance with the terms thereof.

- (c) *Enforceability.* The Original Agreement has been duly authorized, executed and delivered by the University and constitutes a valid and legally binding obligation of the University, enforceable against the University in accordance with the terms thereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.
- (d) *Title.* At the Time of Closing, the University will have good and sufficient title (or good and sufficient title will be had for the benefit of the University) to the Utility Facilities, the Utility System Land, the Utility System Assets and the Tunnels necessary for the Utility System Operations pursuant to the Original Agreement, subject only to Permitted University Encumbrances, and will be able to transfer or grant such interest to the Concessionaire as provided in the Original Agreement. Subject to any and all Permitted University Encumbrances existing at the Time of Closing and to the Actual Knowledge of the University, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the University to sell, transfer, convey, subject to lien, charge, grant a security interest in or in any other way dispose of or materially encumber the Utility System. Subject to any and all Permitted University Encumbrances and to the Actual Knowledge of the University, the recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests and other matters that affect title to the Utility System (or any portion thereof) do not materially adversely affect the Concessionaire's ability to operate the Utility System in accordance with the terms thereof. No indebtedness for borrowed money of the University is or will be secured by any right or interest in the Utility System or the revenues or income therefrom, and no Person will have any claim or right to, or interest in, any income, profits, rents or revenue derived by the Concessionaire from or generated with respect to the Utility System (other than the Concessionaire and any claims, rights or interests granted by or otherwise relating to the Concessionaire); provided, however, the foregoing shall not apply to (i) revenues to which the University is or may be entitled to under the Original Agreement, (ii) revenues or income derived after the End Date, (iii) revenues or income received by the University from students or (iv) revenues or income received by the University from third parties as reimbursement for Utilities received by such parties.
- (e) *No Conflicts.* The execution and delivery of the Original Agreement by the University, the consummation of the Transaction (including the operation of the Utility System in accordance with the terms of the Original Agreement) and the performance by the University of the terms, conditions and provisions thereof have not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the University under (i) any applicable Law, (ii) any agreement, instrument or document to which the University is a party or by which it is bound or (iii) the University's governing documents.

- (f) *Consents.* No Consent is required to be obtained by the University from, and no notice or filing is required to be given by the University to or made by the University with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the University of the Original Agreement or the consummation of the Transaction.
- (g) *Compliance with Law; Litigation; Environmental Matters.*
- (i) The University has operated and was operating the Utility System as of the Signing Date in compliance, in all material respects, with all applicable Laws, and the University is not in breach of any applicable Law that would reasonably be expected to have a Material Adverse Effect or a material adverse effect on the Concessionaire. To the Actual Knowledge of the University, (A) the University is in compliance, in all material respects, with the terms and conditions of all Authorizations from Governmental Authorities, (B) no claim has been made by any Governmental Authority to the effect that an Authorization that the University has not obtained is necessary in respect of the operation of the Utility System, and (C) no additional Authorizations from any Governmental Authority are necessary for the operation of the Utility System as currently being operated.
- (ii) There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the Actual Knowledge of the University, threatened against the University prior to or at the Time of Closing, which would reasonably be expected to have a Material Adverse Effect or a material adverse effect on the Concessionaire. As of the Signing Date, there is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the Actual Knowledge of the University, threatened against the University which could materially affect the validity or enforceability of the Original Agreement.
- (iii) There has been no Release of Hazardous Substances at, on or under the Utility Facilities that would reasonably be expected to have a Material Adverse Effect or a material adverse effect on the Concessionaire, except as cured to the satisfaction of the applicable Governmental Authority. To the Actual Knowledge of the University, (a) there is no pending investigation by a Governmental Authority concerning any Release of Hazardous Substances in connection with the Utility System or the Utility Facilities and (b) there has been no Release of Hazardous Substances in connection with the Utility System or the Utility Facilities that could reasonably result in liability to the Concessionaire.
- (h) *Financial Information.* The financial information of the University relating to the Utility System attached to the Original Agreement as Schedule 9, which includes operations and maintenance costs and expenditures for Capital

Improvements for the periods ended June 30, 2012 through June 30, 2016, fairly presents the financial information disclosed thereon with respect to the Utility System for the periods stated in such financial information based on the University's internal policies.

- (i) *Utility System Contracts.* The University provided to the Concessionaire the true, correct and complete copies of each of the Utility System Contracts as of the Setting Date, and none of those Utility System Contracts have been terminated, amended, modified, supplemented or otherwise changed since the Setting Date. Each Utility System Contract is capable of being assigned to the Concessionaire, except as noted in Schedule 4, and is in full force and effect. The University is not in material breach of its obligations under any Utility System Contract, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof, and, to the Actual Knowledge of the University, no other party to any Utility System Contract is in material breach of its obligations under any Utility System Contract, and no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, is or would reasonably be expected to constitute a material breach thereof.
- (j) *Absence of Changes.* Since June 30, 2016, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect or a material adverse effect on the University. Since June 30, 2016 through the Closing, the University and the University's Contractors have operated the Utility System in a manner consistent with past practice and have not, for example, intentionally increased or decreased efforts and resources related to operations, maintenance or enforcement so as to reduce the value of the Concessionaire Interest.
- (k) *Brokers.* Except for Barclays Capital Inc. ("Barclays"), whose fees will be paid by the University, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the University who might be entitled to any fee or commission from the University in connection with the Transaction. There is also no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the University who might be entitled to any fee or commission from the Concessionaire in connection with the Transaction.
- (l) *Accuracy of Information.* To the Actual Knowledge of the University, the factual and past historical information regarding the Utility System that the University provided to the Concessionaire in the virtual data room labeled "Project Pinta" hosted by IntraLinks, Inc. was accurate in all material respects at the time such information was prepared, except to the extent the University removed, revised or replaced such information prior to the Setting Date.
- (m) *Undisclosed Defects.* To the Actual Knowledge of the University, there are no material defects of the Utility System that could reasonably be expected to

prevent the Utility System from being operated in accordance with the Performance Standards and Prudent Industry Practices.

- (n) *Tax Representations.* Any Tax-Advantaged Bond of the University, the proceeds of which have been allocated to expenditures for any portion of the Utility System, either (i) has been retired in accordance with its terms and is no longer outstanding, (ii) has been remediated pursuant to and in accordance with the provisions of Treasury Regulations Section 1.141-12 or (iii) has not had its proceeds allocated to expenditures for the Utility System in an amount equal to or in excess of that which would cause such Tax-Advantaged Bond to be a “private activity bond” within the meaning of Section 141 of the Code.

By executing this Agreement, the University is not deemed to have re-made or affirmed any of the foregoing representations and warranties.

**Section 9.2. Representations and Warranties of the Concessionaire.** The Concessionaire made the following representations and warranties to the University as of the Signing Date and acknowledges that the University relied upon such representations and warranties in entering into the Original Agreement:

- (a) *Organization.* The Concessionaire is duly organized, validly existing and in good standing under the laws of the state of its organization. The capital stock, units, partnership or membership interests and other equity interests or securities of the Concessionaire (including options, warrants and other rights to acquire any such equity interests) are owned by the Persons set forth in the written certification that the Concessionaire delivered to the University prior to the Signing Date.
- (b) *Power and Authority.* The Concessionaire has the power and authority to enter into the Original Agreement and to do all acts and things and execute and deliver all other documents as are required thereunder to be done, observed or performed by it in accordance with the terms thereof.
- (c) *Enforceability.* The Original Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms thereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.
- (d) *No Conflicts.* The execution and delivery of the Original Agreement by the Concessionaire, the consummation of the Transaction and the performance by the Concessionaire of the terms, conditions and provisions thereof have not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Concessionaire under (i) any applicable Law, (ii) any material agreement, instrument or document to which the Concessionaire is a party or by

which it is bound or (iii) the articles, bylaws or governing documents of the Concessionaire.

- (e) *Consents.* No Consent is required to be obtained by the Concessionaire from, and no notice or filing is required to be given by the Concessionaire to, or made by the Concessionaire with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the Concessionaire of the Original Agreement or the consummation of the Transaction, except for such consents which have been or will be obtained and notices which have been or will be given as of the Closing Date.
- (f) *Compliance with Law; Litigation.* The Concessionaire is not in breach of any applicable Law that could have a Material Adverse Effect. Neither the Concessionaire nor any Affiliate of the Concessionaire is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors or on any other list of Persons with which the University may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and solely with respect to the Concessionaire and the Concessionaire's Parent, the Debarred List. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Concessionaire's knowledge, threatened against the Concessionaire prior to or at the Time of Closing, which will have a material adverse effect on (i) the Transaction or (ii) the validity or enforceability of the Original Agreement.
- (g) *Accuracy of Information.* To the actual knowledge of the Concessionaire, all information regarding the Concessionaire or the Operator provided to the University by or on behalf of the Concessionaire or the Operator was accurate in all material respects at the time such information was provided.
- (h) *Operator.* The Concessionaire represents and warrants as follows: To the best knowledge of the Concessionaire: (i) the Operator is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) the capital stock or other equity interests of the Operator (including options, warrants and other rights to acquire capital stock) is owned by the Persons set forth in the written certification that the Concessionaire delivered to the University prior to the Signing Date; (iii) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required under the Original Agreement to be done, observed or performed by it in connection with its engagement by the Concessionaire; (iv) the Operator has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the Utility System Operations in accordance with the Original Agreement; (v) the Operator is not in breach of any applicable Law that would have a Material Adverse Effect; and (vi) is authorized to do business in the State of Ohio.

- (i) *Brokers.* Except for Royal Bank of Canada, whose fees will be paid by the Concessionaire or its Affiliates, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Concessionaire or any of its Affiliates who might be entitled to any fee or commission in connection with the Transaction which could become a claim on, a liability of, or an Encumbrance on, the Utility System.

By executing this Agreement, the Concessionaire is not deemed to have re-made or affirmed any of the foregoing representations and warranties.

**Section 9.3. Non-Waiver.** No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

**Section 9.4. Survival.**

- (a) *University's Representations and Warranties.* The representations and warranties of the University contained in Section 9.1 shall survive and continue in full force and effect for the benefit of the Concessionaire as follows: (i) as to the representations and warranties contained in Sections 9.1(a) through 9.1(g), inclusive, without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing, in accordance with Section 22.1, prior to the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.
- (b) *Concessionaire's Representations and Warranties.* The representations and warranties of the Concessionaire contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the University as follows: (i) as to the representations and warranties contained in Sections 9.2(a) through 9.2(h), inclusive, without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing, in accordance with Section 22.1, before the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable party.
- (c) *Modification of Statutes of Limitations.* The survival periods set forth in this Section 9.4 shall apply with respect to all Claims notwithstanding any statute of limitations that would be applicable to such Claims under applicable Law. The Parties acknowledge and agree that they intend to modify the statutes of

limitations with respect to all Claims to the extent such statutes of limitations would conflict with the provisions set forth in this Section 9.4.

## **ARTICLE 10 FINANCE OBLIGATIONS**

**Section 10.1. Concessionaire's Obligations.** The Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement, except with respect to the University's funding of costs and expenses related to any Capital Improvements for which the University has elected to fund the cost of construction pursuant to Section 4.4, or as otherwise specifically set forth herein. The Concessionaire shall be permitted to issue additional Leasehold Mortgage Debt or refinance existing Leasehold Mortgage Debt at any time during the Term provided that, as a condition thereof, the Concessionaire must comply with Section 3.6 in connection therewith.

**Section 10.2. University's Obligations.** The University shall, to the extent consistent with applicable Law and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. The University's cooperation may include reviewing, Approving and executing documents which substantiate the terms of this Agreement (including any consents or agreements necessary to confirm that the debt evidenced by the relevant financing constitutes a Leasehold Mortgage Debt) and making information and material relating to the Utility System Operations available to any of the Concessionaire's lenders or proposed lenders to facilitate financing to the extent permitted by applicable Law and contractual obligations with third parties and to the extent reasonable in the circumstances. If requested in writing to do so by the Concessionaire, the University shall, at the sole cost and expense of the Concessionaire, use its commercially reasonable efforts to cause the University's independent public accountants to reasonably cooperate in connection with the Concessionaire's public or private offering of securities, as the case may be. In addition, the University shall, promptly upon the request of the Concessionaire or any Leasehold Mortgagee, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents and estoppel certificates with respect to this Agreement which may be qualified, after reasonable diligence, to the best of the knowledge and belief of a designated Representative of the University. Nothing herein shall require the University to incur any additional obligations or liabilities (unless the University shall have received indemnification, as determined in the University's discretion, with respect thereto) or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

**Section 10.3. Concessionaire's Obligation for Estoppel Certificates.** The Concessionaire shall, promptly upon the request of the University, execute and deliver to the University, or any of the parties specified by the University, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated Representative of the Concessionaire. Nothing herein shall require the Concessionaire to incur any additional obligations or liabilities or to take any action, give any

consent or enter into any document inconsistent with the provisions of this Agreement or applicable Law.

**Section 10.4. Prohibited Tax Shelter Transactions.** The Concessionaire covenants and agrees that it shall not enter into any lease, sublease, concession, management agreement, operating agreement or other similar arrangement or other transaction that would cause the University to become a party to a “prohibited tax shelter transaction” within the meaning of Section 4965 of the Code (it being agreed that, for purposes of this Section 10.4, the University shall not be treated as having become a party to any such transaction solely by virtue of the execution of this Agreement or any lease, sublease, concession, management agreement, operating agreement or other similar arrangement or other transaction to which the University has consented). A violation of this Section 10.4 by the Concessionaire shall entitle the University to (a) recover from the Concessionaire, to the extent permitted by applicable Law, the amount of any Tax liability to which the University or any University official is subject and (b) require the Concessionaire, at the Concessionaire’s expense, to prepare timely all statements and returns, and to maintain all lists and similar information that the University becomes obligated to disclose, file or maintain with any taxing authority or participant or otherwise as a result of such transaction.

## **ARTICLE 11 COMPLIANCE**

**Section 11.1. Compliance with Laws.** The Concessionaire must at all times at its own cost and expense (but subject to the Concessionaire’s express rights hereunder with respect to such costs and expenses, including its right to include the reasonable cost of compliance with any Law enacted after the Setting Date in the Uncapped O&M Costs in accordance with the definition thereof) observe and comply, in all material respects, and cause the Utility System Operations to observe and comply, in all material respects, with all applicable Laws now existing or later in effect, including those Laws expressly enumerated in this Article 11, and those that may in any manner apply with respect to the performance of the Concessionaire’s obligations under this Agreement. The Concessionaire shall cause any contractor or subcontractor engaged in connection with the Utility Services to represent that it is not debarred from contract awards in accordance with Ohio Rev. Code. Ann. §§ 125.25 and 153.02. The Concessionaire shall and shall cause any contractor or subcontractor engaged in connection with the Utility Services to comply with and to submit the filings required by Ohio Rev. Code. Ann. § 125.111. The Concessionaire acknowledges that to the extent any funds subject to appropriation are used for the payment of the University’s obligations under this Agreement, those obligations shall be subject to Ohio Rev. Code Ann. § 126.07. The Concessionaire shall notify the University within 7 Days after receiving written notice from a Governmental Authority that the Concessionaire may have violated any Laws.

### **Section 11.2. Non-Discrimination.**

- (a) *Non-Discrimination Requirements.* The Concessionaire shall comply with, and maintain employment policies in a manner consistent with, all applicable Laws regarding equal employment opportunity and non-discrimination in employment, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (1981);

(ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (1990); (viii) the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 *et seq.*; (ix) the Ohio Fair Employment Practices Law, Ohio Rev. Code Ann. § 4112.01 *et seq.*; (x) the Ohio Equal Pay Act, Ohio Rev. Code Ann. §§ 4111.13, 4111.17 and 4111.99; and (xi) the Ohio Pregnancy Discrimination/Maternity Leave Act, Ohio ADC § 4112-5-05.

- (b) *Contract Provisions.* The Concessionaire shall cause all Contractors to comply with each of the federal laws and Ohio laws referenced in this Section 11.2, and shall include a provision to such effect in each contract entered into with any Contractor.

**Section 11.3. Compliance with Wage and Hour Laws.** The Concessionaire shall comply with all applicable Laws governing employment and/or employee wages and hours, including: (i) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (ii) the Ohio Wage Payment Law, Ohio Rev. Code Ann. § 4113.15 *et seq.*; (iii) the Ohio Minimum Wage Law, Ohio Rev. Code Ann. § 4111.01 *et seq.*; and (iv) the Ohio Prevailing Wage Law, Ohio Rev. Code Ann. § 4115 *et seq.* (collectively, the “Wage and Hour Laws”). Specifically in connection with Ohio Prevailing Wage Law and in no way limiting the obligation of Concessionaire to otherwise comply with applicable Laws, Concessionaire shall supply or shall cause to be supplied to the University’s prevailing wage coordinator, all schedules, affidavits, certified payroll reports, and any other items required by Ohio Rev. Code Ann. § 4115.071 in the time and manner provided for therein.

**Section 11.4. Safety Laws.** The Concessionaire shall comply with and maintain employment policies in a manner consistent with all applicable Laws regarding workplace safety, including the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*

**Section 11.5. Immigration Laws.** The Concessionaire shall comply with and maintain employment policies in a manner consistent with all applicable Laws regarding lawful employment of U.S. citizens and non-U.S. citizens, including taking reasonable steps to verify the employment eligibility of all employees as required under such Laws.

**Section 11.6. Labor Disputes.** The Concessionaire shall take all reasonable steps to resolve any alleged or actual labor dispute between it or the Operator and any representative of its or the Operator’s employees; further, any work stoppage or strike resulting from such labor dispute shall not excuse the Concessionaire’s performance under this Agreement. The Concessionaire shall use good faith efforts and take immediate steps to effect the limitation and/or removal, by lawful means, of any pickets or picketing that are the result of an alleged or actual labor dispute between it and any representative of its employees; provided however, if

such pickets or picketing results in the obstruction of ingress or egress of any Public Way or University facility, the Concessionaire shall immediately seek injunctive relief to terminate such pickets or picketing that may be available under applicable Laws.

**Section 11.7. Employee Conduct and Performance.** The Concessionaire shall ensure that it and the Operator have workplace conduct policies for their employees providing services under this Agreement that are at least as stringent as substantially similar policies and enforcement provisions as those of the University's general policies for conduct in the workplace and are in accordance with Prudent Industry Practices. These policies shall include policies related to workplace behavior; anti-harassment; weapons; confidentiality; security and safety; possession of alcohol; illegal drugs or weapons in the workplace; violation of criminal statutes that have a direct relationship to work performed by the employee; negligent or incompetent performance of work hereunder; gross misconduct related to work; conduct or interactions with University employees, students or visitors that impair or prejudice the University or its relationship with such persons; and unsafe practices or work performance that create a risk of harm to the employee, other persons or property.

**Section 11.8. Non-Collusion.** By signing this Agreement, the Concessionaire duly swears, affirms and warrants that it is the contracting party, and that it has not, nor has any other member, employee, Representative, agent or officer of the firm, company, corporation or partnership represented by it, directly or indirectly entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the Original Agreement or this Agreement.

**Section 11.9. Conflict of Interest.** The Concessionaire certifies and warrants to the University that neither it nor any of its agents, Representatives or employees who will participate in any way in the performance of Concessionaire's obligations hereunder has or, for so long as any such person continues in such capacity, will have any conflict of interest, direct or indirect, with University during the performance of this Agreement, other than in respect of any disputes that may arise hereunder or in connection herewith.

**Section 11.10. Drug-Free Workplace Certification.**

- (a) The Concessionaire hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Concessionaire will give written notice to the University within 7 Days after receiving actual notice that the Concessionaire or an employee of the Concessionaire has been convicted of a criminal drug violation occurring in the Concessionaire's workplace. The Concessionaire must at all times at its own cost and expense (but subject to its right to include the cost of compliance with any Law enacted after the Setting Date in the Uncapped O&M Costs in accordance with the definition thereof) observe and comply, in all material respects, and cause the Utility System Operations to observe and comply, in all material respects, with all applicable Laws now existing or later in effect that are applicable to it or such Utility System Operations, including those Laws expressly enumerated in this Article 11, and those that may in any manner apply with respect to the performance of

the Concessionaire's obligations under this Agreement. The Concessionaire must notify the University within 7 Days after receiving notice from a Governmental Authority that the Concessionaire may have violated any Laws as described above.

- (b) The Concessionaire shall require all Contractors with whom the Concessionaire is in contract for a public improvement to be enrolled in and be in good standing in the State of Ohio's Bureau of Workers' Compensation's (the "Bureau") Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in Ohio Rev. Code Ann. § 153.03 prior to a subcontractor providing labor at the project site of the public improvement.
- (c) The Concessionaire shall cause each subcontractor engaged by the Contractor to require all lower-tier subcontractors with whom the subcontractor is in contract for a public improvement to be enrolled in and be in good standing in the Bureau's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in Ohio Rev. Code Ann. § 153.03 prior to a lower-tier subcontractor providing labor at the project site of the public improvement.
- (d) Failure of the Concessionaire to require a subcontractor to be enrolled in and be in good standing in the Bureau's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in Ohio Rev. Code Ann. § 153.03 prior to the time that the subcontractor provides labor at the project site will result in the Concessionaire being found in breach of this Agreement and that breach shall be used in the responsibility analysis of the Concessionaire or the subcontractor who was not enrolled in a program for future contracts with the State of Ohio for 5 years after the date of the breach.
- (e) Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in Ohio Rev. Code Ann. § 153.03 prior to the time that the lower-tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract with the Concessionaire and a breach of this Agreement by that Concessionaire, and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the State of Ohio for 5 years after the date of the breach.

**Section 11.11. Minority-Owned and Women-Owned Business Enterprises.** The Concessionaire shall use good faith efforts during the Term to obtain the participation of M.B.E./W.B.E. in its Utility System Operations, including requiring the Operator to participate in such programs. In order to demonstrate this good faith efforts commitment, the Concessionaire shall, and shall cause all Contractors to, complete and submit to the University (i) a M.B.E./W.B.E. Solicitation and Commitment Statement, which shall detail the efforts of the Concessionaire or the Contractor, as applicable, to obtain such participation or (ii) a

M.B.E./W.B.E. Commitment Waiver Request, which shall detail the reasons why no M.B.E./W.B.E. participation could be obtained. Further, within 30 Days after the University's request (made not more than twice in any Fiscal Year), the Concessionaire and the Contractor, as applicable, shall submit a report detailing the actual levels of M.B.E./W.B.E. participation.

**Section 11.12. University Accreditation.** The Concessionaire shall ensure that the Utility System provides a sufficient quantity of Utilities in a timeframe sufficient such that the University, or any portion thereof, may maintain any third-party accreditation or other third-party standard of which the University has provided the Concessionaire notice prior to the Setting Date.

**Section 11.13. Title V Permit.** The Concessionaire acknowledges and agrees that, in connection with the Title V permit for Utility System sources issued by the Ohio Environmental Protection Agency (the "Title V Permit"): (i) the University will continue to be the "owner" identified in the Title V Permit during the Term; (ii) the Concessionaire will become the "operator" of permitted emission sources from the Utility System identified in the Title V Permit during the Term; (iii) the Concessionaire shall be responsible for operating all emission sources in compliance with all permit and regulatory requirements and meeting all monitoring, recordkeeping and reporting requirements related to such permitted emission sources; and (iv) the Concessionaire shall provide to the University (a) complete drafts of all required reports for the University to review and Approve and submit at least 15 Days prior to the deadline to submit such reports, with written approval to be received from the University no later than 7 days after submission of the draft report to the University; if this approval is not received, the Concessionaire reserves the right to submit the proposed report if resolution of the reporting issue(s) cannot be resolved prior to the deadline, (b) any information regarding utility operations required for Campus-wide reports by the later of (1) 10 Days after the end of the applicable reporting period and (2) (A) 30 Days prior to the applicable submission deadline or (B) 10 Days after a University request not related to a submission deadline, (c) information to be submitted in connection with the renewal of the regulatory permits or any portion thereof within the time period reasonably established by the University and (d) applications for new permits or Title V modifications for review and Approval at least 30 Days prior to submission to a regulatory agency.

**Section 11.14. Financial and Audit Standards.** The Concessionaire shall comply, and its financial statements shall be prepared in accordance, with GAAP.

**Section 11.15. Affirmative Action Program.** The Concessionaire represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to Ohio Rev. Code. Ann. § 125.111(B) and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services. The Concessionaire shall maintain such program during the Term and shall cause the Operator and any other Contractor, before performing any action under this Agreement, to maintain a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to Ohio Rev. Code. Ann. § 125.111(B) and file an Affirmative Action Program Verification form with the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services.

**Section 11.16. University Payments.** All financial obligations of the University under this Agreement are payable solely from the then-current revenues of the University legally available for such purpose and the Concessionaire shall have no right to receive payment from moneys raised by taxation or state appropriations. The failure of the University to comply with its financial obligations hereunder shall not preclude the Concessionaire from bringing a claim therefor pursuant to the express provisions hereof.

**Section 11.17. Anti-Boycott Requirement.** As required by Ohio Rev. Code. Ann. § 9.76, the Concessionaire hereby declares, represents and warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and hereby covenants not to do so during the Term hereof.

## **ARTICLE 12 PAYMENT OBLIGATIONS**

**Section 12.1. Certain Payment Obligations of the Concessionaire.** To the extent permitted by Law, the Concessionaire shall have a payment obligation to the University and each of its Representatives with respect to the full amount of any Losses actually suffered or incurred (as they are suffered or incurred) by the University or any such Representative, based upon, arising out of, related to, occasioned by or attributable to (i) any failure by the Concessionaire, the Operator or each of their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to the expiration of the survival period specified in Section 9.4(b), any breach by the Concessionaire of its representations or warranties set forth herein, (ii) any Assumed Liabilities, (iii) any Tax or recording charge attributable to any Transfer of the Concessionaire Interest or any part thereof by the Concessionaire, (iv) any increase in Property Taxes payable by the University that is not included in the definition of Uncapped O&M Costs or (v) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Concessionaire or its Representatives in connection with this Agreement, any Transfer of the Concessionaire Interest or any part thereof or any other matter affecting the Utility System; provided, however, that, except with respect to Claims resulting from Third Party Claims, Claims shall be made in writing within a period of 3 Years following the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations. The Parties agree that the Representatives of the University are intended to be third party beneficiaries of the obligations of Concessionaire pursuant to this Article 12.

**Section 12.2. Certain Payment Obligations of the University.** To the extent permitted by Law, and without limiting any other remedy under this Agreement (including Concession Compensation or AA-Compensation as provided in this Agreement) the University shall have a payment obligation to the Concessionaire and each of its Representatives with respect to any Losses actually suffered or incurred by the Concessionaire or any such Representative, based upon, arising out of, related to, occasioned by or attributable to (i) any failure by the University or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to the expiration of the relevant survival period specified in Section 9.4(a), any breach by the University of its representations or warranties set forth herein, (ii) any Excluded Liabilities, (iii) any claim for brokerage

commissions, fees or other compensation by any Person who acted on behalf of the University or its Representatives in connection with this Agreement or any other matter affecting the Utility System or (iv) any payment of Property Taxes with respect to the Utility System that are not the result of the actions or omissions of the Concessionaire; provided, however, that, except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of 3 Years following the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations. The Parties agree that the Representatives of the Concessionaire are intended to be third party beneficiaries of the obligations of University pursuant to this Article 12.

**Section 12.3. Agency for Representatives.** Each of the University and the Concessionaire agrees that it accepts each payment obligation contemplated in this Article 12 in favor of any of its Representatives as agent and trustee of that Representative and agrees that each of the University and the Concessionaire may enforce a payment obligation in favor of its Representatives on behalf of that Representative. For purposes of this Section 12.3, the term “Representative”, in the case of the Concessionaire, includes the Leasehold Mortgagee.

**Section 12.4. Third Party Claims.**

- (a) *Notice of Third Party Claim.* If an Obligee receives notice of the commencement or assertion of any Third Party Claim, the Obligee shall give the Obligor reasonably prompt notice thereof, but in any event no later than 30 Days after receipt of such notice of such Third Party Claim. Such notice to the Obligor shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Obligee.
- (b) *Defense of Third Party Claim.* The Obligor may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Obligee not later than 30 Days after receiving notice of that Third Party Claim (the “Notice Period”). The Obligor’s right to do so shall be subject to the rights of any insurer or other Party who has potential responsibility with respect of that Third Party Claim. The Obligor agrees to pay all of its own expenses of participating in or assuming each defense. The Obligee shall cooperate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Obligor and may participate in such defense assisted by counsel of its own choice at its own expense. If the Obligee has not received notice within the Notice Period that the Obligor has elected to assume the defense of such Third Party Claim, the Obligee may assume such defense, assisted by counsel of its own choosing and the Obligor shall be responsible for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Obligee with respect to such Third Party Claim. Notwithstanding the foregoing, to the extent that the Obligor is the Concessionaire or its Representative, the assumption of such defense shall be subject to the approval of the Ohio Attorney General.

- (c) *Assistance for Third Party Claims.* The Obligor and the Obligee will use all reasonable efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the “Defending Party”), (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim, and (ii) all Documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise co-operate with the Defending Party. The Obligor shall be responsible for all reasonable expenses associated with making such Documents, records and materials available and for all expenses of any employees made available by the Obligee to the Obligor hereunder, which expense shall not exceed the actual cost to the Obligee associated with such employees.
- (d) *Settlement of Third Party Claims.* If an Obligor elects to assume the defense of any Third Party Claim in accordance with Section 12.4(b), the Obligor shall not be responsible for any legal expenses subsequently incurred by the Obligee in connection with the defense of such Third Party Claim. However, if the Obligor fails to take reasonable steps necessary to defend diligently such Third Party Claim within 30 Days after receiving notice from the Obligee that the Obligee bona fide believes on reasonable grounds that the Obligor has failed to take such steps, the Obligee may, at its option, elect to assume the defense of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Obligor shall be responsible for all reasonable costs and expenses paid or incurred in connection therewith. However, the Obligee shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Obligor unless such settlement or compromise is made without any responsibility to, and does not require any action on the part of, the Obligor and does not in any way affect the Obligor. In the event that the Obligee is the University, in no event may the Obligor settle or compromise any Third Party Claim without obtaining the prior written consent of the Obligee, which shall require the consent of the State of Ohio’s Attorney General or his or her designee.

**Section 12.5. Direct Claims.** Any Direct Claim shall be asserted by giving the Obligor reasonably prompt notice thereof, but in any event not later than 60 Days after the Obligee becomes aware of such Direct Claim. The Obligor shall then have a period of 30 Days within which to respond in writing to such Direct Claim. If the Obligor does not so respond within such 30-Day period, the Obligor shall be deemed to have rejected such Direct Claim, and in such event the Obligee may submit such Direct Claim to the dispute resolution process set forth in Article 18.

**Section 12.6. Failure to Give Timely Notice.** A failure to give timely notice in accordance with this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure. However, this

Section 12.6 shall have no effect whatever on the survival provisions set out in Section 9.4 and the rights of the Parties with respect thereto.

**Section 12.7. Reductions and Subrogation.** If the amount of any Loss incurred by an Obligee at any time subsequent to the making of a payment hereunder on account of such Losses (an “Obligation Payment”) is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred in connection therewith), together with interest thereon from the date of such recovery, settlement or reduction at the Bank Rate, shall promptly be repaid by the Obligee to the Obligor. Upon making a full Obligation Payment, the Obligor shall, to the extent of such Obligation Payment, be subrogated to all rights of the Obligee against any third party in respect of the Loss to which the Obligation Payment relates. Until the Obligee recovers full payment of its Loss, any and all claims of the Obligor against any such third party on account of such Obligation Payment shall be postponed and subordinated in right of payment to the Obligee’s rights against such third party.

**Section 12.8. Payment and Interest.** All amounts to be paid by an Obligor hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Obligee disbursed funds, suffered damages or losses or incurred a loss or expense in respect of a Loss for which the Obligor is responsible to make payment pursuant to this Article 12, to the date of payment by the Obligor to the Obligee.

**Section 12.9. Limitation on Certain Claims.** To the extent permitted by Law and without limiting any other remedy under this Agreement (including Concession Compensation or AA-Compensation as provided in this Agreement), the maximum aggregate liability of the University to the Concessionaire or its Representatives, in respect of Losses pursuant to this Article 12 shall not exceed 50% of the Closing Consideration; provided further that this Section 12.9 shall not apply to Claims for (i) breach of the representations or warranties in Sections 9.1(a), (b), (c), (d), (e), (f), and (g); (ii) fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 9.1; (iii) for any Excluded Liabilities referred to in Section 3.2(d)(iv); (iv) payment of the Utility System Concession Value and (v) payment of the Utility Fee. To the extent permitted by Law and without limiting any other remedy under this Agreement, the maximum aggregate liability of the Concessionaire to the University and its Representatives, in respect of Losses pursuant to this Article 12 shall not exceed 50% of the Closing Consideration; provided further that this Section 12.9 shall not apply to Claims for the breach of the representations or warranties in Section 9.2(a), (b), (c), (d), (e), (f), and (g) or Section 12.1(iv) or to Claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 9.2. Neither Party shall have any liability to the other Party or its Representatives for Losses to the extent resulting from fraudulent actions of the other Party or its Representatives or the gross negligence of the other Party or its Representatives.

**Section 12.10. Other Matters.**

- (a) *Waiver of Limits.* With respect to claims by the Concessionaire’s employees, the Concessionaire waives its immunity, if any, to which it is entitled or would be

entitled, as a complying employer under the applicable worker's compensation law, but only to the extent that such immunity would bar or affect recovery under or enforcement of Concessionaire's obligations to defend, indemnify, hold harmless or contribute to any sums due under any Losses, including any claim by any employee of Concessionaire, that may be subject to Section 35, Article II of the Ohio Constitution and Ohio Rev. Code Ann. § 4123.74.

- (b) *Losses Net of Insurance.* For purposes of this Article 12, the amount of any Losses for which payment is provided hereunder shall be net of any amounts recovered by the Obligee under insurance policies with respect to such Losses, it being understood that the obligations of the Obligee hereunder shall not be so reduced to the extent that any such recovery results in an increase in the Obligee's insurance premiums, or results in any other additional cost or expense to any such Obligee.

**Section 12.11. Offset Rights; Limitations on Certain Damages.**

- (a) Each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder that are not subject to dispute (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights as against such Party or any part thereof or interest therein contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets.
- (b) In no event shall any Party be liable to the other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach).

**Section 12.12. Governmental Immunity.** Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that the University and its officers, directors, employees, agents and Representatives are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Ohio Court of Claims under Ohio Rev. Code Ann. § 2743 *et seq.*, or as otherwise set forth or incorporated into Ohio Rev. Code Ann. § 2743 *et seq.*, or otherwise available to the University and its officers, directors, employees, agents and Representatives.

**Section 12.13. Survival.** This Article 12 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

## ARTICLE 13 INSURANCE

**Section 13.1. Insurance Coverage Required – Concessionaire.** The Concessionaire shall provide and maintain at the Concessionaire’s own expense, or cause to be maintained, during the Term and during any time period following expiration if the Concessionaire is required to return and perform any additional work, commercially reasonable insurance coverage in accordance with Prudent Industry Practices, including, at a minimum, the insurance coverages and requirements specified below, insuring the Utility System, all Utility System Operations and all Design-Build ECMs (the “Concessionaire Required Coverages”).

- (a) *Workers’ Compensation and Employer’s Liability.* The Concessionaire shall provide or cause to be provided Workers’ Compensation Insurance, as prescribed by applicable Law, covering all employees who agree to provide a service under this Agreement and Employer’s Liability Insurance coverage with limits of not less than \$1,000,000 for each accident or illness or disease.
- (b) *Commercial General Liability (Primary and Umbrella).* The Concessionaire shall provide or cause to be provided Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence and \$25,000,000 in the annual aggregate for bodily injury, personal injury and property damage liability. Coverage shall include the following: all premises and operations, including products/completed operations, explosion, collapse, mobile equipment not suitable for roadways, underground, separation of insureds, defense of terrorism (to the extent commercially available) and contractual liability (with no limitation endorsement) and shall be written on ISO form CG 00 01 04 13 or its equivalent. The University shall be included as an additional insured on a primary, non-contributory basis for any liability arising under or in connection with this Agreement.
- (c) *Automobile Liability (Primary and Umbrella).* When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, the Concessionaire shall provide or cause to be provided Automobile Liability Insurance with limits of not less than \$10,000,000 combined single limit each accident for bodily injury and property damage. The University shall be included as an additional insured on a primary, non-contributory basis.
- (d) *Professional Liability.* When any architects, engineers, construction managers, professional services providers or any other professional consultants perform work in connection with this Agreement, the Concessionaire shall require such architects, engineers, construction managers or other professional consultants to maintain Professional Liability Insurance covering their respective negligent acts, errors or omissions with limits which are reasonable and commensurate with the work being performed, with limits not less than \$5,000,000 per claim and in the aggregate. Should the Concessionaire self-perform any work of the nature noted in this Section 13.1(d), evidence of Professional Liability Insurance meeting the standards for such work set forth above shall be required.

- (e) *Network Security and Privacy Insurance.* The Concessionaire shall also maintain Cyber Liability Insurance for network security and privacy with limits of not less than \$5,000,000 per claim and in the aggregate inclusive of event management. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of 5 Years.
- (f) *Railroad Protective Liability.* When any work is to be done adjacent to or on railroad or transit property and if such insurance is required, the Concessionaire shall provide, with respect to the operations that the Concessionaire or Contractors perform, Railroad Protective Liability Insurance in the name of the applicable railroad or transit entity. The policy shall have limits of not less than the requirement of the operating railroad for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof. If such work is subcontracted out to Contractors, then the Concessionaire shall not be required to maintain such insurance but may instead require its Contractors performing the work adjacent to or on railroad or transit property to carry such railroad liability insurance.
- (g) *Pollution Legal Liability.* The Concessionaire shall provide Pollution Legal Liability Insurance or Site Pollution Insurance or cause to be provided Pollution Legal Liability Insurance or Site Pollution Insurance or equivalent, in each case with limits of not less than \$5,000,000 per claim and \$10,000,000 in the annual aggregate for environmental and pollution damage liability arising out of pollution events occurring after the Closing Date. The University is to be included as an additional insured on a primary, non-contributory basis for any liability arising under or in connection with this Agreement.
- (h) *Property.* The Concessionaire shall obtain All Risk Property Insurance at full replacement cost, covering all loss, damage or destruction to the Utility System (including improvements and betterments) and any Design-Build ECMs, which insurance may be provided on a blanket basis with reported building values, which shall include the value of the coverage for the Utility System and any Design-Build ECMs required hereunder; provided, however, that the limits of such coverage may be based on replacement cost value agreed by the University and the Concessionaire acting reasonably or on a probable maximum loss analysis, subject to the University's Approval of such probable maximum loss analysis by an independent third party that is reasonably acceptable to the University. Coverage shall include the following, but not be limited to: equipment breakdown, collapse, water including overflow, leakage, sewer backup or seepage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, boiler and machinery, valuable papers and, to the extent commercially available, terrorism, earthquake and named wind. Coverage shall include flood insurance with a sublimit of not less than \$10,000,000 in the aggregate. The University and any Leasehold Mortgagee shall be named as additional insureds and as loss payees. The

Concessionaire shall be responsible for any loss or damage to University property under this Agreement at full replacement cost. The Concessionaire shall be responsible for all loss or damage to personal property (including materials, fixtures/contents, equipment, tools and supplies) of the Concessionaire unless caused by the University.

- (i) *Builder's Risk.* When the Concessionaire undertakes, pursuant to this Agreement, any construction, maintenance or repairs to the Utility System (including Capital Improvements, ECMs, Material Changes and betterments) or any ECMs that are not part of the Utility System, the Concessionaire shall provide or cause to be provided, All Builder's Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Utility System or are or will be part of ECMs implemented by the Concessionaire. This requirement may be satisfied through the All Risk Property Insurance obtained pursuant to Section 13.1(h). Coverage shall include, but not be limited to, the following: right to partial occupancy, boiler and machinery, business income, valuable papers and other consequential loss, when applicable with aggregate sublimits for catastrophic perils of earthquake, flood and named wind which are the best available on commercially reasonable terms. The Concessionaire and any Leasehold Mortgagee shall be named as additional insureds and as loss payees.

**Section 13.2. Insurance Coverage Required – University.** The University shall provide and maintain at the University's own expense, or cause to be maintained, during the Term and during any time period following expiration if the Concessionaire is required to return and perform any additional work, the following insurance coverages and requirements specified below (the "University Required Coverages" together with the Concessionaire Required Coverages, the "Required Coverages").

- (a) *Workers' Compensation and Employer's Liability.* The University shall provide or cause to be provided Workers' Compensation Insurance, as prescribed by applicable Law, covering all employees who agree to provide a service under this Agreement and Employer's Liability Insurance coverage with limits of not less than \$1,000,000 for each accident or illness or disease.
- (b) *Commercial General Liability (Primary and Umbrella).* The University shall provide or cause to be provided Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence and \$25,000,000 in the annual aggregate for bodily injury, personal injury and property damage liability. Coverage shall include the following: all premises and operations, including products/completed operations, explosion, collapse, underground, separation of insureds, defense of terrorism (to the extent commercially available) and contractual liability (with no limitation endorsement). The Concessionaire shall be included as an additional insured.
- (c) *Property.* The University shall obtain All Risk Property Insurance at full replacement cost, covering all loss, damage or destruction to the University's

owned property (other than any property leased to the Concessionaire hereunder), including improvements and betterments, which insurance may be provided on a blanket basis with reported building values, which shall include the value of the coverage for the University's owned property required hereunder; provided, however, that the limits of such coverage may be based on replacement cost value. Coverage shall include the following: equipment breakdown, collapse, water including overflow, leakage, sewer backup or seepage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, boiler and machinery, valuable papers and, to the extent commercially available, terrorism, earthquake and named wind. Coverage shall include flood insurance with limits which are commercially available. The Concessionaire shall be responsible for the property deductible for any loss or damage to University property. The Concessionaire shall be responsible for all loss or damage to personal property (including materials, fixtures/contents, equipment, tools and supplies) of the Concessionaire unless caused by the University.

### **Section 13.3. Additional Requirements.**

- (a) *Evidence of Insurance.* The Parties delivered or caused to be delivered to each other's Representative designated in writing by each Party, original standard ACCORD form Certificates of Insurance, or equivalent documentation acceptable to the Parties, evidencing the Concessionaire Required Coverages or University Required Coverages, as applicable, on or before the Closing Date, and shall provide or cause to be provided, promptly following renewal and not more than 14 Business Days following renewal of the then current coverages (or such other period as is agreed to by the Parties), Renewal Certificates of Insurance, or such similar evidence, if such coverages have an expiration or renewal date occurring during the Term. The receipt of any certificate does not constitute agreement by the receiving Party that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of either Party to obtain certificates or other insurance evidence from the other Party shall not be deemed to be a waiver by such Party. Non-conforming insurance shall not relieve either Party of the obligation to provide insurance as specified herein. Except as otherwise expressly set forth herein, each of the Required Coverages may be reviewed by the Parties for compliance with the terms of this Agreement. The Party responsible for a Required Coverage shall place such Required Coverage with insurers licensed to do business in the State of Ohio; provided that all such insurers, at a minimum, shall have a rating of "A minus (VIII)" or better by A.M. Best Company (unless the other Party consents to waive this requirement). At the request of a Party, the other Party shall provide the requesting Party with complete copies of policies and all policy endorsements commencing on the Signing Date and thereafter if there is a material change.

- (b) *Notice of Cancellation or Violation.* The Concessionaire shall use commercially reasonable efforts to notify the University 30 Days (or in the case of cancellation for non-payment of premiums, 10 Days) prior to cancellation of any Concessionaire Required Coverages. Each Party shall be permitted (but not obligated) to pay any delinquent premiums before the cancellation date specified by the insurer in any notice of cancellation for non-payment of premium in order to maintain such coverage in full force and effect and each Party shall reimburse the other Party for any delinquent premiums paid by such Party on demand without any Days of grace and without prejudice to any other rights and remedies of the Parties hereunder. Each Party shall maintain the Required Coverage for which they are responsible hereunder during the Term.
- (c) *Deductibles.* All Required Coverages may contain deductibles or self-insured retentions not to exceed amounts reasonably acceptable to the Party not responsible for such Required Coverage taking into account the deductibles or self-insured retentions for the required insurance coverages for comparable property. Any and all deductibles or self-insured retentions on Required Coverages shall be borne by the purchasing Party or its Contractors, who shall be responsible for its own deductibles and/or self-insured retentions unless the Party is at fault for a loss to the other Party in which case the at fault party will pay the other Party's deductible or self-retention.
- (d) *Post-Termination Effectiveness.* Any Required Coverage written on a claims made basis and the products/completed operations portion of the Commercial General Liability Insurance shall be continued for at least 5 Years following the termination of this Agreement and evidence of such insurance shall be provided to the Party not responsible for such Required Coverage at least annually.
- (e) *Adjustment of Insurance Coverages.* The amounts of coverage required by Section 13.1 and Section 13.2 shall be reasonably adjusted, as agreed by the University and the Concessionaire, based on limits maintained for comparable property each succeeding fifth anniversary of the Closing Date, but in no event shall the amounts of coverage be less than specified in Section 13.1 and Section 13.2.
- (f) *Waiver of Subrogation by Insurers.* Each of the Required Coverages provided by either Party shall, where legally or customarily permitted, include a waiver by the insurer of its rights of subrogation against the other, its employees, elected officials, agents or Representatives. Concessionaire agrees to waive all rights of subrogation against the University and its employees, elected or appointed officials, agents and Representatives, and Concessionaire shall cause each of its Subcontractors to waive all their rights of subrogation against the University
- (g) *Each Party's Right to Insure.* If either Party fails to obtain and maintain or cause to be obtained and maintained the insurance required to be maintained by such Party by this Article 13, the other Party shall have the right (without any obligation to do so), upon 2 Business Days' notice to the other Party in a non-

emergency situation or forthwith in an emergency situation and without assuming any obligation in connection therewith, to effect such insurance and all costs and expenses of the Party effecting the coverage in connection therewith shall be payable by the other Party on demand without any Days of grace and without prejudice to any other rights and remedies of the Parties hereunder. Such insurance taken out by the effecting Party shall not relieve the other Party of its obligations to insure hereunder and the effecting Party shall not be liable for any loss or damage suffered by the other Party in connection therewith.

- (h) *No Limitation as to Concessionaire Liabilities.* The Concessionaire expressly understands and agrees that any coverages and limits furnished by the Concessionaire shall in no way limit the Concessionaire's liabilities and responsibilities specified within this Agreement or by Law.
- (i) *No Contribution by University.* The Concessionaire expressly understands and agrees that any insurance or self-insurance programs maintained by the University shall not contribute with insurance provided by the Concessionaire under this Agreement.
- (j) *Insurance Not Limited by Indemnification.* The required insurance shall not be limited by any limitations expressed in the payment obligation language herein or any limitation placed on the obligation therein given as a matter of law.
- (k) *Insurance Requirements of Contractors.* The Concessionaire shall require in each contract with any Contractor that such Contractor obtain coverages reasonably comparable to the Concessionaire Required Coverages that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract with the Contractor. Such coverages shall insure the interests of the University, its employees, elected officials and Representatives, the Concessionaire and any other Contractors in respect of the applicable work being performed and shall be subject to the same (or comparable) coverage and administrative requirements as are imposed on the Concessionaire pursuant to this Agreement, specifically requiring such Contractor to name the University as an additional insured and requiring such Contractor's insurance to include a waiver of subrogation as described in Section 13.3(f). When requested to do so by the University, the Concessionaire shall provide or cause to be provided to the University Certificates of Insurance with respect to such insurance coverages or such other evidence of insurance, as may be reasonably acceptable in form and content to the University.
- (l) *Cooperation.* The University and the Concessionaire shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance hereunder so as to expedite the release and dedication of proceeds of such insurance in the manner and for the purposes herein contemplated.

- (m) *Joint Venture and Limited Liability Company Policies.* If the Concessionaire or any Contractor required to obtain an insurance policy hereunder is a joint venture or limited liability company, all insurance policies required to be obtained by the Concessionaire or such Contractor shall specifically name the joint venture or limited liability company as a named insured. If the Concessionaire contracts operations to a third party, the Concessionaire will be an additional named insured on any liability policy.
- (n) *Other Insurance Obtained by Concessionaire.* If the Concessionaire or its Contractors desire coverages in addition to the Concessionaire Required Coverages, the Concessionaire and each Contractor shall be responsible for the acquisition and cost of such additional coverages. If the Concessionaire or its Contractors obtain any property, liability or other insurance coverages that will relate to the Utility System or the Utility System Operations in addition to the Concessionaire Required Coverages (“Additional Coverages”), then the Concessionaire or its Contractors shall (i) notify the University as to such Additional Coverages at least 10 Business Days in advance of purchasing such Additional Coverages and make such modifications as the University may reasonably require so that such Additional Coverage does not conflict with the University’s insurance coverages, (ii) provide the University with any documentation relating to the Additional Coverages, including Certificates of Insurance, that the University reasonably requests and (iii) at the University’s election, acting reasonably, cause the University and its employees, elected or appointed officials, agents and Representatives to be named as additional insureds under such Additional Coverages, if that is normally allowed in accordance with good industry practice and the University reimburses the Concessionaire for any additional expense incurred as a result of naming the University and such persons (or any of them) as additional insureds thereunder.
- (o) *University’s Right to Modify.* The University shall have the right, acting reasonably, to request to modify, delete, alter or change insurance coverage requirements set forth in Section 13.1 and this Section 13.2. Notwithstanding anything to the contrary herein, (i) any change to the types or limits of contractually required insurance coverage shall be subject to mutual agreement of the Parties, and (ii) if any insurance (including the limits or deductibles thereof) required to be maintained under this Agreement shall not be available at commercially reasonable rates, the Concessionaire’s obligation to obtain or maintain such insurance shall be waived by the University for as long as such insurance shall not be available at commercially reasonable rates, provided that during the period of such waiver, the Concessionaire maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.
- (p) *Commercial Availability.* To the extent any of the Concessionaire Required Coverages are not available on a commercially reasonable basis or on commercially reasonable terms, the Concessionaire shall obtain insurance that is available on a commercially reasonable basis or on commercially reasonable terms that best approximates the Concessionaire Required Coverages, but said

substitute coverage shall, at the University's request, be subject to review of an independent insurance consultant, and such independent insurance consultant shall have delivered to the University and the Concessionaire its opinion to the effect that the substitute coverages meet the above-stated criteria.

- (q) *Payment for Insurance Coverage.* To the extent that the University and the Concessionaire determine that it would be in the best interests of both Parties for any of the Concessionaire Required Coverages to be purchased by and held in the name of the University, then the University shall be responsible for purchasing those certain Concessionaire Required Coverages, which shall satisfy the Concessionaire's obligation to do so hereunder. The University shall name the Concessionaire and the Leasehold Mortgagee as additional insureds thereunder.

#### **Section 13.4. Damage and Destruction.**

- (a) *Obligations of Concessionaire.* If all or any part of any of the Utility System shall be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concessionaire shall:
- (i) give the University notice thereof promptly after the Concessionaire receives actual notice of such casualty;
  - (ii) at its sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the "Casualty Cost"), which for the avoidance of doubt shall not be included in the Utility Fee, proceed diligently to repair, restore or rebuild the same to the condition existing prior to the happening of such fire or other casualty (any such activity being a "Restoration"); and
  - (iii) deposit all insurance proceeds received by the Concessionaire in connection with any Restoration with a Depositary; provided, however, that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depositary, then the Concessionaire shall also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (collectively, with any interest earned thereon, the "Restoration Funds"); provided further that the procedures of this Section 13.4(a)(iii) shall apply only to casualty events in which the cost of Restoration exceeds \$5,000,000.

Any Restoration undertaken pursuant to this Section 13.4 shall be undertaken in accordance with and subject to the terms of this Agreement. Prior to the commencement of Restoration work, the Concessionaire shall submit to the

University for Approval by the University the plans for the Restoration work and such work shall not be undertaken unless the plans for such work have been Approved by the University.

- (b) *Rights of University.* If (i) the Concessionaire shall fail or neglect to commence the diligent Restoration of the Utility System or the portion thereof so damaged or destroyed, (ii) having so commenced such Restoration, the Concessionaire shall fail to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion of any such Restoration by the Concessionaire, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the University may, but shall not be required to, complete such Restoration at the Concessionaire's expense and shall be entitled to be paid out of the Restoration Funds, but such payment shall not limit the Concessionaire's obligation to pay the University's reasonable Restoration expenses, less amounts received by the University from such Restoration Funds. In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concessionaire shall (x) account to the University for all amounts spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depository to pay over to the University within 30 Days after demand therefor, the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or cancellation and (z) pay over or cause the Depository to pay over to the University, for allocation between the University, within 30 Days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depository subsequent to such termination or cancellation. The Concessionaire's obligations under this Section 13.4(b) shall survive the expiration or termination of this Agreement.
- (c) *Payment of Restoration Funds to Concessionaire.* Subject to the satisfaction by the Concessionaire of all of the terms and conditions of this Section 13.4, the Depository shall pay to the Concessionaire from time to time, any Restoration Funds, but not more than the amount actually collected by the Depository upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the University, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and the University in the collection of such monies, to be utilized by the Concessionaire solely for the Restoration, such payments to be made as follows:
- (i) prior to commencing any Restoration, the Concessionaire shall furnish the University with an estimate of the cost of such Restoration, prepared by an architect or engineer;
  - (ii) the Restoration Funds shall be paid to the Concessionaire in installments as the Restoration progresses, subject to Section 13.4(c)(iii), based upon requisitions to be submitted by the Concessionaire to the Depository and the University in compliance with Section 13.4(d), showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or

paid by the Concessionaire; provided, however, that if any lien (other than a Permitted Concessionaire Encumbrance) is filed against the Utility System or any part thereof in connection with the Restoration, the Concessionaire shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise); provided further that notwithstanding the foregoing, but subject to the provisions of Section 13.4(c)(iii), the existence of any such lien shall not preclude the Concessionaire from receiving any installment of Restoration Funds so long as such lien will be discharged with funds from such installment and at the time the Concessionaire receives such installment the Concessionaire delivers to the University and the Depository a release of such lien executed by the lien or and in recordable form;

- (iii) the amount of any installment to be paid to the Concessionaire shall be the amount of Restoration Funds incurred by the Concessionaire in connection therewith, less 10% of such amount as a retainage (which 10% retainage shall (i) be reserved without duplication of any retainage reserved by the Concessionaire under its contracts for the Restoration work and (ii) shall be released to the Concessionaire upon completion of the Restoration work), except that such retainage shall not include any amounts for architects' or engineers' fees or permitting or other governmental fees in connection with the Restoration or with respect to each Contractor upon the final completion of each such Contractor's respective work, provided that the unapplied portion of the funds held by the Depository are sufficient to complete the Restoration; provided, however, that all disbursements to the Concessionaire shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depository are sufficient to complete the Restoration; and
- (iv) except as provided in Section 13.4(b), upon completion of and payment for the Restoration by the Concessionaire, subject to the rights of any Leasehold Mortgagee, the Depository shall pay the balance of the Restoration Funds, if any, to the Concessionaire; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Concessionaire shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 13.4(a)(iii).

- (d) *Conditions of Payment.* The following shall be conditions precedent to each payment made to the Concessionaire as provided in Section 13.4(c):

- (i) at the time of making such payment, no Concessionaire Default exists, except if such Concessionaire Default is the result of the damage or destruction for which such payment is being made;
  - (ii) the Restoration shall be carried out under the supervision of the architect or engineer, and there shall be submitted to the Depository and the University the certificate of the architect or engineer (or other evidence reasonably satisfactory to the University) stating that (A) the materials and other items which are the subject of the requisition have been delivered to the Utility System (except with respect to requisitions for advance deposits permitted under Section 13.4(c)(iii)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's or other liens have been claimed, except for any mechanic's lien for claims that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such lien is delivered to the Depository in accordance with Section 13.4(c)(ii)), or insured over by title insurance reasonably acceptable to the University, (B) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concessionaire, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement, (F) the balance of the Restoration Funds held by the Depository will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion and (G) in the case of the final payment to the Concessionaire, the Restoration has been completed in accordance with this Agreement.
- (e) *Payment and Performance Bonds.* If the Concessionaire obtains payment or performance bonds related to a Restoration (which the Concessionaire may or may not obtain in its discretion), the Concessionaire shall name the University and the Concessionaire and the Leasehold Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to the University promptly upon obtaining them. The claims of any such additional obligee with respect to such payment or performance bonds shall rank *pari passu* in priority of payment with the claims of all other additional obligees.

- (f) *Benefit of University.* The requirements of this Section 13.4 are for the benefit only of the University, and no Contractor or other Person shall have or acquire any claim against the University as a result of any failure of the University actually to undertake or complete any Restoration as provided in this Section 13.4 or to obtain the evidence, certifications and other documentation provided for herein.
- (g) *Investment of Restoration Funds.* Restoration Funds deposited with a Depository shall be invested and reinvested in Eligible Investments at the direction of the Concessionaire, and all interest earned on such investments shall be added to the Restoration Funds.
- (h) *Rights of Leasehold Mortgagee.* The Parties acknowledge and agree that any Restoration Funds not applied to a Restoration as provided in this Section 13.4 shall be subject to the lien or liens of any Leasehold Mortgage.

## ARTICLE 14 ADVERSE ACTIONS

### Section 14.1. Adverse Action.

- (a) An “Adverse Action” shall occur if the City of Columbus, Ohio, the County of Franklin, Ohio, the State of Ohio, or any agency, political division or unit or commission thereof, or the University, at any time during the Term, takes any action or actions and the effect of such action or actions, individually or in the aggregate, is reasonably expected (i) to be principally borne by the Concessionaire (or principally borne by the Concessionaire and the concessionaire under the Parking Agreement) and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest (whether as a result of a decrease in the Utility Fee or other revenues, increased expenses that cannot be recovered pursuant to this Agreement, or both), except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action) or such action is otherwise permitted under this Agreement; provided, however, that none of the following shall be an Adverse Action: (A) the development, redevelopment, construction, modification or change in the operation of any existing or new utility facility (other than any Utility Facility) or utility (including a new source of energy or power) (other than the Utilities) whether or not it results in the reduction of the Variable Fee Component over time, (B) the imposition of a state or local Tax of general application or federal Tax or an increase in state or local Taxes of general application or federal Taxes and (C) any action of the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission, or their respective successors, that subjects the Concessionaire to such agency’s regulatory jurisdiction due solely to the Utility System Operations performed in accordance with this Agreement. For the avoidance of doubt, any action described in the foregoing clause (C) may be a Compensation Event in accordance with the definition thereof.

- (b) If an Adverse Action occurs, the Concessionaire may elect, subject to Section 14.2 and Section 14.3, to either (i) be paid by the University the Concession Compensation with respect thereto (such Concession Compensation, the “AA-Compensation”) or (ii) terminate this Agreement and be paid by the University the Termination Damages, in either case by giving notice in the manner described in Section 14.1(c).
- (c) If an Adverse Action occurs, the Concessionaire shall give written notice (the “AA-Preliminary Notice”) to the University within 30 Days following the date on which the Concessionaire first became aware of the Adverse Action stating that an Adverse Action has occurred. Within 180 Days following the date of delivery of the AA-Preliminary Notice, the Concessionaire shall give the University another notice (the “AA-Notice”) setting forth (i) the details of the effect of the occurrence that is principally borne by the Concessionaire, (ii) details of the material adverse effect of the said occurrence on the fair market value of the Concessionaire Interest, (iii) a statement as to which right in Section 14.1(b) the Concessionaire elects to exercise, and (iv) if the Concessionaire elects to exercise the right to AA-Compensation under Section 14.1(b), the amount claimed as AA-Compensation and details of the calculation thereof. The University shall, after receipt of the AA-Notice, be entitled by notice delivered to the Concessionaire no later than 30 Days following the date of receipt of the AA-Notice, to require the Concessionaire to provide such further supporting particulars as the University may reasonably consider necessary. If the University wishes to dispute the occurrence of an Adverse Action or the amount of AA-Compensation, if any, claimed in the AA-Notice, the University shall give written notice of dispute (the “AA-Dispute Notice”) to the Concessionaire within 30 Days following the date of receipt of the AA-Notice stating in reasonable detail the grounds for such dispute. If neither the AA-Notice nor the AA-Dispute Notice has been withdrawn within 30 Days following the date of receipt of the AA-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 18.
- (d) If the Concessionaire has elected to exercise its right to AA-Compensation pursuant to Section 14.1(b), the University shall pay such AA-Compensation as Concession Compensation in accordance with Article 15.
- (e) Payment of the entire sum of the Termination Damages or the AA-Compensation, as the case may be, by the University to the Concessionaire, shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the occurrence of an Adverse Action, as the case may be, and, upon such payment, the University shall be released and forever discharged by the Concessionaire from any and all liability in respect of such Adverse Action, except if the Concessionaire elects to be paid AA-Compensation and the effect of the applicable Adverse Action continues to be borne after the Compensation Calculation Measuring Period in which it took place, in which case, the Concessionaire may make a claim for AA-Compensation in subsequent Compensation Calculation Measuring Periods to

the extent the Concessionaire is affected by such Adverse Action in such Compensation Calculation Measuring Period.

#### **Section 14.2. Termination.**

- (a) If the Concessionaire has elected to exercise its right to terminate this Agreement in connection with an Adverse Action pursuant to Section 14.1(b) and Section 14.1(e), then this Agreement, subject to Section 14.3, shall terminate 60 Days following the date of receipt of the AA-Notice by the University, and the University shall pay an amount equal to the aggregate of (i) the Utility System Concession Value as of the date of such termination (which shall be determined as if no Adverse Action has occurred), *plus* (ii) without duplication, the out-of-pocket and documented costs and expenses incurred by the Concessionaire (which costs and expenses shall include reasonable payments due and payable by the Concessionaire to the Operator or other Contractors pursuant to an Operating Agreement or similar agreement) or the Operator as a result of such termination, *plus* (iii) the Concession Compensation calculated for the period between the date of the Adverse Action and the date of termination *less* (iv) any insurance or condemnation proceeds received by the Concessionaire in respect of all or any portion of the Utility System as a result of such Adverse Action (collectively, the “Termination Damages”), together with any Taxes payable by the Concessionaire on the gross amount of such Termination Damages, to the Concessionaire on the Reversion Date or, if the Termination Damages are determined on a date subsequent to the Reversion Date, then not later than 60 Days following the date of determination of the Termination Damages; provided that, subject to the right of the Concessionaire to receive interest at the Bank Rate on the payment owed by the University from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the University may defer any such payment for an additional 120 Days in the University’s discretion; provided, however, that any amounts received by the Concessionaire or any Leasehold Mortgagee from any insurance policies payable as a result of damage or destruction to the Utility System that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the University to the Concessionaire, so long as the University has not received any such amounts pursuant to Section 13.4.
- (b) Any dispute arising out of the determination of the Termination Damages shall be submitted to the dispute resolution procedure in Article 18.
- (c) This Agreement shall not terminate pursuant to Section 14.2(a) unless the Concessionaire has first obtained and delivered to the University the written consent of the Leasehold Mortgagee to such termination.

**Section 14.3. Right of the University to Remedy.** If the University wishes to remedy the occurrence of an Adverse Action (other than an Adverse Action by the University that constitutes a breach of this Agreement, to which this Section 14.3 shall have no application without the written consent of the Concessionaire), including by reimbursing the Concessionaire

such funds as are necessary to compensate the Concessionaire for the material adverse economic effect on the Concessionaire of such Adverse Action, the University shall give written notice thereof to the Concessionaire within 30 Days following the date of receipt of the AA-Notice. If the University gives such notice it must remedy the applicable Adverse Action within 120 Days following the date of receipt of the AA-Notice or, if a AA-Dispute Notice has been given, within 120 Days following the final determination pursuant to Article 18 that an Adverse Action occurred; provided, however, that in the event of a remedy involving payment of funds to the Concessionaire, the University shall be deemed to have remedied the applicable Adverse Action as of the date that the University provides a written commitment to the Concessionaire to pay such funds from time to time as are necessary to compensate the Concessionaire as it is financially adversely affected by the applicable Adverse Action from time to time. If the University elects to remedy the occurrence of an Adverse Action within the applicable period of time, the right of the Concessionaire shall be limited to a claim for AA-Compensation with respect to such Adverse Action.

**Section 14.4. Other Actions by Governmental Authorities.** In the event that any Governmental Authority proposes to take any action at any time during the Term (including enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by the Concessionaire (and not by others) and (ii) to have a Material Adverse Effect, except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of an Adverse Action or such action by any such Governmental Authority), then at the request of the Concessionaire, the University shall use its reasonable efforts to oppose and challenge such action by any such Governmental Authority; provided, however, that all reasonable out-of-pocket costs and expenses incurred by the University in connection with such opposition or challenge shall be borne by the Concessionaire.

**Section 14.5. Regulatory Filings.** The Parties acknowledge and agree that they share a common interest in any regulatory proceedings that involve the Utility System Operations. Consistent therewith, the Parties agree that, to the extent that the Concessionaire or the University is required to make any regulatory filing or submission with respect to a tariff or rate for the Utility System or the Utility Fee, the Concessionaire and the University shall reasonably cooperate in connection with such required filing or submission and shall, collectively, only make one filing or submission with the applicable regulatory agency. Such cooperation shall include appearing at, and participating in, any regulatory proceeding at the request of the other Party. The Concessionaire and the University shall also reasonably cooperate with respect to any required regulatory filings or submissions not involving a tariff or rate for the Utility System or the Utility Fee, to the extent practicable.

## **ARTICLE 15**

### **DELAY EVENTS; CONCESSION COMPENSATION AND KPI COMPENSATION**

#### **Section 15.1. Delay Events.**

- (a) If the Concessionaire is affected by a Delay Event, it shall give written notice as soon as practicable but in no event later than 10 Business Days following the date on which it first became aware of the effect of such Delay Event on the

Concessionaire (provided that in the case of such Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to such Delay Event and information in support thereof, if known at that time. The University shall, after receipt of any such notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the University may reasonably consider necessary.

- (b) The Concessionaire shall notify the University that a Delay Event has ceased by the later of (i) delivery of the Delay Event notice pursuant to Section 15.1(a) and (ii) the date that is 5 Business Days following the date on which it first became aware that such Delay Event has ceased.
- (c) Subject to the Concessionaire giving the notice required in Section 15.1(a), a Delay Event shall excuse the Concessionaire from whatever performance is prevented by the Delay Event referred to in such notice and, to the extent applicable, for such appropriate number of Days as the University and the Concessionaire jointly determine, each acting reasonably. If the University and the Concessionaire cannot agree upon the period of extension, then either Party shall be entitled to refer the matter to the dispute resolution procedure in Article 18. This Section 15.1(c) shall not excuse the Concessionaire from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. While a Delay Event is occurring, the Utility Fee shall be reduced by an amount equal to the Utility Fee multiplied by the percentage of the Utility System that is inoperable as a result of the Delay Event, as determined by the University in its reasonable discretion (as determined by the reduction in delivery capacity as compared to the delivery capacity immediately preceding such Delay Event), provided that such Delay Event shall be deemed a Compensation Event. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.
- (d) Except as provided in the immediately following sentence, (i) if a Delay Event occurs that has the effect of causing physical damage or destruction to a material part of the Utility System that results in the Utility System being substantially unavailable for the provision of Utility Services and such effect continues for a period in excess of 120 continuous Days or 120 non-continuous Days within a 360-Day period and has a Material Adverse Effect, or (ii) if insurance policies payable (or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by the Concessionaire) or condemnation or other similar proceeds are insufficient to restore the Concessionaire to the same economic position as it would have been in the

absence of such event, then, notwithstanding Section 2.1, in either case, the Concessionaire shall have the right, but not the obligation, by written notice to the University within 30 Days after the Delay Event Remedy is permitted to be elected, to extend the Term for a period that would be sufficient to compensate the Concessionaire and restore it to the same economic position as it would have been in had such Delay Event not occurred (a “Delay Event Remedy”); provided, however, in no event shall the Term be extended if such extension is prohibited by Law or if the extended Term, when taking into account such extension, would subject the Concessionaire or the University to a leasehold tax, conveyance fee or similar charge under applicable Law. If the Concessionaire elects to exercise the right to the Delay Event Remedy but such exercise is prohibited by Law or would subject the Concessionaire or the University to a leasehold tax, conveyance fee or similar charge under applicable Law, (i) the Delay Event Remedy shall be modified such that the Term is extended only for such period as would not cause exercise of the Delay Event Remedy to be prohibited by Law or to subject the Concessionaire or the University to a leasehold tax, conveyance fee or similar charge under applicable Law, and (ii) the relevant Delay Event shall be a Compensation Event to the extent necessary to compensate the Concessionaire and restore it to the same economic position as it would have been in, absent the modification to the Delay Event Remedy pursuant to clause (i) of this sentence.

- (e) If the Concessionaire elects to exercise the right to the Delay Event Remedy, within 5 Business Days following the date on which the Concessionaire first became aware of its right to the Delay Event Remedy pursuant to Section 15.1(d)(i) or Section 15.1(d)(ii), the Concessionaire shall give written notice (a “Delay Event Notice”) to the University setting forth (i) the details of the relevant Delay Event and its effect on either causing physical damage or destruction to the Utility System that results in the Utility System being substantially unavailable for the provision of Utility Services, (ii) the amount claimed to be required to restore the Concessionaire to the same economic position as it would have been in had such Delay Event not occurred (including the details of the calculation thereof) and (iii) the details of the relationship between such amount and the Concessionaire’s proposed extension of the Term. The University shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the University may reasonably consider necessary. If the University wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the University shall give written notice to dispute (the “Delay Event Dispute Notice”) to the Concessionaire within 30 Days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within 30 Days following the date of receipt of the Delay Event Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 18. For the avoidance of doubt, if the conditions set forth in Section 15.1(d)(i) and Section 15.1(d)(ii)

occur with respect to the same Delay Event, the Concessionaire may have 2 opportunities to provide a Delay Event Notice.

**Section 15.2. Notice of Compensation Events and KPI Events.** Except as provided elsewhere in this Agreement, if a Compensation Event occurs, the Concessionaire shall give written notice to the University within 30 Days following the date on which the Concessionaire first became aware of the Compensation Event stating that a Compensation Event has occurred. Except as provided elsewhere in this Agreement, if a KPI Event occurs, the University shall give written notice to the Concessionaire within 30 Days following the date on which the University first became aware of the KPI Event stating that a KPI Event has occurred.

**Section 15.3. Payments of Concession Compensation and KPI Compensation.**

- (a) Within 30 Days after each Compensation Calculation Date, the Concessionaire shall send the University notice setting forth all Concession Compensation due for the immediately preceding Compensation Calculation Measuring Period, and the University shall send the Concessionaire notice setting forth all KPI Compensation due for the immediately preceding Compensation Calculation Measuring Period. Each such notice shall set forth (i) the amount claimed and details of the calculation thereof; (ii) details of the Compensation Event(s), Adverse Action(s) and KPI Event(s), as applicable, as a result of which Concession Compensation and KPI Compensation, respectively, is claimed therein, including an explanation of the reasons that such event(s) constitute Compensation Event(s), Adverse Action(s) and KPI Event(s), respectively, under the terms of this Agreement; and (iii) the amount claimed as Concession Compensation and KPI Compensation, respectively, with respect to each such Compensation Event, Adverse Action and KPI Event, respectively, and details of the calculation thereof.
- (b) If either Party wishes to dispute the occurrence of any Compensation Event(s), Adverse Action(s) or KPI Event(s) set forth in the notices described in Section 15.3(a) or the amounts claimed thereunder, then such Party shall give written notice of dispute (the “Dispute Notice”) to the other Party within 30 Days following the date of receipt of the relevant notice stating the grounds for such dispute. If the Dispute Notice has not been withdrawn or the dispute otherwise resolved by the Parties within 30 Days following the date of receipt of the Dispute Notice, the matter shall be submitted to the dispute resolution procedure set forth in Article 18.
- (c) The University and the Concessionaire shall cooperate and assist in good faith in the determination of the Concession Compensation and KPI Compensation in accordance with this Section 15.3, including making available, to the extent reasonably necessary, books, records, work papers and personnel at such reasonable times as any Party shall request and permitting (at the expense of the requesting Party) the copying of any records or extracts thereof reasonably requested.

- (d) The University shall have the right, prior to any payment of the Concession and KPI Compensation Balance, to include any Concession Compensation in the applicable Utility Fee as (i) a New Approved Capital Improvement if the Concession Compensation was incurred in connection with the construction of a Capital Improvement or (ii) an Uncapped O&M Cost payable over the next Fiscal Year.
- (e) If, following the final determination of the Concession Compensation and KPI Compensation for any Compensation Calculation Date other than the End Date, the Concession and KPI Compensation Balance for such Compensation Calculation Measuring Period is finally determined in accordance with this Section 15.3, to be less than \$1,000,000, neither Party shall make a payment pursuant to this Section 15.3, and, instead, such amount shall be carried forward to the succeeding determination of the Concession and KPI Compensation Balance in accordance with the definition thereof.
- (f) If, following the final determination of the Concession Compensation and KPI Compensation, the Concession and KPI Compensation Balance for such Compensation Calculation Measuring Period as finally determined in accordance with this Section 15.3, exceeds \$1,000,000 (whether owed to the University or to the Concessionaire) or if the relevant Compensation Calculation Date is the End Date, then, (i) if the Concession and KPI Compensation Balance is positive, then the University shall pay, within 15 Business Days of such final determination, to the Concessionaire, the Concession and KPI Compensation Balance or add such amount to the immediately succeeding payment of the Utility Fee, if applicable or (ii) if the Concession and KPI Compensation Balance is negative, then the Concessionaire shall pay, within 15 Business Days of such final determination, to the University, the absolute amount of the Concession and KPI Compensation Balance or offset such amount against the immediately succeeding payment of the Utility Fee, if applicable.
- (g) For the determination of the Concession and KPI Compensation Balance for the Compensation Calculation Date that is the End Date, the Concession Compensation shall also include the Unrecovered Balances as of the End Date, unless this Agreement is terminated as a result of a Concessionaire Default, in which case no Unrecovered Balances shall be included in the Concession and KPI Compensation Balance.

**Section 15.4. KPI Compensation.** Other than the University's right to cause the Concessionaire to remove the Operator pursuant to Section 3.3(c), the payment of KPI Compensation by the Concessionaire shall constitute the Concessionaire's sole and exclusive liability and the University's sole and exclusive remedy for any KPI Event.

## ARTICLE 16 DEFAULTS

### Section 16.1. Default by the Concessionaire.

- (a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a “Concessionaire Default” under this Agreement:
- (i) if the Concessionaire fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement other than a breach of the Performance Standards, Section 5.4(a) or Section 7.5(a) by the Concessionaire or a KPI Event, and such failure continues unremedied for a period of 90 Days following notice thereof (giving particulars of the failure in reasonable detail) from the University to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the University, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the University, and (C) such failure is, in fact, cured within such period of time;
  - (ii) if this Agreement or all or any portion of the Concessionaire Interest is Transferred in contravention of Article 17 and such Transfer or action continues unremedied for a period of 10 Business Days following notice thereof from the University to the Concessionaire;
  - (iii) if the Concessionaire fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 18, and such failure continues unremedied for a period of 30 Days following notice thereof from the University to the Concessionaire, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the University, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the University, and (C) such failure is, in fact, cured within such period of time;
  - (iv) if the Concessionaire (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the United States Code, or if such petition is filed against it and an order for relief is entered, or if the Concessionaire files any petition or answer seeking, consenting to

or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States Bankruptcy Code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Utility System or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 16.1(a)(iv);

- (v) if within 90 Days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States Bankruptcy Code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 Days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Utility System or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 Days after the expiration of any such stay, such appointment has not been vacated;
- (vi) if a levy under execution or attachment has been made against all or any part of the Utility System or any interest therein as a result of any Encumbrance (other than a Permitted Concessionaire Encumbrance) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within 60 Days after the Concessionaire becomes aware of such levy, unless such levy resulted from actions or omissions of the University or its Representatives; or
- (vii) the Concessionaire repudiates in writing any of its material obligations under this Agreement.

Notwithstanding the foregoing, a Concessionaire Default shall not include any failure by the Concessionaire to perform its obligations under this Agreement (other than payment obligations) to the extent such failure is the result of Force Majeure.

- (b) *Remedies of the University upon Concessionaire Default.* Upon the occurrence, and during the continuance, of a Concessionaire Default, the University may, by notice to the Concessionaire, declare the Concessionaire to be in default and may, subject to the provisions of Article 18 and Article 19, do any or all of the following as the University, in its discretion, shall determine:

- (i) the University may terminate this Agreement by giving 30 Days' prior notice to the Concessionaire upon the occurrence of any Concessionaire Default; provided, however, that the Concessionaire shall be entitled to cure a Concessionaire Default pursuant to Section 16.1(a)(i) by (i) agreeing within such 30-Day period to pay any Losses sustained as a result of such Concessionaire Default and (ii) providing the University with a written work plan within such 30-Day period outlining the actions by which the Concessionaire will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 18 that the Concessionaire failed to perform or observe, which work plan is Approved by the University, but any failure of the Concessionaire to comply in any material respect with such Approved work plan (other than as a result of a Delay Event) following 30 Days' notice of such failure from the University to the Concessionaire shall be deemed to be a Concessionaire Default described in Section 16.1(a)(i) and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an Approved work plan shall not apply thereto;
- (ii) if the Concessionaire Default is by reason of the failure to pay any monies to another Person, the University may (without obligation to do so) make payment on behalf of the Concessionaire of such monies unless such non-payment is due to a bona fide dispute, and any amount so paid by the University shall be payable by the Concessionaire to the University within 3 Business Days after demand therefor;
- (iii) subject to the cure rights of the Leasehold Mortgagee set forth in Section 19.3, the University may cure the Concessionaire Default (but this shall not obligate the University to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses reasonably incurred by the University in curing or attempting to cure the Concessionaire Default, shall be payable by the Concessionaire to the University within 3 Business Days after written demand therefor; provided, however, that (A) the University shall not incur any liability to the Concessionaire for any act or omission of the University or any other Person in the course of remedying or attempting to remedy any Concessionaire Default unless resulting from the University's recklessness, gross negligence or willful misconduct; (B) the University's cure of any Concessionaire Default shall not affect the University's rights against the Concessionaire by reason of the Concessionaire Default; and (C) the University may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;
- (iv) the University may seek to recover its Losses arising from such Concessionaire Default and any amounts due and payable under this

Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

- (v) with respect to those Concessionaire Defaults that entitle the University to terminate this Agreement pursuant to Section 16.1(b)(i), the University may terminate the Concessionaire's right to use, operate, maintain, possess, and rehabilitate the Utility System and the Concessionaire's right to collect from the University and retain the Utility Fee, and in such event, the University or the University's agents and servants may immediately or at any time thereafter take possession and control of the Utility System, by any available action under Law or proceeding at law or in equity, and with or without terminating this Agreement, and undertake any and all of the Utility System Operations; provided, however, that no such action by the University shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Concessionaire; and
- (vi) the University may exercise any of its other rights and remedies provided for hereunder or at law or equity.

## **Section 16.2. Default by the University.**

- (a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a "University Default" under this Agreement:
  - (i) if the University fails to pay the Utility Fee, the Forecast Utility Fee or the Concession and KPI Compensation Balance to the extent the University is required to do so pursuant to Section 15.3(f), each in accordance herewith and such failure continues unremedied for a period of 5 Business Days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the University;
  - (ii) if the University fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action or the payment of the Utility Fee, the Forecast Utility Fee or the Concession and KPI Compensation Balance to the extent the University is required to do so pursuant to Section 15.3(f)) and such failure continues unremedied for a period of 90 Days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the University or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the University has demonstrated to the satisfaction of the Concessionaire, that (A) it is proceeding with all due diligence to cure or cause to be cured such failure, and (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, and (C) such failure is, in fact, cured within such period of time;

- (iii) if the University fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 18 and such default continues unremedied for a period of 30 Days following notice thereof from the Concessionaire to the University, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the University has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is, in fact, cured within such period of time;
- (iv) if a levy under execution or attachment has been made against all or any part of the Utility System or the Concessionaire Interest as a result of any Encumbrance (other than a Permitted University Encumbrance) created, incurred, assumed or suffered to exist by the University or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 Days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or if all or a material part of the Utility System shall be subject to a condemnation or similar taking by the University or any agency thereof;
- (v) if the University (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 9 of the United States Code, or if such petition is filed against it and an order for relief is entered, or if the University files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States Bankruptcy Code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the University, or of all or any substantial part of its properties (in each case, to the extent applicable to a municipality), or (D) takes any action in furtherance of any action described in this Section 16.2(a)(v); or if within 90 Days after the commencement of any proceeding against the University seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States Bankruptcy Code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 Days after the appointment, without the consent or acquiescence of the University, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the University or of all or any substantial part of its properties (in each case, to the extent applicable to a municipality), such

appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 Days after the expiration of any such stay, such appointment has not been vacated; or

- (vi) the University repudiates in writing any of its material obligations under this Agreement.

Notwithstanding the foregoing, a University Default shall not include any failure to perform its obligations under this Agreement (other than payment obligations) to the extent such failure is the result of Force Majeure.

- (b) *Remedies of Concessionaire Upon University Default.* Upon the occurrence, and during the continuance, of a University Default, the Concessionaire may by notice to the University declare the University to be in default and may, subject to the provisions of Article 18, do any or all of the following as the Concessionaire, in its discretion, shall determine:
  - (i) terminate this Agreement by giving 60 Days' prior notice to the University; provided, however, that the University shall be entitled to cure a University Default pursuant to Section 16.2(a)(ii) or Section 16.2(a)(iii) by (i) agreeing within such 60-Day period to pay any Losses sustained as a result of such University Default or (ii) providing the Concessionaire with a written work plan within such 60-Day period outlining the actions by which the University will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement that the University failed to perform or observe or (y) the requirements or directives of the final award issued in accordance with Article 18 that the University failed to perform or observe, which work plan is approved by the Concessionaire, but any failure of the University to comply in any material respect with such approved work plan following 30 Days' notice of such failure from the Concessionaire to the University shall be deemed to be a University Default described in Section 16.2(a)(ii) and the entitlement of the University to cure such University Default by the delivery of an approved work plan shall not apply thereto; and upon such termination, the University shall be obligated to pay to the Concessionaire the Utility System Concession Value plus, without duplication, the unpaid Concession and KPI Compensation Balance and the out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination;
  - (ii) exercise any of its rights or remedies at law or in equity;
  - (iii) seek to recover its Losses and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt; and

- (iv) seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a University Default.

**Section 16.3. Consequences of Termination or Reversion.** Upon the termination or expiration of this Agreement, notwithstanding any claims the Parties may have against each other and subject to Section 16.2(b)(iii), the following provisions shall apply:

- (a) the Concessionaire shall, without action whatsoever being necessary on the part of the University, surrender, transfer and deliver to the University the Utility System (including all improvements to the Utility System), the Utility System Assets (to the extent they have not been disposed of in the ordinary course of business) and all tangible and intangible personal property of the Concessionaire (including inventories) that is included in the Utility System and used in connection with the Utility System Operations, in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the then applicable Performance Standards, free and clear of all Encumbrances other than (w) Permitted Concessionaire Encumbrances set forth in clauses (iv) and (vii) of the definition of that term, (x) Permitted University Encumbrances, (y) those created by or suffered to exist or consented to by the University or any Person claiming through it, and (z) with respect to any property added to the Utility System after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Utility System; provided that the Concessionaire may satisfy any obligation to surrender rights to Proprietary Intellectual Property in accordance with Section 3.11;
- (b) the Concessionaire hereby waives any notice now or hereafter required by Law with respect to transfer of the Utility System on the Reversion Date;
- (c) the University shall, as of the Reversion Date, assume full responsibility for the Utility System Operations, and as of such date, the Concessionaire shall have no liability or responsibility for Utility System Operations occurring after such date;
- (d) the Concessionaire shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the Reversion Date, and the University shall be liable for all costs, expenses and amounts incurred in connection with the Utility System Operations on and after the Reversion Date;
- (e) the University shall have the option, subject to the rights of any Leasehold Mortgagee, or its designee or nominee, to enter into a New Agreement, by providing notice to the Concessionaire of requiring that the Concessionaire assign, without warranty or recourse to the Concessionaire, to the fullest extent permitted by Authorizations and applicable Law, all of its right, title and interest in, to and under (in each of the following cases, to the extent assignable) all or any of the Operating Agreements then in effect and all Authorizations to the

University or its nominee for the remainder of their respective terms; provided, however, that if the University exercises such option, the right, title and interest of the Concessionaire in, to and under such Operating Agreements and Authorizations shall be assigned to the University or its nominee as of the Reversion Date and the Concessionaire shall surrender the Utility System to the University and shall cause all Persons claiming under or through the Concessionaire to do likewise, and the University shall assume in writing, pursuant to an assumption agreement satisfactory to the Concessionaire, the Concessionaire's obligations under the Operating Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; provided further, that if the University does not exercise such option, the Concessionaire shall take such steps as are necessary to terminate the Operating Agreements to the extent permitted thereunder and in accordance with the terms thereof;

- (f) the Concessionaire, at its sole cost and expense, shall promptly deliver to the University copies of all records and other documents relating to the Utility Fee that are in the possession of the Concessionaire or its Representatives and all other then existing records and information relating to the Utility System as the University, acting reasonably, may request;
- (g) the Concessionaire shall execute and deliver to the University transfer of title documents and other instruments reasonably required by the University to evidence such termination;
- (h) the Concessionaire shall assist the University in such manner as the University may require to ensure the orderly transition of control, operation, management, maintenance and rehabilitation of the Utility System, and shall, if appropriate and if requested by the University, take all steps as may be necessary to enforce the provisions of the Operating Agreements pertaining to the surrender of the Utility System;
- (i) the University and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to the University, Utility Fee and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of 180 Days following the Reversion Date; provided, however, that the University and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the University or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended;

- (j) if this Agreement is terminated as a result of an Adverse Action, the payment by the University to the Concessionaire of the amounts required under Article 14 or Article 18 shall constitute full and final settlement of any and all Claims the Concessionaire may have against the University for and in respect of the termination of this Agreement and upon such payment, the Concessionaire shall execute and deliver all such releases and discharges as the University may reasonably require to give effect to the foregoing; and
- (k) all plans, drawings, specifications and models prepared in connection with construction at the Utility System and in the Concessionaire's possession and all "as-built" drawings shall become the sole and absolute property of the University, and the Concessionaire shall promptly deliver to the University all such plans, drawings, specifications and models and all such as-built drawings (but may keep copies of those plans, drawings, specifications and models that were developed by the Concessionaire or its Representatives).

This Section 16.3 shall survive the expiration or any earlier termination of this Agreement.

**Section 16.4. Termination Other than Pursuant to Agreement.** If this Agreement is terminated by the University other than pursuant to Section 16.1, or is canceled, rescinded or voided during the Term for any reason over the objection and without action by the Concessionaire, the University shall pay to the Concessionaire the Utility System Concession Value as of the date of such termination, cancellation, rescinding or voiding, plus, without duplication, the out-of-pocket and documented costs and expenses incurred by the Concessionaire or the Operator as a direct result of such termination, cancellation, rescinding or voiding. The University hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience. The Concessionaire hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience or to challenge the validity or enforceability of this Agreement.

**Section 16.5. Option to Extend the Term.**

- (a) If the Term has not terminated earlier than the anticipated expiration of this Agreement on the 50th anniversary of the Closing Date, as may be extended by a Delay Event Remedy (the "Initial Term Expiration Date"), then the University shall have the right, by written notice delivered to the Concessionaire anytime between the date that is 5 Years before the Initial Term Expiration Date and the date that is 3 Years before the Initial Term Expiration Date, to elect to terminate the Concessionaire's Extension Option by purchasing the Concessionaire Interest for an amount equal to the Residual Asset Value, which shall be payable to the Concessionaire on the End Date (the "Extension Purchase Option"). If the University exercises its Extension Purchase Option, the Term shall expire in accordance with this Agreement, subject to any early termination pursuant to the terms of this Agreement, and such payment shall be in addition to, and not in lieu

of, the inclusion of the Unrecovered Balances in the Concession and KPI Compensation Balance described in Section 15.3(g) and any other right or obligation under this Agreement.

- (b) If, and only if, the University does not elect to exercise the Extension Purchase Option, then during the 6 month period commencing on the earlier of (i) the date that the University delivers affirmative written notice to the Concessionaire that the University is not exercising the Extension Purchase Option and (ii) the last date that the University had the right to exercise the Extension Purchase Option, the Concessionaire shall have the right, by written notice delivered to the University during such 6-month period, to exercise its Extension Option so that the Term shall expire on the 10<sup>th</sup> anniversary of the Initial Term Expiration Date (such 10-year period, the “Extended Term”) and this Agreement shall remain in full force and effect during such Extended Term, except that the calculation of the Utility Fee shall be modified, commencing on the first day of the Extended Term, as follows: (x) the Fixed Fee shall be \$0; (y) the University shall pay the Concessionaire a fixed fee payable in equal monthly installments during the Extended Term, and the present value of the sum of those payments shall equal (as of the commencement of the Extended Term) the Residual Asset Value, using a 5% discount rate; and (z) the amount of the Unrecovered Balances existing on the day immediately before the Extended Term shall be reduced to \$0 and the amount of such Unrecovered Balances shall be re-characterized as New Approved Capital Improvement Costs incurred by the Concessionaire on the day immediately before the Extended Term with a Recovery Period that commences on the commencement of the Extended Term and expires at the end of the Extended Term. For the avoidance of doubt, if the Concessionaire exercises its Extension Option, the Unrecovered Balances existing as of the Initial Term Expiration Date shall not be included in the Concession and KPI Compensation Balances on the Initial Term Expiration Date, but any Unrecovered Balances existing as of the expiration of the Term, as extended, shall, subject to Section 15.3(g), be included in the Concession and KPI Compensation Balance.
- (c) If the Concessionaire does not elect to exercise its Extension Option, then this Agreement shall terminate in accordance with the terms hereof, including the inclusion, subject to Section 15.3(g), of any Unrecovered Balances existing as of the expiration of the Term in the Concession and KPI Compensation Balance.
- (d) If at any time before the Initial Term Expiration Date this Agreement is terminated, regardless of whether the Extension Option or Extension Purchase Option has been exercised, this Section 16.5 shall be deemed null and void, and neither Party shall have any rights or obligations with respect thereto.

**ARTICLE 17**  
**RESTRICTIONS ON TRANSFERS**

**Section 17.1. Transfers by the Concessionaire.**

- (a) Subject in all respects to the collateral assignment of the Concessionaire Interest to the Leasehold Mortgagee, and exercise by the Leasehold Mortgagee of its rights pursuant to such assignment, including by foreclosure, as set forth in Article 19, the Concessionaire shall not Transfer, or otherwise permit the Transfer, of any part of the Concessionaire Interest to or in favor of a Transferee (other than a Transferee that is an Affiliate or a Leasehold Mortgagee under Article 19) that would result in the Concessionaire directly owning 50% or less of the Concessionaire Interest granted to the Concessionaire as of the Signing Date unless (i) the University has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee and (ii) the proposed Transferee (other than a Transferee that is an Affiliate or a Leasehold Mortgagee under Article 19) enters into an agreement with the University in form and substance satisfactory to the University, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void ab initio and of no force and effect.
- (b) Approval of a proposed Transfer may be withheld if the University reasonably determines that (i) such proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with the University is prohibited by Law, (iii) such proposed Transfer would result in a violation of Law, (iv) such proposed Transfer would result in a Tax liability to the University (unless the University shall have received indemnification, as determined in the University's discretion, with respect thereto) or (v) such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire under this Agreement. Such determination shall be based upon and take into account the following factors, in each case assessed as of the date of such determination but after giving effect to the proposed Transfer together with any related transactions (including the proposed transfer of employees and other resources to such Transferee in connection with such proposed Transfer and related transactions): (a) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (b) the experience of the proposed Transferee or the Operator to be engaged by the proposed Transferee in operating a utility system and performing other relevant projects; (c) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and (d) the Operator engaged by the proposed

Transferee, including the ability of the Operator to meet the Performance Standards. If the Concessionaire disputes the University's determination under this Section 17.1(b), such dispute shall be resolved in accordance with Article 18

- (c) If requested by the Concessionaire, the University shall, on a confidential basis and at the Concessionaire's sole cost and expense, evaluate one or more proposed Transferees as provided in Section 17.1(b) and notify the Concessionaire within 30 Business Days of its Approval or withholding of Approval with respect to such proposed Transferee(s).
- (d) No Transfer of all or any of the Concessionaire Interest (except for a Transfer to a Leasehold Mortgagee or its nominee upon its exercise of remedies under the Leasehold Mortgage and any subsequent transfer to the transferee of the Leasehold Mortgagee that has been Approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.
- (e) A Change in Control of the Concessionaire (other than a Change in Control occasioned by the exercise by any Leasehold Mortgagee of its remedies under any pledge of shares, limited liability company interest or partnership interest) shall be deemed to be a Transfer of the Concessionaire Interest for purposes of the foregoing provisions and shall be evaluated by the University as provided in Section 17.1(b) and Section 17.1(c).
- (f) Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its name, organizational form or status (including a change from a limited liability company to a corporation or limited partnership), provided that such change in name, organizational form or status does not result in a Change in Control of the Concessionaire.
- (g) Neither (i) a change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the University under this Agreement so long as (A) no "Change in Control" occurs with respect to the Concessionaire and (B) the Concessionaire remains obligated under this Agreement, nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire's economic interest under this Agreement to another entity shall be deemed to be a Transfer of the Concessionaire Interest for purposes of Section 17.1(a).
- (h) Notwithstanding anything to the contrary contained herein, if the Concessionaire is not permitted by applicable Law to disclose a proposed Change in Control of the Concessionaire prior to its effectiveness, then the Concessionaire shall not be in breach of this Section 17.1 if the new Equity Participant and any new beneficial owners of an existing Equity Participant resulting from such Change

in Control: (i) have a minimum total net worth, measured in accordance with GAAP, equal to the greater of (x) \$1,250,000,000 and (y) 25% of the total net position of the University at the time of such Change in Control, which total net position shall be measured in accordance with the standards of the Governmental Accounting Standards Board or its successor; (ii) have a credit rating of at least investment grade at the issuer level as determined by at least one of the Credit Rating Agencies; (iii) are not included on the List of Specially Designated Nationals and Blocked Persons maintained by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"); (iv) do not reside or have places of business in a country or territory named on an OFAC list; and (v) have at least 2 years' experience in operating a Comparable Utility System; provided, that within 2 Business Days after the Concessionaire is permitted by applicable Law to disclose such Change in Control, it shall provide the University with written notice thereof and the University shall have the right to Approve such Change in Control in accordance with Section 17.1(a). If the University does not Approve such Change in Control in accordance with Section 17.1(a), it shall be deemed a Concessionaire Default if the Concessionaire does not cause a Transfer or Change in Control that is Approved by the University in accordance with Section 17.1(a) to be effectuated within 120 Days after the University's disapproval.

**Section 17.2. Assignment by the University.** The University shall have the right to Transfer any or all of the University's interest in the Utility System and this Agreement, provided that it shall be jointly and severally liable with the Transferee for the performance and observance of the obligations and covenants of the University under this Agreement, and any agreement entered into by the University under this Agreement (including agreeing directly with any Leasehold Mortgagee to be bound by the agreement entered into in accordance with Section 19.3) and that any such Transfer by the University shall not materially limit or reduce any of the Concessionaire's other rights, benefits, remedies or privileges under this Agreement nor shall it materially impair the University's ability to meet its obligations under this Agreement and, provided further, any such Transfer shall be subject to the rights and Encumbrances of the Concessionaire and of the Leasehold Mortgagee under any Leasehold Mortgagee.

## **ARTICLE 18 DISPUTE RESOLUTION**

**Section 18.1. Scope.** Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Article 18.

**Section 18.2. Informal Dispute Resolution Procedures.** The Parties shall attempt in good faith to resolve such dispute within 15 Business Days following receipt by one Party of notice of such dispute from the other Party. If the Parties are unable to resolve the dispute within such period of 15 Business Days, and upon notice by either Party to the other, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary. Statements made by Representatives of the Parties during the dispute resolution procedures set forth in this Section 18.2 and in Section 18.3 and documents specifically prepared

for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any litigation proceeding between the Parties without the mutual consent of the Parties.

**Section 18.3. Mediation.** Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Senior Persons, after following the procedures set forth in Section 18.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) 15 Business Days after the notice referring the dispute to the Designated Senior Persons, pursuant to Section 18.2. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation administered by the AAA under its Commercial Mediation Procedures before resorting to litigation, as provided by Section 18.4. The Parties agree that any period of limitation applicable to the assertion of a claim shall be deemed tolled during the conduct of informal dispute resolution under Section 18.2 and mediation under this Section 18.3, and that any claim of any Party shall be deemed not to have accrued until the mediation is terminated.

**Section 18.4. Litigation.** Unless the Parties otherwise agree, if mediation as set forth in Section 18.3 does not resolve the dispute within 30 Business Days following a reference to mediation or such longer period as the Parties may mutually agree, then the Parties shall present the dispute to such court of competent jurisdiction as set forth in Section 22.7.

**Section 18.5. Provisional Remedies.** No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement or to enforce or execute upon a judgment entered in accordance with this Agreement, including temporary, preliminary and permanent injunctive relief and restraining orders, writs of mandamus, and the appointment of a receiver or receiver and manager in connection with the collection and retention of the Utility Fee.

**Section 18.6. Tolling.** If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 18, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

## **ARTICLE 19 LENDERS**

**Section 19.1. Leasehold Mortgages.** The Concessionaire shall have the right, at its sole cost and expense, to grant one or more Leasehold Mortgages, secured by the Concessionaire Interest or the Utility Fee if at the time any such Leasehold Mortgage is executed and delivered to the Leasehold Mortgagee, no Concessionaire Default exists and upon and subject to the following terms and conditions:

- (a) a Leasehold Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Concessionaire or the Concessionaire's Parent, but may cover shares or equity interests in the capital of

the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire;

- (b) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Leasehold Mortgagee in this Agreement; provided, however, that lessors and lenders to the Concessionaire (and lenders to a Leasehold Mortgagee that is a Lessor) may be Persons other than Institutional Lenders so long as any Leasehold Mortgage securing the loans made by such Persons is held by an Institutional Lender acting as collateral agent or trustee;
- (c) no Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concessionaire Interest shall extend to or affect the fee simple interest in the Utility System, the University's interest hereunder or the University's reversionary interests and estates in and to the Utility System or any part thereof; in addition, any foreclosure or termination of this Agreement by the University shall simultaneously terminate the Leasehold Mortgage, provided that such termination shall not affect, modify or terminate the Concessionaire's obligations to the Leasehold Mortgagee with respect to the Leasehold Mortgage Debt;
- (d) the University shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the University of express obligations set forth herein or in any other agreement with the Leasehold Mortgagee, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against the University for any or all of the same;
- (e) the University shall have no obligation to any Leasehold Mortgagee in the enforcement of the rights and remedies of the University under this Agreement or by Law, except as expressly set forth in this Agreement or in any agreement with the Leasehold Mortgagee and unless such Leasehold Mortgagee has provided the University with notice of its Leasehold Mortgage in accordance with the Leasehold Mortgagee Notice Requirements;
- (f) each Leasehold Mortgage shall provide that if the Concessionaire is in default under the Leasehold Mortgage and the Leasehold Mortgagee gives notice of such default to the Concessionaire, then the Leasehold Mortgagee shall give written notice of such default to the University;
- (g) subject to the terms of this Agreement and the terms of any direct consent agreement executed by and between the University and Leasehold Mortgagee, all rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the University hereunder and the Leasehold Mortgagee shall agree to be bound by the terms of this Agreement to the extent applicable to the Leasehold Mortgagee;

- (h) notwithstanding any enforcement of the security of any Leasehold Mortgage, the Concessionaire shall remain liable to the University for the payment of all sums owing to the University under this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement; and
- (i) a Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Utility System than the Concessionaire has at any applicable time under this Agreement, other than such rights granted expressly to such Leasehold Mortgagee pursuant to this Article 19, and each Leasehold Mortgagee, the University and the Concessionaire shall enter into a consent agreement in a form acceptable to all parties; provided that such consent agreement shall be in a customary form and shall include the rights and protections provided to the Leasehold Mortgagees in this Agreement.

While any Leasehold Mortgage is outstanding, the University shall not agree to any amendment or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Leasehold Mortgagee or agree to a voluntary surrender or termination of this Agreement by the Concessionaire without the consent of the Leasehold Mortgagee.

**Section 19.2. Notices and Payments to Leasehold Mortgagees.** Whenever a Leasehold Mortgage exists as to which the University has been provided notice by the holder thereof in accordance with the Leasehold Mortgagee Notice Requirements, the University shall, simultaneously with providing the Concessionaire any required notice under this Agreement, provide a copy of such notice to such Leasehold Mortgagee, and no such notice to the Concessionaire shall be effective against the Leasehold Mortgagee until a copy thereof is duly provided to such Leasehold Mortgagee at its address specified in its notice given to the University in accordance with the Leasehold Mortgagee Notice Requirements (or any subsequent change of address notice given to the University pursuant to the requirements of Section 22.1). With respect to a Leasehold Mortgage regarding which the University has been provided notice in accordance with the Leasehold Mortgagee Notice Requirements, unless the Leasehold Mortgagee has otherwise advised the University in writing, all payments to the Concessionaire to be made by the University under this Agreement shall be made to the institution acting as the collateral agent or depository under the financing secured by such Leasehold Mortgage to the extent the University has been provided the name and mailing address of such institution.

**Section 19.3. Leasehold Mortgagee's Right to Cure.** The Leasehold Mortgagee shall have a period of 90 Days with respect to any Concessionaire Default beyond any cure period expressly provided to the Concessionaire herein, in which to cure or cause to be cured any such Concessionaire Default; provided, however, that such 90-Day period shall be extended if the Concessionaire Default may be cured but cannot reasonably be cured within such period of 90 Days, and the Leasehold Mortgagee begins to cure such default within such 90-Day period (or if possession is necessary in order to effect such cure, the Leasehold Mortgagee files the appropriate legal action to commence foreclosure on the liens of the Leasehold Mortgage (or takes other appropriate action to effect a transfer of title to the property subject to such liens) and take possession of the Utility System within such period) and thereafter proceeds with all due

diligence to cure such Concessionaire Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to the University, acting reasonably; provided further that if a Leasehold Mortgagee's right to cure a Concessionaire Default has not expired, and the Leasehold Mortgagee is acting to cure such Concessionaire Default in accordance with this Section 19.3, then the University shall not exercise its right to terminate this Agreement by reason of such Concessionaire Default. In furtherance of the foregoing, the University shall permit the Leasehold Mortgagee and its Representatives the same access to the Utility System as is permitted to the Concessionaire hereunder. The University shall accept any such performance by a Leasehold Mortgagee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Leasehold Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Leasehold Mortgagee. Any exercise of the Leasehold Mortgagee's rights to cure hereunder shall not result in the assumption by such Leasehold Mortgagee of the Concessionaire's obligations hereunder.

#### **Section 19.4. Rights of the Leasehold Mortgagee.**

- (a) Subject to the provisions of this Agreement, a Leasehold Mortgagee may (i) enforce its Leasehold Mortgage in any lawful way, (ii) acquire the Concessionaire Interest in any lawful way or (iii) take possession of in any lawful way and manage the Utility System in accordance with the terms of this Agreement. Upon foreclosure of (or without foreclosure upon exercise of any contractual or statutory power of sale under such Leasehold Mortgage or a deed in lieu) and subject to the provisions of Article 17 (applied to the Leasehold Mortgagee as if it were the Concessionaire, except that Section 17.1(c) will not apply), a Leasehold Mortgagee may Transfer the Concessionaire Interest; provided, however, that no Transfer by a Leasehold Mortgagee shall be effective unless the Transfer is made in accordance with Section 17.1. Any Person to whom the Leasehold Mortgagee Transfers the Concessionaire Interest (including such Leasehold Mortgagee) shall take the Concessionaire Interest subject to any of the Concessionaire's obligations under this Agreement.
- (b) Except as provided in Section 19.3, unless and until a Leasehold Mortgagee (i) forecloses or has otherwise taken ownership of the Concessionaire Interest or (ii) has taken possession or control of the Concessionaire Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concessionaire Interest by reference to the Leasehold Mortgage, the Leasehold Mortgagee shall not be liable for any of the Concessionaire's obligations under this Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except by way of security; provided, however, that the Leasehold Mortgagee shall be entitled to cure any Concessionaire Default that requires payment of money by paying such money on the Concessionaire's behalf, prior to the Leasehold Mortgagee taking possession, control or ownership of the

Concessionaire Interest. If the Leasehold Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, the Concessionaire Interest, it shall be bound by all liabilities and obligations of the Concessionaire under this Agreement (including the obligation to engage an Operator). Once the Leasehold Mortgagee goes out of possession or control of the Concessionaire Interest or Transfers the Concessionaire Interest to another Person in accordance with the provisions of this Agreement, the Leasehold Mortgagee shall cease to be liable for any of the Concessionaire's obligations under this Agreement accruing thereafter and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except, if the Leasehold Mortgagee remains outstanding, by way of security.

**Section 19.5. Termination of this Agreement; New Agreement.**

- (a) Without prejudice to the rights of a Leasehold Mortgagee under Section 19.3, if this Agreement is terminated prior to the expiration of the Term due to a Concessionaire Default (in which case the University shall notify the Leasehold Mortgagee of such termination) or if this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the University agrees to enter into a new concession and lease agreement of the Utility System with the Leasehold Mortgagee (or its designee or nominee, provided that such designee or nominee either is controlled by the Leasehold Mortgagee (or by the holders of the Leasehold Mortgage Debt)) or is Approved by the University as Transferee under Section 17.1) for the remainder of the original stated Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New Agreement"), effective as of the date of such termination, but only on and subject to the satisfaction of all of the following requirements and conditions: (i) such Leasehold Mortgagee commits in writing to the University, in a notice delivered to the University, within 30 Days after the University delivers the termination notice to Leasehold Mortgagee (or, if later, upon the termination of any cure period granted to the Leasehold Mortgagee pursuant to Section 19.3) or within 30 Days after the effective date of such rejection or disaffirmance, as the case may be, that the Leasehold Mortgagee (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Leasehold Mortgagee (or its designee or nominee); (ii) the Leasehold Mortgagee (or its designee or nominee) pays or causes to be paid to the University, at the time of the execution and delivery of the New Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination; (iii) provided the University furnishes a statement or invoice for such costs the Leasehold Mortgagee pays or causes to be paid to the University all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the University in connection with such Concessionaire Defaults and termination, the recovery of possession from the Concessionaire,

and in connection with the preparation, execution and delivery of the New Agreement and related agreements and documents specified in such statement or invoice; and (iv) such Leasehold Mortgagee (or its designee or nominee), at the time of such written request, cures all Concessionaire Defaults under this Agreement (curable by the payment of money) existing immediately prior to the termination of this Agreement, or, if such Concessionaire Defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) commits to the University in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other Concessionaire Defaults to the extent such Concessionaire Defaults are capable of cure by a Person other than the original Concessionaire and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other Concessionaire Defaults (and such cure shall be a covenant in the New Agreement).

- (b) Nothing contained in this Section 19.5 shall be deemed to limit or affect the University's interests in and to such Utility System upon the expiration of the Term of the New Agreement. The provisions of this Section 19.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 19.5 were a separate and independent contract made by the University, the Concessionaire and the Leasehold Mortgagee and, if the Leasehold Mortgagee satisfies the conditions to execute a New Agreement, from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, the Leasehold Mortgagee may use and enjoy the leasehold estate created by this Agreement without hindrance by the University, but only on and subject to the terms and provisions of this Agreement.
- (c) If the circumstances described in Section 19.5(a) occur, and the University determines, based on the written legal advice of counsel, that termination of this Agreement and the entry into a New Agreement by and among the University and the Leasehold Mortgagee could violate applicable provisions of the Laws of the State of Ohio governing procurement by the University then, in lieu of entering in a New Agreement and in satisfaction of its obligations under this Section 19.5, the University agrees to enter into an Assignment and Assumption Agreement pursuant to Section 19.8.

**Section 19.6. Recognition of Leasehold Mortgagee.** If there is more than one Leasehold Mortgagee, only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, whose notice was earliest received by the University pursuant to the Leasehold Mortgagee Notice Requirements, shall have the rights as a Leasehold Mortgagee under this Article 19, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights. Such Leasehold Mortgagee may act as agent for a group or syndicate of one or more Institutional Lenders and such Leasehold Mortgagee and Institutional Lenders may freely assign or sell interests and/or participations in the loans to any other Institutional Lender.

### **Section 19.7. University's Right to Purchase Leasehold Mortgages.**

- (a) If any default by the Concessionaire has occurred under a Leasehold Mortgage and has not been cured within applicable cure periods, or any act, condition or event has occurred which would permit a Leasehold Mortgagee to declare all or part of the indebtedness secured by a Leasehold Mortgage to be immediately due and payable (or, in the case of a Leasehold Mortgage that is a lease, to terminate the lease), then the University shall have 30 Days after the date on which such Leasehold Mortgagee shall serve notice upon the University in writing ("Leasehold Mortgagee's Notice") that such Leasehold Mortgagee intends to commence proceedings to foreclose the Leasehold Mortgage or, in the case of a Leasehold Mortgage that is a Lessor to terminate the lease with the Concessionaire (stating the calculation of the purchase price pursuant to Section 19.7(c)), during which 30-Day period the University shall have the right and option (the "University's Option") to purchase from all Leasehold Mortgagees their Leasehold Mortgages, upon the terms and subject to the conditions contained in this Section 19.7.
- (b) The University's Option shall be exercised by notice served upon the Concessionaire and all Leasehold Mortgagees within such 30-Day period. If the University's Option is duly and timely exercised, the University shall purchase and all Leasehold Mortgagees shall assign their Leasehold Mortgages to the University (or its designee) on the date which is 60 Days after the date on which a Leasehold Mortgagee's Notice is served upon the University. The closing shall take place at a mutually convenient time and place.
- (c) The purchase price payable by the University shall be equal to the aggregate amounts secured by such Leasehold Mortgages (including principal, interest, fees, premiums, Breakage Costs and other costs, expenses (including attorneys' fees) and any other amounts secured thereby) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the University to each respective Leasehold Mortgagee, to be applied by the Leasehold Mortgagee to the amounts secured by the Leasehold Mortgage owed to such Leasehold Mortgagee, subject to the priorities of lien of such Leasehold Mortgages.
- (d) At the closing and upon payment in full of the purchase price each Leasehold Mortgagee shall assign its Leasehold Mortgage to the University, together with any security interest held by it in the Concessionaire Interest, without recourse, representations, covenants or warranties of any kind, provided that such Leasehold Mortgages and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the University to all Leasehold Mortgagees (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 19.7(d). Each such assignment shall be in form for recordation or filing, as the case may be. The University shall be responsible for paying any Taxes

payable to any Governmental Authority upon such assignment. Such assignment shall be made subject to such state of title of the Utility System as shall exist at the date of exercise of the University's Option.

- (e) Any Leasehold Mortgage shall contain an agreement of the Leasehold Mortgagee to be bound by the provisions of this Section 19.7, and the University shall have the right to receive all notices of default under any Leasehold Mortgage.

**Section 19.8. Assignment and Assumption Agreement.**

- (a) The provisions of this Section 19.8 shall be in effect whenever either (i) the University has made the determination contemplated by Section 19.5(c) or (ii) the University, with the written consent of the Leasehold Mortgagee, has determined to proceed under this Section 19.8 in lieu of under Section 19.5.
- (b) Without prejudice to the rights of a Leasehold Mortgagee under Section 19.3, if either (i) the University has given a notice of termination of this Agreement due to Concessionaire Default pursuant to Section 16.1(b), or (ii) this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the University agrees to cooperate with a Leasehold Mortgagee in order to effectuate such Leasehold Mortgagee's rights under the Leasehold Mortgage to step-in, assume or assign this Agreement, in accordance with the procedures, terms and conditions of this Section 19.8.
- (c) Upon notification and satisfaction of all of the conditions and requirements in Section 19.8(d), the University agrees that this Agreement shall not be deemed terminated, but may be assumed by a Leasehold Mortgagee or by a designee or nominee of such Leasehold Mortgagee who is either controlled by the Leasehold Mortgagee (or by the holders of the Leasehold Mortgage Debt) or is Approved by the University as a Transferee under Section 17.1, for the remainder of the original stated Term of this Agreement, and as evidence of such assignment and assumption the University agrees to execute an amended and restated concession and lease agreement for the Utility System upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "Assignment and Assumption Agreement").
- (d) This Agreement may be so assigned and assumed pursuant to an Assignment and Assumption Agreement upon and subject to satisfaction of all of the following requirements and conditions:
  - (i) Such Leasehold Mortgagee must commit in writing to the University, in a notice delivered to the University within the later of 30 Days after the University delivers the termination notice to Leasehold Mortgagee or upon the termination of any cure period granted to such Leasehold Mortgagee

pursuant to Section 19.3, or within 30 Days after the effective date of any rejection or disaffirmance of this Agreement in a bankruptcy proceeding, as the case may be, that such Leasehold Mortgagee (or its designee or nominee) will assume this Agreement and enter into the Assignment and Assumption Agreement, which notice is accompanied by a copy of such Assignment and Assumption Agreement duly executed and acknowledged by such Leasehold Mortgagee (or its designee or nominee).

- (ii) Such Leasehold Mortgagee (or its designee or nominee) shall pay or cause to be paid to the University, at the time that the Assignment and Assumption Agreement is fully executed, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement.
- (iii) Such Leasehold Mortgagee (or its designee or nominee) shall pay or cause to be paid to the University all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the University in connection with such defaults and notice of termination, the recovery of possession from the Concessionaire, and in connection with the preparation, execution and delivery of the Assignment and Assumption Agreement and related agreements and documents. The University shall provide an invoice to such Leasehold Mortgagee of such costs, and the Leasehold Mortgagee or its designee or nominee shall pay such invoiced costs within 5 Days of the receipt of such invoice.
- (iv) Such Leasehold Mortgagee (or its designee or nominee), at the time of the notice provided under Section 19.8(d)(i), shall cure all Concessionaire Defaults under this Agreement (including all such Concessionaire Defaults curable by the payment of money) existing immediately prior to the notice of termination issued pursuant to Section 16.1(b), or, if such Concessionaire Defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) shall commit to the University in the Assignment and Assumption Agreement to proceed both promptly and diligently, upon the execution of the Assignment and Assumption Agreement, to cure all such other defaults to the extent such defaults are capable of cure by a Person other than the original Concessionaire and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults (and such obligation to cure shall be a covenant in the Assignment and Assumption Agreement).
- (e) If a Leasehold Mortgagee gives the University a notice as provided in Section 19.8(d)(i), the University and Leasehold Mortgagee agree to cooperate with respect to taking any appropriate actions required to regain and transfer possession of the Utility System and the Utility System Assets, including (i) seeking surrender of possession in any bankruptcy proceedings; (ii) seeking

relief from any automatic stay in bankruptcy provisions and pursuit of state law remedies to obtain possession and to foreclose on the Leasehold Mortgage interest and assume the Concessionaire's position as provided in Section 19.4 of this Agreement; provided that any costs incurred by the University under this provision shall be reimbursed by the Leasehold Mortgagee (or its designee or nominee) as provided in Section 19.8(d)(iii).

**Section 19.9. Right to Dispute Resolution.** In each case specified in this Agreement in which resort to dispute resolution is authorized, a Leasehold Mortgagee shall have the right and privilege if an event of default under the Leasehold Mortgage then exists and notice has been given to the University as contemplated by Section 19.1(f), in the Concessionaire's name, place and stead, to obtain and participate in such dispute resolution upon notice to the University in accordance with Article 18; provided that the Leasehold Mortgagee agrees to be bound by the outcome of the dispute resolution process.

**Section 19.10. Closing Date L/C Facility.** The University and the Concessionaire hereby acknowledge and agree that the execution of a facility for the issuance of letters of credit on behalf of the Concessionaire or the Concessionaire's Parent shall not be considered Leasehold Mortgage Debt, even though such facility may be secured by a Leasehold Mortgage, until such time as any letters of credit are issued thereunder, at which time such facility shall be deemed Leasehold Mortgage Debt and must meet the requirements of Section 3.6. Notwithstanding the foregoing, the University agrees that the letter of credit facility entered into by the Concessionaire's Parent on the Closing Date (the "Closing Date L/C Facility") and any indebtedness issued or incurred thereunder shall be considered Leasehold Mortgage Debt and be secured by a Leasehold Mortgage, notwithstanding the fact that any letters of credit issued or drawn upon in connection therewith may not be rated by any Credit Rating Agencies, and the Concessionaire shall not be in default of the Agreement as a result of the fact that such letters of credit are not rated by any Credit Rating Agencies, provided that the Closing Date L/C Facility shall not be amended or in any way modified to increase the aggregate amount of the Letter of Credit Commitments (as defined in the Closing Date L/C Facility), which, for the avoidance of doubt, is \$15,000,000.00.

## ARTICLE 20

### UNIVERSITY ACADEMIC COLLABORATION PROGRAM

**Section 20.1. University Academic Collaboration Program.** The Concessionaire agrees to provide the compensation, contributions and opportunities set forth on Schedule 22, in accordance with the terms and conditions set forth therein and in this Section 20.1.

(a) Visionary Project.

- (i) *Development and Construction of the Visionary Project.* The University shall consult with the Concessionaire regarding the development of plans for the visionary project described in Schedule 22 (the "Visionary Project"), which shall be based on the description submitted by the Concessionaire and attached to Schedule 22, and the Concessionaire shall

provide leadership with developing such plans towards a target Board project design and construction approval date of February 2019.

If requested by the VP Advisory Committee and agreed by the Concessionaire, and provided any necessary University approvals have been obtained, the Concessionaire shall pay certain costs for developing such plans promptly following receipt of invoices for such work to the extent such invoices are approved by the University (the “VP Development Costs Payments”).

Following completion of the plans for the Visionary Project by the University, in its sole discretion, the University shall cause the Visionary Project to be constructed, and the Concessionaire shall directly pay all contractors performing work on the Visionary Project promptly following receipt of invoices for such work to the extent such invoices are approved by the University, provided that, in no event, shall the Concessionaire’s liability for such payments together with the VP Development Cost Payments exceed the amount set forth for the Visionary Project on Schedule 22. If the Concessionaire fails to timely pay any such contractors or make any VP Development Cost Payments, the University shall have the right to make such payments and be reimbursed by the Concessionaire on demand. Within 20 Business Days following issuance of a certificate of occupancy for the Visionary Project, the Concessionaire shall pay to the University an amount, if positive, equal to \$50,000,000 less the sum of (x) the amounts paid to the contractors by the Concessionaire for construction of the Visionary Project pursuant to this Section 20.1(a)(i) and (y) the VP Development Cost Payments such that the Concessionaire’s total payments under this Section 20.1(a)(i) equal \$50,000,000.

The Concessionaire shall also provide assistance with operating the Visionary Project as may be reasonably requested by the University, provided that any out-of-pocket costs incurred by the Concessionaire associated therewith, to the extent Approved by the University prior to being incurred, shall be reimbursed by the University via a mechanism as mutually agreed between the Parties.

- (ii) *Governance and Operation of the Visionary Project.* The Concessionaire shall support the Visionary Project as described in the materials submitted by the Concessionaire and attached to Schedule 22, and, at the University’s discretion, the University may request that the Concessionaire and the University execute an agreement that refines the plans, operations or other aspects of the Visionary Project. The Visionary Project will have an advisory committee (the “VP Advisory Committee”), whose composition will be determined by the University in consultation with the Concessionaire but must include, at all times, at least 1 representative appointed by the Concessionaire and 1 representative

appointed by the University from the City of Columbus community, who will not be employed by or represent the University or the Concessionaire. The VP Advisory Committee shall be established by the University before the completion of the plans and specifications for the Visionary Project. The VP Advisory Committee shall make decisions or take actions on a majority basis, provided that the VP Advisory Committee cannot make any decisions or take any actions that violate or contradict the VP Advisory Committee's charter, this Agreement, applicable Law, including any Law that requires the University to take a particular action, or the University's policies and procedures. Further, the VP Advisory Committee must have a quorum in order to make any decision or take any action, which quorum must include a Concessionaire representative. The VP Advisory Committee shall have a charter, which shall be promulgated by the University, which shall, among other things, expressly set forth the scope of those matters on which the VP Advisory Committee's decision is binding, and such charter shall not be amended, modified, waived or revoked except by the University, provided that the University shall provide the Concessionaire at least 10 Business Days' prior written notice of any proposed change before such change is made effective. The VP Advisory Committee shall establish rules and procedures for how often it will meet and other procedural matters, to the extent they are not addressed in the charter. The University shall also appoint an executive director for the day-to-day operation of the Visionary Project, who shall have such authority regarding the Visionary Project as granted by the University provided such authority does not conflict with the charter of the VP Advisory Committee.

- (iii) *Ownership of Visionary Project and its Assets.* The University shall be the owner of the Visionary Project, and any non-intellectual assets generated by, or in connection with, the operation of the Visionary Project shall be owned by the University. Any intellectual property rights generated by, or in connection with, the operation of the Visionary Project will be owned according to applicable intellectual property laws. Ownership of patent rights follows inventorship, so inventions solely invented by employees of one Party shall be solely owned by that Party and inventions jointly invented by employees of both parties shall be jointly owned by both Parties.
- (b) At Closing, the Concessionaire contributed to the University, in the same manner as the Closing Consideration, the sum of the amount allocated pursuant to Schedule 22 for (i) undergraduate student scholarships, (ii) graduate and professional student scholarships, (iii) faculty endowments, (iv) sustainability commitment, and (v) curriculum and staff development commitment, and the University agrees that it shall use the funds contributed by the Concessionaire for the purposes for which they were designated.

- (c) By April 30 of each Fiscal Year, the Concessionaire shall contribute to the University-related philanthropic organizations the amount set forth to be contributed annually to University-related philanthropic organizations pursuant to Schedule 22 annually, which obligation shall terminate after the Concessionaire has made the number of annual contributions set forth on Schedule 22. On or before April 30 of each Fiscal Year, the Concessionaire shall provide to the University with evidence reasonably acceptable to the University of such contributions.
- (d) The Concessionaire shall provide the number of paid internships to University students as specified on Schedule 22 and shall, prior to the end of each Fiscal Year, provide the University with evidence of such internships. The Concessionaire will consult with the University (i) when establishing educational objectives of the internship and (ii) to identify quality candidates that are an appropriate fit for the student internship positions. The University and the Concessionaire agree to share what has worked and not worked in the past in an effort to provide the best experience for both the Concessionaire and student interns and to inform one another of changes reasonably relevant to the purpose of the internships. The Concessionaire shall provide to the University Liaison the criteria to be considered when evaluating the candidates. In exercising its discretion pursuant to this provision, the Concessionaire agrees not to discriminate with regard to race, creed, color, marital or veteran status, sexual orientation, sex, age, pregnancy, disability, religion, citizenship status, ancestry or handicap.

## ARTICLE 21 INTERACTION WITH PARKING SYSTEM CONCESSIONAIRE

**Section 21.1. Coordination.** To the extent the Concessionaire reasonably determines that the Utility System Operations require the temporary closure of any parking spaces or access to any parking facility or parking space subject to the Long-Term Lease and Concession Agreement for the University Parking System, dated as of June 28, 2012 (as amended, the "Parking Agreement"), the Concessionaire shall provide the University written notice thereof at least 5 Business Days in advance of the proposed closure or access, except in the case of an Emergency. The University shall then use commercially reasonable efforts to exercise its rights under the Parking Agreement to provide the Concessionaire such temporary closure and access as is reasonably necessary for the Utility System Operations. The University shall pay any costs or expenses incurred in exercising its rights under the Parking Agreement, provided that the University may, in its reasonable discretion, elect not to exercise such rights if it determines that (i) the cost associated therewith is unreasonably disproportionate to the benefit received or (ii) there is a reasonable alternative method. Notwithstanding the foregoing, in the event any access or temporary closure is required due to any negligent act or omission of the Concessionaire, then the Concessionaire shall reimburse the University for any such costs or expenses incurred in so exercising its rights.

**Section 21.2. Parking Passes.** The Concessionaire shall be entitled to permit its Representatives to park in the parking spaces designated by the University from time to time, in

its sole discretion, for use in connection with the Utility System. Any additional parking passes purchased by the Concessionaire or by the Representatives shall be at the sole cost and expense of the Concessionaire or its Representatives and which shall not be considered an O&M Cost.

## ARTICLE 22 MISCELLANEOUS

**Section 22.1. Notice.** All notices by the Concessionaire or the University, approvals or consents by the Concessionaire, and Approvals by the University (each, a “Notice”) required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be delivered by facsimile (with hard copy sent via mail), email (with hard copy sent via mail), nationally recognized overnight courier service, or certified or registered mail (return receipt requested and postage prepaid) for the attention of the persons and to the addresses, fax numbers or email addresses shown below (or such other persons, address, fax numbers or email addresses as either Party may from time to time designate by a Notice to the other):

(a) in the case of the University:

(i) for delivery by mail or fax:

The Ohio State University  
Finance Department  
108 Bricker Hall  
190 N. Oval Mall  
Columbus, Ohio 43210  
Attention: Chief Financial Officer  
Fax: 614-292-2820

With a copy to:

The Ohio State University  
Office of the General Counsel  
1590 N High Street, Suite 500  
Columbus, Ohio 43201  
Attention: General Counsel  
Fax: 614-292-6384

(ii) for delivery by email:

Scott Potter  
Email: potter.138@osu.edu

(b) in the case of the Concessionaire:

(i) for delivery by mail or fax:

Ohio State Energy Partners LLC  
c/o Baker Systems Engineering  
1971 Neil Avenue, Suite 210  
Columbus, Ohio 43210  
Attention: Serdar Tufekci  
Fax: 713-636-1364

With a copy to:

Ohio State Energy Partners LLC  
c/o Axium Infrastructure US Inc.  
410 Park Avenue, Suite 510  
New York, New York 10022  
Attention: Paulo Arencibia  
Fax: 514-282-6478

With a copy to:

Ohio State Energy Partners LLC  
c/o ENGIE North America, Inc.  
1990 Post Oak Blvd., Suite 1900  
Houston, Texas 77056  
Attention: André Canguçu and Treasury Group  
Fax: 713-636-1364

And a copy to:

ENGIE North America Inc.  
1990 Post Oak Blvd., Suite 1900  
Houston, Texas 77056  
Attention: General Counsel  
Fax: 713-636-1364

And a copy to:

Allen & Overy LLP  
1221 Avenue of the Americas  
New York, New York 10020  
Attention: Kent Rowey  
Fax: 212-610-6399

(ii) for delivery by email:

Serdar Tufekci  
Email: Serdar.Tufekci@na.engie.com

With a copy to:

André Canguçu  
Email: andre.cangucu@na.engie.com

Paulo Arencibia  
Email: parencibia@axiuminfra.com

A Notice shall be deemed to have been sent and received (i) on the Day it is delivered, or if such Day is not a Business Day or if the Notice is received after ordinary office hours (time of place of receipt), the Notice shall be deemed to have been sent and received on the next Business Day, or (ii) on the 4th Business Day after mailing if sent by U.S. registered or certified mail. Each Party shall use commercially reasonable efforts to deliver an electronic copy of each Notice provided by mail or fax in accordance with the foregoing via email to the persons and email addresses designated pursuant to the foregoing to receive Notices provided by email.

All communications other than Notices that are required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be delivered by email to the persons and email addresses shown below (or such other persons or email addresses as either Party may from time to time designate by a Notice to the other):

(x) in the case of the University:

Scott Potter  
Email: potter.138@osu.edu

(y) in the case of the Concessionaire:

Serdar Tufekci  
Email: Serdar.Tufekci@na.engie.com

**Section 22.2. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

**Section 22.3. Amendment.** This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

**Section 22.4. Waiver of Rights.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for

which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

**Section 22.5. Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstance is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 18. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a manner that effectively entitles the University to have the same rights after the aforesaid determination of invalidity or unenforceability as before, the University shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

**Section 22.6. Governing Law; Waiver of Jury Trial.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the Laws in force in the State of Ohio (excluding any conflict of laws rule or principle which might refer such interpretation to the Laws of another jurisdiction). **EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**Section 22.7. Submission to Jurisdiction.** Subject to Article 18, any action or proceeding against any Party relating in any way to this Agreement may be brought and enforced in the Ohio Court of Claims or other Ohio court of competent jurisdiction, and each of the Concessionaire and the University hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now or hereafter have to the laying of venue of any such action or proceeding in such courts and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Service of process on the University may be made, either by registered or certified mail addressed as provided for in Section 22.1. Service of process on the Concessionaire may be made either by registered or certified mail addressed as provided for in Section 22.1 or by delivery to the Concessionaire's registered agent for service of process in the State of Ohio. If the Concessionaire is presented with a request for Documents by any administrative agency or with a subpoena duces tecum regarding any Documents which may be in its possession by reason of

this Agreement, the Concessionaire, unless prohibited by Law, shall give prompt notice to the University. The University may contest such process by any means available to it before such Documents are submitted to a court or other third party; provided, however, that the Concessionaire shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the subpoena or request is quashed or the time to produce is otherwise extended.

**Section 22.8. Further Acts.** The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and assurances and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

**Section 22.9. Costs.** Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

**Section 22.10. Interest.** Any amount payable under this Agreement and not paid when due shall bear interest at a variable nominal rate per annum equal on each Day to the Bank Rate then in effect, from the date such payment is due until payment and both before and after judgment.

**Section 22.11. Inurement and Binding Effect.** This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and is binding upon the Parties and their respective successors and assigns.

**Section 22.12. No Partnership or Third Party Beneficiaries.** Except as expressly provided herein to the contrary, nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the University and the Concessionaire, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any Person not a party to this Agreement, other than, in the case of Section 3.11, Section 10.2, Section 12.3, Section 13.4, Section 14.2, Section 16.3, Section 17.1, Section 17.2 and Article 19, any Leasehold Mortgagee.

**Section 22.13. Cumulative Remedies.** The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law, except for the remedies available to the University for a breach of the Performance Standards, Section 5.4(a) or Section 7.5(a) by the Concessionaire or a KPI Event, which shall be limited to those expressly set forth herein. Notwithstanding the foregoing, where this Agreement provides for liquidated damages, such liquidated damages shall be the sole exclusive remedy of the University or the Concessionaire, as applicable, and the University and the Concessionaire hereby irrevocably waive any right to assert a claim against the other party based on a legal theory that a remedy provided herein for such breach or act triggering the liquidated damages fails of its essential purpose.

**Section 22.14. Counterparts; Facsimile Execution.** This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

**Section 22.15. Time of the Essence.** Time is of the essence for this Agreement.

(Intentionally Left Blank)

IN WITNESS WHEREOF, the University and the Concessionaire have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

THE OHIO STATE UNIVERSITY

BY: Michael Papadakis  
PRINTED: MICHAEL PAPADAKIS  
ITS: INTERIM SENIOR VP & CFO

OHIO STATE ENERGY PARTNERS LLC

BY: OHIO STATE ENERGY PARTNERS  
HOLDINGS LLC, its sole member

BY: Paulo Arencibia  
PRINTED: Paulo Arencibia  
ITS: Authorized Agent A

*al*

BY: M. Y.  
PRINTED: Andre Cangucu  
ITS: Authorized Agent B

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**SCHEDULES FOR THE  
LONG-TERM LEASE AND CONCESSION AGREEMENT  
FOR THE OHIO STATE UNIVERSITY UTILITY SYSTEM**

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**SCHEDULE 1**  
**FORM OF BOARD RESOLUTION**

[See Attached]

**AUTHORIZATION OF THE LONG-TERM LEASE AND  
CONCESSION AGREEMENT FOR THE OHIO STATE UNIVERSITY UTILITY SYSTEM**

Synopsis: Authorization of that certain Long-Term Lease and Concession Agreement for The Ohio State University Utility System, including authorization of the lessee and concessionaire thereunder, performance of all obligations thereunder and execution and delivery of documents in connection therewith, is proposed.

WHEREAS the Comprehensive Energy Management Project would launch an unprecedented energy efficiency program and modernize our 485-building Columbus campus and create substantial academic benefits for our students, faculty and staff; and

WHEREAS The Ohio State University (the "University") has a long-term commitment to sustainability and the reduction of its impact on the environment, and the Board of Trustees of the University (the "Board") and the president of the University (the "President") believe the Concession Agreement (as defined below), which imposes certain sustainability obligations on the lessee and concessionaire thereunder, is a critical component of that commitment and will enable the University to improve its utility infrastructure for the benefit of all community stakeholders while realizing value to support the University's mission through a substantial up-front payment by the Concessionaire (as defined below) and academic collaboration between the Concessionaire and the University; and

WHEREAS (a) a bidding process with respect to the Concession Agreement was established pursuant to a Request for Proposals dated as of February 9, 2017 (as amended and supplemented by the University, the "RFP"), and conducted by the University (such process, the "Bidding Process") and (b) three (3) bids from such Bidding Process were received for consideration; and

WHEREAS Ohio State Energy Partners LLC, a Delaware limited liability company (the "Concessionaire"), which is ultimately owned by ENGIE North America Inc. and Axium Infrastructure US Inc., submitted a bid in response to the RFP with an upfront payment amount of \$1.015 billion on Form B-1 of the RFP in accordance with the terms thereof, in a form satisfactory to the University; and

WHEREAS University Senate voted to support the university recommendation to the Board that Ohio State enter into a partnership with ENGIE-Axium that would advance and enhance the educational mission of the university; and

WHEREAS pursuant to the Bidding Process, the President, provost of the University (the "Provost") and the senior vice president for business and finance and chief financial officer of the University (the "CFO"), with the endorsement of the President's Cabinet, recommend to the Board that the Concessionaire be chosen as the concessionaire under the Concession Agreement; and

WHEREAS it is proposed that the University enter into a Long-Term Lease and Concession Agreement for The Ohio State University Utility System (the "Concession Agreement") with the Concessionaire, on substantially the same terms and conditions described in the summary of the draft Long-Term Lease and Concession Agreement for The Ohio State University Utility System (the "Draft Concession Agreement Summary") attached hereto as Exhibit A; and

NOW THEREFORE

**AUTHORIZATION OF THE LONG-TERM LEASE AND  
CONCESSION AGREEMENT FOR THE OHIO STATE UNIVERSITY UTILITY SYSTEM (cont'd)**

BE IT RESOLVED, That the Board of Trustees hereby determined that it is in the best interests of the University to enter into the Concession Agreement with the Concessionaire and the Related Documents (as defined below), to perform the obligations arising under, or in connection with, the Concession Agreement and the Related Documents, including, but not limited to, the University's obligation to make the payment of the utility fee (as defined in the Concession Agreement) on a monthly basis (collectively, the "Transaction Obligations"), and to otherwise consummate the transactions contemplated thereby (the "Transaction"); and

BE IT FURTHER RESOLVED, That the Board has reviewed the Bidding Process and accepts the recommendation of the President, Provost, and CFO to select the Concessionaire as the concessionaire under the Concession Agreement; and

BE IT FURTHER RESOLVED, That the Board hereby authorizes the University (1) to enter into the Concession Agreement with the Concessionaire and into any other documents and agreements that the President and CFO ("Authorized Officers"), or either of them, deems necessary, advisable or appropriate in connection with the Concession Agreement (including, without limitation, the Memorandum of Lease (as defined in the Concession Agreement), the Design-Build Agreement (as defined in the Concession Agreement) and one or more consent agreements and estoppel certificates contemplated by the Concession Agreement for the benefit of the Leasehold Mortgagee (as defined in the Concession Agreement)) (collectively, the "Related Documents"), such Authorized Officer's execution thereof to be conclusive evidence of such approval and determination of the necessity, advisability or appropriateness thereof, and (2) to take such actions as any Authorized Officer deems necessary, advisable or appropriate to perform the Transaction Obligations and to otherwise consummate the Transaction, such actions not to be materially inconsistent with the terms of the Draft Concession Agreement Summary, such Authorized Officer's taking of such action to be conclusive evidence of such approval and determination of the necessity, advisability or appropriateness thereof; and

BE IT FURTHER RESOLVED, That the Board hereby authorizes and directs the Authorized Officers, or either of them, upon consultation with the chair of the Finance Committee of the Board, the Senior Vice President for Legal Affairs and General Counsel, any outside counsel or advisors retained for this purpose and such other members of the senior leadership of the University that any Authorized Officer deems necessary, advisable or appropriate, subject to the terms, limitations and conditions prescribed in this resolution, (1) to negotiate, execute, acknowledge and deliver the Concession Agreement and any Related Document on such terms as any Authorized Officer deems necessary, advisable or appropriate, such terms not to be materially inconsistent with the Draft Concession Agreement Summary, with such Authorized Officer's execution thereof to be conclusive evidence of such approval and determination of the necessity, advisability or appropriateness thereof, and (2) to take such actions as any Authorized Officer deems necessary, advisable or appropriate to perform the Transaction Obligations and to otherwise consummate the Transaction, such actions not to be materially inconsistent with the terms of the Draft Concession Agreement Summary, with such Authorized Officer's taking of such action to be conclusive evidence of such approval and determination of the necessity, advisability or appropriateness thereof; and

**AUTHORIZATION OF THE LONG-TERM LEASE AND  
CONCESSION AGREEMENT FOR THE OHIO STATE UNIVERSITY UTILITY SYSTEM (cont'd)**

BE IT FURTHER RESOLVED, That the Board hereby authorizes the CFO to serve as the Senior Official (as defined in the Concession Agreement); and

BE IT FURTHER RESOLVED, That all actions previously taken by any Authorized Officer or employee of the University, by or on behalf of the University in connection with the Transaction (including, without limitation, any such actions related to the RFP, any interest rate management or hedging contract, credit support or enhancement contract), be, and each of the same hereby is, adopted, ratified, confirmed and approved in all respects; and

BE IT FURTHER RESOLVED, That it is found and determined that all formal actions of this Board concerning and relating to the adoption of this resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code; and

BE IT FURTHER RESOLVED, That this resolution shall take effect and be in force immediately upon its adoption.

EXHIBIT A

Draft Concession Agreement Summary  
[See attached]

**PRIVILEGED AND CONFIDENTIAL**  
**ATTORNEY-CLIENT COMMUNICATION**

**THE OHIO STATE UNIVERSITY**

Re: Summary of Long-Term Lease and Concession Agreement for The Ohio State University Utility System

This memorandum contains an executive summary and a detailed summary of the draft proposed Long-Term Lease and Concession Agreement for The Ohio State University Utility System (the “Agreement”) by and between The Ohio State University (the “University”) and a to-be-determined concessionaire (the “Concessionaire”), which is under consideration.

*Executive Summary*<sup>1</sup>

The University will sell to the Concessionaire utility-related personal property and lease to the Concessionaire utility-related land and facilities on the University’s Columbus campus for a 50-year term, and the Concessionaire will operate, maintain and improve such utility system on the Columbus campus during that term. The utility system for the following utilities are covered under the Agreement: electricity, steam and condensate, chilled water, natural gas and geothermal power. Note that the Concessionaire’s primary obligations are with respect to the utility system’s delivery of these utilities on the Columbus campus and does not include the supply or procurement of any utility commodities. However, the Concessionaire will assist the University with the procurement of utility commodities (e.g., electricity and natural gas) even though it will not be responsible for the supply of such utility commodities. All purchase of such utility commodities shall be made by the University so that it can maintain control of the utility commodity mix. For purposes of Ohio real estate law, the transaction is a lease of the land and facilities for the term, and only title to the personal property, such as vehicles and spare parts, is being transferred to the Concessionaire. For federal income tax purposes, the transaction is intended to be a lease of the land and a sale of the facilities and personal property.

In exchange for the grant of the concession, the Concessionaire shall make an upfront payment to the University of \$1,015,000,000 and shall agree to make payments and grants valued at a minimum of \$150 million as part of its academic collaboration program with the University. During the term, the University shall pay the Concessionaire an annual utility fee for providing the utility services. This utility fee shall consist of (i) a fixed amount of \$45 million (increased 1.5% annually), *plus* (ii) a variable component based on the unrecovered costs of capital improvements made by the Concessionaire, *plus* (iii) an amount representing the annual amortization value of those capital improvements made by the Concessionaire (based on a 20-year amortization period unless otherwise agreed), *plus* (v) an operating fee calculated based on historic operating and maintenance costs, subject to certain limitations and adjustments for additional capital improvements made during the term. The Concessionaire will be eligible for bonus payments based on meeting the 25% energy use intensity reduction goal at a lower cost than anticipated or based on exceeding such goal by at least 5%. Note that the utility fee is not a direct reimbursement to the Concessionaire for its cost of actually performing the utility services

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<sup>1</sup> This summary is for convenience only and should not be used in lieu of the Agreement. Initially capitalized terms used in this summary and not otherwise defined herein have the meanings set forth in the Agreement. All references to schedules in this memorandum refer to the schedules to the Agreement.

but instead approximates what would be the market rate of such utility services provided by a third party utility and in line with the University's current costs.

During the term, the Concessionaire's responsibilities will include operating, maintaining, and repairing the utility system, as well as making capital improvements, all in accordance with prudent industry practices and agreed performance standards. The performance standards are detailed specifications intended to require that the Concessionaire operate and maintain the Utility System by at least substantively the same standards as the University maintains and operates the Utility System today. In addition, the Concessionaire must meet certain key performance indicators during the term related to unplanned outage events and hours, emergency response times, Energy Use Intensity reductions on an annual and 10-year basis, and smart meter deployment, and if the Concessionaire fails to do so, it will be subject to annual compensation payments that, depending on the severity and repetitiveness of such failures, can be as high as the greater of \$10 million and 10% of the Utility Fee.

The Concessionaire may not make any capital improvements without the University's approval, which may be withheld in the University's sole discretion except in very limited circumstances. Any capital improvements made by the Concessionaire will modify the utility fee pursuant to the agreed-upon formula in the Agreement. The utility system operations will be under the direction of an experienced operator selected by the Concessionaire and approved by the University, and the Concessionaire must use an experienced and qualified consultant in connection with design-build construction matters. The University may cause the Concessionaire to remove the operator if such operator materially or habitually breaches the performance standards or key performance indicators described above. The Concessionaire must use best efforts to interview University employees who apply for positions with the Concessionaire prior to the transition of control of the utility system. Any debt issued by the Concessionaire secured by its leasehold debt must have an investment grade credit rating.

The University shall retain the right to access the utility system during the term for purposes such as inspections, emergency repairs, and installation of equipment for academic or research purposes. At the end of the term, the Concessionaire will return the utility system to the University.

*Detailed Summary of Long-Term Lease and Concession Agreement  
for The Ohio State University Utility System<sup>2</sup>*

**Article 1. Definitions and Interpretation.** Article 1 sets forth the defined terms and certain other rules of interpretation used in the Agreement. The following are certain select definitions relating to this summary:

- A. “Capped O&M Costs” means the specifically identified operating and maintenance costs incurred by the Concessionaire or the Operator in operating the Utility System and complying with their respective obligations under this Agreement, which costs are intended to cover the expected and recurring costs that are to be incurred in connection therewith such as (i) utilities, (ii) salaries and employee benefits, (iii) supplies, (iv) delivery charges, (v) repair and maintenance costs, (vi) legal fees, (vii) design, energy auditing and engineering services, (viii) janitorial services, (ix) seminar and training costs for employees, (x) service vehicles, (xi) insurance charges and (xii) lease and rental charges.
- B. “Uncapped O&M Costs” means (i) the specifically identified operating and maintenance costs incurred by the Concessionaire or the Operator in operating the Utility System and complying with their respective obligations under this Agreement, which costs are intended to cover the unexpected costs or costs incurred at the University’s direction: (a) costs incurred due to a Delay Event, (b) costs incurred to modify the Utility System as directed by the University, (c) certain costs incurred by the Concessionaire in connection with the Approval process for a Capital Improvement, if such costs are directed to be incurred by the University and the Capital Improvement is not Approved, (d) costs incurred to disconnect property from the Utility System if required pursuant to the Agreement, (e) costs incurred in connection with a modification to the Performance Standards required by applicable law or Prudent Industry Practices, (f) costs incurred to perform the CHP of water feasibility study at the University’s direction, (g) costs incurred to pay Property Taxes, if such Property Taxes are not the result of the Concessionaire’s actions, (h) costs incurred in connection with Supply procurement assistance, (i) costs resulting from the Concessionaire’s failure to comply with Law if caused by the University’s failure to be reasonable in Approving a Capital Improvement or (j) costs incurred in connection with assistance for the regional campuses; and (ii) an amount equal to the sum of the federal income Taxes and the Ohio state commercial activity Tax on the income generated by the Variable Fee Component, assuming the highest corporate income tax rate.
- C. “Utility” means any of the following specific individual utility services: (i) electricity, (ii) steam and condensate, (iii) chilled water, (iv) natural gas and (v) geothermal power, and “Utilities” means each of them.

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<sup>2</sup> This summary is for convenience only and should not be used in lieu of the Agreement. Initially capitalized terms used in this summary and not otherwise defined herein have the meanings set forth in the Agreement. All references to schedules in this memorandum refer to the schedules to the Agreement.

- D. “Utility Facilities” means the improvements and equipment (a) constituting part of or located on the Columbus Campus, including those identified in Schedule 3, that are directly and exclusively involved in the generation, distribution and return of the Utilities and the operation and maintenance of the Utility System and that are not beyond the line of demarcation for each Utility as set forth in the Performance Standards, including the distribution pipes carrying the Utilities, the trench-boxes and vaults exclusively used in connection with the Utilities, the McCracken Power Plant, the South Campus Central Chiller Plant, the East Regional Chilled Water Plant, the OSU Substation, the Smith Substation, the West Campus Substation, the Gashouses, the Generator Plant, the Water Treatment Plant, the geothermal wells, and electric distribution wires or (b) located on Utility System Land; provided that the definition of “Utility Facilities” does not include (i) any improvements or equipment that are beyond the line of demarcation for each Utility as set forth in the Performance Standards, except for those areas expressly set forth in the Performance Standards as being within said line of demarcation or (ii) any cameras or other public safety equipment installed, maintained or used by the Department of Public Safety.
- E. “Utility System” means (A) the personal property, improvements, fixtures and equipment owned and operated by the University prior to the Time of Closing to provide the Utilities on the Columbus Campus, specifically limited to (i) the Utility System Assets, (ii) the computer systems and software set forth on Schedule 12, (iii) the Utility Facilities and (iv) the Utility System Land; provided, however, that the “Utility System” shall not include, other than expressly referred to above, (x) any utility distribution facilities or other equipment that is beyond the line of demarcation for each Utility, as set forth in the Performance Standards, (y) any interest in the Public Way or similar real property or (z) any utility facilities in a building that is not a building leased by the Concessionaire, up to the Utility System point of demarcation for such building, as described in the Performance Standards; and (B) from and after the Time of Closing, such Utility System as it is reconfigured, replaced, improved or relocated by the Concessionaire or the Operator pursuant to the terms of the Agreement.
- F. “Utility System Assets” means (i) as of the time immediately prior to the Time of Closing, the personal property of the University used in connection with operations of the Utility System and identified on Part I of Schedule 3 as “Personal Property” and (ii) from and after the Time of Closing, the personal property of the Concessionaire or the Operator used in connection with the operations of the Utility System.
- G. “Utility System Land” means those parcels of real property described in Schedule 3 for McCracken Power Plant, South Campus Central Chiller Plant, the East Regional Chilled Water Plant, the OSU Substation, the Smith Substation, the West Campus Substation, the Water Treatment Plant, the Generator Plant, the Gashouses and certain other land as identified on Schedule 3 and further described in the Memorandum of Lease.

**Article 2. The Transaction; Closing; Conditions Precedent; Covenants.**

- A. Section 2.1: Grant of Concession. At Closing, the Concessionaire shall pay the University \$1,015,000,000 in exchange for (i) a 50-year lease of the Utility System Land and Utility Facilities, (ii) the granting of a non-exclusive license to access certain appurtenant lands and facilities, (iii) the granting of the exclusive right to (A) operate the Utility System and to provide Utility Services on the Columbus Campus, including the right to use, possess, control, operate, manage, modify, maintain and rehabilitate the Utility System and (B) charge the Utility Fee, and (iv) the conveyance of the Utility System Assets. At Closing, the University and the Concessionaire shall also execute the McCracken Sublease and, to the extent required by the Agreement, the Design-Build Agreement.
- B. Section 2.2: Closing. The Closing shall take place no later than 90 Days after execution of the Agreement, provided that the Concessionaire can purchase a 30-Day or 60-Day extension for \$10 million or \$25 million, respectively. Upon receipt of the Closing Consideration (as adjusted pursuant to the Agreement), the University shall cancel and return the Closing Deposit and Cash Deposit. All Prorated Items shall be prorated between the University and the Concessionaire as of 11:59 p.m. on the Day immediately preceding the Closing Date. For every 1 basis point change in the LIBOR swap spot curve there will be a corresponding change of \$815,000 in the Closing Consideration, provided that such protection may not exceed 25 basis points without the prior written consent of the Party paying the change.
- C. Section 2.3: Deposit. The Concessionaire shall pay to the University a Cash Deposit and/or Letter of Credit in an amount of \$75 million, which such deposit shall be retained by the University if the Agreement is terminated for failure of any of the conditions precedent to the University's obligation to close the Transaction.
- D. Section 2.4: Conditions Precedent; Termination.
1. This section sets forth the conditions precedent to each Party's obligation to close the Transaction, including as a condition precedent for the University's benefit the requirement that any Leasehold Mortgage Debt issued by the Concessionaire have an investment grade credit rating as well as the termination rights of both Parties. The conditions precedent are standard for a transaction of this nature.
  2. This section also set forth the termination rights of both Parties. The Agreement may be terminated prior to Closing: (a) by mutual consent of the University and the Concessionaire; (b) by either the University or the Concessionaire if any Governmental Authority shall have issued an order or taken other action permanently restraining or prohibiting the Transaction; (c) by the Concessionaire if any condition precedent to the Concessionaire's obligation to close set forth in this section is not

satisfied; (d) by the University if any condition precedent to the University's obligation to close set forth in this section is not satisfied; or (e) by either the University or the Concessionaire if the Closing has not occurred within 5 Business Days after the Closing Date or a later date agreed to by the Parties.

3. If the Concessionaire terminates the Agreement because any of the conditions precedent for its benefit are not satisfied, the University shall pay the Concessionaire its costs up to \$2.5 million, except in circumstances involving a casualty or Adverse Action.

E. Section 2.5: Covenants. This section sets forth certain standard covenants and obligations of the Parties during the period between execution of the Agreement and Closing (the "Closing Period"). This section also sets forth (A) a requirement for the University to make its employees reasonably available to the Concessionaire to assist in the transition of control, possession, custody, operation, management, and maintenance of the Utility System during the Closing Period at no out-of-pocket cost to the University; (B) a requirement for Concessionaire to use its best efforts to interview all University Utility System Employees who apply for potential employment with the Concessionaire and for any employment offers the Concessionaire chooses to make to such employees to include terms and conditions that are at least comparable to other similarly-situated employees of the Concessionaire; and (C) a requirement for the University to complete the Ongoing Utility System Projects in substantial accordance with the plans as of the Setting Date, unless the University provides written notice of abandonment or modification to the Concessionaire.

F. Section 2.6: Intended Treatment for Federal and State Income Tax Purposes. This section sets forth the intended tax treatment of the Transaction for federal and state income tax purposes. For federal income tax purposes, the Transaction is intended to be a sale of the Utility Facilities and Utility System Assets and a lease of the Utility System Land.

### **Article 3. Terms of the Concession.**

A. Section 3.1: Quiet Enjoyment and Present Condition. The Concessionaire shall be entitled to quiet enjoyment of the Utility System, and the Concessionaire's rights to use, control and possess the Utility System are subject to the right of the University to monitor compliance with the Agreement to ensure that the Utility System is used and operated as required by the Agreement. The Concessionaire agrees to accept the Utility System "AS IS" and acknowledges that it has inspected the Utility System, is aware of its condition and acknowledges that the University makes no representation regarding the condition of the Utility System other than as expressly set forth in the Agreement. All real estate and improvements forming part of the Utility System shall be the fee-owned property of and owned solely by the University for GAAP and state law purposes and are subject to the terms and conditions of the Agreement.

B. Section 3.2: Utility System Operations.

1. The Concessionaire shall be responsible for all aspects of the Utility System Operations during the Term, including costs, expenses, debts, liabilities and other obligations relating to the Utility System, and shall continuously operate the Utility System, except for standard rights to not operate the Utility System in limited circumstances. The Concessionaire shall operate the Utility System in a manner that does not interfere with or impair the operation of the Columbus Campus. The Concessionaire may not disturb the Columbus Campus land except upon at least 10 Business Days' prior notice and upon compliance with any requirements of the University.
2. This section also provides a grant to the Concessionaire of a right of entry and access to the Public Way (which right does not permit the Concessionaire to block or impede traffic on the Public Way), a requirement for the Concessionaire to map the Utility System in accordance with the Performance Standards, and a requirement for the Concessionaire to use an advisor designated in the Agreement as its sole and exclusive advisor providing advice and support to the Concessionaire, in its capacity as the design-builder under the Design-Build Agreement. The Concessionaire may change such advisor only with the Approval of the University.

C. Section 3.3: Operator.

1. The Utility System Operations shall be under the direction and supervision of an experienced operator (the "Operator"). The Concessionaire shall not replace the Operator without Approval of the University, which may only be withheld if the proposer operator does not meet certain objective criteria.
2. If the Operator fails to operate the Utility System in compliance with the Performance Standards and such failure is a material breach of a material requirement of the Performance Standards other than a requirement which is also a Key Performance Indicator, then the University, after 30 Days notice to the Operator and the Concessionaire, may cure such failure and direct that Concessionaire remove the Operator. In addition, if (A) at least 3 Repetitive Failures occur during an Operator Evaluation Period, or (B) a Major KPI Event for the same Key Performance Indicator occurs for 3 consecutive Fiscal Years or (C) 3 Major KPI Events occur in any given Fiscal Year, the University may direct that the Concessionaire remove the Operator. Upon the University's direction to remove the Operator, the Concessionaire shall remove the Operator within 45 Days. The above, in addition to KPI Compensation, is the University's sole remedy with respect to a breach of the Performance Standards or a KPI Event.

- D. Section 3.4: Authorizations; Qualifications. The Concessionaire shall obtain and maintain all Authorizations applicable to the Utility System or reasonably required for the Utility System Operations to operate the Utility System and shall maintain its existence and all qualifications necessary to carry on its business pertaining to the Utility System Operations.
- E. Section 3.5: No Encumbrances. Neither the University nor the Concessionaire shall do any act that would create any Encumbrance against the Utility System (other than a Permitted University Encumbrance or a Permitted Concessionaire Encumbrance). Each Party shall use reasonable efforts to assist the other Party in attempting to remove any such Encumbrance that comes into existence as a result of an act or omission by such other Party.
- F. Section 3.6: Single Purpose Covenants; Credit Rating. Subject to the other terms of the Agreement, the Concessionaire shall be formed solely for the purpose of (A) owning the Concessionaire Interest, (B) owning, operating, improving, using, possessing, and otherwise dealing with the Utility System, (C) collecting the Utility Fee, (D) financing its interest in the Utility System, and (E) carrying out the Utility Services and other activities permitted by the Agreement, and shall not engage in any unrelated business or possess any unrelated assets. Any issuance or refinancing of Leasehold Mortgage Debt or other financing arrangement by the Concessionaire after the Closing Date shall have an investment grade credit rating.
- G. Section 3.7: Rights of the University to Access and Perform Work on the Utility System and Utilize Space for Energy Resources and Research Purposes. The University reserves the right to enter and have access to the Utility Facilities in order to inspect the Utility System, make necessary repairs in the event of any Concessionaire Default, to rectify an Emergency or danger, install safety measures, and install or maintain utilities that are not part of the Utility System, among other things, provided that the University (A) shall not be obligated to pay Concession Compensation or receive the Concessionaire's consent for access to inspect the Utility System, make necessary repairs in the event of any Concessionaire Default or rectify an Emergency or danger, (B) shall not have access to any intangibles of the Concessionaire, and (C) shall comply with the Concessionaire's reasonable safety protocols and requirements. The University also reserves the right (1) in connection with renewable energy, energy storage and other energy resources, to use portions of the Utility System for installation of energy apparatus, equipment or improvements, provided that the Concessionaire shall be given the option to perform such installation itself (if it is not part of a pilot program or a donation) and regardless shall be responsible for causing any such energy apparatus equipment, or improvement to be connected to the Utility System, and (2) to use portions of the Utility System for installation of energy apparatus, equipment or improvements to serve research and academic purposes.
- H. Section 3.8: Payment of Taxes. The Concessionaire shall pay Taxes payable in respect of use or operations of the Utility System, including any Property Taxes in

respect of the Utility System. To the extent the Utility System or any portion thereof becomes not exempt from Property Taxes due to any cause other than acts or omissions of the Concessionaire, the actual costs of any resulting Property Taxes payable during the Term shall be included in Uncapped O&M Costs.

- I. Section 3.9: Utilities. The Concessionaire shall pay the charges for any utilities used in the Utility System that are not the subject of a Supply Contract or water, and such charges shall be included as Capped O&M Costs. The Concessionaire shall coordinate all Utility System Operations with other utilities and Persons having equipment around the Utility System, and the University may direct the Concessionaire in such coordination.
  
- J. Section 3.11: Intellectual Property.
  - 1. The Concessionaire shall deliver to the University copies of all Proprietary Intellectual Property owned by the Concessionaire which it uses in relation to the Utility System Operations. The University shall have a perpetual, royalty-free license to use the Proprietary Intellectual Property of the Concessionaire used solely or primarily in connection with the Utility System Operations; provided, that the University shall have the right to exercise such license only (A) from and after the expiration or earlier termination of the Term for any reason whatsoever, (B) during any time that the University is exercising its rights to remedy a Concessionaire Default, or (C) during any time that the Leasehold Mortgagee has replaced the Concessionaire pursuant to the Agreement.
  - 2. The Proprietary Intellectual Property may be delivered in escrow, to be released and delivered to the University, if (I) the Agreement is terminated for Concessionaire Default, (II) a business failure of the Concessionaire occurs, (III) the Concessionaire is dissolved or liquidated or (IV) the Concessionaire fails or ceases to provide services as necessary to permit continued use of such Proprietary Intellectual Property pursuant to the license or any sublicense thereof.
  
- K. Section 3.12: Use of Information and Records. Unless prohibited by applicable Law and to the extent reasonably necessary, the University shall be entitled to access all reasonable records, electronic data and other information collected by the Concessionaire with respect to the Utility System and Utility System Operations. Unless prohibited by applicable Law, the Concessionaire shall be entitled to access all reasonable records, electronic data and other information collected by the University to the extent reasonably required for Concessionaire's performance of its obligations, provided that Concessionaire shall keep such information confidential.
  
- L. Section 3.13: Standard of Operation and Maintenance of the Utility System. The Concessionaire shall maintain and operate the Utility System in accordance with the Performance Standards and Prudent Industry Practices. Such Performance

Standards have been structured so as to require the Concessionaire to maintain and operate the Utility System by at least substantively the same standards as the University maintains and operates the Utility System as of the Setting Date.

M. Section 3.15: Naming and Signage Rights, Other Revenue Activities and Commercial Advertisements and Activities.

1. The Concessionaire shall have no right to name or modify the name of the Utility System or any portion thereof or, unless required to do so by applicable Law, to install signage of any kind thereon, without the University's Approval.
2. The University shall have the right to install signage that relates to identification or naming of the Utility System, the Utility Facilities, portions thereof, or surrounding areas; provided that (i) the Concessionaire shall have no obligation under the Performance Standards to replace or maintain any signage installed by the University for advertising purposes, and (ii) the University shall not install any signage that relates to naming of the Utility System, the Utility Facilities, portions thereof, or surrounding areas for a Person that competes directly with the Concessionaire or the Operator.
3. The Concessionaire may investigate opportunities to develop additional sources of revenue in connection with the Utility System, provided that the Concessionaire shall not perform any such revenue producing activities until (i) the Concessionaire provides reasonable proof to the University for its Approval that such activities will not adversely affect (A) the University or its students or employees, including causing any increase in costs, or (B) the ability of the Concessionaire to comply with the Agreement; (ii) the University is granted the right to receive a portion of the gross revenue from such activities as compensation for the University's actual costs in connection therewith; (iii) the Concessionaire has received all relevant Authorizations; and (iv) the Concessionaire provides reasonable proof to the University for its Approval that such activities will comply with Prudent Industry Practices and applicable Laws.

N. Section 3.16: Reversion of Utility System. On the Reversion Date, the Concessionaire shall return to the University the Utility System.

O. Section 3.17: Police, Fire, Emergency, and Public Safety Access Rights. Any police, fire, and other emergency and security personnel retained by the University shall have access to the Utility System.

P. Section 3.18: Negotiations with Third Parties. Prior to entering into any agreement with a third party that could extend beyond the Term or pursuant to which the University may incur liability, the Concessionaire shall submit such

agreement for Approval by the University, which may be withheld in its sole discretion.

- Q. Section 3.19: Administration of the Public Way. The Concessionaire acknowledges and accepts that the University holds and administers the Public Way for the non-discriminatory benefit of all Persons and interests.
- R. Section 3.20: Rights to Adjacent Space. The University reserves, and does not lease to the Concessionaire, the air rights with respect to the Utility Facilities and other property within the Utility System and the right to use any of the space not directly occupied by the Utility System, including space above, below or adjacent to the Utility System, provided that such use does not materially impair the Utility System Operations.
- S. Section 3.21: Sole Utility Provider. The University may not, and may not contract or agree with any third party to, provide any Utility or Utility Services on the Columbus Campus, except in the following circumstances: (i) as of the Bid Date, a third party is providing the relevant Utility or Utility Services to a portion of that Columbus Campus, (ii) as of the Bid Date, any district utility systems within the Columbus Campus which are generating or distributing Utilities beyond the lines of demarcation identified in the Performance Standards or (iii) the University installs systems, equipment or materials for the distribution of Utilities beyond the lines of demarcation identified in the Performance Standards, which shall be performed by or on behalf of the University. If the University does not own or lease from a third party an improvement on the Columbus Campus, the University shall have no obligation to cause the Concessionaire to be the sole provider of Utilities thereto.
- T. Section 3.22: Repair and Maintenance of the Tunnels. The Concessionaire shall cause any intentional or unintentional damage to the Tunnels or the Release of any Hazardous Substances in the Tunnels caused, directly or indirectly, by the Concessionaire or the Utility System to be promptly restored and repaired using a contractor Approved by the University. Other than the Concessionaire's responsibilities pursuant to this section and the Performance Standards and its responsibility to maintain the Utility System, the University shall be responsible for the repair and maintenance of the Tunnels and the equipment therein in accordance with Prudent Industry Practices.
- U. Section 3.23: Adjustments to the Location or Configuration of the Utility System. The University may cause the Concessionaire, at the University's cost, to alter the location or configuration of the Utility System or to designate alternative real property for the Utility System Land to the extent the University deems it necessary or useful in the operation and use of the Columbus Campus.
- V. Section 3.27: Utility System Tours. The Concessionaire shall provide tours of the Utility System to the University upon reasonable request by the University.

- W. Section 3.28: Uniforms. Concessionaire and Operator personnel working on the Columbus Campus shall wear a uniform that is standard across the Utility System and clearly identifies them as Concessionaire and Operator personnel.
- X. Section 3.29: Gashouses. Prior to engaging in any discussions regarding the Gashouses with any third party, the Concessionaire or the Operator shall provide the University the opportunity to participate in such discussions. The Concessionaire shall also promptly provide the University with copies of any written correspondence regarding same with such third parties.

**Article 4. Capital Improvements, ECMs and Material Changes.**

- A. Section 4.1: Concessionaire Responsibility for Capital Improvements. Other than the Ongoing Utility System Projects, the Concessionaire shall be responsible for all Capital Improvements with respect to the Utility System, including as required by the Performance Standards.
- B. Section 4.2: Authorizations Related to Capital Improvements. The Concessionaire's obligation to perform Capital Improvements shall be subject to the issuance by Governmental Authorities and the University of any and all required Authorizations.
- C. Section 4.3: Approval of Capital Improvements, ECMs and Material Changes.
  - 1. The Concessionaire shall not have the right to make any (i) Capital Improvements, (ii) ECMs on the Utility System Land, Utility Facilities or Non-Utility Campus, or (iii) Material Changes, except those Approved by the University pursuant to the Agreement.
  - 2. The Concessionaire shall have the right to request such Approval at any time, but the University shall not be obligated to consider any such requests for Approval except those requests (i) contained in a proposed Five-Year Plan and proposed to be commenced in the first full Fiscal Year in such proposed Five-Year Plan; (ii) required to address an Emergency, a change in Law or a change in a Performance Standard; (iii) required in connection with a University Directive; or (iv) required due to Force Majeure, all of which the University shall consider in good faith.
  - 3. The Concessionaire shall request Approval by (1) submitting a request to the University or (2) submitting a proposed Five-Year Plan. The University shall review such request and, in its sole discretion: (i) Approve such request in accordance with its terms; (ii) require the Concessionaire to perform additional work with respect to such request (which may include obtaining quotations from contractors), provided that the cost for any such additional work that is expressly requested by the University shall be recoverable by the Concessionaire as part of New Approved Capital Improvement Costs or Uncapped O&M Costs; (iii) provide comments to the Concessionaire regarding the request; or (iv) reject the

request and, if the request related to an item necessary to comply with Prudent Industry Practices, applicable Law, or the Performance Standards, provide an explanation, provided the University may not reject a request if (w) it is required to cause the Utility System to comply with any new Law or change in Law and the Concessionaire has received a non-compliance notice from a Governmental Authority, (x) the Concessionaire has investigated any potential alternatives, (y) the Concessionaire has discussed with the University and considered alternatives and (z) the University has not provided a reasonable alternative.

4. The University may, as a condition of its Approval, require that the Concessionaire pay liquidated damages if it fails to meet a completion deadline for the applicable Capital Improvement, ECM or Material Change that is no more stringent than the deadline proposed by the Concessionaire.
5. After Approval, the Concessionaire shall make the Capital Improvement, ECM or Material Change in accordance with the Agreement, including by paying prevailing wages.
6. The Concessionaire may perform Design-Build ECMs and Non-Construction ECMs on the Non-Utility Campus (defined as the portion of the Columbus Campus not leased to the Concessionaire) only in accordance with the terms and conditions of the Agreement. At Closing, the University shall select the Concessionaire as a “design-build firm” in accordance with and as defined in Chapter 153. The Concessionaire must comply with prevailing wage law in implementing any construction on the Columbus Campus. The Concessionaire must comply with the requirements of Chapter 153 and the prevailing wage law in implementing any Design-Build ECMs on the Non-Utility Campus.
7. The Concessionaire shall have the right, as its sole remedy with respect to any Approvals or rejections by the University pursuant to this section, to submit a claim through the dispute procedures in Article 18 that the University was unreasonable, notwithstanding that the University is not required to be reasonable in connection therewith. If it is determined that the University was unreasonable, (i) the University and the Concessionaire shall cooperate in good faith to make any reasonably necessary adjustments to the Key Performance Indicators, the Performance Standards and the requirements of the Agreement regarding reductions in Energy Use Intensity associated with the proposed Capital Improvement, ECM or Material Change and (ii) the University shall waive any claim for a Concessionaire Default for an associated failure to comply with Law or to remedy an Emergency (other than an Unplanned Outage) to the extent such failure would not have occurred but for the University being unreasonable, provided the Concessionaire shall diligently attempt, in good faith, to develop and implement an alternative solution to cause the

Utility System or the Utility System Operations to comply with Law or to cause such Emergency (other than an Unplanned Outage) to be remedied.

- D. Section 4.4: Recovery Period of Capital Improvements. If the Recovery Period of a Capital Improvement, which is a 20-year period over (or such other period as agreed by the University and the Concessionaire) which the Concessionaire recovers the cost of a Capital Improvement via the Utility Fee, is for a period of time beyond the Term, the Concessionaire may elect to either (i) construct such Capital Improvement, in which case the Recovery Period shall be utilized for purposes of calculating the Utility Fee in accordance with Schedule 5, subject to the Agreement, which requires that the Unrecovered Balance be paid at the end of the Term, unless the Agreement is terminated due to a Concessionaire Default or (ii) not construct such Capital Improvement, in which case the University may construct such Capital Improvement.
- E. Section 4.5: University's Capital Plan. The Concessionaire shall reasonably cooperate with the University in the development, modification, and discussions of the University's capital plans and energy conservation initiatives.

**Article 5. Modifications.**

- A. Section 5.1: University Directives. The University may issue a directive to perform work on the Utility System (a "University Directive") to the Concessionaire at any time during the Term, the cost of which shall be recoverable by the Concessionaire.
- B. Section 5.3: Addition, Removal and Lease of Property. If the University sells, conveys or leases for a period longer than the Term any real property within the Columbus Campus to a third party, the Concessionaire shall disconnect such real property from the Utility System and shall not be permitted to serve such real property unless otherwise Approved. If the University provides a leasehold interest in real property served by the Utility System for less than or equal to the period of time remaining in the Term to a third party, the Concessionaire shall continue to provide Utilities to such real property in accordance with the Agreement, and the University shall remain obligated to pay the Utility Fee attributable to such real property. The University, pursuant to a University Directive, may cause the Concessionaire to provide Utility Services to any portion of the Columbus Campus not served by the Utility System at that time and may expand the definition of the Columbus Campus.
- C. Section 5.4: Networked Smart Meters. Within 48 months after the Closing Date, the Concessionaire, at its sole cost and expense, shall deploy a system to meter and display the usage of electricity, natural gas, chilled water, geothermal power, steam and any heating hot water systems fueled by steam from the central steam plants for all buildings on the Columbus Campus. The cost of installing such smart meters shall not be recoverable through the Utility Fee. The Concessionaire shall develop and deploy a digital dashboard to display the Columbus Campus

building energy usage data, which dashboard shall have a web-based interactive public interface that will display individual building data. The Concessionaire shall obtain electricity and/or natural gas usage data from buildings on the Columbus Campus that are not connected to the Utility System and integrate that data into the total Columbus Campus dashboard.

**Article 6. Performance Standards.**

- A. Section 6.1: Compliance with Performance Standards. The Concessionaire shall, at all times during the Term, cause the Utility System Operations to comply with the Performance Standards in all material respects, provided that the Concessionaire shall have a reasonable period of time to comply with the introduction of changes or modifications to the Performance Standards.
- B. Section 6.2: Proposed Performance Standards. If the Concessionaire wishes to use performance standards other than the Performance Standards, the University must Approve such proposed performance standards.
- C. Section 6.3: Modified Performance Standards. The University has the right to modify the Performance Standards, provided that if such modification is not made in order to comply with Law or conform with standards generally adopted with respect to Comparable Utility Facilities or Prudent Industry Practices, the Concessionaire may be entitled to Concession Compensation (if the costs associated therewith are not otherwise recoverable), but only if the amount of Concession Compensation claimed for all such modifications exceeds \$100,000 Adjusted for Inflation during a Fiscal Year. Any costs for modifications or changes required to comply with Law or to conform with standards generally adopted with respect to Comparable Utility Facilities or Prudent Industry Practices shall be recoverable by the Concessionaire as Uncapped O&M Costs.

**Article 7. Utility Fee, Five-Year Plan, Energy Supply and Energy Use Intensity Reduction.**

- A. Section 7.1: Utility Fee. The University shall pay to the Concessionaire the Utility Fee for each Fiscal Year as determined in accordance with the formula in Schedule 5, and as summarized in the Executive Summary. At least 180 Days prior to the commencement of any Fiscal Year, the Concessionaire shall provide a forecast of the Utility Fee to the University for the upcoming Fiscal Year (the "Forecast Utility Fee"), which may be adjusted up to 30 Days prior to the commencement of such Fiscal Year. The University shall pay the Forecast Utility Fee in 12 equal monthly installments. Within 60 Days after the end of each Fiscal Year, the Concessionaire shall deliver to the University a statement (the "Reconciliation Statement") which states the actual Utility Fee for the preceding Fiscal Year and provides a detailed accounting of each component of the Utility Fee. The appropriate Party shall pay any difference reflected in the Reconciliation Statement in a lump sum within 30 Days after receipt thereof. The

University shall have the right to audit any Reconciliation Statement for up to 5 Fiscal Years after the applicable Fiscal Year.

- B. Section 7.2: Updates to the Utility Fee and O&M Costs. The University shall form an Energy Advisory Committee (“EAC”) (which shall include at least one representative of the Concessionaire) to liaise with the Concessionaire with respect to modifying the Performance Standards or the components of the Utility Fee. The EAC shall meet at least every 5 Fiscal Years to assess the methodology of calculating the Utility Fee (including the determination of any adjustment to the Return on Equity Factor used in the Utility Fee) and at least every 10 Fiscal Years to conduct a full review of the categories of O&M Costs and the components thereof being included in the Utility Fee and the Capped O&M Ceiling. The Concessionaire may propose changes at such meetings through its representative(s) on the EAC. The University and the Concessionaire shall consider, in good faith, any changes recommended by the EAC or the Concessionaire’s representative(s) at an EAC meeting, but neither Party shall have any obligation other than to consider such changes in good faith.
- C. Section 7.3: Five-Year Plan. The Concessionaire shall submit to the University a proposed Five-Year Plan for the budget and plan for the operation of the Utility System and performance of its obligations at least 180 Days prior to the end of each Fiscal Year. Each proposed Five-Year Plan shall include the Capital Improvements, ECMs and Material Changes that the Concessionaire proposes to make as well as anticipated O&M Costs and Supply Costs. The EAC shall review and provide comments on such proposed Five-Year Plan to the Concessionaire within 30 Days after receipt. After incorporating any EAC comments that the Concessionaire elects to incorporate, the Concessionaire shall resubmit the proposed Five-Year Plan to the University at least 120 Days prior to the end of the Fiscal Year. The University shall review and provide comments to the Concessionaire, and the Concessionaire shall promptly use such comments to prepare and submit a revised of the proposed Five-Year Plan. This process shall continue until the University Approves the proposed Five-Year Plan. No portion of an Approved Five-Year Plan shall be binding except for the portion related to the first Fiscal Year and any Capital Improvements Approved to be commenced in such Fiscal Year. If a Five-Year Plan or portion thereof is not Approved by the commencement of the applicable Fiscal Year, the previously Approved Five-Year Plan shall continue in effect.
- D. Section 7.4: Energy and Water Supply. The Concessionaire shall assist the University with the procurement of sufficient electricity, natural gas or other energy supply inputs necessary to fully operate the Utility System as set forth in the Performance Standards (the “Supplies”) and the University shall be responsible for paying all Supply Costs directly to Suppliers. The Concessionaire shall, upon written notice from the University, be responsible for assisting the University with the procurement, billing and/or management of Supplies to the University on University locations outside of the Columbus Campus, and such assistance shall be deemed part of the Utility System Operations. The University

shall supply to the Utility System, the water reasonably necessary for the Concessionaire to operate the Utility System and perform its obligations hereunder.

E. Section 7.5: Energy Use Intensity Reduction.

1. The Concessionaire shall cause the Energy Use Intensity for the Fiscal Year ending on June 30, 2028 to be equal to or less than 75% of the Energy Use Intensity for the Fiscal Year ending on June 30, 2017. The Concessionaire shall also cause, at the end of each Fiscal Year, the arithmetic average Energy Use Intensity for that Fiscal Year and the immediately preceding 2 Fiscal Years to be the same or less than the arithmetic average Energy Use Intensity for the 3 immediately preceding Fiscal Years, provided the University waives any rights with respect to the Concessionaire's failure to do so for the first 2 Fiscal Years after the Closing. The EAC shall meet at least every 10 Fiscal Years to agree upon any additional energy conservation measures that the Concessionaire will be directed to take and to discuss the University's overall energy usage and ECMs.
2. Within 2 Years after the Closing Date, the University shall have the right to request in writing that the Concessionaire provide to the University a detailed study with recommendations for opportunities to reduce the energy use intensity of certain regional campuses owned by the University, and the Concessionaire shall in good faith discuss with the University the Concessionaire implementing such recommendations.
3. The University shall pay to the Concessionaire in 10 equal annual installments any Energy Use Intensity bonus earned by the Concessionaire based on meeting the 25% energy use intensity reduction goal at a lower cost than anticipated or based on exceeding such goal by at least 5% pursuant to the table on Schedule 21, if applicable.

F. Section 7.6: CHP Feasibility Study. At the request of the University, the Concessionaire shall promptly conduct a detailed feasibility study and recommendation regarding the construction of a combined heat and power plant as part of the Utility System.

G. Section 7.7: Water Conservation Feasibility Study. At the request of the University, the Concessionaire shall promptly conduct and provide to the University a detailed feasibility study and recommendation regarding opportunities for the University to reduce its consumption of water.

**Article 8. Reporting; Audits; Inspections.**

A. Section 8.1: Reports. The Concessionaire shall provide notice to the University of all Emergencies and all Releases of Hazardous Substances with respect to the Utility System, within 6 hours after becoming aware of the Emergency or

Release. The Concessionaire also must provide notice to the University of all claims in excess of \$25,000 made by or against the Concessionaire. The Concessionaire shall deliver to the University audited financial reports within 120 Days of the end of each Fiscal Year as well as all reports and information required by the Performance Standards.

- B. Section 8.2: Information. At the request of the University, and at the Concessionaire's cost and expense, the Concessionaire shall make available all information relating to the Utility System but not more frequently than once a quarter, and the University shall keep confidential any such information that constitutes trade secrets.
- C. Section 8.3: Inspection; Audit and Review Rights of the University. The University, upon 10 Business Days' notice, may carry out an Audit and Review of the information required to be maintained or delivered by the Concessionaire under the Agreement. The University shall also have access to the Utility System for inspection and testing, provided the Concessionaire must approve any testing.
- D. Section 8.4: Audits, Assistance, Inspections and Approvals. Any reference to the University providing assistance to the Concessionaire performing an Audit shall not relieve the Concessionaire from any liability under the Agreement.

**Article 9. Representations and Warranties.**

- A. Section 9.1: Representations and Warranties of the University. The Agreement contains representations and warranties typical for the nature of this transaction, which include the following: (i) organization; (ii) power and authority; (iii) enforceability; (iv) title; (v) no conflicts; (vi) consents; (vii) compliance with law; (viii) litigation; (ix) environmental matters; (x) financial information; (xi) Utility System Contracts; (xii) absence of changes; (xiii) brokers; (xiv) accuracy of information; (xv) undisclosed defects; and (xvi) tax matters.
- B. Section 9.2: Representations and Warranties of the Concessionaire. The Agreement contains representations and warranties typical for the nature of this transaction and include the following: (i) organization; (ii) power and authority; (iii) enforceability; (iv) no conflicts; (v) consents; (vi) compliance with law; (vii) litigation; (viii) accuracy of information; (ix) representations regarding the Operator; and (x) brokers.
- C. Section 9.3: Non-Waiver. No investigations made by or on behalf of any Party shall have the effect of waiving any representation or warranty made by the other Party.
- D. Section 9.4: Survival. Representations and warranties survive for 24 months except for those listed in this summary in 9.1(i) – (ix) and 9.2(i) – (ix) which shall last indefinitely. Such survival periods shall apply with respect to all Claims notwithstanding any statute of limitations that would be applicable to such Claims under applicable Law.

**Article 10. Finance Obligations.**

- A. Section 10.1: Concessionaire's Obligations. The Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under the Agreement, except as otherwise specifically set forth. The Concessionaire may issue additional Leasehold Mortgage Debt or refinance existing Leasehold Mortgage Debt during the Term, subject to the requirement that such Leasehold Mortgage Debt be rated at least investment grade.

**Article 11. Compliance.**

- A. Section 11.1: Compliance with Laws. The Concessionaire must observe and comply with all applicable Laws, including those regarding non-discrimination, prevailing wage, safety and immigration, and must notify the University within 7 Days after receiving written notice from a Governmental Authority that the Concessionaire may have violated any Laws. To the extent any funds subject to appropriation are used for the payment of the University's obligations, those obligations shall be subject to Ohio Rev. Code Ann. § 126.07.
- B. Section 11.6: Labor Disputes. The Concessionaire shall take all reasonable steps to resolve any alleged or actual labor dispute between it or the Operator and any representative of its or the Operator's employees. The Concessionaire shall use good faith efforts and take immediate steps to effect the limitation and/or removal, by lawful means, of any pickets or picketing that are the result of an alleged or actual labor dispute between it and any representative of its employees.
- C. Section 11.7: Employee Conduct and Performance. The Concessionaire shall ensure that it and the Operator have workplace conduct policies for their employees providing services under the Agreement that are at least as stringent as the University's general policies for conduct in the workplace and are in accordance with Prudent Industry Practices.
- D. Section 11.10: Drug-Free Workplace Certification. The Concessionaire agrees to make a good faith effort to provide and maintain a drug-free workplace. The Concessionaire shall notify the University within 7 Days after receiving actual notice that Concessionaire or its employees have been convicted of a criminal drug violation in the Concessionaire's workplace.
- E. Section 11.11 Minority-Owned and Women-Owned Business Enterprises. The Concessionaire is required to use good faith efforts to obtain the participation of M.B.E./W.B.E. in its Utility System Operations, including requiring the Operator to participate in such programs.
- F. Section 11.12: University Accreditation. The Concessionaire shall ensure that the Utility System provides a sufficient quantity of Utilities in a timeframe sufficient such that the University, or any portion thereof, may maintain any third-party accreditation or other third-party standard of which the University has provided the Concessionaire notice prior to the Setting Date.

- G. Section 11.14: Financial and Audit Standards. The Concessionaire shall observe and comply, in all material respects, with GAAP.
- H. Section 11.15: Affirmative Action Program. The Concessionaire shall maintain a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to Ohio Rev. Code. Ann. § 125.111(B) and shall cause the Operator and any other Contractor to do so.
- I. Section 11.16: University Payments. All financial obligations of the University under the Agreement are payable solely from the then-current revenues of the University legally available for such purpose and the Concessionaire shall have no right to receive payment from moneys raised by taxation or appropriations.

**Article 12. Payment Obligations.**

- A. Section 12.1: Certain Payment Obligations of the Concessionaire. The Concessionaire has a payment obligation to the University and its Representatives for losses related to various items including (i) breach of representations and covenants, (ii) Assumed Liabilities, (iii) Taxes attributable to a Transfer of the Concessionaire Interest, (iv) increases in Property Taxes not included in the definition of Uncapped O&M Costs, and (v) brokerage fees.
- B. Section 12.2: Certain Payment Obligations of the University. Without limiting any other remedy available under the Agreement, the University has a payment obligation to the Concessionaire and its Representatives for losses related to various items including (i) breach of representations and covenants, (ii) Excluded Liabilities, (iii) brokerage fees, and (iv) payment of Property Taxes that are not the result of the actions or omissions of the Concessionaire.
- C. Section 12.9: Limitation on Certain Claims. The maximum liability of the University, without limiting any other remedy under the Agreement, shall not exceed 50% of the Closing Consideration, but such limits shall not apply to Claims for (i) breaches of certain fundamental representations and warranties, (ii) fraud, intentional misrepresentation or intentional breach of representations and warranties, (iii) certain Excluded Liabilities related to environmental matters, (iv) payment of the Utility System Concession Value, and (v) payment of the Utility Fee. The maximum liability of the Concessionaire, without limiting any other remedy under the Agreement, shall not exceed 50% of the Closing Consideration, but such limits shall not apply to the Claims described in clauses (i) and (ii) above.
- D. Section 12.11: Offset Rights; Limitations on Certain Damages. Each Party's payment obligations shall be subject to its defense and offset rights. No Party is liable for indirect or consequential damages.
- E. Section 12.12: Governmental Immunity. The University shall not waive its rights and privileges pursuant to its governmental immunity.

- F. Section 12.13: Survival. The indemnity provisions survive the termination of the Agreement.

**Article 13. Insurance.**

- A. Section 13.1: Insurance Coverage Required – Concessionaire. The Concessionaire is required to provide and maintain insurance coverages typical for this nature of transaction, including (i) workers' compensation and employer's liability; (ii) commercial general liability (primary and umbrella); (iii) automobile liability (primary and umbrella); (iv) professional liability; (v) network security and privacy insurance; (vi) railroad protective liability; (vii) pollution legal liability; (viii) property; and (ix) builder's risk.
- B. Section 13.2: Insurance Coverage Required – University. The University is required to provide and maintain insurance coverages typical for this nature of transaction, including (i) workers' compensation and employer's liability; (ii) commercial general liability (primary and umbrella); and (iii) property.
- C. Section 13.3: Additional Requirements. Each Party must provide original Certificates of Insurance evidencing the Concessionaire Required Coverages or University Required Coverage, as applicable, within 14 Business Days following renewal and must provide 30 Days' prior notice in the event coverage is canceled (or 10 Days' prior notice in the case of cancellation for non-payment). Certain other additional insurance requirements are set forth that are typical for this nature of transaction, including the provision that if any of the Concessionaire Required Coverages are not available on a commercially reasonable basis, the Concessionaire may obtain insurance that best approximates the Concessionaire Required Coverages, subject to the University's Approval. If it is in the best interests of, and agreed by, both Parties, the University shall purchase and hold any of the required Concessionaire insurance coverages.
- D. Section 13.4: Damage and Destruction. If part of any of the Utility System is destroyed or damaged by fire or other casualty of any kind, the Concessionaire shall (i) give the University notice; (ii) proceed diligently to repair the same; and (iii) deposit all insurance proceeds received plus any additional Restoration Funds necessary for such Restoration with a Depositary for approved distributions to the Concessionaire (only if the Restoration costs exceed \$5 million). Prior to any Restoration work, the Concessionaire must submit such plans to the University for Approval.

**Article 14. Adverse Actions.**

- A. Section 14.1: Adverse Action. An Adverse Action shall occur if the City of Columbus, Ohio, the County of Franklin, Ohio, the State of Ohio, or any agency, political division or unit or commission thereof, or the University, takes any action that is (i) principally borne by the Concessionaire (or by the Concessionaire and the concessionaire under the Parking Agreement) and (ii) has a material

adverse effect on the fair market value of the Concessionaire Interest, but the following are NOT Adverse Actions: (A) the development, redevelopment, construction, modification or change in the operation of any existing or new utility facility or utility (other than any Utility Facility or the Utilities), (B) the imposition or increase of a state or local Tax of general application or federal Tax and (C) any action of the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission that subjects the Concessionaire to such agency's regulatory jurisdiction due solely to the Utility System Operations performed in accordance with the Agreement, which could be a Compensation Event. If an Adverse Action occurs, the Concessionaire may, at its election, either (i) receive the Concession Compensation with respect thereto ("AA-Compensation"); or (ii) terminate the Agreement and receive the Termination Damages, which is defined as the fair market value of the Concessionaire Interest as of the date of such termination provided it is not less than amount of the Leasehold Mortgage Debt plus the reasonable out-of-pocket expenses incurred by the Concessionaire or the Operator as a direct result of such termination plus any accrued Concession Compensation less any insurance proceeds.

- B. Section 14.2: Termination. If the Concessionaire exercises its right to terminate the Agreement in connection with an Adverse Action, then the Agreement, subject to the University's right to remedy such Adverse Action, shall terminate 60 Days following the date of the University's receipt of the notice setting forth the details of the Adverse Action.
- C. Section 14.3: Right of the University to Remedy. If the University wishes to remedy the Adverse Action, it shall provide notice within 30 Days and remedy the Adverse Action within 120 Days, which remedy may consist of a written commitment to the Concessionaire to pay funds from time to time to compensate the Concessionaire.
- D. Section 14.4: Other Actions by Governmental Authorities. If any Governmental Authority proposes to take any action that will be principally borne by the Concessionaire and have a Material Adverse Effect, then at the request of the Concessionaire, the University shall use reasonable efforts to oppose such action at the Concessionaire's cost.
- E. Section 14.5: Regulatory Filings. To the extent that either Party is required to make any regulatory filing or submission with respect to a tariff or rate for the Utility System or the Utility Fee, the Parties shall reasonably cooperate in connection therewith and shall, collectively, only make one filing or submission. The Parties shall also reasonably cooperate with respect to any required regulatory filings or submissions not involving a tariff or rate for the Utility System or the Utility Fee, to the extent practicable.

**Article 15. Delay Events; Concession Compensation and KPI Compensation.**

- A. Section 15.1: Delay Events. A Delay Event is an event such as Force Majeure and other limited events beyond the Concessionaire's reasonable control that cause a delay to the Concessionaire in performing its obligations. In the event that the Concessionaire is affected by a Delay Event and provides written notice to the University, the Concessionaire will receive an extension of time to perform the obligations for which it was delayed. While a Delay Event is occurring, the Utility Fee shall be reduced by an amount equal to the Utility Fee multiplied by the percentage of the Utility System that is inoperable as a result of the Delay Event, as determined by the University in its reasonable discretion, provided that such Delay Event shall be deemed a Compensation Event. If a Delay Event exceeds 120 continuous Days (or 120 non-continuous Days during a 360-Day period) and it results in a Material Adverse Effect, then the Concessionaire shall have the right to extend the Term for a period of time sufficient to compensate the Concessionaire and to restore it to the same economic position as it would have been in had such Delay Event not occurred, provided that the Term shall not be extended to the extent it would subject either Party to a leasehold tax or conveyance fee.
- B. Section 15.2: Notice of Compensation Events and KPI Events. If a Compensation Event occurs, the Concessionaire shall give the University written notice within 30 Days. If a KPI Event occurs, the University shall give the Concessionaire written notice within 30 Days.
- C. Section 15.3: Payments of Concession Compensation and KPI Compensation. This section sets forth the procedure for determination and payment of Concession Compensation and KPI Compensation. KPI Compensation is the amount due from the Concessionaire to the University if a KPI Event occurs for each violation and depends on the severity of the event and whether such violation has occurred in prior years. The amount of KPI Compensation for each KPI Event can be as high as the greater of (i) \$10 million and (ii) 10% of the Utility Fee paid in the applicable year. KPI Events relate to unplanned outage events and hours, emergency response times, Energy Use Intensity reductions on an annual and 10-year basis, and smart meter deployment,
- D. Section 15.4: KPI Compensation. Other than the University's right to cause the Concessionaire to remove the Operator, the payment of KPI Compensation by the Concessionaire is the University's sole and exclusive remedy for any KPI Event.

**Article 16. Defaults.**

- A. Section 16.1: Default by the Concessionaire. This section sets forth (i) the events that constitute a "Concessionaire Default" under the Agreement. Such events are typical for this nature of transaction and include, among other things, (A) failing to comply with covenants (other than those relating to a breach of the Performance Standards, smart meters and Energy Use Intensity reduction), (B)

transferring its interest in contravention of the Agreement, (C) failing to comply with requirements of a final award resulting from dispute resolution, and (D) admitting that it is unable to pay its debts or otherwise files bankruptcy; and (ii) the remedies of the University upon a Concessionaire Default, including termination of the Agreement with no compensation paid to the Concessionaire.

- B. Section 16.2: Default by the University. This section sets forth the events that constitute a “University Default” under the Agreement. Such events are typical for this nature of transaction and include, among other things, (A) failing to pay the Utility Fee, the Forecast Utility Fee, or the Concession and KPI Compensation Balance, (B) failing to comply with covenants, (C) failing to comply with requirements of a final award resulting from dispute resolution, and (D) admitting that it is unable to pay its debts or otherwise files bankruptcy. This section also sets forth the remedies of the Concessionaire upon a University Default, including termination which obligates the University to pay to the Concessionaire the fair market value of the Concessionaire Interest as of the date of such termination, which may not be less than amount of the Leasehold Mortgage Debt, plus the reasonable out-of-pocket expenses incurred by the Concessionaire or the Operator as a direct result of such termination plus unpaid Concession and KPI Compensation. A University Default shall not include any failure to perform obligations as a result of Force Majeure.
- C. Section 16.3: Consequences of Termination or Reversion. This section sets forth the procedure to be followed upon the termination or expiration of the Agreement, including Concessionaire’s surrendering of the Utility System.
- D. Section 16.4: Termination Other than Pursuant to Agreement. If the Agreement is terminated by the University other than because of a Concessionaire Default, the University shall pay to the Concessionaire the fair market value of the Concessionaire Interest as of the date of such termination plus the reasonable out-of-pocket expenses incurred by the Concessionaire or the Operator as a direct result of such termination.
- E. Section 16.5: Option to Extend the Term. The University shall have the right, upon written notice delivered to the Concessionaire between 3 and 5 Years before the anticipated expiration date of the Agreement on the date that is 50 years after the Closing Date to terminate the Concessionaire’s Extension Option by purchasing the Concessionaire Interest for \$1 (representing, for purposes of this section, the residual value of the Utility System and the Utility Facilities existing as of the Closing Date without regard to any Capital Improvements undertaken after the Closing Date). If the University does not exercise such right, the Concessionaire shall have the right to extend the Term by 10 Years by providing written notice to the University within 6 months after the date on which the University declines to exercise its termination right or allows such right to expire, as applicable. If the Concessionaire exercises its right to extend the Term, the calculation of the Utility Fee shall be modified for such extended term as set forth

in this section. If the Concessionaire does not exercise such right, then the Agreement shall expire in accordance with its terms.

**Article 17. Restrictions on Transfers.**

- A. Section 17.1: Transfers by the Concessionaire. Subject to the rights of the Leasehold Mortgagee, the Concessionaire may not Transfer any portion of its interest that would result in the Concessionaire directly owning 50% or less of the Concessionaire Interest as of the date of entering into the Agreement unless (i) the University has Approved, and (ii) the proposed Transferee assumes the obligations of the Concessionaire. The University may withhold its consent in various instances, and the University can take into account financial strength and integrity, experience with utility facilities, reputation and the proposed operator. A change in control of the Concessionaire shall be deemed a Transfer requiring the University's consent. If the Concessionaire is not permitted by Law to disclose a change in control prior to its effectiveness, the Concessionaire shall not be in breach of this section if the new Persons holding interests in the Concessionaire meet certain requirements including a minimum net worth, credit rating, and experience in operating a Comparable Utility System; provided that within 2 Business Days after the Concessionaire is permitted to disclose such change in control, it shall provide the University with written notice thereof and the University shall have the right to Approve such change in control. If the University does not Approve such change in control, it shall be deemed a Concessionaire Default if the Concessionaire does not cause a Transfer or change in control that is Approved by the University to be effectuated within 120 Days after the University's disapproval.
- B. Section 17.2: Assignment by the University. The University may Transfer any or all of its interest but must remain jointly and severally liable.

**Article 18. Dispute Resolution.**

- A. Section 18.1: Scope. Any dispute arising out of the Agreement is to be resolved in accordance with this Article 18.
- B. Section 18.2: Informal Dispute Resolution Procedures. If the Parties are unable to resolve any dispute within 15 Business Days, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute.
- C. Section 18.3: Mediation. If the Designated Senior Persons do not resolve the dispute in 15 Business Days, the Parties shall attempt to resolve the dispute through mediation administered by the AAA.
- D. Section 18.4: Litigation. If mediation does not resolve the dispute within 30 Business Days, then the Parties shall present the dispute to a court of competent jurisdiction.

- E. Section 18.5: Provisional Remedies. No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy.
- F. Section 18.6: Tolling. If a Party receiving a notice of default under the Agreement contests the propriety of such notice, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

**Article 19. Lenders.**

- A. Section 19.1: Leasehold Mortgages. The Concessionaire may grant Leasehold Mortgages subject to various restrictions such as the Concessionaire not being in default, the mortgage may only be in favor of an Institutional Lender, the mortgage may not extend to the fee simple interest of the property, the University shall have no liability, etc. While any Leasehold Mortgage is outstanding, the University shall not amend the Agreement in a way that shall have a material adverse effect on the Leasehold Mortgagee without its consent.
- B. Section 19.2: Notices and Payments to Leasehold Mortgagees. All required notices to be made by the University to the Concessionaire must also be made to the Leasehold Mortgagee. All payments by the University to the Concessionaire shall be made to the Leasehold Mortgagee.
- C. Section 19.3: Leasehold Mortgagee's Right to Cure. The Leasehold Mortgagee shall have 90 Days after a Concessionaire Default to cure the default. If the Leasehold Mortgagee is working to cure the default, the University may not terminate the Concession Agreement.
- D. Section 19.4: Rights of the Leasehold Mortgagee. The Leasehold Mortgagee may enforce its rights in any lawful way, including taking possession of the Utility System. Upon taking possession, the Leasehold Mortgagee may transfer the Utility System subject to the rest of the Agreement, except it shall not be subject to the requirement that all Concessionaire Defaults must be cured upon a Transfer. Prior to taking possession of the Utility System, the Leasehold Mortgagee is not liable for any of the Concessionaire's obligations.
- E. Section 19.5: Termination of this Agreement; New Agreement. If the University terminates the Concession Agreement, the University agrees to enter into a New Agreement for the Utility System with the Leasehold Mortgagee, provided the Leasehold Mortgagee cures any Concessionaire Default.
- F. Section 19.6: Recognition of Leasehold Mortgagee. The Leasehold Mortgagee whose notice was earliest received by the University shall be the only one who shall have the rights as a Leasehold Mortgagee under the Concession Agreement.
- G. Section 19.7: University's Right to Purchase Leasehold Mortgages. In the event of a Concessionaire default and if the Leasehold Mortgagee wishes to foreclose

on the Leasehold Mortgage, the University may purchase the Leasehold Mortgage.

- H. Section 19.8: Assignment and Assumption Agreement. If (i) the University has determined that a New Agreement between the University and the Leasehold Mortgagee would violate law or (ii) the University and the Leasehold Mortgagee mutually agree, then the Leasehold Mortgagee and the University shall enter into an Assignment and Assumption Agreement whereby the Leasehold Mortgagee assumes the Concession Agreement in the event of a Concessionaire Default, provided the Leasehold Mortgagee cures such Concessionaire Default.
- I. Section 19.9: Right to Dispute Resolution. In the event of default, the Leasehold Mortgagee shall have the right to participate in the dispute resolution process set forth in Article 18.

**Article 20.** University Academic Collaboration Program. The Concessionaire agrees to provide the compensation and opportunities set forth on Schedule 22 (the Academic Collaboration Schedule) in accordance with the terms and conditions set forth therein.

**Article 21.** Interaction with Parking System Concessionaire.

- A. Section 21.1: Coordination. To the extent the Concessionaire reasonably determines that the Utility System Operations require the temporary closure of any parking spaces or access to any parking facility or parking space subject to the Parking Agreement, the Concessionaire shall provide the University written notice thereof at least 5 Business Days in advance, except in the case of an Emergency. The University shall then use commercially reasonable efforts to exercise its rights under the Parking Agreement to provide the Concessionaire such temporary closure and access as is reasonably necessary, provided the University may elect not to so if the cost associated therewith is unreasonably disproportionate to the benefit or there is a reasonable alternative.

**Article 22.** Miscellaneous. Article 22 contains the miscellaneous provisions standard for an agreement of this nature, including, among other items, (i) notice requirements, (ii) amendment procedure, (iii) governing law (Ohio), and (iv) waiver of jury trial.

**PERFORMANCE STANDARDS**

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## **SCHEDULE 2**

### **PERFORMANCE STANDARDS**

#### **Part I - GENERAL**

##### **Introduction and Purpose of Performance Standards**

These Performance Standards and any Appendices thereto, are provided pursuant to Article 6 of the Long-Term Lease and Concession Agreement (the “Concession Agreement”) for the Ohio State University’s Utility System and Utility System Operations. The Performance Standards and Appendices are incorporated and made part of the obligations under the Concession Agreement.

The Utility System is comprised of five individual Utilities, specifically the: (i) the portion of the Utility System that generates, distributes and returns chilled water (the “Chilled Water System”); (ii) the portion of the Utility System that generates, distributes and returns steam and condensate (the “Steam and Condensate System”); (iii) the portion of the Utility System that distributes natural gas (the “Natural Gas System”); (iv) the portion of the Utility System that distributes electricity (the “Electric System”); and (v) the portion of the Utility System that generates and distributes geothermal energy (the “Geothermal System”).

The purpose of the Performance Standards is to: (i) provide the minimum general requirements for the operations and maintenance of the University’s Utility System and provide standards governing Utility System Operations as required by the Concession Agreement and are not inclusive of all of the Concessionaire’s responsibilities; (ii) aid in the development of an Operations Plan (as defined herein) to be developed annually by the Concessionaire for the Utility System; (iii) incentivize the Concessionaire to minimize the time during which the Utility System experiences outages and (iv) ensure that the Utility System is operated and maintained in accordance with Prudent Industry Practices.

Terms used and not otherwise defined in these Performance Standards shall have the meanings ascribed to them in the Concession Agreement. Any approvals or consent required under these Performance Standards shall be governed by the procedure outlined in Section 1.15 of the Concession Agreement. Unless otherwise stated herein or in the Concession Agreement, any Modification to the requirements set forth in these Performance Standards or Appendices thereto, shall be governed by Section 6.3 of the Concession Agreement. Any references to a governmental entity, industry standard organization or University department shall include any successor to such entity, organization or department. Any references to “degrees” shall, unless otherwise specified herein, mean “degrees Fahrenheit.” To the extent that any term or provision specified herein conflicts with any term or provision of the Concession Agreement, the Concession Agreement shall govern.

The Concessionaire shall perform all duties and tasks and all other responsibilities required by these Performance Standards in conformance with Prudent Industry Practices, and the Concessionaire shall keep the Utility System in good condition and repair throughout the Term

of the Concession Agreement. If the Concessionaire fails to meet these Performance Standards, it shall be subject to the procedures in the Concession Agreement for addressing such failures.

If deficiencies or situations affecting minimum standards for performance develop during the Term that are not specifically noted herein, it is the Concessionaire's responsibility to correct the deficiencies and manage such situations such that the Utility System will be maintained in the condition required by these Performance Standards.

## Part II - PERFORMANCE STANDARDS – GENERAL OPERATIONS

### 1) General

- a) The Concessionaire shall propose a plan with respect to the operation, repair, maintenance and replacement of the Utility System in accordance with these Performance Standards and the Concession Agreement (the “Operations Plan”) The Operations Plan shall include and satisfy at a minimum, all requirements and all components of the Performance Standards and Prudent Industry Practices. The Concessionaire shall submit such Operations Plan to the University for its review within 240 days after Closing and as further required herein. The University will review the Operations Plan and where appropriate, will provide comments for Concessionaire’s consideration. The Concessionaire shall perform all components of the Operations Plan, but, for the avoidance of doubt, the Operations Plan and the University’s review and commentary thereon shall not modify, affect, change or supersede any of the Concessionaire’s obligations under the Agreement, including the obligation to perform in accordance with the Performance Standards and Prudent Industry Practices. The Utility System must have an appropriate maintenance and repair program/plan to provide a safe and satisfactory level of service and to maximize Utility System service life in accordance with these Performance Standards. To the extent that any term or provision of the Operations Plan conflicts with any term or provision of these Performance Standards, the Performance Standards shall govern.
- b) All operations, repairs, replacement and maintenance activities shall be carried out in a good and workmanlike manner so as to ensure continuous safety for users of the Utility System and to sustain the value of the Utility System as an asset. Condition assessments and inspections shall follow Prudent Industry Practices and recognized national standards as set forth herein.
- c) The Concessionaire shall submit any updates to its Operations Plan to the University at least 90 days prior to such updates taking effect. The University will review and if it determines it to be necessary, comment on the updates to the Operations Plan. The Operations Plan existing prior to the submitted updates shall remain in place until any University comments to the updates to the Operations Plan provided prior to the update’s effectiveness have been incorporated into the Operations Plan. Notwithstanding the above, any proposals subject to University Approval as part of the Concessionaire’s Annual Budget or Five Year Plan, must comply with Articles 4 and 7 of the Concession Agreement.
- d) The Operations Plan shall specify how the Concessionaire has considered, trained, addressed, and planned for all operational, repair, maintenance and replacement activities in connection with the Utility System and has established protocols, procedures, responsibilities, and minimum requirements to operate, repair, maintain and replace the Utility System in accordance with these Performance Standards and the Concession Agreement and Prudent Industry Practices.

- e) As part of the Operations Plan, the Concessionaire shall include a maintenance management program for the Utility System. The maintenance management program shall, at a minimum, meet Prudent Industry Practices and shall include all predictive, preventive, and general Emergency maintenance procedures for the Utility System, including life safety systems and a cleaning and maintenance schedule.
- f) The Concessionaire shall maintain records related to its maintenance of the Utility System in accordance with Section 3.12 of the Concession Agreement. The records regarding maintenance of the Utility System required to be retained by the Concessionaire shall include the following:
  - i. Status of Utility System Assets with disposition of breakdowns, deteriorating conditions, failure to start, significant decrease in capacity or performance (> 5%);
  - ii. Total maintenance spend for the Fiscal Year for the repair costs and labor hours for each individual Utility and the Concessionaire Compressed Air System and the individual work orders associated therewith;
  - iii. One, three and five-year projection of life expectancies of equipment that would be considered Capital Improvements based upon maintenance performed and manufacturer's recommendations;
  - iv. Annual inspections of boiler internals;
  - v. State of Ohio Certificate(s) for boilers;
  - vi. Annual inspections required by the Occupational Safety and Health Administration ("OSHA") for all cranes and hoists;
  - vii. Annual assessments of all Natural Gas System master meter systems; and
  - viii. The preventative maintenance data specified in Section II.1.(j) of these Performance Standards.
- g) The Concessionaire shall include in its Operations Plan a proposed plan for its expenditures to extend the useful life of any and all components of the Utility System, including planned replacements or any additions thereto.
- h) Currently, maintenance activities are managed through AiM (Asset Inventory Management by Asset Works). The Concessionaire shall either continue to use the AiM system for the Utility System or utilize a maintenance management system of its own choosing if the cost of such system is approved by the University as part of the Annual Budget.
- i) Predictive Maintenance

- i. “Predictive Maintenance” is defined as the specific maintenance actions performed on Utility System Assets, in the event that a Utility System Asset’s current condition is below the required standards, rather than maintenance based on a schedule. The Concessionaire shall provide the Predictive Maintenance necessary to maintain the Utility System in good condition and repair.
- ii. The Concessionaire shall determine in its reasonable discretion what Predictive Maintenance is required and shall keep records of its Predictive Maintenance in accordance with Section 3.12 of the Concession Agreement. Such records shall include, but not be limited to, the following:
  - 1. Record of unplanned boiler, generator, transformer and chiller malfunctions, even if these outages do not result in a loss of service;
  - 2. Vibration levels and alignment records for rotating equipment with Predictive Maintenance conditions based on revolutions per minute and shaft length tables;
  - 3. Thermal scans and operating temperatures for electrical equipment;
  - 4. Oil testing and contaminant levels;
  - 5. Inspections of chiller condensers, evaporators and tube conditions;
  - 6. Chilled water plant operating efficiencies based on the limits described in Part III, Section 5 of these Performance Standards; and
  - 7. Steam boiler fuel use based on the limits described in Part IV, Section 5 of these Performance Standards.

j) Preventive Maintenance

- i. “Preventive Maintenance” is defined as maintenance on the Utility System based on a pre-determined schedule.
- ii. The Concessionaire shall create and maintain a Preventive Maintenance program as part of the Operations Plan (the “Preventive Maintenance Schedule”). Such Preventive Maintenance Schedule must be in accordance with Prudent Industry Practices, including but not limited to applicable Operations and Maintenance Best Practices Industry Manuals. The Concessionaire shall perform the Preventive Maintenance in accordance with the Preventive Maintenance Schedule.

- k) Emergency Maintenance
  - i. “Emergency Maintenance” is defined as the maintenance necessary to restore operation to equipment, systems, or components in the Utility System that have failed to operate as required.
  - ii. The Concessionaire shall perform all Emergency Maintenance as promptly as possible within time limits agreed to by the Parties and if applicable, adhere to the Unplanned Outage (as defined herein) requirements set forth herein.
- l) In order to properly assist the University in the comprehensive planning for, efficient management of, effective repair of, and controlled access to, the public ways on the Columbus Campus and to lessen the public inconvenience of uncoordinated work in the Public Way while promoting the general public health, safety, and welfare, the Concessionaire shall adhere to the Comprehensive University Pavement and Public Way Management Policy as set forth in Appendix Y.

## **2) Exterior Appearance of Utility Facilities**

- a) The Concessionaire shall maintain the exterior appearance of Utility Facilities in accordance with the University’s design standards applicable to the Columbus Campus, provided in Appendix F (the “Design Standards”), as may be updated from time to time. Changes to the exterior appearances of Utility Facilities, including but not limited to the color and lighting of such Utility Facilities and any signage thereon, shall require prior written approval of the University.

## **3) Utility Marking, GIS Mapping and Asset Management**

- a) The Concessionaire shall provide utility marking of the Utility System in accordance with established University practices for utility marking, as set forth in Appendix A, Standard Operating Procedures for Surveying and Utility Marking and in conformance with the Ohio Revised Code and Prudent Industry Practices. The utility marking process shall include:
  - i. Support design activities during project planning and development;
  - ii. Provide pre-excavation marking for all construction and maintenance projects;
  - iii. Provide line locating and elevation during installation of new equipment; and
  - iv. Contact Ohio Utilities Protection Services (“OUPS”) for marking of buried Utility System distribution assets before commencing digging activity.

- b) The Concessionaire shall provide mapping updates to reflect modifications to the existing Geographic Information System (“GIS”) for the Utility System including mapping of all Utility System Assets that are abandoned and not removed during the Term. Such information and updates shall be provided in a format and include details as requested by the University.
  - i. The Concessionaire shall reasonably cooperate with the University in connection with the GIS, which contains information regarding both Utility Facilities as well as other facilities which are not part of the Utility System, in connection with any changes, updates or modifications to the Utility System.
- c) The Concessionaire shall be responsible for ensuring the GIS is updated in a timely manner to accurately depict the state of the existing Utility System. The Concessionaire shall enter updated mapping of the Utility System into the GIS within 72 hours of any material change including addition, modification, repair, or abandonment of any portion of the Utility System.
- d) The Concessionaire shall provide regular mapping updates to the GIS to include surface feature updates and repairs and non-material changes, every 6 months.
- e) The Concessionaire shall annually update asset management information pursuant to ISO standard (or its successor).

#### **4) Safety**

- a) The Concessionaire shall develop and adhere to safety and security standards in operating, maintaining, repairing and replacing the Utility System which standards, at a minimum, meet Prudent Industry Practices. The Concessionaire shall develop and document policies and procedures to ensure the security and safety of the Utility System that, at a minimum, meet current policies or procedures provided in Appendices B, C, D, N, and all applicable Memorandums of Understanding (“MOUs”) with the University Department of Public Safety. (See also Part II, Section 5(a), herein.) Such policies and procedures shall be included in the Operations Plan.
  - i. In addition, the electrical safety program shall be in compliance with all applicable Laws and requirements, as may be amended from time to time, including standards established by OSHA as well as the National Fire Protection Association (“NFPA”) (NFPA 70E), including applicable training and qualifications programs.
- b) The Concessionaire shall maintain the security of the Utility System Assets located in the Tunnels in compliance with the requirements listed in Appendix Z. In addition, the Concessionaire shall coordinate with the University’s facility group responsible for the Tunnels, the University’s Department of Public Safety and local law enforcement, as appropriate, provided that, absent the University’s negligence or willful misconduct, the University shall not be liable to the

Concessionaire for any damage or loss of the Utility System Assets located in the Tunnels.

- c) The Concessionaire shall secure the industrial control systems within the Utility System to NIST Standard 800-82.
- d) The Concessionaire shall promptly notify the University's Department of Public Safety and local law enforcement upon learning of suspected or alleged criminal activity concerning the Utility System.
- e) The Concessionaire shall abide by all regulations of the University's Department of Public Safety.
- f) The University's Department of Public Safety shall have access at all times (24-hours a day, seven days a week) to all plants, buildings and any other Utility Facilities on the Columbus Campus which are required to be maintained by the Concessionaire.
- g) The Concessionaire shall be responsible for ensuring that safety security alarms, including fire alarms which are part of the Utility System, are directly tied to the life and safety systems of the University.
- h) Except as otherwise provided in Concession Agreement, Concessionaire shall ensure that any and all cameras installed by Concessionaire in Utility Facilities shall provide a direct feed to the University's security office, use the University's network and meet the University's specifications.
- i) All Utility Facilities on the Columbus Campus shall be subject to inspection by University Fire Prevention.
- j) The Concessionaire shall adhere to any and all applicable policies, practices and procedures set forth in the University's Health and Safety Guide, as may be amended.
- k) As part of the Concessionaire's obligation to comply with all Laws, the Concessionaire shall comply with all OSHA requirements including but not limited to, safety training programs and injury reporting and logs.

## **5) Emergency Response and Unplanned Outages**

- a) The Concessionaire shall follow current Emergency Support Function-12, Utility Outage Procedures, Emergency Operations Plan, and Emergency Response Plans referenced in Appendices B, C, D and N.
- b) The Concessionaire shall provide personnel to support all procedures and activities required by the University during an Emergency and or failure of the Utility System which failure had not previously been approved by the University (each, an "Unplanned Outage") in order to provide the required Utility Services.

- c) During an Unplanned Outage, the Concessionaire shall work cooperatively with the University until Utility Services are restored. During any Unplanned Outage, the Concessionaire shall follow all communication procedures for an Emergency and all applicable Emergency response plans provided by the University, including working with a representative contact designated by the Director of Communications and Marketing (hereinafter referred to as the “Communications Contact”). The Concessionaire shall provide automatic text message or email alerts immediately after any Emergency or Unplanned Outage to designated University contacts.
- d) The Concessionaire shall adhere to the procedures and requirements for an Unplanned Outage set forth in these Performance Standards for each individual component of the Utility System.
- e) The Concessionaire shall designate a representative to participate in the University’s Emergency Operations Center (the “EOC”), which representative shall:
  - i. Attend meetings at the reasonable request of the University;
  - ii. Obtain training required by the University; and
  - iii. Assist in coordination with the University to respond during Emergencies.
- f) The Concessionaire shall adhere to a priority list as established by the University for restoration of the Utility System following an Unplanned Outage. The restoration priority list is attached hereto as Appendix R, and may be updated from time to time. Any such update shall not be considered a modification to these Performance Standards subject to Section 6.3 of the Concession Agreement.
- g) During any Unplanned Outage, the Concessionaire shall send prompt updates to Service2Facilities, the EOC and the Director of Marketing and Communication for Administration and Planning or the designated Communications Contact.
- h) At least 48 hours before (i) any home football game, (ii) any visit by a head of state or political dignitary, (iii) any significant political event, or (iv) any other event which the University provides advance written notice of to the Concessionaire (each, a “Major Event”), the Concessionaire shall:
  - i. Prepare a response plan for an Unplanned Outage, in accordance with the University’s then-existing mechanical and Electric System access and response practices and the procedures described in Appendix C (the “Utility Outage Procedures”) and promptly implement such plan as necessary; and
  - ii. Provide a subject matter expert as a resource to the University’s Communications Department and the EOC before and during such Major Event.

- i) If Concessionaire is not provided with advance notice of a Major Event sufficient to comply with the deadline set forth in Section 5(h), above, Concessionaire shall provide the listed information as soon as practicable following notification of any Major Event.
- j) In the event an Unplanned Outage impacts the Columbus Campus, the Concessionaire shall, at the University's request, provide a subject matter expert as a resource to the University's Communications Department for the duration of the need arising from the Unplanned Outage.

**6) Procedures for Planned Outages**

- a) The Concessionaire shall follow the Utility Outage Procedures for requirements for communicating a planned outage of the Utility System (a "Planned Outage") to the parties identified in Appendix C. Failure to adhere to such requirements shall cause any outage of any part of the Utility System to be deemed an Unplanned Outage. In addition to the requirements set forth in the Utility Outage Procedures, the Concessionaire shall provide notice of such Planned Outage at least 10 Business Days before the Planned Outage.
- b) Prior to a Planned Outage, the Concessionaire shall consult with the University to determine when temporary utility sources (such as electrical generators, boilers or chillers) are necessary to maintain building operations, and the Concessionaire shall provide such temporary utility sources as agreed with the University.
- c) The Concessionaire shall coordinate the restoration of Utility Services following a Planned Outage with the University.

**7) Design Standards**

- a) The Concessionaire shall follow the Design Standards for all portions of the Utility System, unless otherwise provided for herein or approved by the University.
- b) The University retains the right to modify or update the Design Standards, which modification or update shall be deemed a modification of these Performance Standards under Section 6.3(a) of the Concession Agreement. The Concessionaire shall have the opportunity to participate in and provide input on periodic updates to the Design Standards.
- c) The Concessionaire shall comply with all other applicable design standards and codes, including:
  - i. American Society of Mechanical Engineers (ASME);
  - ii. Institute of Electrical and Electronics Engineers (IEEE);
  - iii. National Electric Code (NEC);

- iv. ASME Code for Pressure Piping B31; and
- v. National Fire Protection Association (NFPA).

**8) Material and Equipment Management**

- a) The Concessionaire shall procure all necessary equipment and materials to properly operate the Utility System. Such equipment and material shall be appropriate for its use and, at a minimum, meet Prudent Industry Practices.
- b) The Concessionaire shall include in its Operations Plan its plan for materials management; which shall include:
  - i. A process for procuring materials for the operation of the Utility System;
  - ii. A process for maintaining adequate inventory levels to account for Planned Outages and Unplanned Outages;
  - iii. A plan for maintenance of Concessionaire's storage facilities;
  - iv. A method for staging materials; and
  - v. Minimum levels of certain materials identified as critical by the Concessionaire, below which the Concessionaire shall reorder such materials.
- c) In all events, the Concessionaire shall purchase materials and equipment for use in the Utility System that are:
  - i. Fit and serviceable for the intended purpose and free of defects;
  - ii. UL-listed, if applicable at the time of purchase;
  - iii. Of the type and quality typically used in Comparable Utility Systems.

**9) Personnel and Operations**

- a) Whenever the Concessionaire is required to utilize a qualified engineer, such engineer shall be subject to the University's prior Approval. The Concessionaire shall have the right to provide a list of qualified engineers to the University on an annual basis for the University's approval. The Concessionaire shall then be permitted to utilize any engineer on such list.
- b) As part of its Operations Plan, the Concessionaire shall provide a detailed staffing plan, which shall include, at a minimum:
  - i. Organizational chart(s);
  - ii. Shift planning for normal operations;

- iii. Emergency response staffing and communications contact who is designated to work with the University “Concessionaire Communications Contact;”
  - iv. Position descriptions;
  - v. Screenings / testing, which the Concessionaire shall provide to the University promptly after receipt thereof;
  - vi. Training and employee development;
  - vii. Employee credentials, licenses and other certifications;
  - viii. Diversity and inclusion;
  - ix. Rates of pay; and
  - x. Overtime policies and practices for all employees.
- c) As part of its Operations Plan, the Concessionaire shall include a plan for providing personnel coverage during an Emergency, for both a short-term and long-term closure of the University. Such plan shall include a list of employees designated as serving in “essential,” “alternate,” or “standby” status during an Emergency, and identify the Concessionaire Communications Contact, for both short-term and long-term closures. The Concessionaire's Emergency staffing and designations shall conform with then-current University policies for Emergency preparedness and for short-term and long-term closures.
- d) Within 30 days after the end of a Fiscal Year, the Concessionaire shall provide information to the University regarding the operations of the Utility System, including:
- i. The results of the metering accuracy auditing program;
  - ii. The results of the chemical, water treatment, and pre-treatment plans;
  - iii. Environmental and regulatory compliance;
  - iv. The implementation of safety programs;
  - v. The effectiveness of utility data systems and IT network security;
  - vi. Plant operating procedures; and
  - vii. Peak Utility System loads and percentage of installed capacity.
- e) The Concessionaire shall support project design reviews and new utility connection planning, design and construction inspections (as defined in Appendices M and H).

- f) The Concessionaire shall plan and execute hot work and energized electrical equipment testing with respect to the Electric System per applicable safety standards including NFPA 70E.
- g) The Concessionaire shall develop and conduct electrical power system studies including load demand, short circuit, electrical coordination, and OSHA arc flash utilizing SKM software and in compliance with all applicable IEEE standards.
- h) The Concessionaire shall maintain and keep up to date the Primary Electrical Service Policy provided in Appendix M.
- i) The Concessionaire shall maintain KY pipe flow and load models at or above the level existing as of the Closing Date or develop mutually acceptable alternative models for the Steam and Condensate System, the Chilled Water System and the Natural Gas System.
- j) The Concessionaire shall comply with the Utility Service Connection and Inspection Standards provided in Appendix H.
- k) The Concessionaire shall provide a 10 minute response time by a person with senior-level, qualified experience to the location on the Columbus Campus from which said person reasonably believes they can best address the (Emergency or power outage) issue during business hours (6:00 AM to 6:00 PM Monday-Friday) and a 30 minute response time during non-business hours.

**10) Environmental**

- a) In operating the Utility System, the Concessionaire shall comply with applicable Environmental Laws and any and all environmental or sustainability standards, policies or procedures adopted by the University and communicated to the Concessionaire.
- b) The Concessionaire shall instruct its employees and employees of the Operator to conduct all operation, repair, maintenance and replacement work in a manner so as to minimize exposure to Hazardous Substances. The Concessionaire shall notify the University of any planned activity that may disturb building materials containing Hazardous Substances and may require special handling pursuant to applicable Environmental Laws. If advance notice is not practicable, the Concessionaire shall notify the University as soon possible after encountering building materials containing Hazardous Substances on or in the vicinity of the Utility System, and shall cease any activity which would disturb or further disturb hazardous building materials until after Concessionaire has notified and consulted with the University regarding proper handling of such material. If the Concessionaire, in the course of its operation, repair, maintenance or replacement activities, creates a hazardous condition by disturbing or otherwise altering building materials containing Hazardous Substances, the Concessionaire shall manage such Hazardous Substance in accordance with all applicable Environmental Laws and in compliance with University policies and programs

including Asbestos Abatement Standards and Scope of Work set forth in Appendix E.

- c) If the Concessionaire encounters or disturbs any Hazardous Substances in the course of its operations for which the University has retained liability pursuant to Section 3.2(d) of the Concession Agreement, the Concessionaire shall notify the University and shall work with the University to facilitate any University action deemed necessary to comply with applicable Environmental Laws. In any case, Concessionaire shall take measures to avoid causing, exacerbating, or contributing to any hazardous condition or any Release of a Hazardous Substance encountered in the course of its operations. Further, whenever the Concessionaire becomes aware of any Release of a reportable quantity of a Hazardous Substance, the Concessionaire must comply with the notice requirements set forth in Section 8.1(b) of the Concession Agreement.
- d) The Concessionaire shall be responsible for managing and remediating Hazardous Substances Released or encountered in the course of operations, in accordance with all applicable Environmental Laws but only to the extent that such Hazardous Substances are associated with environmental conditions created or caused by Concessionaire after the Time of Closing or such obligations are not otherwise considered to be excluded from liabilities and obligations of Concessionaire pursuant to Section 3.1(d) of the Concession Agreement. In such case, Concessionaire shall notify and coordinate with the University before taking any non-emergency action to address a Release of a Hazardous Substance and shall include the University in any correspondence with regulatory officials regarding the management and remediation of the Hazardous Substance.
- e) In addition to the obligations set forth in Section 11.13 of the Concession Agreement pertaining to the Title V Permit, the Concessionaire shall be responsible for completing and filing all environmental reports and for environmental recordkeeping and monitoring pertaining to the operation of the Utility System as required by the University or as may be required under applicable Environmental Laws. This shall include:
  - i. Fuel Flow Meters Quality Assurance/Quality Control (“QA/QC”) Plan required by Greenhouse Gas Reporting Rule;
  - ii. Predictive Emissions Monitoring System QA/QC Plan, as required by the U.S. Environmental Protection Agency (“EPA”);
  - iii. Boiler 5 Fuel Flow Meters QA/QC Plan required by Ohio NOx Sip Call/Budget Trading Program;
  - iv. Hazard Communication/Globally Harmonized System of Classification and Labeling of Chemicals Plan required by OSHA;
  - v. Reverse Osmosis Plant Wet Weather Plan required by the City of Columbus Division of Sewage and Drains;

- vi. McCracken Slug Discharge Plan required by the City of Columbus Division of Sewage and Drains; and
  - vii. Recordkeeping and reporting for refrigerant storage and leaks.
- f) As part of its obligations under Section 3.12(a) of the Concession Agreement, the Concessionaire shall provide all necessary related operational and environmental data to the University for inclusion in campus-wide regulatory environmental reports.
- g) The Concessionaire shall develop and implement the following plans/programs as required by applicable Environmental Laws:
- i. Spill Prevention Control, and Countermeasure Plan (“SPCC Plan”);
  - ii. Storm water management plan which complies with applicable National Pollutant Discharge Elimination System rules and University requirements;
  - iii. Petroleum storage and tank management program including inspections; and
  - iv. Refrigerant leak monitoring.
- h) Hazardous Substances
- i. The Concessionaire shall not be allowed to use, dispose, treat or store any Hazardous Substances, other than those used in its ordinary course of operations, without written consent by the University.
  - ii. The Concessionaire shall manage all wastes resulting from its operations in accordance with applicable Environmental Laws. All applications, certifications and notifications required for the generation, storage and disposal of Hazardous Substances are the responsibility of the Concessionaire.
- i) Wastewater
- i. Industrial discharge from operation of the Utility System shall meet the requirements of all Laws, including Environmental Laws and any directives provided by a Governmental Authority.
  - ii. Wastewater discharge permits and wastewater discharge operating requirements shall be the responsibility of the Concessionaire.
  - iii. Preapproval for sludge discharges to City of Columbus sanitary system shall be the responsibility of the Concessionaire.

- j) The Concessionaire shall be responsible for evaluation, recycling and/or disposing of waste generated in the course of Utility System Operations, in compliance with applicable Environmental Laws and in alignment with University policies.
- k) Environmental Emergency
  - i. In the event that the Concessionaire has become aware of a release of Hazardous Substances into the environment due to Utility System Operations, the Concessionaire shall immediately notify the University and the appropriate Governmental Authority in accordance with applicable Laws and applicable University policy.
  - ii. The Concessionaire shall also take immediate steps to remediate any release of Hazardous Substances and to minimize further release of Hazardous Substances into the environment.

### **11) Utility Office Functions**

The Concessionaire shall establish an office of the Utility System (the “Utility Office”), which shall be staffed by the Utility System Operator personnel.

- a) The Utility Office is the primary point of contact for the University regarding information on the Utility System and Utility System Operations, including Planned Outages, Unplanned Outages, general campus information and event-specific information related to the Utility Facilities and Utility Services.

### **12) Interagency Coordination**

- a) The Concessionaire is required to cooperate with any and all local, state and federal governmental, regulatory and law enforcement agencies.
- b) The Concessionaire's required cooperation may include, but not be limited to:
  - i. Providing access to the Utility Facilities;
  - ii. Closing Utility Facilities for public safety purposes;
  - iii. Disconnecting Utility Services or a portion thereof due to an Emergency or law enforcement situation;
  - iv. Providing access to information contained in any surveillance system;
  - v. Attending planning and operational meetings;
  - vi. Providing a representative in the EOC in the event of a large-scale or critical situation that involves any aspect of the Utility Facilities or the Concessionaire's responsibilities; or
  - vii. Any other action that is deemed necessary to ensure public safety.

**13) University Department Office Cooperation**

- a) The Concessionaire will work collaboratively with departments, offices or other entities of the University for efficient, safe and effective Utility System Operations pursuant to the Concession Agreement and these Performance Standards: or as may reasonably requested from time to time by the University.
- b) The Concessionaire's involvement with these departments as it relates to the Utility System may include, but not be limited to:
  - i. Participation in appropriate campus planning meetings including working with the University to coordinate responses to media or other inquiries;
  - ii. Coordination of information and logistical activities to ensure customer utility needs are met;
  - iii. Participation on work teams to plan impacts under numerous scenarios related to planned and unplanned events;
  - iv. Campus Emergency coordination;
  - v. On- and off-campus construction; and
  - vi. Working with University stakeholders to execute plans.

**14) Public Relations and Media Interactions**

- a) The Concessionaire shall have procedures in place for working with the University and also for interacting with the University community, to the extent requested by the University. All communications about the Utility System directed to the Columbus Campus constituents, or other University stakeholders must be coordinated with and approved by the University. The Concessionaire shall work with the designated University Communications Contact.
- b) The Concessionaire shall work with the University administration to engage the University community and media before, during and after any material event impacting or involving the Utility System or Utility Service, which plan shall be implemented following approval by the University.
- c) The Concessionaire may be contacted by members of the University community and media regarding information pertaining to the Utility System or Utility Service, and the Concessionaire shall, at the University's option, either provide a referral to the appropriate entity (which may include a designated University representative) or a knowledgeable individual to respond directly to the University community and media. The University reserves the right to take any and all action necessary to ensure effective communication.

## 15) Service Vehicle Use and Operation

The Concessionaire will be permitted to utilize service vehicles to facilitate the operations of the Utility System. Because the Concessionaire's service vehicles will also represent the image and character of the University, the following guidelines must be followed for the use of service vehicles:

- a) The Concessionaire must ensure such service vehicles are in good operating condition and must maintain a sufficient inventory of service vehicles to meet the obligations of the Concessionaire at all times.
- b) The Concessionaire shall be responsible for ensuring the safe operation of all service vehicles.
- c) Insurance must be secured and maintained in accordance with the Concession Agreement.
- d) All service vehicles utilized by the Concessionaire must be clean, safe and regularly maintained to ensure safe operation.
- e) The vehicle body must be relatively free from damage. If damage occurs, it must be repaired within a reasonable period of time.
- f) Annual safety inspections must be performed.
- g) All vehicles in use must have a cumulative fleet MPG average which meets applicable Federal fuel-efficiency standards, and must otherwise comply with all Laws and applicable University sustainability standards.
- h) All service vehicles will be clearly identified and bear uniform markings on both sides of the vehicle. These include, but are not limited to:
  - i. Company name; and
  - ii. Vehicle (fleet) number located on the rear of each vehicle.
- i) All service vehicles must be equipped with fully operational "mars lights" or equivalent with flashing yellow caution lights.
- j) The Concessionaire shall develop and implement service vehicle user requirements and procedures including, but not limited to, the following:
  - i. Employees must be properly trained on proper and safe use of service vehicles;
  - ii. The Concessionaire must provide standards and procedures for screening service vehicle drivers and maintaining driver records;

- iii. Service vehicle operators shall not permit unauthorized passengers to utilize the service vehicles at any time; and
  - iv. The Concessionaire shall report all service vehicle accidents on University property to the University within one (1) Business Day following any accident.
- k) Service vehicles are subject to all University parking regulations and procedures.

**16) Utility Service Inquiries**

- a) The Concessionaire shall establish and implement an effective and reliable system for accepting and responding to University questions and comments about Utility System Operations and Utility Services (“Service Inquiries”). Service Inquiries shall be recorded as they are received. The Concessionaire shall maintain a database of Service Inquiries which shall include:
- i. Specific utility service referred to in each Service Inquiry;
  - ii. Details of the Service Inquiry;
  - iii. A description of actions taken by the Concessionaire in response to the Service Inquiry, including corresponding date of actions taken; and
  - iv. Details of how the Service Inquiry was resolved.
- b) The database of Service Inquiries shall be provided to the University upon request.
- c) The Concessionaire shall respond to all non-outage related Service Inquiries within one (1) Business Day of receipt thereof and shall resolve all Service Inquiries in a timely manner.
- d) The Concessionaire must accept and respond to University Service Inquiries and outage reports on a 24-hour basis.

**17) Building Emergency Action Plan**

- a) As part of its Operations Plan, the Concessionaire shall include a Building Emergency Action Plan (“BEAP”) for the evacuation of Utility Facilities in the event of an Emergency that permits staff to quickly and safely evacuate each Utility Facility. The BEAP must include, at a minimum, the following:
- i. Evacuation procedures and roles;
  - ii. Evacuation routes;
  - iii. Shelter-in-place location(s);

- iv. Emergency communications;
  - v. Training and drill schedules; and
  - vi. Emergency Utility Facility contact.
- b) The BEAP will be created in conjunction with the Continuity Management Plan, as defined below, and the University's Enterprise Continuity Management Program. The BEAP shall be submitted to designated University departments, as necessary. This plan must be evaluated on an annual basis and updated as needed. The Concessionaire shall make personnel and other resources available to conduct Emergency drills or Emergency planning required by the University as requested.
- c) The personnel training program shall include training on all Emergency activities and procedures required by Law. Documentation of enrollment and satisfactory completion shall be supplied to the University and updated at least annually.

**18) Continuity Management Plan**

- a) As part of the Operations Plan, the Concessionaire shall include a Continuity Management Plan ("CM Plan") to establish procedures and protocols in relation to continuing or recovering services following an Emergency. This CM Plan must include, at a minimum, the following:
- i. Plan overview, scope, and assumptions document;
  - ii. Response teams with named individuals assigned to each team;
  - iii. An initial call tree;
  - iv. Contact information for key team members, vendors, departments, agencies, and university stakeholders;
  - v. Initial response activities in the following categories: command/leadership, communications, HR/employee care, financials, IT, and assessment;
  - vi. A list of all Utility Services, prioritized in order of recovery, with recovery time objectives assigned to each;
  - vii. One named individual as a the contact in charge of recovery and one as an alternate contact for each service;
  - viii. A description of how each service will be continued or recovered in each of the following three scenarios:
    - 1. Unavailability of majority of staff;
    - 2. Unavailability of key applications and/or equipment;

3. Unavailability of the building/Utility Facility;
- ix. List of minimally-required resources for recovery;
- b) This CM Plan will be created in conjunction with the BEAP and the University's Enterprise Continuity Management Program, and it shall be submitted to other University departments, as required by the University. The Concessionaire must evaluate the CM Plan on at least an annual basis and update the CM Plan as needed.

**19) Information Technology, Communications and Connectivity**

- a) The Concessionaire shall work with the Office of Chief Information Officer ("OCIO") to develop and implement appropriate interconnection protocols and security measures whenever the Concessionaire is connecting to any electronic network, communications system or other electronic media owned, operated or managed by the University or its agents.
- b) Prior to connecting to or using the University's electronic network, communications system or other electronic media, Concessionaire shall submit to the OCIO for review, and approval all of Concessionaire's electronic network security protocols, application security protocols, data storage protocols, access management procedures, and any other information that the OCIO determines necessary to protect the integrity and security of the University's electronic systems and communications networks. In addition, any use of the University's electronic network or other information systems shall be subject to the policies and requirements contained in Appendix X.
- c) All communications wires and optical fibers used by the Concessionaire within the geographic boundaries of the University in performing its duties under the Concession Agreement shall be provided by the University to the Concessionaire. Any costs charged by the University for communications equipment may be included as O&M costs or Capital Improvement costs pursuant to the terms of the Concession Agreement. The University shall provide such optical fiber and/or wired communications to the Concessionaire at the cost normally charged by the OCIO to internal University customers, but in no event will that cost be in excess of a then-current average market rate charged by local providers of materially similar services.
- d) Subject to the Terms of the Concession Agreement and except as caused by the University's negligence or willful misconduct, Concessionaire assumes all risk and agrees to indemnify, defend and hold harmless the University from any and all actions, claims, costs, demands, or suits arising out of or resulting from the Concessionaire's connection to or use of any electronic network, communications system or other electronic media owned, operated or managed by the University or its agents.

- e) Prior to deploying or using any wireless communications within the geographic boundaries of the University, Concessionaire shall submit to the OCIO for review, approval and acceptance, a detailed description of Concessionaire's proposed wireless communications technology and any other information that the OCIO determines necessary. If required by the OCIO, the Concessionaire will implement all reasonable measures necessary (including abatement) to protect the integrity and security of current wireless communications networks and other equipment operating at the University.
- f) Conditions and requirements for Concessionaire's use for all wired network (IP), dark fiber, cellular data, analog telephone, or 802.11 WiFi communications systems on the Columbus Campus, including service-level agreements, security protocols and operating standards for such use are set forth in Appendix W.

**20) Performance Standards for Capital Improvements, Energy Conservation Measures and Material Changes**

- a) The Concessionaire shall develop, evaluate, propose and, if Approved, implement or construct, all Capital Improvements, Energy Conservation Measures (“ECM”) and Material Changes in accordance with the relevant terms of the Concession Agreement, these Performance Standards and the process and protocols for Capital Improvements and Material Changes (Capital Improvements and Material Changes Protocol) as set forth in Appendix W and the process and protocols for ECMs (“ECMs Protocol”) as set forth in Appendix V.
- b) The process and standards included in Appendix W are provided to assist the Concessionaire in developing any proposal for a Capital Improvement or Material Change, to align with University's capital planning process and to ensure compliance with University planning, design and construction standards. This process includes working with a designated University representative (University Representative) to facilitate project review and input where appropriate. Appendix W lists information required to facilitate the University's review of draft proposals as well as the standards for implementing and constructing Approved Capital Improvement projects.
- c) The process and standards included in Appendix V are provided to assist the Concessionaire in developing any proposal for ECMs, to align with the University's capital planning process and to ensure compliance with University planning, design and construction standards. This process includes working with a designated University Representative to facilitate project review and input where appropriate. Appendix V lists information required to facilitate the University's review of draft proposals as well as the standards for implementing and constructing Approved ECM projects.

**21) Concessionaire Compressed Air System**

- a) In accordance with Section 3.25 of the Concession Agreement, the line of demarcation for the Concessionaire Compressed Air System (comprised of the air generators located in the McCracken Power Plant and distribution system attached thereto), includes the distribution piping up and until the 3” and 4” shut-off valves located inside the McCracken Power Plant, just before the pipelines enter the north McCracken Power Plant Tunnel.
  
- b) The Concessionaire will ensure that Concessionaire Compressed Air System continues to deliver the same volume and quality of compressed air delivered as of the Closing Date, including providing air pressure of at least 80 pounds per square inch (psi), measured at the McCracken Power Plant shutoff valve and otherwise in accordance with these Performance Standards and the Concession Agreement.

### **Part III - PERFORMANCE STANDARDS – CHILLED WATER SYSTEM**

#### **1) Temperature Requirements**

- a) The Concessionaire shall ensure that the water being distributed by the Chilled Water System is maintained at a temperature at or below 42 degrees at each of the following points in the Utility System:
  - i. TIT-TS-CWS6 process area 069 chiller for McCracken Power Plant;
  - ii. TIT-10008 process area in the South Campus Central Chiller Plant; and
  - iii. TIT-10008 process area in the East Regional Chilled Water Plant.

#### **2) Pressure Requirements**

- a) The Concessionaire shall ensure that the water being distributed by the Chilled Water System maintains pressure at the following locations within the ranges specified below:
  - i. McCracken Power Plant:  $\geq 68$  psig; measured at PSCWS process area 069 chiller;
  - ii. South Campus Central Chiller Plant:  $\geq 68$  psig; measured at PIT-10009 process area; and
  - iii. East Regional Chilled Water Plant:  $\geq 68$  psig; measured at PIT-10009 process area.
- b) The Concessionaire shall maintain a positive bridge flow, defined as the differential chilled water pressure between supply and return piping at each of McCracken Power Plant, South Campus Central Chiller Plant and East Regional Chilled Water Plant. Short-term negative bridge flows are permissible during periods of high building demand so long as chilled water supply temperature does not exceed 42.5 degrees for 20 minutes or longer.

#### **3) Line of Demarcation between Concessionaire and University**

- a) Except as otherwise described herein, the line of demarcation for the Chilled Water System is depicted in Appendix L3 (which include separate diagrams for: Plant Chilled Water Direct Connect to Building; Plant Chilled Water Indirect Connect to Building; Central Chilled Water + Direct Connect District Chilled Water Distribution; and Central Chilled Water + Indirect Connect District Chilled Water Distribution). Appendix L3 serves as a representative diagram of the Chilled Water System. See also Appendix K3 for a map of the Chilled Water System.

- i. All building/secondary pumps, heat exchangers and associated building piping shall not be considered part of the Chilled Water System; and
  - ii. For line of demarcation between the tunnel system and the utility piping system, see Appendix Z.
- b) Appendix L3 denotes those portions of the Chilled Water System for which the Concessionaire will have full responsibility for Operation and Maintenance (“O&M”) and for capital expenditures for system upgrades and changes (“Capital Expenditures”) and those portions of the Chilled Water System for which the Concessionaire will have responsibility for Capital Expenditures but for which the University will retain responsibility for the O&M (herein referred to as “Capital Only”). Except as otherwise described herein and as depicted in Appendix L3, the Concessionaire shall be responsible for Capital Expenditures and O&M for the Chilled Water System to the building isolation valves. For Chilled Water district systems, the Concessionaire shall be responsible for Capital Only from the building isolation valves to the metering assemblies. The Concessionaire shall have responsibility for Capital Expenditures and O&M for all meter assemblies within the Chilled Water System.

#### 4) **Metering**

- a) The Concessionaire shall purchase, install, maintain and operate building chilled water smart meters in accordance with the requirements set forth in the Concession Agreement and as further outlined herein.
  - i. The Concessionaire shall ensure the meters are accurate and calibrated to the manufacturer’s recommendations and
  - ii. During the smart meter implementation period, the Concessionaire shall provide the University with all information from the Concessionaire-installed smart meter readings, in a format prescribed by the University and in manner that allows the University to maintain, without interruption, the University’s then-current internal system for usage recording and billing. The Concessionaire-installed smart meters must be read at consistent intervals and at least every 25 to 35 days, throughout the smart meter implementation period.
- b) As part of the Operations Plan, the Concessionaire shall include a plan to ensure metering accuracy and a metering accountability metric for such meters that are part of the Chilled Water System. For the avoidance of doubt, the Concessionaire shall adhere to all requirements set forth in Division 33 of the Design Standards attached as Appendix F, for flow, pressure, and temperature accuracy.
- c) The Concessionaire shall either continue to use the existing Schneider Electric SE licensed software program that the University uses to acquire, monitor and maintain Utility consumption data within the Utility System (the “Instep System”) or use metering software of its choosing, subject to the Approval of the Annual

Budget by the University. In either case, the Concessionaire shall provide the University reasonable access to view the real-time meter data upon request.

- d) The Concessionaire shall ensure electronic metering occurs at a minimum of one (1) minute intervals.
- e) The Concessionaire shall maintain accurate software, monthly meter data, and billing.
- f) The Concessionaire shall ensure that all new building connections to the Chilled Water System are metered at the time of connection using networked smart meters meeting the specifications set forth in the Concession Agreement.
- g) Plant production meters
  - i. Production meters for the Chilled Water System must be in service when equipment is operating, functioning properly and reporting to a data system readily accessible by the University. If a primary production meter fails, the associated equipment shall be shut off until the failure is resolved.
  - ii. Historical data on plant production meters shall be maintained in 1-minute intervals and readily accessible for the University's review. Raw 1-minute data shall be recorded in a database that cannot be edited by the Concessionaire. The Concessionaire shall allow the University to poll the 1-minute data daily via an "open database connectivity" connection for long term storage. Data will be time stamped with the date, hour (in 24 hr. format) and minute.
  - iii. Meters shall be calibrated yearly and maintained in accordance with the manufacturer's recommendations. Calibrations shall be completed using a calibrator with a National Institute of Standards and Technology ("NIST") traceable calibration certificate that is no more than 365 days old. The Concessionaire shall notify the University three (3) Business Days in advance of meter calibration and allow the University to observe the calibration procedure.

## 5) Efficiency

- a) At a minimum, the Concessionaire must meet the kilowatt per ton scorecard requirements for the Chilled Water System as indicated in the table below. Within 180 days after Closing, as part of the Concessionaire's Operations Plan, submitted pursuant to Part II, Section (1)(a) of this Schedule, the Concessionaire shall propose new kilowatt per ton efficiency scorecard requirements, provided that such proposed scorecard requirements shall produce a weighted yearly average (kW/Ton) scorecard requirements that, at a minimum, provide at least the efficiency in the table below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>kW/Ton</b>	0.9	0.85	0.8	0.78	0.78	0.808	0.808	0.808	0.808	0.808	0.9	0.9
<b>Weighted Yearly Average (kW/Ton) - .808</b>												

- b) The Concessionaire shall operate the Chilled Water System plants in a manner to ensure reliability as well as optimization of energy and conservation of natural resources. The Concessionaire shall use commercially reasonable efforts to continuously improve the operating efficiency and use of resources including water for the Chilled Water System.

**6) Design Standards**

- a) The Concessionaire shall maintain and keep up to date an accurate Chilled Water System hydraulic model, which may be KY Pipe or other similar modeling software, in order to:
- i. Inform new buildings being connected to the Chilled Water System of the design pressure drop requirements based on system hydraulic models; and
  - ii. Verify and maintain system flow velocities according to design standards.
- b) The Concessionaire shall stress analyze main Chilled Water System distribution piping when subject to ambient temperatures over 100 degrees, including certain of those located in Tunnels.
- c) The Concessionaire shall cause the Chilled Water System to adhere to the following chilled water pipe velocity limits:
- i. Piping (existing) to be limited to 11 feet per second (“fps”) at peak flow;
  - ii. Piping (new) to be installed at 7.5 fps at peak flow for headers;
  - iii. Follow American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (“ASHRAE”) 90.1 guidelines for peak flow of branch lines; and
  - iv. New and existing HDPE piping velocity at peak flow shall not exceed manufacturer’s burst pressure in the event of sudden velocity changes.
- d) When chilled water distribution piping is not placed in a Tunnel or trench box, it shall be direct buried.
- e) The Concessionaire shall follow the Utility Service Connection and Inspection Standard in Appendix H and associated construction inspection matrix and jurisdictional agreements with Ohio Division of Industrial Compliance.

**7) Unplanned Outage**

- a) An Unplanned Outage for the Chilled Water System shall mean the occurrence of one of the following:
  - i. Chilled water supply temperature exceeds 44.5 degrees at any of McCracken Power Plant, South Campus Central Chiller Plant and East Regional Chilled Water Plant for 10 continuous minutes or more or 30 cumulative minutes in any 60 minute period;
  - ii. Chilled water supply is interrupted to a building due to a closed or inoperable distribution valve, leakage, pipe failure, or other system failure;
  - iii. Pressure of chilled water header supply drops below 40 psig at the South Campus Central Chiller Plant, the McCracken Power Plant or the East Regional Chilled Water Plant for more than 10 minutes; or
  - iv. The Concessionaire fails to provide sufficient notice for such outage to be a Planned Outage.
  
- b) The Concessionaire shall meet or improve upon historical averages for Chilled Water Unplanned Outages including:
  - i. No more than 26 Unplanned Outages per Fiscal Year; and
  - ii. No more than 187 lost customer connection hours (defined as duration of the outage in hours multiplied by the number of buildings affected by the outage) per Fiscal Year.
  
- c) Intentionally omitted.
  
- d) If an Unplanned Outage for the Chilled Water System occurs which causes a loss of service to a portion of the Utility System, the Concessionaire shall promptly and diligently, including 24-hour a day service, commence active work, regardless of potential delay by others, to correct the Chilled Water Unplanned Outage and restore service; unless otherwise approved by the University in its sole discretion.
  
- e) If operational issues occur that result in a high loop temperature event (greater than 44.5 degrees for 10 minutes) for the Chilled Water System, the Concessionaire shall:
  - i. Notify Service2Facilities;
  - ii. Notify Medical Center Operations, if such Chilled Water Unplanned Outage occurs at the South Campus Central Chiller Plant;
  - iii. Begin necessary corrective action; and

- iv. Provide updates every 60 minutes to Service2Facilities if incident exceeds 60 minutes or more.

## **8) Redundancy**

- a) Where possible, the Concessionaire shall maintain an N+1 level of redundancy for the Utility System Assets that make up the Chilled Water System. “N+1” is defined as the ability to meet seasonal peak load assuming the largest capacity Utility System Asset of the Chilled Water System is non-functional.
- b) If the Chilled Water System is below an N+1 level of redundancy, the Concessionaire shall promptly and diligently commence active work to correct the loss of system reliability within 48 hours.
- c) The Concessionaire shall maintain standby generators, or other backup equipment approved by the University, at Smith Substation and McCracken Power Plant with the ability to produce 6,100 kilowatts allocated to the Steam and Condensate System or the Chilled Water System, depending on seasonal requirements, or as directed by the University during a power outage. The University has the right to increase such requirement in its reasonable discretion, which shall be deemed a modification of these Performance Standards under Section 6.3(a) of the Concession Agreement.
- d) The Concessionaire shall maintain standby generators, or other backup equipment approved by the University, at the Generator Plant and the ability to produce 4,500 tons of Emergency chilled water capacity at the South Campus Central Chiller Plant. The University has the right to increase such requirement in its reasonable discretion, which shall be deemed a modification of these Performance Standards under Section 6.3(a) of the Concession Agreement.
- e) The Concessionaire shall perform biennial black start testing of the South Campus Central Chiller Plant and generators and building chilled water load shedding systems that make up the Chilled Water System. The date and time of each test shall be discussed with the University and agreed upon no less than 30 days in advance of such test.

## **9) Water Quality**

- a) The Concessionaire shall prepare a chemical and water treatment plan, as part of the Operations Plan, which shall cover the Chilled Water System and the Geothermal System. Such plan shall cover frequency and validation of measurement and testing as well as the following items at a minimum:
  - i. Scale and corrosion;
  - ii. Excessive reversion of polyphosphate to orthophosphate;
  - iii. Microbiological control;

- iv. Copper corrosion;
- v. Maintaining closed loop water chemistry of nitrite and Adenosine Triphosphate (“ATP”);
- vi. Cooling tower and condenser water:
  - 1. Scale and corrosion inhibitor;
  - 2. Bleach or other biocide;
  - 3. Monitor and maintain cooling tower cycles in the range of 5 to 8 cycles as necessary to keep heat transfer services clean while minimizing water usage; and
  - 4. Legionella testing twice per Fiscal Year on six cooling tower systems, and a cooling tower in each plant must be part of such test.
- b) The Concessionaire shall comply with the Legionella Exposure Control Plan provided in Appendix I as well as risk analysis required by ASHRAE 188.
- c) The Concessionaire shall require the chilled water systems in a new building that is to be connected to the Chilled Water System to be flushed and treated to central plant standards by the building owner or construction team before connecting to the Chilled Water System.
- d) The Concessionaire shall review and approve new building chilled water flush and startup plans per the Chilled Water Construction Checklist provided in Appendix H.

## **Part IV - PERFORMANCE STANDARDS – STEAM AND CONDENSATE SYSTEM**

### **1) Temperature Requirements**

- a) The Concessionaire shall operate steam boilers to produce superheated steam at nominal 600 degrees, as measured at the super heater outlet temperature transmitter.
- b) The Concessionaire shall maintain and operate the heating and hot water skid 24 hours a day, 365 days a year at the East Regional Chilled Water Plant. It shall be operated according to the following reset schedule:
  - i. If the outside ambient temperature is 40 degrees or greater, the supply temperature shall be 120 degrees;
  - ii. If the outside ambient temperature is between 0 and 40 degrees, the supply temperature shall increase on a linear proportionate basis up to 180 degrees, such that, for example purposes only, if the outside ambient temperature is 20 degrees, the supply temperature shall be 150 degrees; and
  - iii. If the outside ambient temperature is less than or equal to 0 degrees, the supply temperature shall be 180 degrees.
- c) The Concessionaire must ensure that every building connected to the Steam and Condensate System shall receive superheated steam, measured at the furthest point from McCracken Power Plant, which are currently the following locations:
  - i. Veterinary Medical Center;
  - ii. Brain and Spine Hospital (300 W. 10th Avenue); and
  - iii. Ohio Union.

### **2) Pressure Requirements**

- a) The Concessionaire shall ensure that central steam in the Steam and Condensate System is maintained at 180-190 psig measured at PIC-960 or PIC160 at McCracken Power Plant.
- b) The Concessionaire shall ensure that central steam in the Steam and Condensate System is maintained at 135 psig or higher at
  - i. Veterinary Medical Center;
  - ii. Brain and Spine Hospital (300 W. 10th Avenue); and
  - iii. Ohio Union.

- c) The Concessionaire shall ensure that the vacuum condensate return system is continuously operated at not less than -4” Hg vacuum.

### **3) Line of Demarcation between Concessionaire and University**

- a) Except as otherwise described herein, the line of demarcation for the Steam and Condensate System is depicted in Appendix L4 (which includes separate diagrams for Typical Building Steam Service; Central Steam Distribution + District Steam Distribution; Central Steam + District Heating Hot Water Distribution). Appendix L4 serves as a representative diagram of the Steam and Condensate System. For line of demarcation between the tunnel system and the utility piping system, see Appendix Z. See also Appendix K4 for a map of the Steam and Condensate System.
- b) Appendix L4 denotes those portions of the Steam and Condensate System for which the Concessionaire will have full responsibility for Operation and Maintenance (“O & M”) and for capital expenditures for upgrades and changes (“Capital Expenditures”) and those portions of the Steam and Condensate System for which the Concessionaire will have responsibility for Capital Expenditures but for which the University will retain responsibility for the O & M (herein referred to as “Capital Only”). Except as otherwise described herein and as depicted in Appendix L4, the Concessionaire shall be responsible for Capital Expenditures and O&M for the Steam and Condensate System to the building isolation valves of the steam metering assembly. For Steam and Heating Hot Water district systems, the Concessionaire shall be responsible for Capital Only from the steam metering assembly to the to the satellite building metering assembly. The Concessionaire shall have responsibility for Capital Expenditures and O & M for all meter assemblies within the Steam and Heating Hot Water district systems.
- c) The Steam and Condensate System shall include, for rinse and regeneration water, the sewer manhole / sewer hub in Water Treatment Annex. The Concessionaire shall comply with discharge control procedure when the Olentangy Scioto Interceptor Sewer (OSIS) sewer is surcharged.
- d) The Concessionaire shall be responsible for chemical treatment in the Utility Facilities.

### **4) Metering**

- a) The Concessionaire shall purchase, install, maintain, and operate building steam smart meters in accordance with the requirements set forth in the Concession Agreement and as further outlined herein.
  - i. The Concessionaire shall ensure the meters are accurate and calibrated to the manufacturer’s recommendations.
  - ii. During the smart meter implementation period, the Concessionaire shall: provide the University with all information from the Concessionaire-

installed smart meter readings, in a format prescribed by the University and in manner that allows the University to maintain, without interruption, the University's then-current internal system for usage recording and billing. The Concessionaire-installed smart meters must be read at consistent intervals and at least every 25 to 35 days, throughout the smart meter implementation period.

- b) As part of the Operations Plan, the Concessionaire shall include a plan to ensure metering accuracy and a metering accountability for such meters that are part of the steam portion of the Steam and Condensate System. For the avoidance of doubt, the Concessionaire shall adhere to all requirements set forth in Division 33 of the Design Standards, for flow, pressure, and temperature accuracy.
- c) The Concessionaire shall either continue to use the existing Instep System or use metering software of its choosing, subject to the Approval of the Annual Budget by the University. In either case, the Concessionaire shall provide the University reasonable access to view the real-time meter data upon request.
- d) The Concessionaire shall ensure electronic metering occurs at a minimum of one minute intervals.
- e) The Concessionaire shall maintain accurate software, monthly meter data, and billing.
- f) The Concessionaire shall ensure that all new building connections to the Steam and Condensate System are metered using networked smart meters meeting the specifications set forth in the Concession Agreement.
- g) Plant production meters
  - i. Production meters for the Steam and Condensate System must be in service when equipment is operating, functioning properly and reporting to a data system readily accessible by the University. If a primary production meter fails, the first meter downstream of the primary production meter shall be used. Failed primary meters must be replaced within 1 Business Day after such failure.
  - ii. Historical data on plant production meters shall be maintained in 1-minute intervals and readily accessible for the University's review. Raw 1-minute data shall be recorded in a database that cannot be edited by the Concessionaire. The Concessionaire shall allow the University to poll the 1-minute data daily via an "open database connectivity" connection for long term storage. Data will be time stamped with the date, hour (in 24 hr. format), and minute.
  - iii. Meters shall be calibrated yearly and maintained in accordance with the manufacturer's recommendations. Calibrations shall be completed using a calibrator with a NIST traceable calibration certificate that is no more than

365 days old. The Concessionaire shall notify the University 3 Business Days in advance of meter calibration and allow the University to observe the calibration procedure. For PIC160/960, all 8 steam pressure transmitters must be calibrated yearly.

**5) Efficiency**

- a) The Concessionaire shall ensure that each boiler maintain a fuel factor of 1.41 mmBtu/mlb of exported steam measured at the boiler outlet.
- b) The Concessionaire shall ensure that the Steam and Condensate System has more than fifty (50) blowdown cycles, calculated based on measured concentrations.
- c) The Concessionaire shall ensure that the water recovery rate from the reverse osmosis treatment system is 75% or greater.
- d) The Concessionaire shall operate the Steam and Condensate System in a manner to ensure reliability as well as optimization of energy and conservation of natural resources. The Concessionaire shall use commercially reasonable efforts to continuously improve the operating efficiency and use of resources including water for the Steam and Condensate System.

**6) Design Standards**

- a) The Concessionaire shall maintain and keep up to date an accurate Steam and Condensate System hydraulic models, which may be KY Pipe or other similar modeling software, in order to:
  - i. Inform new buildings being connected to the Steam and Condensate System of the design pressure drop requirements based on system hydraulic models; and
  - ii. Verify and maintain system flow velocities.
- b) The Concessionaire shall adhere to the following pipe velocity limits for the Steam and Condensate System:
  - i. Existing piping headers and branches for the steam portion of the Steam and Condensate System to be limited to 180 and 220 fps respectively at peak flow;
  - ii. New piping headers and branches for the steam portion of the Steam and Condensate System to be installed at 150 and 200 fps respectively at peak flow;
  - iii. Existing piping headers for the condensate portion of the Steam and Condensate System to be limited to 11 fps at 80% load;

- iv. Existing condensate branch lines to be limited to 11 fps at 150% load;
  - v. New piping headers for the condensate portion of the Steam and Condensate System to be installed at 7.5 fps at 80% load; and
  - vi. New branch lines for the condensate portion of the Steam and Condensate System to be installed at 9 fps at 150% load.
- c) Steam distribution lines shall be located in a walkable Tunnel when paired with chilled water distribution lines and located in part of a main utility corridor, unless otherwise approved by the University in advance.
  - d) Steam distribution lines not located in a Tunnel shall be located in a trench box.
  - e) The Concessionaire shall follow the Utility Service Connection and Inspection Standard in set forth in Appendix H including the associated construction inspection matrix, and jurisdictional agreements with Ohio Division of Industrial Compliance.

## 7) **Unplanned Outage**

- a) An Unplanned Outage for the Steam and Condensate System shall mean the occurrence of one of the following:
  - i. Steam pressure at McCracken Power Plant is less than 100 psig for one-minute or more;
  - ii. Steam supply is interrupted to a building due to a closed or inoperable distribution valve, leakage, pipe failure, or other system failure;
  - iii. The Concessionaire fails to provide sufficient notice for such outage to be a Planned Outage;
  - iv. The Concessionaire fails to maintain a Minimum Condensate Return Percentage equal to or better than 39.10%; or
  - v. The heating skid in the East Regional Chilled Water Plant is more than 5 degrees below set point for 60 minutes.
- b) The Concessionaire shall meet or improve upon historical averages for Unplanned Outages of the portion of the Steam and Condensate System that generates and distributes steam (the “Steam System”) including:
  - i. 10.3 Unplanned Outages per Fiscal Year; and
  - ii. 1178 lost customer connection hours (defined as duration of the outage, in hours, multiplied by the number of buildings affected by the outage) per Fiscal Year.

- c) If an Unplanned Outage of the Steam System occurs, which causes a loss of service to a portion of the Utility System, the Concessionaire shall promptly and diligently, including 24-hour a day work, commence active work, regardless of potential delay by others, to correct the Unplanned Outage and restore service; unless otherwise approved by the University in its sole discretion.
- d) In the case of an Unplanned Outage of the Steam System, the Concessionaire shall notify Service2Facilities and provide updates every 60 minutes if the outage exceeds 60 minutes or more.

**8) Redundancy**

- a) Where possible, the Concessionaire shall maintain an N+1 level of redundancy for the Utility System Assets that make up the Steam and Condensate System. “N+1” is defined as the ability to meet seasonal peak load assuming the largest capacity Utility System Asset of the Steam and Condensate System is non-functional.
- b) If the Steam and Condensate System is below an N+1 level of redundancy, the Concessionaire shall promptly and diligently commence active work to correct the loss of system reliability within 48 hours.
- c) The Concessionaire shall ensure that at least two out of the three steam lines to the Medical Center are always in service.
- d) The Concessionaire shall maintain standby generators, or other backup equipment approved by the University, at Smith Substation and McCracken Power Plant with the ability to produce 6,100 kilowatts allocated to the Steam and Condensate System or the Chilled Water System, depending on seasonal requirements, or as directed by the University during a power outage. The University has the right to increase such requirement in its reasonable discretion, which shall be deemed a modification of these Performance Standards under Section 6.3(a) of the Concession Agreement.
- e) The Concessionaire shall perform biennial simulated black start testing of Smith Substation and McCracken Power Plant generators, South Campus Central Chiller Plant generators, and McCracken Power Plant process load shedding systems. The date and time of each test shall be discussed with the University representative and agreed upon no less than 30 days in advance of such test.
- f) The Concessionaire shall perform biennial simulated black start testing of McCracken Power Plant boilers on fuel oil, using propane and compressed air atomization for startup. The date and time of each test shall be discussed with the University representative and agreed upon no less than 30 days in advance of such test.
- g) Concessionaire shall include a chemical treatment plan for the Steam and Condensate System, as part of the Operations Plan. Such plan shall cover

frequency and validation of measurement and shall adhere to ASME boiler water quality standards.

- h) Concessionaire shall also include pretreatment standards as part of the Operations Plan, which shall include standards for:
  - i. Conductivity and hardness limits from water treatment plan; and
  - ii. Oxygen removal de-aerators.
- i) Amine or other chemical injection into the steam and condensate system shall not be allowed without express written consent of the University.
- j) Concessionaire shall adhere to American Society of Mechanical Engineers boiler water quality standards.

**9) Fuel Procurement, Operations and Storage**

- a) The Concessionaire shall maintain minimum on site storage of 408,000 gallons of fuel oil. The University has the right to increase or decrease such requirements in its reasonable discretion, which shall be deemed a modification of these Performance Standards.
  - i. Fuel oil shall have a sulfur content of less than 0.05% by weight, be premium diesel, ultra-low sulfur, suitable for use as either boiler or generator fuel.
  - ii. Each shipment of fuel oil received by the Concessionaire shall be sampled and analyzed for net and gross heat content in Btu/gal and Btu/lb by ASTM Method D4809, sulfur content in weight % by ASTM Method D4294, density in lb/gal and specific gravity by EPA Method D1298. Other methods may be acceptable if approved by the EPA. Records of analysis shall be maintained in accordance with University policy and applicable Law.
- b) The Concessionaire shall sample and analyze fuel oil in accordance with the requirements of all applicable environmental permits.

**10) Boiler water storage**

- a) The Concessionaire shall maintain minimum on-site storage of 80,000 gallons of treated water as an Emergency supply.

## Part V - PERFORMANCE STANDARDS – ELECTRIC SYSTEM

### 1) Power Requirements

- a) Concessionaire shall ensure that the Electric System maintains:
  - i. Voltage: +6%/- 5% of nominal per American National Standards Institute (“ANSI”) C84.1- 1989 (or newer);
  - ii. Building transformer de-energized tap changers to deliver specified voltage;
  - iii. OSU Substation and Smith Substation transformer load tap changers shall deliver 7875 volts, with a variance of 70 volts on a 30-second time delay, as measured line to neutral;
  - iv. West Campus Substation transformer load tap changers shall deliver 7980 volts, with a variance of 70 volts on a 30-second time delay, as measured line to neutral; and
  - v. 0.95 minimum power factor at the substation buses.
- b) The Concessionaire shall operate and maintain the Electric System such that it is configured for building load and meets redundancy requirements as set forth herein.
- c) The Concessionaire shall operate and maintain the Electric System such that it meets the following power quality requirements:
  - i. For harmonic distortion, comply with IEEE 519 requirements; and
  - ii. For voltage sag or swell events, investigate any such event and minimize internal system disruption.

### 2) Line of Demarcation; Concessionaire, University, and AEP

- a) Except as otherwise depicted in Appendix L and L1 (Campus Electrical System Single-Ended Sub Station and Campus Electrical System Double-Ended Sub Station), the line of demarcation for the Electric System shall be the secondary main breaker of the building service transformer including duct banks, manholes, and vaults and, where there is a double ended substation, the tie breaker will be included.
- b) Except as otherwise depicted in Appendix L and L1, the line of demarcation for the Electric System shall be up to the 138 kV air break switch on the American Electric Power, Inc. (“AEP”) side of the circuit switcher.

- i. AEP operates under an easement from the University and maintains its own equipment and the substation grounding mat.
  - ii. Sight perimeter walls, access and drainage systems and the SPCC Plan shall be included as part of the Electric System.
- c) The Concessionaire shall review and assume the current University role in complying with the operating, interlocking, and station service arrangements between the University and AEP outlined in, “Lines of Demarcation for the MV Distribution System” provided in Appendix L and L1.
- d) Where the physical line of demarcation within the Electric System is not set forth herein, or is not otherwise apparent, the line of demarcation shall be located on the low voltage side of the relevant building or structure transformer.

### **3) Metering**

- a) The Concessionaire shall purchase, install, maintain, and operate building electric smart meters in accordance with the requirements set forth in the Concession Agreement and as further outlined herein.
  - i. The Concessionaire shall be responsible for operation and maintenance of any power quality support equipment within the Electric System and which is located outside of a University building.
  - ii. The Concessionaire shall ensure the meters are accurate and calibrated to the manufacturer’s recommendations.
  - iii. During the smart meter implementation period, the Concessionaire shall: provide the University with all information from the Concessionaire-installed smart meter readings, in a format prescribed by the University and in manner that allows the University to maintain, without interruption, the University’s then-current internal system for usage recording and billing. The Concessionaire-installed smart meters must be read at consistent intervals and at least every 25 to 35 days, throughout the smart meter implementation period.
  - iv. The Concessionaire shall provide to the University all information obtained from meter readings during the smart meter implementation period, in a format prescribed by the University.
- b) As part of the Operations Plan, Concessionaire shall include a plan to ensure metering accuracy and a metering accountability metric for such meters that are part of the Electric System. For the avoidance of doubt, the Concessionaire shall adhere to all requirements for metering and meter accuracy set forth in Appendix O, Division 337000 – Electrical Utilities Metering of the Design Standards.

- c) The Concessionaire shall either continue to use the existing Instep System or use metering software of its choosing, subject to the Approval of the Annual Budget by the University. In either case, the Concessionaire shall provide the University reasonable access to view the real-time meter data at its discretion. The current data uplink from the Schneider Electric SE licensed software program that the University uses to acquire, monitor and maintain electrical performance data for the electrical feeds within the Utility System (“ION System”) to the Instep System will be maintained by the Concessionaire.
- d) The Concessionaire shall ensure electronic metering occurs at a minimum of 1 minute intervals.
- e) The Concessionaire shall maintain accurate software, monthly meter data, and billing.
- f) The Concessionaire shall ensure that all future building connections to the Electric System are metered using networked smart meters meeting the specifications set forth in the Concession Agreement.
- g) Substation and campus feeder meters.
  - i. Main substation and campus electrical feeder meters that are part of the Electric System must be in service when equipment is operating, functioning properly and reporting to a data system accessible by the University. See Appendix S for a list of main substation and campus electrical feeder meters.
  - ii. Historical data on main substation and campus electrical feeder meters shall be maintained in 1 minute intervals and accessible for University review via a web client.
  - iii. Main substation and campus electrical feeder meters shall have event capture capability and store wave form level detail during periods of electrical disturbance.
  - iv. Meters shall be maintained in accordance with manufacturer’s recommendations and ANSI C12.20 class accuracy with bidirectional full four quadrant energy metering.

**4) Design Standards**

- a) The Concessionaire shall adhere to the University’s Design Standards and all legal requirements for the Electric System including but not limited to IEEE and NFPA.
- b) The Concessionaire shall follow the Primary Electrical Service Policy in Appendix M and associated construction inspection matrix and jurisdictional agreements with Ohio Division of Industrial Compliance.

- c) The Concessionaire is prohibited from installing, constructing or using above grade transmission and distribution lines.

## **5) Unplanned Outage**

- a) An Unplanned Outage for the Electrical System shall mean the occurrence of one of the following:
  - i. A distribution feeder breaker, building transformer failure, primary fuse or primary switch opens and interrupts service to a building connected to the Electric System; or
  - ii. The Concessionaire fails to provide sufficient notice for such outage to be a Planned Outage.
- b) The Concessionaire shall meet or improve upon historical averages for Unplanned Outages of the Electric System including:
  - i. 6.84 Unscheduled Outages per Fiscal Year; and
  - ii. 98 lost customer connection hours (defined as duration of the outage in hours times the number of buildings affected by the outage).
- c) If an Unplanned Outage of the Electric System occurs which causes a loss of service, the Concessionaire shall promptly and diligently, including 24-hour a day work, commence active work to correct the Unplanned Outage and restore service, regardless of potential delay by others. Concessionaire shall restore service in accordance with the priority lists provided in Appendix R, as that list may be updated from time to time. Such updates shall be deemed a modification under Section 6.3(a) of the Concession Agreement.
- d) During an Unplanned Outages of the Electric System, the Concessionaire shall follow the Emergency Response and Switching plans provided in Appendix N.
- e) In the case of an Unplanned Outage of the Electric System, the Concessionaire shall notify Service2Facilities and provide updates every 60 minutes if the outage exceeds 60 minutes or more.
- f) The Concessionaire shall communicate with the University when it becomes aware of an AEP line or service feed that is out of service and is impacting any University facilities.

## **6) Redundancy**

- a) Concessionaire shall operate the Electric System such that a single primary electrical power component outage shall result in a prolonged outage to no more than one service connection.

- b) Where possible, the Concessionaire shall maintain an N+1 level of redundancy for the Utility System Assets that make up the Electric System. “N+1” is defined as the ability to meet seasonal peak load assuming the largest capacity Utility System Asset of the Electric System is non-functional.
- c) If the Electric System is below an N+1 level of redundancy, the Concessionaire shall promptly and diligently commence active work to correct the loss of system reliability within 48 hours.
- d) Each component of the Electric System shall have at least one independent backup.
  - i. For each substation in the Electric System, maximum capacity shall be met with the loss of a single transformer or bus.
  - ii. For distribution feeders in the Electric System:
    - 1. Buildings must be assigned a normal and alternate feed; and
    - 2. Feeder loading shall be according to Electrical Design Guidance found in Appendix O.
  - iii. For building service substations in the Electric System, they shall be in a main-tie-main configuration for critical facilities such as hospitals, research facilities and larger stadiums and may be single-ended for non-critical facilities.
  - iv. For the following central utility plants, the Concessionaire must adhere to the redundancy requirements in Division 48 – Power Plant Electrical Utilities of the Design Standards:
    - 1. McCracken Power Plant;
    - 2. South Campus Central Chiller Plant;
    - 3. East Regional Chilled Water Plant;
    - 4. West Campus Substation;
    - 5. Water Plant;
    - 6. Smith Substation;
    - 7. OSU Substation; and
    - 8. Generator Plant.

**7) Distribution System Switching**

- a) The Concessionaire shall maintain circuit and equipment loading guidelines for the Electric System, as specified in the Electrical Design Guidance located in Appendix O.
- b) The Concessionaire shall provide switching for planned maintenance or construction outages for the Electric System. Switching shall result in no unplanned interruption to the University.
- c) Switch loading for the Electric System shall be done as required to comply with the following load limits:
  - i. Bus limits;
  - ii. Transformer load limits; and
  - iii. Feeder loading limits.
- d) The Concessionaire shall provide low voltage switching and support for building outages.
- e) As requested by the University for planning/design, for the duration of construction of new facilities on the Columbus Campus, the Concessionaire shall provide construction power and support which shall include;
  - i. Metering;
  - ii. Inspection of primary electrical service; and
  - iii. Other items described in the Primary Electrical Service Policy document referenced in Appendix M.

**Part VI - PERFORMANCE STANDARDS – NATURAL GAS SYSTEM**

**1) Natural Gas Quality**

- a) The Concessionaire shall ensure the Natural Gas System meets the following pressure requirements:

<u>NM#</u>	<u>System Description</u>	<u>psig</u>
2	Main Campus - 6 psig System	5
3	Main Campus - 18 psig System	18
4	South Medical Center System	17
5	Midwest System	20
6	Kenny Road System	6
7	Buckeye Village System	18
8	Carmack System (West)	2
9	Kinnear Road System	13

**2) Line of Demarcation; Concessionaire, University, and Columbia Gas**

- a) Except as otherwise depicted in Appendix L2 (Natural Gas Service), the line of demarcation for the Natural Gas System shall be the building envelope and the Natural Gas System shall include all natural gas building meters regardless of their location. Notwithstanding the above, the University retains the right to operate the building isolation valves for the purposes of conducting scheduled maintenance and as otherwise needed.
  - i. The Natural Gas System shall include the downstream side of the public utility master meter pressure regulator for natural gas feeds.
- b) Where the physical line of demarcation within the Natural Gas System is not set forth herein, or is not otherwise apparent, the line of demarcation shall be located within 2 feet of the interior of the relevant building or structure.

**3) Metering**

- a) The Concessionaire shall purchase, install, maintain, and operate natural gas smart meters for facilities connected to the Natural Gas System in accordance with the requirements set forth in the Concession Agreement and as further outlined herein. In addition, Concessionaire shall ensure that, any complex of University facilities served by Columbia Gas shall be sub-metered. Please refer to Appendix T for a list of existing natural gas master meters for the Natural Gas System.
  - i. The Concessionaire shall ensure the meters are accurate and calibrated to the manufacturer’s recommendations;
  - ii. During the smart meter implementation period, the Concessionaire shall: provide the University with all information from the Concessionaire-

installed smart meter readings, in a format prescribed by the University and in manner that allows the University to maintain, without interruption, the University's then-current internal system for usage recording and billing. The Concessionaire-installed smart meters must be read at consistent intervals and at least every 25 to 35 days, throughout the smart meter implementation period; and

- iii. The Concessionaire shall provide to the University all information obtained from meter readings during the smart meter implementation period, in a format prescribed by the University.
- b) As part of the Operations Plan, Concessionaire shall include a plan to ensure metering accuracy and a metering accountability metric for such meters that are part of the Natural Gas System. For the avoidance of doubt, the Concessionaire shall adhere to all requirements set forth in the Design Standards for flow, pressure, and temperature accuracy.
- c) The Concessionaire shall either continue to use the existing Instep System or use metering software of its choosing, subject to the Approval of the Annual Budget by the University. In either case, the Concessionaire shall provide the University reasonable access to view the real-time meter data at its discretion.
- d) The Concessionaire shall maintain accurate software, monthly meter data, and billing.
- e) The Concessionaire shall ensure that all future building connections to the Natural Gas System are metered using networked smart meters meeting the specifications set forth in the Concession Agreement.

#### **4) Design Standards**

- a) Except as otherwise set forth in the Concession Agreement the Concessionaire shall diligently continue the University's ongoing utility system project to relocate natural gas distribution piping outside of walkable Tunnels and branch Tunnels.
- b) The Concessionaire shall follow the Utility Service Connection and Inspection Standard in Appendix H and associated construction inspection matrix and jurisdictional agreements with Ohio Division of Industrial Compliance.

#### **5) Compliance with Public Utility Commission of Ohio ("PUCO") Regulations**

- a) For the Natural Gas System, the Concessionaire is required to comply with CFR part 191, 192 – *Transportation of Natural and other Gas by Pipeline: Minimum Federal Safety Standards*, as administered and enforced by PUCO.
- b) The Concessionaire shall update the Distribution Integrity Management Plan as require and as illustrated in Appendix P.

- c) The Concessionaire shall complete annual assessments of each master meter system and of the main gas line to the McCracken Power Plant and the gas line supplied from Godown Road. These assessments shall identify and address any correction action items and shall include the following items:
- i. Line location;
  - ii. Comprehensive leak test with the following definitions, performed once a Fiscal Year by a third party:
    1. Class One leaks shall be immediately repaired;
    2. Class Two leaks shall be repaired within 12 months from the time the leak was reported; and
    3. Class Three leaks shall be monitored and rechecked not less than annually.
  - iii. Review of operating pressures against maximum allowable operating pressure;
  - iv. Inspection and test of district pressure regulators;
  - v. Inspection and service of key valves;
  - vi. Cathodic protection voltage testing and condition assessment to maintain required voltages;
  - vii. Odorant testing and verification;
  - viii. Review and update of Emergency Procedures for Natural Gas Operations and Public Awareness Program, contained therein (see Appendix N);
  - ix. Review and update of Natural Gas Operations and Maintenance Manual (see Appendix Q); and
  - x. Review and update of Natural Gas Distribution Integrity Management Plan (see Appendix P).
- d) The Concessionaire shall provide the University prompt notice of leak detection on any reported leaks or Emergency calls. Such activity shall be in addition to annual comprehensive leak tests performed by the Concessionaire.

**6) Unplanned / Unscheduled Outage**

- a) An Unplanned Outage for the Natural Gas System shall mean the occurrence of one of the following:

- i. Natural gas supply is interrupted to a building due to a closed or inoperable distribution valve, leakage, pipe failure, or other system failure; or
    - ii. The Concessionaire fails to provide sufficient notice for such outage to be a Planned Outage.
  - b) The Concessionaire shall meet or improve upon historical averages for Unplanned Outages of the Natural Gas System including:
    - i. 3.2 Unscheduled Outages per Fiscal Year; and
    - ii. 155 lost customer connection hours (defined as duration of the outage in hours times the number of buildings affected by the outage) per Fiscal Year.
  - c) If an Unplanned Outage of the Natural Gas System occurs, which causes a loss of service to a portion of the Utility System, the Concessionaire shall promptly and diligently, including 24-hour a day work, commence active work, regardless of potential delay by others, to correct the Unplanned Outage and restore service.
  - d) The Concessionaire shall promptly perform a leak test on areas of the Natural Gas System affected by such Unplanned Outage before restoring service to a building.
  - e) In the case of an Unplanned Outage, the Concessionaire shall notify Service2Facilities and provide updates every 60 minutes if the outage exceeds 60 minutes or more.
  - f) The Concessionaire shall communicate with the University when it becomes aware of a Columbia Gas line or service feed that is out of service.

**7) Redundancy**

- a) Where possible, the Concessionaire shall maintain an N+1 level of redundancy for the Master Meter 2 and Master Meter 3. “N+1” is defined as the ability to meet seasonal peak load with the largest capacity Utility System Asset of such non-functional meter. See Appendix T for description of Natural Gas Master Meters.
- b) If a loss of system redundancy occurs the Concessionaire shall immediately (after arriving at the location of the source of the problem in the time specified) and diligently commence active work to correct the loss of reliability within 48 hours.

## Part VII - PERFORMANCE STANDARDS – GEOTHERMAL SYSTEM

### 1) Temperature, Flow and Quality Requirements

- a) Intentionally omitted.
- b) The Concessionaire shall ensure that the Geothermal System delivers water to the University at 2600 gallons per minute (GPM).
- c) The Concessionaire shall maintain water quality in the Geothermal System as follows: Conductivity (mmhos): 0 min; Iron (Fe): at or below 1 ppm; and Nitrite (NO<sub>2</sub>): between 500-1000 ppm.

### 2) Line of Demarcation Between Concessionaire and University

- a) The line of demarcation for the Geothermal System is as set forth herein and is further depicted in Appendix L5 (Geothermal System – Cooling and Geothermal System-Heating). Appendix L5 serves as a representative diagram of the Geothermal System. Further information regarding the Concessionaire’s responsibilities for maintaining portions of the Geothermal System located in or connected to Tunnels, can be found in Appendix Z. For line of demarcation between the tunnel system and the utility piping system, see Appendix Z.
- b) Appendix L5 denotes those portions of the Geothermal System for which Concessionaire will have full responsibility for Operation and Maintenance (“O&M”) and for capital expenditures for upgrades and changes (“Capital Expenditures”) and those portions of the Geothermal System for which the Concessionaire will have responsibility for Capital Expenditures but the University will retain responsibility for the O&M (herein referred to as “Capital Only”). As depicted in Appendix L5, the Concessionaire’s responsibility for Capital Only in contrast to responsibility for Capital Expenditures and O&M is outlined as follows:
  - i. **Geothermal Heating System:** Concessionaire shall be responsible for Capital Expenditures and O&M for the geothermal well field and related distribution piping, up to and including, the isolation valves prior to the heat exchanger as well as for the supplemental steam and condensate distribution piping, up to and including, the heat exchanger meter assembly. The Concessionaire shall have Capital Only responsibility for the Geothermal System from the geothermal heat exchanger isolation valves to the building meter assemblies. The Concessionaire shall have Capital Only responsibility for the steam and heating hot water system from the heat exchanger meter assembly to the building meter assembly. The Concessionaire shall Capital Expenditure and O&M responsibility for all of the building meter assemblies.
  - ii. **Geothermal Cooling System:** The Concessionaire shall be responsible for Capital Expenditures and O&M for the geothermal well field and

distribution piping up to and including the isolation valves prior to the heat exchanger. The Concessionaire shall have Capital Only responsibility for the Geothermal System from the geothermal heat exchanger isolation valves to the building meter assemblies. The Concessionaire shall have Capital Expenditure and O&M responsibility for all building meter assemblies.

### **3) Metering**

- a) The Concessionaire shall purchase, install, and maintain networked smart meters for the Geothermal System meeting the specifications set forth in the Concession Agreement and as further outlined herein.
- b) Concessionaire shall ensure the meters are accurate and calibrated to the manufacturer's recommendations.
- c) As part of the Operations Plan, Concessionaire shall include a plan to ensure metering accuracy and a metering accountability metric for such meters that are part of the Geothermal System. For the avoidance of doubt, the Concessionaire shall follow guidelines set forth in Division 33 of the University's Design Standards for flow, pressure, and temperature accuracy.
- d) The Concessionaire shall either continue to use the existing Instep System or use metering software of its choosing, subject to the Approval by the University. In either case, the Concessionaire shall provide the University reasonable access to view the real-time meter data at its discretion.
- e) The Concessionaire shall maintain accurate software, monthly meter data, and billing.
- f) During the smart meter installation period, the Concessionaire shall provide the University with all information from the Concessionaire-installed smart meter readings, in a format prescribed by the University and in manner that allows the University to maintain, without interruption, the University's then-current internal system for usage recording and billing. The Concessionaire-installed smart meters must be read at consistent intervals and at least every 25 to 35 days, throughout the smart meter implementation period.
- g) The Concessionaire shall ensure that all future building connections to the Geothermal System are metered using networked smart meters meeting the specifications set forth in the Concession Agreement.

### **4) Efficiency**

- a) Intentionally omitted.
- b) Intentionally omitted.

- c) The Concessionaire shall monitor the quality and chemically treat the Geothermal System well field loop water to maintain system efficiency (inclusive of flow, temperature and quality).

## **5) Unplanned / Unscheduled Outage**

- a) An Unplanned Outage for the geothermal well field system shall mean the occurrence of one of the following:
  - i. The geothermal well field return temperature exceeds 85 degrees F. for more than 15 minutes or more, or 30 cumulative minutes in any 60 minute period, not including the first 15 minutes during initial startup;
  - ii. The geothermal well field loop pressure drops below 18 psifor 1 hour;
  - iii. The geothermal well field pumping system is unable to maintain the 2600 GPM set point for more than 15 minutes, or more than 30 cumulative minutes in any 60 minute period, not including the first 15 minutes during initial startup; or
  - iv. The Concessionaire fails to provide sufficient notice for such outage to be considered a Planned Outage.
- b) If there is a leak causing an Unplanned Outage of the geothermal well field, the Concessionaire shall promptly investigate, locate and repair such leak.
- c) Concessionaire shall notify the University if the well filed loop pressure drops below 18 psi for one hour or the makeup valve is open for more than 4 hours.
- d) If an Unplanned Outage of the Geothermal System occurs which causes a loss of service, the Concessionaire shall promptly and diligently, including 24-hour a day work, commence active work, regardless of potential delay by others, to correct the Unplanned Outage and restore service, unless otherwise approved by the University in its sole discretion.

## **6) Redundancy**

- a) Where possible, the Concessionaire shall maintain an N+1 level of redundancy for the Utility System Assets that make up the Geothermal System. "N+1" is defined as the ability to meet seasonal peak load assuming the largest capacity Utility System Asset of the Geothermal System is non-functional. Maintaining N+1 redundancy does not include accounting for supplemental heating or cooling by using steam from the main campus distribution or cooling towers or any other comparable method in the future.
- b) If the Geothermal System is below an N+1 level of redundancy, the Concessionaire shall promptly and diligently commence active work to correct the loss of system reliability within 48 hours.

## LIST OF APPENDICES

- Appendix A - Standard Operating Procedures for Surveying and Utility Marking
- Appendix B - Emergency Support Function #12
- Appendix C - Utility Outage Procedures
- Appendix D - FOD Emergency Operations Plan
- Appendix E - Asbestos Abatement Scope of Work
- Appendix F - Design Standards
- Appendix G - Building Connection Basis of Design
- Appendix H - Utility Service Connection and Inspection Standards
- Appendix I - Legionella Exposure Control Plan
- Appendix J - Reserved
- Appendix K - Utility Maps
- Appendix K1 - Electric
- Appendix K2 - Natural Gas
- Appendix K3 - Chilled Water
- Appendix K4 - Steam and Condensate
- Appendix K5 - Geothermal
- Appendix L - Line of Demarcation
- Appendix L1 - Electric
- Appendix L2 - Natural Gas
- Appendix L3 - Chilled Water
- Appendix L4 - Steam and Condensate
- Appendix L5 - Geothermal
- Appendix L6 - Reserved
- Appendix M - Primary Electrical Service Policy
- Appendix N - Emergency Response and Switching Plans  
Emergency Switching Procedures  
FOD Electrical Power Outage  
Emergency Procedures for Natural Gas system Operations
- Appendix O - Electrical Design Guidance

- Appendix P - Natural Gas Distribution Integrity Management Plan
- Appendix Q - Natural Gas Operations and Maintenance Manual
- Appendix R - Restoration Priority List
- Appendix S - Main Substation and Campus electrical Feeder Meters
- Appendix T - Natural Gas Master Meters
- Appendix U - Reserved
- Appendix V - Energy Conservation Measures Protocol and Flow Chart
- Appendix W - Capital Improvements and Material Changes Protocol and Flow Chart
- Appendix X - Communication Systems and Information System Technology Protocol
- Appendix Y - Comprehensive University Pavement and Public Way Management Protocol
- Appendix Z - Tunnel Joint Use Protocol and Standards

## **SCHEDULE 3**

### **UTILITY FACILITIES, UTILITY SYSTEM LAND AND UTILITY SYSTEM ASSETS**

#### Table of Contents:

Part I	Personal Property
Part II	McCracken Power Plant
Part III	South Campus Central Chiller Plant
Part IV	East Regional Chilled Water Plant
Part V	OSU Substation
Part VI	Smith Substation
Part VII	West Campus Substation
Part VIII	Water Treatment Plant
Part IX	Gashouses
Part X	Generator Plant
Part XI	Trench-Boxes and Vaults
Part XII	Additional Fixtures / Improvements / Equipment

## SCHEDULE 5

### UTILITY FEE

#### ***Calculation of Utility Fee***

The Utility Fee for any given Fiscal Year shall be calculated as follows: (i) the Fixed Fee, *plus* (ii) Return on Equity Factor multiplied by 0.5 multiplied by the Variable Fee Component *plus* (iii) Cost of Debt Factor multiplied by 0.5 multiplied by the Variable Fee Component *plus* (iv) the Capital Recovery Amount *plus* (v) the Operating Fee.

The Parties acknowledge that the purpose of the formula to calculate the Utility Fee is to approximate a reasonable and market rate to be paid by the Concessionaire for the Utility Services commensurate of what would be paid for such services in the applicable market and is not intended to reflect Concessionaire's actual cost of debt, return on equity, return of capital, tax liability or similar items.

#### ***Abandoned Capital Improvements***

If any New Approved Capital Improvement Costs were included in the calculation of the Utility Fee in any Fiscal Year for a Capital Improvement that the University subsequently determines, in its reasonable discretion, that the Concessionaire has abandoned and does not ever intend to complete and bring into service for reasons other than a University Directive, a Delay Event, an Adverse Action or any other change in requirements by the University, those New Approved Capital Improvement Costs shall be removed from the Variable Fee Component and the Unrecovered Balance for each such Fiscal Year, and the Concessionaire shall promptly after receipt of notice of such determination recalculate the Utility Fee for such Fiscal Years resulting from the removal of such New Approved Capital Improvement Costs and pay to the University, within 30 Days of the determination by the Concessionaire, the difference between the Utility Fee actually paid by the University and the Utility Fee that the University would have paid if those New Approved Capital Improvement Costs had not been included.

#### ***Exhibit A***

Attached hereto as Exhibit A is an illustrative mathematical explanation and example of the Utility Fee formula, which, in the event of a conflict between Exhibit A and such formula, the formula set forth above shall control.

#### ***Definitions***

“Capital Improvement Cost” shall mean the lesser of (i) the actual, out-of-pocket costs incurred by the Concessionaire in bringing a Capital Improvement into service, which may include insurance, incremental financing costs and bonding costs and (ii) the amount budgeted for such Capital Improvement in the University’s Approval therefor, which shall be increased by any reasonable, actual out-of-pocket costs incurred by the Concessionaire due to a Delay Event that were unavoidable for reasons outside the Concessionaire’s control, but excluding any amount budgeted for non-capital expenses with respect to such Capital Improvement, provided that, upon written request of the Concessionaire, the University shall have the right, in its sole discretion, to increase the Capital Improvement Cost by some or all of the amount that the actual out-of-pocket costs incurred for such Capital Improvement exceeds the amount Approved therefor.

“Capital Recovery Amount” shall mean the sum of the results of the following calculation, calculated separately for each New Approved Capital Improvement: (i) the New Approved Capital Improvement Costs incurred in the immediately prior Fiscal Year, *divided by* (ii) the Recovery Period for such New Approved Capital Improvement; which Capital Recovery Amount shall be included in each Fiscal Year’s Utility Fee thereafter until such time as the Unrecovered Balance for such New Approved Capital Improvement Costs equals \$0.

“Capped O&M Ceiling” shall mean 103.5% of the Capped O&M Index for an applicable Fiscal Year.

“Capped O&M Index” shall mean for the applicable Fiscal Year (i) the three-year arithmetic average of Capped O&M Costs for the 3 previous Fiscal Years, regardless of whether the University or the Concessionaire was operating the Utility System (provided that for the Fiscal Years in which the University operated the Utility System, the Capped O&M Costs shall be the costs incurred or accrued by the University that are analogous to the categories of the Capped O&M Costs), provided that (A) when calculating such arithmetic average for purposes of determining the Capped O&M Costs for a given Fiscal Year, such Fiscal Year’s Capped O&M Costs shall be multiplied by (I) the CPI Index in the given Fiscal Year *divided by* (II) the CPI Index in such previous Fiscal Year and (B) for purposes of calculating the Capped O&M Costs to be part of the three-year arithmetic average of Capped O&M Costs for the Capped O&M Index in a given Fiscal Year, the Capped O&M Costs for any Fiscal Year used in such calculation shall not exceed the Capped O&M Ceiling for that Fiscal Year, except that the University may, in its sole discretion, approve the inclusion of any Capped O&M Costs above the Capped O&M Ceiling in such calculation, *plus* (ii) the forecasted annual operations and maintenance costs for a New Approved Capital Improvement after it has been brought into service, to the extent included in the Approval for such New Approved Capital Improvement *plus* (iii) any other adjustments to the Capped O&M Index made pursuant to the Agreement. Notwithstanding the foregoing, the University and the Concessionaire hereby acknowledge and agree that, for purposes of calculating the Capped O&M Index, the Capped O&M Costs for the Fiscal Years ending June 30, 2015, June 30, 2016 and June 30, 2017 are deemed to be \$8,726,849, \$8,767,086 and \$9,165,598, respectively.

“Cost of Debt Factor” shall be 0.03691, which shall be adjusted at the end of each fifth Fiscal Year, to be the “yield-to-worst”, expressed as a decimal, as such term is defined in the Barclays Baa U.S. Corporate Investment Grade Index as of the date hereof (or if such index is no longer published, such other index as reasonably agreed by the Concessionaire and the University), which adjustment shall not be considered an amendment or modification of this Schedule 5 or the method of calculation of the Utility Fee and shall not require the approval of either the Concessionaire or the University. The Concessionaire shall have the right, with the University’s Approval which may be withheld in its sole discretion, to set the Cost of Debt Factor for a portion of the Variable Fee Component attributable to the Unrecovered Balance of a New Approved Capital Improvement based on the actual cost of debt incurred by the Concessionaire with respect to such New Approved Capital Improvement.

“Fixed Fee” shall mean \$45,000,000, increased by 1.5% to \$45,675,000 on July 1, 2018 for the Fiscal Year ending on June 30, 2019 and by 1.5% at the start of each Fiscal Year thereafter. For

the avoidance of doubt, the Fixed Fee is compensation for (i) the Concessionaire performing the Utility Services as set forth in the Agreement, (ii) the risks and liabilities undertaken by the Concessionaire in the Agreement for which the Concessionaire may not otherwise be compensated under the Agreement and (iii) the expertise and technical know-how that the Concessionaire is expected to bring to bear on the Utility System and the Utility System Operations.

“New Approved Capital Improvement” shall mean a Capital Improvement that was, or is being, constructed by the Concessionaire and is or will be (i) brought into service as part of the Utility System or (ii) an ECM Approved pursuant to the Agreement.

“New Approved Capital Improvement Cost” shall mean the Capital Improvement Cost of a New Approved Capital Improvement.

“Operating Fee” shall mean the sum of (i) the Capped O&M Index, as may be adjusted in accordance with the definition thereof and (ii) the Uncapped O&M Costs.

“Relevant Region” shall mean Indiana, Kentucky, Michigan, Ohio and Pennsylvania.

“Return on Equity Factor” shall mean 0.0935, which shall be adjusted at the end of each 5th Fiscal Year to be the mean average of all return on equity percentages (as expressed as a decimal) for the investor-owned electric or gas public utilities in the Relevant Region approved within the previous 10 Fiscal Years, to the extent approved by a publicly-available, final, non-appealable order (or its equivalent) issued by the relevant public utilities commission or court of competent jurisdiction, excluding the highest and the lowest equity percentages for the Relevant Region during that period, which adjustment shall not be considered an amendment or modification of this Schedule 5 or the method of calculation of the Utility Fee and shall not require the approval of either the Concessionaire or the University.

“Unrecovered Balance” shall mean for the New Approved Capital Improvement Costs incurred in any prior Fiscal Year, an amount equal to (i) those New Approved Capital Improvement Costs in such Fiscal Year less (ii) the aggregate Capital Recovery Amount that has been paid in the calculation of the Utility Fee in prior Fiscal Years that are attributable to such New Approved Capital Improvement Costs.

“Variable Fee Component” shall mean the sum of all Unrecovered Balances.

Exhibit A

*Formula*

$$UF = FF + (ROE \times 0.5 \times VFC) + (COD \times 0.5 \times VFC) + CRA + OF$$

COD = Cost of Debt Factor

CRA = Capital Recovery Amount

FF = Fixed Fee

OF = Capped O&M Index + Uncapped O&M Costs

ROE = Return on Equity Factor

UF = Utility Fee

VFC = Variable Fee Component

*Exemplar*

As an exemplar only to illustrate a portion of the calculation of the Utility Fee, below shows the calculation for clauses (ii) and (iii) of the Utility Fee formula and the Capital Recovery Amount for Fiscal Years 2017, 2018 and 2019, assuming that (a) \$10,000,000 is incurred as a New Approved Capital Improvement Cost in Fiscal Year 2017 for a New Approved Capital Improvement with an Recovery Period of 20 years with no further New Approved Capital Improvement Costs in 2017, 2018 or 2019, (b) the Return on Equity Factor is 0.10 and (c) the Cost of Debt Factor is 0.04. For the avoidance of doubt, none of these assumptions shall be binding on the University or the Concessionaire, and they are not intended to reflect any expectations of either Party or the actual calculation of the Utility Fee.

Fiscal Year 2017

Utility Fee clause (ii) = \$0, calculated as follows:  $0.1 \times 0.5 \times \$0$

Utility Fee clause (iii) = \$0, calculated as follows:  $0.04 \times 0.5 \times \$0$

Capital Recovery Amount = \$0

Fiscal Year 2018

Utility Fee clause (ii) = \$500,000, calculated as follows:  $0.1 \times 0.5 \times (\$10,000,000 - \$0)$

Utility Fee clause (iii) = \$200,000, calculated as follows:  $0.04 \times 0.5 \times (\$10,000,000 - \$0)$

Capital Recovery Amount = \$500,000, calculated as follows:  $\$10,000,000 / 20$

Fiscal Year 2019

Utility Fee clause (ii) = \$475,000, calculated as follows:  $0.1 \times 0.5 \times (\$10,000,000 - \$500,000)$

Utility Fee clause (iii) = \$190,000, calculated as follows:  $0.04 \times 0.5 \times (\$10,000,000 - \$500,000)$

Capital Recovery Amount = \$500,000, calculated as follows:  $\$10,000,000 / 20$

## SCHEDULE 9

### FINANCIAL INFORMATION

Expense Summary	FY 12	FY 13	FY 14	FY 15	FY 16
<b>FOD Commodity Purchase</b>					
Gas/Fuel Oil	\$ 14,720,425	\$ 13,872,340	\$ 16,779,860	\$ 14,721,610	\$ 8,671,305
Purchased Power	\$ 33,543,106	\$ 33,662,951	\$ 35,246,831	\$ 44,054,290	\$ 45,377,898
Water/Sewer*	\$ 2,361,057	\$ 2,722,072	\$ 2,565,438	\$ 3,122,808	\$ 2,966,430
Sub-Total	\$ 50,624,588	\$ 50,257,364	\$ 54,592,129	\$ 61,898,708	\$ 57,015,634
<b>Personnel &amp; Benefits</b>					
Regular Monthly/Hourly Staff	\$ 2,911,361	\$ 3,126,851	\$ 3,171,037	\$ 3,109,151	\$ 3,100,438
Overtime	\$ 188,703	\$ 179,179	\$ 197,070	\$ 228,908	\$ 210,323
Payouts	\$ 102,159	\$ 32,185	\$ 8,814	\$ 80,141	\$ 11,690
Students	\$ 5,720	\$ 10,278	\$ 1,645	\$ 728	\$ -
Other	\$ 11,538	\$ 11,171	\$ 35,928	\$ 116,175	\$ 105,872
Benefits	\$ 1,128,826	\$ 1,269,816	\$ 1,308,755	\$ 1,319,462	\$ 1,403,221
Sub-Total	\$ 4,348,307	\$ 4,629,480	\$ 4,723,249	\$ 4,854,565	\$ 4,831,544
<b>Other</b>					
Supplies & Services	\$ 893,103	\$ 1,225,408	\$ 935,633	\$ 1,105,520	\$ 940,940
Equipment	\$ 50,044	\$ 83,366	\$ 38,273	\$ 70,238	\$ 31,110
Chemical and Water Services	\$ 218,213	\$ 274,955	\$ 308,005	\$ 332,843	\$ 306,675
Sub-Total	\$ 1,161,360	\$ 1,583,729	\$ 1,281,911	\$ 1,508,601	\$ 1,278,725
<b>Repair and Renovations</b>					
Steam	\$ 100,402	\$ 221,413	\$ 196,892	\$ 303,837	\$ 273,104
Chilled Water	\$ 18,741	\$ 192,594	\$ 37,167	\$ 70,265	\$ 83,444
Gas	\$ 45,850	\$ 43,653	\$ 43,370	\$ 22,642	\$ 57,347
Electric	\$ 20,686	\$ 54,649	\$ 45,812	\$ 46,544	\$ 169,394
Sub-Total	\$ 185,679	\$ 512,309	\$ 323,241	\$ 443,288	\$ 583,289
<b>Department Cost Allocation</b>					
Insurance**	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000
Energy Services and Sustainability	\$ 775,718	\$ 926,744	\$ 733,269	\$ 807,382	\$ 960,514
FOD and A&P Overhead Allocation	\$ 578,272	\$ 578,272	\$ 578,272	\$ 578,272	\$ 578,272
Mapping and Survey Allocation	\$ 34,742	\$ 34,742	\$ 34,742	\$ 34,742	\$ 34,742
Sub-Total	\$ 1,888,732	\$ 2,039,758	\$ 1,846,283	\$ 1,920,396	\$ 2,073,528
<b>Total</b>	<b>\$ 58,208,666</b>	<b>\$ 59,022,640</b>	<b>\$ 62,766,813</b>	<b>\$ 70,625,558</b>	<b>\$ 65,782,720</b>

## SCHEDULE 15

### KEY PERFORMANCE INDICATORS

The Concessionaire shall calculate whether any KPI Compensation for each Key Performance Indicator has been generated during a Fiscal Year in accordance with this Schedule 15. For the avoidance of doubt, each KPI Calculation corresponds to one Key Performance Indicator.

#### 1. *Definitions*

- (a) Unless otherwise specified or the context otherwise requires, for the purposes of this Schedule 15, the following terms have the following meanings:
- (i) “Availability KPIs” means those Key Performance Indicators which are measured by the following KPI Calculations: Electric Hours KPI Calculation, Electric Events KPI Calculation, Steam Hours KPI Calculation, Steam Events KPI Calculation, Natural Gas Hours KPI Calculation, Natural Gas Events KPI Calculation, Chilled Water Hours KPI Calculation and Chilled Water Event KPI Calculation.
  - (ii) “Chilled Water Portion of the Utility System” means that portion of the Utility System exclusively used in the distribution of chilled water to the Columbus Campus.
  - (iii) “Electric Portion of the Utility System” means that portion of the Utility System exclusively used in the distribution of electricity to the Columbus Campus.
  - (iv) “Emergency Response KPI” means the Key Performance Indicator measured by the Emergency Response KPI Calculation.
  - (v) “Emergency Response Score” means the following, which is depicted on KPI Calculation Appendix 13 and is intended to reflect the below in tabular form,
    - (A) with respect to an Emergency that affects the Utility System or a portion thereof (as determined by the University in its reasonable discretion) that the Concessionaire first received notification of (either verbally or by electronic means from the University, identifying it as an Emergency) between 6:00 A.M. eastern time and 6:00 P.M. eastern time on Business Days (“Business Hours”):
      - (1) 0 if the Emergency Response Time is 10 minutes or fewer;
      - (2) 1 if the Emergency Response Time is longer than 10 minutes but 15 minutes or fewer;

- (3) 2 if the Emergency Response Time is longer than 15 minutes but 30 minutes or fewer;
  - (4) 3 if the Emergency Response Time is longer than 30 minutes but 60 minutes or fewer;
  - (5) 5 if the Emergency Response Time is longer than 60 minutes; and
- (B) with respect to an Emergency that affects the Utility System or a portion thereof that the Concessionaire first received notification of (either verbally or by electronic means) at any time other than Business Hours:
- (1) 0 if the Emergency Response Time is 30 minutes or fewer;
  - (2) 1 if the Emergency Response Time is longer than 30 minutes but 45 minutes or fewer;
  - (3) 2 if the Emergency Response Time is longer than 45 minutes but 90 minutes or fewer;
  - (4) 3 if the Emergency Response Time is longer than 90 minutes but 150 minutes or fewer;
  - (5) 5 if the Emergency Response Time is longer than 150 minutes;
- (vi) “Emergency Response Time” means the time, calculated in minutes and seconds rounded down to the nearest whole minute, between (i) the time which the Concessionaire has knowledge of or was notified about an Emergency that affected the Utility System or any portion thereof, including by visual observation of an Emergency, verbal or written notice from the University or a third party or by an automated notification from the Utility System and (ii) the time the Concessionaire or the Operator had a person with senior-level, qualified experience to the location on the Columbus Campus from which said person reasonably believes they can best address the Emergency.
- (vii) “KPI Calculation Appendix” means each of the appendices attached to this Schedule 15, provided that for the Chilled Water Hours KPI Calculation, Appendix 8 shall be the applicable KPI Calculation Appendix through the Fiscal Year ending on June 30, 2020 and Appendix 9 shall be the relevant KPI Calculation Appendix commencing with the Fiscal Year that ends on June 30, 2021.
- (viii) “KPI Calculations” means, collectively, Electric Hours KPI Calculation, Electric Events KPI Calculation, Steam Hours KPI Calculation, Steam

Events KPI Calculation, Natural Gas Hours KPI Calculation, Natural Gas Events KPI Calculation, Chilled Water Hours KPI Calculation, Chilled Water Event KPI Calculation, 10-Year EUI KPI Calculation, Annual EUI KPI Calculation, Smart Meter KPI Calculation and Emergency Response KPI Calculation, and “KPI Calculation” shall mean any one of the foregoing.

- (ix) “KPI Event” occurs when a KPI Calculation does not meet the Target for the applicable Key Performance Indicator in a Fiscal Year, provided that, for the Emergency Response KPI, a “KPI Event” will be deemed to occur if the Emergency Response Score is above 0 for any given Emergency in that Fiscal Year.
  - (x) “KPI Event Year” means a Fiscal Year in which a KPI Event occurs.
  - (xi) “KPI Measurement Window” means, commencing with the current Fiscal Year, the number of consecutive Fiscal Years preceding that Fiscal Year including the current Fiscal Year (but in no event more than the number of “Consecutive Event Years” shown on the applicable KPI Calculation Appendix), in which a KPI Event occurred.
  - (xii) “Natural Gas Portion of the Utility System” means that portion of the Utility System exclusively used in the distribution of natural gas to the Columbus Campus.
  - (xiii) “Steam Portion of the Utility System” means that portion of the Utility System exclusively used in the distribution of steam and heated hot water to the Columbus Campus.
  - (xiv) “Target” for any Key Performance Indicator means the amount or percentage, as applicable, for that Key Performance Indicator as identified on the relevant KPI Calculation Appendix, provided that for the Chilled Water Hours KPI Calculation, the Target starting in Fiscal Year ending on June 30, 2021 shall be average Chilled Water Hours KPI Calculation for that Fiscal Year and all prior Fiscal Years during the Term.
- (b) All capitalized words, not otherwise defined herein, shall have the meaning set forth in this Agreement, and if, pursuant to the terms and conditions of the Agreement, the definition of such capitalized words is modified, such modification shall be deemed to apply in this Schedule 15.
- (c) References to a “current Fiscal Year” herein shall mean the Fiscal Year for which the KPI Calculation is being determined.

## 2. ***Rules of General Applicability***

- (a) If, in any instance, the KPI Compensation is shown by the applicable KPI Calculation Appendix to be \$10,000,000, it shall be deemed to read, in all such

instances, “the greater of (i) \$10,000,000 and (ii) 10% of the Utility Fee for that particular Fiscal Year.”

3. ***KPI Calculation for each Availability KPI***

- (a) *KPI Calculation for Electricity – Unplanned Outage (Hours): KPI Calculation Appendix 1*

The Key Performance Indicator for the hours of Unplanned Outages for electricity is determined on an annual basis in each Fiscal Year by dividing the number of hours that constitute an Unplanned Outage in that Fiscal Year for the Electric Portion of the Utility System by the total possible connection hours of the Electric Portion of the Utility System during that Fiscal Year, expressed as a percentage rounded to the nearest thousandth decimal point, and subtracting that result from 100% (the “Electric Hours KPI Calculation”).

- (b) *KPI Calculation for Electricity – Unplanned Outage (Events): KPI Calculation Appendix 2*

The Key Performance Indicator for the number of events of Unplanned Outages for electricity is determined on an annual basis in each Fiscal Year to equal the number of unique Unplanned Outages for the Electric Portion of the Utility System or any portion thereof (the “Electric Events KPI Calculation”).

- (c) *KPI Calculation for Steam – Unplanned Outage (Hours): KPI Calculation Appendix 3*

The Key Performance Indicator for the hours of Unplanned Outages for steam and heated hot water is determined on an annual basis in each Fiscal Year by dividing the number of hours that constitute an Unplanned Outage in that Fiscal Year for the Steam Portion of the Utility System by the total possible connection hours of the Steam Portion of the Utility System during that Fiscal Year, expressed as a percentage rounded to the nearest hundredth decimal point, and subtracting that result from 100% (the “Steam Hours KPI Calculation”).

- (d) *KPI Calculation for Steam – Unplanned Outage (Events): KPI Calculation Appendix 4*

The Key Performance Indicator for the number of events of Unplanned Outages for steam and heated hot water is determined on an annual basis in each Fiscal Year to equal the number of unique Unplanned Outages for the Steam Portion of the Utility System or any portion thereof (the “Steam Events KPI Calculation”).

- (e) *KPI Calculation for Natural Gas – Unplanned Outage (Hours): KPI Calculation Appendix 5*

The Key Performance Indicator for the hours of Unplanned Outages for natural gas is determined on an annual basis in each Fiscal Year by dividing the number

of hours that constitute an Unplanned Outage in that Fiscal Year for the Natural Gas Portion of the Utility System by the total possible connection hours of the Natural Gas Portion of the Utility System during that Fiscal Year, expressed as a percentage rounded to the nearest hundredth decimal point, and subtracting that result from 100% (the “Natural Gas Hours KPI Calculation”).

- (f) *KPI Calculation for Natural Gas – Unplanned Outage (Events): KPI Calculation Appendix 6*

The Key Performance Indicator for the number of events of Unplanned Outages for natural gas is determined on an annual basis in each Fiscal Year to equal the number of unique Unplanned Outages for the Natural Gas Portion of the Utility System or any portion thereof (the “Natural Gas Events KPI Calculation”).

- (g) *KPI Calculation for Chilled Water – Unplanned Outage (Hours): KPI Calculation Appendix 7*

The Key Performance Indicator for the hours of Unplanned Outages for chilled water is determined on an annual basis in each Fiscal Year by dividing the number of hours that constitute an Unplanned Outage in that Fiscal Year for the Chilled Water Portion of the Utility System by the total possible connection hours of the Chilled Water Portion of the Utility System during that Fiscal Year, expressed as a percentage rounded to the nearest hundredth decimal point, and subtracting that result from 100% (the “Chilled Water Hours KPI Calculation”).

- (h) *KPI Calculation for Chilled Water – Unplanned Outage (Events): KPI Calculation Appendices 8 and 9*

The Key Performance Indicator for the number of events of Unplanned Outages for chilled water is determined on an annual basis in each Fiscal Year to equal the number of unique Unplanned Outages for the Chilled Water Portion of the Utility System or any portion thereof (the “Chilled Water Events KPI Calculation”).

4. ***Determination of KPI Compensation for each Availability KPI***

- (a) The KPI Compensation for each Availability KPI for a Fiscal Year is determined as follows:

- (i) If the applicable KPI Calculation meets the Target for that Availability KPI in that Fiscal Year, then the KPI Compensation for that Key Performance Indicator for that Fiscal Year is \$0;
- (ii) If (A) such Fiscal Year is a KPI Event Year for that Availability KPI and (B) the immediately preceding Fiscal Year was not a KPI Event Year for that Availability KPI, then the KPI Compensation shall be the amount shown on the applicable KPI Calculation Appendix for that KPI Calculation under the column labeled “0 Consecutive Event Years” and in

the row where the column labeled “Annual Score” includes the KPI Calculation in the applicable KPI Calculation Appendix;

- (iii) If such Fiscal Year and the immediately preceding Fiscal Year are both KPI Event Years for that Availability KPI, then the KPI Compensation shall be determined by adding the applicable KPI Calculation for the Fiscal Years during the KPI Measurement Window and dividing that sum by the number of Fiscal Years in the KPI Measurement Window and rounding to the decimal point set forth in the applicable KPI Calculation, or if none is provided, to the nearest whole number, (the “KPI Calculation Average”), in which case the KPI Compensation shall be the amount shown on the applicable KPI Calculation Appendix for that KPI Calculation under the column where the number equals the number of Fiscal Years in the KPI Measurement Window and the row where the column labeled “Annual Score” includes the KPI Calculation Average in the applicable KPI Calculation Appendix, provided that if the KPI Compensation for such Fiscal Year would be higher if calculated pursuant to sub-section (ii) hereof, then the KPI Compensation shall be calculated in accordance with sub-section (ii) as if the immediately preceding Fiscal Year was not a KPI Event Year.

5. ***KPI Calculation and KPI Compensation for Energy Use Intensity Key Performance Indicators***

- (a) *KPI Calculation for 10-Year EUI KPI Calculation: KPI Calculation Appendix 10*

The Key Performance Indicator for the 10-year Energy Use Intensity calculation is determined by dividing (i) the current Fiscal Year’s Energy Use Intensity by (ii) the Energy Use Intensity for the Fiscal Year ending on June 30, 2017, expressed as a percentage rounded to the nearest whole number, and subtracting that result from 100% (the “10-Year EUI KPI Calculation”). The 10-Year EUI KPI Calculation shall be not be calculated for any Fiscal Year after the Fiscal Year ending on June 30, 2032, and no KPI Compensation shall be payable in connection therewith thereafter.

- (b) *KPI Compensation for 10-Year EUI Calculation*

The KPI Compensation for the 10-Year EUI KPI Calculation for a Fiscal Year is determined as follows:

- (i) If the 10-Year EUI KPI Calculation for (1) the current Fiscal Year and the immediately preceding Fiscal Year or (2) the Fiscal Year ending on June 30, 2028 is equal to 25% or higher, then the KPI Compensation is \$0 and the Key Performance Indicator for the 10-year Energy Use Intensity calculation is deemed satisfied and this Section 5 shall be deleted in its entirety.

- (ii) If the 10-Year EUI KPI Calculation for any Fiscal Year before the Fiscal Year ending on June 30, 2028 is less than, equal to, or greater than 25%, then the KPI Compensation is \$0.
- (iii) Commencing on the Fiscal Year ending on June 30, 2028, if the 10-Year EUI KPI Calculation for the applicable Fiscal Year is less than 25%, then the KPI Compensation for this Key Performance Indicator shall be determined by the amount shown on KPI Calculation Appendix 10 under the column that identifies the applicable Fiscal Year after the Closing and in the row where the column labeled “Annual Score” identifies the applicable 10-Year EUI KPI Calculation.

(c) *KPI Calculation for Annual EUI KPI Calculation: KPI Calculation Appendix 11*

The Key Performance Indicator for the annual Energy Use Intensity calculation is determined by (i) adding the Energy Use Intensity for the current Fiscal Year with the Energy Use Intensity for the 2 immediately preceding Fiscal Years and dividing that sum by 3 (the “Current Fiscal Year Average EUI”), (ii) adding the Energy Use Intensity for the 3 Fiscal Years immediately preceding the current Fiscal Year and dividing that sum by 3 (the “Previous Fiscal Year Average EUI”) and (iii) dividing (1) the Current Fiscal Year Average EUI by (2) the Previous Fiscal Year Average EUI, expressed as a percentage, and subtracting 100% from that result, rounded to the nearest tenth decimal point (the “Annual EUI KPI Calculation”).

(d) *KPI Compensation for Annual EUI KPI Calculation*

The KPI Compensation for the Annual EUI KPI Calculation for a Fiscal Year is determined as follows:

- (i) If the Annual KPI EUI Calculation is at or below the Target in that Fiscal Year, then the KPI Compensation for the Annual EUI KPI Calculation for that Fiscal Year is \$0;
- (ii) If (A) such Fiscal Year is a KPI Event Year for the Annual KPI EUI Calculation and (B) the immediately preceding Fiscal Year was not a KPI Event Year for the Annual KPI EUI Calculation, then the KPI Compensation shall be the amount shown on the KPI Calculation Appendix 11 under the column labeled “0 Consecutive Event Years” and in the row where the column labeled “Annual Score” includes the applicable Annual EUI KPI Calculation;
- (iii) If such Fiscal Year and the immediately preceding Fiscal Year are both KPI Event Years for the Annual EUI KPI Calculation, then the KPI Compensation shall be determined by adding the applicable KPI Calculation for the Fiscal Years during the KPI Measurement Window and dividing that sum by the number of Fiscal Years in the KPI Measurement Window rounded to the nearest hundredth decimal point (the “EUI KPI”).

Calculation Average”), in which case the KPI Compensation shall be the amount shown on KPI Calculation Appendix 11 under the column where the number equals the number of consecutive KPI Event Years in the KPI Measurement Window and the row where the column labeled “Annual Score” includes the EUI KPI Calculation Average in KPI Calculation Appendix 11, provided that if the KPI Compensation for such Fiscal Year would be higher if calculated pursuant to sub-section (ii) hereof, then the KPI Compensation shall be calculated in accordance with sub-section (ii) as if the immediately preceding Fiscal Year was not a KPI Event Year.

6. ***KPI Calculation and KPI Compensation for Smart Meter Key Performance Indicators***

(a) *KPI Calculation for Smart Meters: KPI Calculation Appendix 12*

The Key Performance Indicator for the deployment of smart meters on the Columbus Campus shall be determined by calculating, at the end of each consecutive 12-month period commencing three months after the Closing Date (or on the first day of the fourth full month after the Closing Date if the Closing Date occurred on a day other than the first day of a month), the progress of smart meters deployed on the Columbus Campus that meet the requirements of Section 5.4 of the Agreement in accordance with the formula below set forth in Section 6(c), expressed as a percentage rounded to the nearest whole number (the “Smart Meter KPI Calculation”).

(b) *KPI Compensation for Smart Meter KPI Calculation*

The KPI Compensation for the Smart Meter KPI Calculation for a Fiscal Year is determined as follows:

- (i) If at the end of the applicable 12-month period, the Smart Meter KPI Calculation is at or above the Target identified in the column for such 12-month period on KPI Calculation Appendix 12, then the KPI Compensation for the Smart Meter KPI Calculation is \$0; and
- (ii) If at the end of the applicable 12-month period, the Smart Meter KPI Calculation is below the Target identified in the column for such 12-month period on KPI Calculation Appendix 12, then the KPI Compensation for the Smart Meter KPI Calculation shall be the amount shown on KPI Calculation Appendix 12 under the column for such 12-month period and in the row where the column labeled “Annual Score” includes the Smart Meter KPI Calculation.

(c) The Smart Meter KPI Calculation shall be equal to a percentage equal to:

- (i) 50% multiplied by a percentage equal to the number of meters installed and operational that meet the requirements of Section 5.4(a) of the Agreement divided by the total number of meters required pursuant to Section 5.4 of the Agreement, expressed as a percentage, plus

- (ii) 25% multiplied by the engineering completed as compared to the Engineering Progress Curve as established pursuant to Section 5.4(f) of the Agreement, expressed as a percentage, plus
- (iii) 25% multiplied by the construction and project management completed as compared to the Construction and Project Management Progress Curve as established pursuant to Section 5.4(f) of the Agreement, expressed as a percentage.
- (d) The Smart Meter KPI Calculation shall cease to be calculated and this Section 6 shall terminate upon the earlier to occur of (i) the Smart Meter KPI Calculation equals 100% or (ii) one hundred months after the Closing.

7. ***KPI Calculation and KPI Compensation for Emergency Response Key Performance Indicators***

(a) *KPI Calculation for Emergency Response: KPI Calculation Appendix 13*

The Emergency Response KPI is determined on an annual basis in each Fiscal Year to equal the sum of the Emergency Response Scores for each Emergency during the applicable Fiscal Year (the “Emergency Response KPI Calculation”).

(b) *KPI Compensation for Emergency Response KPI Calculation*

- (i) If the Emergency Response KPI Calculation in that Fiscal Year is at or below the Target for the Emergency Response KPI on KPI Calculation Appendix 13, then the KPI Compensation for the Emergency Response KPI Calculation is \$0; and
- (ii) If the Emergency Response KPI Calculation in that Fiscal Year is above the Target for the Emergency Response KPI on KPI Calculation Appendix 13, then the KPI Compensation for the Emergency Response KPI Calculation shall be the amount shown on KPI Calculation Appendix 13 under the column labeled “KPI Compensation” in the row where the column labeled “Annual Score” includes the Emergency Response KPI Calculation.

(c) *Emergency Response Time Information.*

Within 30 Days after an Emergency, the Concessionaire shall provide the University with written verification of the Emergency Response Time for the applicable Emergency, which shall include a description of the method by which the Concessionaire obtained the knowledge of, or the notice received by the Concessionaire for such Emergency, certified as true and accurate by a senior officer of the Operator, and the Concessionaire shall provide such additional information regarding such Emergency Response Time as reasonably requested by the University.

8. ***Delivery of KPI Calculations and Right to Audit any Key Performance Indicator Calculation***

- (a) Within 30 Days after the expiration of the current Fiscal Year, the Concessionaire shall provide the University with written notice of its determination of all KPI Calculations and the KPI Compensation for the current Fiscal Year.
- (b) The records that the Concessionaire maintains with respect to the calculation of the actual KPI Calculations shall be retained by the Concessionaire for a period of 4 Fiscal Years following the Fiscal Year to which such KPI Calculations relate. The University shall have the right, through its Representatives, to examine, copy and audit such records at reasonable times, upon not less than 5 Business Days' prior notice, at such place within the City of Columbus as the Concessionaire shall reasonably designate from time to time for the keeping of such records. All costs of any such audit shall be borne by the University; provided, however, that if such audit establishes that any KPI Compensation for any particular KPI Calculation for the applicable Fiscal Year was lower than the final determination thereof, as set forth in the statement delivered by the Concessionaire to the University, by at least 1.0%, then the Concessionaire shall pay the cost of such audit. If, as a result of such audit, it is determined that the Concessionaire under calculated the KPI Compensation for any particular Fiscal Year, such difference shall be included as KPI Compensation in the KPI Evaluation Period during which such determination was made.

**KPI Calculation for Electricity Unplanned Outage Hours**

KPI Compensation to the University								
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years	8 Consecutive Event Years
% of Availability								
Target 100.00 % - 99.996 %	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
99.995 % - 99.994 %	\$ -	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
99.993 % - 99.992 %	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
99.991 % - 99.990 %	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
99.989 % - 99.988 %	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
99.987 % - 99.986 %	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
99.985 % - 99.984 %	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000				
99.983 % - 99.982 %	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000					
< 99.982 %	\$ 10,000,000	\$ 10,000,000						

**Examples: For illustration purposes only**

Annual Score	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge
Year A 99.997%	No	0	99.997%	\$ -
Year B 99.992%	Yes	0	99.992%	\$ -
Year C 99.988%	Yes	2	99.990%	\$ 1,000,000
Year D 99.995%	Yes	3	99.992%	\$ 1,000,000
Year E 99.995%	Yes	4	99.993%	\$ 2,000,000
Year F 99.981%	Yes	5	99.990%	\$ 10,000,000
Year G 99.998%	No	0	99.998%	\$ -
Year H 99.994%	Yes	0	99.994%	\$ -
Year I 99.983%	Yes	2	99.989%	\$ 8,000,000
Year J 99.996%	No	0	99.996%	\$ -

**KPI Calculation for Electricity Unplanned Outage Events**

KPI Compensation to the University									
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years	8 Consecutive Event Years	9 Consecutive Event Years
Number of Events									
Target ≤ 7	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
9	\$ -	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
10	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
11	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
12	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
13	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000				
14	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000					
15	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000						
16	\$ 10,000,000	\$ 10,000,000							

**Examples: For illustration purposes only**

Annual Score	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge	
Year A	8	Yes	0	8	\$ -
Year B	11	Yes	2	10	\$ 500,000
Year C	6	No	0	6	\$ -
Year D	8	Yes	0	8	\$ -
Year E	10	Yes	2	9	\$ -
Year F	16	Yes	3	11	\$ 10,000,000
Year G	14	Yes	4	12	\$ 8,000,000
Year H	9	Yes	5	11	\$ 8,000,000
Year I	5	No	0	5	\$ -
Year J	10	Yes	0	10	\$ -

**KPI Calculation for Steam Unplanned Outage Hours**

KPI Compensation to the University								
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years	8 Consecutive Event Years
% Availability								
Target 100.00 % - 99.90 %	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
99.89 % - 99.86 %	\$ -	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
99.85 % - 99.82 %	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
99.81 % - 99.78 %	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
99.77 % - 99.74 %	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
99.73 % - 99.70 %	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
99.69 % - 99.66 %	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000				
99.65 % - 99.62 %	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000					
99.61 % - 99.58 %	\$ 10,000,000	\$ 10,000,000						
< 99.58%	\$ 10,000,000	\$ 10,000,000						

**Examples: For illustration purposes only**

Annual Score	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge	
Year A	99.89%	Yes	0	99.89%	\$ -
Year B	99.82%	Yes	2	99.86%	\$ -
Year C	99.93%	No	0	99.93%	\$ -
Year D	99.81%	Yes	0	99.81%	\$ 500,000
Year E	99.66%	Yes	2	99.74%	\$ 4,000,000
Year F	99.79%	Yes	3	99.75%	\$ 4,000,000
Year G	99.81%	Yes	4	99.77%	\$ 8,000,000
Year H	99.75%	Yes	5	99.76%	\$ 10,000,000
Year I	99.94%	No	0	99.94%	\$ -
Year J	99.82%	Yes	0	99.82%	\$ -

**KPI Calculation for Steam Unplanned Outage Events**

KPI Compensation to the University							
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years
Number of Events							
Target 0 - 8	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9 - 10	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
11 - 12	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
13 - 14	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
15 - 16	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
17 - 18	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
19 - 20	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000				
21 - 22	\$ 10,000,000	\$ 10,000,000					
> 22	\$ 10,000,000						

**Examples: For illustration purposes only**

Annual Score	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge	
Year A	10	Yes	0	10	\$ -
Year B	9	Yes	2	10	\$ 500,000
Year C	7	No	0	7	\$ -
Year D	14	Yes	0	14	\$ 1,000,000
Year E	9	Yes	2	12	\$ 1,000,000
Year F	9	Yes	3	11	\$ 2,000,000
Year G	9	Yes	4	10	\$ 2,000,000
Year H	21	Yes	5	12	\$ 10,000,000
Year I	5	No	0	5	\$ -
Year J	10	Yes	0	10	\$ -

**KPI Calculation for Natural Gas Unplanned Outage Hours**

KPI Compensation to the University							
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years
% of Availability							
Target 100.00 % - 99.96 %	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
99.95 % - 99.94 %	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
99.93 % - 99.92 %	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
99.91 % - 99.90 %	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
99.89 % - 99.88 %	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
99.87 % - 99.86 %	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
99.85 % - 99.84 %	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000				
< 99.84 %	\$ 10,000,000	\$ 10,000,000					

Examples: For illustration purposes only					
Annual Score		KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge
Year A	99.95%	Yes	0	99.95%	\$ -
Year B	99.95%	Yes	2	99.95%	\$ 500,000
Year C	99.98%	No	0	99.98%	\$ -
Year D	99.95%	Yes	0	99.95%	\$ -
Year E	99.95%	Yes	2	99.95%	\$ 500,000
Year F	99.93%	Yes	3	99.94%	\$ 1,000,000
Year G	99.92%	Yes	4	99.94%	\$ 2,000,000
Year H	99.83%	Yes	5	99.92%	\$ 10,000,000
Year I	99.98%	No	0	99.98%	\$ -
Year J	99.94%	Yes	0	99.94%	\$ -

**KPI Calculation for Natural Gas Unplanned Outage Events**

KPI Compensation to the University									
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years	8 Consecutive Event Years	9 Consecutive Event Years
Number of Events									
Target 0 - 3	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ 5,000,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
5	\$ -	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
6	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
7	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
8	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
9	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000				
10	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000					
11	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000						
>11	\$ 10,000,000	\$ 10,000,000							

**Examples: For illustration purposes only**

Annual Score	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge	
Year A	4	Yes	0	4	\$ -
Year B	4	Yes	2	4	\$ -
Year C	2	No	0	2	\$ -
Year D	5	Yes	0	5	\$ -
Year E	10	Yes	2	8	\$ 4,000,000
Year F	7	Yes	3	7	\$ 2,000,000
Year G	8	Yes	4	8	\$ 8,000,000
Year H	10	Yes	5	8	\$ 8,000,000
Year I	3	No	0	3	\$ -
Year J	12	Yes	0	12	\$ 10,000,000

**KPI Calculation for Chilled Water Unplanned Outage Hours**

KPI Compensation to the University									
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years	8 Consecutive Event Years	9 Consecutive Event Years
% of Availability									
Target 99.99 % - 99.95 %	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
99.94 % - 99.93 %	\$ -	\$ -	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
99.92 % - 99.91 %	\$ -	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
99.90 % - 99.89 %	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
99.88 % - 99.87 %	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
99.86 % - 99.85 %	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
99.84 % - 99.83 %	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000				
99.82 % - 99.81 %	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000					
99.80 % - 99.79 %	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000						
< 99.79 %	\$ 10,000,000	\$ 10,000,000							

**Examples: For illustration purposes only**

Annual Score	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge	
Year A	99.93%	Yes	0	99.93%	\$ -
Year B	99.88%	Yes	2	99.91%	\$ 500,000
Year C	99.96%	No	0	99.96%	\$ -
Year D	99.88%	Yes	0	99.88%	\$ 500,000
Year E	99.82%	Yes	2	99.85%	\$ 2,000,000
Year F	99.94%	Yes	3	99.88%	\$ 2,000,000
Year G	99.94%	Yes	4	99.90%	\$ 2,000,000
Year H	99.78%	Yes	5	99.87%	\$ 10,000,000
Year I	99.95%	No	0	99.95%	\$ -
Year J	99.81%	Yes	0	99.81%	\$ 4,000,000

**KPI Calculation for Chilled Water Unplanned Outage Events (Through Fiscal Year 2020)**

KPI Compensation to the University				
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years
Number of Events				
Target 0 - 30 *	\$ -	\$ -	\$ -	\$ -
31 - 50	\$ -	\$ -	\$ -	\$ -
51 - 70	\$ -	\$ -	\$ -	\$ 500,000
71 - 90	\$ -	\$ -	\$ 500,000	\$ 1,000,000
91 - 100	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000
> 100	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000

Examples: For illustration purposes only					
Annual Score	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge	
Year A	31	Yes	0	31	\$ -
Year B	75	Yes	2	53	\$ -
Year C	110	Yes	3	72	\$ 500,000
Year D	95	Yes	4	78	\$ 1,000,000

**KPI Calculation for Chilled Water Unplanned Outage Events Beginning with Fiscal Year 2021)**

The target and Annual Score/Number of Events values are included here ONLY for illustrative purposes. The actual target and Annual Score/Number of Events levels will be determined based on the five-year performance data for Chilled Water for the period Fiscal Year 2016 - Fiscal Year 2020

**KPI Compensation to the University (Beginning Fiscal Year 2021)**

Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years
Number of Events							
Target = T (TBD)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
(T)101% - (T)125%	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
(T)126% - (T)150%	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
(T)151% - (T)175%	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
(T)176% - (T)200%	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
(T)201% - (T)225%	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
(T)226% - (T)250%	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000				
(T)251% - (T)275%	\$ 10,000,000	\$ 10,000,000					
> (T)275%	\$ 10,000,000						

**Examples: For illustration purposes only**

Annual Score	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge
Year A (T) 118%	Yes	0	118%	\$ -
Year B (T) 125%	Yes	2	122%	\$ -
Year C (T) 100%	No	0	100%	\$ -
Year D (T) 124%	Yes	0	124%	\$ -
Year E (T) 225%	Yes	2	175%	\$ 4,000,000
Year F (T) 175%	Yes	3	175%	\$ 4,000,000
Year G (T) 139%	Yes	4	166%	\$ 8,000,000
Year H (T) 114%	Yes	5	155%	\$ 10,000,000
Year I (T) 101%	No	0	101%	\$ -
Year J (T) 225%	Yes	0	225%	\$ 4,000,000

**KPI Calculation for 10-Year EUI Score**

<b>KPI Compensation to the University</b>					
<b>Annual Score</b>	<b>Through Fiscal</b>				
<b>% Below Baseline EUI</b>	<b>Year 2028</b>	<b>Year 2029</b>	<b>Year 2030</b>	<b>Year 2031</b>	<b>Year 2032</b>
Target ≥ 25 %	\$ -	\$ -	\$ -	\$ -	\$ -
24 %	\$ 800,000	\$ 1,600,000	\$ 3,200,000	\$ 6,400,000	\$ 10,000,000
23 %	\$ 1,600,000	\$ 3,200,000	\$ 6,400,000	\$ 10,000,000	\$ 10,000,000
22 %	\$ 2,400,000	\$ 4,800,000	\$ 9,600,000	\$ 10,000,000	\$ 10,000,000
21 %	\$ 3,200,000	\$ 6,400,000	\$ 10,000,000	\$ 10,000,000	
20 %	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
19 %	\$ 4,800,000	\$ 9,600,000	\$ 10,000,000	\$ 10,000,000	
18 %	\$ 5,600,000	\$ 10,000,000	\$ 10,000,000		
17 %	\$ 6,400,000	\$ 10,000,000	\$ 10,000,000		
16 %	\$ 7,200,000	\$ 10,000,000	\$ 10,000,000		
15 %	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
14 %	\$ 8,800,000	\$ 10,000,000	\$ 10,000,000		
13 %	\$ 9,600,000	\$ 10,000,000	\$ 10,000,000		
≤ 12 %	\$ 10,000,000	\$ 10,000,000			

<b>Examples: For illustration purposes only</b>			
<b>Annual Score</b>	<b>KPI Event</b>	<b>KPI Charge</b>	
Fiscal Year 2028	12.0%	Yes	\$ 10,000,000
Fiscal Year 2029	19.0%	Yes	\$ 9,600,000
Fiscal Year 2030	23.0%	Yes	\$ 6,400,000
Fiscal Year 2031	24.0%	Yes	\$ 6,400,000
Fiscal Year 2032	25.4%	No	\$ -

**KPI Calculation for Annual EUI Score**

KPI Compensation to the University								
Annual Score	0 Consecutive Event Years	2 Consecutive Event Years	3 Consecutive Event Years	4 Consecutive Event Years	5 Consecutive Event Years	6 Consecutive Event Years	7 Consecutive Event Years	8 Consecutive Event Years
% Above 3-Year Average Score								
Target ≤ 3-Yr Average	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
0.1 % - 1.0 %	\$ -	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000
1.1 % - 2.0 %	\$ -	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
2.1 % - 3.0 %	\$ 500,000	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000
3.1 % - 4.0 %	\$ 1,000,000	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	
4.1 % - 5.0 %	\$ 2,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000		
5.1 % - 6.0 %	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000			
6.1 % - 7.0 %	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000				
7.1 % - 8.0 %	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000					
8.1 % - 9.0 %	\$ 10,000,000	\$ 10,000,000						
> 9.0 %	\$ 10,000,000	\$ 10,000,000						

**Examples: For illustration purposes only**

Year	Fiscal Year EUI	(A)	(B)	(C)	(D)	KPI Event	Consecutive Event Years	Average Consecutive Year Score	KPI Charge
		Avg of Current + Prior 2 FY EUIs	Avg of Prior 3 FY EUIs	EUI Difference = (A) - (B)	Annual Score % above/below (C)/(B)				
Year A-3	203,000								
Year A-2	199,955								
Year A-1	195,756								
Year A	192,820	196,177.0	199,570.3	-3,393.3	-1.70%	No	0	-1.70%	\$ -
Year B	185,492	191,356.0	196,177.0	-4,821.0	-2.46%	No	0	-2.50%	\$ -
Year C	196,956	191,756.0	191,356.0	400.0	0.21%	Yes	0	0.20%	\$ -
Year D	195,053	192,500.3	191,756.0	744.3	0.39%	Yes	2	0.30%	\$ -
Year E	203,245	198,418.0	192,500.3	5,917.7	3.07%	Yes	3	1.20%	\$ 1,000,000
Year F	215,643	204,647.0	198,418.0	6,229.0	3.14%	Yes	4	1.70%	\$ 2,000,000
Year G	218,878	212,588.7	204,647.0	7,941.7	3.88%	Yes	5	2.10%	\$ 8,000,000
Year H	212,311	215,610.7	212,588.7	3,022.0	1.42%	Yes	6	2.00%	\$ 8,000,000
Year I	210,400	213,863.0	215,610.7	-1,747.7	-0.81%	No	0	-0.80%	\$ -
Year J	209,138	210,616.3	213,863.0	-3,246.7	-1.52%	No	0	-1.50%	\$ -

**KPI Calculation for Smart Meters**

KPI Compensation to the University								
Annual Score	After 15 Months	After 27 Months	After 39 Months	After 51 Months	After 63 Months	After 75 Months	After 87 Months	After 99 Months
% of Deployment	Target = 25%	Target = 50%	Target = 75%	Target = 100%				
100%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
96% - 99%	\$ -	\$ -	\$ -	\$ -	\$ 1,000,000	\$ 2,000,000	\$ 8,000,000	\$ 10,000,000
91% - 95%	\$ -	\$ -	\$ -	\$ 500,000	\$ 2,000,000	\$ 4,000,000	\$ 10,000,000	\$ 10,000,000
81% - 90%	\$ -	\$ -	\$ -	\$ 1,000,000	\$ 4,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000
71% - 80%	\$ -	\$ -	\$ -	\$ 2,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000	
61% - 70%	\$ -	\$ -	\$ -	\$ 4,000,000	\$ 10,000,000	\$ 10,000,000		
51% - 60%	\$ -	\$ -	\$ 500,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000		
41% - 50%	\$ -	\$ -	\$ 1,000,000	\$ 10,000,000	\$ 10,000,000			
31% - 40%	\$ -	\$ 500,000	\$ 2,000,000	\$ 10,000,000	\$ 10,000,000			
21% - 30%	\$ -	\$ 1,000,000	\$ 4,000,000	\$ 10,000,000	\$ 10,000,000			
11% - 20%	\$ -	\$ 2,000,000	\$ 8,000,000	\$ 10,000,000	\$ 10,000,000			
0% - 10%	\$ 500,000	\$ 4,000,000	\$ 10,000,000	\$ 10,000,000				

**Examples: For illustration purposes only**

Period: End of Month	Annual KPI Score	KPI Event	KPI Charge
15	22%	Yes	\$ -
27	39%	Yes	\$ 500,000
39	61%	No	\$ -
51	79%	Yes	\$ 1,000,000
63	89%	Yes	\$ 4,000,000
75	100%	No	\$ -

**KPI Calculation for Emergency Response**

Annual Score	KPI Compensation
Target = 0 - 2	\$ -
3 - 5	\$ 500,000
6 - 8	\$ 1,000,000
9 - 11	\$ 2,000,000
12 - 14	\$ 4,000,000
15 - 17	\$ 8,000,000
18 - 20	\$ 10,000,000

Business Hours:		Non-business Hours:	
Target ≤ 10 Minutes		Target ≤ 30 Minutes	
Response Time	Event Score	Response Time	Event Score
≤ 10 Mins	0	≤ 30 Mins	0
≤ 15 Mins	1	≤ 45 Mins	1
≤ 30 Mins	2	≤ 90 Mins	2
≤ 60 Mins	3	≤ 150 Mins	3
> 60 Mins	5	> 150 Mins	5

**Examples: For illustration purposes only**

YEAR	Events	Event Responses Times (Minutes)		Event Response Score	KPI Event	Annual Score	KPI Charge
		Business	Non-bus				
Year A	Event 1	--	18	0	No	1	\$ -
	Event 2	8	--	0	No		
	Event 3	14	--	1	Yes		
Year B	Event 1	9	--	0	No	5	\$ 500,000
	Event 2	67	--	5	Yes		
Year C	Event 1	31	--	3	Yes	12	\$ 4,000,000
	Event 2	28	--	2	Yes		
	Event 3	--	160	5	Yes		
	Event 4	20	--	2	Yes		
Year D	Event 1	8	--	0	No	8	\$ 1,000,000
	Event 2	15		1	Yes		
	Event 3	12		1	Yes		
	Event 4		44	1	Yes		
	Event 5	29		2	Yes		
	Event 6		40	1	Yes		
	Event 7		45	1	Yes		
	Event 8		35	1	Yes		
	Event 9	10		0	No		
Year E	Event 1	10	--	0	No	2	\$ -
	Event 2	15	--	1	Yes		
	Event 3	--	28	0	No		
	Event 4	15	--	1	Yes		

## SCHEDULE 16

### COLUMBUS CAMPUS

Appendix 1 to this Schedule 16 is a list of the buildings currently located on the Columbus Campus including the University designated building number and building name, the street address, the listed gross square footage, and the building use designation as of June 19, 2017. The list is intended to provide the Concessionaire with a general understanding of the buildings on the Columbus Campus. However, subject to the terms and conditions of the Agreement, the buildings and improvements on the Columbus Campus are subject to additions, deletions or other modifications from time to time at the University's sole discretion.

Appendix 2 to this Schedule 16 is a map that graphically depicts the real property and improvements comprising the Columbus Campus as of June 19, 2017. The map is a detailed approximation of the Columbus Campus boundaries and is intended to provide the Concessionaire with a general understanding of the Columbus Campus. The map is not a legal description of any University owned or leased real property or any owned or leased improvements located thereon.

The following additional appendices are provided by the University for informational purposes:

- Appendix 3 to this Schedule 16 is a map that graphically depicts the buildings on the Columbus Campus that have natural gas service, either served directly from a local utility company or served by Utility Facilities. This map is intended to provide the Concessionaire with an understanding of the natural gas serviced buildings on the Columbus Campus as of June 19, 2017.
- Appendix 4 to this Schedule 16 is a map that graphically depicts the buildings on the Columbus Campus that have steam or heating hot water heating (“HHW”) systems. This map is intended to provide the Concessionaire with an understanding of the steam and HHW serviced buildings on the Columbus Campus as of June 19, 2017.
- Appendix 5 to this Schedule 16 is a map that graphically depicts the buildings on the Columbus Campus that have chilled water cooling service, either served directly from a district cooling system or served by Utility Facilities. This map is intended to provide the Concessionaire with an understanding of the chilled water cooling serviced buildings on the Columbus Campus as of June 19, 2017.
- Appendix 6 to this Schedule 16 is a map that graphically depicts the buildings on the Columbus Campus that have electricity service, either served directly by (i) a local utility company, (ii) the City of Columbus municipal utility system, or (iii) Utility Facilities. This map is intended to provide the Concessionaire with an understanding of the electricity serviced buildings on the Columbus Campus as of June 19, 2017.

## SCHEDULE 19

### ENERGY USE INTENSITY PARAMETERS

#### Section 1. DEFINITIONS.

“Baseline EUI” means the initial annual Energy Use Intensity to which the tenth annual Energy Use Intensity will be compared in order to determine Concessionaire’s performance in connection with the 10-Year EUI KPI Calculation requirement (as defined in Schedule 15) pursuant to the Concession Agreement, which Baseline EUI is defined in Section 2(b) of this Schedule 19.

“British Thermal Unit” or “BTU” means a standard unit of measurement of the heat energy in a fuel. One BTU is the amount of heat necessary to raise the temperature of one pound of water by one degree Fahrenheit, equivalent to 1,055.06 joules.

“Building Performance Record” or “BPR” means a database, maintained by Concessionaire, of building performance information including, at a minimum: Building Type(s), building gross square footage (GSF), and, where such information is available, the building-level Energy Use Intensity values, to which the University shall have access at any time. The BPR must include all EUI Buildings, but may also include buildings or other facilities on the Columbus Campus that are not designated EUI Buildings.

“Building Type” means the functional designation of a building or facility, which designations are identified by CBECS. Each building or facility will have at least one Building Type designation and may have more than one designation, as determined by the University in its reasonable discretion.

“CBECS” means the Commercial Buildings Energy Consumption Survey and the associated information as released from time to time by the United States Department of Energy, Energy Information Administration or, if such survey is discontinued, such comparable survey as determined by the University in its sole discretion.

“CCF” means centum cubic feet or hundred cubic feet, and is a standard unit of volume measure for the consumption of natural gas.

“CHP Electricity Consumption” means the metered electricity output from a combined heat and power generation facility (CHP) installed on the Columbus Campus for any given period, net of any electricity used for the operation of the CHP facility.

“CHP Natural Gas Consumption” means the natural gas equivalent of the thermal output of a CHP installed on the Columbus Campus for any given period. The natural gas equivalent is calculated as follows:

$$NG_e = \frac{M_{ti} (h_s - h_r)}{\eta}$$

Where:

- $NG_e$  is the natural gas equivalent
- $M_{ti}$  is the mass flow of the thermal supply in lbs/hour for each hour
- $h_s$  is the enthalpy in Btu/lb of the thermal energy supplied for each hour
- $h_r$  is the enthalpy in Btu/lb of the thermal energy returned for each hour
- $\eta$  is the efficiency of energy conversion as a % of higher heating value, which is fixed at 85%

“CHP Natural Gas Input” means the metered volume of natural gas used by a CHP facility installed on the Columbus Campus for any given period.

“CNG Consumption” means the total metered volume of natural gas used in the production of compressed natural gas on the Columbus Campus for any given period.

“Construction Utilities Electricity Consumption” means metered construction electricity drawn from Utility Facilities at or behind an EDC Meter or Main Electric Power Meter on the Columbus Campus for any given period.

“Construction Utilities Natural Gas Consumption” means metered construction natural gas drawn from Utility Facilities at or behind an LDC Building Meter or a Main Gas Meter on the Columbus Campus for any given period.

“Distributed Generation Consumption” means usage from any permanently installed and metered distributed electricity generation, including generation from renewable fuel sources, directly connected to the Utility Facilities of the Columbus Campus, an EUI Building, or any other load behind an EUI Meter for any given period.

“EDC Building Meters” means the local electricity distribution company’s billing meters used to measure the electricity consumption of a building on the Columbus Campus which is not served electricity by Utility Facilities.

“Energy Use Intensity” means the ratio of the energy consumed by the Columbus Campus to the area in gross square footage of the EUI Buildings on the Columbus Campus over a specified period.

“EUI Building” means each of the uniquely identified buildings and facilities on the Columbus Campus on Appendix 1 to this Schedule 19, which list may be revised by the University at any time in its reasonable discretion to (i) include newly constructed buildings or facilities on the Columbus Campus and (ii) exclude buildings or facilities that have been demolished or vacated. For the avoidance of doubt, the list of EUI Buildings may be a subset of all the buildings and facilities on the Columbus Campus.

“EUI Meters” means the EDC Building Meters, Main Gas Meters, LDC Building Meters, and Main Electric Power Meters, collectively.

“Exported Electricity” means the metered electricity generated on the Columbus Campus that is sold or otherwise settled with a third party for export outside of the Columbus Campus.

“LDC Building Meters” means the local natural gas distribution company’s billing meters used to measure the natural gas consumption of a building on the Columbus Campus which is not served natural gas by Utility Facilities.

“Main Electric Power Meters” means the electricity and/or power meters at the interfaces of the local electricity distribution company and the Utility Facilities on the Columbus Campus used to measure the University’s electricity consumption on the Columbus Campus for all buildings and other facilities connected to the Utility Facilities.

“Main Gas Meters” means the natural gas billing meters at the interfaces of the local natural gas distribution company and the Utility Facilities on the Columbus Campus used to measure the University’s natural gas consumption on the Columbus Campus for all buildings and other facilities connected to the Utility Facilities.

“Therm” means a unit of heat equivalent to 100,000 BTUs or  $1.054 \times 10^8$  joules.

“Total Area” means the total area as calculated pursuant to Section 4 of this Schedule 19.

**Section 2. COLUMBUS CAMPUS EUI CALCULATION.**

- (a) The measurement of energy for the purposes of calculating the Energy Use Intensity will generally follow the 2014 Guideline 14, and the associated annexes, of the American Society of Heating, Refrigerating and Air- Conditioning Engineers, (ASHRAE), *Measurement of Energy, Demand and Water Savings*, using the “Whole Building Prescriptive Path” approach (the “ASHRAE Guidelines”), except to the extent expressly set forth herein.
- (b) The Baseline EUI is 199,974 BTUs / square foot.
- (c) For Energy Use Intensity calculations related to the 10-Year EUI KPI Calculation (as defined in Schedule 15), the Energy Use Intensity energy inputs are limited to electricity and natural gas.
- (d) For Energy Use Intensity calculations related to the Annual EUI KPI Calculation (as defined in Schedule 15), the Energy Use Intensity energy inputs are limited to electricity and natural gas, unless changed pursuant to Section 6 of this Schedule 19.
- (e) The Energy Use Intensity shall be the ratio of the energy consumed by the Columbus Campus to the Total Area of all the EUI Buildings.

$$EUI_i = \frac{\sum mi}{TA_i}$$

Where:

- ***EUI<sub>i</sub>*** is the Energy Use Intensity for the period ***i***
- **$\sum mi$**  is the sum of Weather Adjusted Net Energy Consumption, expressed in BTUs, captured by the EUI Meters ***m*** for the period ***i***
- ***TA<sub>i</sub>*** is the total area ***TA*** at the end of the period ***i***

The expression set forth above is an illustrative mathematical explanation of the Energy Use Intensity formula, which, in the event of a conflict between the remainder of the Schedule 19 and such formula, the formula set forth above shall control.

- (f) The Concessionaire shall calculate the Energy Use Intensity for each month of each Fiscal Year during the Term in accordance with this Schedule 19.
- (g) The Energy Use Intensity for purposes of the Annual EUI KPI Calculation (as defined in Schedule 15) for each Fiscal Year will be the sum of the monthly Energy Use Intensity scores for each month in such Fiscal Year. No later than 60 Days following the end of any Fiscal Year, Concessionaire will determine the Energy Use Intensity for the Annual EUI KPI Calculation for such Fiscal Year and deliver such calculations, inclusive of the monthly Energy Use Intensity calculations, to the University.

- (h) Weather Adjusted Net Electricity Consumption Calculation (all of which shall be calculated in kilowatt hours) shall be calculated as follows for a particular period:
- (i) Determine the total usage in kilowatt hours from all EDC Building Meters and Main Electric Power Meters for the applicable period (“Gross Electricity Consumption”);
  - (ii) Add to the Gross Electricity Consumption, the Distributed Generation Consumption, and the CHP Electricity Consumption for the applicable period (such sum, the “Adjusted Electricity Consumption”);
  - (iii) Subtract from the Adjusted Electricity Consumption, the Construction Utilities Electricity Consumption for the applicable period, and all Exported Electricity (such difference, the “Adjusted Net Electricity Consumption”);
  - (iv) Convert the Adjusted Net Electricity Consumption to BTUs in accordance with Section 5 of this Schedule 19; and
  - (v) Weather normalize the converted Adjusted Net Electricity Consumption in accordance with ASHRAE Guidelines and as adjusted pursuant to Section 3 of this Schedule 19 (as normalized, the “Weather Adjusted Net Electricity Consumption”).
- (i) Weather Adjusted Net Natural Gas Consumption Calculation (all of which shall be calculated in BTUs) shall be calculated as follows for a particular period:
- (i) Determine the total usage in BTUs from all Main Gas Meters and LDC Building Meters for the applicable period (“Gross Natural Gas Consumption”);
  - (ii) Add to the Gross Natural Gas Consumption the CHP Natural Gas Consumption for the applicable period (such sum, the “Adjusted Natural Gas Consumption”);
  - (iii) Subtract from the Adjusted Natural Gas Consumption, the Construction Utilities Natural Gas Consumption, the CHP Natural Gas Input, and the CNG Consumption for the applicable period (such difference, the “Adjusted Net Natural Gas Consumption”);
  - (iv) Convert the Adjusted Net Natural Gas Consumption to BTUs in accordance with Section 5 of this Schedule 19; and
  - (v) Weather normalize the converted Adjusted Net Natural Gas Consumption in accordance with ASHRAE Guidelines and as adjusted pursuant to Section 3 of this Schedule 19 (as normalized, the “Weather Adjusted Net Natural Gas Consumption”).
- (j) Weather Adjusted Net Energy Consumption
- (i) Add the Weather Adjusted Net Electricity Consumption and the Weather Adjusted Net Natural Gas Consumption (such sum, the “Weather Adjusted Net Energy Consumption”).
  - (ii) Divide the Weather Adjusted Net Energy Consumption by the Total Area for the applicable period, which quotient shall be the Energy Use Intensity for such period.

### **Section 3. WEATHER NORMALIZATION.**

- (a) Outdoor air temperature will be the only independent variable used in the calculation of the Weather Adjusted Net Natural Gas Consumption and the Weather Adjusted Net Electricity Consumption for the Energy Use Intensity used in the 10-Year EUI KPI Calculation (as defined in Schedule 15).
- (b) Outdoor air temperature will be the only independent variable used in the calculation of the Weather Adjusted Net Natural Gas Consumption and the Weather Adjusted Net Electricity Consumption for the Energy Use Intensity used in the Annual EUI KPI Calculation (as defined in Schedule 15), unless changed pursuant to Section 6 of this Schedule 19.
- (c) Weather data shall be obtained from National Oceanic and Atmospheric Administration, U.S. Department of Commerce, National Climate Data Center, and specifically from the land-based weather station at John Glenn Columbus International Airport, with station ID GHCND: USW00014821, provided that if such station no longer exists at any point during the Term, the University shall have the right, by written notice to Concessionaire, to identify a replacement station.
  - (i) If the data station reports are missing data for one or more days, missing data can be replaced by averaging the preceding and following days together, in accordance with the United States Environmental Protection Agency, Energy Star Portfolio Manager practices or by any other practice recommended by such agency or its successor agency.
  - (ii) If the data station reports are missing data for an entire month or more, use of another station or another accurate resource for local average daily temperature may be substituted, which substitution shall be subject to the University's Approval.
- (d) Heating Degree Days and Cooling Degree Days will measure the deviation from an average daily temperature of 65 degrees Fahrenheit or 18 degrees Celsius.
- (e) To account for net bias error (as more fully described in the ASHRAE Guidelines), Concessionaire is required to use a weighted regression technique, wherein each data point (day) in a time period (month) is weighted by the length of the time period from that point.

### **Section 4. CALCULATION OF TOTAL AREA.**

- (a) The Total Area for the Fiscal Year ending June 30, 2017 is 24,174,908 square feet. The Concessionaire will use Appendix 1 to this Schedule 19 to enter the initial gross square feet listed for each EUI Building into the BPR.
- (b) For each subsequent Fiscal Year, the Total Area shall be the sum of the areas, in gross square feet, for each EUI Building on the BPR, subject to changes to the list of EUI Buildings and/or changes in the gross square footages of EUI Buildings made pursuant to this Schedule 19.
- (c) Modifications to the Total Area:
  - (i) The current gross square footage, and the history of any changes to the same, of each EUI Building will be recorded and updated as necessary in the Building Performance Record by Concessionaire, provided that (i) Concessionaire shall submit any such changes to the University for its Approval, which may be withheld in its sole discretion, (ii)

Concessionaire shall make such reasonable changes as directed by the University, which the University shall provide promptly after becoming aware of any such change, and (iii) notwithstanding anything to the contrary herein, changes to the gross square footage of EUI Buildings shall only be made to account for actual additions or reductions in square footage of such EUI Buildings.

- (ii) The gross square footage of a newly constructed EUI Building or the addition of new gross square footage to an existing EUI Building shall be added to the Total Area beginning with the first Fiscal Year after such EUI Building or EUI Building addition has been substantially occupied and operational for six (6) months or more prior to the start of such Fiscal Year. For example, a newly constructed EUI Building is first occupied and operational on February 1, 2019, the associated gross square footage of such EUI Building shall be added to the Total Area beginning in the Fiscal Year beginning on July 1, 2020. The energy consumption for any addition of EUI Building gross square footage which has not yet been added to the Total Area will be considered as Construction Utilities Consumption.
- (iii) Any renovation or demolition resulting in a reduction to the gross square footage of an existing EUI Building or the entire removal of an existing EUI Building shall be subtracted from Total Area beginning in the month immediately following the month in which such reduction in gross square footage or removal of an EUI Building resulted in cessation of Utility Services to the gross square footage in question.

#### **Section 5. ENERGY UNIT CONVERSION.**

- (a) All units of energy will be converted to and expressed in BTUs for the purposes of the Energy Use Intensity calculations pursuant to this Schedule 19.
  - (i) The specific conversion for electricity will be 3,412 BTUs per kWh.
  - (ii) For natural gas, the energy unit conversion will be the delivering utility's declared BTU per unit of volume in higher heating value content for the billing period. In the absence of a declared BTU value from the delivering utility, the conversion factor will be the annual "Ohio Heat Content of Natural Gas Deliveries to Consumers" for the most recent previous calendar year published by the U.S. Department of Energy, U.S. Energy Information Administration (EIA), (current EIA Series ID: NG.NGA\_EPG0\_VGTH\_SOH\_BTUCF.A.).

#### **Section 6. BUILDING-LEVEL EUI.**

- (a) Beginning with the Fiscal Year ending on June 30, 2020, Concessionaire shall calculate and record the Energy Use Intensity value for each EUI Building on the Columbus Campus for which the necessary metering data is available (the "Building-Level EUI"). These Energy Use Intensity values will be recorded in the BPR. The Building-Level EUI calculation will be calculated for each EUI Building in the same manner as set forth in Section 2 of this Schedule 19.
- (b) For the avoidance of doubt, the Building-Level EUI is not a consideration for the 10-Year EUI KPI Calculation, nor the Annual EUI KPI Calculation (both as defined in Schedule 15), nor shall it be determinative of any of Concessionaire's rights or obligations under this Agreement.
- (c) Building-Level EUI does not have an associated Key Performance Indicator in Schedule 15.

## **Section 7. BUILDING TYPE.**

- (a) As of Closing, Building Type is not a consideration for the calculation of Energy Use Intensity or any of the Key Performance Indicators related to Energy Use Intensity as calculated in Schedule 15.
- (b) Appendix 1 to this Schedule 19 includes one initial Building Type designation for each EUI Building on the Columbus Campus. At any point during the Term, including as Concessionaire progresses on the smart meter deployment, Concessionaire may propose modifications to the initial Building Type designations provided on Appendix 1. The University, in its sole discretion, will accept or reject such proposed modifications.
- (c) An EUI Building must have a minimum of one and may have a maximum of three Building Type designations. If an EUI Building has more than one Building Type designation, the Total Area of the building must be allocated to each Building Type such that the total allocation equals one hundred percent (100%) of such EUI Building's gross square footage.
- (d) The Building Type designations must be among those Building Types from the CBECS list of building types. Appendix 2 to this Schedule 19 is a table of the CBECS Building Type designations correlated to examples of specific Columbus Campus buildings and building functions. This table is for guidance purposes only, and to aid in the designation of a Building Type for each EUI Building and shall not be binding on the University.
- (e) If CBECS changes the Building Type designations, the University and Concessionaire may collaborate to determine what, if any, changes should be made to the EUI Building Type designations. The decision to make changes will be at the sole discretion of the University.

## **Section 8. ENERGY USE INTENSITY CALCULATION MODIFICATIONS.**

- (a) Following the completion of the smart meter deployment pursuant to this Agreement, the University and the Concessionaire shall collaborate in good faith to consider modifications of the Energy Use Intensity methodology used in the Annual EUI KPI Calculation (as defined in Schedule 15) including the incorporation of Building Types, changes in Building Types, and/or other independent variables into the Energy Use Intensity calculation, provided that both Parties' obligation shall be to engage in such discussions in good faith and neither Party shall be obligated to agree to any changes thereto.
- (b) If the University and Concessionaire jointly agree to incorporate additional independent variables or make other modifications of the Annual EUI KPI Calculation methodology, the Parties shall implement any adjustments to the Annual EUI KPI Calculation methodology (as defined in Schedule 15) that the University and Concessionaire jointly agree are necessary to reflect the incorporation of such independent variables or other modifications.
- (c) If Building Types or other modifications are to be incorporated into the Annual EUI KPI Calculations described in Schedule 15, as a condition precedent to the effectiveness of such modifications the University and Concessionaire must also jointly agree to:
  - (i) The establishment of a new baseline Energy Use Intensity for each applicable Fiscal Year for the Annual EUI KPI Calculation (as defined in Schedule 15), for use in future Annual EUI KPI Calculations; and

- (ii) The method for comparing future Annual EUI KPI Calculations to any applicable prior Annual EUI KPI Calculations.
- (d) Regardless of any modifications to the Annual EUI KPI Calculation methodology made pursuant to this Schedule 19, the EUI Meters will continue to be the source of measurement and recording of the energy inputs for the Annual EUI KPI Calculation and the 10-Year EUI KPI Calculation.

SCHEDULE 19

BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
1	1	Bricker Hall	190 North Oval Mall	74,140	Administration	Yes	Yes	Office	100%	1	0	1	0	1	3
2	3	Agricultural Administration Building	2120 Fyffe Rd.	100,228	Academic / Admin	Yes	Yes	Education	100%	1	0	0	0	1	2
3	4	209 W. 18th Ave.	209 W. 18th Ave.	25,034	Academic	Yes	Yes	Education	100%	1	1	1	0	2	5
4	5	18th Ave. Library	175 W. 18th Ave.	99,126	Library	Yes	Yes	Public Assembly	100%	1	0	1	0	2	4
5	7	Mathematics Tower	231 W. 18th Ave.	61,621	Academic	Yes	Yes	Education	100%	1	1	1	0	2	5
6	8	Dairy Loose Housing Barn	2453 Carmack Rd.	18,606	Agricultural	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
7	9	ElectroScience Laboratory (Old ELS)	1320 Kinnear Rd.	30,205	Research	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	3	4
8	10	Biological Sciences Greenhouses	332 W. 12th Ave.	35,173	Agricultural	Yes	Yes	Other	100%	0	0	0	1	2	3
9	11	Arps Hall	1945 N. High St.	129,371	Academic	Yes	Yes	Education	100%	0	1	0	0	2	3
10	12	Ornamental Plant Germplasm Center	670 Vernon Tharp St.	18,258	Agricultural	Yes	Yes	Other	100%	1	0	0	0	1	2
11	14	Jennings Hall	1735 Neil Ave.	112,502	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	1	3
12	17	Knowlton Hall	275 W. Woodruff Ave.	174,422	Academic	Yes	Yes	Education	100%	1	0	1	1	1	4
13	18	Campbell Hall	1787 Neil Ave.	115,204	Academic	Yes	Yes	Education	100%	1	0	1	1	2	5
14	22	Longaberger Alumni House	2200 Olentangy River Rd.	57,049	Conference Center	Yes	Yes	Public Assembly	100%	0	0	0	1	1	2
15	23	Dairy Research Barn	2491 Carmack Rd.	11,231	Agricultural	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
16	24	Postle Hall	305 W. 12th Ave.	278,307	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	4	6
17	25	Derby Hall	154 North Oval Mall	115,260	Academic / Admin	Yes	Yes	Education	100%	1	0	1	0	2	4
18	26	Caldwell Laboratory	2024 Neil Ave.	100,348	Academic / Research	Yes	Yes	Education	100%	1	0	1	0	5	7
19	28	Faculty Club	181 South Oval Dr.	32,711	Academic	Yes	Yes	Public Assembly	100%	1	0	0	1	1	3
20	29	Women's Field House	1790 Cannon Dr.	5,353	Athletics	Yes	Yes	Public Assembly	100%	0	0	0	1	1	2
21	30	Denney Hall	164 Annie & John Glenn Ave.	103,832	Academic	Yes	Yes	Education	100%	0	1	0	0	2	3
22	37	Hagerty Hall	1775 College Rd.	142,496	Academic	Yes	Yes	Education	100%	1	0	0	1	1	3
23	38	Hamilton Hall	1645 Neil Ave.	141,461	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	2	4
24	39	Hayes Hall	108 North Oval Mall	43,608	Academic	Yes	Yes	Education	100%	1	0	0	0	1	2
25	40	Fechko Alumnae Scholarship House	220-222 W. 11th Ave.	6,396	Student Housing	Yes	Yes	Lodging	100%	0	1	0	1	1	3
26	41	Lazenby Hall	1827 Neil Ave. Mall	66,558	Academic	Yes	Yes	Education	100%	1	0	1	1	1	4
27	42	Hughes Hall	1899 College Rd.	60,883	Academic	Yes	Yes	Education	100%	0	1	0	0	1	2
28	43	Refuse Station	2566 Kenny Rd.	1,805	Facilities	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
29	46	Journalism Building	242 W. 18th Ave.	84,561	Academic	Yes	Yes	Education	100%	1	0	1	0	2	4
30	47	Mershon Center	1501 Neil Ave.	36,761	Academic / Admin	Yes	Yes	Education	100%	0	0	0	1	1	2
31	48	Pennsylvania Place	1478 Pennsylvania Ave.	11,289	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
32	49	Drinko Hall - College of Law	55 W. 12th Ave.	211,421	Academic	Yes	Yes	Education	100%	1	0	0	0	3	4
33	50	Thompson Memorial Library	1858 Neil Ave. Mall	301,907	Library	Yes	Yes	Public Assembly	100%	1	0	1	1	2	5
34	52	Younkin Success Center	1640 Neil Ave.	68,619	Student Life	Yes	Yes	Public Assembly	100%	0	0	0	1	1	2
35	53	McPherson Chemical Laboratory	140 W. 18th Ave.	117,599	Academic / Research	Yes	Yes	Education	100%	1	0	1	1	2	5
36	54	Mendenhall Laboratory	125 South Oval Mall	126,300	Academic / Admin	Yes	Yes	Education	100%	1	0	0	1	1	3
37	55	Mershon Auditorium	1871 N. High St.	120,223	Auditorium	Yes	Yes	Public Assembly	100%	1	0	0	0	3	4
38	56	Converse Hall	2121 Tuttle Park Pl.	58,786	Academic	Yes	Yes	Education	100%	0	0	0	1	2	3
39	59	Fry Hall	338 W. 10th Ave.	75,040	Academic / Research	Yes	Yes	Education	100%	1	0	0	0	1	2

SCHEDULE 19

BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
40	60	Orton Hall	155 South Oval Mall	39,797	Academic / Admin	Yes	Yes	Education	100%	1	1	0	1	1	4
41	61	Page Hall	1810 College Rd.	64,665	Academic	Yes	Yes	Education	100%	1	0	0	1	1	3
42	63	Cockins Hall	1958 Neil Ave.	59,866	Academic	Yes	Yes	Education	100%	0	1	0	0	1	2
43	64	Parker Food Science and Technology Building	2015 Fyffe Ct.	78,214	Academic	Yes	Yes	Education	100%	0	1	0	1	1	3
44	65	Smith Laboratory	174 W. 18th Ave.	218,839	Academic / Research	Yes	Yes	Education	100%	1	0	1	1	3	6
45	66	Plumb Hall	2027 Coffey Rd.	45,196	Academic	Yes	Yes	Education	100%	1	0	0	1	1	3
46	67	Pomerene Hall	1760 Neil Ave.	73,603	Academic	Yes	Yes	Education	100%	1	0	1	0	1	3
47	69	McCracken Power Plant	304 Annie & John Glenn Ave.	110,142	Facilities / Admin	Yes	Yes	Other	100%	1	1	1	1	1	5
48	70	Physics Research Building	191 W. Woodruff Ave.	238,732	Academic / Research	Yes	Yes	Health Care - Outpatient	100%	1	0	1	1	2	5
49	72	Enarson Classroom Building	2009 Millikin Rd.	88,768	Academic	Yes	Yes	Education	100%	1	0	1	0	1	3
50	73	Research Center	1314 Kinnear Rd.	98,131	Research	Yes	Yes	Education	100%	0	0	0	1	3	4
51	76	St John Arena	410 Woody Hayes Dr.	217,262	Athletics	Yes	Yes	Public Assembly	100%	1	0	0	0	2	3
52	77	Central Service Building	2003 Millikin Rd.	15,136	Facilities	Yes	Yes	Office	100%	0	1	0	0	1	2
53	78	Maintenance Building	2000 Tuttle Park Pl.	51,289	Facilities	Yes	Yes	Warehouse and Storage	100%	1	0	0	0	1	2
54	79	OSU Electric Substation	1735 Cannon Dr.	13,520	Facilities	Yes	Yes	Other	100%	0	0	0	0	1	1
55	80	Sisson Hall	1920 Coffey Rd.	55,501	Academic / Research	Yes	Yes	Education	100%	1	0	1	1	1	4
56	81	Schottenstein Center	555 Borror Dr.	604,784	Athletics	Yes	Yes	Public Assembly	100%	1	0	0	1	8	10
57	82	Ohio Stadium	411 Woody Hayes Dr.	808,359	Athletics	Yes	Yes	Public Assembly	100%	1	0	0	0	7	8
58	83	Parking Garage - Northwest	271 Ives Dr.	228,196	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
59	84	Stillman Hall	1947 College Rd.	67,284	Academic	Yes	Yes	Education	100%	1	1	0	1	1	4
60	85	Hale Hall (old Enarson)	154 W. 12th Ave.	47,001	Academic / Admin	Yes	Yes	Office	100%	1	0	0	0	1	2
61	86	French Field House	460 Woody Hayes Dr.	88,424	Athletics	Yes	Yes	Warehouse and Storage	100%	1	0	0	0	1	2
62	87	Townshend Hall	1885 Neil Ave. Mall	64,370	Academic	Yes	Yes	Education	100%	1	0	1	0	1	3
63	88	Parking Garage - Tuttle Park Pl	2050 Tuttle Park Pl.	365,188	Parking Garage	Yes*	Yes	Other	100%	1	0	0	1	1	3
64	89	Doan Hall	410 W. 10th Ave.	673,130	Patient Care	Yes	Yes	Health Care - Outpatient	100%	1	0	1	1	13	16
65	90	Ramseyer Hall	29 W. Woodruff Ave.	86,387	Academic	Yes	Yes	Education	100%	1	1	0	0	1	3
66	91	Jack Nicklaus Museum	2355 Olentangy River Rd.	25,457	Athletics	Yes	Yes	Public Assembly	100%	0	0	0	1	1	2
67	92	Jesse Owens Memorial Stadium	2450 Fred Taylor Dr.	27,987	Athletics	Yes	Yes	Public Assembly	100%	0	0	0	0	1	1
68	93	Owens Stadium - Meet Management Building	2402 Fred Taylor Dr.	1,568	Athletics	Yes	Yes	Office	100%	0	0	0	0	1	1
69	94	2470 North Star Rd.	2470 North Star Rd.	16,413	Office	Yes	Yes	Office	100%	0	0	0	1	1	2
70	95	Baker Hall (East & West)	93 & 129 W. 12th Ave.	227,010	Student Housing	Yes	Yes	Lodging	100%	0	1	1	0	2	4
71	97	Bradley Hall	221 W. 12th Ave.	70,349	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	1	2
72	98	Canfield Hall	236 W. 11th Ave.	61,231	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	1	2
73	99	Siebert Hall	184 W. 11th Ave.	85,839	Student Housing	Yes	Yes	Lodging	100%	1	1	1	0	1	4
74	100	Mack Hall	1698 Neil Ave.	78,880	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	3	4
75	102	Oxley Hall	1712 Neil Ave.	31,148	Academic	Yes	Yes	Education	100%	1	0	0	0	1	2
76	103	Paterson Hall	191 W. 12th Ave.	64,303	Student Housing	Yes	Yes	Lodging	100%	1	1	0	0	1	3
77	105	Kennedy Commons	251 W. 12th Ave.	36,868	Student Housing	Yes	Yes	Food Service	100%	1	1	0	1	1	4
78	106	Sullivant Hall	1813 N. High St.	135,883	Academic	Yes	Yes	Education	100%	1	0	0	0	1	2

SCHEDULE 19

BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
79	107	Watts Hall	2041 College Rd.	35,504	Academic / Research	Yes	Yes	Education	100%	1	0	0	0	1	2
80	108	Buckeye Field	2410 Fred Taylor Dr.	17,634	Athletics	Yes	Yes	Public Assembly	100%	0	0	0	0	2	2
81	112	Biomedical Research Tower	460 W. 12th Ave.	412,630	Research	Yes	Yes	Health Care - Outpatient	100%	1	0	0	1	4	6
82	113	Davis Heart and Lung Research Institute	473 W. 12th Ave.	139,528	Research	Yes	Yes	Health Care - Outpatient	100%	1	0	0	1	4	6
83	126	1314 Kinnear Rd (connected to Research Center)	1314 Kinnear Rd.	21,171	Office	Yes	Yes	Office	100%	0	0	0	1	1	2
84	127	Smith Electrical Substation	1960 Tuttle Park Pl	24,456	Facilities	Yes	Yes	Other	100%	0	0	1	0	1	2
85	128	1260 Kinnear (DRUM & CYL)	1260 Kinnear Rd.	2,788	Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
86	130	Power House	1306 Kinnear Rd.	9,112	Facilities	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	3	4
87	131	Aronoff Laboratory	318 W. 12th Ave.	108,644	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	2	4
88	132	393 Herrick Dr.	393 Herrick Dr.	3,137	Research	Yes	Yes	Health Care - Outpatient	100%	0	0	0	0	1	1
89	133	Waterman Storage Facility	2510 Carmack Rd.	5,450	Research	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
90	134	West Campus Substation	1989 Kenny Road.	11,000	Facilities	Yes	Yes	Other	100%	0	0	0	0	3	3
91	135	Zoology Storage	1294 Kinnear Rd.	2,044	Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
92	136	Veterinary Medicine Academic	1900 Coffey Rd.	113,459	Academic	Yes	Yes	Education	100%	1	0	1	1	2	5
93	144	Psychology Building	1835 Neil Ave.	132,712	Academic	Yes	Yes	Education	100%	1	0	1	1	2	5
94	145	140 W. 19th Ave.	140 W. 19th Ave.	83,437	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	1	3
95	146	Bolz Hall	2036 Neil Ave. Mall	82,179	Academic	Yes	Yes	Education	100%	1	1	1	1	2	6
96	147	Newman and Wolfrom Laboratory of Chemistry	100 W. 18th Ave.	62,058	Lab	Yes	Yes	Education	100%	1	1	1	1	4	8
97	148	Scott Laboratory	201 W. 19th Ave.	262,375	Academic / Research	Yes	Yes	Education	100%	1	0	1	1	2	5
98	149	Hopkins Hall	128 North Oval Mall	110,220	Academic	Yes	Yes	Education	100%	1	1	0	1	2	5
99	150	Evans Laboratory	88 W. 18th Ave.	117,574	OSUWMC	Yes	Yes	Education	100%	1	1	1	1	3	7
100	151	Fontana Laboratories	116 W. 19th Ave.	32,462	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	1	3
101	153	Poultry Breeding House 3	708 W. Lane Ave.	10,229	Agricultural	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
102	154	Poultry Brooding House 2	722 W. Lane Ave.	5,661	Agricultural	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
103	155	Radiation Dosimetry Calibration Facility	1296 Kinnear Rd.	5,603	Research	Yes	Yes	Office	100%	0	0	0	1	1	2
104	156	Animal Science Building	2029 Fyffe Rd.	55,889	Academic	Yes	Yes	Education	100%	1	0	0	1	1	3
105	157	Wiseman Hall	400 W. 12th Ave.	82,032	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	3	5
106	158	Reactor Building (Nuclear Reactor Laboratory)	1298 Kinnear Rd.	3,856	Research	Yes	Yes	Other	100%	0	0	0	1	1	2
107	159	Parking Garage - Lane Avenue	2105 Neil Ave.	445,873	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
108	160	Student Academic Services Building	281 W. Lane Ave.	137,250	Office	Yes	Yes	Office	100%	1	0	1	1	2	5
109	161	Ohio Union	1739 N. High St.	317,694	Student Housing	Yes	Yes	Public Assembly	100%	1	0	0	1	4	6
110	162	Parking Garage - Ohio Union South	1759 N. High St.	288,001	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
111	163	Tzagournis Medical Research Facility	420 W. 12th Ave.	80,417	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	3	5
112	165	Harding Hospital	1670 Upham Dr.	114,199	Patient Care	Yes	Yes	Health Care - Inpatient	100%	1	0	0	0	3	4
113	170	Parking Garage - SafeAuto Hospitals	1585 Westpark St.	365,530	Parking Garage	Yes*	Yes	Other	100%	0	0	0	1	1	2
114	171	Dodd Hall	480 Medical Center Dr.	86,802	Patient Care	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	1	2
115	172	Parking Garage - Cannon Dr. (North & South)	1640 Cannon Dr.	445,148	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
116	174	Animal House Kinnear Research Center	1314 Kinnear Rd.	6,131	Agricultural	Yes	Yes	Other	100%	0	0	0	0	1	1
117	176	Starling Loving Hall	320 W. 10th Ave.	149,403	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	3	5

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BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
118	178	Pesticide Handling Facility	2530 Carmack Rd.	1,740	Facilities	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
119	179	Waterman Farm - Laboratory Headquarters	2490 Carmack Rd.	8,444	Research	Yes	Yes	Office	100%	0	0	0	1	1	2
120	180	Goss Laboratory	1925 Coffey Rd.	67,943	Academic / Research	Yes	Yes	Education	100%	1	0	1	1	2	5
121	182	Haverfield House	112 W. Woodruff Ave.	30,267	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	1	2
122	184	Barrett House	88 W. Woodruff Ave.	35,829	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	1	2
123	185	Halloran House	60 W. Woodruff Ave.	30,269	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	1	2
124	186	Norton House	2114 Neil Ave.	35,831	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	1	2
125	187	Mathematics Building	231 W. 18th Ave.	28,893	Academic	Yes	Yes	Education	100%	1	1	1	0	2	5
126	189	Drackett Tower	191 W. Lane Ave.	138,600	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	2	3
127	190	Morrison Tower	196 W. 11th Ave.	99,934	Student Housing	Yes	Yes	Lodging	100%	1	0	0	0	2	3
128	191	Nationwide and Ohio Farm Bureau 4-H Center	2201 Fred Taylor Dr.	45,189	Conference Center	Yes	Yes	Public Assembly	100%	0	0	0	0	1	1
129	193	33 W. 11th Ave. (Ohio Legal Center)	33 W. 11th Ave.	26,386	Office	Yes	Yes	Office	100%	0	0	0	1	1	2
130	194	Houck House	61 W. Lane Ave.	37,790	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	1	2
131	200	Research Foundation Building	1960 Kenny Rd.	53,095	Academic	Yes	Yes	Office	100%	0	0	0	1	1	2
132	211	Adventure Recreation Center	855 Woody Hayes Dr.	86,070	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
133	213	Center for Integrative Medicine	2000-2002 Kenny Rd.	9,460	Patient Care	Yes	Yes	Office	100%	0	0	0	1	1	2
134	214	2006-2030 Kenny Rd.	2006-2030 Kenny Rd.	27,283	Patient Care	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	1	2
135	217	Recreation Field Support and Utility	1048 Carmack Rd.	4,850	Athletics	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
136	218	Recreation Service Building	2200 Carmack Rd.	1,862	Athletics	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
137	221	Waterman Farm - Heifer Barn	2467 Carmack Rd.	4,800	Agricultural	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
138	222	Heffner Wetland Research and Education	352 W. Dodridge St.	9,157	Research	Yes	Yes	Education	100%	0	0	0	1	1	2
139	223	Plant Materials Building	2568 Kenny Rd.	4,511	Agricultural	Yes	Yes	Education	100%	0	0	0	0	1	1
140	224	Plant Materials Greenhouse	2570 Kenny Rd.	1,998	Agricultural	Yes	Yes	Other	100%	0	0	0	0	1	1
141	226	930 Kinnear Rd. - (Student Motorsports)	930 Kinnear Rd.	12,034	Office	Yes	Yes	Office	100%	0	0	0	1	1	2
142	227	930 Kinnear Rd. - (Center for Automotive Research)	930 Kinnear Rd.	41,919	Office	Yes	Yes	Office	100%	0	0	0	1	1	2
143	228	Bill Davis Baseball Stadium	650 Borror Dr.	30,233	Athletics	Yes	Yes	Public Assembly	100%	0	0	0	0	2	2
144	229	Ice Rink	390 Woody Hayes Dr.	33,845	Athletics	Yes	Yes	Public Assembly	100%	1	0	0	0	1	2
145	230	Field Hockey and Outdoor Tennis Office	530 Irving Schottenstein Dr.	938	Athletics	Yes	Yes	Office	100%	0	0	0	0	1	1
146	231	Zoology Research Laboratory	1292 Kinnear Rd.	800	Research	Yes	Yes	Other	100%	0	0	0	0	1	1
147	232	1900 Kenny Road	1900 Kenny Rd.	31,269	Admin	Yes	Yes	Office	100%	0	0	0	1	1	2
148	234	Aquatic Ecology Laboratory Storage	1292 Kinnear Rd.	450	Research	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
149	241	650 Ackerman Rd. (Building 1)	650 Ackerman Rd.	42,074	Admin	Yes	Yes	Office	100%	0	0	0	1	1	2
150	242	660 Ackerman Rd. (Tower - Building 8)	660 Ackerman Rd.	137,836	Patient Care	Yes	Yes	Office	100%	0	0	0	1	1	2
151	244	690 Ackerman Rd. - Grounds Storage	690 Ackerman Rd.	1,611	Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
152	245	Physical Activity and Education Services - PAES	305 Annie & John Glenn Ave.	163,899	Academic	Yes	Yes	Public Assembly	100%	0	1	1	0	1	3
153	246	Recreation and Physical Activity Center	337 Annie & John Glenn Ave.	279,848	Student Housing	Yes	Yes	Public Assembly	100%	1	1	1	1	2	6
154	247	McCorkle Aquatic Pavilion	1847 Neil Ave.	127,491	Athletics	Yes	Yes	Public Assembly	100%	0	1	1	0	1	3
155	248	Chemical & Biomolecular Engineering and Chemistry	151 W. Woodruff Ave.	236,537	Academic / Research	Yes	Yes	Education	100%	1	0	1	1	4	7
156	249	Fisher Hall	2100 Neil Ave.	132,056	Administration	Yes	Yes	Office	100%	1	0	1	1	2	5

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BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
157	250	Gerlach Graduate Programs Building	2108 Neil Ave.	69,508	Academic / Admin	Yes	Yes	Education	100%	1	0	1	0	1	3
158	251	Schoenbaum Undergrad Program Bldg	210 W. Woodruff Ave.	62,748	Academic / Admin	Yes	Yes	Education	100%	1	0	1	0	1	3
159	252	Mason Hall	250 W. Woodruff Ave.	68,150	Academic	Yes	Yes	Education	100%	1	0	1	0	1	3
160	253	Pfahl Executive Education Building	280 W. Woodruff Ave.	57,619	Academic / Admin	Yes	Yes	Food Service	100%	1	0	1	1	1	4
161	254	Blackwell Inn and Conference Center	2110 Tuttle Park Pl.	127,992	Lodging	Yes	Yes	Lodging	100%	1	0	1	1	1	4
162	255	Coffey Rd Sports Center	1966 Coffey Rd.	402	Athletics	Yes	Yes	Public Assembly	100%	0	0	0	0	1	1
163	257	Maintenance Storage Shed	2661 Defiance Dr.	502	Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
164	260	Mendoza House	190 W. Woodruff Ave.	41,691	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
165	261	Archer House	2130 Neil Ave.	34,970	Student Housing	Yes	Yes	Lodging	100%	0	1	0	0	2	3
166	263	Service Building Annex	2578 Kenny Rd.	58,566	Facilities	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
167	264	Satellite Communications Facility	1318 Kinnear Rd.	3,121	Other	Yes	Yes	Other	100%	0	0	0	0	1	1
168	265	MacQuigg Laboratory	105 W. Woodruff Ave.	76,345	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	2	4
169	266	Riffe Building	496 W. 12th Ave.	130,130	Lab	Yes	Yes	Education	100%	1	0	1	0	2	4
170	267	Jones Tower	123 W. Lane Ave.	177,001	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	2	3
171	268	Taylor Tower	55 W. Lane Ave.	143,051	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	2	3
172	270	Woody Hayes Athletic Center	535 Irving Schottenstein Dr.	219,343	Athletics	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
173	271	Lincoln Tower	1800 Cannon Dr.	322,374	Student Housing	Yes	Yes	Lodging	100%	1	0	0	0	4	5
174	272	Morrill Tower	1900 Cannon Dr.	324,185	Student Housing	Yes	Yes	Lodging	100%	1	0	0	1	4	6
175	273	Parks Hall	500 W. 12th Ave.	119,237	Academic / Research	Yes	Yes	Education	100%	1	0	1	1	3	6
176	274	Hitchcock Hall	2070 Neil Ave.	118,612	Academic	Yes	Yes	Education	100%	1	0	1	1	1	4
177	275	Newton Hall	1585 Neil Ave.	80,833	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	1	3
178	276	Biological Science Building	484 W. 12th Ave.	180,694	Academic / Research	Yes	Yes	Education	100%	1	0	1	1	3	6
179	277	Graves Hall	333 W. 10th Ave.	223,221	Academic / Research	Yes	Yes	Education	100%	1	0	0	1	4	6
180	278	Parking Garage - Arps	1990 College Rd.	323,468	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
181	279	Dreese Laboratories	2015 Neil Ave.	185,430	Academic	Yes	Yes	Education	100%	1	0	1	0	4	6
182	280	Baker Systems Engineering Building	1971 Neil Ave.	114,930	Academic	Yes	Yes	Education	100%	1	0	1	1	2	5
183	281	Meiling Hall	370 W. 9th Ave.	76,545	Administration	Yes	Yes	Office	100%	1	0	0	0	1	2
184	282	Galbreath Equine Center	685 Vernon Tharp St.	40,822	Veterinary	Yes	Yes	Health Care - Outpatient	100%	1	0	1	0	1	3
185	283	Parking Garage - Biological Science Building	484 W. 12th Ave.	19,086	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
186	284	Fawcett Center for Tomorrow	2400 Olentangy River Rd.	178,184	Admin / Conference	Yes	Yes	Public Assembly	100%	0	0	0	1	1	2
187	287	Parking Garage - Neil Ave.	1801 Neil Ave.	364,546	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
188	288	Parking Garage - Ohio Union North	1780 College Rd.	216,738	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
189	289	Laundry Building	2560 Kenny Rd.	52,931	Facilities	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
190	290	Printing Facility	2500 Kenny Rd.	42,623	Office	Yes	Yes	Service	100%	0	0	0	1	1	2
191	293	Cunz Hall	1841 Neil Ave.	68,100	Academic	Yes	Yes	Education	100%	1	0	1	1	2	5
192	294	Wilce Student Health Center	1875 Millikin Rd.	50,179	Student Life	Yes	Yes	Health Care - Outpatient	100%	1	0	1	0	1	3
193	295	Howlett Hall	2001 Fyffe Ct.	62,605	Academic	Yes	Yes	Education	100%	1	1	0	1	1	4
194	296	Drake Performance and Event Center	1849 Cannon Dr.	115,835	Academic	Yes	Yes	Public Assembly	100%	1	0	0	1	1	3
195	297	Howlett Greenhouses	680 Vernon Tharp St.	41,484	Agricultural	Yes	Yes	Other	100%	1	1	0	1	1	4

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BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
196	298	Agricultural Engineering Building	590 Woody Hayes Dr.	120,345	Agricultural	Yes	Yes	Education	100%	1	0	0	1	2	4
197	299	Veterinary Medical Center	601 Vernon Tharp St.	222,496	Veterinary	Yes	Yes	Health Care - Outpatient	100%	1	0	1	1	5	8
198	302	Prior Hall, Health Science Library	376 W. 10th Ave.	147,486	Academic	Yes	Yes	Education	100%	1	0	0	1	2	4
199	303	McCampbell Hall	1581 Dodd Dr.	133,041	Patient Care/Research	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	3	4
200	304	Athletic Maintenance	2402 Fred Taylor Dr.	10,109	Athletics	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	3	4
201	306	Atwel Hall	453 W. 10th Ave.	98,273	Academic / Research	Yes	Yes	Education	100%	0	0	0	1	1	2
202	307	Bevis Hall	1080 Carmack Rd.	79,916	Academic	Yes	Yes	Education	100%	0	0	0	1	2	3
203	308	Rightmire Hall	1060 Carmack Rd.	97,655	Academic / Research	Yes	Yes	Education	100%	0	1	0	1	3	5
204	309	Pressey Hall	1070 Carmack Rd.	77,779	Academic	Yes	Yes	Education	100%	0	1	0	1	1	3
205	310	Scott Hall	1090 Carmack Rd.	62,345	Academic / Research	Yes	Yes	Education	100%	0	0	0	1	2	3
206	311	Mount Hall	1050 Carmack Rd.	72,186	Academic	Yes	Yes	Education	100%	0	0	0	1	1	2
207	316	Waterman Farm - Dairy Calf Barn	2449 Carmack Rd.	7,698	Agricultural	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
208	317	Waterman Farm - Main Dairy Barn	2433 Carmack Rd.	23,703	Agricultural	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
209	337	Dulles Hall	230 Annie & John Glenn Ave.	42,300	Academic	Yes	Yes	Education	100%	0	1	1	0	1	3
210	338	Independence Hall	1923 Neil Ave Mall.	15,891	Academic	Yes	Yes	Education	100%	1	0	1	0	1	3
211	339	University Hall	230 North Oval Mall	78,718	Academic	Yes	Yes	Education	100%	0	1	1	0	1	3
212	340	Kottman Hall	2021 Coffey Rd.	167,040	Academic	Yes	Yes	Education	100%	1	0	0	1	3	5
213	345	Biocontainment Laboratory	2090 Carmack Rd.	2,862	Research	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	1	2
214	347	Jesse Owens Recreation Center North	2151 Neil Ave.	23,728	Student Activity	Yes	Yes	Public Assembly	100%	0	0	0	1	1	2
215	348	Jesse Owens Recreation Center South	175 W. 11th Ave.	23,535	Student Activity	Yes	Yes	Public Assembly	100%	0	0	0	1	1	2
216	349	Jesse Owens Tennis Center West	1031 Carmack Rd.	23,535	Student Activity	Yes	Yes	Public Assembly	100%	0	0	0	1	1	2
217	350	Library Book Depository	2700 Kenny Rd.	38,544	Administration	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
218	352	Parking Garage - 11th Ave.	229 W. 11th Ave.	221,080	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
219	353	Ross Heart Hospital	452 W. 10th Ave.	306,801	Patient Care	Yes	Yes	Health Care - Inpatient	100%	1	0	1	0	2	4
220	354	Rhodes Hall	450 W. 10th Ave.	507,803	Patient Care	Yes	Yes	Health Care - Inpatient	100%	1	0	1	1	7	10
221	355	Weigel Hall	1866 College Rd.	47,042	Academic	Yes	Yes	Education	100%	0	1	0	0	1	2
222	356	395 W. 12th Ave.	395 W. 12th Ave.	90,747	Administration	Yes	Yes	Office	100%	1	0	0	0	2	3
223	357	Northwood-High Building	2231 N. High St.	41,171	Patient Care/Acad	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	1	2
224	358	Sherman Studio Art Center	1055 Carmack Rd.	22,471	Academic	Yes	Yes	Education	100%	0	0	0	1	1	2
225	359	Parking Garage - 9th Ave W	355 W. 9th Ave.	371,752	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
226	360	Blankenship Hall	901 Woody Hayes Dr.	58,109	Administration	Yes	Yes	Public Order and Safety	100%	0	0	0	1	1	2
227	362	Bulk Chemical Warehouse	2600 Kenny Rd.	15,512	Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
228	363	Comprehensive Cancer Center	410 W. 12th Ave.	74,390	Academic / Research	Yes	Yes	Education	100%	1	0	0	0	1	2
229	371	Celeste Laboratory of Chemistry	120 W. 18th Ave.	110,310	Lab	Yes	Yes	Education	100%	1	0	1	1	4	7
230	372	Brain & Spine Hospital	300 W. 10th Ave.	258,797	Patient Care	Yes	Yes	Health Care - Inpatient	100%	1	0	1	1	8	11
231	373	1100 Kinnear Rd.	1100 Kinnear Rd.	48,532	Administration	Yes	Yes	Office	100%	0	0	0	1	3	4
232	374	1224 Kinnear Rd.	1224 Kinnear Rd.	42,773	OAR Net	Yes	Yes	Office	100%	0	0	0	1	1	2
233	375	James Cancer Hospital and Solove Research Institute	460 W. 10th Ave.	1,186,252	Patient Care/Research	Yes	Yes	Health Care - Inpatient	100%	1	0	1	1	8	11
234	376	East Regional Chilled Water Plant	30 W. 18th Ave.	23,450	Facilities	Yes	Yes	Other	100%	1	1	1	0	4	7

SCHEDULE 19

BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
235	377	Generator Building	321 W. 18th Ave.	5,355	Facilities	Yes	Yes	Other	100%	0	0	0	0	1	1
236	379	Telecommunications Network Center	320 W. 8th Ave.	45,297	Facilities	Yes	Yes	Other	100%	0	0	0	0	1	1
237	381	Stores and Receiving	2650 Kenny Rd.	125,050	Administration	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	2	3
238	382	Davis Medical Research Center	480 Medical Center Dr.	43,459	Patient Care	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	1	2
239	384	Rothenbuhler Honey Bee Research Laboratory	2501 Carmack Rd.	6,359	Research	Yes	Yes	Education	100%	0	0	0	1	1	2
240	385	Child Care Center	725 Ackerman Rd.	43,358	Administration	Yes	Yes	Office	100%	0	0	0	1	1	2
241	386	Wexner Center for the Arts	1871 N. High St.	131,071	Museum	Yes	Yes	Public Assembly	100%	1	1	0	0	4	6
242	387	Parking Garage - 12th Ave.	340 W. 12th Ave.	234,895	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
243	388	South Campus Central Chiller Plant	1740 Cannon Dr.	83,056	Facilities	Yes	Yes	Other	100%	1	0	1	0	5	7
244	390	Water Treatment Building	331 W. 18th Ave.	14,991	Facilities	Yes	Yes	Other	100%	1	0	0	0	1	2
245	394	Biotechnology Support Facility	1096 Carmack Rd.	24,433	Research	Yes	Yes	Other	100%	0	0	0	1	2	3
246	800	Buckeye Village Community Center***	2724 Defiance Dr.	27,086	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
247	801	Buckeye Village A	600-626 Cuyahoga Ct.	6,675	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
248	802	Buckeye Village B	630-672 Cuyahoga Ct.	8,751	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
249	803	Buckeye Village C	661-702 Cuyahoga Ct.	10,433	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
250	804	Buckeye Village D	601-653 Cuyahoga Ct.	12,620	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
251	805	Buckeye Village E	2760-2796 Defiance Dr.	8,691	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
252	806	Buckeye Village F	600-642 Stark Ct.	10,522	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
253	807	Buckeye Village G	650-683 Stark Ct.	10,428	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
254	808	Buckeye Village H	601-653 Stark Ct.	12,540	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
255	809	Buckeye Village J	520-556 Mahoning Ct.	8,662	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
256	810	Buckeye Village K	500-517 Mahoning Ct.	8,664	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
257	811	Buckeye Village L	521-557 Mahoning Ct.	10,679	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
258	812	Buckeye Village M	510-546 Montgomery Ct.	10,678	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
259	813	Buckeye Village N	500-517 Montgomery Ct.	6,655	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
260	814	Buckeye Village P	521-547 Montgomery Ct.	6,647	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
261	815	Buckeye Village R	551-587 Montgomery Ct.	10,677	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
262	816	Buckeye Village Laundry	2743 Defiance Dr.	792	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
263	817	Buckeye Village S	591-627 Tuscarawas Ct.	10,678	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
264	818	Buckeye Village T	631-657 Tuscarawas Ct.	6,647	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
265	819	Buckeye Village U	661-703 Tuscarawas Ct.	8,751	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
266	820	Buckeye Village V	650-702 Trumbull Ct.	10,433	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
267	827	Buckeye Village CC	2600-2617 Lorain Ct.	10,711	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
268	830	Buckeye Village FF	2620-2637 Muskingum Ct.	8,681	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
269	831	Buckeye Village GG	2570-2612 Muskingum Ct.	10,522	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
270	833	Buckeye Village Administration	2661 Defiance Dr.	4,472	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
271	834	Buckeye Village Recreation Hall	2704 Defiance Dr.	3,685	Student Housing	Yes**	Yes**	Lodging	100%	0	0	0	1	1	2
272	846	William Hall Complex - Neil Building	1578 Neil Ave.	129,908	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
273	847	William Hall Complex - Scholars House West	239 W. 10th Ave.	17,673	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2

SCHEDULE 19

BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
274	848	William Hall Complex - Scholars House East	221 W. 10th Ave.	17,685	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
275	849	William Hall Complex - Worthington Building	203 W. 10th Ave.	48,554	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
276	850	Residences on Tenth	230 W. 10th Ave.	189,625	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
277	851	Park-Stradley Hall	120 W. 11th Ave.	271,039	Student Housing	Yes	Yes	Lodging	100%	1	1	1	0	5	8
278	852	Smith-Steeb Hall	80 W. 11th Ave.	262,198	Student Housing	Yes	Yes	Lodging	100%	1	1	1	0	1	4
279	860	Gateway A	1595 N. High St.	130,188	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
280	862	Gateway B	1620 N. High St.	112,823	Retail	Yes	Yes	Mercantile (not mall)	100%	0	0	0	1	1	2
281	863	Gateway C - OSU Human Resources	1590 N. High St.	192,313	Retail	Yes	Yes	Office	100%	0	0	0	1	1	2
282	864	Hanley Alumnae Scholarship House	225 W. 10th Ave.	5,519	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
283	865	Gateway D	1550 N. High St.	81,019	Retail	Yes	Yes	Office	100%	0	0	0	1	1	2
284	866	Parking Garage - Gateway E	75 E. 11th Ave.	390,139	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
285	867	Gateway F - North	43-71 E. 11th Ave.	19,356	Retail	Yes	Yes	Mercantile (not mall)	100%	0	0	0	1	1	2
286	868	Gateway F - South	42-68 E. 9th Ave.	19,344	Retail	Yes	Yes	Mercantile (not mall)	100%	0	0	0	1	1	2
287	869	Pomerene Alumnae Scholarship House	231 W. 10th Ave.	5,904	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
288	875	Parking Garage - 9th Ave E	345 W. 9th Ave.	324,294	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
289	878	Institute for Behavioral Medicine Research	460 Medical Center Dr.	79,960	Medical Research	Yes	Yes	Education	100%	0	0	0	1	2	3
290	880	Martha Morehouse Medical Plaza - Pavilion	2050 Kenny Rd.	162,526	Patient Care	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	2	3
291	881	Martha Morehouse Medical Plaza - Tower	2050 Kenny Rd.	127,815	Patient Care	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	2	3
292	882	MarthaMorehouse Medical Plaza - Concourse	2050 Kenny Rd.	38,084	Patient Care	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	3	4
293	891	Lawrence Tower	328 W. Lane Ave.	150,106	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
294	892	Parking Garage - W. Lane Ave	328 W. Lane Ave.	98,460	Parking Garage	No*	Yes	Other	100%	0	0	0	0	1	1
295	902	53 W. 11th Ave.	53 W. 11th Ave.	5,321	Office	Yes	Yes	Office	100%	0	0	0	1	1	2
296	921	Ackerman Place	700 Ackerman Rd.	9,301	Patient Care	Yes	Yes	Office	100%	0	0	0	1	1	2
297	927	1615 Highland St.	1615 Highland St.	5,646	Student Housing	Yes	Yes	Lodging	100%	0	0	0	0	1	1
298	931	960 Kinnear Rd.	960 Kinnear Rd.	42,415	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
299	932	1165 Kinnear Rd.	1165 Kinnear Rd.	104,577	Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
300	951	1315 Kinnear Rd.	1315 Kinnear Rd.	99,781	FOD Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	1	1	2
301	958	Waterman Farm - Agronomy Machinery Storage	2623 Kenny Rd.	3,677	Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
302	959	Kuhn Honors and Scholars House	220 W. 12th Ave.	9,971	Academic	Yes	Yes	Office	100%	0	0	0	0	1	1
303	964	45 W. 11th Ave.	45 W. 11th Ave.	4,525	Office	Yes	Yes	Office	100%	0	0	0	1	1	2
304	965	German House	141 W. 11th Ave.	4,501	Student Housing	Yes	Yes	Lodging	100%	0	0	0	1	1	2
305	977	ElectroScience Laboratory Complex	1320-1330 Kinnear Rd.	40,332	Research	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	1	2
306	983	Turfgrass Foundation Research & Education Facility	2710 North Star Rd.	6,713	Research	Yes	Yes	Education	100%	0	0	0	1	1	2
307	987	Campus Shop	2469 Wood Ave.	10,291	Facilities	Yes	Yes	Service	100%	0	0	0	1	1	2
308	992	Waterman Farm - Agronomy Turf Research	2551 Carmack Rd.	1,960	Academic / Research	Yes	Yes	Education	100%	0	0	0	0	1	1
309	995	Evans Hall	520 King Ave.	27,357	Health Care	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	1	2
310	1004	Jameson Crane Sports Medicine Institute	2835 Fred Taylor Drive.	109,564	Patient Care	Yes	Yes	Health Care - Outpatient	100%	0	0	0	1	1	2
311	1101	Torres House	187 W. Lane Ave.	123,225	Student Housing	Yes	Yes	Lodging	100%	0	1	1	1	1	4
312	1102	Houston House	97 W. Lane Ave.	136,557	Student Housing	Yes	Yes	Lodging	100%	0	1	1	1	1	4

SCHEDULE 19

BPR #	University Building Designations		Street Address	Gross Square Footage	Building Function	Campus EUI	Smart Meter KPI	CBEC Building Type		Required Smart Meters					
	Bldg #	Name						Type	%	Steam	Hot Water	Chilled Water	Natural Gas	Electricity	Total
313	1103	Raney House	33 W. Lane Ave.	125,474	Student Housing	Yes	Yes	Lodging	100%	0	1	1	1	1	4
314	1104	Bowen House	2125 N. High St.	87,581	Student Housing	Yes	Yes	Lodging	100%	0	1	1	0	1	3
315	1105	Busch House	2115 N. High St.	114,500	Student Housing	Yes	Yes	Lodging	100%	0	1	1	0	1	3
316	1106	Curl Hall	80 W. Woodruff Ave.	27,900	Student Housing	Yes	Yes	Lodging	100%	0	1	1	1	1	4
317	1107	Blackburn House	136 W. Woodruff Ave.	132,162	Student Housing	Yes	Yes	Lodging	100%	0	1	1	0	1	3
318	1108	Scott House (Building J)	160 W. Woodruff Ave.	154,751	Student Life	Yes	Yes	Lodging	100%	0	1	1	1	2	5
319	1109	North Recreation Center	149 W. Lane Ave.	28,834	Student Housing	Yes	Yes	Lodging	100%	0	1	1	0	1	3
320	1110	Nosker House	124 W. Woodruff Ave.	106,857	Student Housing	Yes	Yes	Lodging	100%	0	1	1	1	1	4
321	1257	Poly House - Hoop Greenhouse A	680 Vernon Tharp St.	661	Agricultural	Yes	Yes	Other	100%	0	0	0	0	1	1
322	1258	Poly House - Hoop Greenhouse C	680 Vernon Tharp St.	1,575	Agricultural	Yes	Yes	Other	100%	0	0	0	0	1	1
323	1259	Poly House - Hoop Greenhouse B	680 Vernon Tharp St.	1,575	Agricultural	Yes	Yes	Other	100%	0	0	0	0	1	1
324	1270	Poly House - Hoop Greenhouse A	680 Vernon Tharp St.	2,350	Agricultural	Yes	Yes	Other	100%	0	0	0	0	1	1
325	1302	Waterman Farm - Hoop Bio Storage	2451 Carmack Rd.	936	Farm	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
326	1306	Waterman Farm - Arched Greenhouse 1	2532 Carmack Rd.	707	Farm	Yes	Yes	Other	100%	0	0	0	0	1	1
327	1307	Waterman Farm - Arched Greenhouse 2	2536 Carmack Rd.	1,456	Farm	Yes	Yes	Other	100%	0	0	0	0	1	1
328	1316	Waterman Farm - Pump House	2500 Carmack Rd.	1,200	Agricultural	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1
329	2432	640 Ackerman Rd.	640 Ackerman Rd.	35,468	Patient Care	Yes	Yes	Office	100%	0	0	0	0	1	1
330	2433	670 Ackerman Rd.	670 Ackerman Rd.	33,642	Patient Care	Yes	Yes	Office	100%	0	0	0	0	1	1
331	2434	680 Ackerman Rd.	680 Ackerman Rd.	29,315	Patient Care	Yes	Yes	Office	100%	0	0	0	0	1	1
332	2435	600 Ackerman Rd.	600 Ackerman Rd.	68,051	Patient Care	Yes	Yes	Office	100%	0	0	0	0	1	1
333	2436	630 Ackerman Rd.	630 Ackerman Rd.	67,904	Patient Care	Yes	Yes	Office	100%	0	0	0	0	1	1
334	2437	610 Ackerman Rd.	610 Ackerman Rd.	57,975	Patient Care	Yes	Yes	Office	100%	0	0	0	0	1	1
335	2442	690 Ackerman Rd - Shelter House	690 Ackerman Rd.	1,449	Storage	Yes	Yes	Warehouse and Storage	100%	0	0	0	0	1	1

**\* Note regarding parking garages:** The University does not intend to include the main parking structures of parking garages in the EUI calculations pursuant to this Schedule 19. However, some of the parking garage structures include co-located conditioned space used for retail, office, or other functions. Each of the co-located spaces will be metered separately from the garages in which the space is co-located. Once the smart meter deployment is completed to these co-located space, the spaces will be added to the EUI calculation pursuant to Schedule 19. Until such time, the entirety of the parking garage structure will be excluded from the EUI calculations pursuant to Schedule 19.

**\*\* Note regarding Buckeye Village buildings:** Several of the currently existing Buckeye Village buildings have been removed from this Schedule 19 Building List. The future plans for the remaining Buckeye Village buildings on this list are still in development. It is possible that some or all of the remaining Buckeye Village buildings will be razed in the next few years. To avoid unnecessary expense and disruptions to tenants, the University is asking these identified buildings be placed at the end of the Smart Meter deployment schedule in year 4. Prior to deployment of meters to these buildings, the University in collaboration with the Concessionaire will determine what, if any, smart meters should be deployed to these buildings. If the buildings are razed or the University determines it is not prudent to deploy meters to these buildings (due to near-term plans to raze the buildings), then the Smart Meter KPI metrics will be adjusted to eliminate these buildings from the count, such that the total meter count necessary for the Concessionaire's 100% deployment obligation is reduced.

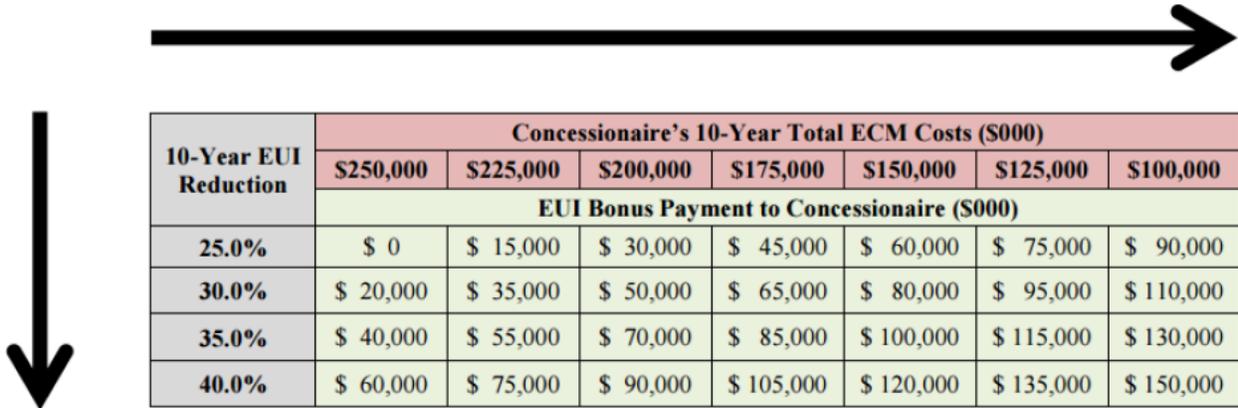
SCHEDULE 19

Appendix 2

CBECS Building Types	CBECS Description	University Buildings	
		Function	Example
Education	Buildings used for academic or technical classroom instruction, such as classroom buildings on college or university campuses. Buildings on education campuses for which the main use is not classroom are included in the category relating to their use. For example, administration buildings are part of "Office," dormitories are "Lodging," and libraries are "Public Assembly."	<ul style="list-style-type: none"> <li>Academic</li> </ul>	<ul style="list-style-type: none"> <li>Derby Hall</li> <li>Page Hall</li> <li>Mason Hall</li> <li>Smith Laboratory</li> </ul>
Food Sales	Buildings used for retail or wholesale of food	<ul style="list-style-type: none"> <li>Currently not applicable</li> </ul>	<ul style="list-style-type: none"> <li>Currently not applicable</li> </ul>
Food Service	Buildings used for preparation and sale of food and beverages for consumption	<ul style="list-style-type: none"> <li>Food service</li> </ul>	<ul style="list-style-type: none"> <li>Kennedy Commons</li> <li>Pfahl Hall</li> </ul>
Health Care (Inpatient)	Buildings used as diagnostic and treatment facilities for inpatient care	<ul style="list-style-type: none"> <li>Inpatient care facilities</li> <li>Central utility plants</li> </ul>	<ul style="list-style-type: none"> <li>McCracken Power Plant</li> <li>James Cancer Hospital</li> </ul>
Health Care (Outpatient)	Buildings used as diagnostic and treatment facilities for outpatient care. Medical offices are included here if they use any type of diagnostic medical equipment (if they do not, they are categorized as an office building).	<ul style="list-style-type: none"> <li>Outpatient care facilities</li> <li>Energy-intensive research facilities</li> </ul>	<ul style="list-style-type: none"> <li>Scott Laboratory</li> <li>Wilce Student Health Center</li> <li>Physics Research Building</li> </ul>
Lodging	Buildings used to offer multiple accommodations for short-term or long-term residents, including skilled nursing and other residential care buildings	<ul style="list-style-type: none"> <li>Student housing</li> <li>Hotel</li> </ul>	<ul style="list-style-type: none"> <li>Baker Hall</li> <li>Blackwell Inn</li> </ul>
Mercantile (Retail other than mall)	Buildings used for the sale and display of goods other than food.	<ul style="list-style-type: none"> <li>Retail</li> </ul>	<ul style="list-style-type: none"> <li>TechHub</li> <li>Tuttle Park Bookstore</li> </ul>
Mercantile (Enclosed and strip malls)	Shopping malls comprised of multiple connected establishments	<ul style="list-style-type: none"> <li>Currently not applicable</li> </ul>	<ul style="list-style-type: none"> <li>Currently not applicable</li> </ul>
Office	Buildings used for general office space, professional office, or administrative offices. Medical offices are included here if they do not use any type of diagnostic medical equipment (if they do, they are categorized as outpatient health care).	<ul style="list-style-type: none"> <li>Administration</li> </ul>	<ul style="list-style-type: none"> <li>Bricker Hall</li> <li>Meiling Hall</li> <li>650 Ackerman</li> </ul>
Public Assembly	Buildings in which people gather for social or recreational activities, whether in private or non-private meeting halls	<ul style="list-style-type: none"> <li>Athletics</li> <li>Library</li> <li>Auditoriums</li> </ul>	<ul style="list-style-type: none"> <li>Ohio Stadium</li> <li>Thompson Library</li> <li>Mershon Auditorium</li> </ul>
Public Order and Safety	Buildings used for the preservation of law and order or public safety	<ul style="list-style-type: none"> <li>Administration</li> </ul>	<ul style="list-style-type: none"> <li>Blankenship Hall (OSU PD)</li> </ul>
Religious Worship	Buildings in which people gather for religious activities, (such as chapels, churches, mosques, synagogues, and temples).	<ul style="list-style-type: none"> <li>Currently not applicable</li> </ul>	<ul style="list-style-type: none"> <li>Currently not applicable</li> </ul>
Service	Buildings in which some type of service is provided, other than food service or retail sales of goods	<ul style="list-style-type: none"> <li>Service</li> <li>Facilities</li> </ul>	<ul style="list-style-type: none"> <li>Printing Facility</li> <li>Campus Shop</li> </ul>
Warehouse and Storage	Buildings used to store goods, manufactured products, merchandise, raw materials, or personal belongings (such as self-storage).	<ul style="list-style-type: none"> <li>Facilities</li> <li>Storage</li> <li>Agricultural storage</li> </ul>	<ul style="list-style-type: none"> <li>Agronomy Pole Barn</li> <li>Sea Grant Boat Storage Shed</li> <li>Laundry Building</li> </ul>
Other	Buildings that are industrial or agricultural with some retail space; buildings having several different commercial activities that, together, comprise 50 percent or more of the floor space, but whose largest single activity is agricultural, industrial/ manufacturing, or residential; and all other miscellaneous buildings that do not fit into any other category.	<ul style="list-style-type: none"> <li>Greenhouse</li> <li>Farm buildings – livestock barns</li> <li>Research facilities with functions similar to industrial, agricultural, or manufacturing functions</li> </ul>	<ul style="list-style-type: none"> <li>Generator Building</li> <li>Howlett Hall Greenhouses</li> <li>Cow Feeding Shed</li> <li>Nuclear Reactor Laboratory</li> </ul>
Vacant	Buildings in which more floor space is vacant than is used for any single commercial activity.	<ul style="list-style-type: none"> <li>Currently not applicable</li> </ul>	<ul style="list-style-type: none"> <li>Currently not applicable</li> </ul>

**SCHEDULE 21**

**EUI BONUS SCHEDULE**



10-Year EUI Reduction	Concessionaire's 10-Year Total ECM Costs (\$000)						
	\$250,000	\$225,000	\$200,000	\$175,000	\$150,000	\$125,000	\$100,000
	EUI Bonus Payment to Concessionaire (\$000)						
25.0%	\$ 0	\$ 15,000	\$ 30,000	\$ 45,000	\$ 60,000	\$ 75,000	\$ 90,000
30.0%	\$ 20,000	\$ 35,000	\$ 50,000	\$ 65,000	\$ 80,000	\$ 95,000	\$ 110,000
35.0%	\$ 40,000	\$ 55,000	\$ 70,000	\$ 85,000	\$ 100,000	\$ 115,000	\$ 130,000
40.0%	\$ 60,000	\$ 75,000	\$ 90,000	\$ 105,000	\$ 120,000	\$ 135,000	\$ 150,000

Examples for illustrative purposes only:

Example 1

- Prior to June 30, 2028, Concessionaire obtains 25% EUI reduction with a total ECM spend of \$200,000,000
  - Concessionaire's potential bonus payment is \$30,000,000
- Prior to June 30, 2028, Concessionaire creates 5% incremental EUI reduction while spending an additional \$25,000,000 on ECMs
  - Concessionaire's potential bonus payment is increased \$5,000,000 for the incremental EUI reduction
- By June 30, 2028, Concessionaire creates another 5% incremental EUI reduction while spending an additional \$25,000,000 on ECMs
  - Concessionaire's potential bonus payment is increased \$5,000,000 for the incremental EUI reduction
- Total EUI Bonus payment to Concessionaire at June 30, 2028 is \$40,000,000 for a 35% reduction in EUI

Example 2

- Prior to June 30, 2028, Concessionaire obtains 25% EUI reduction with a total ECM spend of \$100,000,000
  - Concessionaire's potential bonus payment is \$90,000,000
- Prior to June 30, 2028, Concessionaire creates 5% incremental EUI reduction while spending an additional \$25,000,000 on ECMs
  - Concessionaire's potential bonus payment is reduced by \$10,000,000 for inefficient EUI reduction spending

- By June 30, 2028, Concessionaire creates another 5% incremental EUI reduction while spending an additional \$25,000,000 on ECMs
  - Concessionaire's potential bonus payment is increased \$5,000,000 for the incremental EUI reduction
- Total EUI Bonus payment to the Concessionaire at June 30, 2028 is \$85,000,000 for a 35% reduction in EUI

Example 3

- Prior to June 30, 2028, Concessionaire obtains 25% EUI reduction with a total ECM spend of \$160,000,000
  - Concessionaire's potential bonus payment is \$45,000,000
- Prior to June 30, 2028, Concessionaire creates a 6% incremental EUI reduction while spending an additional \$35,000,000 on ECMs
  - Concessionaire's potential bonus is increased by \$5,000,000 for the incremental EUI reduction
- By June 30, 2028, Concessionaire creates another 3% incremental EUI reduction while spending an additional \$5,000,000 on ECMs
  - Concessionaire's potential bonus is unchanged
- Total EUI Bonus payment to Concessionaire at June 30, 2028 is \$50,000,000 for a 34% reduction in EUI

**SCHEDULE 22**

**ACADEMIC COLLABORATION**

[See Attached]

# Academic Collaboration

Topic	Minimum Investment	Description	Valuation	Payment	Election
Internships and Scholarship	<ul style="list-style-type: none"> <li>\$30 million divided between annual internships and endowed scholarships</li> </ul>	<ul style="list-style-type: none"> <li>Minimum of 10 paid internships annually</li> </ul>	<ul style="list-style-type: none"> <li>One 3-month internship is valued at \$10,000 (\$5mm/50years)</li> </ul>	<ul style="list-style-type: none"> <li>Annually to each intern</li> </ul>	<ul style="list-style-type: none"> <li>\$30 million or more allocated as follows:                             <ul style="list-style-type: none"> <li>Total number of paid annual internships: <b>10</b></li> </ul> </li> </ul>
		<ul style="list-style-type: none"> <li>Minimum of \$7.5 million for undergraduate student scholarships</li> </ul>		<ul style="list-style-type: none"> <li>One-time at Closing</li> </ul>	<ul style="list-style-type: none"> <li>Total amount contributed to undergraduate student scholarships: <b>\$12.5 million</b></li> </ul>
		<ul style="list-style-type: none"> <li>Minimum of \$7.5 million for graduate &amp; professional student scholarships</li> </ul>		<ul style="list-style-type: none"> <li>One-time at Closing</li> </ul>	<ul style="list-style-type: none"> <li>Total amount contributed to graduate &amp; professional student scholarships: <b>\$12.5 million</b></li> </ul>
Full-time employment positions are not to be included in the Academic Collaboration Commitment.					
Impactful, Visionary Project and Research	<ul style="list-style-type: none"> <li>\$50 million – of which, \$25-\$50 million must be for a single impactful, visionary project</li> </ul>	<ul style="list-style-type: none"> <li>Impactful visionary project – academic or research initiative combining interests of University and the Concessionaire/Affiliates</li> </ul>		<ul style="list-style-type: none"> <li>At such time and in such manner as provided in Section 20.1(a)(i)</li> </ul>	<ul style="list-style-type: none"> <li>\$50 million or more contributed as follows:                             <ul style="list-style-type: none"> <li>Amount contributed to visionary project: <b>\$50 million</b></li> </ul> </li> </ul>
		<ul style="list-style-type: none"> <li>Other research investment – (if less than \$50 mm is committed to visionary project): initiative(s) for the University and the Concessionaire</li> </ul>		<ul style="list-style-type: none"> <li>At the launch of such other research investments(s)</li> </ul>	<ul style="list-style-type: none"> <li>Amount, if any, contributed to other research investment(s): <b>\$0</b></li> </ul>
Philanthropy	<ul style="list-style-type: none"> <li>\$50 million divided between annual contributions to University-related philanthropic organizations and faculty endowments</li> </ul>	<ul style="list-style-type: none"> <li>Annual contribution examples                             <ul style="list-style-type: none"> <li>Pelotonia</li> <li>WOSU</li> <li>Wexner Center for the Arts</li> </ul> </li> </ul> <p>(Athletic sponsorships do not qualify)</p>	<ul style="list-style-type: none"> <li>Annual \$ contributed x years of contributions commitment</li> </ul>	<ul style="list-style-type: none"> <li>Annually to the University-related philanthropic organizations selected by Concessionaire</li> </ul>	<ul style="list-style-type: none"> <li>\$50 million or more allocated as follows:                             <ul style="list-style-type: none"> <li>Annual amount to be contributed to University-related philanthropic organizations: <b>\$810,000</b></li> <li>Number of years: <b>50 years</b></li> </ul> </li> </ul>
		<ul style="list-style-type: none"> <li>Faculty Endowment examples                             <ul style="list-style-type: none"> <li>Deans Chair: \$3.5mm</li> <li>Chair: \$2mm</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Total of all endowments</li> </ul>	<ul style="list-style-type: none"> <li>One-time at Closing</li> </ul>	<ul style="list-style-type: none"> <li>Type and number of each faculty endowment: <b>1 Dean's Chair, 2 Chairs, 2 Professorships</b></li> </ul>
Sustainability	<ul style="list-style-type: none"> <li>\$15 million Endowment</li> </ul>	<ul style="list-style-type: none"> <li>Concessionaire and University to direct all funds to sustainability projects outside the scope of the Agreement</li> </ul>		<ul style="list-style-type: none"> <li>One-time at Closing</li> </ul>	<ul style="list-style-type: none"> <li>Sustainability commitment: <b>\$15 million total</b></li> </ul>
Curriculum and Staff Development	<ul style="list-style-type: none"> <li>\$5 million Endowment</li> </ul>	<ul style="list-style-type: none"> <li>Funds will be used at University's discretion to develop sustainability curriculum and support related teaching and learning initiatives, and for staff development</li> </ul>		<ul style="list-style-type: none"> <li>One-time at Closing</li> </ul>	<ul style="list-style-type: none"> <li>Curriculum and staff development commitment: <b>\$5 million total</b></li> </ul>

# A center for innovation unlike any other

## Project Introduction

OSEP is proposing a new **Energy Advancement and Innovation Center** – an experiential hub for energy research and technology incubation at Ohio State – where innovation will flourish among interdisciplinary teams of collaborators, supported by a unique University–Industry partnership. Bringing together University faculty, students, ENGIE researchers, local entrepreneurs, and industry experts, the Center will engage the community with the next generation of smart energy systems, renewable energy and green mobility. With the support of ENGIE’s network of 11 global research labs and industry partnerships, the Center will propel innovation beyond the R&D stage to incubate technologies developed here, providing them with the support and resources necessary to become commercially successful. Promising projects will find a “route to market” at the Center through unique channels provided by ENGIE, bridging the gap between a proof of concept or pilot project and a commercially viable product or process. See the video for 3D visualization of the project including the Innovation Center.<sup>1</sup>

## Mission & Purpose

The Energy Advancement and Innovation Center will have 5 distinct purposes:

1. Nurture **collaboration** across disciplines in order to foster energy advancement and innovation in a holistic way, bringing together the people, technologies, services and data to discover novel methods for tackling the challenges of tomorrow.
2. Facilitate **collaborative research** between University faculty, students and ENGIE Labs with tools, lab space, funding and human resources.
3. **Incubate** energy and related digital technology startups in the Columbus area by providing a route to market for innovative ideas through various outlets including ENGIE and Axium businesses and subsidiaries.
4. Serve as a physical forum for learning, dialog and **public-private partnership** in energy innovation; a symbol of leadership and advancement in the field.
5. Connect the academic and professional work above to the public through active **community engagement**.

## Facts & Figures



1: [https://www.siradel.com/all\\_web/P.DT/colombus/finalOSUvideo.mp4](https://www.siradel.com/all_web/P.DT/colombus/finalOSUvideo.mp4)  
2: For the first five years.

# Designing for collaboration

The Energy Advancement and Innovation Center is designed first and foremost to encourage the cross-pollination of people and ideas in spaces conducive to collaboration. Reconfigurable laboratories, networked workspaces, and beautiful public spaces throughout the Center promote equal parts spontaneous collaboration and focused, intentional investigation.



## Architectural Program

### Create & Innovate

Dedicated Laboratories 6,500 sq. ft.

### Collaborative Clusters

Flexible Workspaces 14,000 sq. ft.  
Modular Pods 3,500 sq. ft.

### Meet & Gather

Entry Vestibule & Lobby 3,500 sq. ft.  
Café & Micro Kitchen 2,500 sq. ft.  
Outdoor & Green Spaces 6,000 sq. ft.  
Circulation 7,000 sq. ft.

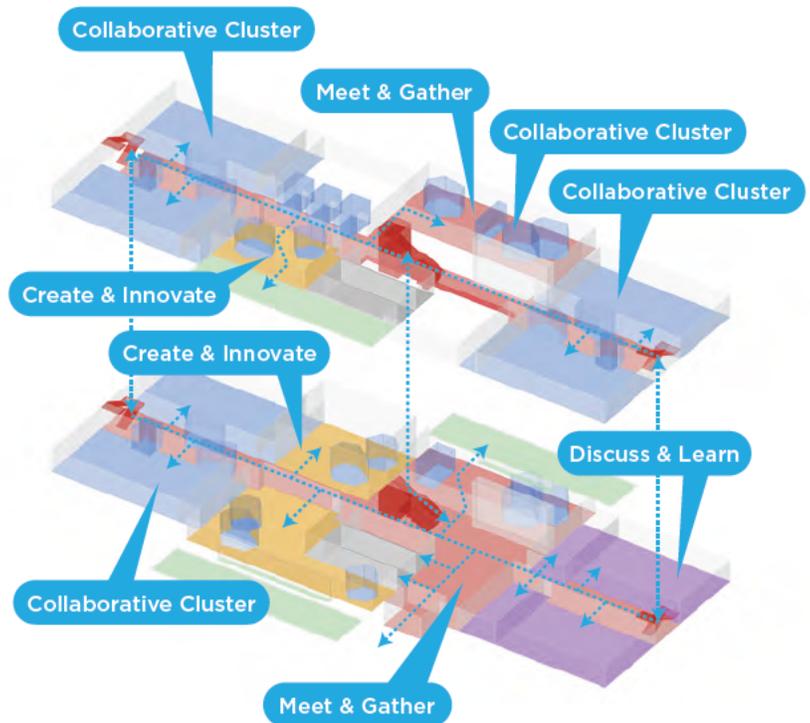
### Discuss & Learn

Mission Control 1,000 sq. ft.  
Interactive Showcase 2,500 sq. ft.  
Ampitheater 2,500 sq. ft.

### Other

Building Support 11,000 sq. ft.

**Total<sup>3</sup> 60,000 sq. ft.**



<sup>3</sup>: Based on our preliminary discussions with local architects Design Group, we have identified a number of locations in and around OSU campus that would be suitable for the Center.

# It's not just a building...

## Nurturing Innovators

The outline for creating a research laboratory is straightforward: provide funding, construct a building, fill it with equipment for researchers. Though vital to the development of the building, these foundational elements do not, and in fact cannot, create innovation. For that, one must rely on a most rare and valuable resource: human creativity. Fostering creativity is a much more challenging prospect and this fact requires that the central focus of this project extend far beyond the creation of a building to the creation of a unique community, comprised of scientists, engineers, inventors, designers, artists, and thinkers. At the Center, they will discover that true innovation comes when diverse perspectives collide around shared challenges. A veritable playground for innovation, the Center is more than just a building; it is a place where diverse groups of people with various educational backgrounds can meet and gather, discuss and learn, create, innovate, and collaborate. The result is an inspiring, creative and cool place people want to be, attracting people from across campus and the city.

## Making Local Connections

Participation from various stakeholders within the city of Columbus is central to this project and critical for the Center to be successful. To that end, the Center will promote local innovators by providing space, support, collaboration and testing opportunities of new developments within the Center's laboratories and building systems.

## Engaging the Community

Engaging the community is essential to the mission of the Center. The innovations that will originate here are intended to better the world, and that process begins with community participation. Ohio State faculty, staff and students, researchers, entrepreneurs, artists and local industry leaders will make the Center Columbus' new home for public discourse around energy, with public events, TED Talk-style presentations, demonstrations, receptions, and conferences focusing on issues in the energy and digital technology sectors. In cooperation with the local community organizations, the Center will include a dedicated arts program to facilitate artistic design to seep into the innovative products of the designers and developers. The Center will stand apart from other research facilities and innovation centers by offering a public showcase that explores energy issues, active research projects and technology through public events as well as exhibit-style interactive experiences that promote understanding about the state of the industry and the future of innovation.



A striking structure creates an iconic entry to the building. The exterior surface of this entry vestibule is comprised of configurable digital walls to mimic the energy consumption, generation, flow, and KPIs of the entire campus in a 3D model, making a strong statement that the Center is not just a building, it is a building with a brain.



An Interactive Showcase highlights and demonstrates the state-of-the-art technologies at work and under development in the Center. Through hands-on exhibits, visitors learn about energy and explore curated stories of real innovators and real technology.

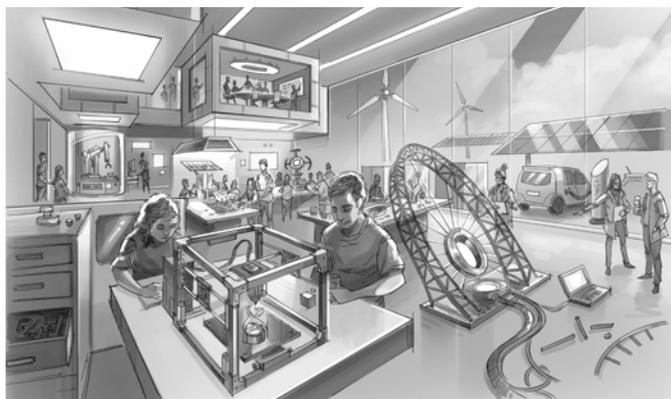


Art installations created by Artists in Residence interpret energy technologies, simultaneously inspiring the viewer, connecting art with science and product development.

# It's a living laboratory

## A Living Laboratory

Unlike typical research facilities, the Center – with its **cutting edge infrastructure and built-in energy generation and management technologies** - will be a living laboratory, a constantly changing organism, evolving and adapting to meet the needs of its residents. A flexible configuration of laboratories, open-plan workspaces, and the opportunity to test technologies onsite will support faculty, students, **ENGIE Labs** and the Columbus community in their pursuit of innovative projects and unexpected collaborations. A section of the Center will be dedicated to collaborative applied research to be carried out by Ohio State and ENGIE Labs, integrated within the research and incubation functions of the Center. This section of the Center will be the **12<sup>th</sup>** global R&D facility for ENGIE Labs, and its first in North America. While the topics of research will naturally change and evolve with emerging technologies and developments, Engie Labs is committed to concentrate on developing solutions, products, and materials on **building energy systems utilizing IoT and 5G technologies** to kick-start the process in collaboration with OSU's Institute of Materials Research - IMR, the Dept. of Food, Agriculture & Biological Engineering, the Knowlton School of Architecture, the College of Engineering, the School of Medicine & Public Health, etc. An in-house ENGIE research group - expected to be 10 to 15 researchers initially - will perform applied research and development at the Center, providing opportunities for faculty and students to participate in this area. It is envisaged that as the Center grows, co-development between OSU and Engie Labs will also grow to include related topics such as **micro-grids, data analytics,**



**renewable energy, and green mobility** with Dept of Electrical Engineering, Center for automotive research and Smart Columbus, IMR, etc. It is also envisaged that the other eleven global ENGIE labs facilities will collaborate with the University and ENGIE researchers at the Center, making it truly part of a global network.

## A Platform for Real Technology

Cutting edge technology will be used on an ongoing basis in the building itself, some of which will be highly-visible from the common areas of the building to touch and inspire visitors with a look into the exciting work taking place. Furthermore, wherever possible, the implementation of technologies in the Center will be celebrated and on display. Rather than hiding the mechanical and building support functions, the real equipment is visible and accompanied by graphic panels interpreting the technology, its purpose and its impact throughout the building.

### Technology in use and on display in the Center may include:

- A direct current electrical network and a digital ceiling IT network architecture to allow current and future devices, facility systems and power generators to be seamlessly connected to each other
- Net zero energy import, carbon neutral, & LEED platinum certification
- Innovative 5G network connectivity with other campus systems and devices fostering development for IoT
- State of the art building technology to maximize onsite energy generation and minimize energy consumption and loss such as:
  - › Solar PV paneled roof
  - › Organic PV paneled windows on the south facing façade
  - › Regen-drive elevators to generate electricity when empty cars going up/full cars going down
  - › Hydrogen fuel cells
  - › Battery wall to manage supply/demand
  - › Passive heat recovery system to capture building HVAC exhaust duct energy
  - › Natural ventilation architecture and hydronic radiant heating/cooling systems to minimize forced air ventilation requirements
  - › Onsite rainwater collection for reuse on green spaces
  - › Grey water filtration for reuse on green spaces
  - › Fully automated building energy management system

# Planning for sustainability.

## Public-Private Partnership

ENGIE is more than an expert in the business of electricity, natural gas and energy services; ENGIE is an eager partner uniquely positioned to connect the Center to the global energy market and bring together technology, services, data, and people to help tackle the world's energy challenges. With its subsidiaries and partners, ENGIE is committed to the success of the Energy Advancement and Innovation Center project. The Center will be home to the first laboratory in the ENGIE network to be designated a **"living laboratory"** and the in-house ENGIE research group will work alongside Ohio State researchers and faculty to research and evaluate new technologies as well as sponsor patents, inventions and creative works. The potential here is great, for the innovative ideas, processes, and products that will originate from the Center hold the promise of helping the University reach its sustainability targets, bring new solutions to market and help this public-private partnership lead the energy transition in North America.

## Catalysts

A key element in converting innovative ideas into successful startups is the guidance and coaching of leaders from the industry as "catalysts." A catalyst program, where various **industry leaders** with experience in starting and running successful businesses, including some from ENGIE and Axium senior management, would **volunteer** to participate in the incubation teams.

## Governance

The Center is suggested to be guided by an Advisory Committee consisting of three (3) members from the University faculty/staff, two (2) from ENGIE and two (2) from the Columbus community with no direct ties to Ohio State or Ohio State Energy Partners. Chairmanship of the Committee would permanently stay with the University. The Committee would meet monthly and vote on major decisions (such as granting access to tenants, research topic decisions, collaboration with other Columbus nonprofits and foundations, budgeting, etc.). The Committee would also take an active role in promoting and marketing the Center, bringing in funds, donations, and fostering collaboration with other public and private entities. Day to day operations would be managed by the Center's Director, appointed by the Committee, and his/her staff. In collaboration with the University, the O&M services may be contracted out to a third party.

## Capital Expenditures and Funding

OSEP considers a capital outlay of approximately \$35 million for the facility (\$20 million for the construction of the building and \$15 million for building energy and communications technologies), an incremental **\$7.5 million as seed money** to fund the initial OSU/Engie Labs projects, and another \$7.5 million as operating budget, totaling an investment of **\$50 million**. OSEP also plans to reach out and invite other industry partnerships; non-profit organizations and foundations for their contribution to the Center.

## Intellectual Property and Research

While the intellectual property rights decisions are likely to be guided by the Advisory Committee on a project by project basis, OSEP considers that the principle of maximizing value with proportionate rights for the inventor/developer, the University and the Center will be applied. OSEP and the Center will work in accordance with The Office of Responsible Research Practices which provides administrative services to facilitate research, improve review efficiency, and ensure regulatory compliance with research requirements. OSEP will not receive any portion of the proceeds that the Center will generate (except for ENGIE as "inventor/developer" for products that are developed by the ENGIE researchers).



Research



Incubation



Implementation

## **SCHEDULE 24**

### **FORM OF TRADEMARK LICENSE AGREEMENT**

This Trademark License Agreement (this “Agreement”), is made and entered into as of this 6th day of July, 2017, by and between The Ohio State University (“Licensor”), and Ohio State Energy Partners LLC, a Delaware limited liability company (“Licensee”). Unless the context requires otherwise, terms used in this Agreement that are initially capitalized and not otherwise defined herein will have the meanings given to them in the Concession Agreement (as defined below).

#### **RECITALS**

WHEREAS, pursuant to that certain Long-Term Lease and Concession Agreement for The Ohio State Utility System, dated as of April 10, 2017 by and between Licensor and Licensee (as amended, the “Concession Agreement”), Licensor will lease the Utility Facilities to Licensee and will grant Licensee the right to operate, maintain, repair, replace, improve and service the Utility System for the Term of the Concession Agreement as provided therein;

WHEREAS, Licensor is the owner of the “OHIO STATE” name and trademark (the “Licensed Trademark”) and the photographs set forth in Exhibit A (the “Licensed Photographs”); and

WHEREAS, Licensor desires to grant to Licensee a limited license under the Licensed Trademark and the Licensed Photographs for certain limited uses and times pursuant to the terms and conditions set forth herein.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. License Grant. Licensor hereby grants to Licensee, subject to the terms and upon the conditions of this Agreement, a royalty-free non-exclusive, non-transferable right and license to use the Licensed Trademark solely as part of Licensee's name "Ohio State Energy Partners LLC" or "Ohio State Energy Partners" and a royalty-free non-exclusive, non-transferable right and license to use the Licensed Photographs only in connection with Licensee's operation of the Utility System and lease of the Utility Facilities in accordance with the Concession Agreement (the "Licensed Use"). Notwithstanding anything herein to the contrary, Licensed Use does not include providing utility services to customers other than Licensor or making market-based sales of electricity. Notwithstanding anything herein to the contrary, the license to use the Licensed Photographs does not include the right for Licensee to use the Photographs for promotion or endorsement of Licensee or Licensee's products and services. No right or license is granted to Licensee and Licensee shall not use the Licensed Trademark or the Licensed Photographs in connection with any goods, services, or use other than the Licensed Use, including in connection with providing utility services to customers other than Licensor and making market-based sales of electricity. No other rights or licenses, other than those expressly granted herein and subject to the limitations herein and otherwise in this Agreement, are granted to Licensee in and to any intellectual property of Licensor under this Agreement, expressly, by implication or estoppels. Licensor reserves to itself all such other rights, including the right to use and license to others the right to use the Licensed Trademark and the Licensed Photographs anywhere in connection with any products and/or services.

2. Quality Control. Licensee shall permit an authorized representative of Licensor to inspect the use of the Licensed Trademark and the Licensed Photographs from time to time, to make certain that the high quality image of Licensor is maintained and that the use of the

Licensed Trademark and the Licensed Photographs otherwise complies with the terms of this Agreement and the Concession Agreement. The quality, appearance, style and use of the Licensed Trademark and the Licensed Photographs shall be subject to the written approval of Licensor prior to any use of the Licensed Trademark and the Licensed Photographs by Licensee, such approval not to be unreasonably withheld. No changes with respect to the use of the Licensed Trademark and the Licensed Photographs shall be made without the prior written consent of Licensor.

3. Material. All promotional material utilizing or tying in with the Licensed Trademark and all material utilizing or tying in with the Licensed Photographs shall be submitted for prior written approval to Licensor's Trademark Licensing Office, which will act in a timely manner.

4. Assignability. Except for an assignment and pledge of this Agreement to the collateral agent as security for the benefit of the Concessionaire's lenders, this Agreement may not be assigned by Licensee without the prior written consent of Licensor. Nevertheless, the Licensed Trademark and the Licensed Photographs are licensed to Licensee based upon Licensor's belief that Licensee will properly utilize the Licensed Trademark and the Licensed Photographs in a high quality manner. A Change in Control of Licensee, and any Transfer of the Concessionaire Interest in contravention of Article 17 of the Concession Agreement, will be considered an assignment subject to this Section 4.

5. No Sublicensing Rights. Except for a sublicense of the Licensed Trademark to the Operator solely for the purpose of performing the Utility Services, Licensee may not authorize, permit or grant any right or sublicense to third parties to use the Licensed Trademark; provided that the Operator shall not sublicense or transfer such sublicense to any party.

6. Third Party Infringements. Licensor may, at its own expense, challenge all unauthorized uses of the Licensed Trademark and the Licensed Photographs or colorable imitations thereof and may prosecute infringers who may use or attempt to use the Licensed Trademark and the Licensed Photographs or any trademark confusingly similar thereto. In this connection, Licensee shall cooperate with Licensor by assisting with the prosecution of lawsuits, providing available evidence and the like. In the event Licensor finds it necessary to institute legal proceedings affecting the rights acquired by Licensee under this Agreement, Licensee may employ counsel at its own expense to assist Licensor's effort.

7. Indemnification. Licensee agrees to indemnify, hold harmless and defend Licensor, its Board of Trustees, officers, employees, agents and any related entities with legal counsel acceptable to Licensor and the Ohio Attorney General from and against all demands, claims, injuries, losses, damages, actions, suits, causes of action, proceedings, judgments, liabilities and expenses, including attorneys' fees, court costs and other legal expenses, arising out of or connected with Licensee's use of the Licensed Trademark and the Licensed Photographs. No approval by Licensor of any action by Licensee shall affect any right of Licensor to indemnification hereunder. Licensee acknowledges that it will have no claims against Licensor for any damage to property or injury to persons arising out of Licensee's use of the Licensed Trademark and the Licensed Photographs. OTHER THAN FOR CLAIMS AGAINST LICENSEE FOR INDEMNIFICATION OR FOR MISUSE OR MISAPPROPRIATION OR INFRINGEMENT OF THE LICENSED TRADEMARK OR THE LICENSED PHOTOGRAPHS, LICENSEE WILL NOT BE LIABLE TO LICENSOR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

8. Use of the Licensed Trademark and the Licensed Photographs. Use of the Licensed Trademark and the Licensed Photographs by Licensee pursuant to this Agreement shall inure solely to the benefit of Licensor. Licensee acknowledges and agrees that the Licensed Trademark and the Licensed Photographs are the sole and exclusive property of Licensor and that Licensee shall not acquire any right, title, or interest in or to the Licensed Trademark or the Licensed Photographs as a result of this Agreement (other than the licenses expressly granted it hereunder), and that all uses of the Licensed Trademark and the Licensed Photographs by Licensee and all goodwill generated thereby inures to the benefit of Licensor. Licensee agrees to cooperate with Licensor in the prosecution of any trademark or copyright application that Licensor may desire to file for services or in the conduct of any litigation relating to the Licensed Trademark and the Licensed Photographs. Licensee shall supply to Licensor reasonable samples, advertisements, financial information and similar material and, upon Licensor's request, shall provide evidence, give testimony and cooperate with Licensor as may reasonably be required in connection with any such application. Licensee agrees to assign any and all trademark or service mark applications (Federal or state) that it may have already filed for the Licensed Trademark referred to herein. Licensor shall prepare the assignments at its own expense and Licensee shall execute them and return them to Licensor in a prompt fashion. Licensee shall not register any trademarks or service marks which include the Licensed Trademark.

9. Term and Termination. So long as Licensee complies with all the terms and conditions of this Agreement, it shall continue in full force and effect for the Term of the Concession Agreement. In the event of a material breach of this Agreement by Licensee and a failure to cure same within thirty (30) days of written notice to Licensee, Licensor may terminate

this Agreement immediately thereafter by mailing a written notice of termination to Licensee. Upon termination of this Agreement for any reason, Licensee shall immediately discontinue all use of the Licensed Trademark and the Licensed Photographs.

Licensor may terminate this Agreement in the event that Licensor determines Licensee is using the Licensed Trademark or the Licensed Photographs in a way that Licensor deems to be immoral, lewd, obscene or offensive to the educational image of Licensor. In the event that Licensor determines that Licensee has violated this provision, Licensor agrees to give Licensee the opportunity to correct the objectionable activities within thirty (30) days after sending Licensee written notice.

10. Bankruptcy. This Agreement shall immediately terminate upon bankruptcy, receivership, or assignment for the benefit of creditors of Licensee.

11. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other provision hereof, and the remainder of this Agreement, disregarding such invalid portion, shall continue in full force and effect as though such void provision had not been contained herein. The parties agree that each party and its counsel has reviewed this Agreement and the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

12. Entire Agreement. This Agreement and the Concession Agreement contain the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes and cancels all previous written or oral understandings, agreements, negotiations, commitments, or any other writings or communications in respect of such subject matter. In the

event of any ambiguity or conflict between the terms hereof and the Concession agreement, the terms of the Concession Agreement will be governing and controlling. This Agreement may not be released, discharged, abandoned, changed, or modified in any manner except by an instrument in writing signed by each of the parties hereto.

13. Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the State of Ohio (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

14. Waiver. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

15. Nature of Relationship. Nothing herein shall be construed to place the parties in a relationship of agency, partners, joint venturers, affiliate or employee, and neither party shall have the power to obligate or bind the other in any manner whatsoever.

16. Notices. All communications, notices, and exchanges of information contemplated herein or required or permitted to be given hereunder shall be given in accordance with Section 22.1 of the Concession Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed  
as of the day and year first above written.

THE OHIO STATE UNIVERSITY

By: \_\_\_\_\_  
Printed: Geoffrey S. Chatas  
Its: Senior Vice President of Business & Finance  
and Chief Financial Officer

OHIO STATE ENERGY PARTNERS LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: Authorized Agent A

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: Authorized Agent B