



JOINT LEGISLATIVE COMMITTEE ON THE BUDGET
STATE CAPITOL
P.O. BOX 44294, CAPITOL STATION
BATON ROUGE, LOUISIANA 70804
(225) 342-2062

SENATOR BODI WHITE
CHAIRMAN

REPRESENTATIVE ZERINGUE
VICE-CHAIRMAN

REVISED
NOTICE OF MEETING
November 19, 2021
9:30 A.M.
House Committee Room 5
A G E N D A

I. CALL TO ORDER

ADDED ITEM #18

II. ROLL CALL

III. BUSINESS

1. Fiscal Status Statement and Five-year Baseline Budget
2. BA-7 Agenda
3. Review and approval of supplemental pay in accordance with Act 110 of 1982
 - A. Deputy Sheriffs' Supplemental Pay
 - B. Municipal Police and Firemen's Supplemental Pay
4. Review and approval of amendments to the contract between the Department of State and PCC Technology Inc. for continued improvement and upgrade of geauxBIZ, the state's one-stop business portal, pursuant to LA R.S. 39:1615(J).
5. Review and approval of amendments to the contracts between the Office of Group Benefits ("OGB") and the following entities, in accordance with LA R.S. 39:1615(J)
 - A. Humana Health Benefit Plan of Louisiana, for the provision of a fully insured Medicare Advantage plan
 - B. New Orleans Regional Physician Hospital Organization, LLC, d/b/a Peoples Health, for the provision of a fully insured Medicare Advantage plan
 - C. HMO Louisiana, Inc.; a subsidiary of Blue Cross and Blue Shield of Louisiana, for the provision of a fully insured Medicare Advantage plan
 - D. Vantage Health Plan, Inc., for the provision of fully insured Medicare Advantage plans
 - E. Vantage Health Plan, Inc., for the provision of a fully insured Louisiana-domiciled Health Maintenance Organization ("HMO") plan

6. Review and approval of the contract between OGB and DataPath Administrative Services Inc., for the provision of Flexible Spending Arrangement ("FSA") and Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") administrative services, in accordance with LA R.S. 42:802(D)(1).
7. Review and approval of the emergency contract between OGB and Express Scripts, Inc., for the provision of pharmacy benefit manager administrative services, in accordance with LA R.S. 42:802(D)(1).
8. Review and approval of the amendments to extend by one year the contracts for Self-Direction Fiscal/Employer Agent services under the self-direction option for the provision of Medicaid home and community-based personal care services, in accordance with the provisions of R.S. 39:1615(J):
 - A. Amendment for a one-year extension of the contract between Louisiana Department of Health, Medical Vendor Administration and Acumen Fiscal Agent, L.L.C.
 - B. Amendment for a one-year extension of the contract between Louisiana Department of Health, Medical Vendor Administration and Morning Sun Financial Services.
9. Review and approval of the 2022 operating budget for the Louisiana Public Facilities Authority in accordance with R.S. 9:2346.
10. Review of the amendment to extend by two years the contract between the Louisiana Department of Health, Medical Vendor Administration and CAMBRIA Solutions. Inc., for Project and Portfolio Management Services, in accordance with the provisions of R.S. 39:1615(J).
11. Review of Lease Agreement for Center for Energy Resources Management between Board of Supervisors for the University of Louisiana System, on behalf of the University of New Orleans, and University of New Orleans Research and Technology Foundation, Inc., in accordance with R.S. 39:366.11.
12. Review of Cooperative Endeavor Agreement among Board of Supervisors of the Louisiana State University and Agricultural and Mechanical College (LSU), Utilities Modernization LLC (UMLLC), CenTrio, and Tiger Energy Partners, LLC (TEP), in accordance with R.S. 39:366.11.
13. Review of Lease Agreement Adjustment for Department of Children and Family Services and Admiral Investments, LLC, in accordance with R.S. 29:1644(D).
14. Update and Reporting on the current status of the American Recovery Plan allocations contained in Act 410 of the 2021 Regular Session by the commissioner of administration, Treasurer, Department of Revenue and the Department of Culture, Recreation and Tourism.
15. In accordance with the provisions of R.S. 24:653(E), interpretation of the legislative intent for certain funding allocations contained in the 2021/2022 appropriation bills of the 2021 Regular Legislative Session of the Legislature.
16. Update on the Louisiana Emergency Rental Assistance Program implemented by the Division of Administration and the Louisiana Housing Corporation.

17. Update from the Louisiana Workforce Commission on unemployment and layoff notifications.
18. **Discussion on the Infrastructure, Investment and Jobs Act and related matters by the Department of Transportation.**

IV. CONSIDERATION OF ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE

V. ADJOURNMENT

Persons who do not feel comfortable giving testimony in person may submit a prepared statement in accordance with Senate Rule 13.79, in lieu of appearing before the committee. Statements may be emailed to gasconr@legis.la.gov and must be received by the committee secretary at least three hours prior to the meeting to be included in the record for this committee meeting.

Audio/visual presentations, such as PowerPoint, must be received by the committee secretary at gasconr@legis.la.gov at least twenty-four hours PRIOR to the scheduled start of the committee meeting for review and prior approval. Thumb drives will NOT be accepted.

Persons desiring to participate in the meeting should utilize appropriate protective health measures and observe the recommended and appropriate social distancing.

THIS NOTICE CONTAINS A TENTATIVE AGENDA AND MAY BE REVISED PRIOR TO THE MEETING.

BODI WHITE, CHAIRMAN

**JOINT LEGISLATIVE COMMITTEE ON THE BUDGET
GENERAL FUND FISCAL STATUS STATEMENT
FISCAL YEAR 2021-2022
(\$ in millions)**

November 19, 2021

	OCTOBER 2021	NOVEMBER 2021	NOVEMBER 2021 Over/(Under) OCTOBER 2021
<u>GENERAL FUND REVENUE</u>			
Revenue Estimating Conference, May 18, 2021	\$9,887.500	\$9,887.500	\$0.000
FY 21-21 Revenue Carried Forward into FY 21-22	\$183.621	\$183.621	\$0.000
Total Available General Fund Revenue	\$10,071.121	\$10,071.121	\$0.000
<u>APPROPRIATIONS AND REQUIREMENTS</u>			
Non-Appropriated Constitutional Requirements			
Debt Service	\$434.030	\$434.030	\$0.000
Interim Emergency Board	\$1.323	\$1.323	\$0.000
Revenue Sharing	\$90.000	\$90.000	\$0.000
Total Non-Appropriated Constitutional Requirements	\$525.353	\$525.353	\$0.000
Appropriations			
General (Act 119 of 2021 RS)	\$9,260.639	\$9,260.639	\$0.000
Ancillary (Act 113 of 2021 RS)	\$0.000	\$0.000	\$0.000
Judicial (Act 116 of 21 RS)	\$164.008	\$164.008	\$0.000
Legislative (Act 117 of 21 RS)	\$73.610	\$73.610	\$0.000
Capital Outlay (Act 485 of 2021 RS)	\$43.332	\$43.332	\$0.000
Total Appropriations	\$9,541.590	\$9,541.590	\$0.000
Total Appropriations & Non-Appropriated Constitutional Requirements	\$10,066.942	\$10,066.942	\$0.000
General Fund Revenue Less Appropriations and Requirements	\$4.179	\$4.179	\$0.000

II. FY 2020-2021 Fiscal Status Summary:

In accordance with Act 1092 of the 2001 Regular Session and Act 107 of the 2002 First Extraordinary Session (R.S. 39:75), the first budget status report presented after October 15th shall reflect the fund balance for the previous fiscal year. "At the first meeting of the Joint Legislative Committee on the Budget after publication of the Comprehensive Annual Financial Report for the state of Louisiana, the commissioner of administration shall certify to the committee the actual expenditures paid by warrant or transfer and the actual monies received and any monies or balances carried forward for any fund at the close of the previous fiscal year which shall be reflected in the budget status report."

FY21 GENERAL FUND DIRECT SURPLUS/DEFICIT - ESTIMATED (millions)

FY20 Surplus/(Deficit)	270.434
Other Obligations Against Cash Carried Over from FY20 to FY21	
General Fund - Direct Carryforward	67.251
Unappropriated FY17 & FY18 Surpluses	1.234
FY19 Surplus Transferred Out in FY21	105.938
Transfer from Budget Stabilization Fund per HCR 1 of 2020 1ES	90.063
Total Other Obligations Against Cash Carried Over from FY20 to FY21	264.486
FY21 General Fund - Adjusted Direct Revenues:	10,695.872

Total General Funds Available for Expenditure in FY21	11,230.792
--	-------------------

FY21 General Fund - Direct Appropriations & Requirements:

Draws of General Fund - Direct Appropriations	(9,090.377)
General Obligation Debt Service	(429.052)
Transfer to the Revenue Sharing Fund (Z06) - Constitution 7:26	(90.000)
Transfer to Coastal Protection & Restoration Fund (Z12) - R.S. 49:214.5.4	(7.230)
Transfer to Revenue Stabilization Fund (Z25) - Constitution 7:10.15	(205.422)
Transfers - Legislative Actions	(152.212)
Transfers - Other	(3.016)
Use of Prior Year(s) Surplus - Appropriated or Transferred	(377.606)

Total FY21 General Fund - Direct Appropriations & Requirements	(10,354.914)
---	---------------------

General Fund Direct Cash Balance	875.878
---	----------------

Obligations Against the General Fund Direct Cash Balance

General Fund - Direct Carryforwards from FY21 to FY22	(183.621)
FY20 adjustments completed in FY21	(24.824)
Capital Outlay/Fund corrections made in FY22	2.860
Tobacco Tax allocation corrections made in FY22	28.925

Total Obligated General Fund Direct	(176.659)
--	------------------

Net General Fund Direct Surplus/(Deficit)	699.220
--	----------------

III. Current Year Items Requiring Action

IV. Horizon Issues Not Contained in 5-Year Plan

Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP)

State share owed to FEMA upon the final closeout of various disasters, including Hurricane Katrina, for public assistance (state, local and private non-profits) and hazard mitigation projects. Final closeouts of the various disasters are not expected until FY22 at the earliest and Katrina FY23, but could extend beyond the 5-year baseline projection window.

FIVE YEAR BASE LINE PROJECTION STATE GENERAL FUND SUMMARY APPROPRIATED					
	Prior Fiscal Year 2020-2021	Official Current Fiscal Year 2021-2022	Projected Fiscal Year 2022-2023	Projected Fiscal Year 2023-2024	Projected Fiscal Year 2024-2025
REVENUES:					
Taxes, Licenses & Fees	\$12,264,200,000	\$12,296,300,000	\$12,610,100,000	\$12,831,900,000	\$13,024,900,000
Less Dedications	(\$2,454,300,000)	(\$2,408,800,000)	(\$2,445,700,000)	(\$2,473,800,000)	(\$2,595,900,000)
TOTAL REC REVENUES	\$9,809,900,000	\$9,887,500,000	\$10,164,400,000	\$10,358,100,000	\$10,429,000,000
ANNUAL REC GROWTH RATE		0.79%	2.80%	1.91%	0.68%
Other Revenues:					
Carry Forward Balances	\$67,251,068	\$183,620,801	\$0	\$0	\$0
Use of Budget Stabilization Fund	\$90,062,911	\$0	\$0	\$0	\$0
Total Other Revenue	\$157,313,979	\$183,620,801	\$0	\$0	\$0
TOTAL REVENUES	\$9,967,213,979	\$10,071,120,801	\$10,164,400,000	\$10,358,100,000	\$10,429,000,000
EXPENDITURES:					
General Appropriation Bill (Act 119 of 2021 RS)	\$8,509,867,982	\$9,077,018,132	\$10,356,916,583	\$10,512,861,124	\$10,292,204,750
Ancillary Appropriation Bill (Act 113 of 2021 RS)	\$0	\$0	\$17,098,864	\$21,681,710	\$26,424,956
Non-Appropriated Requirements	\$519,801,757	\$525,352,685	\$533,894,467	\$543,798,375	\$561,667,758
Judicial Appropriation Bill (Act 116 of 2021 RS)	\$154,508,439	\$164,008,439	\$167,681,713	\$169,671,836	\$169,671,825
Legislative Appropriation Bill (Act 117 of 2021 RS)	\$61,242,871	\$73,610,173	\$73,622,833	\$73,619,416	\$73,615,904
Special Acts	\$0	\$0	\$25,162,436	\$25,162,436	\$25,162,436
Capital Outlay Bill (Act 485 of 2021 RS)	\$0	\$43,331,996	\$0	\$0	\$0
TOTAL ADJUSTED EXPENDITURES (less carryforwards)	\$9,245,421,049	\$9,883,321,425	\$11,174,376,896	\$11,346,794,897	\$11,148,747,629
ANNUAL ADJUSTED GROWTH RATE		6.90%	13.06%	1.54%	-1.75%
Other Expenditures:					
Carryforward BA-7s Expenditures	\$67,251,068	\$183,620,801	\$0	\$0	\$0
Supplemental Bill (Act 120 of 21RS)	\$558,537,575	\$0	\$0	\$0	\$0
Funds Bills (Act 10 of 20 1ES and Acts 114 and 448 of 21 RS)	\$95,937,064	\$0	\$0	\$0	\$0
27th Pay Period occurring in FY22-23	\$0	\$0	\$62,508,941	\$0	\$0
Total Other Expenditures	\$721,725,707	\$183,620,801	\$62,508,941	\$0	\$0
TOTAL EXPENDITURES	\$9,967,146,756	\$10,066,942,226	\$11,236,885,837	\$11,346,794,897	\$11,148,747,629
PROJECTED BALANCE	\$67,223	\$4,178,575	(\$1,072,485,837)	(\$988,694,897)	(\$719,747,629)
Oil Prices included in the REC forecast.	\$51.00	\$58.93	\$59.41	\$61.36	\$62.54

JOINT LEGISLATIVE COMMITTEE ON THE BUDGET

BA-7 AGENDA

November 2021 - REVISED

Revised
R4 Added EXEC

A. Fiscal Status Statement

B. 5-Year Base Line Projection

C. Regular BA-7s

- | | | |
|---|------|--|
| 1 | CRT | Department of Culture, Recreation and Tourism
(06-267) Office of Tourism |
| 2 | PSAF | Department of Public Safety and Corrections
(08B-422) Office of State Fire Marshal |
| 3 | WFIS | Department of Wildlife and Fisheries
(16-514) Office of Fisheries |
| 4 | EXEC | Executive Department
(01-111) Governor's Office of Homeland Security & Emergency Preparedness |

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

DEPARTMENT: CULTURE, RECREATION AND TOURISM			FOR OPB USE ONLY				
AGENCY: OFFICE OF TOURISM			OPB LOG NUMBER 101R		AGENDA NUMBER 1		
SCHEDULE NUMBER: 06-267			Approval and Authority:				
SUBMISSION DATE: OCTOBER 2021							
AGENCY BA-7 NUMBER: 267-22-02							
HEAD OF BUDGET UNIT: NANCY WATKINS							
TITLE: UNDERSECRETARY							
SIGNATURE (Certifies that the information provided is correct and true to the best of your knowledge): <i>Nancy Watkins</i>							
MEANS OF FINANCING		CURRENT FY 2021-2022		ADJUSTMENT (+) or (-)		REVISED FY 2021-2022	
GENERAL FUND BY:							
DIRECT		\$1,367,969		\$0		\$1,367,969	
INTERAGENCY TRANSFERS		\$43,216		\$0		\$43,216	
FEES & SELF-GENERATED		\$26,339,459		\$0		\$26,339,459	
Regular Fees & Self-generated		\$26,339,459		\$0		\$26,339,459	
Subtotal of Fund Accounts from Page 2		\$0		\$0		\$0	
STATUTORY DEDICATIONS		\$17,500,000		\$0		\$17,500,000	
Louisiana Tourism Revival Fund (V48)		\$17,500,000		\$0		\$17,500,000	
[Select Statutory Dedication]		\$0		\$0		\$0	
Subtotal of Dedications from Page 2		\$0		\$0		\$0	
FEDERAL		\$322,608		\$50,000		\$372,608	
TOTAL		\$45,573,252		\$50,000		\$45,623,252	
AUTHORIZED POSITIONS		73		0		73	
AUTHORIZED OTHER CHARGES		1		0		1	
NON-TO FTE POSITIONS		0		0		0	
TOTAL POSITIONS		74		0		74	
PROGRAM EXPENDITURES	DOLLARS	POS	DOLLARS	POS	DOLLARS	POS	
PROGRAM NAME:							
Administration	\$2,216,744	7	\$0	0	\$2,216,744	7	
Marketing	\$39,668,257	16	\$50,000	0	\$39,718,257	16	
Welcome Center	\$3,688,251	51	\$0	0	\$3,688,251	51	
	\$0	0	\$0	0	\$0	0	
	\$0	0	\$0	0	\$0	0	
	\$0	0	\$0	0	\$0	0	
	\$0	0	\$0	0	\$0	0	
	\$0	0	\$0	0	\$0	0	
	\$0	0	\$0	0	\$0	0	
	\$0	0	\$0	0	\$0	0	
Subtotal of programs from Page 2:	\$0	0	\$0	0	\$0	0	
TOTAL		\$45,573,252	74	\$50,000	0	\$45,623,252	

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

DEPARTMENT: CULTURE, RECREATION AND TOURISM	FOR OPB USE ONLY	
AGENCY: OFFICE OF TOURISM	OPB LOG NUMBER	AGENDA NUMBER
SCHEDULE NUMBER: 06-267		
SUBMISSION DATE: OCTOBER 2021	ADDENDUM TO PAGE 1	
AGENCY BA-7 NUMBER: 267-22-02		

Use this section for additional Dedicated Fund Accounts or Statutory Dedications, if needed.
The subtotal will automatically be transferred to Page 1.

MEANS OF FINANCING	CURRENT FY 2021-2022	ADJUSTMENT (+) or (-)	REVISED FY 2021-2022
GENERAL FUND BY:			
FEES & SELF-GENERATED			
[Select Fund Account]	\$0	\$0	\$0
[Select Fund Account]	\$0	\$0	\$0
SUBTOTAL (to Page 1)	\$0	\$0	\$0
STATUTORY DEDICATIONS			
[Select Statutory Dedication]	\$0	\$0	\$0
[Select Statutory Dedication]	\$0	\$0	\$0
[Select Statutory Dedication]	\$0	\$0	\$0
[Select Statutory Dedication]	\$0	\$0	\$0
[Select Statutory Dedication]	\$0	\$0	\$0
[Select Statutory Dedication]	\$0	\$0	\$0
SUBTOTAL (to Page 1)	\$0	\$0	\$0

--

Use this section for additional Program Names, if needed.
The subtotal will automatically be transferred to Page 1.

PROGRAM EXPENDITURES	DOLLARS	POS	DOLLARS	POS	DOLLARS	POS
PROGRAM NAME:						
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
SUBTOTAL (to Page 1)	\$0	0	\$0	0	\$0	0

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT**

Policy and Procedure Memorandum No. 52, Revised, requires that all Requests for Changes in Appropriation be fully documented. At a minimum, the following questions and statements must be answered. Use Continuation Sheets as needed. **FAILURE TO ANSWER ALL QUESTIONS COMPLETELY WILL BE CAUSE TO RETURN THIS DOCUMENT WITHOUT ACTION.**

1. What is the source of funding (if other than General Fund (Direct))? Specifically identify any grant or public law and the purposes of the funds, if applicable. A copy of any grant application and the notice of approved grant or appropriation must accompany the BA-7. What are the expenditure restrictions of the funds?

Federal Funds -

CFDA 15.904 Historic Preservation Funds Grant

Funds are restricted to expenditures on research, fabrication and installation of approximately 12 civil rights markers in Louisiana and must be expended within two year of grant award or September 30, 2023.

2. Enter the financial impact of the requested adjustment for the next four fiscal years.

MEANS OF FINANCING OR EXPENDITURE	FY 2021-2022	FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026
GENERAL FUND BY:					
DIRECT	\$0	\$0	\$0	\$0	\$0
INTERAGENCY TRANSFERS	\$0	\$0	\$0	\$0	\$0
FEES & SELF-GENERATED	\$0	\$0	\$0	\$0	\$0
STATUTORY DEDICATIONS	\$0	\$0	\$0	\$0	\$0
FEDERAL	\$50,000	\$0	\$0	\$0	\$0
TOTAL	\$50,000	\$0	\$0	\$0	\$0

3. If this action requires additional personnel, provide a detailed explanation below:

This action requires no additional personnel.

4. Explain why this request can't be postponed for consideration in the agency's budget request for next fiscal year.

Funds must be expended within two years of grant award. Grant awarded on September 30, 2021.

5. Is this an after the fact BA-7, e.g.; have expenditures been made toward the program this BA-7 is for? If yes, explain per PPM No.52.

No expenditures have been made toward this project.

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT**

PERFORMANCE IMPACT OF MID-YEAR BUDGET ADJUSTMENT

1. Identify and explain the programmatic impacts (positive or negative) that will result from the approval of this BA-7.

There will be no programmatic impacts resulting from approval of this BA-7.

2. Complete the following information for each objective and related performance indicators that will be affected by this request. *(Note: Requested adjustments may involve revisions to existing objectives and performance indicators or creation of new objectives and performance indicators. Repeat this portion of the request form as often as necessary.)*

OBJECTIVE:

LEVEL	PERFORMANCE INDICATOR NAME	PERFORMANCE STANDARD		
		CURRENT FY 2021-2022	ADJUSTMENT (+) OR (-)	REVISED FY 2021-2022

JUSTIFICATION FOR ADJUSTMENT(S): Explain the necessity of the adjustment(s).
There are no performance indicators affected.

3. Briefly explain any performance impacts other than or in addition to effects on objectives and performance indicators. *(For example: Are there any anticipated direct or indirect effects on program management or service recipients? Will this BA-7 have a positive or negative impact on some other program or agency?)*

There will be no impact on performance indicators.

4. If there are no performance impacts associated with this BA-7 request, then fully explain this lack of performance impact.

This BA-7 provides for fabrication and installation of approximately eight (8) civil rights markers. While this enhancement will benefit the tourism industry as a whole, tracking marginal visitation increases due to this enhancement is not feasible.

5. Describe the performance impacts of failure to approve this BA-7. (Be specific. Relate performance impacts to objectives and performance indicators.)

Failure to approve this BA-7 will have no discernable impact on our performance indicators.

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM 2 NAME: Marketing

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT				
PROGRAM 2 NAME: <u>Marketing</u>				
MEANS OF FINANCING:				
CURRENT FY 2021-2022	REQUESTED ADJUSTMENT	REVISED FY 2021-2022	ADJUSTMENT OUT YEAR PROJECTIONS	
			FY 2022-2023	FY 2023-2024
GENERAL FUND BY:				
Direct	\$1,067,969	\$0	\$1,067,969	
Interagency Transfers	\$43,216	\$0	\$43,216	
Fees & Self-Generated *	\$20,734,464	\$0	\$20,734,464	
Statutory Dedications **	\$17,500,000	\$0	\$17,500,000	
FEDERAL FUNDS	\$322,608	\$50,000	\$372,608	
TOTAL MOF	\$39,668,257	\$50,000	\$39,718,257	
EXPENDITURES:				
Salaries	\$948,647	\$0	\$948,647	
Other Compensation	\$3,865	\$0	\$3,865	
Related Benefits	\$482,720	\$0	\$482,720	
Travel	\$169,000	\$0	\$169,000	
Operating Services	\$4,512,919	\$0	\$4,512,919	
Supplies	\$16,000	\$0	\$16,000	
Professional Services	\$9,853,091	\$0	\$9,853,091	
Other Charges	\$18,708,528	\$50,000	\$18,758,528	
Debt Services	\$0	\$0	\$0	
Interagency Transfers	\$4,973,487	\$0	\$4,973,487	
Acquisitions	\$0	\$0	\$0	
Major Repairs	\$0	\$0	\$0	
UNALLOTTED	\$0	\$0	\$0	
TOTAL EXPENDITURES	\$39,668,257	\$50,000	\$39,718,257	
POSITIONS				
Classified	15	0	15	
Unclassified	0	0	0	
TOTAL T.O. POSITIONS	15	0	15	
Other Charges Positions	1	0	1	
Non-TO FTE Positions	0	0	0	
TOTAL POSITIONS	18	0	16	
*Dedicated Fund Accounts:				
Reg. Fees & Self-generated	\$20,734,464	\$0	\$20,734,464	
[Select Fund Account]	\$0	\$0	\$0	
[Select Fund Account]	\$0	\$0	\$0	
**Statutory Dedications:				
[Select Statutory Dedication]	\$17,500,000	\$0	\$17,500,000	
[Select Statutory Dedication]	\$0	\$0	\$0	
[Select Statutory Dedication]	\$0	\$0	\$0	
[Select Statutory Dedication]	\$0	\$0	\$0	
[Select Statutory Dedication]	\$0	\$0	\$0	
[Select Statutory Dedication]	\$0	\$0	\$0	
[Select Statutory Dedication]	\$0	\$0	\$0	
[Select Statutory Dedication]	\$0	\$0	\$0	

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM 2 NAME: Marketing

MEANS OF FINANCING:	State General Fund	Interagency Transfers	Fees & Self-Generated Revenues	Statutory Dedications	Federal Funds	TOTAL
AMOUNT	\$0	\$0	\$0	\$0	\$50,000	\$50,000
EXPENDITURES:						
Salaries	\$0	\$0	\$0	\$0	\$0	\$0
Other Compensation	\$0	\$0	\$0	\$0	\$0	\$0
Related Benefits	\$0	\$0	\$0	\$0	\$0	\$0
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Operating Services	\$0	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$0	\$0
Professional Services	\$0	\$0	\$0	\$0	\$0	\$0
Other Charges	\$0	\$0	\$0	\$0	\$50,000	\$50,000
Debt Services	\$0	\$0	\$0	\$0	\$0	\$0
Interagency Transfers	\$0	\$0	\$0	\$0	\$0	\$0
Acquisitions	\$0	\$0	\$0	\$0	\$0	\$0
Major Repairs	\$0	\$0	\$0	\$0	\$0	\$0
UNALLOTTED	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL EXPENDITURES	\$0	\$0	\$0	\$0	\$50,000	\$50,000
OVER / (UNDER)						
	\$0	\$0	\$0	\$0	\$0	\$0
POSITIONS						
Classified	0	0	0	0	0	0
Unclassified	0	0	0	0	0	0
TOTAL T.O. POSITIONS	0	0	0	0	0	0
Other Charges Positions	0	0	0	0	0	0
Non-TO FTE Positions	0	0	0	0	0	0
TOTAL POSITIONS	0	0	0	0	0	0

BA-7 QUESTIONNAIRE

(Provide answers on the Questionnaire Analysis Form; answer all questions applicable to the requested budget adjustment.)

GENERAL PURPOSE

1. This BA-7 will allow the Louisiana Office of Tourism to receive federal funds that will be used to research, fabricate, and place civil rights markers on our Louisiana Civil Rights Trail.

REVENUES

(Explain the Means of Financing. Provide details including Source, authority to spend, etc.)

7. If Federal Funds

- Grant awarded per CFDA 15.904 Dept. of Interior - National Parks Service Historic Preservation Fund
- 80% federal 20% state (Tourism will be using dollars currently allocated toward the civil rights trail as match)

8. All Grants:

- This federal grant is for placing markers on the Louisiana Civil Rights Trail within the Office of Tourism
- Grant award attached (FAIN #P21AP11735-00)
- Expenditures are expected to be completed this fiscal year although the grant is through September 30, 2023.

EXPENDITURES

ISIS Coding

<u>Program</u>	<u>Org</u>	<u>Obj</u>	<u>Amount</u>	<u>Means of Finance</u>
200	6786	740	\$50,000	Federal

LaGov Coding

<u>Program</u>	<u>Fund Center</u>	<u>GL</u>	<u>Amount</u>	<u>Means of Finance</u>
200	2672028627	5610003	\$50,000	Federal

OTHER

9. Billy Nungesser, Lt. Governor bnungesser@crt.la.gov 225-342-7009
10. Nancy Watkins, Undersecretary nwatkins@crt.la.gov 225-342-8201
11. Doug Bourgeois, Asst. Secretary dbourgeois@crt.la.gov 225-342-8100

1. DATE ISSUED MM/DD/YYYY 1a. SUPERSEDES AWARD NOTICE dated
09/19/2021 except that any additions or restrictions previously imposed
remain in effect unless specifically rescinded

2. CFDA NO.
15.904 - Historic Preservation Fund Grants-In-Aid

3. ASSISTANCE TYPE Project Grant

4. GRANT NO. P21AP11735-00

Originating MCA #

5. TYPE OF AWARD

Other

4a. FAIN P21AP11735

5a. ACTION TYPE New

6. PROJECT PERIOD MM/DD/YYYY
From 09/30/2021

Through MM/DD/YYYY
09/30/2023

7. BUDGET PERIOD MM/DD/YYYY
From 09/30/2021

Through MM/DD/YYYY
09/30/2023

8. TITLE OF PROJECT (OR PROGRAM)
2020 HPF AACR - Louisiana Office of Tourism

NOTICE OF AWARD



AUTHORIZATION (Legislation/Regulations)
54 USC §301 et seq National Historic Preservation Act

9a. GRANTEE NAME AND ADDRESS

Louisiana Office of Tourism
1051 N 3rd St
Louisiana Byways Program
Baton Rouge, LA 70802-5239

9b. GRANTEE PROJECT DIRECTOR

Ms. Sharon Calcote
1051 North Third Street
Louisiana Byways Program
Baton Rouge, LA 70802-5239
Phone: 225-342-8146

10a. GRANTEE AUTHORIZING OFFICIAL

Ms. Sharon Calcote
1051 North Third Street
Louisiana Byways Program
Baton Rouge, LA 70802-5239
Phone: 225-342-8146

10b. FEDERAL PROJECT OFFICER

Taylor Pearlstein
1849 C St NW
Washington, DC 20240-0001
Phone: 202 354 2095

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)

I Financial Assistance from the Federal Awarding Agency Only

II Total project costs including grant funds and all other financial participation

a. Salaries and Wages	\$	0.00
b. Fringe Benefits	\$	0.00
c. Total Personnel Costs	\$	0.00
d. Equipment	\$	0.00
e. Supplies	\$	97,200.00
f. Travel	\$	0.00
g. Construction	\$	0.00
h. Other	\$	24,000.00
i. Contractual	\$	0.00
j. TOTAL DIRECT COSTS	\$	121,200.00
k. INDIRECT COSTS	\$	0.00
l. TOTAL APPROVED BUDGET	\$	121,200.00
m. Federal Share	\$	50,000.00
n. Non-Federal Share	\$	71,200.00

12. AWARD COMPUTATION

a. Amount of Federal Financial Assistance (from item 11m)	\$	50,000.00
b. Less Unobligated Balance From Prior Budget Periods	\$	0.00
c. Less Cumulative Prior Award(s) This Budget Period	\$	0.00
d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION	\$	50,000.00
13. Total Federal Funds Awarded to Date for Project Period	\$	50,000.00

14. RECOMMENDED FUTURE SUPPORT

(Subject to the availability of funds and satisfactory progress of the project):

YEAR	TOTAL DIRECT COSTS	YEAR	TOTAL DIRECT COSTS
a. 2	\$	d. 5	\$
b. 3	\$	e. 6	\$
c. 4	\$	f. 7	\$

15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:

- a. DEDUCTION
- b. ADDITIONAL COSTS
- c. MATCHING
- d. OTHER RESEARCH (Add / Deduct Option)
- e. OTHER (See REMARKS)

b

16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

- a. The grant program legislation
- b. The grant program regulations
- c. This award notice including terms and conditions, if any, noted below under REMARKS.
- d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.

In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.

REMARKS (Other Terms and Conditions Attached -

Yes

No

GRANTS MANAGEMENT OFFICIAL:

Megan Brown, Chief - State, Tribal, Local, Plans & Grants
1849 C Street NW
7380
Washington, DC 20240-1000
Phone: 202 354 2062

17. VENDOR CODE			18. DUNS			19. CONG. DIST.
0071422851			117350547			06
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION
1	0051012515-00010	\$50,000.00	09/30/2021	09/30/2023	5140	FY21 HPF AACR LA Louisiana Civil Rights

Louisiana Office of the Lieutenant Governor Department of Culture, Recreation, & Tourism Office of Tourism

Jennifer Berthelot
Louisiana Office of Tourism
jberthelot@crt.la.gov
[225-342-8142](tel:225-342-8142)

Veronica Mosgrove
Office of the Lieutenant Governor
vmosgrove@crt.la.gov
[225-342-7009](tel:225-342-7009)

LOUISIANA AWARDED AFRICAN AMERICAN CIVIL RIGHTS GRANT FOR TRAIL PROJECT

Thursday, September 30, 2021

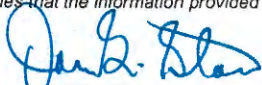
BATON ROUGE, La. – Lieutenant Governor Billy Nungesser announced today the Louisiana Office of Tourism received a \$50,000 grant to complete the design and installation of the first round of Louisiana Civil Rights Trail markers. The grant was awarded through the African American Civil Rights Grant Program from the Historic Preservation Fund administered by the Department of the Interior's National Park Service (NPS).

According to NPS Deputy Director Shawn Bengé, this competitive grant program is just one of the many ways the National Park Service is working to preserve and interpret the lesser-known facets of our nation's shared history.

"We have spent the better part of three years developing the Louisiana Civil Rights Trail," said Lieutenant Governor Billy Nungesser. "The Louisiana Office of Tourism began research on the Louisiana Civil Rights Movement in January 2019. We held 22 meetings across the state with stakeholders, historians, citizens, and tourism representatives to gather information on Civil Rights events and history. A group of university scholars, who are subject matter experts in African American studies, vetted and reviewed each nomination. From the nominations submitted, a website was created as a first step and now we are placing markers at locations where events and activities of national importance occurred."

The first four Louisiana Civil Rights Trail markers installed are located at Dooky Chase's Restaurant in New Orleans, the Old State Capitol and A.Z. Young Park in Baton Rouge, and Little Union Baptist Church in Shreveport. As we obtain property permissions, and the design and fabrication of additional markers happens, we will announce those marker installation dates.

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

DEPARTMENT: Department of Public Safety		FOR OPB USE ONLY				
AGENCY: Office of State Fire Marshal		OPB LOG NUMBER <div style="font-size: 2em; font-family: cursive;">90</div>		AGENDA NUMBER <div style="font-size: 2em; font-family: cursive;">2</div>		
SCHEDULE NUMBER: 08B-422		Approval and Authority:				
SUBMISSION DATE: October 5, 2021						
AGENCY BA-7 NUMBER: 11-422-02						
HEAD OF BUDGET UNIT: H. "Butch" Browning						
TITLE: State Fire Marshal						
SIGNATURE <small>(Certifies that the information provided is correct and true to the best of your knowledge):</small> <div style="font-size: 1.5em; font-family: cursive; margin-top: 10px;">  </div>						
MEANS OF FINANCING	CURRENT FY 2021-2022	ADJUSTMENT (+) or (-)	REVISED FY 2021-2022			
GENERAL FUND BY:						
DIRECT	\$110,000		\$110,000			
INTERAGENCY TRANSFERS	\$651,000		\$651,000			
FEES & SELF-GENERATED	\$2,500,000		\$2,500,000			
Regular Fees & Self-generated	\$2,500,000		\$2,500,000			
Subtotal of Fund Accounts from Page 2						
STATUTORY DEDICATIONS	\$22,037,041		\$22,037,041			
Subtotal of Dedications from Page 2	\$22,037,041		\$22,037,041			
FEDERAL	\$90,600	\$160,715	\$251,315			
TOTAL	\$25,388,641	\$160,715	\$25,549,356			
AUTHORIZED POSITIONS	163		163			
AUTHORIZED OTHER CHARGES						
NON-TO FTE POSITIONS	10		10			
TOTAL POSITIONS	173		173			
PROGRAM EXPENDITURES	DOLLARS	POS	DOLLARS	POS	DOLLARS	POS
PROGRAM NAME:						
100-Fire Prevention	\$25,388,641	173	\$160,715		\$25,549,356	173
Subtotal of programs from Page 2:						
TOTAL	\$25,388,641	173	\$160,715		\$25,549,356	173

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

DEPARTMENT: Department of Public Safety	FOR OPB USE ONLY	
AGENCY: Office of State Fire Marshal	OPB LOG NUMBER	AGENDA NUMBER
SCHEDULE NUMBER: 08B-422		
SUBMISSION DATE: October 5, 2021	ADDENDUM TO PAGE 1	
AGENCY BA-7 NUMBER: 11-422-02		

Use this section for additional Dedicated Fund Accounts or Statutory Dedications, if needed.
The subtotal will automatically be transferred to Page 1.

MEANS OF FINANCING	CURRENT FY 2021-2022	ADJUSTMENT (+) or (-)	REVISED FY 2021-2022
GENERAL FUND BY:			
FEES & SELF-GENERATED			
Sex Offender Registry Technology Fund Account			
[Select Fund Account]			
SUBTOTAL (to Page 1)			
STATUTORY DEDICATIONS			
Louisiana Manufactured Housing Commission Fund (V20)	\$305,775		
Louisiana Fire Marshal Fund (P01)	\$18,706,266		
Two Percent Fire Insurance Fund (I03)	\$1,750,000		
Louisiana Life Safety and Property Protection Trust Fund (P32)	\$725,000		
Volunteer Firefighters Tuition Reimbursement Fund (P43)	\$250,000		
Industrialized Building Program Fund (P36)	\$300,000		
SUBTOTAL (to Page 1)	\$22,037,041		

Use this section for additional Program Names, if needed.
The subtotal will automatically be transferred to Page 1.

PROGRAM EXPENDITURES	DOLLARS	POS	DOLLARS	POS	DOLLARS	POS
PROGRAM NAME:						
SUBTOTAL (to Page 1)						

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

Policy and Procedure Memorandum No. 52, Revised, requires that all Requests for Changes in Appropriation be fully documented. At a minimum, the following questions and statements must be answered. Use Continuation Sheets as needed. **FAILURE TO ANSWER ALL QUESTIONS COMPLETELY WILL BE CAUSE TO RETURN THIS DOCUMENT WITHOUT ACTION.**

1. What is the source of funding (if other than General Fund (Direct))? Specifically identify any grant or public law and the purposes of the funds, if applicable. A copy of any grant application and the notice of approved grant or appropriation must accompany the BA-7. What are the expenditure restrictions of the funds?

The source of funding for this request is Federal grant funding (2020 Fire Prevention & Safety Grant) from the Department of Homeland Security. These federal grant funds are for the purchase of 15,000 smoke alarms that will be distributed to fire departments across Louisiana, and then received by local residents. This Community Risk Reduction project has a cost share. FEMA will reimburse 95% of the smoke alarm costs, and OSFM will cover the 5% state share. using the Statutory Dedicated Fire Marshal Fund.

2. Enter the financial impact of the requested adjustment for the next four fiscal years.

MEANS OF FINANCING OR EXPENDITURE	FY 2021-2022	FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026
GENERAL FUND BY:					
DIRECT					
INTERAGENCY TRANSFERS					
FEES & SELF-GENERATED					
STATUTORY DEDICATIONS					
FEDERAL	\$160,715	(\$160,715)			
TOTAL	\$160,715	(\$160,715)			

3. If this action requires additional personnel, provide a detailed explanation below:

This action will not require additional personnel.

4. Explain why this request can't be postponed for consideration in the agency's budget request for next fiscal year.

This request is for the one-time purchase of 15,000 smoke alarms in the current fiscal year. Expenditures and revenues will be recognized in FY 2021-2022. While the period of performance crosses fiscal years, the grant will be expensed in year one. See grant agreement for details of period of performance and budget breakdown.

5. Is this an after the fact BA-7, e.g.; have expenditures been made toward the program this BA-7 is for? If yes, explain per PPM No.52.

This BA-7 is not after the fact.

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PERFORMANCE IMPACT OF MID-YEAR BUDGET ADJUSTMENT

1. Identify and explain the programmatic impacts (positive or negative) that will result from the approval of this BA-7.

This request is to allow the expenses that will be incurred in FY 2021-2022 to also be fully reimbursed in the current fiscal year. See attached grant agreement for details.

2. Complete the following information for each objective and related performance indicators that will be affected by this request. *(Note: Requested adjustments may involve revisions to existing objectives and performance indicators or creation of new objectives and performance indicators. Repeat this portion of the request form as often as necessary.)*

OBJECTIVE:

LEVEL	PERFORMANCE INDICATOR NAME	PERFORMANCE STANDARD		
		CURRENT FY 2021-2022	ADJUSTMENT (+) OR (-)	REVISED FY 2021-2022

JUSTIFICATION FOR ADJUSTMENT(S): Explain the necessity of the adjustment(s).

3. Briefly explain any performance impacts other than or in addition to effects on objectives and performance indicators. *(For example: Are there any anticipated direct or indirect effects on program management or service recipients? Will this BA-7 have a positive or negative impact on some other program or agency?)*

This request directly impacts the agency's Fire Prevention and Safety initiatives. See page 2 of grant agreement for details.

4. If there are no performance impacts associated with this BA-7 request, then fully explain this lack of performance impact.

Not applicable.

5. Describe the performance impacts of failure to approve this BA-7. (Be specific. Relate performance impacts to objectives and performance indicators.)

If this BA-7 is not approved, the Office of State Fire Marshal would have to purchase 15,000 smoke alarms with an alternate means of financing, and expenditures would not be reimbursed to the agency.

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM 1 NAME: FIRE PREVENTION

MEANS OF FINANCING:	CURRENT FY 2021-2022	REQUESTED ADJUSTMENT	REVISED FY 2021-2022	ADJUSTMENT OUTYEAR PROJECTIONS			
				FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026
GENERAL FUND BY:							
Direct	\$110,000		\$110,000				
Interagency Transfers	\$651,000		\$651,000				
Fees & Self-Generated *	\$2,500,000		\$2,500,000				
Statutory Dedications **	\$22,037,041		\$22,037,041				
FEDERAL FUNDS	\$90,600	\$160,715	\$251,315	(\$160,715)			
TOTAL MOF	\$25,388,641	\$160,715	\$25,549,356	(\$160,715)			
EXPENDITURES:							
Salaries	\$11,368,523		\$11,368,523				
Other Compensation	\$10,528		\$10,528				
Related Benefits	\$5,871,606		\$5,871,606				
Travel	\$197,000		\$197,000				
Operating Services	\$651,202		\$651,202				
Supplies	\$432,417		\$432,417				
Professional Services	\$7,219		\$7,219				
Other Charges	\$3,320,629	\$160,715	\$3,481,344	(\$160,715)			
Debt Services							
Interagency Transfers	\$3,419,517		\$3,419,517				
Acquisitions	\$110,000		\$110,000				
Major Repairs							
UNALLOTTED							
TOTAL EXPENDITURES	\$25,388,641	\$160,715	\$25,549,356	(\$160,715)			
POSITIONS							
Classified	153		153				
Unclassified	10		10				
TOTAL T.O. POSITIONS	163		163				
Other Charges Positions							
Non-TO FTE Positions	10		10				
TOTAL POSITIONS	173		173				
*Dedicated Fund Accounts:							
Reg. Fees & Self-generated	\$2,500,000		\$2,500,000				
**Statutory Dedications:							
Louisiana Manufactured Housing Commission Fund (V20)	\$305,775		\$305,775				
Louisiana Fire Marshal Fund (P01)	\$18,706,266		\$18,706,266				
Two Percent Fire Insurance Fund (I03)	\$1,750,000		\$1,750,000				
Louisiana Life Safety and Property Protection Trust Fund (P32)	\$725,000		\$725,000				
Volunteer Firefighters Tuition Reimbursement Fund (P43)	\$250,000		\$250,000				
Industrialized Building Program Fund (P36)	\$300,000		\$300,000				

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM 1 NAME: FIRE PREVENTION

MEANS OF FINANCING:	State General Fund	Interagency Transfers	Fees & Self-Generated Revenues	Statutory Dedications	Federal Funds	TOTAL
AMOUNT					\$160,715	\$160,715
EXPENDITURES:						
Salaries						
Other Compensation						
Related Benefits						
Travel						
Operating Services						
Supplies						
Professional Services						
Other Charges					\$160,715	\$160,715
Debt Services						
Interagency Transfers						
Acquisitions						
Major Repairs						
UNALLOTTED						
TOTAL EXPENDITURES					\$160,715	\$160,715
OVER / (UNDER)						
POSITIONS						
Classified						
Unclassified						
TOTAL T.O. POSITIONS						
Other Charges Positions						
Non-TO FTE Positions						
TOTAL POSITIONS						

BA-7 QUESTIONNAIRE

GENERAL PURPOSE

1. The general purpose of BA-7 #11-422-02 is for the purchase of 15,000 smoke alarms in FY 2021-2022, and to receive reimbursement in the current fiscal year.

REVENUES

The revenues associated with this request are Federal from the Department of Homeland of Security.

REVENUE SOURCE	BEGINNING BUDGET	ADJUSTMENT AMOUNT	REQUESTED BUDGET
Federal	\$90,600	\$160,715	\$251,315
Total Adjustment		\$160,715	

EXPENDITURES

9. The Other Charges expenditure category will be adjusted as a result of this BA-7.

OBJECT CODE	AMOUNT	MOF
5620068 - Other Charges Acquisitions	\$160,715	Federal - Grant
TOTAL	\$160,715	

OTHER

12. LTC Jason Starnes
Deputy Superintendent, Chief Administrative Officer
(225) 925-6032
Jason.Starnes@la.gov

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Effective date: 08/22/2021

Ashley Rodrigue

STATE FIRE MARSHAL'S OFFICE, LOUISIANA

8181 INDEPENDENCE BLVD

BATON ROUGE, LA 70806

EMW-2020-FP-00198



FEMA

Dear Ashley Rodrigue,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2020 Fire Prevention & Safety (FPS) Grant funding opportunity has been approved in the amount of \$160,714.29 in Federal funding. As a condition of this grant, you are required to contribute non-Federal funds equal to or greater than 5.00% of the Federal funds awarded, or \$8,035.71 for a total approved budget of \$168,750.00. Please see the FY 2020 FP&S Notice of Funding Opportunity for information on how to meet this cost share requirement.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- FY 2020 FP&S Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

Robert Farmer
Acting Deputy Assistant Administrator
Grant Programs Directorate

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

DEPARTMENT: Louisiana Department of Wildlife and Fisheries			FOR OPB USE ONLY			
AGENCY: Office of Fisheries			OPB LOG NUMBER 103		AGENDA NUMBER 3	
SCHEDULE NUMBER: 16-514			Approval and Authority:			
SUBMISSION DATE: 09/23/2021						
AGENCY BA-7 NUMBER: F-22-2						
HEAD OF BUDGET UNIT: Bryan McClinton						
TITLE: Undersecretary						
SIGNATURE <i>(Certifies that the information provided is correct and true to the best of your knowledge):</i> 						
MEANS OF FINANCING		CURRENT FY 2021-2022	ADJUSTMENT (+) or (-)		REVISED FY 2021-2022	
GENERAL FUND BY:						
DIRECT		\$0	\$0		\$0	
INTERAGENCY TRANSFERS		\$24,569,897			\$24,569,897	
FEES & SELF-GENERATED		\$116,976	\$0		\$116,976	
Regular Fees & Self-generated		\$0	\$0		\$0	
Subtotal of Fund Accounts from Page 2		\$116,976	\$0		\$116,976	
STATUTORY DEDICATIONS		\$27,954,839			\$28,010,220	
Oyster Sanitation Fund (Q08)		\$76,965	\$0		\$76,965	
Conservation Fund (W01)		\$14,309,948	\$0		\$14,309,948	
Subtotal of Dedications from Page 2		\$13,567,926	\$55,381		\$13,623,307	
FEDERAL		\$10,306,721	\$0		\$10,306,721	
TOTAL		\$62,948,433	\$55,381		\$63,003,814	
AUTHORIZED POSITIONS		236	0		236	
AUTHORIZED OTHER CHARGES		1	0		1	
NON-TO FTE POSITIONS		53	0		53	
TOTAL POSITIONS		290	0		290	
PROGRAM EXPENDITURES	DOLLARS	POS	DOLLARS	POS	DOLLARS	POS
PROGRAM NAME:						
Fisheries	\$62,948,433	290	\$55,381	0	\$63,003,814	290
Program 2	\$0	0	\$0	0	\$0	0
Program 3	\$0	0	\$0	0	\$0	0
Program 4	\$0	0	\$0	0	\$0	0
Program 5	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
Subtotal of programs from Page 2:	\$0	0	\$0	0	\$0	0
TOTAL	\$62,948,433	290	\$55,381	0	\$63,003,814	290

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

DEPARTMENT: Louisiana Department of Wildlife and Fisheries	FOR OPB USE ONLY	
AGENCY: Office of Fisheries	OPB LOG NUMBER	AGENDA NUMBER
SCHEDULE NUMBER: 16-514		
SUBMISSION DATE: 09/23/2021	ADDENDUM TO PAGE 1	
AGENCY BA-7 NUMBER: F-22-2		

Use this section for additional Dedicated Fund Accounts or Statutory Dedications, if needed.
The subtotal will automatically be transferred to Page 1.

MEANS OF FINANCING	CURRENT FY 2021-2022	ADJUSTMENT (+) or (-)	REVISED FY 2021-2022
GENERAL FUND BY:			
FEES & SELF-GENERATED			
Administrative Fund Account	\$116,976	\$0	\$116,976
(Select Fund Account)	\$0	\$0	\$0
SUBTOTAL (to Page 1)	\$116,976	\$0	\$116,976
STATUTORY DEDICATIONS			
Artificial Reef Development Fund (W04)	\$8,043,207	\$0	\$8,043,207
Oyster Development Fund (W18)	\$149,989	\$0	\$149,989
Shrimp Marketing & Promotion Account (W22)	\$70,331	\$0	\$70,331
Aquatic Plant Control Fund (W27)	\$1,403,211	\$0	\$1,403,211
Public Oyster Seed Ground Development Account (W28)	\$2,439,224	\$0	\$2,439,224
Crab Promotion and Marketing Account (W33)	\$42,577	\$55,381	\$97,958
Derelict Crab Trap Removal Program Account (W34)	\$80,371	\$0	\$80,371
Saltwater Fish Research and Conservation Fund (W40)	\$1,339,016	\$0	\$1,339,016
SUBTOTAL (to Page 1)	\$13,567,926	\$55,381	\$13,623,307

Use this section for additional Program Names, if needed.
The subtotal will automatically be transferred to Page 1.

PROGRAM EXPENDITURES	DOLLARS	POS	DOLLARS	POS	DOLLARS	POS
PROGRAM NAME:						
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
	\$0	0	\$0	0	\$0	0
SUBTOTAL (to Page 1)	\$0	0	\$0	0	\$0	0

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

Policy and Procedure Memorandum No. 52, Revised, requires that all Requests for Changes in Appropriation be fully documented. At a minimum, the following questions and statements must be answered. Use Continuation Sheets as needed. **FAILURE TO ANSWER ALL QUESTIONS COMPLETELY WILL BE CAUSE TO RETURN THIS DOCUMENT WITHOUT ACTION.**

1. What is the source of funding (if other than General Fund (Direct))? Specifically identify any grant or public law and the purposes of the funds, if applicable. A copy of any grant application and the notice of approved grant or appropriation must accompany the BA-7. What are the expenditure restrictions of the funds?
The source of the funding is the Crab Promotion Fund that was established in RS 56:20 (B). The funds are to be administered by the Crab Task Force.

2. Enter the financial impact of the requested adjustment for the next four fiscal years.

MEANS OF FINANCING OR EXPENDITURE	FY 2021-2022	FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026
GENERAL FUND BY:					
DIRECT	\$0	\$0	\$0	\$0	\$0
INTERAGENCY TRANSFERS	\$0	\$0	\$0	\$0	\$0
FEES & SELF-GENERATED	\$0	\$0	\$0	\$0	\$0
STATUTORY DEDICATIONS	\$55,381	\$0	\$0	\$0	\$0
FEDERAL	\$0	\$0	\$0	\$0	\$0
TOTAL	\$55,381	\$0	\$0	\$0	\$0

3. If this action requires additional personnel, provide a detailed explanation below:
No additional personnel required

4. Explain why this request can't be postponed for consideration in the agency's budget request for next fiscal year.
This request cannot be postponed because it is needed to fund an active contract that expires in December 2021.

5. Is this an after the fact BA-7, e.g., have expenditures been made toward the program this BA-7 is for? If yes, explain per PPM No.52.
Yes. A BA-7 was requested and approved last fiscal year and the funds were not carried forward to the FY22 budget.

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT**

PERFORMANCE IMPACT OF MID-YEAR BUDGET ADJUSTMENT

1. Identify and explain the programmatic impacts (positive or negative) that will result from the approval of this BA-7.

This budget adjustment will allow the Office of Fisheries to complete a contract associated with the sustainability certification audit for blue crab.

2. Complete the following information for each objective and related performance indicators that will be affected by this request. (Note: Requested adjustments may involve revisions to existing objectives and performance indicators or creation of new objectives and performance indicators. Repeat this portion of the request form as often as necessary.)

OBJECTIVE: N/A

LEVEL	PERFORMANCE INDICATOR NAME	PERFORMANCE STANDARD		
		CURRENT FY 2021-2022	ADJUSTMENT (+) OR (-)	REVISED FY 2021-2022

JUSTIFICATION FOR ADJUSTMENT(S): Explain the necessity of the adjustment(s).

3. Briefly explain any performance impacts other than or in addition to effects on objectives and performance indicators. (For example: Are there any anticipated direct or indirect effects on program management or service recipients? Will this BA-7 have a positive or negative impact on some other program or agency?)

This budget adjustment will have a positive impact on the blue crab fishery in that it will maintain sustainability certification. This certification can be used to increase marketability of the product and positively impact the commercial fishery.

4. If there are no performance impacts associated with this BA-7 request, then fully explain this lack of performance impact.

N/A

5. Describe the performance impacts of failure to approve this BA-7. (Be specific. Relate performance impacts to objectives and performance indicators.)

The current contract would not be completed and the commercial blue crab fishery would lose their sustainability certification.

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM 1 NAME: Fisheries

MEANS OF FINANCING:	CURRENT	REQUESTED	REVISED	ADJUSTMENT OUTYEAR PROJECTIONS			
	FY 2021-2022	ADJUSTMENT	FY 2021-2022	FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026
GENERAL FUND BY:							
Direct	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interagency Transfers	\$24,569,897	\$0	\$24,569,897	\$0	\$0	\$0	\$0
Fees & Self-Generated *	\$116,976	\$0	\$116,976	\$0	\$0	\$0	\$0
Statutory Dedications **	\$27,954,839	\$55,381	\$28,010,220	\$0	\$0	\$0	\$0
FEDERAL FUNDS	\$10,306,721	\$0	\$10,306,721	\$0	\$0	\$0	\$0
TOTAL MOF	\$62,948,433	\$55,381	\$63,003,814	\$0	\$0	\$0	\$0
EXPENDITURES:							
Salaries	\$13,851,987	\$0	\$13,851,987	\$0	\$0	\$0	\$0
Other Compensation	\$120,752	\$0	\$120,752	\$0	\$0	\$0	\$0
Related Benefits	\$8,808,112	\$0	\$8,808,112	\$0	\$0	\$0	\$0
Travel	\$141,786	\$0	\$141,786	\$0	\$0	\$0	\$0
Operating Services	\$14,260,836	\$0	\$14,260,836	\$0	\$0	\$0	\$0
Supplies	\$5,262,673	\$0	\$5,262,673	\$0	\$0	\$0	\$0
Professional Services	\$2,392,957	\$55,381	\$2,448,338	\$0	\$0	\$0	\$0
Other Charges	\$14,585,492	\$0	\$14,585,492	\$0	\$0	\$0	\$0
Debt Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interagency Transfers	\$903,475	\$0	\$903,475	\$0	\$0	\$0	\$0
Acquisitions	\$1,667,934	\$0	\$1,667,934	\$0	\$0	\$0	\$0
Major Repairs	\$952,429	\$0	\$952,429	\$0	\$0	\$0	\$0
UNALLOTTED	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL EXPENDITURES	\$62,948,433	\$55,381	\$63,003,814	\$0	\$0	\$0	\$0
POSITIONS							
Classified	236	0	236	0	0	0	0
Unclassified	1	0	1	0	0	0	0
TOTAL T.O. POSITIONS	237	0	237	0	0	0	0
Other Charges Positions	0	0	0	0	0	0	0
Non-FTE Positions	53	0	53	0	0	0	0
TOTAL POSITIONS	290	0	290	0	0	0	0
*Dedicated Fund Accounts:							
Reg. Fees & Self-generated	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Administrative Fund Account	\$116,976	\$0	\$116,976	\$0	\$0	\$0	\$0
(Select Fund Account)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
**Statutory Dedications:							
Oyster Sanitation Fund (Q00)	\$76,965	\$0	\$76,965	\$0	\$0	\$0	\$0
Conservation Fund (W01)	\$14,309,948	\$0	\$14,309,948	\$0	\$0	\$0	\$0
Artificial Reef Development Fund (W04)	\$5,857,207	\$0	\$5,857,207	\$0	\$0	\$0	\$0
Oyster Development Fund (W18)	\$149,989	\$0	\$149,989	\$0	\$0	\$0	\$0
Shrimp Marketing & Promotion Account (W22)	\$70,331	\$0	\$70,331	\$0	\$0	\$0	\$0
Aquatic Plant Control Fund (W27)	\$1,403,211		\$1,403,211				
Public Oyster Seed Ground Development Account (W28)	\$2,439,224	\$0	\$2,439,224	\$0	\$0	\$0	\$0
Crab Promotion and Marketing Account (W33)	\$42,577	\$55,381	\$97,958	\$0	\$0	\$0	\$0
Derelict Crab Trap Removal Program Account (W34)	\$80,371		\$80,371				
Saltwater Fish Research and Conservation Fund (W40)	\$1,339,016	\$0	\$1,339,016	\$0	\$0	\$0	\$0

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM 1 NAME: Fisheries

MEANS OF FINANCING:	State General Fund	Interagency Transfers	Fees & Self-Generated Revenues	Statutory Dedications	Federal Funds	TOTAL
AMOUNT	\$0	\$0	\$0	\$55,381	\$0	\$55,381
EXPENDITURES:						
Salaries	\$0	\$0	\$0	\$0	\$0	\$0
Other Compensation	\$0	\$0	\$0	\$0	\$0	\$0
Related Benefits	\$0	\$0	\$0	\$0	\$0	\$0
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Operating Services	\$0	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$0	\$0
Professional Services	\$0	\$0	\$0	\$55,381	\$0	\$55,381
Other Charges	\$0	\$0	\$0	\$0	\$0	\$0
Debt Services	\$0	\$0	\$0	\$0	\$0	\$0
Interagency Transfers	\$0	\$0	\$0	\$0	\$0	\$0
Acquisitions	\$0	\$0	\$0	\$0	\$0	\$0
Major Repairs	\$0	\$0	\$0	\$0	\$0	\$0
UNALLOTTED	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL EXPENDITURES	\$0	\$0	\$0	\$55,381	\$0	\$55,381
OVER / (UNDER)	\$0	\$0	\$0	\$0	\$0	\$0
POSITIONS						
Classified	0	0	0	0	0	0
Unclassified	0	0	0	0	0	0
TOTAL T.O. POSITIONS	0	0	0	0	0	0
Other Charges Positions	0	0	0	0	0	0
Non-TO FTE Positions	0	0	0	0	0	0
TOTAL POSITIONS	0	0	0	0	0	0

QUESTIONNAIRE ANALYSIS

(Please reference question numbers, provide detailed information and use continuation sheets as needed.)

GENERAL PURPOSE

The purpose of this BA-7 is to increase the budget of the Crab Promotion Fund to cover an existing contract to complete the audit for the crab sustainability certification.

REVENUES

Statutory Dedication:
Crab Promotion & Marketing Fund

Current Fund Balance:	\$	274,662
Existing Crab Promotion & Marketing Fund Budget	\$	40,577
BA-7 Adjustment	\$	55,381
Revised Crab Promotion & Marketing Fund Budget	\$	95,958

EXPENDITURES


Program	Major Category	Description	Amount	Purchase Order
Fisheries	Professional Services	Sustainability Certification Audit for Blue Crab	\$ 55,381	2000572578
			\$ 55,381	

OTHER

Fiscal Contact:	Beth Boulet, Fiscal Officer, (225) 765-2801	bboulet@wif.la.gov
Programmatic Contact:	Patrick Banks, Asst Secretary, (225) 765-2370	pbanks@wif.la.gov
Testifying before JLCB:	Patrick Banks, Asst Secretary, (225) 765-2370	pbanks@wif.la.gov

BA-7 SUPPORT INFORMATION

REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

DEPARTMENT: Executive Department			FOR OPB USE ONLY			
AGENCY: GOHSEP			OPB LOG NUMBER		AGENDA NUMBER	
SCHEDULE NUMBER: 01-111			107		4	
SUBMISSION DATE: November 15, 2021			Approval and Authority:			
AGENCY BA-7 NUMBER: 13-111-03						
HEAD OF BUDGET UNIT: Casey Tingle						
TITLE: Director						
SIGNATURE (Certifies that the information provided is correct and true to the best of your knowledge):						
						
MEANS OF FINANCING		CURRENT FY 2021-2022	ADJUSTMENT (+) or (-)		REVISED FY 2021-2022	
GENERAL FUND BY:						
DIRECT		\$43,731,764			\$43,731,764	
INTERAGENCY TRANSFERS		\$1,186,347			\$1,186,347	
FEES & SELF-GENERATED		\$265,396			\$265,396	
Regular Fees & Self-generated		\$265,396			\$265,396	
Subtotal of Fund Accounts from Page 2						
STATUTORY DEDICATIONS		\$921,000,000			\$921,000,000	
[Select Statutory Dedication]						
[Select Statutory Dedication]						
Subtotal of Dedications from Page 2		\$921,000,000			\$921,000,000	
FEDERAL		\$1,183,775,826	\$500,000,000		\$1,683,775,826	
TOTAL		\$2,149,959,333	\$500,000,000		\$2,649,959,333	
AUTHORIZED POSITIONS		62			62	
AUTHORIZED OTHER CHARGES		227			227	
NON-TO FTE POSITIONS						
TOTAL POSITIONS		289			289	
PROGRAM EXPENDITURES	DOLLARS	POS	DOLLARS	POS	DOLLARS	POS
PROGRAM NAME:						
100 - Administration	\$2,149,959,333	289	\$500,000,000		\$2,649,959,333	289
Subtotal of programs from Page 2:						
TOTAL	\$2,149,959,333	289	\$500,000,000		\$2,649,959,333	289

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

DEPARTMENT: Executive Department	FOR OPB USE ONLY	
AGENCY: GOHSEP	OPB LOG NUMBER	AGENDA NUMBER
SCHEDULE NUMBER: 01-111		
SUBMISSION DATE: November 16, 2021	ADDENDUM TO PAGE 1	
AGENCY BA-7 NUMBER: 13-111-03		

Use this section for additional Dedicated Fund Accounts or Statutory Dedications, if needed.
The subtotal will automatically be transferred to Page 1.

MEANS OF FINANCING	CURRENT FY 2021-2022	ADJUSTMENT (+) or (-)	REVISED FY 2021-2022
GENERAL FUND BY:			
FEES & SELF-GENERATED			
[Select Fund Account]			
[Select Fund Account]			
SUBTOTAL (to Page 1)			
STATUTORY DEDICATIONS			
Louisiana Port Relief Fund (V47)	\$50,000,000		\$50,000,000
Louisiana Rescue Plan Fund (V43)	\$490,000,000		\$490,000,000
Louisiana Tourism Revival Fund (V48)	\$60,000,000		\$60,000,000
Louisiana Water Sector Fund (V44)	\$300,000,000		\$300,000,000
State Emergency Response Fund (V29)	\$21,000,000		\$21,000,000
[Select Statutory Dedication]			
SUBTOTAL (to Page 1)	\$921,000,000		\$921,000,000

Use this section for additional Program Names, if needed.
The subtotal will automatically be transferred to Page 1.

PROGRAM EXPENDITURES	DOLLARS	POS	DOLLARS	POS	DOLLARS	POS
PROGRAM NAME:						
SUBTOTAL (to Page 1)						

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

Policy and Procedure Memorandum No. 52, Revised, requires that all Requests for Changes in Appropriation be fully documented. At a minimum, the following questions and statements must be answered. Use Continuation Sheets as needed. **FAILURE TO ANSWER ALL QUESTIONS COMPLETELY WILL BE CAUSE TO RETURN THIS DOCUMENT WITHOUT ACTION.**

1. What is the source of funding (if other than General Fund (Direct))? Specifically identify any grant or public law and the purposes of the funds, if applicable. A copy of any grant application and the notice of approved grant or appropriation must accompany the BA-7. What are the expenditure restrictions of the funds?

The source of funding for this request is Federal Funds.

2. Enter the financial impact of the requested adjustment for the next four fiscal years.

MEANS OF FINANCING OR EXPENDITURE	FY 2021-2022	FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026
GENERAL FUND BY:					
DIRECT					
INTERAGENCY TRANSFERS					
FEES & SELF-GENERATED					
STATUTORY DEDICATIONS					
FEDERAL	\$500,000,000	(\$500,000,000)			
TOTAL	\$500,000,000	(\$500,000,000)			

3. If this action requires additional personnel, provide a detailed explanation below:

This action will not require additional personnel.

4. Explain why this request can't be postponed for consideration in the agency's budget request for next fiscal year.

This request is necessary for the agency to have sufficient budget authority to complete the fiscal year. Postponement of this request will cause the non-payment of obligations for the current fiscal year.

5. Is this an after the fact BA-7, e.g., have expenditures been made toward the program this BA-7 is for? If yes, explain per PPM No.52.

This BA-7 is not after the fact.

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT**

PERFORMANCE IMPACT OF MID-YEAR BUDGET ADJUSTMENT

1. Identify and explain the programmatic impacts (positive or negative) that will result from the approval of this BA-7.

GOHSEP requires additional Federal budget authority to complete FY 2021-2022 obligations.

2. Complete the following information for each objective and related performance indicators that will be affected by this request. *(Note: Requested adjustments may involve revisions to existing objectives and performance indicators or creation of new objectives and performance indicators. Repeat this portion of the request form as often as necessary.)*

OBJECTIVE:

LEVEL	PERFORMANCE INDICATOR NAME	PERFORMANCE STANDARD		
		CURRENT FY 2021-2022	ADJUSTMENT (+) OR (-)	REVISED FY 2021-2022

JUSTIFICATION FOR ADJUSTMENT(S): Explain the necessity of the adjustment(s).

3. Briefly explain any performance impacts other than or in addition to effects on objectives and performance indicators. *(For example: Are there any anticipated direct or indirect effects on program management or service recipients? Will this BA-7 have a positive or negative impact on some other program or agency?)*

Not applicable

4. If there are no performance impacts associated with this BA-7 request, then fully explain this lack of performance impact.

This request is necessary in order for the agency to have necessary budget authority to complete the fiscal year.

5. Describe the performance impacts of failure to approve this BA-7. (Be specific. Relate performance impacts to objectives and performance indicators.)

Not applicable

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM 1 NAME: ADMINISTRATIVE

MEANS OF FINANCING:	CURRENT FY 2021-2022	REQUESTED ADJUSTMENT	REVISED FY 2021-2022	ADJUSTMENT OUTYEAR PROJECTIONS			
				FY 2022-2023	FY 2023-2024	FY 2024-2025	FY 2025-2026
GENERAL FUND BY:							
Direct	\$43,731,764		\$43,731,764				
Interagency Transfers	\$1,186,347		\$1,186,347				
Fees & Self-Generated *	\$265,396		\$265,396				
Statutory Dedications **	\$921,000,000		\$921,000,000				
FEDERAL FUNDS	\$1,183,775,826	\$500,000,000	\$1,683,775,826	(\$500,000,000)			
TOTAL MOF	\$2,149,959,333	\$500,000,000	\$2,649,959,333	(\$500,000,000)			
EXPENDITURES:							
Salaries	\$4,938,830		\$4,938,830				
Other Compensation							
Related Benefits	\$2,358,753		\$2,358,753				
Travel	\$5,417		\$5,417				
Operating Services	\$980		\$980				
Supplies	\$201,705		\$201,705				
Professional Services							
Other Charges	\$2,125,647,851	\$500,000,000	\$2,625,647,851	(\$500,000,000)			
Debt Services							
Interagency Transfers	\$16,805,797		\$16,805,797				
Acquisitions							
Major Repairs							
UNALLOTTED							
TOTAL EXPENDITURES	\$2,149,959,333	\$500,000,000	\$2,649,959,333	(\$500,000,000)			
POSITIONS							
Classified							
Unclassified	62		62				
TOTAL T.O. POSITIONS	62		62				
Other Charges Positions	227		227				
Non-TO FTE Positions							
TOTAL POSITIONS	289		289				
*Dedicated Fund Accounts:							
Reg. Fees & Self-generated	\$265,396		\$265,396				
[Select Fund Account]							
[Select Fund Account]							
**Statutory Dedications:							
Louisiana Port Relief Fund (V47)	\$50,000,000		\$50,000,000				
Louisiana Rescue Plan Fund (V43)	\$490,000,000		\$490,000,000				
Louisiana Tourism Revival Fund (V48)	\$60,000,000		\$60,000,000				
Louisiana Water Sector Fund (V44)	\$300,000,000		\$300,000,000				
State Emergency Response Fund (V29)	\$21,000,000		\$21,000,000				

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF PLANNING AND BUDGET
REQUEST FOR MID-YEAR BUDGET ADJUSTMENT

PROGRAM LEVEL REQUEST FOR MID-YEAR BUDGET ADJUSTMENT						
PROGRAM 1 NAME: <u>ADMINISTRATIVE</u>						
MEANS OF FINANCING:	State General Fund	Interagency Transfers	Fees & Self-Generated Revenues	Statutory Dedications	Federal Funds	TOTAL
AMOUNT					\$500,000,000	\$500,000,000
EXPENDITURES:						
Salaries						
Other Compensation						
Related Benefits						
Travel						
Operating Services						
Supplies						
Professional Services						
Other Charges					\$500,000,000	\$500,000,000
Debt Services						
Interagency Transfers						
Acquisitions						
Major Repairs						
UNALLOTTED						
TOTAL EXPENDITURES					\$500,000,000	\$500,000,000
OVER / (UNDER)						
POSITIONS						
Classified						
Unclassified						
TOTAL T.O. POSITIONS						
Other Charges Positions						
Non-TO FTE Positions						
TOTAL POSITIONS						

BA-7 QUESTIONNAIRE

GENERAL PURPOSE

1. The general purpose of BA-7 #13-111-03 is to increase Federal budget authority for GOHSEP.

REVENUES

7. The revenue associated with this request is Federal funding. GOHSEP is currently appropriated \$1,183,775,826 in Federal Funds. Approval of this BA-7 will increase that amount to \$1,683,775,826.

EXPENDITURES

9. The Other Charges expenditure category will be adjusted as a result of this BA-7.

11.		Expenditure	Amount	Source
	5610003	Other Public Assistance & Grants - General	\$500,000,000	Federal

OTHER

12. Christina Dayries
Deputy Director, Grants and Administration
225.358.5899
Christina.Dayries@la.gov

Vyki Thompson
Budget Administrator
225.925.4507
Vyki.Thompson@la.gov



STATE OF LOUISIANA
LEGISLATIVE FISCAL OFFICE
BATON ROUGE

Post Office Box 44097
Capitol Station
Baton Rouge, Louisiana 70804
Phone: 225.342.7233
Fax: 225.342.7243

To: The Honorable Mack "Bodi" White, Chairman
Joint Legislative Committee on the Budget
The Honorable Members of the Joint Legislative Committee on the Budget

From: Alan Boxberger, Deputy Fiscal Officer *AMB*

Date: November 12, 2021

Subject: Joint Legislative Committee on the Budget
Meeting November 19, 2021

Attached are the Legislative Fiscal Office BA-7 (Budget Adjustment) write-ups for the November 19th meeting of the Joint Legislative Committee on the Budget.

The LFO recommends approval of all BA-7's.

Please contact me if you have questions or need additional information.

**LEGISLATIVE FISCAL OFFICE
ANALYSIS OF BA-7 REQUEST**

DEPARTMENT: Culture, Recreation & Tourism

AGENDA NO.: 1

AGENCY: Tourism

ANALYST: Willie Marie Scott

<u>Means of Financing</u>		<u>Expenditures by Program</u>		<u>T.O.</u>
State General Fund:	\$0	Administrative	\$0	0
Interagency Transfers:	\$0	Marketing	\$50,000	0
Self-Generated Revenue:	\$0	Welcome Centers	\$0	0
Statutory Dedications:	\$0			
Federal Funds:	\$50,000			
Total	\$50,000	Total	\$50,000	0

I. SUMMARY/COMMENTS

The purpose of this BA-7 request is to increase expenditure authority in the Marketing Program within the Office of Tourism by \$50,000 in federal grant funds. The source is a U.S. Department of the Interior - National Parks Service grant to complete the design and installation of civil rights markers on the Louisiana Civil Rights Trail. The grant's term is from 9/30/2021 to 9/30/2023 and the total amount of the project is \$121,200 (\$50,000 federal/\$71,200 state match). The Office of Tourism will use funding currently allocated toward the civil rights trail as state match.

According to the Office of Tourism, the \$50,000 expenditure for FY 22 will provide assistance for the fabrication and installation of up to 8 markers. Based on information provided the installation cost for each marker varies depending on geographic locations, the Office of Tourism has budgeted \$8,000 for fabrication and installation of each marker. Approximately four (4) markers are currently located at Dooky Chase Restaurant in New Orleans, the Old State Capitol and A. Z. Young Park in Baton Rouge, and the Little Union Baptist Church in Shreveport.

II. IMPACT ON FUTURE FISCAL YEARS

This is a one-time federal grant award allotment that is anticipated to be expended within a 2-year budget period. According to CRT, the project is expected to be completed in FY 22, therefore there will be no impact on future fiscal years.

III. LEGISLATIVE FISCAL OFFICE RECOMMENDATION

The Legislative Fiscal Office recommends approval of this BA-7 request.

**LEGISLATIVE FISCAL OFFICE
ANALYSIS OF BA-7 REQUEST**

DEPARTMENT: DPSC Public Safety Services

AGENDA NO.: 2

AGENCY: State Fire Marshal

ANALYST: Patrice Thomas

<u>Means of Financing</u>		<u>Expenditures by Program</u>		<u>T.O.</u>
State General Fund:	\$0	Fire Prevention	\$160,715	0
Interagency Transfers:	\$0			
Self-Generated Revenue:	\$0			
Statutory Dedications:	\$0			
Federal Funds:	\$160,715			
Total	\$160,715	Total	\$160,715	0

I. SUMMARY/COMMENTS

The purpose of this BA-7 request is to increase Federal funds budget authority by \$160,715 in the Office of the State Fire Marshal within the Department of Public Safety. The source of funds is the 2020 Fire Prevention and Safety (FPS) grant from the US Department of Homeland Security, Federal Emergency Management Agency (FEMA). The grant requires a 5% state match of \$8,035 and the grant period is for one year, 8/29/2021 to 8/28/2022.

The total budget for the FPS grant is \$168,750. This BA-7 represents 95% federal funding - \$160,715 of the total \$168,750. The 5% state matching funds of \$8,035 will come from the statutorily dedicated LA Fire Marshal Fund. The source of funding from the LA Fire Marshal Fund is a tax of 1.25% on the gross annual insurance premium of businesses.

Fire Prevention and Safety (FPS) Grant

Federal Funds - 95%	\$160,715
State Match - 5%	\$8,035
Total Grant Budget	\$168,750

Total expenditures for this BA-7 request are as follows:

Other Charges - \$160,715

The State Fire Marshal will purchase and distribute 15,000 smoke alarms to fire departments across the state. The fire departments will then distribute the smoke alarms to residents. Each single-station smoke alarm with a non-removable 10-year lithium battery costs \$11.25 (15,000 smoke alarms x \$11.25 per alarm = \$168,750).

II. IMPACT ON FUTURE FISCAL YEARS

Approval of this BA-7 request will have no impact on future fiscal years.

III. LEGISLATIVE FISCAL OFFICE RECOMMENDATION

The Legislative Fiscal Office recommends approval of this BA-7 request.

**LEGISLATIVE FISCAL OFFICE
ANALYSIS OF BA-7 REQUEST**

DEPARTMENT: Wildlife & Fisheries

AGENDA NO.: 3

AGENCY: Office of Fisheries

ANALYST: Kimberly Fruge

<u>Means of Financing</u>		<u>Expenditures by Program</u>		<u>T.O.</u>
State General Fund:	\$0	Fisheries	\$55,381	0
Interagency Transfers:	\$0			
Self-Generated Revenue:	\$0			
Statutory Dedications:	\$55,381			
Federal Funds:	\$0			
Total	\$55,381	Total	\$55,381	0

I. SUMMARY/COMMENTS

This is an after-the-fact BA-7 request to increase the statutory dedications out of the Crab Promotion and Marketing Account fund in the amount of \$55,381 for the Office of Fisheries within the Department of Wildlife and Fisheries (LDWF). This fund was created during the 2005 Regular Legislative Session for the development of markets for crabs and the creation of marketing strategies for the development and market expansion for crabs harvested from Louisiana waters. The fund's source of revenue is annual fees from the purchase of crab trap gear licenses. The current fund balance, as of 11/9/21, is \$307,553 with an FY 22 appropriated budget of \$42,577.

The funds are being used for the fourth surveillance audit and reassessment of the Louisiana commercial blue crab fisheries. The goal is to determine whether the fisheries' crab management program successfully manages a sustainable crab fishery that follows standards set by the Audubon Nature Institute Gulf United for Lasting Fisheries. This is to retain the Responsible Fisheries Management (RFM) Certification for the blue crab fishery that the industry can utilize when marketing their product.

The total funding for this project was approved in FY 21 at \$79,116 for contracting services (PO#2000572576) and was budgeted as follows:

\$ 712	Contracting and announcement
\$ 1,424	Site visit and planning
\$ 9,968	Surveillance Draft Report
\$14,240	Client Draft Report
\$ 8,544	Remote Site Visit
\$ 9,968	Final Surveillance Report
\$24,208	Scoring and completion of Client Report
\$ 6,848	Peer Review Report and Team's responses to Peer Reviewers' comments
\$ 3,204	Final Report and Certification Decision

On 6/22/2021, the department paid \$23,735 (30% of the total) for the completion of the first stage of the project. This BA-7 request is for the remaining balance of \$55,381 to complete the final stages of the project. On 10/8/2021, the department paid \$23,735 (30% of the total) for the completion of the second and third stages of the project. The remaining balance on the contract is \$31,646.

II. IMPACT ON FUTURE FISCAL YEARS

Approval of this BA-7 request will have no impact on future fiscal years. However, the appropriation of \$55,381 out of the Crab Promotion and Marketing Fund will increase the appropriation from this statutory dedication to a total of \$97,958 for FY 22 and decrease the fund balance of the statutory dedication by an equal amount. The current fund balance is \$307,553. In addition, REC estimates approximately \$40,000 in revenue will be deposited into the fund in FY 22.

III. LEGISLATIVE FISCAL OFFICE RECOMMENDATION

The Legislative Fiscal Office recommends approval of this BA-7 request.

November 19, 2021



STATE OF LOUISIANA
Legislative Fiscal Office
BATON ROUGE

Post Office Box 44097
Capitol Station
Baton Rouge, Louisiana 70804
Phone: 225.342.7233
Fax: 225.342.7243

To: The Honorable Mack "Bodi" White, Chairman
Joint Legislative Committee on the Budget
The Honorable Members of the Joint Legislative Committee on the Budget

From: Alan Boxberger, Deputy Fiscal Officer *AMB*

Date: November 17, 2021

Subject: Joint Legislative Committee on the Budget
Meeting November 19, 2021

Attached are the revised Legislative Fiscal Office BA-7 (Budget Adjustment) write-ups for the November 19th meeting of the Joint Legislative Committee on the Budget. The only change is the addition of BA-7 Agenda Item #4 for the Office of Homeland Security and Emergency Preparedness.

The LFO recommends approval of all BA-7's.

Please contact me if you have questions or need additional information.

**LEGISLATIVE FISCAL OFFICE
ANALYSIS OF BA-7 REQUEST**

DEPARTMENT: Culture, Recreation & Tourism

AGENDA NO.: 1

AGENCY: Tourism

ANALYST: Willie Marie Scott

<u>Means of Financing</u>		<u>Expenditures by Program</u>		<u>T O</u>
State General Fund:	\$0	Administrative	\$0	0
Interagency Transfers:	\$0	Marketing	\$50,000	0
Self-Generated Revenue:	\$0	Welcome Centers	\$0	0
Statutory Dedications:	\$0			
Federal Funds:	\$50,000			
Total	\$50,000	Total	\$50,000	0

I. SUMMARY/COMMENTS

The purpose of this BA-7 request is to increase expenditure authority in the Marketing Program within the Office of Tourism by \$50,000 in federal grant funds. The source is a U.S. Department of the Interior - National Parks Service grant to complete the design and installation of civil rights markers on the Louisiana Civil Rights Trail. The grant's term is from 9/30/2021 to 9/30/2023 and the total amount of the project is \$121,200 (\$50,000 federal/\$71,200 state match). The Office of Tourism will use funding currently allocated toward the civil rights trail as state match.

According to the Office of Tourism, the \$50,000 expenditure for FY 22 will provide assistance for the fabrication and installation of up to 8 markers. Based on information provided the installation cost for each marker varies depending on geographic locations, the Office of Tourism has budgeted \$8,000 for fabrication and installation of each marker. Approximately four (4) markers are currently located at Dooky Chase Restaurant in New Orleans, the Old State Capitol and A. Z. Young Park in Baton Rouge, and the Little Union Baptist Church in Shreveport.

II. IMPACT ON FUTURE FISCAL YEARS

This is a one-time federal grant award allotment that is anticipated to be expended within a 2-year budget period. According to CRT, the project is expected to be completed in FY 22, therefore there will be no impact on future fiscal years.

III. LEGISLATIVE FISCAL OFFICE RECOMMENDATION

The Legislative Fiscal Office recommends approval of this BA-7 request.

November 19, 2021

**LEGISLATIVE FISCAL OFFICE
ANALYSIS OF BA-7 REQUEST**

DEPARTMENT: DPSC Public Safety Services

AGENDA NO.: 2

AGENCY: State Fire Marshal

ANALYST: Patrice Thomas

<u>Means of Financing</u>		<u>Expenditures by Program</u>		<u>T.O.</u>
State General Fund:	\$0	Fire Prevention	\$160,715	0
Interagency Transfers:	\$0			
Self-Generated Revenue:	\$0			
Statutory Dedications:	\$0			
Federal Funds:	\$160,715			
Total	\$160,715	Total	\$160,715	0

I. SUMMARY/COMMENTS

The purpose of this BA-7 request is to increase Federal funds budget authority by \$160,715 in the Office of the State Fire Marshal within the Department of Public Safety. The source of funds is the 2020 Fire Prevention and Safety (FPS) grant from the US Department of Homeland Security, Federal Emergency Management Agency (FEMA). The grant requires a 5% state match of \$8,035 and the grant period is for one year, 8/29/2021 to 8/28/2022.

The total budget for the FPS grant is \$168,750. This BA-7 represents 95% federal funding - \$160,715 of the total \$168,750. The 5% state matching funds of \$8,035 will come from the statutorily dedicated LA Fire Marshal Fund. The source of funding from the LA Fire Marshal Fund is a tax of 1.25% on the gross annual insurance premium of businesses.

Fire Prevention and Safety (FPS) Grant	
Federal Funds - 95%	\$160,715
State Match - 5%	<u>\$8,035</u>
Total Grant Budget	\$168,750

Total expenditures for this BA-7 request are as follows:

Other Charges - \$160,715

The State Fire Marshal will purchase and distribute 15,000 smoke alarms to fire departments across the state. The fire departments will then distribute the smoke alarms to residents. Each single-station smoke alarm with a non-removable 10-year lithium battery costs \$11.25 (15,000 smoke alarms x \$11.25 per alarm = \$168,750).

II. IMPACT ON FUTURE FISCAL YEARS

Approval of this BA-7 request will have no impact on future fiscal years.

III. LEGISLATIVE FISCAL OFFICE RECOMMENDATION

The Legislative Fiscal Office recommends approval of this BA-7 request.

**LEGISLATIVE FISCAL OFFICE
ANALYSIS OF BA-7 REQUEST**

DEPARTMENT: Wildlife & Fisheries

AGENDA NO.: 3

AGENCY: Office of Fisheries

ANALYST: Kimberly Fruge

<u>Means of Financing</u>		<u>Expenditures by Program</u>		<u>T.O.</u>
State General Fund:	\$0	Fisheries	\$55,381	0
Interagency Transfers:	\$0			
Self-Generated Revenue:	\$0			
Statutory Dedications:	\$55,381			
Federal Funds:	\$0			
Total	\$55,381	Total	\$55,381	0

I. SUMMARY/COMMENTS

This is an after-the-fact BA-7 request to increase the statutory dedications out of the Crab Promotion and Marketing Account fund in the amount of \$55,381 for the Office of Fisheries within the Department of Wildlife and Fisheries (LDWF). This fund was created during the 2005 Regular Legislative Session for the development of markets for crabs and the creation of marketing strategies for the development and market expansion for crabs harvested from Louisiana waters. The fund's source of revenue is annual fees from the purchase of crab trap gear licenses. The current fund balance, as of 11/9/21, is \$307,553 with an FY 22 appropriated budget of \$42,577.

The funds are being used for the fourth surveillance audit and reassessment of the Louisiana commercial blue crab fisheries. The goal is to determine whether the fisheries' crab management program successfully manages a sustainable crab fishery that follows standards set by the Audubon Nature Institute Gulf United for Lasting Fisheries. This is to retain the Responsible Fisheries Management (RFM) Certification for the blue crab fishery that the industry can utilize when marketing their product.

The total funding for this project was approved in FY 21 at \$79,116 for contracting services (PO#2000572576) and was budgeted as follows:

\$ 712	Contracting and announcement
\$ 1,424	Site visit and planning
\$ 9,968	Surveillance Draft Report
\$14,240	Client Draft Report
\$ 8,544	Remote Site Visit
\$ 9,968	Final Surveillance Report
\$24,208	Scoring and completion of Client Report
\$ 6,848	Peer Review Report and Team's responses to Peer Reviewers' comments
\$ 3,204	Final Report and Certification Decision

On 6/22/2021, the department paid \$23,735 (30% of the total) for the completion of the first stage of the project. This BA-7 request is for the remaining balance of \$55,381 to complete the final stages of the project. On 10/8/2021, the department paid \$23,735 (30% of the total) for the completion of the second and third stages of the project. The remaining balance on the contract is \$31,646.

II. IMPACT ON FUTURE FISCAL YEARS

Approval of this BA-7 request will have no impact on future fiscal years. However, the appropriation of \$55,381 out of the Crab Promotion and Marketing Fund will increase the appropriation from this statutory dedication to a total of \$97,958 for FY 22 and decrease the fund balance of the statutory dedication by an equal amount. The current fund balance is \$307,553. In addition, REC estimates approximately \$40,000 in revenue will be deposited into the fund in FY 22.

III. LEGISLATIVE FISCAL OFFICE RECOMMENDATION

The Legislative Fiscal Office recommends approval of this BA-7 request.

November 19, 2021

**LEGISLATIVE FISCAL OFFICE
ANALYSIS OF BA-7 REQUEST**

DEPARTMENT: Executive

AGENDA NO.: 4

AGENCY: Homeland Security & Emergency Prep

ANALYST: Monique Appeaning

<u>Means of Financing</u>		<u>Expenditures by Program</u>		<u>T.O.</u>
State General Fund:	\$0	Administrative	\$500,000,000	0
Interagency Transfers:	\$0			
Self-Generated Revenue:	\$0			
Statutory Dedications:	\$0			
Federal Funds:	\$500,000,000			
Total	\$500,000,000	Total	\$500,000,000	0

I. SUMMARY/COMMENTS

The purpose of the BA-7 request is to increase the federal budget authority by \$500 M within the Governor's Office of Homeland Security & Emergency Preparedness (GOHSEP) for Hurricanes Laura (\$75 M) and Ida (\$400 M) cost shares as well as COVID (\$25 M) related expenditures. The increase in federal budget authority would allow GOHSEP to continue to pay invoices to its vendors and process reimbursement requests from local, state, and nonprofit agencies for disasters and non-disaster grants. The source of the Federal funds is FEMA.

While GOHSEP reports a weekly expenditure burn rate of \$69.6 M to date in FY 22, it does not anticipate this level to continue further into the current fiscal year as a large portion was directly related to Hurricane Ida. As of 11/15/21 the agency reports the remaining unencumbered budget authority was \$2,335. The \$500 M requested increase represents an average weekly burn rate of \$14,285,714 for an additional 35 weeks. GOHSEP anticipates this burn rate will increase, but the agency needs time to evaluate it over the next 60 days to update its projections. The agency will continue to monitor expenditures to determine if additional budget authority is needed for the remainder of the fiscal year.

II. IMPACT ON FUTURE FISCAL YEARS

Approval of this BA-7 request will have no impact on future fiscal years.

III. LEGISLATIVE FISCAL OFFICE RECOMMENDATION

The Legislative Fiscal Office recommends approval of this BA-7 request.

November 19, 2021



TREASURER OF THE STATE OF LOUISIANA

John M. Schroder
State Treasurer

P. O. Box 44154
Baton Rouge, LA 70804
(225) 342-0010
www.latreasury.com

October 20, 2021

Honorable Bodi White, Chairman
Joint Legislative Committee on the Budget
Post Office Box 44486, Capitol Station
Baton Rouge, LA 70804

Dear Senator White:

Attached is a spreadsheet detailing requests for back pay for Deputy Sheriffs' Supplemental pay which has been approved by the Deputy Sheriff Supplemental Pay Board as per Act 110 of 1982. Please place this item on the agenda for the next meeting.

Total requested prior year funds: \$14,603.04.

If we may be of further assistance in this matter, please call me or Stacey Guilbeau (225) 342-0698.

Sincerely,

A handwritten signature in blue ink that reads "Laura Lapeze".

Laura Lapeze
Chairman,
Deputy Sheriffs Supplemental Pay Board

LL/sg

Enclosures

No.	Parish	Deputy Name	Dates Owed	Amount	Reason	Addl Info
1	Calcasieu	Austin Arnold	6/26/2021	\$16.43	termination date corrected by sheriff's office	Received on September recon 9/7/21
2	Desoto	Jerek Lewis	4/26/21-6/30/21	\$1,082.15	new hire	July reconciliation turned in 8/18/21
3	Iberia	Westley Lanceslin	4/27/21-6/30/21	\$1,065.72	sheriff's office overlooked email from POST recertifying	received on September recon 9/13/21
4	Lafayette	Cory Baudoin	9/21/20-6/30/21	\$4,664.30	Prior service certification received from POST 8/26/21.	received on September recon 9/2/21
5	Lafourche	Eric Moses	5/12/21-6/30/21	\$828.60	waited on post certificate	received on July recon 8/24/21
6	Lafourche	Garrett Vogt	5/12/21-6/30/21	\$828.60	waited on post certificate	received on July recon 8/24/21
7	Red River	Dean Allison	6/25/21-6/30/21	\$98.58	sheriff office missed eligibility date	received on August recon 8/17/21
8	Red River	Darryl Jordan	11/1/20-6/30/21	\$4,000.00	post certificate not received in sheriff's office until August 2021	received on September recon 9/21/21
9	St. Tammany	Jimmie Daniel	5/27/21-6/30/21	\$582.15	documentation received late in sheriff office	received on September recon 9/16/21
10	Tensas	Michael Harrison	6/5/21-6/30/21	427.18	documentation received late in sheriff office	received on October recon 10/4/21
11	Webster	Matthew Hicks	6/21/21-6/30/21	164.30	documentation received late in sheriff office	received on September recon 10/6/21
12	Webster	Nicholas Pickard	5/11/21-6/30/21	845.03	post certificate received late in sheriff office	received on August recon 8/12/21
13						
14						
15						
16						
17						
18						
19						
20						

Grand Total \$14,603.04



JOHN BEL EDWARDS
GOVERNOR

LAMAR A. DAVIS, COLONEL
DEPUTY SECRETARY

State of Louisiana
Department of Public Safety and Corrections
Public Safety Services

November 2, 2021
DPS-02-02104-JS

Honorable Mack "Bodi" White, Chairman
Joint Legislative Committee on the Budget
Post Office Box 44294
Baton Rouge, Louisiana 70804

Dear Honorable White:

Attached is a spreadsheet detailing 50 requests for back pay for Municipal Firemen's Supplemental Pay which have been approved by the Board of Review as per Act 110 of 1982. Please place this item on the agenda for the next meeting.

Total requested prior year funds: \$67,169.00.

Public Safety Services projects sufficient funds available in the current fiscal year budget to fund these Act 110 requests for back pay.

If any additional documentation or information is needed, please feel free to contact the Undersecretary's Office at (225) 925-6032.

Sincerely,

Lt. Colonel Jason Starnes
Chief Administrative Officer

Attachment

CC: Brien Ruiz, Chairman, Board of Review
 Morgan Williams, Board Member
 Dwayne Thevis, Board Member
 Ronnie Schillace, Board Member
 Richard Parker, Board Member
 Connor Junkin, Legal Affairs

COURTESY • LOYALTY • SERVICE
"An Equal Opportunity Employer"
P.O. BOX 66614, BATON ROUGE, LOUISIANA 70896

MUNICIPAL FIRE SUPPLEMENTAL PAY ACT 110 REQUEST 2021

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON
1	Ascension Parish Fire	Norgrady, Brett Steven	03/10/2021-6/30/2021	\$ 1,850	
2	Avondale VFD	Arrington, Taylor S.	06/06/2021 - 06/30/2021	\$ 400	
3	Baton Rouge FD	Bell, Hayden Scott	04/15/2020 - 6/30/2020	\$ 1,267	
4	Bayou Cane	Adams, Ethan A.	06/15/2020 - 06/30/2020	\$ 267	
5	Bayou Cane FPD	Tinkes, Brent	05/13/2120 - 06/30/2021	\$ 767	
6	Benton FD #4	Smiley, Austin T.	02/11/2021 - 06/30/2021	\$ 2,317	
7	Cameron Fire Dist. 10	Trahan, Joseph Lynn	02/28/21-06/30/2021	\$ 2,050	
8	Chitimacha Fire	LeBlanc Nate A	04/01/21-06/30/2021	\$ 1,500	
9	Covington	Betz, Trevor	04/26/21-06/30/21	\$ 1,083	
10	Covington	Lawrence, Landon	03/08/21-06/30/21	\$ 1,883	
11	David Crockett	Goodwin, Shalen	06/15/21-06/30/21	\$ 250	
12	David Crockett	Ledet, Mark	06/02/21-06/30/21	\$ 483	
13	East Bank Consolidated	Smith, Jonathan L	02/13/2021 - 06/30/2021	\$ 2,300	
14	East Bank Consolidated	Rice, Courtney P.	04/10/2021 - 06/30/2021	\$ 1,350	
15	Eighth Ward	Leard, Cody	4/27/21-6/30/21	\$ 1,067	
16	East Side FD	Rogers, Dustin S.	03/16/2020 - 06/30/2020	\$ 1,750	
17	Grand Caillou	Beattie, Jacob Matthew	06/01/21-06/30/21	\$ 367	
18	Harahan FD	Brown Lee III	02/03/2020 - 06/30/2020	\$ 2,450	
19	Husser VFD	Leonard, Jerome Joseph	10/27/2020 - 06/30/2020	\$ 3,651	\$333.00 deducted for overpay in Aug. 2021
20	Kenner FD	Bryant, JaKenzie	06/02/21 - 06/30/21	\$ 483	
21	Kenner FD	Smith, Connor J	06/07/21 - 06/30/21	\$ 400	
22	Lafourche PFD #3	Danos, Jacob J.	03/25/2021 - 06/30/2021	\$ 1,600	
23	Little Caillou Fire	Sollers, Christopher J.	06/09/2020 - 06/30/2020	\$ 367	Application Submitted Late
24	Livingston Parish FPD #4	Williams, Austin C	05/18/21 - 06/31/21	\$ 717	
25	Marksville FD	Green, Robert J.	05/14/2021 - 06/30/2021	\$ 783	
26	Marrero Ragusa VFC	Hayes, Blaine	06/14/21 - 06/30/21	\$ 267	
27	Morgan City FD	Hillen, Kalen R.	01/15/2021 - 06/30/2021	\$ 2,767	
28	Natchitoches FD	Adkins, Anthony	05/11/21 - 06/30-21	\$ 883	
29	New Llano FD	Foster, Brandon C	06/20/21 - 06/30/21	\$ 183	
30	New Orleans FD	Weber, Randall D'Juan	03/01/2020 - 06/30/2020	\$ 2,000	
31	Oakdale FD	Brunet, Louis Charles	06/06/2020 - 06/30/2020	\$ 417	Application Submitted Late
32	Oakdale FD	Fontenot, Kevin B.	03/09/2020 - 06/30/2020	\$ 1,867	
33	Oakdale FD	Maricle, Eric	04/13/2021 - 06/30/2021	\$ 867	
34	Plaquemine Port Harbor Term. Dist.	Barthelemy, Keith E	09/04/20 - 06/30/21	\$ 4,933	

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON
35	Ponchatoula FD	Schenk, Shane	01/29/21 - 06/30/2021	\$ 2,533	
36	Rapides PFD #2	Walden, Matthew	06/06/2021 - 06/30/2021	\$ 417	
37	St. George FPD	Mora, William Manuel	05/18/2021 - 06/30/2021	\$ 717	
38	St. George FPD	Petty, William B., III	05/14/21 - 06/30/21	\$ 783	
39	St. Helena FD #4	McDaniel Brandon Wade	03/04/2020 - 06/30/2020	\$ 1,933	
40	St. Tammany #01	Dreux, Seth	06/01/21 - 06/30/2021	\$ 500	
41	St. Tammany #01	Gebhardt, Edwin	06/01/21 - 06/30/2021	\$ 500	
42	St. Tammany #01	Hoffman, Adam Skyler	03/06/2020 - 06/30/2020	\$ 1,917	
43	St. Tammany #02	Corales, Scott	01/03/2021 - 06/30/2021	\$ 2,967	was not paid for Active Military Duty
44	St. Tammany #01	Haley, Bryan	06/01/2020 - 06/30/2020	\$ 500	
45	St. Tammany #4	Keen Kyle Bruce	11/12/2019 - 06/30/2020	\$ 3,817	
46	St. Tammany #8	Gouzien, Aaron Paul	04/05/2021 - 06/30/2021	\$ 1,433	
47	Third District	White, Deyton C.	05/22/2020 - 06/30/2020	\$ 650	
48	West Baton Rouge FD #1	Naylor, James	05/11/21 - 06/30/2021	\$ 833	
49	Westlake FD	Boyette, James	04/26/2021 - 60/30/2021	\$ 1,083	
50	Westlake FD	Johnson, Joshua	05/01/2021 - 06/30/2021	\$ 1,000	
30				\$ 67,169	
31					
32					
33					
34					
35					
36					
37					
38					
39					
40					
41					



JOHN BEL EDWARDS
GOVERNOR

LAMAR A. DAVIS, COLONEL
DEPUTY SECRETARY

State of Louisiana
Department of Public Safety and Corrections
Public Safety Services

November 2, 2021
DPS-02-02103-JS

Honorable Mack "Bodi" White, Chairman
Joint Legislative Committee on the Budget
Post Office Box 44294
Baton Rouge, Louisiana 70804

Dear Honorable White:

Attached is a spreadsheet detailing 153 requests for back pay for Municipal Police Supplemental Pay which have been approved by the Board of Review as per Act 110 of 1982. Please place this item on the agenda for the next meeting.

Total requested prior year funds: \$268,433.00

Public Safety Services projects sufficient funds available in the current fiscal year budget to fund these Act 110 requests for back pay.

If any additional documentation or information is needed, please feel free to contact the Undersecretary's Office at (225) 925-6032.

Sincerely,

Lt. Colonel Jason Starnes
Chief Administrative Officer

Attachment

CC: Chief Bry Layrisson, Chairman, MPO Board of Review
 Ternisa Hutchinson, Division of Administration, MPO Board Member
 Connor Junkin, Legal Affairs

COURTESY • LOYALTY • SERVICE
"An Equal Opportunity Employer"
P.O. BOX 66614, BATON ROUGE, LOUISIANA 70896

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON	NOTES
1	Alexandria	Ryland, Eric D	4/13/20 - 6/30/20	\$1,300.00	Application Submitted Late	
2	Ball	Mitchell, Richard Lelo	5/19/21 - 6/30/21	\$700.00	Application Submitted Late	
3	Basile	Charlie, David	5/26/21 - 6/30/21	\$583.00	Application Submitted Late	
4	Baton Rouge	Sherman, Dylan Michael	3/24/20-6/30/20	\$1,617.00	Application Submitted Late	
5	Baton Rouge City Constable	Evans, Dawnielle	4/10/21 - 6/30/21	\$1,350.00	Application Submitted Late	
6	Benton	Mora, Cesar D.	4/19/21 - 6/30/21	\$1,200.00	Application Submitted Late	
7	Bernice	Ivory, Terrance Darnell	4/13/21 - 6/30/21	\$1,300.00	Application Submitted Late	
8	Bogalusa	Dominguez, Derek Scott	2/15/21 - 6/30/21	\$2,267.00	Application Submitted Late	
9	Bogalusa	Seal, Joseph A	6/17/20 - 6/30/20	\$233.00	Application Submitted Late	
10	Bossier City	Edwards, Margaret Mary	4/21/21 - 6/30/21	\$1,167.00	Application Submitted Late	
11	Broussard	Derouen, Donovan D., Jr.	5/3/21 - 6/30/21	\$967.00	Application Submitted Late	
12	Broussard	Oliver, Vance J.	6/14/21 - 6/30/21	\$283.00	Application Submitted Late	
13	Carencro	Clancey, Grant O.	6/27/21 - 6/30/21	\$67.00	Application Submitted Late	
14	Church Point	Johnson, LeTroy J.	4/29/21 - 6/30/21	\$1,033.00	Application Submitted Late	Was overpaid at Jeanerette \$1000 take from ACT 110
15	Church Point	Regan, Mark Anthony II	4/26/21 - 6/30/21	\$1,083.00	Application Submitted Late	
16	Coushatta	Stafford, Sr. Kevin R.	11/19/19 - 6/30/20	\$3,700.00	Application Submitted Late	
17	Coushatta	Pouncy, Javarrea	6/1/2020 - 6/30/20	\$500.00	Application Submitted Late	
18	Coushatta Tribal	Deville, Dylan Landrus	5/23/20 - 6/30/20	\$633.00	Application Submitted Late	
19	Covington	Hess, Michael	6/24/20 - 6/30/20	\$117.00	Application Submitted Late	
20	Covington	Hutchinson, Jeremy Wayne	3/1/2021 - 6/30/21	\$2,000.00	Application Submitted Late	
21	Covington	Labonte, James E.	5/14/20 - 6/30/20	\$783.00	Effective date was incorrect.	
22	Covington	Talley, Jordan	5/8/2020 - 6/30/20	\$883.00	Application Submitted Late	
23	Crowley	Eaglin, Alan	5/19/21 - 6/30/21	\$700.00	Application Submitted Late	
24	DeQuincy	Stains, Dalton Blake	6/21/21 - 6/30/21	\$167.00	Application Submitted Late	
25	Deridder	Holmes, Marlon	6/24/21 - 6/30/21	\$117.00	Application Submitted Late	
26	Erath	Hardy, Payton Lee	3/16/20 - 6/30/20	\$1,750.00	Application Submitted Late	

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON	NOTES
27	Eunice	Burton, Lindsey Dorene	4/26/21 - 6/30/21	\$1,083.00	Application Submitted Late	
28	Eunice	Myers, Jeffery A.	4/26/21 - 6/30/21	\$1,083.00	Application Submitted Late	
29	Farmerville	Nolan, Harrison Cade	5/24/21 - 6/30/21	\$617.00	Application Submitted Late	
30	Folsom	LeBlanc, Mark	3/22/21 - 6/30/21	\$1,650.00	Application Submitted Late	
31	Franklin	Stewart, Samuel C.	5/19/21 - 6/30/21	\$700.00	Application Submitted Late	
32	Georgetown	McClung, Lynn Daniel	6/8/2020 - 6/30/20	\$383.00	Application Submitted Late	
33	Grand Coteau	Guilbeau, Jeffrey Carl	3/4/20 - 6/30/20	\$1,950.00	Application Submitted Late	
34	Greensburg	Carmona, Virgil Lee II	5/30/20 - 6/30/20	\$517.00	Application Submitted Late	
35	Gretna	Dimarco, Jason M.	5/21/21 - 6/30/21	\$667.00	Application Submitted Late	
36	Gretna	LeBlanc, Roy E.	4/2/21 - 6/30/21	\$1,483.00	Application Submitted Late	
37	Gretna	Lynch, Keri Anne	6/12/20 - 6/30/20	\$317.00	Application Submitted Late	
38	Gretna	Weidenbacher, Drew Christian	8/9/2019 - 6/30/20	\$5,367.00	Application Submitted Late	
39	Hammond	Ramirez-Gannon, Xavier S	6/25/20 - 6/30/20	\$100.00	Application Submitted Late	
40	Hammond	Zaffuto, Lanna Clark	6/25/20 - 6/30/20	\$100.00	Application Submitted Late	
41	Harrisonburg	Abshire, Garrett Glenn	5/28/21 - 6/30/21	\$550.00	Application Submitted Late	
42	Haynesville	Hedgepeth, Garrett S.	1/7/21 - 6/30/21	\$2,900.00	Application Submitted Late	
43	Hodge	Kelley, Kevin Keith II	5/3/21 - 6/30/21	\$967.00	Application Submitted Late	
44	Hodge	Mullins, Kerry Loyd	1/1/21 - 4/6/21	\$1,600.00	Prior Service not submitted with application	
45	Homer	Nalitt, Tyler Lee	4/17/21 - 6/30/21	\$1,233.00	Application Submitted Late	
46	Houma	Rel, Drew	10/16/20 - 6/30/21	\$4,250.00	Application Submitted Late	
47	Jackson Marshal	Dephew, Travis Clay	1/2/20-6/30/20	\$2,983.00	Additional prior service was submitted after approved	
48	Jeanerette	Landry, Zachariah James	6/3/21 - 6/30/21	\$467.00	Application Submitted Late	
49	Jeanerette	Johnson, Letroy	4/11/20 - 6/30/20	\$1,333.00	Application Submitted Late	Resigned 7/10/20 He was overpaid \$2333. I billed the town for \$1000
50	Jeanerette	Ledet, Odis	3/11/20 - 6/30/20	\$1,833.00	Application Submitted Late	
51	Jeanerette	Oneil, John	3/11/20 - 6/30/20	\$1,833.00	Application Submitted Late	
52	Jeanerette Marshal's Office	Rochon, Isaiah	6/21/21 - 6/30/21	\$167.00	Application Submitted Late	

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON	NOTES
53	Kaplan	Kraut, Terry Wayne L Jr	5/14/20 - 6/30/20	\$783.00	Application Submitted Late	
54	Krotz Springs	LeJeune, Hunter Blake	4/26/21 - 6/30/21	\$1,083.00	Application Submitted Late	
55	Krotz Springs	Morrison, George W. II	4/26/21 - 6/30/21	\$1,083.00	Application Submitted Late	
56	Krotz Springs	Savoie, Michael Todd II	5/4/21 - 6/30/21	\$950.00	Application Submitted Late	
57	Lafayette	Charles, Nadia	6/6/2019 - 6/15/19	\$167.00	Effective date was incorrect.	
58	Lafayette	Johnson, Timothy	12/16/19 - 6/20/20	\$3,250.00	Application Submitted Late	
59	Lafayette	Marks, Shimira	11/18/19 - 6/30/20	\$3,717.00	Application Submitted Late	
60	Lafayette	Millette, Michael S.	4/22/21 - 6/30/21	\$1,150.00	Application Submitted Late	
61	Lafayette	Moore, Christina	6/8/20 - 6/30/21	\$6,383.00	Application Submitted Late	
62	Lafayette	Savoie, Ryan A.	2/11/21 - 6/30/21	\$2,333.00	Application Submitted Late	
63	Lafayette	Savoy, Malik D'Andre Shakur	8/26/20 - 6/30/21	\$5,083.00	Application Submitted Late	
64	Lafayette	Tatman, Candace A'Kela-Ongelle	11/18/19 - 6/30/20	\$3,717.00	Application Submitted Late	
65	Lake Charles	Bills, Keeton Alexander	6/15/21 - 6/30/21	\$267.00	Application Submitted Late	
66	Livingston	Hanna, John C.	4/12/21 - 6/30/21	\$1,317.00	Application Submitted Late	
67	Livonia	Bergeron, Garrett	6/28/21 - 6/30/21	\$50.00	Application Submitted Late	
68	Lockport	Guillot, Adam Jude	5/18/21 - 6/30/21	\$717.00	Application Submitted Late	
69	Madisonville	Stephens, Brandon K.	6/5/20 - 6/30/20	\$433.00	Application Submitted Late	
70	Mandeville	Saephan, Rick James	4/7/21 - 6/30/21	\$1,400.00	Application Submitted Late	
71	Mansfield	Walker, Jeffrey Lee	4/29/21 - 6/30/21	\$1,033.00	Application Submitted Late	
72	Mansura	Schuyler, Gage Leigh	6/8/21 - 6/30/21	\$383.00	Application Submitted Late	
73	Many	Shaw, Benjamin Thomas	3/26/21 - 6/30/21	\$1,583.00	Application Submitted Late	
74	Marksville	Carmouche, Jeffery B.	1/1/21 - 6/30/21	\$3,000.00	Application Submitted Late	
75	Minden PD	Griffith, Brandon	10/01/19-11/21/19	\$850.00	Civil Service Reinstatement	Minden paid the officer, the money is owed to the department.
76	Minden PD	Griffith, Michael S.	6/3/19- 2/30/20	\$2,800.00	Civil Service Reinstatement	Minden paid the officer, the money is owed to the department.
77	Minden PD	Lee, Jason Scott, II	3/17/21 - 6/30/21	\$1,733.00	Application Submitted Late	

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON	NOTES
78	Monroe	Epps, Jamarco O'Brien	9/1/20 - 12/7/20	\$1,617.00	Application Submitted Late	Resigned 12/7/20
79	Monroe	Page, Austin Tee	4/1/21 - 6/18/21	\$1,300.00	Application Submitted Late	Resigned 6/18/21
80	Morgan City	LaPoint, Clayton Anthony	6/21/21 - 6/30/21	\$167.00	Application Submitted Late	
81	Morgan City	Rink, Jeramiah James	5/12/21 - 6/30/21	\$817.00	Application Submitted Late	
82	Morgan City	Strother, Rory James	6/16/21 - 6/30/21	\$250.00	Application Submitted Late	
83	Morgan City	Witherow, Kimberly A.	11/20/19 - 6/30/20	\$3,683.00	Application Submitted Late	
84	Morgan City Marshal	Liner, Teddy R.	5/2/21 - 6/30/21	\$983.00	Application Submitted Late	
85	New Iberia	Bonin, Ila Mae	1/28/20 - 6/30/20	\$2,550.00	Application Submitted Late	
86	New Iberia	Helms, Tyler	5/6/2020 - 6/30/20	\$917.00	Application Submitted Late	
87	New Iberia	Legon, Micah	8/12/20 - 6/30/21	\$5,317.00	Application Submitted Late	
88	New Iberia	Rudd, Christopher G.	4/26/21 - 6/30/21	\$1,083.00	Application Submitted Late	Resigned 7/9/21
89	New Iberia	Smith, James Rex	4/26/21 - 6/30/21	\$1,083.00	Application Submitted Late	
90	New Orleans	Armstrong, Alicia Jerice	4/7/2017 - 6/30/20	\$19,400.00	Application Submitted Late	
91	New Orleans	Hall, Jr. Mark Albert	5/20/20 - 6/30/20	\$683.00	Application Submitted Late	
92	New Orleans	Janetis, Nicholas Joseph Jordon	12/15/20 - 6/30/21	\$3,267.00	Application Submitted Late	
93	New Orleans	Jones, Tanisha Bell	12/15/20 - 6/30/21	\$3,267.00	Application Submitted Late	
94	New Orleans	Noel, Romello	11/10/20 - 6/30/21	\$3,850.00	Application Submitted Late	
95	New Orleans	Pfingston, Daniel Ed	12/15/20 - 6/30/21	\$3,267.00	Application Submitted Late	
96	New Orleans	Tricoche, Daniel Jr.	11/10/20 - 6/30/21	\$3,850.00	Application Submitted Late	
97	New Orleans	Lacombe, Zachary Anthony	3/10/20 - 6/30/20	\$1,850.00	Application Submitted Late	
98	New Orleans Harbor Police	Causey, Travis Ricks	2/25/20-6/30/20	\$2,200.00	Application Submitted Late	
99	New Orleans Harbor Police	Tillery, Logan Errol	5/13/20 - 6/30/20	\$800.00	Application Submitted Late	
100	New Roads	Hutchinson, Jr. Vincent Edward	10/6/19 - 6/30/20	\$4,417.00	Application Submitted Late	
101	New Roads	Karanja, Kyle Mark	1/16/20 - 6/30/20	\$2,750.00	Application Submitted Late	
102	Oak Grove	Aaron, Randall D.	2/26/21 - 6/30/21	\$2,083.00	Application Submitted Late	
103	Oakdale	Johnson, Kevin Patrick, Jr.	5/5/21 - 6/30/21	\$933.00	Application Submitted Late	

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON	NOTES
104	Oberlin	Dentley, Dalvin I.	5/5/21 - 6/30/21	\$933.00	Application Submitted Late	
105	Patterson	Peters, Deveri	6/17/20 - 6/30/20	\$233.00	Application Submitted Late	
106	Patterson	Vining, Blake Dakota Kirby	12/17/20 - 6/30/21	\$3,233.00	Application Submitted Late	
107	Pearl River	Butterworth, Guy William	6/6/21 - 6/30/21	\$417.00	Application Submitted Late	
108	Pollock	Rachal, Justin Wayne	4/15/21 - 6/30/21	\$1,267.00	Application Submitted Late	Over paid \$267 at Ball take from ACT 110
109	Ponchatoula	Davidson, Richard	5/19/21 - 6/30/21	\$700.00	Application Submitted Late	
110	Ponchatoula	Dean, Pricilla	6/25/20 - 6/30/20	\$100.00	Application Submitted Late	
111	Ponchatoula	Ferrand, Thomas	6/22/21 - 6/30/21	\$150.00	Application Submitted Late	
112	Ponchatoula	Gideon, Christopher	6/21/20 - 6/30/20	\$167.00	Application Submitted Late	Resigned 11/01/20 Overpaid \$500.00
113	Port Allen	Chustz, Jana Alis	2/17/21 - 6/30/21	\$2,233.00	Application Submitted Late	
114	Port Allen	Williams, Shawn	4/23/21 - 6/30/21	\$1,133.00	Application Submitted Late	
115	Port Allen	Winters, Corione	4/23/21 - 6/30/21	\$1,133.00	Application Submitted Late	
116	Port Barre	Baudoin, Richard C	12/4/19 - 6/30/20	\$3,450.00	Application Submitted Late	
117	Port Vincent	Hopson, Bobby Dale Jr.	6/21/21 - 6/30/21	\$167.00	Application Submitted Late	
118	Rayville	White, Quatez Mantell	12/19/20 - 6/30/21	\$3,200.00	Application Submitted Late	
119	Scott	Galvez, Christopher	5/31/21 - 6/30/21	\$517.00	Application Submitted Late	
120	Shreveport	Gebele, Cody James	6/12/20 - 6/30/20	\$317.00	Application Submitted Late	
121	Simmesport	Juneau, Rushing John	2/1/21 - 6/30/21	\$2,500.00	Application Submitted Late	
122	Slidell	Alvarado, Kristendant Alejandro	4/12/21 - 6/30/21	\$1,317.00	Application Submitted Late	
123	Slidell	Ballard, Courtney Marie	5/10/21 - 6/30/21	\$850.00	Application Submitted Late	
124	Slidell	Haas, Robert Paul	5/10/21 - 6/30/21	\$850.00	Application Submitted Late	
125	St. Martinville	Broussard, Andrew	6/27/20 - 6/30/20	\$67.00	Application Submitted Late	
126	St. Martinville	Broussard, Corey J.	6/1/20 - 6/30/20	\$500.00	He had to renew his Basic POST	
127	St. Martinville	Floyd, Althea	6/21/21 - 6/30/21	\$167.00	Application Submitted Late	
128	St. Martinville	Francois, Ivana	6/21/21 - 6/30/21	\$167.00	Application Submitted Late	
129	St. Martinville	Anslum, Mallory Comeaux	6/21/21 - 6/30/21	\$167.00	Application Submitted Late	

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON	NOTES
130	Sulphur	Hanson, Natalie Marie	7/10/20 - 6/30/21	\$5,850.00	Approved On Board Meeting Agenda Appealed her denial.	
131	Sulphur	Richard, Rachel Wren	7/10/20 - 6/30/20	\$5,850.00	Approved On Board Meeting Agenda Appealed her denial.	
132	SUNO	Collins, Latoya Requel	5/20/19 - 6/30/20	\$6,183.00	Application Submitted Late	
133	SUNO	Short, William D.	2/3/20 - 6/30/20	\$2,467.00	Application Submitted Late	
134	Sunset	Buswell, Paul B	5/14/20 - 6/30/20	\$783.00	Application Submitted Late	
135	Thibodaux	Ordoyne, Ryan J.	10/21/20 - 5/25/21	\$3,767.00	Prior Service not submitted with application	
136	Turkey Creek	Lemaire, Christopher R	5/20/20 - 6/30/20	\$683.00	Application Submitted Late	
137	Turkey Creek	Shaw, Michael M.	6/3/21 - 6/30/21	\$467.00	Application Submitted Late	
138	Ville Platte	Hampton, Teia D'Shai	4/27/20 - 6/30/20	\$1,067.00	Application Submitted Late	
139	Ville Platte Marshal	Marsh, Lyndon Kyle	1/26/21 - 6/30/21	\$2,583.00	Prior Service not submitted with application	
140	Vinton	Pierrotte, Mary D.	6/3/21 - 6/30/21	\$467.00	Application Submitted Late	
141	Ward 4/Sulphur Marshal	Diakos, Paul Chris Sr.	1/1/20 - 6/30/21	\$9,000.00	Application Submitted Late	
142	Waterproof	Clark, Valarie Nicole	9/14/20 - 6/30/21	\$4,783.00	Application Submitted Late	
143	Welsh	Richard, Ben	5/5/21 - 6/30/21	\$933.00	Application Submitted Late	
144	Welsh	Stevens, Erika Lynn	11/3/17 - 5/25/21	\$567.00	Application Submitted Late	
145	West Monroe Marshal	Fletcher, Shannon D.	6/30/21 - 6/30/21	\$17.00	Application Submitted Late	
146	Westlake	Boudreaux, Michael Wayne Jr.	10/22/20 - 6/30/21	\$4,150.00	Application Submitted Late	
147	Westlake	Clymer, Kena Ann Marie	5/17/21 - 6/30/21	\$733.00	Application Submitted Late	
148	Westlake	Matte, Hunter Joseph	1/25/21 - 6/30/21	\$2,600.00	Application Submitted Late	

No.	DEPARTMENT	EMPLOYEE NAME	DATES OWED	AMOUNT	REASON	NOTES
149	Westwego	Paz, Christian Dee	11/25/20 - 6/30/21	\$3,600.00	Application Submitted Late	
150	White Castle	Sykes, Jr., Jimmie Augustus	5/20/20 - 6/30/20	\$683.00	Application Submitted Late	
151	Woodworth	Johnson, Caleb Anthony	5/10/21 - 6/30/21	\$850.00	Application Submitted Late	
152	Zachary	Clark, Michael Dewayne, Jr.	6/28/21 - 6/30/21	\$50.00	Application Submitted Late	
153	Zwolle	Rivers, Randy	2/26/18 - 10/31/18	\$4,083.00	Application Submitted Late	

Amendment to Agreement between State of Louisiana,

Louisiana Department of State

AND

PCC Technology Inc., 100 Northfield Drive, Suite 300A, Windsor, Connecticut 06095

Amendment Provisions

2.1 TERM OF CONTRACT

Change Agreement from:

This contract shall begin on May 1, 2019 and shall end on April 30, 2022.

ADD OR CHANGE TO:

This contract shall begin on May 1, 2019 and shall end on April 30, 2023.

Amendment becomes effective: May 1, 2022.

Justification: The original contract provided that the State has the right to extend the contract up to a total of five years with the concurrence of the Contractor. The contract is to be extended pursuant to this provision due to the fact that the work is still in progress and is required for the continued improvement of geauxBIZ, Louisiana's one-stop business portal.

This amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties. IN WITNESS THEREOF, this amendment is signed and entered into on the date indicated below:

(Contractor's Signature)

Contractor's Name: Mike Wons

Contractor's Title: President, Civix Government Business

(Date)

(Agency Signature)

Agency's Name: Nancy Landry

Agency's Title: First Assistant

(Date)



STATE of LOUISIANA
DIVISION OF ADMINISTRATION
OFFICE OF GROUP BENEFITS



Office of Group Benefits

October 20, 2021 JLCB Meeting

Humana Health Benefit Plan of Louisiana

Fully Insured Medicare Advantage Plan Contract Amendment Overview

Humana Health Benefit Plan of Louisiana

Fully Insured Medicare Advantage Plans Contract Amendment Overview

Contract Purpose	To offer a Medicare Advantage plan including Medicare Part D prescription drug benefits for Medicare eligible retirees.
Eligible Enrollees	Retired employees of the State of Louisiana and other OGB-participating entities who are enrolled in Medicare Parts A and B.
Members as of 10/1/2021	235
Beginning Contract Date	1/1/2019
Ending Contract Date	12/31/2021
Renewable Options	24 months
Renewable Options Already Exercised	None
Ending Contract Date After Amendment Approval	12/31/2023
Renewable Options Remaining After Amendment Approval	None
Procurement Method	Request for Proposals
Current Maximum Payable Amount	\$2,450,000
Contract Authority Expended	\$477,679 (through 9/30/2021)
Maximum Payable Amount After Amendment Approval	\$2,450,000
Administrative Fee	\$12.50 Per Enrollee per Month, Payable to OGB (no change from 2021*)
Number of Plans Offered	One (no change from 2021)
Statewide or Regional Premium Rates	Regional

*PEPM administrative fee payable to OGB was \$16.67 for 2019.

Humana Health Benefit Plan of Louisiana

Fully Insured Medicare Advantage Plans Contract Amendment Overview, Cont.

Humana Medicare Advantage	Humana HMO			
	2021 Total Monthly Premiums	2022 Total Monthly Premiums	Change	% Change
Region 1				
Enrollee Only	\$0.00	\$0.00	\$0.00	0.0%
Enrollee + Spouse	\$0.00	\$0.00	\$0.00	0.0%
Region 2				
Enrollee Only	\$155.52	162.17	\$6.65	4.3%
Enrollee + Spouse	\$311.04	324.34	\$13.30	4.3%
Region 3				
Enrollee Only	\$116.92	121.57	\$4.65	4.0%
Enrollee + Spouse	\$233.84	243.14	\$9.30	4.0%
Region 4				
Enrollee Only	\$155.97	\$162.17	\$6.20	4.0%
Enrollee + Spouse	\$311.94	324.34	\$12.40	4.0%
Region 5				
Enrollee Only	\$133.51	\$138.82	\$5.31	4.0%
Enrollee + Spouse	\$267.02	277.64	\$10.62	4.0%
Region 6				
Enrollee Only	\$191.33	198.94	\$7.61	4.0%
Enrollee + Spouse	\$382.66	397.88	\$15.22	4.0%
Region 7				
Enrollee Only	\$199.02	206.94	\$7.92	4.0%
Enrollee + Spouse	\$398.04	413.88	\$15.84	4.0%
Region 8				
Enrollee Only	\$180.54	187.72	\$7.18	4.0%
Enrollee + Spouse	\$361.08	375.44	\$14.36	4.0%
Region 9				
Enrollee Only	\$193.65	\$201.35	\$7.70	4.0%
Enrollee + Spouse	\$387.30	402.70	\$15.40	4.0%

Amendment to Contract Between

**State of Louisiana
Office of Group Benefits (OGB)**

And

**Humana Health Benefit Plan of Louisiana
One Galleria Blvd., Suite 1200, Metairie, LA 70001**

CHANGE FROM:

3.1 TERM OF CONTRACT

The initial term this Contract shall begin on or about January 1, 2019, and is anticipated to end on December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise a one-time option to extend the Contract for up to twenty-four (24) additional months at the same administrative fees as provided in Attachment II, terms and conditions of the initial Contract term. Prior to the extension of the Contract beyond the initial thirty-six (36)-month term prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the contract amendment, to the Office of State Procurement (OSP) to extend contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

CHANGE TO:

3.1 TERM OF CONTRACT

The initial term this Contract shall begin on or about January 1, 2019, with an initial contract term through December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise a one-time option to extend the Contract for up to twenty-four (24) additional months at the same administrative fees as provided in Attachment II, terms and conditions of the initial Contract term. Prior to the extension of the Contract beyond the initial thirty-six (36)-month term prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the contract amendment, to the Office of State Procurement (OSP) to extend contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

At this time, OGB is exercising the twenty-four (24) month option, to extend the term of the Contract for an additional twenty-four (24) month term, through December 31, 2023, at the same terms and conditions as the initial Contract term, except as provided herein.

CHANGE FROM:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To Humana Health Benefit Plan of Louisiana:

Steven E. McCulley
Senior VP, Medicare Administration
Humana Health Benefit Plan of Louisiana
One Galleria Boulevard
Metairie, LA 70001

To OGB:

Mr. Tommy Teague, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

Mr. Tommy Teague, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

CHANGE TO:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To Humana Health Benefit Plan of Louisiana:

Steven E. McCulley
Senior VP, Medicare Administration
Humana Health Benefit Plan of Louisiana
One Galleria Boulevard
Metairie, LA 70001

To OGB:

David W. Couvillon, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

David W. Couvillon, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

REPLACE: ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED) with the attached ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED)

Effective Date of Amendment: September 1, 2021

Justification for Amendment: To exercise the one-time option to extend Contract for twenty-four (24) additional months available under the Contract at the same terms and conditions of the initial Contract term, as previously amended, except as provided in this amendment. To provide revised Attachment II: Administrative Fee and Premium Rate Schedule (Revised) reflecting rates for calendar year 2022 and to update notice provision of the Contract.

No Amendment shall be valid until it has been executed by all parties and approved by the Office of State Procurement, Division of Administration.

All other provisions of the Contract shall remain in full force and effect. Any conflict between the Contract and this Amendment regarding the subject matters of this Amendment shall be resolved in favor of this Amendment.

This Amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties.

IN WITNESS THEREOF, this Amendment is signed and entered into on the date(s) included below.

STATE OF LOUISIANA,
OFFICE OF GROUP BENEFITS

BY: 

NAME: David W. Couvillon

TITLE: Chief Executive Officer

DATE: 9/29/21

HUMANA HEALTH BENEFIT PLAN

BY: 

NAME: Steven E. McCulley

TITLE: Sr. Vice President, Medicare Administration

DATE: August 30, 2021

ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED)

All pricing is fully burdened and inclusive of travel and all Contract-related expenses. Commissions or finder's fees are not payable under this Contract.

Administrative Fee

Monthly Administrative Fee Per Primary Plan Participant Per Month
\$16.67 Calendar Year 1 of Contract Term
\$12.50 Each Subsequent Calendar Year of Contract Term

Regional Premium

The Contractor will submit proposed rates for each subsequent twelve (12)-month period of the Contract no later than August 31st of the preceding year, beginning on August 31, 2019. Premium rates proposed for each twelve (12)-month period must be approved by the Centers for Medicare and Medicaid Services (CMS). Additionally, for each twelve (12)-month period, the Contractor must document, through a written certification from its actuary, that the proposed rates for each twelve (12)-month period are calculated on the basis of sound actuarial principles, reasonable in relation to the benefits provided and the population anticipated to be covered, and are neither excessive nor deficient.

Parishes Included in OGB Region 1	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$75.00
1/1/2020 – 12/31/2020	\$80.35
1/1/2021 – 12/31/2021	\$0.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$0.00</u>

Parishes Included in OGB Region 2	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$150.00
1/1/2020 – 12/31/2020	\$170.86
1/1/2021 – 12/31/2021	\$155.52
<u>1/1/2022 – 12/31/2022</u>	<u>\$162.17</u>

Parishes Included in OGB Region 3	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$115.00
1/1/2020 – 12/31/2020	\$128.45
1/1/2021 – 12/31/2021	\$116.92
<u>1/1/2022 – 12/31/2022</u>	<u>\$121.57</u>

Parishes Included in OGB Region 4	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$150.00
1/1/2020 – 12/31/2020	\$171.36
1/1/2021 – 12/31/2021	\$155.97
<u>1/1/2022 – 12/31/2022</u>	<u>\$162.17</u>

Parishes Included in OGB Region 5	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$130.00
1/1/2020 – 12/31/2020	\$146.68
1/1/2021 – 12/31/2021	\$133.51
<u>1/1/2022 – 12/31/2022</u>	<u>\$138.82</u>

Parishes Included in OGB Region 6	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$175.00
1/1/2020 – 12/31/2020	\$201.20
1/1/2021 – 12/31/2021	\$191.33
<u>1/1/2022 – 12/31/2022</u>	<u>\$198.94</u>

Parishes Included in OGB Region 7	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$225.00
1/1/2020 – 12/31/2020	\$262.87
1/1/2021 – 12/31/2021	\$199.02
<u>1/1/2022 – 12/31/2022</u>	<u>\$206.94</u>

Parishes Included in OGB Region 8	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$205.00
1/1/2020 – 12/31/2020	\$238.46
1/1/2021 – 12/31/2021	\$180.54
<u>1/1/2022 – 12/31/2022</u>	<u>\$187.72</u>

Parishes Included in OGB Region 9	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$220.00
1/1/2020 – 12/31/2020	\$255.78
1/1/2021 – 12/31/2021	\$193.65
<u>1/1/2022 – 12/31/2022</u>	<u>\$201.35</u>

Office of State Procurement
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

October 5, 2021

TO: Col. David W. Couvillon, USMCR (Ret.)
Office of Group Benefits
Chief Executive Officer

FROM: Ms. Pamela Bartfay Rice, Esq. *pbr*
Assistant Director, Professional Contracts

RE: OSP Approval for JLCB
LaGov PO/Contract # 2000384392/Amendment 3
Humana Health Benefit Plan of Louisiana

The above referenced amendment has been reviewed by the Office of State Procurement. The document complies with the State Procurement Code and is ready for submission to the Joint Legislative Committee on the Budget. Upon approval of the proposed term extension, in accordance with La. R.S. 39:1615(J), please return the "Agency Memo to OSP After JLCB Approval" along with the stamped amendment from the JLCB.

The amendment will not receive final approval by OSP until it has been approved by JLCB and is submitted to OSP in LaGov, Proact, or LESA, as applicable.

If you should have any further questions/comments, please do not hesitate to contact Bess Guidry at OSP.



STATE of LOUISIANA
DIVISION OF ADMINISTRATION
OFFICE OF GROUP BENEFITS



Office of Group Benefits

October 20, 2021 JLCB Meeting

**New Orleans Regional Physician Hospital Organization,
LLC, d/b/a Peoples Health**

Fully Insured Medicare Advantage Plan Contract Amendment Overview

New Orleans Regional Physician Hospital Organization, LLC, d/b/a Peoples Health

Fully Insured Medicare Advantage Plans Contract Amendment Overview

Contract Purpose	To offer a Medicare Advantage plan including Medicare Part D prescription drug benefits for Medicare eligible retirees.
Eligible Enrollees	Retired employees of the State of Louisiana and other OGB-participating entities who are enrolled in Medicare Parts A and B.
Members as of 10/1/2021	2,238
Beginning Contract Date	1/1/2019
Ending Contract Date	12/31/2021
Renewable Options	24 months
Renewable Options Already Exercised	None
Ending Contract Date After Amendment Approval	12/31/2023
Renewable Options Remaining After Amendment Approval	None
Procurement Method	Request for Proposals
Current Maximum Payable Amount	\$17,000,000
Contract Authority Expended	\$14,804,520 (through 9/30/2021)
Maximum Payable Amount After Amendment Approval	\$27,200,000
Administrative Fee	\$10.00 Per Enrollee per Month, Payable to OGB (no change from 2021)
Number of Plans Offered	One (no change from 2021)
Statewide or Regional Premium Rates	Statewide

**New Orleans Regional Physician Hospital Organization, LLC,
d/b/a Peoples Health**

Fully Insured Medicare Advantage Plans Contract Amendment Overview, Cont.

Peoples Health Medicare Advantage	HMO-POS			
	2021 Total Monthly Premiums	2022 Total Monthly Premiums	Change	% Change
<i>All Regions</i>				
Enrollee Only	190.00	\$170.00	(\$20.00)	(10.5%)
Enrollee + Spouse	380.00	\$340.00	(\$40.00)	(10.5%)

Amendment to Contract Between

**State of Louisiana
Office of Group Benefits (OGB)**

And

**New Orleans Regional Physician Hospital Organization, LLC,
d/b/a Peoples Health
3838 N. Causeway Blvd., Suite 2200, Metairie, LA 70002**

CHANGE FROM:

3.1 TERM OF CONTRACT

The initial term this Contract shall begin on or about January 1, 2019, and is anticipated to end on December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise a one-time option to extend the Contract for up to twenty-four (24) additional months at the same administrative fee, terms and conditions of the initial Contract term. Prior to the extension of the Contract beyond the initial thirty-six (36)-month term prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the Contract amendment, to the Office of State Procurement (OSP) to extend Contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

CHANGE TO:

3.1 TERM OF CONTRACT

The initial term this Contract shall begin on or about January 1, 2019, with an initial contract term through December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise a one-time option to extend the Contract for up to twenty-four (24) additional months at the same administrative fee, terms and conditions of the initial Contract term. Prior to the extension of the Contract beyond the initial thirty-six (36)-month term prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the Contract amendment, to the Office of State Procurement (OSP) to extend Contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

At this time, OGB is exercising the twenty-four (24) month option, to extend the term of the Contract for an additional twenty-four (24) month term, through December 31, 2023, at the same terms and conditions as the initial Contract term, except as provided herein.

CHANGE FROM:

3.4 PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$17,000,000.00 (Seventeen Million Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. No payments will be made by OGB on banking or State holidays.

With respect to Plan Participants who select a Louisiana HMO for their coverage, OGB shall impose no extraordinary restrictions on their plan participation due to the selection of the Louisiana HMO. OGB shall impose on Contractor a monthly administrative fee of \$10.00 for each HMO Primary Plan Participant. The administrative fee will be paid directly to OGB for each Primary Plan Participant and shall not be included in the premium charged. Plan Participants selecting the Louisiana HMO option shall receive the same employer contributions provided under La. R.S. 42:851, and the regulations issued thereunder, as participants who choose other health coverage options by OGB.

The Contractor will invoice OGB on the 1st of each month for payment of premiums for services provided pursuant to the resulting Contract. The invoice should include, at a minimum, the time period covered, total billed amount detailed by class of coverage, and assessed administrative fee based on total number of Primary Plan Participants. Payments will be made to the Contractor after written acceptance and approval of the invoice by the State. Upon approval of each submitted invoice by OGB's Chief Executive Officer or designee under a valid Contract, OGB/State will render payment of undisputed amounts within thirty (30) days.

CHANGE TO:

3.4 PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$27,200,000.00 (Twenty-Seven Million Two Hundred Thousand Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. No payments will be made by OGB on banking or State holidays.

With respect to Plan Participants who select a Louisiana HMO for their coverage, OGB shall impose no extraordinary restrictions on their plan participation due to the selection of the Louisiana HMO. OGB shall impose on Contractor a monthly administrative fee of \$10.00 for each HMO Primary Plan Participant. The administrative fee will be paid directly to OGB for each Primary Plan Participant and shall not be included in the premium charged. Plan Participants selecting the Louisiana HMO option shall receive the same employer contributions provided under La. R.S. 42:851, and the regulations issued thereunder, as participants who choose other health coverage options by OGB.

The Contractor will invoice OGB on the 1st of each month for payment of premiums for services provided pursuant to the resulting Contract. The invoice should include, at a minimum, the time period covered, total billed amount detailed by class of coverage, and assessed administrative fee based on total number of Primary Plan Participants. Payments will be made to the Contractor after written acceptance and approval of the invoice by the State. Upon approval of each submitted invoice by OGB's Chief Executive Officer or designee under a valid Contract, OGB/State will render payment of undisputed amounts within thirty (30) days.

CHANGE FROM:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To Peoples Health: Warren P. Murrell, CEO
Peoples Health
3838 N. Causeway Blvd., Suite 2200
Metairie, LA 70002

To OGB: Mr. Tommy Teague, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

Mr. Tommy Teague, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

CHANGE TO:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To Peoples Health: Warren P. Murrell, CEO
Peoples Health
3838 N. Causeway Blvd., Suite 2200
Metairie, LA 70002

To OGB: Mr. David W. Couvillon, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

Mr. David W. Couvillon, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

REPLACE: ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED) with the attached ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED).

Effective Date of Amendment: September 1, 2021

Justification for Amendment: To exercise the one-time option to extend Contract for twenty-four (24) additional months available under the Contract at the same terms and conditions of the initial Contract term, as previously amended, except as provided in this amendment. To update Attachment II: Administrative Fee and Premium Rate Schedule (Revised) reflecting rates for calendar year 2022 and to increase the maximum payable amount to \$27,200,000.00. To update the notice provision of the contract.

No Amendment shall be valid until it has been executed by all parties and approved by the Office of State Procurement, Division of Administration.

All other provisions of the Contract shall remain in full force and effect. Any conflict between the Contract and this Amendment regarding the subject matters of this Amendment shall be resolved in favor of this Amendment.

This Amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties.

(Signature page to follow)

IN WITNESS THEREOF, this Amendment is signed and entered into on the date(s) included below.

STATE OF LOUISIANA,
OFFICE OF GROUP BENEFITS

BY: 

NAME: David W. Couvillon

TITLE: Chief Executive Officer

DATE: 9/29/21

NEW ORLEANS REGIONAL PHYSICIAN
HOSPITAL ORGANIZATION, LLC d/b/a
PEOPLES HEALTH

BY: 

NAME: Warren P. Murrell

TITLE: Chief Executive Officer

DATE: 8/17/21

ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED)

All pricing is fully burdened and inclusive of travel and all Contract-related expenses. Commissions or finder's fees are not payable under this Contract.

Administrative Fee

Monthly Administrative Fee Per Primary Plan Participant Per Month
\$10.00

Regional Premium

The Contractor will submit proposed rates for each subsequent twelve (12)-month period of the Contract no later than August 31st of the preceding year, beginning on August 31, 2019. Premium rates proposed for each twelve (12)-month period must be approved by the Centers for Medicare and Medicaid Services (CMS). Additionally, for each twelve (12)-month period, the Contractor must document, through a written certification from its actuary, that the proposed rates for each twelve (12)-month period are calculated on the basis of sound actuarial principles, reasonable in relation to the benefits provided and the population anticipated to be covered, and are neither excessive nor deficient.

Parishes Included in all OGB Regions (i.e., statewide)	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2020	\$200.00
1/1/2021 – 12/31/2021	\$190.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$170.00</u>

Office of State Procurement
State of Louisiana
Division of Administration


JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

October 5, 2021

TO: Col. David W. Couvillon, USMCR (Ret.)
Office of Group Benefits
Chief Executive Officer

FROM: Ms. Pamela Bartfay Rice, Esq.
Assistant Director, Professional Contracts 

RE: OSP Approval for JLCB
LaGov PO/Contract # 2000380901/Amendment 3
New Orleans Regional Physician Hospital Organization LLC d/b/a Peoples Health

The above referenced amendment has been reviewed by the Office of State Procurement. The document complies with the State Procurement Code and is ready for submission to the Joint Legislative Committee on the Budget. Upon approval of the proposed term extension, in accordance with La. R.S. 39:1615(J), please return the "Agency Memo to OSP After JLCB Approval," along with the stamped amendment from the JLCB.

The amendment will not receive final approval by OSP until it has been approved by JLCB and is submitted to OSP in LaGov, Proact, or LESA, as applicable.

If you should have any further questions/comments, please do not hesitate to contact Bess Guidry at OSP.



STATE of LOUISIANA
DIVISION OF ADMINISTRATION
OFFICE OF GROUP BENEFITS



Office of Group Benefits

October 20, 2021 JLCB Meeting

HMO Louisiana, Inc.

Fully Insured Medicare Advantage Plan Contract Amendment Overview

HMO Louisiana, Inc.

Fully Insured Medicare Advantage Plan Contract Amendment Overview

Contract Purpose	To offer a Medicare Advantage plan including Medicare Part D prescription drug benefits for Medicare eligible retirees.
Eligible Enrollees	Retired employees of the State of Louisiana and other OGB-participating entities who are enrolled in Medicare Parts A and B.
Members as of 10/1/2021	510
Beginning Contract Date	1/1/2019
Ending Contract Date	12/31/2021
Renewable Options	24 months
Renewable Options Already Exercised	None
Ending Contract Date After Amendment Approval	12/31/2023
Renewable Options Remaining After Amendment Approval	None
Procurement Method	Request for Proposals
Current Maximum Payable Amount	\$6,405,000
Contract Authority Expended	\$2,367,058 (through 9/30/2021)
Maximum Payable Amount After Amendment Approval	\$8,835,000
Administrative Fee	\$10.00 Per Enrollee per Month, Payable to OGB (no change from 2021)
Number of Plans Offered	One (no change from 2021)
Statewide or Regional Premium Rates	Regional

HMO Louisiana, Inc.

Fully Insured Medicare Advantage Plan Contract Amendment Overview, Cont.

HMO Louisiana Medicare Advantage	Blue Advantage HMO			
	2021 Total Monthly Premiums	2022 Total Monthly Premiums	Change	% Change
Region 1				
Enrollee Only	\$165.00	\$157.00	(\$8.00)	-4.8%
Enrollee + Spouse	\$330.00	\$314.00	(\$16.00)	-4.8%
Region 2, 5				
Enrollee Only	\$210.00	\$200.00	(\$10.00)	-4.8%
Enrollee + Spouse	\$420.00	\$400.00	(\$20.00)	-4.8%
Region 3, 4				
Enrollee Only	\$180.00	\$180.00	\$0.00	0.0%
Enrollee + Spouse	\$360.00	\$360.00	\$0.00	0.0%
Region 6, 7, 8				
Enrollee Only	\$255.00	\$255.00	\$0.00	0.0%
Enrollee + Spouse	\$510.00	\$510.00	\$0.00	0.0%
Region 9				
Enrollee Only	\$195.00	\$195.00	\$0.00	0.0%
Enrollee + Spouse	\$390.00	\$390.00	\$0.00	0.0%

Amendment to Contract Between

**State of Louisiana
Office of Group Benefits (OGB)**

And

**HMO Louisiana, Inc.,
subsidiary of Blue Cross and Blue Shield of Louisiana
5525 Reitz Avenue, Baton Rouge, LA 70809**

CHANGE FROM:

3.1 TERM OF CONTRACT

The initial term this Contract shall begin on or about January 1, 2019, and is anticipated to end on December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise a one-time option to extend the Contract for up to twenty-four (24) additional months at the same administrative fee, terms and conditions of the initial Contract term. Rates charged by Contractor may be revised each twelve (12) month period. Prior to the extension of the Contract beyond the initial thirty-six (36)-month term, prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the Contract amendment, to the Office of State Procurement (OSP) to extend Contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

CHANGE TO:

3.1 TERM OF CONTRACT

The initial term this Contract shall begin on or about January 1, 2019, with an initial contract term through December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise a one-time option to extend the Contract for up to twenty-four (24) additional months at the same administrative fee, terms and conditions of the initial Contract term. Rates charged by contractor may be revised each twelve (12) month period. Prior to the extension of the Contract beyond the initial thirty-six (36)-month term prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the Contract amendment, to the Office of State Procurement (OSP) to extend Contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

At this time, OGB is exercising the twenty-four (24) month option, to extend the term of the Contract for an additional twenty-four (24) month term, through December 31, 2023, at the same terms and conditions as the initial Contract term, except as provided herein.

CHANGE FROM:

3.4 PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$6,405,000.00 (Six Million Four Hundred Five Thousand Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. No payments will be made by OGB on banking or State holidays.

With respect to Plan Participants who select a Louisiana HMO for their coverage, OGB shall impose no extraordinary restrictions on their plan participation due to the selection of the Louisiana HMO. OGB shall impose on Contractor a monthly administrative fee of \$10.00 for each HMO Primary Plan Participant. The administrative fee will be paid directly to OGB for each Primary Plan Participant and shall not be included in the premium charged. Should OGB make retroactive changes to the covered HMO Primary Plan Participants, OGB shall refund to Contractor any administrative fees paid by Contractor to OGB for those Primary Plan Participants. Plan Participants selecting the Louisiana HMO option shall receive the same employer contributions provided under La. R.S. 42:851, and the regulations issued thereunder, as participants who choose other health coverage options by OGB.

The Contractor will invoice OGB on the 1st of each month for payment of premiums for services provided pursuant to the resulting Contract. The invoice should include, at a minimum, the time period covered, total billed amount detailed by class of coverage, and assessed administrative fee based on total number of Primary Plan Participants. Payments will be made to the Contractor after written acceptance by the State and approval of invoice. Upon approval of each submitted invoice by OGB's Chief Executive Officer or designee under a valid Contract, OGB/State will render payment of undisputed amounts within thirty (30) days.

CHANGE TO:

3.4 PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$8,835,000.00 (Eight Million Eight Hundred Thirty-Five Thousand Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. No payments will be made by OGB on banking or State holidays.

With respect to Plan Participants who select a Louisiana HMO for their coverage, OGB shall impose no extraordinary restrictions on their plan participation due to the selection of the Louisiana HMO. OGB shall impose on Contractor a monthly administrative fee of \$10.00 for each HMO Primary Plan Participant. The administrative fee will be paid directly to OGB for each Primary Plan Participant and shall not be included in the premium charged. Should OGB make retroactive changes to the covered HMO Primary Plan Participants, OGB shall refund to Contractor any administrative fees paid by Contractor to OGB for those Primary Plan Participants. Plan Participants selecting the Louisiana HMO option shall receive the same employer contributions provided under La. R.S. 42:851, and the regulations issued thereunder, as participants who choose other health coverage options by OGB.

The Contractor will invoice OGB on the 1st of each month for payment of premiums for services provided pursuant to the resulting Contract. The invoice should include, at a minimum, the time period covered, total billed amount detailed by class of coverage, and assessed administrative fee based on total number of Primary Plan Participants. Payments will be made to the Contractor after written acceptance by the State and approval of invoice. Upon approval of each submitted invoice by OGB's Chief Executive Officer or designee under a valid Contract, OGB/State will render payment of undisputed amounts within thirty (30) days.

CHANGE FROM:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To HMO Louisiana, Inc.: Sheldon Faulk, Senior Vice President and COO
HMO Louisiana, Inc.
5525 Reitz Ave.
Baton Rouge, LA 70809

And

Michele Calandro
CAO and General Counsel
HMO Louisiana, Inc.
5525 Reitz Avenue
Baton Rouge, LA 70809

To OGB: Mr. Tommy Teague, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

Mr. Tommy Teague, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

CHANGE TO:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i)

an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To HMO Louisiana, Inc.: Sheldon Faulk, Senior Vice President and COO
HMO Louisiana, Inc.
5525 Reitz Ave.
Baton Rouge, LA 70809

And

Michele Calandro
CAO and General Counsel
HMO Louisiana, Inc.
5525 Reitz Avenue
Baton Rouge, LA 70809

To OGB: Mr. David W. Couvillon, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

Mr. David W. Couvillon, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

REPLACE: ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED) with the attached ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED).

Effective Date of Amendment: October 1, 2021

Justification for Amendment: To exercise the one-time option to extend Contract for twenty-four (24) additional months available under the Contract at the same terms and conditions of the initial Contract term, as previously amended, except as provided in this amendment. To update Attachment II: Administrative Fee and Premium Rate Schedule reflecting HMO rates for calendar year 2022. To increase the maximum payable amount to \$8,835,000.00. To update notice provision.

No Amendment shall be valid until it has been executed by all parties and approved by the Office of State Procurement, Division of Administration.

All other provisions of the Contract shall remain in full force and effect. Any conflict between the Contract and this Amendment regarding the subject matters of this Amendment shall be resolved in favor of this Amendment.

This Amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties.

IN WITNESS THEREOF, this Amendment is signed and entered into on the date(s) included below.

**STATE OF LOUISIANA,
OFFICE OF GROUP BENEFITS**

BY:

NAME: David W. Couvillon

TITLE: Chief Executive Officer

DATE:

9/29/21

HMO LOUISIANA, INC.

BY:

Sheldon Faulk

Digitally signed by Sheldon
Faulk
Date: 2021.09.15 15:29:04
-05'00'

NAME: Sheldon Faulk

TITLE: Senior VP and COO

DATE:

**ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE
SCHEDULE (REVISED)**

All pricing is fully burdened and inclusive of travel and all Contract-related expenses. Commissions or finder's fees are not payable under this Contract.

Administrative Fee

Monthly Administrative Fee Per Primary Plan Participant Per Month
\$10.00

If CMS, another federal agency or governing authority determines at any time that Contractor's payment to OGB of this Administrative Fee is unlawful, Contractor shall discontinue payments. Further, Contractor may require OGB to refund all past payments if instructed to do so by CMS, other federal agency or governing authority.

Regional Premium

The Contractor will submit proposed rates for each subsequent twelve (12)-month period of the Contract no later than August 31st of the preceding year, beginning on August 31, 2019. **Premium rates proposed for each twelve (12)-month period must be approved by the Centers for Medicare and Medicaid Services (CMS).** Additionally, for each twelve (12)-month period, the Contractor must document, through a written certification from its actuary, that the proposed rates for each twelve (12)-month period are calculated on the basis of sound actuarial principles, reasonable in relation to the benefits provided and the population anticipated to be covered, and are neither excessive nor deficient.

<u>Parishes Included in OGB Region 1</u>	<u>Fixed Monthly Premium, Per Plan Participant Per Month</u>
1/1/2019 – 12/31/2019	\$170.00
1/1/2020 – 12/31/2020	\$170.00
1/1/2021 – 12/31/2021	\$165.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$157.00</u>

<u>Parishes Included in OGB Region 2</u>	<u>Fixed Monthly Premium, Per Plan Participant Per Month</u>
1/1/2019 – 12/31/2019	\$220.00
1/1/2020 – 12/31/2020	\$220.00
1/1/2021 – 12/31/2021	\$210.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$200.00</u>

Parishes Included in OGB Regions 3, and 4	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$170.00
1/1/2020 – 12/31/2020	\$180.00
1/1/2021 – 12/31/2021	\$180.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$180.00</u>

Parishes Included in OGB Regions 5	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$220.00
1/1/2020 – 12/31/2020	\$220.00
1/1/2021 – 12/31/2021	\$210.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$210.00</u>

Parishes Included in OGB Regions 6, 7, and 8	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$240.00
1/1/2020 – 12/31/2020	\$250.00
1/1/2021 – 12/31/2021	\$255.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$255.00</u>

Parishes Included in OGB Region 9	Fixed Monthly Premium, Per Plan Participant Per Month
1/1/2019 – 12/31/2019	\$190.00
1/1/2020 – 12/31/2020	\$195.00
1/1/2021 – 12/31/2021	\$195.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$195.00</u>

Office of State Procurement
State of Louisiana
Division of Administration


JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

October 5, 2021

TO: Col. David W. Couvillon, USMCR (Ret.)
Office of Group Benefits
Chief Executive Officer

FROM: Ms. Pamela Bartfay Rice, Esq.
Assistant Director, Professional Contracts 

RE: OSP Approval for JLCB
LaGov PO/Contract # 2000384808/Amendment 4
HMO Louisiana Inc.

The above referenced amendment has been reviewed by the Office of State Procurement. The document complies with the State Procurement Code and is ready for submission to the Joint Legislative Committee on the Budget. Upon approval of the proposed term extension, in accordance with La. R.S. 39:1615(J), please return the "Agency Memo to OSP After JLCB Approval," along with the stamped amendment from the JLCB.

The amendment will not receive final approval by OSP until it has been approved by JLCB and is submitted to OSP in LaGov, Proact, or LESA, as applicable.

If you should have any further questions/comments, please do not hesitate to contact Bess Guidry at OSP.



STATE of LOUISIANA
DIVISION OF ADMINISTRATION
OFFICE OF GROUP BENEFITS



Office of Group Benefits

October 20, 2021 JLCB Meeting

Vantage Health Plan, Inc.

Fully Insured Medicare Advantage Plan Contract Amendment Overview

Vantage Health Plan, Inc.

Fully Insured Medicare Advantage Plans Contract Amendment Overview

Contract Purpose	To offer Medicare Advantage plans including Medicare Part D prescription drug benefits for Medicare eligible retirees.
Eligible Enrollees	Retired employees of the State of Louisiana and other OGB-participating entities who are enrolled in Medicare Parts A and B.
Members as of 10/1/2021	1,167
Beginning Contract Date	1/1/2019
Ending Contract Date	12/31/2021
Renewable Options	24 months
Renewable Options Already Exercised	None
Ending Contract Date After Amendment Approval	12/31/2023
Renewable Options Remaining After Amendment Approval	None
Procurement Method	Request for Proposals
Current Maximum Payable Amount	\$12,000,000
Contract Authority Expended	\$7,786,483 (through 9/30/2021)
Maximum Payable Amount After Amendment Approval	\$12,908,000
Administrative Fee	\$10.00 Per Enrollee per Month, Payable to OGB (no change from 2021)
Number of Plans Offered	Three; "Premium", "Standard" and "Basic" plans (no change from 2021)
Statewide or Regional Premium Rates	Statewide

Vantage Health Plan, Inc.

Fully Insured Medicare Advantage Plans Contract Amendment Overview, Cont.

Vantage Health Plan Medicare Advantage	Premium			
	2021 Total Monthly Premiums	2022 Total Monthly Premiums	Change	% Change
All Regions				
Enrollee Only	\$187.00	\$187.00	\$0.00	0.0%
Enrollee + Spouse	\$374.00	\$374.00	\$0.00	0.0%

Vantage Health Plan Medicare Advantage	Standard			
	2021 Total Monthly Premiums	2022 Total Monthly Premiums	Change	% Change
All Regions				
Enrollee Only	\$152.00	\$152.00	\$0.00	0.0%
Enrollee + Spouse	\$304.00	\$304.00	\$0.00	0.0%

Vantage Health Plan Medicare Advantage	Basic			
	2021 Total Monthly Premiums	2022 Total Monthly Premiums	Change	% Change
All Regions				
Enrollee Only	\$72.00	\$72.00	\$0.00	0.0%
Enrollee + Spouse	\$144.00	\$144.00	\$0.00	0.0%

Purchase Order #20003 80092
Amendment #3

Amendment to Contract Between

**State of Louisiana
Office of Group Benefits (OGB)**

And

**Vantage Health Plan, Inc.
130 DeSiard Street, Monroe, LA 71201**

CHANGE FROM:

3.1 TERM OF CONTRACT

The initial term this Contract shall begin on or about January 1, 2019, and is anticipated to end on December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise a one-time option to extend the Contract for up to twenty-four (24) additional months at the same administrative fee, terms and conditions of the initial Contract term. Prior to the extension of the Contract beyond the initial thirty-six (36)-month term prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the Contract amendment, to the Office of State Procurement (OSP) to extend Contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

CHANGE TO:

3.1 TERM OF CONTRACT

The initial term this Contract shall begin on or about January 1, 2019, with an initial contract term through December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise a one-time option to extend the Contract for up to twenty-four (24) additional months at the same administrative fee, terms and conditions of the initial Contract term. Prior to the extension of the Contract beyond the initial thirty-six (36)-month term prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the Contract amendment, to the Office of State Procurement (OSP) to extend Contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

At this time, OGB is exercising the twenty-four (24) month option, to extend the term of the Contract for an additional twenty-four (24) month term, through December 31, 2023, at the same terms and conditions as the initial Contract term, except as provided herein.

CHANGE FROM:

3.4 PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$12,000,000.00 (Twelve Million Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. No payments will be made by OGB on banking or State holidays.

With respect to Plan Participants who select a Louisiana HMO for their coverage, OGB shall impose no extraordinary restrictions on their plan participation due to the selection of the Louisiana HMO. OGB shall impose on Contractor a monthly administrative fee of \$10.00 for each HMO Primary Plan Participant. The administrative fee will be paid directly to OGB for each Primary Plan Participant and shall not be included in the premium charged. Plan Participants selecting the Louisiana HMO option shall receive the same employer contributions provided under La. R.S. 42:851, and the regulations issued thereunder, as participants who choose other health coverage options by OGB.

The Contractor will invoice OGB on the 1st of each month for payment of premiums for services provided pursuant to the resulting Contract. The invoice should include, at a minimum, the time period covered, total billed amount detailed by class of coverage, and assessed administrative fee based on total number of Primary Plan Participants. Payments will be made to the Contractor after written acceptance and approval of the invoice by the State. Upon approval of each submitted invoice by OGB's Chief Executive Officer or designee under a valid Contract, OGB/State will render payment of undisputed amounts within thirty (30) days.

CHANGE TO:

3.4 PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$12,908,000.00 (Twelve Million Nine Hundred Eight Thousand Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. No payments will be made by OGB on banking or State holidays.

With respect to Plan Participants who select a Louisiana HMO for their coverage, OGB shall impose no extraordinary restrictions on their plan participation due to the selection of the Louisiana HMO. OGB shall impose on Contractor a monthly administrative fee of \$10.00 for each HMO Primary Plan Participant. The administrative fee will be paid directly to OGB for each Primary Plan Participant and shall not be included in the premium charged. Plan Participants selecting the Louisiana HMO option shall receive the same employer contributions provided under La. R.S. 42:851, and the regulations issued thereunder, as participants who choose other health coverage options by OGB.

The Contractor will invoice OGB on the 1st of each month for payment of premiums for services provided pursuant to the resulting Contract. The invoice should include, at a minimum, the time period covered, total billed amount detailed by class of coverage, and assessed administrative fee based on total number of Primary Plan Participants. Payments will be made to the Contractor after written acceptance and approval of the invoice by the State. Upon approval of each submitted invoice by OGB's Chief Executive Officer or designee under a valid Contract, OGB/State will render payment of undisputed amounts within thirty (30) days.

CHANGE FROM:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To Vantage Health Plan, Inc.: P. Gary Jones, MD, President
Vantage Health Plan, Inc.
130 DeSiard Street, Suite 300
Monroe, LA 71201

To OGB: Mr. Tommy Teague, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

Mr. Tommy Teague, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

CHANGE TO:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i)

an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To Vantage Health Plan, Inc.: P. Gary Jones, MD, President
Vantage Health Plan, Inc.
130 DeSiard Street, Suite 300
Monroe, LA 71201

To OGB: Mr. David W. Couvillon, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

Mr. David W. Couvillon, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

REPLACE: ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE with the attached ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED)

Effective Date of Amendment: September 1, 2021

Justification for Amendment: To exercise the one-time option to extend Contract for twenty-four (24) additional months available under the Contract at the same terms and conditions of the initial Contract term, as previously amended, except as provided in this amendment. To provide revised Attachment II: Administrative Fee and Premium Rate Schedule (Revised) reflecting rates for calendar year 2022 and to increase the maximum payable amount to \$12,908,000.00. To update the notice provision of the contract.

No Amendment shall be valid until it has been executed by all parties and approved by the Office of State Procurement, Division of Administration.

All other provisions of the Contract shall remain in full force and effect. Any conflict between the Contract and this Amendment regarding the subject matters of this Amendment shall be resolved in favor of this Amendment.

This Amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties.

IN WITNESS THEREOF, this Amendment is signed and entered into on the date(s) included below.

**STATE OF LOUISIANA,
OFFICE OF GROUP BENEFITS**

BY:

NAME: David W. Couvillon

TITLE: Chief Executive Officer

DATE:

9/29/21

VANTAGE HEALTH PLAN, INC.

BY:

NAME: P. Gary Jones, MD

TITLE: Chief Executive Officer

DATE: 9/7/2021

ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED)

All pricing is fully burdened and inclusive of travel and all Contract-related expenses. Commissions or finder's fees are not payable under this Contract.

Administrative Fee

Monthly Administrative Fee Per Primary Plan Participant Per Month
\$10.00

Regional Premium

The Contractor will submit proposed rates for each subsequent twelve (12)-month period of the Contract no later than August 31st of the preceding year, beginning on August 31, 2019. **Premium rates proposed for each twelve (12)-month period must be approved by the Centers for Medicare and Medicaid Services (CMS). Additionally, for each twelve (12)-month period, the Contractor must document, through a written certification from its actuary, that the proposed rates for each twelve (12)-month period are calculated on the basis of sound actuarial principles, reasonable in relation to the benefits provided and the population anticipated to be covered, and are neither excessive nor deficient.**

Parishes Included in all OGB Regions (i.e., statewide)	Fixed Monthly Premium, Per Plan Participant Per Month
Basic	
1/1/2019 – 12/31/2019	\$72.00
1/1/2020 – 12/31/2020	\$72.00
1/1/2021 – 12/31/2021	\$72.00
<u>1/1/2022 - 12/31/2022</u>	<u>\$72.00</u>
Standard	
1/1/2019 – 12/31/2019	\$184.00
1/1/2020 – 12/31/2020	\$152.00
1/1/2021 – 12/31/2021	\$152.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$152.00</u>
Premium	
1/1/2019 – 12/31/2019	\$232.00
1/1/2020 – 12/31/2020	\$187.00
1/1/2021 – 12/31/2021	\$187.00
<u>1/1/2022 – 12/31/2022</u>	<u>\$187.00</u>

Office of State Procurement
State of Louisiana
Division of Administration


JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

October 5, 2021

TO: Col. David W. Couvillon, USMCR (Ret.)
Office of Group Benefits
Chief Executive Officer

FROM: Ms. Pamela Bartfay Rice, Esq., CPPO 
Assistant Director, Professional Contracts

RE: OSP Approval for JLCB
LaGov PO/Contract # 2000380092/Amendment 3
Vantage Health Plan Inc.

The above referenced amendment has been reviewed by the Office of State Procurement. The document complies with the State Procurement Code and is ready for submission to the Joint Legislative Committee on the Budget. Upon approval of the proposed term extension, in accordance with La. R.S. 39:1615(J), please return the "Agency Memo to OSP After JLCB Approval," along with the stamped amendment from the JLCB.

The amendment will not receive final approval by OSP until it has been approved by JLCB and is submitted to OSP in LaGov, Proact, or LESA, as applicable.

If you should have any further questions/comments, please do not hesitate to contact Bess Guidry at OSP.



STATE of LOUISIANA
DIVISION OF ADMINISTRATION
OFFICE OF GROUP BENEFITS



Office of Group Benefits

October 20, 2021 JLCB Meeting

Vantage Health Plan, Inc.

*Fully Insured Louisiana-Domiciled Health Maintenance Organization (“HMO”) Plan
Contract Amendment Overview*

Vantage Health Plan, Inc.

Fully Insured Louisiana-Domiciled HMO Plan Contract Amendment Overview

Contract Purpose	To provide a fully-insured HMO physician and hospital network for all regions of the state to eligible active employees, retirees, and their dependents.
Eligible Enrollees	Active and retired employees of the State of Louisiana and other OGB-participating entities
Members as of 10/1/2021	7,173
Beginning Contract Date	1/1/2019
Ending Contract Date	12/31/2021
Renewable Options	24 months
Renewable Options Already Exercised	None
Ending Contract Date After Amendment Approval	12/31/2023
Renewable Options Remaining After Amendment Approval	None
Procurement Method	Request for Proposals
Current Maximum Payable Amount	\$140,500,000
Contract Authority Expended	\$125,794,192 (through 9/30/2021)
Maximum Payable Amount After Amendment Approval	\$242,950,000
Administrative Fee	\$20.00 Per Enrollee per Month, Payable to OGB (no change from 2021)
Number of Plans Offered	One (no change from 2021)
Statewide or Regional Premium Rates	Statewide

Vantage Health Plan, Inc.

Fully Insured Louisiana-Domiciled HMO Plan Contract Amendment Overview, Cont.

Vantage Health Plan	Medical Home HMO			
	2021 Total Monthly Premiums	2022 Total Monthly Premiums	Change	% Change
ACTIVE EMPLOYEE				
ENROLLEE ONLY	\$746.84	\$821.52	\$74.68	10.0%
ENROLLEE + SPOUSE	\$1,586.16	\$1,744.78	\$158.62	10.0%
ENROLLEE + CHILD(REN)	\$910.80	\$1,001.88	\$91.08	10.0%
FAMILY	\$1,672.80	\$1,840.08	\$167.28	10.0%
RETIREE WITHOUT MEDICARE & RE-EMPLOYED RETIREE				
ENROLLEE ONLY	\$1,393.86	\$1,533.24	\$139.38	10.0%
ENROLLEE + SPOUSE	\$2,461.18	\$2,707.30	\$246.12	10.0%
ENROLLEE + CHILD(REN)	\$1,552.66	\$1,707.92	\$155.26	10.0%
FAMILY	\$2,449.36	\$2,694.30	\$244.94	10.0%
RETIREE WITH 1 MEDICARE				
ENROLLEE ONLY	\$461.12	\$507.24	\$46.12	10.0%
ENROLLEE + SPOUSE	\$1,685.32	\$1,853.86	\$168.54	10.0%
ENROLLEE + CHILD(REN)	\$793.24	\$872.56	\$79.32	10.0%
FAMILY	\$2,243.24	\$2,467.56	\$224.32	10.0%
RETIREE WITH 2 MEDICARE				
ENROLLEE + SPOUSE	\$826.58	\$909.24	\$82.66	10.0%
FAMILY	\$1,023.40	\$1,125.74	\$102.34	10.0%

Purchase Order #2000367811
Amendment #3

Amendment to Contract Between

**State of Louisiana
Office of Group Benefits (OGB)**

And

**Vantage Health Plan, Inc.
130 DeSiard Street, Suite 300, Monroe, LA 71201**

CHANGE FROM:

3.1 TERM OF CONTRACT

The initial term of this Contract shall begin on or about January 1, 2019, and is anticipated to end on December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise an option to extend the Contract for up to twenty-four (24) additional months at the same administrative fee, terms and conditions of the initial Contract term. Prior to the extension of the contract beyond the initial thirty-six (36)-month term, prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the contract amendment, to the Office of State Procurement (OSP) to extend contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

CHANGE TO:

3.1 TERM OF CONTRACT

The initial term of this Contract shall begin on or about January 1, 2019, with an initial contract term through December 31, 2021. With all proper approvals and concurrence with the successful Contractor, OGB may also exercise an option to extend the Contract for up to twenty-four (24) additional months at the same administrative fee, terms and conditions of the initial Contract term. Prior to the extension of the contract beyond the initial thirty-six (36)-month term, prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. Written evidence of JLCB approval shall be submitted, along with the contract amendment, to the Office of State Procurement (OSP) to extend contract terms beyond the initial 3-year term. The total Contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

At this time, OGB is exercising the twenty-four (24) month option, to extend the term of the Contract for an additional twenty-four (24) months, through December 31, 2023, with the same terms and conditions as the initial Contract term, except as provided herein.

CHANGE FROM:

3.4 PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$140,500,000.00 (One Hundred Forty Million, Five Hundred Thousand Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. No payments will be made by OGB on banking or State holidays.

With respect to Plan Participants who select a Louisiana HMO for their coverage, OGB shall impose no extraordinary restrictions on their plan participation due to the selection of the Louisiana HMO. OGB shall impose upon Contractor a monthly administrative fee of \$20.00 for each HMO Primary Plan Participant. This administrative fee will be retained from the successful Contractor's fixed monthly premium paid directly to OGB for each Plan Participant. Those Plan Participants selecting the Louisiana HMO option shall receive the same employer contributions provided under La. R.S. 42:851, and the regulations issued thereunder, as participants who choose other health coverage options offered by OGB.

The Contractor will invoice OGB on the 1st of each month for payment of Plan premiums for services provided pursuant to this Contract. The invoice should include, at a minimum, the time period covered, total billed amount detailed by class of coverage, and assessed administrative fee based on total number of primary Plan Participant. Payments will be made to the Contractor after written acceptance by the State and approval of invoice. Upon approval of each submitted invoice by OGB's Chief Executive Officer or designee under a valid Contract, OGB/State will render payment of undisputed amounts within thirty (30) days.

CHANGE TO:

3.4 PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$242,950,000.00 (Two Hundred Forty-Two Million, Nine Hundred Fifty Thousand Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. No payments will be made by OGB on banking or State holidays.

With respect to Plan Participants who select a Louisiana HMO for their coverage, OGB shall impose no extraordinary restrictions on their plan participation due to the selection of the Louisiana HMO. OGB shall impose upon Contractor a monthly administrative fee of \$20.00 for each HMO Primary Plan Participant. This administrative fee will be retained from the successful Contractor's fixed monthly premium paid directly to OGB for each Plan Participant. Those Plan Participants selecting the Louisiana HMO option shall receive the same employer

contributions provided under La. R.S. 42:851, and the regulations issued thereunder, as Plan Participants who choose other health coverage options offered by OGB.

The Contractor will invoice OGB on the 1st of each month for payment of premiums and for services provided pursuant to the resulting Contract. The invoice should include, at a minimum, the time period covered, total billed amount detailed by class of coverage, and assessed administrative fee based on total number of Primary Plan Participant. Payments will be made to the Contractor after written acceptance by the State and approval of invoice. Upon approval of each submitted invoice by OGB's Chief Executive Officer or designee under a valid Contract, OGB/State will render payment of undisputed amounts within thirty (30) days.

CHANGE FROM:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or (ii) registered or certified mail return receipt requested, and addressed as follows:

To Vantage Health Plan, Inc.: P. Gary Jones, MD, President
Vantage Health Plan, Inc.
130 DeSiard Street, Suite 300
Monroe, LA 71201

To OGB: Mr. Tommy Teague, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

or

Mr. Tommy Teague, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

CHANGE TO:

20 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or (ii) registered or certified mail return receipt requested, and addressed as follows:

To Vantage Health Plan, Inc.: P. Gary Jones, MD, President
Vantage Health Plan, Inc.
130 DeSiard Street, Suite 300
Monroe, LA 71201

To OGB: Mr. David W. Couvillon, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

or

Mr. David W. Couvillon, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

REPLACE: ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED) with the attached ATTACHMENT II: ADMINISTRATIVE FEE AND PREMIUM RATE SCHEDULE (REVISED).

Effective Date of Amendment: October 1, 2021

Justification for Amendment: To exercise the option to extend Contract for twenty-four (24) additional months available under the Contract at the same terms and conditions of the initial Contract term, as previously amended, except as provided in this amendment. To provide revised Attachment II: Administrative Fee and Premium Rate Schedule reflecting rates for calendar year 2022 and to increase the maximum payable amount to \$242,950,000.00. To update notice provision.

No Amendment shall be valid until it has been executed by all parties and approved by the Office of State Procurement, Division of Administration.

All other provisions of the Contract shall remain in full force and effect. Any conflict between the Contract and this Amendment regarding the subject matters of this Amendment shall be resolved in favor of this Amendment.

This Amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties.

IN WITNESS THEREOF, this Amendment is signed and entered into on the date(s) included below.

STATE OF LOUISIANA
OFFICE OF GROUP BENEFITS

VANTAGE HEALTH PLAN, INC.

BY:



BY:

DocuSigned by:
P. Gary Jones, M.D.
03624542D0384EE

NAME: David W. Couvillon

NAME: P. Gary Jones MD

TITLE: Chief Executive Officer

TITLE: Chief Executive Officer

DATE: 10/1/21

DATE: 9/29/2021

ATTACHMENT II: PREMIUM RATE SCHEDULE (REVISED)

The monthly premiums listed below are fully burdened and inclusive of all Contract costs and expenses. Commissions or finder's fees are not payable under this Contract.

Statewide	Fixed Monthly Premium 1/1/19 – 12/31/19	Fixed Monthly Premium 1/1/20 – 12/31/20	Fixed Monthly Premium 1/1/21 – 12/31/21	Fixed Monthly Premium 1/1/22 – 12/31/22
<u>Active Employee</u>				
SINGLE	\$671.00	\$704.56	\$ 746.84	<u>\$821.52</u>
+1 (SPOUSE)	\$1,425.12	\$1,496.38	\$1,586.16	<u>\$1,744.78</u>
+1 (CHILD)	\$818.32	\$859.24	\$910.80	<u>\$1,001.88</u>
WITH CHILDREN	\$818.32	\$859.24	\$910.80	<u>\$1,001.88</u>
FAMILY	\$1,502.98	\$1,578.12	\$1,672.80	<u>\$1,840.08</u>
<u>Retiree Without Medicare and Re- Employed Retiree</u>				
SINGLE	\$1,252.34	\$1,314.96	\$ 1,393.86	<u>\$1,533.24</u>
+1 (SPOUSE)	\$2,211.30	\$2,321.86	\$2,461.18	<u>\$2,707.30</u>
+1 (CHILD)	\$1,395.02	\$1,464.78	\$1,552.66	<u>\$1,707.92</u>
WITH CHILDREN	\$1,395.02	\$1,464.78	\$1,552.66	<u>\$1,707.92</u>
FAMILY	\$2,200.68	\$2,310.72	\$2,449.36	<u>\$2,694.30</u>
<u>Retiree With One Medicare</u>				
SINGLE	\$414.30	\$435.02	\$ 461.12	<u>\$507.24</u>
+1 (SPOUSE)	\$1,514.20	\$1,589.92	\$1,685.32	<u>\$1,853.86</u>
+1 (CHILD)	\$712.70	\$748.34	\$793.24	<u>\$872.56</u>
WITH CHILDREN	\$712.70	\$748.34	\$793.24	<u>\$872.56</u>
FAMILY	\$2,015.48	\$2,116.26	\$2,243.24	<u>\$2,467.56</u>
<u>Retiree With Two Medicare</u>				
+1 (SPOUSE)	\$742.66	\$779.80	\$ 826.58	<u>\$909.24</u>
FAMILY	\$919.50	\$965.48	\$1,023.40	<u>\$1,125.74</u>
<u>COBRA</u>				
SINGLE	\$684.42	\$718.64	\$ 761.76	<u>\$837.94</u>
+1 (SPOUSE)	\$1,453.62	\$1,526.30	\$1,617.88	<u>\$1,779.66</u>
+1 (CHILD)	\$834.68	\$876.42	\$929.00	<u>\$1,021.90</u>
WITH CHILDREN	\$834.68	\$876.42	\$929.00	<u>\$1,021.90</u>
FAMILY	\$1,533.04	\$1,609.70	\$1,706.28	<u>\$1,876.90</u>

<i>DISABILITY COBRA</i>				
SINGLE	\$1,006.50	\$1,056.84	\$1,120.26	<u>\$1,232.28</u>
+1 (SPOUSE)	\$2,137.68	\$2,244.58	\$2,379.24	<u>\$2,617.18</u>
+1 (CHILD)	\$1,227.48	\$1,288.86	\$1,366.20	<u>\$1,502.82</u>
WITH CHILDREN	\$1,227.48	\$1,288.86	\$1,366.20	<u>\$1,502.82</u>
FAMILY	\$2,254.48	\$2,367.18	\$2,509.20	<u>\$2,760.12</u>

Premium rates proposed for each twelve (12)-month period must be approved by the OGB. The maximum percentage increase for each twelve (12)-month period during the initial Contract period and during any renewal option period is 20%. OGB reserves the right to negotiate lower premiums for each twelve (12)-month period during the initial Contract period and for each twelve (12)-month period during any renewal option period.

Office of State Procurement
State of Louisiana
Division of Administration


JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

October 5, 2021

TO: Col. David W. Couvillon, USMCR (Ret.)
Office of Group Benefits
Chief Executive Officer

FROM: Ms. Pamela Bartfay Rice, Esq., CPPO 
Assistant Director, Professional Contracts

RE: OSP Approval for JLCB
LaGov PO/Contract # 2000367811/Amendment 3
Vantage Health Plan Inc. (HMO)

The above referenced amendment has been reviewed by the Office of State Procurement. The document complies with the State Procurement Code and is ready for submission to the Joint Legislative Committee on the Budget. Upon approval of the proposed term extension, in accordance with La. R.S. 39:1615(J), please return the "Agency Memo to OSP After JLCB Approval," along with the stamped amendment from the JLCB.

The amendment will not receive final approval by OSP until it has been approved by JLCB and is submitted to OSP in LaGov, Proact, or LESA, as applicable.

If you should have any further questions/comments, please do not hesitate to contact Bess Guidry at OSP.



STATE of LOUISIANA
DIVISION OF ADMINISTRATION
OFFICE OF GROUP BENEFITS



Office of Group Benefits

October 20, 2021 JLCB Meeting

DataPath Administrative Services

*Background Information on Solicitations for Flexible Spending Arrangement and
COBRA Administration Services*

&

*Flexible Spending Arrangement and COBRA Administration Services Contract
Overview*

Background Information on Solicitations for Flexible Spending Arrangement and COBRA Administration Services

- The Request for Proposals (“RFP”) for Flexible Spending Arrangement (“FSA”) and COBRA Administration Services was issued on 4/15/2021
 - Offers were due by 5/27/2021
 - Five (5) offers were received
 - One (1) offer was received late and was excluded from consideration
- The Office of Group Benefits (“OGB”) issued a Notice of Intent to Award to DataPath Administrative Services (“DataPath”) on 7/27/2021
- The Office of State Procurement (“OSP”) issued an approval notice for the Contract between OGB and DataPath for FSA and COBRA administrative services on 10/15/2021

DataPath Administrative Services

FSA and COBRA Administration Services Contract Overview

Contract Purpose	To provide FSA and COBRA administration services in support of plan options offered by OGB.
FSA Eligible Enrollees	Active employees of the State of Louisiana and other OGB-participating entities participating in an OGB Flexible Benefits Plan may enroll in one or several Flexible Benefits Plan options.
COBRA Eligible Enrollees	OGB health plan participants, who have been termed from health insurance coverage due to resignation, dismissal, employer lay-off, retirement, or other qualifying events. COBRA is also offered to participants in the General-Purpose Flexible Spending Arrangement ("GPFSA") or Limited-Purpose Flexible Spending Arrangement ("LPFSA"), who have funds remaining in their FSA account.
FSA Members as of 10/01/2021	5,986
COBRA Members as of 10/01/2021	284
Beginning Contract Date	01/01/2022
Ending Contract Date	12/31/2024
Renewable Options	Up to 24 months
Procurement Method	RFP
Current Contract Maximum Payable Amount ^{1, 2}	\$1,892,000
Current Contract Authority Expended ¹	\$1,679,635 (through 9/30/2021)
Contract Maximum Payable Amount	\$1,130,000
FSA Administration Fee	\$0.95 per Primary Plan Participant per Month
COBRA Administration Fee	\$0.185 per Employee and Retiree per Month

¹ Current FSA and COBRA Administration Services vendor is WEX Health, Inc. d/b/a WEX (formerly Discovery Benefits, LLC).

² The current WEX contract maximum payable amount is for four (4) years. The original three (3) year contract maximum payable amount was \$1,400,000. Contract amendment #2 extended the contract term from 12/31/2020 to 12/31/2021 and increased the maximum payable amount to \$1,892,000.

Office of State Procurement
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

October 15, 2021

TO: Col. David W. Couvillon, USMCR (Ret.)
Office of Group Benefits
Chief Executive Officer

FROM: Ms. Pamela Bartfay Rice, Esq., CPPO
Assistant Director, Professional Contracts

RE: OSP Approval for JLCB
Contract between OGB and DataPath Administrative Services Inc. – FSA and COBRA
administrative services

The Office of State Procurement has reviewed the above-referenced contract. The document complies with the State Procurement Code and is ready for submission to the Joint Legislative Committee on the Budget. Upon approval of the proposed contract in accordance with La. R.S. 42:802 (D)(1), please return the **"Agency Memo to OSP After JLCB Approval,"** along with the stamped contract from the JLCB.

The contract will not receive final approval by OSP until JLCB has approved and it is submitted to OSP in LaGov, Proact, or LESA, as applicable.

If you should have any further questions/comments, please do not hesitate to contact Bess Guidry at OSP.

CONTRACT

On this ___ day of October, 2021, the State of Louisiana, Office of Group Benefits, 1201 N. 3rd Street, Suite G-159, Baton Rouge, LA 70802, hereinafter sometimes referred to as the “OGB” or “State”, and DataPath Administrative Services, 1601 Westpark Drive, Suite 9, Little Rock, AR 72204, hereinafter sometimes referred to as the “Contractor,” do hereby enter into a Contract under the following terms and conditions.

1 TERM OF CONTRACT

This Contract shall begin on or about January 1, 2022, and is anticipated to end on December 31, 2024. The State has the right to extend this Contract up to a total of three years with the concurrence of the Contractor and all appropriate approvals. With all proper approvals and concurrence of the Contractor, that State may also exercise an option to extend for up to twenty-four (24) additional months at the same rates, terms, and conditions of the initial Contract term. Prior to the extension of the Contract beyond the initial thirty-six (36) month term, prior approval by the Joint Legislative Committee on the Budget (JLCB) or other approval authorized by law shall be obtained. Such written evidence of JLCB approval shall be submitted, along with the Contract amendment to the Office of State Procurement (OSP) to extend contract terms beyond the initial three (3) year term. The total contract term, with extensions, shall not exceed five (5) years. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

2 COMPENSATION AND MAXIMUM AMOUNT OF CONTRACT

In consideration of the services required by this Contract, OGB hereby agrees pay to Contractor a maximum fee of One Million One Hundred Thirty Thousand Dollars (\$1,130,000.00) over multiple years as follows: January 1, 2022 to December 31, 2022; January 1, 2023 to December 31, 2023; and January 1, 2024 to December 31, 2024. Payments are predicated upon successful completion of the services described in Description of Services and acceptance of deliverables described in Acceptance of Deliverables; receipt of an invoice; and written approval of OGB Medical and Pharmacy Administrator by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. **No payments will be made by OGB on banking or State holidays.**

The methods of payment may be via EFT, a method in which payment is sent directly from the State’s bank to the payee’s bank.

Within five (5) business days after the end of each month, Contractor will invoice OGB monthly for payment of all administrative fees and charges earned by Contractor. For billing purposes, FSA participant counts will be determined on the last business day of each month. Participants losing eligibility to receive FSA reimbursement after the first business day of the month are included in the count for that month’s billing. The amount of administrative fees paid will be based upon the number determined by OGB’s eligibility system using the contracted rate. For COBRA administration, the administrative fee will be based on the number of employees and retirees enrolled in the OGB health plans at the end of each month. The amount of administrative fees paid will be based upon the number determined by OGB’s eligibility system using the

contracted rate. Upon validation of the invoice for administrative fees, OGB shall render payment of undisputed amounts within thirty (30) days of receipt of invoice.

Dollar Amount of the Contract

During the execution of services as described in Attachment I, Contractor may not submit invoices more frequently than monthly.

Payment terms are as follows:

FSA Administrative Fees per Primary Plan Participant per month	\$0.95
--	--------

COBRA Administrative Fees per employee and retiree per month	\$0.185
--	---------

For FSA Administration, a participant is an individual who is eligible to receive reimbursement based on the Internal Revenue Code Section 125 cafeteria plan adopted by OGB.

For COBRA Administration, a covered employee/retiree is the Primary Plan Participant enrolled for coverage in an OGB plan.

The State shall make every reasonable effort to make payments within **thirty (30) days** of receiving an invoice. Contractor shall comply with the Division of Administration State General Travel Regulations, as set forth in the Division of Administration Policy and Procedure Memorandum No. 49.

3 PROHIBITION AGAINST ADVANCE PAYMENTS

No compensation or payment of any nature shall be made in advance of services actually performed, unless allowed by law.

4 GOALS AND OBJECTIVES

1. To ensure accurate and timely FSA and COBRA administration.
2. To provide quality, cost-effective healthcare services to Plan Participants.

5 DEFINITIONS

Account Management Team – Contractor’s staff assigned to OGB which includes a dedicated Account Executive, Implementation Manager, COBRA Operations Manager, and Customer Service Manager. Contractor’s staff assigned to OGB will also include a Privacy Officer, Financial Analyst, Senior Operations Specialist, Compliance Analyst that is not required to be exclusively dedicated to OGB. The Account Executive must have at least one (1) back-up staff member designated to handle the overall responsibility of OGB.

COBRA – Consolidated Omnibus Budget Reconciliation Act.

Contractor – the successful Proposer who is awarded a Contract and assumes full responsibility and liability for completion of the deliverables.

CY – Calendar Year.

CSR – a Customer Service Representative.

Deliverable – a good or service that Contractor is required to provide. Deliverables can be tangible or intangible in nature.

Dependent Care Flexible Spending Arrangement (DCFSA) - the Flexible Spending Arrangement option that permits a participant to set aside pre-tax money to pay for dependent care expenses for young children under age thirteen (13) in daycare and elderly or disabled dependents, who cannot care for themselves and spend at least eight (8) hours a day in your household.

FSA –Flexible Spending Arrangement plans.

General-Purpose Flexible Spending Arrangement (GPFSA) – the Flexible Spending Arrangement option that permits a participant to contribute to an account for pre-tax reimbursement of certain qualifying medical care expenses.

Grace Period - the 2 months plus 15 days immediately following the end of a plan year when participants may incur qualifying expenses to be reimbursed from their respective unused FSA benefits remaining at the end of the immediately preceding plan year in accordance with IRS Notice 2005-42 or any amendment thereof.

HIPAA – the Health Insurance Portability and Accountability Act.

IRS – Internal Revenue Service.

JLCB –Joint Legislative Committee on the Budget.

Limited-Purpose (Dental/Vision) Flexible Spending Arrangement (LPFSA) - the Flexible Spending Arrangement option that permits a participant to contribute to an account for pre-tax reimbursement of certain qualifying medical care expenses and to maintain his Health Savings Account eligible individual status.

OGB CEO – the Office of Group Benefit’s Chief Executive Officer.

OGB Plan-Recognized Qualified Life Event (QLE) – one or more of the OGB Plan-Recognized Qualified Life Events for FSA purposes recognized by OGB from time-to-time.

OSP – Office of State Procurement.

Plan – OGB’s defined health benefit plan pursuant to which Covered Benefits are provided to Plan Participants.

Plan Participant(s) – individuals who are entitled to Covered Benefits through OGB as identified in the eligibility data file prepared, maintained and as determined by OGB, and delivered to the Contractor.

Primary Plan Participant(s) – the Plan Participant whose relationship with OGB or the employee/retiree governs the coverage under the Plan.

PPACA – the Patient Protection and Affordable Care Act.

Proposal – a response to a RFP.

Proposer – an individual or organization submitting a proposal in response to a RFP.

RFP – a Request for Proposals.

Run-out Period – the time period immediately following the Grace Period, ending on April 30, when participants may submit qualifying expenses incurred during the preceding plan year

and/or Grace Period for reimbursement from their respective unused FSA benefits remaining at the end of the immediately preceding plan year.

6 DESCRIPTION OF SERVICES

6.1 CONCISE DESCRIPTION OF SERVICES

DataPath Administrative Services shall provide Flexible Spending Arrangement (“FSA”) and COBRA administration services in support of plan options offered by OGB/State. These services shall include, at a minimum, all services specified in Section 6.2 and the attachments referenced therein.

6.2 STATEMENT OF SERVICES

Contractor agrees to furnish services to State as specified in this Section and in any attachments. The Statement of Work consists of the following and/or any subsequent addendum:

Attachment I: Scope of Services

Attachment II: Business Associate Addendum

Attachment III: Records Retention Schedule

Attachment IV: Imaging System Survey Compliance and Records Destruction

Attachment V: Insurance Requirements

6.3 DELIVERABLES

The Contract will be considered complete when Contractor has delivered and State has accepted all deliverables specified in the Statement of Work.

6.4 ACCEPTANCE OF DELIVERABLES

Deliverables shall be submitted, reviewed, and accepted according to the following procedure:

A. *General.* The State shall accept work performed in accordance with the Statement of Services and/or as subsequently modified in State-approved documents.

B. *Submittal and Review.* Contractor shall provide written notification to the OGB Medical and Pharmacy Administrator that a Deliverable is completed, and available for review and acceptance.

Upon Contractor’s written notification, the OGB Medical and Pharmacy Administrator shall review the Deliverable within ten (10) business days. Within this period, the OGB Medical and Pharmacy Administrator shall direct the appropriate review process; coordinate any review outside the Project team; and present results to any appropriate committee(s) for acceptance. The review process shall be comprehensive—identifying all items that must be modified or added.

C. *Acceptance or Rejection.* A Deliverable shall be considered accepted unless, within the 10 business days, the OGB Medical and Pharmacy Administrator notifies the Contractor in writing that the Deliverable is rejected and specifies the items that, if

modified or added, will cause the Deliverable to be accepted. A failure to submit all or any essential part of a Deliverable shall be a cause for rejection of the Deliverable.

- D. *Resubmitting Deliverables.* Contractor shall provide written notification to the OGB Medical and Pharmacy Administrator when the Contractor resubmits a Deliverable for acceptance. The OGB Medical and Pharmacy Administrator shall review the resubmitted Deliverable within five (5) business days. A resubmitted Deliverable shall be considered accepted unless, within this period, the OGB Medical and Pharmacy Administrator notifies the Contractor in writing that the resubmitted Deliverable is rejected and specifies the items that, if modified or added, will cause the resubmitted Deliverable to be accepted. The parties shall repeat this process until the resubmitted Deliverable is accepted, or the State determines that the Contractor has breached the Contract and places the Contractor in default.

6.5 PERFORMANCE MEASURES

The performance of the Contract, including but not limited to Attachment I, Scope of Services, and/or any subsequent addendum including performance criteria and corresponding monetary penalties for Contractor's failure to comply with the identified criteria in Section 13, Performance Guarantees, will be measured by the OGB Contract Monitor. The OGB Contract Monitor is authorized to evaluate the Contractor's performance against these criteria.

6.6 MONITORING PLAN

The Contract Monitor will be the OGB Medical and Pharmacy Group Benefits Administrator, who will monitor the services and performance provided by the Contractor and the expenditure of funds under this Contract. The monitoring plan is as follows:

1. The Contractor will submit various monthly, quarterly, and annual reports to the Contract Monitor as specified in Attachment I, Scope of Services.
2. The Contract Monitor will ensure all deliverables are submitted timely and perform subsequent review and acceptance.
3. The Contract Monitor will provide oversight of the implementation of the Scope of Services to ensure quality, efficiency, and effectiveness in fulfilling the goals and objectives of OGB.

6.7 CONTRACTOR PROJECT MANAGEMENT

Contractor Project Management is as follows:

- A. **Account Management Team.** Contractor will provide an Account Management Team for the duration of the engagement including a dedicated Account Executive, Implementation Manager, COBRA Operations Manager, and Customer Service Manager. Contractor's staff assigned to OGB will also include a Privacy Officer, Financial Analyst, Senior Operations Specialist, and a Compliance Analyst that are not required to be exclusively dedicated to OGB. The Account Executive must have at least one (1) back-up staff member designated to handle the overall responsibility of OGB.

- B. Account Management Team Support.** The Account Management Team will provide support around account strategy, Plan Participant inquiries, issue resolution, reports, and other requested projects and deliverables. Contractor will provide an annual service cycle plan as well as an ongoing task log with timelines for all deliverables and weekly status update meetings in person or via teleconference.
- C. Quarterly Meetings.** All of the Account Management Team will attend all quarterly meetings via teleconference or on-site at OGB. The meetings shall be held no later than thirty (30) days following quarter end. The Account Management Team will provide for OGB approval a draft agenda at least ten (10) business days in advance of a meeting to allow changes to the agenda and a reasonable opportunity to prepare for the meeting. At minimum, during the quarterly meeting, the Account Management Team should discuss the following: goals, expectations, and priorities; review the quarterly report and other issues such as performance guarantees, quality assurance, operations, network status and access; benefit and program changes or enhancements; legislative issues; audits; cost trends; utilization; program outcomes; customer service issues; future goals and planning; and other issues reasonably related to the Contract.
- D. Minutes.** Within three (3) business days after any meeting, Contractor shall provide OGB with a detailed and well-documented draft of meeting minutes. OGB shall review and revise the draft minutes as appropriate and return to the Contractor. Final minutes must be provided within three (3) business days after receipt of the revised minutes from OGB. Minutes shall include a list of and description of all tasks and/or deliverables, identify the responsible party, and provide a projected delivery date.
- E. Documentation.** Contractor will maintain an ongoing process log that will document all benefit and system programming changes, which will be provided to OGB within five (5) business days of any change.
- F. Coordination with other OGB Vendor(s).** Contractor will coordinate and cooperate with OGB's administrative services provider(s) for OGB's self-insured medical plans, actuary, and other vendors as needed on integration of information to or from other service providers relative to the services addressed in this Contract.

7 TERMS OF PAYMENTS

The Contractor may submit invoices, not more frequently than monthly. If progress and/or completion of services are provided to the satisfaction of OGB, payments are to be made as follows:

Within five (5) business days after the end of each month, Contractor will invoice OGB monthly for payment of all administrative fees and charges earned by Contractor set forth in Section 2, Compensation and Maximum Amount of Contract. For billing purposes, FSA participant counts will be determined on the last business day of each month. For COBRA administration, the administrative fee will be based on the number of employees and retirees enrolled in the OGB health plans at the end of each month. Participants losing eligibility to receive FSA reimbursement after the first business day of the month are included in the count for that month's billing. The amount of administrative fees paid will be based upon the number determined by OGB's eligibility

system using the contracted rate. Upon validation of the invoice for administrative fees, OGB shall render payment of undisputed amounts within thirty (30) days of receipt of invoice.

Such payment amounts for work performed must be based on at least equivalent services rendered, and to the extent practical, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices. Contractor will not be paid more than the maximum amount of the Contract. Payment will be made only upon approval of OGB Medical and Pharmacy Administrator.

8 VETERAN/HUDSON SMALL ENTREPRENEURSHIP PROGRAM PARTICIPATION

During the term of the Contract and at expiration, the Contractor will be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor participation and the dollar amount of each.

9 SUBSTITUTION OF KEY PERSONNEL

The Contractor's personnel assigned to this Contract shall not be replaced without the written consent of the OGB/State. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any State or Contractor personnel become unavailable due to resignation, illness, or other factors, excluding assignment to project outside this contract, outside of the State's or Contractor's reasonable control, as the case may be, the State or the Contractor, shall be responsible for providing an equally qualified replacement in time to avoid delays in completing tasks. The Contractor will make every reasonable attempt to assign the personnel listed in his/her proposal. OGB reserves the right to request changes to any of the assigned personnel based on unsatisfactory performance levels as determined by OGB. Additionally, OGB will be provided with the opportunity to interview any new team member(s).

10 OGB FURNISHED RESOURCES

OGB shall appoint a Contract Monitor for this Contract who will provide oversight of the activities conducted hereunder. The assigned Contract Monitor shall be the principal point of contact on behalf of OGB and will be the principal point of contact for the Contractor concerning Contractor's performance under this Contract.

11 TAXES

Contractor is current in the filing of all applicable tax returns and reports and in the payment of all taxes, interest, penalties, and fees owed to the State and collected by the Department of Revenue. Contractor's federal tax identification number is 71-0808497. Contractor's seven-digit Louisiana Department of Revenue account number is 2459081. The State's obligations are conditioned on the Contractor resolving any identified outstanding tax compliance discrepancies with the Louisiana Department of Revenue within seven (7) days of such notification. If the Contractor fails to resolve the identified outstanding tax compliance discrepancies within seven days of notification, then the using agency may proceed with alternate arrangements without notice to the Contractor and without penalty.

The State acknowledges that Contractor is not providing tax or legal advice and that State shall be

solely responsible for determining the legal and tax status of the Plan(s).

12 PERFORMANCE BOND

Unless issuance of such bond is against applicable law, Contractor shall provide a performance (surety) bond in an amount determined by OGB of no more than one hundred percent (100%) of the annual contracted fees to ensure the successful performance under the terms and conditions of the Contract. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved companies which is published annually in the Federal Register, or by a Louisiana-domiciled insurance company with at least an A-rating to write individual bonds up to ten percent (10%) of policyholders' surplus as shown in the latest A.M. Best's Key Rating Guide. In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

The performance bond is to be provided at least thirty (30) working days prior to the effective date of the Contract. Failure to provide within the time specified may cause the Contract to be cancelled.

13 PERFORMANCE GUARANTEES

Contractor agrees to provide its operational performance guarantees on a OGB-specific basis and report OGB's results on a quarterly basis. OGB shall have the ability to modify the performance guarantees each contract year. Contractor will be subject to per day fees for certain performance guarantees.

All guarantees must be reconciled annually and any penalties owed to OGB shall be paid automatically within ninety (90) days after the end of the calendar year.

Performance Guarantees: The Contractor will be subject to negotiated performance standards and those detailed in Attachment I, Scope of Services.

Audit: OGB reserves the right to audit performance guarantee reports on an annual basis. A third party may be utilized to perform this audit.

Measurement Periods: The first period to be measured shall be calendar year 2022 also known as January 1, 2022 through December 31, 2022. The second period will be for calendar year 2023, and the third period for calendar year 2024. The fourth period, subject to the renewal option, will be for calendar year 2025, and the fifth period, subject to the renewal option, will be for calendar year 2026. If the performance guarantees are effective for less than a full calendar year, the payment amounts will be prorated for the portion of the Measurement Period.

14 TERMINATION FOR CAUSE

Should the State determine that the Contractor has failed to comply with the Contract's terms, the State may terminate the Contract for cause by giving the Contractor written notice specifying the Contractor's failure. If the State determines that the failure is not correctable, then the Contract shall terminate on the date specified in such notice. If the State determines that the failure may be corrected, the State shall give a deadline for the Contractor to make the correction. If the State determines that the failure is not corrected by the deadline, then the State may give additional time

for the Contractor to make the corrections or the State may notify the Contractor of the Contract termination date.

If the Contractor seeks to terminate the Contract, the Contractor shall file a complaint with the Chief Procurement Officer under La. R.S. 39:1672.2-1672.4.

15 TERMINATION FOR CONVENIENCE

State may terminate the Contract at any time without penalty by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor a termination date. Contractor shall be entitled to payment for deliverables in progress, to the extent the State determines that the work is acceptable.

16 REMEDIES FOR DEFAULT

Any claim or controversy arising out of this Contract shall be resolved by the provisions of La. R.S. 39:1672.2 - 1672.4.

17 GOVERNING LAW

This Contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana, including but not limited to La. R.S. 39:1551-1736; rules and regulations; executive orders; standard terms and conditions, special terms and conditions, and specifications listed in the RFP (if applicable); and this Contract. Venue of any action brought, after exhaustion of administrative remedies, with regard to this Contract shall be in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

18 E-VERIFY

Contractor acknowledges and agrees to comply with the provisions of La. R.S. 38:2212.10 and federal law pertaining to E-Verify in the performance of services under this Contract.

19 OWNERSHIP OF WORK PRODUCT

All data files, documentation, records, worksheets, or any other related materials developed under this Contract shall become the property of the State upon creation. All material related to the Contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of State, and shall be returned by Contractor to State, at Contractor's expense, at termination or expiration of the Contract and/or at the State's request.

20 DATA/RECORD RETENTION

Contractor shall retain all its books, records, and other documents relevant to this Contract and the funds expended hereunder for at least five (5) years after final payment, or as required by applicable Federal law, if Federal funds are used to fund this Contract. Contractor shall comply with all applicable State and Federal laws regarding data retention and provide for a transition period that accommodates all data retention requirements of the State, including data retained and length of retention, following Contract termination, regardless of the reason for Contract

termination. Further, Contractor agrees to retain all Records in accordance with OGB's official retention schedules (the "Schedules"), **Attachment III**, until such time as the Records are returned to the State or other disposition is agreed. In the event the applicable Law and the Schedules contain different retention periods, the Records shall be kept for the longer period. Records shall be in a format and media as required by applicable law or as agreed upon by the parties in writing if allowed by applicable law. The Schedules in place as of the effective date of this Contract are contained in **Attachment III**, Records Retention Schedule, and may be amended from time to time as deemed necessary by the State. To further ensure compliance with the Schedules and Louisiana retention laws, Contractor agrees to abide by the processes outlined in **Attachment IV**, Imaging System Survey Compliance and Records Destruction. Additionally, all State data must be sanitized in compliance with the most currently approved revision of NIST SP 800-66.

21 RECORD OWNERSHIP

All records, reports, documents and other material delivered or transmitted to Contractor by State shall remain the property of State, and shall be returned by Contractor to State, at Contractor's expense, at termination or expiration of the Contract. Contractor shall return the Records to the State, at Contractor's expense, within seven (7) days of request or in the specific instance of termination or expiration of the Contract, within sixty (60) days after the termination or expiration of this Contract, and shall retain no copies of the Records unless required by applicable law, provided, the confidentiality and security requirements of this Contract shall apply to such Records as long as retained by the Contractor. All material related to the Contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of State, and shall be returned by Contractor to State, at Contractor's expense, at termination or expiration of the Contract.

22 CONTRACTOR'S COOPERATION

The Contractor has the duty to fully cooperate with the State and provide any and all information, documentation, etc. to the State immediately upon request. This applies even if this Contract is terminated and/or a lawsuit is filed. Specifically, the Contractor shall not limit or impede the State's right to audit or shall not withhold State owned documents.

23 ASSIGNABILITY

Contractor may assign its interest in the proceeds of this Contract to a bank, trust company, or other financial institution. Within ten (10) calendar days of the assignment, the Contractor shall provide notice of the assignment to the State and the Office of State Procurement. The State will continue to pay the Contractor and will not be obligated to direct payments to the assignee until the State has processed the assignment.

Except as stated in the preceding paragraph, Contractor shall only transfer an interest in the Contract by assignment, novation, or otherwise, with prior written consent of the State. The State's written consent of the transfer shall not diminish the State's rights or the Contractor's responsibilities and obligations.

24 RIGHT TO AUDIT

Any authorized agency of the State (e.g. Office of the Louisiana Legislative Auditor, Inspector General's Office, etc.) and of the Federal Government has the right to inspect and review all books and records pertaining to services rendered under this contract for a period of five years from the date of final payment under the prime contract and any subcontract. The Contractor and subcontractor shall maintain such books and records for this five-year period and cooperate fully with the authorized auditing agency. Contractor and subcontractor shall comply with federal and state laws authorizing an audit of their operations as a whole, or of specific program activities.

25 FISCAL FUNDING

The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

26 NON-DISCRIMINATION

Contractor agrees to abide by the requirements of the following as applicable and amended: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964; Equal Employment Opportunity Act of 1972; Federal Executive Order 11246; the Rehabilitation Act of 1973; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; Age Discrimination Act of 1975; Fair Housing Act of 1968; and, Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and shall render services under this Contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Contract.

27 CONTINUING OBLIGATION

Contractor has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of the Contract and debarment from future Contracts.

Notwithstanding any provisions to the contrary herein, upon the termination of this Contract for any reason, the provisions of this Contract which by their nature require some action or forbearance after such termination, including but not limited to confidentiality, PHI, reporting, indemnity, insurance, records retention, and performance guarantees, shall survive such termination and be binding until any actions, obligations, and/or rights provided therein have been satisfied or released.

28 ELIGIBILITY STATUS

Contractor, and each tier of Subcontractors, shall certify that it is not on the List of Parties Excluded from Federal Procurement or Nonprocurement Programs promulgated in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

29 CONFIDENTIALITY

Contractor shall protect from unauthorized use and disclosure all information relating to the State's operations and data (e.g. financial, statistical, personal, technical, etc.) that becomes available to the Contractor in carrying out this Contract. Contractor shall use protecting measures that are the same or more effective than those used by the State. Contractor is not required to protect information or data (other than protected health information) that is publicly available outside the scope of this Contract; already rightfully in the Contractor's possession; independently developed by the Contractor outside the scope of this Contract; or rightfully obtained from third parties.

Under no circumstance shall the Contractor discuss and/or release information to the media concerning this Contract or any Plan Participant without prior express written approval of the OGB CEO or his/her delegee.

30 AMENDMENTS

Any modification to the provisions of this Contract shall be in writing, signed by all parties, and approved by the required authorities.

31 PROHIBITED USE OF FUNDS

Contractor shall not use funds received for services rendered under this Contract to urge an elector to vote for or against any candidate or proposition on an election ballot, or to lobby for or against any matter the Louisiana Legislature or a local governing authority is considering to become law. This provision shall not prevent the normal dissemination of factual information relative to any proposition on an election ballot or any matter being considered by the Louisiana Legislature or a local governing authority.

32 SUBCONTRACTORS

The Contractor may, with prior written permission from the State, enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and/or State Agency for any breach in the performance of the Contractor's duties. The Contractor will be the single point of contact for all subcontractor work.

33 PROHIBITION OF DISCRIMINATORY BOYCOTTS OF ISRAEL

In accordance with La. R.S. 39:1602.1, for any contract for \$100,000 or more and for any Contractor with five or more employees, Contractor, or any Subcontractor, shall certify it is not engaging in a boycott of Israel, and shall, for the duration of this Contract, refrain from a boycott of Israel.

The State reserves the right to terminate this Contract if the Contractor, or any Subcontractor, engages in a boycott of Israel during the term of the Contract.

34 DUTY TO DEFEND

Upon notice of any claim, demand, suit, or cause of action against the State, alleged to arise out of or be related to this Contract, Contractor shall investigate, handle, respond to, provide defense for, and defend at its sole expense, even if the claim, demand, suit, or cause of action is groundless, false, or fraudulent. The State may, but is not required to, consult with or assist the Contractor, but this assistance shall not affect the Contractor's obligations, duties, and responsibilities under this section. Contractor shall obtain the State's written consent before entering into any settlement or dismissal.

35 LIABILITY AND INDEMNIFICATION

35.1 CONTRACTOR LIABILITY

Contractor shall be liable to the State for any and all injury, death, damage, loss, destruction, damages, costs, fines, penalties, judgments, forfeitures, assessments, expenses (including attorney fees), obligations, and other liabilities of every name and description, which may occur or in any way arise out of any act or omission of Contractor, its owners, agents, employees, partners or subcontractors in the course and scope of performing Contractor's duties under this Contract.

35.2 FORCE MAJEURE

It is understood and agreed that neither party can foresee the exigencies beyond the control of each party which arise by reason of an Act of God or force majeure; therefore, neither party shall be liable for any delay or failure in performance beyond its control resulting from an Act of God or force majeure. The State shall determine whether a delay or failure results from an Act of God or force majeure based on its review of all facts and circumstances. The parties shall use reasonable efforts, including but not limited to, use of continuation of operations plans (COOP), business continuity plans, and disaster recovery plans, to eliminate or minimize the effect of such events upon the performance of their respective duties under this Contract.

35.3 INDEMNIFICATION

Contractor shall fully indemnify and hold harmless the State for direct damages (including the request of reimbursement of reasonable attorney fees in accordance with applicable procedural rules), which may occur or in any way arise out of any act or omission of Contractor, its owners, agents, employees, partners or subcontractors, but subject to the limitations set forth in Section 35.5. The Contractor shall not indemnify for the portion of any loss or damage arising from the State's act or failure to act.

The State acknowledges it is responsible for the information it provides to Contractor, including eligibility data and directives, upon which Contractor acts or fails to act as it relates to Plans'.

Contractor does not insure or underwrite the Plans' liability. Contractor has no duty or obligation to defend any legal action or proceeding brought to recover benefits under the Plan(s) subject to Section 35.1; however, Contractor will provide to the State immediate notice of any such legal action or proceeding of which Contractor is aware. Additionally, upon request and subject to any limitations described in this Agreement, Contractor will provide to the State any documentation in Contractor's possession that may reasonably relate to such claim for benefits and/or expenses.

35.4 INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor shall fully indemnify and hold harmless the State, without limitation, from and against damages, costs, fines, penalties, judgments, forfeitures, assessments, expenses (including attorney fees), obligations, and other liabilities in any action for infringement of any intellectual property right, including but not limited to, trademark, trade-secret, copyright, and patent rights.

When a dispute or claim arises relative to a real or anticipated infringement, the Contractor, at its sole expense, shall submit information and documentation, including formal patent attorney opinions, as required by the State.

If the use of the product, material, service, or any component thereof is enjoined for any reason or if the Contractor believes that it may be enjoined, Contractor, while ensuring appropriate migration and implementation, data integrity, and minimal delays of performance, shall at its sole expense and in the following order of precedence: (i) obtain for the State the right to continue using such product, material, service, or component thereof; (ii) modify the product, material, service, or component thereof so that it becomes a non-infringing product, material, or service of at least equal quality and performance; (iii) replace the product, material, service, or component thereof so that it becomes a non-infringing product, material, or service of at least equal quality and performance; or, (iv) provide the State monetary compensation for all payments made under the Contract related to the infringing product, material, service, or component, plus for all costs incurred to procure and implement a non-infringing product, material, or service of at least equal quality and performance. Until this obligation has been satisfied, the Contractor remains in default.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon the State's unauthorized: i) modification or alteration of the product, material or service; ii) use of the product, material or service in combination with other products not furnished by Contractor; or, iii) use of the product, material or service in other than the specified operating conditions and environment.

35.5 LIMITATIONS OF LIABILITY

This Section does not apply to Contractor's or Contractor's employees, etc. that are intentional or willful. Those acts or omissions are provided for in Sec. 35.1.

For all claims against the Contractor not governed by any other provision of this Section, regardless of the basis on which the claim is made, the Contractor's liability for direct damages shall be limited to two times the maximum dollar amount of the Contract.

The Contractor shall not be liable for incidental, indirect, special, or consequential damages, unless otherwise specifically enumerated herein, or in a resulting task order or purchase order mutually agreed upon between the parties. In no circumstance shall the State be liable for incidental, indirect, special, or consequential damages; lost profits; lost revenue; or lost institutional operating savings.

35.6 OTHER REMEDIES

If the Contractor fails to perform in accordance with the terms and conditions of this Contract, or if any lien or claim for damages, penalties, costs and the like is asserted by or against the State, then, upon notice to the Contractor, the State may pursue all remedies available to it at law or equity, including retaining monies from amounts due the Contractor and proceeding against any surety of the Contractor.

36 STAFF INSURANCE

For the duration of the Contract, Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the total Contract amount. For insurance requirements, refer to **Attachment V**, Insurance Requirements.

37 LICENSES AND PERMITS

Contractor shall secure and maintain all licenses and permits, and pay inspection fees required to do the work required to complete this Contract.

38 SECURITY

Contractor's personnel shall always comply with all security regulations in effect at the State's premises, and externally for materials belonging to the State or to the project. Contractor is responsible for reporting any breach of security to the State promptly.

39 CYBERSECURITY TRAINING

In accordance with La. R.S. 42:1267(B)(3) and the State of Louisiana's Information Security Policy, if the Contractor, any of its employees, agents, or subcontractors will have access to State government information technology assets, the Contractor's employees, agents, or subcontractors with such access must complete cybersecurity training annually, and the Contractor must present evidence of such compliance annually and upon request. The Contractor may use the cybersecurity training course offered by the Louisiana Department of State Civil Service without additional cost or may use any alternate course approved in writing by the Office of Technology Services.

For purposes of this Section, "access to State government information technology assets" means the possession of credentials, equipment, or authorization to access the internal workings of State information technology systems or networks. Examples would include but not be limited to State-issued laptops, VPN credentials to credentials to access the State network, badging to access the State's telecommunications closets or systems, or permissions to maintain or modify IT systems used by the State. Final determination of scope inclusions or exclusions relative to access to State government information technology assets will be made by the Office of Technology Services.

40 SECURITY/DUTIES TO MONITOR AND REPORT SECURITY EVENTS

Contractor's personnel shall always comply with all security regulations in effect at the State's premises, and externally for materials belonging to the State or to the project.

The Contractor and its subcontractors/vendors shall maintain safeguards and take commercially reasonable technical, physical, and organizational/administrative precautions to ensure that the State's data is protected from unauthorized access, use, and disclosure, in accordance with the State's current and published Information Security Policy found at https://doa.louisiana.gov/media/wvmhsr1r/louisiana_infosecpolicy.pdf.

The Contractor shall implement and maintain safeguards and monitoring plans to detect unauthorized access to or use of confidential information and any attempts to gain unauthorized access to confidential information. The Contractor and its subcontractors shall provide the Contract Monitor with notification as soon as reasonable practicable (not more than forty-eight (48) hours) of the Contractor's awareness of any Security Event, as defined in the Information Security Policy ("Security Event"), involving confidential information under this Contract and also report such Security Event to Louisiana's Information Security Team at 1.844.692.8019 (open 24 hours a day, 7 days a week) as soon as feasibly possible, not to exceed 48 hours following discovery of the Security Event. References to Security Event herein may include, but not be limited to, the following: attempted, suspected, or successful attempts at gaining unauthorized access to confidential information or the unauthorized use of a system for the processing or storage of confidential information, or the unauthorized use or disclosure, whether intentional or otherwise, of confidential information.

In the event of a Security Event, the Contractor shall consult and cooperate fully with the State regarding the necessary steps to address the factors giving rise to the Security Event and to address the consequences of such Security Event. Contractor shall also provide assistance performing a risk assessment of any Security Event that occurs, if requested by the State.

Nothing in this Contract shall be deemed to affect or limit any rights an individual participant may have under any applicable state or federal law concerning privacy rights or the unauthorized access, use, or disclosure of protected health information.

41 THIRD PARTY REQUESTS FOR RELEASE OF INFORMATION

Should third parties request the Contractor to submit confidential information to them pursuant to an audit or other request not initiated by the Contractor, public records request, subpoena, summons, search warrant or governmental order, the Contractor will notify the State immediately upon receipt of such request. Notice shall be forwarded via e-mail to the Chief Executive Officer and to Chief Operating Officer of OGB. The Contractor shall cooperate with the State with respect to defending against any such requested release of information or obtaining any necessary judicial protection against such release if, in the opinion of the State, the information contains confidential information which should be protected against such disclosure. The reasonable legal fees and related expenses incurred by the Contractor or its subcontractor in resisting the release of information under this provision shall constitute reimbursable expenses under this Contract. If such a request for payment of reasonable legal fees and related expenses is made pursuant to this

Contract, Contractor and the OGB will, after the request for payment is made, engage in good faith negotiations to determine the amount of the payment.

Legal service fees of law firms engaged pursuant to this Section may not be “marked up” (i.e., invoiced cost-plus) by the Contractor.

42 BUSINESS ASSOCIATE ADDENDUM

A Business Associate Addendum, Attachment II, shall be executed between the parties to this Contract to protect the privacy and provide security of Protected Health Information (“PHI”) and personally-identifiable information (“PII”) in compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and regulations promulgated thereunder, as amended from time to time.

OGB is a “Covered Entity” under HIPAA/HITECH. For the purposes of this Contract, Contractor is deemed to be a “Business Associate” of OGB as such term is defined by HIPAA and regulations promulgated thereunder, including in the Privacy Standard of the Federal Register, published on December 28, 2000. The parties have executed a Business Associate Addendum attached to this Contract as Attachment II and made a part of this Contract. The parties understand and agree that if additional agreements are required to be compliant as required under HIPAA and applicable laws, the parties will execute such agreements in a timely manner. Contractor agrees that its processes, systems, and reporting will be in full compliance with federal and state requirements, including but not limited to HIPAA, throughout the term of the Contract. Any fines or penalties imposed on any party related to Contractor’s or its subcontractors’ non-compliance will be the sole responsibility of Contractor. Contractor shall require its subcontractors’ and any other vendors’ processes, systems, and reporting to be in full compliance with federal and state requirements, including but not limited to HIPAA. Further, Contractor agrees that its organization, as well as its subcontractors/vendors, will comply with all HIPAA regulations throughout the term of the Contract with respect to any issue related to the OGB Contract, plans, or participants involving PHI/PII, including but not limited to participant services, complaints, appeals determinations, notification of rights, and confidentiality. Contractor shall affirm that all subcontractors or other vendors providing services for this Contract are HIPAA compliant. OGB shall be provided redacted copies of such subcontractor/vendor agreements upon request.

Notwithstanding any provision to the contrary, major delegated functions involving PHI and PII, including but not limited to claims processing, customer service, and any other services as provided by applicable Law, shall not be sourced outside of the territorial and jurisdictional limits of the fifty (50) United States of America.

43 CODE OF ETHICS

The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (La. R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this Contract. The Contractor agrees to immediately notify the State if potential violations of the Code of Governmental Ethics arise at any time during the term of this Contract.

44 SEVERABILITY

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

45 OUTSOURCING OF KEY INTERNAL CONTROLS

The State of Louisiana/State Agency will also require the Contractor and/or subcontractors, if performing a key internal control, to submit to an independent SSAE 18 SOC 1 and/or type II audit of its internal controls and other financial and performance audits from outside companies to assure both the financial viability of the (outsourced) program and the operational viability, including the policies and procedures placed into operation. The audit firm will conduct tests and render an independent opinion on the operating effectiveness of the controls and procedures.

The Contractor could be required to provide a quality control plan, such as third party Quality Assurance (QA), Independent Verification and Validation (IV &V), and other internal project/program reviews and audits.

These audits will require the Contractor to provide any assistance, records access, information system access, staff access, and space access to the party selected to perform the indicated audit. The audit firm will submit a final report on controls placed in operations for the project and include a detailed description of the audit firm's tests of the operating effectiveness of controls.

The Contractor shall supply the Department with an exact copy of their report by no later than October 31st of each calendar year. Contractor shall supply any material subcontractor's report, no later than 30 days after receipt of said report. Such audits may be performed annually during the term of the contract. The Contractor agrees to implement recommendations as suggested by the audits within three months of report issuance at no cost to the State Agency.

46 HEADINGS

Descriptive headings in this Contract are for convenience only and shall not affect the construction or meaning of contractual language.

47 ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Contract, (together with the Request for Proposals and addenda issued thereto by the State, the proposal submitted by the Contractor in response to the State's Request for Proposals, and any exhibits specifically incorporated herein by reference) constitutes the entire agreement between the parties with respect to the subject matter.

This Contract shall, to the extent possible, be construed to give effect to all provisions contained therein: however, where provisions are in conflict, first priority shall be given to the provisions of the Contract, excluding the Request for Proposals and the Proposal; second priority shall be given to the provisions of the Request for Proposals and amendments thereto; and third priority shall be given to the provisions of the Proposal.

48 CONTRACT APPROVAL

This Contract is not effective until executed by all parties and approved in writing by the Office of State Procurement, in accordance with LSA-R.S.39:1595.1.

49 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To DataPath Administrative Services: Ben Robbins, Director
DataPath Administrative Services
1601 Westpark Drive, Suite 9
Little Rock, AR 72204

To OGB: David Couvillion, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

David Couvillion, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

50 TRANSITION OF SERVICES AND DATA

Contractor shall comply with the provisions of this Contract, and other requests of OGB/State, to accomplish a timely transition of services without interruption of services to participants. During any such transition, Contractor will provide all of the same Records and data in the same format as provided during the term of the Contract, to OGB/State or its designee. Contractor further agrees that no dispute or objection it may have regarding the propriety of any transition of services by OGB/State will relieve Contractor of these obligations.

51 INSURANCE REQUIREMENTS FOR CONTRACT

See **Attachment V**.

The cost of such insurance shall be included in the total Contract amount.

(Signature Page Follows)

THUS DONE AND SIGNED on the date(s) noted below:

**STATE OF LOUISIANA
OFFICE OF GROUP BENEFITS**

BY: _____

NAME: David W. Couvillon

TITLE: Chief Executive Officer

DATE: _____

**DATAPATH ADMINISTRATIVE
SERVICES**

BY: _____

NAME: _____

TITLE: _____

DATE: _____

ATTACHMENT I: SCOPE OF SERVICES

Overview

The Contractor shall provide the following services:

- Proactive support in responding to plan participants;
- Educate employees on the advantages of FSAs and provide communications of available benefits with the goal of maximizing program enrollment;
- Notify plan participants of key plan deadlines, including but not limited to, end of plan year, end of grace period, and end of run out. A separate notification shall be sent for each deadline;
- Solid operational performance, demonstrated by timely adjudication and payment of claims, validation of purchases, and reliable and accurate information of participant accounts; customer service; and,
- COBRA administration in compliance with all OGB and regulatory requirements.

The Contractor must possess the knowledge, capability, and resourcefulness to effectively provide Flexible Spending Arrangement services in accordance with all federal, state, and any other applicable laws, regulations, policies, OGB requirements, etc. The Contractor will be responsible for successfully transitioning (in conjunction with OGB and the incumbent contractor) to being the party responsible for completing all required services. The Contractor shall provide competent and qualified staff to work on the scope of services under the Contract.

The Contractor will be responsible for ensuring the accuracy, timeliness, and completion of all tasks assigned under the resulting Contract. OGB reserves the right to modify or delete the tasks and services listed prior to and during the term of the Contract, subject to the approval of the OGB CEO, Office of State Procurement, and any other approval required by law.

Should the State request additional requested services, services shall be agreed upon by in writing by both parties and by amendment to this contract. In performance of additional requested services, the Contractor shall be entitled to rely upon instructions, authorization and approvals provided by the State to Contractor. The State will furnish the information necessary for the Contractor to perform the additional requested services. Such information will be provided to Contractor in the time and in the manner agreed to by both parties.

At a summary level, these tasks include:

1. Implementation/Transition of FSA and COBRA Administration Services;
2. General Support Services;
3. FSA Administration Services; and
4. COBRA Administration Services.

Below is a list of minimum services the Contractor shall be responsible for providing pursuant to the Contract:

Task 1: Implementation Services

1. Assign a dedicated implementation team to manage the implementation process and the transition of services from the incumbent contractor.
2. Work with OGB and incumbent contractor to transfer competencies and operational expertise essential to administering OGB's FSA plans and COBRA with minimal interruption to Plan Participants.
3. Provide an implementation credit to OGB in the amount of \$50,000 to offset OGB's expense associated with the RFP, transition, and ongoing services. In no case shall OGB be required to repay all or a portion of the used or unused implementation credit. Contractor will track such services and provide OGB a quarterly report, upon request, of current utilization and remaining balance, if any, of the implementation credit. Such credits applied to the implementation credit of \$50,000.00 for the RFP, transition, and ongoing service will be mutually agreeable to OGB and Contractor. Any remaining balance will not expire and will be available for use during the term of this Contract and any subsequent amendments to or extensions of the Contract.
4. Facilitate system programming including, but not limited to, data collection from OGB; file transfer set-up between OGB and Contractor; and data transfer and mapping. If Contractor requires file mapping and/or subsequent updates, this service will be provided by Contractor at no additional cost to OGB. **Files must be sent electronically to the OTS MOVEit DMZ Secure FTP server utilizing a security file transport protocol; the preference is FTPS. All files must be encrypted using Public Key Infrastructure (PKI) with a prior exchange of Public Key(s), commonly referred to as PGP encryption. The encrypted file(s) must have an extension of "pgp." The encryption key must have an expiration of no longer than five (5) years from the creation date and be approved by the OTS InfoSec Team. All files must be encoded as an ASCII text file prior to encryption.**
5. Provide file data in a layout format designated by OGB. Contractor will need to accept OGB's standard file layout. File layouts will be provided at no cost to OGB. **The file transfer protocol and the file encryption must meet OTS Information Security Requirements as posted in the OTS Information Security Policy. Files must be sent electronically to the OTS MOVEit DMZ Secure FTP server utilizing a security file transport protocol; the preference is FTPS. All files must be encrypted using Public Key Infrastructure (PKI) with a prior exchange of Public Key(s), commonly referred to as PGP encryption. The encrypted file(s) must have an extension of "pgp." The encryption key must have an expiration of no longer than five (5) years from the creation date, key strength is highly suggested 4096 with a minimum allowed 2048, key must include a valid email address and be approved by the OTS InfoSec Team. All files must be encoded as an ASCII text file prior to encryption.**
6. Conduct project status implementation meetings with the Contract Monitor on-site, or via teleconference.
7. Perform comprehensive systems testing and quality assurance audits, with results reported to OGB prior to the "Go-Live" date, at no additional cost.
8. Ensure successful and timely completion of all tasks necessary to begin performance of the Contract on January 1, 2022 at 12:00 am CT.

Task 2: General Support Services

1. Adhere to all provisions outlined and requested in the **RFP Attachment V and Contractor's Proposal Response 3.1-3.4: Approach and Methodology Technical Questionnaire** and **RFP Attachment VI and Contractor's Proposal Response 2.1: Company Background and Experience Technical Questionnaire**.
2. Provide knowledgeable staff to attend statewide annual/special enrollments and any other informational meetings as requested by OGB, at Contractor's expense. Staff in attendance at statewide annual/special enrollments and informational meetings must be Contractor's employees not subcontractors.
3. Provide an Account Executive and/or Operational Account Manager who will provide day-to-day management of project tasks and activities, coordination of Proposer's employees, and possess the technical and functional knowledge to direct all aspects of the project. The Account Executive and/or Operational Account Manager must be knowledgeable about all aspects of the FSA Plan and COBRA administration and accessible by phone or email during regular working hours to address issues posed by the OGB staff. The Account Executive must have at least one (1) back-up staff member designated to handle the overall responsibility of OGB. When the Account Executive will be out of the office for more than eight hours, the designated back-up staff member will be available and available to address all questions and report requests during the Account Executive's absence. The designated back-up staff member will be identified by name, and phone number prior to the account representative leaving the office.
4. Provide advisory and compliance services to OGB regarding actual or pending state and federal laws, regulations, policies, procedures and potential impact to FSA and COBRA administration.
5. Meet with OGB staff onsite or via teleconference, on a quarterly basis to review and evaluate program administration.
6. Provide 24/7 access to an online portal in compliance with the Patient Protection Affordable Care Act ("PPACA") Section 1557 and any other regulatory requirement, except for scheduled maintenance to FSA, and OGB for activities such as claim submission, account monitoring (i.e., approved claims, pending claims, election amount, available balance, etc.), plan benefits and eligibility information, payment history, communications requested and approved by OGB, as well as any other information required by state and federal laws. Reporting capabilities are required for OGB. This online portal must include adequate encryption to guarantee protection of the participant's privacy and confidential data (i.e., PHI, personal data, and banking information, as applicable). All outages in excess of one (1) hour should be promptly reported to the Contract Monitor.
7. Provide a website that is specific to OGB that is in compliance with all applicable anti-discrimination laws and the Patient Protection Affordable Care Act ("PPACA") Section 1557 and any other regulatory requirement.
8. Maintain a service disruption plan or procedure to continue customer service activities and all other business operations when existing service is temporarily unavailable due to either scheduled or unforeseen events (i.e., repairing/restoring utility or power supply, upgrading phone systems, and other events). OGB must be notified in advance for scheduled

disruptions and within twenty-four (24) hours of occurrence for other events not related to the online portal.

9. Investigate any suspicious activity, related to administration of FSA and COBRA, which it believes to be fraudulent or abusive whenever detected by Contractor or brought to the attention of the Contractor by OGB or other persons. Contractor shall have established procedures to aggressively monitor and proactively search for cases and potential cases of fraud and abuse including providing OGB with a quarterly report of fraud activities and discoveries relating to the contract.
10. Administration of FSA for participants from at least seventy-two (72) payroll systems within the State of Louisiana. The successful proposer will not be required to interface with 72 payroll systems, but is only required to interface with OGB's system.
11. Furnish a dedicated toll-free telephone number for incoming customer service calls in compliance with the PPACA Section 1557, including telephone technology for the hearing impaired and multi-lingual support. The call center must be staffed and available to receive calls Monday through Friday from 8:00 am to 5:00 pm, Central Standard Time ("CT").
12. Upon request of the Plan Participant, provide printed materials in a medium widely accepted and in compliance with all applicable anti-discrimination laws.
13. Provide all printed material in electronic format with final version submitted to OGB in PDF file format.
14. Assist OGB in complying with grievance and appeal procedures. The Contractor will be responsible for resolution of appeals in accordance with all applicable law.
15. Upon OGB request, the Contractor will be required to work with the appointed OGB actuary, other selected OGB contractors, employees from the Division of Administration, and the OGB staff for management of the program.
16. Notify the applicable state authority (i.e., state treasurer, etc.) and escheat any unclaimed property upon the expiration of the statutory time period for escheatment.
17. Upon request, provide digital recordings of phone calls within two (2) business days of request.

Task 3: FSA Administration Services

1. Subject to OGB's customization and approval, Contractor will prepare and distribute all FSA materials, including but not limited to customized educational materials; claim processes and forms; debit cards which shall include a customized welcome kit that provides FSA coverage information and a website link to the OGB Flexible Benefits plan summary; covered expenses; explanations of reimbursements and denials of reimbursements; appeals procedure, and monthly account statements for annual/special enrollment and FSA participants. All health care FSA communications must be in compliance with PPACA Section 1557. Contractor will be responsible for all costs associated with producing, printing, distributing, and mailing such materials using first-class mail. All printed material shall be provided in electronic format with final version submitted to OGB in PDF file format.

2. Provide a secure online portal to accept individual contribution files and termination notifications from participating agencies and OGB.
3. Process and verify claims requests in accordance with the plan design of OGB, all applicable mandatory provisions of the Internal Revenue Code governing such arrangements, including Section 125 (Cafeteria Plans) and any other applicable regulations, rules, and guidance issued by the Internal Revenue Services (“IRS”).
4. Provide and maintain reliable and accurate information of plan participant FSA accounts for purposes of substantiating FSA expenditures and for purposes of curing ineligible expenses. This includes but is not limited to maintaining and updating plan participant information such as employment/agency records. At OGB’s request, Contractor will provide the plan participant FSA account information to OGB as ad hoc reporting.
5. Recoup funds from participants who have failed to provide documentation needed to substantiate the claim(s) for debit card transactions.
6. Recoup funds from participants who have provided documentation that does not substantiate claim(s) for debit card transactions.
7. Establish and maintain files on all FSA participants. The files on all FSA participants should include but not be limited to:
 - claims paid and/or denied,
 - accurate account balances,
 - timely activation and deactivation of debit cards,
 - responses to participant inquiries, and
 - notice of action(s) taken.
8. Notify participants, in writing, of the reason for denial of any claim.
9. Provide the option for reimbursements using either check or direct deposit to the participant’s account.
10. Provide participants with a debit card option to pay for eligible claim expenses. Debit cards, including replacement cards, will be provided to FSA participants and made available for spouse/dependents upon request, at no charge.
11. Provide FSA debit card holders with real-time emails of debit card transaction notifications. The notification should include, but is not limited to: transaction is fully substantiated, no further action is necessary; transaction is not fully substantiated, please submit documentation; reminder that a transaction is not fully substantiated, card holder has “x” number of days to submit documentation; or card holder has failed to submit substantiation, card is deactivated. Contractor shall prepare, print, and distribute letters to debit card holders with the above information when the debit card holder does not have an email address. Any such notifications must be in compliance with PPACA Section 1557.
12. Provide a funding notification to OGB detailing the approved claims and debit card transactions scheduled for reimbursement to receive FSA contributions from OGB.

Contractor may request daily or weekly transfer of funds for debit card transactions and approved claims. **Under no circumstance will OGB prefund the Contractor's account.**

13. Establish and maintain a separate depository account to hold funds provided to Contractor by OGB for payment of plan benefits. Upon termination of this contract, Contractor shall return all OGB funds remaining in the account within sixty (60) calendar days.
14. Prepare, print and mail FSA account statements to participants on a quarterly basis showing funds contributed, claims paid, and claims received but not paid. Contractor may distribute account statements electronically if participant elects such method of transmission. All such communications must be in compliance with PPACA Section 1557.
15. Prepare, print, and mail end-of-plan-year warning notices to participants regarding Grace Period and Run-Out Period for claim submission and subsequent forfeiture of any remaining contributions. Contractor may distribute notices electronically if participant elects such method of transmission. Participant's election to receive notices electronically must be documented and retained. OGB reserves the right to request copies of the participant's election.
16. Reconcile funds and prepare monthly accounting statement including funds received, amount of claims paid by plan, plan year, amount of substantiated and unsubstantiated claims, account balance, and expense detail.
17. Perform semi-annually all federally required Section 125 nondiscrimination tests, reporting, filing, and amendments as required by law. These services include accepting nondiscrimination spreadsheets from each OGB agency participating in OGB coverage, performing the testing services, and providing resulting semi-annual nondiscrimination testing results to OGB.
18. Recommend steps to bring FSA plans in compliance if any plan fails any one of the federally required Section 125 nondiscrimination tests and assist OGB with implementation of any corrective action.
19. Administer eligible Grace and Run-Out Periods and process run-on claims for the incumbent contractor, if requested by OGB.
20. Administer eligible Grace Period and process subsequent run-off claims each calendar year. At OGB's request, the handling of such claims may be transitioned to a successor appointed by OGB prior to the end of the run-off period, and the Contractor shall cooperate fully in transitioning such services to any successor appointed by OGB.
21. Assist OGB with development of related employee benefit policies, procedures, and summary plan documents and ensure all such documents remain in compliance with all applicable regulations.
22. Provide paper notices to plan participants whose emails bounce back.
23. Provide outreach to enrolled OGB agencies when Contractor receives notice that there are no plan participant contributions submitted for plan participants that are enrolled in health and limited FSA plans. This service includes monitoring account balance detail reports that is submitted to Contractor and sending alerts and written notices to OGB agencies when there is no contribution listed for enrolled plan participants.

Task 4: COBRA Administration Services

1. Administer all aspects of COBRA, including special limited health care FSA plans, as required by the U.S. Department of Labor and any other applicable federal or state agency, including compliance with all applicable state and federal regulations. Contractor will also handle federally subsidized COBRA benefits.
2. Prepare, print, and mail all COBRA communications (i.e., COBRA specific rights notice letter, QLE notice, election notice/enrollment applications, premium billing, cancellation notices, rate change letters, termination letters, unavailability, delinquent payments, payment deadlines, etc.) using first-class mail. All communications are subject to approval and customization by OGB prior to distribution. Contractor will be responsible for all costs associated with producing, printing, and mailing of such communications. All COBRA communications must be in compliance with PPACA Section 1557, <https://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>.
3. Provide technical guidance and administrative support to OGB regarding compliance with COBRA regulations and any other pertinent federal laws, rules, and regulations.
4. Determine eligibility of terminated employees and/or COBRA participants and the length of COBRA continuation coverage for second QLEs.
5. Track eligibility, elections, payments, cancellation dates due to nonpayment and/or expiration dates and timely notify OGB of such.
6. Invoice, collect and maintain premium payment records for COBRA participants and remit payments to OGB, including the two percent (2%) administration fee, with a premium remittance report on a monthly basis. Do not report to OGB as paid any participant that did not remit the required payment amount.
7. Maintain communications with COBRA Participants concerning eligibility for Medicare, Plan changes, and/or premium changes.
8. Resolve all servicing issues related to the administration of services, including premium received and remitted, enrollment elections and discrepancies, address changes, etc.
9. Accommodate various COBRA premium payment structures that OGB currently has in place. **OGB currently offers multiple medical plans with more than one (1) carrier.**
10. Determine cancellation dates due to nonpayment or expiration of coverage.
11. Submit electronic eligibility files and premium payments to OGB and its benefit administrators using an agreed upon schedule.
12. Offer additional insurance offerings through the marketplace for COBRA participants.
13. Implement and administer the current COBRA plans by January 1, 2022.
14. Provide OGB with the ability to run standard reports such as the following: detailed participant reporting, termination reporting, QLE reporting, new hire COBRA notices mailed each month, individuals who elect and decline continuation coverage per month, and Medicare eligible participants.

15. Provide integrated COBRA systems that generate both health and FSA COBRA notices for applicable QLE. The FSA COBRA notices will utilize information maintained in the Contractor's FSA system.

1.1 Deliverables

The deliverables listed in this section are the minimum required from the Contractor.

The Contractor shall provide the following deliverables:

Deliverable	Description	Frequency of Submission
General		
Independent Assurances	Contractor and its subcontractors performing key delegated functions shall each supply OGB with an exact copy of the SOC 1, Type II report and/or SOC 2, Type II report (as agreed by OGB) resulting from the SSAE 18 engagement or other assurances as described in Section 45 of the contract.	Contractor shall supply report by no later than October 31 st of each calendar year. Contractor shall supply any material subcontractor's report, no later than 30 days after receipt of said report.
Unclaimed Property	A copy of the documentation provided to the applicable state authority for escheatment of unclaimed property.	Within thirty (30) calendar days from submission to the applicable state authority.
Fraud and Abuse	Report detailing the financial impact of identified fraud and abuse.	Within thirty (30) calendar days after the close of each quarter.
Performance Guarantees	A detailed monthly report including metrics for the performance guarantees set forth in the contract.	Within thirty (30) calendar days after the close of each month.
Grievance Log	A detailed report listing all appeals and grievances filed during the month and the current status of each.	Within fifteen (15) calendar days after the close of each month.
Ad Hoc Reports	OGB-specific ad hoc reports that will include data related to Contractor's operating performance under the contract.	Within thirty (30) calendar days of request from OGB.
FSA Administration		
FSA Contribution Replenishment Report	Detailed listing in a mutually agreeable format of approved claims and debit card transactions scheduled for reimbursement.	On a daily basis.

Deliverable	Description	Frequency of Submission
FSA Accounting Statement	FSA accounting statement including name, identification number, election amount, claim type (i.e., manual, debit card transaction, etc.), contribution amounts received from OGB and paid out per month, cumulative year-to-date claim payments, and available balance.	Within fifteen (15) calendar days after the close of each month.
Forfeited FSA Participant Contributions	Forfeited FSA participant contributions remittance report including, name, identification number, election amount, cumulative year-to date paid claims, total of denied claims, outstanding balance, and remaining balance, along with any forfeited funds.	Calendar Year 1: Due June 17, 2023, for the period of January 1 – December 31, 2022 Calendar Year 2: Due June 17, 2024, for the period of January 1 – December 31, 2023 Calendar Year 3: Due June 17, 2025, for the period of January 1 – December 31, 2024
Email Bounce Back Report	Submit a report of listed email bounce back occurrences. Report must contain the details of steps taken to remedy the failure.	Within fifteen (15) calendar days after the close of each month.
Returned Mail Report	Submit a report listing returned mail. Report must contain the details of steps taken to remedy the failure.	Within fifteen (15) calendar days after the close of each month.
Nondiscrimination Testing	Provide the results of the semi-annual nondiscrimination testing results to OGB.	Within thirty (30) calendar days of each semi-annual report.
Flexible Benefits Plan Summary	Provide FSA Plan Participants the Flexible Benefits Summary on an annual basis according to OGB's desired method of communication.	Within thirty (30) calendar days after the end of each calendar year.
COBRA Administration		
COBRA Accounting Statement	COBRA eligibility and payment status report including all COBRA participants for whom coverage is continued, including such information as name, identification number, effective date of coverage, plan, coverage status, amount and dates of payments made, date through which premium paid, and any outstanding premiums due.	Within fifteen (15) calendar days after the close of each month.

Deliverable	Description	Frequency of Submission
COBRA Premiums	Remit 100% of collected COBRA premiums (including 2% administrative fee collected from participants) to OGB with a premium remittance report. The content and format of the remittance report are subject to OGB's prior approval.	Within ten (10) business days after the close of each month.

1.2 Performance Guarantees

The following performance guarantees are the minimum acceptable standards for the contract.

METRIC	PERFORMANCE STANDARD	PENALTY PERCENT AT RISK ANNUALLY
General		
Independent Assurances	Contractor and its subcontractors performing key delegated functions shall each supply OGB with an exact copy of the SOC 1, Type II report and/or SOC 2, Type II report (as agreed by OGB) resulting from the SSAE 18 engagement or other assurances as described in Section 45 of the Contract.	\$1,000 per day
First Call Resolution	90% of participant inquiries will be resolved in the first call.	2%
Written Inquiry Timeliness	98% of all written inquiries will be answered within seven (7) business days. Autoreply emails are excluded from the calculation of this performance guarantee.	2%
Abandoned Call Rate	Less than or equal to 5% of participant calls abandoned after being connected for at least thirty (30) seconds.	2%
Average Speed to Answer	Average answer time is sixty (60) seconds or less.	2%
FSA Administration		
Forfeited FSA Participant Contributions	100% of forfeited FSA participant contributions must be returned to OGB no later than June 17 th of each calendar year.	4.5%
Claims Processing	98% of electronic and non-electronic claims paid within two (2) business days of receipt.	3.5%

Debit Cards	100% of debit cards mailed to FSA participants within fourteen (14) business days of Contractor's receipt of an accurate and usable eligibility file. The annual enrollment file must be submitted and processed by December 1st in order for FSA participants enrolling during the annual enrollment period to receive debit cards by January 1st.	3.5%
COBRA Administration		
COBRA Premium Processing	100% of COBRA premiums remitted to OGB within ten (10) business days after the end of each month in which the premium(s) were received.	3.5%
COBRA Initial Notice	100% of initial notices must be mailed within forty-five (45) calendar days from receipt of accurate and usable eligibility file from OGB for COBRA participants first becoming covered on or after January 1, 2022.	3%
COBRA Termination Notice	100% of COBRA termination notices mailed within seven (7) business days of Contractor's determination.	3%
COBRA Election Notice	100% of COBRA election notices mailed within three (3) business days of notification of a QLE.	3%
COBRA Unavailability Notice	100% of COBRA unavailability notices mailed within seven (7) business days of notification of a QLE.	3%

These metrics shall be reported quarterly and reconciled on an annual basis unless another time period is agreed upon by OGB and Contractor. OGB, at its sole discretion, shall have the ability to modify the Performance Guarantees each contract year. Contractor will also be subject to "per day" fees for Independent Assurance Reporting Performance Guarantees.

Any penalties owed to OGB shall be paid within ninety (90) days after the end of the calendar year; penalties owed by the Contractor will be paid automatically and will not need to be requested. Implementation performance guarantees will be measured and reported within ninety (90) days after the agreed upon implementation date.

Performance Guarantees: The Contractor will be subject to the performance standards and those detailed in Attachment I, Scope of Services.

Audit: OGB reserves the right to audit performance guarantee reports on an annual basis. A third party may be utilized to perform this audit without limitation of the scope of the audit.

Measurement Periods: The first period to be measured shall be calendar year 2022 also known as January 1, 2022 through December 31, 2022. The second period will be for calendar year 2023,

and the third period for calendar year 2024. The fourth period, subject to the renewal option, will be for calendar year 2025, and the fifth period, subject to the renewal option, will be for calendar year 2026. If the Performance Guarantees are effective for less than a full calendar year, the penalty payment amounts will be prorated for the portion of the Measurement Period.

ATTACHMENT II: BUSINESS ASSOCIATE ADDENDUM

State of Louisiana, Office of Group Benefits

HIPAA Business Associate Addendum

THIS HIPAA BUSINESS ASSOCIATE ADDENDUM (the “Addendum”) is entered into effective the _____ day of October, 2021 (the “Effective Date”), by and between DataPath Administrative Services (“Business Associate”) and the State of Louisiana, Office of Group Benefits, on behalf of itself and its affiliates, if any (individually and collectively, the “Covered Entity”), and adds to the Agreement or Contract dated October __, 2021, entered into between Covered Entity and Business Associate (the “Agreement”).

WHEREAS, pursuant to the Agreement, Business Associate performs functions or activities or arranges for such on behalf of Covered Entity involving the use and/or disclosure of protected health information that Business Associate accesses, creates, receives, maintains or transmits on behalf of Covered Entity (“PHI”); and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI in compliance with the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HHS”), as amended from time to time including by the Health Information Technology for Economic and Clinical Health Act (“HITECH”) (collectively “HIPAA”).

Business Associate, therefore, agrees to the following terms and conditions set forth in this Addendum.

1. Definitions. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms are defined under HIPAA.
2. Compliance with Applicable Law. The parties acknowledge and agree that, beginning with the Effective Date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA and other applicable laws, regulations, and record retention policies, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is effective.
3. Uses and Disclosures of PHI. Except as otherwise limited in the Agreement or this Addendum, Business Associate may, and shall ensure that its directors, officers, employees, contractors, subcontractors, vendors, and agents use or disclose PHI only as follows:
 - (a) Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (b) Business Associate may disclose PHI for the proper management and administration, or to carry out the legal responsibilities, of the Business Associate, provided that disclosures are required by HIPAA, or Business Associate obtains reasonable written assurances from the person or entity to whom the PHI is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity, and the person or entity notifies the Business Associate of any

instances of which it is aware or suspects in which the confidentiality of the PHI has been breached. In such case, Business Associate shall report such known or suspected breaches to Covered Entity as soon as possible and in accordance with timeframes set forth in this Addendum.

- (c) Business Associate, upon written request by Covered Entity, may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B). For purposes of this Section, Data Aggregation means, with respect to PHI, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another Covered Entity to permit data analyses that relate to the health care operations of the respective Covered Entities. It is not contemplated that Business Associate will perform Data Aggregation services with PHI received from Covered Entity without express prior written permission of Covered Entity.
- (d) Business Associate may completely de-identify any and all PHI created or received by Business Associate under this Agreement; provided, however, that the de-identification conforms to the requirements of HIPAA and in accordance with any guidance issued by the Secretary. Such resulting de-identified information would not be subject to the terms of this Addendum.
- (e) Business Associate may create a Limited Data Set, as defined in HIPAA, and use such Limited Data Set pursuant to a Data Use Agreement that meets the requirements of HIPAA, provided Covered Entity agrees to such creation and use of a Limited Data Set.

4. Required Safeguards to Protect PHI. Business Associate shall implement appropriate safeguards in accordance with HIPAA to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of the Agreement. To the extent that Business Associate creates, receives, maintains, or transmits electronic PHI (“ePHI”) on behalf of Covered Entity, Business Associate shall comply with the HIPAA Security Rule as of the relevant effective date and further, shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI.

5. Reporting to Covered Entity. Business Associate shall report without unreasonable delay but no later than five (5) business days from notice of any knowledge to Covered Entity any use or disclosure of PHI not provided for by this Addendum, including breaches of unsecured PHI in accordance with the Breach Notification Rule (45 CFR Subpart D), and any security incident of which it becomes aware. Business Associate shall cooperate with Covered Entity’s investigation, analysis, notification and mitigation activities, and shall be responsible for all costs incurred by Covered Entity for those activities.

6. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum, including, but not limited to, compliance with any state law or contractual data breach requirements.

7. Agreements with Third Parties. Business Associate understands and agrees that any agent or subcontractor that may create, receive, maintain or transmit PHI on behalf of Business Associate must comply with all applicable laws and regulations as are applicable to Covered Entity in regard to PHI. Business Associate shall enter into a written agreement with any agent or subcontractor of Business Associate that will create, receive, maintain, or transmit PHI on behalf of Business

Associate. Pursuant to such agreement, the agent or subcontractor shall agree to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this Addendum with respect to such PHI. Such agreements with Business Associates agents and subcontractors shall be provided to Covered Entity upon request and subject to audit hereunder.

8. Access to Information. Within ten (10) days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 CFR 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall forward such request to Covered Entity within five (5) days.

9. Availability of PHI for Amendment. Within ten (10) days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 CFR 164.526.

10. Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

11. Accounting of Disclosures. Within ten (10) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual, Business Associate shall make available to Covered Entity information collected in accordance with Section 10 of this Addendum, to permit Covered Entity to respond to the request for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within five (5) days forward such request to Covered Entity. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

12. Other Obligations. To the extent that Business Associate is to carry out Covered Entity's obligation under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to the Covered Entity in the performance of such obligation.

13. Availability of Books and Records. Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity and to the Secretary for purposes of determining Covered Entity's compliance with HIPAA for the term of this Agreement and for six years following the final payment under the Agreement.

14. Effect of Termination of Agreement. Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to Covered Entity, at its expense and within sixty (60) days of the termination, all PHI owned by or belonging to Covered Entity as

provided in the Agreement, and shall retain no copies of the PHI unless required by law. In the event that the law requires Business Associate to retain copies of PHI, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes required by law, for so long as Business Associate maintains such PHI. This provision includes, but is not limited to, PHI: (a) received from Covered Entity; (b) created or received by Business Associate on behalf of Covered Entity; and, (c) in the possession of subcontractors or agents of Business Associate. This provision includes PHI in any form, recorded on any medium, or stored in any storage system. In addition, the Business Associate shall return or destroy any books, records, or other documents required by the Agreement, at the request of Covered Entity.

15. *Breach of Contract by Business Associate.* In addition to any other rights Covered Entity may have in the Agreement, this Addendum or by operation of law or in equity, Covered Entity may (i) immediately terminate the Agreement if Covered Entity determines that Business Associate has violated a material term of this Addendum, or (ii) at Covered Entity's option, permit Business Associate to cure or end any such violation within the time specified by Covered Entity. Covered Entity's exercise of its option to permit Business Associate to cure a breach of this Addendum shall not be construed as a waiver of any other rights Covered Entity has in the Agreement, this Addendum or by operation of law or in equity.

16. *Indemnification.* Business Associate shall defend, indemnify and hold harmless Covered Entity and its officers, trustees, employees, subcontractors and agents from and against any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by Covered Entity arising from a violation by Business Associate or its subcontractors of Business Associate's obligations under this Addendum or HIPAA. This Section 16 of the Addendum shall survive the termination of the Agreement or this Addendum.

17. *Exclusion from Limitation of Liability.* To the extent that Business Associate has limited its liability under the terms of the Agreement, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business Associate's breach of its obligations relating to the use and disclosure of PHI. This Section 17 of the Addendum shall survive the termination of the Agreement and this Addendum.

18. *Injunctive Relief.* Business Associate acknowledges and stipulates that the unauthorized use or disclosure of PHI by Business Associate or its subcontractors while performing services pursuant to the Agreement or this Addendum would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages and injunctive relief, together with the right to recover from Business Associate costs, including reasonable attorneys' fees, for any such breach of the terms and conditions of the Agreement or this Addendum.

19. *Third Party Rights.* The terms of this Addendum are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and Covered Entity.

20. *Owner of PHI.* Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate pursuant to the terms of the Agreement.

21. Changes in the Law. Covered Entity may amend either the Agreement or this Addendum, as appropriate, to conform to any new or revised federal or state legislation, rules, regulations, and records retention policies to which Covered Entity is subject now or in the future including, without limitation, HIPAA.

22. Judicial and Administrative Proceedings. In the event Business Associate receives a subpoena, court, or administrative order, or other discovery request or mandate for release of PHI, other than a standard medical records request/medical records subpoena, Business Associate shall notify Covered Entity of such within five (5) business days by providing a copy of such and any applicable comments. Covered Entity shall have the right to control Business Associate's response to such request.

23. Conflicts. If there is any direct conflict between the Agreement and this Addendum, the terms and conditions of this Addendum shall control.

IN WITNESS WHEREOF, the parties have executed this Addendum effective the day and year first above written.

**STATE OF LOUISIANA
OFFICE OF GROUP BENEFITS**

By: _____
Signature

Printed Name

Title: Chief Executive Officer

Date: _____

**DATAPATH ADMINISTRATIVE
SERVICES**

By: _____
Signature

Printed Name

Title: _____

Date: _____

ATTACHMENT III: RECORDS RETENTION SCHEDULE

Records Retention Schedule

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Http://www.sos.la.gov

SS ARC 932 (10/19)

Agency No 003.005 Agency / Division / Section Division of Administration / Office of Group Benefits / Executive

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Http://www.sos.la.gov

Page 1 of 13 R2019-ff00 CFM

Agency No	Agency / Division / Section	Division of Administration / Office of Group Benefits / Executive				Http://www.sos.la.gov			
Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total Retention					
1	Internal Audit Records/Reports	ACT + 2 FY	3 FY	ACT + 5 CY	M	S	Y	V	ACT = until the end of the FY in which the audit report is issued. ^{AA}
2	LLA Audit Records/Reports	ACT + 2 FY	3 FY	ACT + 5 CY	M	S	Y	V	ACT = until the end of the FY in which the audit report is issued. ^{AA}
3	Group Benefits Policy and Planning Board Meeting Presentations	ACT + 10 CY	0	ACT + 10 CY	P	S	N	I	ACT = until the end of the CY in which the presentations were created. ^{AA}
4	Group Benefits Policy & Planning Board Reports	ACT + 10 CY	0	ACT + 10 CY	M	S	N	V	ACT= Until end of CY in which OGB ceases to exist. ^{AA}
5	Group Benefits Policy & Planning Board Meeting Minutes	PERM	0	PERM	M	R	N	V	
6	Group Benefits Estimating Conference Meeting Presentations	ACT + 10 CY	0	ACT + 10 CY	P	S	N	I	ACT = until the end of the CY in which the presentations were created. ^{AA}
7	Group Benefits Estimating Conference Meeting Minutes	PERM	0	PERM	M	R	N	V	
8	OGB 5-year Strategic Plan	ACT + 5 FY	0	ACT + 5FY	P	S	N	V	ACT = until the end of the FY in which the Strategic plan was drafted. ^{AA}
9	OGB HIPAA Compliance Records	ACT + 6 CY	0	ACT + 6 CY	M	S	N	V	ACT = until the end of the CY in which the records were created or received. ^{AA}
Permitted Retention Period Abbreviations									
ACT - Active Period (when used define term in remarks column)									
FY- Fiscal Year (July 1- June 30)									
CY - Calendar Year (Jan 1 - Dec 31)									
AY - Academic Year (Aug 1 - July 31)									
FFY - Federal Fiscal Year (Oct 1 - Sept 30)									
MO - Months WK - Week (Mon-Sun) DY - Day(s)									
PERM - Permanent									
** = May be part of an Imaging/Electronic Exception.									
AA = May be part of an Imaging/Electronic Survey.									
					Security Status Codes		State Records Center Use		Agency Abbreviations LLA = Louisiana Legislative Auditor OGB = Office of Group Benefits HIPAA = Health Insurance Portability and Accessibility Act
					P - Public Record		Y - Yes		
					M - May Contain Confidential Information		N - No		
					C - Confidential Information				
					Archival Processing Codes		Vital Record Identification Code		
					A - Transfer to State Archives		V = Vital		
					R - Retain in Agency Archives		I = Important		
					S - Review by State Archives		U = Useful		
					O - Other (Specify in Remarks)				

Agency Approval *[Signature]*

Date Signed 1-7-2020

Secretary of State, State Archives & Records Services *[Signature]*

Date Approved 1-8-2020

Records Retention Schedule

SS ARC 932 (10/19)

Agency No	Agency / Division / Section	Division of Administration / Office of Group Benefits / Administration -- Finance	Retention Period			Security	Archival	State Records Center	Vital	Remarks
			In Office	In Storage	Total					
003.005										Indicate Use of Form __ ORIGINAL SUBMISSION __ RENEWAL __ REPLACEMENT PAGE __ ADDENDUM PAGE
Item Number	Records Series Title									
1	OGB Budget Request Documents/Records	ACT + 5 FY	0	ACT + 5 FY	P	R	N	V	ACT = until the end of the FY in which created**	
2	Actuarial Revenue/Expenditure Line-Item Projections	ACT + 5 FY	0	ACT + 5 FY	M	S	N	V	ACT = until the end of the FY in which received**	
3	Actuarial Premium Rate Schedules	ACT + 5 CY	0	ACT + 5 CY	P	S	N	V	ACT = until the end of the FY in which received**	
4	Official Premium Rate Schedules	ACT + 10 CY	0	ACT + 10 CY	P	S	N	V	ACT = until the end of the CY in which the OGB ceases to exist**	
5	Monthly OTS Invoices & Supporting Documents	ACT + 1 FY	3 FY	ACT + 4 FY	M	S	Y	V	ACT = until the end of the FY in which the document was received**	
6	Annual IAT Agreements & Supporting Documents	ACT + 1 FY	3 FY	ACT + 4 FY	M	S	Y	V	ACT = until the end of the FY in which the document was received**	
7	Miscellaneous/One-time Invoices & Supporting Documents	ACT + 1 FY	3 FY	ACT + 4 FY	M	S	Y	V	ACT = until the end of the FY in which the document was received**	
8	OGB Fiscal Note Worksheets & Supporting Documents	ACT + 5 CY	0	ACT + 5 CY	M	S	N	V	ACT = until the end of the CY in which the document was created**	
9	DOA Analysis Sheets & Supporting Documents	ACT + 5 CY	0	ACT + 5 CY	M	S	N	V	ACT = until the end of the CY in which the document was created**	
10	Fuel Invoices & Supporting Documents	ACT + 1 FY	3 FY	ACT + 4 FY	M	S	Y	V	ACT = until the end of the FY in which the document was received**	

Permitted Retention Period Abbreviations
ACT - Active Period (when used define term in remarks column)
FY - Fiscal Year (July 1 - June 30)
CY - Calendar Year (Jan 1 - Dec 31)
AY - Academic Year (Aug 1 - July 31)
FFY - Federal Fiscal Year (Oct 1 - Sept 30)
MO - Months WK - Week (Mon-Sun) DY - Day(s)
PERM - Permanent

Security Status Codes
P - Public Record
M - May Contain Confidential Information
C - Confidential Information
Archival Processing Codes
A - Transfer to State Archives
R - Retain in Agency Archives
S - Review by State Archives
D - Review by State Archives/Electronic
O - Other (Specify in Remarks)
State Records Center Use
Y - Yes
N - No
Vital Record Identification Code
V= Vital
I = Important
U= Useful

Agency Abbreviations
OGB - Office of Group Benefits
OTS - Office of Technology Services
IAT - Inter Agency Transfers
DOA - Division of Administration

Agency Approval: [Signature]

Date Signed: 1-7-2020

Secretary of State, State Archives & Records Services: [Signature]

Date Approved: 1-8-2020

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Records Retention Schedule

SS ARC 932 (10/19)

<http://www.sos.la.gov>

Agency No	Agency / Division / Section	Division of Administration / Office of Group Benefits / Administration -- Communications									
Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks		
		In Office	In Storage	Total							
1	Annual Enrollment Member Guides	ACT + 10 CY	0	ACT + 10 CY	P	D	N	I	ACT = until the end of the CY in which OGB ceases to exist**		
2	Annual Enrollment Member Presentations	ACT + 10 CY	0	ACT + 10 CY	P	S	N	I	ACT = until the end of the CY in which the presentations were created**		
4	Annual Enrollment HR Presentations	ACT + 10 CY	0	ACT + 10 CY	P	S	N	I	ACT = until the end of the CY in which the presentations were created**		
5	Agency/Member Memos on OGB Policies/Procedures Changes	ACT + 10 CY	0	ACT + 10 CY	P	D	N	V	ACT = until the end of the CY in which the notices were created**		
6	Medicare Part D Creditable Coverage Notices	ACT + 6 CY	0	ACT + 6 CY	M	S	N	V	ACT = until the end of the CY in which the notices were created**		
7	Publications	ACT + 10 CY		ACT + 10 CY	M	S	N	I	ACT = until end of CY in which OGB ceases to exist**		

Permitted Retention Period Abbreviations
ACT - Active Period (when used define term in remarks column)
FY - Fiscal Year (July 1 - June 30)
CY - Calendar Year (Jan 1 - Dec 31)
AY - Academic Year (Aug 1 - July 31)
FFY - Federal Fiscal Year (Oct 1 - Sept 30)
MO - Months WK - Week (Mon-Sun) DY - Day(s)
PERM - Permanent
** = May be part of an Imaging/Electronic Exception.
** = May be part of an Imaging/Electronic Survey.

Security Status Codes
P - Public Record
M - May Contain Confidential Information
C - Confidential Information
Archival Processing Codes
A - Transfer to State Archives
R - Retain in Agency Archives
S - Review by State Archives
D - Review by State Archives/Electronic
O - Other (Specify in Remarks)
State Records Center Use
Y - Yes
N - No
Vital Record Identification Code
V = Vital
I = Important
U = Useful

Agency Abbreviations
HR - Human Resources
OGB - Office of Group Benefits

Agency Approval *[Signature]*

Date Signed 1-7-2020

Secretary of State, State Archives & Records Services *[Signature]*

Date Approved 1-8-2020

Records Retention Schedule

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

http://www.sos.la.gov

SS ARC 932 (10/19)

Page 4 of 13

Indicate Use of Form

ORIGINAL SUBMISSION

XRENEWAL

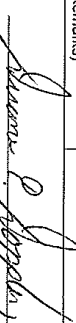
REPLACEMENT PAGE

ADDENDUM PAGE

Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
1	OGB Employee Driver Authorization Forms	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	V	ACT = until the end of the FY in which the employee separates from agency**
2	OGB Employee Safety Meetings Training Materials & Sign-in Sheets	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	V	ACT = until the end of the FY in which the documents were created or received**
3	OGB Employee PES Evaluations and Planning Session Documents	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	V	ACT = until the end of the FY in which supervision ends**
4	OGB Employee Time & Attendance Reports	ACT + 2 CY	3 CY	ACT + 5 CY	M	S	Y	V	ACT = until the end of the CY in which the reports were created or received**
5	Vehicle Logs & Supporting Documents	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	V	ACT = until the end of the FY in which the documents were created or received**
6	SOF & Supporting Documents	ACT + 2 FY	1 FY	ACT + 3 FY	M	S	Y	V	ACT = until the end of the FY in which the documents were created or received**
7	OGB Visitor Logs/Sign-in Sheets	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	U	ACT = until the end of the FY in which the logs were created**
8	Daily Documents/Mail Assignments Logs	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	U	ACT = until the end of the FY in which the logs were created**
9	Records Management Files (Retention Schedules, disposal requests, Transmittals, Surveys and Exceptions)	ACT + 10 CY		ACT + 10 CY	M	S	N	V	ACT = until end of CY in which OGB ceases to exist. **
<div> <div> Permitted Retention Period Abbreviations ACT - Active Period (when used define term in remarks column) FY - Fiscal Year (July 1 - June 30) CY - Calendar Year (Jan 1 - Dec 31) AY - Academic Year (Aug 1 - July 31) FFY - Federal Fiscal Year (Oct 1 - Sept 30) MO - Months WK - Week (Mon-Sun) DY - Day(s) </div> <div> Security Status Codes P - Public Record M - May Contain Confidential Information C - Confidential Information </div> <div> Archival Processing Codes A - Transfer to State Archives R - Retain in Agency Archives S - Review by State Archives D - Review by State Archives/Electronic O - Other (Specify in Remarks) </div> <div> State Records Center Use Y - Yes N - No </div> <div> Vital Record Identification Code V= Vital I = Important U= Useful </div> <div> Agency Abbreviations SOF - Special order Form OGB - Office of Group Benefits PES = Personnel Evaluation System </div> </div>									

Agency Approval 

Date Signed 1-2-2022

Secretary of State, State Archives & Records Services 

Date Approved 1-8-2020

SS ARC 932 (10/19)

[Http://www.sos.la.gov](http://www.sos.la.gov)

Page 5 of 13

Indicate Use of Form

XRENEWAL

REPLACEMENT PAGE

ADDENDUM PAGE _____

Remarks

1-8-2020
Date Approved

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

SS ARC 932 (10/19)

Agency Approval Germany Huber

Susan P. Appleby, Clerk
Secretary of State, State Archives & Records

1-8-2020
Date Approved

Records Retention Schedule

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Http://www.sos.la.gov

SS ARC 932 (10/19)

Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
003.005	Division of Administration / Office of Group Benefits / Customer Service								Indicate Use of Form ___ ORIGINAL SUBMISSION ___ RENEWAL ___ REPLACEMENT PAGE ___ ADDENDUM PAGE
1	Enrollment Change Forms & Supporting Eligibility Documents (GB-01)	ACT + 10 CY		ACT + 10 CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
2	Designation Forms (OGB Coordinator, Agency Master User, Invoice Contact) (GB-74, GB-75, GB-78)	ACT + 10 CY		ACT + 10 CY	M	S	N	I	ACT = until the end of the CY in which OGB ceases to exist. **
3	OGB Member Correspondence	ACT + 10 CY		ACT + 10 CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
4	Daily Work Papers (includes printed copies of imaged documents and non-essential notes with PHI or OGB member contact info, produced by OGB Customer Service section staff)	ACT	0	ACT	M	S	N	U	ACT = until the end of the day in which the work papers were created **

Agency Approval *Theresa Taylor*

Date Signed 1-7-2020

Secretary of State, State Archives & Records Services *Quenna E. Apple, CRM*

Date Approved 1-8-2020

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Http://www.sos.la.gov

Records Retention Schedule

SS ARC 932 (10/19)

Agency No	Agency / Division / Section	Division of Administration / Office of Group Benefits / Medical and Pharmacy Benefits				003.005 Administration - Health Insurance			
Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
1	Self-funded Health Plan Medical TPA Invoices & Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
2	Self-funded Health Plan Pharmacy TPA Invoices & Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
3	Fully Insured Health Plan Vendors Invoices & Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
4	Capitated Primary Care Network Vendor Invoices & Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
5	IMMHEIRA Vendor Invoices and Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
6	Health Plan Vendors Reports & Contract Deliverables	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	U	ACT = until the end of the CY in which the report or deliverable was received ^{xx}
7	Health Savings Account Enrollment & Payroll Deduction Election/Changes (GB-79 Forms)	ACT + 10 CY		ACT + 10 CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. ^{xx}
8	TPA Health and Pharmacy Claims (including supplemental Claims)	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. ^{xx}

Permitted Retention Period Abbreviations
ACT - Active Period (when used define term in remarks column)
FY - Fiscal Year (July 1 - June 30)
CY - Calendar Year (Jan 1 - Dec 31)
AY - Academic Year (Aug 1 - July 31)
FFY - Federal Fiscal Year (Oct 1 - Sept 30)
MO - Months WK - Week (Mon-Sun) DY - Day(s)
PERM - Permanent
^{xx} = May be part of an Imaging/Electronic Exception.
^{xx} = May be part of an Imaging/Electronic Survey.

Security Status Codes
P - Public Record
M - May Contain Confidential Information
C - Confidential Information
Archival Processing Codes
A - Transfer to State Archives
R - Retain in Agency Archives
S - Review by State Archives
D - Review by State Archives/Electronic
O - Other (Specify in Remarks)
State Records Center Use
Y - Yes
N - No
Vital Record Identification Code
V = Vital
I = Important
U = Useful

Agency Abbreviations
TPA = Third party administrator
IMMHEIRA = Individual Medicare Market Exchange with Health Reimbursement Arrangements
OGB = Office of Group Benefits

Agency Approval *[Signature]*

Date Signed *1-7-2020*

Secretary of State, State Archives & Records Services *[Signature]*

Date Approved *1-8-2020*

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

[Http://www.sos.la.gov](http://www.sos.la.gov)

Agency Approval _____

Sumner P. Duggan, Clerk

Date Approved 1-8-2020

SS ARC 932 (10/19)

[Http://www.sos.la.gov](http://www.sos.la.gov)

Date Approved 1-8-2020

Records Retention Schedule

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Http://www.sos.la.gov

SS ARC 932 (10/19)

003.005		Division of Administration / Office of Group Benefits / Discontinued Programs				<div> <div>Indicate Use of Form</div> <div> ORIGINAL SUBMISSION X- RENEWAL REPLACEMENT PAGE ADDENDUM PAGE </div> </div>			
Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
1	Filing Deadline Mail Records	ACT + 3 CY		ACT + 3 CY	M	S	N	I	ACT = until the end of the CY in which the document was created or received. **
2	Live and Event Claims Records	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
3	Field and Audit Reports	ACT + 5 CY		ACT+ 5 CY	M	S	N	I	ACT = until the end of the CY in which Report was issued. **
4	Health Claims (including supplemental Claims)	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
5	Explanation of Benefits (EOBs)	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
6	Medical Records	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
7	Pre-determinations	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
8	Case Management	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
9	Medical Necessities	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
Permitted Retention Period Abbreviations		Security Status Codes			State Records Center Use			Agency Abbreviations	
ACT - Active Period (when used define term in remarks column)		P - Public Record			Y - Yes			OGB = Office of Group Benefits	
FY - Fiscal Year (July 1 - June 30)		M - May Contain Confidential Information			N - No				
CY - Calendar Year (Jan 1 - Dec 31)		C - Confidential Information							
AY - Academic Year (Aug 1 - July 31)		Archival Processing Codes			Vital Record Identification Code				
FFY - Federal Fiscal Year (Oct 1 - Sept 30)		A - Transfer to State Archives			V= Vital				
MO - Months WK - Week (Mon-Sun) DY - Day(s)		R - Retain in Agency Archives			I = Important				
PERM - Permanent		S - Review by State Archives			U= Useful				
** = May be part of an Imaging/Electronic Exception.		D - Review by State Archives/Electronic							
** = May be part of an Imaging/Electronic Survey.		O - Other (Specify in Remarks)							

Agency Approval

Date Signed

Secretary of State, State Archives & Records Services

Date Approved

Records Retention Schedule

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

http://www.sos.la.gov

SS ARC 932 (10/19)

003.005		Division of Administration / Office of Group Benefits / Discontinued Programs				Page 12 of 13 Indicate Use of Form <input type="checkbox"/> ORIGINAL SUBMISSION <input checked="" type="checkbox"/> RENEWAL <input type="checkbox"/> REPLACEMENT PAGE <input type="checkbox"/> ADDENDUM PAGE			
Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
10	Paid in Vouchers	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
11	Flexible Benefit Master File	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
12	Hospital Audits, Statistical Reports and Work Papers	ACT + 5 CY		ACT + 5 CY	M	S	N	I	ACT = until the end of the CY in which Report was issued. **
13	Fraud and Abuse Case Files and Logs	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
14	Health Claim Audits and work papers (including over \$500 plan Member check Audits)	ACT + 5 CY		ACT + 5CY	C	S	N	I	ACT = until the end of the CY in Audit is completed. **
15	Special Reports (Outlier, Check Cycle)	ACT + 10 CY		ACT + 10CY	M	S	N	I	ACT = until the end of the CY in which report is run. **
16	Reviews (Medical and Chiropractic)	ACT + 10 CY		ACT + 10CY	C	S	N	I	ACT = until the end of the CY in which OGB ceases to exist. **
17	Case Management	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
18	Medical Necessities	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **

Permitted Retention Period Abbreviations	Security Status Codes	State Records Center Use	Agency Abbreviations
ACT - Active Period (when used define term in remarks column)	P - Public Record	Y - Yes	OGB = Office of Group Benefits
FY - Fiscal Year (July 1 - June 30)	M - May Contain Confidential Information	N - No	
CY - Calendar Year (Jan 1 - Dec 31)	C - Confidential Information		
AY - Academic Year (Aug 1 - July 31)	Archival Processing Codes	Vital Record Identification Code	
FFY - Federal Fiscal Year (Oct 1 - Sept 30)	A - Transfer to State Archives	V = Vital	
MO - Months	R - Retain in Agency Archives	I = Important	
WK - Week (Mon-Sun)	S - Review by State Archives	U = Useful	
PERM - Permanent	D - Review by State Archives/Electronic		
** = May be part of an Imaging/Electronic Exception.	O - Other (Specify in Remarks)		
** = May be part of an Imaging/Electronic Survey.			

Agency Approval *[Signature]*

Date Signed 1-7-2020

Secretary of State, State Archives & Records Services *[Signature]*

Date Approved 1-8-2020

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Page 13 of 13

Post Office Box 94125, Baton Rouge, LA

Agency Approval

James E. Doyle, OSM
Secretary of State, State Archives & Records S

Date Approved 1-8-2020

ATTACHMENT IV: IMAGING SYSTEM SURVEY COMPLIANCE AND RECORDS DESTRUCTION

In connection with OGB's electronic records retention requirements and within thirty (30) days of the Contract's effective date, Contractor shall complete a State Archives Imaging System Survey ("System Survey") and forward to OGB.Records@la.gov¹, or as otherwise directed by OGB. According to LAC 4:XVII.1305(A), the System Survey must contain the following information:

1. A list of all OGB records series² maintained/managed by Contractor's system;
2. The hardware and software used including model number, version number and total storage capacity;
3. The type and density of media used by Contractor's system;
4. The type and resolution of images being produced (TIFF class 3 or 4 and dpi);
5. Contractor's quality control procedures for image production and maintenance;
6. Contractor's system's back up procedures including location of back-up (on or off-site) and number of existing images; and
7. Contractor's migration plan for purging images from the system that have met their retention period.

OGB shall review the System Survey to make an initial determination of conformity with LAC 4:XVII.1305(A). Once OGB determines that Contractor's System Survey contains the requisite information, OGB will forward the System Survey to the Secretary of State. As a continuing requirement, any system changes necessitating a revised System Survey response must be submitted to the Secretary of State within ninety (90) days of the change. To ensure compliance with this rule, Contractor shall notify the Records Officer of these changes within sixty (60) days so that he or she may forward the appropriate information to the Secretary of State.

¹ If OGB makes a different designation, OGB will notify Contractor of the change and provide updated contact information.

² A records series is a group of related or similar records that may be filed together as a unit, used in a similar manner, and typically evaluated as a unit for determining retention periods. LAC 4:XVII.301(A). The records series listed in Contractor's imaging survey should correspond to the records series listed on the OGB official Record Retention Schedule, Attachment III.

ATTACHMENT V: INSURANCE REQUIREMENTS

The Contractor shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. Workers Compensation

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

2. Commercial General Liability

Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general annual aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

3. Professional Liability (Errors and Omissions)

Professional Liability (Error & Omissions) insurance, which covers the professional errors, acts, or omissions of the Contractor, shall have a minimum limit of \$1,000,000. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 36 months from the expiration date of the policy, if the policy is not renewed.

4. Automobile Liability

Automobile Liability Insurance shall have a minimum combined single limit per accident of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.

5. Cyber Liability

Cyber liability insurance, including first-party costs, due to an electronic breach that compromises the State's confidential data shall have a minimum limit per occurrence of \$1,000,000. Claims-made coverage is acceptable. The date of the inception of the policy

must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 36 months from the expiration date of the policy, if the policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Contractor shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability, Automobile Liability, and Cyber Liability Coverages

- a. The Agency, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor. ISO Forms CG 20 10 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalents, are to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.
- b. The Contractor's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers for any and all losses that occur under the contract. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Contractor's insurance.

2. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the Agency.

3. All Coverages

- a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits.
- b. The acceptance of the completed work, payment, failure of the Agency to require proof of compliance, or Agency's acceptance of a non-compliant certificate of insurance shall

not release the Contractor from the obligations of the insurance requirements or indemnification agreement.

- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

- 1. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers compensation coverage only.
- 2. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

E. VERIFICATION OF COVERAGE

- 1. Contractor shall furnish the Agency with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal or insurance policy renewal thereafter.
- 2. The Certificate Holder Shall be listed as follows:

State of Louisiana
Office of Group Benefits, Its Officers, Agents, Employees and Volunteers
1201 N. Third Street, Baton Rouge, LA, 70802
Project or Contract #: FSA and COBRA contract
- 3. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.
- 4. Upon failure of the Contractor to furnish, deliver and maintain required insurance, this contract, at the election of the Agency, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

F. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.

G. WORKERS COMPENSATION INDEMNITY

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.



STATE of LOUISIANA
DIVISION OF ADMINISTRATION
OFFICE OF GROUP BENEFITS



Office of Group Benefits

October 20, 2021 JLCB Meeting

Express Scripts, Inc.

Background Information on Solicitations for Pharmacy Benefit Manager Services
&
Pharmacy Benefit Manager Services Emergency Contract Overview

Background Information on Solicitations for Pharmacy Benefit Manager Services

- The Solicitation for Offers (“SFO”) for Pharmacy Benefit Manager (“PBM”) Services was issued on 07/09/2021
 - Offers were due by 07/26/2021
 - Two (2) offers were received
- The Office of Group Benefits (“OGB”) issued a Notice of Intent to Award to Express Scripts, Inc. (“ESI”) on 8/27/2021
- The Office of State Procurement (“OSP”) issued an approval notice for the Emergency Contract between OGB and ESI for PBM administrative services on 10/15/2021

Express Scripts, Inc.

PBM Services Emergency Contract Overview

Contract Purpose	To provide PBM services to support certain self-funded health plans offered by OGB.
Eligible Participants	Members who are enrolled in any of the BCBSLA Magnolia Open Access, Local, Local Plus, and Pelican HRA1000 plans.
PBM Members as of 10/1/2021¹	203,924
Beginning Emergency Contract Date	01/01/2022
Ending Emergency Contract Date	12/31/2022
Renewable Options	None
Procurement Method	SFO
Current Emergency Contract Maximum Payable Amount ^{2, 3}	\$481,289,300
Current Emergency Contract Authority Expended ²	\$422,308,490 (through 9/30/2021)
Current Emergency Contract Total Projected Expenditures ²	\$605,053,205
Current Emergency Contract Total Projected Expenditures, Net of Projected Rebates ²	\$419,319,205
ESI Emergency Contract Maximum Payable Amount / Total Projected Expenditures	\$602,142,205
ESI Emergency Contract Total Projected Expenditures, Net of Projected Rebates	\$400,583,443

¹ Based on the 10/01/2021 member participation in the BCBSLA Magnolia Open Access, Magnolia Local, Magnolia Local Plus, and Pelican HRA1000 plans.

² Current PBM contract vendor is MedImpact Healthcare Systems, Inc. ("MedImpact").

Express Scripts, Inc.

PBM Services Emergency Contract Overview, Cont.

³ The current emergency contract maximum payable amount was based on the year 1 costs projected for the maximum payable contract amount projected for the three-year PBM services contract based on the selection of Caremark PCS Health, LLC (“CVS Health”) as the successful bidder for the RFP for PBM Services issued on 2/21/2020. As a result of protests of the award received by the Office of State Procurement (“OSP”), a Stay of Notice of Intent to Award was issued. OGB then submitted a request to OSP to enter into a one (1) year emergency contract with CVS Health, which was approved. As a result of opposition from the Group Benefits Policy and Planning Board, the Joint Legislative Committee on the Budget (“JLCB”), and special interest groups, the one (1) year emergency contract for PBM services was awarded to MedImpact, which became effective on 01/01/2021.

Office of State Procurement
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

October 15, 2021

TO: Col. David W. Couvillon, USMCR (Ret.)
Office of Group Benefits
Chief Executive Officer

FROM: Ms. Pamela Bartfay Rice, Esq., CPPO
Assistant Director, Professional Contracts

RE: OSP Approval for JLCB
Emergency Contract between OGB and Express Scripts, Inc. – Pharmacy Benefits
Manager Administrative Services

The Office of State Procurement has reviewed the above-referenced contract. The document complies with the State Procurement Code and is ready for submission to the Joint Legislative Committee on the Budget. Upon approval of the proposed contract in accordance with La. R.S. 42:802 (D)(1), please return the **"Agency Memo to OSP After JLCB Approval,"** along with the stamped contract from the JLCB.

The contract will not receive final approval by OSP until JLCB has approved and it is submitted to OSP in LaGov, Proact, or LESA, as applicable.

If you should have any further questions/comments, please do not hesitate to contact Bess Guidry at OSP.

Changes from Final Draft to Signed 2022 Express Scripts Emergency Contract, Redacted

changed from:

2022 Express Scripts Emergency Contract, Redacted (Final Draft)		
Item	Pg #	Text
1.	1	On this __ day of October, 2021
2.	26	<div> <div>STATE OF LOUISIANA OFFICE OF GROUP BENEFITS</div> <div>EXPRESS SCRIPTS, INC.</div> </div> <div> BY: _____ BY: _____ NAME: <u>David W. Couvillon</u> NAME: _____ TITLE: <u>Chief Executive Officer</u> TITLE: _____ DATE: _____ DATE: _____ </div>
3.	55	THIS HIPAA BUSINESS ASSOCIATE ADDENDUM (the "Addendum") is entered into effective the ____ day of October, 2021 (the "Effective Date"), by and between Express Scripts, Inc. ("Business Associate") and the State of Louisiana, Office of Group Benefits, on behalf of itself and its affiliates, if any (individually and collectively, the "Covered Entity"), and adds to the Agreement or Contract dated October __, 2021, entered into between Covered Entity and Business Associate (the "Agreement").
4.	58	<div> <div>STATE OF LOUISIANA OFFICE OF GROUP BENEFITS</div> <div>EXPRESS SCRIPTS, INC.</div> </div> <div> By: _____ By: _____ Signature Signature <u>David W. Couvillon</u> Printed Name Printed Name Title: <u>Chief Executive Officer</u> Title: _____ Date: _____ Date: _____ </div>

To:

2022 Express Scripts Emergency Contract, Redacted (Final Draft)		
Item	Pg #	Text
1.	1	On this 4th day of November, 2021
2.	26	<div> <div>STATE OF LOUISIANA OFFICE OF GROUP BENEFITS</div> <div>EXPRESS SCRIPTS, INC.</div> </div> <div> BY: <u>David W. Couvillon</u> BY: <u>Grace E Allen</u> NAME: <u>David W. Couvillon</u> NAME: <u>Grace E Allen</u> TITLE: <u>Chief Executive Officer</u> TITLE: <u>VP - Account Management</u> DATE: <u>11/9/21</u> DATE: <u>11/4/21</u> </div>
3.	55	THIS HIPAA BUSINESS ASSOCIATE ADDENDUM (the "Addendum") is entered into effective the 4th day of November, 2021 (the "Effective Date"), by and between Express Scripts, Inc. ("Business Associate") and the State of Louisiana, Office of Group Benefits, on behalf of itself and its affiliates, if any (individually and collectively, the "Covered Entity"), and adds to the Agreement or Contract dated November 4, 2021, entered into between Covered Entity and Business Associate (the "Agreement").
4.	58	<div> <div>STATE OF LOUISIANA OFFICE OF GROUP BENEFITS</div> <div>EXPRESS SCRIPTS, INC.</div> </div> <div> By: <u>David W. Couvillon</u> By: <u>Grace E Allen</u> Signature Signature <u>David W. Couvillon</u> Printed Name Printed Name Title: <u>Chief Executive Officer</u> Title: <u>VP - Account Management</u> Date: <u>11/9/21</u> Date: <u>11/4/21</u> </div>

EMERGENCY CONTRACT

On this 4th day of November, 2021, the State of Louisiana, Office of Group Benefits, 1201 N. 3rd Street, Suite G-159, Baton Rouge, LA 70802, hereinafter sometimes referred to as "OGB" or "State", and Express Scripts, Inc. ("ESI or PBM"), One Express Way, St. Louis, MO 63121, hereinafter sometimes referred to as the "Contractor," do hereby enter into an Emergency Contract under the following terms and conditions.

WHEREAS, OGB is an agency of the State of Louisiana given statutory responsibility to provide health and accident benefits to state employees, retirees, and their dependents, which offers self-funded plan of health care benefits; and

WHEREAS, OGB's employee benefit plan is not governed by the provisions of ERISA as it is a governmental plan established or maintained for State of Louisiana employees by OGB, an agency of the State of Louisiana; and

WHEREAS, Express Scripts, Inc. is a pharmacy benefits manager that provides pharmacy drug benefit management and administrative services to employer groups and other plan sponsors, including Medicare Part D employer group waiver plan sponsors; and

WHEREAS, in order to ensure the continuity of care for OGB state employees, retirees, and their dependents, the Office of State Procurement, Division of Administration, has authorized OGB to proceed with an emergency procurement of PBM services, including EGWP administrative services, effective January 1, 2022; and

WHEREAS, after completing a Solicitation for Offers, OGB has determined the best interest of the State, OGB, and the state employees, retirees, and their dependents would be served by contracting with Express Scripts, Inc. for PBM services, including EGWP administrative services; and Express Scripts, Inc. has agreed to perform such services, and to provide Medicare Part D EGWP services through Medco Containment Life Insurance Company;

WHEREAS, OGB and Express Scripts, Inc. wish to enter into and be bound by the terms contained in this emergency contract.

NOW THEREFORE, in consideration of the mutual promises and agreement herein contained, OGB and Express Scripts, Inc. hereby agree as follows:

1 SCOPE OF SERVICES

1.1 CONCISE DESCRIPTION OF SERVICES

Express Scripts, Inc. shall provide Pharmacy Benefit Manager ("PBM") services to support certain self-funded plans offered by OGB. These services shall include, at a minimum, all services specified in Section 1.2 and the attachments referenced therein.

1.2 STATEMENT OF WORK

The Statement of Work consists of the following and/or any subsequent addendum:

Attachment I: Scope of Work/Services

Attachment II: Pricing

Attachment III: Business Associate Addendum

Attachment IV: Records Retention Schedule

Attachment V: Imaging System Survey Compliance and Records Destruction

Attachment VI: Clinical Management Programs

1.3 GOALS AND OBJECTIVES

1. To fulfill OGB's delegated responsibility to serve the State of Louisiana by managing prescription drug cost and utilization while improving the quality of health for those served by OGB.
2. To provide quality, cost-effective healthcare services to Plan Participants.

1.4 PERFORMANCE MEASURES

The performance of the Emergency Contract, including but not limited to Attachment I, Scope of Work/Services, and/or any subsequent addendum including performance criteria and corresponding monetary penalties for Contractor's failure to comply with the identified criteria in Section 3.6, Performance Guarantees, will be measured by the OGB Contract Monitor. The OGB Contract Monitor is authorized to evaluate the Contractor's performance against these criteria.

1.5 MONITORING PLAN

The Contract Monitor will be the OGB Medical and Pharmacy Group Benefits Administrator, who will monitor the services and performance provided by the Contractor and the expenditure of funds under this Emergency Contract. The monitoring plan is as follows:

1. The Contractor will submit various monthly, quarterly, and annual reports to the Contract Monitor as specified in Attachment I: Scope of Work/Services.
2. The Contract Monitor will ensure all deliverables are submitted timely and perform subsequent review and acceptance.
3. The Contract Monitor will provide oversight of the implementation of the Scope of Services to ensure quality, efficiency, and effectiveness in fulfilling the goals and objectives of OGB.

1.6 CONTRACTOR PROJECT MANAGEMENT

Contractor Project Management is as follows:

- A. Account Management Team.** Contractor will provide an Account Management Team for the duration of the engagement including a dedicated Account Executive, Employer Group Waiver Plan ("EGWP")/Retiree Manager, Operational Account Manager, Clinical Program Manager, Clinical Pharmacy Manager (must be a resident of Louisiana), Financial Analyst, Analytics and Data Lead, Privacy Officer, and Customer Service Manager. The Account Executive must have at least one (1) back-up staff member designated to handle the overall responsibility of OGB.
- B. Substitution of Key Personnel.** The Contractor's personnel assigned to this Emergency Contract shall not be replaced without the prior written consent of OGB/State. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any Contractor personnel become unavailable due to resignation, illness, or other factors, excluding assignment to projects outside this Emergency Contract, outside of the Contractor's reasonable control, as the case may be, the Contractor shall be responsible for providing an equally qualified replacement in time to avoid delays in providing services. When possible, Contractor will give OGB a minimum of sixty (60) days' advance notice of any changes in OGB's Account Management Team, and a description of the training requirements for new team members. Reasonable exceptions would apply in situations beyond Contractor's control (i.e., resignation/termination with less than 60 days' notice). OGB reserves the right to request changes to any of the assigned

personnel based on unsatisfactory performance levels as determined by OGB. Additionally, OGB will be provided with the opportunity to interview any new team member(s).

- C. Account Management Team Support.** The Account Management Team will provide support around account strategy, Plan Participant inquiries, issue resolution, reports and other requested projects and deliverables. Contractor will provide an annual service cycle plan as well as an ongoing task log with timelines for all deliverables and weekly status update meetings in person, via video conference, or via teleconference.
- D. Quarterly Meetings.** All of the Account Management Team will attend all quarterly meetings via teleconference or on-site at OGB. The meetings shall be held no later than forty-five (45) days following quarter end. The Account Management Team will provide a draft agenda for OGB approval at least ten (10) business days in advance of a meeting to allow changes to the agenda and a reasonable opportunity to prepare for the meeting. The meeting presentation should be provided seven (7) days in advance of the meeting. At minimum, during the quarterly meeting, the Account Management Team should discuss the following: goals, expectations and priorities; review the quarterly report and other issues such as performance guarantees, quality assurance, operations, network pharmacy status and access; benefit and program changes or enhancements; legislative issues; audits; cost trends; utilization; program outcomes; customer service issues; future goals and planning; and other issues reasonably related to the Emergency Contract.
- E. Minutes.** Within three (3) business days after any meeting, Contractor shall provide OGB with a draft of detailed and well-documented, meeting minutes. OGB shall review and revise the draft minutes as appropriate and return to the Contractor. Final minutes must be provided within three (3) business days after receipt of the revised minutes from OGB. Minutes shall include a list and description of all tasks and/or deliverables, identify the responsible party, and provide a projected delivery date.
- F. Documentation.** Contractor will maintain an ongoing process log that will document all benefit and system programming changes, which will be provided to OGB within five (5) business days of any change.
- G. Coordination with other OGB Vendor(s).** Contractor will coordinate and cooperate with OGB's administrative services provider(s) for OGB's self-insured medical plans, actuary, and other vendors as needed on integration of information to or from other service providers relative to the services addressed in this Emergency Contract.

1.7 DELIVERABLES

The Emergency Contract will be considered complete when the entire scope of work has been completed and Contractor has delivered and OGB has accepted all deliverables specified in the Emergency Contract.

1.8 VETERAN-OWNED AND SERVICE-CONNECTED SMALL ENTREPRENEURSHIPS (VETERAN INITIATIVE) AND LOUISIANA INITIATIVE FOR SMALL ENTREPRENEURSHIPS (HUDSON INITIATIVE) PROGRAMS REPORTING REQUIREMENTS

During the term of the Emergency Contract and at expiration, the Contractor will be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor or distributor participation and the dollar amount of each.

DEFINITIONS

Account Management Team – Contractor’s staff for PBM services assigned to OGB which shall include an Account Executive, Implementation Manager, Employer Group Waiver Plan (“EGWP”)/Retiree Manager, Operational Account Manager, Clinical Program Manager, Clinical Pharmacy Manager (must be a resident of Louisiana), Financial Analyst, Data and Analytics Lead, Privacy Officer and Customer Service Manager.

Average Wholesale Price or AWP – the average wholesale price of a prescription drug or medication dispensed, on the date the prescription or medication is dispensed, as set forth in the most recent edition of the Medi-Span pricing guide or supplement as of that date, or as retroactively adjusted by Medi-Span. The applicable AWP for all prescriptions dispensed at retail pharmacies, the Mail Order Pharmacies and the Specialty Drug Pharmacies shall be based on (i) the unit AWP using the eleven-digit NDC from which the medication was dispensed (not the package size of the prescription dispensed); and (ii) the actual manufacturer’s AWP (repackager AWP’s shall not be substituted for manufacturer AWP’s); and (iii) the actual unit prescribed (and an alternative unit measure shall not be substituted, such as capsules for tablets, or tablets for capsules). Contractor shall not process any repackagers’ AWP’s in connection with any Claims. Contractor shall not change pricing terms or guarantees in the Contract unless OGB agrees to such changes in writing, and the changes are memorialized as a written amendment to the Contract.

Biosimilar Drug – a “biosimilar” biological product as defined in the Biologics Price Competition and Innovation Act of 2009 at 42 U.S.C. §262(i)(2) and approved under Section 351(k) of the Public Health Services Act or pursuant to any successor legislative provision relating to expedited approval of biological products which are highly similar to a reference biological product.

Brand or Brand Drug – Drugs or devices where the Medi-Span Multisource Code field contains “M” (co-branded product), or “N” (single source brand), or “O” (originator) on the date of service.

CDHP – a Consumer Driven Health Plan.

CMS – the Centers for Medicare and Medicaid Services.

COB – the Coordination of Benefits.

Commercial Prescription Drug Plan – OGB’s prescription drug plan(s) covering active employees and non-Medicare eligible retirees.

Covered Benefit(s) – outpatient drugs (including those that under state or federal law require a prescription, or over the counter drugs), products, services, or supplies made available as a covered benefit to Plan Participants as set forth in the Plan.

CSR – a Customer Service Representative.

DAW – prescription drugs dispensed as written.

DEA – Drug Enforcement Administration.

DUR – a Drug Utilization Review.

DMR – a Direct Member Reimbursement.

EGWP – an Employer Group Waiver Plan.

EOB – an Explanation of Benefits.

ERRP – the Early Retiree Reinsurance Program.

Exclusive or Limited Distribution – a Specialty Product that is not generally available from most or all pharmacies but is restricted to select pharmacies as determined by a pharmaceutical manufacturer.

FDA – the Federal Drug Administration.

Formulary – the list of prescription drugs that are considered as Covered Benefits. The Formulary may contain preferred and non-preferred tiers.

Generic Drug – any drug that is not a Brand.

HIPAA – the Health Insurance Portability and Accountability Act.

Identification Cards (“ID Cards”) – printed identification cards containing specific information about the Covered Benefits to which Plan Participants are entitled. All ID Cards shall have the applicable pharmacy network logo or other method, agreed upon by both parties in writing, of identifying the fact that the Contractor is the PBM.

IVR – Interactive Voice Response, an automated telephony system that interacts with callers, gathers information and routes calls to the appropriate recipients.

MAC or Maximum Allowable Cost – the maximum unit price a PBM will pay a pharmacy for a drug.

MBI – Medicare Beneficiary Identifier.

Multisource – a drug that is manufactured by more than one labeler.

NDC – the National Drug Code.

Offer – a response to a Solicitation for Offers.

OGB CEO – the Office of Group Benefit’s Chief Executive Officer.

OTC – Over The Counter drugs.

PBM – the Pharmacy Benefit Manager.

PDP – a CMS approved Prescription Drug Plan.

PHI – Protected Health Information.

PII – Personally-Identifiable Information.

Plan – OGB’s defined benefit plan pursuant to which Covered Benefits are provided to Plan Participants.

Plan Participant(s) – the person(s) who are entitled to benefits through OGB as identified in the eligibility data file prepared, maintained and as determined by OGB, and delivered to the Contractor.

Primary Plan Participant(s) – the Plan Participant whose relationship with OGB or the employee/retiree governs the coverage under the Plan.

PPACA – the Patient Protection and Affordable Care Act.

Rebates – will include rebates and other manufacturer revenues, which is defined as all revenue you receive from outside sources related to the Plan’s utilization or enrollment in programs. These would include but are not limited to access fees, market share fees, rebates, formulary access fees, inflation protection/penalty payments, administrative fees and marketing grants from pharmaceutical manufacturers, wholesalers and data warehouse vendors.

ROI – a Return On Investment.

SFO – a Solicitation for Offers.

Shall, Must, Will – a mandatory requirement.

Should, May, Can – an advisable or permissible action.

Single Source – a drug that is manufactured by one labeler.

Specialty Drug(s) – a prescription drug that: (1) is prescribed for an individual with a complex or chronic medical condition or a rare medical condition; (2) is not typically stocked at retail pharmacies; and (3) requires a difficult or unusual process of delivery to the patient in the preparation, handling, storage, inventory, or distribution of the drug; or requires enhanced patient education, management, or support, beyond those required for traditional dispensing, before or after administration of the drug.

U&C – Usual and Customary; the usual selling price or cash price for a prescription drug at a participating pharmacy.

3 ADMINISTRATIVE REQUIREMENTS

3.1. TERM OF CONTRACT

The term of this Contract shall begin on January 1, 2022, and is anticipated to end on December 31, 2022, subject to written extension(s) of this Emergency Contract by agreement of the parties and as provided by the Office of State Procurement. Notwithstanding any other provision of this emergency contract, this emergency contract shall not become effective until approved as required by statutes and regulations of the State of Louisiana. Prior to the extension of the contract beyond the twelve (12)-month term, prior approval by the Joint Legislative Committee on the Budget (JLCB) and/or other approval authorized by law shall be obtained. The continuation of this Contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Contract.

3.2. OGB FURNISHED RESOURCES

OGB shall appoint a Contract Monitor for this Contract who will provide oversight of the activities conducted hereunder. The assigned Contract Monitor shall be the principal point of contact on behalf of OGB and will be the principal point of contact for the Contractor concerning Contractor's performance under this Contract.

3.3. TAXES AND FEES

Contractor is responsible for payment of all taxes and fees on Contractor's income, property, and entity status (i.e., permits, licenses, etc.). Contractor's federal tax identification number is 43-1420563. Contractor's seven-digit Louisiana Department of Revenue account number is 9989492. In accordance with La. R.S. 39:1624(A)(10), the Louisiana Department of Revenue ("LDR") must determine that the prospective Contractor is current in the filing of all applicable tax returns and reports and in payment of all taxes, interest, penalties, and fees owed to the State and collected by the Department of Revenue prior to the approval of this Contract by the Office of State Procurement. The Contractor hereby attests to its current and/or compliance, and agrees to provide its seven-digit LDR Account Number to the contracting agency so that the contractor's tax payment compliance status may be verified. The Contractor further acknowledges understanding that issuance of a tax clearance certificate by the Louisiana Department of Revenue is a necessary precondition to the approval and effectiveness of this Contract by the Office of State Procurement. The contracting agency reserves the right to withdraw its consent to this Contract without penalty and proceed with alternate arrangements should the Contractor fail to resolve any identified apparent

outstanding tax compliance discrepancies with the Louisiana Department of Revenue within seven (7) days of notification of such discrepancies.

3.4. PAYMENT TERMS

In consideration of the services required by this Contract, OGB hereby agrees to pay to Contractor a maximum fee of \$602,142,205.00 (Six Hundred Two Million One Hundred Forty-Two Thousand Two Hundred Five Dollars) for work performed during the term of this Contract. This fee is inclusive of travel and all Contract-related expenses. Payments are predicated upon successful completion by Contractor and written approval by OGB of the described services and deliverables as provided in the Contract. Contractor will not be paid more than the maximum amount of the Contract. **No payments will be made by OGB on banking or State holidays.**

OGB will monitor total expenditures under the Contract and, should the maximum fee stated above be exceeded, OGB shall seek additional appropriations to continue the Contract in effect, or terminate the Contract pursuant to Section 4.3 of this Contract.

Claims Payments. OGB will not provide advance funding for payment of claims. The Contractor shall submit weekly invoices for reimbursement of claims no later than 12:00 p.m. CT on the established billing day, with an accompanying check register (claims disbursements) showing all paid claims and any other supporting documentation necessary to substantiate invoiced costs. Separate invoices shall be prepared with respect to claims for each Plan offering. Upon receipt and validation of each claims invoice, OGB shall wire the undisputed amount within seven (7) business days of receipt. If the invoice(s) and electronic check register(s) do not reconcile, payment of the disputed amount will be made within seven (7) business days of successful reconciliation. If OGB questions the amount, OGB will notify the Contractor of its questions regarding said amount, and Contractor shall make a reasonable effort to respond to such questions within five (5) business days.

Contractor may not suspend or fail to render payments to participating pharmacies or to OGB Plan Participants within the timeframes provided by applicable law because of non-payment or late payment by OGB. Such payments by Contractor shall not constitute a waiver of any of Contractor's remedies with respect to non-payment. Should Contractor fail to make payments within the timeframes provided by applicable law, Contractor shall be liable to OGB for any penalties or fees that OGB may incur as a result of such inaction by Contractor.

Administrative Fees. Contractor will invoice OGB monthly for all fees and charges earned by Contractor set forth in Attachment II: Pricing, which may be included on the same invoice as claims payments or reflected in a separate invoice. Upon receipt and validation of Contractor's invoice for administrative fees, OGB shall pay undisputed fees by wire transfer within seven (7) business days of receipt. Any monthly fees will be charged the month following the month in which the service is provided. If OGB questions the amount, OGB will notify the Contractor of its questions regarding said amount, and Contractor shall make a reasonable effort to respond to such questions within five (5) business days.

During the term of the Contract and at expiration, the Contractor will be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor or distributor participation and the dollar amount of each, if applicable.

3.5. PERFORMANCE BOND

Unless issuance of such bond is against applicable law, Contractor shall provide a performance (surety) bond in an amount determined by OGB of no more than one hundred

percent (100%) of the annual contracted fees to ensure the successful performance under the terms and conditions of the Contract. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved companies which is published annually in the Federal Register, or by a Louisiana-domiciled insurance company with at least an A-rating to write individual bonds up to ten percent (10%) of policyholders' surplus as shown in the latest A.M. Best's Key Rating Guide. In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

The performance bond is to be provided at least thirty (30) working days prior to the effective date of the Contract. Failure to provide within the time specified may cause the Contract to be cancelled.

3.6. PERFORMANCE GUARANTEES

Contractor agrees to provide its operational performance guarantees on a client-specific basis and report OGB's results on a quarterly basis. OGB shall have the ability to modify the performance guarantees each contract year. OGB, at its sole discretion, will allocate amounts at risk for performance guarantees, provided no more than thirty percent (30%) of the total amount at risk is allocated to one performance guarantee excluding financial guarantees (i.e., AWP discounts, dispensing fees, rebates, etc.). OGB may allocate 0% to a guarantee, which would indicate that the performance guarantee will only be reported on with no amounts at risk. Contractor will be subject to per day fees for certain performance guarantees.

All guarantees must be reconciled annually and reported to OGB within sixty (60) days after the close of the period being measured and any penalties owed to OGB shall be paid within forty-five (45) days after reported reconciliation.

Performance Guarantees: The Contractor will be subject to negotiated performance standards and those detailed in Attachment I: Scope of Work/Services.

Audit: OGB reserves the right to audit performance guarantee reports on an annual basis. A third party may be utilized to perform this audit.

Measurement Periods: The period to be measured shall be January 1, 2022 through December 31, 2022. If the performance guarantees are effective for less than a full calendar year, the payment amounts will be prorated for the portion of the Measurement Period.

3.7. FINANCIAL GUARANTEES

Financial guarantees provided by Contractor will be covered dollar for dollar on any shortfall with no limit to the amount at risk. Any surplus on financial guarantees will be retained 100% by OGB. In addition, the amount at risk will be the full value of the financial guarantee(s) not achieved and not a calculation of OGB's net Plan cost impact. All financial guarantees, with the exception of rebate minimum guarantees, which will be reconciled in the aggregate, will be trued up individually, meaning no guarantees can be cross-subsidized (i.e., surplus on one guarantee offsetting another, etc.). This includes no cross-subsidization between delivery channels, or within a delivery channel. Note: Retail and retail extended supply networks are considered separate delivery channels.

In the event that the PBM utilizes an intermediary/third party to determine rebates for OGB, OGB will have the right to audit that intermediary/third party directly. Contractor also agrees to comply with OGB's requirement for a third-party to perform a detailed, comprehensive claims and rebate reconciliation at the end of the 2022 contract year. The comprehensive reconciliation will be at the Contractor's expense. The reconciliation will focus on adjudication

rates versus contractual pricing guarantees to ensure one hundred percent pass-through pricing between OGB and dispensing pharmacies, as well as, paid rebates versus minimum rebate guarantees. A walkdown of the various excluded claims will be required to account for all rebate-eligible claims. All claims, including those excluded from pricing guarantees, will be included in the reconciliation review.

Contractor will report financial guarantee performance to OGB on a quarterly basis, including the effective AWP discounts, dispensing fees, and rebates. This reporting will include all prior quarters covered by this Contract. All financial guarantees must be reconciled annually and any shortfalls owed to OGB shall be paid within one hundred twenty (120) days after the end of the Measurement Period.

Audit: OGB reserves the right to audit financial guarantees after the end of each Measurement Period. A third party of OGB's choosing may be utilized to perform this audit with no limitation in the scope of the audit.

Measurement Periods: The period to be measured shall be January 1, 2022 through December 31, 2022.

4 TERMINATION

4.1 TERMINATION FOR CAUSE

State may terminate this Contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of the Contract; provided the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) calendar days after receipt of such notice, the Contractor shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) calendar days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default, and the Contract shall terminate on the date specified in such notice. Failure to perform within the time agreed upon in the contract may constitute default and may cause cancellation of the contract.

4.2 TERMINATION FOR CONVENIENCE

OGB/State may terminate the Contract at any time by giving at least thirty (30) days' written notice to Contractor of such termination or negotiating with Contractor an effective date for termination. Contractor shall be entitled to payment for services completed prior to receipt of such notice and deliverables in progress, to the extent work has been performed to OGB's satisfaction.

4.3 TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of this Contract is contingent upon the appropriation of funds by the Louisiana Legislature to fulfill the requirements of the Contract, as applicable. If the Legislature fails to appropriate sufficient monies to provide for the continuation of the Contract, or if such appropriation is reduced or eliminated by the veto of the Governor or by any means provided in the Appropriations Act of Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated.

5 INDEMNIFICATION AND DEFENSE

(a) Contractor shall be fully liable for its own actions and the actions of its agents, employees,

partners and subcontractors and shall fully protect, defend, and indemnify the State, all State departments, Agencies, Boards, and Commissions, its officers, trustees, employees, servants, subcontractors, agents, and volunteers (collectively the "State"), from and against any and all losses, claims, demands, liabilities, suits, actions, damages, costs, fines, penalties, judgments, forfeitures, assessments, expenses, obligations (including attorneys' fees), and other liabilities of every name and description ("Claims/Costs") relating to personal injury or death to any person or damages, loss, or destruction of any real or tangible property which may occur, or in any way arise out of, any act or omission of Contractor, its employees, agents, partners, or subcontractors/vendors. Contractor shall not be required to indemnify for that portion of any Claim/Cost arising solely because of the negligent or intentional act or failure to act of the State.

- (b) Contractor shall further indemnify and defend the State from and against any Claims/Costs resulting from any violation of or failure to comply with any state or federal law, or other legal or Contract requirement to the extent caused by Contractor, its agents, employees, partners or subcontractors. Contractor shall not be required to indemnify for that portion of any Claim/Cost arising due solely to the negligent or intentional act or failure to act of the State.
- (c) Contractor shall fully protect, defend, and indemnify, the State from and against all adverse federal and state tax consequences, loss, liability, damage, expense, attorneys' fees or other obligations resulting from, or arising out of, any act or omission by Contractor in connection with this Contract, including but not limited to other obligations resulting from or arising out of any premium charge, tax, or similar assessment by federal, state, and local governmental authorities, for which Contractor is liable.
- (d) If applicable, Contractor will protect, defend, and indemnify, the State, its officers, trustees, employees, servants, subcontractors, agents, and volunteers, from and against all Claims/Costs which may be assessed against the State in any action for infringement of a United States Letter Patent with respect to the products furnished, or of any copyright, trademark, trade secret or intellectual property right, in relation to the Contract provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle or defend such Claim/Cost at Contractor's sole expense; and (iii) reasonable assistance in the defense of any such action at the expense of Contractor. Where a Claim/Cost arises relative to a real or anticipated infringement, the State, its officers, trustees, employees, servants, subcontractors, agents, and/or volunteers, may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as to such infringement claim as the State deems necessary.
- (e) In addition to the foregoing remedies for patent infringement Claims/Costs, if the use of the product, material, or service or part(s) thereof shall be enjoined for any reason or if Contractor believes that such use may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the State the right to continue using such product, material, or service or part(s) thereof, as applicable, under the same terms and conditions as provided in the Contract; (ii) to modify the product, material, or service so that it becomes a non-infringing product, material, or service of at least equal quality and performance, in the State's sole opinion; (iii) to replace the product, material, or service or part(s) thereof, as applicable,

with non-infringing components of at least equal quality and performance, in the State's sole opinion; or (iv) if none of the foregoing is commercially reasonable, provide monetary compensation to the State.

- (f) Contractor agrees to indemnify and defend the State from all Claims/Costs relating to Contractor's or its subcontractors' fault or negligence, including, but not limited to, any claims relating to the failure of Contractor to provide services or fulfill obligations as specified in the Contract due to financial hardship or insolvency.
- (g) Contractor agrees to investigate, handle, respond to, provide defense for and defend any Claims/Costs at its sole expense and agrees to bear all other costs and expenses related thereto, even if the Claims/Costs are groundless, false or fraudulent.
- (h) The State may, in addition to other remedies available to the State, its officers, trustees, employees, servants, subcontractors, agents, and/or volunteers at Law or equity and upon notice to Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any Claims/Costs asserted by or against the State, its officers, trustees, employees, servants, subcontractors, agents, and/or volunteers, for which Contractor owes indemnification and/or defense pursuant to this Section.

6 FORCE MAJEURE

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. Whether a delay or failure results from a force majeure is ultimately determined by the State based on a review of all facts and circumstances. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.

7 CONTRACT CONTROVERSIES

Any claim or controversy arising out of the Contract shall be resolved by the provisions of La. R.S. 39:1672.2-1672.4.

8 FUND USE

Contractor agrees not to use Contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot, nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

9 ASSIGNMENT

Contractor shall not assign any interest in this Contract by assignment, transfer, novation, or otherwise without prior written consent of the OGB CEO or his/her delegee. This provision shall not be construed to prohibit Contractor from assigning to a bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment, transfer, or novation shall be furnished promptly to the State Contract Monitor and shall not be binding upon the State until actually received by the State.

10 RIGHT TO AUDIT

The State Legislative Auditor, federal auditors, internal auditors of the Division of Administration and its designated agents, the State, OGB, or others so designated by the State/OGB shall be entitled to audit all accounts, procedures, matters, and records of any Contractor or subcontractor under any negotiated Contract or subcontract directly pertaining to the Contract for a period of five (5) years after final payment under the Contract and for the subcontractor/vendor for a period of five (5) years from the date of final payment under the subcontract or such longer period as required by applicable state and federal Law. Records, including direct read access to databases and all tables, shall be made available during normal business hours for this purpose.

The State has the right to hire an independent third-party auditor, if the State deems necessary, to review all accounts, procedures, matters, and records, and Contractor and/or subcontractor/vendor shall provide access to all files, information system access, and space access upon request of the State for the third-party auditor selected to perform the indicated audit. Third-party auditors selected by OGB shall execute Contractor's form of confidentiality agreement prior to performance of any audit functions. OGB acknowledges that if any independent auditor it retains to conduct any Rebate audit also performs consulting services, such auditor must maintain a firewall between its consulting activities and its audit activities. OGB agrees that, to promote efficiency, full Claims and Rebate audits will be conducted for full-year periods, not more frequently than annually.

In the event that an examination of records results in a determination that previously paid invoices included charges which were improper or beyond the scope of the Contract, Contractor agrees that the amounts paid to the Contractor shall be adjusted accordingly, and that the Contractor shall within thirty (30) days of notification of such finding issue a remittance to the State of any payments declared to be improper or beyond the scope of the Contract. In combination therewith, or alternatively, the State, at its option, may offset the amounts deemed improper or beyond the scope of the Contract against Contractor's outstanding or subsequent invoices, if any.

10.1 RECORDS

All records, reports, documents, or other material related to this Contract, delivered or transmitted to the Contractor by the State or its employees, agents, or authorized vendors, and/or obtained or prepared by Contractor or its subcontractors/vendors in connection with the performance of the services under the Contract, shall become records of the State and are referred to herein as "Records."

Contractor agrees to retain all Records in accordance with all Louisiana and federal laws and regulations. Further, Contractor agrees to retain all Records in accordance with OGB's official retention schedules (the "Schedules"), Attachment IV, until such time as the Records are returned to the State or other disposition is agreed. In the event the applicable Law and the Schedules contain different retention periods, the Records shall be kept for the longer period. Records shall be in a format and media as required by applicable law or as agreed upon by the parties in writing if allowed by applicable law. The Schedules in place as of the effective date of this Contract are contained in Attachment IV, Records Retention Schedule, and may be amended from time to time as deemed necessary by the State. To further ensure compliance with the Schedules and Louisiana retention laws, Contractor agrees to abide by the processes outlined in Attachment V, Imaging System Survey Compliance and Records Destruction. Contractor shall return the Records to the State, at Contractor's expense, within seven (7) days of request or, in the specific instance of termination or expiration of the Contract, within sixty (60) days after the termination or expiration of this Contract, and shall retain no copies of the Records unless required by applicable law, provided, the confidentiality

and security requirements of this Contract shall apply to such Records as long as they are retained by the Contractor. Additionally, all State data must be sanitized from Contractor's (and its vendors') systems in compliance with the most current revision of NIST SP 800-66.

10.2 CONTRACTOR'S COOPERATION

Contractor has the duty to fully cooperate with the State and provide any and all requested information, documentation, or other such requested support to the State when requested. This applies even if the Contract is terminated and/or litigation ensues. Specifically, Contractor shall not limit or impede OGB's right to audit or withhold Records.

11 CONTRACT MODIFICATIONS

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties, and approved as required by applicable law. No oral understanding or agreement not incorporated in the Contract shall be binding on any of the parties.

12 CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical, and other data and information relating to the State's operation or the Contract which are made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective security and procedural requirements as are applicable to OGB and the State. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information (other than protected health information) which is or becomes publicly available through no fault of Contractor or its subcontractors, vendors, agents, or employees, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Contract, or is rightfully obtained from third parties without breach of the Contract.

Under no circumstance shall the Contractor discuss and/or release information to the media concerning this Contract or any Plan Participant without prior express written approval of the OGB CEO or his/her delegatee.

OGB acknowledges that Contractor has asserted that certain information of Contractor relating to Contractor's operations, systems, programs, costs, and pricing data ("Contractor Confidential Information") is Contractor's confidential, proprietary and trade secret information that is exempt from disclosure under the Louisiana Public Records Law. OGB agrees that, to the extent feasible, it will notify Contractor of any request it receives for Contractor Confidential Information, including a request made pursuant to the Louisiana Public Records Law, and provide Contractor a reasonable opportunity to redact or otherwise designate Contractor Confidential Information from any requested records. Should OGB or other State agency with responsibility for responding to records requests disagree with Contractor's request for non-disclosure of such identified Contractor Confidential Information, OGB shall notify Contractor of its intent to disclose such information and, to the extent legally permitted, allow Contractor to seek judicial relief to prevent such disclosure.

12.1 SECURITY/DUTIES TO MONITOR AND REPORT SECURITY EVENTS

The Contractor and its subcontractors/vendors shall maintain safeguards and take commercially reasonable technical, physical, and organizational/administrative precautions to ensure that the State's data is protected from unauthorized access, use, and disclosure, in

accordance with the State's current and published Information Security Policy found at <https://www.doa.la.gov/OTS/InformationSecurity/LA-InfoSecPolicy-v1.01.pdf>. The Contractor shall implement and maintain safeguards and monitoring plans to detect unauthorized access to or use of confidential information and any attempts to gain unauthorized access to confidential information. The Contractor, on behalf of itself and its subcontractors/vendors, shall provide the Contract Monitor with immediate notification (not more than forty-eight (48) hours) of the Contractor's awareness of any Security Event, as defined in the Information Security Policy ("Security Event"), involving confidential information under this Contract and also report such Security Event to Louisiana's Information Security Team at 1.844.692.8019 (open 24 hours a day, 7 days a week) as soon as feasibly possible, not to exceed 48 hours following discovery of the Security Event. The reference to Security Event herein may include, but not be limited to, the following: attempts at gaining unauthorized access to confidential information or the unauthorized use of a system for the processing or storage of confidential information, or the unauthorized use or disclosure, whether intentional or otherwise, of confidential information. The Parties acknowledge the ongoing existence of pings, port scans, and other routine unsuccessful attempts at accessing and/or interfering with Contractor's information system that do not pose a threat or hazard to the integrity of the State's data and about which no further notification is necessary.

In the event of a Security Event, the Contractor shall consult and cooperate fully with the State regarding the necessary steps to address the factors giving rise to the Security Event and to address the consequences of such Security Event. Contractor shall also provide assistance performing a risk assessment of any Security Event that occurs, if requested by the State.

Nothing in this Contract shall be deemed to affect or limit any rights an individual participant may have under any applicable state or federal law concerning privacy rights or the unauthorized access, use, or disclosure of protected health information.

12.2 THIRD PARTY REQUESTS FOR RELEASE OF INFORMATION

Should third parties request the Contractor to submit confidential information to them pursuant to an audit or other request not initiated by the Contractor, public records request, subpoena, summons, search warrant or governmental order, the Contractor will notify the State immediately upon receipt of such request. Notice shall be forwarded via e-mail to the OGB CEO. The Contractor shall cooperate with the State with respect to defending against any such requested release of information or obtaining any necessary judicial protection against such release if, in the opinion of the State, the information contains confidential information which should be protected against such disclosure. The reasonable legal fees and related expenses incurred by the Contractor or its subcontractor in resisting the release of information under this provision shall constitute reimbursable expenses under this Contract.

Legal service fees of law firms engaged pursuant to this Section may not be "marked up" (i.e., invoiced cost-plus) by the Contractor.

13 SUBCONTRACTORS

The Contractor may enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations, with the express prior written approval of the OGB CEO or his/her designee. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State for any breach or deficiency in the performance of the Contractor's duties. The Contractor will be the single point of contact for all subcontractor work. The Contractor shall require subcontractors/vendors who are performing any key internal control to undergo independent assurance project/program review.

14 COMPLIANCE WITH LAWS

The Contractor must comply with all applicable laws while providing services under this Contract. Specifically, Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990 as amended.

Contractor agrees not to discriminate in its employment practices, and will render services under this Contract without regard to race, color, religion, sex, age, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor or its subcontractors, or failure to comply with these statutory obligations when applicable, shall be grounds for immediate termination of this Contract.

15 INSURANCE

Contractor's Insurance: The Contractor shall not commence work under the resulting Contract until it has obtained all insurance required herein, and Contractor shall maintain the required insurance for the duration of the Contract or as further indicated herein. The date of the inception of the policy must be no later than the first date of anticipated work under the Contract. Certificates of Insurance shall be filed with the State for approval. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of the State before work is commenced.

Workers' Compensation Insurance: Before any work is commenced, Contractor must have in place and shall maintain during the life of the Contract, Workers' Compensation Insurance for all of Contractor's employees and other persons for whom Contractor is required to provide Workers' Compensation Insurance under applicable law. In case any work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by the Contractor. Workers' Compensation Insurance shall be in compliance with the Workers' Compensation law of the state of the Contractor's headquarters. Employer's Liability Insurance shall be included with a minimum limit of \$500,000 per accident/per disease/per person. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included and the Employer's Liability limit increased to a minimum of \$1,000,000 per accident/per disease/per person. A.M. Best's insurance company rating requirement may be waived for workers' compensation coverage only.

Workers' Compensation Indemnity: In the event Contractor is not required to provide or elects not to provide workers' compensation coverage, the parties hereby agree that Contractor, its owners, agents, and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers' Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents, and employees. The parties further agree that Contractor is a wholly-independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, and indemnify the State of Louisiana, its departments, agencies, agents,

and employees from any such assertion or claim that may arise from the performance of this Contract.

Commercial General Liability Insurance: Contractor shall maintain during the life of the Contract such Commercial General Liability Insurance, including but not limited to Personal and Advertising Injury Liability, which shall protect it, and the State, its officers, trustees, employees, servants, and/or agents, from losses, claims, demands, liabilities, suits, actions, damages, costs, fines, penalties, judgments, forfeitures, assessments, expenses, obligations (including attorneys' fees), and other liabilities relating to personal injury, general negligence, violation of or failure to comply with any state or federal law, regulation, or other legal mandate, and damage to real or personal tangible property to the extent caused by Contractor, its employees, officers, agents, partners or, subject to the subsection titled "Subcontractor's Insurance", below, subcontractors, and which may arise from operations or services under the Contract, whether such operations or services be by Contractor or by a subcontractor, or by anyone directly or indirectly employed or procured by either of them, or in such manner as to impose liability on the State, its officers, trustees, employees, servants, and/or agents. Such insurance shall name the State of Louisiana, its officers, trustees, employees, servants, and agents as additional insureds. The amount of coverage shall be as follows: Commercial General Liability insurance, including Personal and Advertising Injury Liability, with policy limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and Umbrella Liability insurance, with policy limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate.

The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (or current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

Professional Liability (Errors & Omissions) Insurance: Contractor shall maintain professional liability insurance, which covers the professional errors, acts, or omissions of the Contractor, with minimum policy limit of \$1,000,000 for the purpose of providing coverage for claims arising out of the performance of its services under this Contract. Claims-made coverage is acceptable. Coverage shall be provided for the duration of the Contract and shall have an expiration date no earlier than thirty (30) days after the anticipated completion of the Contract. The policy shall provide an extended reporting period of not less than thirty-six (36) months, with full reinstatement of limits, from the expiration date of the policy, if the policy is not renewed.

Cyber/Data Breach Liability Insurance: Contractor shall have in place before commencing work under the Contract and maintain during the life of the Contract and for the extended reporting period herein, cyber/data breach liability insurance, including first-party costs, for any data breach that compromises the State's confidential data with a minimum policy limit of \$25,000,000 or self-insurance limit of \$25,000,000 for the purpose of providing coverage for claims arising out of the performance of its services under the Contract. Claims-made coverage is acceptable. Such insurance policy shall name the State of Louisiana, its officers, trustees, employees, servants, and agents as additional insureds. If self-insured, evidence of self-insurance must be provided to and accepted by the State. Coverage shall be provided for the duration of the Contract and shall have an expiration date no earlier than thirty (30) days after the anticipated completion of the Contract. The policy shall provide an extended reporting period of not less than twenty-four (24) months from the expiration date of the policy,

if the policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premiums.

Owned, Non-Owned and Hired Motor Vehicles/Automobile Liability: Contractor shall maintain during the life of the Contract, Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. ISO form number CA 00 01 (or current form approved for use in Louisiana), or equivalent, is to be used in the policy. Such insurance shall cover and include third-party bodily injury and property damage liability for any owned, non-owned, and hired motor vehicles engaged in operations within the terms of the Contract, unless such coverage is included in insurance elsewhere specified.

Subcontractor's Insurance: Contractor shall include all subcontractors performing work required by this Contract as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates of Insurance provided for any and all subcontractors, which are not protected under the Contractor's own insurance policies, of the same nature and in the same amounts as required of Contractor. Subcontractors shall be subject to all of the requirements stated herein. The State reserves the right to request copies of subcontractor's Certificates of Insurance at any time.

Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and accepted by the State. The Contractor shall be responsible for all deductibles and self-insured retentions.

Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The State, OGB, its officers, agents, employees, and volunteers shall be named as an additional insured as regards negligence by the Contractor. ISO Form CG 20 10 (or current form approved for use in Louisiana), or equivalent, is to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the State.
- b. The Contractor's insurance shall be primary as respects the State, OGB, its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the State/OGB shall be excess and non-contributory of the Contractor's insurance.
- c. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the State/OGB, its officers, agents, employees, and volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the policy limits.

2. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the State/OGB, its officers, agents, employees, and volunteers for losses arising from work performed by the Contractor for the State/OGB under the Contract.

3. All Coverages

- a. Coverage shall not be cancelled, suspended, or voided by either the Contractor or the insurer or reduced in coverage or in limits, except after 30 days' written notice has been given to the OGB/State. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy.
- b. Neither the acceptance of the completed work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the OGB/State for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the State/OGB, its officers, agents, employees, and volunteers.

Acceptability of Insurers: All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction(s) in which the Project is performed. Insurance shall be placed with insurers with a A.M. Best's rating of A-:VI or higher. This rating requirement may be waived for worker's compensation coverage only.

If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance as required in the Contract.

Verification of Coverage: Contractor shall furnish the OGB/State with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the OGB/State before work commences and upon any Contract renewal thereafter.

In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision endorsement for each insurance policy. The OGB/State reserves the right to request complete certified copies of all required insurance policies at any time.

Upon failure of the Contractor to furnish, deliver, or maintain such insurance as above provided, the Contract, at the election of the OGB/State, may be suspended, discontinued, or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the Contract.

16 APPLICABLE LAW

This Contract shall be governed by and enforced in accordance with the laws of the State of Louisiana, including but not limited to La. R.S. 39:1551-1736 (Louisiana Procurement Code, as applicable) (collectively referred to as the "Law"). After exhaustion of any available administrative remedies, the exclusive venue of any action brought with regard to this Contract shall be in the Nineteenth (19th) Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

17 LEGAL REQUIREMENTS

17.1 ACT 124 OF THE 2019 REGULAR LEGISLATIVE SESSION

The Contractor shall comply with all applicable laws of the State of Louisiana, including but not limited to, Act 124 (Senate Bill 41) of the 2019 Regular Legislative Session.

17.2 La. R.S. 40:2870, ACT 124 OF THE 2019 REGULAR LEGISLATIVE SESSION

The Contractor shall comply with all applicable laws of the State of Louisiana, including but not limited to La. R.S. 40:2870, Act 124 (Senate Bill 41) of the 2019 Regular Legislative Session. In adhering to La. R.S. 40:2870, Contractor shall not:

- (1) Commit any unfair and deceptive trade practice prohibited by R.S. 22:1964(15).
- (2) Perform any act that violates the duties, obligations, and responsibilities imposed under the Louisiana Insurance Code on a pharmacy benefit manager.
- (3) Buy, sell, transfer, or provide personal healthcare or contact information of any beneficiary to any other party for any purpose with one exception. A pharmacy benefit manager may provide such information regarding beneficiaries of a health plan to that health plan provider if requested by the health plan provider.
- (4) Conduct or participate in spread pricing as defined in R.S. 22:1863(9) without providing the notice required by R.S. 22:1867.
- (5)(a) Directly or indirectly engage in patient steering to a pharmacy in which the pharmacy benefit manager maintains an ownership interest or control without making a written disclosure and receiving acknowledgment from the patient. The disclosure required by this Paragraph shall provide notice that the pharmacy benefit manager has an ownership interest in or control of the pharmacy, and that the patient has the right under the law to use any alternate pharmacy that they choose. The pharmacy benefit manager is prohibited from retaliation or further attempts to influence the patient, or treat the patient or the patient's claim any differently if the patient chooses to use the alternate pharmacy.
- (b) The provisions of this Paragraph shall not apply to employers, unions, associations, or other persons who employ, own, operate, control, or contract directly with a pharmacy or pharmacist for the purpose of managing or controlling prescription costs paid for the benefit of an employee or member or those covered by the employee or member's plan, or when the persons contract with a pharmacy benefit manager to steer employees or members to pharmacists or pharmacies which the person owns, operates, or controls.
- (6)(a) Penalize a beneficiary or provide an inducement to the beneficiary for the purpose of getting the beneficiary to use specific retail, mail order pharmacy, or another network pharmacy provider in which a pharmacy benefit manager has an ownership or controlling interest or that has an ownership or controlling interest in a pharmacy benefit manager.
- (b) For purposes of this Paragraph, "inducement" means the providing of financial incentives, including variations in premiums, deductibles, copayments, or coinsurance.
- (c) The provisions of this Paragraph shall not apply to employers, unions, associations, or other persons who employ, own, operate, control, or contract directly with a pharmacy or pharmacist for the purpose of managing or controlling prescription costs paid for the benefit of an employee or member or those covered by the employee or member's plan, or when the

persons contract with a pharmacy benefit manager to steer employees or members to pharmacists or pharmacies which the person owns, operates, or controls.

(7) Retroactively deny or reduce a claim of a pharmacist or pharmacy for payment or demand repayment of all or part of a claim after the claim has been approved by the pharmacy benefit manager as authorized by R.S. 22:1856.1.

(8) Reimburse a local pharmacist or local pharmacy, as defined in R.S. 46:460.36(A), less than the amount it reimburses chain pharmacies, mail-order pharmacies, specialty pharmacies, or affiliates of the pharmacy benefit manager for the same drug or device or for the same pharmacy service in this state.

(9) Fail to update prices as required by R.S. 22:1857.

(10)(a) Fail to honor maximum allowable cost (MAC) prices as set forth in R.S. 22:1863 et seq.

(b) Shall not require a pharmacist or pharmacy to purchase drugs from any particular wholesaler. However, if Contractor recommends or provides a wholesaler, then that wholesaler must be willing and able to honor the Contractor's MAC price, ship the order, and have receipt of the order within two business days with no additional charge to the pharmacist.

(c) If the wholesaler chooses not to sell the drug to the pharmacist or pharmacy, then the MAC price set by Contractor must be adjusted to the price available to the pharmacist or pharmacy through another wholesaler.

(11) Fail to meet the payment standards established in R.S. 22:1856.

(12) Fail to provide detailed remittance advice to pharmacists and pharmacies in compliance with R.S. 22:1856.

(13)(a) Fail to pay any state or local sales tax imposed on any drug, device, or pharmacy services or to remit the sales tax to the appropriate pharmacist or pharmacy for the tax proceeds to be forwarded to the sales tax authority.

(b) As provided in La. R.S. 40:2870, if Contractor does not pay the sales tax, Contractor shall be liable to the taxing authority for the tax, interest, penalties, and any other fees or costs imposed by law for failure to pay sales taxes.

(c) Contractor shall not deduct the taxes from any amount due to a pharmacist or pharmacy for a drug, device, or pharmacy service or charge or pay anyone a fee or surcharge for paying any sales tax or remitting any sales tax proceeds to a pharmacist or pharmacy if that fee or surcharge would be imposed directly or indirectly on the pharmacist or pharmacy.

(d) If Contractor pays any out-of-state pharmacist or pharmacy for drugs or devices shipped to a beneficiary in this state or for pharmacy services rendered to a beneficiary which is taxable in this state, Contractor shall remit the tax directly to the appropriate taxing authority.

(e) State or local sales taxes and other applicable state-imposed taxes or fees shall be considered as part of the allowable cost and shall be included in the claim submitted by a pharmacist or pharmacy.

(14) Restrict early refills on maintenance drugs to an amount less than seven days for a prescription of at least a thirty-day supply.

(15) Require a beneficiary to follow a plan's step therapy protocol if the prescribed drug is on the health plan's prescription drug formulary, the beneficiary has tried the step therapy required prescription drug while under his current or previous health plan, and the provider has submitted a justification and supporting clinical documentation that such prescription drug was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse effect or event.

(16) Delay a decision on a request for authorization to dispense a prescription drug for more than seventy-two hours, or twenty-four hours in exigent circumstances in which the patient, in the opinion of the prescribing provider, pharmacy, or pharmacist submitting the authorization request, is suffering from a health condition that may seriously jeopardize the patient's life, health, or ability to regain maximum function. A request for authorization shall include relevant data or appropriate documentation to render a decision on a request for authorization.

(17) Exploit prescription drug information obtained from beneficiaries for monetary gain or economic power over beneficiaries, pharmacists, or pharmacies.

(18) Sell, exchange, or use in any manner prescription drug information regarding a beneficiary obtained through a beneficiary's use of a prescription for purposes of marketing, solicitation, consumer steering, referral, or any other practice or act, except as otherwise provided for in this Section, that provides the pharmacy benefit manager or any of its affiliates or subsidiaries economic power or control over pharmacists or pharmacies or interferes in the free choice of a beneficiary.

(19) Engage in drug repackaging and markups. If Contractor owns or controls a mail-order pharmacy, Contractor shall not allow the mail-order pharmacy to repackage drugs and sell the repackaged items at higher prices than the original average wholesale price unless beneficiaries who may buy the repackaged drugs are informed in writing that the drugs have been repackaged and are being sold at the higher price.

(20) Operate in Louisiana without either being registered with and in good standing with the Louisiana secretary of state to do business in Louisiana or being licensed by and in good standing with the commissioner of insurance, as provided by this Chapter.

17.3 La. R.S. 22:1651(J)(1), Special Requirements

In accordance with La. R.S. 22:1651(J)(1), OGB or its contractor shall not require any license, accreditation, affiliation, or registration other than those required by federal or state government. Any contract provision in conflict with this provision shall be severable from the contract, considered null and void, and not enforceable in this state.

17.4 La. R.S. 22:1860.2, Certain pharmacy claims fees prohibited

In accordance with La. R.S. 22:1860.2, OGB or its contractor shall not directly or indirectly charge or hold a pharmacy or pharmacist responsible for any fee related to a claim that is any of the following:

- (1) Not apparent at the time of claim processing.
- (2) Not reported on the remittance advice of an adjudicated claim.
- (3) After the initial claim is adjudicated.

17.5 La. R.S. 40:2865, General licensing and permitting requirements

In accordance with La. R.S. 40:2865, every pharmacy benefit manager that does business in this state or pays for benefits for a beneficiary through a pharmacy benefit management plan shall be licensed or permitted as required. A copy of the valid license or permit must be provided to OGB prior to the effective date of the contract.

18 MAIL ORDER

The Contractor shall not steer OGB plan participants to use a mail order pharmacy by penalizing plan participants for not selecting mail order or by offering any inducement for the purposes of increasing plan participants' usage of mail order. The Contractor shall not solicit OGB plan participants' usage of mail order pharmacies by advertising, marketing, or promoting its mail order pharmacy, either orally or in writing, including online messaging. This provision does not prohibit the Contractor from including the mail order pharmacy option with other annual enrollment and general information that includes all options of obtaining pharmaceuticals.

19 CODE OF ETHICS

Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (La. R.S. 42:1101, *et. seq.*, Code of Governmental Ethics) applies to the contracting parties in the performance of services called for in this Contract. Contractor agrees to immediately notify the OGB's CEO if violations or potential violations of the Code of Governmental Ethics by or through Contractor or its subcontractors/vendors under this Contract arise at any time during the term of this Contract.

20 SEVERABILITY

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end, the terms and conditions of this Contract are declared severable.

21 INDEPENDENT ASSURANCES

Contractor shall submit, and cause its subcontractors who perform key internal controls to submit, to certain independent audits to ascertain that processes and controls related to the contracted service are operating properly. Independent assurances may be in the form of a Service Organization Control ("SOC") 1, Type II and/or SOC 2, Type II report resulting from an independent annual SSAE 18 engagement of the operations. The SSAE 18 engagement will be performed at least annually by an audit firm that will conduct tests and render an independent opinion on the operating effectiveness of the controls and procedures. The audit firm that will conduct the SSAE 18 engagement will submit a final report on controls placed in operation for the project and include a detailed description of the audit firm's tests of the operating effectiveness of controls. The Contractor shall supply the State with an exact copy of the SOC report resulting from the SSAE 18 engagement within the specified timeframe. Contractor shall also provide a bridge letter to OGB for the period of January 1-June 30, 2022 no later than July 31, 2022. The OGB will not sign a non-disclosure agreement in order to obtain any of the independent assurances referenced herein.

The cost of such independent assurances will be borne solely by Contractor. Such independent assurances shall be performed at least annually during the term of the Contract. Contractor may review any audit report before delivery to the State and include with the report a supplementary statement containing facts that Contractor considers pertinent to the audit or

engagement. Contractor shall implement recommendations as suggested by the program review and/or audit, within three (3) months of report issuance and at no cost to the State.

22 NOTICE

Any notice required or permitted by this Contract, unless otherwise specifically provided for in this Contract, shall be in writing and shall be deemed given upon receipt following delivery by: (i) an overnight carrier or hand delivery to the State/OGB; or, (ii) registered or certified mail return receipt requested, and addressed as follows:

To Express Scripts, Inc.: Amy Bricker, President
Express Scripts, Inc.
One Express Way
St. Louis, MO 63121

To OGB: David W. Couvillon, CEO
Office of Group Benefits
Post Office Box 44036
Baton Rouge, LA 70804

Or

David W. Couvillon, CEO
Office of Group Benefits
1201 N. 3rd Street, Suite G-159
Baton Rouge, LA 70802
For hand delivery

The U.S. Postal Service does not make deliveries to OGB's physical location.

At any time, either party may change its addressee and/or address for notification purposes by mailing a notice stating the change and setting forth the new address.

23 HEADINGS

Descriptive headings in this Contract are for convenience only and shall not affect the construction or meaning of Contractual language.

24 ENTIRE AGREEMENT

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this Contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

25 BUSINESS ASSOCIATE ADDENDUM

A Business Associate Addendum, Attachment III, shall be executed between the parties to this Contract to protect the privacy and provide security of Protected Health Information ("PHI") and personally-identifiable information ("PII") in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and regulations promulgated thereunder, as amended from time to time.

OGB is a "Covered Entity" under HIPAA/HITECH. For the purposes of this Contract, Contractor is deemed to be a "Business Associate" of OGB as such term is defined by HIPAA and regulations promulgated thereunder, including in the Privacy Standard of the Federal Register, published on December 28, 2000, and the parties have executed a Business Associate Addendum attached to this Contract as Attachment III, and made a part of this Contract. The parties understand and agree that if additional agreements are required to be compliant as required under HIPAA and applicable law, the parties will execute such agreements in a timely manner. Contractor agrees that its processes, systems, and reporting will be in full compliance with federal and state requirements, including but not limited to HIPAA, throughout the term of the Contract. Any fines or penalties imposed on any party related to Contractor's or its subcontractors' non-compliance will be the sole responsibility of Contractor. Contractor shall require its subcontractors' and any other vendors' processes, systems, and reporting to be in full compliance with federal and state requirements, including but not limited to HIPAA. Further, Contractor agrees that its organization, and that it requires that its subcontractors/vendors, will comply with all HIPAA regulations throughout the term of the Contract with respect to any issue related to the OGB Contract, plans, or participants involving PHI/PII, including but not limited to participant services, complaints, appeals determinations, notification of rights, and confidentiality. Contractor shall require that all agreements with subcontractors or other vendors providing services for this Contract include the provisions of this Section and any Attachments referenced herein. OGB shall be provided copies of such subcontractor/vendor agreements upon request.

Notwithstanding any provision to the contrary, major delegated functions involving PHI and PII, including but not limited to claims processing, customer service, and any other services as provided by applicable Law, shall not be sourced outside of the territorial and jurisdictional limits of the fifty (50) United States of America.

26 CONTRACTOR ELIGIBILITY

At the time of execution, Contractor, and each tier of subcontractors/vendors, certifies that it is not on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension" as set forth in 24 CFR Part 24. Contractor has a continuing obligation to disclose any suspensions, debarment, or investigations by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of the Contract and debarment from future contracting opportunities.

27 CONTINUING OBLIGATIONS

Notwithstanding any provisions to the contrary herein, upon the termination of this Contract for any reason, the provisions of this Contract which by their nature require some action or forbearance after such termination, including but not limited to confidentiality, PHI, reporting, indemnity, insurance, records retention, and performance guarantees, shall survive such termination and be binding until any actions, obligations, and/or rights provided therein have been satisfied or released.

28 PREFERRED CLIENT

OGB should be recognized as a preferred client relationship and should benefit from yearly pricing improvements provided to any other clients in Contractor's "book of business". Essentially, if Contractor offers better pricing to another client during the Contract term, OGB will benefit from the lesser pricing arrangement and receive the benefit of any offered enhancements.

29 CENTERS FOR MEDICARE AND MEDICAID SERVICES

Contractor shall make its books and records in connection with any Medicare business available to CMS and/or its designees in accordance with 42 CFR 423.504(d) and 42 CFR 423.505(d) and (e). In this regard, CMS and/or its designees shall have the right to audit, evaluate, and inspect any books, contracts, records, computer and/or other electronic systems, including medical records and documentation involving transactions related to the Plan and/or Medicare business provided under this Contract (including coverage costs, low income subsidies, and privacy and security of PHI and other personally identifiable information, enrollment and disenrollment) and any additional relevant information that CMS may require, and these rights shall continue for a period of ten (10) years, or longer if required by CMS, from the final date of the Contract period or from the date of completion of any audit, whichever is later. CMS and/or its designees shall have direct access (i.e., on-site access) to the Contractor, and the Contractor will make such books, records, computer and/or other electronic systems, directly available to CMS and/or its designee(s) for such inspection, evaluation, and audit.

30 TRANSITION OF SERVICES AND DATA

Contractor shall comply with the provisions of this Contract, and other requests of OGB/State, to accomplish a timely transition of services without interruption of services to participants. During any such transition, Contractor will provide all of the same Records and data in the same format as provided during the term of the Contract, to OGB/State or its designee. Contractor further agrees that no dispute or objection it may have regarding the propriety of any transition of services by OGB/State will relieve Contractor of these obligations.

31 PROHIBITION OF DISCRIMINATORY BOYCOTTS OF ISRAEL

In accordance with La. R.S. 39:1602.1, for any contract for \$100,000 or more and for any Contractor with five or more employees, Contractor, including any subcontractor, shall certify it is not engaging in a boycott of Israel, and shall, for the duration of this Contract, refrain from a boycott of Israel.

The State reserves the right to terminate this Contract if the Contractor, or any subcontractor, engages in a boycott of Israel during the term of the Contract.

(Signature Page To Follow)

THUS DONE AND SIGNED on the date(s) noted below:

STATE OF LOUISIANA
OFFICE OF GROUP BENEFITS

BY: David W. Couvillon

NAME: David W. Couvillon

TITLE: Chief Executive Officer

DATE: 11/9/21

EXPRESS SCRIPTS, INC.

BY: Grace E Allen

NAME: ~~Bob~~ Grace E Allen

TITLE: VP - Account Management

DATE: 11/4/21

ATTACHMENT I: SCOPE OF WORK/SERVICES

The Contractor must possess the knowledge, capability, and resourcefulness to effectively provide PBM services in accordance with all federal, state, and any other applicable laws, regulations, policies, OGB requirements, etc. The Contractor will be responsible for successfully transitioning (in conjunction with OGB and the incumbent contractor) to being the Contractor responsible for completing all required services. The Contractor shall provide competent and qualified staff to work on the scope of services under the Contract.

The Contractor will be responsible for ensuring the accuracy, timeliness, and completion of all tasks assigned under the resulting Contract. OGB reserves the right to modify or delete the tasks and services listed prior to and during the term of the Contract, subject to the approval of the OGB CEO, Office of State Procurement, and any other approval required by law.

At a summary level, these tasks include:

1. Implementation services
2. General Support Services
3. Pharmacy Benefit Manager Services
4. Clinical Management Services

Below is a list of minimum services the Contractor shall be responsible for providing under the Emergency Contract:

Task (1): Implementation

- Assign a dedicated implementation team to manage the implementation process and the transition of services from the incumbent contractor.
- Work with OGB and incumbent contractor to transfer competencies and operational expertise essential to administering OGB's pharmacy benefits program with minimal interruption to Plan Participants.
- Perform all tasks necessary to complete the pre-implementation audit (including follow-up test claims) at least ten (10) days prior to the effective date. This assumes OGB will sign off on the benefit set up at least thirty (30) days in advance of the Plan effective date.
- Provide an implementation credit to OGB to offset OGB's expense associated with the SFO, transition, and ongoing services, see Attachment II: Pricing. In no case shall OGB be required to repay all or a portion of the used or unused implementation credit. Contractor will track such services and provide OGB a quarterly report, upon request, of current utilization and remaining balance, if any, of the implementation credit. Any remaining balance will not expire and be available for use during the term of this Contract.
- Establish and implement data utilization edits that identify and deny duplicate claims, claims filed too soon, claims requiring authorization when such authorization is not in place, as well as messages to the pharmacist for review and approval or denial of the claim(s) due to safety issues.
- Facilitate system programming including, but not limited to, data collection from OGB; file transfer set-up between OGB and Contractor; and data transfer and mapping. If Contractor requires file mapping and/or subsequent updates, this service will be provided by Contractor at no additional cost to OGB. **Files must be sent electronically to the OTS MOVEit DMZ Secure FTP server utilizing a security file transport protocol; the**

preference is FTPS. All files must be encrypted using Public Key Infrastructure (PKI) with a prior exchange of Public Key(s), commonly referred to as PGP encryption. The encrypted file(s) must have an extension of “.pgp”. The encryption key must have an expiration of no longer than five (5) years from the creation date and be approved by the OTS InfoSec Team. All files must be encoded as an ASCII text file prior to encryption.

- Provide file data in a layout format designated by OGB to include, but not be limited to, Drug Claims File, Prior Authorization Review File, Appeals Determination File, and Out of Pocket Maximum. The Contractor must accept OGB's designated file layout. File layouts will be provided at no cost to OGB. **Files must be sent electronically to the OTS MOVEit DMZ Secure FTP server utilizing a security file transport protocol; the preference is FTPS. All files must be encrypted using Public Key Infrastructure (PKI) with a prior exchange of Public Key(s), commonly referred to as PGP encryption. The encrypted file(s) must have an extension of “.pgp”. The encryption key must have an expiration of no longer than five (5) years from the creation date and be approved by the OTS InfoSec Team. All files must be encoded as an ASCII text file prior to encryption.**
- Mail identification cards (“ID Cards”) to the homes of newly enrolled EGWP Plan Participants within ten (10) calendar days following receipt of notification of approval from CMS. Contractor will be responsible for the cost of reproducing ID Cards and priority mail shipping in the event of Contractor errors and/or initiated changes.
- Mail welcome kits to the homes of newly enrolled Plan Participants within four (4) calendar days upon receipt of eligibility.
- Integrate with selected contractor(s) accurately and timely for the administration of the Plan, including the health claims administrator and COBRA administrator, for the purpose of out-of-pocket maximum accumulation. **Ensure that out-of-pocket maximum accumulation integration with selected contractor(s) as defined by OGB is successful prior to the “Go-Live” date, at no additional cost.**
- Provide ten (10) read-only access codes to the online eligibility, claims payment and/or standard and ad hoc reporting systems(s) (collectively, the “System”) which will allow OGB's specified personnel to view and/or extract information residing in the System on an individual, Plan level, and account structure basis. Training to OGB personnel will be provided by the Contractor's Account Management Team on-site at OGB.
- Conduct project status implementation meetings with the Contract Monitor on-site, or via teleconference.
- Perform comprehensive systems testing and quality assurance audits, with results reported to OGB prior to the “Go-Live” date, at no additional cost.
- Ensure successful and timely completion of all tasks necessary to begin performance of the Contract on January 1, 2022, 12:00 a.m. CT.

Task (2): General Support Services

- Provide a dedicated Account Executive and/or Operational Account Manager that will provide day-to-day management of project tasks and activities, coordination of Contractor's employees, and possess the technical and functional knowledge to direct all aspects of the project. Also, the Account Executive must have at least one (1) back-up staff member designated to handle the overall responsibility of OGB. Assist OGB in complying with grievance and appeal procedures adopted by OGB as outlined in the Plan. The Contractor will be responsible for resolution of appeals specific to Covered Benefits, medical necessity, and external reviews consistent with the appeals program and Plan

Participant requested reviews of prescription drug denials as allowed by and in accordance with all applicable Law.

- Provide support around account strategy, Plan Participant inquiries, issue resolution, reports and other requested projects and deliverables.
- Provide an annual service cycle plan as well as an ongoing task log with timelines for all deliverables and weekly status update meetings in person or via teleconference.
- Attend all quarterly meetings via teleconference or on-site four times per calendar year at OGB. The meetings shall be held no later than sixty (60) days following quarter end. The Account Management Team will provide for OGB approval a draft agenda at least ten (10) business days in advance of a meeting to allow changes to the agenda and a reasonable opportunity to prepare for the meeting.
- Maintain an ongoing process log that will document all benefit and system programming changes, which will be provided to OGB within five (5) business days of any change.
- Upon OGB request, the Contractor will be required to work with the appointed OGB actuary, other selected OGB contractors, employees from the Division of Administration, and the OGB staff for management of the program.
- Investigate any activity, prescription related or otherwise relating to the Plan, which it believes to be fraudulent or abusive whenever detected by the Contractor or brought to the attention of the Contractor by OGB or other persons. The Contractor shall have established procedures and system edits to aggressively monitor and proactively search for cases and potential cases of fraud and abuse including providing OGB with a quarterly report of fraud activities and discoveries relating to the resulting Contract.
- Assist OGB in responding to inquiries received from Plan Participants, pharmacy providers, or other persons. Such requests shall be 1) given priority status; 2) subject to a method of tracking approved by OGB; and 3) result in the delivery of all requested information, documentation, etc. When immediate responses are required, the Contractor shall assist OGB in preparing its reply including providing data and documentation within the timeframes prescribed by OGB for a specific inquiry.
- Provide immediate online real-time manual eligibility updates for urgent requests by OGB staff.
- Make available all necessary resources to assist OGB in responding to legislative inquiries and requests including, but not limited to, the Account Management Team, analytics and outcomes, and government relations department. The Contractor shall respond within the timeframe set by OGB, which will be determined at the time of the inquiry depending upon the scope and complexity of the request.
- Provide knowledgeable staff to attend statewide annual/special enrollments and any other informational meetings as scheduled by OGB as well as prepare, print, and distribute communication materials.
- Provide advisory services to OGB regarding actual or pending state and federal laws, regulations, policies, procedures, and rules specific to self-funded plans for pharmacy benefit management, pharmacy and prescription drugs, other topics related to the provisions of this Plan and provide OGB with interpretation as to the impact of such laws or regulations on the Plan.
- Subject to OGB's customization and approval, the Contractor will be responsible for the development of pharmacy benefit information including, but not limited to 1) annual and special enrollment brochures and promotions; 2) other Plan-related printed materials (i.e., promotional, Plan Participant education, ID Cards, benefit brochures, claim forms, clinical program notices and letters, pre-formatted letters, system generated letters and notifications, correspondence forms, and other written materials and forms). The

Contractor will be responsible for all costs associated with designing, writing, printing, distributing, and mailing all such information.

- Upon request of the Plan Participant, provide printed materials in a medium widely accepted and in compliance with all applicable anti-discrimination Laws.
- Provide website that is specific to OGB and that is in compliance with all applicable anti-discrimination Laws.
- Provide all printed material in electronic format with final version submitted to OGB in PDF file format.
- Provide dedicated Customer Service Representatives (“CSR”) to research and resolve benefits, Claims payment, denial inquiries and complaints submitted by Plan Participants, pharmacies, and OGB to the satisfaction of OGB. CSR must have the ability to gather and analyze data, create an historical picture, including a timeline of Claim activity for the individual Plan Participant, and develop appropriate correspondence for complicated Claim issues that are appealed to OGB.
- Furnish a dedicated toll-free number for incoming customer service calls, including telephone technology for the hearing impaired and multi-lingual support. The dedicated call center for pharmacies, Plan Participants, and account management must be staffed and available to receive calls 24/7.
- Upon request, provide digital recordings of phone calls within two (2) business days of request.
- Document and maintain a service disruption/continuity of operations plan or procedure to continue customer service activities and all other business operations when existing service is temporarily unavailable due to either scheduled or unforeseen events (i.e., repairing/restoring utility or power supply, upgrading phone systems, and other events). OGB must be notified in advance for scheduled disruptions and within twenty-four (24) hours of occurrence for other events.
- Written communications to Plan Participants that have not been previously approved by OGB will be subject to OGB’s approval prior to distribution. Such changes are subject to OGB approval prior to implementation. OGB will review written communications to Plan Participants annually to ensure no change in information, legal requirements as to OGB, etc. are necessary.
- Conduct annual Plan Participant(s) and OGB satisfaction surveys and report results to OGB. The survey tools are subject to OGB’s approval.
- Meet with OGB staff in person or via teleconference, on at least a weekly basis to review and evaluate Contract administration. This schedule may be modified by OGB.
- Notify OGB within five (5) business days of receipt of any class action notice and/or knowledge of other lawsuits related to the services provided hereunder in which the Contractor determines OGB could have an interest and provide copy of such to OGB. Contractor is not authorized to file such claims on behalf of OGB without OGB’s express written consent. Contractor will provide claims data and reporting to use in filing for refunds or to participate in any such action or litigation at no additional costs.
- Contractor must notify the applicable state authority (i.e., state treasurer, etc.) and escheat any unclaimed property upon the expiration of the statutory time period for escheatment.

Task (3): Pharmacy Benefit Manager Services

- Provide prescription benefit management services including, but not necessarily limited to, general support and advisory services regarding pharmacy benefit design and implementation, Formulary management, network and rebate management,

administrative and claims processing services, clinical management programs, reporting, marketing, customer service, quality management, and utilization management functions.

- Provide network access, without an access fee, to Louisiana pharmacies which are licensed and in good standing.
- Perform all aspects of Claims processing, coordination of benefits including non-Medicare and Medicare, Claims reimbursement, point-of-sale transactions, adjudication, and payment. The Contractor shall verify benefits and eligibility before authorizing prescriptions and paying Claims.
- Provide a process for reimbursing Plan Participants through electronic submission and paper reimbursement form.
- Provide a full Claims file feed to all vendors designated by OGB including, but not limited to, OGB's actuary and third-party claims administrator of self-insured health plans, as requested by OGB at no additional cost and in the format specified by OGB. File layouts will be provided at no cost to OGB.
- Modify Formulary as requested by OGB and communicate such modifications as necessary by transmitting disruption letters to those Plan Participants impacted by Formulary changes.
- Manage the current pharmacy benefit plan design and any changes implemented by OGB. Benefit design and coverage for supplies and prescriptions can be modified as needed and requested by OGB to align with associated health/medical programs, such as disease management and diabetic care.
- Provide innovative savings solutions for the prescription drug plan, including a detailed overview of the design and scope of the solution.
- Provide a process flow of the solution, from identification of potential savings, outreach to plan participants and providers, and data regarding savings realized by the plan and participants.
- Provide retail network (30 and 90 day), mail order, and specialty pharmacy services.
- Comprehensive management of the EGWP, including the ability to maintain benefits for OGB retirees who are awaiting EGWP approval by CMS with 100% adherence to all CMS guidelines. Any funds received applicable to Plan Participants in Medicare Part D will be remitted to OGB within ten (10) business days of receipt from CMS and the appropriate files will be provided for purposes of reconciliation.
- Review, clarify, edit as necessary, and confirm the accuracy of all prescription drug program information included in the annual benefit guide and website as requested by OGB. The Contractor shall respond within the timeframe set by OGB, which will be determined at the time of the request.
- Communicate as necessary with those Plan Participants on Plan Participant disruption letters to those impacted by quarterly Formulary changes.
- Perform all aspects of claims processing, coordination of benefits including non-Medicare and Medicare, claims reimbursement, point-of-sale transactions, adjudication, and payment. The Contractor shall verify benefits and eligibility before authorizing prescriptions and paying claims.
- Support any deductible or out-of-pocket maximum cross accumulation in a mutually agreed format to ensure compliance with the Patient Protection and Affordable Care Act ("PPACA").
- Process run-on claims for eligible OGB Plan Participants incurred prior to but not processed as of the effective date of the resulting Contract at OGB's request.
- Process claims for eligible OGB Plan Participants incurred prior to but not processed as of the termination of the resulting Contract and received not more than one (1) year following Contract termination ("run-off services"). At OGB's request, the handling of such

claims may be transitioned to a successor appointed by OGB prior to the end of the run-off period, and the Contractor shall cooperate in transitioning such services to any successor appointed by OGB. Further, Contractor will continue to process all claims and appeals for claims incurred prior to termination of the resulting Contract during the one (1) year run-off period following termination, unless otherwise transitioned to a successor appointed by OGB.

- Provide membership eligibility/enrollment, co-payment/coinsurance and benefit coverage information, supplied by OGB or its designated agent in mutually agreed format, available to network pharmacies on a weekly basis at the time of dispensing through the online electronic transmission link maintained between the Contractor and pharmacies to assure claims are processed appropriately.
- Provide 24/7 access to online portal, except for scheduled maintenance, to Plan Participants for activities such as Claim submission, account monitoring, communications requested and approved by OGB, Formulary, and any other information required by state and federal Laws. All outages in excess of one (1) hour should be promptly reported to the Contract Monitor.
- Provide web-based tools that will help educate Plan Participants on the benefit plan design and assist in calculating and tracking the cost and utilization of their prescribed drug through all delivery channels (i.e., retail 30, retail 90, specialty, and mail service). The tool(s) must also provide alternative suggestions for more cost-effective medication within the same therapeutic class.
- Unless Louisiana Law requires greater notice, provide advance written notice to OGB no later than ninety (90) days prior to any anticipated Formulary change, with written notice also to be sent to the address of impacted Plan Participants no later than sixty (60) days prior to the effective date of any change. For purposes of this requirement, Plan Participant shall include any Plan Participant who has had a prescription filled for the impacted medication(s) within the last ninety (90) calendar days or has an active refill on file. Written communications to Plan Participants will be subject to OGB's approval prior to distribution. Such formulary changes are subject to OGB approval prior to implementation.
- Unless Louisiana Law requires greater notice, provide advance written notice to OGB no later than ninety (90) days prior to any anticipated material change(s) to the retail pharmacy network, mail order pharmacy, and/or specialty pharmacy with written notice also to be sent to the address of impacted Plan Participants no later than sixty (60) days prior to the effective date of any change. For purposes of this requirement, Plan Participant shall include any Plan Participant who has had a prescription filled within the last ninety (90) calendar days or has an active refill on file with the terminating pharmacy. Written communications to Plan Participants will be subject to OGB's approval prior to distribution. Such network changes are subject to OGB approval prior to implementation.
- Provide Plan Participant notice of any delays beyond three (3) days in the delivery of prescription to the Plan Participant.
- Implement a specialty pharmacy program that will provide cost-effective care and positive patient outcomes through increased adherence, as well as provide an enhanced patient experience through the convenience of scheduled delivery, disease management programs and compliance monitoring employing a care coordination model.
- Provide predictive and plan design modeling capabilities and tools that will assist OGB in assessing the financial impact and/or return on investment ("ROI") of OGB's current benefit plan design and any proposed benefit changes.
- Provide benchmark comparison for clients similar to OGB as well as national comparisons.
- Perform audits of individual pharmacies not located in the State of Louisiana prior to their entering the provider network and as requested by OGB for the purpose of determining

pharmacy accuracy. For pharmacies located in the State of Louisiana that are seeking entrance into the network, the Contractor may accept the formal application of the pharmacy along with a copy of the on-site inspection report completed by the Louisiana Pharmacy Board in lieu of an audit.

- Maintain criteria to establish when and how a utilized participating pharmacy may be selected for audit (i.e., desk audit, on-site audit, client specific on-site participating pharmacy audit requests, etc.) and/or audited to determine compliance with its contract with the Contractor. Audits will be conducted by the Contractor's internal auditors or its subcontracted auditors at the utilized participating pharmacy. The Contractor will be required to institute action to collect overpayments and return 100% of the recoveries to OGB. Overpayments will be remitted to OGB within thirty (30) days after the close of each Contract quarter via check or wire unless otherwise specified. Contractor will provide reporting at no cost to validate overpayments and recoveries.
- OGB has the right to audit PBM more than once per year if the audits are different in scope or for different services (eg. Rebate, Performance Guarantees, Claims, Financial). The audits will be at no charge to OGB except at a direct pass-through of any data retrieval fees, which may be required if data requested has already been stored.
- Render payment to OGB for all rebates within one hundred twenty (120) days after termination of the Contract. In addition, all pricing guarantees will be trued up and any shortfalls will be paid to OGB within one hundred twenty (120) days after said termination.
- Provide immediate notification upon receipt by Contractor of any non-routine CMS-related inquiries regarding OGB's pharmacy benefits program and prepare response to such inquiries for OGB approval within the specified timeframe mutually agreed upon by the parties; and submit such response to CMS after OGB approval.
- Perform and/or process subrogation of prescription claims and other government agency recoveries on behalf of OGB in accordance with the timeframes specified by Law or such other periods requested by OGB. Government agencies include but are not limited to the Centers for Medicaid and Medicare Services ("CMS"), Office of Inspector General ("OIG"), Health and Human Services ("HHS"), state Medicaid agencies, Veteran's Administration ("VA") facilities, Indian Health Services and Bureau of Indian Affairs ("IHS"), and Department of Defense military treatment facilities (or other similar facilities) ("DOD"), or the agencies' or facilities' third-party representatives.
- Remit applicable fees to pharmacies as required by Louisiana law.
- For disaster declarations and or catastrophic events, Contractor should have the ability to limit the "refill too soon" edit to either the parish/county of residence or the zip code of residence of Plan Participants.
- Provide all EGWP communications via Mail and not electronically.

Task (4) Clinical Management Services

- Perform Formulary management, rebate sharing and other clinical services described herein. These services will include, but not limited to, prior authorization, step-therapy, concurrent and retrospective drug utilization review and other measures that are deemed appropriate to effectuate Formulary management. All Formulary changes are subject to OGB's approval prior to implementation.
- Develop and implement clinical intervention and cost-saving programs. All such initiatives are subject to OGB's approval prior to implementation and/or discontinuance.
- Provide clinical resources (i.e., dedicated pharmacist, etc.) to OGB to assist in interpreting pharmacy data and developing cost management strategies.

1.1 Deliverables

The deliverables listed in this section are the minimum required from the Contractor for both Commercial & EGWP. Additional deliverables may be included at the time of Contract award or as mutually agreed between both parties.

Deliverable	Description	Frequency of Submission
Independent Assurances		
Independent Assurances	Contractor shall supply OGB with an exact copy of the annual SOC 1, Type II and/or SOC 2, Type II (as agreed by OGB) resulting from the SSAE18 engagement or any other independent assurances approved by OGB for the period of January 1 – December 31. Contractor shall also provide a bridge letter to OGB for the period of January 1- June 30, 2022.	March 31, 2023 and each calendar year thereafter. Contractor shall provide bridge letter for the period of January 1- June 30, 2022 no later than July 31, 2022.
Performance Guarantees		
Performance Guarantee Report	A detailed comprehensive monthly report including metrics for the performance guarantees set forth in the Contract.	Within sixty (60) calendar days after close of each month and calendar year.
Financial Guarantee Report	A comprehensive quarterly report, including the effective AWP discounts, dispensing fees, and rebates.	Within thirty (30) calendar days after the close of each quarter.
Account Satisfaction		
Plan Participant Satisfaction Survey	Conduct annual Plan Participant satisfaction survey and report results to OGB.	Within thirty (30) calendar days after end of each calendar year.
OGB Satisfaction Survey	Conduct annual OGB satisfaction survey and report results to OGB.	Within thirty (30) calendar days after end of each calendar year.
Operational Activities		
Ad Hoc Reports	Provide client-specific reports that include data related to Contractor's operating performance and health outcomes of OGB Plan Participants.	Within ten (10) business days of request.
Monthly Projections	Provide client-specific reports that project cashflow and rebates.	Within ten (10) business days of month end.
Weekly Status Meeting Agenda	A document that provides a high level overview of agenda topics, new and	Twenty-four (24) hours prior to the scheduled

	current issues requiring resolution, and any other necessary discussions.	meeting for review and comments.
Service Log	A log detailing open and resolved issues to include, but not limited to, description of issue, date identified, recommended and/or agreed upon course of action, anticipated completion date, responsible party for resolution, notes from meeting discussions regarding the issue, and any other applicable comments.	Within fifteen (15) calendar days after the end of each month.
Meeting Minutes	Provide detailed and well-documented draft meeting minutes for review and comment. Final minutes must be provided within three (3) business days after receipt of revisions from OGB.	Within three (3) days after any meeting and/or receipt of revisions from OGB.
Quarterly Meeting Frequency	Attend all on-site quarterly meetings four times per calendar year at OGB.	The meetings shall be held no later than sixty (60) days following quarter end.
Quarterly Meeting Agenda	A document that provides a high level overview of agenda topics, new and current issues requiring resolution, and any other necessary discussions.	Within ten (10) business days in advance of the scheduled quarterly meeting.
Process Log	A comprehensive document including a detailed description of all benefit and system programming changes.	Within five (5) business days of any change.
Drug Type Summary	A summary of claims by drug type, broken out by Plan & level of coverage (employee ("EE"), employee + spouse ("EE+SP"), etc.), drug type (Generic/Brand), prescription count, days' supply, paid amount, total Plan Participant Out of Pocket ("OOP").	Within fifteen (15) calendar days after end of each month.
Paid Claims Summary	A summary of paid claims, broken out by Plan & level of coverage, prescription count, Plan paid amount, Plan Participant paid amount, total claims, and year to date total.	Within fifteen (15) calendar days after end of each month.
Direct Member Reimbursement ("DMR") Summary	A summary of DMR claims by Plan to include DMR flag, in/out network, prescription count, relationship code, paid amount, total Plan Participant OOP, and year to date total.	Within fifteen (15) calendar days after end of each month.

Specialty Utilization by Drug within Disease Summary	A summary of specialty drug utilization to include, but not limited to, Rheumatoid Arthritis, Multiple Sclerosis, and Hepatitis C broken out by disease state, drug name, number of prescriptions, Plan/Plan Participant cost, Plan/Plan Participant cost per fill, average total cost per fill.	Within fifteen (15) calendar days after end of each month.
Clinical Pipeline Report	A summary of specialty products in Phase III trials that are expected to receive Federal Drug Administration ("FDA") approvals within the next twelve (12) months. This report is to include information by drug, manufacturer, therapeutic category, main use/description, expected approval, efficacy and safety data, predicted place in therapy, and financial impact. As specialty products are released to market, a drug review will be performed that includes efficacy, safety data, place in therapy, comparative cost analysis, Formulary placement recommendation, and prior authorization guideline recommendation.	Last day of the month following end of each quarterly reporting period.
OGB Claims by Therapeutic Class	A description of the top 25 therapeutic classes by Plan paid claims. This report is to include total paid, Plan paid, patient paid, and percentage of Generic of each, number of claims, percentage of total claims, percentage of Generic drugs utilized, Plan paid/day, Plan paid/claim, and per Plan Participant per month. Commercial and EGWP claims must be separated.	Last day of the month following end of each quarterly reporting period.
Drug Utilization Review ("DUR") Activity Report	A description of the total monthly drug utilization. To include total DUR activity, rejected claims, and reversed claims broken out by conflict description, summarized by total DUR count, ingredient cost, paid and percentage of alerts, total overall claims, claims with alerts, and claims sent summary. Commercial and EGWP claims must be separated.	Last day of the month following end of each quarterly reporting period.

Grievance report	A description of Plan Participant reported grievances, both oral and written broken out by number of type: Plan (co-pays, coinsurance, coverage gap, prescription exclusions/limitations); appeals/formal grievances; customer service (i.e., Plan materials not received, mail order vendor, pharmacy staff, service plan operations, service plan staff); disenrollment (i.e., disenrollment not processed), fraud and abuse; marketing; quality of care; other/misc.	Last day of the month following end of each quarterly reporting period.
Plan Summary	A summary of issues, changes to Formulary, communications, and recommendations, to be presented at quarterly meetings.	Ten (10) calendar days prior to the occurrence of each quarterly meeting.
Maximum Allowable Cost ("MAC")	A MAC pricing list (i.e., OGB retail pricing).	Within fifteen (15) calendar days after end of each month.
Pharmacy Audits	Detailed results of any pharmacy audit including recommendations for identified deficiencies and plan of action as needed.	Last day of the month following end of each quarterly reporting period.
Plan Participant Communications	Prepare talking points and communications necessary for Plan/Formulary updates and changes.	Within the timeframe identified by OGB at time of request.
CMS Reporting	Prepare and submit all CMS mandated and ad hoc reports.	Within the timeframe identified at the time of request.
Payment of Rebates	Render payment to OGB for rebates	Within ninety (90) days following the end of each quarter.
Reconciliation and Payment of Financial Guarantees	Render payment to OGB for reconciliation of financial guarantees.	Within ninety (90) days following the end of each quarter.
Unclaimed Property	Detailed listing in a mutually agreeable format of any unclaimed property of OGB Plan Participants held by Contractor.	No later than June 30 of each calendar year.
DIR reporting	Provide quarterly reporting and payment to OGB	Within 30 days post quarter
DIR reconciliation	Provide annual reconciliation and reimbursement to OGB	Within 180 days of calendar year closure

1.2 Performance Guarantees

The following performance guarantees are the minimum acceptable standards for the resulting Contract. These metrics shall be reported quarterly and reconciled on an annual basis unless another time period is agreed to between OGB and Contractor. OGB shall have the ability to

modify the performance guarantees each Contract year. OGB, at its sole discretion, will allocate amounts at risk for performance guarantees, provided no more than thirty (30%) of the total amount at risk is allocated to one performance guarantee excluding financial guarantees (i.e., AWP discounts, dispensing fees, rebates, etc.). OGB may allocate 0% to a guarantee, which would indicate that the performance guarantee will only be reported on with no amounts at risk. Contactor will also be subject to per day fees for Independent Assurance Reporting performance guarantees.

Any penalties owed to OGB shall be reported within sixty (60) days after the close of the period being measured, and will not need to be requested. Any penalties owed to OGB shall be paid within forty-five (45) days after reported. Implementation performance guarantees will be measured and reported within ninety (90) days after the agreed upon implementation date. Payment of any due and owing implementation performance penalty shall be paid within sixty (60) days after reported.

Performance Guarantees: The Contractor will be subject to the performance standards and those detailed in Part 3, Scope of Service.

Financial guarantees will be covered dollar for dollar on any shortfall with no limit to the amount at risk. Any surplus on financial guarantees will be retained 100% by OGB. All guarantees will be trued up individually, meaning no guarantees can be cross-subsidized (i.e., surplus on one guarantee offsetting other, etc.). This includes not being able to cross-subsidize between delivery channels, or within a delivery channel. For example, retail and retail extended supply networks are considered separate delivery channels.

Performance Guarantees Total Dollars at Risk	January 1, 2022 through December 31, 2022
Commercial Implementation Performance Guarantees: Total dollar at risk for the Implementation Performance Guarantees as noted in this Emergency Contract	
Commercial Ongoing Performance Guarantees: Total dollar at risk for the Ongoing (annual) Performance Guarantees as noted in this Emergency Contract	
EGWP Implementation Performance Guarantees: Total dollar at risk for the Implementation Performance Guarantees as noted in this Emergency Contract	
EGWP Ongoing Performance Guarantees: Total dollar at risk for the Ongoing (annual) Performance Guarantees as noted in this Emergency Contract	

Audit: OGB reserves the right to audit performance guarantee reports on an annual basis. A third party may be utilized to perform this audit without limitation of the scope of the audit.

Measurement Periods: The measurement period shall be January 1, 2022 through December 31, 2022. If the performance guarantees are effective for less than a full calendar year, the payment amounts will be prorated for the portion of the Measurement Period.

Commercial

Performance Guarantee	Measurement	Risk Allocation
Implementation		
Implementation Satisfaction Survey	Provide an implementation satisfaction guarantee that is separate from all other guarantees. The guarantee will be at the sole discretion of OGB, meaning OGB can determine, in good faith, a "yes" or "no" if they were satisfied with the implementation, or a percentage of satisfaction.	60%
Pre-Implementation Audit	Complete the pre-implementation audit, including follow-up test claims, at least ten (10) days prior to the established implementation date.	40%
Post Implementation (ongoing)		
Pharmacy Network Disruption	At least 98% of Plan Participants shall reside within one and one half (1.5) miles of a network pharmacy for urban areas, within three (3) miles for suburban areas, and ten (10) miles for rural areas.	2%
Retail Direct Reimbursement Claims	100% of retail direct reimbursement claims processed for payment or rejected and responded to within five (5) business days.	1%
Retail Point-of-Sale Claims Adjudication Accuracy	Adjudication accuracy rate of at least 99.5% for all claims processed at point of sale.	0% - Report Only
Mail Order Turnaround for Prescription Drugs Requiring No Intervention	99% of mail orders for prescription drugs requiring no intervention (i.e., clinical verification, prior authorization, etc.) will be shipped within two (2) business days. (Measured in business days from the date the prescription drug claim is received by the vendor either paper, phone, fax or e-prescribed.)	2%
Mail Order Turnaround for Prescription Drugs Requiring Administrative/Clinical Intervention	100% of mail orders for prescription drugs requiring administrative/clinical intervention will be shipped within five (5) business days.	1%
Mail Order Dispensing Accuracy	99.8% or greater accuracy of mail order prescriptions dispensed with no errors.	0% - Report Only
Wait Time for Pharmacist/Clinical Support Supervisor	100% of Plan Participant calls that are transferred to a pharmacist or supervisor will be answered within five (5) minutes.	2%

Specialty Pharmacy Dispensing Accuracy	99.8% or greater of specialty pharmacy prescriptions filled with no errors.	0% - Report Only
Specialty Adherence Rate	Adherence rate for patients using specialty pharmacy of at least 90%. Conditions to be measured include, but are not limited to, Rheumatoid Arthritis, Multiple Sclerosis, Growth Hormones, HIV/AIDS, and Hepatitis C. Conditions will be measured for each condition separately.	3%
Average Speed to Answer	100% of calls will be answered by a live voice within twenty (20) seconds. The amount of time that elapses between the time a call is received into a Plan Participant service queue to the time the phone is answered by a Customer Service Representative ("CSR"). Measurement excludes calls routed to Interactive Voice Response ("IVR").	3%
Abandoned Call Rate	2% or less of calls will be abandoned before call is answered by CSR. (Measurement excludes calls abandoned within the first thirty (30) seconds and calls routed to IVR.)	3%
First Call Resolution	98% of all calls will be resolved at first point of contact.	5%
Prior Authorizations	Promptly review and respond to requests for prior approval for specific drugs following receipt of all required information, but in any case respond in no more than two (2) business days.	2%
Plan Participant Written Inquiry Timeliness	97% of all Plan Participant written inquiries will be responded to and resolved within five (5) business days and 100% within ten (10) business days.	1%
Plan Participant Satisfaction Survey	Satisfaction rate must be 85% or greater, using metrics mutually agreed upon by Contractor and OGB prior to January 1, 2022 and each subsequent contract year.	15%
OGB Satisfaction Survey	Satisfaction rate must be 85% or greater, using metrics mutually agreed by Contractor and OGB prior to January 1, 2022 and each subsequent contract year.	15%
Standard Reporting	Within the specified timeframe, deliver standard financial and clinical reports detailed in the deliverables section.	5%

Quarterly Meeting	Attend all quarterly meetings via teleconference or on-site four times per calendar year at OGB. The meetings shall be held no later than sixty (60) days following quarter end.	2%
Benefit Plan Review	Conduct an annual benefit plan review forty-five (45) days prior to effective date of any plan benefit changes, (i.e., co-payments, coinsurance, clinical rules, etc.).	4%
Plan Participant Identification Card Timeliness	Issue 100% of all new Plan Participant identification cards within five (5) business days following receipt of a clean eligibility file.	12%
Reporting Requirements	Provide OGB all reports specified in Attachment I: Scope of Work/Services within the specified timeframes. Additionally, on an annual basis, Contractor must prepare a written summary analysis and orally present results to OGB.	1%
On-site Pharmacy Audits	At least 3% of pharmacies with greater than 150 OGB Plan Participant prescriptions will be audited on-site on a quarterly basis.	0% - Report Only
Point-of-Sale Network System Downtime	System downtime will be 0.5% or less, measured monthly.	2%
Eligibility Processing Accuracy	100% of electronically transmitted eligibility processed accurately within one (1) business day without error.	2%
Reconciliation	Reconciliation of all financial settlements (i.e. performance guarantees, Formulary guarantee true-up, generic guarantees, rebates, etc.) to OGB within one hundred twenty (120) days from the close of each reporting period.	5%
True-up Payments	Payment of all financial settlements (i.e. performance guarantees, Formulary guarantee true-up, generic guarantees, rebates, etc.) to OGB within one hundred twenty (120) days from the close of each reporting period	5%
Independent Assurances	Contractor shall supply OGB with an exact copy of the annual SOC 1, Type II and/or SOC 2, Type II (as agreed by OGB) resulting from the SSAE18 engagement or any other independent assurances approved by OGB for the period of	Subject to \$1,000 per day penalty.

	January 1 – December 31 for each calendar year of the contract.	
Audit Response Time and Reconciliation	Audit response and reconciliation of findings will be provided within sixty (60) days of the close of the audit. If a response is not received and the vendor requires the audit be reopened then the vendor will pay for additional audit fees.	2%
Audit Errors	If a claims or rebate audit results in errors that express more than 1% of drug costs then the vendor will reimburse OGB those costs plus interest, as well as the applicable audit fees.	0% - Report Only
Accumulator Tracking and Accuracy	Accumulators (tracking plan participants' Out-of-Pocket Maximum) shall be tracked realtime with 99.5% accuracy.	5%

EGWP

Performance Guarantee	Measurement	Risk Allocation
Implementation		
Implementation Satisfaction Survey	Provide an implementation satisfaction guarantee that is separate from all other guarantees see Attachment II: Pricing. The guarantee will be at the sole discretion of OGB, meaning OGB can determine, in good faith, a "yes" or "no" if OGB is satisfied with the implementation, or a percentage of satisfaction.	60%
Pre-Implementation Audit	Complete the pre-implementation audit, including follow up test claims, at least thirty (30) days prior to the established implementation date.	40%
Post Implementation (ongoing)		
Pharmacy Network Disruption	In accordance with CMS requirements.	4%
Retail Direct Reimbursement Claims	100% of retail direct reimbursement claims processed for payment or rejected and responded to within five (5) business days.	1%
Retail Point-of-Sale Claims Adjudication Accuracy	Adjudication accuracy rate of at least 99.5% for all claims processed at point of sale.	0% - Report Only

Mail Order Turnaround for Prescription Drugs Requiring No Intervention	99% of mail orders for prescription drugs requiring no intervention (i.e., clinical verification, prior authorization, etc.) will be shipped within two (2) business days. (Measured in business days from the date the prescription drug claim is received by the vendor either paper, phone, fax or e-prescribed.)	2%
Mail Order Turnaround for Prescription Drugs Requiring Administrative/Clinical Intervention	100% of mail orders for prescription drugs requiring administrative/clinical intervention will be shipped within five (5) business days.	2%
Mail Order Dispensing Accuracy	99.8% or greater accuracy of mail order prescriptions dispensed with no errors.	0% - Report Only
Wait Time for Pharmacist/Clinical Support Supervisor	100% of Plan Participant calls that are transferred to a pharmacist or supervisor will be answered within five (5) minutes.	1%
Specialty Pharmacy Dispensing Accuracy	99.8% or greater of specialty pharmacy prescriptions filled with no errors.	0% - Report Only
Specialty Adherence Rate	Adherence rate for patients using specialty pharmacy of at least 90%. Conditions to be measured include, but are not limited to, Rheumatoid Arthritis, Multiple Sclerosis, Growth Hormones, HIV/AIDS, and Hepatitis C. Conditions will be measured for each condition separately.	3%
Average Speed to Answer	On average 100% of calls will be answered by a live voice within twenty (20) seconds or less. The amount of time that elapses between the time a call is received into a Plan Participant service queue to the time the phone is answered by a CSR. Measurement excludes calls routed to IVR.	3%
Abandoned Call Rate	2% or less of calls will be abandoned before call is answered by CSR. (Measurement excludes calls abandoned within the first thirty (30) seconds and calls routed to IVR.)	3%
First Call Resolution	98% of all calls will be resolved at first point of contact.	5%
Prior Authorizations	Promptly review and respond to request for prior approval for specific drugs following receipt of all required information, but in any case will respond in no more than two (2) business days.	2%

Plan Participant Written Inquiry Timeliness	97% of all Plan Participant written inquiries will be responded to and resolved within five (5) business days and 100% within ten (10) business days.	2%
Plan Participant Satisfaction Survey	Satisfaction rate must be 85% or greater, using metrics mutually agreed upon by Contractor and OGB prior to January 1, 2022.	15%
OGB Satisfaction Survey	Satisfaction rate must be 85% or greater, using metrics mutually agreed upon by Contractor and OGB prior to January 1, 2022.	15%
Standard Reporting	Deliver within the specified timeframe standard financial and clinical reports detailed in the deliverables section.	5%
Quarterly Meeting	Attend all on-site quarterly meetings four times per calendar year at OGB. The meetings shall be held no later than sixty (60) days following quarter end.	2%
Plan Participant Identification Card Timeliness	Issue at least 99% of all new Plan Participant identification cards within ten (10) calendar days following receipt of notification of approval from CMS.	15%
Reporting Requirements	Provide OGB all reports specified in Attachment I: Scope of Work/Services within the specified timeframes. Additionally, Contractor must prepare a written summary analysis and orally present results to OGB annually.	2%
On-site Pharmacy Audits	At least 3% of pharmacies with greater than 150 OGB Plan Participant prescriptions will be audited on-site on a quarterly basis.	0% - Report Only
Point-of-Sale Network System Downtime	System downtime will be 0.5% or less, measured monthly.	2%
Eligibility Processing Accuracy	100% of electronically transmitted eligibility files processed accurately within one (1) business day without error.	2%
Reconciliation	Reconciliation of all financial settlements (i.e., performance guarantees, Formulary guarantee true-up, generic guarantees, rebates, etc.) to OGB within one-hundred and twenty (120) days from the close of each reporting period.	5%

True-up Payments	Payment of all financial settlements (i.e., performance guarantees, Formulary guarantee true-up, generic guarantees, rebates, etc.) to OGB within one-hundred and twenty (120) days from the close of each reporting period.	5%
Independent Assurances	Contractor shall supply OGB with an exact copy of the annual SOC 1, Type II and/or SOC 2, Type II (as agreed by OGB) resulting from the SSAE18 engagement or any other independent assurances approved by OGB for the period of January 1 – December 31.	Subject to \$1,000 per day penalty.
Audit Response Time and Reconciliation	Audit response and reconciliation of findings will be provided within 60 days of the close of the audit. If a response is not received and the vendor requires the audit be reopened then the vendor will pay for additional audit fees.	2%
Audit Errors	If a claims or rebate audit results in errors that express more than one percent (1%) of drug costs then the vendor will reimburse OGB those costs plus interest, as well as the applicable audit fees.	0% - Report Only
Accumulator Tracking and Accuracy	Accumulators (tracking plan participants' Out-of-Pocket Maximum) shall be tracked in realtime with 99.5% accuracy.	2%

ATTACHMENT II: PRICING

1. Pricing Information

1.1 The amount billed to OGB will be equal to the amount paid to retail pharmacies. OGB will pay the lower of the retail pharmacy's usual and customary price, MAC price plus dispensing fee (if applicable), or discount price plus dispensing fee. OGB acknowledges that retail pharmacy rates and fees are variable and in a transparent arrangement Claims will process at the retail pharmacy paid rate. Any applicable sales tax will be added to the Claim cost unless OGB submits documentation confirming its exemption from applicable sales and use taxes.

The participating pharmacy will collect from the Member the lowest of the discounted cost plus dispensing fee and applicable taxes, applicable cost share, or the participating pharmacy's usual and customary price.

1.2 Proposed pricing shall not be contingent upon the adoption of any ancillary services (i.e., clinical programs, utilization management programs, plan design changes, etc.) beyond what is currently in place today. For avoidance of doubt, OGB's current plan design, as noted in SFO ATTACHMENT IV, qualifies for all network pricing and minimum guarantees.

1.3 OGB will receive the greater of the aggregate minimum Rebate guarantees or 100% of Rebates plus manufacturer administrative fees received by PBM for negotiating and administering Rebate agreements, quoted herein. For the purpose of this financial offer, the "minimum Rebate guarantee" or "Rebate" includes formulary and price protection rebates collected by PBM on behalf of OGB, and manufacturer administrative fees received by PBM that are attributable to the utilization of prescription drugs by OGB's Members. In the event that the PBM utilizes an intermediary/third party to determine rebates for OGB, OGB will have the right to audit that intermediary/third party directly.

Within ninety (90) days of the beginning of each calendar quarter, PBM will remit to OGB the greater of the aggregate minimum Rebate guarantees or 100% of Rebates plus manufacturer administrative fees received by PBM for negotiating and administering Rebate agreements amounts attributable to Claims processed during the prior calendar quarter. No minimum Rebate shall be credited for any Generic Drug Claim, whether such Claim is filled with a Generic Drug or by a Brand Drug dispensed in lieu of a Generic Drug at the Generic Drug reimbursement rate. Final reconciliation between Rebates paid and Rebates collected by PBM in aggregate shall be performed annually, within ninety (90) days after the end of the calendar year.

PBM shall render payment to OGB for all Rebates within one hundred twenty (120) days after termination of the Contract. In addition, all pricing guarantees will be true-up and any shortfalls will be paid to OGB within one hundred twenty (120) days after said termination.

1.4 Reconciliation of all financial settlements (i.e. performance guarantees, Formulary guarantee true-up, generic guarantees, Rebates, etc.) will be made to OGB within one-hundred and twenty (120) days from the close of each reporting period. Any billing formula and all related financial guarantees stated herein will be based on the AWP and associated discount on the date of service of each individual prescription Claim.

Pricing guarantees are measured and reconciled on a component basis. MAC, if applicable, is managed to achieve pricing guarantees within each component while maintaining a MAC unit price at mail that is equal to or lower than the MAC unit price at retail.

All billing discounts and related guarantees will be calculated using only the billing formula used to process the Claim. No other monies (i.e. audit savings, clinical savings, therapeutic interchange savings, DUR savings, etc.) will be included in the reconciliation of any billed amounts, guarantees or otherwise.

1.5 The rebate credit will not be conditioned on the days of supply performance averaging a defined target during the Contract term. Said differently, as long as the Plan allows up to a thirty (30)-day supply at retail and up to a ninety (90)-day supply at retail, the full rebate credit will be provided to OGB. The Contractor cannot pro-rate guarantees based on the achieved utilization performance, nor set a floor days of supply performance amount that needs to be achieved to be eligible for the guarantees.

1.6 For purposes of the Federal Anti-Kickback Statute, Rebates paid to OGB shall constitute and shall be treated as discounts against the price of drugs within the meaning of 42 U.S.C. 1320a 7b(b)(3)(A).

1.7 For compound drug Claims, PBM applies the NCPDP D.0 standard. For each compound drug Claim, the submitting pharmacy shall provide the following: (a) compound indicator; (b) eleven-digit NDC, quantity, and submitted ingredient cost for each component in the recipe; (c) total quantity and total Usual & Customary price; and (d) level of effort value. PBM shall determine the appropriate ingredient cost, or NDC, for each component using the lower of (1) the AWP discount; (2) MAC; or (3) the submitted ingredient cost. The level of effort charge will be applied in addition to the appropriate dispensing fee.

2. Pricing Terms. The financial terms described in this Attachment II will be effective January 1, 2022.

The following tables indicate what will be included and excluded from the pricing guarantees in 2.1 and 2.2.

Discount and dispensing fee guarantees apply to the following days supply within each channel	Response
Retail network- 0 to 83 days supply	
Retail 90 network- 84+ days supply	
Mail network- All days supply, no limitations	
Retail Specialty network- All days supply, no limitations	
Mail/ PBM Specialty network- All days supply, no limitations	
Brand Guarantees will apply to and include the following in the reconciliation:	Response
Single Source Brands	
Multi Source Brands not adjudicated with a DAW-5 code	
Exclusive Distribution Drugs	
Limited Distribution Drugs	
Glucose test strips	
OTC Brand Drugs - (if covered by Plan)	
Generic Guarantees will apply to and include the following in the reconciliation:	Response
Single Source Generics	

Multi Source Generics (both MAC and non-MAC'd)	
Brands adjudicated with a DAW-5 code	
Patent Litigated products	
Limited Supply Generic Drugs	
Biosimilars (Specialty Generics) dispensed at retail pharmacies (not at the PBM specialty pharmacies)	
Exclusive Distribution Drugs	
Limited Distribution Drugs	
Glucose test strips	
OTC Generics - (if covered by Plan)	
Effective rate guarantees shall exclude the following from the guarantee reconciliation:	Response
Claims where Vendor negotiated rate was NOT the basis for adjudication (i.e. U&C claims)	
Compound Claims	
Direct Member Reimbursement/Paper Claims	
Claims with calculated discount of greater than 95% (must be explained to and accepted by Client prior to including)	
Secondary/COB claims (including subrogation)	
In-house or 340b pharmacy	
Vaccines	
Claims through Department of Veterans Affairs (VA) pharmacies	
Rebate Guarantees	Response
Confirm that rebate guarantees apply to the following days supply within each channel	
Retail network- 0 to 83 days supply	
Retail 90 network- 84+ days supply	
Mail network- All days supply, no limitations	
Retail Specialty network- All days supply, no limitations	
Mail/ PBM Specialty network- All days supply, no limitations	
Confirm that the following are counted (included) in the baseline for rebates guarantee calculation:	
Single Source Brands	
Multi Source Brands	
Biosimilars	
OTC Brand Drugs (if covered by Plan)	
Limited Distribution Drugs/ Exclusive Distribution Drugs	
Confirm that the following are excluded in the baseline for rebates guarantee calculation:	
Claims that adjudicate at 340B pricing	
Vaccines	
Compound Claims	
Direct Member Reimbursement/Paper Claims	
Coordination of Benefits (COB) or secondary payor Claims	
Provide a disclosure of all pharmaceutical manufacturer contract provisions by completing the table below <u>and</u> indicate if each item will be <u>included in</u>	

the pass-through of rebates to Client. Please provide additional revenue sources if not captured in the table below.	
Formulary/Access rebates	
Market Share rebates	
Performance/Incentive rebates	
Data fees	
Manufacturer administration fees	
Inflation caps / price protection	
Compliance program funding	
Clinical program support/funding	
Therapeutic intervention funding	
Specialty drug rebates/point of service discounts	
Specialty clinical/case management funding	
Specialty compliance program funding	
Mail Order volume discounts	
Other (please describe)	N/A

2.1 .Commercial

Retail Network Pricing (Base Retail Network)	Contract Year 1
Brand Discount: The annual average Brand effective discount guarantee rate.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: The overall annual guarantee.	
Retail 90 Network Pricing	Contract Year 1
Brand Discount: The annual average Brand effective discount guarantee rate.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: The overall annual guarantee.	
Mail Pricing	Contract Year 1
Brand Discount: The value of "X" in the lower of AWP - X% or MAC.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: It is expected this will be zero for all claims.	
Retail Specialty Pharmacy Pricing	Contract Year 1
Minimum discount for all new products in new therapeutic classes	
Aggregate annual discount guarantee across all specialty drugs (filled through retail). This will include all specialty products, including bio-generics, biosimilars, limited distribution, etc.	
Dispensing Fee: It is expected this will be zero for all claims.	
Vendor Specialty Pharmacy Specialty Pricing	Contract Year 1
Minimum discount for all new products in new therapeutic classes	
Aggregate annual discount guarantee across all specialty drugs (not filled through retail). This will include all specialty products, including bio-generics, biosimilars, limited distribution, etc.	

Dispensing fee for specialty claims filled through specialty pharmacy	
Minimum Rebate Guarantees (Exclusion Formulary)	Contract Year 1
Formulary Name and Description	National Preferred Formulary
Minimum rebate guarantee per retail network Brand claim	
Minimum rebate guarantee per retail 90 network extended supply Brand claim	
Minimum rebate guarantee per mail Brand claim	
Minimum rebate guarantee per retail specialty network claim	
Minimum rebate guarantee per specialty claim	
Admin Fee per final net paid claim	Contract Year 1
Admin fee per final net paid retail claim	
Admin fee per final net paid retail 90 extended supply claim	
Admin fee per final net paid mail claim	
Admin fee per final net paid specialty pharmacy claim	
Admin fee per final net paid retail specialty claim	

2.2 EGWP and EGWP Wrap Enhanced Benefit

Retail Network Pricing (Base Retail Network)	Contract Year 1
Brand Discount: The annual average Brand effective discount guarantee rate.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: The overall annual guarantee.	
Retail 90 Network Pricing	Contract Year 1
Brand Discount: The annual average Brand effective discount guarantee rate.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: The overall annual guarantee.	
Mail Pricing	Contract Year 1
Brand Discount: The value of "X" in the lower of AWP - X% or MAC.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: It is expected this will be zero for all claims.	
Retail Specialty Pharmacy Pricing	Contract Year 1
Minimum discount for all new products in new therapeutic classes	
Aggregate annual discount guarantee across all specialty drugs (filled through retail). This will include all specialty products, including bio-generics, biosimilars, limited distribution, etc.	
Dispensing Fee:	
Vendor Specialty Pharmacy Specialty Pricing	Contract Year 1
Minimum discount for all new products in new therapeutic classes	
Aggregate annual discount guarantee across all specialty drugs (not filled through retail). This will include all specialty products, including bio-generics, biosimilars, limited distribution, etc.	
Dispensing fee for specialty claims filled through specialty pharmacy	
Long Term Care (LTC) Network Pricing	Contract Year 1

Brand Discount: The annual average Brand effective discount guarantee rate.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: The overall annual guarantee.	
Home Infusion (HIF) Network Pricing	Contract Year 1
Brand Discount: The annual average Brand effective discount guarantee rate.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: The overall annual guarantee.	
Indian Health Service (IHS) Network Pricing	Contract Year 1
Brand Discount: The annual average Brand effective discount guarantee rate.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: The overall annual guarantee.	
Territory (TER) Network Pricing	Contract Year 1
Brand Discount: The annual average Brand effective discount guarantee rate.	
Generic Discount: The annual overall Generic discount guarantee, as defined within this Emergency Contract.	
Dispensing Fee: The overall annual guarantee.	
Minimum Rebate Guarantees (Exclusion Formulary)	Contract Year 1
Formulary Name and Description	Premier Performance
Minimum rebate guarantee per retail network Brand claim	
Minimum rebate guarantee per retail 90 network extended supply Brand claim	
Minimum rebate guarantee per mail Brand claim	
Minimum rebate guarantee per retail specialty network claim	
Minimum rebate guarantee per specialty claim	
Minimum rebate guarantee per LTC network Brand claim	
Minimum rebate guarantee per HIF network Brand claim	
Minimum rebate guarantee per IHS network Brand claim	
Minimum rebate guarantee per TER network Brand claim	
Admin Fee per final net paid claim	Contract Year 1
Admin fee per final net paid retail claim	
Admin fee per final net paid retail 90 extended supply claim	
Admin fee per final net paid mail claim	
Admin fee per final net paid specialty pharmacy claim	
Admin fee per final net paid retail specialty claim	
Admin fee per final net paid LTC claim	
Admin fee per final net paid HIF claim	
Admin fee per final net paid IHS claim	
Admin fee per final net paid TER claim	

EGWP	Contract Year 1
Monthly Administrative Service Fee*	
Broad Performance Network (BPMN) Fee	
*Confirm that the per final net paid claim and/ or monthly administrative service fee include the following services:	
Core Service Package, including Claims Processing, Implementation Set up, Paper Claims/DMR, Subrogation Claims, Reprocessed claims, 24/7 Medicare Part D specialized member contact center and provider call center, Administrative overrides, Formulary Submission/Maintenance, Rebate Administration, Online Reporting, CMS required clinical and FWA, MTM, etc programs, LICs Best Available Evidence (BAE), Eligibility and Enrollment Processing with CMS, Provide file of Part B drugs to medical plan, Allow global attestation of credible coverage, Electronic prescribing	
Mailings of ALL CMS required communications	
Enrollment Materials	
Pre-enrollment Calls	
Post-enrollment Calls	
Premium Billing/Collection	
TrOOP Tracking/Facilitation	
Data Collection & Reporting	
Enrollment Packets	
Enrollment Cards	
Pre-enrollment Appl Material	
Post Enrollment Calls- Total	
After Hours Calls	
Customized Reporting	
Manual Eligibility Entry	
Annual Setup Direct Waivers PDP	
Pre-Enrollment Calls	
Grievance Tracking	
Member Welcome Kits to include all CMS required materials (EOC, Pharmacy directory, Formulary, ID card, Welcome letter, etc.)	
CMS required model notices (in response to TRR)	
Opt out (pre-notification) letter	
Summary of Benefits	
Explanation of Benefits	
Interactive Member Websites	
Negative Formulary Impact Letters	
All CMS required enrollment/disenrollment letters	
Coverage Gap Letters	
Transition Fill Letters	
ANOC	
Negative Formulary Impact Letters	
Submission/Reconciliation PDE	
Eligibility	
Formulary	

Grievances	
MMR reconciliation	
Other CMS required submissions	
Audits	
Vaccine Administration	
Data Storage	
Other--Specify any services with fees that are not listed:	N/A

2.3 Clinical Management Programs as set forth in Attachment VI

Clinical Management Fees	Contract Year 1
All-inclusive total Clinical Management Fee for Commercial	
All-inclusive total Clinical Management Fee for EGWP	
Commercial Therapeutic Prior Authorization Administration (Non-POS Edits)	
Commercial Appeals Administration	
EGWP Therapeutic Prior Authorization Administration (Non-POS Edits)	
EGWP Appeals Administration	

2.4 Credits and Allowances

This Section sets forth various credits to be paid or credited by PBM to OGB (collectively "Client Credits"). It is the intention of the parties that, for purposes of the Federal Anti-Kickback Statute, these Client Credits shall constitute and shall be treated as discounts against the price of drugs within the meaning of 42 U.S.C. 1320a 7b(b)(3)(A). In addition, OGB acknowledges and agrees that, as a condition to its right to receive Client Credits from PBM, all Client Credits received shall be used exclusively for providing benefits to Plan Participants and defraying the reasonable expense of administering the Plan.

PBM agrees to provide OGB a commercial implementation credit in the amount up to [REDACTED] and an EGWP implementation credit in the amount up to [REDACTED] which will be available during the term of the contract as provided in Attachment I: Scope of Work/Services. This credit will be used for costs incurred by OGB in implementing the PBM.

Additionally, PBM agrees to provide OGB an annual commercial administrative fund credit in the amount up to [REDACTED] and an annual EGWP administration fund credit in the amount up to [REDACTED] which will be available during the term of the contract as provided in Attachment I: Scope of Work/Services.

This implementation and administrative credits may be used to offset certain expenses incurred by OGB in the implementation and administration of OGB's prescription benefit plan or the services provided by PBM during the term. The credit, for example, may be applied to offset communication expenses, Member I.D. cards, postage, special programming charges, fees and expenses from OGB-engaged consultants associated with projects related to pharmacy benefits or specialty drug medical benefit management, fees and expenses for third party ongoing reviews/audits or any other consulting services or applied to clinical programs offered by PBM. OGB will be requested to provide reasonable documentation of expenses incurred that are to be applied to this credit. Alternatively, OGB may elect to have this credit applied to its monthly invoices on a prorated basis.

[REDACTED]

Notwithstanding the credits provided above, for pre and/or post-implementation audits, PBM shall provide OGB with a credit of up to [REDACTED] for the term of the contract as provided in in Attachment I: Scope of Work/Services, Task (3) Pharmacy Benefits Manager Services. PBM shall provide OGB with an ongoing audit credit (inclusive of rebate audit and prior authorization retrospective review) of up to [REDACTED] per year for commercial and [REDACTED] per year for EGWP for the term of the contract as provided in in Attachment I: Scope of Work/Services, Task (3) Pharmacy Benefits Manager Services. This annual credit provided to OGB can be applied to offset costs incurred by OGB in the administration of an audit pursuant to the terms of the Agreement. This audit credit will be credited to OGB's monthly invoices. Identification of the expenses attributable to this audit credit shall be mutually agreed upon. OGB shall provide PBM with documentation of expenses actually incurred in the form of an invoice, an account statement, or other detailed documentation. Expenses applied to this credit will not exceed fair market value of such expenses.

2.5 [REDACTED]

[REDACTED]

[REDACTED]

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

ATTACHMENT III: BUSINESS ASSOCIATE ADDENDUM

State of Louisiana, Office of Group Benefits HIPAA Business Associate Addendum

THIS HIPAA BUSINESS ASSOCIATE ADDENDUM (the "Addendum") is entered into effective the 4th day of November, 2021 (the "Effective Date"), by and between Express Scripts, Inc. ("Business Associate") and the State of Louisiana, Office of Group Benefits, on behalf of itself and its affiliates, if any (individually and collectively, the "Covered Entity"), and adds to the Agreement or Contract dated November 4, 2021, entered into between Covered Entity and Business Associate (the "Agreement").

WHEREAS, pursuant to the Agreement, Business Associate performs functions or activities or arranges for such on behalf of Covered Entity involving the use and/or disclosure of protected health information that Business Associate accesses, creates, receives, maintains or transmits on behalf of Covered Entity ("PHI"); and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI in compliance with the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HHS"), as amended from time to time including by the Health Information Technology for Economic and Clinical Health Act ("HITECH") (collectively "HIPAA").

Business Associate, therefore, agrees to the following terms and conditions set forth in this Addendum.

1. Definitions. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms are defined under HIPAA.
2. Compliance with Applicable Law. The parties acknowledge and agree that, beginning with the Effective Date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA and other applicable laws, regulations, and record retention policies, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is effective.
3. Uses and Disclosures of PHI. Except as otherwise limited in the Agreement or this Addendum, Business Associate may, and shall ensure that its directors, officers, employees, contractors, subcontractors, vendors, and agents use or disclose PHI only as follows:
 - (a) Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (b) Business Associate may disclose PHI for the proper management and administration, or to carry out the legal responsibilities, of the Business Associate, provided that disclosures are required by HIPAA, or Business Associate obtains reasonable written assurances from the person or entity to whom the PHI is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity, and the person or entity notifies the Business Associate of any instances of which it is aware or suspects in which the confidentiality of the PHI has been breached. In such case, Business Associate shall report such known or suspected breaches to Covered Entity as soon as possible and in accordance with timeframes set forth in this Addendum.
 - (c) Business Associate, upon written request by Covered Entity, may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B). For purposes of this Section, Data Aggregation means, with respect to PHI, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another Covered Entity to permit data analyses that relate to the health care operations of the respective Covered Entities. It is not contemplated that Business Associate will

perform Data Aggregation services with PHI received from Covered Entity without express prior written permission of Covered Entity.

(d) Business Associate may completely de-identify any and all PHI created or received by Business Associate under this Agreement; provided, however, that the de-identification conforms to the requirements of HIPAA and in accordance with any guidance issued by the Secretary. Such resulting de-identified information would not be subject to the terms of this Addendum.

(e) Business Associate may create a Limited Data Set, as defined in HIPAA, and use such Limited Data Set pursuant to a Data Use Agreement that meets the requirements of HIPAA, provided Covered Entity agrees to such creation and use of a Limited Data Set.

4. **Required Safeguards To Protect PHI.** Business Associate shall implement appropriate safeguards in accordance with HIPAA to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of the Agreement. To the extent that Business Associate creates, receives, maintains, or transmits electronic PHI ("ePHI") on behalf of Covered Entity, Business Associate shall comply with the HIPAA Security Rule as of the relevant effective date and further, shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI.

5. **Reporting to Covered Entity.** Business Associate shall immediately report to Covered Entity any use or disclosure of PHI not provided for by this Addendum, including breaches of unsecured PHI in accordance with the Breach Notification Rule (45 CFR Subpart D), and any security incident of which it becomes aware. Business Associate shall cooperate with Covered Entity's investigation, analysis, notification and mitigation activities, and shall be responsible for all costs incurred by Covered Entity for those activities.

6. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum, including, but not limited to, compliance with any state law or contractual data breach requirements.

7. **Agreements with Third Parties.** Business Associate understands and agrees that any agent or subcontractor that may create, receive, maintain or transmit PHI on behalf of Business Associate must comply with all applicable laws and regulations as are applicable to Covered Entity in regard to PHI. Business Associate shall enter into a written agreement with any agent or subcontractor of Business Associate that will create, receive, maintain, or transmit PHI on behalf of Business Associate. Pursuant to such agreement, the agent or subcontractor shall agree to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this Addendum with respect to such PHI. Such agreements with Business Associates agents and subcontractors shall be provided to Covered Entity upon request and subject to audit hereunder.

8. **Access to Information.** Within ten (10) days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 CFR 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) days forward such request to Covered Entity.

9. **Availability of PHI for Amendment.** Within ten (10) days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 CFR 164.526.

10. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who

received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

11. Accounting of Disclosures. Within ten (10) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual, Business Associate shall make available to Covered Entity information collected in accordance with Section 10 of this Addendum, to permit Covered Entity to respond to the request for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within five (5) days forward such request to Covered Entity. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

12. Other Obligations. To the extent that Business Associate is to carry out Covered Entity's obligation under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to the Covered Entity in the performance of such obligation.

13. Availability of Books and Records. Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity and to the Secretary for purposes of determining Covered Entity's compliance with HIPAA for the term of this Agreement and for six years following the final payment under the Agreement.

14. Effect of Termination of Agreement. Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to Covered Entity, at its expense and within sixty (60) days of the termination, all PHI owned by or belonging to Covered Entity as provided in the Agreement, and shall retain no copies of the PHI unless required by law. In the event that the law requires Business Associate to retain copies of PHI, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes required by law, for so long as Business Associate maintains such PHI. This provision includes, but is not limited to, PHI: (a) received from Covered Entity; (b) created or received by Business Associate on behalf of Covered Entity; and, (c) in the possession of subcontractors or agents of Business Associate. This provision includes PHI in any form, recorded on any medium, or stored in any storage system. In addition, the Business Associate shall return any books, records, or other documents required by the Agreement.

15. Breach of Contract by Business Associate. In addition to any other rights Covered Entity may have in the Agreement, this Addendum or by operation of law or in equity, Covered Entity, in its sole discretion, may (i) immediately terminate the Agreement if Covered Entity determines that Business Associate has violated a material term of this Addendum, or (ii) at Covered Entity's option, permit Business Associate to cure or end any such violation within the time specified by Covered Entity. Covered Entity's exercise of its option to permit Business Associate to cure a breach of this Addendum shall not be construed as a waiver of any other rights Covered Entity has in the Agreement, this Addendum or by operation of law or in equity.

16. Indemnification. Business Associate shall defend, indemnify and hold harmless Covered Entity and its officers, trustees, employees, subcontractors and agents from and against any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by Covered Entity arising from a violation by Business Associate or its subcontractors of Business Associate's obligations under this Addendum or HIPAA. This Section 16 of the Addendum shall survive the termination of the Agreement or this Addendum.

17. Exclusion from Limitation of Liability. To the extent that Business Associate has limited its liability under the terms of the Agreement, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business

Associate's breach of its obligations relating to the use and disclosure of PHI. This Section 17 of the Addendum shall survive the termination of the Agreement and this Addendum.

18. Injunctive Relief. Business Associate acknowledges and stipulates that the unauthorized use or disclosure of PHI by Business Associate or its subcontractors while performing services pursuant to the Agreement or this Addendum would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages and injunctive relief, together with the right to recover from Business Associate costs, including reasonable attorneys' fees, for any such breach of the terms and conditions of the Agreement or this Addendum.

19. Third Party Rights. The terms of this Addendum are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and Covered Entity.

20. Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate pursuant to the terms of the Agreement.

21. Changes in the Law. Covered Entity may amend either the Agreement or this Addendum, as appropriate, to conform to any new or revised federal or state legislation, rules, regulations, and records retention policies to which Covered Entity is subject now or in the future including but not limited to HIPAA.

22. Judicial and Administrative Proceedings. In the event Business Associate receives a subpoena, court, or administrative order, or other discovery request or mandate for release of PHI associated with this contract, other than a standard medical records request/medical records subpoena, Business Associate shall notify Covered Entity of such within five (5) business days by providing a copy of such and any applicable comments. Covered Entity shall have the right to control Business Associate's response to such request.

23. Conflicts. If there is any direct conflict between the Agreement and this Addendum, the terms and conditions of this Addendum shall control.

IN WITNESS WHEREOF, the parties have executed this Addendum effective the day and year first above written.

**STATE OF LOUISIANA
OFFICE OF GROUP BENEFITS**

By: 
Signature

David W. Couvillon
Printed Name

Title: Chief Executive Officer

Date: 11/9/21

EXPRESS SCRIPTS, INC.

By: 
Signature

Grace Allen
Printed Name

Title: VP - Account Management

Date: 11/4/21

ATTACHMENT IV: RECORDS RETENTION SCHEDULE

Records Retention Schedule

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Http://www.sos.la.gov

SS ARC 932 (10/19)

Agency No		Division of Administration / Office of Group Benefits / Executive		Retention Period		Security	Archival	State Records Center	Vital	Remarks
Item Number	Records Series Title	In Office	In Storage	Total Retention						
1	Internal Audit Records/Reports	ACT + 2 FY	3 FY	ACT + 5 CY	M	S	Y	Y	V	ACT = until the end of the FY in which the audit report is issued. **
2	LLA Audit Records/Reports	ACT + 2 FY	3 FY	ACT + 5 CY	M	S	Y	Y	V	ACT = until the end of the FY in which the audit report is issued. **
3	Group Benefits Policy and Planning Board Meeting Presentations	ACT + 10 CY	0	ACT + 10 CY	P	S	N	N	I	ACT = until the end of the CY in which the presentations were created. **
4	Group Benefits Policy & Planning Board Reports	ACT + 10 CY	0	ACT + 10 CY	M	S	N	N	V	ACT = until end of CY in which OGB ceases to exist. **
5	Group Benefits Policy & Planning Board Meeting Minutes	PERM	0	PERM	M	R	N	N	V	
6	Group Benefits Estimating Conference Meeting Presentations	ACT + 10 CY	0	ACT + 10 CY	P	S	N	N	I	ACT = until the end of the CY in which the presentations were created. **
7	Group Benefits Estimating Conference Meeting Minutes	PERM	0	PERM	M	R	N	N	V	
8	OGB 5-year Strategic Plan	ACT + 5 FY	0	ACT + 5 FY	P	S	N	N	V	ACT = until the end of the FY in which the Strategic plan was drafted. **
9	OGB HIPAA Compliance Records	ACT + 6 CY	0	ACT + 6 CY	M	S	N	N	V	ACT = until the end of the CY in which the records were created or received. **

Permitted Retention Period Abbreviations
 ACT - Active Period (when used define term in remarks column)
 FY - Fiscal Year (July 1 - June 30)
 CY - Calendar Year (Jan 1 - Dec 31)
 AY - Academic Year (Aug 1 - July 31)
 FFY - Federal Fiscal Year (Oct 1 - Sept 30)
 MO - Months WK - Week (Mon-Sun) DY - Day(s)
 PERM - Permanent
 ** = May be part of an Imaging/Electronic Exception.
 ** = May be part of an Imaging/Electronic Survey.

Security Status Codes
 P - Public Record
 M - May Contain Confidential Information
 C - Confidential Information

Archival Processing Codes
 A - Transfer to State Archives
 R - Retain in Agency Archives
 S - Review by State Archives
 D - Review by State Archives/Electronic
 O - Other (Specify in Remarks)

State Records Center Use
 Y - Yes
 N - No

Vital Record Identification Code
 V = Vital
 I = Important
 U = Useful

Agency Abbreviations
 LLA = Louisiana Legislative Auditor
 OGB = Office of Group Benefits
 HIPAA = Health Insurance Portability and Accessibility Act

Thomas J. Jaque
Agency Approval

1-7-2020
Date Signed

Quinn E. Appala, APRN
Secretary of State, State Archives & Records Services

1-8-2020
Date Approved

Records Retention Schedule

Http://www.sos.la.gov

SS ARC 932 (10/19)

Page 2 of 13

Indicate Use of Form

__ ORIGINAL SUBMISSION
__ XRENEWAL
__ REPLACEMENT PAGE
__ ADDENDUM PAGE

Agency No	Agency / Division / Section	Division of Administration / Office of Group Benefits / Administration -- Finance										ORIGINAL SUBMISSION			
Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks						
		In Office	In Storage	Total Retention											
003.005											RENEWAL REPLACEMENT PAGE ADDENDUM PAGE				
1	OGB Budget Request Documents/Records	ACT + 5 FY	0	ACT + 5 FY	P	R	N	V	ACT = until the end of the FY in which created ¹						
2	Actuarial Revenue/Expenditure Line-Item Projections	ACT + 5 FY	0	ACT + 5 FY	M	S	N	V	ACT = until the end of the FY in which received ¹						
3	Actuarial Premium Rate Schedules	ACT + 5 CY	0	ACT + 5 CY	P	S	N	V	ACT = until the end of the FY in which received ¹						
4	Official Premium Rate Schedules	ACT + 10 CY	0	ACT+ 10 CY	P	S	N	V	ACT= until end of the CY in which the OGB ceases to exist ¹						
5	Monthly OTS Invoices & Supporting Documents	ACT + 1 FY	3 FY	ACT + 4 FY	M	S	Y	V	ACT = until the end of the FY in which the document was received ¹						
6	Annual IAT Agreements & Supporting Documents	ACT + 1 FY	3 FY	ACT + 4 FY	M	S	Y	V	ACT = until the end of the FY in which the document was received ¹						
7	Miscellaneous/One-time Invoices & Supporting Documents	ACT + 1 FY	3 FY	ACT + 4 FY	M	S	Y	V	ACT = until the end of the FY in which the document was received ¹						
8	OGB Fiscal Note Worksheets & Supporting Documents	ACT + 5 CY	0	ACT + 5 CY	M	S	N	V	ACT = until the end of the CY in which the document was created ¹						
9	DOA Analysis Sheets & Supporting Documents	ACT + 5 CY	0	ACT + 5 CY	M	S	N	V	ACT = until the end of the CY in which the document was created ¹						
10	Fuel Invoices & Supporting Documents	ACT + 1 FY	3 FY	ACT + 4 FY	M	S	Y	V	ACT = until the end of the FY in which the document was received ¹						
Permitted Retention Period Abbreviations															
ACT – Active Period (when used define term in remarks column)															
FY- Fiscal Year (July 1- June 30)															
CY – Calendar Year (Jan 1 – Dec 31)															
AY – Academic Year (Aug 1 – July 31)															
FFY – Federal Fiscal Year (Oct 1 – Sept 30)															
MO – Months WK – Week (Mon-Sun) DY - Days)															
PERM – Permanent															
** = May be part of an Imaging/Electronic Exception.															
^ = May be part of an Imaging/Electronic Survey.															
Security Status Codes					State Records Center Use										
P – Public Record					Y – Yes										
M – May Contain Confidential Information					N - No										
C – Confidential Information															
Archival Processing Codes					Vital Record Identification Code										
A – Transfer to State Archives					V= Vital										
R – Retain in Agency Archives					I = Important										
S – Review by State Archives					U= Useful										
D- Review by State Archives/Electronic															
O – Other (Specify in Remarks)															

Agency Approval: [Signature]

Date Signed: 1-7-2020

Secretary of State, State Archives & Records Services: [Signature]

Date Approved: 1-8-2020

Records Retention Schedule

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Http://www.sos.la.gov

SS ARC 932 (10/19)

003.005		Division of Administration / Office of Group Benefits / Administration -- Communications		Indicate Use of Form					
Agency No		Agency / Division / Section		Page 3 of 13 ORIGINAL SUBMISSION XRENEWAL REPLACEMENT PAGE ADDENDUM PAGE					
Item Number	Records Series Title	Retention Period		Security	Archival	State Records Center	Vital	Remarks	
		In Office	In Storage						Total
1	Annual Enrollment Member Guides	ACT + 10 CY	0	ACT + 10 CY	P	D	N	I	ACT = until the end of the CY in which OGB ceases to exist**
2	Annual Enrollment Member Presentations	ACT + 10 CY	0	ACT + 10 CY	P	S	N	I	ACT = until the end of the CY in which the presentations were created**
4	Annual Enrollment HR Presentations	ACT + 10 CY	0	ACT + 10 CY	P	S	N	I	ACT = until the end of the CY in which the presentations were created**
5	Agency/Member Memos on OGB Policies/Procedures Changes	ACT + 10 CY	0	ACT + 10 CY	P	D	N	V	ACT = until the end of the CY in OGB ceases to exist**
6	Medicare Part D Creditable Coverage Notices	ACT + 6 CY	0	ACT + 6 CY	M	S	N	V	ACT = until the end of the CY in which the notices were created**
7	Publications	ACT + 10 CY		ACT + 10 CY	M	S	N	I	ACT = until end of CY in which OGB ceases to exist**

Permitted Retention Period Abbreviations
 ACT - Active Period (when used define term in remarks column)
 FY - Fiscal Year (July 1 - June 30)
 CY - Calendar Year (Jan 1 - Dec 31)
 AY - Academic Year (Aug 1 - July 31)
 FFY - Federal Fiscal Year (Oct 1 - Sept 30)
 MO - Months WK - Week (Mon-Sun) DY - Day(s)
 PERM - Permanent
 ** = May be part of an Imaging/Electronic Exception.
 ~ = May be part of an Imaging/Electronic Survey.

Security Status Codes
 P - Public Record
 M - May Contain Confidential Information
 C - Confidential Information
 Archival Processing Codes
 A - Transfer to State Archives
 R - Retain in Agency Archives
 S - Review by State Archives
 D - Review by State Archives/Electronic
 O - Other (Specify in Remarks)

State Records Center Use
 Y - Yes
 N - No
 Vital Record Identification Code
 V = Vital
 I = Important
 U = Useful

Agency Abbreviations
 HR - Human Resources
 OGB - Office of Group Benefits

Agency Approval: [Signature] Date Signed: 1-7-2020
 Secretary of State, State Archives & Records Services: [Signature] Date Approved: 1-8-2020

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Records Retention Schedule

SS ARC 932 (10/19)

Http://www.sos.la.gov

Agency No 003.005	Agency / Division / Section Division of Administration / Office of Group Benefits / Administration - General			Page 4 of 13 Indicate Use of Form ORIGINAL SUBMISSION XRENEWAL REPLACEMENT PAGE ADDENDUM PAGE					
Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
1	OGB Employee Driver Authorization Forms	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	V	ACT = until the end of the FY in which the employee separates from agency**
2	OGB Employee Safety Meetings Training Materials & Sign-In Sheets	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	V	ACT = until the end of the FY in which the documents were created or received**
3	OGB Employee PES Evaluations and Planning Session Documents	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	V	ACT = until the end of the FY in which supervision ends**
4	OGB Employee Time & Attendance Reports	ACT + 2 CY	3 CY	ACT + 5 CY	M	S	Y	V	ACT = until the end of the CY in which the reports were created or received**
5	Vehicle Logs & Supporting Documents	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	V	ACT = until the end of the FY in which the documents were created or received**
6	SOF & Supporting Documents	ACT + 2 FY	1 FY	ACT + 3 FY	M	S	Y	V	ACT = until the end of the FY in which the documents were created or received**
7	OGB Visitor Logs/Sign-In Sheets	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	U	ACT = until the end of the FY in which the logs were created**
8	Daily Documents/Mail Assignments Logs	ACT + 2 FY	3 FY	ACT + 5 FY	M	S	Y	U	ACT = until the end of the FY in which the logs were created**
9	Records Management Files (Retention Schedules, disposal requests, Transmittals, Surveys and Exceptions)	ACT + 10 CY		ACT + 10 CY	M	S	N	V	ACT = until end of CY in which OGB ceases to exist. **
Permitted Retention Period Abbreviations ACT - Active Period (when used define term in remarks column) FY - Fiscal Year (July 1 - June 30) CY - Calendar Year (Jan 1 - Dec 31) AY - Academic Year (Aug 1 - July 31) FFY - Federal Fiscal Year (Oct 1 - Sept 30) MO - Months WK - Week (Mon-Sun) DY - Days) PERM - Permanent ** = May be part of an Imaging/Electronic Exception. ** = May be part of an Imaging/Electronic Survey.		Security Status Codes P - Public Record M - May Contain Confidential Information C - Confidential Information Archival Processing Codes A - Transfer to State Archives R - Retain in Agency Archives S - Review by State Archives D - Review by State Archives/Electronic O - Other (Specify in Remarks)		State Records Center Use Y - Yes N - No Vital Record Identification Code V = Vital I = Important U = Useful		Agency Abbreviations SOF - Special order Form OGB - Office of Group Benefits PES = Personnel Evaluation System			

Agency Approval: *[Signature]*

Date Signed: 1-2-2020

Secretary of State, State Archives & Records Services: *[Signature]*

Date Approved: 1-8-2020

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Page 5 of 13

Indicate Use of Form

ORIGINAL SUBMISSION

Agency Approval Thomas Folger

James P. Apple, Clerk
Secretary of State, State Archives & Record

1-8-2020
Date Approved

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

SS ARC 932 (10/19)

Indicate Use of Form

ORIGINAL SUBMISSION

XRENEWAL

REPLACEMENT PAGE

ADDENDUM PAGE

Remarks

Agency Approval: Deborah Hulse

William E. Stephens, Clerk
Secretary of State, State Archives & Record

Date Approved 1-8-2020

Louisiana Secretary of State
 Division of Archives, Records Management and History
 Post Office Box 94125, Baton Rouge, LA 70804

Records Retention Schedule

Http://www.sos.la.gov

SS ARC 932 (10/19)

Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
003.005	Division of Administration / Office of Group Benefits / Customer Service								
1	Enrollment Change Forms & Supporting Eligibility Documents (GB-01)	ACT + 10 CY		ACT + 10 CY	C	N	V	ACT = until the end of the CY in which OGB ceases to exist. **	
2	Designation Forms (OGB Coordinator, Agency Master User, Invoice Contact) (GB-74, GB-75, GB-78)	ACT + 10 CY		ACT + 10 CY	M	N	I	ACT = until the end of the CY in which OGB ceases to exist. **	
3	OGB Member Correspondence	ACT + 10 CY		ACT + 10 CY	C	N	V	ACT = until the end of the CY in which OGB ceases to exist. **	
4	Daily Work Papers (includes printed copies of imaged documents and non-essential notes with PHI or OGB member contact info, produced by OGB Customer Service section staff)	ACT	0	ACT	M	N	U	ACT = until the end of the day in which the work papers were created **	

Permitted Retention Period Abbreviations
 ACT - Active Period (when used define term in remarks column)
 FY - Fiscal Year (July 1 - June 30)
 CY - Calendar Year (Jan 1 - Dec 31)
 AY - Academic Year (Aug 1 - July 31)
 FFY - Federal Fiscal Year (Oct 1 - Sept 30)
 MO - Months WK - Week (Mon-Sun) DY - Day(s)
 PERM - Permanent
 ** = May be part of an Imaging/Electronic Exception.
 ** = May be part of an Imaging/Electronic Survey.

Agency Approval: Theresa J. Taylor Date Signed: 1-3-2020
 Secretary of State, State Archives & Records Services: Quenna E. Apple, CRM Date Approved: 1-8-2020

Records Retention Schedule

Http://www.sos.la.gov

SS ARC 932 (10/19)

Page 8 of 13

Indicate Use of Form
— ORIGINAL SUBMISSION
— XRENEWAL
— REPLACEMENT PAGE
— ADDENDUM PAGE

Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
003.005	Division of Administration / Office of Group Benefits / Medical and Pharmacy Benefits Administration - Health Insurance								
1	Self-funded Health Plan Medical TPA Invoices & Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
2	Self-funded Health Plan Pharmacy TPA Invoices & Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
3	Fully Insured Health Plan Vendors Invoices & Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
4	Capitated Primary Care Network Vendor Invoices & Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
5	IMMEDIHRA Vendor Invoices and Supporting Documents	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	V	ACT = until the end of the CY in which the document was received ^{xx}
6	Health Plan Vendors Reports & Contract Deliverables	ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	U	ACT = until the end of the CY in which the report or deliverable was received ^{xx}
7	Health Savings Account Enrollment & Payroll Deduction Election/Changes (GB-79 Forms)	ACT + 10 CY		ACT + 10 CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. ^{xx}
8	TPA Health and Pharmacy Claims (including supplemental Claims)	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. ^{xx}

Permitted Retention Period Abbreviations

ACT - Active Period (when used define term in remarks column)

FY - Fiscal Year (July 1 - June 30)

CY - Calendar Year (Jan 1 - Dec 31)

AY - Academic Year (Aug 1 - July 31)

FFY - Federal Fiscal Year (Oct 1 - Sept 30)

MO - Months WK - Week (Mon-Sun) DY - Day(s)

PERM - Permanent

^{xx} = May be part of an Imaging/Electronic Exception.

^{xx} = May be part of an Imaging/Electronic Survey.

Security Status Codes

P - Public Record

M - May Contain Confidential Information

C - Confidential Information

Archival Processing Codes

A - Transfer to State Archives

R - Retain in Agency Archives

S - Review by State Archives

D - Review by State Archives/Electronic

O - Other (Specify in Remarks)

State Records Center Use

Y - Yes

N - No

Vital Record Identification Code

V = Vital

I = Important

U = Useful

Agency Abbreviations

TPA = Third party administrator

IMMEDIHRA = Individual Medicare Market Exchange with Health Reimbursement Arrangements

OGB = Office of Group Benefits

Theresa Taylor
Agency Approval

1-7-2020
Date Signed

James E. Hoppa, III
Secretary of State, State Archives & Records Services

1-8-2020
Date Approved

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Page 9 of 13

Page 9 of 13

<http://www.sos.la.gov>

Agency No	Agency / Division / Section	Division of Administration / Office of Group Benefits / Medical and Pharmacy Benefits										<div> <div>ORIGINAL SUBMISSION</div> <div>RENEWAL</div> <div>REPLACEMENT PAGE</div> <div>ADDENDUM PAGE</div> </div>						
003.005	Division of Administration - Life Insurance	Item Number		Records Series Title		Retention Period			Security		Archival		State Records Center		Vital		Remarks	
				In Office	In Storage	Total Retention												
1	Fully Insured Basic and Supplemental Life Insurance Vendor Invoices & Supporting Documents			ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	U							ACT = until the end of the CY in which the document was received ^m	
2	Fully Insured Basic and Supplemental Life Insurance Vendor Reports & Contract Deliverables			ACT + 1 CY	3 CY	ACT + 4 CY	M	S	Y	U							ACT = until the end of the CY in which the report or deliverable was received ^m	
3	Fully Insured Basic and Supplemental Life Insurance Member/Beneficiary Designation/Change Forms			ACT+ 10 CY	0	ACT + 10 CY	C	S	N	V							ACT= Until end of the CY in which OGB ceases to exist. ^m	
Permitted Retention Period Abbreviations		Security Status Codes												State Records Center Use		Agency Abbreviations		
ACT - Active Period (when used define term in remarks column)		P - Public Record												Y - Yes		OGB = Office of Group Benefits		
FY - Fiscal Year (July 1 - June 30)		M - May Contain Confidential Information												N - No				
CY - Calendar Year (Jan 1 - Dec 31)		C - Confidential Information																
AY - Academic Year (Aug 1 - July 31)		Archival Processing Codes												Vital Record Identification Code				
FFY - Federal Fiscal Year (Oct 1 - Sept 30)		A - Transfer to State Archives												V= Vital				
MO - Months WK - Week (Mon-Sun) DY - Day(s)		R - Retain in Agency Archives												I = Important				
PERM - Permanent		S - Review by State Archives												U= Useful				
		D- Review by State Archives/Electronic																
		O - Other (Specify in Remarks)																

Agency Approval

Date Signed _____

Secretary of State, State Archives & Records Services

Date Approved _____

SS ARC 932 (10/19)

<http://www.sos.la.gov>

1-8-2020
Date Approved

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Records Retention Schedule

Http://www.sos.la.gov

SS ARC 932 (10/19)

Page 11 of 13

Indicate Use of Form

__ ORIGINAL SUBMISSION

X RENEWAL

__ REPLACEMENT PAGE

__ ADDENDUM PAGE

Item Number	Records Series Title	Retention Period			Security	Archival	State Records Center	Vital	Remarks
		In Office	In Storage	Total					
003.005	Division of Administration / Office of Group Benefits / Discontinued Programs								
1	Filing Deadline Mail Records	ACT + 3 CY		ACT + 3 CY	M	S	N	I	ACT = until the end of the CY in which the document was created or received. **
2	Live and Event Claims Records	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
3	Field and Audit Reports	ACT + 5 CY		ACT + 5 CY	M	S	N	I	ACT = until the end of the CY in which Report was issued. **
4	Health Claims (including supplemental Claims)	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
5	Explanation of Benefits (EOBs)	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
6	Medical Records	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
7	Pre-determinations	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
8	Case Management	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
9	Medical Necessities	ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **
Permitted Retention Period Abbreviations ACT - Active Period (when used define term in remarks column) FY - Fiscal Year (July 1 - June 30) CY - Calendar Year (Jan 1 - Dec 31) AY - Academic Year (Aug 1 - July 31) FFY - Federal Fiscal Year (Oct 1 - Sept 30) MO - Months WK - Week (Mon-Sun) DY - Day(s) PERM - Permanent ** = May be part of an Imaging/Electronic Exception. ** = May be part of an Imaging/Electronic Survey.									
					Security Status Codes		State Records Center Use		Agency Abbreviations
					P - Public Record	M - May Contain Confidential Information	Y - Yes	N - No	
					Archival Processing Codes		Vital Record Identification Code		OGB = Office of Group Benefits
					A - Transfer to State Archives	R - Retain in Agency Archives	Y = Vital	I = Important	
					S - Review by State Archives	D - Review by State Archives/Electronic	U = Useful		
					O - Other (Specify in Remarks)				

Agency Approval

Date Signed

Secretary of State, State Archives & Records Services

Date Approved

Louisiana Secretary of State
Division of Archives, Records Management and History
Post Office Box 94125, Baton Rouge, LA 70804

Records Retention Schedule

SS ARC 932 (10/19)

Http://www.sos.la.gov

Agency No	Agency / Division / Section	Division of Administration / Office of Group Benefits / Discontinued Programs	Retention Period			Security	Archival	State Records Center	Vital	Indicate Use of Form	
			In Office	In Storage	Total					Page 12 of 13	ORIGINAL SUBMISSION X RENEWAL REPLACEMENT PAGE ADDENDUM PAGE
003.005											
Item Number	Records Series Title		In Office	In Storage	Total					Remarks	
10	Paid in Vouchers		ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **	
11	Flexible Benefit Master File		ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **	
12	Hospital Audits, Statistical Reports and Work Papers		ACT + 5 CY		ACT + 5 CY	M	S	N	I	ACT = until the end of the CY in which Report was issued. **	
13	Fraud and Abuse Case Files and Logs		ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **	
14	Health Claim Audits and work papers (including over \$500 plan Member check Audits)		ACT + 5 CY		ACT + 5CY	C	S	N	I	ACT = until the end of the CY in Audit is completed. **	
15	Special Reports (Outlier, Check Cycle)		ACT + 10 CY		ACT + 10CY	M	S	N	I	ACT = until the end of the CY in which report is run. **	
16	Reviews (Medical and Chiropractic)		ACT + 10 CY		ACT + 10CY	C	S	N	I	ACT = until the end of the CY in which OGB ceases to exist. **	
17	Case Management		ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **	
18	Medical Necessities		ACT + 10 CY		ACT + 10CY	C	S	N	V	ACT = until the end of the CY in which OGB ceases to exist. **	
Permitted Retention Period Abbreviations											
ACT - Active Period (when used define term in remarks column)											
FY - Fiscal Year (July 1 - June 30)											
CY - Calendar Year (Jan 1 - Dec 31)											
AY - Academic Year (Aug 1 - July 31)											
FFY - Federal Fiscal Year (Oct 1 - Sept 30)											
MO - Months WK - Week (Mon-Sun) DY - Day(s)											
PERM - Permanent											
** = May be part of an Imaging/Electronic Exception.											
** = May be part of an Imaging/Electronic Survey.											
			Security Status Codes			State Records Center Use			Agency Abbreviations		
			P - Public Record			Y - Yes			OGB = Office of Group Benefits		
			M - May Contain Confidential Information			N - No					
			C - Confidential Information								
			Archival Processing Codes			Vital Record Identification Code					
			A - Transfer to State Archives			V = Vital					
			R - Retain in Agency Archives			I = Important					
			S - Review by State Archives			U = Useful					
			D - Review by State Archives/Electronic								
			O - Other (Specify in Remarks)								

Agency Approval

Date Signed

Secretary of State, State Archives & Records Services

Date Approved

ATTACHMENT V: IMAGING SYSTEM SURVEY COMPLIANCE AND RECORDS DESTRUCTION

In connection with OGB's electronic records retention requirements and within thirty (30) days of the Contract's effective date, Contractor shall complete a State Archives Imaging System Survey ("System Survey") and forward to OGB.Records@la.gov¹, or as otherwise directed by OGB. According to LAC 4:XVII.1305(A), the System Survey must contain the following information:

1. A list of all OGB records series² maintained/managed by Contractor's system;
2. The hardware and software used including model number, version number and total storage capacity;
3. The type and density of media used by Contractor's system;
4. The type and resolution of images being produced (TIFF class 3 or 4 and dpi);
5. Contractor's quality control procedures for image production and maintenance;
6. Contractor's system's back up procedures including location of back-up (on or off-site) and number of existing images; and
7. Contractor's migration plan for purging images from the system that have met their retention period.

OGB shall review the System Survey to make an initial determination of conformity with LAC 4:XVII.1305(A). Once OGB determines that Contractor's System Survey contains the requisite information, OGB will forward the System Survey to the Secretary of State. As a continuing requirement, any system changes necessitating a revised System Survey response must be submitted to the Secretary of State within ninety (90) days of the change. To ensure compliance with this rule, Contractor shall notify the Records Officer of these changes within sixty (60) days so that he or she may forward the appropriate information to the Secretary of State.

¹ If OGB makes a different designation, OGB will notify Contractor of the change and provide updated contact information.

² A records series is a group of related or similar records that may be filed together as a unit, used in a similar manner, and typically evaluated as a unit for determining retention periods. LAC 4:XVII.301(A). The records series listed in Contractor's imaging survey should correspond to the records series listed on the OGB official Record Retention Schedule, Attachment IV.

ATTACHMENT VI: CLINICAL MANAGEMENT PROGRAMS

OGB Current Programs to be supported by Express Scripts, Inc.			
Active / Non-Medicare Retirees Clinical Programs			
Item	Description	Confirm agreement that each program (or vendor similar programs) are included in the All-inclusive Clinical Fee	Provide vendor similar program name/ description
High Cost Generic Program	Copays for certain generic medications are at the member's Preferred Brand copay level (High Cost Generic Program listing not provided due to proprietary nature of listing)		
If member is enrolled in OGB's Disease Management Program	\$1500 Rx out of pocket is waived. Member pays \$0 for generic, \$20 for preferred brand, and \$40 for non-preferred brand and specialty (Disease Mgmt Program tab in "OGB-MVS Plan Design Features Supplement File.xlsx"). In addition, all covered Diabetic Supplies including Test Strips are for \$0 copay (Diabetic Supply List tab in "OGB-MVS Plan Design Features Supplement File.xlsx").		
Clinical Edit Package	PA, Step Therapy, QL, Age/Gender edits in place under the formulary		
Formulary Exclusions			n
510k management			
Standard Concurrent Drug Utilization Review			

Patent Exclusivity Management	Allows coverage of the branded product at the lower tier and the generic product is blocked from adjudication to achieve lowest net cost.		
Opioid Cumulative Dosing Program	POS edit providing hard- and soft-stops on Opioid claims based on Morphine Equivalent Dose per day		
Acetaminophen (APAP) Safety Controls Program	Identifies the dispensing of unsafe daily doses of the ingredient acetaminophen (APAP) of greater than 4gm/day		
Polypharmacy DUE	Retrospectively identifies members receiving 10 or more unique, chronic medications from 3 or more prescribers in the previous 3 months		
High Cost Generics Program	Program that identifies high cost generic drugs with lower cost generic alternatives to target for a higher copay (copays for certain generic medications are at the member's Preferred Brand copay level)		
EGWP Clinical Programs			
Item	Description		
Diabetic Supply Coverage	Diabetic Supplies including Test Strips that adjudicate through the Part D benefit are for \$0 copay		
Patent Exclusivity Management	Generic equivalent products for brand Advair Diskus, Zytiga, Tracleer, Mitigare, Afinitor, Novolog, Welchol packets		
Clinical Edit Package	PA, Step Therapy, QL, Age/Gender edits in place under the formulary		
Formulary Exclusions			
510k management			

Standard Concurrent Drug Utilization Review			
Opioid Cumulative Dosing Program	POS edit providing hard- and soft-stops on Opioid claims based on Morphine Equivalent Dose per day		
Acetaminophen (APAP) Safety Controls Program	Identifies the dispensing of unsafe daily doses of the ingredient acetaminophen (APAP) of greater than 4gm/day		
Care Quality and High Risk Safety Management Drug Use Evaluation (DUE) Programs	Physician outreach programs focused on care quality along with safety management interventions on the following topics: <ul style="list-style-type: none"> • Statin Use in Persons with Diabetes (SUPD) • High Risk Medication • Concurrent use of Opioids and Benzodiazepines • Naloxone 		
Medication Therapy Management Program (MTMP)	Member outreach program for members to make better use of their drug coverage and to improve their understanding of their medications		
Opioid Overutilization & Safety Controls Programs	Opioid Overutilization & Safety Controls Programs which monitor the utilization of prescribed medications through use of drug utilization controls at the point-of-sale and retrospective interventional programs to increase Eligible Member safety		

Recommended Clinical Management Programs available on a-la-carte basis, to be selected at OGB's option

Commercial

Name of Recommended Clinical Management Programs	Description of Recommended Clinical Management Programs	Description of the Cost Savings for each Recommended Clinical Management Program	Plan Participant Per Month Cost
---	--	---	--

Programs in support of OGB's Current Clinical Programs as listed above

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<div data-bbox="203 191 394 245" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="462 191 862 632" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="894 191 1021 220" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="1218 191 1373 245" data-label="Text"><p>[REDACTED]</p></div>
<div data-bbox="203 663 420 716" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="462 663 852 894" data-label="Text"><p>[REDACTED]</p></div> <div data-bbox="462 915 862 1766" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="894 663 1183 894" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="1218 663 1373 716" data-label="Text"><p>[REDACTED]</p></div>
<div data-bbox="203 1287 313 1314" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="462 1287 852 1766" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="894 1287 1183 1570" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="1218 1287 1373 1339" data-label="Text"><p>[REDACTED]</p></div>
<div data-bbox="203 1780 362 1858" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="462 1780 852 1900" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="894 1780 1164 1881" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="1218 1780 1373 1833" data-label="Text"><p>[REDACTED]</p></div>

<div data-bbox="201 191 350 243" data-label="Text"> <div></div> </div>	<div data-bbox="461 191 859 428" data-label="Text"> <div></div> </div> <div data-bbox="461 449 859 915" data-label="Text"> <div></div> </div>	<div data-bbox="894 191 1175 270" data-label="Text"> <div></div> </div>	<div data-bbox="1219 191 1395 348" data-label="Text"> <div></div> </div>
<div data-bbox="201 915 391 968" data-label="Text"> <div></div> </div>	<div data-bbox="461 915 859 1205" data-label="Text"> <div></div> </div> <div data-bbox="461 1226 859 1713" data-label="Text"> <div></div> </div>	<div data-bbox="894 915 1159 995" data-label="Text"> <div></div> </div>	<div data-bbox="1219 915 1395 1073" data-label="Text"> <div></div> </div>

<div data-bbox="201 191 427 268" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="461 191 862 632" data-label="Text"><p>[REDACTED]</p></div> <div data-bbox="461 657 862 968" data-label="Text"><p>[REDACTED]</p></div> <div data-bbox="461 993 862 1451" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="894 191 1159 268" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="1219 191 1393 506" data-label="Text"><p>[REDACTED]</p></div> <div data-bbox="1219 531 1393 583" data-label="Text"><p>[REDACTED]</p></div>
<div data-bbox="201 1461 367 1539" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="461 1461 862 1866" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="894 1461 1182 1539" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="1219 1461 1393 1850" data-label="Text"><p>[REDACTED]</p></div>

<div data-bbox="203 191 280 220" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="462 191 865 682" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="893 191 1164 321" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="1218 191 1390 296" data-label="Text"> <p>[REDACTED]</p> </div>
<div data-bbox="203 682 347 714" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="462 682 865 919" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="893 682 927 711" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="1218 682 1390 997" data-label="Text"> <p>[REDACTED]</p> </div>
<div data-bbox="203 968 412 1024" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="462 968 865 1598" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="893 968 1182 1127" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="1218 968 1390 1155" data-label="Text"> <p>[REDACTED]</p> </div>
<div data-bbox="203 1619 391 1673" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="462 1619 865 1904" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="893 1619 1005 1646" data-label="Text"> <p>[REDACTED]</p> </div>	<div data-bbox="1218 1619 1330 1646" data-label="Text"> <p>[REDACTED]</p> </div>

[illegible]

EGWP

Name of Recommended Clinical Management Programs	Description of Recommended Clinical Management Programs	Description of the Cost Savings for each Recommended Clinical Management Program	Proposer's Per Plan Participant Per Month Cost
Programs in support of OGB's Current Clinical Programs as listed above			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[illegible]

	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>		
<div>[REDACTED]</div>	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>

[illegible]

--	--	--	--

John Bel Edwards
GOVERNOR



Dr. Courtney N. Phillips
SECRETARY

State of Louisiana

Louisiana Department of Health
Office of Management and Finance

September 21, 2021

The Honorable Mack "Bodi" White
Louisiana State House of Representatives
Chairman, Joint Legislative Committee on the Budget
P.O. Box 44294
Baton Rouge, LA 70804

Re: LDH Request for September JLCB Agenda Item Pursuant to La. R.S. 39:1615(J)

Dear Senator White:

The Louisiana Department of Health (LDH) requests that the following contracts be placed on the agenda for the Joint Legislative Committee on the Budget (JLCB) September hearing for consideration by your committee pursuant to La. R.S. 39:1615(J). LDH wishes to extend these contracts pursuant to the extension options in the contracts; however, La. R.S. 39:1615(J) requires the approval of your committee before proceeding. The contracts are as follows:

Acumen Fiscal Agent, LLC. and Morning Sun Financial Services

Both the Acumen and Morning Sun Fiscal Employer Agent (F/EA) contracts provide for an initial three-year term, both of which expire on 9/30/22. These contracts support self-direction of services, which is an alternative service delivery method that allows Medicaid waiver participants or a designee to directly recruit, hire, and manage their direct care staff. The F/EA ensures compliance with payroll and tax requirements for those Medicaid waiver participants who have opted for self-direction of services.

Due to growth in the program over the past several years, LDH is exploring the possibility of transitioning this activity from an administrative service provided under contracts to a Medicaid service provided under our 1915(c) waivers. This change would reduce State general fund costs by allowing the State to utilize the higher Federal Medical Assistance Percentage rate for Medicaid services instead of the lower administrative match rate that is available under the current model. To allow additional time LDH staff to further research this option and submit the required waiver amendments to CMS, we are requesting approval from the JLCB to extend the current contracts an additional year through September 2023.

Thank you for considering our request to have this contract extension included on the September JLCB agenda. I am enclosing a copy of the contracts for your convenience. If you have any questions or need any additional information, please feel free to contact Kelly Zimmerman at 225-342-1353 or Kelly.Zimmerman@la.gov.

Sincerely,

A handwritten signature in blue ink that reads "Ruth Johnson".

Ruth Johnson
Undersecretary



TALKING POINTS

FISCAL/EMPLOYER AGENT (F/EA) CONTRACTS

CONTRACT EXTENSION

CONTRACT SUMMARY:

Contract	Acumen Fiscal Agent, LLC	Morning Sun Financial Services
Start Date	10-1-2019	10-01-2019
End Date	09-30-2022	09-30-2022
Contract Total	\$6,148,385	\$ 984,851
Requested Extension (Amendment 1)	\$2,499,840	\$ 49,044
Total Contract Amount	\$8,648,225	\$1,033,895

BACKGROUND:

- The Self-Direction Fiscal/Employer Agent (F/EA) contracts allow Medicaid participants enrolled in the self-direction option to have decision-making authority over their personal care services and take direct responsibility to manage their services with assistance from a fiscal/employer agent.
- The F/EA ensures payroll and tax obligations are met. This option provides an alternative service delivery method, as participants do not receive services from a traditional Medicaid provider.
- Self-Direction has been an option in Louisiana for nearly 20 years.
- LDH would like to explore moving this service from being an administrative service to a waiver service.
- LDH is requesting permission to extend the current contracts by 12 months, through September 30, 2023 to research this option and complete the required waiver amendments to add the service as a waiver service in the applicable waivers.
- The current contracts provide an option to extend up to twenty-four (24) months with the same services at the same rates.

JUSTIFICATION:

- As a result of the RFP process, Acumen has been the F/EA contractor in LA since 2007.
- A Request for Proposal (RFP) was released in 2016 and the contract was awarded to PALCO. After receiving a multitude of payroll and customer service complaints, an emergency contract was given to Acumen to resume FEA duties and reconcile payroll issues. LDH then developed the long-term goal of F/EA services being provided by Medicaid enrolled F/EA providers as other waiver services are provided, rather than a contracted service. This would allow choice of providers and avoid disruption of services due to changing vendors.
- The RFP that was issued in 2019 allowed the opportunity to award a contract to more than one vendor as the short-term solution.
- Contracts were awarded to two vendors, Acumen and Morning Sun, in October 2019.

FISCAL IMPACT:

- The Self-Direction program continues to grow each year and enrollment has increased over 200% from FY15 to FY21. If we are able to transition the F/EA service from an administrative activity to a waiver service, this would allow Medicaid to receive a higher federal match rate and would save state general fund dollars.
- The total payments in FY21 for F/EA services (excluding the cost of criminal background checks) is \$1,964,807. With the change from the administrative to the service federal match rate, the savings to the state for FY21 would have been \$461,337. For FY23, the anticipated savings to the state is approximately \$500k.

**AMENDMENT TO
AGREEMENT BETWEEN STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF HEALTH**

Amendment #: 1LAGOV#: 2000440780LDH #: 062488

MVA

Medical Vendor Administration

(Regional/ Program/
Facility)

Bureau of Health Services Financing

Original Contract Amount \$ 6,148,385.00

AND

Original Contract Begin Date 10-01-2019

Acumen Fiscal Agent, L.L.C.

Original Contract End Date 09-30-2022

Contractor Name

RFP Number: 3000012241

AMENDMENT PROVISIONS

Change Contract From: From Maximum Amount: _____

Current Contract Term: 10-01-2019

Change maximum contract amount from \$6,148,385.00 (as approved)

Change end date of contract from September 30, 2022 (as approved)

Change Contract To: To Maximum Amount: _____

Changed Contract Term: 9-30-2023

Change maximum contract amount to \$8,648,225.00 (as revised)

Change end date to September 30, 2023 (as revised)

Justifications for amendment:

Pursuant to the extension options in the contract, LDH is requesting Amendment 1 to extend the contract term for one year. LDH is exploring the possibility of transitioning this activity from an administrative service provided under contracts to a Medicaid service provided under our 1915c waivers. The extension will allow for time to further research this option and submit the required waiver amendments to CMS without interruption in services to participants.

This Amendment Becomes Effective: 10-01-2022

This amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties.

IN WITNESS THEREOF, this amendment is signed and entered into on the date indicated below.

CONTRACTOR

Acumen Fiscal Agent, L.L.C.

**STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF HEALTH**

Secretary, Louisiana Department of Health or Designee

CONTRACTOR SIGNATURE**DATE**PRINT
NAMECONTRACTOR
TITLE**SIGNATURE****DATE**

NAME

TITLE

OFFICE

PROGRAM SIGNATURE

DATE

NAME

**AMENDMENT TO
AGREEMENT BETWEEN STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF HEALTH**

Amendment #: 1LAGOV#: 2000LDH #: 062466

MVA

Medical Vendor Administration

(Regional/ Program/
Facility)

Bureau of Health Services Financing

Original Contract Amount \$ 984,851.00**AND**Original Contract Begin Date 10-01-2019

Morning Sun Financial Services

Original Contract End Date 09-30-2022

Contractor Name

RFP Number: 3000012241**AMENDMENT PROVISIONS**

Change Contract From: From Maximum Amount: _____

Current Contract Term: 9-30-2022

Change maximum contract amount from \$984,851.00 (as approved)

Change end date of contract from September 30, 2022 (as approved)

Change Contract To: To Maximum Amount: _____

Changed Contract Term: 9-30-2023

Change maximum contract amount to \$1,033,895.00 (as revised)

Change end date to September 30, 2023 (as revised)

Justifications for amendment:

Pursuant to the extension options in the contract, LDH is requesting Amendment 1 to extend the contract term for one year. LDH is exploring the possibility of transitioning this activity from an administrative service provided under contracts to a Medicaid service provided under our 1915c waivers. The extension will allow for time to further research this option and submit the required waiver amendments to CMS without interruption in services to participants.

This Amendment Becomes Effective: 10-01-2022

This amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties.

IN WITNESS THEREOF, this amendment is signed and entered into on the date indicated below.

CONTRACTOR

Morning Sun Financial Services

**STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF HEALTH**

Secretary, Louisiana Department of Health or Designee

CONTRACTOR SIGNATURE

DATE

PRINT
NAMECONTRACTOR
TITLE

SIGNATURE

DATE

NAME

TITLE

OFFICE

PROGRAM SIGNATURE

DATE

NAME

Louisiana Public Facilities Authority (LPFA)

2022 Budget Request

Program Authorization: Public Trust Act -- R.S. 9:2341 et seq.

Agency Description

The Louisiana Public Facilities Authority (LPFA) is a financing authority created as a public trust and public corporation, pursuant to an Indenture of Trust. The State of Louisiana is the beneficiary of the LPFA trust. LPFA was established to benefit the State of Louisiana and its citizens through the issuance of taxable and tax-exempt bonds as well as through other means of public service and economic development. The purposes of the LPFA are to promote, encourage, and further the accomplishment of all activities beneficial to the state and which have a public purpose.

Comparative Statement

Budget Comparison	Prior Year Actuals 2020	Existing Operating Budget 2021	Total Proposed 2022	Total Proposed Over/(Under) Existing	Percent Change
Means of Financing					
State General Fund by:					
Fees and Self-generated Revenues	\$ 2,181,710	\$ 1,985,620	\$ 2,022,620	\$ 37,000	1.86
Total Means of Financing	\$ 2,181,710	\$ 1,985,620	\$ 2,022,620	\$ 37,000	1.86
Expenditures and Request:					
Personal Services	\$ 1,224,682	\$ 1,211,865	\$ 1,241,965	\$ 30,100	2.48
Total Operating Expenses	\$ 413,500	\$ 648,935	\$ 654,900	\$ 5,965	0.92
Total Professional Services	\$ 103,117	\$ 124,820	\$ 124,820	\$ -	0.00
Total Other Charges	\$ -	\$ -	\$ -	\$ -	0.00
Total Acquisitions and Major Repairs	\$ -	\$ 29,400	\$ 29,400	\$ -	0.00
Total Expenditures and Request	\$ 1,741,299	\$ 2,015,020	\$ 2,051,085	\$ 36,065	1.79
Authorized T.O. FTE Positions					
Classified	-	-	-	-	0
Unclassified	14	14	14	0	0.00
Total Positions	14	14	14	0	0.00

Source of Funding and Programs

The LPFA is a self-supporting entity that operates solely on revenues generated by fees on both taxable and tax-exempt bonds issued through the agency. The operating budget for the LPFA is set by the authority board. Prior-year surplus funds may be used to cover budget needs if projected revenues do not materialize as anticipated. The LPFA budget has two programs – Bond Financing/Business Development and Student Loans.

Major Changes from the Existing Operating Budget

\$2,015,020 2021 Existing Operating Budget Expenditures & Request

- \$30,100 Personal Services -- Increases in Salaries (\$22,000) and Related Benefits (\$8,100).
- \$5,965 Operating Expenses -- Increase in Operating Services (\$3,500 for advertising and business promotions and \$4,000 for internet provider costs less (\$1,535) from Grants/Technical Assistance/Advocacy.
- No Change Professional Services, Other Charges, and Acquisitions and Major Repairs.

\$36,065 Total Proposed Adjustments 2021 EOB to 2022 Proposed

\$2,051,085 2022 Proposed Operating Budget Expenditures & Request

Notes:

- *The overall proposed budget expenditures and request for this agency is increased by 1.79 percent from the existing operating budget.*
- *Revenues are anticipated to increase by 1.86 percent from the existing operating budget.*
- *The proposed budget for the **Bond Financing/Business Development Program (see below)** is requested at \$1,118,620 for 2022, an increase of \$20,000 over the 2021 Existing Budget of \$1,098,620.*
- *The proposed budget for the **Student Loans Program** is requested at \$904,000 for 2022, an increase of \$17,000 over the 2021 Existing Budget of \$887,000.*

Program Descriptions

Bond Financing/Business Development Program

(\$1,118,620 / 5 positions)

This program issues taxable and tax-exempt bonds for:

- Industry and commerce to foster economic growth and stability
- Hospital, extended care, clinical, community health, geriatric, nursing home, and medical care facilities
- Educational facilities
- Residential housing
- Projects protecting citizens against air, water, noise, ground, and other types of pollution
- Public utility facilities and services
- Projects increasing efficiency in operating state and local governments
- Cultural and recreational facilities
- Public transportation facilities

Student Loans Program**(\$904,000 / 9 positions)**

This program:

- Issues bonds for student loans
- Provides outreach services to high school students and their parents focusing primarily on financial aid access and FAFSA completion
- Maintains the *asklela.org* web site as a resource to students and parents during their college research and application process
- Maintains a free College Planning Resource Center at its office in Baton Rouge
- Has direct contact with thousands of high school students and parents through such outreach visits, FAFSA completion workshops, presentations, and visits to the College Planning Resource Center
- Continues to administer its existing Federal Family Education Loan Program loan portfolio

Funding Sources by Program

Funding Sources by Program	Prior Year Actual 2020	Existing Operating Budget 2021	Total Request 2022	Total Proposed Over/(Under) Existing
SELF-GENERATED REVENUES				
Bond Financing/ Business Development:				
Financing Acceptance Fees	\$ 452,757	\$ 425,000	\$ 425,000	\$ -
Financing Application Fees	\$ 4,000	\$ 15,000	\$ 15,000	\$ -
Program Administrative Fees	\$ 77,351	\$ 122,500	\$ 122,500	\$ -
Program Fees - General	\$ 23,700	\$ 25,000	\$ 25,000	\$ -
Multifamily and other Program Fees	\$ 35,996	\$ 36,120	\$ 36,120	\$ -
Interest Income - Loan Programs	\$ 195,179	\$ 150,000	\$ 170,000	\$ 20,000
Interest Income	\$ 218,559	\$ 325,000	\$ 325,000	\$ -
Program Investment Earnings	\$ 120,413	\$ -	\$ -	\$ -
Miscellaneous Income	\$ 1,979	\$ -	\$ -	\$ -
Realized and unrealized gain or loss on investments	\$ 94,986	\$ -	\$ -	\$ -
SUB-TOTAL	\$ 1,224,920	\$ 1,098,620	\$ 1,118,620	\$ 20,000
Student Loans:				
Program Administrative Fees	\$ 956,790	\$ 887,000	\$ 904,000	\$ 17,000
Miscellaneous Income	\$ -	\$ -	\$ -	\$ -
SUB-TOTAL	\$ 956,790	\$ 887,000	\$ 904,000	\$ 17,000
TOTAL SELF-GENERATED REVENUES	\$ 2,181,710	\$ 1,985,620	\$ 2,022,620	\$ 37,000

Positions and Compensation

Position	Current Semi-Monthly Salary as of 10-30-21	Total Base Salary Requested 2022	Total Salary Requested 2022	Retirement	Medicare	Group Insurance
President and CEO	\$ 8,415	\$ 201,960	Salary adjustments for the requested year will be made based upon merit as determined by LPFA management and will range between 1.25% and 4% of the base year amounts			
Vice President of Student Loans and Administration	\$ 5,587	\$ 134,088				
Vice President of Economic and Program Development	\$ 4,446	\$ 106,704				
Assistant Vice President of Student Loans	\$ 3,526	\$ 84,624				
Accountant	\$ 3,283	\$ 78,792				
Executive Assistant	\$ 2,716	\$ 65,184				
Public Information / IT Manager	\$ 1,895	\$ 45,480				
Compliance Analyst	\$ 1,792	\$ 43,008				
Administrative Assistant	\$ 1,643	\$ 39,432				
Receptionist	\$ 1,303	\$ 31,272				
Assistant Vice President of Student Loans	\$ -	\$ -				
Marketing Representative	\$ -	\$ -				
Client Service Representative	\$ -	\$ -				
Administrative Assistant	\$ -	\$ -				
Totals	\$ 34,606	\$ 830,544	\$ 852,800	\$95,600	\$ 12,200	\$ 212,100

Shaded positions are vacant.

*Roughly 2.65%
over 2021*

- All positions are unclassified.
- Authorized employees have remained at 14.
- Funded employees remain at 10.
- LPFA employees are not considered State employees.
 - They do not participate in State retirement.
 - LPFA employees have a defined contribution retirement plan at 11.2% of salary.
 - They are not eligible for Social Security.
 - They do not participate in Group Benefits and have no LPFA-provided health insurance after retirement.
 - LPFA employees are eligible for Medicare.

Professional Services

Professional Services by Program and Category	Individual and/or Firm	Prior Year Actual 2020	Existing Operating Budget 2021	Total Request 2022	Total Proposed Over/(Under) Existing
Bond Financing/Business Development					
Accounting	Postlethwaite & Netterville, APAC	\$ -	\$ 3,000	\$ 3,000	\$ -
Audit	Louisiana State Legislative Auditor	\$ 16,500	\$ 17,000	\$ 17,000	\$ -
SUB-TOTAL		\$ 16,500	\$ 20,000	\$ 20,000	\$ -
Legal					
Legal	Breazeale Sachse Wilson, LLP	\$ 60	\$ 3,000	\$ 3,000	\$ -
Legal	Gregory A. Pletsch & Associate		\$ 1,000	\$ 1,000	\$ -
Legal	Jacob S. Capraro	\$ 19,750	\$ 13,000	\$ 13,000	\$ -
Legal	Kutak Rock	\$ -	\$ 3,000	\$ 3,000	\$ -
SUB-TOTAL		\$ 19,810	\$ 20,000	\$ 20,000	\$ -
Casual Labor					
Media Graphics/ Third Party	Various	\$ 23	\$ 1,000	\$ 1,000	\$ -
Media Graphics/ Third Party	Don Kadair Photography	\$ 175	\$ 1,500	\$ 1,500	\$ -
Media Graphics/ Third Party	Object 9	\$ 6,825	\$ 25,000	\$ 25,000	\$ -
Media Graphics/ Third Party	Various	\$ -	\$ 2,020	\$ 2,020	\$ -
Media Graphics/ Third Party	Dr. James Richardson	\$ -	\$ 12,500	\$ 12,500	\$ -
Media Graphics/ Third Party	NAHEFFA	\$ -	\$ 2,000	\$ 2,000	\$ -
SUB-TOTAL		\$ 7,023	\$ 44,020	\$ 44,020	\$ -
Student Loans					
Accounting	Hannis T. Bourgeois and Co.	\$ -	\$ 500	\$ 500	\$ -
Audit	Louisiana State Legislative Auditor or Postlethwaite & Netterville, APAC	\$ 16,500	\$ 17,000	\$ 17,000	\$ -
SUB-TOTAL		\$ 16,500	\$ 17,500	\$ 17,500	\$ -
Legal					
Legal	Breazeale Sachse Wilson, LLP	\$ 2,453	\$ 2,000	\$ 2,000	\$ -
Legal	Gregory A. Pletsch & Associate		\$ 2,000	\$ 2,000	\$ -
Legal	Jacob S. Capraro	\$ 7,500	\$ 4,000	\$ 4,000	\$ -
Legal	Foley & Lardner	\$ -	\$ 2,000	\$ 2,000	\$ -
SUB-TOTAL		\$ 9,953	\$ 10,000	\$ 10,000	\$ -
Casual Labor					
Media Graphics/ Third Party	Various	\$ 43	\$ 500	\$ 500	\$ -
Media Graphics/ Third Party	EGB Creative or Similar	\$ 3,873	\$ 8,000	\$ 1,000	\$ (7,000)
Media Graphics/ Third Party	Dr. James Richardson		\$ 2,000	\$ 2,000	\$ -
Media Graphics/ Third Party	NRCCUA	\$ 4,800	\$ -	\$ -	\$ -
Media Graphics/ Third Party	Object 9	\$ 9,615	\$ 2,800	\$ 2,800	\$ -
Media Graphics/ Third Party	B. Ann Carmichael	\$ 15,000	\$ -	\$ 7,000	\$ 7,000
SUB-TOTAL		\$ 33,331	\$ 13,300	\$ 13,300	\$ -
Consolidated Accounting & Audit		\$ 33,000	\$ 37,500	\$ 37,500	\$ -
Consolidated Legal		\$ 29,763	\$ 30,000	\$ 30,000	\$ -
Consolidated Other Professional Services		\$ 40,354	\$ 57,320	\$ 57,320	\$ -
GRAND TOTAL PROFESSIONAL SERVICES		\$ 103,117	\$ 124,820	\$ 124,820	\$ -

- Professional Services has two adjustments, but no change to its bottom line from 2021 Existing Operating Budget to 2022 Requested.

Travel

- Travel expenses remain the same for 2022 Requested as for 2021 Existing at \$64,700.
- It should be noted that travel expenses for 2020 Actual were \$6,536 due to coronavirus-related restrictions on meetings and other public gatherings.
- For 2022 Requested, In-State Travel is funded at \$37,800 and Out-of-State Travel is funded at \$26,900.
- Travel costs may include, but are not limited to, administrative purposes, conferences, conventions, training, field travel, or for board members' expenses.

James W. Parks II
President and CEO

Tricia A. Dubroc
VP of Student Loans and Administration

Martin Walke
VP of Economic Development



LPFA
LOUISIANA PUBLIC FACILITIES AUTHORITY

BOARD OF TRUSTEES

Guy Campbell III, Chairman
Ronald H. Bordelon, Vice Chairman
Craig A. Cheramie, Secretary-Treasurer
Michael C. Darnell
David W. Groner
Casey R. Guidry
Dannye W. Malone

October 27, 2021

The Honorable Bodi White
Chairman
Joint Legislative Committee on the Budget
11th Floor, State Capitol
Baton Rouge, LA 70804

The Honorable Jerome Zeringue
Vice Chairman
Joint Legislative Committee on the Budget
11th Floor, State Capitol
Baton Rouge, LA 70804

Re: Proposed LPFA Budget for Calendar Year 2022

Dear Chairman White and Vice Chairman Zeringue:

Thank you for your consideration of our proposed Budget for calendar year 2022. This proposed Budget was approved by LPFA's Board of Trustees at a public meeting held on October 12, 2021. I have also included a copy of the resolution adopted by the Board of Trustees approving our proposed 2022 Budget.

As always, the LPFA will operate solely on self-generated revenues. We are not requesting and we have never received any funds from the State for our operations.

The amount budgeted for revenues has increased by \$37,000 due to increases in Program Fees and Interest Income - Loan Programs. The amount budgeted for expenditures has increased by \$36,065 to maintain a balanced budget.

The total operating expenditures requested for 2022 are approximately \$2.02 million.

Here are a few brief highlights about the proposed 2022 budget:

- Overall revenues have increased by \$37,000 due to increases in Program Fees and Interest Income - Loan Programs. We are projecting a slight increase in our Program Fees as we develop and administer additional programs. Our various loan programs continue to provide interest savings to local government borrowers while providing interest income to the LPFA. We participate with a local bank to finance a local government's borrowing and charge interest at half the amount charged by the bank. Demand for these discounted loans is high and we project an increase in our interest income from these loans.

2237 South Acadian Thruway • Suite 650 • Baton Rouge, Louisiana 70808
PHONE: (225) 923-0020 FAX: (225) 923-0021 www.lpfa.com www.lela.org

Financing Louisiana Today for a Better Tomorrow

- Overall expenses have increased by \$36,065, or 1.820%, as a result of the increase in revenues and to maintain a balanced budget.
- The amount budgeted for Total Personal Services has increased by \$30,100, or by 2.48%. This amount includes a modest cost of living adjustment for our employees ranging from 1.25% to 4%.
- The amount budgeted for Total Operating Expenses has increased by \$5,965, or approximately 0.92%.
- The amount budgeted for Professional Services has not changed.
- The amount budgeted for "Acquisitions and Major Repairs" has not changed.
- The number of authorized employees has not changed and remains at 14.
- The number of funded employees has not changed and remains at 10.
- All of our employees are unclassified.
- LPFA employees are not considered State employees.
- We do not participate in the State retirement plan, but instead have a **defined contribution retirement plan**.
- We also do not participate in State Group Benefits and have no LPFA provided health insurance coverage after retirement. LPFA employees are eligible for Medicare.
- LPFA employees are not eligible for Social Security.

I have attached information about our recent bond financing and education activities. Our student loans division maintains the web site, *asklela.org*, that acts as a resource to students and parents during their college research and application process. Additionally, we continue to administer our existing Federal Family Education Loan Program loan portfolio. We provide a student loan refinancing program to help families in Louisiana ease their prior student loan debt burden by refinancing their student loans at a lower interest rate. We also have a new in-school private loan program with more competitive rates and terms to provide families with better options if they are in need of additional assistance.

The Honorable Bodi White
The Honorable Jerome Zeringue
October 27, 2021
Page 3

Please contact me if you have any questions or if you would like for me to meet with you or your staff about our proposed 2022 Budget.

Very truly yours,



James W. Parks II

Enclosures

cc: Members, LPFA Board of Trustees

LOUISIANA PUBLIC FACILITIES AUTHORITY

On the motion of Trustee Cheramie, seconded by Trustee Groner, the following resolution was unanimously adopted:

A resolution approving the Annual Budget of the Louisiana Public Facilities Authority for Calendar Year 2022 and the submitting of the Annual Budget of the Louisiana Public Facilities Authority to the Joint Legislative Committee on the Budget; and providing for other matters with respect thereto.

WHEREAS, the Louisiana Public Facilities Authority (the "Authority") is a public trust and public corporation established by a private corporation for the benefit of the State of Louisiana (the "State") by a certain Indenture of Trust dated August 21, 1974 (the "Indenture of Trust"), under and pursuant to the provisions of the Louisiana Public Trust Act, Louisiana Revised Statutes 9:2341-2347 of 1950, as amended (the "Act"); and

WHEREAS, each year the Authority operates pursuant to a budget; and

WHEREAS, the Board of Trustees of the Authority desires to approve the Annual Budget attached hereto as Exhibit "A" for calendar year 2022; and

WHEREAS, pursuant to Act 915 of the 1999 Regular Session of the Louisiana Legislature ("Act 915"), the Authority is to submit its proposed annual operating budget to the Joint Legislative Committee on the Budget for its review and approval;

WHEREAS, it is now the desire of the Board of Trustees of the Authority to authorize and direct the submitting of the Authority's annual operating budget for 2022 to the Joint Legislative Committee on the Budget in accordance with Act 915;

NOW, THEREFORE, BE IT RESOLVED BY THE TRUSTEES OF THE LOUISIANA PUBLIC FACILITIES AUTHORITY:

SECTION 1. The Trustees, for and on behalf of the Authority, hereby approve the Annual Budget attached hereto as Exhibit "A" for calendar year 2022.

SECTION 2. The Trustees, for and on behalf of the Authority, hereby authorize and direct the Staff of the Authority to submit a copy of the Authority’s annual operating budget for 2022, as approved pursuant to Section 1 hereof, no later than November 1, 2021, to the Joint Legislative Committee on the Budget in accordance with Act 915.

SECTION 3. The Chairman, Vice-Chairman, Secretary-Treasurer and any Assistant Secretary are hereby authorized and directed to do all things necessary to effectuate and implement the purpose and intent of this Resolution.

SECTION 4. This Resolution shall become effective upon its adoption.

<u>Member</u>	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstaining</u>
Ronald H. Bordelon			X	
Guy Campbell III	X			
Craig A. Cheramie	X			
Michael C. Darnell			X	
David Groner	X			
Casey R. Guidry			X	
Dannye W. Malone	X			

This Resolution was declared adopted on this 12th day of October, 2021.

* * * *

(Other items of business not pertinent to the foregoing resolution may be found in the official minutes of the Board of Trustees of the Authority.)

Upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

CERTIFICATE OF ASSISTANT SECRETARY

I, the undersigned, do hereby certify that I am an Assistant Secretary of the Board of Trustees of the Louisiana Public Facilities Authority (the "Authority"), a public trust duly organized and existing under and by virtue of the laws of the State of Louisiana, and in such capacity I have access to all records of the Authority.

I do hereby further certify that at a meeting of the Trustees of the Authority, duly called, held and convened, according to law, on the 12th day of October, 2021, a quorum being present and voting thereon, the above and foregoing Resolution was unanimously adopted and that said Resolution is a full true and correct copy of said Resolution as it appears on the records of the Authority and that the same has not been revoked or amended and is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and attached the seal of the Authority this 12th day of October, 2021.

LOUISIANA PUBLIC FACILITIES AUTHORITY

SEAL

By: 
Assistant Secretary

BUDGET REQUEST

BR-0
(6/08)

Year Ending December 31, 2022

NAME OF DEPARTMENT: Louisiana Public Facilities Authority

ADDRESS: 2237 South Acadian Thruway Suite 650
Baton Rouge, LA

BUDGET UNIT: _____

SCHEDULE NUMBER: _____

ZIP CODE: 70808

FAX NUMBER: (225) 923-0021

TELEPHONE NUMBER: (225) 923-0020

AGENCY WEB ADDRESS: _____

TO THE OFFICE OF PLANNING AND BUDGET:

THE ACCOMPANYING FORMS, STATEMENTS AND EXPLANATIONS HAVE BEEN APPROVED BY US AND ARE COMPRISED AS FOLLOWS:

OPERATIONAL PLAN PACKAGE:

NUMBERED PAGE 1 THROUGH PAGE _____

EXISTING OPERATING BUDGET PACKAGE:

NUMBERED PAGE 1 THROUGH PAGE _____

CONTINUATION BUDGET PACKAGE:

NUMBERED PAGE 1 THROUGH PAGE _____

TECHNICAL/OTHER ADJUSTMENT BUDGET PACKAGE:

NUMBERED PAGE 1 THROUGH PAGE _____

NEW/EXPANDED BUDGET REQUEST PACKAGE:

NUMBERED PAGE 1 THROUGH PAGE _____

TOTAL REQUEST SUMMARY PACKAGE:

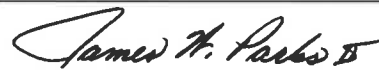
NUMBERED PAGE 1 THROUGH PAGE _____

ADDENDA TO REQUEST (WHERE APPLICABLE)

NUMBERED PAGE 1 THROUGH PAGE _____

WE HEREBY CERTIFY THAT THE STATEMENTS AND FIGURES ON THE ACCOMPANYING FORMS ARE TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE.

HEAD OF DEPARTMENT: _____




PRINTED NAME/TITLE: President and CEO

DATE: October 27, 2021

EMAIL ADDRESS: parks@lpfa.com

HEAD OF BUDGET UNIT: _____



PRINTED NAME/TITLE: President and CEO

EMAIL ADDRESS: parks@lpfa.com

PROGRAM CONTACT PERSON: James W. Parks II

TITLE: President and CEO

TELEPHONE NUMBER: (225) 923-0020

EMAIL ADDRESS: parks@lpfa.com

FINANCIAL CONTACT PERSON: James W. Parks II

TITLE: President and CEO

TELEPHONE NUMBER: (225) 923-0020

EMAIL ADDRESS: parks@lpfa.com

SUMMARY STATEMENT OF MEANS OF FINANCING FOR YEARS SHOWN

BR-1
(9/06)

LINE NO.	MEANS OF FINANCING	PRIOR YEAR ACTUAL 2020 (no negatives)	EXISTING OPERATING BUDGET 2021 (no negatives)	TOTAL REQUEST 2022 (no negatives)	OVER/UNDER EXISTING OPERATING BUDGET	PERCENT CHANGE
1	FEES & SELF-GENERATED REVENUES	\$ 2,181,710	\$ 1,985,620	\$ 2,022,620	\$ 37,000	1.86%
2						
3	TOTAL MEANS OF FINANCING	\$ 2,181,710	\$ 1,985,620	\$ 2,022,620	\$ 37,000	1.86%

Note: Column totals on BR-1 from should equal corresponding Column totals on BR-2 form.

REVENUE OBJECT	SOURCE (FEDERAL, INTERAGENCY TRANSFERS, ETC.) * Give the Legal Citation Authorizing These Funds and Describe Fully Their Purpose and Use.	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET	DETAIL SHEET NOS.
	SELF-GENERATED REVENUES					
	Bond Financing/ Business Development:					
	Financing Acceptance Fees	\$ 452,757	\$ 425,000	\$ 425,000	\$ -	
	Financing Application Fees	\$ 4,000	\$ 15,000	\$ 15,000	\$ -	
	Program Administrative Fees	\$ 77,351	\$ 122,500	\$ 122,500	\$ -	
	Program Fees - General	\$ 23,700	\$ 25,000	\$ 25,000	\$ -	
	Multifamily and other Program Fees	\$ 35,996	\$ 36,120	\$ 36,120	\$ -	
	Interest Income - Loan Programs	\$ 195,179	\$ 150,000	\$ 170,000	\$ 20,000	
	Interest Income	\$ 218,559	\$ 325,000	\$ 325,000	\$ -	
	Program Investment Earnings	\$ 120,413	\$ -	\$ -	\$ -	
	Miscellaneous Income	\$ 1,979	\$ -	\$ -	\$ -	
	Realized and unrealized gain or loss on investments	\$ 94,986	\$ -	\$ -	\$ -	
	SUB-TOTAL	\$ 1,224,920	\$ 1,098,620	\$ 1,118,620	\$ 20,000	
	Student Loans:					
	Program Administrative Fees	\$ 956,790	\$ 887,000	\$ 904,000	\$ 17,000	
	Miscellaneous Income	\$ -	\$ -	\$ -	\$ -	
	SUB-TOTAL	\$ 956,790	\$ 887,000	\$ 904,000	\$ 17,000	
	PUBLIC TRUST ACT:					
	LA. R.S. 9:2341-47 The Louisiana Public Facilities Authority (LPFA) is a financing authority created as a public trust and public corporation by a Louisiana corporation, pursuant to an Indenture of Trust. The State of Louisiana is the beneficiary of the LPFA trust. LPFA was established to benefit the State of Louisiana and its citizens through the issuance of taxable and tax-exempt bonds as well as through other means of public service and economic development. The purposes of the LPFA are to promote, encourage and further the accomplishment of all activities beneficial to the state and which have a public purpose.					
	TOTAL SELF-GENERATED REVENUES	\$ 2,181,710.00	\$ 1,985,620.00	\$ 2,022,620.00	\$ 37,000.00	

* NOTE: Each individual grant, interagency transfer, self-generated revenue source, etc. must be listed separately, and a BR-6A and BR-6B detail sheet must be completed for each separate item listed on the BR-6.

Line No.	DEPARTMENT OF BR-8 Tracking Sheet	PRIOR YEAR ACTUAL 2020 (NO NEGATIVE NUMBERS IN THIS COLUMN)	EXISTING OPERATING BUDGET 2021 (NO NEGATIVE NUMBERS IN THIS COLUMN)	TOTAL REQUEST 2022 (NO NEGATIVE NUMBERS IN THIS COLUMN)	OVER/UNDER EXISTING OPERATING BUDGET
	Bond Financing/Business Development				
	Program:				
1	General Fund	-	-	-	
2	Self-Generated Revenues:				
3	Financing Acceptance Fees	452,757	425,000	425,000	-
4	Financing Application Fees	4,000	15,000	15,000	-
5	Program Administrative Fees	77,351	122,500	122,500	-
6	Program Fees - General	23,700	25,000	25,000	-
7	Multifamily and Other Program Fees	35,996	36,120	36,120	-
8	Interest Income - Loan Programs	195,179	150,000	170,000	20,000
9	Interest Income	218,559	325,000	325,000	-
10	Program Investment Earnings	120,413	-	-	-
11	Miscellaneous Income	1,979	-	-	-
12	Realized and unrealized gain or loss on investments	94,986	-	-	-
13					
14					
15	TOTAL REVENUE	1,224,920	1,098,620	1,118,620	20,000
16					
17	Classified	N/A	N/A	N/A	N/A
18	Unclassified	5	5	5	-
19	TOTAL AUTHORIZED T. O. FTE POSITIONS	5	5	5	-
20	TOTAL AUTHORIZED OTHER CHARGES POSITIONS*	-	-	-	-
21	TOTAL NON-T.O. FTE POSITIONS**	-	-	-	-
22	TOTAL POSITION CONTROL	5	5	5	-
23					
24	2100 Salaries-Classified - Regular	N/A	N/A	N/A	N/A
25	2110 Salaries-Classified - Overtime	N/A	N/A	N/A	N/A
26	2120 Salaries-Classified - Termination	N/A	N/A	N/A	N/A
27	2130 Salaries-Unclassified - Regular	359,909	401,000	411,100	10,100
28	2140 Salaries-Unclassified - Overtime	N/A	N/A	N/A	N/A
29	2150 Salaries-Unclassified - Termination	N/A	N/A	N/A	N/A
30	TOTAL SALARIES	359,909	401,000	411,100	10,100
31					
32	2200 Other Compensation - Wages	-	665	665	-
33	2210 Other Compensation - Students	445	3,000	3,000	-
34	2221 Compensation Board of Trustees	500	10,000	10,000	-
35	2230 Evening Instruction	N/A	N/A	N/A	N/A
36	TOTAL OTHER COMPENSATION	945	13,665	13,665	-
37					
38	2300 Retirement - State	N/A	N/A	N/A	N/A
39	2310 Retirement - School Employees	N/A	N/A	N/A	N/A
40	2320 Retirement - Teachers	N/A	N/A	N/A	N/A

Line No.	DEPARTMENT OF BR-8 Tracking Sheet					OVER/UNDER EXISTING OPERATING BUDGET
			PRIOR YEAR ACTUAL 2020 (NO NEGATIVE NUMBERS IN THIS COLUMN)	EXISTING OPERATING BUDGET 2021 (NO NEGATIVE NUMBERS IN THIS COLUMN)	TOTAL REQUEST 2022 (NO NEGATIVE NUMBERS IN THIS COLUMN)	
	Bond Financing/Business Development					
	Program:					
81	2820	Maintenance of Data Processing Equipment	17,358	12,000	12,000	-
82	2825	Maintenance of Data Processing Software	-	-	-	-
83	2830	Rentals - Buildings	79,679	90,000	90,000	-
84	2840	Rentals - Equipment	N/A	N/A	N/A	N/A
85	2850	Rentals - Data Processing Equipment	N/A	N/A	N/A	N/A
84	2870	Rentals - Other	N/A	N/A	N/A	N/A
85	2875	Data Processing - Licensing Software	4,417	5,000	5,000	-
86	2880	Internet Provider Costs	10,984	10,000	12,000	2,000
87	2890	Dues & Subscriptions	13,826	11,600	11,600	-
88	2900	Mail, Delivery & Postage	1,504	7,000	7,000	-
89	2910	Telephone - Services	5,588	7,500	7,500	-
90	2930	Telephone - Other Comm Services	N/A	N/A	N/A	N/A
91	2935	Data Processing - Contract Services	N/A	N/A	N/A	N/A
92	2940	Utilities - Gas	N/A	N/A	N/A	N/A
93	2950	Utilities - Electricity	N/A	N/A	N/A	N/A
94	2960	Utilities - Water	N/A	N/A	N/A	N/A
95	2970	Utilities - Other	N/A	N/A	N/A	N/A
96	2990	Lab Fees	N/A	N/A	N/A	N/A
97	2991	Operating Services - Security	N/A	N/A	N/A	N/A
98	3000	Miscellaneous	17,959	117,385	115,850	(1,535)
99	3010	Depreciation Expense-Building	N/A	N/A	N/A	N/A
100	3020	Depreciation Expense-Improvements	-	-	-	-
101	3030	Depreciation Expense-Equipment	3,007	8,700	8,700	-
102	3040	Depreciation Expense-Software	-	500	500	-
103	3090	Credit Card Transaction Fees	N/A	N/A	N/A	N/A
104	3091	Credit Card Discount Fees	N/A	N/A	N/A	N/A
105						
106	TOTAL OPERATING SERVICES		213,313	348,785	352,750	3,965
107						
108						
109	3100	Office Supplies	6,245	13,750	13,750	-
110	3120	Computer Supplies	N/A	N/A	N/A	N/A
111	3130	Clothing & Uniforms	N/A	N/A	N/A	N/A
112	3140	Medical Supplies	N/A	N/A	N/A	N/A
113	3160	Food Supplies	N/A	N/A	N/A	N/A
114	3170	Automotive Supplies	N/A	N/A	N/A	N/A
115	3180	Operating Supplies - Other	N/A	N/A	N/A	N/A
116	3190	Bldgs, Grounds & Gen Plant Supplies	N/A	N/A	N/A	N/A
117	3200	Household Supplies	N/A	N/A	N/A	N/A
118	3300	Repair & Maintenance Supplies - Auto	N/A	N/A	N/A	N/A

Line No.	DEPARTMENT OF BR-8 Tracking Sheet					OVER/UNDER EXISTING OPERATING BUDGET
			PRIOR YEAR ACTUAL 2020 (NO NEGATIVE NUMBERS IN THIS COLUMN)	EXISTING OPERATING BUDGET 2021 (NO NEGATIVE NUMBERS IN THIS COLUMN)	TOTAL REQUEST 2022 (NO NEGATIVE NUMBERS IN THIS COLUMN)	
	Bond Financing/Business Development					
	Program:					
159	4980	IAT - Insurance	0	0	0	0
160	5000	IAT - Other Maintenance	0	0	0	0
161	5010	IAT - Rentals	0	0	0	0
162	5020	IAT - Dues & Subscriptions	0	0	0	0
163	5030	IAT - Postage	0	0	0	0
164	5040	IAT - Telephone & Telegraph	0	0	0	0
165	5050	IAT - Utilities	0	0	0	0
166	5080	IAT - Laboratory Fees	0	0	0	0
167	5110	IAT - Office Supplies	0	0	0	0
168	5140	IAT - Automotive Supplies	0	0	0	0
169	5150	IAT - Other Operating Services	0	0	0	0
170						
171	TOTAL INTERAGENCY TRANSFER		0	0	0	0
172						
173	TOTAL O/C & IAT		0	0	0	0
174						
175	4400	Land				
176	4410	Buildings				
177	4420	Capitalized Automobile => \$5000	0	0	0	0
178	4440	Equipment \$1000 - \$4999	0	0	0	0
179	4441	Equipment < \$1000	0	0	0	0
180	4442	Equipment => \$5000	0	0	0	0
181	4450	Capitalized Computer Software => \$5000	0	0	0	0
182	4451	Capitalized Computer Hardware => \$5000	0	12,000	12,000	0
183	4452	Capitalized Data Comm Facilities => \$5000	0	0	0	0
184	4453	Software \$1000 - \$4999	0	0	0	0
185	4454	Hardware \$1000 - \$4999	0	10,000	10,000	0
186	4455	Data Comm Facilities \$1000 - \$4999	0	0	0	0
187	4456	Software < \$1000	0	0	0	0
188	4457	Hardware < \$1000	0	0	0	0
189	4458	Data Comm Facilities < \$1000	0	0	0	0
190	4470	Household	0	0	0	0
191	4480	Medical	0	0	0	0
192	4490	Office Equipment \$1000 - \$4999	0	7,400	7,400	0
193	4491	Capitalized Office Equipment => \$5000	0	0	0	0
194	4492	Office Equipment < \$1000	0	0	0	0
195	4512	Library Reference < \$1000	0	0	0	0
196	4520	Boats \$1000 - \$4999	0	0	0	0
197	4521	Capitalized Boats => \$5000	0	0	0	0
198	4522	Boats < \$1000	0	0	0	0

Line No.	DEPARTMENT OF BR-8 Tracking Sheet	PRIOR YEAR ACTUAL 2020 (NO NEGATIVE NUMBERS IN THIS COLUMN)	EXISTING OPERATING BUDGET 2021 (NO NEGATIVE NUMBERS IN THIS COLUMN)	TOTAL REQUEST 2022 (NO NEGATIVE NUMBERS IN THIS COLUMN)	OVER/UNDER EXISTING OPERATING BUDGET
	Student Loans				
	Program:				
1	General Fund	-	-	-	
2	Interagency Transfer	-	-	-	-
3	Self Generated Revenue	-	-	-	-
4	Program Administrative Fees	956,790	887,000	904,000	17,000
5	Miscellaneous Income	-	-	-	-
6		-	-	-	-
7		-	-	-	-
8		-	-	-	-
9		-	-	-	-
10		-	-	-	-
11	IEB	-	-	-	-
12	Federal Funds	-	-	-	-
13					
14	TOTAL REVENUE	956,790	887,000	904,000	17,000
15					
16	Classified	N/A	N/A	N/A	N/A
17	Unclassified	9	9	9	-
18	TOTAL AUTHORIZED T. O. FTE POSITIONS	9	9	9	-
19	TOTAL AUTHORIZED OTHER CHARGES POSITIONS*	-	-	-	-
20	TOTAL NON-T.O. FTE POSITIONS**	-	-	-	-
21	TOTAL POSITION CONTROL	9	9	9	-
22					
23	2100 Salaries-Classified - Regular	N/A	N/A	N/A	N/A
24	2110 Salaries-Classified - Overtime	N/A	N/A	N/A	N/A
25	2120 Salaries-Classified - Termination	N/A	N/A	N/A	N/A
26	2130 Salaries-Unclassified - Regular	451,317	429,800	441,700	11,900
27	2140 Salaries-Unclassified - Overtime	N/A	N/A	N/A	N/A
28	2150 Salaries-Unclassified - Termination	N/A	N/A	N/A	N/A
29	TOTAL SALARIES	451,317	429,800	441,700	\$ 11,900
30					
31	2200 Other Compensation - Wages	0	-	-	-
32	2210 Other Compensation - Students	0	-	-	-
33	2221 Compensation Board of Trustees	500	10,000	10,000	-
34	2230 Evening Instruction	N/A	N/A	N/A	N/A
35	TOTAL OTHER COMPENSATION	500	10,000	10,000	0
36					
37	2300 Retirement - State	N/A	N/A	N/A	N/A
38	2310 Retirement - School Employees	N/A	N/A	N/A	N/A
39	2320 Retirement - Teachers	N/A	N/A	N/A	N/A

Line No.	DEPARTMENT OF BR-8 Tracking Sheet			EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
			PRIOR YEAR ACTUAL 2020			
	Student Loans		(NO NEGATIVE NUMBERS IN THIS COLUMN)	(NO NEGATIVE NUMBERS IN THIS COLUMN)	(NO NEGATIVE NUMBERS IN THIS COLUMN)	
	Program:					
79	2811	Maintenance of Grounds	0	0	0	-
80	2820	Maintenance of Data Processing Equipment	17,357	12,000	12,000	-
81	2825	Maintenance of Data Processing Software	0	0	0	-
82	2830	Rentals - Buildings	79,679	90,000	90,000	-
83	2840	Rentals - Equipment	N/A	N/A	N/A	N/A
84	2850	Rentals - Data Processing Equipment	N/A	N/A	N/A	N/A
85	2870	Rentals - Other	N/A	N/A	N/A	N/A
86	2875	Data Processing - Licensing Software	6,397	5,000	5,000	-
87	2880	Internet Provider Costs	13,006	10,000	12,000	2,000
88	2890	Dues & Subscriptions	11,612	5,325	5,325	-
89	2900	Mail, Delivery & Postage	467	5,000	5,000	-
90	2910	Telephone - Services	5,580	7,500	7,500	-
91	2930	Telephone - Other Comm Services	N/A	N/A	N/A	N/A
92	2935	Data Processing - Contract Services	N/A	N/A	N/A	N/A
93	2940	Utilities - Gas	N/A	N/A	N/A	N/A
94	2950	Utilities - Electricity	N/A	N/A	N/A	N/A
95	2960	Utilities - Water	N/A	N/A	N/A	N/A
96	2970	Utilities - Other	N/A	N/A	N/A	N/A
97	2990	Lab Fees	N/A	N/A	N/A	N/A
98	2991	Operating Services - Security	N/A	N/A	N/A	N/A
99	3000	Miscellaneous	8,000	10,000	10,000	-
100	3010	Depreciation Expense-Building	N/A	N/A	N/A	N/A
101	3020	Depreciation Expense-Improvements	0	400	400	-
102	3030	Depreciation Expense-Equipment	5,584	8,700	8,700	-
103	3040	Depreciation Expense-Software	0	1,500	1,500	-
104	3090	Credit Card Transaction Fees	N/A	N/A	N/A	N/A
105	3091	Credit Card Discount Fees	N/A	N/A	N/A	N/A
106						
107	TOTAL OPERATING SERVICES		181,079	208,200	210,200	2,000
108						
109						
110	3100	Office Supplies	6,327	13,500	13,500	-
111	3120	Computer Supplies	N/A	N/A	N/A	N/A
112	3130	Clothing & Uniforms	N/A	N/A	N/A	N/A
113	3140	Medical Supplies	N/A	N/A	N/A	N/A
114	3160	Food Supplies	N/A	N/A	N/A	N/A
115	3170	Automotive Supplies	N/A	N/A	N/A	N/A
116	3180	Operating Supplies - Other	N/A	N/A	N/A	N/A
117	3190	Bldgs, Grounds & Gen Plant Supplies	N/A	N/A	N/A	N/A

Line No.	DEPARTMENT OF BR-8 Tracking Sheet					OVER/UNDER EXISTING OPERATING BUDGET
			PRIOR YEAR ACTUAL 2020 (NO NEGATIVE NUMBERS IN THIS COLUMN)	EXISTING OPERATING BUDGET 2021 (NO NEGATIVE NUMBERS IN THIS COLUMN)	TOTAL REQUEST 2022 (NO NEGATIVE NUMBERS IN THIS COLUMN)	
	Student Loans					
	Program:					
157	4940	IAT - Transfer of Funds	0	0	0	0
158	4960	IAT - Printing	0	0	0	0
159	4970	IAT - Data Processing	0	0	0	0
160	4980	IAT - Insurance	0	0	0	0
161	5000	IAT - Other Maintenance	0	0	0	0
162	5010	IAT - Rentals	0	0	0	0
163	5020	IAT - Dues & Subscriptions	0	0	0	0
164	5030	IAT - Postage	0	0	0	0
165	5040	IAT - Telephone & Telegraph	0	0	0	0
166	5050	IAT - Utilities	0	0	0	0
167	5080	IAT - Laboratory Fees	0	0	0	0
168	5110	IAT - Office Supplies	0	0	0	0
169	5140	IAT - Automotive Supplies	0	0	0	0
170	5150	IAT - Other Operating Services	0	0	0	0
171						
172	TOTAL INTERAGENCY TRANSFER		0	0	0	0
173						
174	TOTAL O/C & IAT		0	0	0	0
175						
176	4400	Land				
177	4410	Buildings				
178	4420	Capitalized Automobile => \$5000	0	0	0	0
179	4440	Equipment \$1000 - \$4999	0	0	0	0
180	4441	Equipment < \$1000	0	0	0	0
181	4442	Equipment => \$5000	0	0	0	0
182	4450	Capitalized Computer Software => \$5000	0	0	0	0
183	4451	Capitalized Computer Hardware => \$5000	0	0	0	0
184	4452	Capitalized Data Comm Facilities => \$5000	0	0	0	0
185	4453	Software \$1000 - \$4999	0	0	0	0
186	4454	Hardware \$1000 - \$4999	0	0	0	0
187	4455	Data Comm Facilities \$1000 - \$4999	0	0	0	0
188	4456	Software < \$1000	0	0	0	0
189	4457	Hardware < \$1000	0	0	0	0
190	4458	Data Comm Facilities < \$1000	0	0	0	0
191	4470	Household	0	0	0	0
192	4480	Medical	0	0	0	0
193	4490	Office Equipment \$1000 - \$4999	0	0	0	0
194	4491	Capitalized Office Equipment => \$5000	0	0	0	0
195	4492	Office Equipment < \$1000	0	0	0	0

SCHEDULE OF WAGES AND STUDENT LABOR

BR-10
(9/09)

Title of Position (Indicate if Student or Wages) (List by Program)	Detailed Explanation for Existing Operating Budget	Prior Year Actual Expenditures 2020	Existing Operating Budget 2021			Total Request 2022		
			Hourly Rate of Pay	No. of Hours Employ.	Amount	Hourly Rate of Pay	No. of Hours Employ.	Amount
1 Waged Worker	Performs duties and responsibilities for both programs.	\$ -	\$ 19.00	35	\$ 665	\$ 19.00	35	\$ 665
2 Student Workers	Performs duties and responsibilities for both programs.	\$ 445	\$ 10.00	300	\$ 3,000	\$ 10.00	300	\$ 3,000
Total Positions <u> 3 </u>								
TOTAL WAGES AND STUDENT LABOR		\$ 445		335	\$ 3,665		335	\$ 3,665

OBJECT CLASS	LIST BY PROGRAM	DESTINATION	PURPOSE OF TRAVEL	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022
	IN STATE TRAVEL:		Bond Financing/ Business Development:			
	Administrative					
2500	Bond Financing/ Business Development:	Statewide	To promote, encourage and further the accomplishment of all activities	\$ 1,107	\$ 7,800	\$ 7,800
	Student Loans:		which are or may become of benefit to the state of Louisiana and	\$ 81	\$ 4,000	\$ 4,000
	Total		which have public purpose, including industrial, economic, and community	\$ 1,188	\$ 11,800	\$ 11,800
			development, health, education, environmental, and public safety; to provide			
	Conferences, Conventions and Training		leadership training programs, bond financing seminars, economic development			
2510	Bond Financing/ Business Development:	Statewide	training for local governments and rural areas, educational and networking	\$ 210	\$ 5,000	\$ 5,000
	Student Loans:		opportunities for state and local governments; community outreach initiatives;	\$ 300	\$ 6,000	\$ 6,000
	Total		professional training seminars for human resources, computer, and continuing	\$ 510	\$ 11,000	\$ 11,000
			education on federal and state bond laws; to attend economic development			
	Field Travel		conferences, bond closings, groundbreaking ceremonies for bond financings, and public			
2520	Bond Financing/ Business Development:	Statewide	relations seminars and activities; to meet with clients and prospective clients; and to	\$ 525	\$ 1,500	\$ 1,500
	Student Loans:		perform general economic development activities.	\$ -	\$ 4,500	\$ 4,500
	Total			\$ 525	\$ 6,000	\$ 6,000
			Student Loans:			
	Board Members					
2530	Bond Financing/ Business Development:	Statewide	To develop and market lower cost student loansand programs student loan refinancing and other relate	\$ 368	\$ 4,500	\$ 4,500
	Student Loans:		programs which make higher education more accessible and affordable to Louisiana students,	\$ 368	\$ 4,500	\$ 4,500
	Total		parents and teachers; to provide information on financial aid access and FAFSA completion services	\$ 736	\$ 9,000	\$ 9,000
			In Louisiana; to attend			
			professional training seminars for human resources, accounting, personnel, computer			
			and client users; to attend student loan conferences of third party service providers;			
			to develop in-school lower cost loan programs; to attend student aid operations			
			functions and student loan bond closings and seminars. To attend board meetings,			
			bond commission meetings and other special functions promoting LPFA programs and services.			
			Board of Trustees:			
			To attend board meetings, bond closings, bond commission meetings and other			
			special functions promoting LPFA programs and services.			
Explain Existing Operating Budget by Program. Use Continuation Sheet.						

PROPOSED OUT OF STATE TRAVEL BUDGET FOR 2022
BOND FINANCING/BUSINESS DEVELOPMENT

APRIL	Staff Member:	2 People	
	Purpose:	NAHEFFA Spring Conference	
	Location:	To be determined by NAHEFFA	
	Costs to Attend:	\$3,000	\$3,000
SEPTEMBER	Staff Member:	2 People	
	Purpose:	NAHEFFA Fall Conference	
	Location:	To be determined by NAHEFFA	
	Costs to Attend:		\$3,000
<hr/>			
JANUARY	Staff Member:	1 person	
	Purpose:	CDFA Board Meeting	
	Location:	To be determined by CDFA	
	Costs to Attend:		\$1,500
MAY	Staff Member:	2 People	
	Purpose:	CDFA Board Meeting & Annual Educational Conference	
	Location:	To be determined by CDFA	
	Costs to Attend:		\$3,000
OCTOBER	Staff Member:	1 Person	
	Purpose:	CDFA Board Meeting & Strategic Planning	
	Location:	To be determined by CDFA	
	Costs to Attend:		\$1,500
<hr/>			
To be Determined	Staff Member:	1 person	
	Purpose:	A meeting or meetings with the MSRB, IRS, SEC, or other Government Agencies at the request of the agencies or in connection with NAHEFFA or CDFA initiatives	
	Location:	Washington, D.C.	
	Costs to Attend:		\$1,750
To be Determined	Staff Member:	1 person	
	Purpose:	Accounting Training and CPE Seminar	
	Location:	To be determined	
	Costs to Attend:		\$1,000
To be Determined	Staff Member:	1 person	
	Purpose:	SPRF Annual Conference	
	Location:	To be determined by SPRF	
	Costs to Attend:		\$1,500
			\$ 16,250.00

ADVERTISING 2700	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
Bond Financing/ Business Development:				
Advertising and Business Promotions	\$ 42,061	\$ 44,000	\$ 47,500	\$ 3,500
				\$ -
SUB-TOTAL	\$ 42,061	\$ 44,000	\$ 47,500	\$ 3,500
Student Loans:				
Advertising and Business Promotions	\$ 5,107	\$ 24,675	\$ 24,675	\$ -
SUB-TOTAL	\$ 5,107	\$ 24,675	\$ 24,675	\$ -
TOTAL ADVERTISING	\$ 47,168	\$ 68,675	\$ 72,175	\$ 3,500

Explain Existing Operating Budget By Program. Use Continuation Sheet If Necessary.

INSURANCE	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
2720 - AUTOMOTIVE	N/A	N/A	N/A	N/A
2730 - WORKMAN'S COMPENSATION				
Bond Financing/ Business Development	\$ 1,088	\$ 2,300	\$ 2,300	\$ -
Student Loans	\$ 2,021	\$ 2,300	\$ 2,300	\$ -
TOTAL WORKMAN'S COMPENSATION	\$ 3,109	\$ 4,600	\$ 4,600	\$ -
2740 - FIRE & EXTENDED COVERAGE				
Bond Financing/ Business Development	\$ 1,497	\$ 2,300	\$ 2,300	\$ -
Student Loans	\$ 2,775	\$ 2,300	\$ 2,300	\$ -
TOTAL FIRE & EXTENDED COVERAGE	\$ 4,272	\$ 4,600	\$ 4,600	\$ -
2750 - MALPRACTICE	N/A	N/A	N/A	N/A
2760 - OTHER				
Bond Financing/ Business Development- Insurance Surty and D&O	\$ 8,811	\$ 13,500	\$ 13,500	\$ -
Student Loans- Insurance Surty and D&O	\$ 16,364	\$ 13,500	\$ 13,500	\$ -
TOTAL OTHER	\$ 25,175	\$ 27,000	\$ 27,000	\$ -
PAGE TOTAL	\$ 32,556	\$ 36,200	\$ 36,200	\$ -

MAINTENANCE OF PROPERTY AND EQUIPMENT	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
2780 - PROPERTY & EQUIP. - OTHER	N/A	N/A	N/A	N/A
2790 - BUILDINGS	N/A	N/A	N/A	N/A
2800 - EQUIPMENT				
Bond Financing/ Business Development	\$ -	\$ 2,000	\$ 2,000	\$ -
Student Loans	\$ -	\$ 2,000	\$ 2,000	\$ -
TOTAL EQUIPMENT	\$ -	\$ 4,000	\$ 4,000	\$ -
2810 - JANITORIAL/CUSTODIAL	N/A	N/A	N/A	N/A
2820 - DATA PROCESSING				
Bond Financing/ Business Development	\$ 17,358	\$ 12,000	\$ 12,000	\$ -
Student Loans	\$ 17,357	\$ 12,000	\$ 12,000	\$ -
TOTAL DATA PROCESSING	\$ 34,715	\$ 24,000	\$ 24,000	\$ -
2825 - DATA PROCESSING - SOFTWARE				
Bond Financing/ Business Development	\$ -	\$ -	\$ -	\$ -
Student Loans	\$ -	\$ -	\$ -	\$ -
TOTAL DATA PROCESSING- SOFTWARE	\$ -	\$ -	\$ -	\$ -
PAGE TOTAL	\$ 34,715	\$ 28,000	\$ 28,000	\$ -

Explain Existing Operating Budget by Program. Use Continuation Sheet if Necessary.

DUES AND SUBSCRIPTIONS 2890	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
DUES AND MEMBERSHIP			
BOND FINANCING/ BUSINESS DEVELOPMENT			
Council of Development Finance Agencies	\$ 3,000	\$ 3,000	\$ -
National Ass'n. of Health & Education Fac. Finance Authorities	\$ 4,000	\$ 4,000	\$ -
Louisiana Ind. Dev. Executives Assn.	\$ 200	\$ 200	\$ -
Louisiana Assoc. of Non Profit Org.	\$ 100	\$ 100	\$ -
Louisiana Business Incubation Assoc.	\$ 100	\$ 100	\$ -
Miscellaneous	\$ 2,200	\$ 2,200	\$ -
SUB-TOTAL	\$ 9,600	\$ 9,600	\$ -
STUDENT LOANS:			
Southwest Assoc. of Student Aid Admin.	\$ 250	\$ 250	\$ -
Louisiana Assoc. of Student Aid Admin.	\$ 250	\$ 250	\$ -
Education Finance Council	\$ -	\$ -	\$ -
National College Access Network	\$ 1,000	\$ 1,000	\$ -
Louisiana Banker's Association	\$ 1,000	\$ 1,000	\$ -
Louisiana Jumpstart Coalition	\$ -	\$ -	\$ -
Miscellaneous	\$ 1,075	\$ 1,075	\$ -
SUB-TOTAL	\$ 3,575	\$ 3,575	\$ -
TOTAL DUES AND MEMBERSHIP	\$ 13,175	\$ 13,175	\$ -

DUES AND SUBSCRIPTIONS 2890	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
SUBSCRIPTIONS			
BOND FINANACING/ BUSINESS DEVELOPMENT			
The Bond Buyer	\$ 600	\$ 600	\$ -
New Orleans City Business	\$ 50	\$ 50	\$ -
State Bond Commission	\$ 35	\$ 35	\$ -
Tax Analysts	\$ 150	\$ 150	\$ -
Capitol City Press	\$ 75	\$ 75	\$ -
Finder Binder	\$ 60	\$ 60	\$ -
B.R. Business Report	\$ 50	\$ 50	\$ -
Metro Press Clipping	\$ 425	\$ 425	\$ -
Sheshunoff Publications	\$ 55	\$ 55	\$ -
SUB-TOTAL	\$ 1,500	\$ 1,500	\$ -
STUDENT LOANS:			
Capital City Press	\$ 125	\$ 125	\$ -
The Bond Buyer	\$ 700	\$ 700	\$ -
Tax Analysts	\$ -	\$ -	\$ -
Metro Press Clippings	\$ 600	\$ 600	\$ -
New Orleans City Business	\$ 50	\$ 50	\$ -
Postsecondary Education	\$ 25	\$ 25	\$ -
State Bond Commission	\$ -	\$ -	\$ -
SUB-TOTAL	\$ 1,500	\$ 1,500	\$ -
TOTAL SUBSCRIPTIONS	\$ 3,000	\$ 3,000	\$ -

MAIL, DELIVERY & POSTAGE 2900	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
Bond Financing/ Business Development:				
Freight and Shipping	\$ 1,358	\$ 4,000	\$ 4,000	\$ -
Postage Expense	\$ 146	\$ 3,000	\$ 3,000	\$ -
SUB-TOTAL	\$ 1,504	\$ 7,000	\$ 7,000	\$ -
Student Loans:				
Freight and Shipping	\$ 122	\$ 3,000	\$ 3,000	\$ -
Postage Expense	\$ 345	\$ 2,000	\$ 2,000	\$ -
SUB-TOTAL	\$ 467	\$ 5,000	\$ 5,000	\$ -
TOTAL MAIL, DELIVERY & POSTAGE	\$ 1,971	\$ 12,000	\$ 12,000	\$ -

Explain Existing Operating Budget By Program. Use Continuation Sheet If Necessary.

Major articles mailed:

- 1) Quarterly LPFA Newsletter sent to clients for education and awareness.
- 2) Annual Report sent to clients for education and awareness.
- 3) Ongoing Student Loan marketing materials including direct mail campaigns to high school students.
- 4) Ongoing Board of Trustees meeting agendas.

UTILITIES	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
2940 - GAS	N/A	N/A	N/A	N/A
2950 - ELECTRICITY	N/A	N/A	N/A	N/A
2960 - WATER	N/A	N/A	N/A	N/A
2970 - OTHER	N/A	N/A	N/A	N/A
PAGE TOTAL	0	0	0	0

Explain Existing Operating Budget By Program. Use Continuation Sheet if Necessary.

OFFICE SUPPLIES 3100	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
Bond Financing/ Business Development:				
Copier Expense	\$ 1,863	\$ 3,250	\$ 3,250	\$ -
Office Expenses	\$ 4,382	\$ 10,000	\$ 10,000	\$ -
Office Supplies	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ -	\$ 500	\$ 500	\$ -
SUB-TOTAL	\$ 6,245	\$ 13,750	\$ 13,750	\$ -
Student Loans:				
Copier Expense	\$ 1,862	\$ 3,250	\$ 3,250	\$ -
Office Expenses	\$ 4,465	\$ 10,000	\$ 10,000	\$ -
Office Supplies	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ -	\$ 250	\$ 250	\$ -
SUB TOTAL	\$ 6,327	\$ 13,500	\$ 13,500	\$ -
TOTAL OFFICE SUPPLIES	\$ 12,572	\$ 27,250	\$ 27,250	\$ -

Explain Existing Operating Budget By Program. Use Continuation Sheet If Necessary.

OTHER OPERATING SUPPLIES	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
3170 - AUTOMOTIVE	N/A	N/A	N/A	N/A
3180 - OTHER	N/A	N/A	N/A	N/A
3185 - PURCHASING CARD	N/A	N/A	N/A	N/A
3190 - BUILDINGS, GROUNDS & GENERAL PLANT	N/A	N/A	N/A	N/A
3200 - HOUSEHOLD	N/A	N/A	N/A	N/A
3210 - FARM	N/A	N/A	N/A	N/A
3220 - PERSONAL ITEMS	N/A	N/A	N/A	N/A
3230 - OTHER MEDICAL	N/A	N/A	N/A	N/A
PAGE TOTAL	0	0	0	0

Explain Existing Operating Budget By Program. Use Continuation Sheet If Necessary.

OBJECT CLASS	DESCRIPTION	NAME AND ADDRESS OF INDIVIDUAL AND/OR FIRM	NATURE OF WORK PERFORMED AND JUSTIFICATION FOR SERVICES	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET
	Bond Financing/ Business Development:						
3400	Accounting	Postlethwaite & Netterville, APAC		\$ -	\$ 3,000	\$ 3,000	\$ -
3400	Audit	Louisiana State Legislative Auditor		\$ 16,500	\$ 17,000	\$ 17,000	\$ -
	SUB-TOTAL			\$ 16,500	\$ 20,000	\$ 20,000	\$ -
3430	Legal	Breazeale Sachse Wilson, LLP		\$ 60	\$ 3,000	\$ 3,000	\$ -
3430	Legal	Gregory A. Pletsch & Associate			\$ 1,000	\$ 1,000	\$ -
3430	Legal	Jacob S. Capraro		\$ 19,750	\$ 13,000	\$ 13,000	\$ -
3430	Legal	Kutak Rock		\$ -	\$ 3,000	\$ 3,000	\$ -
	SUB-TOTAL			\$ -	\$ -	\$ -	\$ -
				\$ 19,810	\$ 20,000	\$ 20,000	\$ -
3460	Casual Labor	Various		\$ 23	\$ 1,000	\$ 1,000	\$ -
3460	Media Graphics/ Third Party	Don Kadair Photography		\$ 175	\$ 1,500	\$ 1,500	\$ -
3460	Media Graphics/ Third Party	Object 9		\$ 6,825	\$ 25,000	\$ 25,000	\$ -
3460	Media Graphics/ Third Party	Various		\$ -	\$ 2,020	\$ 2,020	\$ -
3460	Media Graphics/ Third Party	Dr. James Richardson		\$ -	\$ 12,500	\$ 12,500	\$ -
3460	Media Graphics/ Third Party	NAHEFFA		\$ -	\$ 2,000	\$ 2,000	\$ -
	SUB-TOTAL			\$ 7,023	\$ 44,020	\$ 44,020	\$ -
	Student Loans:						
3400	Accounting	Hannis T. Bourgeois and Co.		\$ -	\$ 500	\$ 500	\$ -
3400	Audit	Louisiana State Legislative Auditor or Postlethwaite & Netterville, APAC		\$ 16,500	\$ 17,000	\$ 17,000	\$ -
	SUB-TOTAL			\$ 16,500	\$ 17,500	\$ 17,500	\$ -
3430	Legal	Breazeale Sachse Wilson, LLP		\$ 2,453	\$ 2,000	\$ 2,000	\$ -
3430	Legal	Gregory A. Pletsch & Associate			\$ 2,000	\$ 2,000	\$ -
3430	Legal	Jacob S. Capraro		\$ 7,500	\$ 4,000	\$ 4,000	\$ -
3430	Legal	Foley & Lardner		\$ -	\$ 2,000	\$ 2,000	\$ -
	SUB-TOTAL			\$ 9,953	\$ 10,000	\$ 10,000	\$ -
3460	Casual Labor	Various		\$ 43	\$ 500	\$ 500	\$ -
3460	Media Graphics/ Third Party	EGB Creative or Similar		\$ 3,873	\$ 8,000	\$ 1,000	\$ (7,000)
3460	Media Graphics/ Third Party	Dr. James Richardson			\$ 2,000	\$ 2,000	\$ -
3460	Media Graphics/ Third Party	NRCCUA		\$ 4,800	\$ -	\$ -	\$ -
3460	Media Graphics/ Third Party	Object 9		\$ 9,615	\$ 2,800	\$ 2,800	\$ -
3460	Media Graphics/ Third Party	B. Ann Carmichael		\$ 15,000	\$ -	\$ 7,000	\$ 7,000
	SUB-TOTAL			\$ 33,331	\$ 13,300	\$ 13,300	\$ -
3400	Consolidated Accounting & Audit			\$ 33,000	\$ 37,500	\$ 37,500	\$ -
3430	Consolidated Legal			\$ 29,763	\$ 30,000	\$ 30,000	\$ -
3460	Consolidated Other Professional Services			\$ 40,354	\$ 57,320	\$ 57,320	\$ -
	GRAND TOTAL PROFESSIONAL SERVICES			\$ 103,117	\$ 124,820	\$ 124,820	\$ -
Explain Existing Operating Budget by Program. Use Continuation Sheet if Necessary.							

LINE NO.	DESCRIPTION	PRIOR YEAR ACTUAL 2020	EXISTING OPERATING BUDGET 2021	TOTAL REQUEST 2022	OVER/UNDER EXISTING OPERATING BUDGET	DETAIL SHEET NOS.
1						
2	N/A	N/A	N/A	N/A	N/A	N/A
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23	TOTAL OTHER CHARGES					
	AUTHORIZED OTHER CHARGES POSITIONS:					
24	Other Charges-Salaries Classified (3670)					
25	Other Charges-Compensation (3680)					
26	Other Charges-Wages (3681)					
27	TOTAL AUTHORIZED OTHER CHARGES POSITIONS*					

* Authorized Other Charges Positions are those reported under Objects 3670, 3680, and 3681 (exclude WAEs).

DETAIL OF ACQUISITIONS REQUESTED
(USE THIS FORM TO EXPLAIN ACQUISITIONS AUTHORIZED IN THE EXISTING OPERATING BUDGET)

BR-20A
(9/09)

Priority Number	OBJ CLASS	QUANTITY	EQUIPMENT REPLACED DESCRIPTION BY PROGRAM	AMOUNT	OBJ CLASS	QUANTITY	NEW EQUIPMENT DESCRIPTION BY PROGRAM	AMOUNT
							Both Programs*	
					4450		Acquisitions - Capitalized Software	
								\$ -
							Subtotal	\$ -
					4451		Acquisitions - Capitalized Hardware	
						1	Computer and Telephone Network Upgrades	\$ 12,000
								\$ -
							Subtotal	\$ 12,000
					4453		Acquisitions - Software	
								\$ -
							Subtotal	\$ -
					4454		Acquisitions - Hardware	
						2	Laptop Computers	\$ 5,000
						3	Desktop Computers	\$ 5,000
							Subtotal	\$ 10,000
					4456		Acquisitions - Software Less Than \$1000	
							Subtotal	\$ -
					4457		Acquisitions - Hardware Less Than \$1000	
							Subtotal	\$ -
					4490		Acquisitions - Office Equipment	
							Various Office Furniture and Equipment to Replace Old or Broken Items	\$ 7,400
							Subtotal	\$ 7,400
					4491		Acquisitons - Capitalized Office Equipment	
								\$ -
							Subtotal	\$ -
					4492		Acquisitions - Office Equipment Less Than \$1000	
							Subtotal	\$ -

Itemized Equipment currently authorized in the Existing Operating Budget. Use Continuation Sheet.

* The cost of this equipment will be shared by each program as follows: Bond Financing/Business Development - 50%; Student Loans - 50%.

CAMBRIA SOLUTIONS, INC. - CONTRACT EXTENSION

➤ Contract Summary

Start Date	June 1, 2019
End Date	May 31, 2022
Requested Extension	June 1, 2022 - May 31, 2024

➤ Extension Request

- **LDH is requesting permission to exercise the contractual option for a one-year extension with** Cambria Solutions, Inc. to continued Project, Program & Portfolio Management for Medicaid Systems Modernization modules which the Centers for Medicare and Medicaid Services (CMS) require states to have in order to receive enhanced federal funding.
- **Extension of the Contract will allow the State to** continue to receive enhanced funds at the 85% Federal /15% State Financial Participation rate without interruption of the PPMO/Cambria staff assisting Louisiana Department of Health with the development and implementation of various Medicaid Modularity Projects.
- **Failure to extend the contract** could put enhanced Federal funding at risk. This could also cause interruption the current development of the TPL HMS Modularity Project that the PPMO staff services which recover Medicaid funds from liable third parties while the RFP is developed. By Law, Medicaid is the payer of last resort and HMS performs their functions as required by 42 CFR 433 Subpart D.

➤ Services Provided

- Supplying staff and skills necessary for the Project, Program & Portfolio Management (PPMO) office to support the Bureau of Health Services Financing (BHSF) with Medicaid Modernization and enterprise business transforming goals.
- The PPMO shall oversee and provide project management staff for the existing and newly initiated Medicaid Enterprise System (MES) modernization and business-related projects as requested, approved and prioritized by the BHSF.
- The PPMO shall supply the staff and skills necessary for Project, Program & Portfolio Management, including: Intake and Demand Management; Scope, Risk, and Change Management; Requirements Management; Budget/Financial Management; Schedule Management; and Reporting.

- The PPMO will serve as a liaison between the BHSF, the MES Modernization Vendors, and other vendors and stakeholders as needed.

DRAFT

John Bel Edwards
GOVERNOR



Dr. Courtney N. Phillips
SECRETARY

State of Louisiana

Louisiana Department of Health
Office of Management and Finance

October 25, 2021

The Honorable Bodi White
Louisiana State House of Representatives
Chairman, Joint Legislative Committee on the Budget
P. O. Box 44294
Baton Rouge, LA 70804

RE: LDH Request for August JLCB Agenda Item Pursuant to R.S.39:1615(J) for
PO 2000398750 for Cambria Solutions Inc

Dear Representative White:

The Louisiana Department of Health (LDH) requests that the following contract amendment be placed on the agenda for the Joint Legislative Committee on the Budget (JLCB) during its November meeting. LDH currently has a contract with CAMBRIA Solutions, Inc. and requests approval to extend this contract, in accordance with R.S. 39:1615(J).

PROJECT AND PORTFOLIO MANAGEMENT SERVICES

This is a three year, statewide contract with the Bureau of Health Services Financing (BHSF) for assisting in supplying staff and skills necessary for Project, Program & Portfolio Management, including but not limited to Intake and Demand Management; Scope, Risk, and Change Management; Project Requirements and Implementation Management; Budget/Financial Management; Schedule Management, Oversight and Reporting; and Enterprise Agile Transformation/Enablement. This contract with Cambria Solutions, Inc. is being used to assist the department in managing the various Medicaid Systems Modernization modules, which the Centers for Medicare and Medicaid Services (CMS) require in order to receive enhanced federal funding.

The current contract, which was executed on June 1, 2019, expires on May 31, 2022. LDH is exercising the contractual option for a two-year extension with CAMBRIA Solutions, Inc. to continue the Project and Portfolio Management Services required by the Centers for Medicaid and Medicaid (CMS) without the need for additional funds. Therefore, LDH seeks your committee's approval to amend the current Cambria Solutions contract to extend contract period to May 31, 2024, to avoid the interruption of services and allow for the completion of the RFP.

Honorable Bodi White

October 25, 2021

Page 2

Thank you for considering our request to have this contract extension included on your November agenda. I am enclosing a copy of the contract amendment, the revised Statement of Work, and Budget Form (BA-22) for your convenience. Should you have any questions, or need additional information, please do not hesitate to contact Shannon Duplessis at (225) 342-6917 or Shannon.Duplessis@la.gov.

Sincerely,

DocuSigned by:

EE9731C74D9442A...
Ruth Johnson
Undersecretary

Enclosures

RJ/tm

AMENDMENT TO
AGREEMENT BETWEEN STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF HEALTH

Amendment #: 2

LAGOV#: 2000398750

LDH #: N/A

MVA

Medical Vendor Administration

(Regional/ Program/
Facility

Bureau of Health Financing

Original Contract Amount \$54,000,000.00

Original Contract Begin Date 06-01-2019

Original Contract End Date 05-31-2022

RFP Number: 30000010963

AND

CAMBRIA Solutions, Inc.

Contractor Name

AMENDMENT PROVISIONS

Change Contract From: From Maximum Amount: Current Contract Term: 6-1-2019 to 5-31-2022

As Approved.

Change Contract To: To Maximum Amount: Changed Contract Term: 6-1-2019 to 5-31-2024

See Redline version of the Statement of Work (SOW).

Additional terms and conditions attachment .

Justifications for amendment:

LDH is extending the CAMBRIA Solutions, Inc.'s contract for two-years changing the term to 6-1-2019 through 5-31-2024 in order to provide services for a Project & Portfolio Management Office (PPMO) including Project Management Staff Augmentation services required by the Bureau of Health Services financing (BHSF) in support of the Medicaid Modernization and enterprise business transforming goals.

This Amendment Becomes Effective: 06-01-2022

This amendment contains or has attached hereto all revised terms and conditions agreed upon by contracting parties.

IN WITNESS THEREOF, this amendment is signed and entered into on the date indicated below.

CONTRACTOR

CAMBRIA Solutions, Inc.

STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF HEALTH

Secretary, Louisiana Department of Health or Designee

CONTRACTOR SIGNATURE

DATE

PRINT
NAME

Susanne Vitale

CONTRACTOR
TITLE

President, Cambria Solutions, Inc.

SIGNATURE

DATE

NAME

Patrick Gillies

TITLE

Medicaid Executive Director

OFFICE

Louisiana Department of Health

PROGRAM SIGNATURE

DATE

NAME

Mitzi Hochheiser

Office of the Commissioner
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

November 4, 2021

Dr. John Nicklow
UNO President
University of New Orleans
2000 Lakeshore Drive
New Orleans, Louisiana 70148

Re: UNO – UNO Research and Technology Foundation, Inc.
CEA and Lease Documents

President Nicklow:

The Board of Supervisors for the University of Louisiana System (the “*Board*”) on behalf of the University of New Orleans proposed CEA and Lease, (the “*Lease*”) with the University of New Orleans Research and Technology Foundation, Inc. regarding the operation and management of the UNO Center for Energy Resources Management has been submitted to my office for review. The CEA and Lease appear to result in a non-public party generating or expending revenue of one million dollars or more per year from the operation, management, or control of a state resource. Accordingly, La. R.S. 39:366.5 requires that the CEA and Lease be reported to the Joint Legislative Committee on the Budget (the “*JLCB*”) after, pursuant to La. R.S. 39:366.11, I have determined that the parties to the agreement are sufficiently far enough along in negotiations that the essential elements of the proposed agreement have been worked out by the parties and can be explained to JLCB.

I have made such a determination and therefore you are hereby authorized to submit the proposed Leases and accompanying documents not less than thirty (30) calendar days prior to the next regular meeting of the JLCB.

The following information should be provided with your submission:

- 1) The public purpose sought to be accomplished by the cooperative endeavor;


2) The reason a cooperative endeavor with the non-public person is the preferred means by which to accomplish the public purpose as opposed to competitively bid or competitively negotiated contract; and

3) The nature and amount of all state resources being obligated, the nature of the obligation, and the expected duration of the obligation.

It is my understanding that the Board approved the CEA and Lease on August 26, 2021 and that the Louisiana Board of Regents approved the CEA and Lease on October 20, 2021. Please note that this letter does not constitute approval of this project, as it does not appear that such approval by me is required.

Thank you for your assistance.

Sincerely,


Jay Dardenne
Commissioner of Administration



THE UNIVERSITY *of*
NEW ORLEANS
OFFICE OF THE PRESIDENT

November 5, 2021

Via Email – hymels@legis.la.gov / gasconr@legis.la.gov

Joint Legislative Committee on the Budget

Attn: Sherry Phillips-Hymel – Director
Raynel Gascon – Committee Secretary

Re: Lease Agreement for Center for Energy Resources Management by Board of Supervisors for the University of Louisiana System to the University of New Orleans Research and Technology Foundation, Inc.

To Whom It May Concern:

The New Orleans Research and Technology Park (the “R&T Park”) was established in 1994 and is located on property adjacent to the campus of the University of New Orleans (“UNO”) or the “University” and owned by the Board of Supervisors for the University of Louisiana System (the “Board”). The R&T Park is under the jurisdiction of the Board for the benefit of UNO, and the R&T Park is operated and managed by the University of New Orleans Research and Technology Foundation, Inc., (the “R & T Foundation” or the “Foundation”), a private nonprofit corporation established to support the mission of the University of New Orleans under the authority of La. R.S. 17:3390. One of the buildings in the R&T Park is the Center for Energy Resources Management, (“CERM”) which was constructed in 2002 and is owned by the Board for the benefit of UNO. For the last 19 years that building has been operated and managed by the Foundation pursuant to an agreement between the Board with and on behalf of UNO and the Foundation, and a portion of the space in the CERM building has been leased to the Foundation.

The R&T Park is an enormous resource for the University of New Orleans and for the City of New Orleans. Over the last 20 years the R&T Park has been home to such entities as the United State Navy which located all of its computer functions in the Park, multiple technology and other companies that have interacted with the University and whose presence in New Orleans has been a benefit to the city, and several state and local agencies such as the Department of Wildlife and Fisheries and the New Orleans Crime Lab. As outlined herein the R&T Park serves an important public purpose by facilitating mutually beneficial interaction



THE UNIVERSITY of
NEW ORLEANS

OFFICE OF THE PRESIDENT

and exchanges between and among the private sector, the public sector and UNO, and the CERM building is a focal point for the R&T Park. As the operator of the R&T Park for the last 20 years, and the manager of the CERM Building, the Foundation is the only reasonable choice to manage and operate the CERM Building. As a nonprofit created for the specific purpose of supporting the mission of UNO, the Foundation uses its resources to assist UNO in a multitude of areas including the R&T Park. The Foundation's experience and knowledge concerning the operation of the Park and the CERM Building are invaluable to the University and should be continued.

Although the CERM Building and the land on which it is located is owned by the University, it is of great benefit to the University that the Foundation now assume payment for all major maintenance and all insurance premiums with respect to the CERM Building. Under the previous 20 year lease which would otherwise expire in 2022, the University had the obligation for all major maintenance and/or a portion of the insurance premiums for the CERM building, an obligation that would be extremely difficult for the University to perform going forward in light of its current budgetary limitations. The Foundation has stepped up and agreed to assume those obligations as a part of its agreement to sublease the entire CERM Building. The initial term of the new lease is 35 years, with options to renew at the Foundation's option, and the lease is authorized by both La. R.S. 17:3361A(2) and La. R.S. 41:137.

The Board and the Foundation have agreed that, pursuant to a Lease Agreement for Center for Energy Resources Management, the entirety of the CERM building going forward will be leased by the Board with and on behalf of UNO to the Foundation for management and operation by the Foundation. That proposed Lease Agreement was approved by the Board of Supervisors for the University of Louisiana System at its meeting of August 26, 2021. The Board authorized Dr. John Nicklow, President of UNO, to execute all necessary documents in this matter. The CERM project was then approved by the Louisiana Board of Regents at its meeting of October 20, 2021.

Pursuant to the provisions of La. R.S. 39:366.11, UNO provided a copy of the proposed Lease Agreement to the Commissioner of Administration. The Commissioner's office has informed UNO that the Lease Agreement is ready to be provided to the Joint Legislative Committee on the Budget for its review. Attached please find a copy of the approved Lease Agreement. We would appreciate your placing this matter on the Agenda for your November 19, 2021 meeting. The parties are anxious to proceed with this transaction as quickly as possible. If you have additional questions, please contact Gloria Walker, Vice President of Business



THE UNIVERSITY *of*
NEW ORLEANS

OFFICE OF THE PRESIDENT

Affairs and CFO of the University of New Orleans (office 504-280-6209). Also, please let us know if a representative of UNO and/or the R&T Foundation should be present for the November 19, 2021 meeting.

Yours very truly,

Dr. John Nicklow, PhD., PE, PH, DWRE
President, University of New Orleans

cc: Jim Henderson

Attachment

LEASE AGREEMENT FOR CENTER FOR ENERGY RESOURCES MANAGEMENT

THIS LEASE AGREEMENT FOR CENTER FOR ENERGY RESOURCES

MANAGEMENT (herein “**Lease**”) is entered into as of the Effective Date by and between

BOARD OF SUPERVISORS FOR THE UNIVERSITY OF LOUISIANA SYSTEM (the “**Board**”), a public constitutional corporation organized and existing under the Constitution and laws of the State of Louisiana, domiciled in the Parish of East Baton Rouge, said state, on behalf of the **University of New Orleans**, (herein “**UNO**”) an institution under the supervision and management of the Board, appearing herein through Dr. John Nicklow, in his capacity as President of UNO, duly authorized and empowered by Resolution of said Board,

and

UNIVERSITY OF NEW ORLEANS RESEARCH AND TECHNOLOGY FOUNDATION, INC. (the “**Foundation**”) a Louisiana nonprofit corporation organized and existing under the laws of the State of Louisiana, domiciled in the Parish of Orleans, said state, herein and appearing through and represented by David Gallo, its duly authorized Chair of the Board of Directors, provides as follows:

WITNESSETH

WHEREAS, Board is the owner of a certain building on the campus of the University of New Orleans known as the “Center for Energy Resources Management” (the “**Building**”);

WHEREAS, Foundation is a private nonprofit Louisiana corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose tax exempt purpose is to support the mission and programs of the University of New Orleans, a higher education institution under the management and supervision of the Board;

WHEREAS, pursuant to La. R.S. 41:137, Board is authorized to lease to a nonprofit corporation such as Foundation any real property or portions thereof, without the necessity of bid if the property so leased is dedicated for the purpose of creating a research and development park in cooperation with the Board;

WHEREAS, the Building is located on land which has been dedicated as a part of what was originally designated as the “University of New Orleans Research and Technology Park” (“**the R and T Park**”) and is subject to the Declaration of Covenants, Conditions and Restrictions implemented on the property on August 10, 1994;

WHEREAS, Board and Foundation agree that Foundation, as a nonprofit corporation supporting the mission of UNO, will operate the Building as a part of the R and T Park in conformance with said Declaration of Covenants, Conditions and Restrictions and to further the research, educational, and public research functions of Board and UNO and for the ultimate benefit of UNO.

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements which follow, the parties hereby agree as follows:

CERTAIN TERMS DEFINED

“Applicable Law” refers to all laws, statutes, rules, regulations, ordinances, building codes, resolutions and orders of any Governmental Authority, including but not limited to applicable rules, regulations, policies and architectural standards of UNO and Board, applicable to the parties and substantially affecting the ability of the parties to meet their obligations hereunder; provided, however, that this definition shall not be interpreted as waiving protections granted to any party against future laws impairing the obligations of contracts between the parties and/or any third parties.

“Architect” refers to any architect or other design professional, including his or her permitted successors and assigns, engaged by Foundation to perform architectural or design services with respect to any phase of the design and/or construction and renovation of any Improvements.

“Authorization to Proceed” refers to the authorization that must be given in writing by the UNO Representative before any Work can begin, which authorization shall be required for each phase of the Work, if the Work is divided into phases by Foundation and the UNO Representative.

“Board” refers to the Board of Supervisors for the University of Louisiana System.

“Building” refers to the building housing the Center for Energy Resources Management located at 2045 Lakeshore Drive, New Orleans, LA 70148.

“Cash Sale” refers to the Cash Sale by the Board of Commissioners of the Orleans Levee District to Board of Supervisors of Louisiana State University and Agricultural and Mechanical College acting for the University of New Orleans dated October 1, 1992 and recorded in the records of Orleans Parish as #951300, as amended.

“Construction Contract” refers to one or more agreements for the construction of Improvements entered into by and between the Foundation and a Contractor, including all amendments, modifications, exhibits, schedules, supplements, addenda and change orders to all such agreements.

“Contractor” refers to a contractor or contractors selected by Foundation to construct Improvements and their permitted successors and assigns.

“Covered Damages” refers to damages, loss or casualty caused in whole or in part by an Event for which any (i) insurance proceeds, (ii) federal, state (including the Louisiana Office of Risk Management), local or other governmental payments, or (iii) third party’s or other insurer’s payments are received or are to be received by Board.

“Declaration of Covenants, Conditions and Restrictions” refers to the Declaration of Covenants, Conditions and Restrictions dated August 10, 1994 and imposed by the Board of

Supervisors of Louisiana State University and Agricultural and Mechanical College (whose successor in title to said Land is the Board of Supervisors for the University of Louisiana System) on the Land and other property for the creation of the University of New Orleans Research and Development Park.

“Effective Date” refers to November 1, 2021.

“Event” refers to damage, loss and/or casualty to the Leased Premises caused in whole or in part by a Force Majeure or by the fault or negligence of any party including third parties.

“Final Term” shall have the meaning as set forth in Section 1B hereof.

“Force Majeure” refers to any (a) act of God, lightning, hurricane, tornado, flood and other extraordinarily adverse and inclement weather, fire, explosion, act of a public enemy, war, insurrection, riot or civil disturbance; (b) labor dispute, strike, work slowdown or work stopped; (c) pandemic or epidemic; and (d) any other similar cause or similar occurrence beyond the reasonable control of the Foundation.

“Foundation” refers to the University of New Orleans Research and Technology Foundation, Inc.

“Funds” refers to (i) insurance proceeds; (ii) federal, state (including the Louisiana Office of Risk Management) local or other governmental payments, or (iii) any third party’s or other insurer’s payments.

“Governmental Authority or Authorities” refers to any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, parish, district, municipality, city or otherwise) whether now or hereafter in existence.

“Improvements” refers to any expansion, renovation or improvement constructed by Foundation to the Building in accordance with Plans and Specifications and the terms of this Lease.

“Initial Term” shall have the meaning as set forth in Section 1B hereof.

“Land” refers to that certain parcel of property described on Exhibit A hereto, and leased pursuant to this Lease.

“Lease” refers to this Lease Agreement for Center For Energy Resources Management between the Board of Supervisors for the University of Louisiana System and University of New Orleans Research and Technology Foundation, Inc.

“Leased Premises” refers to the Land and the Building shown on Exhibit B hereto as “Leased Premises” and leased pursuant to this Lease by Board to Foundation.

“Payment and Performance Bonds” refers to payment and performance bonds required in connection with performance of certain Work and described in Section 4D of this Lease.

“Plans and Specifications” refers to one or more sets of final plans and specifications which have been approved, in writing, by the UNO Representative, including any amendments, addenda, or supplements for design of any Improvements, materials selection and method of construction for the construction of Improvements and for all Work related thereto.

“Punch List” refers to a list prepared by the Architect and approved by the UNO Representative, which sets forth those items of Work to be completed following Substantial Completion, prior to final acceptance.

“R and T Park” refers to the University of New Orleans Research and Technology Park located on property owned by the Board in Orleans Parish, Louisiana.

“Renewal Term” shall have the meaning as set forth in Section 1B hereof.

“Rent” refers to all sums paid by Foundation to Board pursuant to Section 2 hereof and the obligations the Foundation has assumed under this Lease.

“Repairs and/or Restorations” refers to replacement, repairs, restorations, renovations and/or partial or complete reconstruction to the Leased Property other than ordinary or routine repairs and/or maintenance.

“Substantial Completion” refers to the date or dates on which (a) the Architect has certified to Foundation that the Work (or, if approved by the UNO Representative, any portion of the Work) has been completed substantially in accordance with the Plans and Specifications, subject to customary punch list items remaining to be completed, (b) the UNO Representative has given written approval of the Architect's certificate, which approval shall not be unreasonably delayed, withheld or conditioned, and (c) governmental certificates and approvals required to allow beneficial use and occupancy of any Improvements by UNO have been obtained, including, but not limited to, a Certificate of Occupancy (whether temporary or final) and State Fire Marshal approval.

“Term” refers to the period of time set forth in Section 1B during which this Lease shall be in full force and effect including in whole or in part, any Renewal Term if exercised and the Final Term if exercised.

“UNO Representative” refers to the President of UNO or his designees.

“Work” refers to all work and activities to be undertaken by Foundation in order to design and construct any Improvements including, without limitation, the transportation and storage of materials, the securing of work sites and staging areas, the design, planning and construction of facilities and all necessary utility placements, relocations, tie-ins and upgrades.

1.
LEASE OF LEASED PREMISES; TERM

A. Lease of Leased Premises

For the consideration herein set forth and subject to the provisions of this Lease, Board hereby leases the Leased Premises to Foundation and hereby grants to Foundation such rights of use and access in, over, on and across the Land and the Building as are necessary for Foundation to utilize the Leased Premises as provided herein and to make Improvements to the Building as provided herein. Notwithstanding anything to the contrary set forth herein, this Lease is not intended to and shall not constitute a sale or transfer of the ownership of the Leased Premises by Board to Foundation and is entered into at the request of and for the benefit of the Board and UNO.

B. Term

The Term of this Lease shall commence on November 1, 2021. Unless sooner terminated as herein provided, this Lease shall be and continue in full force and effect for an initial term of thirty-five (35) years (the "Initial Term"), such Initial Term commencing on the Effective Date. Foundation shall have four (4) separate and successive options to renew this Lease (each a Renewal Term), with each such Renewal Term being for a period of ten (10) additional and subsequent years, and furthermore, the Foundation shall have one additional opportunity after the expiration of the fourth Renewal Term, to extend the Term of the Lease until October 31, 2096. (the "Final Term") In the event and on each occasion that Foundation desires to renew the Lease for any Renewal Term, as provided above, then provided that Foundation is not then in default of this Lease, Foundation may exercise its right by providing written notice of same to the Board, no later than sixty (60) days prior to the expiration of the then current Term. In the event that the Foundation fails to provide the Board with written notice within said sixty (60) day period, then

the Board shall provide the Foundation with written notice of the expiration date of this Lease and the Foundation shall have an additional fifteen (15) days from the date of the Foundation's receipt of the Board's written notice to provide written notice to the Board of the Foundation's election to renew the Lease for any Renewal Term or for the Final Term.

2.
RENT

As consideration and rental for the lease of the Leased Premises, Foundation in furtherance of its nonprofit mission to support the Board on behalf of UNO, shall:

1) pay to Board \$10.00 a year payable in advance on the first day of October of each year of this Lease;

2) assume all responsibility for the maintenance and operation of the Building, both routine and major maintenance and as otherwise and more fully set forth in this Lease;

3) assume all responsibility for management of the Building;

4) assume the responsibility for the construction, at Foundation's sole option, of any Improvements to the Building or Land; and

5) reimburse Board for insurance premiums paid by Board pursuant to Section 6A hereof;

It being agreed that the Foundation will assume no other obligations of the Board or UNO related to the Leased Premises.

3.
USE OF LEASED PREMISES

Foundation may use the Land and the Building for those purposes set forth in the Cash Sale and in the Declaration of Covenants, Conditions and Restrictions and consistent with the

purposes of a Research and Technology Park as defined in La. R.S. 41:137, all of which is consistent with UNO's, role, scope and mission. The Land and the Building are to be used for no other purposes without the prior written consent of the President of UNO.

4. **CONSTRUCTION**

At its sole cost and expense, Foundation shall construct all Improvements in a good and workmanlike manner, in accordance with the following provisions, subject to the provisions in Section 12N hereof:

A. Plans and Specifications/Change Orders

At least thirty (30) days prior to commencement of any construction, proposed final plans and specifications shall be delivered to the UNO Representative for his review. The UNO Representative shall approve or disapprove such proposed final plans and specifications in writing within thirty (30) days of receipt thereof. Any change in work and materials relating to construction of Improvements which either (1) materially alters the exterior appearance of the Building, regardless of the cost thereof, or (2) materially alters the quality of materials and Work or the interior appearance of the Building and costs more than Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), is subject to the prior review and approval of the UNO Representative, which approval shall not be unreasonably withheld, delayed or conditioned. Foundation shall notify the UNO Representative in writing of any such proposed changes in work or materials, and provide to the UNO Representative copies of the proposed changes, and the UNO Representative shall either approve or disapprove any such changes within seven (7) days (excluding Saturdays, Sundays or state or federal holidays) after receipt of such notice from Foundation. If the UNO Representative fails to respond within such seven (7) day period (excluding Saturdays, Sundays or state or federal holidays), it shall be deemed that UNO approves

such changes. All notifications to the UNO Representative for requests for change orders to the Plans and Specifications shall include copies of the proposed change orders and copies of the approvals by the Contractor, the Architect and the Foundation of such change orders, and shall further include sufficient information for the UNO Representative to make a determination whether to approve or disapprove such changes in the Work or materials. Complete copies of all final change orders shall be provided to the UNO Representative no later than the commencement of the Work represented by the change order, even if UNO Representative approval is not required.

B. Commencement and Completion of Work

No work shall commence until the UNO Representative has given written consent to the Foundation to proceed and written approval to the final proposed Plans and Specifications. Any commencement dates may be extended by a written request issued by the Foundation and approved in writing by the UNO Representative.

C. Construction Contract

All Work shall be performed on behalf of Foundation pursuant to the terms of any Construction Contract. Where appropriate, the Construction Contract and Payment and Performance Bonds shall be recorded properly with the Clerk of Court of Orleans Parish prior to commencement of the Work. Foundation shall include a liquidated damages clause in the proposed Construction Contract. Board and Foundation hereby acknowledge the following, and, to the extent practically and legally possible, the Construction Contract and all subcontracts entered into by the Contractor shall acknowledge expressly that the parties thereto have been informed of the following:

1. The Work will be performed solely and exclusively for Foundation.

2. Foundation is a separate legal entity from UNO and Board. It is not acting as agent for UNO or Board, and Foundation has no authority to obligate UNO or Board to any extent whatsoever.
3. Neither Board, UNO nor the State of Louisiana shall be liable, directly or indirectly, for the payment of any sums whatsoever or for the performance of any other obligation whatsoever arising out of the Work performed pursuant to this Lease.
4. Foundation has no ownership interest in the Land on which the Work will be performed. Any improvements placed on the Land or in the Building shall become property of Board upon completion of the Work. The Work shall not give rise to any rights against the Land, the Building, any Improvements, Board or UNO.
5. It is understood and agreed that the Board, its members, employees and agents including but not limited to the UNO Representative, shall owe no legal duty to or assume any liability or responsibility to any party as a result of or in connection with any consent, approval or review given or undertaken in connection with the Work. No party shall infer, based on any consent, approval or review given or undertaken by the Board, its members, employees and agents including but not limited to the UNO Representative, agreement with or endorsement of the particular matter at issue; rather, such consent, approval or review shall only be deemed to indicate “no objection” to the particular matter at issue.

D. Payment and Performance Bonds

Foundation shall require that any Contractor for contracts in excess of \$100,000 provide a performance and labor and materials payment bond(s) with a corporate surety authorized to do business in the State of Louisiana. Said bond(s) shall be for the greater of the full amount of the Contract Sum or the Guaranteed Maximum Price as defined and established in the Construction Contract. Both Foundation and Board shall be obliges under the bond(s).

E. Rights Concerning the Leased Premises During Construction

Contractor shall have the right to access the Leased Premises, with reasonable ingress to and egress from the Leased Premises, during any Work and, with the prior written consent of the UNO Representative, shall fence or block off that area of the Leased Premises necessary to perform any Work in a safe and secure manner.

F. Access over Adjoining Property During Construction

Board hereby grants to Foundation a servitude of access over and across such other property owned by Board insofar as such is reasonably necessary in order for the Foundation to fulfill its obligations hereunder, provided, however, that (1) such access routes are approved in writing by the UNO Representative; and (2) Foundation shall not unreasonably interfere with Board's use of such other property.

G. Board and UNO Rules and Regulations: Access During Construction

Foundation agrees that it will comply with all Board and UNO regulations, policies and mandates with regard to all contractors and personnel entering the Leased Premises for purposes of construction, which rules and regulations will be addressed at any pre-construction conference, and that it will secure, at its own expense, all necessary permits and licenses from all regulatory agencies or bodies. Foundation shall make these same requirements of the Contractor. At all times

during any construction, the UNO Representative and any individuals authorized by the UNO Representative shall have the right but not the obligation to enter the Leased Premises and review the Work to determine that it is being performed in compliance with the Plans and Specifications and in a good and workmanlike manner.

H. Inspection and Survey

Foundation shall inspect the Leased Premises and arrange for any necessary boundary surveys, topographical surveys, soil borings and other site investigations at its expense. Foundation accepts the Leased Premises in its present condition.

I. No Liens; Release of Recorded Liens

Foundation shall not suffer or permit any liens to be enforced against the Leased Premises or any Improvements or Work by reason of a failure to pay for any Work, labor, services or materials supplied or claimed to have been supplied to Foundation or to anyone through or under the Foundation. If any such liens shall be recorded, Foundation shall cause the same to be released of record, or in the alternative, if the Foundation in good faith desires to contest the same, Foundation shall be privileged to do so.

5.

OPERATION AND MAINTENANCE OF LEASED PREMISES

A. Operation and Maintenance

Except as provided herein below as to any Repairs and/or Restorations caused or necessitated, in whole or in part by any Event, the Foundation shall, at its sole cost and expense during the Term, have operation and management responsibility for the Leased Premises and shall maintain the Leased Premises and all Improvements, including all fixtures located therein, and make and perform all maintenance, repairs, renovations, and/or replacements to the Leased Premises, including without limitation the heating, ventilating, air conditioning, mechanical,

electrical, elevators, telephone, cable and other utility lines, plumbing, fire, sprinkler and security systems, computer service, air and water pollution control and waste disposal facilities, roof, structural walls, sewer lines, including any septic tank and effluent disposal system that may be necessary, and foundations, fixtures, equipment, and appurtenances to the Leased Premises as and when needed to maintain them in as good or better working condition and repair (ordinary wear and tear excepted) as existed as of the Effective Date, regardless of whether such maintenance, repairs, renovations and/or replacements are ordinary or extraordinary, routine or major, foreseeable or unforeseeable, all maintenance, repairs, renovations and/or replacements shall be of a quality and class equal to or better than the quality and class located in the Leased Premises as of the Effective Date.

Notwithstanding anything to the contrary set forth hereinabove, if any Funds are available to the Board for Covered Damages, those Funds shall be utilized by the Board, and Board shall be responsible for, undertake and pay either itself or through others, for all Repairs and/or Restorations necessitated by a related Event, subject to the reasonable approval of the Foundation as to such Repairs and/or Renovations. Foundation, at its sole option, shall have the right to oversee and/or manage any or all Repairs and/or Restorations.

B. Fire Equipment

Foundation shall furnish and maintain all fire extinguishers and other equipment or devices necessary to comply with the order of the Louisiana State Fire Marshal. Foundation shall further be responsible for all costs associated with any required periodic inspections and serving of fire extinguishers and other safety equipment or devices, or any licenses or permits required by the State Fire Marshal's Office.

C. Utilities

Foundation shall provide to the Leased Premises and the Building normal air conditioning and heating, tempered water at those points of supply normally required for general tenant use and electricity in an amount as required in the reasonable judgment of Foundation. Foundation reserves the right to suspend services of heating, air conditioning, plumbing, and electrical power or utilities when necessary by reason of accident or for repairs, alterations, replacements or Improvements which are necessary and desirable in the judgment of Foundation, and no such interruption or cessation of utilities or services shall render Foundation liable in any respect for damages to any property or be construed as a default of Foundation. Foundation shall pay or cause to be paid any and all charges for water, heat, gas, electricity, sewer and all other utilities used in the Leased Premises throughout the Term of this Lease.

D. Security and Other Services

Foundation shall provide or cause to be provided all custodial service, janitorial service, medical waste disposal, trash disposal, pest control services and all other services reasonably necessary for the proper upkeep and maintenance of the Leased Premises.

6. **INSURANCE**

A. Property Damage

Board shall keep the Building insured against such contingencies as are normally covered by fire and extended coverage insurance, but shall not insure and will not be responsible for any loss or damage to any property belonging to Foundation. As Rent, Foundation shall reimburse Board all insurance premiums paid by Board to fulfill Board's obligation to insure the Building. Foundation agrees that it will obtain such insurance governing Foundation's own property.

B. Worker's Compensation, Foundation General Liability and Property Damage Insurance

Foundation, at its sole expenses, shall maintain at all times during the Term of the Lease, insurance with Louisiana authorized insurers in the following minimum amounts:

1. Worker's Compensation – Statutory limits
2. Comprehensive General Liability, including Personal Injury Liability coverage-with minimum combined single limits for bodily injury and property damage of \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate; and
3. Property Insurance covering risk of direct physical loss or damage on Foundation's furniture, fixtures, equipment and other property located in, upon or about the Lease Premises or any other part of the Building with limits equal to the full replacement value thereof.

C. ORM; Additional Insured

Insurance required herein to be provided by Board or by Foundation may be provided through the Louisiana Office of Risk Management, ("ORM") and if acquired from or through ORM, such insurance shall be deemed in compliance hereof, as applicable. General Liability Insurance obtained by Foundation shall name Board as an "Additional Insured" and be endorsed to provide Board not less than thirty (30) days prior written notice of cancellation or material change in coverage afforded. Foundation agrees to deliver to Board upon Board's written request a certificate of insurance for each policy required hereunder or a renewal thereof.

7.

CASUALTY DAMAGE

A. Damage of More Than 25% of the Leased Premises

If the Leased Premises are damaged by fire or other casualty to the extent of 25% or more of the Leased Premises, Foundation may terminate this Lease by giving fifteen (15) days written notice of its election to do so to the other party, which notice shall be given, if at all, within sixty (60) days following the date of such occurrence. If the Foundation does not terminate this Lease

pursuant to this Section 7, this Lease shall continue in full force and effect, and the Board shall use its best efforts and shall proceed with all due diligence to repair the Leased Premises and restore it to its original condition. Following such damage or destruction, rental shall be abated in proportion to the diminished utility of the Leased Premises, and, upon the occurrence of termination of this Lease, Rent shall be apportioned on a calendar day basis according to the number of days of occupancy during the calendar month by Foundation.

B. Damage of Less than 25% of the Leased Premises

If damage or destruction to the Leased Premises occurs in the amount of less than 25% of the Leased Premises, Board shall use its best efforts to repair the leased Premises and restore it to its original condition within One Hundred Eighty (180) days from the date of said damage or destruction. Following such damage or destruction, and during the period of repair, the Rent shall be abated in proportion to the diminished utility of the Leased Premises by the Foundation.

8.

DEFAULT AND FORCE MAJEURE

A. Foundation Default

Each of the following shall be a default by Foundation under the terms of this Lease:

1. Failure of Foundation to observe or perform any other covenant, condition or obligation upon its part to be observed or performed under this Lease for a period of thirty (30) days after receipt of written notice from the UNO Representative specifying such failure and requesting that it be remedied; or
2. A court having jurisdiction shall enter an order for relief in any involuntary case commenced against Foundation, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or the entry of a

decree or order by a court having jurisdiction in the premises appointing a custodian, receiver, liquidator, assignee, trustee, sequestration, or other similar official of or for Foundation or any substantial part of the properties of Foundation or ordering the winding up or liquidation of the affairs of Foundation, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; or

3. The commencement by Foundation of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or the consent or acquiescence by Foundation to the commencement of a case under such Code or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestration, or other similar official of or for Foundation or any substantial part of the properties of the Foundation.

Whenever any default referred to in this section shall have occurred and be continuing and Foundation refuses or fails to take the reasonable and necessary remedial action to cure such default in the time period specified therefor, in addition to any other remedies herein or by Applicable Law provided, Board shall have the right, without any further demand or notice, to declare this Lease terminated. If this Lease terminates during the Work, Board shall be the owner of all improvements made on or to the Building and/or the Land, provided, however, at Board's sole option and direction, if this Lease terminates during the Work due to the default of Foundation, Foundation shall transfer any Improvements constructed pursuant to the Lease, its rights and obligations under this Lease to another nonprofit corporation or entity which meets the requirements of La. R.S. 17:3390 and which is acceptable to Board.

B. Board Default

Foundation may declare Board in default upon the failure of Board to observe or perform any covenant, condition or agreement upon its part to be observed or performed under this Lease for a period of thirty (30) days after receipt of written notice from Foundation specifying such failure and requesting that it be remedied. If the default be continuing and Board has not taken any action reasonably anticipated to cure such default, in addition to any other remedies herein or by Applicable Law provided, Foundation shall have the right, without any further demand or notice to declare this Lease terminated and shall have no further obligation to perform any of the obligations of Foundation under this Lease.

C. Force Majeure

Notwithstanding anything to the contrary set forth in this Lease, whenever a period of time is herein prescribed for action to be taken by a party, that party shall not be liable or responsible during and there shall be excluded from the computation of any such period of time delays, due to Force Majeure.

9.
ASSIGNMENT AND SUBLEASE

Foundation shall not assign, or permit any assignment by operation of law of this Lease without the prior written consent of Board which consent shall not be unreasonably withheld. Foundation may lease and/or sublease all or part of the leased Premises in accordance with the requirements of Exhibit C hereto. Foundation shall be authorized to contract for and with tenants in the Leased Premises upon the approval of the Faculty Advisory Committee for the University of New Orleans. Board agrees to work in good faith with Foundation to assign to Foundation any existing leases in the Building by Board to a state or other public entity.

10.
INDEMNIFICATION

Foundation, for itself and for its successors, assigns, agents, employees, invitees, and licensees, agrees to indemnify, defend and to hold Board harmless against any loss for damages or injuries that may be suffered by Board or by any person, including but not limited to Foundation's agents, employees, invitees and licensees, to the extent such loss arises out of or is related to Foundation's use of the Leased Premises, except with respect to acts or omissions by Board's members, officers and employees, or anyone acting at Board's or UNO's direction, and as to any claim for which the Foundation owes indemnity to Board, Foundation agrees to defend Board with an attorney of Board's reasonable choice in any legal action against it and pay in full and satisfy any claims, demands or judgments made or rendered against Board, and to reimburse Board for any legal expenses, including attorney's fees and court costs, which may be incurred by it in defense of any claim or legal action arising thereunder, but Foundation's costs and expenses incurred in fulfilling this indemnity and defense shall, to the extent allowed by Applicable Law, and except in any instance in which insurance is denied because the action at issue was an intentional wrongdoing by Foundation, be limited to insurance proceeds which are available to Foundation for this purpose.

To the extent allowed by Applicable Law, Board, for itself and for its successors, assigns, agents, employees, invitees and licensees agrees to indemnify, defend and hold Foundation harmless against any loss for damages or injuries that may be suffered by Foundation or by any person including but not limited to Board's agents, employees, invitees, and licensees, to the extent that such loss, damage or injuries arise out of or are related to the fault or negligence of Board, its members, employees, or officers, except with respect to acts or omissions of

Foundation's board members, officers and employees, and Board agrees to defend Foundation in any legal actions against it and, to the extent allowed by Applicable Law, pay in full and satisfy any claims, demands or judgments made or rendered against Foundation, and to reimburse Foundation for any legal expenses, including attorney's fees and court costs, which may be incurred by it in defense of any claim or legal action arising thereunder; provided, however, that Board's costs and expenses incurred in fulfilling this indemnity and defense shall, to the extent allowed by Applicable Law, and except in any instance in which insurance is denied because the action at issue was an intentional wrongdoing by Board, be limited to proceeds from insurance available for this purpose.

11. **NOTICES**

All notices (including, without limitation, approvals, consents and exercises of rights or options) required or permitted to be given hereunder shall be in writing and shall be served on the parties at the addresses set forth below or to such other address as the party entitled to receive such notice may, from time to time hereinafter, designate by giving written notice pursuant hereto. Any such notice shall be either (a) sent by personal delivery, in which case notice shall be deemed delivered upon receipt, (b) sent by facsimile, in which case notice shall be deemed delivered upon receipt of confirmation of transmission of such facsimile notice (c) sent by certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed delivered upon actual delivery (or attempted delivery which is refused) or, (d) sent by overnight delivery using a nationally recognized overnight courier (e.g., Federal Express), in which case notice shall be deemed delivered one (1) business day after deposit with such courier. Notices given by counsel to the Board shall be deemed given by Board, notices given by counsel to the

Foundation shall be deemed given by Foundation, and notices given to a party's counsel shall be deemed given to the party.

If to Board
or to UNO

Dr. John Nicklow
President
University of New Orleans
2000 Lakeshore Drive
New Orleans, LA 70148

With copy to:

Board of Supervisors for the
University of Louisiana System
Attn: Bruce Janet
1201 North Third Street, Suite 7-300
Baton Rouge, LA 70802

If to Foundation:

University of New Orleans Research and Technology
Foundation, Inc.
President and CEO
2000 Lakeshore Drive
New Orleans, LA 70148
Telephone: 504-280-6574
Telecopy: 504-280-1177

12. MISCELLANEOUS

A. Relationship of Parties.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto.

B. Attorney's Fees.

The prevailing party to the extent allowed by Applicable Law shall be entitled to receive reimbursement for its reasonable attorneys' fees and costs of suit.

C. Louisiana Law to Apply.

This Lease shall be construed under and in accordance with the laws of the State of Louisiana, and all obligations of the parties created hereunder are performable in Orleans Parish, Louisiana.

D. Nonwaiver.

No waiver by Board or Foundation of a breach of any of the covenants, conditions, or restrictions of this Lease shall constitute a waiver of any subsequent breach of any of the covenants, conditions, or restrictions of this Lease. The failure of Board or Foundation to insist in any one or more cases upon the strict performance of any of the covenants of the Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. No waiver, change, modification or discharge by Board or Foundation of any provision of this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by the parties hereto.

E. Severability.

If any clause or provision of this Lease is found to be illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and this Lease shall remain in full force and effect except as to the illegal, invalid or unenforceable provisions.

F. Authorization.

By execution of this Lease, Foundation and Board each represent to the other that they are entities validly existing, duly constituted and in good standing under the laws of the jurisdiction in which they were formed and in which they presently conduct business; that all acts necessary to

permit them to enter into and be bound by this Lease have been taken and performed; and that the persons signing this Lease on their behalf have due authorization to do so.

G. Use of Name, Logos or Marks.

Neither party shall make use of the other party's name, logo or marks without its prior written consent.

H. Amendment.

No amendment, modification, or alteration of the terms of this Lease shall be binding unless made in writing, dated on or subsequent to the date hereof and duly executed by the parties hereto.

I. Assignment and Mortgage.

Foundation shall not assign this Lease or any part hereof without the prior written consent of the UNO Representative, and any attempt of assignment without the prior written consent of the UNO Representative shall be null and void as to Board. Furthermore, Foundation may not mortgage or encumber its rights in or arising out of this Lease or any rights it has or might have in the Land, the Building or any Improvements without the prior written consent of the UNO Representative, and any attempt to mortgage or encumber without the prior written consent of the UNO Representative shall be null and void as to Board.

J. Books, Records and Audit.

The books, accounts and records of Foundation which pertain directly to this Lease or to any Improvements shall be maintained at the principal office of Foundation. Board may at its option and at its own expense during customary business hours, conduct internal audits of the books, bank accounts, records and accounts of Foundation and its contractor(s) to the extent necessary to verify compliance with this Lease or insofar as said books, bank accounts, records

and accounts directly relate to Foundation's performance of its obligations under this Lease. Audits may be made on either a continuous or periodic basis or both and may be conducted by employees of Board, by independent auditors retained by Board to conduct such audit, or by the Louisiana Legislative Auditor, but any and all such audits shall be conducted without materially or unreasonably or unnecessarily interrupting or interfering with the normal conduct of business affairs of the Foundation.

K. Successors and Assigns.

All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective successors and assigns including any successor by merger or consolidation of UNO or Board into another educational institution or governing body.

L. Notice of Lease.

Foundation agrees not to record this Lease. At the Foundation's request, the parties will execute a Notice of Lease for recording in the records of Orleans Parish, and the cost of recording will be borne by Foundation.

M. Consent or Approval.

It is understood and agreed that the Board, its members, employees and agents including but not limited to the UNO Representative, shall owe no legal duty to or assume any liability or responsibility to any party as a result of or in connection with any consent, approval or review given or undertaken in connection with this Lease. No party shall infer, based on any consent, approval or review given or undertaken by the Board, its members, employees and agents including but not limited to the UNO Representative, agreement with or endorsement of the

particular matter at issue; rather, such consent, approval or review shall only be deemed to indicate “no objection” to the particular matter at issue.

N. Oversight By Division of Administration Office of Facility Planning and Control (“OFPC”).

Design and construction of any Improvements shall be subject to oversight by OFPC, and such oversight includes, but is not limited to (a) the right to review and approve plans and specifications prior to commencement of construction and to require changes to conform to Applicable Law, including space and quality standards, and International Building Code review, and (b) the right to conduct periodic inspections during construction to ensure that all work is being performed in compliance with the OFPC approved Plans and Specifications.

O. Entire Agreement.

This Lease, together with the exhibits attached hereto, contains the final and entire agreement between the parties hereto with respect to the Leased Premises, the Land and the Building and contains all of the terms and conditions agreed upon with respect to the Leased Premises, the Land and the Building, and no other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representations not herein written.

P. Notice of Lease.

The Board agrees not to record this Lease. The parties shall execute a Notice of Lease for recording, at Foundation’s sole option, in the records of Orleans Parish meeting the requirements of La. R.S. 9:2742, and the cost of recording will be borne by the Foundation, as lessee.

[The remainder of this page intentionally left blank.]

[Signature Page for Lease Agreement For Center For Energy Resources Management]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the dates indicated on the attached Acknowledgments.

WITNESSES:

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM
ON BEHALF OF UNIVERSITY OF NEW
ORLEANS**

Print Name: _____

By: _____
Dr. John Nicklow,
President of UNO

Print Name: _____

**UNIVERSITY OF NEW ORLEANS
RESEARCH AND TECHNOLOGY
FOUNDATION, INC**

Print Name: _____

By: _____
David Gallo
Chair of the Board of Directors

Print Name: _____

STATE OF LOUISIANA

PARISH OF ORLEANS

ACKNOWLEDGMENT

BE IT KNOWN that on this ____ day of _____, 2021, before me, the undersigned Notary Public, duly commissioned and qualified in and for the above Parish and State, and in the presence of the undersigned competent witnesses, personally came and appeared Dr. John Nicklow, appearing herein in his capacity as President of the University of New Orleans, and appearing on behalf of the Board of Supervisors for the University of Louisiana System, a public constitutional corporation organized and existing under the laws of the State of Louisiana, who, being by me first duly sworn, declared and acknowledged to me, Notary, that he executed the above and foregoing instrument on behalf of said corporation with full authority of its Board of Supervisors and that said instrument is the free act and deed of said corporation and was executed for the uses, purposes and benefits therein expressed.

IN TESTIMONY WHEREOF, Appearer has executed this acknowledgment in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

WITNESSES:

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM
ON BEHALF OF UNIVERSITY OF NEW
ORLEANS**

Print Name: _____

By: _____
Dr. John Nicklow,
President of UNO

Print Name: _____

NOTARY PUBLIC

STATE OF LOUISIANA

PARISH OF ORLEANS

ACKNOWLEDGMENT

BE IT KNOWN that on this _____ day of _____, 2021, before me, the undersigned Notary Public, duly commissioned and qualified in and for the above Parish and State, and in the presence of the undersigned competent witnesses, personally came and appeared David Gallo, appearing herein in his capacity as Chair of the Board of Directors of the University of New Orleans Research and Technology Foundation, Inc., a charitable organization, who, being by me first duly sworn, declared and acknowledged to me, Notary, that he executed the above and foregoing instrument on behalf of said Foundation with full authority of its Board of Directors and that said instrument is the free act and deed of said Foundation and was executed for the uses, purposes and benefits therein expressed.

IN TESTIMONY WHEREOF, Appearer has executed this acknowledgment in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

WITNESSES:

**UNIVERSITY OF NEW ORLEANS
RESEARCH AND TECHNOLOGY
FOUNDATION, INC**

Print Name: _____

By: _____
David Gallo
Chair of the Board of Directors

Print Name: _____

NOTARY PUBLIC

Exhibit A
To Lease Agreement for Center for Energy Resources Management
Property Description
Parcel B

University of New Orleans
Third District
New Orleans, LA.

A CERTAIN PORTION OF GROUND together with all the rights, ways, privileges, servitudes and appurtenances thereunto belonging or in anywise appertaining, situated in the Third Municipal District of the City of New Orleans, in University of New Orleans Research Park, bounded by Lakeshore Drive, Parcel A, Lake Pontchartrain, Hotel site and Elysian Fields Avenue, designated as Parcel B as shown on a Lease Parcel Map by the Office of Gandolfo Kuhn LLC, dated August 9, 2021; and is more particularly described as follows:

Commence at the intersection of the westerly line of Elysian Fields Avenue and the northerly line of Lakeshore Drive;

Thence S85°55'06"W along the northerly line of Lakeshore Drive a distance of 260.98' to the Point Of Beginning;

Thence continue S85°55'06"W along the northerly line of Lakeshore Drive a distance of 162.69' to a point;

Thence S04°34'54"E along the northerly line of Lakeshore Drive a distance of 10' to a point;

Thence S85°55'06"W along the northerly line of Lakeshore Drive a distance of 26.02' to a point of curvature;

Thence in a westerly direction along a curve to the right having a radius of 698', a Length of 281.53', a chord bearing of N81°41'59"W and a chord distance of 279.63' to a point;

Thence N12°31'00"E a distance of 113.55' to a point of curvature;

Thence in a northerly direction along a curve to the right having a radius of 76.92', a Length of 95.83', a chord bearing of N48°08'15"E and a chord distance of 89.75' to a point of reverse curvature;

Thence in a northerly direction along a curve to the left having a radius of 76.92', a Length of 113.28', a chord bearing of N41°38'20"E and a chord distance of 103.32' to a point of tangency;

Thence N00°28'50"W a distance of 326.36' to a point;

Thence N89°31'11"E a distance of 83.32' to a point;

Thence N28°07'48"E a distance of 105.94' to a point;

Thence N89°31'10"E a distance of 166.64' to a point;

Thence S00°28'50"E a distance of 687.01' to the Point Of Beginning, and containing 5.2644 Acres or 229,316 Square Feet.

Exhibit A
To Lease Agreement For Center For Energy Resources Management

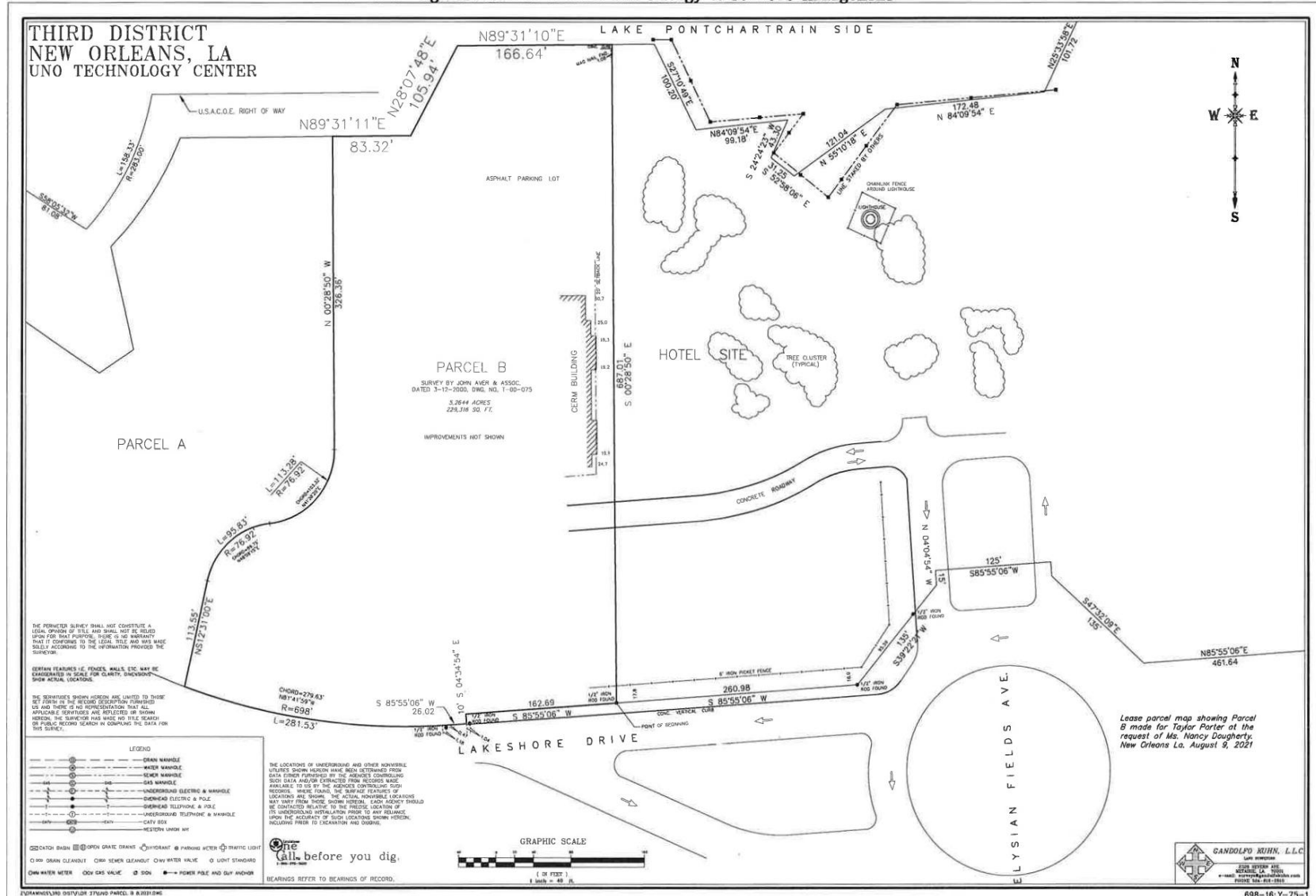
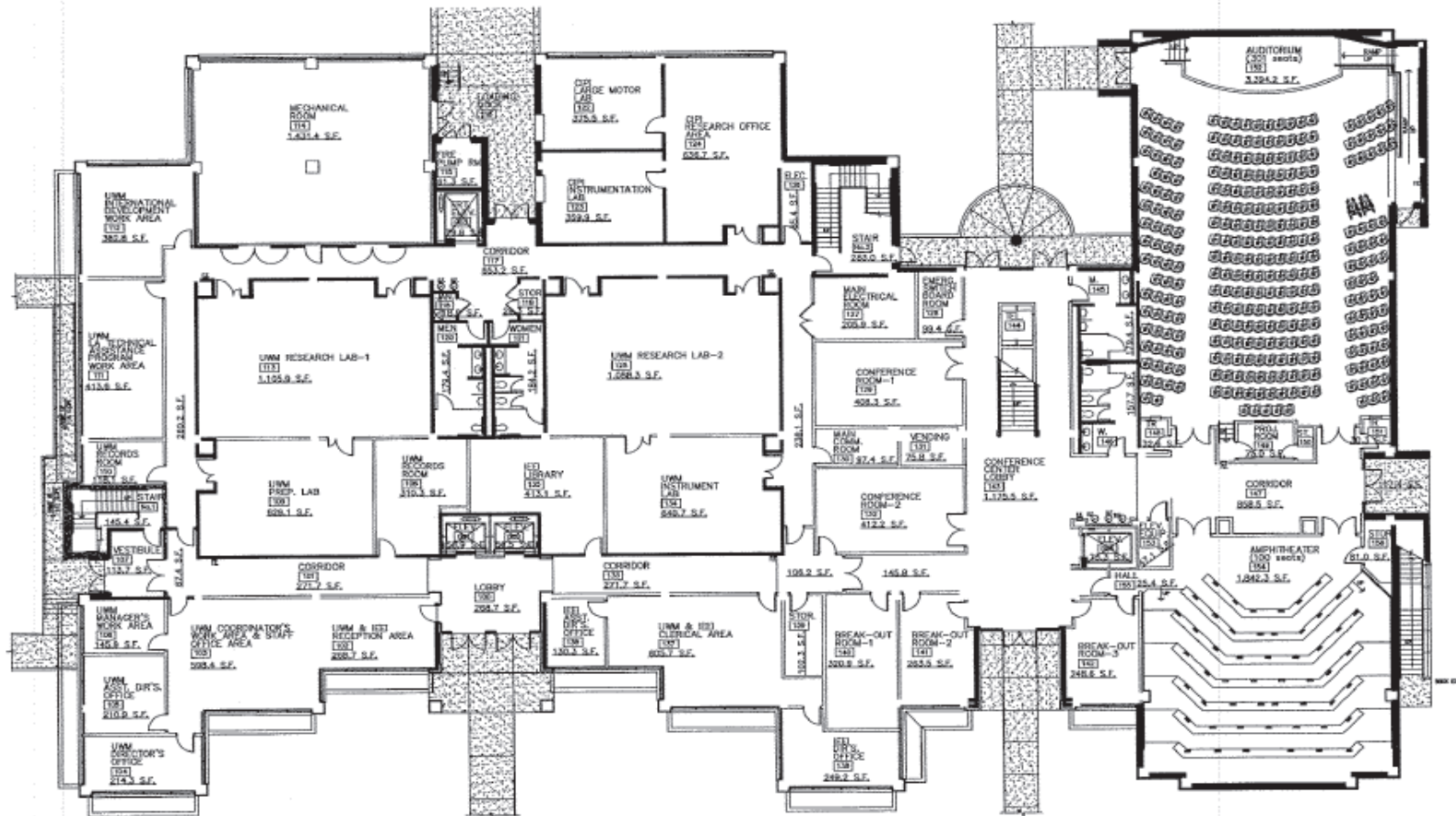


EXHIBIT B LEASED PREMISES



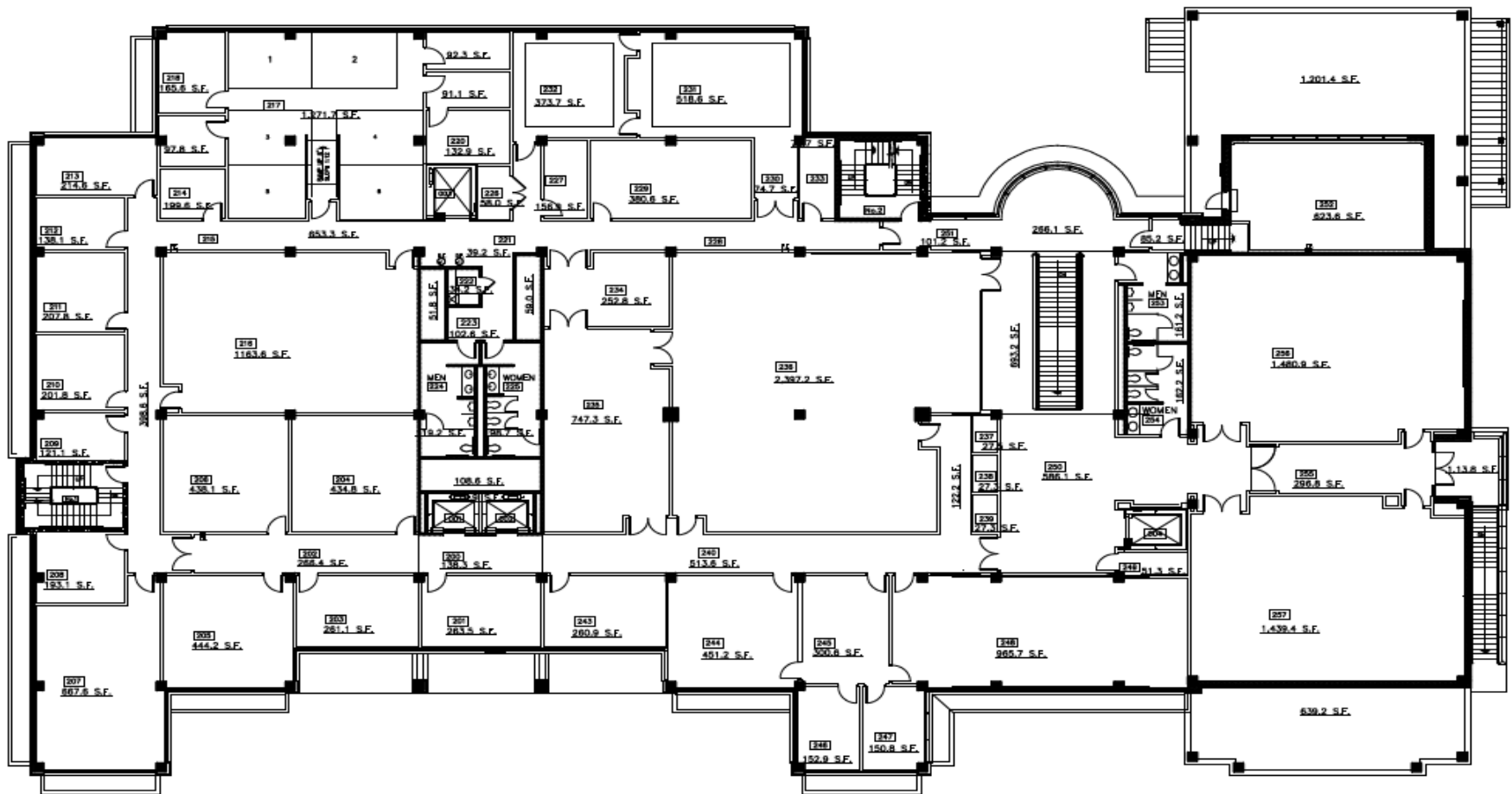
CENTER FOR RESOURCE MANAGEMENT BUILDING – FIRST FLOOR

1 FLOOR OF 6 FLOOR

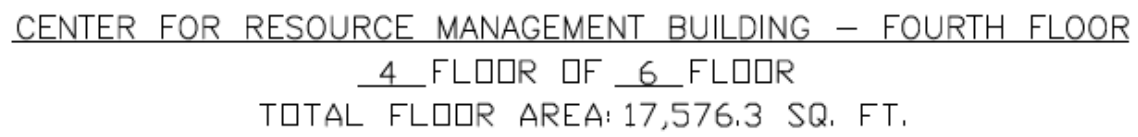
TOTAL FLOOR AREA: 27,733.6 SQ. FT.

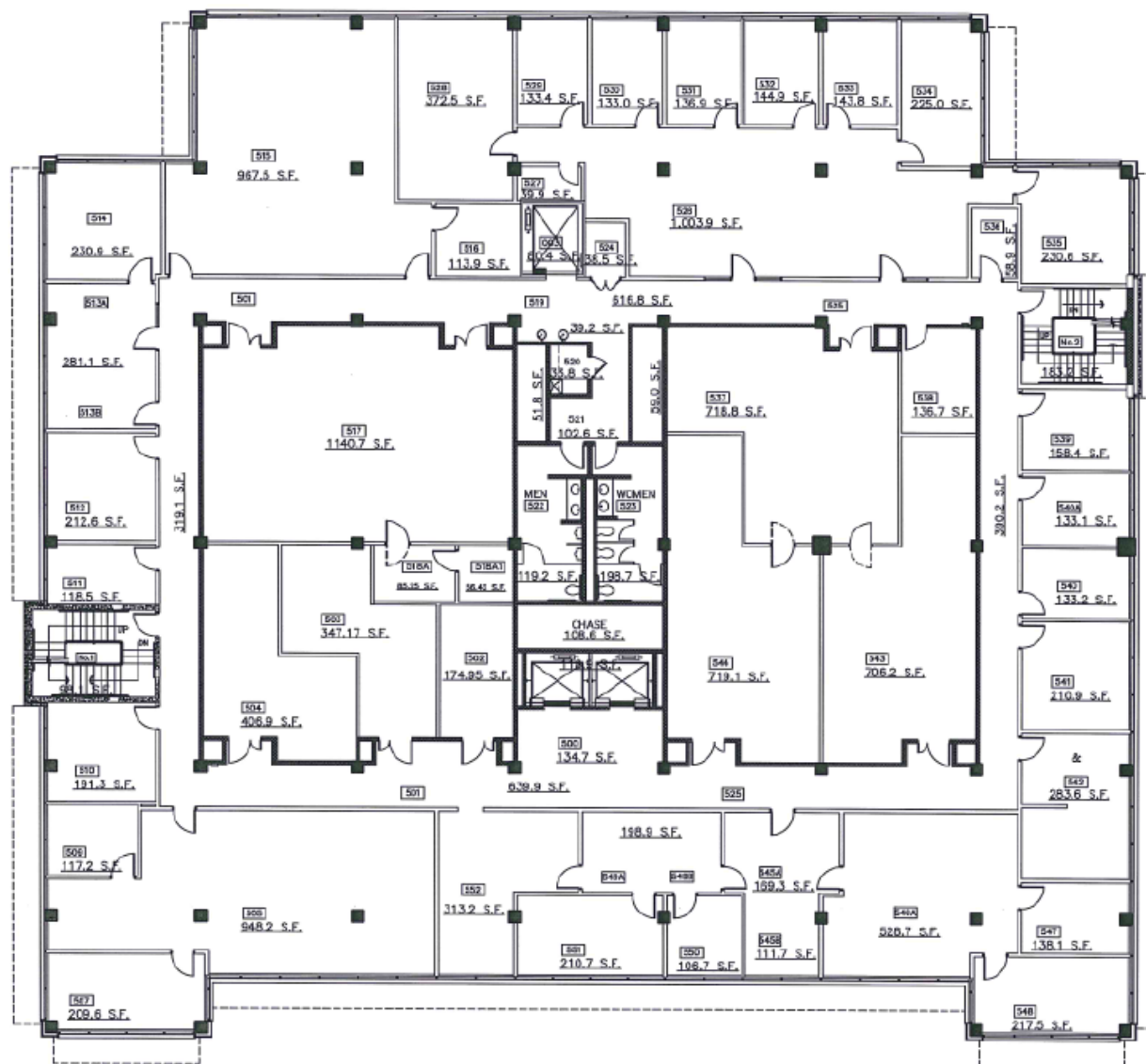
TOTAL ROOF AREA: 27,774.7 SQ. FT.

TOTAL GROSS FLOOR AREA: 81,414.1 SQ. FT.



CENTER FOR RESOURCE MANAGEMENT BUILDING – SECOND FLOOR
2 FLOOR OF 6 FLOOR
 TOTAL FLOOR AREA: 28,383.6 SQ. FT.

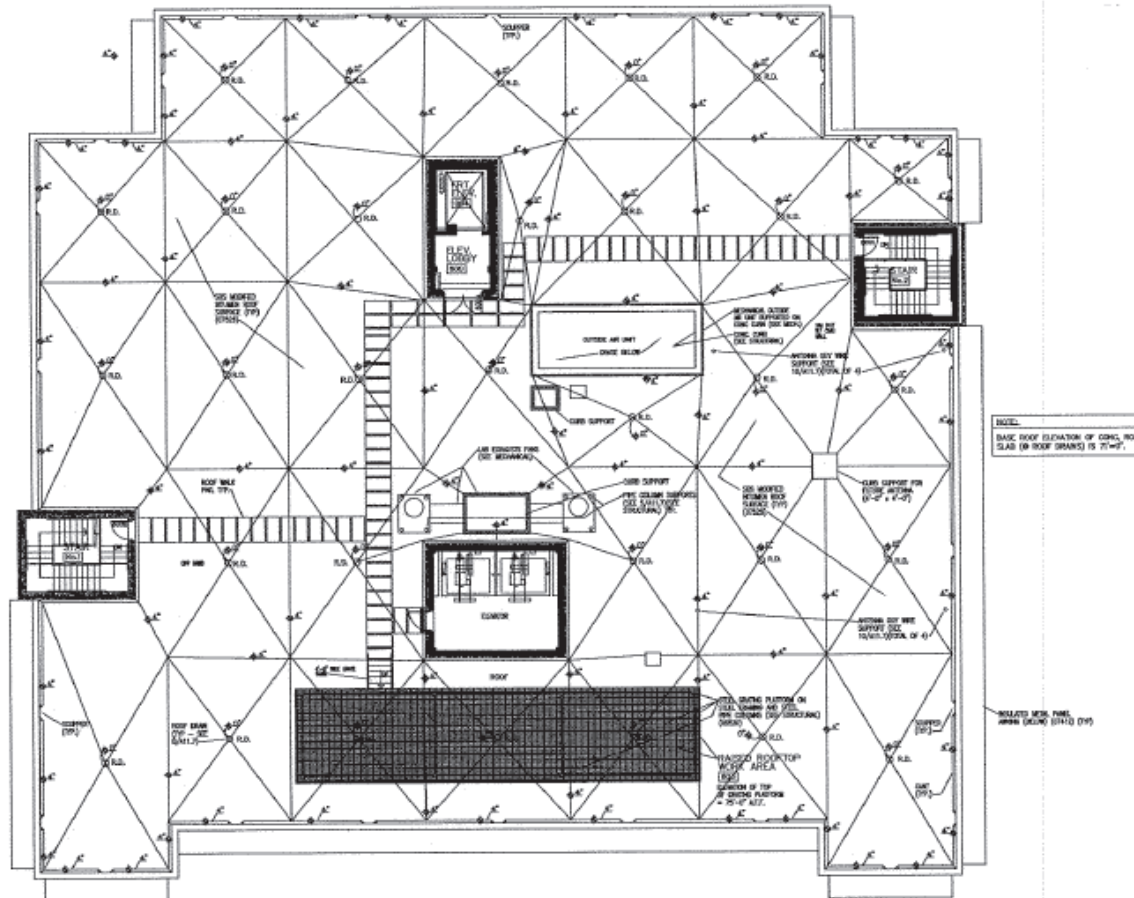




CENTER FOR RESOURCE MANAGEMENT BUILDING – FIFTH FLOOR

TOTAL FLOOR AREA: 18,034.4 SQ. FT.

UPDATED: 100917 RJO VERIFIED: RJO



CENTER FOR RESOURCE MANAGEMENT BUILDING — SIXTH FLOOR

"THE ROOF"

6 FLOOR OF 6 FLOOR

TOTAL FLOOR AREA: 17,994.6 SQ. FT.

Exhibit C
To
Lease Agreement for Center for Energy Resources Management (the “Lease”)
Requirements for Subleasing

1. Foundation shall not make changes to its articles of incorporation or bylaws which will alter its UNO support purpose or will affect its ability to comply with the terms of the Lease.
2. Foundation shall comply with, and shall require its tenants to comply with the requirements of the Cash Sale and with the permitted uses established in the Declaration of Covenants, Conditions and Restrictions.
3. Foundation shall identify tenants for the Research Park and submit such tenants to UNO for approval.
4. All Research Park tenants shall have a significant relationship with UNO directly related to UNO’s research and technology missions. Potential tenants will be reviewed by the Faculty Advisory Committee to the Research Park and, if acceptable, recommended for tenancy in the Research Park jointly by that committee and by a Dean or other appropriate academic officer, to the Vice President for Research and Economic Development, who will, in turn recommend potential tenants to the President of UNO for submission to the Board.
5. The lease rate to such tenants shall be no less than forty cents (\$0.40) per square foot plus the tenants’ share of common area costs, the latter to be determined by actual experience. Any proposed pricing below this lease price shall be submitted to UNO for review and approval.
6. Tenants shall be required to maintain adequate insurance, as determined by UNO, for their activities and options within the Research Park.
7. At UNO’s sole option, membership in the Research Park may be required of all tenants. Membership in the Research Park shall entitle tenants to use the park common areas and also to utilize UNO campus programs and services in such fashions and at such rates as UNO may from time to time determine. Members will be required to contribute to the expenses of operating and maintaining the Common Areas by paying a proportionate share of those expenses as an annual membership fee or assessed common area cost based on the expenses of operating the park and the relative amount of Research Park area leased by each tenant.

Office of the Commissioner
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

November 12, 2021

William F. Tate IV
LSU President
Louisiana State University
3810 West Lakeshore Drive
Baton Rouge, Louisiana 70808

Re: LSU Utilities Modernization Initiative
Cooperative Endeavor Agreement and Project Lease Documents

President Tate:

The Board of Supervisors for the University of Louisiana System's (the "*Board*") proposed CEA and Facility Leases, (the "*Leases*") with CenTrio and Tiger Energy Partners ("TEP") to make capital improvements to LSU's utility plants and distribution system were recently submitted to my office for review. According to your summary, the project will reduce LSU's energy consumption and lower its annual operating and maintenance costs. The agreement also provides for the potential for future energy and cost savings projects within LSU's utility plants, distribution systems and building mechanical systems. The CEA and Leases appear to result in a non-public party generating or expending revenue of one million dollars or more per year from the operation, management, or control of a state resource. Accordingly, La. R.S. 39:366.5 requires that the CEA and Leases be reported to the Joint Legislative Committee on the Budget (the "*JLCB*") after, pursuant to La. R.S. 39:366.11, I have determined that the parties to the agreement are sufficiently far enough along in negotiations that the essential elements of the proposed agreement have been worked out by the parties and can be explained to JLCB.

I have made such a determination and therefore you are hereby authorized to submit the proposed Leases and accompanying documents not less than thirty (30) calendar days prior to the next regular meeting of the JLCB.

The following information should be provided with your submission:

- 1) The public purpose sought to be accomplished by the cooperative endeavor;

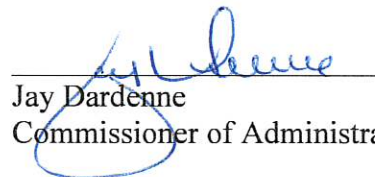
2) The reason a cooperative endeavor with the non-public person is the preferred means by which to accomplish the public purpose as opposed to competitively bid or competitively negotiated contract; and

3) The nature and amount of all state resources being obligated, the nature of the obligation, and the expected duration of the obligation.

It is my understanding that the Board of Supervisors approved the CEA and Leases on October 29, 2021. Please note that this letter does not constitute approval of this project, as it does not appear that such approval by me is required.

Thank you for your assistance.

Sincerely,


Jay Dardenne
Commissioner of Administration

TO: Joint Legislative Committee on the Budget ("JLCB" or the "Committee")
900 North Third Street
Baton Rouge, LA 70802

DATE: November 17, 2021

RE: LSU Utilities Modernization Initiative Project

For several years, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College ("LSU") has worked diligently to find a suitable method of addressing substantial deferred maintenance in its utilities system and reduce LSU's annual operating costs for heating, cooling, and powering the flagship campus in Baton Rouge. Through a competitive proposal and negotiation process, LSU has reached an agreement with two private vendors, CenTrio Energy ("CenTrio") and Tiger Energy Partners ("TEP"), to make substantial capital improvements to LSU's utilities plants and distribution system thereby reducing LSU's energy consumption and lowering its annual costs for operating and maintaining its utilities plants. The agreement also provides the potential for future energy- and cost-saving projects within LSU's utility plants, distribution systems, and building mechanical systems.

Pursuant to the provisions of La. R.S. 39:366.11, the following documents are hereby submitted to the Committee for review and consideration at the Committee's November 19, 2021 meeting:

1. Cooperative Endeavor Agreement by and among LSU, Utilities Modernization LLC (a wholly owned subsidiary of the LSU Real Estate and Facilities Foundation) ("UMLLC"), CenTrio (through its special purpose affiliate), and TEP (the "CEA")
2. Long-Term Lease and Concession Agreement for Louisiana State University Utility System by and between LSU, as lessor, and UMLLC, as lessee (the "Prime Lease")
3. Long-Term Sub-Lease and Concession Agreement for Louisiana State University Utility System by and between UMLLC, as sublessor, and CenTrio, as sublessee and concessionaire (the "Sublease and Concession Agreement")

The Commissioner of Administration, pursuant to his letter dated November 12, 2021, has determined the above agreements to be sufficiently far enough along in negotiations that the essential elements of the proposed agreement have been worked out by the parties, such that the enclosed agreements and documents may be submitted to the Committee pursuant to La. R.S. 39:366.11.

The enclosed CEA outlines, in general terms, the roles and responsibilities to be performed by LSU, UMLLC, CenTrio and TEP pursuant to the other project agreements, namely the Prime Lease and Sublease and Concession Agreement, over the transaction's 30-year term. The CEA itself creates no obligations to expend State funds and does not itself give any private entity a right to any State assets. Among other legal bases for the agreements, the parties are relying on the University Leasing Statute, La. R.S. 17:3361 *et seq.* As summarized in the CEA, LSU will enter the Prime Lease with UMLLC, granting leasehold interests in certain of LSU's central utility plant assets to UMLLC and directing UMLLC to cause modernization improvements to that system, as discussed below. UMLLC will concurrently enter into the Sublease and Concession Agreement, granting sub leasehold interests to CenTrio in those same utility plant assets and directing

CenTrio to construct and implement the modernization improvements, using TEP as its contractor, and to operate and maintain the subleased utility plant assets.

Pursuant to the Prime Lease and the Sublease and Concession Agreement, LSU will pay a monthly utility fee, through UMLLC to CenTrio, in consideration for these construction, operation and maintenance services. The expected amount and breakdown of the utility fee payment can be found in the enclosed materials. This payment obligation will be funded through LSU's operating budget since, as noted below and in the enclosed materials, LSU expects to experience net savings each year of the project's term when compared to LSU's anticipated annual expenditures should the project not move forward.

The proposed agreements provide for CenTrio to finance and expend approximately \$111.8 million in initial improvements to modernize LSU's central plant located by Tiger Stadium and substantially increase the capacity of its satellite plant located on Highland Road. The capital project will also fix existing bottlenecks in the distribution system that distributes steam and chilled water across the LSU campus. The construction will be performed by TEP. As part of the agreements, CenTrio will operate and maintain LSU's utility plants, meeting certain key performance indicators and performance standards to ensure that LSU achieves the energy savings it has projected. In addition, CenTrio will have a right to propose future capital projects for additional improvements to the utility plants and the distribution system, and TEP will have a right to propose future capital projects for mechanical systems located in buildings across the campus.

LSU provides the following additional information to summarize the proposed agreements:

1. The public purposes of this project include:
 - a. **Elimination of over \$100 million in deferred maintenance** associated with the aging equipment in LSU's utility plants
 - b. Reduction of LSU's annual costs to operate and maintain its utility system
 - c. Substantial reduction of the risk of catastrophic failure of the current, aging components of the utility plant system, thereby reducing the risk that the campus would face prolonged utility outages as well as the risk that LSU would be forced to incur extreme costs for emergency equipment rentals and emergency replacements of failed components, and
 - d. Reduction of LSU's consumption of energy commodities such as electricity and natural gas, through increased energy efficiencies from modern equipment.
2. LSU and other universities in the state and across the country increasingly turn to public-private partnerships such as this to better meet the needs of their students, faculty, and staff at a lower cost and a higher quality of service.
3. Under the agreements, **LSU expects to save approximately \$142 million** over the 30-year term of the agreements from a reduction in operating costs, a reduction in emergency procurement costs, and a reduction in energy consumption.
4. CenTrio is responsible for arranging the financing for the initial capital project. Of the total amount financed, 10% will be financed from equity, for which CenTrio anticipates a 10%

return, while 90% will be financed through privately issued debt, expected to bear an interest rate of approximately 3.3%, subject to prevailing market pricing at financial close.

5. The agreements do not create net state tax-supported debt and include a non-appropriations clause; the payment upon termination provisions are consistent with the terms of the Shaw Center transaction entered into by the State several years ago with TEP's affiliate, Louisiana Energy Partners.
6. LSU has relied on CenTrio (under its prior corporate name, Enwave) for over 20 years to manage the utilities systems at its Health Sciences Center – New Orleans campus, with very successful results. LSU has also worked closely and successfully with the joint venture partners who comprise TEP, Bernhard, LLC, and Johnson Controls. Each of CenTrio and TEP offers district energy service experience, an existing presence in Louisiana higher education projects, and familiarity with LSU's specific campus needs and interests. Relying on their unique positions, both CenTrio and TEP participated in a competitive proposal and negotiation process with LSU, its staff, and advisors where each party offered a targeted, unique proposal to address LSU's deferred maintenance and immediate utility modernization needs, ultimately resulting with both entities being selected to serve distinct roles in the project.

Finally, prior to their execution, LSU will ensure that at least one non-public party to the transaction is required to prepare and submit the annual reports to the Commissioner of Administration required under La. R.S. 39:366.11(B), for the Commissioner's further use in reporting annually to the Committee regarding the project's status. The project agreements will also require each non-public party to maintain books and records and allow for inspection and audit rights consistent with La. R.S. 39:366.11(C) and other applicable Louisiana public records laws.

The draft agreements are in nearly final form, though some technical provisions and schedules are still being perfected as part of the engineering design process, and some non-material changes may be required to meet requirements imposed by lenders. The fundamental financial and operational terms, including the guaranteed maximum price for the construction, are fully complete and will not change. Thus, as determined by the Commissioner of Administration, the enclosed agreements are in sufficient form for submission to the Committee for review and consideration in accordance with La. R.S. 39:366.11, and LSU respectfully requests that the referenced project be placed on the Commission's agenda for its November 19, 2021 meeting.



Board of Supervisors

C E R T I F I C A T E

I, Jason Droddy, the executive director and staff member for the Office of the Board of Supervisors of Louisiana State University and Agricultural & Mechanical College, duly authorized to certify actions of the Board, hereby certify that the foregoing is a true and exact copy of the resolution as adopted by the Board of Supervisors at a duly called and noticed meeting on October 29, 2021, at which meeting a quorum was present and voted.

Request from LSU A&M to authorize a Cooperative Endeavor Agreement and Lease for the Utilities Modernization Initiative

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College hereby authorizes the LSU President, or the President's designee, to execute and approve the following agreements and documents:

1. A Cooperative Endeavor Agreement between LSU, CenTrio, TEP, and UMLLC providing for implementation of LSU's Utilities Modernization Initiative;
2. A Long Term Lease and Concession Agreement (the "Prime Lease") providing for the leasing of the utility plant system and related facilities by LSU to UMLLC, financing and construction of the Initial Modernization Project, the long-term operation of LSU's utility plant system, and future construction projects within the utility plant system and distribution system;
3. A Long Term Sub-lease and Concession Agreement between UMLLC and CenTrio providing for subleasing of the utility plant system and related facilities by UMLLC to CenTrio and for such other matters as set forth in the Prime Lease; and
4. Such other agreements, documents, approvals, and consents as are reasonably necessary to accomplish LSU's Utilities Modernization Initiative and for all other purposes set forth in this Resolution; and

BE IT FURTHER RESOLVED that all agreements authorized by this Resolution shall be contain terms that are as or more advantageous to LSU than the form of agreements and the business and financial terms presented to the Board at its October 2021 meeting, and provided further that final copies of the Cooperative Endeavor Agreement, the Prime Lease, and the Long

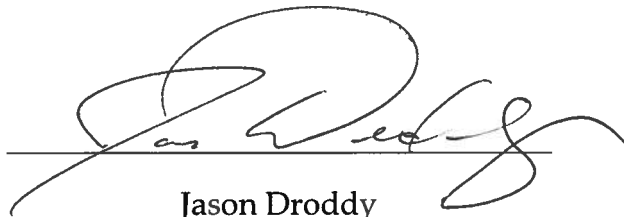
Term Sub-lease and Concession Agreement shall be transmitted by the President to the Board prior to financial close of the transaction; and

BE IT FURTHER RESOLVED that the improvements constructed pursuant to these agreements shall not constitute "Auxiliary Facilities" as defined in the General Bond Resolution adopted by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College on June 17, 1994, as supplemented and amended from time to time (the "General Bond Resolution"); and

BE IT FURTHER RESOLVED that the payment obligations of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College under these agreements shall be expressly subordinate to the payment of debt service on the Bonds (as defined in the General Bond Resolution heretofore or hereafter issued pursuant to the General Bond Resolution); and

BE IT FURTHER RESOLVED that the Board hereby determines that an Acceptable University Purpose exists, for purposes of the Uniform Affiliation Agreement, for UMLLC, as a subsidiary entity of REFF, to enter into the various agreements called for by this Resolution.

In witness whereof, I have hereunto signed my name and affixed the official seal of the Board of Supervisors this 17th day of November, 2021.

A handwritten signature in black ink, appearing to read "Jason Droddy", is written over a horizontal line.

Jason Droddy
Executive Director, Office of the Board of Supervisors
Louisiana State University and Agricultural & Mechanical College



Board of Supervisors

Request from LSU A&M to authorize a Cooperative Endeavor Agreement and Lease for the Utilities Modernization Initiative

Date: October 29, 2021

1. Bylaw Citation

This is a Significant Board Matter pursuant to Article VII, Section 1 of the Board's Bylaws:

- E.1 The lease of any immovable property for a term of 5 years or more
- G.1 Capital improvements over \$1 million
- J.2 Cooperative Endeavor Agreements
- J.3 Contracts raising significant financial or other policy issues, such as a privatization of a major university function

2. Summary of Matter

Background

LSU's utilities infrastructure is essential to the long-term success of the University and consists of three elements - the utility plant system, the distribution system, and the building mechanical systems. Working together, these three elements are responsible for providing heating, cooling, and electricity to the campus.

Each of these three elements is aging, and like much of the campus, suffering from extensive deferred maintenance due to a lack of capital funding. The current utilities infrastructure fails to provide redundancy for the campus, meaning that even a small failure in one component of the system can cause large portions of campus to suffer a loss of heating and cooling. The utilities infrastructure requires investment to reliably meet the campus' current needs and to be prepared for future needs based on anticipated growth described in the Comprehensive and Strategic Campus Master Plan.

Thanks to the hard work of LSU facilities staff, many of the major components of the utilities infrastructure have continued to operate long after the end of their expected useful life, but this is not a sustainable strategy. Major components of the utilities infrastructure are beginning to fail, resulting in large, unplanned expenses for emergency repairs and replacements in order to maintain uninterrupted heating and cooling services on campus which divert resources from other campus priorities.

As an illustrative example, LSU currently has approximately 3-5% surplus capacity to cool the campus during the summer and early fall. If a single turbine or pump fails, some buildings will be uncomfortably warm. For example, at the beginning of the Spring 2018 semester, a cooling tower suffered catastrophic failure, and LSU was forced to spend approximately \$4.5 million to replace the tower and to rent emergency equipment to keep the campus properly cooled. This type of reactive maintenance is expensive and does not allow LSU to strategically invest in a more modern and efficient system.

Utilities Modernization Initiative

Working with its consultants, LSU prepared the Utilities Modernization Initiative (“UMI”), which called for a public-private partnership with an energy services firm to finance, construct, and operate significant renovations to LSU’s utility plant system (the Central Utility Plant and the Highland Utility Plant) and portions of its distribution system. The UMI also provides for the same private firm to operate the improved plants for the term of the agreement, as well as for the potential future construction of improvements to the various building mechanical systems.

After substantial analysis, evaluation, and negotiations, which are described in the “project history” section below, LSU has negotiated the following proposed deal terms with two private firms and the LSU Real Estate and Facilities Foundation (“REFF”). The proposed set of agreements is consistent with, and stem from, the Board’s direction at its February 2021 meeting.

LSU is expected to save money through implementation of the Utilities Modernization Initiative through the proposed agreement in two ways. First, the vendor will charge LSU less for the operations and maintenance of the utility plant system than the costs LSU incurs performing the same services itself. Second, the capital improvements to be made by the vendor will result in greater energy efficiencies in the production of steam and chilled water to heat and cool the campus, reducing the amount of commodities (electricity and natural gas) consumed by LSU.

The UMI will be implemented through three agreements: a Cooperative Endeavor Agreement, a Prime Lease, and a Sublease and Concession Agreement.

Cooperative Endeavor Agreement

The proposed Cooperative Endeavor Agreement (“CEA”) sets forth the overall arrangement. It is not intended to contain detailed business terms, but to set forth the overall arrangement between the parties. The parties are:

1. LSU
2. Utilities Modernization, LLC (“UMLLC,” a special purpose entity formed by REFF)
3. CenTrio (formerly known as Enwave)
4. Tiger Energy Partners, LLC (“TEP,” a joint venture of Bernhard, LLC and Johnson Controls)

Under the structure set forth in the CEA, LSU will:

- Lease its utility plant system and related facilities to UMLLC, requiring UMLLC to enter into the Concession Agreement with CenTrio under terms provided by LSU
- Make appropriate payments, through UMLLC, to CenTrio in return for the operating and maintenance services it will provide over the 30 year term, including an amount sufficient to cover the debt service owed by CenTrio used to pay for the IMP construction

Under the structure set forth in the CEA, UMLLC will:

- Lease LSU’s utility plant system and related facilities from LSU, and sublease those same facilities to CenTrio, under terms prescribed by LSU and CenTrio
- As set forth in the Sublease and Concession Agreement, the **only** payment that UMLLC or REFF will receive through any of these agreements will be an annual charge of \$7,500

to cover its costs associated with accounting, record-keeping, and tax filing functions it must perform to fulfill its role

Under the structure set forth in the CEA, CenTrio will:

- Sublease LSU's utility plant system and certain related facilities for a term of 30 years
- Cause TEP to design and construct the Initial Modernization Project ("IMP")
- Operate the utility plant system and related facilities during the term of the lease
- Have a right to propose future improvements to the utility plant system and the distribution system, which CenTrio will finance, maintain, and operate and which TEP will design and construct

Under the structure set forth in the CEA, TEP will:

- Design and construct the IMP and any future utility plant system or distribution system improvements, under contract to CenTrio
- Have a right to propose future improvements to LSU building mechanical systems, which TEP will finance, design, and construct with no involvement from CenTrio

In no event is LSU required to conduct any future projects with either CenTrio or TEP. All such projects would be undertaken only if, at the time the project is proposed, LSU, in its sole discretion, determined that doing so will be in its best interests.

Prime Lease

The Long Term Lease and Concession Agreement ("Prime Lease") is between LSU and UMLLC, the REFF subsidiary. The Prime Lease provides for the leasing of LSU's utility plant system and certain related facilities to UMLLC and:

- Requires UMLLC to enter into the Sublease and Concession Agreement with CenTrio
- Requires UMLLC to require CenTrio to perform the obligations that the Sublease and Concession Agreement obligate CenTrio to perform
- Obligates LSU to pay and perform all financial and other obligations owed by UMLLC to CenTrio pursuant to the Sublease and Concession Agreement
- Requires that UMLLC obtain LSU's consent prior to giving any consents to CenTrio called for in the Sublease and Concession Agreement.

Sublease and Concession Agreement

The Long Term Sub-Lease and Concession Agreement for Louisiana State University Utility System contains the definitive terms under which CenTrio will lease, improve, finance, and operate LSU's utility plant system, and under which CenTrio will cause TEP to design and construct the IMP. Key business terms contained in this Agreement are described in section 3, below.

3. Review of Business Plan

Lease

LSU will lease its Central Utility Plant and its Highland Utility Plant (collectively, the “utility plant system”), along with a limited portion of the LSU distribution system and the Vet Med Plant, to UMLLC, which in turn will sublease the same facilities to CenTrio. The primary terms of the Lease are:

- Term of 30 years
- Effective upon financial close
- Financial and other terms discussed below

Annual Financial Terms

LSU will pay an annual Utility Fee to CenTrio in return for the construction improvements and services it is providing. The Utility Fee consists of 3 components:

- Capped O&M Charge of **\$3,360,851.18**
 - This compensates CenTrio for operating and maintaining the utility plant system
 - This was the amount bid by CenTrio in its Best and Final Offer in November 2020
 - It will escalate by 2% annually for inflation
- Capital Charge projected at **\$7,540,997.63** for the first year after substantial completion of the IMP
 - This compensates CenTrio for a notional cost of equity, cost of debt, and amortization to repay the financing used to construct the Initial Modernization Project, calculated as described in the “Financing” section below, and will ultimately include any future capital improvement projects approved by LSU and financed by CenTrio.
 - The amount will increase slightly each year, as the equity return for CenTrio’s 10% of equity in the deal will increase annually by the 2% inflation amount, such that by the end of the 30 year term, the Capital Charge would be approximately \$8.3 million. The amount owed for the debt service, which covers 90% of the amount financed, will be flat, not adjusted for inflation.
 - The actual amount of the Capital Charge will be determined shortly before financial close, based on the Final GMP and the actual interest rate obtained for the IMP
- Uncapped O&M Charge
 - This compensates CenTrio for certain operations and maintenance costs it incurs as a result of changes caused or requested by LSU, or certain changes that cannot be reasonably anticipated or controlled by CenTrio, such as certain changes in law.
 - For example, if LSU needs new capacity in the utility plant system to accommodate campus growth, and thus adds new equipment (either through CenTrio or through a capital outlay process), CenTrio and LSU would negotiate an additional amount to cover CenTrio’s added costs for operating that new equipment.

Initial Modernization Project

LSU’s utility plant system produces electricity, steam, and chilled water which are distributed across campus to heat, cool, and power LSU’s buildings. Under the IMP, TEP, under its contract with CenTrio, will replace or renovate virtually all mechanical equipment (pumps, chillers, boilers, and cooling towers) in the Central Plant and add new equipment in the Highland Plant

to substantially increase its production capacity. In addition, the IMP will improve LSU's electrical substation and remove some bottlenecks which currently exist in the LSU utilities distribution system.

The exact scope of work for the IMP has been carefully prepared by CenTrio and TEP, with close review and approval by LSU and its consultants. The design has been advanced to what is known as the "30% design" stage, which means that the plans are sufficiently complete to allow for reasonable estimation of costs and final determination of design options. Plans at this stage are not sufficient to get final pricing but will be completed prior to financial close in order to determine the Final Guaranteed Maximum Price.

Based on the 30% design documents and the proposed Sublease and Concession Agreement, the IMP will:

- Cost no more than **\$111,880,557**, (the "Initial Guaranteed Maximum Price" or "IGMP"; this figure does not include certain CenTrio costs of financing and reimbursements to LSU that are described under "Financing," below)
 - This IGMP will be replaced with a Final Guaranteed Maximum Price (FGMP), mutually agreed by all parties, prior to financial close of the transaction.
 - CenTrio and TEP have guaranteed that the FGMP will not exceed the IGMP, and the FGMP is expected to be lower than the IGMP.
 - The FGMP will be reported to the Board prior to financial close.
- A summary of the final scope of work is available in Attachment 3 of this submission. Generally, the scope consists of replacing or renovating pumps, chillers, cooling towers, and boilers which actually perform the heating and cooling of water into chilled water or steam, along with related improvements to the electrical system which provides electricity to those machines, and also to underground piping and related gear which distribute the steam and chilled water across campus.
- Comply with LSU's Diverse Supplier Initiative and actively seek to involve DBE firms with the financing, construction, and operation and maintenance of the project, as set forth in Schedule 17 to the Sublease and Concession Agreement
- Provide transparency into the actual construction costs incurred for the project, including review by LSU and its contract monitor of all draw requests submitted by TEP to CenTrio, prior to payment by CenTrio
- If the project is completed below the budgeted amount, LSU, CenTrio, and TEP will share in the savings
 - The basic split is 55% of savings to LSU, with 45% of savings to CenTrio, which it will share with TEP, unless the IMP is completed at least 90 days ahead of schedule, in which case the split of savings would be 45% in favor of LSU and 55% in favor of CenTrio, to provide an incentive for early completion, which would be to LSU's benefit.
 - The IGMP amount includes a \$5 million contingency amount; this amount will be under LSU's control and will NOT be subject to the savings split.

Under the proposed Sublease and Concession Agreement, and based on the 30% design, CenTrio and TEP have proposed that the IMP capital cost will not exceed \$111,880,557 and may be reduced further (but not increased) prior to financial close of the transaction. Details of the final scope agreed to by the parties are summarized in Attachment 3 to this Board submission.

Note that the cost has increased from the \$90 million figure that was used in the competitive negotiation process between CenTrio and TEP for several reasons:

- The \$90 million was always intended to be a rough estimate to allow for an appropriate comparison of the underlying financial and other terms proposed by the two parties.
- The figure was always expected to change upon completion of a full scope of work and design exercise to identify LSU's needs and opportunities more fully.
- During the programming and design exercises with CenTrio and TEP, several bottlenecks in the existing LSU distribution and electrical systems were identified that would prevent portions of the campus from receiving full benefit from the increased plant capacity, or would reduce available redundancies to insure full system performance even when a component is unavailable for a period of time, unless those bottlenecks are eliminated as part of the IMP.
- Construction costs increased substantially due to pandemic-related shortages of material and labor.

As shown in more detail in the Fiscal Impact section below, LSU will still realize substantial savings in commodity costs and reduced O&M costs, despite the increase in capital cost. Further, the scope of work has increased to include the distribution work described, which means that LSU is getting more improvements than originally contemplated.

Financing

The Capital Charge included in calculating the total Utility Fee paid by LSU to CenTrio will be based on the following terms:

- Total Amount Financed, which will be the sum of:
 - Final GMP amount (which will not exceed the IGMP of \$111,880,557).
 - No more than 2.5% of the FGMP for LSU's reimbursable expenses (legal fees, contract monitoring, etc.; LSU does not expect to include this full amount in the financing, but is still calculating the precise costs)
 - No more than \$840,000 of CenTrio's costs of issuance and legal fees associated with the transaction
- Stipulated Debt financing of 90% of the Total Amount Financed
 - 3.3% is the projected interest rate, which will be set shortly before financial close
 - Debt, issued as long-term capital placed through Bank of America
 - One or more DBE financial institutions will be invited to subscribe to the private placement bonds on the same terms as other participating lenders
- Stipulated Equity financing of 10% of the Total Amount Financed
 - 10% after-tax equity return on investment, in accordance with CenTrio's BAFO
 - CenTrio will offer some portion of the equity share to DBE investment groups or entities after completion of construction; however, CenTrio notes that, given the small amount of equity available and the relatively high transaction costs for due diligence to buy-in to the deal, it is unlikely that any investors outside of CenTrio will find it feasible to buy in to the equity return.

Future Projects

LSU has certain rights, but not obligations, to ask (or, in some cases, require) CenTrio to perform improvements to the utility plant system and the distribution system. Such projects would be subject to these terms:

- CenTrio will propose 5-year plans for improvements that would enhance the performance of LSU's utility plant systems or distribution systems, by improving energy efficiencies, reducing operating costs, increasing redundancies, or providing better service to the campus
 - LSU will participate in the planning process
 - LSU is not obligated to accept or act on any of the plans
- Exact scope and design of any projects will be negotiated at the time of the project
- Debt/equity gearing ratio will be negotiated at the time of the project
- Equity return will remain 10% after-tax
- Interest rate for the debt portion of the financing will be set at the time of the project, with a targeted and expected interest rate tied to a Bloomberg-Barclays US-based utilities and energy index
- Any increases in O&M costs caused by the new improvements will be negotiated
- As with the IMP, LSU will have transparency into the actual construction costs incurred, including review by LSU and its contract monitor of all draw requests submitted by TEP to CenTrio, prior to payment by CenTrio
- CenTrio and TEP will continue to conform with LSU's Diverse Supplier Initiative and the goals and objectives set forth in Schedule 17 of the Sublease and Concession Agreement
 - Any DBE firms who participate in the post-construction equity component of the IMP financing will have an opportunity to participate in the equity component of future projects. Again, CenTrio notes that, given the small amount of equity available and the relatively high transaction costs for due diligence to buy-in to the deal, it is unlikely that any DBE investors, or any investors outside of CenTrio, will find it feasible to buy in to the equity return, though this may change depending on the debt/equity gearing ratio agreed for such future projects and the size of such projects
 - DBE financial institutions who participate in the debt portion of the IMP financing will have an opportunity to do so again in the debt component of future projects.

LSU may use capital outlay funds without restriction to construct improvements or add capacity in the utility plant system or the distribution system. For capital outlay projects in the utility plant system that are funded primarily with capital outlay, CenTrio is required to participate in the state design and construction process as LSU's owner's rep, and will receive a fee of 2.5% of certain project costs for doing so. CenTrio will not receive any such fee for projects that it is primarily responsible for financing and constructing.

Plant Performance

CenTrio's operation of the utility plant system will be subject to certain Key Performance Indicators and other performance measures to ensure LSU is receiving the expected services and helps to ensure that the commodity savings are achieved. These KPIs are key to ensuring that

LSU will reduce its consumption of electricity and natural gas and achieve the projected savings from commodities costs.

- The specific KPIs and performance measures to be met were established primarily in the Request for Negotiated Offers issued by LSU and the BAFO submitted by CenTrio. Some of these are technical KPIs intended to ensure that the energy savings goals of the university are met, while others are up-time requirements to ensure that the core requirements to keep the campus lit, heated, and cooled appropriately are met.
- Each KPI and performance measure has a financial consequence attached, a liquidated damages amount for failing to meet the requirements.
- The amount of the liquidated damages is calculated to ensure that, if the energy savings goals are not met (and thus LSU does not receive the benefit from projected savings in commodity purchase), the liquidated damages amount will be sufficient to make LSU whole from that loss

If there are substantial and continued failures to meet the KPIs and performance measures, the amount of liquidated damages owed by CenTrio could become so large as to jeopardize repayment of the debt for the IMP and CenTrio's ability to continue to fund operations of the plants. To protect against this risk (which would be very detrimental to LSU and increase the cost to finance the IMP by increasing risk to the lenders), the agreement contains cap on the amount of liquidated damages which may be paid by CenTrio to LSU in any given year. If the cap applies in a given year, then any amount owed by CenTrio above that cap will roll over to the following year. This roll-over is also subject to cap. To protect LSU from prolonged failure to meet the KPIs, LSU has the right to require CenTrio to replace the plant operator under certain conditions.

- Annual cap on liquidated damages is \$2.5 million
- Liquidated damages in excess of the \$2.5 million in any year will roll over to the following year, for up to 2 years
- If CenTrio owes penalty payments in excess of \$2.5 million in any 2 years within a single 5-year period, LSU has the right to require CenTrio to obtain a new operator for the utility plant system

Employees

LSU and CenTrio both highly value the current utility plant employees, who have an unparalleled knowledge of the plant systems and who have been dedicated to keeping the plants functioning despite the extreme amount of deferred maintenance within them. Under the agreements, LSU employees currently assigned to the utility plant system will be given the option to quit or retire (if eligible) from LSU and be hired by CenTrio, which is committed to retain such employees for at least one year.

Depending on what is allowed by the state Civil Service Commission, LSU intends to allow employees who are within a few years of being eligible for retirement to remain as LSU employees, while LSU leases their services to CenTrio, which will pay LSU the full costs incurred by LSU for such continued employment. It would not be fair to force employees who are only a year or two from retirement to leave LSU and lose their long-expected retirement benefits.

Employees who are not near a major retirement milestone will either have to leave and accept employment with CenTrio, be reassigned to another job at LSU (if any are available) or be laid off. The precise thresholds for which employees will have the option to stay on with LSU while their services are leased to CenTrio will be determined through consultations with the employees and negotiations with the state Civil Service Commission, which will have the final determination of the rules to be followed. If all employees come to a voluntary agreement with CenTrio and LSU, without the need for any layoffs, then no Civil Service Commission action will be required.

Termination

In order to comply with state law requirements governing state debt, the payments owed to CenTrio will be subject to a non-appropriation clause, meaning that if the LSU budget set by the legislature is insufficient, in LSU's judgment, to fund the payments owed to CenTrio, LSU would not have to pay that amount.

However, consistent with state precedent transactions such as the Shaw Center arrangement between TEP's parent entity and the state, if such a non-appropriation event occurs, or if LSU chooses to terminate the agreement for any reason other than the fault of CenTrio, LSU will be required to make a substantial payment to CenTrio upon such termination.

- The compensation on termination amount will be the greater of (a) certain debt of CenTrio and (b) the assessed fair market value of the remaining concession period
 - In LSU's deal with CenTrio, the calculation of fair market value expressly bars the appraiser from assigning any value to hypothetical future projects that were never approved by LSU. This feature favorably distinguishes this project from a number of other lease-based transactions involving university utilities that have closed in recent years.
- If the contract must be terminated as a result of default by CenTrio, the following would apply:
 - LSU, since it will be the owner of the plant improvements, will also have to: (1) repay the principal amount due on the outstanding debt and (2) return the principal amount of the equity, but will not pay any further return on the equity that CenTrio would have earned over the life of the agreement
 - Acts of default by CenTrio include:
 - Failing to comply with any material obligations of the agreement, other than KPIs and Performance Standards
 - Filing for bankruptcy or otherwise becoming insolvent
 - Abandoning the project
 - Failing to complete the IMP by May 30, 2025
 - Note that failure to meet the KPIs and Performance Standards, even for an extended period, will not constitute a default of the agreement, but will allow LSU to require CenTrio to replace the operator of the utility plant system

Risks

No transaction of this magnitude is implemented without risk. One of the prime purposes of entering into these agreements is to shift some risks that LSU already has to the private parties

involved, which the private parties agree to accept in return for payment of the amounts to be paid by LSU. Risks in such transactions can include, but are not limited to:

- Certain construction risk, the risk that construction of the IMP is not achieved on schedule or to the original budget
 - This risk will be shared by CenTrio and TEP
 - If there is a failure during the construction process, LSU is financially protected through the requirement of a substantial performance bond, as is typical with large construction contracts
 - LSU is protected from cost overruns by the Guaranteed Maximum Price set in the agreements.
 - LSU is not obligated to begin payment for the Financial Charge associated with construction of the IMP until the IMP improvements are completed and accepted by LSU.
 - Another construction-related risk is associated with the separate state capital outlay project to fund distribution system improvements related to the new Life Sciences building (the new Science Zone Infrastructure project). To maximize use of state funding, the IMP design assumes that the state project will, as planned, install underground distribution piping that will complete the connection between the Central and the Highland Utility Plants, allowing either or both plants to provide steam and chilled water to most of the existing campus distribution loops. If for any reason the state does not fulfill its commitment to fund and approve the new Science Zone Infrastructure project, the current IMP scope would be insufficient to complete the goals of the IMP. To protect against this risk, LSU needs to make every effort to ensure that the state fully understands the importance of the New Science Zone project and follows through on its commitment. If the state fails to do so, LSU, CenTrio, and TEP will have to make significant changes to the IMP design scope in order to make funds available to complete the anticipated piping.
- Certain operation risk, the risk that the plant is operated inefficiently or incompetently
 - LSU is protected from this risk by the liquidated damages owed by CenTrio if it misses the KPIs or performance measures as well as by LSU's right to require to provide a new operator for the plants, if there are repeated substantial failures to meet those KPIs and performance measures over a period of multiple years
- Commodity price risk
 - Under the agreements, LSU will continue to be responsible for directly contracting with Entergy and a wholesale natural gas supplier for the purchase of electricity and natural gas consumed by the plants.
 - All savings that are guaranteed by the KPI and Performance Standard liquidated damages faced by CenTrio relate to savings of consumption of the relevant commodities, not to savings of a particular dollar amount. This means that if commodity prices go up, LSU could pay more for the electricity and natural gas it consumes than LSU is currently paying. The guarantees simply ensure that LSU won't consume more of those commodities than it is currently consuming.
 - This leaves LSU at risk for:
 - Fluctuations in the price of those commodities
 - Price shifts which would alter the price of electricity and natural gas relative to each other, which could affect the dollar value of savings

recognized by the university over time as a result of the design choices made for the IMP.

Balanced against these risks are the risks of inaction. These risks include, but are not limited to:

- Continued degradation of the LSU utility systems, with major components failing at unpredictable times. Emergency, piece-meal replacements made necessary by such failures would certainly cost more and be less energy efficient than the complete overhaul of the utility plant systems and related facilities in accordance with this process.
- Failure to operate the plant optimally. While LSU has exceptional employees who have done an excellent job keeping the aging equipment of the utility plant system functioning, LSU also has difficulty attracting and retaining highly qualified plant operators, due to competition from the chemical and petroleum plants in the area
- Higher commodity consumption caused by the continued use of old, outdated equipment within the utility plant system

Benefits

LSU expects to receive substantial benefits from entering into the proposed transaction, which will exceed in value the risks described above. LSU will receive:

- Substantial savings, more fully set forth in the “Fiscal Impact” section below, including
 - Energy efficiencies leading to a reduced consumption of commodities such as electricity, natural gas, and water
 - Reduced costs for operating and maintaining the utility plant system
- Elimination of over \$100 million in deferred maintenance associated with the aging equipment in the plants
- Improved redundancies throughout the utilities infrastructure, increasing the reliability of the system
- Substantial reduction of risk of catastrophic failure of the current, aging components of the utility plant system, thereby reducing the risk that the campus would face prolonged utility outages as well as the risk that LSU would be forced to incur extreme costs for emergency equipment rentals and emergency replacements of failed components.

Schedule and Approvals

Prior to execution, the proposed transactions must receive approval from:

1. Louisiana Board of Regents
2. State of Louisiana, Division of Administration
3. State Bond Commission
4. Joint Legislative Committee on the Budget

If any lay-offs of civil service employees are required, approval from the state Civil Service Commission will also be required. LSU hopes to avoid such approvals by making satisfactory voluntary arrangements with the affected employees operating the utility plant systems.

LSU will make applications for approvals from each of these agencies upon approval of this transaction by the Board. Based on the scheduled meetings of the Regents, Bond Commission, and JLCB, LSU anticipates that it can receive all approvals in sufficient time to have financial close on the transaction in January or February 2022.

In order to reduce pricing risks, CenTrio and TEP will begin seeking competitive subcontractor pricing and placing non-binding equipment orders immediately upon approval of this transaction by the Board of Supervisors. This will allow the project to begin faster and reduce the risk of inflation in construction costs and interest rates.

Construction will start almost immediately upon financial close. CenTrio and TEP expect to reach substantial completion for the improvements by May 31, 2024. They will be in default of the agreement if substantial completion is not achieved by May 30, 2025.

4. Fiscal Impact

LSU expects to save no less than \$1.3 million annually for the next 30 years under the proposed agreement. The savings from the first two years will be even higher, some \$5 million annually, because CenTrio's lower operating costs will begin immediately, while the additional charge related to financing the IMP will not begin until the IMP is completed, which is projected to be about two years from financial close of the transaction.

LSU's savings will come from 3 primary components:

- Reduced operating costs; CenTrio will operate and maintain the utility plant system for less than it costs LSU to perform the same operations
- Reduced commodity costs; the IMP will operate with greater energy efficiency than LSU's current aging equipment, resulting in reduced consumption of electricity and natural gas.
- Reduced future capital costs and emergency expenditures; without a significant capital infusion, LSU's utility plant system will continue to degrade and is expected to experience periodic catastrophic failure, which would necessitate emergency repairs or replacements, along with emergency equipment rentals to continue serving the campus. Those emergency items would cost far more over time than the plan, scheduled replacements called for in the IMP

Over the 30 year term of the proposed agreements:

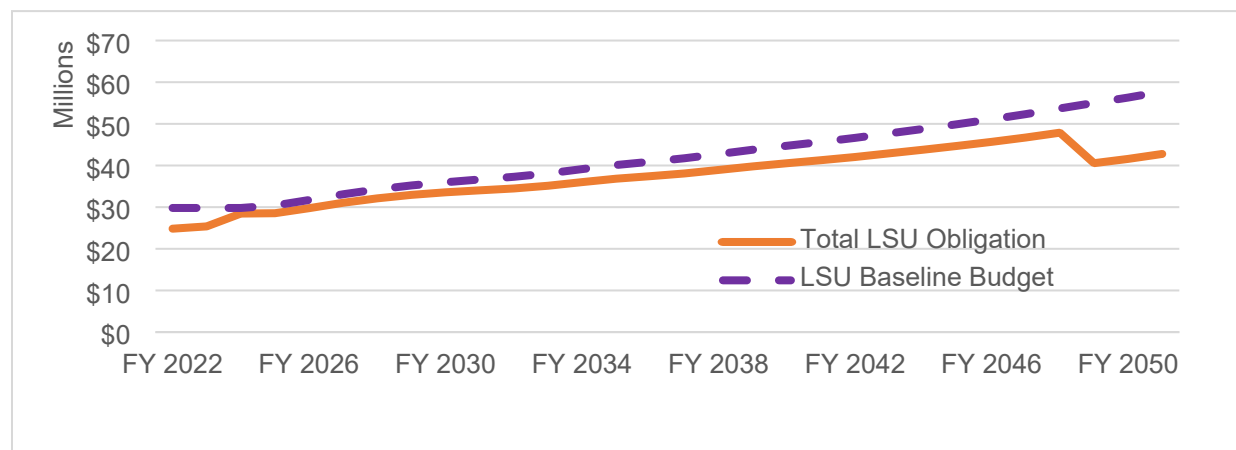
- LSU will save a total of \$142,296,682 compared to its projected baseline budget
- That total has a Net Present Value of \$69,185,795

The following charts, prepared by KPMG, illustrate the total projected costs and savings.

Transaction Statistics

Project Cost Assumptions	
Initial Guaranteed Maximum Price	\$111,880,557
LSU Reimbursable Expenses	\$2,797,014
Financial Arrangement Costs	\$573,388
Total Amount Financed	\$115,250,959
Financing Assumptions	
Gearing Ratio	90.00%
Equity Return	10.00%
Debt Rate	3.30%
Debt Funded Initial Modernization Solution	\$103,725,863
Equity Funded Initial Modernization Solution	\$11,525,096
Annual Cost Basis	
Pre-Modernization Total Cost to LSU	\$24,828,916
Post-Modernization Year 1 Cost to LSU	\$28,459,036
Average Annual Cost to LSU	\$37,262,092
Minimum Annual Savings	\$1,344,202
Total Savings	\$142,296,682
NPV Savings (4% NPV Rate)	\$69,185,795

Annual Savings



5-Year Pre and Post Initial Modernization Cost Comparison

Utilities Modernization Initiative	Year 1	Year 2	Year 3	Year 4	Year 5
	Pre-Modernization		Post-Modernization		
Capped O&M Costs	3,360,851	3,428,068	3,496,630	3,566,562	3,637,893
Initial Modernization Capital Charge	-	-	7,540,998	7,568,665	7,596,886
Total Commodities Cost	17,240,059	17,601,166	16,721,409	17,408,655	18,518,918
Cogen Settlement and Debt Service	4,228,006	4,350,884	700,000	-	-
Total LSU Obligation	24,828,916	25,380,118	28,459,036	28,543,882	29,753,697
LSU Baseline Plant Budget¹	29,803,238	29,803,238	29,803,238	30,406,770	31,711,785
Benefits Relative to Budget	4,974,322	4,423,120	1,344,202	1,862,887	1,958,088

¹⁾ Includes estimated costs for deferred maintenance

It is important to note that LSU expects to use the savings coming from the UMI to increase service levels in its facilities operations and, potentially, fund future efforts within the framework of these agreements to continue to address its deferred maintenance challenges.

5. Description of Competitive Process

LSU has conducted an extensive competitive negotiation process to reach the proposed agreement with CenTrio and TEP.

LSU had been extensively studying its utility system and the potential for a public-private partnership to increase its performance, including multiple discussions with industry-leading energy services firms. In the course of that work, LSU received proposals to provide the energy services which LSU was seeking, from two firms (CenTrio, then called Enwave, and TEP's parent entity, Louisiana Energy Partners) which each had existing energy services contracts with either LSU or the state of Louisiana. CenTrio has a contract to provide energy services to the LSU Health Sciences Center – New Orleans campus, and TEP's parent Louisiana Energy Partners has a contract with the state to provide energy services to the Shaw Center complex in downtown Baton Rouge.

September 2020

After an initial review of these two proposals, in September 2020, this Board determined that the dire condition of LSU's utilities system necessitated a rapid procurement process and directed LSU staff and its consultants to engage in competitive negotiations with each of these two firms. Complying with this directive, LSU issued a Request for Negotiated Offers to each firm, then engaged each firm in extensive negotiations intended to ensure that both firms fully understood LSU's expectations. After these competitive negotiations, each firm submitted a Best and Final Offer ("BAFO") to LSU in November 2020.

February 2021

After LSU had reviewed and evaluated each BAFO, the two firms, CenTrio and TEP, came together and proposed to LSU that they join forces to jointly provide the services needed as part of LSU's Utilities Modernization Initiative. At a special meeting held in February 2021, this Board directed LSU staff to negotiate with CenTrio and TEP to enter into a Cooperative Endeavor Agreement with all parties, and a lease with CenTrio, to provide for implementation of the Utilities Modernization Initiative. The final deal was directed to be consistent with the presentation made to the Board that day, based on the outcome of negotiations between CenTrio and TEP. The goal was to implement the Utilities Modernization Initiative, as it had been set forth in the Request for Negotiated Offers and BAFOs prepared and submitted in late 2020, with the only change being which firms would perform which services contemplated in those documents. The document presented to the Board at the February meeting is attached as Attachment 4 to this Board submission.

6. Review of Legal Documents

The documents have been negotiated by LSU and Phelps Dunbar as lead outside counsel for LSU, assisted by the Hunton law firm, a national law firm with expertise in similar deals conducted by other universities. KPMG and LSU staff have also played a substantial role in negotiation of the commercial terms. The terms of the agreements are generally as or more advantageous to the university than comparable terms included in other similar agreements between universities and energy services firms.

The drafts provided are complete in all material business terms. There are some construction-related and similar schedules to the agreements that are still in preparation, as is routine for transactions of this magnitude. Counsel for all parties will continue to review the documents prior to financial close, and some minor changes are expected in the normal course of business, particularly as CenTrio engages in more detailed discussions with its lenders, who may request or require changes as a condition of financing. No changes are anticipated that would materially affect the business and financial terms outlined in this Board submission. The resolution proposed below provides for the Board to receive copies of the final form of agreements prior to financial close.

7. Parties of Interest

LSU

LSU Real Estate & Facilities Foundation

CenTrio

Raptor Bid Co. I, a single-purpose entity owned by an investment consortium of Ullico Infrastructure Master Fund, QIC limited, and the California Public Employees' Retirement System

Tiger Energy Partners and Louisiana Energy Partners, which are each joint ventures between Bernhard, LLC and Johnson Controls

Bernhard, LLC

Bernhard, LLC's owners; currently a majority of its shares are owned or controlled by Bernhard Capital Projects and some of its key employees, shareholders, and related entities, but Bernhard Capital Partners' controlling interest is expected to be sold, prior to financial close of the transaction with LSU, CenTrio, and TEP, to DIF Capital Partners, a Netherlands-based energy investment firm

Johnson Controls

8. Related Transactions

Not applicable.

9. Conflicts of Interest

There are no known conflicts of interest between any LSU employees and consultants involved with the project and any of the private firms listed under "Parties in Interest", above.

10. Attachments

1. Transmittal Memo
2. Savings Analysis
3. Scope of Work Summary for IMP
4. February 2021 Board presentation
5. Draft CEA
6. Draft Prime Lease
7. Draft Long Term Sublease and Concession Agreement

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College hereby authorizes the LSU President, or the President's designee, to execute and approve the following agreements and documents:

1. A Cooperative Endeavor Agreement between LSU, CenTrio, TEP, and UMLLC providing for implementation of LSU's Utilities Modernization Initiative;
2. A Long Term Lease and Concession Agreement (the "Prime Lease") providing for the leasing of the utility plant system and related facilities by LSU to UMLLC, financing and construction of the Initial Modernization Project, the long-term operation of LSU's utility plant system, and future construction projects within the utility plant system and distribution system;
3. A Long Term Sub-lease and Concession Agreement between UMLLC and CenTrio providing for subleasing of the utility plant system and related facilities by UMLLC to CenTrio and for such other matters as set forth in the Prime Lease; and
4. Such other agreements, documents, approvals, and consents as are reasonably necessary to accomplish LSU's Utilities Modernization Initiative and for all other purposes set forth in this Resolution; and

BE IT FURTHER RESOLVED that all agreements authorized by this Resolution shall be contain terms that are as or more advantageous to LSU than the form of agreements and the business and financial terms presented to the Board at its October 2021 meeting, and provided further that final copies of the Cooperative Endeavor Agreement, the Prime Lease, and the Long Term Sub-lease and Concession Agreement shall be transmitted by the President to the Board prior to financial close of the transaction; and

BE IT FURTHER RESOLVED that the improvements constructed pursuant to these agreements shall not constitute "Auxiliary Facilities" as defined in the General Bond Resolution adopted by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College on June 17, 1994, as supplemented and amended from time to time (the "General Bond Resolution"); and

BE IT FURTHER RESOLVED that the payment obligations of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College under these agreements shall be expressly subordinate to the payment of debt service on the Bonds (as defined in the General Bond Resolution heretofore or hereafter issued pursuant to the General Bond Resolution); and

BE IT FURTHER RESOLVED that the Board hereby determines that an Acceptable University Purpose exists, for purposes of the Uniform Affiliation Agreement, for UMLLC, as a subsidiary entity of REFF, to enter into the various agreements called for by this Resolution.



Louisiana State University

Utilities Modernization Initiative

October 2021

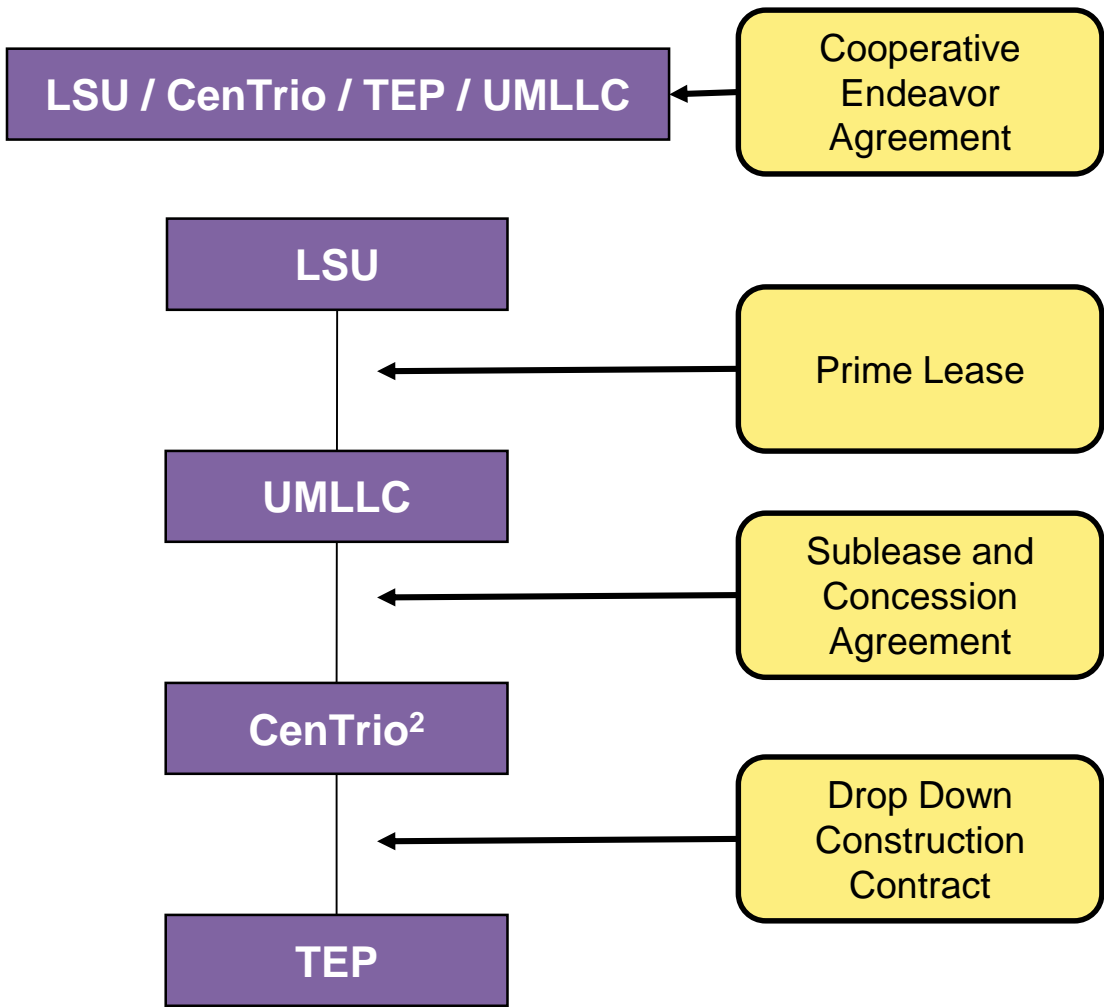


Agreement Structure

Parties¹

Agreement

General Overview



- The transaction structure outlined left is intended to comply with La. R.S. 17:3361 *et seq.*, such that implementation of the Initial Modernization Solution will occur **pursuant to a lease/sublease arrangement following the competitive proposal process undertaken** among LSU, CenTrio and LAEP during 2019 and 2020
- A new Cooperative Endeavor Agreement (CEA) is included as part of the project's definitive agreements, **consistent with the Board's resolution adopted February 23, 2021**, though the structure does not rely solely on the legal treatment of the entire project as a "Cooperative Endeavor Agreement"
- The CEA provides the additional **benefit of bringing all project parties under one document** and providing a high-level outline of the project structure

1) Acronyms for Parties refer to: **Tiger Energy Partners** ("TEP", a subsidiary of Louisiana Energy Partners), and **Utilities Modernization Limited Liability Company** ("UMLLC", a subsidiary of LSU Real Estate Facilities Foundation)

2) As currently drafted, Baton Rouge Energy Concessionaire LLC, a special purpose entity formed by CenTrio, will be the named counterparty to UMLLC in the Sublease and Concession Agreement. A similar special purpose entity may be formed for operations and maintenance.

Responsibilities



Utility Facilities



Distribution System



Building Mechanicals

Initial Modernization Solution	
Construction	Operations
<ul style="list-style-type: none">▪ Financed by CenTrio▪ Constructed by TEP▪ Install New and Refurbish Existing Equipment	<ul style="list-style-type: none">▪ CenTrio will operate and maintain plant for 30 years▪ Will be held to Performance Standards and Key Performance Indicators▪ LSU has certain rights to require a new operator
<ul style="list-style-type: none">▪ Financed by CenTrio▪ Constructed by TEP▪ 36' pipe from Main to Highland Plant and removal of certain bottlenecks	<ul style="list-style-type: none">▪ LSU maintains responsibility for the operations and maintenance of the Distribution System
N/A	N/A

KPIs and Performance Standards

Key Performance Indicators (“KPIs”)

Purpose

Require CenTrio to meet certain measurable targets in order to align financial payments with levels of service

Examples

Availability KPIs:

- Annual Steam Unplanned Outage Events
(Target = 4 events or fewer)
- Annual Chilled Water Unplanned Outage Hours
(Target = 99.90% availability)
- Annual Cogeneration System Unplanned Outage Hours
(Target = 94.00% availability)

Operational KPI:

- Hot Water System Efficiency
(Target = 1.240 MCF/MMBTU)
- Chiller Plant Efficiency
(Target = 0.750 kW/ton average)
- Cogeneration System Output
(Target = 20,000 kW)

Performance Standards

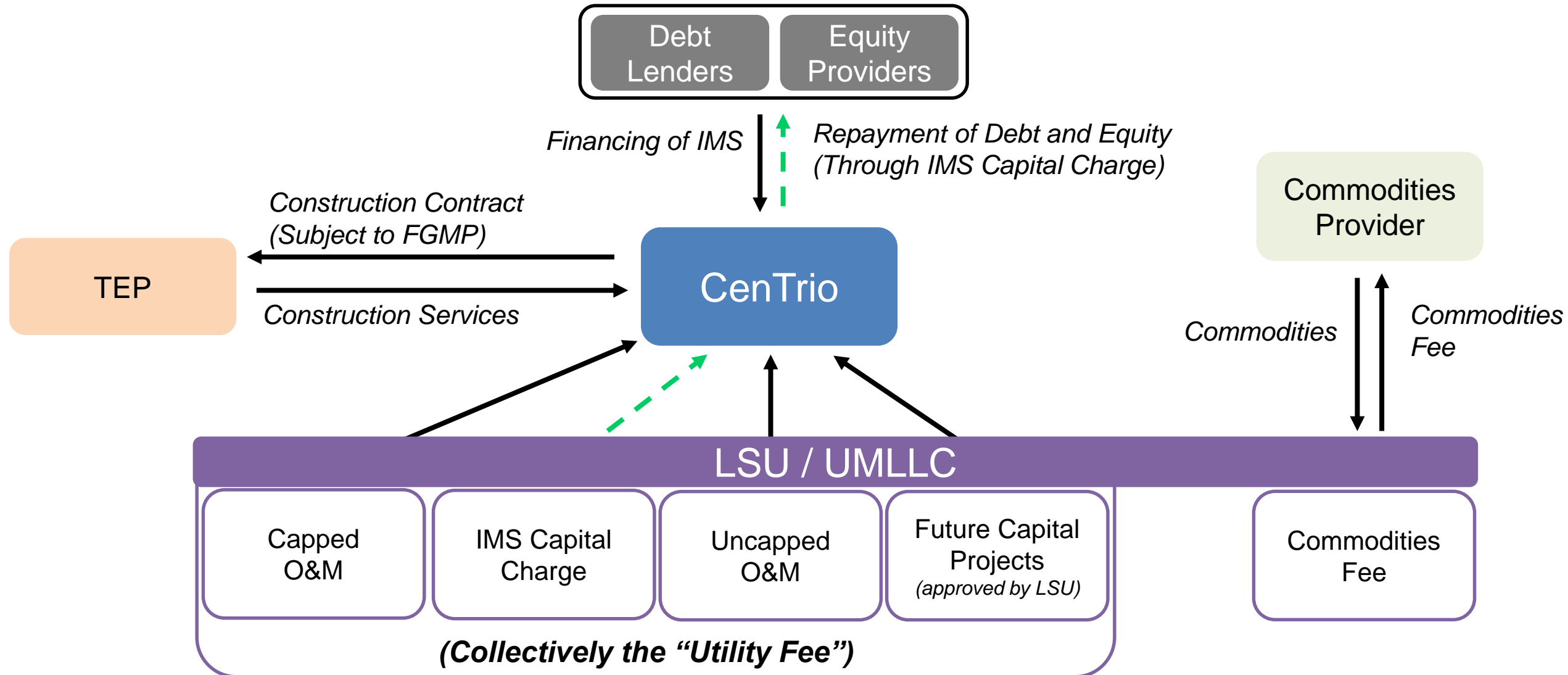
Purpose

Performance Standards work in tandem with KPIs to ensure CenTrio follows prescribed guidelines when operating the Utility Facilities

Examples

- Design standards and exterior appearance
- Health and safety
- Environmental compliance
- Vehicle use and operations
- Operations plans (short term and long term)
- Data network requirements

Flow of Funds



LSU Payments to CenTrio

Payments from LSU to CenTrio	FY 2022	FY 2024	Inflation Adj.
Capped O&M Costs	\$ 3,360,851	\$ 3,496,630	2%
Initial Modernization Capital Charge		\$ 7,540,998	
Equity Portion		\$ 1,383,911	2%
Debt Portion		\$ 6,157,087	0%
Total LSU Obligation	\$ 3,360,851	\$ 7,540,998	

Chart reflects all payments that will be made by LSU to CenTrio in the respective fiscal years. No Uncapped O&M costs are currently projected.

Capped O&M	CenTrio bid a fixed annual price to operate and maintain LSU’s utility plant system. The amount will increase by 2% annually, but will not otherwise change, regardless of actual costs.
Capital Charge	The final amount will be based on the actual amount borrowed at financial close. Payments do not begin until completion of the construction project.
Debt	90% of the amount financed will be borrowed as private debt, at an interest rate determined by the market at financial close. CenTrio and LSU’s consultants expect a rate of approximately 3.3%.
Equity	CenTrio is financing the remainder as equity, with an anticipated 10% return. This amount will increase by 2% annually to adjust for inflation, but will not otherwise change, regardless of actual costs, inflation rates, or other factors.
Uncapped O&M	To allow for changes to O&M expectations required of CenTrio for reasons outside of its control (such as new regulatory burdens imposed by law or added capacities required by LSU) LSU and CenTrio can agree on additional charges to cover its increased costs to meet those new expectations.

Estimated Annual Savings

Estimated Savings: FY2022 - FY2031	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Capped O&M Costs ¹	3,360,851	3,428,068	3,496,630	3,566,562	3,637,893	3,710,651	3,784,864	3,860,562	3,937,773	4,016,528
Initial Modernization Capital Charge ¹	-	-	7,540,998	7,568,665	7,596,886	7,625,671	7,655,032	7,684,980	7,715,527	7,746,685
Estimated Commodities Cost ¹	17,240,059	17,601,166	16,721,409	17,408,655	18,518,918	19,722,061	20,674,302	21,404,714	21,913,160	22,273,818
Cogen Settlement and Debt Service	4,228,006	4,350,884	700,000	-	-	-	-	-	-	-
Total LSU Obligation	24,828,916	25,380,118	28,459,036	28,543,882	29,753,697	31,058,383	32,114,199	32,950,256	33,566,460	34,037,032
LSU Estimated Budget ²	29,803,238	29,803,238	29,803,238	30,406,770	31,711,785	33,097,315	34,262,210	35,211,979	35,977,547	36,645,626
Savings Relative to Budget	4,974,322	4,423,120	1,344,202	1,862,887	1,958,088	2,038,932	2,148,011	2,261,724	2,411,088	2,608,594

Estimated Savings: FY2032 - FY2041	FY 2032	FY 2033	FY 2034	FY 2035	FY 2036	FY 2037	FY 2038	FY 2039	FY 2040	FY 2041
Capped O&M Costs ¹	4,096,859	4,178,796	4,262,372	4,347,619	4,434,572	4,523,263	4,613,728	4,706,003	4,800,123	4,896,126
Initial Modernization Capital Charge ¹	7,778,466	7,810,883	7,843,948	7,877,675	7,912,076	7,947,165	7,982,956	8,019,462	8,056,699	8,094,681
Estimated Commodities Cost ¹	22,608,297	23,145,766	23,905,323	24,608,038	25,092,216	25,617,571	26,335,762	27,057,038	27,684,424	28,282,737
Cogen Settlement and Debt Service	-	-	-	-	-	-	-	-	-	-
Total LSU Obligation	34,483,623	35,135,445	36,011,643	36,833,333	37,438,864	38,087,999	38,932,446	39,782,503	40,541,246	41,273,543
LSU Estimated Budget ²	37,285,789	38,094,800	39,133,759	40,119,353	40,900,144	41,737,920	42,741,438	43,784,711	44,734,173	45,654,763
Savings Relative to Budget	2,802,166	2,959,355	3,122,116	3,286,020	3,461,280	3,649,920	3,808,992	4,002,208	4,192,926	4,381,221

Estimated Savings: FY2042 - FY2051	FY 2042	FY 2043	FY 2044	FY 2045	FY 2046	FY 2047	FY 2048	FY 2049	FY 2050	FY 2051
Capped O&M Costs ¹	4,994,048	5,093,929	5,195,808	5,299,724	5,405,718	5,513,833	5,624,109	5,736,591	5,851,323	5,968,350
Initial Modernization Capital Charge ¹	8,133,422	8,172,938	8,213,244	8,254,356	8,296,291	8,339,064	8,382,693	-	-	-
Estimated Commodities Cost ¹	28,912,746	29,654,443	30,385,425	31,156,638	31,973,555	32,864,266	33,869,191	34,821,833	35,731,314	36,805,290
Cogen Settlement and Debt Service	-	-	-	-	-	-	-	-	-	-
Total LSU Obligation	42,040,216	42,921,309	43,794,476	44,710,718	45,675,564	46,717,163	47,875,993	40,558,424	41,582,638	42,773,640
LSU Estimated Budget ²	46,632,975	47,708,993	48,782,141	49,917,560	51,092,013	52,332,861	53,701,969	55,023,559	56,308,797	57,748,783
Savings Relative to Budget	4,592,760	4,787,684	4,987,665	5,206,842	5,416,449	5,615,698	5,825,976	14,465,135	14,726,159	14,975,143

1) Estimates based on current conditions. Subject to change prior to commercial and financial close

2) Includes estimates for deferred maintenance, averaged over time

COOPERATIVE ENDEAVOR AGREEMENT

dated as of [•], 2022

by and among

**Board of Supervisors of the
Louisiana State University and Agricultural and Mechanical College,**

Utilities Modernization LLC,

Baton Rouge Energy Concessionaire LLC, and

Tiger Energy Partners, LLC

**COOPERATIVE ENDEAVOR AGREEMENT
(LSU Utilities Modernization Initiative)**

THIS COOPERATIVE ENDEAVOR AGREEMENT (this “**UMI CEA**”) is made and entered into effective as of [•], 2022 (the “**Effective Date**”), by and among (i) the Board of Supervisors of the Louisiana State University and Agricultural and Mechanical College, herein represented by William F. Tate IV, its duly authorized President (the “**University**”), (ii) Utilities Modernization LLC, a Louisiana limited liability company (“**UMLLC**”), a wholly owned subsidiary of LSU Real Estate Facilities Foundation, a Louisiana non-profit corporation (“**REFF**”), (iii) Baton Rouge Energy Concessionaire LLC, a Delaware limited liability company (“**CenTrio**”), an affiliate of CenTrio Energy South LLC, and (iv) Tiger Energy Partners, LLC, a Delaware limited liability company (“**TEP**”). The University, UMLLC, CenTrio and TEP are each referred to herein as a “**Party**” and together the “**Parties**”.

WITNESSETH:

WHEREAS, Article VII, Section 14(C) of the Louisiana Constitution of 1974, as amended (the “**Constitution**”), provides that for a public purpose, the State of Louisiana (the “**State**”) and its political subdivisions, such as the University, may engage in cooperative endeavors with political subdivisions, private associations, corporations, or individuals;

WHEREAS, at the University’s flagship campus in Baton Rouge, Louisiana (the “**Campus**”), the operating costs, deferred maintenance and replacement of existing utilities assets and infrastructure (the “**Utilities Infrastructure**”, which, for purposes of this UMI CEA, shall include the Building Mechanical Systems (as defined below)) places a substantial financial burden on the University and State and exposes the University, State and those facilities to risks that materially and adversely impact the University’s ability to conduct its business, satisfy its commitments and obligations, and further its educational mission;

WHEREAS, the University has identified a need to develop and implement a comprehensive modernization, operations and maintenance solution for the Utilities Infrastructure in order to mitigate these risks, eliminate unnecessary expenditures, increase efficiencies that derive savings, establish robust levels of service for operations and maintenance, increase future budget certainty for the University, address deferred maintenance challenges, address the University’s anticipated increase in energy demand, achieve operational efficiencies, and ensure resiliency of the Utilities Infrastructure (the “**Utilities Modernization Initiative**”);

WHEREAS, in light of these goals, the University, together with its staff and advisors, have undertaken a comprehensive review and assessment of the Utilities Infrastructure and have developed a framework for achieving the Utilities Modernization Initiative with one or more private district energy services providers to make capital investments in and operate more efficiently the Utilities Infrastructure;

WHEREAS, during the evaluation of the Utilities Infrastructure and development of the Utilities Modernization Initiative by the University, its staff and advisors, the University entered preliminary discussions with Brookfield District Energy, USA, LLC d/b/a Enwave USA (“**Enwave**”), which has since changed its name to CenTrio Energy South LLC and rebranded as

“CenTrio Energy”, and with LA Energy Partners, LLC (“**LAEP**”), an affiliate under common ownership with TEP, each of which had existing energy-related contractual relationships with the University or State and each of which expressed an interest in providing the services the University is seeking for the Utilities Modernization Initiative;

WHEREAS, Enwave began working with the University in New Orleans in 1998 and, through its existing cooperative endeavor agreement with the University, provides thermal energy services to the University’s Health Sciences Center. Enwave has spent over \$100 million constructing district energy facilities that serve the University’s Health Sciences Center and invested another \$200 million in the local economy;

WHEREAS, LAEP, which (like TEP) is a joint venture between Bernhard LLC and Johnson Controls, Inc., has deep ties to the State and, together with its affiliates or related companies, has completed over 400 projects for the University, including the design and construction of the University’s existing combined heating and power system. In addition to its University experience, LAEP also operates and maintains numerous energy plants in Louisiana, including the Shaw Center energy plant in downtown Baton Rouge pursuant to an existing cooperative endeavor agreement with the State;

WHEREAS, after working cooperatively with the University to review the Utilities Infrastructure, on April 1, 2020, each of Enwave and LAEP submitted its separate formal proposal to provide capital improvements to the Utilities Infrastructure and to take over aspects of the operations and maintenance of the Utilities Infrastructure. The University, through its staff and advisors, then undertook a comprehensive evaluation of each proposal in an effort to determine whether accepting one of the proposals would be in the University’s best interests;

WHEREAS, after considerable review of these proposals by the University’s staff and advisors, the University, at its September 2020 Board of Supervisors meeting, determined that the dire condition of the Utilities Infrastructure necessitated an expedited procurement of an appropriate private partner so that the Utilities Modernization Initiative could be implemented as quickly as possible. Based on this policy decision, the University, through its staff and advisors, commenced a 90-day negotiation and competitive proposal process with both Enwave and LAEP by issuing a Request for Negotiations and Final Offer to Enwave and LAEP on October 16, 2020 (as amended and supplemented, the “**RFO**”), to determine whether a competitive, negotiated transaction with either party would be in the University’s best interest, or whether an open public competitive process, involving a request for qualifications and request for proposals, would be in the University’s best interest;

WHEREAS, in response to the RFO, on November 25, 2020, each of Enwave and TEP submitted its Best and Final Offer dated November 25, 2020 (each a “**BAFO**”) to the University, each of which included, among other things, a term sheet outlining the technical, commercial and financial terms on which Enwave and TEP, respectively, proposed to accomplish the Utilities Modernization Initiative for the University;

WHEREAS, each BAFO was carefully evaluated and analyzed by the University’s staff and advisors, and, after considering the results of that evaluation and the recommendation from its staff and advisors, the University approved and directed, by resolution of the Board of Supervisors

at its February 23, 2021 meeting, “the initiation of a cooperative endeavor agreement between the University, the Real Estate & Facilities Foundation (REFF), Enwave, and the Louisiana Energy Partners, as well as the leasing of utility infrastructure to REFF,” in order to implement the Utilities Modernization Initiative (the “**Resolution**”);

WHEREAS, the Parties desire to enter into this UMI CEA, to serve as the “cooperative endeavor agreement” referenced in the Resolution, to memorialize the cooperative intent among the University, UMLLC (a newly formed, wholly owned subsidiary of REFF), CenTrio and TEP to design, develop and implement improvements to the Campus utility system, and to establish generally the transaction framework for the implementation of the Utilities Modernization Initiative; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 **Recitals**. The Parties hereby agree and acknowledge that the foregoing recitals are true and correct and hereby incorporate the same into this UMI CEA as if fully set forth herein.

Section 1.2 **Use of Defined Terms**. Capitalized terms defined in this UMI CEA shall have their defined meanings when used herein and in any document, certificate, report or agreement furnished from time to time in connection with this UMI CEA unless the context otherwise requires.

Section 1.3 **Rules of Interpretation**. Unless the context clearly indicates to the contrary, the following rules shall apply to the interpretation and construction of this UMI CEA:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) All references herein to particular articles or sections are references to articles or sections of this UMI CEA.

(c) The captions and headings herein are solely for convenience of references and shall not constitute part of this UMI CEA, nor shall they affect its meaning, construction or effect.

(d) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereinbelow,” “hereunder,” or any similar terms as used in this UMI CEA refer to the UMI CEA in its entirety and not the particular article or section of this UMI CEA in which they appear, and the term “hereafter” means after and the term “heretofore” means before the date of execution of this UMI CEA.

(e) The words “include”, “includes” and “including” or any similar terms as used in this UMI CEA will be deemed to be followed by the phrase “without limitation” or words of similar effect.

(f) Any reference herein to any person, or to any person in a specified capacity, will be construed to include such person’s successors and assigns or such person’s successors in such capacity, as the case may be (subject to any restrictions on assignment set forth in this UMI CEA or any Project Agreement).

ARTICLE 2 AUTHORITY AND PUBLIC PURPOSE

Section 2.1 Authority of State and University. As provided by Article VII, Section 14(C) of the Constitution, the University may enter into cooperative endeavor agreements with political subdivisions, private associations, corporations, or individuals for a public purpose, including agreements which may require the use of State funds, personnel or other resources, provided that applicable legal guidelines are met and that the State benefits of such an agreement are demonstrated to be commensurate with or greater than the investment of funds by the State. The University has the constitutional or statutory authority to enter into this UMI CEA, based on the representations, agreements and undertakings set forth herein. The University has provided to each of CenTrio and TEP duly executed authorizing resolutions of its Board of Supervisors evidencing the authority of the undersigned representative to enter into this UMI CEA on behalf of the University. The University represents that, as of the Effective Date, there is no action, suit, investigation or proceeding pending, or to its best knowledge, threatened, against the University before any court, arbitrator, or administrative or governmental body, or insurance underwriting agency that might adversely affect the ability of the University to comply with its obligations hereunder or in connection with the transactions contemplated hereby or by the Project Agreements.

Section 2.2 Authority of CenTrio and TEP. Each of CenTrio and TEP has provided to the University a copy of its organizational documents (e.g., as applicable, articles of incorporation, articles of organization, certificate of formation, bylaws, limited liability company agreement), a certificate of good standing from its state of formation and (if applicable) a certificate from the State authorizing it to conduct business within the State, and duly executed authorizing resolutions evidencing the authority and representation of CenTrio and TEP, respectively, by the undersigned representatives, such documents collectively demonstrating the authority of each of CenTrio and TEP to enter into this UMI CEA, to carry out the commitments made herein, and the authority of the undersigned representative to execute this UMI CEA on behalf of CenTrio and TEP, respectively. Each of CenTrio and TEP represents that, as to itself as of the Effective Date, there is no action, suit, investigation or proceeding pending, or to its best knowledge, threatened, against such Party, before any court, arbitrator, or administrative or governmental body, or insurance underwriting agency that might result in a material adverse change in the financial condition or operations of such Party or that might adversely affect the ability of such Party to comply with its obligations hereunder or in connection with the transactions contemplated hereby or by the Project Agreements (as defined below).

Section 2.3 Public Purpose. The Parties hereby acknowledge and represent that the Utilities Modernization Initiative, as implemented through the Project Agreements, will serve the following public purposes, among others:

- (a) Mitigating the operating costs, deferred maintenance and replacement costs associated with certain portions of the Utilities Infrastructure, thereby relieving a substantial financial burden of the University and State;
- (b) Increasing future budgetary certainty for the University and State relative to the Utilities Infrastructure;
- (c) Increasing operational efficiencies that are expected to derive savings to the University and State;
- (d) Shifting certain risks associated with certain portions of the Utilities Infrastructure, its condition and its operation away from the University and State;
- (e) Ensuring robust levels of service, system resiliency and reliability for the University and its students, faculty, researchers, administration, staff and visitors; and
- (f) Addressing the University's anticipated increase in energy demand over the term of the applicable Project Agreements.

Section 2.4 Net Public Benefit. The Parties hereby acknowledge and represent that the Utilities Modernization Initiative, as implemented through and as more fully set forth in the Project Agreements, will result in a net public benefit to the University, State and its citizens that will exceed the value of the obligations of the University and State thereunder, so that all obligations and expenditures by the University and State under the Project Agreements will not be gratuitous donations.

ARTICLE 3 PROJECT AGREEMENTS

Section 3.1 Generally. The Parties intend to set forth their respective rights and obligations with respect to the Utilities Modernization Initiative through various documents and binding agreements (each a "**Project Agreement**" and collectively, the "**Project Agreements**"), including those outlined below. References to terms and provisions of certain of the Project Agreements as set forth below are descriptive only and, in the event of any conflict between the terms and provisions referenced below and the actual terms and provisions set forth in the Project Agreements, the Project Agreements shall control. Further, the description of the Project Agreements set forth below are not all-inclusive and reference is made to each Project Agreement for the specific terms, conditions, provisions, and rights and obligations of the respective parties to each Project Agreement.

Section 3.2 Project Agreements. As of the Effective Date:

(a) Prime Lease. The University and UMLLC shall enter into a Long-Term Lease and Concession Agreement (the “**Prime Lease**”) pursuant to La. R.S. 17:3361 *et seq.* and which, among other things:

(i) Defines those portions of the Utilities Infrastructure (excluding the Building Mechanical Systems) leased by the University to UMLLC, consisting generally of the Campus’ central utility plant assets and certain other specifically identified distribution assets more fully described on Exhibit A attached hereto and incorporated herein by reference (collectively, the “**Thermal Assets**”);

(ii) Provides for a term of thirty (30) years;

(iii) Requires UMLLC to cause to be performed operations and maintenance services for the Thermal Assets, subject to certain performance standards and key performance indicators, and procurement advisory services relating to Campus energy supply;

(iv) Requires UMLLC to cause to be constructed, completed and delivered initial modernization capital improvements to the Thermal Assets based on a preliminary design and on a guaranteed maximum price basis, and addresses the initial transition of operations and maintenance of Thermal Assets during the construction and delivery process;

(v) Provides a framework for collaboration among the University, UMLLC and CenTrio to periodically review, identify and implement potential upgrades and further capital improvements to the Utilities Infrastructure (excluding the Building Mechanical Systems); and

(vi) Requires the University to (A) pay to UMLLC an all-in utilities fee, comprised of operations and maintenance service charges and capital recovery charges for completed Utilities Infrastructure capital projects, and (B) provide, or cause to be provided, commodities required for the operation and maintenance of the Thermal Assets.

(b) Sublease. UMLLC and CenTrio shall enter into a Long-Term Sub-Lease and Concession Agreement (the “**Sublease**”) pursuant to La. R.S. 17:3361 *et seq.* and which, among other things:

(i) Defines those portions of the Utilities Infrastructure subleased by UMLLC to CenTrio, consisting of the Thermal Assets leased by the University to UMLLC in the Prime Lease;

(ii) Provides for a term of thirty (30) years;

(iii) Requires CenTrio to perform operations and maintenance services for the Thermal Assets, subject to certain performance standards and key performance indicators, and to perform procurement advisory services relating to Campus energy supply;

(iv) Requires CenTrio to cause to be constructed, completed and delivered initial modernization capital improvements to the Thermal Assets based on a preliminary design and on a guaranteed maximum price basis, and addresses the initial transition of operations and maintenance of the Thermal Assets during the construction and delivery process;

(v) (1) Provides a framework for collaboration among the University, UMLLC and CenTrio to periodically review, identify and implement potential upgrades and further capital improvements to the Utilities Infrastructure (excluding the Building Mechanical Systems), and (2) to the extent the University and UMLLC have approved CenTrio's plan to implement and deliver certain future capital improvements to the Thermal Assets, directs CenTrio to engage TEP for the construction, completion and delivery of such future capital improvements, subject in all cases to (x) the University's and UMLLC's right to implement such future capital improvements using capital outlay funds conditioned upon a competitive bid or other public procurement process, and (y) CenTrio's right to engage a contractor other than TEP for the construction, completion and delivery of such future capital improvements (I) if TEP declines, in writing, to participate in the applicable project, or (II) if doing so would be in the University's best interest. If the University desires that CenTrio engage a non-TEP contractor as contemplated in subclause (II) above, it shall provide written notice of such intent to CenTrio and TEP together with its detailed reasoning therefor, and TEP shall have thirty (30) days following receipt of such notice to provide its written response to the University and CenTrio. Following receipt of TEP's written response or TEP's failure to timely respond, the University's senior official(s) (as designated and appointed from time to time by the President of the University pursuant to the Prime Lease) shall make a final, binding and non-appealable determination.

(vi) Requires that UMLLC (A) pay to CenTrio an all-in utilities fee, comprised of operations and maintenance service charges and capital recovery charges for completed Utilities Infrastructure capital projects, and (B) provide, or cause to be provided, commodities required for the operation and maintenance of the Thermal Assets; and

(vii) Directs CenTrio to enter into a design-build contract with TEP (the "**Drop-Down DB Contract**") for the final design, construction, completion and delivery of the initial modernization capital improvements to the Thermal Assets based on the preliminary design referenced above; provided that the Drop-Down DB Contract, as well as the final design of the improvements covered thereby, shall be subject to the University's and UMLLC's review and approval.

Section 3.3 Building Mechanical Systems. The Project Agreements described in Section 3.2 above will not cover, and the Prime Lease and Sublease will not grant leasehold interests in, those Campus "in-building" mechanical systems more fully described on Exhibit B attached hereto and incorporated herein by reference (collectively, the "**Building Mechanical Systems**"). TEP shall have the right to make the first proposal for any future capital improvements or upgrades to the Building Mechanical Systems and the financing thereof; provided, however,

that such right shall not apply with respect to any Building Mechanical Systems located within Campus buildings owned by or long-term leased to third parties; and provided further that the University shall at all times retain the right to procure similar upgrades, improvements, repairs or replacements to the Building Mechanical Systems without TEP's involvement (i) using capital outlay funds conditioned upon a competitive bid or other public procurement process, (ii) in emergency situations in order to restore functionality to in-building systems following unforeseen damage, equipment failure or interruption of service, (iii) with respect to the University's existing or future Auxiliary Services facilities (defined and limited to student housing, athletics facilities, the LSU Student Union, LSU Dining, and Barnes & Noble at LSU), or (iv) in connection with existing or future ground-up construction projects currently underway or initiated in the future (collectively, the "**BMS Project Exclusions**"). The Project Agreements related to any future capital improvements or upgrades to the Building Mechanical System to be implemented by TEP shall be set forth in a contractual document, and shall be formalized and executed upon the approval of the University to undertake such Building Mechanical System upgrades (a "**BMS Project Agreement**"). Any BMS Project Agreement shall provide a framework for collaboration among the University and TEP to periodically review, identify and implement potential upgrades and capital improvements to the Building Mechanical Systems, subject in all cases to the BMS Project Exclusions. Any BMS Project Agreement shall (x) be subject in all respects to the University's consent and approval and (y) comply with all applicable laws, statutes, rules, ordinances or regulations relative to the structure, implementation and financing of such capital improvements or upgrades.

ARTICLE 4 TERM

Section 4.1 Term. The term of this UMI CEA shall commence as of the Effective Date and shall expire upon the thirtieth (30th) anniversary of the Effective Date. Notwithstanding the foregoing, (i) this UMI CEA may be terminated upon the mutual written consent of all Parties hereto, and/or (ii) CenTrio's or TEP's participation in this UMI CEA may be terminated by the University as provided in Section 4.2 below.

Section 4.2 Termination of Participation by a Party.

(a) CenTrio's participation in this UMI CEA may be terminated by the University, at the University's election upon written notice to all other Parties hereto, (i) upon the natural expiration of the Sublease, or (ii) upon the University's termination of the Sublease due to a default by CenTrio or any affiliate of CenTrio pursuant to the terms and conditions thereof (including all applicable notice and cure periods). Upon any such termination, CenTrio shall have no further rights hereunder, and this UMI CEA shall continue in full force and effect by and among the other Parties hereto. Notwithstanding any termination of CenTrio's participation in this UMI CEA, any other Project Agreement to which CenTrio remains a party shall continue in accordance with its terms and conditions unless and until terminated as provided in such Project Agreement.

(b) TEP's participation in this UMI CEA may be terminated by the University, at the University's election upon written notice to all other Parties hereto, (i) upon the natural expiration of any BMS Project Agreement, or (ii) upon the University's termination

of a BMS Project Agreement due to a default by TEP or any affiliate of TEP pursuant to the terms and conditions thereof (including all applicable notice and cure periods). Upon any such termination, TEP shall have no further rights hereunder, and this UMI CEA shall continue in full force and effect by and among the other Parties hereto. Notwithstanding any termination of TEP's participation in this UMI CEA, any other Project Agreement to which TEP remains a party shall continue in accordance with its terms and conditions unless and until terminated as provided in such Project Agreement.

ARTICLE 5 DIVERSITY AND INCLUSION

Section 5.1 Diversity and Inclusion. The Parties understand that the University is committed to promoting the growth and development of minority- and women-owned and small and historically underutilized businesses (collectively, "**Diverse Businesses**") by providing opportunities to participate in University agreements. In support of this commitment, each of CenTrio and TEP (i) shall develop and implement a Diversity, Inclusion and Equity Plan, to be attached to its respective Project Agreements, outlining such Party's commitment and obligation to provide opportunities to Diverse Businesses that are either certified by the State or another certifying entity in a diverse category as a contractor, subcontractor, supplier, or capital provider under the Project Agreements, (ii) shall provide to the University, on a quarterly basis during the term of this UMI CEA, a list of all Diverse Businesses engaged or utilized by such Party in connection with the Utilities Modernization Initiative, which list shall identify as to each Diverse Business contained thereon (A) the legal name thereof, (B) the principal office or address, (C) ownership and (D) the services, goods or capital provided or supplied (or to be provided or supplied) and the value of the services, goods or capital procured therefrom, and (iii) following written notice from the University, take all other reasonable measures required by the University to ensure accountability, compliance and transparency in complying with the commercially reasonable, University system-wide disadvantaged business enterprise goals or policies established by University's Office of Supplier Diversity, all in connection with the Utilities Modernization Initiative. To the extent that any law, rule or regulation would require that this Section be modified or voided, the Parties agree that such provision can be amended or severed from this UMI CEA without affecting any of the other terms hereof.

ARTICLE 6 MISCELLANEOUS

Section 6.1 Successors and Assigns; Assignment. This UMI CEA shall be binding upon and shall inure solely to the benefit of the Parties hereto and their respective permitted successors and assigns, and not to the benefit of any other third parties. Neither CenTrio, TEP nor UMLLC may assign, transfer or convey this UMI CEA or any interest herein without the express written consent of the University, and any such assignment, transfer or conveyance made or given without first obtaining the University's prior written consent shall be null and void; provided, however, that (i) the foregoing prohibition on assignment of this UMI CEA shall not prohibit a Party's assignment of a Project Agreement to the extent expressly permitted by such Project Agreement; (ii) CenTrio may assign its interest in this UMI CEA, without the consent of the other Parties hereto, in connection with a permitted assignment of the Sublease accomplished in accordance with the terms and conditions of the Sublease; and (iii) TEP may assign its interest in this UMI

CEA, without the consent of the other Parties hereto, in connection with a permitted assignment of a BMS Project Agreement accomplished in accordance with the terms and conditions of such BMS Project Agreement.

Section 6.2 Audit. The Legislative Auditor of the State may audit any and all books and records of CenTrio and TEP related to this UMI CEA or the Project Agreements, and CenTrio and TEP shall make such books and records available for such purpose upon reasonable notice during reasonable business hours.

Section 6.3 Waiver. No delay or failure of any Party in exercising any right, power, or privilege under this UMI CEA, nor any single or partial exercise thereof or abandonment or discontinuance of steps to enforce such a right, power, or privilege under this UMI CEA, shall preclude any further exercise thereof. Any waiver, consent, or approval of any kind or character on the part of any Party of any breach or default under this UMI CEA, or any waiver of any provision or condition of this UMI CEA, must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 6.4 Entire Agreement. This UMI CEA and the appendices hereto shall constitute the entire understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this UMI CEA.

Section 6.5 Notices. All notices and demands delivered pursuant to this UMI CEA shall be in writing and shall be given by (i) registered or certified mail, return receipt requested, or (ii) recognized overnight delivery service providing positive tracking of items (e.g., Federal Express), or (iii) personal delivery to and receipt by the person to whom delivered, or (iv) telecopy with receipt confirmed by telephone, in each case addressed or telecopied as follows, or at such other address or telecopy number of a party shall have given notice as herein provided:

If to the University: LSU Facility Services
201 Facilities Services Bldg.
Engineering Lane
Baton Rouge, LA 70803
Telephone: (225) 578-6832
Email: pmartin@lsu.edu
Attention: Patrick Martin, Assistant Vice President, Real Estate, Public Partners, & Compliance

with a copy to: Board of Supervisors of Louisiana State University and
Agricultural and Mechanical College
3810 West Lakeshore Drive, Suite 124
Baton Rouge, LA 70808
Telephone: (225) 578-4126
Facsimile: (225) 578-5524
Email: wdecurjr@lsu.edu
Attention: Winston DeCuir, General Counsel

and with a copy to: Phelps Dunbar, L.L.P.
II City Plaza
400 Conventional Street, Suite 1000
Baton Rouge, LA 70802
Telephone: (225) 346-0285
Facsimile: (225) 381-9197
Email: ragan.richard@phelps.com and
dennis.blunt@phelps.com
Attention: P. Ragan Richard and Dennis Blunt

If to UMLLC: LSU Foundation
3796 Nicholson Drive
Baton Rouge, LA 70802
Telephone: (225) 578-3811
Facsimile: (225) 578-0530
Email: lgreco@lsufoundation.org
Attention: Leu Anne Greco, Vice President & General
Counsel

If to CenTrio: Baton Rouge Energy Concessionaire LLC
1661 Gravier Street
New Orleans, Louisiana 70112
Telephone: 504.569.2126
Facsimile: N/A
Email: Phillip.Hymel@centrioenergy.com
Attention: Chief Financial Officer

With a copy to: Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
Telephone: 312.701.8818
Facsimile: 312.706.8339
Email: JSeliga@mayerbrown.com
Attention: Joseph Seliga, Esq.

With a copy to: Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
201 St. Charles Avenue, Suite 3600
New Orleans, LA 70170-3600
Telephone: 504.566.8628
Facsimile: 504.585.6928
Email: jleyens@bakerdonelson.com
Attention: Chip Leyens, Esq.

If to TEP: Tiger Energy Partners, LLC
8555 United Plaza Blvd., Suite 201
Baton Rouge, LA 70809
Telephone: (225) 706-2207
Email: msamuel@bernhard.com
Attention: Melissa Samuel

With a copy to: Bernhard, LLC
1 Allied Drive, Suite 2600
Little Rock, AR 72202
Telephone: (501) 666-6776
Email: etinsley@bernhard.com
Attention: Ed Tinsley

All such notices and documents shall be deemed to have been sufficiently given for all purposes hereof only upon receipt by the party to whom such notice is sent (in the case of telecopy, during normal business hours). Notices by the Parties may be given, but not received, on their behalf by their respective attorneys. With respect to all notices and demands given as set out above, a courtesy copy (which shall not constitute notice) will be sent simultaneously by email to each party to whom the notice or demand is directed.

Section 6.6 Amendments, Supplements, and Modifications. This UMI CEA may not be amended, supplemented, or modified, except in writing and executed by all Parties hereto; provided, however, that (i) a Project Agreement may be amended, supplemented or modified in accordance with the applicable terms and conditions of such Project Agreement, and (ii) execution by one or more Parties of a Project Agreement following the Effective Date (including the BMS Project Agreement and any amendment, supplement or modification to any existing or future Project Agreement) shall not require amendment or modification to this UMI CEA.

Section 6.7 Governing Law, Jurisdiction and Venue. This UMI CEA shall be deemed to be made in the State of Louisiana. This UMI CEA will be interpreted, and the rights and liabilities of the Parties hereto determined, in accordance with the laws of the State of Louisiana without regard to principles of conflicts of law. Each Party irrevocably submits to the exclusive jurisdiction in the 19th Judicial District Court for the Parish of East Baton Rouge, or the federal district court encompassing East Baton Rouge Parish, in any action or proceeding arising out of or relating to this UMI CEA and waives any objection which it may have at any time to the laying of venue in such court and any claim that such action or proceeding has been brought in an inconvenient forum.

Section 6.8 Severance. To the fullest extent possible, each provision of this UMI CEA shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision or a portion of any provision of this UMI CEA shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this UMI CEA.

Section 6.9 No Personal Liability. No covenant or agreement contained in this UMI CEA shall be deemed to be the covenant or agreement of any member, official, trustee, officer, agent or employee of any Party in his or her individual capacity, and neither the officers thereof nor any official executing this UMI CEA shall be liable personally with respect hereto or be subject to any personal liability or accountability by reason of the execution and delivery of this UMI CEA on behalf of any Party.

Section 6.10 No Partnership. Nothing contained in this UMI CEA shall be deemed or construed to create the relationship of principal and agent or of partnership or joint venture among or between any of the Parties hereto.

Section 6.11 Limitation on Liability. The provisions of this UMI CEA do not waive or abrogate, nor are they intended to waive or abrogate, any limitation of liability for the University provided by Louisiana law, including without limitation under La. R.S. 13:5106.

Section 6.12 Captions. The captions or headings in this UMI CEA are for convenience only and in no way define, limit or describe the scope or extent of any of the provisions of this UMI CEA.

Section 6.13 Further Assurances. From time to time, and at any time, at and after the Effective Date, each Party will execute, acknowledge and deliver such documents and assurances, reasonably requested by any other Party (in such form and substance reasonably acceptable to the requested Party) and will take any other action consistent with the terms of this UMI CEA that may be reasonably requested by a Party for the purpose of effecting or confirming any of the terms and provisions hereof. Notwithstanding the foregoing, no Party shall be required to execute or deliver any documents or take any action that decreases the rights or increase the obligations of such Party under this UMI CEA.

Section 6.14 No Authorship Presumption. Each of the Parties has had an opportunity to obtain legal advice and negotiate the language of this UMI CEA and the Project Agreements. No presumption shall arise, or adverse inference be drawn by virtue of authorship, and each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this UMI CEA or any Project Agreement, including to any rule of law to the effect that any provision of this UMI CEA shall be interpreted or construed against the Party whose counsel drafted that provision.

Section 6.15 No Third Party Benefit. No provisions in this UMI CEA are for the benefit of, or may be enforceable by, any person other than the Parties hereto and their permitted successors and assigns. Each Party hereto may only seek enforcement of its own rights hereunder, and no Party may seek enforcement (whether in its own name or on behalf of another Party) of the rights of another Party hereto.

Section 6.16 Counterparts. This UMI CEA may be executed in several counterparts, each which shall be an original and all of which when taken together shall be deemed one and the same agreement.

Section 6.17 Negotiations. For clarity, the Parties agree that CenTrio shall not, without the consent of TEP, negotiate with the University or UMLLC the terms of the BMS Project Agreement, and TEP shall not, without the consent of CenTrio, negotiate with the University or UMLLC the terms of the Prime Lease, Sublease or other Project Documents (other than the BMS Project Agreement).

[Remainder of Page Intentionally Blank; Signatures to Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this UMI CEA effective as of the day and year first set forth above.

UNIVERSITY:

**LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL COLLEGE**

By: _____
Name:
Title:

UMLLC:

UTILITIES MODERNIZATION LLC

By: _____
Name:
Title:

CENTRIO:

**BATON ROUGE ENERGY CONCESSIONAIRE
LLC**

By: _____
Name:
Title:

TEP:

TIGER ENERGY PARTNERS, LLC

By: _____
Name:
Title:

EXHIBIT A

Thermal Assets

Main Power House:

- 20 MW Cogen and HRSG (Boiler 8)
- Allison Gas Turbine Chiller and HRSG (Chiller 6 and Boiler 7)
- Boiler 4
- Deaerator System
- Water Softener System
- Chillers 1, 2, 3, 4, 5, 7, 8, 9, 10
- Cooling Tower System 135
- Cooling Towers 2, 4, 6, 7, 8
- Primary Chilled Water Pump CPP-1, CPP-2, CPP-3, CPP-4, CPP-5
- Secondary Chilled Water Pumps ELP-1, ELP-2, ELP-3, EQLP-1, WQLP-2, QLP-3, HLP-1, NWLP-2, SELP-1, SELP-2, SELP-3, SWLP-1, SWLP-2
- Cooling Tower Pumps CT135P-1, CT135P-2, CT2P-1, CT2P-2, CT4P-1, CT4P-2, CT6P-1, CT6P-2, CT6P-3, CT7P-1, CT7P-2, CT8P-1, CT8P-2, CT8P-3
- Plant Control System
- Generator Control System
- Gas Turbine Control Systems
- Electrical distribution associated with plant systems
- All mechanical systems including piping, valves, actuators, sensors etc.

Highland Plant:

- Hot water boilers
- Water Softener System
- Chiller 3 (plus two small chillers)
- Cooling Towers 1, 2, 3, 4
- Chilled Water Pump PP-1, PP-2, PP-3
- Secondary Chilled Water Pumps CWSP-1, CWSP-2
- Cooling Tower Pumps P456-1, P456-2, P456-3
- Plant Control System
- Electrical distribution associated with plant systems
- All mechanical systems including piping, valves, actuators, sensors etc.

The above descriptions are subject to continued review, supplement and refinement by the Parties prior to execution of this UMI CEA.

EXHIBIT B

Building Mechanical Systems

- Air handlers and air distribution equipment (includes all motors, fans, coils, louvers, VFDs, controls)
- Heat exchangers required for transforming central plant energy for local use
- All piping, valving and traps associated with the distribution of chilled water, steam, hot water within the HVAC system
- All motors and pumps associated with the distribution of chilled water and hot water required for proper operation of the building HVAC system (e.g., secondary or chilled water booster pumps)
- In-building duct work
- All terminal boxes (e.g., variable air volume boxes)
- Reheat coils
- All system sensing and control related devices (e.g., duct temperature, space temperature, DP, static pressure)
- Building control systems for equipment noted above

The above descriptions are subject to continued review, supplement and refinement by the Parties prior to execution of this UMI CEA.

**LONG-TERM LEASE AND CONCESSION AGREEMENT FOR
LOUISIANA STATE UNIVERSITY UTILITY SYSTEM**

dated as of

[•]

by and between

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL COLLEGE

and

UTILITIES MODERINZATION LLC

TABLE OF CONTENTS

(continued)

SCHEDULES

Schedule 1	Reserved
Schedule 2A	Performance Standards
Schedule 2B	Interim Performance Standards
Schedule 3A	Utility Facilities, Utility System Land and Utility System Assets
Schedule 3B	Building Mechanical Systems
Schedule 3C	Distribution System
Schedule 4A	University Utility System Employees
Schedule 4B	Form of Employee Services Agreement
Schedule 5	Utility Fee
Schedule 6	Existing Supply Contracts
Schedule 7	Preliminary Design
Schedule 8A	Form of Legal Opinion of Counsel to University
Schedule 8B	Form of Legal Opinion of Counsel to UMLLC
Schedule 9	Historical Financial Information
Schedule 10	Permitted University Encumbrances
Schedule 11	Excluded Utility System Projects
Schedule 12	Computer Systems and Software
Schedule 13	Form of Memorandum of Lease
Schedule 14	Reserved
Schedule 15	Key Performance Indicators
Schedule 16	University Campus Map
Schedule 17	Diversity Plan
Schedule 18	Campus-Wide Permits
Schedule 19	Reserved
Schedule 20	Form of Trademark License Agreement
Schedule 21	Notices to Proceed; Conditions to IMP Substantial Completion and IMP Final Acceptance of Initial Modernization Project
Schedule 22	Warranty Period Utility System Projects
Schedule 23	Concession Agreement

LONG-TERM LEASE AND CONCESSION AGREEMENT FOR LOUISIANA STATE UNIVERSITY UTILITY SYSTEM

THIS LONG-TERM LEASE AND CONCESSION AGREEMENT FOR THE LOUISIANA STATE UNIVERSITY UTILITY SYSTEM (this “University Lease”) is made and entered into as of this [•] day of [•], 20[•]by and between the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, a public constitutional corporation organized and existing under the laws of the State of Louisiana (the “Board”) and Utilities Modernization LLC, a Louisiana limited liability company (“UMLLC”), the sole member of which is the LSU Real Estate and Facilities Foundation, a Louisiana nonprofit corporation (the “Foundation”).

RECITALS

WHEREAS, Louisiana State University and Agricultural and Mechanical College (“LSU”), is the flagship institution of the State of Louisiana under the management and supervision of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (the “Board” and, together with LSU, the “University”), which Board is a public constitutional corporation organized and existing under the laws of the State of Louisiana; and

WHEREAS, the Foundation is a tax-exempt organization organized and operated for the purpose of supporting the University, its programs, facilities, and research and educational activities, the Foundation is the sole member of UMLLC, and the business of UMLLC is at all times carried out and operated exclusively for the tax-exempt purposes of the Foundation; and

WHEREAS, at the University’s flagship campus in Baton Rouge, Louisiana (the “University Campus”), the operating costs, deferred maintenance and replacement of its Utility System (defined herein) comprised of the Utility Facilities and the Utility System Assets (both, as defined herein) places a substantial financial burden on the University and the State of Louisiana and exposes the University, State of Louisiana, and Utility System to risks that materially and adversely impact the University’s ability to conduct its business and satisfy its commitments and obligations; and

WHEREAS, the University has identified a need to develop and implement a comprehensive modernization, operations and maintenance solution for the Utility System in order to mitigate these risks, eliminate unnecessary expenditures, increase efficiencies that derive savings, establish robust levels of service for operations and maintenance, increase future budget certainty for the University, address deferred maintenance challenges, address the University’s anticipated increase in energy demand, achieve operational efficiencies, and ensure resiliency of the Utility System (the “Utilities Modernization Initiative”); and

WHEREAS, in light of these goals, the University, together with its staff and advisors, has undertaken a comprehensive review and assessment of the Utility System and has developed a framework for achieving the Utilities Modernization Initiative with one or more private district energy services providers to make capital investments in and operate more efficiently the Utility System; and

WHEREAS, the University, UMLLC, [Baton Rouge Energy Concessionaire LLC, a [•] limited liability company (the “Concessionaire”)], and Tiger Energy Partners, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of Louisiana (“TEP”), have entered into that certain Cooperative Endeavor Agreement (LSU Utilities Modernization Initiative), dated the date hereof (the “UMI CEA”), to memorialize the cooperative intent among the University, UMLLC, Concessionaire, and TEP to design, develop and implement improvements to the Utility System, and to establish generally the transaction framework for the implementation of the Utilities Modernization Initiative; and

WHEREAS, pursuant to Louisiana Revised Statutes 17:3361, *et seq.*, as amended from time to time (the “University Leasing Act”), the University is authorized to lease to a private entity, such as UMLLC, any portion or portions of the University Campus or other immovable property under its supervision and management under the conditions set forth therein; and

WHEREAS, the University Leasing Act further requires any such lease to a private entity to provide for the construction of improvements on the portion or portions of the University Campus subject to such lease that will further the educational, scientific, research, or public service functions of the University; and

WHEREAS, in furtherance of the foregoing, and pursuant to the UMI CEA, the University, UMLLC, the Concessionaire, and TEP are engaging in a public-private partnership for the performance of the Utilities Modernization Initiative, pursuant to which: (a) the University will lease the Utility System Land, Utility Facilities and Utility System Assets (collectively, the “Property”), as more particularly described in Schedule 3A attached hereto, together with certain construction, access, parking, and utility servitudes for the purpose of implementing the Utilities Modernization Initiative, as approved by the University, to UMLLC pursuant to this University Lease, (b) UMLLC and Concessionaire will enter into that certain Long-Term Sub-Lease and Concession Agreement for Louisiana State University Utility System dated the date hereof (the “Concession Agreement”) for the sublease of the Property and granting of the necessary construction, access, parking, and utility servitudes for the purpose of implementing the Utilities Modernization Initiative, and (c) and the Concessionaire will engage TEP, as design-build contractor, to perform certain design and construction obligations related to the Initial Modernization Project pursuant to a Drop-Down DB Contract, which Drop-Down DB Contract has been approved by the University and UMLLC; and

WHEREAS, the University has determined that the lease of the Property to UMLLC under this University Lease and the engagement by UMLLC of the Concessionaire under the Concession Agreement will, among other things, further the University’s energy efficiency and sustainability goals, provide a mechanism for capital improvements as needed, permit the more efficient operation of the Utility System, and advance the overall educational purposes of the University and UMLLC, and, therefore, the University desires to lease the Property to UMLLC and approve the sublease of the Property from UMLLC to Concessionaire pursuant to the terms and conditions of this University Lease and the Concession Agreement, including but not limited to providing the Concessionaire with an exclusive right to design, build, and finance the Initial Modernization Project and other Capital Improvements, and to operate, maintain, possess, control and improve the Utility System for the Term of this University Lease, all as hereinafter provided; and

WHEREAS, UMLLC agrees to lease the Property from the University and sublease the Property to the Concessionaire pursuant to the Concession Agreement, which Concession Agreement will provide Concessionaire with the exclusive grant to design, build, and finance the Initial Modernization Project and other Capital Improvements and to operate, maintain, possess, control, and improve the Utility System for the Term of this University Lease, all as hereinafter provided; and

WHEREAS, UMLLC agrees that the Concession Agreement shall require the Concessionaire to sublease the Property from UMLLC and to operate, maintain, possess, control and improve the Utility System in accordance with the provisions this University Lease, including the Performance Standards (as defined herein); and

WHEREAS, UMLLC agrees that the Concession Agreement shall require the Concessionaire to design, build, and finance the Initial Modernization Project and other Capital Improvements, as hereinafter provided; and

WHEREAS, UMLLC agrees that the Concession Agreement shall require the Concessionaire to provide the Utility Services (as defined herein) to UMLLC and to engage in the Utility System Operations (as defined herein) pursuant to the terms and conditions of this University Lease;

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 (as defined herein) covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

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

“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).

“AAA” means the American Arbitration Association.

“Abandon” means to abandon all or a material part of the Initial Modernization Project, which abandonment will be deemed to have occurred if: (a) UMLLC demonstrates through statements, acts, or omissions an intent not to continue (for any reason other than a Delay Event that interferes with UMLLC’s ability to continue) to design or construct the Initial Modernization Project; (b) no significant Construction Work (taking into account any Delay Event) on the Initial Modernization Project is performed for a continuous period of more than sixty (60) days; or (c)

UMLLC fails to begin (taking into account any Delay Event) (i) any works or activities authorized pursuant to NTP1, within thirty (30) days following the issuance of NTP1, (ii) any works or activities authorized pursuant to NTP2, within thirty (30) days following the issuance of NTP2, or (iii) any works or activities authorized pursuant to NTP3, within thirty (30) days following the issuance of NTP3, in the case of each of clause (a), clause (b) and clause (c), unless such failure is otherwise expressly permitted or excused pursuant to this University Lease.

“Actual Knowledge of the University” means the actual, current knowledge of the University’s [Note: Designated Officer(s) of the University to be named] 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 five (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.

“Actual Knowledge of UMLLC” means the actual, current knowledge of [Note: Designated Officer(s) of the University to be named] 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 five (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(l).

“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 adjustment period 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) a Person that, directly or indirectly, through one or more intermediaries (i) has a fifty percent (50%) or more voting or economic interest in such specified Person or (ii) is Controlled by such specified Person;
- (b) with respect to any Person described in clause (a), such Person’s Ultimate Holding Entity and any entity that such Ultimate Holding Entity (i) has a fifty percent (50%) or more voting or economic interest in or (ii) Controls;
- (c) any Person that is managed by either such Person described in clause (b) or a related body corporate of such Person for so long as such other Person is so managed;
- (d) any trustee of a trust in which all or substantially all of the beneficial interests are held directly or indirectly by such Person or any Person referred to in clauses (a), (b), or (c) of this definition; or
- (e) any trustee, custodian, or nominee of such Person or any Person referred to in clauses (a), (b), (c), or (d) of this definition;

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).

“Approved Five-Year Plan” means the Five-Year Plan then in effect pursuant to Section 7.2.

“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 D&C Work, the Utility System, the Utility System Operations or this University Lease, 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, and in accordance with the provisions of this University Lease.

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

“Board” has the meaning ascribed thereto in the recitals of this University Lease.

“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 UMLLC 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.

“Building Mechanical Systems” means those “in-building” portions of the Utility Facilities more particularly described in Schedule 3B.

“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 University Lease, 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.

“Campus-Wide Permits” means the Authorizations set forth on Schedule 18, as each may be extended, renewed, modified or replaced.

“Capital Improvement” means any improvement to or replacement or expansion of the components of the Utility Facilities or Shared Spaces that is capital in nature, as determined in accordance with GAAP. For clarity, the Initial Modernization Project constitutes a Capital Improvement.

“Capital Recovery Amount” has the meaning ascribed thereto in Schedule 5.

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

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

“CenTrio” means [•].

“Certificate of IMP Final Acceptance” has the meaning ascribed thereto in Section 22.1(g).

“Certificate of IMP Substantial Completion” has the meaning ascribed thereto in Section 22.2(e).

“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 fifty percent (50%) or more of the direct or indirect voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) a change in the power directly or indirectly to direct or cause the direction of management and policy of such Person, 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, a “Change in Control” of UMLLC shall be deemed to have occurred at any time when the Foundation shall cease to own one hundred percent (100%) of the ownership of UMLLC (or otherwise possess less than all of the power to direct or cause the direction of the management of UMLLC).

“CI Cost of Debt Factor” has the meaning ascribed thereto in Schedule 5.

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

“City-Parish” means the City of Baton Rouge and Parish of East Baton Rouge, State of Louisiana.

“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.

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

“Cogeneration Building” means the “Cogeneration Building” as described or depicted Schedule 3A.

“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, condition, utilization, and the nature of the services provided, provided that the University and UMLLC may designate by written agreement one or more utility systems as “Comparable Utility Systems”.

“Compensation Calculation Date” means each of the following: (i) each June 30 during the Term, commencing as of June 30, 202[●]; (ii) the date of removal of the Operator pursuant to Section 3.3(c)(ii); (iii) the first (1st) 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 [two hundred fifty thousand dollars (\$250,000)] if calculated on the date of such notice; and (iv) the End Date.

“Compensation Calculation Measuring Period” means (i) with respect to the first (1st) Compensation Calculation Date, the period commencing on the Turnover Date and 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 each of the following: (i) subject to Article 5, UMLLC’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 UMLLC 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 an event expressly described as a Compensation Event in Section 3.7(a); (v) the University distributing or permitting any third party to distribute on the University Campus, any Utility, except as permitted by Section 3.21; (vi) UMLLC 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 UMLLC'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 UMLLC; (vii) any suspension of the Construction Work that constitutes a Compensation Event pursuant to Section 21.4(b); (viii) any action of the Louisiana Public Service Commission or the Federal Energy Regulatory Commission, or their respective successors, that subjects UMLLC to such agency's regulatory jurisdiction due solely to the Utility System Operations performed by UMLLC in accordance with this University Lease and has a material adverse effect on the fair market value of the UMLLC 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 University Lease or both), except where such action is in response to any act or omission on the part of UMLLC 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 University Lease and such designation as a Compensation Event shall be UMLLC's sole right and remedy with respect to any action by the Louisiana Public Service Commission or the Federal Energy Regulatory Commission (or their successors) subjecting a Person to its jurisdiction in connection with the Utility System; (ix) the occurrence of a change described in clause (iii) of Section 6.1(a) to the extent that notice of such change was not publically available or otherwise known by CenTrio prior to the date hereof; or (x) the occurrence of any other event that under the terms of this University Lease expressly requires the payment of Concession Compensation.

"Concession Agreement" has the meaning ascribed thereto in the recitals of this University Lease, which Concession Agreement is substantially in the form attached hereto as Schedule 23.

"Concession Compensation" means any amount payable by the University to UMLLC in order to restore UMLLC to the same economic position UMLLC would have enjoyed if the applicable Compensation Event had not occurred, which amount, for any Compensation Calculation Date, shall be calculated as the sum of (i) all Losses for the applicable Compensation Calculation Measuring Period and financing costs (but excluding any costs and expenses that UMLLC 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. If UMLLC provides its own capital for a Capital Improvement with respect to compliance with any Compensation Event that is not recoverable by UMLLC 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 IMP Return on Equity Factor or the CI Return on Equity Factor, as the case may be.

“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 University Lease 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 University Lease, 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 recitals to this Agreement.

“Concessionaire Cost of Finance” means an amount equal to eight hundred forty thousand dollars (\$840,000) from the gross amount of the financing of the Initial Modernization Project.

“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, (a) the Concessionaire shall be a Contractor of UMLLC and (B) each of the Operator and the IMP Contractor shall be a Contractor of UMLLC for purposes of this University Lease (regardless of whether the Operator or IMP Contractor, as applicable, is engaged by the Concessionaire pursuant to the Concession Agreement).

“Construction Documents” means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, and construction quality assurance reports and samples necessary or desirable for construction of the Initial Modernization Project in accordance with this University Lease.

“Construction Work” means all work to build or construct, make, form, manufacture, furnish, install, supply, deliver, or equip the Initial Modernization Project.

“Control” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “Controlling,” “Controlled by” and “under common Control with” have meanings correlative to the foregoing. With respect to a managed fund or trust, Control includes 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.

“CPI Index” means the “Consumer Price Index – South 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., or Moody’s Investor Services, or their successors or Affiliates, provided that if any of the foregoing and any of their successors cease to exist, the University shall, by written notice to UMLLC, 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.

“D&C Closeout Plan” has the meaning ascribed thereto in Section 22.2(b).

“D&C Security” means, collectively, (i) the Performance Bond and (ii) the Payment Bond.

“D&C Work” means all design, engineering, and construction-related services, including the Construction Work, necessary in order to design, implement, and deliver the Initial Modernization Solution in accordance with the approved Final Design and the terms and conditions of this University Lease, including Article 22 and Article 23.

“Day” means a calendar day, beginning at midnight in the central 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 UMLLC’s obligations hereunder or UMLLC’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 UMLLC); (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 Turnover 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 UMLLC or any Contractor; (v) a delay caused by a failure by the University to perform or observe any of its covenants or obligations under this University Lease; (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 UMLLC of any obligation under this University Lease and which Hazardous Substances were not caused to be in, on, under, over, or around the Utility System by UMLLC, any Contractor, or any of their respective Representatives; (vii) a delay in providing the Utility Services caused by the failure of a third party or 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 UMLLC's obligations hereunder or UMLLC'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 University Lease of legally protected plant or animal species or archaeological, paleontological, or cultural resources; or (xi) the occurrence of any event expressly described as a Compensation Event in clause (i), clause (vii), or clause (viii) of the definition of "Compensation Event." For the avoidance of doubt, a Delay Event shall not include any event of which the consequence is otherwise specifically dealt with in this University Lease or arises by reason of (A) the negligence or willful misconduct of, or violation of applicable Law by, UMLLC, any Contractor, or any of their respective Representatives, (B) any act or omission by UMLLC or its Representatives in breach of the provisions of this University Lease, (C) any strike, labor dispute, or other labor protest involving any Person retained, employed, or hired by UMLLC 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 UMLLC, 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 UMLLC 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 UMLLC, unless such lack or insufficiency of funds or such failure is caused by another relevant Delay Event.

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

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

"Delay Event Remedy Notice" has the meaning ascribed thereto in Section 15.1(e).

"Depository" 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 UMLLC, that enters into an agreement with UMLLC to serve as depository pursuant to this University Lease, provided that such Depository shall have an office, branch, agency, or representative located in the City of Baton Rouge, Louisiana (or in another location within the United States designated by the University in writing, acting reasonably); *provided, however*, that so long as a Leasehold Mortgage is in effect, the Depository under Section 13.4 shall be the institution acting as the collateral agent or depository under the financing secured by such Leasehold Mortgage, whether or not it has an office, branch, agency, or representative located in the City of Baton Rouge, Louisiana (or such other location within the United States designated by the University in writing, acting reasonably).

"DEQ" has the meaning ascribed thereto in Section 11.13.

"Designated Senior Person" means such individual or individuals who are 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 University's [•] and the Designated Senior Persons for UMLLC will be [•] and [•].

"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 3A, Schedule 3B, Schedule 6, Schedule 9, Schedule 10, Schedule 11, Schedule 12, Schedule 14, Schedule 16, Schedule 18, and Schedule 22.

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

“Distribution Bottlenecks” means those portions of the Distribution System described on Schedule 3C which are subject to the Initial Modernization Project as described on Schedule 7 and which portions, for purposes of this Agreement, (i) shall be deemed a part of the Utility System (and not part of the Distribution System) until the IMP Substantial Completion Date, and (ii) shall be deemed a part of the Distribution System (and not part of the Utility System, unless and until the same becomes subject to a Distribution System Capital Improvement) from and after the IMP Substantial Completion Date.

“Distribution System” means the respective equipment, systems and facilities (including any discrete component portion thereof) for the carriage and distribution of each Utility that are, as of the Turnover Date, beyond the line of demarcation for inclusion in the Utility Facilities and Utility System, all as described and shown on Exhibit 3C.

“Distribution System Capital Improvement” means any improvement to or replacement or expansion of the components of the Distribution System that is capital in nature, as determined in accordance with GAAP.

“Diverse Business” has the meaning ascribed thereto in Section 11.11.

“Diversity Plan” means the Diversity, Inclusion and Equity Plan attached hereto as Schedule 17.

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

“Drop-Down DB Contract” means that certain [•] dated as of the date hereof by and between the Concessionaire and the IMP Contractor, providing for the design, construction, and completion of the Initial Modernization Project.

“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 (1) 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 one hundred twenty percent (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 UMLLC.

“Employee Services Agreement” means the agreement set forth in the form of Schedule 4B.

“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 University Lease expires or is terminated.

“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 UMLLC.

“Equivalent Project Relief” has the meaning ascribed thereto in Section 1.21.

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

“Excluded Utility System Projects” means (a) those projects that the University is undertaking with respect to the Utility System that are listed on Schedule 11 and (b) those Capital Improvements that the University undertakes after the Turnover Date pursuant to its right to undertake such improvements under Section 3.21 or Section 4.1(b).

“Extraordinary Failure” means the failure (but only if such failure occurs prior to the Planned IMP Substantial Completion Date) of equipment or systems associated with the Utility System not addressed by the Initial Modernization Project reasonably attributable to the University’s deferred maintenance of the Utility System accumulated as of the Turnover Date,

including end-of-life breakdown repairs, replacements and rentals of temporary replacement equipment.

“FA Punch List” means the itemized list of Construction Work that remains to be completed as a condition to IMP Final Acceptance, prepared by UMLLC and included in the D&C Closeout Plan and agreed with the University prior to IMP Substantial Completion in accordance with Section 21.1. The FA Punch List shall only include any incomplete Construction Work that, due to its nature and the activities required to correct and complete the work, will not have any material or adverse effect on the normal, uninterrupted, and safe use of the Initial Modernization Project.

“Final Design” shall mean the full and complete design for the Initial Modernization Project, based on the Preliminary Design and approved by the University, for the final design and construction of one hundred percent (100%) of the Initial Modernization Project pursuant to the Drop-Down DB Contract.

“Fiscal Year” means the period from July 1 to June 30, provided that the Fiscal Year shall always be the same as the University’s fiscal year.

“Five-Year Plan” means the budget and plan prepared by UMLLC in accordance with Section 7.2 for the operation of the Utility System and performance of its obligations under this University Lease in respect of (i) the period consisting of the first partial Fiscal Year of the Term and the first five (5) full Fiscal Years of the Term, (ii) any given period of exactly five (5) full Fiscal Years during the Term, or (iii) if fewer than five (5) full Fiscal Years remain in the Term, the remaining full and partial Fiscal Years of the Term.

“Force Majeure” means any event beyond the reasonable control of a Party 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, vandalism, epidemic, quarantine restriction, strike, labor dispute or other labor protest, stop-work order or injunction issued by a Governmental Authority, a governmental embargo, or general unavailability or interruption 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).

“Foreign Shell Bank” means a foreign bank that does not have a physical presence in any country and that is not affiliated with a bank that has a physical presence and an acceptable level of regulation and supervision.

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

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

“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 or UMLLC.

“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 that 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).

“Highland Utility Center” means the “Highland Utility Center” as described or depicted Schedule 3A.

“IFRS” means the International Financial Reporting Standards, consistently applied.

“IMP Contractor” means, initially, TEP and, thereafter, any successor to TEP designated by UMLLC as the IMP Contractor pursuant Section 21.5.

“IMP Cost of Debt Factor” has the meaning ascribed thereto in Schedule 5.

“IMP Design Documents” means all drawings (including plans, profiles, cross-sections, notes, elevations, details, and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary for, or related to, the design of the Initial Modernization Project. IMP Design Documents includes the Record Design Documents.

“IMP Final Acceptance” means the occurrence of all the events and satisfaction of all the conditions set out in Schedule 21, Part [C], as and when confirmed by the University’s issuance of a certificate in accordance with the procedures and within the time frame set out in Section 22.2.

“IMP Final Acceptance Date” means the date upon which the University issues the Certificate of IMP Final Acceptance.

“IMP Final Acceptance Deadline” means the day that is [sixty (60)] Days after the IMP Substantial Completion Date.

“IMP Final Acceptance Long Stop Date” means the day that is three hundred sixty-five (365) days after the IMP Substantial Completion Date, as such period may be extended in accordance with Section 15.1(c).

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

“IMP Substantial Completion” means (a) the satisfaction of all the conditions set out in Schedule 21, Part [B] and (b) issuance by the University of the Certificate of IMP Substantial Completion in accordance Section 21.1.

“IMP Substantial Completion Date” means the date upon which the University issues the Certificate of IMP Substantial Completion.

“IMP Substantial Completion Long Stop Date” means the day that is three hundred sixty-five (365) days after the Planned IMP Substantial Completion Date, as such period may be extended in accordance Section 15.1(c).

“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 Investor” means UMLLC Parent or, if there is no UMLLC Parent as of the date hereof, each Equity Participant as of the date hereof.

“Initial Modernization Project” means the initial improvements and upgrades to the Utility System contemplated by the Preliminary Design and to be implemented and delivered by UMLLC in accordance with the Final Design and the terms and conditions set forth in this University Lease.

“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 UMLLC and Approved by the University (provided that such institution or entity, in its activity under this University Lease, 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 five hundred million dollars (\$500,000,000), which shall include, in the case of an investment or advisory firm, assets controlled by it or under management.

“Interim Performance Standards” means the standards, specifications, policies, procedures, and processes that apply to the operation of, maintenance of, rehabilitation of the Utility System set forth in Schedule 2B and the appendices thereto (as may be modified pursuant to the terms hereof) from Turnover until the IMP Substantial Completion of the Initial Modernization Project. To the extent that any term or provision set forth in Schedule 2B or incorporated by reference in Schedule 2B conflicts with any term or provision specified in this University Lease, then such term or provision of this University Lease shall govern and shall supersede any such conflicting term or provision.

“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 UMLLC 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 University Lease 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 University Lease.

“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 UMLLC Interest or the shares or equity interests in the capital of UMLLC and any of its subsidiaries or any cash reserves or deposits held in the name of UMLLC, in each case that satisfies all of the conditions set forth in Section 3.6 and Section 19.1.

“Leasehold Mortgage Debt” means: (i) 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 University Lease. For the purposes of determining the Utility System Concession Value, Leasehold Mortgage Debt shall not include: (i) debt from an Affiliate of UMLLC, unless such debt is on terms consistent with terms that would be reasonably expected from a non-Affiliate lender acting in good faith and otherwise complies with the requirements of Leasehold Mortgage Debt set forth above; (ii) any increase in debt to the extent such increase is the result of an agreement or other arrangement entered into after UMLLC was aware (or should have been aware), using reasonable diligence, of the prospective occurrence of an event giving rise to the payment of Leasehold Mortgage Debt; 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 Mortgage 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 ten (10) Days after the execution and delivery of such Leasehold Mortgage by UMLLC, 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).

“Legislature” means the Louisiana State Legislature.

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

“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 A-2 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 (1) Year or as otherwise provided in this University Lease. 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 Baton Rouge, Louisiana 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 UMLLC 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, except, for the avoidance of doubt, to the extent the same are part of a Third Party Claim pursuant to Article 12 (provided that, for the avoidance of doubt, an actual loss, claim, liability, damage of any Contractor or Representative of UMLLC and for which UMLLC is liable subject only to receiving payment in respect thereof from the University, shall not be treated as a contingent liability for this purpose).

“LSU” has the meaning ascribed thereto in the recitals of this University Lease.

“Main Powerhouse” means the “Main Powerhouse” as described or depicted Schedule 3A.

“Major KPI Event” means any single KPI Event that obligates UMLLC to pay KPI Compensation to the University, with respect to that KPI Event only, in an amount equal to the greater of (i) two million five hundred thousand dollars (\$2,500,000) and (ii) ten percent (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 UMLLC has actual knowledge as of the Turnover Date; (v) any action, omission, change, effect, circumstance, or condition contemplated by this University Lease or attributable to the execution, performance, or announcement of this University Lease or the Transaction (except for any litigation relating thereto or to this University Lease (or the matters contemplated herein)); and (vi) negligence, intentional misconduct, or bad faith of UMLLC 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.

“Maximum Budgeted IMP Amount” has the meaning ascribed thereto in Section 2.4(f).

“Memorandum of Sub-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.

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

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

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

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

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

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

“Open Book Basis” means, with respect to the proposed costs of any Capital Improvement, allowing the University to review all underlying assumptions and data associated with the cost of delivering such Capital Improvement, including, without limitation, assumptions as to costs of the design, construction, and installation of such Capital Improvement, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, and other items reasonably required by the University to satisfy themselves as to the reasonableness and accuracy of the amount.

“Operating Agreement” means any material agreement, contract, or commitment to which UMLLC 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.

“Operating Agreements and Plans” has the meaning ascribed thereto in Section 3.11(a).

“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 Turnover Date and ending on the first (1st) anniversary thereof or (ii) each subsequent one (1) -year period after the period described in clause (i). For the avoidance of doubt, such one (1) -year period is a fixed period, rather than a rolling period.

“Parallel Issue” has the meaning ascribed thereto in Section 1.22.

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

“Pass-Down Provisions” has the meaning ascribed thereto in Section 1.23.

“Payment Bond” has the meaning ascribed thereto in Section 21.6(a)(i).

“Performance Bond” has the meaning ascribed thereto in Section 21.6(a)(ii).

“Performance Standards” means (i) for the period commencing upon Turnover until the IMP Substantial Completion of the Initial Modernization Project, the Interim Performance Standards, and (ii) for the period commencing upon IMP Substantial Completion of the Initial Modernization Project through the remainder of the Term, the standards, specifications, policies, procedures, and processes that apply to the operation of, maintenance of, and rehabilitation of the Utility System set forth in Schedule 2A and the appendices thereto (as may be modified pursuant to the terms hereof). To the extent that any term or provision set forth in Schedule 2A or incorporated by reference in Schedule 2A conflicts with any term or provision specified in this University Lease, then such term or provision of this University Lease shall govern and shall supersede any such conflicting term or provision.

“Permitted UMLLC Encumbrance” means, with respect to the UMLLC 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, or being caused to be contested, by UMLLC 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', or warehousemen's liens or other like Encumbrances arising in the ordinary course of business of all or any part of the Utility System or UMLLC's performance of any of its rights or obligations hereunder, and either (A) are not delinquent or (B) are being contested by UMLLC 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 UMLLC'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 UMLLC and any Affiliate as to UMLLC'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 Turnover not caused by UMLLC, the Concessionaire, the Operator, or any of their respective Representatives; (x) the Concession Agreement; and (xi) any amendment, extension, renewal or replacement of any of the foregoing.

"Permitted University Encumbrance" means: (i) the UMLLC 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', or warehousemen's liens 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 UMLLC under this University Lease or materially impair the value of the UMLLC Interest from and after the Turnover Date; (v) any zoning, building, environmental, health, safety, or other Law; (vi) the police and regulatory powers of the State or the City-Parish 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 UMLLC or any Person claiming through it (provided that this shall not grant UMLLC, or any Person claiming through UMLLC, the right to create, incur, assume, or suffer to exist any such Encumbrance unless otherwise expressly contemplated herein); (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 UMLLC's rights hereunder); (xi) any of the Encumbrances set forth on Schedule 10; (xii) (A) any Encumbrances reflected in any leasehold title insurance policies (or any other title policies related to the Transaction) issued to UMLLC or any Leasehold Mortgagee in connection with the Transaction, or (B) if no such policies are issued in connection with the Transaction, any Encumbrances reflected in the Title Commitment which are not cured, satisfied, released or removed from the Title Commitment prior to closing of financing of the Initial Modernization Project; (xiii) this University Lease; and (xiii) 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, including the University.

“Planned IMP Substantial Completion Date” means May 30, 2024, as such date may be extended in accordance with the terms of this University Lease.

“Preliminary Design” shall mean the approximately thirty percent (30%) design for the Initial Modernization Project attached hereto as Schedule 7, which Preliminary Design shall include the Maximum Budgeted IMP Amount for the final design and construction of one hundred percent (100%) of the Initial Modernization Project pursuant to the Drop-Down DB Contract.

“Project Intellectual Property” has the meaning ascribed thereto in Section 3.11(b).

“Property” has the meaning ascribed thereto in the recitals of this University Lease.

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

“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 University Lease 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 University Lease, 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 the University.

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

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

“Record Design Documents” means the IMP Design Documents which provide the complete and final documents necessary or related to construction, operations, and maintenance of the Initial Modernization Project or any portion thereof.

“Record Retention Policy” has the meaning ascribed thereto in Section 3.12(a).

“Recovery Period” has the meaning ascribed thereto in Schedule 5.

“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 three (3) or more times during such Operator Evaluation Period.

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

“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).

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

“Restricted Person” means any Person that (a) to the knowledge of UMLLC after reasonable diligence and due inquiry, directly or indirectly, is acting in contravention of any United States or other applicable international anti-money laundering regulations or conventions, (b) is 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”), which list may be found at www.treas.gov/ofac, (c) operating, organized, or residing in a country or territory named on an OFAC list or which is designated as a Non-Cooperative Jurisdiction by the Financial Action Task Force on Money Laundering, which designation can be found at www.fatf-gafi.org, or whose funds are transferred from or through such a jurisdiction, (d) operates, resides in, or is organized under the laws of a jurisdiction designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns, which designation can be found at www.fincen.gov, (e) is a Foreign Shell Bank, or (f) has been debarred or suspended for cause from entering into contracts with the University or the State.

“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).

“Satellite Plants” means, collectively, each plant located adjacently and supplying Utilities to any of the following locations on the University Campus: (a) the South Campus, (b) the Nicholson Gateway Building, (c) the Recreation Center Building, (d) the Laboratory School Building, (e) the Union Center Building, (f) the 459 Complexes, (g) The Five Building, (h) the Cypress Building, and (i) the Ed Gay Building.

“SC Punch List” means the itemized list of Construction Work that remains to be completed in order to satisfy the conditions to achieving IMP Substantial Completion, prepared by UMLLC and included in the D&C Closeout Plan in accordance with Section 21.1.

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

“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).

“Shared Spaces” has the meaning ascribed thereto in Section 3.30.

“State” means the State of Louisiana.

“Supplies” has the meaning ascribed thereto in Section 7.3(a).

“Supply Contract” has the meaning ascribed thereto in Section 7.3(a).

“Supply Costs” means the purchase price of Supplies in accordance with the applicable Supply Contract, inclusive of any taxes, including sales, use or excise taxes, applicable to such Supplies and 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.

“TEP” has the meaning ascribed thereto in the recitals of this University Lease.

“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 Turnover” means 9:00 a.m. in Baton Rouge, Louisiana, on the Turnover Date.

“Title Commitment” means any commitment obtained by UMLLC, at its cost, for a leasehold title policy or policies, proposing to insure the leasehold interest of UMLLC in the Utility System Land, to the extent of such leasehold interest, prior to Turnover, issued by Title Company.

“Title Company” means [●] through Phelps Title Agency, L.L.C.

“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 UMLLC Interest pursuant to a Transfer.

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

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

“Ultimate Holding Entity” means, in relation to any Person, the ultimate holding entity of that Person, and in respect of UMLLC as of the date of this University Lease, means the Foundation.

“UMI CEA” has the meaning ascribed thereto in the recitals of this University Lease.

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

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

“UMLLC Interest” means the interest of UMLLC in the Utility System created by this University Lease and the rights and obligations of UMLLC under this University Lease.

“UMLLC Liaison” means the University’s [•], or such other Person as may be identified by UMLLC to the University in writing.

“UMLLC Parent” means the Person, if any, that owns, and only owns, one hundred percent (100%) of the shares of the capital stock, units, partnership or membership interests, other equity interests and equity securities, to the extent applicable, of UMLLC; as of the date of this University Lease, the UMLLC Parent means the Foundation.

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

“UMLLC Utility System Employees” means those Persons employed by UMLLC or Concessionaire immediately prior to the End Date whose duties directly relate to the provision of the Utility Services.

“Uncapped O&M Costs” means the sum of the following specifically identified out-of-pocket operating and maintenance costs and expenses incurred by UMLLC (which costs and expenses shall include payments due and payable by UMLLC or 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 University Lease: (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 costs incurred to make 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 3.21 (but only to the extent such costs are not costs incurred to make a Capital Improvement); (c) costs incurred by UMLLC pursuant to Section 4.3(c)(ii) if the relevant proposed Capital Improvement 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 7.4, 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 to make time-sensitive repairs or improvements to (A) the Utility System or (B) the University-owned property related to, but not a part of, the Utility System, in each case to the extent such repairs or improvements (w) are not Capital Improvements, (x) were not contemplated in the most recently approved Five-Year Plan, (y) were either (I) made in UMLLC’s good-faith belief that they were being made to the Utility System or (II) made in UMLLC’s good-faith belief that the repair was the best first response to an Emergency, and (z) have been Approved by the University in its discretion; (i) storm water and sanitary effluent charges assessed by the City-Parish, except to the extent that such storm water and sanitary effluent charges increase as a result of an action or inaction of UMLLC (other than the actions or inactions that UMLLC is directed or obligated to take or omit pursuant to this University Lease, including

in order to comply with the Performance Standards); (j) an Approved Capital Improvement that is classified as Uncapped O&M Costs pursuant to Section 4.3(h) or an Approved Material Change (unless such costs are treated as another form of compensation to UMLLC provided for in this University Lease in connection with the Approval of such Material Change), in each case up to the amount Approved by the University as part of its Approval of such Capital Improvement or Material Change; (k) costs incurred in connection with Supply procurement assistance under Section 7.3(a) or Section 7.3(b), but only to the extent such costs were Approved by the University prior to being incurred; (l) costs (including KPI Compensation) incurred as a direct result of UMLLC's failure to comply with Law or this University Lease if the sole reason for such failure is that the University failed to be reasonable in its Approval of all possible Capital Improvements or Material Changes that would cure or prevent such failure to comply with such Law or this University Lease; (m) costs associated with a University Directive that is not the construction of a Capital Improvement in accordance with Section 5.1, (n) legal fees arising out of any Excluded Liabilities; (o) the costs of any premium for insurance coverage procured by UMLLC in accordance with Section 13.1; *provided* that such coverage and the cost thereof has been Approved by the University prior to the purchase thereof; *provided, further*, that with respect to any Approved Capital Improvement or Material Change, such coverage and the cost thereof is expressly included in the request for Approval of such Capital Improvement or Material Change and the University Approves such cost; (p) the operations and maintenance costs that are reasonably necessary to cause the Utility System or Utility System Operations to comply with 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 Turnover Date but solely for the first 3 full Fiscal Years (and any partial Fiscal Year) after the occurrence of such enactment, modification, amendment or change (but not, for the avoidance of doubt, those costs that are included in any other clause of this definition; (q) operations and maintenance costs to the extent reasonably incurred by UMLLC to rectify an Extraordinary Failure that is neither insured pursuant to Article 13 nor caused by the act, omission, negligence, or willful misconduct of, or violation of applicable Law by, UMLLC, its Affiliates or their respective Representatives; and (r) a cost expressly described as an Uncapped O&M Cost in Section 3.7(c) or Section 3.7(e).

"Unexpended Contingency Amount" means an amount equal to the difference between (a) [five million dollars (\$5,000,000)] and (b) the cumulative amount of funds actually disbursed by UMLLC or the Concessionaire prior to the IMP Substantial Completion Date from reserves designated by for contingencies in the Approved Budgeted Amount pursuant to Section 2.4(f); *provided* that in no event shall the Unexpended Contingency Amount be less than zero dollars (\$0.00).

"University" has the meaning ascribed thereto in the preamble to this University Lease.

"University Campus" has the meaning ascribed thereto in the recitals to this University Lease as more particularly shown on Schedule 16.

"University Claim" has the meaning ascribed thereto in Section 1.20.

"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 University Lease directing UMLLC, to the extent permitted hereby, other than pursuant to Section 3.21, to: (i) add to, or perform work in respect of, the Utility System in addition to that provided for in this University Lease (including (a) work within the University Campus on utility facilities or energy equipment that are not and will not be considered part of the Utility System in accordance with the definition thereof, (b) taking control of the internal the University billing system for Utilities, and (c) causing UMLLC to engage in sustainability practices in excess of those reasonably required by Prudent Industry Practices); 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 UMLLC 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 UMLLC, 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, 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 UMLLC performs a University Directive, and (4) no such order or directive may in any event order or direct UMLLC 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 UMLLC to fail to be in compliance with this University Lease. Notwithstanding anything herein to the contrary, the University may not issue a University Directive to UMLLC for any portion of the Building Mechanical Systems.

“University Lease” has the meaning ascribed thereto in the preamble hereto.

“University Leasing Act” has the meaning ascribed thereto in the recitals of this University Lease.

“University Liaison” means the University’s [•], or such other Person as may be identified by the University to UMLLC in writing.

“University Reimbursable Amount” means an amount equal to two and one half percent (2.5%) of the gross amount of the financing of the Initial Modernization Project but in no event less than [two million five hundred thousand dollars (\$2,500,000)].

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

“University Responsible Parties” has the meaning ascribed thereto in Section 12.2.

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

“University Utility System Employees” means those Persons identified on Schedule 4A employed by the University immediately prior to Turnover whose duties directly relate to the operation or maintenance of the Utility System.

“Unplanned Outage” has the meaning ascribed thereto in Schedule 2A or Schedule 2B, as applicable.

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

“Utilities Modernization Initiative” has the meaning ascribed thereto in the recitals of this University Lease.

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

“Utility Facilities” means the improvements and equipment (a) constituting part of those identified in Schedule 3A, 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, 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 (I) expressly set forth in the Performance Standards as being within said line of demarcation or (II) which the University directs to be part of the Utility System as part of a University Directive in accordance with the definition thereof, (ii) any cameras or other public safety equipment installed, maintained, or used by the Louisiana State University Police Department or any successor department, (iii) the Satellite Plants, or (iv) any portion of the Building Mechanical Systems. For the avoidance of doubt, except as set forth in the definition of Distribution Bottlenecks, no part of the Distribution System shall be included within the scope of the Utility Facilities unless and until such part of the Distribution System has become the subject of a Distribution System Capital Improvement.

“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 University Lease, including Schedule 5.

“Utility Services” means the services to be provided by UMLLC as grantee of the concession under this University Lease. For the avoidance of doubt, no services in respect of the Distribution System shall be included within the scope of the Utility Services unless and until such part of the Distribution System has become the subject of a Distribution System Capital Improvement.

“Utility System” means: (A) the personal property, real property, improvements, fixtures, and equipment owned and operated by the University prior to the Time of Turnover to provide the Utilities on the University 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, (v) any utility distribution facilities or other equipment that is beyond the line of demarcation for each Utility, as set forth in the Performance Standards, except to the extent incorporated into the Utility System by a University Directive, (w) any interest in the Public Way or similar real property, (x) any utility facilities in a building that is not a building leased by UMLLC, up to the Utility System line of demarcation for such building, as described in the Performance Standards, except to the extent incorporated into the Utility System by a University Directive, (y) the Satellite Plants, or (z) any portion of the Building Mechanical Systems; and (B) from and after the Time of Turnover, such Utility System as it is reconfigured, replaced, improved, or relocated by UMLLC, the Concessionaire or the Operator pursuant to the terms of this University Lease. For the avoidance of doubt, except as set forth in the definition of Distribution Bottlenecks, no part of the Distribution System shall be included within the scope of the Utility System unless and until such part of the Distribution System has become the subject of a Distribution System Capital Improvement.

“Utility System Assets” means (i) as of the time immediately prior to the Time of Turnover, the personal property of the University used in connection with operations of the Utility System and identified on Part 3 of Schedule 3A as “Personal Property,” and (ii) in addition to the personal property described in clause (i) above, from and after the Time of Turnover, the personal property of UMLLC, the Concessionaire or the Operator used in connection with the operations of the Utility System; *provided* that the definition of “Utility System Assets” does not include any portion of the Building Mechanical Systems.

“Utility System Concession Value” means, at any given date, the fair market value of the UMLLC Interest at the time of the occurrence of the relevant Adverse Action, 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 UMLLC; *provided* that in no event shall such appraisal take into account any Capital Improvement not Approved by the University prior to such time; *provided, further*, 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 thirty (30) Days after a Party requests the appointment thereof, then the University and UMLLC shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select an independent third party appraiser to make the appraisal referred to above. Each of the University and UMLLC shall pay fifty percent (50%) of the costs and expenses of any appraisal.

“Utility System Land” means those parcels of real property described or depicted in Schedule 3A for the Main Powerhouse, the Cogeneration Building, the Highland Utility Center, and the Vet Med Plant.

“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 UMLLC pursuant to this University Lease.

“Utility System Purposes” means the use of the Utility System to provide Utility Services in support of the University by providing utility services to the University facilities on the University Campus, including to students, faculty, administrators, employees, and invitees of the University thereon and others providing services to the University.

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

“Vet Med Plant” means heating and cooling plant located at the University’s School of Veterinary Medicine, described or depicted as the “Vet Med Plant” on Schedule 3A.

“Warranty Period Utility System Projects” means those projects with respect to the Utility System completed by the University prior to the Time of Turnover that remain subject to an ongoing warranty from the contractor responsible for completing such projects and are listed on Schedule 22.

“Year” means the calendar year.

Section 1.2. Number and Gender. In this University Lease, 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 University Lease into articles, sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this University Lease. The headings in this University Lease are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this University Lease.

Section 1.4. References to this University Lease. The words “herein”, “hereby”, “hereof”, “hereto”, “hereunder”, and words of similar import refer to this University Lease 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 University Lease.

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

Section 1.6. Meaning of Including. In this University Lease, 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 University Lease, 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 University Lease, the word “notice” means “written notice”, unless specified otherwise.

Section 1.9. Consents and Approvals. Unless specified otherwise, wherever the provisions of this University Lease 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 University Lease 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 University Lease, 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 Baton Rouge, Louisiana 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 Baton Rouge, Louisiana on the next Business Day.

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

- (a) *Procedures.* Wherever the provisions of this University Lease 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 University Lease, 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 UMLLC 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 thirty (30) Days after receipt of UMLLC'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 discretion that additional time to consider such request would be appropriate due to the request's complexity or interrelationship with larger University issues, advise UMLLC by written notice of a reasonable timeframe (not to exceed ninety (90) 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, UMLLC 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. UMLLC 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 University Lease or the Concession Agreement an approval or consent by the University or UMLLC 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.
- (c) *Consent by the University.* Wherever the provisions of the Concession Agreement require or provide for or permit an approval or consent by UMLLC, such provisions shall be deemed also to require or provide for or permit the approval or consent by the University as precedent condition to the effectiveness of UMLLC's approval or consent pursuant to this Section 1.15; *provided, however*, for the avoidance of doubt, such approval or consent by the University shall be a Parallel Issue.

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

Section 1.17. References to Agreements Generally. References to agreements (including this University Lease) and other contractual instruments shall be deemed to include all amendments, restatements, extensions and other modifications to such instruments, whether in effect as of the date hereof or made thereafter.

Section 1.18. Cost Responsibilities. In this University Lease, the phrases “at the Concessionaire’s sole cost and expense”, “at the Concessionaire’s cost and expense”, “the Concessionaire shall be responsible for providing”, “the Concessionaire shall pay”, “the Concessionaire shall reimburse”, 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 University Lease. 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 University Lease, any reference to “out-of-pocket” or “out of pocket” costs or expenses of UMLLC, the Concessionaire or Operator and similar phrases and provisions shall mean the reasonable, incremental actual costs paid by UMLLC, 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.

Section 1.20. Interaction with the Concession Agreement.

- (a) Notwithstanding any other provision of this University Lease, to the extent that UMLLC is or becomes obligated under the Concession Agreement to take any action, do anything or perform any obligation in connection with the Transaction, the University agrees that, except as otherwise specified herein, it will be obligated to take any such action, do any such thing or perform any such obligation under this University Lease in the manner and to the standard specified herein or, in the absence of any such standard, such standard specified in the Concession Agreement.
- (b) Where the University has the right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction under this University Lease in respect of any matter, and UMLLC has a corresponding right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction pursuant to the terms of the Concession Agreement in respect of the same or substantially the same or similar matter, and where the University has exercised its rights in a particular manner,

UMLLC shall only be entitled to exercise its discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission or make the relevant determination in a manner that is consistent with the discretion exercised, approval granted or refused, request or submission accepted or refused or determination made or level of satisfaction confirmed by the University under this University Lease.

- (c) Where the University asserts or exercises any right against UMLLC in accordance with this University Lease in regard to any matter associated with the Transaction or the Concessionaire, including reductions in or retentions from payments under this University Lease, claims for indemnification and claims for damages for breach of this University Lease (such assertion or exercise of rights by the University being referred to as a “University Claim”), any determination made or reached under this University Lease as to the amount, nature and extent of UMLLC’s liability in relation to any University Claim shall be binding on the Concessionaire, provided that UMLLC may not compromise any University Claim without the prior written consent of the Concessionaire, in its sole discretion. The Concessionaire shall bear and discharge on a current basis, and shall indemnify UMLLC against all Losses reasonably and properly incurred by UMLLC related to any University Claim, except to the extent that (1) such Losses arise from a “UMLLC Default” (as such term is defined and used in the Concession Agreement) or (2) the liability for the relevant University Claim will be shared by UMLLC and Concessionaire, in which case, each of UMLLC and Concessionaire shall bear a fair and reasonable proportion of the related costs and expenses. For clarity, UMLLC will only share in the liability for a University Claim to the extent related to its specific obligations under the Concession Agreement.
- (d) The Parties acknowledge that where this University Lease contemplates meetings between UMLLC and the University and/or any of their respective Representatives, such provisions generally do not necessarily contemplate a right for the Concessionaire to attend such meetings. The University and UMLLC will use reasonable efforts to ensure that the Concessionaire is included in such meetings and, where the University and UMLLC are not successful, the University and UMLLC each agrees to keep the Concessionaire informed of any such discussions or meetings between UMLLC and the University and to put forward all comments and questions provided to them by the Concessionaire in respect of the subject matter of the relevant discussions or meetings. The University and UMLLC will not agree on any matter at a meeting in which the Concessionaire is not present and which could impact the obligations of the Concessionaire under the Concession Agreement without the prior written consent of the Concessionaire.
- (e) In certain sections of this University Lease, there are references to or acknowledgements of the Concession Agreement or portions thereof and the absence of such a reference or acknowledgement in any other particular section of this University Lease will not be construed for or against either party in interpreting this University Lease.

- (f) Notwithstanding anything in this University Lease to the contrary, the University may, in its sole and absolute discretion: (i) pay, perform or otherwise satisfy any and all obligations of UMLLC to the Concessionaire under the Concession Agreement, as and when the same become due; (ii) collect, receive, settle or compromise any and all obligations of Concessionaire to UMLLC under the Concession Agreement, as and when the same become due; or (iii) direct or cause UMLLC to approve or reject any matter requiring UMLLC's approval under the Concession Agreement. UMLLC hereby irrevocably makes, constitutes, and appoints the University (and any officer of the University or any Person designated by the University for that purpose) as UMLLC's true and lawful proxy and attorney-in-fact (and agent-in-fact) in UMLLC's name, place, and stead, with full power of substitution, to carry out the foregoing purposes. UMLLC hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable.
- (g) Notwithstanding anything contained in this University Lease to the contrary, and without limiting the provisions of Section 1.20(f) above, the Parties acknowledge and agree that (i) the University shall make any and all payments due from UMLLC to the Concessionaire under the Concession Agreement directly to the Concessionaire as and when the same become due from UMLLC to the Concessionaire pursuant to the terms of the Concession Agreement, and payment by the University of such amounts directly to the Concessionaire shall be in satisfaction of the University's corresponding payment obligation to UMLLC under this University Lease, and (ii) the Concessionaire shall make any and all payments due from the Concessionaire to UMLLC under the Concession Agreement directly to the University as and when the same become due from the Concessionaire to UMLLC pursuant to the terms of the Concession Agreement as provided in the Concession Agreement, and payment by the Concessionaire of such amounts directly to the University shall be in satisfaction of UMLLC's corresponding payment obligation to the University under this University Lease.
- (h) Notwithstanding anything contained in this University Lease to the contrary, the Parties acknowledge and agree that UMLLC may cause the Concessionaire, pursuant to the Concessionaire's obligations under the Concession Agreement, to perform any obligation of UMLLC to the University required under this University Lease, and performance by the Concessionaire of such obligations for the benefit of the University shall be in satisfaction of UMLLC's corresponding obligation to the University under this University Lease.

Section 1.21. Equivalent Project Relief.

- (a) Except to the extent any entitlement of UMLLC under this University Lease (including any rights, remedies or relief) does not, in any way, relate to the rights or obligations of the Concessionaire under the Concession Agreement, the Concessionaire will be entitled to receive the benefit of such entitlement from UMLLC (in accordance with and subject to the provisions of Section 1.21(c)), including the benefit of:

- (i) any compensation, damages or other payment of any kind on the same or substantially the same grounds as UMLLC is entitled to compensation, damages or other payment of any kind under this University Lease, including compensation on termination;
- (ii) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, the Concession Agreement on the same or substantially the same grounds as UMLLC is entitled to be relieved from performance of equivalent obligations under, or from termination of, this University Lease;
- (iii) any entitlement of the Concessionaire under the Concession Agreement in respect of which any provision of the Concession Agreement states that the Pass-Down Provisions are to apply; and
- (iv) any certificate, consent or approval granted under the Concession Agreement, this University Lease or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Concessionaire, including any entitlement of UMLLC to request or apply for such certificate, consent or approval from the University, or any other Person under the Concession Agreement or this University Lease,

including, for greater certainty, any benefit to UMLLC arising out of any modification implemented or required because of a University Directive pursuant to this University Lease, any Compensation Event, Delay Event, Force Majeure, or remedies or compensation in respect of any University Default in respect of which UMLLC is entitled to relief, compensation or benefit under this University Lease in respect of UMLLC's obligations, but excluding any specific loss, cost or expense incurred by UMLLC to which the relevant compensation expressly relates and which is not included in any amount claimed by the Concessionaire.

UMLLC's entitlement under the Concession Agreement in respect of the matters set out in this Section 1.21 is referred to in this University Lease as "Equivalent Project Relief".

- (b) The Concessionaire will not be entitled to any relief from, or waiver in respect of performance of its obligations under the Concession Agreement other than:
 - (i) to the extent UMLLC receives Equivalent Project Relief under this University Lease; or
 - (ii) to the extent expressly provided for in the Concession Agreement.
- (c) The Concessionaire will be entitled to the benefit of any Equivalent Project Relief to the extent that UMLLC is or becomes entitled under this University Lease only if, when and to the same extent that UMLLC has received Equivalent Project Relief from the University under this University Lease.

- (d) For purposes of UMLLC asserting a claim under this University Lease against the University in respect of Equivalent Project Relief, where the Concessionaire has suffered Losses or otherwise claims relief in respect of any event or circumstance in respect of which UMLLC is entitled to claim Equivalent Project Relief, the University and UMLLC each acknowledges that UMLLC will be obligated to include such Losses or relief claimed by the Concessionaire in UMLLC's claim against the University and to make such claim against the University under this University Lease, provided that the Concessionaire's recourse against UMLLC and UMLLC's liability to the Concessionaire in respect of any such Losses or relief will be subject to, and strictly limited by, the provisions of Sections 1.21(a) through 1.21(c) of the Concession Agreement and that UMLLC will not be required to reimburse the Concessionaire under the Concession Agreement to the extent that such Losses or relief arise as a result of any failure on the part of the University to perform its obligations under this University Lease, unless UMLLC has received compensation from the University under this University Lease in respect of such University failure, in which case the Pass-Down Provisions shall apply.

Section 1.22. Enforcement of Parallel Issues.

- (a) UMLLC will preserve, protect, and pursue under the Concession Agreement such rights, remedies, and relief as may relate to the University's rights and obligations hereunder, including any claim for Equivalent Project Relief, (a "Parallel Issue") in order to secure a favorable resolution of the Parallel Issue, provided that:
- (i) UMLLC has received written notice from the University of the Parallel Issue;
 - (ii) the University will not be entitled to recover from UMLLC any Losses or claims arising out of or in connection with UMLLC pursuing resolution of a Parallel Issue on the University's behalf other than any amounts received from the Concessionaire in respect of such Parallel Issue; and
 - (iii) the University will indemnify UMLLC in respect of any Losses arising out of or in connection with UMLLC pursuing resolution of a Parallel Issue on the University's behalf in accordance with this Section 1.22(a), including reimbursing UMLLC for any deduction from, reduction of or exercise of set-off, compensation or similar right against any amount payable by the Concessionaire associated therewith, provided that such indemnification will, unless UMLLC has no entitlement to any amount received in respect of such Parallel Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Issue.
- (b) Subject to Section 1.22(c), UMLLC consents to the University pursuing the rights, remedies and relief under the Concession Agreement described in Section 1.22(a) of this University Lease, including any entitlement to compensation on termination, in the name of UMLLC, which may, subject to the provisions of Section 12.4 of the Concession Agreement, include the defense of claims where the University is

required to provide an indemnity to UMLLC in accordance with this University Lease. The University will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that, if the University is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the Parties in proportion to their ultimate entitlements to same. UMLLC will, at the sole cost and expense of the University, use commercially reasonable efforts to provide assistance, including providing documents, data, and information, as the University may reasonably request in connection with the pursuit of such Parallel Issue by the University.

- (c) No later than seven (7) days following receipt of the notice referred to in Section 1.22(a)(i), UMLLC may take conduct of the Parallel Issue and pursue the rights, remedies and relief under the Concession Agreement described in Section 1.22(a) of this University Lease on behalf of the University and in accordance with the reasonable directions of the University.
- (d) UMLLC will not enter into any compromise or settlement of a Parallel Issue with the Concessionaire which affects, in any respect, the University's obligations, rights, remedies or relief hereunder without the prior written consent of the University, in its sole discretion.
- (e) Where UMLLC pursues a Parallel Issue in accordance with this Section 1.22, the University will be kept informed of UMLLC's progress under this Section 1.22 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by UMLLC in accordance with this Section 1.22.
- (f) The University will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure, use commercially reasonable efforts to provide assistance, including providing documents, data, and information, as UMLLC may reasonably request in connection with the pursuit of any Parallel Issue.
- (g) Any claims in respect of a Parallel Issue and any recoveries obtained by UMLLC or the University in respect of any Parallel Issue under the Concession Agreement will be subject to the provisions of Section 1.21 in respect of Equivalent Project Relief.

Section 1.23. Pass-Down Provisions. The Parties acknowledge and agree that all provisions of this University Lease including the provisions of each Schedule hereto will be subject to the provisions of Section 1.20 through Section 1.22 of this University Lease (the "Pass-Down Provisions"), and the absence of any specific reference to the Pass-Down Provisions will not preclude the application of the Pass-Down Provisions to any provision of this University Lease.

Section 1.24. Communications with the Concessionaire and Third Parties.

- (a) To the extent that any written notice, information, consent, claim, request, response, submission, or other communication (a "Communication") is required or permitted to be given or made by the University directly to the Concessionaire or any other

third party under this University Lease or the Concession Agreement, the University will provide a copy of the same to UMLLC at the same time as giving or making the Communication to the Concessionaire or such third party.

- (b) Except as otherwise specifically set out in this University, UMLLC hereby gives permission to the University to provide all Communications directly to the Concessionaire.
- (c) UMLLC will make all Communications required to be made by UMLLC to the University under this University Lease in a timely manner so as to permit the University to comply with its obligations under this University Lease and will consult with the University in respect of all Communications with the Concessionaire.
- (d) The University will make all Communications required to be made by the University to UMLLC under this University Lease in a timely manner so as to permit UMLLC to comply with its obligations under this University Lease.

Section 1.25. Louisiana Defined Terms. As used in this University Lease, the term “lien” will also mean a privilege, mortgage, security interest, assignment, or other encumbrance. The term “real property” or “real estate” will mean “immovable property” as that term is used in the Louisiana Civil Code. The term “personal property” will mean “movable property” as that term is used in the Louisiana Civil Code. The terms “fee simple interest” shall mean “full ownership interest” as that term is used in Louisiana law. The term “easement” will mean “servitude” as that term is used in the Louisiana Civil Code. The term “building” will also include “other constructions” as that term is used in the Louisiana Civil Code. The term “intangible” will mean “incorporeal” as that term is used in Louisiana law. The term “tangible” will mean “corporeal” as that term is used in Louisiana law. The term “condemnation” will include “expropriation” as that term is used in Louisiana law. The term “receiver” will include “keeper” as that term is used in Louisiana law. The term “fixtures” will mean component parts of the Land and/or the improvements.

ARTICLE 2

THE TRANSACTION; CONDITIONS PRECEDENT; COVENANTS; ADMINISTRATIVE FEE

Section 2.1. Grant of Concession. Upon the terms and subject to the conditions of this University Lease, effective at the Time of Turnover:

- (a) The University demises and leases the Property to UMLLC free and clear of Encumbrances other than Permitted University Encumbrances and on an exclusive basis, other than as expressly provided in this University Lease and the Concession Agreement, for and during the term (the “Term”) commencing on the Turnover Date and expiring on the thirtieth (30th) anniversary thereof (or such later date as may be required to effect a Delay Event Remedy but subject to earlier termination as provided in this University Lease), provided that such demise and lease of the Utility Facilities and Utility System Assets other than those located on the Utility

System Land shall not prevent the University or any Governmental Authority from using, occupying, developing, leasing, or otherwise enjoying the real property and the improvements other than the land on which the Utility Facilities and Utility System Assets are located without the payment of any fee, charge or rent to UMLLC, and

- (b) The University (i) grants UMLLC a non-exclusive license during the Term, appurtenant to the leasehold interest described in clause (a) above, to access the Public Way and other portions of the University Campus (subject to Section 3.2(b)), solely in order to operate, maintain, repair, replace, improve, and service the Utility Facilities and Utility System Assets located therein or thereon to the extent permitted or required under this University Lease and the Concession Agreement, and (ii) grants UMLLC, free and clear of any Encumbrances (other than Permitted University Encumbrances) for and during the Term, except as expressly provided in this University Lease and the Concession Agreement (including as provided in Section 3.21 and Section 4.1), (x) an exclusive right to perform the Capital Improvements which are Approved pursuant to Section 4.3, (y) an exclusive right to design, build, and finance the Initial Modernization Project, subject to the University's approval rights as set forth herein, and (z) an exclusive right to operate the Utility System (and any expansions, improvements or replacements thereto) and to provide Utility Services on the University Campus (except as expressly provided herein or in the Concession Agreement), 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 (collectively, the "Transaction").

Section 2.2. Turnover.

- (a) The commencement of the rights and obligations of the Parties hereunder (the "Turnover") shall occur on the date on which the Turnover occurs which date shall be the date hereof (the "Turnover Date"). The Turnover shall be held at the University, [●], Baton Rouge, Louisiana, or such other place agreed to in writing by the University and UMLLC.
- (b) All Prorated Items shall be prorated between the University and UMLLC as of 11:59 p.m. on the Day immediately preceding the Turnover Date based upon the actual number of Days in the month and a three hundred sixty-five (365) -Day year and the required payment resulting from such proration shall be made by the relevant Party to the other as follows:
 - (i) On or prior to the Time of Turnover, the University will provide to UMLLC an itemized statement of such Prorated Items, estimated in good faith as of the Turnover and reasonably based on relevant billing information from third parties or (in the absence of such information) the University's financial statements as of [●], and such statement shall be the basis of proration of any Prorated Items at the Time of Turnover;

- (ii) Within forty-five (45) Business Days after the Turnover, the University will provide to UMLLC a revised good-faith accounting of such Prorated Items as of the Turnover in the form of an itemized statement of such Prorated Items (the “Revised Proration Statement”);
 - (iii) Within fifteen (15) Business Days after UMLLC’s receipt of the Revised Proration Statement, UMLLC will review the Revised Proration Statement and will notify the University of any adjustments made by UMLLC to the Revised Proration Statement in good faith;
 - (iv) To the extent the University disagrees with any of UMLLC’s adjustments to the Revised Proration Statement, the University shall provide notice to UMLLC within fifteen (15) Business Days after the University’s receipt of UMLLC’s adjustments, and any disagreement shall be resolved in accordance with Article 18; 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 ten (10) Business Days of such determination.
- (c) At the time of the first closing of the financing of the Initial Modernization Project, UMLLC shall pay to the University in readily available funds (according to instructions provided by the University to the Concessionaire not later than three (3) Days prior to such closing) an amount equal to the University Reimbursable Amount.

Section 2.3. Conditions Precedent to Turnover.

- (a) *Conditions for the Benefit of UMLLC.* UMLLC shall be obligated to complete the Turnover only if each of the following conditions has been satisfied in full at or before the Time of Turnover, unless waived by UMLLC:
- (i) the representations and warranties of the University set forth in Section 9.1 shall be true and correct in all material respects as of the Time of Turnover;
 - (ii) The University shall have (A) delivered to UMLLC a legal opinion of counsel to the University, substantially in the form attached hereto as Schedule 8A, and (B) executed and delivered the Employee Services Agreement in the form of Schedule 4B (which shall also have been executed by UMLLC);
 - (iii) all Campus-Wide Permits set forth on Schedule 18 are in full force and effect;
 - (iv) the University shall have obtained and delivered to UMLLC, at the expense of UMLLC, a commitment effective at the Time of Turnover for a leasehold

title policy or policies, in form and substance reasonably acceptable to UMLLC (which will include an endorsement with the terms of the leasehold coverage), proposing to insure the leasehold interest of UMLLC in the Utility System Land, to the extent of such leasehold interest, subject only to (A) Permitted UMLLC 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 (iv) of this Section 2.3(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 UMLLC shall purchase any leasehold title insurance policies (or any other title policies related to the Transaction) that it elects to purchase at UMLLC’s cost in connection with the Transaction or any Leasehold Mortgage; and

- (v) The University shall have delivered to UMLLC a certificate confirming that each of the conditions set forth in Section 2.3(a)(i) through Section 2.3(a)(iv) has been satisfied in full by the University (except for any condition that has been waived by UMLLC) at or before the Time of Turnover.
- (b) *Conditions for the Benefit of the University.* The University shall be obligated to complete the Turnover only if all of the conditions set forth in Section 2.3 of the Concession Agreement have been satisfied in full at or before the Time of Turnover, unless waived by the University.
- (c) *Mutual Conditions.* In addition, the University and UMLLC shall be obligated to complete the Turnover only if each of the following conditions precedent has been satisfied in full at the Time of Turnover, unless waived by both the University and UMLLC:
 - (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;
 - (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; and
 - (iii) the University and UMLLC shall have approved in writing the Preliminary Design for the Initial Modernization Project in the form of Schedule 7.

Section 2.4. Covenants.

- (a) *Cooperation.* The Parties shall cooperate with each other in consummate the Transaction as provided in this University Lease.
- (b) *Reasonable Efforts.* 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 University Lease 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 which would prohibit or materially restrict or hinder the Transaction, 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.
- (d) *Operation of the Utility System After the Time of Turnover.* UMLLC shall be fully responsible for performing the Utility Services under the terms of this University Lease, and for observing and performing all other obligations of UMLLC hereunder, from and after the Time of Turnover.
- (e) *Access to Information and Inspections.* UMLLC shall hold and shall 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 UMLLC in connection with the Transaction. UMLLC 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 UMLLC's employees available when reasonably requested by the University; *provided, however,* that the University shall reimburse UMLLC for all out-of-pocket and documented costs and expenses incurred by UMLLC in providing said assistance and will not unduly interfere with UMLLC's operations.
- (f) *Final Design of Initial Modernization Project; Approved Budgeted Amount.* As quickly and efficiently as reasonably possible after the date hereof, the Parties shall cooperate and work collaboratively with each other and the Concessionaire to develop and approve (x) the Final Design of the Initial Modernization Project based on the Preliminary Design and (y) the proposed Approved Budgeted Amount for

the Initial Modernization Project (which shall include the University Reimbursable Amount plus the Concessionaire Cost of Finance); *provided* the proposed Approved Budgeted Amount for the Initial Modernization Project shall not exceed [(\$111,880,557)] (such amount, plus the Concessionaire Cost of Finance, the “Maximum Budgeted IMP Amount”). UMLLC shall have the right to request Approval of the Final Design and the Approved Budgeted Amount for the Initial Modernization Project at any time, which the University shall consider in good faith, by submitting a request to the University, or an office or person designated by the University Liaison, containing detailed plans for the Final Design and the proposed Approved Budgeted Amount based on such detailed plans, which shall include, in addition to such other commercially reasonable detail as the University shall require (which may include, at the University’s discretion, such information and detail as contemplated by Section 4.3 below as if the Initial Modernization Project were a Capital Improvement or Material Change contemplated thereby): (A) total costs for construction and installation of the Initial Modernization Project, including all hard and soft costs, any financing costs, and any applicable sales or use tax, which shall be presented on an Open Book Basis; (B) an explanation of all relevant assumptions, variables, and data sources used to develop the proposed Final Design and the proposed Approved Budgeted Amount; and (C) the proposed schedules, process, and other technical and logistics details associated with the proposed Final Design and the proposed Approved Budgeted Amount. Upon receipt of UMLLC’s request for approval of the Final Design and the Approved Budgeted Amount for the Initial Modernization Project, including all supporting information and detail therefor as described in this Section 2.4(f), the University shall review such request and, in its 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 by the University with respect to such Approval at such time, unless UMLLC’s written request submitted to the University explicitly requested that the University respond only pursuant to Sections 2.4(f)(ii) or (iii);
- (ii) provide a written response requiring that UMLLC (1) perform additional work with respect to such proposed Final Design 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 any details contemplated by this Section 2.4(f) that were previously unavailable, and (2) after performing such additional work, submit a revised request for Approval by the University pursuant to this Section 2.4(f), which revised request the University shall consider; or
- (iii) (1) provide UMLLC with comments on such proposed Final Design or such proposed Approved Budgeted Amount, as applicable, including comments on any details provided in UMLLC’s proposal, and (2) require that UMLLC incorporate such comments and re-submit a revised request for Approval pursuant to this Section 2.4(f).

The foregoing submittal and approval process shall continue until such time as the proposed Final Design and the proposed Approved Budgeted Amount has been Approved in accordance with Section 2.4(f)(i) above. Following the University's approval of the proposed Approved Budgeted Amount in accordance with this Section 2.4(f), such amount shall constitute the Approved Budgeted Amount for the Initial Modernization Project, for purposes of this University Lease and the Concession Agreement, including the calculation of the Utility Fee.

- (g) *Policies of Insurance.* The University and UMLLC shall be responsible for obtaining insurance for the Utility System in accordance with the terms hereof.
- (h) *Employees.* The University and UMLLC shall comply with the terms and conditions of Section 2.4(h) of the Concession Agreement in all respects, the terms and conditions of which are integral to, and made part of, this University Lease.
- (i) *Excluded Utility System Projects.* The University shall undertake the construction of the Excluded Utility System Projects, in accordance with applicable Law, until they have been completed in substantial accordance with the plans for such Excluded Utility System Projects, provided that the University may, upon written notice to UMLLC, abandon or modify any or all Excluded Utility System Projects. To the extent that the construction or completion of any Excluded Utility System Project requires access to the Utility System, UMLLC hereby grants a non-exclusive license to the University and its Representatives to so access the Utility System as necessary to complete such Excluded Utility System Projects (and UMLLC shall use reasonable efforts to avoid undue interference with the operation of the Utility System) and shall reasonably cooperate with the University and its Representatives with respect to the completion of the Excluded Utility System Projects, which cooperation shall include (i) providing the University with notice if UMLLC becomes aware of any deviation from the University's approved plans and specifications for the applicable Excluded Utility System Project and (ii) directing the University's contractors to stop any work on the Excluded Utility System Project if UMLLC reasonably believes that continuing such work would constitute an Emergency. Upon completion of an Excluded Utility System Project, the University shall (i) deliver UMLLC written notice thereof, and, at such time, that Excluded Utility System Project shall become part of the Utility System and UMLLC shall be granted a leasehold interest therein, (ii) either (A) assign to UMLLC (or one or more third parties at UMLLC's direction,) all contractors' warranties held by the University with respect to such Excluded Utility System Project or (B) to the extent the University chooses not to so assign such warranties or such warranties are not assignable, cooperate with UMLLC to provide the benefit of such warranties to UMLLC (or one or more third parties at UMLLC's direction), and (iii) the Capped O&M Amount shall be increased for the Fiscal Year in which such Excluded Utility System Project is placed into service by the additional annual operation and maintenance costs (determined reasonably in accordance with GAAP) that UMLLC is required to incur due to the placement into service of such Excluded Utility System Project, provided that UMLLC provides reasonable proof of such additional costs and that such additional costs were unavoidable. The

University shall name UMLLC as an additional insured on its insurance policies with respect to those Excluded Utility System Projects. For the avoidance of doubt, Excluded Utility System Projects shall not be considered New Approved Capital Improvements. If the University elects to abandon an Excluded Utility System Project, the Capped O&M Amount shall be increased for the Fiscal Year in which such Capital Improvement is abandoned by the additional annual operation and maintenance costs (determined reasonably in accordance with GAAP) that UMLLC is required to incur due to the abandonment of such Excluded Utility System Project, provided UMLLC provides reasonable proof of such additional costs and that such additional costs were unavoidable.

Section 2.5. Turnover Deliverables. At the Time of Turnover, each Party shall execute and deliver all assets, agreements, 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 2.6. Memorandum of University Lease. At the Time of Turnover, the Parties shall execute and deliver a Memorandum of University Lease (the “Memorandum of University Lease”) in the form attached hereto as Schedule 13, which the Parties shall cause to be recorded in the Recorder’s Office of the East Baton Rouge Parish, Louisiana. To the extent that changes are made to this University Lease with respect to the Term, leased property or other material matters set forth in the recorded Memorandum of Material Lease, including the removal of property from service by the Utility System in accordance with Section 5.3, the Parties shall timely (and in no event longer than 10 Days after a request therefor) execute, deliver and record an amendment to the recorded Memorandum of University Lease reflecting such changes. The Parties acknowledge that for purposes of recordation, a description of certain portions of the Utility System constituting Utility Facilities that are a real property interest, are depicted specifically but are recorded generally against the lot or parcel on which such Utility Facility is located. Each party shall have the right, from time to time, at its cost and expense to further refine by a metes and bounds legal description the specific location of the applicable Utility Facility, and subject to the other Parties’ reasonable approval, may modify the Memorandum of University Lease by recording an amendment thereto that shows the refined location description. In such instance, the modification to the Memorandum of University Lease is subject to the other Party’s reasonable approval, and both Parties shall sign a consent to the recording of the Memorandum of University Lease upon its approval. The Parties agree not to record this University Lease itself.

Section 2.7. Administrative Fee. During the Term, the University shall pay UMLLC an annual administrative fee in the amount of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) for the reimbursement UMLLC’s costs and expenses related to the Transaction, which, notwithstanding anything herein to the contrary, (i) shall in no event be considered part of the Utility Fee, (ii) shall be retained by UMLLC for its own account and (iii) shall not be payable by UMLLC to the Concessionaire under the Concession Agreement.

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 UMLLC Default, UMLLC 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 UMLLC hereunder, subject to the provisions contained in this University Lease. The University and UMLLC acknowledge that UMLLC'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 University Lease, to monitor compliance with this University Lease to ensure that the Utility System is used and operated as required by this University Lease. Any entry by the University or its Representatives into the Utility System required or permitted under this University Lease shall not constitute a reentry, trespass, or a breach of the covenant for quiet enjoyment contained in this University Lease. 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, UMLLC's leasehold interest in and to the Utility System and the rights granted to UMLLC hereunder, or any portion thereof, against any Person claiming any interest adverse to the University or UMLLC in the Utility System, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, or willful misconduct of, or violation of applicable Law by, UMLLC, its Affiliates or their respective Representatives.
- (b) *Present Condition.* Subject to Section 2.4(g) and except as specifically set forth herein, UMLLC understands, agrees, and acknowledges that UMLLC (i) by the execution of this University Lease, agrees to accept the Utility System "AS IS" at the Time of Turnover 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), the absence of latent or apparent defects in the Utility System (or any part thereof), or its suitability for UMLLC's proposed use, provided that nothing in this Section 3.1(b) shall preclude UMLLC from making repairs or replacements or Capital Improvements to the Utility System in accordance with the terms of this University Lease (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 operations and maintenance costs (reasonably determined in accordance with GAAP) 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 Turnover. Upon the Turnover, UMLLC shall be deemed to have inspected and shall assume responsibility for the condition of the Utility System consistent with provisions of La R.S. 9:3221.
- (c) *Legal Title to Real Property and Improvements.* For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, all real estate and improvements now or hereafter forming part of the Utility System shall be the fee-owned property of the University for GAAP and State law purposes, and are subject to the terms and conditions of this University Lease.

Section 3.2. Utility System Operations.

- (a) *Use.* Except as otherwise specifically provided herein, UMLLC 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 University Lease, including the Performance Standards, Prudent Industry Practices, and applicable Law. Upon the University's request, UMLLC shall provide an estimate for the costs associated with providing Utilities from temporary sources for construction projects or special events identified by the University. In connection with such maintenance, UMLLC 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), UMLLC 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, UMLLC 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 University Lease, (B) as required by applicable Law, (C) as necessary to comply with any other requirement of this University Lease (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) *University Campus.* Notwithstanding anything to the contrary contained herein, UMLLC shall operate the Utility System and provide the Utility Services in a manner that does not interfere with or impair the operation of the University Campus or any other real property owned by the University, including any special events conducted on the University Campus. Except in the case of an Emergency or as otherwise provided for in Section 3.2(e) or Section 3.2(j), if UMLLC, in performing the Utility System Operations, determines it is reasonably necessary to access or disturb any portion of the University Campus or any other real property owned by the University, excluding Utility System Land, it shall, to the extent possible given the circumstances, provide the University at least thirty (30) Days' prior written notice and UMLLC shall comply with any reasonable requirements or restrictions on such disturbance imposed by the University, including limiting the time in which UMLLC can so access and/or disturb the portion of the University Campus or any other real property owned by the University to specific hours. In accessing any portion of the University Campus or any other real property owned by the University pursuant to the license granted hereunder, UMLLC shall also abide by any restrictions and requirements generally imposed by the University on such access, as communicated to UMLLC from time to time. To the extent that, in operating and maintaining the Utility System, UMLLC damages any portion of the University's real or personal property, including the landscape of the University

Campus, the University's information technology network or any other real property owned by the University, the University's outdoor lighting, traffic signals, irrigation equipment and communications equipment and such damage was neither (i) Approved by the University in accordance with this University Lease nor (ii) included as part of the scope of work Approved by the University related to such operations and maintenance, then UMLLC shall, in coordination with University personnel, promptly cause such property to be repaired to substantially the same or, solely at UMLLC's election, better condition that existed prior to such damage, and the cost incurred therewith shall not be recovered as a part of the Utility Fee or otherwise provided, however, that UMLLC shall be entitled to make a claim on any applicable UMLLC Required Coverage.

- (c) *Costs and Expenses.* Except as otherwise specifically provided herein, UMLLC 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.* UMLLC 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 University Lease (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 University Lease, (ii) arising out of the Utility System or any Utility System Operations (including with respect to any Utility System Employee) prior to the Time of Turnover, (iii) arising under any Environmental Law and related to (1) the ownership, operation or condition of the Utility System prior to the Time of Turnover 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 Turnover and including (A) the abatement, handling, disposal, or removal of any asbestos or other Hazardous Substances present at the Time of Turnover 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 University Lease and (B) any known or unknown environmental conditions relating to the Utility System or its subsurface that existed prior to the Time of Turnover the manifestation of which occurs following the Time of Turnover, which environmental obligations the University shall perform and discharge when due, except in any case to the extent exacerbated by UMLLC or its Representatives or caused by any action of UMLLC or its Representatives, (iv) arising out of the University's rights under this University Lease to test, inspect, audit, repair, maintain, or operate the Utility System without impairment of the University's remedies for a UMLLC Default and (v) with respect to the Excluded Utility System Projects that have not yet become

a part of the Utility System in accordance herewith (collectively, the “Excluded Liabilities”).

- (e) *Right of Entry and Access to the Public Way.* Subject to Section 3.19, the University hereby grants to UMLLC and its Representatives a non-exclusive 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 UMLLC 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 UMLLC shall, enter, access, and perform work in, on or over the Public Way in accordance with the Performance Standards. The rights granted to UMLLC under this Section 3.2(e) neither create an interest in real property nor do they create a priority in favor of UMLLC 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.* UMLLC shall be responsible for marking and mapping all portions of the Utility System in accordance with the Performance Standards.
- (g) *Deemed Planned Outage.* UMLLC 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 UMLLC 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 University Liaison agrees to such shut down (which agreement must be in writing or by e-mail from the University Liaison), then it shall be treated as a Planned Outage. The University Liaison shall consider such proposed shut down in good faith. If the University Liaison does not Approve such shutdown, then it will be considered an Unplanned Outage if UMLLC elects to proceed with such shutdown.
- (h) *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 UMLLC 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 UMLLC shall comply with the provisions of Section 8.1 and the relevant portion of the Performance Standards, as if such shutdown were an Unplanned Outage. UMLLC shall perform the corrective action to address such circumstance as soon as reasonably practicable. Within ten (10) Business Days after the shutdown and repair of the applicable portion of the Utility System, UMLLC shall provide the University with pertinent information on such circumstance and such other relevant information within UMLLC’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 UMLLC's obligation to treat such shutdown as an Unplanned Outage for purposes of compliance with the Performance Standards.

- (i) *Other Public Streets.* To the extent that the performance of the Utility System Operations requires access to streets, alleys, driveways, or sidewalks owned or controlled by a Governmental Authority, the University shall, at no out-of-pocket cost to the University, use commercially reasonable efforts to cooperate with UMLLC to secure such access from the applicable Governmental Authority consistent with the University's past practice.

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 University Lease, Prudent Industry Practices and applicable Law (an "Operator") who may be (but is not required to be) UMLLC or the Concessionaire itself. The Operator on the first Day of the Term shall be [CenTrio Energy South LLC] unless UMLLC has designated another Person to be the Operator and such Person has been Approved in accordance with Section 3.3(b). UMLLC shall not engage or appoint a replacement Operator unless the University has Approved such Operator and the terms (including fees charged by such replacement Operator) of any such engagement are commercially reasonable; *provided, however*, that a "Change in Control" (as such term is defined and used in the Concession Agreement) 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" as set forth in the Concession Agreement shall be read and apply as though "Operator" were substituted for the "Concessionaire"; *provided, further*, that if the University does not provide UMLLC with the relevant Approval, UMLLC shall be entitled to appoint an interim Operator for a period of up to one hundred eighty (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 UMLLC 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. UMLLC shall not extend the term of any interim Operator beyond one hundred eighty (180) consecutive Days or appoint a successor interim Operator after such one hundred eighty (180) -Day period. The Operator shall at all times be subject to the direction, supervision, and control (by ownership, contract, or otherwise) of UMLLC, and any delegation to an Operator shall not relieve UMLLC of any obligations, duties or liability hereunder. UMLLC 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 five (5) Business Days' notice to such Operator or the University, as applicable, upon the termination of this University Lease. Except as otherwise expressly set forth herein, the Operator shall have no interest in, or rights under, this University Lease or the Utility System unless the Operator is UMLLC or the Concessionaire itself.

- (b) *Approval.* The University has the right, acting reasonably, to withhold Approval of any removal of the Operator or a proposed replacement Operator, including for any of the following reasons: (i) the University reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law or this University Lease; or (ii) the University reasonably determines that such proposed Operator is not capable of performing the Utility System Operations in accordance with this University Lease and Prudent Industry Practices, which determination may be based upon one or more of the following factors: (A) the ability of the proposed Operator to operate the Utility System in a manner that complies with the Performance Standards; (B) 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 (which guaranty shall not be required to run to the benefit of the University); (C) the experience of the proposed Operator in operating Comparable Utility Systems; (D) 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 (E) the proposed terms of the engagement of the proposed Operator, including the fee being charged by the Operator, length of the term of the engagement and any restrictions on transfer by the Operator of its obligations and change in control of the proposed 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) If 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 UMLLC setting forth such failure. If the Operator does not cure such failure within thirty (30) Days of said written notice (or, if such cure or correction cannot reasonably be accomplished during such thirty (30) -Day period, within such longer period as is reasonably required to accomplish such cure or correction, provided UMLLC, either directly or through the Operator, has commenced such cure or correction within thirty (30) Days of said written notice and diligently prosecutes the same to completion), then (i) the University may, upon notice to UMLLC (A) cure

such failure and (B) UMLLC shall reimburse the University any and all costs related to such cure and/or correction; and (ii) the University may direct that UMLLC remove the Operator pursuant to the written order of senior the University officials designated by the President of the University (or his or her designee) in writing for such purpose or otherwise with respect to assessing the performance of the Operator (the “Senior Officials”).

(B) If such failure results in an Emergency, then the University may, upon notice to UMLLC, (i) immediately cure any such failure after endeavoring to provide UMLLC notice appropriate under the circumstances (which may include telephone notice) and (ii) UMLLC shall reimburse the University any and all direct costs related to such cure and/or correction.

(ii) Notwithstanding the foregoing, if:

(A) within any Operator Evaluation Period, at least three (3) Repetitive Failures occur;

(B) a Major KPI Event for the same Key Performance Indicator occurs for five (5) consecutive Fiscal Years;

(C) five (5) Major KPI Events occur in any given Fiscal Year; or

(D) the amount of KPI Compensation (such amount to be calculated without regard to any reduction in KPI Compensation pursuant to Section 15.5(e) or Section 12.11(a)) incurred by UMLLC equals or exceeds the maximum amount of annual KPI Compensation for which UMLLC may be liable in accordance with Section 15.5 in any two (2) Fiscal Years out of any five (5) consecutive Fiscal Years,

then, in addition to its right to KPI Compensation, the University may direct that UMLLC remove the Operator pursuant to the written order of the Senior Officials.

(iii) The University shall provide UMLLC and the Operator with no less than thirty (30) Days’ prior written notice of the time, date, place, and subject matter of any meeting of the Senior Officials at which a decision to remove the Operator will be considered, and both UMLLC 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 thirty (30) Days following the effective date of such decision, UMLLC shall (x) provide the University with a transition plan to 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), (B) an interim Operator in accordance with

Section 3.3(a) or (C) to the extent the Concessionaire was not the removed Operator, the Concessionaire, and then (y) carry out such transition plan within 30 Days following the delivery thereof.

- (iv) For the avoidance of doubt, if there is a dispute as to whether there has been a failure to meet the Performance Standards or the Target for any Key Performance Indicator, such dispute shall be subject to resolution in accordance with Article 18.
- (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 UMLLC's sole and exclusive liability and the University's sole and exclusive remedy relating to a failure to meet a requirement of the Performance Standards or a KPI Event.

Section 3.4. Authorizations; Qualifications.

- (a) *Compliance*. UMLLC shall obtain, comply with, promptly renew and maintain in good standing all Authorizations, and the University shall use commercially reasonable efforts to assist UMLLC 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 Turnover. If the University reasonably expects to incur any out-of-pocket costs in connection with providing assistance to UMLLC as provided in the preceding sentence, it shall have no obligation to provide such assistance until UMLLC commits to the prompt reimbursement of such out-of-pocket costs in writing. Nothing in this University Lease, including Section 2.1, shall be deemed to waive or modify any Authorization required to be obtained by UMLLC or any other Person in connection with the Utility System, the Utility System Operations, or any activities generating the Utility Fee.
- (b) *Qualifications*. UMLLC 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 UMLLC*. UMLLC shall not do any act or thing that will create any Encumbrance (other than a Permitted UMLLC Encumbrance) against the Utility System and shall promptly remove any Encumbrance (other than a Permitted UMLLC Encumbrance) against the Utility System, unless the Encumbrance came into existence as a result of an act of or omission by University, or a Person claiming through the University which in turn was not caused by an act or omission of UMLLC. UMLLC shall not be deemed to be in default hereunder if UMLLC

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 UMLLC has (i) given advance notification to the University that it is the intent of UMLLC 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 UMLLC at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; *provided, however*, that unless UMLLC 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 UMLLC, 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 UMLLC 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 UMLLC 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. Subject to Section 3.15(c), UMLLC shall, at all times during the Term: (i) be formed and organized solely for the purpose of (A) owning the UMLLC Interest, (B) owning, leasing, operating, improving, using, possessing, controlling, 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 and any fees from third parties to which it provides services to the extent permitted by Section 3.15(c), (D) financing its interest in the Utility System, and (E) carrying out the Utility Services and other activities permitted pursuant to this University Lease (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 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.

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 UMLLC, (y) with respect to Section 3.7(a)(iii), such right is to be exercised at all reasonable times upon reasonable prior notice to UMLLC if practicable under the circumstances, and (z) with respect to Section 3.7(a)(iv), Section 3.7(a)(v), Section 3.7(a)(vi), and Section 3.7(a)(vii) such right is to be exercised at all reasonable times with the University to request, with reasonable prior notice, UMLLC's consent to the exercise of such right, which consent shall not be unreasonably withheld, conditioned or delayed, provided that if UMLLC has not responded to such request within five (5) Business Days, it shall be deemed to have consented to such exercise:
- (i) to inspect the Utility System, including performance of an assessment of the condition of the Utility System or any component thereof, or determine whether or not UMLLC is in compliance with its obligations under this University Lease or applicable Law pursuant to Section 8.3;
 - (ii) if a UMLLC 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 UMLLC 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 UMLLC 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 University 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), UMLLC 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 University Lease);
- (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), UMLLC 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 (x) necessary for the Utility System Operations and (y) not otherwise Excluded Utility System Projects);
- (vi) at its own cost and expense, to (A) design and install any Excluded Utility System Project, and (B) grant easements and rights on, over, under, or within the Utility System for the benefit of contractors with respect to such Excluded Utility System Project; and
- (vii) at its own cost and expense (except as otherwise expressly provided in this University Lease) 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 University Lease;

provided, however, that the University shall (A) not be obligated to make any payments to UMLLC for such access (other than Concession Compensation to the extent required by the next proviso) 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 UMLLC, and (C) comply with UMLLC's reasonable safety protocols and requirements to the extent provided in writing in advance to the University; *provided, further*, that any entry into the Utility System pursuant to clauses (v), (vi), or (vii) of this Section 3.7(a) shall be a Compensation Event.

- (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 University Lease, such work or repairs shall be commenced and diligently completed in a good and professional manner, in accordance with any applicable Performance Standards and UMLLC's reasonable safety protocols and procedures to the extent provided in writing in advance to the University and in such a manner as not to unreasonably interfere with UMLLC's conduct of business in or use of such space.
- (c) *Renewable and Other Energy Resources.* UMLLC 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. The University shall have the right to install or replace such energy apparatus, equipment, or improvement. Prior to any such installation, the University shall provide UMLLC written notice that includes the plans and schedule for completing such installation or replacement or, alternatively, the University may provide UMLLC a written notice requiring it to complete such installation or replacement as part of a University Directive, which notice shall include the plans, specifications, schedule (including the liquidated damages for failure to meet such schedule), and cost therefor. If UMLLC is directed 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 and (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 UMLLC, 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. 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, UMLLC 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 UMLLC's reasonable interconnection and generation standards and is in accordance with Prudent Industry Practices and applicable Law, and that UMLLC 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 that UMLLC incurs costs for such interconnections (including any costs of installation, operation, replacement and repair), such costs shall be Uncapped O&M Costs.

- (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 UMLLC's obligation pursuant to this University Lease, shall not be deemed to (i) impose any obligation on the University to do so, (ii) render the University liable to UMLLC or any other Person for the failure to do so, or (iii) relieve UMLLC from any obligation to indemnify the University as otherwise provided in this University Lease. Nothing in this University Lease shall impose any duty upon the part of the University to do any work required to be performed by UMLLC 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 UMLLC's default in failing to perform the same. For the avoidance of doubt and notwithstanding any other provision of this University Lease, access to the Utility System by the University and its staff, students and Representatives shall be subject to and in accordance with UMLLC's reasonable access and safety protocols to the extent provided in writing in advance to the University.
- (e) *Energy Research and Education.* UMLLC 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 UMLLC'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, UMLLC 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 UMLLC's reasonable interconnection standards, provided that, unless disclosure is required by applicable Law, the University shall maintain any information received by the University in

connection therewith confidential in accordance with Section 8.2(b) if UMLLC has identified such information as a trade secret. UMLLC agrees that any intellectual property, including copyrights, patents, trade secrets, and trademarks, created or generated by or related to any of the University's actions under this Section 3.7(e) shall not be considered owned or created by UMLLC, notwithstanding that the University or its energy industry research partners may access or use the Utility System with respect thereto, and UMLLC shall have no rights with respect thereto unless the University enters into a separate agreement with UMLLC granting such rights. To the extent that UMLLC incurs costs for such connections, such costs shall be Uncapped O&M Costs. UMLLC 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. UMLLC 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 Turnover 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 UMLLC or its Representatives, the actual costs of any resulting Property Taxes payable during the Term shall be an Uncapped O&M Cost; otherwise such costs shall be borne and paid by UMLLC. UMLLC 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 UMLLC has not already done so, UMLLC 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 UMLLC in any reasonable attempt by UMLLC to reduce or eliminate UMLLC's Tax liability. Notwithstanding anything contained herein to the contrary, it shall never be deemed an Adverse Action if the Utility System or any portion thereof becomes not exempt from any Property Taxes.

Section 3.9. Utilities.

- (a) *Charges.* Unless otherwise directed by the University in writing, UMLLC shall ensure that contracts for utilities (other than those utilities that constitute Supplies, which is addressed in Section 7.3) 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 UMLLC, which UMLLC shall pay. 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 UMLLC's use of the Utility System or any part thereof, or render the University liable to UMLLC for damages or, unless the same constitutes a Delay Event, relieve UMLLC from performance of UMLLC's obligations under this University Lease.

- (b) *Utility Coordination.* Subject to Section 7.3, UMLLC 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. UMLLC 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 UMLLC 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), UMLLC 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 University Lease or applicable Law; *provided* that the University shall cooperate with UMLLC with respect to UMLLC'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 UMLLC, and the University shall cooperate with UMLLC in minimizing any effect that the obligations of UMLLC 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) *Communications Systems.* To the extent that UMLLC utilizes or connects with the University's communications systems, UMLLC 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 UMLLC.* UMLLC shall promptly give notice to the University (i) if UMLLC becomes aware that a UMLLC Default has occurred under this University Lease (provided, however, that the failure to give such notice shall not constitute an independent UMLLC Default) and (ii) of all material claims, proceedings, disputes (including labor disputes), or litigation in respect of UMLLC 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 UMLLC is aware (other than as a result of a notice to UMLLC from the University). UMLLC 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 UMLLC (i) if the University becomes aware that a University Default has occurred under this University Lease (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 UMLLC (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 UMLLC). The University shall provide UMLLC with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

Section 3.11. Assignment of Operating Agreements and Plans; Project Intellectual Property.

- (a) *Operating Agreements and Plans.* At the request of the University, UMLLC shall collaterally assign, to the extent reasonably practicable and subject to the terms and conditions herein, to the University, in form and substance satisfactory to the University, all of the right, title and interest of UMLLC in, to, and under all or any of the Operating Agreements and all present and future specifications, plans, drawings, information, and any other documentation (except Project Intellectual Property) in relation to the Utility System Operations regardless as to whether any of the foregoing involve proprietary information (collectively, the “Operating Agreements and Plans”) as collateral security to the University for the observance and performance by UMLLC of its covenants and obligations under this University Lease. UMLLC covenants that it shall cause all of the right, title, and interest of UMLLC in, to, and under all Operating Agreements and Plans entered into or created after the Time of Turnover to be collaterally assignable and transferable to the University as provided in this Section 3.11(a). the University acknowledges and agrees that the Operating Agreements and Plans 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 Operating Agreements and Plans in enforcing their respective security interests as hereinafter provided. Without limiting the generality of the foregoing, the University shall be entitled to use the Operating Agreements and Plans in the event of, and as necessary to, remedy a UMLLC Default under this University Lease for so long as such UMLLC Default is continuing and has not been cured. Notwithstanding the foregoing, in the event that any such Leasehold Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or manager, foreclosure or power of sale in accordance with Article 19 or otherwise, or has entered (or is in process to enter) into a New Agreement under Section 19.5 and is using the Operating Agreements and Plans in respect of the Utility System Operations, the University shall not be entitled to use the Operating Agreements and Plans in enforcing its security, it being acknowledged that any assignment of the Operating Agreements and Plans to a Leasehold Mortgagee shall have priority at all times (other than if the University is enforcing its rights to cure under Section 3.3(c)(i)(B) or, if the Leasehold

Mortgagee's extended cure period under Section 19.3, if any, has expired and the Leasehold Mortgagee has not commenced any action to effect a cure in accordance therewith, Section 16.1(b)(iii)) over any assignment of the Operating Agreements and Plans to the University. UMLLC shall promptly deliver to the University, at the sole cost and expense of UMLLC, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and Plans. The University agrees that (i) it shall bear all risks associated with the use of the Operating Agreements and Plans, (ii) it may not rely on the Operating Agreements and Plans, and (iii) under no circumstances will UMLLC 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 Operating Agreements and Plans.

- (b) *Project Intellectual Property.* The University shall have and is hereby granted a nonexclusive, transferable, irrevocable, perpetual, fully paid up right and license to use, exploit, reproduce, modify, adapt, and disclose, and sublicense others to use, reproduce, modify, adapt, and disclose, the intellectual property (including business systems and patents) of UMLLC, the Concessionaire, the IMP Contractor, or the Operator solely used in connection with the Utility System (the "Project Intellectual Property"), subject to the following:
- (i) The University shall have the right to exercise such license only in connection with the Utility System and Utility System Operations;
 - (ii) The University shall have the right to exercise such license only at the following times: (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 pursuant to Section 3.7(a)(ii) or Section 3.7(a)(iii); and (C) during any time that a receiver is appointed for UMLLC, or during any time that there is pending a voluntary or involuntary proceeding in bankruptcy in which UMLLC is the debtor;
 - (iii) The University shall not at any time use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Project Intellectual Property for any other purpose;
 - (iv) the right to transfer the license is limited to any Person that succeeds to the power and authority of the University generally or with respect to the Utility System, and all such transfers shall be subject to Section 3.11(b)(v);
 - (v) the right to sublicense is limited to concessionaires, contractors, subcontractors, employees, attorneys, consultants, and agents that are retained by or on behalf of the University in connection with the Utility System, and all such sublicenses shall be subject to Section 3.11(b)(v); and
 - (vi) except to the extent required by Law, the University (A) shall not disclose any Project Intellectual Property to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality

obligations of the University relating thereto; (B) shall enter into a commercially reasonable confidentiality agreement if requested by UMLLC with respect to the licensed Project Intellectual Property; and (C) include, or where applicable require the contract with the transferee or sublicensee to include, a 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 Project Intellectual Property of UMLLC and other materials provided under the license or sublicense, as the case may be, against disclosure to third parties not in receipt of a license or sublicense, as applicable, and to use the license or sublicense only for the permitted purposes;

provided that: (A) for the avoidance of doubt, UMLLC shall continue to have a full and complete right to use any and all duplicates or other originals of its Project Intellectual Property in any manner it chooses, and (B) the University agrees that if it uses any Project Intellectual Property (x) it shall bear all risks associated with the use of the Project Intellectual Property, (y) it may not rely on the Project Intellectual Property, and (z) under no circumstances will UMLLC 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 Project 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 UMLLC with respect to the Utility System and the Utility System Operations, including utility usage data, consumption pattern information, and other utility data, and UMLLC 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 two (2) Business Days' written notice prior to accessing such records. At least thirty (30) Days prior to the Turnover Date, UMLLC shall deliver to the University for its Approval a proposed policy for the maintenance and retention of all records related to the operation and maintenance of the Utility System (once Approved, the "Record Retention Policy"). If the University does not Approve the Record Retention Policy, it shall provide UMLLC a reasonably detailed explanation for its disapproval, and UMLLC shall, promptly thereafter, submit a revised Record Retention Policy intended to address the University's comments, and this process shall continue until the University Approves a Record Retention Policy. Following the Approval of the Record Retention Policy, UMLLC shall maintain all records related to the operation and maintenance of the Utility System in accordance with such Record Retention Policy. The University covenants and agrees that it will implement safeguards to protect against the disclosure or misuse of any such UMLLC information that is in its care or custody and will promptly inform UMLLC 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, UMLLC 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, UMLLC's performance of its obligations under this University Lease and the Performance Standards, including the maintenance of any Authorization. The University shall promptly make such records, data, and information available to UMLLC as reasonably requested by UMLLC. Unless disclosure is required by applicable Law, UMLLC shall keep confidential any information obtained from the University or its Representatives, including any information obtained through its performance of the Utility System Operations. UMLLC 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 UMLLC, or the University on behalf of UMLLC, to any third party, including any equity member of UMLLC, the Concessionaire, the Operator or any Contractor, then (i) UMLLC shall cause such third party to comply with the provisions of this Section 3.12(b) and (ii) UMLLC shall be liable for the disclosure or use of such information by such third party as if UMLLC had disclosed or used it.

Section 3.13. Standard of Operation and Maintenance of the Utility System; Warranty Period Utility System Projects. At all times during the Term, UMLLC shall be required to maintain and operate the Utility System in accordance with the Performance Standards and Prudent Industry Practices. In the event any maintenance, repair, or replacement is required in respect of any Warranty Period Utility System Project, other than in connection with an Emergency (in which case, only to the extent of such Emergency), UMLLC shall consult with the University prior to undertaking any such maintenance or repair. If such maintenance, repair, or replacement could be covered by the warranty provided by the contractor that completed such Warranty Period Utility System Project, as determined by the University acting in good faith, then the University shall make a warranty claim to the contractor providing such warranty and shall use commercially reasonable efforts to pursue such claim and cause the contractor providing such warranty to perform such maintenance, repair or replacement pursuant to such warranty, provided that if the University is unsuccessful in causing such contractor to do so, then UMLLC shall perform such maintenance, repair, or replacement. The foregoing obligation shall expire for each Warranty Period Utility System Project contemporaneously with the expiration of the applicable warranty period from such contractor, and the University shall provide notice to UMLLC of such expiration. Any Excluded Utility System Projects that remain under warranty following their completion by the University and delivery to UMLLC shall be treated as Warranty Period Utility System Projects until the expiration of the applicable warranty period for such Excluded Utility System Project.

Section 3.14. Payments by the University. UMLLC 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 UMLLC under this University Lease and to pay such amount to a Governmental Authority, the University will be deemed to have satisfied such payment obligation to UMLLC 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 UMLLC, the University shall pay such amounts to UMLLC whenever permitted by Law. Any items and payment amounts that, to the Actual Knowledge of the University ten (10) Business Days prior to the Turnover Date, it is legally required to withhold from UMLLC as of the Turnover Date will be listed in Schedule 14 and agreed to by UMLLC, acting reasonably, prior to Turnover as a condition of Turnover, 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 University Lease. Prior to withholding any portion of any payment hereunder, the University shall give reasonable prior notice to UMLLC of the proposed withholding, and UMLLC shall promptly notify the University of any challenge by UMLLC to such proposed withholding. For the avoidance of doubt, any payment obligation of a the University's department, office or center required by this University Lease is a payment obligation of the University for purposes of this University Lease, 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 University Campus for safety and aesthetic purposes, UMLLC 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 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) UMLLC 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 UMLLC, the Concessionaire or the Operator.
- (c) UMLLC shall not, without the University's Approval, provide utility services to customers other than the University or make market-based sales of electricity. To the extent the University Approves any such activities, UMLLC shall be liable to the University for, and reimburse the University for, any Losses incurred by the University as a result thereof, including any increase or additional Property Taxes imposed upon the University or the Utility System, the cost of which may not be included in any component of the Utility Fee, provided that the University's Approval shall not be required to explore and investigate such additional sources of revenue so long as UMLLC does not implement such additional sources of

revenue and UMLLC is liable for any Losses to the University as a result of such exploration and investigation. To the extent possible, UMLLC shall pay any increased or additional Property Taxes resulting from such additional sources of revenue directly to the applicable Governmental Authority.

- (d) Notwithstanding anything to the contrary contained herein, due to the importance of having uniform nutritional choices on the University 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 UMLLC agree that they shall execute on Turnover a trademark license agreement in the form attached hereto as Schedule 20.

Section 3.16. Reversion of Utility System. On the Reversion Date, UMLLC 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 UMLLC (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 UMLLC in the operation of the metered Utility System at the time of the Reversion Date, UMLLC and the University will negotiate in good faith appropriate license rights and terms for the University's continued use of the software following reversion.

Section 3.17. Police, Fire, Emergency and Public Safety Access Rights. Notwithstanding any other provision of this University Lease, at all times during the Term and without notice or compensation to UMLLC: (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, UMLLC shall submit such Third Party Agreement for Approval by the University (which Approval may be withheld, conditioned, or delayed in the discretion of the University) prior to the execution and delivery thereof (except with respect to Third Party Agreements the absence of which may cause UMLLC or Utility System Operations to fail to be in compliance with applicable Law or this University

Lease, in which case UMLLC may enter into such Third Party Agreement upon notice to the University provided that UMLLC indemnifies the University for any Losses relating thereto).

Section 3.19. Administration of the Public Way. UMLLC acknowledges and accepts that the University holds and administers the Public Way for the non-discriminatory benefit of all Persons and interests, including UMLLC and the UMLLC Interest. The rights granted to UMLLC under this University Lease do not create a priority in favor of UMLLC 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 UMLLC, 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 date hereof, 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 University Campus, the University shall have the right to construct any building, structure or other improvement on that part of the University 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 University Campus, except with respect to the following circumstances or activities: (a) as of the Turnover Date, a third party is providing the relevant Utility or Utility Services to a portion of the University 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 University Campus; (b) as of the Turnover Date, any district utility systems within the University Campus which are generating or distributing Utilities beyond the lines of demarcation identified in the Performance Standards; (c) 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; (d) the performance of any Capital Improvements described in Section 4.1(b); or (e) the performance of any work on the Building Mechanical Systems.

Section 3.22. Adjustments to the Location or Configuration of the Utility System. The University shall have the right, upon notice to UMLLC, to cause UMLLC 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 University Campus, including in connection with the reconstruction of a Utility Facility following a fire or other casualty. Except as provided in Section 13.4 with respect to any modifications in connection with a casualty, 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 Amount reasonably approved by UMLLC and the University, but, to the extent such alteration or designation of

alternative real property is not a Capital Improvement, the costs incurred by UMLLC, the Concessionaire or the Operator as a result of the University's exercise of its right under this Section 3.22 shall be considered an Uncapped O&M Cost in accordance with the definition thereof. If the University directs UMLLC to relocate the Utility System to a location to which it does not have a right to access pursuant to this University Lease, the University shall grant occupancy rights to UMLLC sufficient for UMLLC 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 University Lease, (ii) UMLLC 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 UMLLC 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 UMLLC 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, UMLLC shall relocate the Utility Facilities then existing on the prior Utility System Land to the alternative real property. UMLLC shall have the right to amend the Memorandum of Sub-Lease to reflect any changes resulting from the University's exercise of its right under this Section 3.22, and the University shall reasonably cooperate in such amendment and shall pay the out-of-pocket costs incurred by UMLLC in connection therewith. In connection with alteration as set forth in this Section 3.22, UMLLC and the University shall adjust the Key Performance Indicators in light of such alteration.

Section 3.23. Sales to Individual Customers on the University Campus. UMLLC shall not be permitted to sell any fuels or Supplies to individual customers on the University Campus. To the extent that UMLLC supplies fuels or Supplies to the University for distribution to individual customers, the University shall control the distribution of such fuels or Supplies. UMLLC shall have no interests or rights to charge or collect any payments from the University or such individual customers for the provision of such fuels or Supplies.

Section 3.24. University Master Plan. UMLLC shall reasonably cooperate with the University in connection with the University's master plan (including in connection with the development of the Master Plan to the extent relevant to the Utility System) and shall attend any University meetings regarding such plan if requested by the University.

Section 3.25. Utility System Tours. UMLLC 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) UMLLC 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 UMLLC's other obligations hereunder and (ii) all tour participants shall be required to comply with UMLLC's reasonable safety protocols and requirements to the extent provided in writing to the University.

Section 3.26. Uniforms. To aid the University's provision of security and safety measures to the University Campus, UMLLC, the Concessionaire, and Operator personnel working on the University Campus shall wear a uniform (and other insignia) that is standard across the Utility System and clearly identifies such personnel as UMLLC, Concessionaire, and Operator personnel and not employees of the University.

Section 3.27. Sustainability. UMLLC acknowledges that the University has a long-term commitment to operating the University Campus in a sustainable manner and that the Utility System Operations are an integral part of that commitment. As such, consistent with Prudent Industry Practices and subject to obtaining any required University Approvals for Capital Improvements and Material Changes, UMLLC agrees that, in connection with the Utility System Operations, it will reasonably cooperate with the University to operate the Utility System in a manner consistent with the University's larger goal to promote a sustainable campus and to acknowledge stewardship of the natural environment and resources by the University and its stakeholders. UMLLC will use commercially reasonable efforts to implement any changes to the Utility System Operations requested by the University in the form of a University Directive to increase the sustainability of the Utility System Operations that do not materially and adversely affect UMLLC's ability to meet its obligations hereunder, including the obligation to meet the Performance Standards. In addition, UMLLC will use commercially reasonable efforts throughout the Term to propose Capital Improvements and Material Changes pursuant to Article 4 that are reasonably intended to increase the sustainability of the Utility System Operations and the University Campus, including reduction of emissions, Utility use, and other impacts on the environment. Further, UMLLC shall attend any University meetings regarding sustainability planning on the University Campus if requested by the University. Further, the Parties acknowledge that what constitutes "sustainability" may evolve over the Term and that the Parties intend that, for purposes of this Section 3.27, "sustainable" and "sustainability" shall have the then-current generally accepted utility industry meaning of the term, which, as of the date of this University Lease, includes undertaking measures to (i) reduce energy and water consumption, (ii) become a net-negative energy use, (iii) reduce the impact of operations on the environment, (iv) recycle and reuse resources, (v) purchase goods and services derived in a sustainable manner, and (vi) employ goods and services that protect the environment. For the avoidance of doubt, UMLLC shall not be required to incur costs that would otherwise be Uncapped O&M Costs to comply with this Section 3.27 unless such costs are included in an Approved Five-Year Plan.

Section 3.28. Student Educational Experiences. During the Term and at the request of the University, UMLLC shall discuss, or shall cause the Concessionaire and Operator to discuss, with the University in good faith the development and maintenance of the following programs of UMLLC, the Concessionaire, or the Operator, as the case may be: (i) a program for the employment of students of the University in connection with the Utility System Operations; (ii) an internship program for University students to gain hands-on, practical experience with structured educational and mentorship opportunities either with respect to the Utility System or other utility systems owned, leased, operated, or maintained by UMLLC, the Concessionaire, the Operator, or any of their Affiliates; (iii) a program for employment of apprentices serving industrial and skilled trades of boiler makers in connection with the Utility System Operations; and (iv) structured educational and mentorship opportunities either with respect to the Utility System or other utility systems owned, lease, operated, or maintained by UMLLC, the Concessionaire, the Operator or any of their Affiliates; in each case which shall be on such reasonable terms and conditions as determined by UMLLC, the Concessionaire, or the Operator, as applicable.

Section 3.29. Office Space. To the extent requested by UMLLC in writing, the Parties shall use reasonable efforts to enter into a commercially reasonable license agreement with respect to the temporary license of office space (not to exceed [●] square feet) by the University to

UMLLC within a location on the University Campus at no additional cost. The University shall not be required to provide such space if it determines, in its sole discretion, that it does not wish to provide such space based on its current use, and it may terminate such license or may cause such licensed space to be moved to a new location at any time upon Notice to UMLLC and may require UMLLC to abide by reasonable rules and regulations, including limiting the hours of access thereto.

Section 3.30. Utility System Space in Larger Buildings. UMLLC acknowledges that each of [●] (the “Shared Spaces”) are not separate buildings but are spaces within larger buildings that the University owns. As such, the University shall retain the responsibility, either by the University employees or Contractors at the University’s direction, to maintain, repair, replace, and keep in good order and condition the structural and building-system components of the buildings in which the Shared Spaces are located, including the roof, load-bearing walls, and foundations of each of the foregoing, except to the extent any maintenance, repair or replacement is caused by the negligence or willful misconduct of, or violation of applicable Law by, UMLLC or its Representatives, in which case UMLLC shall be responsible therefor and shall perform such maintenance, repair or replacement as promptly as reasonably practicable. Subject to the University’s rights under Section 3.22, if a building in which a Shared Space is located is damaged by a fire or other casualty of any kind or nature, then the University shall restore such building to the condition in which it existed prior to such fire or other casualty but shall not, for the avoidance of doubt, be responsible for repairing or restoring the furniture, fixtures or equipment within the Shared Space that are part of the Utility System. UMLLC shall abide by any reasonable rules and regulations promulgated by the University and provided to UMLLC in writing with respect to the buildings in which the Shared Spaces are located, and UMLLC shall have non-exclusive access to any common areas of the larger buildings (as identified by the University) in which those Shared Spaces are a part. UMLLC shall not be obligated to pay any additional rent with respect to the Shared Spaces.

ARTICLE 4

CAPITAL IMPROVEMENTS AND MATERIAL CHANGES

Section 4.1. UMLLC Responsibility for Capital Improvements.

- (a) Other than the Excluded Utility System Projects, UMLLC shall be responsible for all Capital Improvements with respect to the Utility System required to be completed by it during the Term in accordance with the terms of this University Lease, including as required by the Performance Standards. For the avoidance of doubt, improvements or upgrades to the Building Mechanical Systems shall not be considered Capital Improvements with respect to the Utility System pursuant to this University Lease.
- (b) Notwithstanding anything in this University Lease to the contrary, the University reserve the right to procure Capital Improvements to the Utility System from any Person other than UMLLC pursuant to a competitive bid or other public procurement if and to the extent that such Capital Improvements are approved by the State through the University’s capital outlay plan, and such State approval of such Capital Improvements and the funds budgeted therefor are contingent on a

competitive bid or other public procurement process therefor; *provided* that, in such a circumstance, to the extent allowed by Law and subject to any conditions imposed by the State on the use of the relevant capital outlay funds, (i) UMLLC shall be allowed to participate in the procurement and delivery process (including drafting performance specifications and oversight of project delivery) for such Capital Improvements to ensure that Key Performance Indicators and Performance Standards are not impacted by the project's design and delivery, and (ii) to the extent reasonably practicable, as part of such competitive bid or other public procurement process, the Parties shall endeavor to procure Utility-related equipment of such brands, models or types that will ensure system compatibility and maximize future repair and maintenance efficiencies (provided that there shall be no exclusivity with respect to the procurement of Utility-related equipment). In the event that (i) the University procures a Capital Improvement from any Person other than UMLLC pursuant to a competitive bid or other public procurement process, as provided in this Section 4.1(b), (ii) such Capital Improvement is funded by moneys sourced from a capital outlay from the State in an amount equal to or greater than fifty percent (50%) of the total capital cost of such Capital Improvement, (iii) the total capital cost of such Capital Improvement exceeds one million dollars (\$1,000,000) in the aggregate, and (iv) the University designates UMLLC (or its Affiliate) the representative of the University with respect to such Capital Improvement on terms acceptable to UMLLC (acting reasonably), then the University shall pay UMLLC a development fee equal to two and one-half percent (2.5%) of the total capital costs of such Capital Improvement that were funded by such capital outlay from the State upon the substantial completion thereof.

Section 4.2. Authorizations Related to Capital Improvements. UMLLC'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 UMLLC in obtaining any Authorizations required to be issued by Governmental Authorities, provided that UMLLC shall reimburse the University in a timely manner for any reasonable out-of-pocket costs incurred by the University in providing such assistance. Without limiting the generality of the foregoing, the University agrees that it will reasonably assist and cooperate with UMLLC 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 UMLLC to perform an Approved Capital Improvement, which assistance shall include providing UMLLC reasonable access to the areas of the University Campus where the Approved Capital Improvement will be located, subject to the reasonable conditions and restrictions of the University, provided that UMLLC shall reimburse the University in a timely manner for any reasonable out-of-pocket costs incurred by the University in providing such assistance.

Section 4.3. Approval of Capital Improvements and Material Changes.

- (a) UMLLC shall not have the right to make any (i) Capital Improvements or (ii) Material Changes, except those Capital Improvements or Material Changes which either (A) constitute the Initial Modernization Project or (B) are otherwise

Approved pursuant to Section 4.3(c). For the avoidance of doubt, the Approval of Final Design and the performance and delivery of the Initial Modernization Project shall be governed by the specific provisions of this University Lease relating to the Initial Modernization Project (including Section 2.4(f), Article 21, and Article 22). In addition, subject to the provisions of this Section 4.3(a), TEP shall be: (x) the Contractor responsible for the design, construction, and completion of any Capital Improvements or Material Changes which are Approved pursuant to Section 4.3(c); and, in such capacity, (y) under the direction, supervision and control (by ownership, contract or otherwise) of UMLLC or the Concessionaire, and no delegation by UMLLC or the Concessionaire to TEP with respect to such Capital Improvement or Material Change shall relieve UMLLC of any obligations, duties or liability hereunder; [provided that UMLLC shall have the right to appoint a Contractor other than TEP for the purposes of designing, constructing, and completing any Capital Improvements or Material Changes which are Approved pursuant to Section 4.3(c), as jointly determined by the University, UMLLC, and CenTrio, taking into consideration, among other relevant factors, TEP's prior performance and TEP's proposed costs or other terms.]¹

- (b) UMLLC shall have the right to request Approval of (I) a proposed Capital Improvement or Material Change or (II) a change in the scope or cost of a previously Approved Capital Improvement or Material Change at any time (and shall identify whether an item requested for Approval or any portion thereof is a Capital Improvement or Material Change or a combination thereof), 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 7.2 and (B) proposed to be commenced in the first (1st) 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; or (iv) required due to Force Majeure, all of which the University shall consider in good faith.
- (c) UMLLC shall request Approval of one or more proposed Capital Improvements or Material Changes or Approval of a proposed change in the scope or cost of a previously Approved Capital Improvement 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 or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change or (2) submitting a proposed Five-Year Plan in accordance with Section 7.2 containing a detailed description of each proposed Capital Improvement or Material Change proposed to be commenced in the first (1st) full Fiscal Year in such proposed Five-Year Plan or each proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change, provided that, in each case, such detailed description shall include: (A) total costs for construction and installation thereof, including all hard and soft costs, any financing costs and any applicable sales or

¹ Note to Draft: LSU will conform the bracketed language to the CEA once finalized.

use tax, which shall be presented on an Open Book Basis; (B) forecasted annual operations and maintenance costs therefor; (C) any proposed modification to the Recovery Period (if applicable) for such Capital Improvement; (D) an explanation of all relevant assumptions, variables, and data sources, used to develop the proposal; (E) the proposed schedules, process, and other technical and logistics details associated with the proposed Capital Improvement and/or Material Change proposal, including any liquidated damages if UMLLC fails to meet the proposed schedule; (F) how such proposed Capital Improvement and/or Material Change will improve the sustainability of the Utility System Operations or the University Campus; (G) any actual or anticipated tax credits or other benefits that will accrue to UMLLC as a result thereof of which UMLLC has knowledge, and a description thereof as well as a description as to how such credits or benefits will be incorporated into the Capital Improvement Cost (if Approved); (H) any fee or charge payable to the Contractor in connection with such Capital Improvement or Material Change; (I) any proposed change to the limits on the professional liability insurance coverage for the professionals providing services with respect to such Capital Improvement or Material Change and the associated change in the premium associated therewith; (J) any potential increase or reduction in Supply Costs or consumption of Supplies that would result from such Capital Improvement or Material Change; and (K) the terms of any payment and/or performance security required by Law or otherwise required hereunder in order to undertake such Capital Improvement or Material Change; *provided* that, (x) to the extent any of the details set out in clauses (A) through (K) above are unavailable or inapplicable, UMLLC shall describe the reason for such unavailability or inapplicability and (y) to the extent that UMLLC has explicitly requested that the University respond only pursuant to Sections 4.3(c)(ii), (iii), or (iv), UMLLC may include an indicative estimate or estimate range with respect to Sections 4.3(c)(A) or (B). To the extent the University elects to, or is required to, consider a request for Approval of a proposed Capital Improvement or Material Change or a change in the scope or cost of a previously Approved Capital Improvement or Material Change, the University shall review such request and, in its 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 by the University with respect to such Approval at such time, unless UMLLC'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 UMLLC (1) perform additional work with respect to such proposed Capital Improvement or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement 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 or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change or procuring any details set out in clauses (A) through (K) of Section 4.3(c)(2) 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 fifteen (15) Days before the commencement of the first (1st) Fiscal Year of such Five-Year Plan; or

- (iii) (1) provide UMLLC with comments on such proposed Capital Improvement or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change, including comments on any details provided in UMLLC's proposal, which may include comments from the University intended to align the proposal with the larger University Campus capital improvement plans existing at such time or disagreeing with its characterization as a Capital Improvement or Material Change, and (2) require that UMLLC 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 UMLLC shall have the right, upon written notice to the University, to withdraw its request for Approval; or
- (iv) (1) reject such proposed Capital Improvement or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change and (2) if such proposed Capital Improvement or Material Change or change to the scope of a previously Approved Capital Improvement or Material Change is necessary to comply with Prudent Industry Practices, applicable Law, or the Performance Standards, provide UMLLC 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 Turnover Date and UMLLC has received written notice from the applicable Governmental Authority that the Utility System is not in compliance therewith, (x) UMLLC has reasonably investigated any potential alternatives to such proposal and provided the University with reasonable evidence of such investigation, (y) UMLLC 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, as applicable, 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 or Material Changes or changes in the scope or cost of a previously Approved Capital Improvement 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 that UMLLC elects to abandon a proposed Capital Improvement or Material Change after it has been Approved by the University, which UMLLC may do so upon Notice to the University, unless such Capital Improvement or Material Change is the subject of a University, UMLLC shall be obligated to promptly restore the Utility System and any other affected area of the University Campus to the condition that existed prior to the commencement of such Capital Improvement or Material Change. As a condition of its Approval of any proposed Capital Improvement or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change, the University may require certain payments of liquidated damages by UMLLC to the University if UMLLC does not meet the timeframe set forth in the applicable Approval regardless of the abandonment of such Capital Improvement or Material Change, but only to the extent such liquidated damages are proposed in UMLLC's most recent request for Approval thereof. To the extent that the University elects to suspend or cancel a Capital Improvement or Material Change after such Capital Improvement or Material Change has been approved by the University, then (i) in the case of a suspension, any such suspension shall be treated as a University in accordance with Article 5 and (ii) in the case of a cancellation, (A) any Capital Improvement Costs incurred by UMLLC prior to the date of cancellation (including all reasonable and documented demobilization and contractor breakage costs) nonetheless shall be included in the Unrecovered Balance and (B) any costs incurred with respect to such Material Change prior to the date of cancellation (including all reasonable and documented demobilization and contractor breakage costs) nonetheless shall be included in the Uncapped O&M Costs.
- (e) To the extent a proposed Capital Improvement or proposed change in a previously Approved scope or cost of a Capital Improvement is Approved, UMLLC 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 UMLLC 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 UMLLC 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 that is not a Capital Improvement or any proposed change in the scope or cost of a previously Approved Material Change,

the out-of-pocket costs incurred by UMLLC pursuant to Section 4.3(c)(ii) shall be included in Uncapped O&M Costs.

- (f) After Approval of a proposed Capital Improvement or Material Change or a proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change, UMLLC shall make such Capital Improvement or Material Change in accordance with this University Lease, but subject to Section 4.3(d).
- (g) Notwithstanding anything to the contrary contained in this Section 4.3, to the extent that UMLLC incurs any out-of-pocket costs that qualify as operation or maintenance costs (as reasonably determined in accordance with GAAP) in the exercise of its rights and performance of its obligation pursuant to this Section 4.3, UMLLC shall have the right to request that the University Approve those costs as a Capital Improvement, and such request shall be a considered a request for Approval of a proposed Capital Improvement; *provided* that, for the avoidance of doubt and without limitation, the University may Approve such costs as a Capital Improvement on the condition that the Capped O&M Amount is equitably reduced to account for UMLLC's recovery of such costs by means of the Variable Fee Component instead of the Capped O&M Amount.
- (h) The cost of (i) any Approved Material Changes and (ii) any Approved Capital Improvements that are less than one hundred thousand dollars (\$100,000) (Adjusted for Inflation) will be classified as Uncapped O&M Costs for purposes of calculating the Utility Fee, unless otherwise indicated by the University, in its discretion, in its Approval thereof.

Section 4.4. University's Capital Plan. UMLLC shall reasonably cooperate with the University in the development, modification, and discussion 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 meetings related to the University's capital plans.

Section 4.5. Distribution System; Distribution System Capital Improvements.

- (a) *Status of Distribution System as of Turnover Date.* As of the Turnover Date, (i) except as set forth in the definition of Distribution Bottlenecks, the Distribution System is not included in the Utility System or Utility Facilities and (ii) the Utility Services do not include any services in respect of the Distribution System.
- (b) *Initiation of Consideration of Distribution System Capital Improvements.* Either Party may initiate the process by which the University and UMLLC will engage with respect to a Distribution System Capital Improvement, as set forth below.
 - (i) *By UMLLC.* At any time during the Term, UMLLC may, by written notice to the University, request the University to consider whether to invite a proposal from UMLLC for Approval of a Distribution System Capital Improvement. Within thirty (30) days of the receipt of such request by

UMLLC, the University shall determine whether to invite a proposal from UMLLC pursuant to Section 4.5(c), which determination shall be made in the University's discretion.

- (ii) *By the University.* At any time during the Term, the University may, by written notice to UMLLC, initiate a request for UMLLC to prepare a proposal for a Distribution System Capital Improvement pursuant to Section 4.5(c).
- (c) *Proposal for Distribution System Capital Improvement.* Upon the initiation of the request to UMLLC to prepare a proposal as set forth in Section 4.5(b), UMLLC shall, within sixty (60) days of such request from the University, deliver a proposal to the University requesting Approval of such Distribution System Capital Improvement. The scope of such request for Approval shall be consistent with the requirements for requests for Approval of Capital Improvements as set forth in Section 4.3 as if such proposal was in respect of a Capital Improvement.
- (d) *Negotiation Period.* Following the University's receipt of the proposal for Approval of the Distribution System Capital Improvement pursuant to Section 4.5(c), the Parties shall negotiate in good faith concerning the University's consideration for Approval of such Distribution System Capital Improvement for a period of not less than ninety (90) Days. If the Parties, after such good faith negotiations, do not reach an agreement concerning such Distribution System Capital Improvement, the University shall have the right to pursue such Distribution System Capital Improvement through other means, subject to the rights of UMLLC set forth in Section 4.5(e).
- (e) *UMLLC Right of First Refusal.* If, following the expiration of the good faith negotiation period set forth in Section 4.5(d), the University elects to pursue the financing, funding or construction of such Distribution System Capital Improvement through other means, the University shall have, prior to entering into any agreement to construct or permit the construction of such Distribution System Capital Improvement, an ongoing obligation (i) to give UMLLC notice of the intention to enter into a separate agreement for the construction of such Distribution System Capital Improvement and (ii) to provide UMLLC the option to enter into an agreement under substantially the same economic terms (or terms otherwise acceptable to the University, in its discretion) within forty-five (45) Days of such notice.
- (f) *Approval of Distribution System Capital Improvement.* To the extent any Distribution System Capital Improvement is Approved by the University, the cost of such Distribution System Capital Improvement shall be included as a New Approved Capital Improvement Cost in accordance with the terms of Schedule 5. To the extent that any Distribution System Capital Improvement is the subject of an agreement of the University and UMLLC pursuant to Section 4.5(e), the University shall pay such compensation to UMLLC as set forth in such separate agreement.

- (g) *Addition of Distribution System to Utility System.* Each relevant component of the Distribution System that is constructed or improved as the result of a Distribution System Capital Improvement upon substantial completion of each such Distribution System Capital Improvement shall be (i) deemed to be part of the Utility System and Utility Facilities for purposes of this Agreement and (ii) included in the Utility System to be operated and the Utility Services to be performed by the Concessionaire under the terms of this Agreement. In addition, with respect to any Distribution System Capital Improvement, UMLLC and the University shall determine in good faith the forecasted annual ongoing operations and maintenance costs associated with such Distribution System Capital Improvement and the associated component of the Distribution System that would be then added to the Utility System (or any reductions in current annual ongoing operations and maintenance costs associated therewith), and the Capped O&M Amount shall be increased (or decreased) by such amount.
- (h) Notwithstanding anything in this Agreement to the contrary, the University reserves the right to procure any Distribution System Improvement funded through the capital outlay process outlined in Section 4.1(b) above or in response to an Emergency, in each case without regard to this Section 4.5.
- (i) For the avoidance of doubt, the University shall not be required to comply with this Section 4.5(e) to the extent such compliance by the University would violate applicable Law (in the reasonable opinion of the University, subject to dispute resolution under Article 18).

ARTICLE 5 MODIFICATIONS

Section 5.1. University Directives. The University may, at any time during the Term, issue a University Directive to UMLLC, 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. Subject to UMLLC having obtained (with the cooperation of the University) all relevant Authorizations from all relevant Governmental Authorities required for the relevant work, UMLLC 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 University Lease and (b) included in the Utility System to be operated by UMLLC under the terms of this University Lease. 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 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, UMLLC and the

University shall determine in good faith the forecasted annual ongoing operations and maintenance costs associated with such University Directive (or any reductions in current annual ongoing operations and maintenance costs associated therewith), and the Capped O&M Amount shall be increased or decreased by such amount. To the extent that that an order or directive would be a University Directive but for the operation of sub-paragraph (4)(y) of the definition of “University Directive”, and in the event that UMLLC notifies the University in writing that it is not willing to carry out such order or directive for such reason: (A) the University may elect to engage a third party to perform the relevant order or directive, and (B) if the University so elects, the University and UMLLC shall determine in good faith any corresponding adjustments to the Utility Fee and other provisions of the Concession Agreement that may be required to put the Parties in substantially the same economic position as they were prior to such actions being taken, provided the University shall not be required to compensate UMLLC for any benefit that UMLLC would have received if it undertook University Directive. Notwithstanding the foregoing, the University may not issue a University Directive requiring the construction of a Capital Improvement to the extent that such Capital Improvement was previously the subject of a proposal for Approval submitted by UMLLC pursuant to Section 4.3 for a period of twenty-one (21) months following the initial submission of the proposal for Approval of such Capital Improvement; *provided that* this sentence shall apply only to the first such proposal by UMLLC and no other proposal with respect to the same or substantially the same Capital Improvement shall restrict the University from issuing a University Directive hereunder; *provided, however*, nothing in this sentence shall restrict the University from issuing a University Directive in response to an Emergency.

Section 5.2. Performance of Modifications. Subject to the other provisions of this Article 5, UMLLC 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 Turnover 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 University Campus to a third party unaffiliated with the University, then, contemporaneously with such transfer, UMLLC shall disconnect such real property from the Utility System and remove or abandon in place all Utility Facilities and Utility System Assets thereon and shall not be permitted to serve such real property, except if Approved in accordance with Section 3.15(c). However, if the University elects to enter into a concession agreement, ground lease, management agreement, or similar agreement with a third party to operate and maintain any real property that had been part of the University Campus, UMLLC shall not be required to disconnect such real property from the Utility System. 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 University Lease as if not removed from the Utility System. UMLLC shall reasonably cooperate with the University and the transferee of such real property in such disconnection. In connection therewith, the University and UMLLC 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 UMLLC is agreeing to service the University Campus throughout the Term, if, after the Turnover 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, UMLLC shall continue to provide Utilities to such real property in accordance with this University Lease, and the University shall remain obligated to pay the Utility Fee attributable to such real property. UMLLC 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 discretion, may, pursuant to a University Directive, cause UMLLC to provide Utility Services to any portion of the University Campus not served by the Utility System at that time and may expand the definition of the University Campus.

ARTICLE 6

PERFORMANCE STANDARDS

Section 6.1. Compliance with Performance Standards. UMLLC 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 University Lease); *provided* that UMLLC 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 University Lease. From and after the date on which UMLLC is required to have an Operations Plan pursuant to the Performance Standards, UMLLC shall have in place at all times during the Term an Operations Plan. Except as specifically set forth herein, UMLLC 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 UMLLC, at its cost and expense, wishes to implement and use performance standards for the operation of the Utility System other than the Performance Standards, UMLLC must provide notice of such proposed performance standards to the University for Approval. UMLLC's proposed performance standards must be accompanied by an explanation of UMLLC's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that UMLLC'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 UMLLC'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 UMLLC's proposed performance standards, UMLLC shall not implement the proposed performance standards and shall implement and comply with the Performance Standards. UMLLC'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 UMLLC disagrees with such refusal, UMLLC'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 UMLLC to the University may impact the quality of life on the University Campus. Because of the importance 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 UMLLC to (i) comply with any new Law or change in Law applicable to the Utility System Operations, (ii) conform the Performance Standards to standards or practices generally adopted with respect to Comparable Utility Systems or Prudent Industry Practices, or (iii) conform the Performance Standards to a change in the University's design standards after the date hereof of which UMLLC did not have, or could not reasonably be expected to have, notice prior to such change taking effect; 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, UMLLC shall promptly perform all work required to implement and shall comply with all such modifications and changes and in no event shall UMLLC be excused from compliance with any such modification or change, except as otherwise expressly provided in this University Lease. The cost of such modification or change 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). If (x) any such modification or change is a New Approved Capital Improvement and UMLLC and the University determine in good faith the amount of 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 and UMLLC and the University determine in good faith the amount of the forecasted annual operations and maintenance costs for such modification or change, then, in either case, the Capped O&M Amount shall increase by such amount. UMLLC 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 Standards under this Section 6.3(a), the

University and UMLLC 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 UMLLC 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 UMLLC, 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 seventy-five thousand dollars (\$75,000) (annually Adjusted for Inflation) which cannot be charged through to the University as an Uncapped O&M Cost or recovered as a New Approved Capital Improvement Cost. At the University's request, UMLLC shall perform all work required to implement and shall comply with all such modifications and changes, and in no event shall UMLLC 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 UMLLC fails to do so within a reasonable period of time; *provided, however*, that to the extent that such work is undertaken by the University, UMLLC shall pay to the University within ten (10) Business Days following demand therefor, or the University may offset from amounts owing to UMLLC 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, AND ENERGY SUPPLY

Section 7.1. Utility Fee.

- (a) As compensation for the services provided hereunder by UMLLC to the University in connection with the Utility System, the University shall pay to UMLLC 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 one hundred eighty (180) Days prior to the commencement of any Fiscal Year during the Term (other than the first (1st) Fiscal Year), UMLLC shall provide a forecast of the Utility Fee (as determined in accordance with Schedule 5, and subject to the limitations therein) to the University for the upcoming Fiscal Year (the “Forecast Utility Fee”), provided that UMLLC shall, by notice to the University (i) on or before ninety (90) Days prior to the commencement of any Fiscal Year and (ii) again at least ten (10) Days and no more than thirty (30) Days prior to the commencement of such Fiscal Year, adjust such Forecast Utility Fee as necessary, as determined by UMLLC in its good faith and reasonable discretion; provided, with respect to the Fiscal Year commencing on the first (1st) July 1 to occur after the Turnover Date, UMLLC shall provide the Forecast Utility Fee to the University by the later of one hundred eighty (180) Days before the commencement of the next Fiscal Year and thirty (30) Days after the Turnover Date. The University shall pay the Forecast Utility Fee in twelve (12) equal monthly installments, payable on the first (1st) Day of every month during the Fiscal Year, provided that if the Term expires on a date that is not the last day of a Fiscal Year, the Forecast Utility Fee for that last partial Fiscal Year shall be prorated based on the number of Days in that last Fiscal Year, provided, further, that the first (1st) payment of the Utility Fee shall be made no sooner than one (1) month after the Turnover Date. The Forecast Utility Fee for the first (1st) Fiscal Year of the Term shall be \$[3,360,851.18] prorated based on the number of Days remaining in the first Fiscal Year after the Turnover and payable in equal monthly installments over the number of months remaining in such Fiscal Year. For purposes of providing the Forecast Utility Fee for any Fiscal Year after the first (1st) Fiscal Year, the Parties shall meet in advance and, acting in good faith, shall agree on the methodology for determining the Forecast Utility Fee, including, but not limited to, estimations of the CPI Index for the current Fiscal Year.

- (b) Within sixty (60) Days after the end of each Fiscal Year, UMLLC shall deliver to the University a statement (the “Reconciliation Statement”) which states the actual Utility Fee (as determined in accordance with Schedule 5, and subject to the limitations therein) for such Fiscal Year and provides a detailed accounting of each component of the Utility Fee in such Fiscal Year, in each case 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. If the Reconciliation Statement reveals that the Utility Fee for a Fiscal Year (as determined in accordance with Schedule 5, and subject to the limitations therein) is more than the Forecast Utility Fee for that Fiscal Year, the University agrees to pay UMLLC the difference in a lump sum within thirty (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, UMLLC will pay the University the difference in a lump sum within thirty (30) Days after receipt of the Reconciliation Statement. In addition to the foregoing, UMLLC shall deliver to the University the quarterly reporting described in Section 8.1(d).
- (c) The records that UMLLC maintains with respect to the calculation of the actual Utility Fee shall be retained by UMLLC for a period of five (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 five (5) Business Days' prior notice, at such place within the City of Baton Rouge, Louisiana as UMLLC 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 one percent (1%), then UMLLC shall pay the cost of such audit. If, as a result of such audit, it is determined that the University has overpaid UMLLC on account of the Utility Fee, then UMLLC shall reimburse the University for any (i) undisputed amounts within thirty (30) Days after such determination and (ii) amounts which have been determined to be due pursuant to Article 18 within thirty (30) Days after such determination. If UMLLC disputes the results of an audit conducted pursuant to this Section 7.1(c), UMLLC'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 three percent (3%), then in addition to paying the cost of such audit and reimbursing the University for the payments in accordance with Section 7.1(c), UMLLC shall pay, as liquidated damages, three (3) times the amount of the difference between the Utility Fee and the amount set forth in the Reconciliation Statement. The University and UMLLC 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 three percent (3%). The University and UMLLC therefore agree that, in such instance, three (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 UMLLC disputes the results of an audit conducted pursuant to Section 7.1(c), UMLLC's sole remedy shall be to submit such dispute to the procedures set forth in Article 18.

Section 7.2. Five-Year Plan.

- (a) UMLLC shall submit to the University a proposed Initial Five-Year Plan on or before ninety (90) Days following the Turnover Date and shall thereafter submit to the University a proposed Five-Year Plan at least one hundred eighty (180) Days prior to the end of each Fiscal Year during the Term. Each proposed Five-Year Plan shall include the Capital Improvements and Material Changes (and shall identify whether an item requested for Approval is a Capital Improvement or Material Change or a combination thereof) that UMLLC proposes to make in each Fiscal Year in such proposed Five-Year Plan as well as anticipated Uncapped O&M Costs, and the anticipated types of Supplies that will be used for each such Fiscal Year, including the estimated usage pattern over the course of the first 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 Turnover 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 review and provide comments to UMLLC on the proposed Five-Year Plan, provided that to the extent pertaining to proposed Capital Improvements 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 7.2(c), if the University shall have previously Approved any such Capital Improvement 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. UMLLC 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 all components of the proposed Five-Year Plan, including the estimated usage of Supplies over the first Fiscal Year in such Five-Year Plan.
- (c) The proposed Five-Year Plan Approved by the University shall become the Approved Five-Year Plan as of the commencement of the first (1st) Fiscal Year in such proposed Five-Year Plan (or, in the case of the 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 second (2nd) through fifth (5th) full Fiscal Years therein shall be deemed Approved by the University, except to the extent that a Capital Improvement or Material Change is scheduled pursuant to such Approved Five-Year Plan to be started in the first (1st) full Fiscal Year and completed in the second (2nd) through fifth (5th) full Fiscal Years therein. For the avoidance of doubt, the Approval of a Five-Year Plan that includes a Capital Improvement or Material Change that is not scheduled to be commenced until the second Fiscal Year therein at the earliest shall not be deemed an Approval of such Capital Improvement or Material Change for purposes of Article 4 or this Article 7.
- (d) If UMLLC does not accommodate or otherwise resolve any comment provided by the University pursuant to Section 7.2(b), UMLLC shall deliver to the University, within ten (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 UMLLC 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 UMLLC and the University over such comment shall be resolved pursuant to the procedures set forth in Article 18.
- (e) If a proposed Five-Year Plan or a portion thereof is not Approved by the commencement of the first (1st) 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 7.2 shall permit UMLLC to make a Capital Improvement 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 Turnover Date, UMLLC shall operate the Utility System in accordance with this University Lease and otherwise in substantially the same manner it had been operated immediately prior to Turnover provided that nothing in this Section 7.2 shall permit UMLLC to make a Capital Improvement or Material Change except if it is Approved in accordance with Section 4.3(c).

- (f) For the avoidance of doubt, UMLLC'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.
- (g) Except as otherwise provided in Section 7.2(c), the contents of any Approved Five-Year Plan shall not be binding on any future Five-Year Plan.
- (h) Notwithstanding anything to the contrary in this University Lease, the Parties acknowledge and agree that all payments to the Operator pursuant to any agreement between UMLLC or the Concessionaire and the Operator to operate the Utility System that have been previously Approved by the University on or prior to the Turnover 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.
- (i) In acknowledgement of the importance of the Utility System to the operation of the University Campus and the integrated delivery of services to students, employees, staff, faculty and visitors of the University Campus, the University Liaison and other University Representatives selected by the University will meet with a representative of UMLLC, the Concessionaire and the Operator on a quarterly basis in order to discuss and assess the implementation of the then-current Five-Year Plan, including any delays or failures to meet the then-current Five-Year Plan and discuss the development of the immediately subsequent Five-Year Plan.

Section 7.3. Energy and Water Supply.

- (a) UMLLC shall assist the University with the procurement of sufficient electricity, natural gas, biomass, or other energy supply inputs and domestic water 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”); *provided* that the University shall have made a reasonable determination that each such Supply Contract is consistent with the then-current Approved Five-Year Plan or has issued a University Directive with respect to such Supply Contract. The University shall, in its sole discretion, determine the types and sources of the Supplies and the appropriate entity (among UMLLC, the Concessionaire, the Operator and the University) to execute each Supply Contract and, if applicable, any Authorization related to Supplies, with UMLLC, the Concessionaire or Operator executing pursuant to a power of attorney, and UMLLC shall operate the Utility System consistent with the types and sources of Supplies determined by the University. 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 7.3(a) or used for the operation of the Utility System. Notwithstanding the foregoing, the Parties acknowledge that as of the Time of Turnover, there shall be in place certain Supply Contracts to provide Supplies as described in Schedule 6, and UMLLC’s obligations under this Section 7.3(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 UMLLC shall be responsible for assisting the University with the procurement of those Supplies for the University 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 University Campus), (ii) UMLLC 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) UMLLC 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 University 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, UMLLC 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 7.3(a).
- (c) UMLLC shall ensure that any Supply Contracts negotiated by UMLLC provide that invoices are remitted to UMLLC, 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 five (5) Business Days after receipt thereof, UMLLC shall forward the supplier's invoice to the University, and UMLLC shall have no obligation to pay such Supply Costs.

- (d) UMLLC shall cause the Utility System to be operated using a mix of Supplies supported by the then-current Supply Contracts and the Approved Five-Year Plan. UMLLC shall consult the University with respect to any adjustments to the mix of Supplies required to operate the Utility System in accordance with this University Lease and any such adjustments shall only be made upon Approval from the University, which may be withheld in its sole discretion.

Section 7.4. Energy Use Intensity Reduction and Energy Conservation Measures.

In furtherance of the objectives set forth in Section 3.27, within two (2) Years after the Turnover Date, the University shall have the right to request in writing that UMLLC diligently prepare and provide to the University a detailed study with recommendations and proposals for opportunities to reduce the energy use intensity on the University Campus, and UMLLC shall in good faith discuss with the University UMLLC implementing such recommendations and proposals. In addition, in connection with each Five-Year Plan, UMLLC may propose certain measures or improvements on the University Campus, including energy conservation measures, buying strategies in connection with Supplies, or such other improvements anticipated to achieve an energy use intensity reduction. The University may consider such proposals in its discretion in connection with reviewing such Five-Year Plan and any Approval of the same may include a shared savings of costs with respect thereto.

ARTICLE 8 REPORTING; AUDITS; INSPECTIONS

Section 8.1. Reports; Environmental Incident Management.

- (a) *Incident Management and Notifications.* UMLLC shall (i) provide notice to the University of all Emergencies as promptly as possible, and, in any event, not later than six (6) hours after UMLLC, 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 twenty-five thousand dollars (\$25,000) annually made by or against UMLLC or potential claims in excess of twenty-five thousand dollars (\$25,000) annually that UMLLC reasonably expects to make against, or to be made against it by, third parties.
- (b) *Environmental Incident Management and Notifications.* UMLLC shall provide notice to the University as promptly as possible, and, in any event, not later than six (6) hours after UMLLC 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 University Campus or any part thereof, which notice shall include the time of such Release, the agencies involved, the damage that has occurred and the remedial

action taken. UMLLC 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, UMLLC or any of its Representatives, which costs shall not be recoverable by UMLLC as part of the Utility Fee or otherwise pursuant to this University Lease, and UMLLC shall not be financially responsible for other Releases of Hazardous Substances from the Utility System. Regardless of the foregoing, unless such Release is an Excluded Liability, UMLLC shall be responsible for the remediation of any Releases of Hazardous Substances from the Utility System. UMLLC shall not be financially responsible for the actions or inactions of third parties except for (i) those actions or inactions with respect to which UMLLC 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 in writing to or directed in writing by UMLLC or any of its Representatives. As between the University and UMLLC, the University shall be designated the generator for the disposal of all Hazardous Substances or other contamination, except for any Hazardous Substances that were Released by the willful misconduct or negligent action of, or permitted by the negligent inactions of, UMLLC, the Concessionaire, the Operator or any of their respective Representatives.

- (c) *Financial Reports.* UMLLC shall deliver to the University within one hundred twenty (120) Days after the end of each Fiscal Year a copy of the audited balance sheets of UMLLC 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 UMLLC, in each case in a manner and containing information consistent with UMLLC's current practices and certified by UMLLC'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 UMLLC as of the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP or IFRS, provided that if such financial statements are prepared in accordance with IFRS, such financial statements shall include a reconciliation statement setting forth any material discrepancies between IFRS and GAAP reporting with respect to the subject matter thereof. UMLLC's independent certified public accountants shall be subject to the University's Approval.
- (d) *Utility Fee Reports.* UMLLC shall deliver to the University within thirty (30) Days after the end of each Quarter during a Fiscal Year a report showing (i) the calculation of the Variable Fee Component for that Quarter, (ii) the amount of Uncapped O&M Costs incurred to date for such Fiscal Year, and (iii) the anticipated expenditures on Capital Improvements and Material Changes for the remainder of such Fiscal Year.

- (e) *Regular Reports.* UMLLC 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, UMLLC shall, at UMLLC's cost and expense and at any and all reasonable times during the Term: (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 University Lease or the Utility System as may be specified in such request and as shall be in the possession or control of UMLLC or its Representatives, and (ii) permit the University, after giving ten (10) Business Days' prior notice to UMLLC (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 UMLLC's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, to discuss the obligations of UMLLC under this University Lease with any of the directors, officers, employees or managers of UMLLC, the Concessionaire, the Operator or their respective Representatives at times and places on the University Campus acceptable to all attendees (it being agreed that UMLLC shall have the right to be present during any such discussions with the Operator or Representatives of UMLLC, the Concessionaire or the Operator), for the purpose of enabling the University to determine whether UMLLC is in compliance with this University Lease. 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 UMLLC or its Representatives that constitutes a "trade secret" as defined by applicable Law, as determined by the University in its reasonable discretion. In the event that UMLLC seeks to defend an action seeking the disclosure of information that UMLLC 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 UMLLC 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 ten (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 UMLLC under this University Lease 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). UMLLC 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. Such audits may be made on either a continuous or a periodic basis or both, and may be conducted by (1) employees of the University, (2) by independent auditors retained by the University, or (3) to the extent required by Law (including La. R.S. 24:511 *et seq.*), by or on behalf of the Louisiana Legislative Auditor or by the Office of the Governor or Division of Administration of the State of Louisiana.

- (b) *Inspection Right.* The University and its Representatives shall, at all reasonable times and upon reasonable prior notice and subject to UMLLC's reasonable safety requirements and protocols, have access to the Utility System, the D&C Work, and every part thereof, and UMLLC, at the reasonable cost and expense of UMLLC, shall and shall cause its Representatives to furnish the University with every reasonable assistance for inspecting the Utility System, the D&C Work, and the Utility System Operations for the purpose of Auditing and Reviewing the information relating to the Utility System Operations and the D&C Work or ascertaining compliance with this University Lease and applicable Law subject to reasonable restrictions on access to confidential and proprietary information as determined by UMLLC.
- (c) *Tests.* The University and its Representatives shall, with the prior consent of UMLLC, 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, the D&C Work, or the Utility System Operations as the University may reasonably determine to be necessary in the circumstances, and UMLLC, at the cost and expense of UMLLC, 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 and Review UMLLC's responsibilities under this University Lease or any part thereof, or the performance by UMLLC 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 UMLLC hereunder. Inspection, review, testing or Audit and Review not followed by a notice of UMLLC Default shall not constitute a waiver of any

UMLLC Default or constitute an acknowledgement that there has been or will be compliance with this University Lease and applicable Law.

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

Section 8.4. Audits, Assistance, Inspections and Approvals. Wherever in this University Lease reference is made to the University or its Representatives providing assistance, services, Approvals, or consents to or on behalf of UMLLC or its Representatives or to the University or its Representatives performing an Audit and Review 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 UMLLC or its Representatives, such undertaking by the University or its Representatives shall not relieve or exempt UMLLC from, or represent a waiver of, any requirement, liability, UMLLC Default, covenant, agreement, or obligation under this University Lease 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 University Lease.

Section 8.5. Review and Audit of Costs Relating to D&C Work. Prior to making any progress payments or final payment to the D&C Contractor in respect of the D&C Work pursuant to the terms of the Drop-Down DB Contract, UMLLC shall provide the University and its Representatives with the opportunity to review and comment on the relevant draw or payment request from the D&C Contractor for purposes of verifying that the payment amount requested corresponds with the D&C Work performed during the relevant period. The University and its Representatives, as applicable, will provide comments on the relevant draw or payment request within five (5) Business Days of the receipt of same from UMLLC. UMLLC shall not make payment to the D&C Contractor until the University's comments on the relevant draw or payment request, if any, have been resolved to the satisfaction of the University, acting reasonably. Following IMP Final Acceptance and final payment to the D&C Contractor, the University or its Representatives shall be entitled to carry out an Audit and Review of all payments in respect of the D&C Work made to the D&C Contractor pursuant to the terms of the Drop-Down DB Contract in order to, among other things, verify the Capital Improvement Cost of the Initial Modernization Project as compared to the Approved Budgeted Amount for the Initial Modernization Project. Such Audit and Review may be conducted by (1) employees of the University, (2) by independent auditors retained by the University, or (3) to the extent required by Law (including La. R.S. 24:511 *et seq.*), by or on behalf of the Louisiana Legislative Auditor or by the Office of the Governor or Division of Administration of the State of Louisiana.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

Section 9.1. Representations and Warranties of the University. The University makes the following representations and warranties to UMLLC and acknowledges that UMLLC and its Representatives are relying upon such representations and warranties in entering into this University Lease:

- (a) *Organization.* LSU is the flagship institution of the State of Louisiana under the management and supervision of the Board, which Board is a public constitutional corporation organized and existing under the laws of the State of Louisiana.
- (b) *Power and Authority.* The University has (i) duly authorized and approved the execution and delivery of this University Lease and (ii) duly authorized and approved the performance by UMLLC of its obligations contained in this University Lease. The University has the power and authority to enter into this University Lease and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.
- (c) *Enforceability.* This University Lease 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 hereof, 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.* The University has good and sufficient ownership interest in the Utility Facilities, the Utility System Land, and the Utility System Assets necessary for the Utility System Operations pursuant to this University Lease, subject only to Permitted University Encumbrances, and is able to transfer or grant such interest to UMLLC as provided in this University Lease. Subject to any and all Permitted University Encumbrances 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 UMLLC's ability to operate the Utility System in accordance with the terms hereof. 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 UMLLC from or generated with respect to the Utility System (other than UMLLC and any

claims, rights, or interests granted by or otherwise relating to UMLLC); *provided, however*, the foregoing shall not apply to (i) revenues to which the University is or may be entitled to under this University Lease, (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 this University Lease by the University, the consummation of the Transaction (including the operation of the Utility System in accordance with the terms of this University Lease), and the performance by the University of the terms, conditions, and provisions hereof 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 UMLLC is a party or by which it is bound, or (iii) the University's governing documents.
- (f) *Consents.* No Consent that has not already been obtained is required to be obtained by the University from, and no notice or filing that has not already been given 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 this University Lease or the consummation of the Transaction, except for such consents which have been obtained and notices which have been given.
- (g) *Compliance with Law; Litigation; Environmental Matters.*
 - (i) 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 UMLLC. 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) To the Actual Knowledge of the University, the University has not been served with notice of any action, suit, or proceeding, at law or in equity, or before or by any Governmental Authority, and to the Actual Knowledge of the University, there is no such action, suit, or proceeding pending or threatened against the University, which would reasonably be expected to have a Material Adverse Effect or a material adverse effect on UMLLC. As of the date hereof, 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 this University Lease or the Concession Agreement.

- (iii) 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 UMLLC.
- (h) *Historical Financial Information.* The financial information relating to the Utility System attached hereto as Schedule 9, which identifies operational costs for the periods that ended June 30, 20[●] through June 30, 20[●], to the Actual Knowledge of the University, fairly presents the financial information disclosed thereon in accordance with standard accounting procedures of the University with respect to the Utility System, and is adjusted for anticipated expenditures UMLLC will incur to operate the Utility System as it is currently operated.
- (i) *Absence of Changes.* To the Actual Knowledge of the University, since June 30, 20[●], 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
- (j) *Brokers.* 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 UMLCC in connection with the Transaction.
- (k) *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 UMLLC through [●] 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 Turnover Date.
- (l) *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.

Section 9.2. Representations and Warranties of UMLLC. UMLLC makes the following representations and warranties to the University and acknowledges that the University and its Representatives are relying upon such representations and warranties in entering into this University Lease:

- (a) *Organization.* UMLLC is Louisiana limited liability company.

- (b) *Power and Authority.* UMLLC has (i) duly authorized and approved the execution and delivery of this University Lease and (ii) duly authorized and approved the performance by UMLLC of its obligations contained in this University Lease. UMLLC has the power and authority to enter into this University Lease and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.
- (c) *Enforceability.* This University Lease has been duly authorized, executed, and delivered by UMLLC and constitutes a valid and legally binding obligation of UMLLC, enforceable against UMLLC in accordance with the terms hereof, 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 this University Lease by UMLLC, the consummation of the Transaction (including the operation of the Utility System in accordance with the terms of this University Lease), and the performance by UMLLC of the terms, conditions, and provisions hereof 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 UMLLC under (i) any applicable Law, (ii) any agreement, instrument, or document to which UMLLC is a party or by which it is bound, or (iii) UMLLC's governing documents.
- (e) *Consents.* No Consent that has not already been obtained is required to be obtained by UMLLC from, and no notice or filing that has not already been given is required to be given by UMLLC to or made by UMLLC with, any Person (including any Governmental Authority) in connection with the execution, delivery, and performance by UMLLC of this University Lease or the consummation of the Transaction, except for such consents which have been obtained and notices which have been given.
- (f) *Compliance with Law; Litigation.*
 - (i) UMLLC 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 University. UMLLC is in compliance, in all material respects, with the terms and conditions of all Authorizations from Governmental Authorities, no claim has been made by any Governmental Authority to the effect that an Authorization that UMLLC has not obtained is necessary in respect of the operation of the Utility System, and no additional Authorizations from any Governmental Authority are necessary for the operation of the Utility System as currently being operated.
 - (ii) UMLLC has not been served with notice of any action, suit, or proceeding, at law or in equity, or before or by any Governmental Authority, and there is no such action, suit, or proceeding pending or threatened against UMLLC which would reasonably be expected to have a Material Adverse Effect or

a material adverse effect on the University. As of the date hereof, there is no action, suit, or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor threatened against UMLLC which could materially affect the validity or enforceability of this University Lease or the Concession Agreement.

- (g) *Absence of Changes.* Since June 30, 20[●], 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.
- (h) *Accuracy of Information.* To the actual knowledge of UMLLC, (i) all information regarding UMLLC provided to the University by or on behalf of UMLLC was accurate in all material respects at the time such information was provided.
- (i) *Brokers.* There is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of UMLLC who might be entitled to any fee or commission from UMLLC 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 UMLLC who might be entitled to any fee or commission from the University in connection with the Transaction.

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 University Lease or pursuant to this University Lease. 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) *The 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 UMLLC 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 twenty-four (24) months following the Turnover Date unless a bona fide notice of a Claim shall have been given, in writing, in accordance with Section 20.1, 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) *UMLLC's Representations and Warranties.* The representations and warranties of UMLLC contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the University without time limit.
- (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 or prescriptive period that would be applicable to such Claims under

applicable Law. The Parties acknowledge and agree that they intend to modify the statutes of limitations and prescriptive periods with respect to all Claims to the extent such statutes of limitations or prescriptive periods would conflict with the provisions set forth in this Section 9.4.

ARTICLE 10 FINANCE OBLIGATIONS

Section 10.1. UMLLC's Obligations. UMLLC shall be responsible for obtaining any financing for the performance of its obligations under this University Lease, which financing shall comply with all requirements of this University Lease, and which financing shall be subject to the University's prior written approval, in its sole discretion. To the extent so approved by the University, UMLLC 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, UMLLC 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 UMLLC, cooperate with UMLLC with respect to documentation reasonably necessary to obtain, maintain, and replace financing for the performance of the obligations of UMLLC hereunder. The University's cooperation may include reviewing, Approving, and executing documents which substantiate the terms of this University Lease (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 UMLLC'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, provided that such lenders and potential lenders shall hold such information in confidence (provided that such lenders and potential lenders may disclose such information to Affiliates and their respective officers, employees, agents, advisors, stockholders, partners, members, accountants, and attorneys to the extent the foregoing agree to maintain such information as confidential in accordance with this Section 10.2 or as may be compelled in a judicial, regulatory (including any self-regulatory organization), or administrative proceeding or as otherwise required by applicable Law or required by any Governmental Authority having jurisdiction over the lender) and UMLLC shall be liable for any disclosure by such lenders or potential lenders in breach thereof. If requested in writing to do so by UMLLC, the University shall, at the sole cost and expense of UMLLC, use its commercially reasonable efforts to cause the University's independent public accountants to reasonably cooperate in connection with UMLLC's public or private offering of securities, as the case may be. In addition, the University shall, promptly upon the request of UMLLC or any Leasehold Mortgagee, execute, acknowledge, and deliver to UMLLC, or any of the parties specified by UMLLC, standard consents and estoppel certificates with respect to this University Lease 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), to take any action or give any consent or enter into any document inconsistent with the provisions of this University Lease.

Section 10.3. UMLLC's Obligation for Estoppel Certificates. UMLLC 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 University Lease which may be qualified to the best of the knowledge and belief of a designated Representative of UMLLC. Nothing herein shall require UMLLC 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 University Lease or applicable Law.

Section 10.4. Prohibited Tax Shelter Transactions. Consistent with Section 9.2(g), UMLLC 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. A violation of this Section 10.4 or a breach of the representation set forth in Section 9.2(g) by UMLLC shall entitle the University to (a) recover from UMLLC the amount of any Tax liability, penalty, or loss to which the University or any University official is subject and (b) require UMLLC, at UMLLC'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.

Section 10.5. Concessionaire Leasehold Mortgage Debt. The University and UMLLC agree and acknowledge that the Concession Agreement allows the Concessionaire the right to obtain "Leasehold Mortgage Debt" (as such term is defined and used in the Concession Agreement) in accordance with the express terms and conditions of Article 10 of the Concession Agreement. The University agrees to reasonably cooperate with UMLLC and Concessionaire with any such Leasehold Mortgage Debt sought by the Concessionaire in accordance with the relevant terms and conditions of the Concession Agreement (including Article 10 thereof), in each case consistent with the University's obligations under Article 10 of this University Lease as the same would apply to Leasehold Mortgage Debt approved by the University as contemplated in Section 10.1 hereof, but subject in all cases to the relevant terms, conditions and obligations of the Concessionaire set forth in the Concession Agreement with respect thereto.

ARTICLE 11 COMPLIANCE

Section 11.1. Compliance with Laws. UMLLC must at all times at its own cost and expense (but subject to UMLLC'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 Turnover 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 UMLLC's obligations under this University Lease. For the avoidance of doubt, any costs incurred to comply with applicable Law as a result of any Capital Improvement or other alteration to the Utility System undertaken by UMLLC, shall be at UMLLC's cost (subject to inclusion in the Utility Fee as part of the Variable Fee Component or Uncapped O&M Costs, if and as applicable). UMLLC shall notify the University within seven (7)

Days after receiving written notice from a Governmental Authority that UMLLC, the Concessionaire or the Operator may have violated any Laws.

Section 11.2. Non-Discrimination.

- (a) *Non-Discrimination Requirements.* UMLLC 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 Louisiana Human Rights Act, La. R.S. 51:2231 et seq.; and (ix) the Louisiana Employment Discrimination Law, La. R.S. 23:301 et seq.
- (b) *Contract Provisions.* UMLLC shall cause all Contractors to comply with each of the federal Laws and Louisiana 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. UMLLC 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.; and (ii) the Louisiana Payment of Employees Statute, La. R.S. 23:631 et seq.

Section 11.4. Safety Laws. UMLLC 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. UMLLC 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. UMLLC 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 UMLLC's performance under this University Lease. The UMLLC 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, UMLLC 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. UMLLC shall ensure that it and the Operator have workplace conduct policies for their employees providing services under this University Lease 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 University Lease, UMLLC 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 University Lease other than that which appears upon the face of this University Lease.

Section 11.9. Conflict of Interest. UMLLC 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 UMLLC'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 the University during the performance of this University Lease, other than in respect of any disputes that may arise hereunder or in connection herewith.

Section 11.10. Drug-Free Workplace Certification. UMLLC hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. UMLLC will give written notice to the University within seven (7) Days after receiving actual notice that UMLLC or an employee of UMLLC has been convicted of a criminal drug violation occurring in UMLLC's workplace.

Section 11.11. Diverse Businesses. UMLLC and its Representatives shall use good faith and commercially reasonable efforts to provide opportunities to minority- and women-owned and small and historically underutilized businesses (collectively, "Diverse Businesses") that are either certified by the State or another certifying entity in a diverse category as a contractor, subcontractor, supplier, or capital provider. UMLLC and its Representatives shall (i) implement the Diversity, Inclusion and Equity Plan attached hereto as Schedule 17 (the "Diversity Plan"), which Diversity Plan outlines UMLLC's commitment and obligation to provide opportunities to Diverse Businesses, (ii) provide to the University on a quarterly basis during the Term a list of all Diverse Businesses engaged or utilized in connection with any Capital Improvements, including but not limited to the Initial Modernization Project, which list shall identify as to each Diverse

Business contained thereon (A) the legal name thereof, (B) the principal office or address thereof, (C) ownership thereof, and (D) the services or good provided or supplied (or to be provided or supplied) and the value of the goods or services procured therefrom, and (iii) following written notice from the University, take all reasonable measures required by the University to ensure accountability, compliance, and transparency in complying with the commercially reasonable, the University system-wide disadvantaged business enterprise goals or policies established by the University's Office of Supplier Diversity. To the extent that any Law would require that this Section 11.11 or comparable language in this University Lease be modified or voided, the Parties agree that such provision can be amended or severed from any such agreement without affecting any of the other terms thereof.

Section 11.12. Accreditation. UMLLC shall ensure that the Utility System provides a sufficient quantity of Utilities in a timeframe sufficient such that the University may maintain any third-party accreditation or other third-party standard of which the University have provided UMLLC notice prior to the Turnover Date.

Section 11.13. Permits and Other Campus-Wide Authorizations. UMLLC acknowledges and agrees that, in connection with the Campus-Wide Permits: (i) the University will continue to be the "owner" identified in the Campus-Wide Permits during the Term; (ii) UMLLC will become the "operator" of permitted emission sources from the Utility System identified in the Campus-Wide Permits during the Term, to the extent applicable; (iii) UMLLC 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; (iv) UMLLC shall promptly provide to the University's Office of Environmental Health and Safety, as the responsible University official for communications with the Louisiana Department of Environmental Quality ("DEQ"), all records that the DEQ inspectors request the University provide with respect to the Utility System; and (v) UMLLC shall provide to the University (a) complete drafts of all required reports with respect to the Utility System portion of the Campus-Wide Permits for the University to review and Approve at least 15 Business Days prior to the deadline to submit such reports, (b) any information regarding utility operations required for reports related to the Campus-Wide Permits by the later of (1) ten (10) Days after the end of the applicable reporting period and (2) (A) thirty (30) Days prior to the applicable submission deadline or (B) ten (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 modifications to any Campus-Wide Permit for review and Approval at least thirty (30) Days prior to submission to a regulatory agency; and (v) the Parties shall reasonably cooperate with each other in connection with any matters relating to the Campus-Wide Permits. UMLLC shall comply with all Campus-Wide Permits to the extent applicable to the Utility System or Utility System Operations.

Section 11.14. Financial and Audit Standards. UMLLC shall comply, and its financial statements shall be prepared in accordance, with GAAP or IFRS, provided that if such financial statements are prepared in accordance with IFRS, such financial statements shall include a reconciliation statement setting forth any material discrepancies between IFRS and GAAP reporting with respect to the subject matter thereof.

Section 11.15. Pay If Paid; Non-Appropriation and Termination.

- (a) *Pay If Paid.* Notwithstanding anything to the contrary contained in this University Lease, whenever a provision in this University Lease provides (i) that the University shall only be entitled to compensation in the event and only to the extent that UMLLC receives the corresponding compensation under the Concession Agreement, (ii) that the University's entitlement to compensation shall be conditional upon and only to the extent that UMLLC receives the corresponding compensation under the Concession Agreement, (iii) that a payment or other compensation obligation of UMLLC is subject to the Pass-Down Provisions, or (iv) other similar language providing that a payment to the University is conditional upon receipt of the relevant amount by UMLLC from the Concessionaire, payment of the amount in question by the Concessionaire to UMLLC pursuant to the Concession Agreement will be strict conditions precedent to the obligation of UMLLC to make a payment to the University under the relevant provision of this University Lease.
- (b) *Non-Appropriation.* UMLLC acknowledges and agrees that the University's ability to make payments to UMLLC pursuant to this University Lease (including with respect to payment of the Utility Fee), require that the Legislature appropriate to the University funds sufficient therefor and to make such funds available to the University following appropriation. UMLLC has the right, pursuant to this University Lease, to cause the University to include in the University's annual budget request to the Legislature for each fiscal year of the University the funds necessary for payment of the amounts payable by the University to UMLLC pursuant to this University Lease. The University agrees to include such amounts in its annual budget request to the Legislature; but makes no representations, warranties or covenants, express or implied, that the Legislature will make such appropriations.
- (c) *Termination.* In the event the Legislature fails to appropriate sufficient moneys that would enable the University to pay its obligations to UMLLC to provide for the continuation of this University Lease, this University Lease shall terminate on the last day of that fiscal year, and the University shall adopt resolutions stating that there has been an event of non-appropriation. Such termination shall be without penalty or expense to the University or UMLLC; *provided, however*, that the University shall pay to UMLLC the amounts payable to UMLLC for termination pursuant to Section 16.4. In such event and for the avoidance of doubt, the University agrees to include in one or more of the University's annual budget request(s) to the Legislature the funds necessary for any such refunds and/or termination fees due UMLLC pursuant to this University Lease until such refunds and/or termination fees are paid in full.

ARTICLE 12 PAYMENT OBLIGATIONS

Section 12.1. Certain Payment Obligations of UMLLC. To the extent permitted by Law, UMLLC 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 UMLLC, 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 University Lease or, subject to the expiration of the survival period specified in Section 9.4(b), any breach by UMLLC of its representations or warranties set forth herein, (ii) any Assumed Liabilities, (iii) any Tax or recording charge attributable to any Transfer of UMLLC Interest or any part thereof by UMLLC, (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 UMLLC or its Representatives in connection with this University Lease, any Transfer of the UMLLC 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, subject to Section 12.5 Claims shall be made in writing within a period of three (3) Years following the expiration of the Term or earlier termination of this University Lease or within such shorter period as may be prescribed by the applicable statute of limitations or prescriptive period. The Parties agree that the Representatives of the University are intended to be third party beneficiaries of the obligations of UMLLC 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 University Lease (including Concession Compensation or AA-Compensation as provided in this University Lease) the University shall have a payment obligation to UMLLC and each of its Representatives with respect to any Losses actually suffered or incurred by UMLLC or any such Representative, based upon, arising out of, related to, occasioned by, or attributable to (i) any failure by the University or any of its employees, officers, or agents (collectively, the “University Responsible Parties”) to comply with, observe, or perform any of the covenants, obligations, agreements, terms, or conditions in this University Lease 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 any University Responsible Party in connection with this University Lease 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 UMLLC and therefore not paid to UMLLC as Uncapped O&M Costs; *provided, however*, that, except with respect to Claims resulting from Third Party Claims, subject to Section 12.5 Claims are made in writing within a period of three (3) Years following the expiration of the Term or earlier termination of this University Lease or within such shorter period as may be prescribed by the applicable statute of limitations or prescriptive period. The Parties agree that the Representatives of UMLLC are intended to be third party beneficiaries of the obligations of the University pursuant to this Article 12.

Section 12.3. Agency for Representatives. Each of the University and UMLLC 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 UMLLC 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 UMLLC, 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 thirty (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.
- (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 Obligees 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 thirty (30) Days after receiving notice from the Obligees that the Obligees believe on reasonable grounds that the Obligor has failed to take such steps, the Obligees 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 Obligees 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 Obligees is the University, in no event may the Obligor settle or compromise any Third Party Claim without obtaining the prior written consent of the Obligees.

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 sixty (60) Days after the Obligees becomes aware of such Direct Claim. The Obligor shall then have a period of thirty (30) Days within which to respond in writing to such Direct Claim. If the Obligor does not so respond within such thirty (30) -Day period, the Obligor shall be deemed to have rejected such Direct Claim, and in such event the Obligees 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 whatsoever 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 Obligees 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 Obligees 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 Obligees against any third party in respect of the Loss to which the Obligation Payment relates. Until the Obligees 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 Obligees’s rights against such third party.

Section 12.8. Payment and Interest. All amounts to be paid by an Obligor hereunder, not including deductibles or self-insured retentions or insurance proceeds, 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 University Lease (including Concession Compensation, AA-Compensation, or KPI Compensation as provided in this University Lease), the maximum aggregate liability of the University to UMLLC or its Representatives, in respect of Losses pursuant to this Article 12 shall not exceed the Maximum Budgeted IMP Amount; *provided* 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), (g), and (j); (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)(iii)(2); (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 University Lease, the maximum aggregate liability of UMLLC to the University and its Representatives, in respect of Losses pursuant to this Article 12 shall not exceed the Maximum Budgeted IMP Amount; *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), (g) and (j) 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 or gross negligence of the other Party or its Representatives (or the University Responsible Parties in the case of the University). Notwithstanding anything herein to the contrary, the provisions of this University Lease do not waive or abrogate, nor are they intended to waive or abrogate, any limitation of liability for the University provided by Louisiana law, including without limitation under La. R.S. 13:5106.

Section 12.10. Other Matters.

- (a) *Waiver of Limits.* With respect to claims by UMLLC's employees, UMLLC 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 UMLLC's obligations to defend, indemnify, hold harmless, or contribute to any sums due under any Losses.
- (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 University Lease 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 University Lease 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 University Lease 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, employees, and agents are relying on, and do not waive or intend to waive by any provision of this University Lease, the monetary limitations or any other rights, immunities, and protections provided by Law or otherwise available to the University and its officers, employees, and agents.

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 University Lease by any Party.

ARTICLE 13 INSURANCE

Section 13.1. Insurance Coverage Required – UMLLC. UMLLC and any contractors or sub-contractors of UMLLC shall provide and maintain at UMLLC's own expense (without limitation of UMLLC's right to recover any Uncapped O&M Cost pursuant to clause (o) of the definition thereof), or cause to be maintained, during the Term and during any time period following expiration if UMLLC 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 and all Utility System Operations (the "UMLLC Required Coverages"). For the avoidance of doubt, UMLLC Required Coverages may be provided and maintained as part of a corporate insurance program of a direct or indirect holder of equity in UMLLC and each of the insurance coverage limits set out in Section 13.1(b), Section 13.1(c), and Section 13.1(d) may be achieved through a combination of primary, excess, and/or umbrella coverage. Any coverage provided under a self-insured program *MUST* first be approved in writing by the University.

- (a) *Workers' Compensation and Employer's Liability.* UMLLC shall provide or cause to be provided statutory Workers' Compensation Insurance, to cover liability imposed by Federal and State statutes having jurisdiction over UMLLC's

employees engaged in the performance of this University Lease and Employer's Liability Insurance coverage with limits of not less than \$1,000,000 each employee disease, \$1,000,000 each accident, \$1,000,000 each disease policy limit.

- (b) *Commercial General Liability.* UMLLC shall provide or cause to be provided Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate. Coverage shall include the following: bodily injury and property damage including personal injury, coverage for contractual employees (excluding any employees of the University), all premises and on going and completed operations, including blanket contractual and products/completed operations, explosion, collapse, mobile equipment not suitable for roadways, underground, separation of insureds, and liability assumed under an insured contract and shall be written on ISO form CG 00 01 12-07 or its equivalent.
- (c) *Commercial Automobile Liability.* When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, UMLLC shall provide or cause to be provided Commercial Automobile Liability Insurance with limits of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The policy shall be endorsed with CA 99 48 and MCS 90 (or their equivalents), if such exposure exists. The employee versus employee exclusion shall be removed.
- (d) *Umbrella Liability.* UMLLC shall provide or cause to be provided follow form Umbrella Liability Insurance with a minimum limit of \$50,000,000 per occurrence and shall apply in excess of the coverages for the UMLLC Required Coverages set forth in Section 13.1(a), Section 13.1(b) and Section 13.1(c). In the event that such Umbrella Liability Insurance applies in excess of the coverages for UMLLC Required Coverage in Section 13.1(e), then the minimum limit for UMLLC Required Coverage in Section 13.1(e) shall be \$12,000,000 rather than \$15,000,00, and in the event that such Umbrella Liability Insurance applies in excess of the coverages for UMLLC Required Coverage in Section 13.1(g), then the minimum aggregate limit for UMLLC Required Coverage in Section 13.1(g) shall be \$10,000,000 rather than \$15,000,000.
- (e) *Professional Liability.* When any architects, engineers, construction managers, professional services providers or any other professional consultants perform work in connection with this University Lease, UMLLC shall maintain or require such architects, engineers, construction managers or other professional consultants to maintain Professional Liability Insurance, with limits not less than \$15,000,000 per claim and in the aggregate or such other limit (whether lower or higher) as the University and UMLLC may agree (each, acting reasonably) with respect to such policy for a particular Capital Improvement or Material Change, which other limit shall be included as part of the Approval of such Capital Improvement or Material Change in accordance with Section 4.3. The policy shall include: contingent bodily injury liability, rectification and punitive damages. The faulty workmanship exclusion should be modified to cover losses arising out of professional services.

Should UMLLC self-perform any work of the nature noted in this Section 13.1(e), evidence of Professional Liability Insurance meeting the standards for such work set forth above shall be required. Such insurance *shall remain* in place following completion of turnover date through the timing set forth in the applicable statute of repose.

- (f) *Network Security and Privacy Insurance.* UMLLC shall also maintain Cyber Liability Insurance for network security and privacy liability with limits of not less than \$10,000,000 per claim and in the aggregate inclusive of cybersecurity event management. Additionally coverage shall include: naming the University as Additional Insureds, \$10,000,000 per claim/aggregate Business Income/Network Interruption coverage, system failure cover, cyber extortion full limits, and physical damage ensuing from a cyber attack. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this University Lease.
- (g) *Pollution Legal Liability.* UMLLC shall provide Pollution Legal Liability Insurance and Site Pollution Insurance (third party or first party) or cause to be provided Pollution Legal Liability Insurance or Site Pollution Insurance (third party or first party) or equivalent, in each case with limits of not less than \$10,000,000 per incident and \$15,000,000 in the aggregate during any 3 year period for environmental and pollution damage liability arising out of pollution events occurring after the Turnover Date.
- (h) *Property.* UMLLC 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 excluding any building in which the Shared Spaces are located), 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; provided, however, that the limits of such coverage may be based on replacement cost value agreed by the University and UMLLC 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, earthquake, flood, ground up terrorism (certified and non-certified) and named wind including storm surge. 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. UMLLC shall be responsible for any loss or damage to University property caused by UMLLC or its Representatives at full replacement cost, except to the extent such loss or damage is covered by the insurance described in Section 13.2(c), in which case UMLLC shall be responsible for the deductible only in accordance with Section 13.2(c) as well as any uninsured damages resulting from direct or indirect peril.

- (i) *All Risk Builder's Risk.* When UMLLC undertakes, pursuant to this University Lease, any construction, maintenance or repairs to the Utility System (including Capital Improvements, Material Changes and betterments), UMLLC shall provide or cause to be provided, All Risk Builder's Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Utility System. Coverage shall include, but not be limited to, the following: right to partial occupancy, boiler and machinery, business income, valuable papers, ground up terrorism (including certified and non-certified incidents), and other consequential loss, when applicable with aggregate sublimits for catastrophic perils of earthquake, flood and named wind including storm surge which are the best available on commercially reasonable terms. The University and any Leasehold Mortgagee may be named as additional insured and as loss payees and included in any claim payment for signature prior to execution of the payment.
- (j) UMLLC's insurance, including Contractors and sub-contractors shall be primary and any insurance or self-insurance carried by the University shall not contribute with it. Any limits carried by UMLLC in excess of the required limits shown herein shall be available to the University.

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 UMLLC is required to return and perform any additional work, the following insurance coverages and requirements specified below (the "University Required Coverages" together with the University Required Coverages, the "Required Coverages").

- (a) *Workers' Compensation.* The University shall provide or cause to be provided Workers' Compensation coverage, as prescribed by applicable Law, covering all University employees who agree to provide a service under this University Lease.
- (b) [*University Liability Coverage.* The University's liability coverage administered by the State's Office of Risk Management.]
- (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 UMLLC hereunder), including improvements and betterments and the buildings in which the Shared Spaces are located, 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, earthquake and named wind. Coverage shall include flood insurance with limits which are commercially available. UMLLC shall be responsible for the property deductible payable by the

University and/or the State of Louisiana for any loss or damage to University property caused by UMLLC or its Representatives.

Section 13.3. Additional Requirements.

- (a) *Evidence of Insurance.* The Parties shall deliver or cause to be delivered to each other's Representative designated in writing by each Party, original, latest edition standard ACORD form Certificates of Insurance, or equivalent documentation acceptable to the Parties, evidencing the UMLLC Required Coverages or University Required Coverages, as applicable, on or before the Turnover 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 University Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this University Lease. 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.
- (b) *Notice of Cancellation or Violation.* Each carrier shall be required to notify the Certificate Holding, including the University, of notice of cancellation in accordance with policy provisions, and each Party to this contract shall notify the other Party in writing 30 Days (or in the case of cancellation for non-payment of premiums, 10 Days) prior to cancellation, non-renewal or any material change of any University Required Coverages (in the case of the University) or UMLLC Required Coverages (in the case of UMLLC). Without limiting Section 13.3(e), the University 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 UMLLC shall reimburse the University for any delinquent premiums paid by the University on demand without any Days of grace and without prejudice to any other rights and remedies of the Parties hereunder.
- (c) *Deductibles.* All deductibles or self-insured retentions for UMLLC Required Coverages or UMLLC Contractors in excess of \$200,000 (Adjusted for Inflation annually) shall not exceed amounts approved by the University in writing. Except as expressly provided herein, 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) *Waiver of Subrogation.* Each of the Required Coverages provided by UMLLC pursuant to this University Lease (other than those set forth in Section 13.2(a) and

Section 13.2(b)) 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 (and, in the case of the UMLLC Required Coverages, against the State of Louisiana; the University, their agents, officials, and employees. UMLLC shall cause each of its Contractors and subcontractors to waive all their rights of subrogation against the State of Louisiana; the University, their agents, officials, and employees.

- (e) *University's Right to Insure.* Without limiting Section 13.3(b), if UMLLC fails to obtain and maintain or cause to be obtained and maintained UMLLC Required Coverage in accordance with this Article 13, the University shall have the right (without any obligation to do so), upon 2 Business Days' notice to UMLLC 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 in connection therewith shall be payable by UMLLC on demand without any Days of grace and without prejudice to any other rights and remedies of the University hereunder. Such insurance taken out by the University shall not relieve UMLLC of its obligations to insure hereunder and the University shall not be liable for any loss or damage suffered by UMLLC in connection therewith.
- (f) *No Limitation as to UMLLC Liabilities.* UMLLC expressly understands and agrees that any coverages and limits furnished by UMLLC shall in no way limit UMLLC's liabilities and responsibilities specified within this University Lease or by Law.
- (g) *No Contribution by the University.* UMLLC expressly understands and agrees that any insurance or self-insurance programs maintained by the University or the State of Louisiana shall not contribute with insurance provided by UMLLC under this University Lease.
- (h) *Insurance Requirements of Contractors.* UMLLC shall require in each contract with any Contractor that such Contractor obtain coverages reasonably comparable to the UMLLC Required Coverages that are reasonably appropriate in their limits and other terms and conditions, in each case to the nature of the contract with the Contractor. Such coverages shall insure the interests of the State of Louisiana, the University, their agents, officials, and employees (provided that such agents, officials or employees shall not be included if not permitted by applicable Law or commercially available), UMLLC 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 UMLLC pursuant to this University Lease, specifically requiring such Contractor to name the State of Louisiana, the University, their agents, officials and employees as Additional Insureds and requiring such Contractor's insurance to include a waiver of subrogation as described in Section 13.3(d). When requested to do so by the University, UMLLC 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.

- (i) *Cooperation.* The University and UMLLC 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.
- (j) *Joint Venture and Limited Liability Company Policies.* If UMLLC 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 UMLLC or such Contractor shall specifically name the joint venture or limited liability company as a named insured. If UMLLC contracts operations to a third party, UMLLC will be an additional insured on any liability policy.
- (k) *Other Insurance Obtained by UMLLC.* If UMLLC or its Contractors desire coverages in addition to the UMLLC Required Coverages, UMLLC and each Contractor shall be responsible for the acquisition and cost of such additional coverages. If UMLLC 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 UMLLC Required Coverages (“Additional Coverages”), then UMLLC 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 State of Louisiana, the University, their agents, officials and employees, to be named as additional insureds under such Additional Coverages, if that is normally allowed in accordance with good industry practice.
- (l) *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 13.3. 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, each acting reasonably, and (ii) if any insurance (including the limits or deductibles thereof) required to be maintained under this University Lease shall not be available at commercially reasonable rates, UMLLC’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, UMLLC maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.
- (m) *Commercial Availability.* To the extent any of the Required Coverages are not available on a commercially reasonable basis or on commercially reasonable terms, the Party responsible for obtaining such Required Coverage shall obtain insurance

that is available on a commercially reasonable basis or on commercially reasonable terms that best approximates the applicable Required Coverages, but said substitute coverage shall, at the other Party's request, be subject to review of an independent insurance consultant, and such independent insurance consultant shall have delivered to the University and UMLLC its opinion to the effect that the substitute coverages meet the above-stated criteria.

- (n) *Endorsements.* All UMLLC Required Coverages (except for the professional liability, workers' compensation and employer's liability policies) shall be endorsed to include the State of Louisiana, the University, their agents, officials, and employees as Additional Insureds, in each case to the extent permitted by Law and commercially available. For the avoidance of doubt, Blanket Additional Insured endorsements that provide coverage "where required by contract" shall be acceptable for this purpose. The General Liability Additional Insured provisions will include both on-going and completed operations and confirmed accordingly in the Certificates of Insurance.
- (o) *UMLLC Required Coverage Requirements.* All UMLLC Required Coverages and UMLLC's All Risk Property Insurance described in Section 13.2(c) shall be issued by reputable insurance companies duly authorized to engage in the insurance business in the State of Louisiana, with an A.M. Best's rating of A-, VII or better, be primary noncontributory coverage and contain severability of interests provisions.
- (p) *Defense of Coverage Outside Limits of Liability.* All UMLLC Required Coverages shall include defense coverage outside the limits of liability, except for the Professional Liability Insurance required to be carried by UMLLC.
- (q) *Requirements for UMLLC Required Coverages for Liability Policies.* All UMLLC Required Coverages that are liability policies shall be occurrence-based, except where not commercially available, in which case they shall be on a claims-made basis, provided that such policies shall extend for a period of 5 years after the expiration or earlier termination of this University Lease, which obligation shall survive the expiration or earlier termination of this University Lease.
- (r) *Payment for Insurance Coverage.* To the extent that the University and UMLLC determine that it would be in the best interests of both Parties for any of the UMLLC Required Coverages to be purchased by and held in the name of the University, then the University shall be responsible for purchasing those certain UMLLC Required Coverages, which shall satisfy UMLLC's obligation to do so hereunder. The University shall name UMLLC and the Leasehold Mortgagee as additional insureds thereunder.

Section 13.4. Damage and Destruction.

- (a) *Obligations of UMLLC.* 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, UMLLC shall:

- (i) give the University notice thereof promptly after UMLLC 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 or with such modifications, including as to location or configuration, as directed by the University provided such modifications shall not materially and adversely affect UMLLC’s ability to perform the Utility System Operations once completed and such cost shall be included in the Casualty Costs (any such activity being a “Restoration”); and
- (iii) if the Casualty Cost cumulatively exceeds \$1,000,000, deposit all insurance proceeds received by UMLLC in connection with the relevant Restoration with the Depositary selected by the University pursuant to Section 13.4(b); provided, however, that if at any time the Casualty Cost exceeds the net insurance proceeds then deposited with the Depositary, then UMLLC shall also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds deposited pursuant to this Section 13.4(a)(iii) and Section 13.4(b) (the “Restoration Shortfall Amount”), except to the extent such difference is caused by the negligence or willful misconduct of, or violation of applicable Law by, the University or is the result of any modifications made by the University pursuant to Section 13.4(a)(ii) in which case the University shall be responsible to make such deposit (collectively, with (A) any insurance proceeds received by UMLLC with respect to such Casualty not on deposit with the Depositary and (B) any interest earned on all such funds, the “Restoration Funds”).

Any Restoration undertaken pursuant to this Section 13.4 shall be undertaken in accordance with and subject to the terms of this University Lease. Prior to the commencement of Restoration work, UMLLC 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 in writing. For the avoidance of doubt, and notwithstanding any direction by the University to modify the location or configuration of the Utility System pursuant to Section 13.4(a)(ii), the Restoration Shortfall Amount shall not be considered a New Approved Capital Improvement Cost.

- (b) *Rights of the University.* If (i) UMLLC 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, UMLLC shall fail to diligently complete the same in accordance with the terms of this University Lease or (iii) prior to the completion of any such Restoration by UMLLC, this University Lease shall expire or be terminated in accordance with the terms of this University Lease, the University may, but shall not be required to, complete such Restoration at UMLLC's expense and shall be entitled to be paid out of the Restoration Funds, but such payment shall not limit UMLLC'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 University Lease shall expire or be terminated prior to the completion of the Restoration, UMLLC shall (x) account to the University for all amounts spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depositary to pay over to the University within 30 Days after demand therefor, the remainder, if any, of the Restoration Funds received by UMLLC prior to such termination or cancellation and (z) pay over or cause the Depositary to pay over to the University, for allocation to the University, within 30 Days after receipt thereof, any Restoration Funds received by UMLLC or the Depositary subsequent to such termination or cancellation. The UMLLC's obligations under this Section 13.4(b) shall survive the expiration or termination of this University Lease.

(c) *Payment of Restoration Funds to UMLLC.* Subject to the satisfaction by UMLLC of all of the terms and conditions of this Section 13.4, the Depositary shall pay to UMLLC from time to time, any Restoration Funds then held by the Depositary, but not more than the amount actually collected by the Depositary 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 Depositary and the University in the collection of such monies, to be utilized by UMLLC solely for the Restoration, such payments to be made as follows:

- (i) prior to commencing any Restoration, UMLLC shall furnish the University with an estimate of the cost of such Restoration, prepared by an architect or engineer;
- (ii) the Restoration Funds then held by the Depositary shall be paid to UMLLC in installments as the Restoration progresses, subject to Section 13.4(c)(iii), based upon requisitions to be submitted by UMLLC to the Depositary 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 UMLLC; provided, however, that if any lien (other than a Permitted UMLLC Encumbrance) is filed against the Utility System or any part thereof in connection with the Restoration, UMLLC 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 UMLLC from receiving any installment of Restoration Funds so long as such lien will be discharged with funds from

such installment and at the time UMLLC receives such installment UMLLC delivers to the University and the Depositary a release of such lien executed by the lienholder or and in recordable form;

- (iii) the amount of any installment to be paid to UMLLC shall be the amount of Restoration Funds incurred by UMLLC 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 UMLLC under its contracts for the Restoration work and (ii) shall be released to UMLLC 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 Depositary are sufficient to complete the Restoration; provided, however, that all disbursements to UMLLC 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 materials 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 Depositary are sufficient to complete the Restoration; and
- (iv) except as provided in Section 13.4(b) and subject to Section 13.4(h), upon completion of and payment for the Restoration by UMLLC, the Depositary shall pay the balance of the Restoration Funds, if any, to UMLLC; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), UMLLC shall nevertheless be required to make the Restoration, provided the deficiency in funds necessary to complete the Restoration is provided in accordance with Section 13.4(a)(iii).

For the avoidance of doubt, the costs incurred for Capital Improvements made as part of the Restoration shall not be considered Capital Improvement Costs for purposes of Schedule 5 or otherwise included in the calculation of the Utility Fee.

- (d) *Conditions of Payment.* The following shall be conditions precedent to each payment made to UMLLC as provided in Section 13.4(c):
 - (i) at the time of making such payment, no UMLLC Default exists, except if such UMLLC 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 Depositary 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 liens or other Encumbrances 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 Depositary 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 UMLLC 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 UMLLC, (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 University Lease, (F) the balance of the Restoration Funds held by the Depositary 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 UMLLC, the Restoration has been completed in accordance with this University Lease.

- (e) *Payment and Performance Bonds.* If UMLLC obtains payment or performance bonds related to a Restoration (which UMLLC may or may not obtain in its discretion), UMLLC shall name the State of Louisiana, the University, their agents, officials, and employees, UMLLC 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 of performance bonds shall rank *pari passu* in priority with the claims of all other additional obligees.
- (f) *Benefit of the 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 Depositary shall be invested and reinvested in Eligible Investments at the direction of UMLLC, and all interest earned on such investments shall be added to the Restoration Funds.

- (h) *Lien of Leasehold Mortgage.* Any Restoration Funds not used for the Restoration shall be subject to the lien of the applicable Leasehold Mortgage, but only after such Restoration is complete.
- (i) *Personal Property.* UMLLC shall be responsible for all loss or damage to personal property (including materials, fixtures/contents, equipment, tools and supplies) of UMLLC unless caused by the University.

Section 13.5. Additional UMLLC Requirements.

- (a) UMLLC shall submit, at UMLLC's cost and expense, all design documents for proposed Capital Improvements to the Utility System to the standard University design and construction review process, including, but not limited to submitting documents to the University's Facilities and Property Oversight Department, c/o the Associate Vice President, Facility & Property Oversight, and the University's property insurance carrier for a plan review.
- (b) UMLLC shall cooperate and participate, at UMLLC's cost and expense, in any and all Utility System Land visits or site inspections by or for any University insurance carrier.

ARTICLE 14 ADVERSE ACTIONS

Section 14.1. Adverse Action.

- (a) An "Adverse Action" shall occur if the City-Parish, the State of Louisiana, 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 (x) to be principally borne by UMLLC or by private sector utility concessionaires at universities and other public institutions in Louisiana, including UMLLC, and, in either case, not by other Persons and (y) to have a material adverse effect on the fair market value of the UMLLC Interest (whether as a result of a decrease in the Utility Fee or other revenues, increased expenses that cannot be recovered pursuant to this University Lease, or both), except where such action is in response to any act or omission on the part of UMLLC 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 University Lease; *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; or (C) any action of the Louisiana Public Service Commission or the Federal Energy Regulatory Commission, or their respective

successors, that subjects UMLLC to such agency's regulatory jurisdiction due solely to the Utility System Operations performed by UMLLC in accordance with this University Lease.

- (b) If an Adverse Action occurs, UMLLC 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 University Lease 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, UMLLC shall give written notice (the "AA-Preliminary Notice") to the University within thirty (30) Days following the date on which UMLLC first became aware of the Adverse Action stating that an Adverse Action has occurred. Within one hundred eighty (180) Days following the date of delivery of the AA-Preliminary Notice, UMLLC 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 UMLLC, (ii) details of the material adverse effect of the said occurrence on the fair market value of the UMLLC Interest, (iii) a statement as to which right in Section 14.1(b) UMLLC elects to exercise, and (iv) if UMLLC 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 UMLLC no later than thirty (30) Days following the date of receipt of the AA-Notice, to require UMLLC 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 UMLLC within thirty (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 thirty (30) Days following the date of receipt of the AA-Dispute Notice by UMLLC, the matter shall be submitted to the dispute resolution procedure in Article 18.
- (d) If UMLLC 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 UMLLC, shall constitute full and final satisfaction of all amounts that may be claimed by UMLLC 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 UMLLC from any and all liability in respect of such Adverse Action, except if UMLLC 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, UMLLC may make a claim for AA-Compensation in subsequent Compensation Calculation Measuring Periods to the extent UMLLC is affected by

such Adverse Action in such Compensation Calculation Measuring Period, but UMLLC may not change its election to receive AA-Compensation with respect to such Adverse Action.

Section 14.2. Termination.

- (a) If UMLLC has elected to exercise its right to terminate this University Lease in connection with an Adverse Action pursuant to Section 14.1(b), then this University Lease, subject to Section 14.3, shall terminate sixty (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 unpaid Concession and KPI Compensation Balance (for the avoidance of doubt, including any Unrecovered Balances), plus (iii) without duplication, the out-of-pocket and documented costs and expenses incurred by UMLLC (which costs and expenses shall include reasonable payments due and payable by UMLLC or 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 (iv) the Concession Compensation calculated for the period between the date of the Adverse Action and the date of termination less (v) any insurance or condemnation proceeds received by UMLLC 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 UMLLC on the gross amount of such Termination Damages, to UMLLC on the Reversion Date or, if the Termination Damages are determined on a date subsequent to the Reversion Date, then not later than sixty (60) Days following the date of determination of the Termination Damages; *provided* that, subject to the right of UMLLC 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 one hundred twenty (120) Days in the University’s discretion; *provided, however*, that any amounts received by UMLLC 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 UMLLC, 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 University Lease shall not terminate pursuant to Section 14.2(a) unless UMLLC 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 University Lease, to which this Section 14.3 shall have no application without the written consent of UMLLC), including by reimbursing UMLLC such funds as are necessary to compensate UMLLC for the material adverse economic effect on UMLLC of such Adverse Action, the University shall give written notice thereof to UMLLC within thirty (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 one hundred twenty (120) Days following the date of receipt of the AA-Notice or, if a AA-Dispute Notice has been given, within one hundred twenty (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 UMLLC, the University shall be deemed to have remedied the applicable Adverse Action as of the date that the University provides a written commitment to UMLLC to pay such funds from time to time as are necessary to compensate UMLLC 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 UMLLC 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 UMLLC or by private sector utility concessionaires at universities and other public institutions in Louisiana, including UMLLC (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 UMLLC 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 UMLLC, 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 UMLLC.

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 UMLLC 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, UMLLC 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. UMLLC 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 UMLLC is affected by a Delay Event, it shall give written notice as soon as practicable but in no event later than ten (10) Business Days following the date on which it first became aware of the effect of such Delay Event on UMLLC (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 University Lease 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 UMLLC to provide such further supporting particulars as the University may reasonably consider necessary.

- (b) UMLLC shall notify the University within five (5) Business Days following the date on which it first became aware that a Delay Event has ceased.
- (c) Subject to UMLLC giving the notice required in Section 15.1(a), a Delay Event shall excuse UMLLC 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 UMLLC jointly determine, each acting reasonably. If the University and UMLLC 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 UMLLC from the performance and observance under this University Lease 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, UMLLC shall continue its performance and observance under this University Lease of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its commercially 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 to UMLLC, the Concessionaire or the Operator for the performance of obligations under this University Lease and such effect continues for a period in excess of one hundred twenty (120) continuous Days or one hundred twenty (120) non-continuous Days within a three hundred sixty (360) -Day period and has a Material Adverse Effect, for which UMLLC is not made whole through Concession Compensation, 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 UMLLC), condemnation or other similar proceeds are insufficient to restore UMLLC to the same economic position as it would have been in the absence of such event and UMLLC is not otherwise made whole through Concession Compensation, then, notwithstanding Section 2.1, in either case, UMLLC shall

have the right, but not the obligation, by written notice to the University within thirty (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 UMLLC 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 UMLLC or the University to a leasehold tax, conveyance fee or similar charge under applicable Law. If UMLLC timely elects to exercise the right to the Delay Event Remedy but such exercise is prohibited by Law or would subject UMLLC 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 UMLLC 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 UMLLC 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 UMLLC elects to exercise the right to the Delay Event Remedy, within five (5) Business Days following the date on which UMLLC first became aware of its right to the Delay Event Remedy pursuant to Section 15.1(d)(i) or Section 15.1(d)(ii), UMLLC shall give written notice (a “Delay Event Remedy 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 UMLLC 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 UMLLC’s proposed extension of the Term. the University shall, after receipt of the Delay Event Remedy Notice, be entitled by notice to require UMLLC 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 Remedy Notice, the University shall give written notice to dispute (the “Delay Event Remedy Dispute Notice”) to UMLLC within thirty (30) Days following the date of receipt of the Delay Event Remedy Notice stating the grounds for such dispute, and if neither the Delay Event Remedy Notice nor the Delay Event Remedy Dispute Notice has been withdrawn within thirty (30) Days following the date of receipt of the Delay Event Remedy Dispute Notice by UMLLC, 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, UMLLC may have two (2) opportunities to provide a Delay Event Remedy Notice.

Section 15.2. Notice of Compensation Events and KPI Events. Except as provided elsewhere in this University Lease, if a Compensation Event occurs, UMLLC shall give written

notice to the University within forty-five (45) Days following the date on which UMLLC first became aware of the Compensation Event stating that a Compensation Event has occurred. Except as provided elsewhere in this University Lease, if a KPI Event occurs, the University shall give written notice to UMLLC within forty-five (45) 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 fourteen (14) Days after each Compensation Calculation Date, UMLLC shall send the University notice setting forth all Concession Compensation due for the immediately preceding Compensation Calculation Measuring Period, and the University shall send UMLLC 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, as applicable, is claimed therein, including an explanation of the reasons that such event(s) constitute Compensation Event(s), Adverse Action(s) and KPI Event(s), as applicable, under the terms of this University Lease; and (iii) the amount claimed as Concession Compensation and KPI Compensation, as applicable, with respect to each such Compensation Event, Adverse Action and KPI Event, as applicable, 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 thirty (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 thirty (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 UMLLC 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, subject to Section 3.12.
- (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 in equal monthly installments.

- (e) Following the final determination of the Concession Compensation and KPI Compensation, (i) if the Concession and KPI Compensation Balance is positive, then the University shall pay, within ninety (90) Days of such final determination, to UMLLC, the Concession and KPI Compensation Balance or add such amount to the immediately succeeding payment of the Utility Fee in accordance with Section 15.3(d), if applicable or (ii) if the Concession and KPI Compensation Balance is negative, then UMLLC shall pay, within ninety (90) Days of such final determination, to the University, the absolute amount of the Concession and KPI Compensation Balance or, with the University's consent, offset such amount against the immediately succeeding payment of the Utility Fee, if applicable.
- (f) 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 all Unrecovered Balances as of the End Date, unless this University Lease is terminated as a result of a UMLLC 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 UMLLC to remove the Operator pursuant to Section 3.3(c), the payment of KPI Compensation by UMLLC shall constitute UMLLC's sole and exclusive liability and the University's sole and exclusive remedy for any KPI Event.

Section 15.5. Maximum Annual Amount of KPI Compensation. Notwithstanding anything to the contrary contained herein, the maximum amount of KPI Compensation for which UMLLC may be liable in any given Fiscal Year shall be the greater of (a) ten percent (10%) of the Utility Fee otherwise payable during such Fiscal Year, or (b) two million five hundred thousand dollars (\$2,500,000); *provided that* any KPI Compensation in excess of such cap in any Fiscal Year for which UMLLC would otherwise be liable shall become due and owing in the subsequent Fiscal Year (but subject to the same cap in such Fiscal Year) until the earlier of (x) the second (2nd) anniversary of the Fiscal Year in which the KPI Compensation was incurred and (y) the time that all such outstanding amounts are paid to the University pursuant to this Section 15.5, and such deferred amounts shall accrue interest at a rate equal to the lesser of (A) the sum of the Bank Rate plus three percent (3%) per annum and (B) the maximum interest rate permitted by Law. For the avoidance of doubt, the limitation on the maximum amount of KPI Compensation shall not limit the number of KPI Events that have occurred, including the determination of the number of KPI Events in a Fiscal Year for purposes of Section 3.3 or the determination of future KPI Compensation.

ARTICLE 16 DEFAULTS

Section 16.1. Default by UMLLC.

- (a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a "UMLLC Default" under this University Lease:

- (i) UMLLC fails to comply with, perform or observe any material obligation, covenant, agreement, term, or condition in this University Lease (other than a breach of the Performance Standards, a KPI Event, or a breach of Section 21.1(a)), and such failure continues unremedied for a period of ninety (90) Days following notice thereof (giving particulars of the failure in reasonable detail) from the University to UMLLC or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that UMLLC 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) UMLLC fails to remedy any Transfer of this University Lease or all or any portion of the UMLLC Interest in contravention of Article 17 within ten (10) Business Days following notice thereof from the University to UMLLC;
- (iii) UMLLC 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 [fifty (50)] Days following notice thereof from the University to UMLLC, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that UMLLC 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) UMLLC (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 such petition is filed against it and an order for relief is entered, or UMLLC 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 UMLLC 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) within ninety (90) Days after the commencement of any proceeding against UMLLC 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, within ninety (90) Days after the appointment, without the consent or acquiescence of UMLLC, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of UMLLC 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, within ninety (90) Days after the expiration of any such stay, such appointment has not been vacated;

- (vi) 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 UMLLC Encumbrance) created, incurred, assumed, or suffered to exist by UMLLC 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 sixty (60) Days after UMLLC becomes aware of such levy, unless such levy resulted from actions or omissions of the University or its Representatives;
 - (vii) UMLLC Abandons the Initial Modernization Project or otherwise repudiates in writing any of its material obligations under this University Lease;
 - (viii) UMLLC fails to achieve IMP Substantial Completion by the IMP Substantial Completion Long Stop Date, or UMLLC fails to achieve IMP Final Acceptance by the IMP Final Acceptance Long Stop Date, and in either case, such failure continues unremedied for a period of thirty (30) Days following notice thereof (giving particulars of the failure in reasonable detail) from the University to UMLLC; or
 - (ix) UMLLC fails to obtain, provide, or maintain the D&C Security in accordance with the terms of this University Lease and such failure continues unremedied for a period of thirty (30) Days following notice thereof from the University to UMLLC.
- (b) *Remedies of the University upon UMLLC Default.* Upon the occurrence, and during the continuance, of a UMLLC Default, the University may, by notice to UMLLC, declare UMLLC 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) subject to the cure rights of the Leasehold Mortgagee set forth in Section 19.3, the University may terminate this University Lease by giving fifty (50) Days' prior notice to UMLLC upon the occurrence of any UMLLC Default; *provided, however*, that UMLLC shall be entitled to cure a UMLLC Default pursuant to Section 16.1(a)(i) or Section 16.1(a)(viii) by

- (i) agreeing within such fifty (50) -Day period to pay any Losses sustained as a result of such UMLLC Default and (ii) providing the University with a written work plan within such fifty (50) -Day period outlining the actions by which UMLLC will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this University Lease or (y) the requirements or directives of the issued final award in accordance with Article 18 that UMLLC failed to perform or observe, which work plan is Approved by the University, but any failure of UMLLC to comply in any material respect with such Approved work plan (other than as a result of a Delay Event) following thirty (30) Days' notice of such failure from the University to UMLLC shall be deemed to be a UMLLC Default described in Section 16.1(a)(i) or Section 16.1(a)(viii), as applicable, and the entitlement of UMLLC to cure such UMLLC Default by the delivery of an Approved work plan shall not apply thereto;
- (ii) if UMLLC 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 UMLLC 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 UMLLC to the University within three (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 UMLLC Default (but this shall not obligate the University to cure or attempt to cure a UMLLC Default or, after having commenced to cure or attempted to cure a UMLLC Default, to continue to do so), and all costs and expenses reasonably incurred by the University in curing or attempting to cure UMLLC Default, shall be payable by UMLLC to the University within three (3) Business Days after written demand therefor; *provided, however*, that: (A) the University shall not incur any liability to UMLLC for any act or omission of the University or any other Person in the course of remedying or attempting to remedy any UMLLC Default unless resulting from the University's recklessness, gross negligence or willful misconduct; (B) the University's cure of any UMLLC Default shall not affect the University's rights against UMLLC by reason of UMLLC 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 UMLLC Default;
- (iv) The University may seek to recover its Losses arising from such UMLLC Default and any amounts due and payable under this University Lease and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;
- (v) with respect to those UMLLC Defaults that entitle the University to terminate this University Lease pursuant to Section 16.1(b)(i), the University may terminate UMLLC's right to use, operate, maintain,

possess, control, and rehabilitate the Utility System and UMLLC'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 University Lease, 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 University Lease unless a notice of such intention is given to UMLLC; 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 "UMLLC Default" under this University Lease:
 - (i) 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 five (5) Business Days following notice thereof (giving particulars of the failure in reasonable detail) from UMLLC to the University;
 - (ii) The University fails to comply with or observe any material obligation, covenant, agreement, term, or condition in this University Lease (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 ninety (90) Days following notice thereof (giving particulars of the failure in reasonable detail) from UMLLC 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 UMLLC, that (A) it is proceeding 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 UMLLC, and (C) such failure is, in fact, cured within such period of time;
 - (iii) 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 fifty (50) Days following notice thereof from UMLLC 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 UMLLC, 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 UMLLC, acting reasonably and (C) such failure is, in fact, cured within such period of time;

- (iv) a levy under execution or attachment has been made against all or any part of the Utility System or the UMLLC 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 sixty (60) Days, unless such levy resulted from actions or omissions of UMLLC or its Representatives or 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) 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 such petition is filed against it and an order for relief is entered, or 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 within ninety (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, within ninety (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, within ninety (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 University Lease.
- (b) *Remedies of UMLLC Upon UMLLC Default.* Upon the occurrence, and during the continuance, of a UMLLC Default, UMLLC 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 UMLLC, in its discretion, shall determine:

- (i) terminate this University Lease by giving ninety (90) Days' prior notice to the University; *provided, however*, that the University shall be entitled to cure a UMLLC Default pursuant to Section 16.2(a)(ii) or Section 16.2(a)(iii) by (i) agreeing within such sixty (60) -Day period to pay any Losses sustained as a result of such UMLLC Default or (ii) providing UMLLC with a written work plan within such sixty (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 University Lease 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 UMLLC, but any failure of the University to comply in any material respect with such approved work plan following thirty (30) Days' notice of such failure from UMLLC to the University shall be deemed to be a UMLLC Default described in Section 16.2(a)(ii) and the entitlement of the University to cure such UMLLC 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 UMLLC the Utility System Concession Value plus, without duplication, the unpaid Concession and KPI Compensation Balance (for the avoidance of doubt, including any Unrecovered Balances) and the out-of-pocket and documented costs and expenses incurred by UMLLC as a result of such termination together with any Taxes payable by UMLLC on the foregoing that exceed the Taxes UMLLC would have paid on future receipts of the Utility Fee if the termination of this University Lease pursuant to this Section 16.2(b)(i) had not occurred (using the Tax rates in effect when such damages would be payable);
- (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 University Lease 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 UMLLC Default.

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

- (a) UMLLC shall, without action whatsoever being necessary on the part of the University (other than any payment obligations of the University with respect to such termination (including, for the avoidance of doubt, any payment obligations

pursuant to Sections 14.2(a), 15.3(f) or 16.2(b)(i), if any, and the payment obligation set forth in this Section 16.3(a)), surrender, transfer and deliver to the University the Utility System (including all improvements to the Utility System), the Utility System Assets and all tangible and intangible personal property of UMLLC (including inventories) that is included in the Utility System or 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 UMLLC 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 Turnover, title defects affecting such property in existence on the date such property is added to the Utility System, all in exchange for one dollar (\$1) paid by the University on the Reversion Date;

- (b) UMLLC 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, UMLLC shall have no liability or responsibility for Utility System Operations occurring after such date;
- (d) UMLLC 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 with a third party, by providing notice to UMLLC requiring that UMLLC assign, without warranty or recourse to UMLLC, 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 UMLLC in, to and under such Operating Agreements and Authorizations shall be assigned to the University or its nominee as of the Reversion Date and UMLLC shall surrender the Utility System to the University and shall cause all Persons claiming under or through UMLLC to do likewise, and the University shall assume in writing, pursuant to an assumption agreement satisfactory to UMLLC, UMLLC'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, UMLLC 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) UMLLC, 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 UMLLC or its Representatives and all other then-existing records and information relating to the Utility System as the University, acting reasonably, may request;
- (g) UMLLC shall execute and deliver to the University transfer of title documents and other instruments reasonably required by the University to evidence such termination;
- (h) UMLLC 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 UMLLC 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 one hundred eighty (180) Days following the Reversion Date; *provided, however,* that the University and UMLLC acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the University or UMLLC 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 University Lease is terminated as a result of an Adverse Action, the payment by the University to UMLLC of the amounts required under Article 14 or Article 18 shall constitute full and final settlement of any and all Claims UMLLC may have against the University for and in respect of the termination of this University Lease and upon such payment, UMLLC shall execute and deliver all such releases and discharges as the University may reasonably require to give effect to the foregoing;
- (k) all plans, drawings, specifications and models prepared in connection with construction at the Utility System and in UMLLC's possession and all "as-built" drawings shall become the sole and absolute property of the University, and UMLLC 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 UMLLC or its Representatives); and
- (l) The University and UMLLC shall undertake reasonable efforts to transition UMLLC Utility System Employees to the University, or their designee, subject to the University's then-applicable employment policies and legal requirements.

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

Section 16.4. Termination Other than Pursuant to Agreement. If this University Lease (i) is terminated by the University other than pursuant to Section 16.1, (ii) is canceled, rescinded or voided during the Term for any reason over the objection and without action by UMLLC, or (iii) terminates as provided in Section 11.15(c), then the University shall (without limiting any payment obligations set forth in Section 15.3(f)) pay to UMLLC the Utility System Concession Value as of the date of such termination, cancellation, rescinding, or voiding, plus, without duplication, (A) unpaid Concession and KPI Compensation Balance (for the avoidance of doubt, including any Unrecovered Balances), and (B) the out-of-pocket and documented costs and expenses incurred by UMLLC or the Operator as a direct result of such termination, cancellation, rescinding, or voiding, and (C) any Taxes payable by UMLLC on the foregoing (A) through (B) that exceed the Taxes UMLLC would have paid on future receipts of the Utility Fee if the termination of this University Lease pursuant to this Section 16.4 had not occurred (using the Tax rates in effect when such damages would be payable). The University hereby acknowledges and agrees that it may only terminate this University Lease in accordance with the express terms hereof and shall not, in any event, have the right to terminate this University Lease for convenience. UMLLC hereby acknowledges and agrees that it may only terminate this University Lease in accordance with the express terms hereof and shall not, in any event, have the right to terminate this University Lease for convenience or to challenge the validity or enforceability of this University Lease. For the avoidance of doubt, the termination of this University Lease as provided in Section 11.15(c) shall not constitute termination for convenience by either the University or UMLLC.

ARTICLE 17

RESTRICTIONS ON TRANSFERS

Section 17.1. Transfers by UMLLC.

- (a) Subject in all respects to the collateral assignment of the UMLLC Interest to a Leasehold Mortgagee, and exercise by a Leasehold Mortgagee of its rights pursuant to such assignment, including by foreclosure, as set forth in Article 19, UMLLC shall not permit the Transfer of any part of the UMLLC Interest to or in favor of a Transferee (other than a Transferee that is an Affiliate or a Leasehold Mortgagee under or nominee/designee of a Leasehold Mortgagee under Article 19), unless the University Liaison has Approved such Transfer in his or her sole discretion. Any Transfer made in violation of this Section 17.1(a) shall be null and void ab initio and of no force and effect. Subject to Section 17.1(f), in no event shall UMLLC permit a Transfer of the UMLLC Interest to a Restricted Person.
- (b) [Intentionally Omitted.]
- (c) [Intentionally Omitted.]
- (d) No Transfer of all or any of the UMLLC 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 as provided in Section 17.1(a) shall be made or have any force or effect without the University's prior written approval, in its sole discretion.

- (e) 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, UMLLC shall not cause or suffer to exist any Change in Control of UMLLC without the University's prior written approval, in its sole discretion.
- (f) Nothing contained in the foregoing shall be deemed to prohibit or limit UMLLC 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 UMLLC.
- (g) Notwithstanding anything herein to the contrary, UMLLC shall have the right, and is hereby directed by the University, to enter into the Concession Agreement with Concessionaire.

Section 17.2. Assignment by the University. The University shall have the right to Transfer any or all of its interest in the Utility System and this University Lease (a) without UMLLC's consent, to any Person that (i) is a successor to the University or similarly organized under and operated for the public educational purposes of the University, (ii) has (A) the sources of funding available for the payment of Concession Compensation (including AA-Compensation) that are at least as adequate and secure as the University's at the time of the assignment, and (B) has access to debt markets that is at least as adequate as the University's at the time of the assignment, and (iii) is able to receive such assignment without causing, directly or indirectly, UMLLC to experience any adverse tax consequence as a result of such assignment, or (b) to others with the prior consent of UMLLC; *provided* that, in either of the foregoing clauses (a) or (b), the University shall be jointly and severally liable with such proposed transferee for the performance and observance of the obligations and covenants of the University under this University Lease, and any agreement entered into by the University under this University Lease (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 UMLLC's other rights, benefits, remedies, or privileges under this University Lease nor shall it materially impair the University's ability to meet its obligations under this University Lease and, provided further, that any such Transfer shall be subject to the rights and Encumbrances of UMLLC and of the Leasehold Mortgagee under any Leasehold Mortgage.

ARTICLE 18 DISPUTE RESOLUTION

Section 18.1. Scope. Any dispute arising out of, relating to, or in connection with this University Lease 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 fifteen (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 fifteen (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 University Lease 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) fifteen (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 thirty (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 20.7.

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 University Lease or to enforce or execute upon a judgment entered in accordance with this University Lease, 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 University Lease 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. UMLLC shall not execute or suffer to incur any Leasehold Mortgage without the University's prior written approval, in its sole discretion. In the

event the University grants such written approval, UMLLC shall have the right, at its sole cost and expense, to grant one or more Leasehold Mortgages, if at the time any such Leasehold Mortgage is executed and delivered to the Leasehold Mortgagee, no UMLLC 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 UMLLC or the UMLLC Parent, but may cover shares or equity interests in the capital of UMLLC and any cash reserves or deposits held in the name of UMLLC;
- (b) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Leasehold Mortgagee in this University Lease; *provided, however,* that lessors and lenders to UMLLC (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 UMLLC 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 termination of this University Lease, following the expiration of the Leasehold Mortgagee's cure period in Section 19.3, if any, without a cure, by UMLLC shall simultaneously terminate the Leasehold Mortgage; *provided, however,* such termination of the Leasehold Mortgage and UMLLC's leasehold interest in the Utility System, shall not affect, modify or terminate UMLLC'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 with respect to the Leasehold Mortgagee 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 University Lease or by Law, except as expressly set forth in this University Lease 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 Mortgage Notice Requirements;
- (f) each Leasehold Mortgage shall provide that if UMLLC is in default under the Leasehold Mortgage and the Leasehold Mortgagee gives notice of such default to

UMLLC, then the Leasehold Mortgagee shall give written notice of such default to the University;

- (g) subject to the terms of this University Lease 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 University Lease and to all of the rights of the University hereunder and the Leasehold Mortgagee shall agree to be bound by the terms of this University Lease to the extent applicable to the Leasehold Mortgagee;
- (h) notwithstanding any enforcement of the security of any Leasehold Mortgage, UMLLC shall remain liable to the University for the payment of all sums owing to the University under this University Lease and the performance and observance of all of UMLLC's covenants and obligations under this University Lease;
- (i) a Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Utility System than UMLLC has at any applicable time under this University Lease, other than such rights granted expressly to such Leasehold Mortgagee pursuant to this Article 19, and each Leasehold Mortgagee, the University, and UMLLC 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 University Lease;
- (j) a Leasehold Mortgagee shall, within ten (10) days after receipt of written request from the University, execute an amendment to its recorded Leasehold Mortgage to conform the legal description of the real property encumbered by such Leasehold Mortgage to conform to the legal description in the Memorandum of Sub-Lease to the extent properly modified pursuant to Section 2.8; and
- (k) a Leasehold Mortgagee shall, within ten (10) days after receipt of written request from the University, execute documentation reasonably acceptable to the University releasing any land or other real property owned by the University from the lien of any Leasehold Mortgage such that such land or real property may be conveyed to a third party without being subject to this University Lease or the Leasehold Mortgage, provided such request is accompanied by an affidavit from the University that such land or other real property does not contain any Utility Facilities or Utility System Assets.

While any Leasehold Mortgage is outstanding, the University shall not agree to any amendment or modification of this University Lease 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 University Lease by UMLLC 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 UMLLC any required notice under this University Lease, provide a copy of such notice to such Leasehold Mortgagee, and no such notice to UMLLC 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 20.1). 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 UMLLC to be made by the University under this University Lease 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 ninety (90) Days with respect to any UMLLC Default beyond any cure period expressly provided to UMLLC herein, in which to cure or cause to be cured any such UMLLC Default; *provided, however*, that such ninety (90) -Day period shall be extended if UMLLC Default may be cured but cannot reasonably be cured within such period of ninety (90) Days, and the Leasehold Mortgagee begins to cure such default within such ninety (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 UMLLC 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 UMLLC Default has not expired, and the Leasehold Mortgagee is acting to cure such UMLLC Default in accordance with this Section 19.3, then the University shall not exercise its right to terminate this University Lease by reason of such UMLLC 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 UMLLC hereunder. The University shall accept any such performance by a Leasehold Mortgagee as though the same had been done or performed by UMLLC. Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder as a prerequisite to keeping this University Lease 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 UMLLC's obligations hereunder.

Section 19.4. Rights of the Leasehold Mortgagee.

- (a) Subject to the provisions of this University Lease, a Leasehold Mortgagee may (i) enforce its Leasehold Mortgage in any lawful way, (ii) acquire the UMLLC 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 University Lease. 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 UMLLC), a Leasehold Mortgagee may Transfer the UMLLC 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 UMLLC Interest (including such Leasehold Mortgagee) shall take the UMLLC Interest subject to all of UMLLC's obligations under this University Lease.

- (b) Except as provided in Section 19.3, unless and until a Leasehold Mortgagee (i) forecloses or has otherwise taken ownership of the UMLLC Interest or (ii) has taken possession or control of the UMLLC 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 UMLLC Interest by reference to the Leasehold Mortgage, the Leasehold Mortgagee shall not be liable for any of UMLLC's obligations under this University Lease or be entitled to any of UMLLC's rights and benefits contained in this University Lease, except by way of security; *provided, however*, that the Leasehold Mortgagee shall be entitled to cure any UMLLC Default that requires payment of money by paying such money on UMLLC's behalf, prior to the Leasehold Mortgagee taking possession, control or ownership of the UMLLC 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 UMLLC Interest, it shall be bound by all liabilities and obligations of UMLLC under this University Lease (including the obligation to engage an Operator). Once the Leasehold Mortgagee goes out of possession or control of the UMLLC Interest or Transfers the UMLLC Interest to another Person in accordance with the provisions of this University Lease, the Leasehold Mortgagee shall cease to be liable for any of UMLLC's obligations under this University Lease accruing thereafter and shall cease to be entitled to any of UMLLC's rights and benefits contained in this University Lease, except, if the Leasehold Mortgage remains outstanding, by way of security.

Section 19.5. Termination of this University Lease; New Agreement.

- (a) Without prejudice to the rights of a Leasehold Mortgagee under Section 19.3, if this University Lease is terminated prior to the expiration of the Term due to a UMLLC Default (in which case the University shall notify the Leasehold Mortgagee of such termination) or if this University Lease 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 UMLLC 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 University Lease, without any charge, penalty, assessment or consideration not specifically provided for in this Section 19.5 (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 thirty (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 thirty (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 University Lease 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, advisory and other fees), Taxes, fees, charges and disbursements paid or incurred by the University in connection with such UMLLC Defaults and termination, the recovery of possession from UMLLC, 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 UMLLC Defaults under this University Lease (curable by the payment of money) existing immediately prior to the termination of this University Lease, or, if such UMLLC 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 UMLLC Defaults to the extent such UMLLC Defaults are capable of cure by a Person other than the original UMLLC and, if possession is necessary in order to cure such other UMLLC Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other UMLLC 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 University Lease 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, UMLLC 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 University Lease to the date of

execution and delivery of the New Agreement, the Leasehold Mortgagee may use and enjoy the leasehold estate created by this University Lease without hindrance by the University, but only on and subject to the terms and provisions of this University Lease.

- (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 University Lease 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 Louisiana 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 (who, for the avoidance of doubt, may act on behalf of one or more lender groups as contemplated by Section 19.1), 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 right to exercise the rights as a Leasehold Mortgagee under this Article 19 vis-à-vis the University, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights in which case the other Leasehold Mortgagee may exercise such rights, provided that such requirement shall not limit such additional Leasehold Mortgagees' rights hereunder. 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. The University's Right to Purchase Leasehold Mortgages.

- (a) If any default by UMLLC 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 thirty (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 Mortgagee that is a Lessor to terminate the lease with UMLLC (stating the calculation of the purchase price pursuant to Section 19.7(c)), during which thirty (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 UMLLC and all Leasehold Mortgagees within such thirty (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 sixty (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 UMLLC 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 University Lease due to UMLLC Default pursuant to Section 16.1(b), or (ii) this University Lease 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 UMLLC 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 University Lease, in accordance with the procedures, terms and conditions of this Section 19.8 without any charge, penalty, assessment, or consideration not specifically provided for in 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 University Lease 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 University Lease, 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 University Lease (the "Assignment and Assumption Agreement").
- (d) This University Lease 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 thirty (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 thirty (30) Days after the effective date of any rejection or disaffirmance of this University Lease in a bankruptcy proceeding, as the case may be, that such Leasehold Mortgagee (or its designee or nominee) will assume this University Lease 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 University Lease.
 - (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 UMLLC, 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 five (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 UMLLC Defaults under this University Lease (including all such UMLLC 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 UMLLC 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 UMLLC and, if possession is necessary in order to cure such other UMLLC 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 UMLLC's position as provided in Section 19.4 of this University Lease; *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 University Lease 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 UMLLC'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. Concessionaire Leasehold Mortgage. The University and UMLLC agree and acknowledge that the Concession Agreement allows the Concessionaire the right to grant a "Leasehold Mortgage" (as such term is defined and used in the Concession Agreement) in accordance with the express terms and conditions of Article 19 of the Concession Agreement. The University agrees to reasonably cooperate with UMLLC and Concessionaire with any such Leasehold Mortgage (and related financing) sought by the Concessionaire in accordance with the relevant terms and conditions of the Concession Agreement (including Article 19 thereof), in each

case consistent with the University's obligations under Article 19 of this University Lease as the same would apply to a Leasehold Mortgage approved by the University as contemplated in Section 19.1 hereof, but subject in all cases to the relevant terms, conditions and obligations of the Concessionaire set forth in the Concession Agreement with respect thereto.

ARTICLE 20 MISCELLANEOUS

Section 20.1. Notice. All notices by the University or UMLLC, approvals or consents by the University, and Approvals by UMLLC (each, a "Notice") required or permitted by this University Lease shall be in writing, shall state specifically that they are being given pursuant to this University Lease, and shall be delivered by email, 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 or email addresses shown below (or such other persons, address 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:

LSU Facility Services
201 Facilities Services Bldg.
Engineering Lane
Baton Rouge, LA 70803
Attention: Patrick Martin, Assistant Vice President, Real Estate, Public
Partners, & Compliance

With a copy to:

Board of Supervisors of Louisiana State University and
Agricultural and Mechanical College
3810 West Lakeshore Drive, Suite 124
Baton Rouge, LA 70808
Telephone: (225) 578-4126
Facsimile: (225) 578-5524
Attention: Winston DeCuir, General Counsel

(ii) for delivery by e-mail:

Patrick Martin, Assistant Vice President, Real Estate, Public Partners, &
Compliance
Email: pmartin@lsu.edu

With a copy to:

Winston DeCuir, General Counsel

Email: wdecurjr@lsu.edu

(b) in the case of UMLLC:

(i) for delivery by mail:

Utilities Modernization LLC
c/o LSU Real Estate and Facilities Foundation
Attn: Vice President & General Counsel
3796 Nicholson Drive
Baton Rouge, LA 70802

With a copy to:

[•]

(ii) for delivery by email:

Vice President & General Counsel (Foundation)
Email: lgreco@lsufoundation.org

With a copy to:

[•]

Email: [•]

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 fourth (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 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 University Lease shall be in writing, shall state specifically that they are being given pursuant to this University Lease 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:

[•]

Email: [•]

(c) in the case of UMLLC:

[•]

Email: [•]

Section 20.2. Entire Agreement. This University Lease 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 University Lease, or that induced any Party to enter into this University Lease or on which reliance is placed by any Party, except as specifically set forth in this University Lease. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this University Lease, (ii) the provisions and language of this University Lease have been fully negotiated, and (iii) no provision of this University Lease shall be construed in favor of any Party or against any Party by reason of such provision of this University Lease having been drafted on behalf of one Party rather than the other.

Section 20.3. Amendment. This University Lease may be amended, changed, or supplemented only by a written agreement signed by the Parties.

Section 20.4. Waiver of Rights. Any waiver of, or consent to depart from, the requirements of any provision of this University Lease 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 University Lease 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 20.5. Severability. Each provision of this University Lease 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 University Lease shall not affect the remaining portions of this University Lease or any part thereof. If any provision of this University Lease 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 University Lease 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 20.6. Governing Law; Waiver of Jury Trial. This University Lease shall be governed by, and interpreted and enforced in accordance with, the Laws in force in the State of Louisiana (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 UNIVERSITY LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

Section 20.7. Submission to Jurisdiction. Subject to Article 18, any action or proceeding against any Party relating in any way to this University Lease may be brought and enforced in the state courts in the State of Louisiana in the Parish of East Baton Rouge, and each of the Parties 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 UMLLC may be made either (i) by delivery to UMLLC's registered agent for service of process in the State of Louisiana, or (ii) by such other lawful means under the Laws of the State of Louisiana. Service of process on the University may be made either (i) by delivery to the University's registered agent for service of process in the State of Louisiana, or (ii) by such other lawful means under the Laws of the State of Louisiana. If UMLLC 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 University Lease, UMLLC, 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 UMLLC 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 20.8. 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 University Lease. 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 University Lease.

Section 20.9. Costs. Except as otherwise provided in this University Lease, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this University Lease.

Section 20.10. Interest. Any amount payable under this University Lease 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 20.11. Inurement and Binding Effect. This University Lease 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 20.12. No Partnership or Third Party Beneficiaries. Except as expressly provided herein to the contrary, nothing contained in this University Lease shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship the Parties, 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 University Lease, 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 20.13. 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 through UMLLC for a breach of the Performance Standards or a KPI Event under the Concession Agreement, which shall be limited to those expressly set forth in this University Lease and the Concession Agreement. Notwithstanding the foregoing, where this University Lease provides for liquidated damages (except with respect to the liquidated damages described in Section 15.4 and by Section 22.4), such liquidated damages shall be the sole exclusive remedy of the University or UMLLC, as applicable, and the University and UMLLC 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 20.14. Counterparts; Electronic Execution. This University Lease may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This University Lease 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 University Lease, a Party may send a copy of its executed counterpart to the other Party by email or other means of electronic transmission. Such Party shall be deemed to have executed and delivered this University Lease on the date it sent such email or other means of electronic transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this University Lease executed by such Party.

Section 20.15. Time of the Essence. Time is of the essence for this University Lease.

ARTICLE 21 DESIGN AND CONSTRUCTION

Section 21.1. General Duties. In connection with the Initial Modernization Project, UMLLC shall:

- (a) furnish all design, engineering, and other services, provide construction management and all D&C Work, including the supply of all materials, equipment, labor, and installations, and undertake all efforts necessary or appropriate to construct the Initial Modernization Project and maintain it during construction, so

as to achieve IMP Substantial Completion by the IMP Substantial Completion Long Stop Date and IMP Final Acceptance by the IMP Final Acceptance Long Stop Date;

- (b) perform the Construction Work in accordance with the approved Final Design;
- (c) ensure that UMLLC's Representative, or a designated person approved by the University, is present at the Initial Modernization Project at all times during performance of the Construction Work;
- (d) comply with, and require that all Contractors comply with, all requirements of all applicable Laws;
- (e) cooperate with the University and any Governmental Authority with jurisdiction in all matters relating to the applicable portions of the D&C Work, including their review, inspection and oversight of the design and construction;
- (f) provide quality management and quality assurance of all the work in respect of the D&C Work in accordance with [●]; and
- (g) use commercially reasonable efforts to mitigate delay to design and construction of the Initial Modernization Project, including by re-sequencing, reallocating, or redeploying UMLLC's and its Contractors' forces to other work, as appropriate.

Section 21.2. Performance of D&C Work. UMLLC and its Contractor shall perform or cause to be performed the D&C Work in accordance with:

- (a) good industry practice;
- (b) the requirements, terms and conditions set out in this University Lease, including the approved Final Design;
- (c) all applicable Laws; and
- (d) the requirements, terms and conditions set forth in all Authorizations.

Section 21.3. Design Development and Construction Commencement. Except for the development of the Final Design in accordance with Section 2.4(f), neither UMLLC nor its Contractor shall commence any D&C Work until authorized in accordance with Section 22.1(a), Section 22.1(b) and Section 22.1(c).

Section 21.4. Suspension of Construction Work.

- (a) The University shall at any time have the right and authority to suspend, in whole or in part, the Construction Work by written order to UMLLC. Any such written order will be supported by the University's reasons for the required suspension of the Construction Work.

- (b) Any suspension of the Construction Work by the University pursuant to this Section 21.4 will entitle UMLLC to relief pursuant to Section 15.1(c) and constitute a Compensation Event except where the suspension order is made in response to:
- (i) any failure by UMLLC to comply with any applicable Law, safety standard or Authorization (including failure to handle, preserve, and protect archaeological, paleontological, or cultural remains or failure to handle Hazardous Substances, in accordance with applicable Laws and Governmental Approvals);
 - (ii) UMLLC's failure to ensure skilled and experienced personnel are furnished for the proper performance of the Construction Work in accordance with the requirements set out in [●];
 - (iii) UMLLC's failure to provide the University with proof of (i) insurance coverage and payment in accordance with Section 13.3(a) or (ii) the D&C Security; or
 - (iv) the existence of conditions unsafe for workers, other Initial Modernization Project personnel or the general public, including failures to comply with safety standards (but only if such condition does not arise as a direct result of a Compensation Event or an event that entitles UMLLC to relief pursuant to Section 15.1(c)).
- (c) Any suspension order made in response to matters referred to in Section 21.4(b) shall cease to apply as soon as the relevant matter has been rectified or remedied to the reasonable satisfaction of the University.

Section 21.5. Removal of IMP Contractor.

- (a) The IMP Contractor shall, at all times in connection with the design, construction, delivery and completion of the Initial Modernization Project, be under the direction, supervision and control (by ownership, contract or otherwise) of UMLLC, and no delegation by UMLLC or the Concessionaire to the IMP Contractor (including pursuant to the Drop-Down DB Contract) shall relieve UMLLC of any obligations, duties or liability hereunder.
- (b) UMLLC shall have the right, to the extent provided in the Drop-Down DB Contract or any other agreement between UMLLC or the Concessionaire, on the one hand, and the IMP Contractor, on the other, to terminate and replace the IMP Contractor, provided that UMLLC shall not engage or appoint a replacement IMP Contractor unless the University has Approved such replacement IMP Contractor and the terms of any such engagement. UMLLC shall immediately notify the University upon the termination or resignation of the IMP Contractor. The University shall have the right, acting reasonably, to withhold Approval of any proposed replacement IMP Contractor, including for any of the following reasons: (i) the University reasonably determines that the engagement of such proposed IMP Contractor is prohibited by

applicable Law or this University Lease; (ii) the University reasonably determines that such proposed IMP Contractor is not capable of performing the Initial Modernization Project in accordance with this University Lease, which determination may be based upon one or more of the following factors: (1) the ability of the proposed IMP Contractor to construct and deliver the Initial Modernization Project in a manner that complies with the Final Design; (2) the financial strength, capitalization and integrity of the proposed IMP Contractor, its direct or indirect beneficial owners and some or all of their respective Affiliates providing a guaranty of the IMP Contractor's obligations (which guaranty shall not be required to run to the benefit of the University); (3) the experience of the proposed IMP Contractor in performing work and projects substantially similar to the Initial Modernization Project; (4) the background and reputation of the proposed IMP Contractor, 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 (5) the proposed terms of the engagement of the proposed IMP Contractor, including the fee being charged by the IMP Contractor, length of the term of the engagement and any restrictions on transfer by the IMP Contractor of its obligations and change in control of the proposed IMP Contractor. No termination or replacement of the IMP Contractor shall relieve UMLLC of any obligations, duties or liability hereunder or extend any time period for UMLLC's performance hereunder.

- (c) A "Change in Control" (as such term is defined and used in the Concession Agreement) of the IMP Contractor shall be deemed to be the appointment of a replacement IMP Contractor subject to the University's Approval pursuant to Section 21.5(b).

Section 21.6. Performance and Payment Security

- (a) Prior to the commencement of D&C Work, UMLLC shall furnish, [or cause the IMP Contractor to furnish,] the following:
 - (i) a performance bond (substantially in the form of the most current version of The American Institute of Architects AIA Document 312) in an amount equal to one hundred percent (100%) of the Approved Budgeted Amount for the Initial Modernization Project (the "Performance Bond"); and
 - (ii) a payment bond (substantially in the form of the most current version of The American Institute of Architects AIA Document 312) in an amount equal to one hundred percent (100%) of the Approved Budgeted Amount for the Initial Modernization Project (the "Payment Bond").
- (b) Each of the Performance Bond and the Payment Bond must be issued by a surety or an insurance company authorized to issue bonds in the State that is rated in the top two categories by two of the three nationally recognized rating agencies or at

least “A” or better and “Class VIII” or better according to A.M. Best’s Financing Strength Rating and Financial Size Category and listed on U.S. Treasury Circular 570.

- (c) Each of the Performance Bond and the Payment Bond shall name the State of Louisiana, the University, their agents, officials, and employees, UMLLC and the Leasehold Mortgagee, as their interests may appear as additional obligees. The claims of any such additional obligee with respect each of the Performance Bond and the Payment Bond shall rank *pari passu* in priority with the claims of all other additional obligees.
- (d) UMLLC shall maintain, or cause the IMP Contractor to maintain, each of the Performance Bond and the Payment Bond until the [second (2nd)] anniversary of the IMP Substantial Completion Date.

ARTICLE 22

NOTICES TO PROCEED; IMP SUBSTANTIAL COMPLETION; IMP FINAL ACCEPTANCE

Section 22.1. Notices to Proceed. With respect to the Initial Modernization Project:

- (a) *Notice to Proceed – 1.*
 - (i) The University anticipates issuing a notice to UMLLC (“NTP1”) promptly following approval of the Final Design and the Approved Budgeted Amount for the Initial Modernization Project in accordance with Section 2.4(f), and shall in any case issue NTP1 within three (3) Business Days after approval of the Final Design and such Approved Budgeted Amount.
 - (ii) Following issuance of NTP1, UMLLC is authorized to perform the works and activities specified in Section 1 (*NTP1 Conditions*) of Part 1 of Schedule 21.
- (b) *Notice to Proceed – 2.*
 - (i) Upon satisfaction of the conditions precedent set out in Section 2 of Part 1 (*NTP2 Conditions*) of Schedule 21, the University shall issue a notice to UMLLC (“NTP2”).
 - (ii) Following issuance of NTP2, UMLLC is authorized to perform the works and activities specified in Section 2 (*NTP2*) of Schedule 21.
- (c) *Notice to Proceed – 3.*
 - (i) Upon satisfaction of the conditions precedent set out in Section 3 (*NTP3 Conditions*) of Part 1 of Schedule 21, the University shall issue a notice to UMLLC (“NTP3”).

- (ii) Following issuance of NTP3, UMLLC is authorized to commence all other work and activities pertaining to the Initial Modernization Project, subject to any requirement to obtain acceptance of applicable submittals in accordance with Section 3 (*NTP3 Conditions*) of Part 3 of Schedule 21.
- (iii) If UMLLC has not satisfied all the conditions precedent set out in Section 3 (*NTP3 Conditions*) of Part 1 of Schedule 21, the University may elect to issue a notice to UMLLC authorizing UMLLC to commence certain works prior to the satisfaction of the remaining conditions precedent, as specified and subject to any conditions in the University's notice.

Section 22.2. IMP Substantial Completion.

- (a) The University will issue a written certificate that UMLLC has achieved IMP Substantial Completion upon satisfaction (or waiver by the University, in its sole discretion) of each of the conditions set forth in Part 2 of Schedule 21 and in accordance with the terms of this Section 22.2. On the IMP Substantial Completion Date, the IMP shall be (i) deemed to be part of the Utility System and the Utility System Facilities for purposes of this University Lease, and (ii) included in the Utility System to be operated and the Utility System Services to be performed by UMLLC pursuant to this University Lease.
- (b) UMLLC shall prepare a detailed plan for the completion of all remaining D&C Work ("D&C Closeout Plan"), which shall include:
 - (i) the SC Punch List and the draft FA Punch List; and
 - (ii) the timetable for carrying out Construction Work, including:
 - (A) the activities to be carried out between IMP Substantial Completion and IMP Final Acceptance and included in the FA Punch List; and
 - (B) any other activities to be carried out after IMP Final Acceptance; and

UMLLC shall submit the D&C Closeout Plan to the University at least ninety (90) days prior to the date on which UMLLC anticipates achieving IMP Substantial Completion.

- (c) UMLLC shall implement the accepted D&C Closeout Plan and regularly update the SC Punch List and the FA Punch List, provided that UMLLC will not transfer any items from the SC Punch List to the FA Punch List without the prior written acceptance of the University.
- (d) UMLLC shall provide the University with not less than thirty (30) days' prior written notification of the date UMLLC anticipates achieving IMP Substantial Completion.

- (e) During the thirty (30)-day period specified in Section 22.1(d):
 - (i) UMLLC and the University shall meet and confer and exchange information on a regular cooperative basis and shall at a minimum meet twice a week;
 - (ii) The University may conduct:
 - (A) an inspection of the entire Initial Modernization Project and its components;
 - (B) a review of the IMP Design Documents and Construction Documents; and
 - (C) such other investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the conditions to IMP Substantial Completion have been satisfied; and
 - (iii) UMLLC and the University shall agree the final FA Punch List.
- (f) Within five (5) Business Days of completion of the inspections, reviews and investigations specified in Section 22.1(e)(ii), the University may either:
 - (i) issue the written certificate of IMP Substantial Completion (“Certificate of IMP Substantial Completion”); or
 - (ii) notify UMLLC in writing setting forth, as applicable, why the Initial Modernization Project has not reached IMP Substantial Completion.
- (g) If the University issues a notice under Section 22.1(f)(ii) and UMLLC:
 - (i) does not dispute the University’s assessment, then the processes set forth in Sections 22.2(d), 22.2(e) and 22.2(f) shall be repeated until the University issues a Certificate of IMP Substantial Completion; or
 - (ii) disputes the University’s assessment, UMLLC may refer the dispute for resolution in accordance with Section 18 and:
 - (A) where the dispute is determined in favor of UMLLC, the University shall issue the Certificate of IMP Substantial Completion; or
 - (B) where the dispute is determined in favor of the University, then the processes set forth in Sections 22.2(d), 22.2(e) and 22.2(f) shall be repeated.
- (h) If Sections 22.2(g)(i) or 22.2(g)(ii)(B) apply and the University determines that it does not require the full thirty (30) day period under Section 22.2(e) to re-conduct

relevant inspections and investigations, the University may notify UMLLC that a shorter period will apply.

- (i) On the IMP Substantial Completion Date, UMLLC shall pay to the University in readily available funds (according to instructions provided by the University to UMLLC not later than three (3) Days prior to such date) the Unexpended Contingency Amount.

Section 22.3. IMP Final Acceptance.

- (a) The University will issue a written certificate that UMLLC has achieved IMP Final Acceptance upon satisfaction (or waiver by the University, in its sole discretion) of each of the conditions set forth in Part 3 of Schedule 21 and in accordance with the terms of this Section 22.3.
- (b) Promptly after achieving IMP Substantial Completion, UMLLC shall perform all remaining Construction Work for the Initial Modernization Project in accordance with the accepted D&C Closeout Plan, including completion of all FA Punch List items.
- (c) UMLLC shall provide the University with not less than thirty (30) days' prior written notification of the date UMLLC anticipates achieving IMP Final Acceptance.
- (d) During the thirty (30) day period specified in Section 22.3(c):
 - (i) UMLLC and the University shall meet and confer and exchange information on a regular cooperative basis; and
 - (ii) The University may conduct:
 - (A) an inspection of the FA Punch List items;
 - (B) a review of the Record Design Documents; and
 - (C) such other investigation as may be necessary to evaluate whether the conditions to IMP Final Acceptance are satisfied.
- (e) Within five (5) Business Days of completion of the inspections, reviews and investigations specified in Section 22.3(d)(ii), the University may either:
 - (i) issue a certificate of IMP Final Acceptance ("Certificate of IMP Final Acceptance"); or
 - (ii) notify UMLLC in writing setting forth, as applicable, why IMP Final Acceptance has not been achieved in which case the processes set out in Sections 22.3(c), 22.3(d) and 22.3(e) shall be repeated until the University issues a Certificate of IMP Final Acceptance.

Section 22.4. Liquidated Damages for Failure to Achieve IMP Substantial Completion or IMP Final Acceptance.

- (a) The Parties acknowledge and agree that breaches or failures by UMLLC of the kind identified in this Section 22.4 would cause significant harm to the University, including loss of use, enjoyment and benefit of the Initial Modernization Project, injury to the credibility and reputation of the University with policy makers and with the University community who depend on and expect availability of service, and additional costs of administering this University Lease (including engineering, legal, accounting, overhead and other administrative costs); and that such harm is incapable of being accurately determined. The Parties further acknowledge and agree that the liquidated damages stipulated in this Section 22.4 as remedies for such breaches or failures reasonably approximate the appropriate compensation for the anticipated harm.
- (b) The University's right to, and imposition of, liquidated damages pursuant to this Section 22.4 are in addition, and without prejudice, to any other rights and remedies available to the University under this University Lease, at law or in equity respecting the breach, failure to perform or UMLLC Default that is the basis for the liquidated damages or any other breach, failure to perform or UMLLC Default, except for recovery of the monetary damage that the liquidated damages are intended to compensate. Liquidated damages are not intended to, and do not, liquidate UMLLC's liability under the payment obligation provisions of Section 12, even though third-party claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to such liquidated damages. Permitting or requiring UMLLC to continue and finish the Construction Work or any part thereof after the Planned IMP Substantial Completion Date or IMP Final Acceptance Deadline shall not act as a waiver of the University's right to receive liquidated damages hereunder or any rights or remedies otherwise available to the University.
- (c) UMLLC shall pay any liquidated damages owing under this Section 22.4 within thirty (30) days after the University delivers invoice or demand therefor to UMLLC. Liquidated damages shall be due and payable to the University without right of offset, deduction, reduction or other charge.
- (d) The amounts set forth in this Section 22.4 shall be increased annually on July 1 of each year by a percentage equal to the percentage increase in the CPI Index between the CPI Index of the second (2nd) immediately preceding year and the CPI Index of the immediately preceding year (in no event shall the amount be less than the amount in effect during the immediately preceding year).
- (e) The University shall be entitled to immediate and automatic liquidated damages from UMLLC equal to [twenty thousand dollars (\$20,000)] per day for each day that the IMP Substantial Completion Date is later than the Planned IMP Substantial Completion Date. Such liquidated damages shall constitute the University's sole right to monetary damages for such delay.

- (f) The University shall be entitled to immediate and automatic liquidated damages from UMLLC equal to [ten thousand dollars (\$10,000)] per day for each day that the IMP Final Acceptance Date is later than the IMP Final Acceptance Deadline. No liquidated damages shall be owing under this Section 22.4(f) for any day for which liquidated damages are owing under Section 22.4(e). Such liquidated damages shall constitute the University's sole right to monetary damages for such delay.

[Signature page follows]

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

**Board of Supervisors of Louisiana State
University and Agricultural and Mechanical
College**

BY: _____

PRINTED: [•]

ITS: [•]

Utilities Modernization LLC,
a Louisiana limited liability company

BY: _____

PRINTED: [•]

ITS: [•]

SCHEDULE 21
Notices to Proceed; Conditions to IMP Substantial Completion and IMP Final Acceptance
of Initial Modernization Project

PART 1 – NOTICES TO PROCEED

Section 1 NTP1 Conditions

(a) Approval by the University of (i) the Final Design and (ii) the Approved Budgeted Amount with respect to the Initial Modernization Project pursuant to Section 4.3(f) of the University Lease;

(b) The D&C Security has been obtained (and copies thereof furnished to the University) and is in full force and effect in accordance with Section 21.6 of the University Lease;

(c) [●]

Section 2 NTP2 Conditions

[●]

Section 3 NTP3 Conditions

[●]

PART 2 – IMP SUBSTANTIAL COMPLETION

1. COMPLETED D&C WORK

UMLLC has completed the D&C Work with respect to the Initial Modernization Project, including all SC Punch List items, in accordance with the approved Final Design, the D&C Closeout Plan, and the terms and conditions of this University Lease, except with respect to any FA Punch List items.

2. FUNCTIONAL UTILITY SYSTEM

- (a) The Utility System, as upgraded via the Initial Modernization Project, is fully operational and capable of being operated full-time, uninterrupted, and continuously in accordance with the [Final Design].
- (b) The Utility System, as upgraded via the Initial Modernization Project, meets the Performance Standards.
- (c) All ancillary items including equipment, supplies, spare parts and manuals are in place for the Utility System, as upgraded via the Initial Modernization Project.
- (d) UMLLC has updated the Operations Plan.
- (e) All establishment and commissioning procedures for the Utility System, as upgraded via the Initial Modernization Project, have been successfully completed in accordance with the testing and commissioning requirements set forth in [●].

3. INSURANCE

All UMLLC Required Coverages required to be obtained under Section 13.1 (*Insurance Coverage Required – UMLLC*) of the University Lease have been obtained and are in full force and effect in accordance with Section 13.1 (*Insurance Coverage Required – UMLLC*) of the University Lease.

4. NO CONCESSIONAIRE DEFAULT

There exists no uncured UMLLC Default that is the subject of a notice, unless the achievement of IMP Substantial Completion will effect its full and complete cure.

5. AUTHORIZATIONS

All Authorizations (if any) required to perform the Utility System Operations with respect to the Utility System, as upgraded via the Initial Modernization Project, are in place, have been provided to the University, and are not subject to appeal.

6. FA PUNCH LIST

UMLLC and the University shall have agreed to the final FA Punch List.

7. PAYMENT OF THE UNEXPENDED CONTINGENCY AMOUNT

UMLLC shall have paid to the University the Unexpended Contingency Amount pursuant to Section 22.2(i).

PART 3 – IMP FINAL ACCEPTANCE

1. FA PUNCH LIST

UMLLC has achieved IMP Substantial Completion and completed all FA Punch List items in accordance with the approved Final Design, the D&C Closeout Plan, and the terms and conditions of this University Lease.

2. DEMOBILIZATION

All demobilization from the Property is complete, including the removal of temporary work and equipment used in the performance of the D&C Work, but not required for Utility System Operations.

3. NO CONCESSIONAIRE DEFAULT

There exists no uncured UMLLC Default that is the subject of a notice, unless the achievement of IMP Final Acceptance will effect its full and complete cure.

4. RELEASE OF LIENS

UMLLC has provided evidence to the University that all Contractors have waived any rights to liens against the Utility System and the Property.

5. INSURANCE

All UMLLC Required Coverages required to be obtained under Section 13.1 (*Insurance Coverage Required – UMLLC*) of the University Lease have been obtained and are in full force and effect in accordance with Section 13.1 (*Insurance Coverage Required – UMLLC*) of the University Lease.

6. RECORD DRAWINGS

UMLLC has provided the University with a complete set of [as-built drawings/final Construction Documents], in form and content required by [●].

7. PAYMENTS TO THE UNIVERSITY

UMLLC has paid in full all [liquidated damages] arising or resulting from the D&C Work that are owing to the University pursuant to the University Lease and are not in dispute.

**LONG-TERM SUB-LEASE AND CONCESSION AGREEMENT FOR
LOUISIANA STATE UNIVERSITY UTILITY SYSTEM**

dated as of

[•]

by and between

UTILITIES MODERNIZATION LLC

and

[BATON ROUGE ENERGY CONCESSIONAIRE LLC]

TABLE OF CONTENTS

Page

[Table of Contents to be Updated]

ARTICLE 1 DEFINITIONS AND INTERPRETATION	3
Section 1.1. Definitions.....	3
Section 1.2. Number and Gender	33
Section 1.3. Headings.....	33
Section 1.4. References to this Agreement.	33
Section 1.5. References to Any Person	33
Section 1.6. Meaning of Including.....	33
Section 1.7. Meaning of Discretion.....	33
Section 1.8. Meaning of Notice..	33
Section 1.9. Consents and Approvals.....	33
Section 1.10. Trade Meanings..	33
Section 1.11. Laws	33
Section 1.12. Currency.	34
Section 1.13. Generally Accepted Accounting Principles	34
Section 1.14. Calculation of Time.....	34
Section 1.15. Approvals, Consents and Performance by UMLLC	34
Section 1.16. Incorporation of Schedules..	35
Section 1.17. References to Agreements Generally	35
Section 1.18. Cost Responsibilities	35
Section 1.19. Out-of-Pocket Costs	36
Section 1.20. Interaction with the University Lease	36
Section 1.21. Equivalent Project Relief	37
Section 1.22. Enforcement of Parallel Issues	39
Section 1.23. Pass-Down Provisions	40
Section 1.24. Communications with the University and Third Parties	40
Section 1.25. Louisiana Defined Terms	41
ARTICLE 2 THE TRANSACTION; CONDITIONS PRECEDENT; COVENANTS.....	41
Section 2.1. Grant of Concession.....	41
Section 2.2. Turnover	42
Section 2.3. Conditions Precedent to Turnover	43
Section 2.4. Covenants.....	45
Section 2.5. Turnover Deliverables	49
Section 2.6. Memorandum of Sub-Lease.....	49
ARTICLE 3 TERMS OF THE CONCESSION	49
Section 3.1. Quiet Enjoyment and Present Condition.....	49
Section 3.2. Utility System Operations	51
Section 3.3. Operator.....	54
Section 3.4. Authorizations; Qualifications.....	57
Section 3.5. No Encumbrances	57
Section 3.6. Single Purpose Covenants; Credit Rating	59
Section 3.7. Rights of UMLLC to Access and Perform Work on the Utility System and Utilize Space for Energy Resources and Research Purposes	59
Section 3.8. Payment of Taxes	63

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Section 3.9. Utilities	63
Section 3.10. Notices of Defaults and Claims	65
Section 3.11. Assignment of Operating Agreements and Plans; Project Intellectual Property	65
Section 3.12. Use of Information and Records	67
Section 3.13. Standard of Operation and Maintenance of the Utility System; Warranty Period Utility System Projects	68
Section 3.14. Payments by UMLLC	69
Section 3.15. Naming and Signage Rights, Other Revenue Activities and Commercial Advertisements and Activities	69
Section 3.16. Reversion of Utility System	70
Section 3.17. Police, Fire, Emergency and Public Safety Access Rights	71
Section 3.18. Negotiations with Third Parties	71
Section 3.19. Administration of the Public Way	71
Section 3.20. Rights to Adjacent Space	71
Section 3.21. Sole Utility Provider	71
Section 3.22. Adjustments to the Location or Configuration of the Utility System.	72
Section 3.23. Sales to Individual Customers on the University Campus	72
Section 3.24. University Master Plan	73
Section 3.25. Utility System Tours	73
Section 3.26. Uniforms.	73
Section 3.27. Sustainability	73
Section 3.28. University Utility System Employees	74
Section 3.29. [Office Space]	74
Section 3.30. Utility System Space in Larger Buildings	74
ARTICLE 4 CAPITAL IMPROVEMENTS AND MATERIAL CHANGES	75
Section 4.1. Concessionaire Responsibility for Capital Improvements	75
Section 4.2. Authorizations Related to Capital Improvements	76
Section 4.3. Approval of Capital Improvements and Material Changes.	76
Section 4.4. UMLLC's Capital Plan.	81
ARTICLE 5 MODIFICATIONS	83
Section 5.1. UMLLC Directives	83
Section 5.2. Performance of Modifications	84
Section 5.3. Addition, Removal and Lease of Property	84
ARTICLE 6 PERFORMANCE STANDARDS	85
Section 6.1. Compliance with Performance Standards	85
Section 6.2. Proposed Performance Standards	85
Section 6.3. Modified Performance Standards	86
ARTICLE 7 UTILITY FEE, FIVE-YEAR PLAN, AND ENERGY SUPPLY	87
Section 7.1. Utility Fee	87
Section 7.2. Five-Year Plan	89
Section 7.3. Energy and Water Supply	91

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Section 7.4. Energy Use Intensity Reduction and Energy Conservation Measures	93
ARTICLE 8 REPORTING; AUDITS; INSPECTIONS	93
Section 8.1. Reports; Environmental Incident Management	93
Section 8.2. Information	95
Section 8.3. Inspection, Audit and Review Rights of UMLLC	96
Section 8.4. Audits, Assistance, Inspections and Approvals	97
ARTICLE 9 REPRESENTATIONS AND WARRANTIES	98
Section 9.1. Representations and Warranties of UMLLC	98
Section 9.2. Representations and Warranties of the Concessionaire	101
Section 9.3. Non-Waiver ..	103
Section 9.4. Survival	103
ARTICLE 10 FINANCE OBLIGATIONS	104
Section 10.1. Concessionaire's Obligations ..	104
Section 10.2. UMLLC's Obligations	104
Section 10.3. Concessionaire's Obligation for Estoppel Certificates	105
Section 10.4. Prohibited Tax Shelter Transactions	105
ARTICLE 11 COMPLIANCE	105
Section 11.1. Compliance with Laws ..	105
Section 11.2. Non-Discrimination	106
Section 11.3. Compliance with Wage and Hour Laws	106
Section 11.4. Safety Laws	106
Section 11.5. Immigration Laws	106
Section 11.6. Labor Disputes ..	107
Section 11.7. Employee Conduct and Performance ..	107
Section 11.8. Non-Collusion	107
Section 11.9. Conflict of Interest ..	107
Section 11.10. Drug-Free Workplace Certification	107
Section 11.11. Minority-Owned and Women-Owned Business Enterprises	107
Section 11.12. Accreditation ..	108
Section 11.13. Permits and Other Campus-Wide Authorizations ..	108
Section 11.14. Financial and Audit Standards	109
Section 11.15. Pay If Paid; Non-Appropriation and Termination	109
ARTICLE 12 PAYMENT OBLIGATIONS	110
Section 12.1. Certain Payment Obligations of the Concessionaire	110
Section 12.2. Certain Payment Obligations of UMLLC ..	110
Section 12.3. Agency for Representatives	111
Section 12.4. Third Party Claims	111
Section 12.5. Direct Claims	112
Section 12.6. Failure to Give Timely Notice	112
Section 12.7. Reductions and Subrogation	113
Section 12.8. Payment and Interest	113
Section 12.9. Limitation on Certain Claims	113

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Section 12.10. Other Matters	113
Section 12.11. Offset Rights; Limitations on Certain Damages	114
Section 12.12. Governmental Immunity	114
Section 12.13. Survival	114
ARTICLE 13 INSURANCE	115
Section 13.1. Insurance Coverage Required – Concessionaire.	115
Section 13.2. Insurance Coverage Required – UMLLC.	117
Section 13.3. Additional Requirements	118
Section 13.4. Damage and Destruction	122
Section 13.5. Additional UMLLC Requirements	126
ARTICLE 14 ADVERSE ACTIONS	127
Section 14.1. Adverse Action	127 127
Section 14.2. Termination	128
Section 14.3. Right of UMLLC to Remedy.	129
Section 14.4. Other Actions by Governmental Authorities	130
Section 14.5. Regulatory Filings	130
ARTICLE 15 DELAY EVENTS; CONCESSION COMPENSATION AND KPI COMPENSATION	130
Section 15.1. Delay Events	130
Section 15.2. Notice of Compensation Events and KPI Events	132
Section 15.3. Payments of Concession Compensation and KPI Compensation	132
Section 15.4. KPI Compensation	134
Section 15.5. Maximum Annual Amount of KPI Compensation	134
ARTICLE 16 DEFAULTS	134
Section 16.1. Default by the Concessionaire	134
Section 16.2. Default by UMLLC	138
Section 16.3. Consequences of Termination or Reversion	140
Section 16.4. Termination Other than Pursuant to Agreement	143
ARTICLE 17 RESTRICTIONS ON TRANSFERS	143
Section 17.1. Transfers by the Concessionaire	143
Section 17.2. Assignment by UMLLC.	146
ARTICLE 18 DISPUTE RESOLUTION	146
Section 18.1. Scope	146
Section 18.2. Informal Dispute Resolution Procedures	146
Section 18.3. Mediation	147
Section 18.4. Litigation	147
Section 18.5. Provisional Remedies	147
Section 18.6. Tolling.	147
ARTICLE 19 LENDERS	147
Section 19.1. Leasehold Mortgages	147
Section 19.2. Notices and Payments to Leasehold Mortgagees.	149
Section 19.3. Leasehold Mortgagee’s Right to Cure.	150

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Section 19.4. Rights of the Leasehold Mortgagee	150
Section 19.5. Termination of this Agreement; New Agreement.....	151
Section 19.6. Recognition of Leasehold Mortgagee	153
Section 19.7. UMLLC's Right to Purchase Leasehold Mortgages.....	153
Section 19.8. Assignment and Assumption Agreement.....	154
Section 19.9. Right to Dispute Resolution.	156
ARTICLE 20 MISCELLANEOUS	156
Section 20.1. Notice.....	156
Section 20.2. Entire Agreement.....	158
Section 20.3. Amendment.	158
Section 20.4. Waiver of Rights	158
Section 20.5. Severability.	158
Section 20.6. Governing Law; Waiver of Jury Trial.....	159
Section 20.7. Submission to Jurisdiction.	159
Section 20.8. Further Acts.	159
Section 20.9. Costs..	159
Section 20.10. Interest.	159
Section 20.11. Inurement and Binding Effect.	160
Section 20.12. No Partnership or Third Party Beneficiaries.	160
Section 20.13. Cumulative Remedies.	160
Section 20.14. Counterparts; Electronic Execution.	160
Section 20.15. Time of the Essence.....	160
ARTICLE 21 DESIGN AND CONSTRUCTION	160
Section 21.1. General Duties.....	160
Section 21.2. Performance of D&C Work.....	161
Section 21.3. Design Development and Construction Commencement.....	161
Section 21.4. Suspension of Construction Work.....	161
Section 21.5. Removal of IMP Contractor	162
Section 21.6. Performance and Payment Security.....	163
ARTICLE 22 NOTICES TO PROCEED; IMP SUBSTANTIAL COMPLETION; IMP FINAL ACCEPTANCE	164
Section 22.1. Notices to Proceed	164
Section 22.2. IMP Substantial Completion	165
Section 22.3. IMP Final Acceptance	167
Section 22.4. Liquidated Damages for Failure to Achieve IMP Substantial Completion or IMP Final Acceptance.....	167

TABLE OF CONTENTS

(continued)

SCHEDULES

Schedule 1	Reserved
Schedule 2A	Performance Standards
Schedule 2B	Interim Performance Standards
Schedule 3A	Utility Facilities, Utility System Land; and Utility System Assets
Schedule 3B	Building Mechanical Systems
Schedule 3C	Distribution System
Schedule 4A	University Utility System Employees
Schedule 4B	Form of Employee Services Agreement
Schedule 5	Utility Fee
Schedule 6	Existing Supply Contracts
Schedule 7	Preliminary Design
Schedule 8A	Form of Legal Opinion of Counsel to UMLLC
Schedule 8B	Form of Legal Opinion of Counsel to the Concessionaire
Schedule 9	Historical Financial Information
Schedule 10	Permitted UMLLC Encumbrances
Schedule 11	Excluded Utility System Projects
Schedule 12	Computer Systems and Software
Schedule 13	Form of Memorandum of Sub-Lease
Schedule 14	Reserved
Schedule 15	Key Performance Indicators
Schedule 16	University Campus Map
Schedule 17	Diversity Plan
Schedule 18	Campus-Wide Permits
Schedule 19	Reserved
Schedule 20	Form of Trademark License Agreement
Schedule 21	Notices to Proceed; Conditions to IMP Substantial Completion and IMP Final Acceptance of Initial Modernization Project
Schedule 22	Warranty Period Utility System Projects
Schedule 23	University Lease

LONG-TERM SUB-LEASE AND CONCESSION AGREEMENT FOR LOUISIANA STATE UNIVERSITY UTILITY SYSTEM

THIS LONG-TERM SUB-LEASE AND CONCESSION AGREEMENT FOR THE LOUISIANA STATE UNIVERSITY UTILITY SYSTEM (this “Agreement”) is made and entered into as of this [•] day of [•], 2021, by and between Utilities Modernization LLC, a Louisiana limited liability company (“UMLLC”), the sole member of which is the LSU Real Estate and Facilities Foundation, a Louisiana nonprofit corporation (the “Foundation”), and [Baton Rouge Energy Concessionaire LLC, a [•] limited liability company (the “Concessionaire”)].

RECITALS

WHEREAS, Louisiana State University and Agricultural and Mechanical College (“LSU”) is the flagship institution of the State of Louisiana under the management and supervision of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (the “Board” and, together with LSU, the “University”), which Board is a public constitutional corporation organized and existing under the laws of the State of Louisiana; and

WHEREAS, the Foundation is a tax-exempt organization organized and operated for the purpose of supporting the University, its programs, facilities, and research and educational activities, the Foundation is the sole member of UMLLC, and the business of UMLLC is at all times carried out and operated exclusively for the tax-exempt purposes of the Foundation; and

WHEREAS, the Concessionaire is a limited liability company organized and existing under the laws of the State of [•], registered and in good standing to conduct business in the State of Louisiana, and a leading core-competency U.S. district energy provider providing innovative, sustainable energy solutions across the United States, including but not limited to the operation of intelligent thermal energy systems that generate, store, and share energy; and

WHEREAS, at the University’s flagship campus in Baton Rouge, Louisiana (the “University Campus”), the operating costs, deferred maintenance and replacement of its Utility System (defined herein) comprised of the Utility Facilities and the Utility System Assets (both, as defined herein) places a substantial financial burden on the University and the State of Louisiana and exposes the University, State of Louisiana, and Utility System to risks that materially and adversely impact the University’s ability to conduct its business and satisfy its commitments and obligations; and

WHEREAS, the University has identified a need to develop and implement a comprehensive modernization, operations and maintenance solution for the Utility System in order to mitigate these risks, eliminate unnecessary expenditures, increase efficiencies that derive savings, establish robust levels of service for operations and maintenance, increase future budget certainty for the University, address deferred maintenance challenges, address the University’s anticipated increase in energy demand, achieve operational efficiencies, and ensure resiliency of the Utility System (the “Utilities Modernization Initiative”); and

WHEREAS, in light of these goals, the University, together with its staff and advisors, has undertaken a comprehensive review and assessment of the Utility System and has developed a framework for achieving the Utilities Modernization Initiative with one or more private district

energy services providers to make capital investments in and operate more efficiently the Utility System; and

WHEREAS, the University, UMLLC, the Concessionaire, and Tiger Energy Partners, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of Louisiana (“TEP”), have entered into that certain Cooperative Endeavor Agreement (LSU Utilities Modernization Initiative), dated the date hereof (the “UMI CEA”), to memorialize the cooperative intent among the University, UMLLC, the Concessionaire, and TEP to design, develop and implement improvements to the Utility System, and to establish generally the transaction framework for the implementation of the Utilities Modernization Initiative; and

WHEREAS, pursuant to Louisiana Revised Statutes 17:3361, *et seq.*, as amended from time to time (the “University Leasing Act”), the University is authorized to lease to a private entity, such as UMLLC, any portion or portions of the University Campus or other immovable property under its supervision and management under the conditions set forth therein; and

WHEREAS, the University Leasing Act further requires any such lease to a private entity to provide for the construction of improvements on the portion or portions of the University Campus subject to such lease that will further the educational, scientific, research, or public service functions of the University; and

WHEREAS, in furtherance of the foregoing, and pursuant to the UMI CEA, the University, UMLLC, the Concessionaire, and TEP are engaging in a public-private partnership for the performance of the Utilities Modernization Initiative, pursuant to which: (a) the University and UMLLC will enter into that certain Long-Term Lease and Concession Agreement for Louisiana State University Utility System dated the date hereof (the “University Lease”), for the lease of the Utility System Land, Utility Facilities and Utility System Assets (collectively, the “Property”), as more particularly described in Schedule 3A attached hereto, together with certain construction, access, parking, and utility servitudes for the purpose of implementing the Utilities Modernization Initiative, as approved by the University; (b) UMLLC will sublease the Property and grant the necessary construction, access, parking, and utility servitudes to the Concessionaire pursuant to this Agreement; and (c) the Concessionaire will engage TEP, as design-build contractor, to perform certain design and construction obligations related to the Initial Modernization Project pursuant to the Drop-Down DB Contract, which Drop-Down DB Contract has been approved by the University and UMLLC; and

WHEREAS, UMLLC has determined that the engagement of the Concessionaire under this Agreement will, among other things, further its energy efficiency and sustainability goals, provide a mechanism for capital improvements as needed, permit the more efficient operation of the Utility System, and advance the overall educational purposes of the University and UMLLC, and, therefore, desires to sublease the Property to the Concessionaire and provide the Concessionaire with an exclusive right to design, build, and finance the Initial Modernization Project and other Capital Improvements, and to operate, maintain, possess, control and improve the Utility System for the Term of this Agreement, all as hereinafter provided; and

WHEREAS, the Concessionaire agrees to sublease the Property from UMLLC and receive the exclusive grant from UMLLC to design, build, and finance the Initial Modernization Project and other Capital Improvements and to operate, maintain, possess, control, and improve the Utility System for the Term of this Agreement, all as hereinafter provided; and

WHEREAS, the Concessionaire agrees to sublease the Property from UMLLC and to operate, maintain, possess, control, 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 design, build, and finance the Initial Modernization Project and other Capital Improvements, as hereinafter provided; and

WHEREAS, the Concessionaire agrees to provide the Utility Services (as defined herein) to UMLLC and to engage in the Utility System Operations (as defined herein) pursuant to the terms and conditions of this Agreement;

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 (as defined herein) covenant and agree 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:

“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).

“AAA” means the American Arbitration Association.

“Abandon” means to abandon all or a material part of the Initial Modernization Project, which abandonment will be deemed to have occurred if: (a) the Concessionaire demonstrates through statements, acts, or omissions an intent not to continue (for any reason other than a Delay Event that interferes with the Concessionaire’s ability to continue) to design or construct the Initial Modernization Project; (b) no significant Construction Work (taking into account any Delay Event) on the Initial Modernization Project is performed for a continuous period of more than sixty (60) days; or (c) the Concessionaire fails to begin (taking into account any Delay Event) (i) any works or activities authorized pursuant to NTP1 within thirty (30) days following the issuance of NTP1, (ii) any works or activities authorized pursuant to NTP2 within thirty (30) days following the issuance of NTP2, or (iii) any works or activities authorized pursuant to NTP3 within thirty

(30) days following the issuance of NTP3, in the case of each of clause (a), clause (b) and clause (c), unless such failure is otherwise expressly permitted or excused pursuant to this Agreement.

“Actual Knowledge of UMLLC” means the actual, current knowledge of the University’s [Note: *Designated Officer(s) of the University to be named*] 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 five (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; *provided, however*, that to the extent UMLLC makes any representation herein with respect to (i) the University, or (ii) the condition or prior operation of the Property or the Utility System, such representation is made by UMLLC without independent investigation and solely in reliance upon corresponding representations made by the University to UMLLC contained in the University Lease.

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

“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 adjustment period 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) a Person that, directly or indirectly, through one or more intermediaries (i) has a fifty percent (50%) or more voting or economic interest in such specified Person or (ii) is Controlled by such specified Person;
- (b) with respect to any Person described in clause (a), such Person’s Ultimate Holding Entity and any entity that such Ultimate Holding Entity (i) has a fifty percent (50%) or more voting or economic interest in or (ii) Controls;
- (c) any Person that is managed by either such Person described in clause (b) or a related body corporate of such Person for so long as such other Person is so managed;
- (d) any trustee of a trust in which all or substantially all of the beneficial interests are held directly or indirectly by such Person or any Person referred to in clauses (a), (b), or (c) of this definition; or
- (e) any trustee, custodian, or nominee of such Person or any Person referred to in clauses (a), (b), (c), or (d) of this definition;

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 7.2.

“Approval”, “Approved”, “Approves”, “Approved by UMLLC” and similar expressions mean approved or consented to by UMLLC 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 D&C Work, the Utility System, the Utility System Operations or this Agreement, the performance by or on behalf of UMLLC of such reviews, investigations, inspections and audits relating to such matter or thing as UMLLC 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, and 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 three (3) -month LIBOR (or any successor rate thereto) as reported in the *Wall Street Journal* (or any successor thereof).

“Board” has the meaning ascribed thereto in the recitals of 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.

“Building Mechanical Systems” means those “in-building” portions of the Utility Facilities more particularly described in Schedule 3B.

“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.

“Campus-Wide Permits” means the Authorizations set forth on Schedule 18, as each may be extended, renewed, modified, or replaced.

“Capital Improvement” means any improvement to or replacement or expansion of the components of the Utility Facilities or Shared Spaces that is capital in nature, as determined in accordance with GAAP. For clarity, the Initial Modernization Project constitutes a Capital Improvement.

“Capital Recovery Amount” has the meaning ascribed thereto in Schedule 5.

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

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

“CenTrio” means [●].

“Certificate of IMP Final Acceptance” has the meaning ascribed thereto in Section 22.1(g).

“Certificate of IMP Substantial Completion” has the meaning ascribed thereto in Section 22.2(e).

“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 fifty percent (50%) or more of the direct or indirect voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) a change in the power directly or indirectly to direct or cause the direction of management and policy of such Person, 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 (i) Persons that are majority-owned Affiliates of each other or (ii) Persons that are under common Control, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise with each other or with the Ultimate Holding Entity of the Concessionaire;
- (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 date hereof) 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 date hereof) acquires securities such that such Person or group of Persons beneficially owns more than fifty percent (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 date hereof or any Affiliate of such Equity Participants together retain, in the aggregate, (1) fifty percent (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 (for the avoidance of doubt, the issuance, redemption, or transfer of units, shares, or interests in the Equity Participant alone, without additional facts or circumstances, will not itself constitute a Change in Control of the Concessionaire);
- (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 UMLLC 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 (A) remain under the same common ownership, management, or control as existed prior to such Transfer or (B) are under the common ownership, management, or Control of the Ultimate Holding Entity of the Concessionaire, or (2) from investment funds, including infrastructure funds, or investors therein, to any Person; *provided* that such direct or indirect ownership interests, following the consummation of such Transfer, (x) remain under the same management or Control that existed prior to such Transfer or (y) are under the common ownership, management, or Control of the Ultimate Holding Entity of the Concessionaire; 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;

- (g) Transfers of direct or indirect ownership interests in the Concessionaire to any Person that is a trustee, custodian, or nominee of (i) any Person who was the beneficial owner of such direct or indirect ownership interests in the Concessionaire immediately prior to such Transfer or (ii) any Person otherwise permitted to be a transferee without causing a Change in Control of the Concessionaire pursuant to this definition, provided that such direct or indirect ownership interest, following consummation of such Transfer, (x) remain under the same management or Control that existed prior to such Transfer or (y) are under the common ownership, management, or Control of the Ultimate Holding Entity of the Concessionaire or an Affiliate of the Ultimate Holding Entity of the Concessionaire; 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
- (h) 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.

“CI Cost of Debt Factor” has the meaning ascribed thereto in Schedule 5.

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

“City-Parish” means the City of Baton Rouge and Parish of East Baton Rouge, State of Louisiana.

“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.

“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.

“Cogeneration Building” means the “Cogeneration Building” as described or depicted Schedule 3A.

“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, condition,

utilization, and the nature of the services provided, provided that UMLLC and the Concessionaire may designate by written agreement one or more utility systems as “Comparable Utility Systems”.

“Compensation Calculation Date” means each of the following: (i) each June 30 during the Term, commencing as of June 30, 202[●]; (ii) the date of removal of the Operator pursuant to Section 3.3(c)(ii); (iii) the first (1st) 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 [two hundred fifty thousand dollars (\$250,000)] if calculated on the date of such notice; and (iv) the End Date.

“Compensation Calculation Measuring Period” means (i) with respect to the first (1st) Compensation Calculation Date, the period commencing on the Turnover Date and 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 each of the following: (i) subject to Article 5, the Concessionaire’s compliance with or the implementation of any UMLLC 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 an event expressly described as a Compensation Event in Section 3.7(a); (v) UMLLC distributing or permitting any third party to distribute on the University 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 UMLLC 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 suspension of the Construction Work that constitutes a Compensation Event pursuant to Section 21.4(b); (viii) any action of the Louisiana Public Service Commission 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 by the Concessionaire 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 Louisiana Public Service Commission or the Federal Energy Regulatory Commission (or their successors) subjecting a Person to its jurisdiction in connection with the Utility System; (ix) the occurrence of a change described in clause (iii) of Section 6.1(a) to the extent that notice of such change was not publically available or otherwise known by CenTrio prior to the date hereof; or (x)

the occurrence of any other event that under the terms of this Agreement expressly requires the payment of Concession Compensation.

“Concession Compensation” means any amount payable by UMLLC 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 amount, for any Compensation Calculation Date, shall be calculated as the sum of (i) all Losses for the applicable Compensation Calculation Measuring Period and financing costs (but excluding any costs and expenses 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 UMLLC 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. If the Concessionaire provides 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 IMP Return on Equity Factor or the CI Return on Equity Factor, as the case may be.

“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 Cost of Finance” means an amount equal to eight hundred forty thousand dollars (\$840,000) from the gross amount of the Concessionaire’s financing of the Initial Modernization Project.

“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 Parent” means the Person, if any, that owns, and only owns, one hundred percent (100%) of the shares of the capital stock, units, partnership or membership interests, other equity interests and equity securities, to the extent applicable, of the Concessionaire.

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

“Concessionaire Utility System Employees” means those Persons employed by the Concessionaire immediately prior to the End Date whose duties directly relate to the provision of the Utility Services.

“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, each of the Operator (if other than the Concessionaire) and the IMP Contractor shall be a Contractor of the Concessionaire.

“Construction Documents” means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, and construction quality assurance reports and samples necessary or desirable for construction of the Initial Modernization Project in accordance with this Agreement.

“Construction Work” means all work to build or construct, make, form, manufacture, furnish, install, supply, deliver, or equip the Initial Modernization Project.

“Control” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “Controlling,” “Controlled by” and “under common Control with” have meanings correlative to the foregoing. With respect to a managed fund or trust, Control includes 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.

“CPI Index” means the “Consumer Price Index – South 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., or Moody’s Investor Services, or their successors or Affiliates, provided that if any of the foregoing and any of their successors cease to exist, UMLLC 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.

“D&C Closeout Plan” has the meaning ascribed thereto in Section 22.2(b).

“D&C Security” means, collectively, (i) the Performance Bond and (ii) the Payment Bond.

“D&C Work” means all design, engineering, and construction-related services, including the Construction Work, necessary in order to design, implement, and deliver the Initial Modernization Solution in accordance with the approved Final Design and the terms and conditions of this Agreement, including Article 22 and Article 23.

“Day” means a calendar day, beginning at midnight in the central 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 Turnover Date; (iv) a delay caused by the performance of works (including the activities authorized by Section 3.7) carried out by UMLLC 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 any Contractor; (v) a delay caused by a failure by UMLLC 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 Hazardous Substances were not caused to be in, on, under, over, or around the Utility System by the Concessionaire, any Contractor, or any of their respective Representatives; (vii) a delay in providing the Utility Services caused by the failure of a third party or UMLLC 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 UMLLC 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) the occurrence of any event expressly described as a Compensation Event in clause (i),

clause (vii), or clause (viii) of the definition of “Compensation Event.” 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 willful misconduct of, or violation of applicable Law by, the Concessionaire, any Contractor, 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 Remedy” has the meaning ascribed thereto in Section 15.1(d).

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

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

“Depository” 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 depository pursuant to this Agreement, provided that such Depository shall have an office, branch, agency, or representative located in the City of Baton Rouge, Louisiana (or in another location within the United States designated by UMLLC in writing, acting reasonably); *provided, however*, that so long as a Leasehold Mortgage is in effect, the Depository under Section 13.4 shall be the institution acting as the collateral agent or depository under the financing secured by such Leasehold Mortgage, whether or not it has an office, branch, agency, or representative located in the City of Baton Rouge, Louisiana (or such other location within the United States designated by UMLLC in writing, acting reasonably).

“DEQ” has the meaning ascribed thereto in Section 11.13.

“Designated Senior Person” means such individual or individuals who are 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 UMLLC will be UMLLC’s [•] and the Designated Senior Persons for the Concessionaire will be [•] and [•].

“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 3A, Schedule 3B, Schedule 6, Schedule 9, Schedule 10, Schedule 11, Schedule 12, Schedule 14, Schedule 16, Schedule 18, and Schedule 22.

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

“Distribution Bottlenecks” means those portions of the Distribution System described on Schedule 3C which are subject to the Initial Modernization Project as described on Schedule 7 and which portions, for purposes of this Agreement, (i) shall be deemed a part of the Utility System (and not part of the Distribution System) until the IMP Substantial Completion Date, and (ii) shall be deemed a part of the Distribution System (and not part of the Utility System, unless and until the same becomes subject to a Distribution System Capital Improvement) from and after the IMP Substantial Completion Date.

“Distribution System” means the respective equipment, systems and facilities (including any discrete component portion thereof) for the carriage and distribution of each Utility that are, as of the Turnover Date, beyond the line of demarcation for inclusion in the Utility Facilities and Utility System, all as described and shown on Exhibit 3C.

“Distribution System Capital Improvement” means any improvement to or replacement or expansion of the components of the Distribution System that is capital in nature, as determined in accordance with GAAP.

“Diverse Business” has the meaning ascribed thereto in Section 11.11.

“Diversity Plan” means the Diversity, Inclusion and Equity Plan attached hereto as Schedule 17.

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

“Drop-Down DB Contract” means that certain [•] dated as of the date hereof by and between the Concessionaire and the IMP Contractor, providing for the design, construction, and completion of the Initial Modernization Project.

“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 (1) 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 UMLLC 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 one hundred twenty percent (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 UMLLC or the Concessionaire.

“Employee Services Agreement” means the agreement set forth in the form of Schedule 4B.

“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.

“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.

“Equivalent Project Relief” has the meaning ascribed thereto in Section 1.21.

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

“Excluded Utility System Projects” means (a) those projects that either UMLLC or the University is undertaking with respect to the Utility System that are listed on Schedule 11 and (b) those Capital Improvements that either UMLLC or the University undertakes after the Turnover Date pursuant to its right to undertake such improvements under Section 3.21 or Section 4.1(b).

“Extraordinary Failure” means the failure (but only if such failure occurs prior to the Planned IMP Substantial Completion Date) of equipment or systems associated with the Utility System not addressed by the Initial Modernization Project reasonably attributable to the University’s deferred maintenance of the Utility System accumulated as of the Turnover Date, including end-of-life breakdown repairs, replacements and rentals of temporary replacement equipment.

“FA Punch List” means the itemized list of Construction Work that remains to be completed as a condition to IMP Final Acceptance, prepared by the Concessionaire and included in the D&C Closeout Plan and agreed with UMLLC prior to IMP Substantial Completion in accordance with Section 21.1. The FA Punch List shall only include any incomplete Construction Work that, due to its nature and the activities required to correct and complete the work, will not have any material or adverse effect on the normal, uninterrupted, and safe use of the Initial Modernization Project.

“Final Design” shall mean the full and complete design for the Initial Modernization Project, based on the Preliminary Design and approved by UMLLC and the University, for the final design and construction of one hundred percent (100%) of the Initial Modernization Project pursuant to the Drop-Down DB Contract.

“Fiscal Year” means the period from July 1 to June 30, provided that the Fiscal Year shall always 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 7.2 for the operation of the Utility System and 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 five (5) full Fiscal Years of the Term, (ii) any given period of exactly five (5) full Fiscal Years during the Term, or (iii) if fewer than five (5) full Fiscal Years remain in the Term, the remaining full and partial Fiscal Years of the Term.

“Force Majeure” means any event beyond the reasonable control of a Party 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, vandalism, epidemic, quarantine restriction, strike, labor dispute or other labor protest, stop-work order or injunction issued by a Governmental Authority, a governmental embargo, or general unavailability or interruption 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).

“Foreign Shell Bank” means a foreign bank that does not have a physical presence in any country and that is not affiliated with a bank that has a physical presence and an acceptable level of regulation and supervision.

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

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

“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 UMLLC or 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 that 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).

“Highland Utility Center” means the “Highland Utility Center” as described or depicted Schedule 3A.

“IFRS” means the International Financial Reporting Standards, consistently applied.

“IMP Contractor” means, initially, TEP and, thereafter, any successor to TEP designated by the Concessionaire as the IMP Contractor pursuant Section 21.5.

“IMP Cost of Debt Factor” has the meaning ascribed thereto in Schedule 5.

“IMP Design Documents” means all drawings (including plans, profiles, cross-sections, notes, elevations, details, and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary for, or related to, the design of the Initial Modernization Project. IMP Design Documents includes the Record Design Documents.

“IMP Final Acceptance” means the occurrence of all the events and satisfaction of all the conditions set out in Schedule 21, Part [C], as and when confirmed by UMLLC’s issuance of a certificate in accordance with the procedures and within the time frame set out in Section 22.2.

“IMP Final Acceptance Date” means the date upon which UMLLC issues the Certificate of IMP Final Acceptance.

“IMP Final Acceptance Deadline” means the day that is [sixty (60)] Days after the IMP Substantial Completion Date.

“IMP Final Acceptance Long Stop Date” means the day that is three hundred sixty-five (365) days after the Planned IMP Substantial Completion Date, as such period may be extended in accordance with Section 15.1(c).

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

“IMP Substantial Completion” means (a) the satisfaction of all the conditions set out in Schedule 21, Part [B] and (b) issuance by UMLLC of the Certificate of IMP Substantial Completion in accordance Section 21.1.

“IMP Substantial Completion Date” means the date upon which UMLLC issues the Certificate of IMP Substantial Completion.

“IMP Substantial Completion Long Stop Date” means the day that is three hundred sixty-five (365) days after the Planned IMP Substantial Completion Date, as such period may be extended in accordance Section 15.1(c).

“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 Investor” means the Concessionaire Parent or, if there is no Concessionaire Parent as of the date hereof, each Equity Participant as of the date hereof.

“Initial Modernization Project” means the initial improvements and upgrades to the Utility System contemplated by the Preliminary Design and to be implemented and delivered by the Concessionaire in accordance with the Final Design and the terms and conditions set forth in this Agreement.

“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 UMLLC (provided that such institution or entity, in its activity under this Agreement, shall be acceptable under then-current guidelines and practices of UMLLC); *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 five hundred million dollars (\$500,000,000), which shall include, in the case of an investment or advisory firm, assets controlled by it or under management.

“Interim Performance Standards” means the standards, specifications, policies, procedures, and processes that apply to the operation of, maintenance of, rehabilitation of the Utility System set forth in Schedule 2B and the appendices thereto (as may be modified pursuant to the terms hereof) from Turnover until the IMP Substantial Completion of the Initial Modernization Project. To the extent that any term or provision set forth in Schedule 2B or incorporated by reference in Schedule 2B 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.

“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 UMLLC 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 UMLLC, the negligence or willful misconduct of UMLLC or its Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires, and others claiming by, through, or under UMLLC, 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 set forth in Section 3.6 and Section 19.1.

“Leasehold Mortgage Debt” means: (i) 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, UMLLC 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, unless such debt is on terms consistent with terms that would be reasonably expected from a non-Affiliate lender acting in good faith and otherwise complies with the requirements of Leasehold Mortgage Debt set forth above; (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 diligence, of the prospective occurrence of an event giving rise to the payment of Leasehold Mortgage Debt; or (iii) any debt with respect to which the Leasehold Mortgagee did not provide UMLLC with notice of its Leasehold Mortgage in accordance, in all material respects, with the Leasehold Mortgage 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 UMLLC, not later than ten (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).

“Legislature” means the Louisiana State Legislature.

“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 UMLLC, in form and content reasonably acceptable to UMLLC, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that UMLLC 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 A-2 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 UMLLC and Approved by UMLLC prior to the submission of the letter of credit) or such other commercial bank or trust company that is Approved by UMLLC, and (ii) provides for the continuance of such letter of credit for a period of at least one (1) 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 Baton Rouge, Louisiana or other location acceptable to UMLLC 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, except, for the avoidance of doubt, to the extent the same are part of a Third Party Claim pursuant to Article 12 (provided that, for the avoidance of doubt, an actual loss, claim, liability, damage of any Contractor or Representative of the Concessionaire and for which the Concessionaire is liable subject only to receiving payment in respect thereof from UMLLC, shall not be treated as a contingent liability for this purpose).

“LSU” has the meaning ascribed thereto in the recitals of this Agreement.

“Main Powerhouse” means the “Main Powerhouse” as described or depicted Schedule 3A.

“Major KPI Event” means any single KPI Event that obligates the Concessionaire to pay KPI Compensation to UMLLC, with respect to that KPI Event only, in an amount equal to the greater of (i) two million five hundred thousand dollars (\$2,500,000) and (ii) ten percent (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 UMLLC 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 Turnover 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.

“Maximum Budgeted IMP Amount” has the meaning ascribed thereto in Section 2.4(f).

“Memorandum of Sub-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.

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

“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.

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

“Open Book Basis” means, with respect to the proposed costs of any Capital Improvement, allowing UMLLC and the University to review all underlying assumptions and data associated

with the cost of delivering such Capital Improvement, including, without limitation, assumptions as to costs of the design, construction, and installation of such Capital Improvement, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, and other items reasonably required by UMLLC or the University to satisfy themselves as to the reasonableness and accuracy of the amount.

“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.

“Operating Agreements and Plans” has the meaning ascribed thereto in Section 3.11(a).

“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-Turnover Transition Period~~ Turnover Date and ending on the first (1st) anniversary thereof or (ii) each subsequent one (1) -year period after the period described in clause (i). For the avoidance of doubt, such one (1) -year period is a fixed period, rather than a rolling period.

“Parallel Issue” has the meaning ascribed thereto in Section 1.22.

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

“Pass-Down Provisions” has the meaning ascribed thereto in Section 1.23.

“Payment Bond” has the meaning ascribed thereto in Section 21.6(a)(i).

“Performance Bond” has the meaning ascribed thereto in Section 21.6(a)(ii).

“Performance Standards” means (i) for the period commencing upon Turnover until the IMP Substantial Completion of the Initial Modernization Project, the Interim Performance Standards, and (ii) for the period commencing upon IMP Substantial Completion of the Initial Modernization Project through the remainder of the Term, the standards, specifications, policies, procedures, and processes that apply to the operation of, maintenance of, and rehabilitation of the Utility System set forth in Schedule 2A and the appendices thereto (as may be modified pursuant to the terms hereof). To the extent that any term or provision set forth in Schedule 2A or incorporated by reference in Schedule 2A 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, or being caused to be 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', or warehousemen's liens 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 UMLLC by any statutory provision or under common law (it being understood and agreed that nothing in this clause (iv) shall limit or otherwise affect UMLLC'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 UMLLC or any Person claiming through UMLLC; (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 Turnover 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 UMLLC Encumbrance" means: (i) the Concessionaire Interest; (ii) any Encumbrance that is being contested, or being caused to be contested, by UMLLC 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', or warehousemen's liens or other like Encumbrances arising in UMLLC'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 UMLLC 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 Turnover Date; (v) any zoning, building, environmental, health, safety, or other Law; (vi) the police and regulatory powers of the State or the City-Parish 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 (provided that this shall not grant the Concessionaire, or any Person claiming through the Concessionaire, the right to create, incur, assume, or suffer to exist any such Encumbrance unless otherwise expressly contemplated herein); (x) any rights reserved to or vested in the University or UMLLC by any statutory provision (it being understood and agreed that nothing in this definition shall limit or otherwise affect UMLLC's obligations or the Concessionaire's rights hereunder); (xi) any of the Encumbrances set forth on Schedule 10; (xii) (A) any Encumbrances reflected in any leasehold title insurance policies (or any other title policies related to the Transaction) issued to the Concessionaire or any Leasehold Mortgagee in connection with the Transaction, or (B) if no such policies are issued in connection with the Transaction, any Encumbrances reflected in the Title Commitment which are not cured, satisfied, released or removed from the Title Commitment prior to closing of financing of the Initial Modernization Project; (xiii) the University Lease; and (xiv) 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, including the University and UMLLC.

"Planned IMP Substantial Completion Date" means May 30, 2024, as such date may be extended in accordance with the terms of this Agreement.

"Preliminary Design" shall mean the approximately thirty percent (30%) design for the Initial Modernization Project attached hereto as Schedule 7, which Preliminary Design shall include the Maximum Budgeted IMP Amount for the final design and construction of one hundred percent (100%) of the Initial Modernization Project pursuant to the Drop-Down DB Contract.

"Project Intellectual Property" has the meaning ascribed thereto in Section 3.11(b).

"Property" has the meaning ascribed thereto in the recitals of this Agreement.

"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.

"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 the University.

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

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

“Record Design Documents” means the IMP Design Documents which provide the complete and final documents necessary or related to construction, operations, and maintenance of the Initial Modernization Project or any portion thereof.

“Record Retention Policy” has the meaning ascribed thereto in Section 3.12(a).

“Recovery Period” has the meaning ascribed thereto in Schedule 5.

“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 three (3) or more times during such Operator Evaluation Period.

“Repetitive Performance Standards Failure” means, during any given Operator Evaluation Period, the failure to comply with or to meet a distinct requirement of the Performance Standards (provided that UMLLC shall have provided separate written notices for each such failure) three (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.

“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).

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

“Restricted Person” means any Person that (a) to the knowledge of the Concessionaire after reasonable diligence and due inquiry, directly or indirectly, is acting in contravention of any United States or other applicable international anti-money laundering regulations or conventions, (b) is 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”), which list may be found at www.treas.gov/ofac, (c) operating, organized, or residing in a country or territory named on an OFAC list or which is designated as a Non-Cooperative Jurisdiction by the Financial Action Task Force on Money Laundering, which designation can be found at www.fatf-gafi.org, or whose funds are transferred from or through such a jurisdiction, (d) operates, resides in, or is organized under the laws of a jurisdiction designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns, which designation can be found at www.fincen.gov, (e) is a Foreign Shell Bank, or (f) has been debarred or suspended for cause from entering into contracts with the University or the State.

“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).

“Satellite Plants” means, collectively, each plant located adjacently and supplying Utilities to any of the following locations on the University Campus: (a) the South Campus, (b) the Nicholson Gateway Building, (c) the Recreation Center Building, (d) the Laboratory School Building, (e) the Union Center Building, (f) the 459 Complexes, (g) The Five Building, (h) the Cypress Building, and (i) the Ed Gay Building.⁺

“SC Punch List” means the itemized list of Construction Work that remains to be completed in order to satisfy the conditions to achieving IMP Substantial Completion, prepared by the Concessionaire and included in the D&C Closeout Plan in accordance with Section 21.1.

“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).

“Shared Spaces” has the meaning ascribed thereto in Section 3.30.

“State” means the State of Louisiana.

“Supplies” has the meaning ascribed thereto in Section 7.3(a).

“Supply Contract” has the meaning ascribed thereto in Section 7.3(a).

“Supply Costs” means the purchase price of Supplies in accordance with the applicable Supply Contract, inclusive of any taxes, including sales, use or excise taxes, applicable to such

~~⁺ Note to Draft: Each building to be defined.~~

Supplies and 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.

“TEP” has the meaning ascribed thereto in the recitals of this Agreement.

“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 Obligor by any Person who is not a Party or an Affiliate of such a Party.

“Time of Turnover” means 9:00 a.m. in Baton Rouge, Louisiana, on the Turnover Date.

“Title Commitment” means any commitment obtained by the Concessionaire, at its cost, for a leasehold title policy or policies, proposing to insure the leasehold interest of the Concessionaire in the Utility System Land, to the extent of such leasehold interest, prior to Turnover, issued by Title Company.

“Title Company” means [●] through Phelps Title Agency, L.L.C.

“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.

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

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

“Ultimate Holding Entity” means, in relation to any Person, the ultimate holding entity of that Person, and in respect of the Concessionaire as of the date of this Agreement, means: (i) (A) QIC Investments No. 1 Pty Ltd as trustee for QIC Global Infrastructure Fund (Australia) No. 1

Trust, (B) QIC Infrastructure Management No. 2 Pty Ltd as trustee for QIC Global Infrastructure Fund (Australia) No. 2 Trust, or (C) QIC Global Infrastructure Fund US AIV LP; (ii) Ullico Infrastructure Master Fund, L.P.; (iii) California Public Employees' Retirement System; or (iv) any of the foregoing.

“UMICEA” has the meaning ascribed thereto in the recitals of this Agreement.

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

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

“UMLLC Directive” means a written order or directive prepared by or on behalf of UMLLC in conformity with the requirements and limitations of this Agreement directing the Concessionaire, to the extent permitted hereby, other than pursuant to Section 3.21, 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 University Campus on utility facilities or energy equipment that are not and will not be considered part of the Utility System in accordance with the definition thereof, (b) taking control of the internal UMLLC billing system for Utilities, and (c) causing the Concessionaire to engage in sustainability practices in excess of those reasonably required by Prudent Industry Practices); 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, UMLLC 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, provided that such work must be part of a larger project (as determined by UMLLC in its reasonable discretion) for which the Utility System is the primary driver of such project (as determined by UMLLC in its reasonable discretion), (3) UMLLC may, in any such order or directive, direct the manner and means by which the Concessionaire performs a UMLLC 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. Notwithstanding anything herein to the contrary, UMLLC may not issue a UMLLC Directive to the Concessionaire for any portion of the Building Mechanical Systems.

“UMLLC Liaison” means the University's [•], or such other Person as may be identified by UMLLC to the Concessionaire in writing.

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

“UMLLC Responsible Parties” has the meaning ascribed thereto in Section 12.2.

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

“Unexpended Contingency Amount” means an amount equal to the difference between (a) [five million dollars (\$5,000,000)] and (b) the cumulative amount of funds actually disbursed by the Concessionaire, ~~or the IMP Contractor (or its Contractors),~~ prior to the IMP Substantial Completion Date from reserves designated by the Concessionaire for contingencies in the Approved Budgeted Amount pursuant to Section 2.4(f); *provided* that in no event shall the Unexpended Contingency Amount be less than zero dollars (\$0.00).

“Uncapped O&M Costs” means the sum of 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 costs incurred to make 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 UMLLC pursuant to Section 3.21 (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 or Material Change is not Approved by UMLLC; (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 7.4, but only to the extent such costs were Approved by UMLLC 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 to make time-sensitive repairs or improvements to (A) the Utility System or (B) UMLLC-owned property related to, but not a part of, the Utility System, in each case to the extent such repairs or improvements (w) are not Capital Improvements, (x) were not contemplated in the most recently approved Five-Year Plan, (y) were either (I) made in the Concessionaire’s good-faith belief that they were being made to the Utility System or (II) made in the Concessionaire’s good-faith belief that the repair was the best first response to an Emergency, and (z) have been Approved by UMLLC in its discretion; (i) storm water and sanitary effluent charges assessed by the City-Parish, except to the extent that such storm water and sanitary effluent charges increase as a result of an action or inaction of the Concessionaire (other than the 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); (j) an Approved Capital Improvement that is classified as Uncapped O&M Costs pursuant to Section 4.3(h) or an Approved Material Change (unless such costs are treated as another form of compensation to the Concessionaire provided for in this Agreement in connection with the Approval of such Material Change), in each case up to the amount Approved by UMLLC as part of its Approval of such Capital Improvement or Material Change; (k) costs incurred in connection with Supply procurement assistance under Section 7.3(a) or Section 7.3(b), but only to the extent such costs were Approved by UMLLC prior to being incurred; (l) costs (including KPI Compensation) incurred as a direct result of the Concessionaire’s

failure to comply with Law or this Agreement if the sole reason for such failure is that UMLLC failed to be reasonable in its Approval of all possible Capital Improvements or Material Changes that would cure or prevent such failure to comply with such Law or this Agreement; (m) costs associated with a UMLLC Directive that is not the construction of a Capital Improvement in accordance with Section 5.1, (n) legal fees arising out of any Excluded Liabilities; (o) the costs of any premium ~~or deductible for professional liability for~~ insurance coverage procured by the Concessionaire in accordance with Section 13.1 ~~(e) for a particular; provided that such coverage and the cost thereof has been Approved by UMLLC prior to the purchase thereof; provided, further, that with respect to any~~ Approved Capital Improvement or Material Change ~~provided that,~~ such coverage and the cost thereof is expressly included in the request for Approval of such Capital Improvement or Material Change and UMLLC Approves such cost; (p) the operations and maintenance costs that are reasonably necessary to cause the Utility System or Utility System Operations to comply with 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 Turnover Date but solely for the first 3 full Fiscal Years (and any partial Fiscal Year) after the occurrence of such enactment, modification, amendment or change (but not, for the avoidance of doubt, those costs that are included in any other clause of this definition; (q) ~~costs that would otherwise qualify as Capped O&M Costs~~ operations and maintenance costs to the extent reasonably incurred by the Concessionaire to rectify an Extraordinary Failure that is neither insured pursuant to Article 13 nor caused by the act, omission, negligence, or willful misconduct of, or violation of applicable Law by, the Concessionaire, its Affiliates or their respective Representatives; and (r) a cost expressly described as an Uncapped O&M Cost in Section 3.7(c) or Section 3.7(e).

“University” has the meaning ascribed thereto in the recitals of this Agreement.

“University Campus” has the meaning ascribed thereto in the recitals to this Agreement as more particularly shown on Schedule 16.

“University Claim” has the meaning ascribed thereto in Section 1.20.

“University Lease” has the meaning ascribed thereto in the recitals of this Agreement, which University Lease is substantially in the form attached hereto as Schedule 23.

“University Leasing Act” has the meaning ascribed thereto in the recitals of this Agreement.

“University Reimbursable Amount” means an amount equal to two and one half percent (2.5%) of the gross amount of the Concessionaire’s financing of the Initial Modernization Project but in no event less than [two million five hundred thousand dollars (\$2,500,000)].

“University Utility System Employees” means those Persons identified on Schedule 4A employed by the University immediately prior to Turnover whose duties directly relate to the operation or maintenance of the Utility System.

“Unplanned Outage” has the meaning ascribed thereto in Schedule 2A or Schedule 2B, as applicable.

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

“Utilities Modernization Initiative” has the meaning ascribed thereto in the recitals of this Agreement.

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

“Utility Facilities” means the improvements and equipment (a) constituting part of ~~or located on the University Campus, including~~ those identified in Schedule 3A, 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, 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 (I) expressly set forth in the Performance Standards as being within said line of demarcation or (II) which UMLLC directs to be part of the Utility System as part of a UMLLC Directive in accordance with the definition thereof, (ii) any cameras or other public safety equipment installed, maintained, or used by the Louisiana State University Police Department or any successor department, (y) the Satellite Plants, or (iii) any portion of the Building Mechanical Systems. For the avoidance of doubt, except as set forth in the definition of Distribution Bottlenecks, no part of the Distribution System shall be included within the scope of the Utility Facilities unless and until such part of the Distribution System has become the subject of a Distribution System Capital Improvement.

“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, including Schedule 5.

“Utility Services” means the services to be provided by the Concessionaire as grantee of the concession under this Agreement. For the avoidance of doubt, no services in respect of the Distribution System shall be included within the scope of the Utility Services unless and until such part of the Distribution System has become the subject of a Distribution System Capital Improvement.

“Utility System” means: (A) the personal property, real property, improvements, fixtures, and equipment owned and operated by the University or UMLLC prior to the Time of Turnover to provide the Utilities on the University 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, ~~(w)~~ (v) any utility distribution facilities or other equipment that is beyond the line of demarcation for each Utility, as set forth in the Performance Standards, except to the extent incorporated into the Utility System by a UMLLC Directive, ~~(x)~~ (w) any interest in the Public Way or similar real property, ~~(y)~~ (x) any utility facilities in a building that is not a building leased by the Concessionaire, up to the Utility System line of demarcation for such building, as described in the Performance Standards, except to the extent incorporated into the Utility System by a UMLLC Directive, (y) the Satellite Plants, or (z) any portion of the Building

Mechanical Systems; and (B) from and after the Time of Turnover, such Utility System as it is reconfigured, replaced, improved, or relocated by the Concessionaire or the Operator pursuant to the terms of this Agreement. For the avoidance of doubt, except as set forth in the definition of Distribution Bottlenecks, no part of the Distribution System shall be included within the scope of the Utility System unless and until such part of the Distribution System has become the subject of a Distribution System Capital Improvement.

“Utility System Assets” means (i) as of the time immediately prior to the Time of Turnover, the personal property of the University or UMLLC used in connection with operations of the Utility System and identified on Part 3 of Schedule 3A as “Personal Property,” and (ii) in addition to the personal property described in clause (i) above, from and after the Time of Turnover, the personal property of the Concessionaire or the Operator used in connection with the operations of the Utility System; *provided* that the definition of “Utility System Assets” does not include any portion of the Building Mechanical Systems.

“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, UMLLC Default, or any event of termination, cancellation, rescinding, or voiding referred to in Section 16.4 (but excluding the effect of such Adverse Action, UMLLC 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 UMLLC and the Concessionaire; *provided* that in no event shall such appraisal take into account any Capital Improvement not Approved by UMLLC prior to such time; *provided, further*, 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 thirty (30) Days after a Party requests the appointment thereof, then UMLLC and the Concessionaire shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select an independent third party appraiser to make the appraisal referred to above. Each of UMLLC and the Concessionaire shall pay fifty percent (50%) of the costs and expenses of any appraisal.

“Utility System Land” means those parcels of real property described or depicted in Schedule 3A for the Main Powerhouse, the Cogeneration Building, the Highland Utility Center, and the Vet Med Plant ~~and each of the Satellite Plants~~.

“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 UMLLC by providing utility services to UMLLC facilities on the University Campus, including to students, faculty, administrators, employees, and invitees of UMLLC thereon and others providing services to UMLLC.

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

“Vet Med Plant” means heating and cooling plant located at the University’s School of Veterinary Medicine, described or depicted as the “Vet Med Plant” on Schedule 3A.

“Warranty Period Utility System Projects” means those projects with respect to the Utility System completed by UMLLC prior to the Time of Turnover that remain subject to an ongoing warranty from the contractor responsible for completing such projects and are listed on Schedule 22.

“Year” means the calendar year.

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”, “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 Baton Rouge, Louisiana 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 Baton Rouge, Louisiana on the next Business Day.

Section 1.15. Approvals, Consents and Performance by UMLLC.

- (a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by UMLLC 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 UMLLC, (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 UMLLC); (iii) UMLLC 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 UMLLC acting reasonably, of the information or documentation provided; (iv) unless a time period is specifically set forth elsewhere herein, UMLLC shall, within thirty (30) 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 UMLLC determines in its discretion that additional time to consider such request would be appropriate due to the request's complexity or interrelationship with larger UMLLC issues, advise the Concessionaire by written notice of a reasonable timeframe (not to exceed ninety (90) Days) in which UMLLC 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 UMLLC does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of UMLLC 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 UMLLC, 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 UMLLC Liaison, who will direct such request to the appropriate committee, Person or group within UMLLC.

- (b) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an approval or consent by UMLLC 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.
- (c) *Consent by the University.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by UMLLC, such provisions shall be deemed also to require or provide for or permit the approval or consent by the University as precedent condition to the effectiveness of UMLLC’s approval or consent pursuant to this Section 1.15; *provided, however*, for the avoidance of doubt, such approval or consent by the University shall be a Parallel Issue.

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, whether in effect as of the date hereof or made thereafter.

Section 1.18. Cost Responsibilities. In this Agreement, the phrases “at the Concessionaire’s sole cost and expense”, “at the Concessionaire’s cost and expense”, “the

Concessionaire shall be responsible for providing”, “the Concessionaire shall pay”, “the Concessionaire shall reimburse”, 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.

Section 1.20. Interaction with the University Lease.

- (a) Notwithstanding any other provision of this Agreement, to the extent that UMLLC is or becomes obligated under the University Lease to take any action, do anything or perform any obligation in connection with the Transaction, the Concessionaire agrees that, except as otherwise specified herein, it will be obligated to take any such action, do any such thing or perform any such obligation under this Agreement in the manner and to the standard specified herein or, in the absence of any such standard, such standard specified in the University Lease.
- (b) Where the University has the right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction under the University Lease in respect of any matter, and UMLLC has a corresponding right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction pursuant to the terms of this Agreement in respect of the same or substantially the same or similar matter, and where the University has exercised its rights in a particular manner, UMLLC shall only be entitled to exercise its discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission or make the relevant determination in a manner that is consistent with the discretion exercised, approval granted or refused, request or submission accepted or refused or determination made or level of satisfaction confirmed by the University under the University Lease.
- (c) Where the University asserts or exercises any right against UMLLC in accordance with the University Lease in regard to any matter associated with the Transaction or the Concessionaire, including reductions in or retentions from payments under the University Lease, claims for indemnification and claims for damages for breach of the University Lease (such assertion or exercise of rights by the University being referred to as a “University Claim”), any determination made or reached under the University Lease as to the amount, nature and extent of UMLLC’s liability in

relation to any University Claim shall be binding on the Concessionaire, provided that UMLLC may not compromise any University Claim without the prior written consent of the Concessionaire, in its sole discretion. The Concessionaire shall bear and discharge on a current basis, and shall indemnify UMLLC against all Losses reasonably and properly incurred by UMLLC related to any University Claim, except to the extent that (1) such Losses arise from a UMLLC Default or (2) the liability for the relevant University Claim will be shared by the Parties, in which case, each Party shall bear a fair and reasonable proportion of the related costs and expenses. For clarity, UMLLC will only share in the liability for a University Claim to the extent related to its specific obligations under this Agreement.

- (d) The Parties acknowledge that where the University Lease contemplates meetings between UMLLC and the University and/or any of their respective Representatives, such provisions generally do not necessarily contemplate a right for the Concessionaire to attend such meetings. UMLLC will use reasonable efforts to ensure that the Concessionaire is included in such meetings and, where UMLLC is not successful, UMLLC agrees to keep the Concessionaire informed of any such discussions or meetings between UMLLC and the University and to put forward all comments and questions provided to it by the Concessionaire in respect of the subject matter of the relevant discussions or meetings. UMLLC will not agree with the University on any matter at meeting in which the Concessionaire is not present and which could impact the obligations of the Concessionaire under this Agreement without the prior written consent of the Concessionaire.
- (e) In certain sections of this Agreement, there are references to or acknowledgements of the University Lease or portions thereof and the absence of such a reference or acknowledgement in any other particular section of this Agreement will not be construed for or against either party in interpreting this Agreement.

Section 1.21. Equivalent Project Relief.

- (a) Except to the extent any entitlement of UMLLC under the University Lease (including any rights, remedies or relief) does not, in any way, relate to the rights or obligations of the Concessionaire under this Agreement, the Concessionaire will be entitled to receive the benefit of such entitlement from UMLLC (in accordance with and subject to the provisions of Section 1.21(c)), including the benefit of:
 - (i) any compensation, damages or other payment of any kind on the same or substantially the same grounds as UMLLC is entitled to compensation, damages or other payment of any kind under the University Lease, including compensation on termination;
 - (ii) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Agreement on the same or substantially the same grounds as UMLLC is entitled to be relieved from performance of equivalent obligations under, or from termination of, the University Lease;

- (iii) any entitlement of the Concessionaire under this Agreement in respect of which any provision of this Agreement states that the Pass-Down Provisions are to apply; and
- (iv) any certificate, consent, or approval granted under this Agreement, the University Lease or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Concessionaire, including any entitlement of UMLLC to request or apply for such certificate, consent, or approval from the University, or any other Person under this Agreement or the University Lease,

including, for greater certainty, any benefit to UMLLC arising out of any modification implemented or required because of a University Directive pursuant to the University Lease, any Compensation Event, Delay Event, Force Majeure, or remedies or compensation in respect of any University Default (as defined in the University Lease) in respect of which UMLLC is entitled to relief, compensation or benefit under the University Lease in respect of UMLLC's obligations, but excluding any specific loss, cost or expense incurred by UMLLC to which the relevant compensation expressly relates and which is not included in any amount claimed by the Concessionaire.

UMLLC's entitlement under the University Lease in respect of the matters set out in this Section 1.21 is referred to in this Agreement as "Equivalent Project Relief".

- (b) The Concessionaire will not be entitled to any relief from, or waiver in respect of, performance of its obligations under this Agreement other than:
 - (i) to the extent UMLLC receives Equivalent Project Relief; or
 - (ii) to the extent expressly provided for in this Agreement.
- (c) The Concessionaire will be entitled to the benefit of any Equivalent Project Relief to the extent that UMLLC is or becomes entitled under the University Lease only if, when and to the same extent that UMLLC has received Equivalent Project Relief from the University under the University Lease.
- (d) For purposes of UMLLC asserting a claim under the University Lease against the University in respect of Equivalent Project Relief, where the Concessionaire has suffered Losses or otherwise claims relief in respect of any event or circumstance in respect of which UMLLC is entitled to claim Equivalent Project Relief, UMLLC acknowledges that it will be obligated to include such Losses or relief claimed by the Concessionaire in its claim against the University and to make such claim against the University under the University Lease, provided that the Concessionaire's recourse against UMLLC and UMLLC's liability to the Concessionaire in respect of any such Losses or relief will be subject to, and strictly limited by, the provisions of Sections 1.21(a) through 1.21(c) above and that UMLLC will not be required to reimburse the Concessionaire to the extent that such Losses or relief arise as a result of any failure on the part of the University to

perform its obligations under the University Lease, unless UMLLC has received compensation from the University under the University Lease in respect of such University failure, in which case the Pass-Down Provisions shall apply.

Section 1.22. Enforcement of Parallel Issues.

- (a) UMLLC will preserve, protect, and pursue under the University Lease such rights, remedies, and relief as may relate to the Concessionaire's rights and obligations hereunder, including any claim for Equivalent Project Relief, (a "Parallel Issue") in order to secure a favorable resolution of the Parallel Issue, provided that:
 - (i) UMLLC has received written notice from the Concessionaire of the Parallel Issue;
 - (ii) the Concessionaire will not be entitled to recover from UMLLC any Losses or claims arising out of or in connection with UMLLC pursuing resolution of a Parallel Issue on the Concessionaire's behalf other than any amounts received from the University in respect of such Parallel Issue; and
 - (iii) the Concessionaire will indemnify UMLLC in respect of any Losses arising out of or in connection with UMLLC pursuing resolution of a Parallel Issue on the Concessionaire's behalf in accordance with this Section 1.22(a), including reimbursing UMLLC for any deduction from, reduction of or exercise of set-off, compensation or similar right against any amount payable by the University associated therewith, provided that such indemnification will, unless UMLLC has no entitlement to any amount received in respect of such Parallel Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Issue.
- (b) Subject to Section 1.22(c), UMLLC consents to the Concessionaire pursuing the rights, remedies and relief under the University Lease described in Section 1.22(a) of this Agreement, including any entitlement to compensation on termination, in the name of UMLLC, which may, subject to the provisions of Section 12.4 of the University Lease, include the defense of claims where the Concessionaire is required to provide an indemnity to UMLLC in accordance with this Agreement. The Concessionaire will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that, if the Concessionaire is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the Parties in proportion to their ultimate entitlements to same. UMLLC will, at the sole cost and expense of the Concessionaire, use commercially reasonable efforts to provide assistance, including providing documents, data, and information, as the Concessionaire may reasonably request in connection with the pursuit of such Parallel Issue by the Concessionaire.
- (c) No later than seven (7) days following receipt of the notice referred to in Section 1.22(a)(i), UMLLC may take conduct of the Parallel Issue and pursue the rights,

remedies and relief under the University Lease described in Section 1.22(a) of this Agreement on behalf of the Concessionaire and in accordance with the reasonable directions of the Concessionaire.

- (d) UMLLC will not enter into any compromise or settlement of a Parallel Issue with the University which affects, in any respect, the Concessionaire's obligations, rights, remedies or relief hereunder without the prior written consent of the Concessionaire, in its sole discretion.
- (e) Where UMLLC pursues a Parallel Issue in accordance with this Section 1.22, the Concessionaire will be kept informed of UMLLC's progress under this Section 1.22 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by UMLLC in accordance with this Section 1.22.
- (f) The Concessionaire will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure, use commercially reasonable efforts to provide assistance, including providing documents, data, and information, as UMLLC may reasonably request in connection with the pursuit of any Parallel Issue.
- (g) Any claims in respect of a Parallel Issue and any recoveries obtained by UMLLC or the Concessionaire in respect of any Parallel Issue under the University Lease will be subject to the provisions of Section 1.21 in respect of Equivalent Project Relief.

Section 1.23. Pass-Down Provisions. The Parties acknowledge and agree that all provisions of this Agreement including the provisions of each Schedule hereto will be subject to the provisions of Section 1.20 through Section 1.22 of this Agreement (the "Pass-Down Provisions"), and the absence of any specific reference to the Pass-Down Provisions will not preclude the application of the Pass-Down Provisions to any provision of this Agreement.

Section 1.24. Communications with the University and Third Parties.

- (a) To the extent that any written notice, information, consent, claim, request, response, submission, or other communication (a "Communication") is required or permitted to be given or made by the Concessionaire directly to the University or any other third party under this Agreement, the Concessionaire will provide a copy of the same to UMLLC at the same time as giving or making the Communication to the University or such third party.
- (b) Except as otherwise specifically set out in this Agreement, UMLLC hereby gives permission to the Concessionaire to provide all Communications directly to the University.
- (c) UMLLC will make all Communications required to be made by UMLLC to the Concessionaire under this Agreement in a timely manner so as to permit the Concessionaire to comply with its obligations under this Agreement and will

consult with the Concessionaire in respect of all Communications with the University.

- (d) The Concessionaire will make all Communications required to be made by the Concessionaire to UMLLC under this Agreement in a timely manner so as to permit UMLLC to comply with its obligations under this Agreement.

Section 1.25. Louisiana Defined Terms. As used in this Agreement, the term “lien” will also mean a privilege, mortgage, security interest, assignment, or other encumbrance. The term “real property” or “real estate” will mean “immovable property” as that term is used in the Louisiana Civil Code. The term “personal property” will mean “movable property” as that term is used in the Louisiana Civil Code. The terms “fee simple interest” shall mean “full ownership interest” as that term is used in Louisiana law. The term “easement” will mean “servitude” as that term is used in the Louisiana Civil Code. The term “building” will also include “other constructions” as that term is used in the Louisiana Civil Code. The term “intangible” will mean “incorporeal” as that term is used in Louisiana law. The term “tangible” will mean “corporeal” as that term is used in Louisiana law. The term “condemnation” will include “expropriation” as that term is used in Louisiana law. The term “receiver” will include “keeper” as that term is used in Louisiana law. The term “fixtures” will mean component parts of the Land and/or the improvements.

ARTICLE 2

THE TRANSACTION; 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 Turnover:

- (a) UMLLC demises and subleases the Property to the Concessionaire free and clear of Encumbrances other than Permitted UMLLC Encumbrances and on an exclusive basis, other than as expressly provided in this Agreement, for and during the term (the “Term”) commencing on the Turnover Date and expiring on the thirtieth (30th) anniversary thereof (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 sublease of the Utility Facilities and Utility System Assets other than those located on the Utility System Land shall not prevent UMLLC, the University, or any Governmental Authority from using, occupying, developing, leasing, or otherwise enjoying the real property and the improvements other than the land on which the Utility Facilities and Utility System Assets are located without the payment of any fee, charge or rent to the Concessionaire, and
- (b) UMLLC (i) grants the Concessionaire a non-exclusive license during the Term, appurtenant to the leasehold interest described in clause (a) above, to access the Public Way and other portions of the University Campus (subject to Section 3.2(b)), solely in order to operate, maintain, repair, replace, improve, and service the Utility Facilities and Utility System Assets located therein or thereon to the extent permitted or required under this Agreement, and (ii) grants the Concessionaire, free and clear of any Encumbrances (other than Permitted UMLLC Encumbrances) for

and during the Term, except as expressly provided in this Agreement (including as provided in Section 3.21 and Section 4.1), (x) an exclusive right to perform the Capital Improvements that are Approved pursuant to Section 4.3, (y) an exclusive right to design, build, and finance the Initial Modernization Project, subject to UMLLC's approval rights as set forth herein, and (z) an exclusive right to operate the Utility System (and any expansions, improvements or replacements thereto) and to provide Utility Services on the University 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 (collectively, the "Transaction").

Section 2.2. Turnover.

- (a) The commencement of the rights and obligations of the Parties hereunder (the "Turnover") shall occur on the date on which the Turnover occurs which date shall be the date hereof (the "Turnover Date"). The Turnover shall be held at the University, [●], Baton Rouge, Louisiana, or such other place agreed to in writing by UMLLC and the Concessionaire.
- (b) All Prorated Items shall be prorated between UMLLC and the Concessionaire as of 11:59 p.m. on the Day immediately preceding the Turnover Date based upon the actual number of Days in the month and a three hundred sixty-five (365) -Day year and the required payment resulting from such proration shall be made by the relevant Party to the other as follows:
 - (i) On or prior to the Time of Turnover, UMLLC will provide to the Concessionaire an itemized statement of such Prorated Items, estimated in good faith as of the Turnover and reasonably based on relevant billing information from third parties or (in the absence of such information) UMLLC's or the University's financial statements as of [●], and such statement shall be the basis of proration of any Prorated Items at the Time of Turnover;
 - (ii) Within forty-five (45) Business Days after the Turnover, UMLLC will provide to the Concessionaire a revised good-faith accounting of such Prorated Items as of the Turnover in the form of an itemized statement of such Prorated Items (the "Revised Proration Statement");
 - (iii) Within fifteen (15) Business Days after the Concessionaire's receipt of the Revised Proration Statement, the Concessionaire will review the Revised Proration Statement and will notify UMLLC of any adjustments made by the Concessionaire to the Revised Proration Statement in good faith;
 - (iv) To the extent UMLLC disagrees with any of the Concessionaire's adjustments to the Revised Proration Statement, UMLLC shall provide notice to the Concessionaire within fifteen (15) Business Days after

UMLLC's receipt of the Concessionaire's adjustments, and any disagreement shall be resolved in accordance with Article 18; 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 ten (10) Business Days of such determination.
- (c) At the time of the first closing of the Concessionaire's financing of the Initial Modernization Project, the Concessionaire shall pay to the University in readily available funds (according to instructions provided by the University to the Concessionaire not later than three (3) Days prior to such closing) an amount equal to the University Reimbursable Amount.

Section 2.3. Conditions Precedent to Turnover.

- (a) *Conditions for the Benefit of the Concessionaire.* The Concessionaire shall be obligated to complete the Turnover only if each of the following conditions has been satisfied in full at or before the Time of Turnover, unless waived by the Concessionaire:
 - (i) the representations and warranties of UMLLC set forth in Section 9.1 shall be true and correct in all material respects as of the Time of Turnover;
 - (ii) UMLLC shall have (A) delivered to the Concessionaire a legal opinion of counsel to UMLLC, substantially in the form attached hereto as Schedule 8A, and (B) executed and delivered the Employee Services Agreement in the form of Schedule 4B (which shall also have been executed by the University);
 - (iii) all Campus-Wide Permits set forth on Schedule 18 are in full force and effect;
 - (iv) UMLLC shall have obtained and delivered to the Concessionaire, at the expense of the Concessionaire, a commitment effective at the Time of Turnover 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 UMLLC 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 (iv) of this Section 2.3(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 title

insurance policies (or any other title policies related to the Transaction) that it elects to purchase at Concessionaire's cost in connection with the Transaction or any Leasehold Mortgage; and

- (v) UMLLC shall have delivered to the Concessionaire a certificate confirming that each of the conditions set forth in Section 2.3(a)(i) through Section 2.3(a)(iv) has been satisfied in full by UMLLC (except for any condition that has been waived by the Concessionaire) at or before the Time of Turnover.
- (b) *Conditions for the Benefit of UMLLC.* UMLLC shall be obligated to complete the Turnover only if each of the following conditions precedent has been satisfied in full at or before the Time of Turnover, unless waived by UMLLC:
- (i) the representations and warranties of the Concessionaire set forth in Section 9.2 shall be true and correct in all material as of the Time of Turnover;
 - (ii) the Concessionaire shall have (A) delivered to UMLLC a legal opinion of outside counsel to the Concessionaire, substantially in the form attached hereto as Schedule 8B, and (B) executed and delivered the Employee Services Agreement;
 - (iii) the Concessionaire shall have delivered to UMLLC a certificate confirming that the Concessionaire has engaged TEP as the IMP Contractor to perform substantially all of the Initial Modernization Project pursuant to the Drop-Down DB Contract; and
 - (iv) the Concessionaire shall have delivered to UMLLC a certificate confirming that each of the conditions set forth in Section 2.4(b)(i) through Section 2.4(b)(iii) has been satisfied in full by UMLLC (except for any condition that has been waived by UMLLC) at or before the Time of Turnover.
- (c) *Mutual Conditions.* In addition, UMLLC and the Concessionaire shall be obligated to complete the Turnover only if each of the following conditions precedent has been satisfied in full at the Time of Turnover, unless waived by both UMLLC and the Concessionaire:
- (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;
 - (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; and

- (iii) UMLLC and the Concessionaire shall have approved in writing the Preliminary Design for the Initial Modernization Project in the form of Schedule 7 (which shall also have been approved in writing by the University).

Section 2.4. Covenants.

- (a) *Cooperation.* The Parties shall cooperate with each other in consummate the Transaction as provided in this Agreement.
- (b) *Reasonable Efforts.* 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 which would prohibit or materially restrict or hinder the Transaction, 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.
- (d) *Operation of the Utility System After the Time of Turnover.* The Concessionaire shall be fully responsible for performing the Utility Services under the terms of this Agreement, and for observing and performing all other obligations of the Concessionaire hereunder, from and after the Time of Turnover.
- (e) *Access to Information and Inspections.* The Concessionaire shall hold and shall 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 UMLLC and the Concessionaire in connection with the Transaction. The Concessionaire shall, at the request of UMLLC, 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 UMLLC; *provided, however*, that UMLLC 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 the Concessionaire's operations.

- (f) *Final Design of Initial Modernization Project; Approved Budgeted Amount.* As quickly and efficiently as reasonably possible after the date hereof, the Parties shall cooperate and work collaboratively with each other and the University to develop and approve (x) the Final Design of the Initial Modernization Project based on the Preliminary Design and (y) the proposed Approved Budgeted Amount for the Initial Modernization Project (which shall include the University Reimbursable Amount plus the Concessionaire Cost of Finance); *provided* the proposed Approved Budgeted Amount for the Initial Modernization Project shall not exceed [(\$111,880,557)] (such amount, plus the Concessionaire Cost of Finance, the “Maximum Budgeted IMP Amount”). The Concessionaire shall have the right to request Approval of the Final Design and the Approved Budgeted Amount for the Initial Modernization Project at any time, which UMLLC shall consider in good faith, by submitting a request to UMLLC, or an office or person designated by UMLLC Liaison, containing detailed plans for the Final Design and the proposed Approved Budgeted Amount based on such detailed plans, which shall include, in addition to such other commercially reasonable detail as UMLLC shall require (which may include, at UMLLC's discretion, such information and detail as contemplated by Section 4.3 below as if the Initial Modernization Project were a Capital Improvement or Material Change contemplated thereby): (A) total costs for construction and installation of the Initial Modernization Project, including all hard and soft costs, any financing costs, and any applicable sales or use tax, which shall be presented on an Open Book Basis; (B) an explanation of all relevant assumptions, variables, and data sources used to develop the proposed Final Design and the proposed Approved Budgeted Amount; and (C) the proposed schedules, process, and other technical and logistics details associated with the proposed Final Design and the proposed Approved Budgeted Amount. Upon receipt of the Concessionaire's request for approval of the Final Design and the Approved Budgeted Amount for the Initial Modernization Project, including all supporting information and detail therefor as described in this Section 2.4(f), UMLLC shall review such request and, in its 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 by UMLLC with respect to such Approval at such time, unless the Concessionaire's written request submitted to UMLLC explicitly requested that UMLLC respond only pursuant to Sections 2.4(f)(ii) or (iii);
 - (ii) provide a written response requiring that the Concessionaire (1) perform additional work with respect to such proposed Final Design to provide further information regarding the scope, design, or cost thereof and/or multiple alternative designs therefor to UMLLC, which additional work may include procuring any details contemplated by this Section 2.4(f) that

were previously unavailable, and (2) after performing such additional work, submit a revised request for Approval by UMLLC pursuant to this Section 2.4(f), which revised request UMLLC shall consider; or

- (iii) (1) provide the Concessionaire with comments on such proposed Final Design or such proposed Approved Budgeted Amount, as applicable, including comments on any details provided in the Concessionaire's proposal, and (2) require that the Concessionaire incorporate such comments and re-submit a revised request for Approval pursuant to this Section 2.4(f).

The foregoing submittal and approval process shall continue until such time as the proposed Final Design and the proposed Approved Budgeted Amount has been Approved in accordance with Section 2.4(f)(i) above. Following UMLLC's approval of the proposed Approved Budgeted Amount in accordance with this Section 2.4(f), such amount shall constitute the Approved Budgeted Amount for the Initial Modernization Project, for purposes of this Agreement, including the calculation of the Utility Fee hereunder.

- (g) *Policies of Insurance.* UMLLC and the Concessionaire shall be responsible for obtaining insurance for the Utility System in accordance with the terms hereof.
- (h) *Employees.* The Concessionaire shall interview (or use its reasonable efforts to cause the Operator to interview) each University Utility System Employee individually. 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 Baton Rouge, Louisiana. 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. With respect to University Utility System Employees who elect to remain a University employee and elect not to become an employee of the Concessionaire, the Concessionaire, UMLLC, and the University shall enter into the Employee Services Agreement pursuant to which the University shall continue to pay all salaries, wages, and benefits of such University Utility System Employees (including payment of employer contributions to the Louisiana State Employees' Retirement System pursuant to La. R.S. 11:441, the Louisiana Deferred Compensation Plan, social security, or other retirement systems, as applicable, for each such University Utility System Employee, in each case meeting the University's employer contribution rate as determined each year by the State) subject to reimbursement from the Concessionaire for all such salaries, wages and benefits. Nothing in this Agreement shall be construed or is otherwise intended to create joint employment by UMLLC or 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. UMLLC and the Concessionaire agree that the work to be performed by the Concessionaire and/or the Operator pursuant to or as a result of this Agreement is part of the trade, business, or occupation of UMLLC and is an integral part of and essential to the ability of UMLLC to generate its goods, products or services. Accordingly, and in accordance with La. R.S. § 23:1032 and § 23:1061, UMLLC shall be considered the statutory employer of the Concessionaire's and/or the Operator's, and their respective Representative's employees who perform part of the Utility Services or provide services in connection with or as a result of this Agreement, and the Concessionaire the Operator shall require their Representatives to agree that UMLLC shall be considered the statutory employer of such Representative's employees who perform work or provide services in connection with or as a result of this Agreement. It is the express intention of UMLLC and the Concessionaire and/or the Operator that UMLLC, as the statutory employer, shall, in accordance with La. R.S. 23:1061, be granted the exclusive remedy protections of La. R.S. 23:1032. In the event UMLLC is required as the statutory employer to pay any amounts, including any workers' compensation benefits, to any of the Concessionaire's and/or the Operator's, and their respective Representative's employees who perform part of the Utility Services in connection with or as a result of this Agreement, it shall be entitled to indemnity from the Concessionaire and/or the Operator for such payments.

- (i) *Excluded Utility System Projects.* UMLLC shall undertake the construction of the Excluded Utility System Projects, in accordance with applicable Law, until they have been completed in substantial accordance with the plans for such Excluded Utility System Projects, provided that UMLLC may, upon written notice to the Concessionaire, abandon or modify any or all Excluded Utility System Projects. To the extent that the construction or completion of any Excluded Utility System Project requires access to the Utility System, the Concessionaire hereby grants a non-exclusive license to UMLLC and its Representatives to so access the Utility System as necessary to complete such Excluded Utility System Projects (and UMLLC shall use reasonable efforts to avoid undue interference with the operation of the Utility System) and shall reasonably cooperate with UMLLC and its Representatives with respect to the completion of the Excluded Utility System Projects, which cooperation shall include (i) providing UMLLC with notice if the Concessionaire becomes aware of any deviation from UMLLC's approved plans and specifications for the applicable Excluded Utility System Project and (ii) directing UMLLC's Contractors to stop any work on the Excluded Utility System Project if the Concessionaire reasonably believes that continuing such work would constitute an Emergency. Upon completion of an Excluded Utility System Project, UMLLC shall (i) deliver the Concessionaire written notice thereof, and, at such time, that Excluded Utility System Project shall become part of the Utility System and the Concessionaire shall be granted a leasehold interest therein, (ii) either (A) assign to the Concessionaire (or one or more third parties at the Concessionaire's direction,) all contractors' warranties held by UMLLC with respect to such

Excluded Utility System Project or (B) to the extent UMLLC chooses not to so assign such warranties or such warranties are not 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), and (iii) the Capped O&M Amount shall be increased for the Fiscal Year in which such Excluded Utility System Project is placed into service by the additional annual operation and maintenance costs (determined reasonably in accordance with GAAP) that the Concessionaire is required to incur due to the placement into service of such Excluded Utility System Project, provided that the Concessionaire provides reasonable proof of such additional costs and that such additional costs were unavoidable. UMLLC shall name the Concessionaire as an additional insured on its insurance policies with respect to those Excluded Utility System Projects. For the avoidance of doubt, Excluded Utility System Projects shall not be considered New Approved Capital Improvements. If UMLLC elects to abandon an Excluded Utility System Project, the Capped O&M Amount shall be increased for the Fiscal Year in which such Capital Improvement is abandoned by the additional annual operation and maintenance costs (determined reasonably in accordance with GAAP) that the Concessionaire is required to incur due to the abandonment of such Excluded Utility System Project, provided the Concessionaire provides reasonable proof of such additional costs and that such additional costs were unavoidable.

Section 2.5. Turnover Deliverables. At the Time of Turnover, each Party shall execute and deliver all assets, agreements, 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 2.6. Memorandum of Sub-Lease. At the Time of Turnover, the Parties shall execute and deliver a Memorandum of Sub-Lease (the "Memorandum of Sub-Lease") in the form attached hereto as Schedule 13, which the Concessionaire shall cause to be recorded in the Recorder's Office of the East Baton Rouge Parish, Louisiana. 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 Sub-Lease, including the removal of property from service by the Utility System in accordance with Section 5.3, the Parties shall timely (and in no event longer than 10 Days after a request therefor) execute, deliver and record an amendment to the recorded Memorandum of Sub-Lease reflecting such changes. The Parties acknowledge that for purposes of recordation, a description of certain portions of the Utility System constituting Utility Facilities that are a real property interest, are depicted specifically but are recorded generally against the lot or parcel on which such Utility Facility is located. Each party shall have the right, from time to time, at its cost and expense to further refine by a metes and bounds legal description the specific location of the applicable Utility Facility, and subject to the other Parties' reasonable approval, may modify the Memorandum of Sub-Lease by recording an amendment thereto that shows the refined location description. In such instance, the modification to the Memorandum of Sub-Lease is subject to the other Party's reasonable approval, and both Parties shall sign a consent to the recording of the Memorandum of Sub-Lease upon its approval. The Parties agree not to record this Agreement itself.

ARTICLE 3 TERMS OF THE CONCESSION

Section 3.1. Quiet Enjoyment and Present Condition.

- (a) *Quiet Enjoyment.* UMLLC agrees that, subject to UMLLC'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. UMLLC 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 UMLLC, 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 UMLLC or its Representatives into 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. UMLLC 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 UMLLC 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, or willful misconduct of, or violation of applicable Law by, the Concessionaire, its Affiliates or their respective Representatives.
- (b) *Present Condition.* Subject to Section 2.4(g) and except as specifically set forth herein, the Concessionaire understands, agrees, and acknowledges that the Concessionaire (i) by the execution of this Agreement, agrees to accept the Utility System "AS IS" at the Time of Turnover and (ii) has inspected the Utility System and is aware of its condition and acknowledges that UMLLC 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), the absence of latent or apparent defects in 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 operations and maintenance costs (reasonably determined in accordance with GAAP) 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 Turnover. Upon the Turnover, the Concessionaire shall be deemed to have inspected and shall assume responsibility for the condition of the Utility System consistent with provisions of La R.S. 9:3221.

- (c) *Legal Title to Real Property and Improvements.* For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, all real estate and improvements now or hereafter forming part of the Utility System shall be the fee-owned property of 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 UMLLC 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. Upon UMLLC's request, the Concessionaire shall provide an estimate for the costs associated with providing Utilities from temporary sources for construction projects or special events identified by UMLLC. 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) *University 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 University Campus or any other real property owned by UMLLC, including any special events conducted on the University Campus. Except in the case of an Emergency or as otherwise provided for in Section 3.2(e) or Section 3.2(j), if the Concessionaire, in performing the Utility System Operations, determines it is reasonably necessary to access or disturb any portion of the University Campus or any other real property owned by the University or UMLLC, excluding Utility System Land, it shall, to the extent possible given the circumstances, provide UMLLC at least thirty (30) Days' prior written notice and the Concessionaire shall comply with any reasonable

requirements or restrictions on such disturbance imposed by UMLLC, including limiting the time in which the Concessionaire can so access and/or disturb the portion of the University Campus or any other real property owned by the University or UMLLC to specific hours. In accessing any portion of the University Campus or any other real property owned by the University or UMLLC pursuant to the license granted hereunder, the Concessionaire shall also abide by any restrictions and requirements generally imposed by UMLLC 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 or UMLLC's real or personal property, including the landscape of the University Campus, the University's or UMLLC's information technology network or any other real property owned by the University or UMLLC, the University's or UMLLC's outdoor lighting, traffic signals, irrigation equipment and communications equipment and such damage was neither (i) Approved by UMLLC in accordance with this Agreement nor (ii) included as part of the scope of work Approved by UMLLC related to such operations and maintenance, then the Concessionaire shall, in coordination with UMLLC personnel, promptly cause such property to be repaired to substantially the same or, solely at the Concessionaire's election, better condition that existed prior to such damage, and the cost incurred therewith shall not be recovered as a part of the Utility Fee or otherwise provided, however, that the Concessionaire shall be entitled to make a claim on any applicable Concessionaire Required Coverage.

- (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 UMLLC 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 UMLLC 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 UMLLC's obligations under this Agreement, (ii) arising out of the Utility System or any Utility System Operations (including with respect to any Utility System Employee) prior to the Time of Turnover, (iii) arising under any Environmental Law and related to (1) the ownership, operation or condition of the Utility System prior to the Time of Turnover 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 Turnover and including (A) the abatement, handling, disposal, or removal of any asbestos or other Hazardous Substances present at the Time of Turnover 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 Turnover the manifestation of which occurs following the Time of Turnover, which environmental obligations UMLLC 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, (iv) arising out of UMLLC's rights under this Agreement to test, inspect, audit, repair, maintain, or operate the Utility System without impairment of UMLLC's remedies for a Concessionaire Default and (v) with respect to the Excluded Utility System Projects that have not yet become a part of the Utility System in accordance herewith (collectively, the "Excluded Liabilities").

- (e) *Right of Entry and Access to the Public Way.* Subject to Section 3.19, UMLLC hereby grants to the Concessionaire and its Representatives a non-exclusive 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.* The Concessionaire shall be responsible for marking and mapping all portions of the Utility System in accordance with the Performance Standards.
- (g) *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 UMLLC Liaison agrees to such shut down (which agreement must be in writing or by e-mail from UMLLC Liaison), then it shall be treated as a Planned Outage. UMLLC Liaison shall consider such proposed shut down in good faith. If UMLLC Liaison does not Approve such shutdown, then it will be considered an Unplanned Outage if the Concessionaire elects to proceed with such shutdown.

- (h) *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 the relevant portion of the Performance Standards, as if such shutdown were an Unplanned Outage. The Concessionaire shall perform the corrective action to address such circumstance as soon as reasonably practicable. Within ten (10) Business Days after the shutdown and repair of the applicable portion of the Utility System, the Concessionaire shall provide UMLLC with pertinent information on such circumstance and such other relevant information within the Concessionaire's possession or control that is requested by UMLLC, and UMLLC 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 the Performance Standards.
- (i) *Other Public Streets.* To the extent that the performance of the Utility System Operations requires access to streets, alleys, driveways, or sidewalks owned or controlled by a Governmental Authority, UMLLC shall, at no out-of-pocket cost to UMLLC, use commercially reasonable efforts to cooperate, and cause the University to cooperate, with the Concessionaire to secure such access from the applicable Governmental Authority consistent with UMLLC's and the University's past practice.

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, Prudent Industry Practices and applicable Law (an "Operator") who may be (but is not required to be) the Concessionaire itself. The Operator on the first Day of the Term shall be [CenTrio Energy South LLC] unless the Concessionaire has designated another Person to be the Operator and such Person has been Approved in accordance with Section 3.3(b). The Concessionaire shall not engage or appoint a replacement Operator unless UMLLC has Approved such Operator and the terms (including fees charged by such replacement Operator) of any such engagement are commercially reasonable; *provided, however*, that a Change in Control of an Operator shall be deemed to be the appointment of a replacement Operator subject to UMLLC'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 the "Concessionaire"; *provided, further*, that if UMLLC 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 one hundred eighty (180) Days from the date of appointment of such interim Operator. This interim Operator may be selected without Approval by UMLLC 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 one hundred eighty (180) consecutive Days or appoint a successor interim Operator after such one hundred eighty (180) -Day 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 UMLLC 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 UMLLC or the Operator upon five (5) Business Days' notice to such Operator or UMLLC, 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.* UMLLC has the right, acting reasonably, to withhold Approval of any removal of the Operator or a proposed replacement Operator, including for any of the following reasons: (i) UMLLC reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law or this Agreement; or (ii) UMLLC reasonably determines that such proposed Operator is not capable of performing the Utility System Operations in accordance with this Agreement and Prudent Industry Practices, which determination may be based upon one or more of the following factors: (A) the ability of the proposed Operator to operate the Utility System in a manner that complies with the Performance Standards; (B) 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 (which guaranty shall not be required to run to the benefit of UMLLC); (C) the experience of the proposed Operator in operating Comparable Utility Systems; (D) 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 (E) the proposed terms of the engagement of the proposed Operator, including the fee being charged by the Operator, length of the term of the engagement and any restrictions on transfer by the Operator of its obligations and change in control of the proposed 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) If 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, UMLLC may provide written notice to the Operator and the Concessionaire setting forth such failure. If the Operator does not cure such failure within thirty (30) Days of said written notice (or, if such cure or correction cannot reasonably be accomplished during such thirty (30) -Day period, within such longer period is as reasonably required to accomplish such cure or correction, provided the Concessionaire, either directly or through the Operator, has commenced such cure or correction within thirty (30) Days of said written notice and diligently prosecutes the same to completion), then (i) UMLLC may, upon notice to the Concessionaire (A) cure such failure and (B) the Concessionaire shall reimburse UMLLC any and all costs related to such cure and/or correction; and (ii) UMLLC may direct that the Concessionaire remove the Operator pursuant to the written order of senior UMLLC officials designated by the President of the University (or his or her designee) in writing for such purpose or otherwise with respect to assessing the performance of the Operator (the “Senior Officials”).

(B) If such failure results in an Emergency, then UMLLC 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 UMLLC any and all direct costs related to such cure and/or correction.

- (ii) Notwithstanding the foregoing, if:

(A) within any Operator Evaluation Period, at least three (3) Repetitive Failures occur;

(B) a Major KPI Event for the same Key Performance Indicator occurs for five (5) consecutive Fiscal Years;

(C) five (5) Major KPI Events occur in any given Fiscal Year; or

(D) the amount of KPI Compensation (such amount to be calculated without regard to any reduction in KPI Compensation pursuant to Section 15.5(e) or Section 12.11(a)) incurred by the Concessionaire equals or exceeds the maximum amount of annual KPI Compensation for which the Concessionaire may be liable in accordance with Section 15.5 in any two (2) Fiscal Years out of any five (5) consecutive Fiscal Years,

then, in addition to its right to KPI Compensation, UMLLC may direct that the Concessionaire remove the Operator pursuant to the written order of the Senior Officials.

- (iii) UMLLC shall provide the Concessionaire and the Operator with no less than thirty (30) Days' prior written notice of the time, date, place, and subject matter of any meeting of the Senior Officials at which a decision 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 thirty (30) Days following the effective date of such decision, the Concessionaire shall (x) provide UMLLC with a transition plan to remove the then current Operator and replace such Operator with either (A) a new Operator that is Approved by UMLLC pursuant to Section 3.3(b), (B) an interim Operator in accordance with Section 3.3(a) or (C) to the extent the Concessionaire was not the removed Operator, the Concessionaire, and then (y) carry out such transition plan within 30 Days following the delivery thereof.
- (iv) For the avoidance of doubt, if there is a dispute as to whether there has been a failure to meet the Performance Standards or the Target for any Key Performance Indicator, such dispute shall be subject to resolution in accordance with Article 18.
- (d) *Sole Remedy*. Other than UMLLC's right to KPI Compensation pursuant to Article 15, notwithstanding anything to the contrary contained herein, UMLLC's right to remove the Operator pursuant to Section 3.3(c) shall constitute the Concessionaire's sole and exclusive liability and UMLLC's sole and exclusive remedy relating to a failure to meet a requirement of the Performance Standards or a KPI Event.

Section 3.4. Authorizations; Qualifications.

- (a) *Compliance*. The Concessionaire shall obtain, comply with, promptly renew and maintain in good standing all Authorizations, and UMLLC 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 UMLLC was not required to obtain in connection with its operation of the Utility System prior to the Time of Turnover. If UMLLC 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 UMLLC, the University, or a Person claiming through either of them 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 UMLLC 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 UMLLC or deposited with UMLLC a Letter of Credit, indemnity bond, surety bond, cash, or Eligible Investment reasonably satisfactory to UMLLC in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as UMLLC 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 UMLLC 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 UMLLC to procure such release or discharge or any loss, cost, damage, reasonable attorneys' fees or expense incurred by UMLLC by virtue of the contest of such Encumbrance.
- (b) *By UMLLC.* UMLLC shall not do any act or thing that will create any Encumbrance (other than a Permitted UMLLC Encumbrance) against the Utility System (and UMLLC shall cause the University not to do any act or thing that will create any Encumbrance (other than a Permitted UMLLC Encumbrance)) and shall promptly remove any Encumbrance (other than a Permitted UMLLC Encumbrance) against the Utility System that came into existence as a result of an act of or omission by UMLLC or the University or a Person claiming through either of them. UMLLC

shall not be deemed to be in default hereunder if UMLLC 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 UMLLC has given advance notification to the Concessionaire that it is the intent of UMLLC 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 UMLLC Encumbrance or a Permitted Concessionaire Encumbrance); *provided* that nothing herein shall obligate UMLLC to waive, modify, or otherwise limit or affect the enforcement by UMLLC of any applicable rule, procedure or policy of UMLLC whether or not with respect to the Utility System.

Section 3.6. Single Purpose Covenants. 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, leasing, operating, improving, using, possessing, controlling, and otherwise dealing with the Utility System, (C) collecting from UMLLC the Utility Fee in consideration of providing the services hereunder to UMLLC and any fees from third parties to which it provides services to the extent permitted by Section 3.15(c), (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 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.

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

- (a) *Reservation of Rights.* UMLLC reserves (for itself and the University and any of their respective Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires, and others claiming by, through, or under UMLLC or 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), Section 3.7(a)(vi), and Section 3.7(a)(vii) such right is to be exercised at all reasonable times with UMLLC 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 five (5) Business Days, it shall be deemed to have consented to such exercise:

- (i) to inspect the Utility System, including performance of an assessment of the condition of the Utility System or any component thereof, 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 UMLLC shall promptly give the Concessionaire written notice of such measures taken by UMLLC;
- (iv) at its own cost and expense, to (A) install, design, manage, maintain, repair, and rehabilitate any existing or future safety measures for the University Campus (whether provided by UMLLC or third parties at UMLLC'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 UMLLC or third parties at UMLLC'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 (x) necessary for the Utility System Operations and (y) not otherwise Excluded Utility System Projects);

- (vi) at its own cost and expense, to (A) design and install any Excluded Utility System Project, and (B) grant easements and rights on, over, under, or within the Utility System for the benefit of contractors with respect to such Excluded Utility System Project; and
- (vii) 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 UMLLC may be obligated to do or have a right to do under this Agreement;

provided, however, that UMLLC shall (A) not be obligated to make any payments to the Concessionaire for such access (other than Concession Compensation to the extent required by the next proviso) and UMLLC 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 UMLLC; *provided, further*, that any entry into the Utility System pursuant to clauses (v), (vi), or (vii) of this Section 3.7(a) shall be a Compensation Event.

- (b) *Access Rights.* UMLLC and any of its Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires, and others claiming by, through, or under UMLLC, 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 UMLLC 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 the Concessionaire's reasonable safety protocols and procedures to the extent provided in writing in advance to UMLLC 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 UMLLC recognize the value of exploring the use of renewable energy, energy storage, and other energy resources, and, consistent therewith, UMLLC 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. UMLLC shall have the right to install or replace such energy apparatus, equipment, or improvement. Prior to any such installation, UMLLC shall provide the Concessionaire written notice that includes the plans and schedule for completing such installation or replacement or, alternatively, UMLLC may provide the Concessionaire a written notice requiring it to complete such installation or replacement as part of a UMLLC Directive, which notice shall include the plans, specifications, schedule (including the liquidated damages for failure to meet such schedule), and cost therefor. If the Concessionaire is directed to install or replace such energy apparatus, equipment, or improvement, (i) it shall do so in accordance with the terms and conditions of UMLLC's notice and (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. 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 UMLLC, 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 that the Concessionaire incurs costs for such interconnections (including any costs of installation, operation, replacement and repair), such costs shall be Uncapped O&M Costs.

- (d) *Effect of Reservation.* Any reservation of a right by UMLLC and any of its Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires, and others claiming by, through, or under UMLLC 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 UMLLC to do so, (ii) render UMLLC liable to the Concessionaire or any other Person for the failure to do so, or (iii) relieve the Concessionaire from any obligation to indemnify UMLLC as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of UMLLC to do any work required to be performed by the Concessionaire hereunder and performance of any such work by UMLLC and any of its Representatives, grantees, tenants, contractors, mortgagees, licensees, concessionaires, and others claiming by, through or under UMLLC shall not constitute a waiver of the Concessionaire's default in failing to perform the same. For the avoidance of doubt and notwithstanding any other provision of this Agreement, access to the Utility System

by UMLLC and its staff, students and Representatives shall be subject to and in accordance with the Concessionaire's reasonable access and safety protocols to the extent provided in writing in advance to UMLLC.

- (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, UMLLC 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 UMLLC. In connection therewith, upon the request of UMLLC, 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, unless disclosure is required by applicable Law, UMLLC shall maintain any information received by UMLLC in connection therewith confidential in accordance with Section 8.2(b) if the Concessionaire has identified such information as a trade secret. The Concessionaire agrees that any intellectual property, including copyrights, patents, trade secrets, and trademarks, created or generated by or related to any of UMLLC's actions under this Section 3.7(e) shall not be considered owned or created by the Concessionaire, notwithstanding that UMLLC or its energy industry research partners may access or use the Utility System with respect thereto, and the Concessionaire shall have no rights with respect thereto unless UMLLC enters into a separate agreement with the Concessionaire granting such rights. To the extent that the Concessionaire incurs costs for such connections, such costs shall be Uncapped O&M Costs. The Concessionaire also acknowledges that as part of UMLLC's research, UMLLC 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 Turnover 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, the actual costs of any resulting Property Taxes payable during the Term shall be an Uncapped O&M Cost; otherwise such costs shall be borne and paid by the Concessionaire. 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. UMLLC shall, at no out-of-pocket cost to UMLLC, reasonably cooperate with the Concessionaire in any reasonable attempt by the Concessionaire to reduce or eliminate the Concessionaire's Tax liability. Notwithstanding anything contained herein to the contrary, it shall never be deemed an Adverse Action if the Utility System or any portion thereof becomes not exempt from any Property Taxes.

Section 3.9. Utilities.

- (a) *Charges.* Unless otherwise directed by UMLLC in writing, the Concessionaire shall ensure that contracts for utilities (other than those utilities that constitute Supplies, which is addressed in Section 7.3) 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. UMLLC 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 UMLLC 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 7.3, 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 UMLLC in writing prior to communicating with any such utilities or Persons and shall take UMLLC'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 UMLLC 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 UMLLC 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 UMLLC 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 UMLLC 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) *Communications Systems.* To the extent that the Concessionaire utilizes or connects with UMLLC's communications systems, the Concessionaire shall be responsible for the operation and maintenance of its telecommunications systems up until the point of connection with UMLLC'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 UMLLC (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 UMLLC (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 UMLLC). The Concessionaire shall provide UMLLC with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.
- (b) *Notice by UMLLC.* UMLLC shall promptly give notice to the Concessionaire (i) if UMLLC becomes aware that a UMLLC Default has occurred under this Agreement (provided, however, that the failure to give such notice shall not constitute an independent UMLLC Default) and (ii) of all material claims, proceedings, disputes (including labor disputes), or litigation in respect of UMLLC 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 UMLLC is aware (other than as a result of a notice to UMLLC from the Concessionaire). UMLLC 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. Assignment of Operating Agreements and Plans; Project Intellectual Property.

- (a) *Operating Agreements and Plans.* At the request of UMLLC, the Concessionaire shall collaterally assign, to the extent reasonably practicable and subject to the terms and conditions herein, to UMLLC, in form and substance satisfactory to UMLLC, all of the right, title and interest of the Concessionaire in, to, and under

all or any of the Operating Agreements and all present and future specifications, plans, drawings, information, and any other documentation (except Project Intellectual Property) in relation to the Utility System Operations regardless as to whether any of the foregoing involve proprietary information (collectively, the “Operating Agreements and Plans”) as collateral security to UMLLC for the observance and performance by the Concessionaire of its covenants and obligations under this Agreement. The Concessionaire covenants that it shall cause all of the right, title, and interest of the Concessionaire in, to, and under all Operating Agreements and Plans entered into or created after the Time of Turnover to be collaterally assignable and transferable to UMLLC as provided in this Section 3.11(a). UMLLC acknowledges and agrees that the Operating Agreements and Plans may also be assigned as security to a Leasehold Mortgagee and that each of UMLLC and such Leasehold Mortgagee shall be entitled to use the Operating Agreements and Plans in enforcing their respective security interests as hereinafter provided. Without limiting the generality of the foregoing, UMLLC shall be entitled to use the Operating Agreements and Plans in the event of, and as necessary to, remedy a Concessionaire Default under this Agreement for so long as such Concessionaire Default is continuing and has not been cured. Notwithstanding the foregoing, in the event that any such Leasehold Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or manager, foreclosure or power of sale in accordance with Article 19 or otherwise, or has entered (or is in process to enter) into a New Agreement under Section 19.5 and is using the Operating Agreements and Plans in respect of the Utility System Operations, UMLLC shall not be entitled to use the Operating Agreements and Plans in enforcing its security, it being acknowledged that any assignment of the Operating Agreements and Plans to a Leasehold Mortgagee shall have priority at all times (other than if UMLLC is enforcing its rights to cure under Section 3.3(c)(i)(B) or, if the Leasehold Mortgagee’s extended cure period under Section 19.3, if any, has expired and the Leasehold Mortgagee has not commenced any action to effect a cure in accordance therewith, Section 16.1(b)(iii)) over any assignment of the Operating Agreements and Plans to UMLLC. The Concessionaire shall promptly deliver to UMLLC, at the sole cost and expense of the Concessionaire, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and Plans. UMLLC agrees that (i) it shall bear all risks associated with the use of the Operating Agreements and Plans, (ii) it may not rely on the Operating Agreements and Plans, and (iii) under no circumstances will the Concessionaire be liable in any way with respect to UMLLC’s use of, or for any loss or damage of any kind incurred as a result of the use of, the Operating Agreements and Plans.

- (b) *Project Intellectual Property.* Each of UMLLC and the University shall have and is hereby granted a nonexclusive, transferable, irrevocable, perpetual, fully paid up right and license to use, exploit, reproduce, modify, adapt, and disclose, and sublicense others to use, reproduce, modify, adapt, and disclose, the intellectual property (including business systems and patents) of the Concessionaire, the IMP Contractor, or the Operator solely used in connection with the Utility System (the “Project Intellectual Property”), subject to the following:

- (i) Each of UMLLC and the University shall have the right to exercise such license only in connection with the Utility System and Utility System Operations;
- (ii) Each of UMLLC and the University shall have the right to exercise such license only at the following times: (A) from and after the expiration or earlier termination of the Term for any reason whatsoever; (B) during any time that UMLLC is exercising its rights pursuant to Section 3.7(a)(ii) or Section 3.7(a)(iii); and (C) during any time that a receiver is appointed for the Concessionaire, or during any time that there is pending a voluntary or involuntary proceeding in bankruptcy in which the Concessionaire is the debtor;
- (iii) Neither UMLLC nor the University shall at any time use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Project Intellectual Property for any other purpose;
- (iv) the right to transfer the license is limited to any Person that succeeds to the power and authority of UMLLC or the University generally or with respect to the Utility System, and all such transfers shall be subject to Section 3.11(b)(v);
- (v) the right to sublicense is limited to concessionaires, contractors, subcontractors, employees, attorneys, consultants, and agents that are retained by or on behalf of UMLLC and the University in connection with the Utility System, and all such sublicenses shall be subject to Section 3.11(b)(v); and
- (vi) except to the extent required by Law, UMLLC will ensure that it and the University (A) shall not disclose any Project Intellectual Property to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of UMLLC relating thereto; (B) shall enter into a commercially reasonable confidentiality agreement if requested by the Concessionaire with respect to the licensed Project Intellectual Property; and (C) include, or where applicable require the contract with the transferee or sublicensee to include, a 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 Project Intellectual Property of the Concessionaire and other materials provided under the license or sublicense, as the case may be, against disclosure to third parties not in receipt of a license or sublicense, as applicable, and to use the license or sublicense only for the permitted purposes;

provided that: (A) for the avoidance of doubt, the Concessionaire shall continue to have a full and complete right to use any and all duplicates or other originals of its

Project Intellectual Property in any manner it chooses, and (B) UMLLC agrees that if it uses any Project Intellectual Property (x) it shall bear all risks associated with the use of the Project Intellectual Property, (y) it may not rely on the Project Intellectual Property, and (z) under no circumstances will the Concessionaire be liable in any way with respect to UMLLC's use of, or for any loss or damage of any kind incurred as a result of the use of, the Project Intellectual Property.

Section 3.12. Use of Information and Records.

- (a) Unless prohibited by applicable Law and to the extent reasonably necessary, UMLLC 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 UMLLC in order to facilitate UMLLC's efforts with respect to energy efficiency, sustainability, environmental impact and research. UMLLC shall use commercially reasonable efforts to provide at least two (2) Business Days' written notice prior to accessing such records. At least thirty (30) Days prior to the Turnover Date, the Concessionaire shall deliver to UMLLC for its Approval a proposed policy for the maintenance and retention of all records related to the operation and maintenance of the Utility System (once Approved, the "Record Retention Policy"). If UMLLC does not Approve the Record Retention Policy, it shall provide the Concessionaire a reasonably detailed explanation for its disapproval, and the Concessionaire shall, promptly thereafter, submit a revised Record Retention Policy intended to address UMLLC's comments, and this process shall continue until UMLLC Approves a Record Retention Policy. Following the Approval of the Record Retention Policy, the Concessionaire shall maintain all records related to the operation and maintenance of the Utility System in accordance with such Record Retention Policy. UMLLC 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 UMLLC 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. UMLLC 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 UMLLC or its Representatives, including any information obtained through its performance of the Utility System Operations. The Concessionaire covenants and agrees that it will implement safeguards to protect against the disclosure or misuse of any such UMLLC information that is in

its care or custody and will promptly inform UMLLC if there is any breach or suspected breach of security related to such information. If any information obtained from UMLLC or its Representatives is provided by the Concessionaire, or UMLLC 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; Warranty Period Utility System Projects. 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. In the event any maintenance, repair, or replacement is required in respect of any Warranty Period Utility System Project, other than in connection with an Emergency (in which case, only to the extent of such Emergency), the Concessionaire shall consult with UMLLC prior to undertaking any such maintenance or repair. If such maintenance, repair, or replacement could be covered by the warranty provided by the contractor that completed such Warranty Period Utility System Project, as determined by UMLLC acting in good faith, then UMLLC shall make a warranty claim to the contractor providing such warranty and shall use commercially reasonable efforts to pursue such claim and cause the contractor providing such warranty to perform such maintenance, repair or replacement pursuant to such warranty, provided that if UMLLC is unsuccessful in causing such contractor to do so, then the Concessionaire shall perform such maintenance, repair, or replacement. The foregoing obligation shall expire for each Warranty Period Utility System Project contemporaneously with the expiration of the applicable warranty period from such contractor, and UMLLC shall provide notice to the Concessionaire of such expiration. Any Excluded Utility System Projects that remain under warranty following their completion by UMLLC and delivery to the Concessionaire shall be treated as Warranty Period Utility System Projects until the expiration of the applicable warranty period for such Excluded Utility System Project.

Section 3.14. Payments by UMLLC. The Concessionaire acknowledges and agrees that if UMLLC is required under applicable Law of general application to withhold a portion of any payment that UMLLC is obligated to make to the Concessionaire under this Agreement and to pay such amount to a Governmental Authority, UMLLC will be deemed to have satisfied such payment obligation to the Concessionaire to the extent of such withholding by UMLLC and payment to the appropriate Governmental Authority. If any such withheld amounts are permitted to be paid to the Concessionaire, UMLLC shall pay such amounts to the Concessionaire whenever permitted by Law. Any items and payment amounts that, to the Actual Knowledge of UMLLC ten (10) Business Days prior to the Turnover Date, it is legally required to withhold from the Concessionaire as of the Turnover Date will be listed in Schedule 14 and agreed to by the Concessionaire, acting reasonably, prior to Turnover as a condition of Turnover, provided that regardless of whether any payment is listed on Schedule 14, UMLLC 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, UMLLC shall give reasonable prior notice to the Concessionaire of the proposed withholding, and the Concessionaire shall promptly notify UMLLC of any challenge by the Concessionaire to such proposed withholding. For the avoidance

of doubt, any payment obligation of a UMLLC's department, office or center required by this Agreement is a payment obligation of UMLLC for purposes of this Agreement, and UMLLC 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 University 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 UMLLC's Approval, which may be withheld in its discretion.
- (b) UMLLC 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 UMLLC for advertising purposes, and (B) UMLLC 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 not, without UMLLC's Approval, provide utility services to customers other than the University or UMLLC or make market-based sales of electricity. To the extent UMLLC Approves any such activities, the Concessionaire shall be liable to UMLLC for, and reimburse UMLLC for, any Losses incurred by UMLLC as a result thereof, including any increase or additional Property Taxes imposed upon UMLLC or the Utility System, the cost of which may not be included in any component of the Utility Fee, provided that UMLLC's Approval shall not be required to explore and investigate such additional sources of revenue so long as the Concessionaire does not implement such additional sources of revenue and the Concessionaire is liable for any Losses to UMLLC as a result of such exploration and investigation. To the extent possible, the Concessionaire shall pay any increased or additional Property Taxes resulting from such additional sources of revenue directly to the applicable Governmental Authority.
- (d) Notwithstanding anything to the contrary contained herein, due to the importance of having uniform nutritional choices on the University Campus, UMLLC 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 UMLLC shall be entitled to the revenue generated by such vending machines.
- (e) UMLLC and the Concessionaire agree that they shall execute on Turnover a trademark license agreement in the form attached hereto as Schedule 20.

Section 3.16. Reversion of Utility System. On the Reversion Date, the Concessionaire shall surrender and deliver to UMLLC 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 UMLLC will negotiate in good faith appropriate license rights and terms for UMLLC's continued use of the software following reversion.

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 UMLLC shall have access, as required by such services or personnel, to the Utility System; (ii) UMLLC 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 UMLLC, 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 UMLLC may incur any liability whatsoever thereunder, the Concessionaire shall submit such Third Party Agreement for Approval by UMLLC (which Approval may be withheld, conditioned, or delayed in the discretion of UMLLC) 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 UMLLC provided that the Concessionaire indemnifies UMLLC for any Losses relating thereto).

Section 3.19. Administration of the Public Way. The Concessionaire acknowledges and accepts that UMLLC 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. Subject to the approval of the University, UMLLC 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 date hereof, 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 University Campus, UMLLC shall have the right to construct any building, structure or other improvement on that part of the University Campus, provided such construction does not damage or alter such buried Utility Facilities. UMLLC'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. UMLLC 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 University Campus, except with respect to the following circumstances or activities: (a) as of the Turnover Date, a third party is providing the relevant Utility or Utility Services to a portion of the University Campus, in which case UMLLC 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 University Campus; (b) as of the Turnover Date, any district utility systems within the University Campus which are generating or distributing Utilities beyond the lines of demarcation identified in the Performance Standards; (c) UMLLC 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 UMLLC; (d) the performance of any Capital Improvements described in Section 4.1(b); or (e) the performance of any work on the Building Mechanical Systems.

Section 3.22. Adjustments to the Location or Configuration of the Utility System. UMLLC 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 UMLLC deems it necessary or useful in the operation and use of the University Campus, including in connection with the reconstruction of a Utility Facility following a fire or other casualty. Except as provided in Section 13.4 with respect to any modifications in connection with a casualty, 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 Amount reasonably approved by the Concessionaire and UMLLC, 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 UMLLC's exercise of its right under this Section 3.22 shall be considered an Uncapped O&M Cost in accordance with the definition thereof. If UMLLC 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, UMLLC shall grant occupancy rights to the Concessionaire sufficient for the Concessionaire to meet its obligations hereunder. If UMLLC 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 UMLLC in the condition required under Section 16.3, at no additional cost to UMLLC, 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 UMLLC'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 Sub-Lease to reflect any changes resulting from UMLLC's exercise of its right under this Section 3.22, and UMLLC shall reasonably cooperate in such amendment and shall pay the out-of-pocket costs incurred by the Concessionaire in connection therewith. In connection with alteration as set forth in this Section 3.22, the Concessionaire and UMLLC shall adjust the Key Performance Indicators in light of such alteration.

Section 3.23. Sales to Individual Customers on the University Campus. The Concessionaire shall not be permitted to sell any fuels or Supplies to individual customers on the University Campus. To the extent that the Concessionaire supplies fuels or Supplies to UMLLC for distribution to individual customers, UMLLC shall control the distribution of such fuels or Supplies. The Concessionaire shall have no interests or rights to charge or collect any payments from UMLLC or such individual customers for the provision of such fuels or Supplies.

Section 3.24. University Master Plan. The Concessionaire shall reasonably cooperate with the University and UMLLC in connection with the University's master plan (including in connection with the development of the Master Plan to the extent relevant to the Utility System) and shall attend any University and/or UMLLC meetings regarding such plan if requested by the University or UMLLC.

Section 3.25. Utility System Tours. The Concessionaire shall provide tours of the Utility System or any portion thereof to UMLLC and its Representatives upon reasonable request by UMLLC, 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 UMLLC.

Section 3.26. Uniforms. To aid the University's provision of security and safety measures to the University Campus, the Concessionaire and Operator personnel working on the University Campus shall wear a uniform (and other insignia) that is standard across the Utility System and clearly identifies such personnel as the Concessionaire and Operator personnel and not employees of the University.

Section 3.27. Sustainability. The Concessionaire acknowledges that UMLLC and the University have a long-term commitment to operating the University Campus in a sustainable manner and that the Utility System Operations are an integral part of that commitment. As such, consistent with Prudent Industry Practices and subject to obtaining any required UMLLC Approvals for Capital Improvements and Material Changes, the Concessionaire agrees that, in connection with the Utility System Operations, it will reasonably cooperate with UMLLC to operate the Utility System in a manner consistent with the University's larger goal to promote a sustainable campus and to acknowledge stewardship of the natural environment and resources by UMLLC and its stakeholders. The Concessionaire will use commercially reasonable efforts to implement any changes to the Utility System Operations requested by UMLLC in the form of a UMLLC Directive to increase the sustainability of the Utility System Operations that do not

materially and adversely affect the Concessionaire's ability to meet its obligations hereunder, including the obligation to meet the Performance Standards. In addition, the Concessionaire will use commercially reasonable efforts throughout the Term to propose Capital Improvements and Material Changes pursuant to Article 4 that are reasonably intended to increase the sustainability of the Utility System Operations and the University Campus, including reduction of emissions, Utility use, and other impacts on the environment. Further, the Concessionaire shall attend any UMLLC meetings regarding sustainability planning on the University Campus if requested by UMLLC. Further, the Parties acknowledge that what constitutes "sustainability" may evolve over the Term and that the Parties intend that, for purposes of this Section 3.27, "sustainable" and "sustainability" shall have the then-current generally accepted utility industry meaning of the term, which, as of the date of this Agreement, includes undertaking measures to (i) reduce energy and water consumption, (ii) become a net-negative energy use, (iii) reduce the impact of operations on the environment, (iv) recycle and reuse resources, (v) purchase goods and services derived in a sustainable manner, and (vi) employ goods and services that protect the environment. For the avoidance of doubt, the Concessionaire shall not be required to incur costs that would otherwise be Uncapped O&M Costs to comply with this Section 3.27 unless such costs are included in an Approved Five-Year Plan.

Section 3.28. Student Educational Experiences. During the Term and at the request of UMLLC, the Concessionaire shall discuss, or shall cause the Operator to discuss, with UMLLC in good faith the development and maintenance of the following programs of the Concessionaire or the Operator, as the case may be: (i) a program for the employment of students of the University in connection with the Utility System Operations; (ii) an internship program for University students to gain hands-on, practical experience with structured educational and mentorship opportunities either with respect to the Utility System or other utility systems owned, leased, operated, or maintained by the Concessionaire, the Operator, or any of their Affiliates; (iii) a program for employment of apprentices serving industrial and skilled trades of boiler makers in connection with the Utility System Operations; and (iv) structured educational and mentorship opportunities either with respect to the Utility System or other utility systems owned, lease, operated, or maintained by the Concessionaire, the Operator or any of their Affiliates; in each case which shall be on such reasonable terms and conditions as determined by the Concessionaire or the Operator, as applicable.

Section 3.29. Office Space. To the extent requested by the Concessionaire in writing, the Parties shall use reasonable efforts to enter into a commercially reasonable license agreement with respect to the temporary license of office space (not to exceed [●] square feet) by UMLLC to the Concessionaire within a location on the University Campus at no additional cost. UMLLC shall not be required to provide such space if it determines, in its sole discretion, that it does not wish to provide such space based on its current use, and it may terminate such license or may cause such licensed space to be moved to a new location at any time upon Notice to the Concessionaire and may require the Concessionaire to abide by reasonable rules and regulations, including limiting the hours of access thereto.

Section 3.30. Utility System Space in Larger Buildings. The Concessionaire acknowledges that each of [●] (the "Shared Spaces") are not separate buildings but are spaces within larger buildings that the University owns. As such, UMLLC shall retain the responsibility, either by UMLLC employees or Contractors at UMLLC's direction, to maintain, repair, replace,

and keep in good order and condition the structural and building-system components of the buildings in which the Shared Spaces are located, including the roof, load-bearing walls, and foundations of each of the foregoing, except to the extent any maintenance, repair or replacement is caused by the negligence or willful misconduct of, or violation of applicable Law by, the Concessionaire or its Representatives, in which case the Concessionaire shall be responsible therefor and shall perform such maintenance, repair or replacement as promptly as reasonably practicable. Subject to UMLLC's rights under Section 3.22, if a building in which a Shared Space is located is damaged by a fire or other casualty of any kind or nature, then UMLLC shall restore such building to the condition in which it existed prior to such fire or other casualty but shall not, for the avoidance of doubt, be responsible for repairing or restoring the furniture, fixtures or equipment within the Shared Space that are part of the Utility System. The Concessionaire shall abide by any reasonable rules and regulations promulgated by UMLLC and provided to the Concessionaire in writing with respect to the buildings in which the Shared Spaces are located, and the Concessionaire shall have non-exclusive access to any common areas of the larger buildings (as identified by UMLLC) in which those Shared Spaces are a part. The Concessionaire shall not be obligated to pay any additional rent with respect to the Shared Spaces.

ARTICLE 4

CAPITAL IMPROVEMENTS AND MATERIAL CHANGES

Section 4.1. Concessionaire Responsibility for Capital Improvements.

- (a) Other than the Excluded Utility System Projects, the Concessionaire shall be responsible for all Capital Improvements with respect to the Utility System required to be completed by it during the Term in accordance with the terms of this Agreement, including as required by the Performance Standards. For the avoidance of doubt, improvements or upgrades to the Building Mechanical Systems shall not be considered Capital Improvements with respect to the Utility System pursuant to this Agreement.
- (b) Notwithstanding anything in this Agreement to the contrary, UMLLC and the University reserve the right to procure Capital Improvements to the Utility System from any Person other than the Concessionaire pursuant to a competitive bid or other public procurement if and to the extent that such Capital Improvements are approved by the State through the University's capital outlay plan, and such State approval of such Capital Improvements and the funds budgeted therefor are contingent on a competitive bid or other public procurement process therefor; *provided* that, in such a circumstance, to the extent allowed by Law and subject to any conditions imposed by the State on the use of the relevant capital outlay funds, (i) the Concessionaire shall be allowed to participate in the procurement and delivery process (including drafting performance specifications and oversight of project delivery) for such Capital Improvements to ensure that Key Performance Indicators and Performance Standards are not impacted by the project's design and delivery, and (ii) to the extent reasonably practicable, as part of such competitive bid or other public procurement process, the Parties shall endeavor to procure Utility-related equipment of such brands, models or types that will ensure system compatibility and maximize future repair and maintenance efficiencies (provided

that there shall be no exclusivity with respect to the procurement of Utility-related equipment). In the event that (i) UMLLC or the University procures a Capital Improvement from any Person other than the Concessionaire pursuant to a competitive bid or other public procurement process, as provided in this Section 4.1(b), (ii) such Capital Improvement is funded by moneys sourced from a capital outlay from the State in an amount equal to or greater than fifty percent (50%) of the total capital cost of such Capital Improvement, (iii) the total capital cost of such Capital Improvement exceeds one million dollars (\$1,000,000) in the aggregate, and (iv) UMLLC designates the Concessionaire (or its Affiliate) the representative of UMLLC or the University, as the case may be, with respect to such Capital Improvement on terms acceptable to the Concessionaire (acting reasonably), then UMLLC shall pay the Concessionaire a development fee equal to two and one-half percent (2.5%) of the total capital costs of such Capital Improvement that were funded by such capital outlay from the State upon the substantial completion thereof.

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 UMLLC of any and all Authorizations required to be issued by such parties with respect thereto, and UMLLC agrees (i) not to unreasonably withhold, condition or delay the issuance of any Authorization to be issued by UMLLC 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, provided that the Concessionaire shall reimburse UMLLC in a timely manner for any reasonable out-of-pocket costs incurred by UMLLC in providing such assistance. Without limiting the generality of the foregoing, UMLLC 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 UMLLC) 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 University Campus where the Approved Capital Improvement will be located, subject to the reasonable conditions and restrictions of UMLLC, provided that the Concessionaire shall reimburse UMLLC in a timely manner for any reasonable out-of-pocket costs incurred by UMLLC in providing such assistance.

Section 4.3. Approval of Capital Improvements and Material Changes.

- (a) The Concessionaire shall not have the right to make any (i) Capital Improvements or (ii) Material Changes, except those Capital Improvements or Material Changes which either (A) constitute the Initial Modernization Project or (B) are otherwise Approved pursuant to Section 4.3(c). For the avoidance of doubt, the Approval of Final Design and the performance and delivery of the Initial Modernization Project shall be governed by the specific provisions of this Agreement relating to the Initial Modernization Project (including Section 2.4(f), Article 21, and Article 22). In addition, subject to the proviso of this Section 4.3(a), TEP shall be: (x) the Contractor responsible for the design, construction, and completion of any Capital Improvements or Material Changes which are Approved pursuant to Section 4.3(c); and, in such capacity, (y) under the direction, supervision and control (by

ownership, contract or otherwise) of the Concessionaire, and no delegation by the Concessionaire to TEP with respect to such Capital Improvement or Material Change shall relieve the Concessionaire of any obligations, duties or liability hereunder; [provided that the Concessionaire shall have the right to appoint a Contractor other than TEP for the purposes of designing, constructing, and completing any Capital Improvements or Material Changes which are Approved pursuant to Section 4.3(c), as jointly determined by the University, UMLLC and CenTrio, taking into consideration, among other relevant factors, TEP's prior performance and TEP's proposed costs or other terms.]²¹

- (b) The Concessionaire shall have the right to request Approval of (I) a proposed Capital Improvement or Material Change or (II) a change in the scope or cost of a previously Approved Capital Improvement or Material Change at any time (and shall identify whether an item requested for Approval or any portion thereof is a Capital Improvement or Material Change or a combination thereof), but UMLLC 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 7.2 and (B) proposed to be commenced in the first (1st) 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 UMLLC Directive; or (iv) required due to Force Majeure, all of which UMLLC shall consider in good faith.
- (c) The Concessionaire shall request Approval of one or more proposed Capital Improvements or Material Changes or Approval of a proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change by (1) submitting a request to UMLLC, or an office or person designated by UMLLC Liaison, containing a detailed description of each proposed Capital Improvement or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change or (2) submitting a proposed Five-Year Plan in accordance with Section 7.2 containing a detailed description of each proposed Capital Improvement or Material Change proposed to be commenced in the first (1st) full Fiscal Year in such proposed Five-Year Plan or each proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change, provided that, in each case, such detailed description shall include: (A) total costs for construction and installation thereof, including all hard and soft costs, any financing costs and any applicable sales or use tax, which shall be presented on an Open Book Basis; (B) forecasted annual operations and maintenance costs therefor; (C) any proposed modification to the Recovery Period (if applicable) for such Capital Improvement; (D) an explanation of all relevant assumptions, variables, and data sources, used to develop the proposal; (E) the proposed schedules, process, and other technical and logistics details associated with the proposed Capital Improvement and/or Material Change proposal, including any liquidated damages if the Concessionaire fails to meet the proposed schedule; (F) how such proposed Capital Improvement and/or Material

²¹ **Note to CenTrio:** LSU will conform the bracketed language to the CEA once finalized.

Change will improve the sustainability of the Utility System Operations or the University Campus; (G) any actual or anticipated tax credits or other benefits that will accrue to the Concessionaire as a result thereof of which the Concessionaire has knowledge, and a description thereof as well as a description as to how such credits or benefits will be incorporated into the Capital Improvement Cost (if Approved); (H) any fee or charge payable to the Contractor in connection with such Capital Improvement or Material Change; (I) any proposed change to the limits on the professional liability insurance coverage for the professionals providing services with respect to such Capital Improvement or Material Change and the associated change in the premium associated therewith; (J) any potential increase or reduction in Supply Costs or consumption of Supplies that would result from such Capital Improvement or Material Change; and (K) the terms of any payment and/or performance security required by Law or otherwise required hereunder in order to undertake such Capital Improvement or Material Change; *provided* that, (x) to the extent any of the details set out in clauses (A) through (K) above are unavailable or inapplicable, the Concessionaire shall describe the reason for such unavailability or inapplicability and (y) to the extent that the Concessionaire has explicitly requested that UMLLC respond only pursuant to Sections 4.3(c)(ii), (iii), or (iv), the Concessionaire may include an indicative estimate or estimate range with respect to Sections 4.3(c)(A) or (B). To the extent UMLLC elects to, or is required to, consider a request for Approval of a proposed Capital Improvement or Material Change or a change in the scope or cost of a previously Approved Capital Improvement or Material Change, UMLLC shall review such request and, in its 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 by UMLLC with respect to such Approval at such time, unless the Concessionaire's written request submitted to UMLLC explicitly requested that UMLLC 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 or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change to provide further information regarding the scope, design or cost thereof and/or multiple alternative designs therefor to UMLLC, 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 or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change or procuring any details set out in clauses (A) through (K) of Section 4.3(c)(2) that were previously unavailable, provided that the cost of such additional work shall be subject to UMLLC's prior Approval, and (2) after performing such additional work, submit a revised request for Approval by UMLLC 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, UMLLC shall consider with respect to the same proposed Five-Year Plan, if submitted within fifteen (15) Days before the commencement of the first (1st) Fiscal Year of such Five-Year Plan; or

- (iii) (1) provide the Concessionaire with comments on such proposed Capital Improvement or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change, including comments on any details provided in the Concessionaire's proposal, which may include comments from UMLLC intended to align the proposal with the larger University Campus capital improvement plans existing at such time or disagreeing with its characterization as a Capital Improvement or Material Change, 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 UMLLC elects to exercise its rights under this Section 4.3(c)(iii), then the Concessionaire shall have the right, upon written notice to UMLLC, to withdraw its request for Approval; or
- (iv) (1) reject such proposed Capital Improvement or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change and (2) if such proposed Capital Improvement or Material Change or change to the scope of a previously Approved Capital Improvement 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 UMLLC 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 Turnover 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 UMLLC with reasonable evidence of such investigation, (y) the Concessionaire has discussed in good faith with UMLLC and reasonably considered any potential viable alternatives to such proposal and (z) UMLLC has provided no reasonable alternative that would address such new or changed Law, as applicable, that UMLLC 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 or Material Changes or changes in the scope or cost of a previously Approved Capital Improvement or Material Change, UMLLC shall have the right to provide different responses with respect to each proposal included in such request.

- (d) To the extent that the Concessionaire elects to abandon a proposed Capital Improvement or Material Change after it has been Approved by UMLLC, which the Concessionaire may do so upon Notice to UMLLC, unless such Capital Improvement or Material Change is the subject of a UMLLC Directive, the Concessionaire shall be obligated to promptly restore the Utility System and any other affected area of the University Campus to the condition that existed prior to the commencement of such Capital Improvement or Material Change. As a condition of its Approval of any proposed Capital Improvement or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change, UMLLC may require certain payments of liquidated damages by the Concessionaire to UMLLC if the Concessionaire does not meet the timeframe set forth in the applicable Approval regardless of the abandonment of such Capital Improvement or Material Change, but only to the extent such liquidated damages are proposed in the Concessionaire's most recent request for Approval thereof. To the extent that UMLLC elects to suspend or cancel a Capital Improvement or Material Change after such Capital Improvement or Material Change has been approved by UMLLC, then (i) in the case of a suspension, any such suspension shall be treated as a UMLLC Directive in accordance with Article 5 and (ii) in the case of a cancellation, (A) any Capital Improvement Costs incurred by the Concessionaire prior to the date of cancellation (including all reasonable and documented demobilization and contractor breakage costs) nonetheless shall be included in the Unrecovered Balance and (B) any costs incurred with respect to such Material Change prior to the date of cancellation (including all reasonable and documented demobilization and contractor breakage costs) nonetheless shall be included in the Uncapped O&M Costs.
- (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 that is not a Capital Improvement or any proposed change in the scope or cost of a previously Approved Material Change, the out-of-pocket costs incurred by the Concessionaire pursuant to Section 4.3(c)(ii) shall be included in Uncapped O&M Costs.
- (f) After Approval of a proposed Capital Improvement or Material Change or a proposed change in the scope or cost of a previously Approved Capital Improvement or Material Change, the Concessionaire shall make such Capital

Improvement or Material Change in accordance with this Agreement, but subject to Section 4.3(d).

- (g) Notwithstanding anything to the contrary contained in this Section 4.3, to the extent that the Concessionaire incurs any out-of-pocket costs that qualify as operation or maintenance costs (as reasonably determined in accordance with GAAP) in the exercise of its rights and performance of its obligation pursuant to this Section 4.3, the Concessionaire shall have the right to request that UMLLC Approve those costs as a Capital Improvement, and such request shall be considered a request for Approval of a proposed Capital Improvement; *provided* that, for the avoidance of doubt and without limitation, UMLLC may Approve such costs as a Capital Improvement on the condition that the Capped O&M Amount is equitably reduced to account for the Concessionaire's recovery of such costs by means of the Variable Fee Component instead of the Capped O&M Amount.
- (h) The cost of (i) any Approved Material Changes and (ii) any Approved Capital Improvements that are less than one hundred thousand dollars (\$100,000) (Adjusted for Inflation) will be classified as Uncapped O&M Costs for purposes of calculating the Utility Fee, unless otherwise indicated by UMLLC, in its discretion, in its Approval thereof.

Section 4.4. UMLLC's Capital Plan. The Concessionaire shall reasonably cooperate with UMLLC in the development, modification, and discussion of UMLLC's and the University's capital plans and energy conservation initiatives, including participating with UMLLC's and the University's capital planning and capital plan forecasting processes, attending planning meetings, and, as requested by UMLLC, attending and participating in meetings related to UMLLC's or the University's capital plans.

Section 4.5. Distribution System; Distribution System Capital Improvements.

- (a) *Status of Distribution System as of Turnover Date.* As of the Turnover Date, (i) except as set forth in the definition of Distribution Bottlenecks, the Distribution System is not included in the Utility System or Utility Facilities and (ii) the Utility Services do not include any services in respect of the Distribution System.
- (b) *Initiation of Consideration of Distribution System Capital Improvements.* Either Party may initiate the process by which UMLLC and the Concessionaire will engage with respect to a Distribution System Capital Improvement, as set forth below.
 - (i) *By the Concessionaire.* At any time during the Term, the Concessionaire may, by written notice to UMLLC, request UMLLC to consider whether to invite a proposal from the Concessionaire for Approval of a Distribution System Capital Improvement. Within thirty (30) days of the receipt of such request by the Concessionaire, UMLLC shall determine whether to invite a proposal from the Concessionaire pursuant to Section 4.5(c), which determination shall be made in UMLLC's discretion.

- (ii) *By UMLLC.* At any time during the Term, UMLLC may, by written notice to the Concessionaire, initiate a request for the Concessionaire to prepare a proposal for a Distribution System Capital Improvement pursuant to Section 4.5(c).
- (c) *Proposal for Distribution System Capital Improvement.* Upon the initiation of the request to the Concessionaire to prepare a proposal as set forth in Section 4.5(b), the Concessionaire shall, within sixty (60) days of such request from UMLLC, deliver a proposal to UMLLC requesting Approval of such Distribution System Capital Improvement. The scope of such request for Approval shall be consistent with the requirements for requests for Approval of Capital Improvements as set forth in Section 4.3 as if such proposal was in respect of a Capital Improvement.
- (d) *Negotiation Period.* Following UMLLC's receipt of the proposal for Approval of the Distribution System Capital Improvement pursuant to Section 4.5(c), the Parties shall negotiate in good faith concerning UMLLC's consideration for Approval of such Distribution System Capital Improvement for a period of not less than ninety (90) Days. If the Parties, after such good faith negotiations, do not reach an agreement concerning such Distribution System Capital Improvement, UMLLC shall have the right to pursue such Distribution System Capital Improvement through other means, subject to the rights of the Concessionaire set forth in Section 4.5(e).
- (e) *Concessionaire Right of First Refusal.* If, following the expiration of the good faith negotiation period set forth in Section 4.5(d), UMLLC elects to pursue the financing, funding or construction of such Distribution System Capital Improvement through other means, UMLLC shall have (and shall cause the University to have), prior to entering into any agreement to construct or permit the construction of such Distribution System Capital Improvement, an ongoing obligation (i) to give the Concessionaire notice of the intention to enter into a separate agreement for the construction of such Distribution System Capital Improvement and (ii) to provide the Concessionaire the option to enter into an agreement under substantially the same economic terms (or terms otherwise acceptable to UMLLC, in its discretion) within forty-five (45) Days of such notice.
- (f) *Approval of Distribution System Capital Improvement.* To the extent any Distribution System Capital Improvement is Approved by UMLLC, the cost of such Distribution System Capital Improvement shall be included as a New Approved Capital Improvement Cost in accordance with the terms of Schedule 5. To the extent that any Distribution System Capital Improvement is the subject of an agreement of UMLLC and the Concessionaire pursuant to Section 4.5(e), UMLLC shall pay such compensation to the Concessionaire as set forth in such separate agreement.
- (g) *Addition of Distribution System to Utility System.* Each relevant component of the Distribution System that is constructed or improved as the result of a Distribution System Capital Improvement upon substantial completion of each such

Distribution System Capital Improvement shall be (i) deemed to be part of the Utility System and Utility Facilities for purposes of this Agreement and (ii) included in the Utility System to be operated and the Utility Services to be performed by the Concessionaire under the terms of this Agreement. In addition, with respect to any Distribution System Capital Improvement, the Concessionaire and UMLLC shall determine in good faith the forecasted annual ongoing operations and maintenance costs associated with such Distribution System Capital Improvement and the associated component of the Distribution System that would be then added to the Utility System (or any reductions in current annual ongoing operations and maintenance costs associated therewith), and the Capped O&M Amount shall be increased (or decreased) by such amount.

- (h) Notwithstanding anything in this Agreement to the contrary, UMLLC reserves for itself and the University the right to procure any Distribution System Improvement funded through the capital outlay process outlined in Section 4.1(b) above or in response to an Emergency, in each case without regard to this Section 4.5.
- (i) For the avoidance of doubt, UMLLC shall not be required to comply with this Section 4.5(e) to the extent such compliance by UMLLC would violate applicable Law (in the reasonable opinion of UMLLC, subject to dispute resolution under Article 18).

ARTICLE 5 MODIFICATIONS

Section 5.1. UMLLC Directives. UMLLC may, at any time during the Term, issue a UMLLC 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 UMLLC 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 UMLLC Directive shall have the effect of reducing the components of the Variable Fee Component. Subject to the Concessionaire having obtained (with the cooperation of UMLLC) all relevant Authorizations from all relevant Governmental Authorities required for the relevant work, the Concessionaire shall perform the work required to implement such UMLLC Directive. Utility Facilities constructed as the result of a UMLLC 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 UMLLC 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 UMLLC Directive. To the extent any UMLLC 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 UMLLC Directive, the Concessionaire and UMLLC shall determine in good faith the forecasted annual ongoing operations and maintenance costs associated with such UMLLC Directive (or any reductions in current annual ongoing operations and maintenance costs associated therewith), and the Capped

O&M Amount shall be increased or decreased by such amount. To the extent that that an order or directive would be a UMLLC Directive but for the operation of sub-paragraph (4)(y) of the definition of “UMLLC Directive”, and in the event that the Concessionaire notifies UMLLC in writing that it is not willing to carry out such order or directive for such reason: (A) UMLLC may elect to engage a third party to perform the relevant order or directive, and (B) if UMLLC so elects, UMLLC and the Concessionaire shall determine in good faith any corresponding adjustments to the Utility Fee and other provisions of the Concession Agreement that may be required to put the Parties in substantially the same economic position as they were prior to such actions being taken, provided UMLLC shall not be required to compensate the Concessionaire for any benefit that the Concessionaire would have received if it undertook UMLLC Directive. Notwithstanding the foregoing, UMLLC may not issue a UMLLC Directive requiring the construction of a Capital Improvement to the extent that such Capital Improvement was previously the subject of a proposal for Approval submitted by the Concessionaire pursuant to Section 4.3 for a period of twenty-one (21) months following the initial submission of the proposal for Approval of such Capital Improvement; *provided* that this sentence shall apply only to the first such proposal by the Concessionaire and no other proposal with respect to the same or substantially the same Capital Improvement shall restrict UMLLC from issuing a UMLLC Directive hereunder; *provided, however*, nothing in this sentence shall restrict UMLLC from issuing a UMLLC Directive in response to an Emergency.

Section 5.2. Performance of Modifications. Subject to the other provisions of this Article 5, the Concessionaire shall ensure that UMLLC 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 Turnover 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 University 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 remove or abandon in place all Utility Facilities and Utility System Assets thereon and shall not be permitted to serve such real property, except if Approved in accordance with Section 3.15(c). However, if UMLLC or the University elects to enter into a concession agreement, ground lease, management agreement, or similar agreement with a third party to operate and maintain any real property that had been part of the University Campus, the Concessionaire shall not be required to disconnect such real property from the Utility System. 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 UMLLC and the transferee of such real property in such disconnection. In connection therewith, UMLLC 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 University Campus throughout the Term, if, after the Turnover Date, UMLLC or 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 UMLLC 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 UMLLC, the lessees or sub-lessees for the provision of Utilities to such real property.
- (c) UMLLC, at its discretion, may, pursuant to a UMLLC Directive, cause the Concessionaire to provide Utility Services to any portion of the University Campus not served by the Utility System at that time and may expand the definition of the University Campus.

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. From and after the date on which the Concessionaire is required to have an Operations Plan pursuant to the Performance Standards, the Concessionaire shall have in place at all times 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 UMLLC 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. UMLLC may request any additional supporting information, certificates,

reports, studies, investigations, and other materials as are reasonably required by UMLLC 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 UMLLC 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 UMLLC in accordance with the terms hereof. It shall be unreasonable for UMLLC 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 UMLLC. If UMLLC 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 UMLLC may impact the quality of life on the University Campus. Because of the importance of maintaining high standards with respect to such campus life, UMLLC 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, (ii) conform the Performance Standards to standards or practices generally adopted with respect to Comparable Utility Systems or Prudent Industry Practices, or (iii) conform the Performance Standards to a change in the University's design standards after the date hereof of which the Concessionaire did not have, or could not reasonably be expected to have, notice prior to such change taking effect; any such modification shall not constitute a Compensation Event. In the event UMLLC 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 such modification or change 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). If (x) any such modification or change is a New Approved Capital Improvement and the Concessionaire and UMLLC determine in good faith the amount of 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 and the Concessionaire and UMLLC determine in good faith the amount of the forecasted annual operations and maintenance costs for such modification or change, then, in either case, the Capped O&M Amount 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 Standards under this Section 6.3(a), UMLLC 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, UMLLC 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), UMLLC 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 seventy-five thousand dollars (\$75,000) (annually Adjusted for Inflation) which cannot be charged through to UMLLC as an Uncapped O&M Cost or recovered as a New Approved Capital Improvement Cost. At UMLLC'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) UMLLC 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 UMLLC, the Concessionaire shall pay to UMLLC within ten (10) Business Days following demand therefor, or UMLLC 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 UMLLC 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, AND ENERGY SUPPLY

Section 7.1. Utility Fee.

- (a) As compensation for the services provided hereunder by the Concessionaire to UMLLC in connection with the Utility System, UMLLC 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 one hundred eighty (180) Days prior to the commencement of any Fiscal Year during the Term (other than the first (1st) Fiscal Year), the Concessionaire shall provide a forecast of the Utility Fee (as determined in accordance with Schedule 5, and subject to the limitations therein) to UMLLC for the upcoming Fiscal Year (the “Forecast Utility Fee”), provided that the Concessionaire shall, by notice to UMLLC (i) on or before ninety (90) Days prior to the commencement of any Fiscal Year and (ii) again at least ten (10) Days and no more than thirty (30) Days prior to the commencement of such Fiscal Year, adjust such Forecast Utility Fee as necessary, as determined by the Concessionaire in its good faith and reasonable discretion; provided, with respect to the Fiscal Year commencing on the first (1st) July 1 to occur after the Turnover Date, the Concessionaire shall provide the Forecast Utility Fee to UMLLC by the later of one hundred eighty (180) Days before the commencement of the next Fiscal Year and thirty (30) Days after the Turnover Date. UMLLC shall pay the Forecast Utility Fee in twelve (12) equal monthly installments, payable on the first (1st) Day of every month during the Fiscal Year, provided that if the Term expires on a date that is not the last day of a Fiscal Year, the Forecast Utility Fee for that last partial Fiscal Year shall be prorated based on the number of Days in that last Fiscal Year, provided, further, that the first (1st) payment of the Utility Fee shall be made no sooner than one (1) month after the Turnover Date. The Forecast Utility Fee for the first (1st) Fiscal Year of the Term shall be \$[●3,360,851.18] prorated based on the number of Days remaining in the first Fiscal Year after the Turnover and payable in equal monthly installments over the number of months remaining in such Fiscal Year. For purposes of providing the Forecast Utility Fee for any Fiscal Year after the first (1st) Fiscal Year, the Parties shall meet in advance and, acting in good faith, shall agree on the methodology for determining the Forecast Utility Fee, including, but not limited to, estimations of the CPI Index for the current Fiscal Year.

- (b) Within sixty (60) Days after the end of each Fiscal Year, the Concessionaire shall deliver to UMLLC a statement (the “Reconciliation Statement”) which states the actual Utility Fee (as determined in accordance with Schedule 5, and subject to the limitations therein) for such Fiscal Year and provides a detailed accounting of each component of the Utility Fee in such Fiscal Year, in each case calculated in a form and with such detail as may be reasonably requested by UMLLC for the determination of the Utility Fee set forth in the Reconciliation. If the Reconciliation Statement reveals that the Utility Fee for a Fiscal Year (as determined in accordance with Schedule 5, and subject to the limitations therein) is more than the Forecast Utility Fee for that Fiscal Year, UMLLC agrees to pay the Concessionaire the difference in a lump sum within thirty (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 UMLLC the difference in a lump sum within thirty (30) Days after receipt of the Reconciliation Statement. In addition to the foregoing, the Concessionaire shall deliver to UMLLC the quarterly reporting described in Section 8.1(d).

- (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 five (5) Fiscal Years following the Fiscal Year to which such Utility Fee applied. UMLLC shall have the right, through its Representatives, to examine, copy and audit such records at reasonable times, upon not less than five (5) Business Days' prior notice, at such place within the City of Baton Rouge, Louisiana 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 UMLLC; *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 one percent (1%), then the Concessionaire shall pay the cost of such audit. If, as a result of such audit, it is determined that UMLLC has overpaid the Concessionaire on account of the Utility Fee, then the Concessionaire shall reimburse UMLLC for any (i) undisputed amounts within thirty (30) Days after such determination and (ii) amounts which have been determined to be due pursuant to Article 18 within thirty (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 three percent (3%), then in addition to paying the cost of such audit and reimbursing UMLLC for the payments in accordance with Section 7.1(c), the Concessionaire shall pay, as liquidated damages, three (3) times the amount of the difference between the Utility Fee and the amount set forth in the Reconciliation Statement. UMLLC and the Concessionaire agree that it would be impracticable and extremely difficult to fix the actual damage to UMLLC if the actual Utility Fee was lower than the amount shown in the Reconciliation Statement by at least three percent (3%). UMLLC and the Concessionaire therefore agree that, in such instance, three (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 UMLLC's damages and that UMLLC 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. Five-Year Plan.

- (a) The Concessionaire shall submit to UMLLC a proposed Initial Five-Year Plan on or before ninety (90) Days following the Turnover Date and shall thereafter submit to UMLLC a proposed Five-Year Plan at least one hundred eighty (180) Days prior to the end of each Fiscal Year during the Term. Each proposed Five-Year Plan shall include the Capital Improvements and Material Changes (and shall identify whether an item requested for Approval is a Capital Improvement 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 Uncapped O&M

Costs, and the anticipated types of Supplies that will be used for each such Fiscal Year, including the estimated usage pattern over the course of the first Fiscal Year. The initial Five-Year Plan can include, and UMLLC 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 Turnover Date. Each proposed Five-Year Plan shall be submitted in a format reasonably acceptable to UMLLC as of the date of submission.

- (b) UMLLC shall review and provide comments to the Concessionaire on the proposed Five-Year Plan, provided that to the extent pertaining to proposed Capital Improvements 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 7.2(c), if UMLLC shall have previously Approved any such Capital Improvement or Material Change included in the proposed Five-Year Plan, UMLLC 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 UMLLC's comments on the proposed Five-Year Plan to prepare a revised version thereof and submit such revised version to UMLLC. This process shall continue until UMLLC Approves all components of the proposed Five-Year Plan, including the estimated usage of Supplies over the first Fiscal Year in such Five-Year Plan.
- (c) The proposed Five-Year Plan Approved by UMLLC shall become the Approved Five-Year Plan as of the commencement of the first (1st) Fiscal Year in such proposed Five-Year Plan (or, in the case of the proposed Initial Five-Year Plan, as of the date of UMLLC's Approval); *provided, however*, that no portion of an Approved Five-Year Plan related to the second (2nd) through fifth (5th) full Fiscal Years therein shall be deemed Approved by UMLLC, except to the extent that a Capital Improvement or Material Change is scheduled pursuant to such Approved Five-Year Plan to be started in the first (1st) full Fiscal Year and completed in the second (2nd) through fifth (5th) full Fiscal Years therein. For the avoidance of doubt, the Approval of a Five-Year Plan that includes a Capital Improvement or Material Change that is not scheduled to be commenced until the second Fiscal Year therein at the earliest shall not be deemed an Approval of such Capital Improvement or Material Change for purposes of Article 4 or this Article 7.
- (d) If the Concessionaire does not accommodate or otherwise resolve any comment provided by UMLLC pursuant to Section 7.2(b), the Concessionaire shall deliver to UMLLC, within ten (10) Days after receipt of UMLLC'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 UMLLC over such comment shall be resolved pursuant to the procedures set forth in Article 18.

- (e) If a proposed Five-Year Plan or a portion thereof is not Approved by the commencement of the first (1st) 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 7.2 shall permit the Concessionaire to make a Capital Improvement 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 Turnover 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 Turnover provided that nothing in this Section 7.2 shall permit the Concessionaire to make a Capital Improvement or Material Change except if it is Approved in accordance with Section 4.3(c).
- (f) 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.
- (g) Except as otherwise provided in Section 7.2(c), the contents of any Approved Five-Year Plan shall not be binding on any future Five-Year Plan.
- (h) 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 UMLLC on or prior to the Turnover 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 UMLLC in its Approval of the Operator or otherwise.
- (i) In acknowledgement of the importance of the Utility System to the operation of the University Campus and the integrated delivery of services to students, employees, staff, faculty and visitors of the University Campus, UMLLC Liaison and other UMLLC Representatives selected by UMLLC will meet with a representative of the Concessionaire and the Operator on a quarterly basis in order to discuss and assess the implementation of the then-current Five-Year Plan, including any delays or failures to meet the then-current Five-Year Plan and discuss the development of the immediately subsequent Five-Year Plan.

Section 7.3. Energy and Water Supply.

- (a) The Concessionaire shall assist UMLLC with the procurement of sufficient electricity, natural gas, biomass, or other energy supply inputs and domestic water necessary to fully operate the Utility System as set forth in the Performance Standards (the "Supplies"). At UMLLC'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 UMLLC to negotiate or assist in negotiating Supply purchases, acting on behalf of UMLLC, or assisting UMLLC in the operation of bidding mechanisms to procure competitive retail Supplies. UMLLC shall be responsible for paying all Supply Costs directly to the vendor of such Supplies. UMLLC, 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”); *provided that* UMLLC shall have made a reasonable determination that each such Supply Contract is consistent with the then-current Approved Five-Year Plan or has issued a UMLLC Directive with respect to such Supply Contract. UMLLC shall, in its sole discretion, determine the types and sources of the Supplies and the appropriate entity (among the Concessionaire, the Operator and UMLLC) to execute each Supply Contract and, if applicable, any Authorization related to Supplies, with the Concessionaire or Operator executing pursuant to a power of attorney, and the Concessionaire shall operate the Utility System consistent with the types and sources of Supplies determined by UMLLC. 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 7.3(a) or used for the operation of the Utility System. Notwithstanding the foregoing, the Parties acknowledge that as of the Time of Turnover, there shall be in place certain Supply Contracts to provide Supplies as described in Schedule 6, and the Concessionaire’s obligations under this Section 7.3(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 UMLLC with the procurement of those Supplies for the University 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 UMLLC or University locations outside of the University Campus), (ii) the Concessionaire acting on behalf of UMLLC 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 UMLLC with the prompt replacement of such third-party supplier.

- (b) The Concessionaire shall, upon written notice from UMLLC, be responsible for assisting UMLLC with the procurement, billing and/or management of Supplies to UMLLC or its Affiliates on UMLLC or University locations outside of the University 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 UMLLC with the management of Supplies under any existing Supply Contract described in Schedule 6 as provided in Section 7.3(a).

- (c) The Concessionaire shall ensure that any Supply Contracts negotiated by the Concessionaire provide that invoices are remitted to the Concessionaire, if so requested by UMLLC in writing, or to such other entity as identified by UMLLC. Promptly after receipt of such an invoice for Supply Costs from a third party but in no event more than five (5) Business Days after receipt thereof, the Concessionaire shall forward the supplier's invoice to UMLLC, and the Concessionaire shall have no obligation to pay such Supply Costs.
- (d) The Concessionaire shall cause the Utility System to be operated using a mix of Supplies supported by the then-current Supply Contracts and the Approved Five-Year Plan. The Concessionaire shall consult UMLLC with respect to any adjustments to the mix of Supplies required to operate the Utility System in accordance with this Agreement and any such adjustments shall only be made upon Approval from UMLLC, which may be withheld in its sole discretion.

Section 7.4. Energy Use Intensity Reduction and Energy Conservation Measures.

In furtherance of the objectives set forth in Section 3.27, within two (2) Years after the Turnover Date, UMLLC shall have the right to request in writing that the Concessionaire diligently prepare and provide to UMLLC a detailed study with recommendations and proposals for opportunities to reduce the energy use intensity on the University Campus, and the Concessionaire shall in good faith discuss with UMLLC the Concessionaire implementing such recommendations and proposals. In addition, in connection with each Five-Year Plan, the Concessionaire may propose certain measures or improvements on the University Campus, including energy conservation measures, buying strategies in connection with Supplies, or such other improvements anticipated to achieve an energy use intensity reduction. UMLLC may consider such proposals in its discretion in connection with reviewing such Five-Year Plan and any Approval of the same may include a shared savings of costs with respect thereto.

ARTICLE 8 REPORTING; AUDITS; INSPECTIONS

Section 8.1. Reports; Environmental Incident Management.

- (a) *Incident Management and Notifications.* The Concessionaire shall (i) provide notice to UMLLC of all Emergencies as promptly as possible, and, in any event, not later than six (6) hours after the Concessionaire or the Operator becomes aware of the Emergency, and (ii) promptly provide notice to UMLLC of all material accidents and incidents occurring with respect to the Utility System and of all claims in excess of twenty-five thousand dollars (\$25,000) annually made by or against the Concessionaire or potential claims in excess of twenty-five thousand dollars (\$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 UMLLC as promptly as possible, and, in any event, not later than six (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 University Campus or any part thereof, 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, and the Concessionaire shall not be financially responsible for other Releases of Hazardous Substances from the Utility System. Regardless of the foregoing, unless such Release is an Excluded Liability, the Concessionaire shall be responsible for the remediation of any Releases of Hazardous Substances from the Utility System. 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 in writing to or directed in writing by the Concessionaire or any of its Representatives. As between UMLLC and the Concessionaire, UMLLC shall be designated the generator for the disposal of all Hazardous Substances or other contamination, except for any Hazardous Substances that were Released by the willful misconduct or negligent action of, or permitted by the negligent inactions of, the Concessionaire, the Operator or any of their respective Representatives.

- (c) *Financial Reports.* The Concessionaire shall deliver to UMLLC within one hundred twenty (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 of the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP or IFRS, provided that if such financial statements are prepared in accordance with IFRS, such financial statements shall include a reconciliation statement setting forth any material discrepancies between IFRS and GAAP reporting with respect to the subject matter thereof. The Concessionaire's independent certified public accountants shall be subject to UMLLC's Approval.
- (d) *Utility Fee Reports.* The Concessionaire shall deliver to UMLLC within thirty (30) Days after the end of each Quarter during a Fiscal Year a report showing (i) the calculation of the Variable Fee Component for that Quarter, (ii) the amount of Uncapped O&M Costs incurred to date for such Fiscal Year, and (iii) the

anticipated expenditures on Capital Improvements and Material Changes for the remainder of such Fiscal Year.

- (e) *Regular Reports.* The Concessionaire shall deliver to UMLLC 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 UMLLC, the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by UMLLC, furnish or cause to be furnished) to UMLLC 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 UMLLC, after giving ten (10) Business Days' prior notice to the Concessionaire (which notice shall identify the Persons UMLLC 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 University 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 UMLLC 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, UMLLC shall keep confidential any information obtained from the Concessionaire or its Representatives that constitutes a "trade secret" as defined by applicable Law, as determined by UMLLC in its reasonable discretion. 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), UMLLC shall use commercially reasonable efforts to cooperate in such action at no out-of-pocket cost to UMLLC, provided that UMLLC shall not be required to institute any legal action against the requesting party. Notwithstanding anything to the contrary herein, UMLLC 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 UMLLC.

- (a) *Audit Right.* In addition to the rights set out in Section 7.1(c) and Section 8.2, UMLLC may, at all reasonable times, upon ten (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 UMLLC'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 UMLLC or its designated Representative such information and material as may reasonably be required by UMLLC or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by UMLLC in connection with the same. Such audits may be made on either a continuous or a periodic basis or both, and may be conducted by (1) employees of the University and/or UMLLC, (2) by independent auditors retained by the University and/or UMLLC, or (3) to the extent required by Law (including La. R.S. 24:511 *et seq.*), by or on behalf of the Louisiana Legislative Auditor or by the Office of the Governor or Division of Administration of the State of Louisiana.

- (b) *Inspection Right.* UMLLC 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, the D&C Work, and every part thereof, and the Concessionaire, at the reasonable cost and expense of the Concessionaire, shall and shall cause its Representatives to furnish UMLLC with every reasonable assistance for inspecting the Utility System, the D&C Work, and the Utility System Operations for the purpose of Auditing and Reviewing the information relating to the Utility System Operations and the D&C Work 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.* UMLLC 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 UMLLC 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, the D&C Work, or the Utility System Operations as UMLLC 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 UMLLC or its Representatives with reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.
- (d) *No Waiver.* Failure by UMLLC or its Representatives to inspect, review, test or Audit and Review 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 UMLLC hereunder or any of the obligations or

liabilities of the Concessionaire hereunder. Inspection, review, testing or Audit and Review 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 and Reviews hereunder, UMLLC 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 and Reviews being performed, except as necessary in the case of investigations of possible criminal conduct or UMLLC ordinance violations.

Section 8.4. Audits, Assistance, Inspections and Approvals. Wherever in this Agreement reference is made to UMLLC or its Representatives providing assistance, services, Approvals, or consents to or on behalf of the Concessionaire or its Representatives or to UMLLC or its Representatives performing an Audit and Review 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 UMLLC 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 UMLLC or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

Section 8.5. Review and Audit of Costs Relating to D&C Work. Prior to making any progress payments or final payment to the D&C Contractor in respect of the D&C Work pursuant to the terms of the Drop-Down DB Contract, the Concessionaire shall provide UMLLC and its Representatives with the opportunity to review and comment on the relevant draw or payment request from the D&C Contractor for purposes of verifying that the payment amount requested corresponds with the D&C Work performed during the relevant period. UMLLC and its Representatives, as applicable, will provide comments on the relevant draw or payment request within five (5) Business Days of the receipt of same from the Concessionaire. The Concessionaire shall not make payment to the D&C Contractor until UMLLC's comments on the relevant draw or payment request, if any, have been resolved to the satisfaction of UMLLC, acting reasonably. Following IMP Final Acceptance and final payment to the D&C Contractor, UMLLC or its Representatives shall be entitled to carry out an Audit and Review of all payments in respect of the D&C Work made by the Concessionaire to the D&C Contractor pursuant to the terms of the Drop-Down DB Contract in order to, among other things, verify the Capital Improvement Cost of the Initial Modernization Project as compared to the Approved Budgeted Amount for the Initial Modernization Project. Such Audit and Review may be conducted by (1) employees of the University and/or UMLLC, (2) by independent auditors retained by the University and/or UMLLC, or (3) to the extent required by Law (including La. R.S. 24:511 *et seq.*), by or on behalf

of the Louisiana Legislative Auditor or by the Office of the Governor or Division of Administration of the State of Louisiana.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

Section 9.1. Representations and Warranties of UMLLC. UMLLC makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire and its Representatives are relying upon such representations and warranties in entering into this Agreement:

- (a) *Organization.* UMLLC is Louisiana limited liability company.
- (b) *Power and Authority.* UMLLC has (i) duly authorized and approved the execution and delivery of this Agreement and (ii) duly authorized and approved the performance by UMLLC of its obligations contained in this Agreement. UMLLC has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.
- (c) *Enforceability.* This Agreement has been duly authorized, executed, and delivered by UMLLC and constitutes a valid and legally binding obligation of UMLLC, enforceable against UMLLC in accordance with the terms hereof, 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.* UMLLC has good and sufficient leasehold interest in, pursuant to the University Lease, the Utility Facilities, the Utility System Land, and the Utility System Assets necessary for the Utility System Operations pursuant to this Agreement, subject only to Permitted UMLLC Encumbrances, and is able to transfer or grant such interest to the Concessionaire as provided in this Agreement. Subject to any and all Permitted UMLLC Encumbrances and to the Actual Knowledge of UMLLC, 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, UMLLC 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 UMLLC Encumbrances and to the Actual Knowledge of UMLLC, 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 hereof. No indebtedness for borrowed money of UMLLC 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 UMLLC is or may be entitled to under this Agreement, (ii) revenues or income derived after the End Date, (iii) revenues or income received by UMLLC from students, or (iv) revenues or income received by UMLLC from third parties as reimbursement for Utilities received by such parties.

- (e) *No Conflicts.* The execution and delivery of this Agreement by UMLLC, the consummation of the Transaction (including the operation of the Utility System in accordance with the terms of this Agreement), and the performance by UMLLC of the terms, conditions, and provisions hereof 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 (A) of UMLLC under (i) any applicable Law, (ii) any agreement, instrument, or document to which UMLLC is a party or by which it is bound, or (iii) UMLLC's governing documents and (B) to the Actual Knowledge of UMLLC, or 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 that has not already been obtained is required to be obtained by UMLLC or, to the Actual Knowledge of UMLLC, the University, from, and no notice or filing that has not already been given is required to be given by UMLLC or, to the Actual Knowledge of UMLLC, the University, to or made by UMLLC or the University with, any Person (including any Governmental Authority) in connection with the execution, delivery, and performance by UMLLC of this Agreement or the consummation of the Transaction, except for such consents which have been obtained and notices which have been given.
- (g) *Compliance with Law; Litigation; Environmental Matters.*
 - (i) UMLLC 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 UMLLC, (A) UMLLC and the University are 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 UMLLC or 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) Neither UMLLC nor, to the Actual Knowledge of UMLLC, the University has been served with notice of any action, suit, or proceeding, at law or in equity, or before or by any Governmental Authority, and to the Actual Knowledge of UMLLC, there is no such action, suit, or proceeding pending or threatened against UMLLC or the University, which would reasonably be expected to have a Material Adverse Effect or a material adverse effect

on the Concessionaire. As of the date hereof, 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 UMLLC, threatened against UMLLC or the University which could materially affect the validity or enforceability of this Agreement or the University Lease.

- (iii) To the Actual Knowledge of UMLLC, (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) Historical Financial Information. The financial information relating to the Utility System attached hereto as Schedule 9, which identifies operational costs for the periods that ended June 30, 20[●] through June 30, 20[●], to the Actual Knowledge of UMLLC, fairly presents the financial information disclosed thereon in accordance with standard accounting procedures of the University with respect to the Utility System, and is adjusted for anticipated expenditures the Concessionaire will incur to operate the Utility System as it is currently operated.
- (i) Absence of Changes. To the Actual Knowledge of UMLLC, since June 30, 20[●], 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 UMLLC.
- (j) Brokers. There is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of UMLLC who might be entitled to any fee or commission from UMLLC 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 UMLLC who might be entitled to any fee or commission from the Concessionaire in connection with the Transaction.
- (k) Accuracy of Information. To the Actual Knowledge of UMLLC, the factual and past historical information regarding the Utility System that UMLLC or the University provided to the Concessionaire through [●] was accurate in all material respects at the time such information was prepared, except to the extent UMLLC removed, revised, or replaced such information prior to the Turnover Date.
- (l) Undisclosed Defects. To the Actual Knowledge of UMLLC, 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.

Section 9.2. Representations and Warranties of the Concessionaire. The Concessionaire makes the following representations and warranties to UMLLC (and

acknowledges that UMLLC is relying upon such representations and warranties in entering into this 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 UMLLC prior to the date hereof.
- (b) *Power and Authority.* The Concessionaire has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed, or performed by it in accordance with the terms hereof.
- (c) *Enforceability.* This 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 hereof, 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 this Agreement by the Concessionaire, the consummation of the Transaction, and the performance by the Concessionaire of the terms, conditions, and provisions hereof 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 that has not already been obtained is required to be obtained by the Concessionaire from, and no notice or filing that has not already been given 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 this Agreement or the consummation of the Transaction, except for such consents which have been obtained and notices which have been given.
- (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 (a) 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, the Department of State, or their successors or on any other list of Persons with which UMLLC is prohibited from engaging in business under applicable Law: the Specially Designated Nationals and Blocked Persons List; the Sectoral Sanctions Identifications List; the Denied Persons List; the

Unverified List; the Entity List; and solely with respect to the Concessionaire and its parent, the Debarred List; or (b) controlled or fifty percent (50%) or more owned, directly or indirectly, individually or in the aggregate, by one (1) or more Persons on a list identified in clause (a). The Concessionaire has not been served with notice of any suit or proceeding, at law or in equity, or before or by any Governmental Authority, and to the best of the Concessionaire's knowledge, there is no such action, suit, or proceeding threatened against the Concessionaire, which will have a material adverse effect on (i) the Transaction or (ii) the validity or enforceability of this Agreement.

- (g) *Prohibited Tax Shelter Transaction.* The Concessionaire has not entered into, and will not enter into, any lease, sublease, concession, management agreement, operating agreement, or other similar arrangement or other transaction that would cause UMLLC to become a party to a "prohibited tax shelter transaction" within the meaning of Section 4965 of the Code, including 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 UMLLC has consented to pursuant to the arrangements contemplated by this Agreement.
- (h) *Accuracy of Information.* To the actual knowledge of the Concessionaire, (i) all information regarding the Concessionaire or the Operator provided to UMLLC by or on behalf of the Concessionaire or the Operator was accurate in all material respects at the time such information was provided, and (ii) all information set forth in *[document to be identified]* provided to UMLLC by or on behalf of the Concessionaire or the IMP Contractor was accurate in all material respects at the time such information was provided.
- (i) *Operator; IMP Contractor.*
 - (i) To the extent the Operator is not the Concessionaire, the Concessionaire represents and warrants as follows: (A) the Operator is duly organized, validly existing, and in good standing under the laws of the state of its organization; (B) 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 UMLLC prior to the date hereof; (C) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by the Concessionaire; (D) the Operator has all necessary expertise, qualifications, experience, competence, skills, and know-how to perform the Utility System Operations in accordance with this Agreement; (e) the Operator is not in breach of any applicable Law that would have a Material Adverse Effect; and (f) is authorized to do business in the State of Louisiana, and, except the extent such licenses and permits are set forth on Schedule 18, has all licenses and permits required to perform its obligations hereunder, which

representations shall be only to the best knowledge of the Concessionaire in the event that the Operator is not an Affiliate of the Concessionaire.

- (ii) To the actual knowledge of the Concessionaire (following reasonable investigation by the Concessionaire), the Concessionaire represents and warrants as follows: (A) the IMP Contractor is duly organized, validly existing, and in good standing under the laws of the state of its organization; (B) the capital stock or other equity interests of the IMP Contractor (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 UMLLC prior to the date hereof; (C) the IMP Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by the Concessionaire; (D) the IMP Contractor has all necessary expertise, qualifications, experience, competence, skills, and know-how to perform the D&C Work in accordance with this Agreement; (E) the IMP Contractor is not in breach of any applicable Law that would have a Material Adverse Effect; and (F) is authorized to do business in the State of Louisiana, and, except the extent such licenses and permits are set forth on Schedule 18, has all licenses and permits required to perform its obligations hereunder.
- (j) *Brokers.* 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.

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) *UMLLC's Representations and Warranties.* The representations and warranties of UMLLC 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 twenty-four (24) months following the Turnover Date unless a bona fide notice of a Claim shall have been given, in writing, in accordance with Section 20.1, 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 UMLLC as follows: (i) as to the representations and warranties contained in Sections 9.2(a) through 9.2(i), inclusive, without time limit; and (ii) as to all other matters, for a period of twenty-four (24) months following the Turnover Date unless a bona fide notice of a Claim shall have been given, in writing, in accordance with Section 20.1, 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 or prescriptive period that would be applicable to such Claims under applicable Law. The Parties acknowledge and agree that they intend to modify the statutes of limitations and prescriptive periods with respect to all Claims to the extent such statutes of limitations or prescriptive periods 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. 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. UMLLC's Obligations. UMLLC 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. UMLLC'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, provided that such lenders and potential lenders shall hold such information in confidence (provided that such lenders and potential lenders may disclose such information to Affiliates and their respective officers, employees, agents, advisors, stockholders, partners, members, accountants, and attorneys to the extent the foregoing agree to maintain such information as confidential in accordance with this Section 10.2 or as may be compelled in a judicial, regulatory (including any self-regulatory organization), or administrative proceeding or as otherwise required by applicable Law or required by any Governmental Authority having jurisdiction over the lender)

and the Concessionaire shall be liable for any disclosure by such lenders or potential lenders in breach thereof. If requested in writing to do so by the Concessionaire, UMLLC shall, at the sole cost and expense of the Concessionaire, use its commercially reasonable efforts to cause UMLLC'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, UMLLC 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 UMLLC. Nothing herein shall require UMLLC to incur any additional obligations or liabilities (unless UMLLC shall have received indemnification, as determined in UMLLC's discretion, with respect thereto), to take any action or 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 UMLLC, execute and deliver to UMLLC, or any of the parties specified by UMLLC, 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. Consistent with Section 9.2(g), 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 UMLLC to become a party to a "prohibited tax shelter transaction" within the meaning of Section 4965 of the Code. A violation of this Section 10.4 or a breach of the representation set forth in Section 9.2(g) by the Concessionaire shall entitle UMLLC to (a) recover from the Concessionaire the amount of any Tax liability, penalty, or loss to which UMLLC or any UMLLC 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 UMLLC 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 Turnover 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. For the avoidance of doubt, any costs incurred to comply with applicable Law as a result of any Capital Improvement or other alteration to the Utility System undertaken by the

Concessionaire, shall be at the Concessionaire's cost (subject to inclusion in the Utility Fee as part of the Variable Fee Component or Uncapped O&M Costs, if and as applicable). The Concessionaire shall notify UMLLC within seven (7) Days after receiving written notice from a Governmental Authority that the Concessionaire or the Operator 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 Louisiana Human Rights Act, La. R.S. 51:2231 et seq.; and (ix) the Louisiana Employment Discrimination Law, La. R.S. 23:301 et seq.
- (b) *Contract Provisions.* The Concessionaire shall cause all Contractors to comply with each of the federal Laws and Louisiana 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.; and (ii) the Louisiana Payment of Employees Statute, La. R.S. 23:631 et seq.

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 UMLLC 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 and UMLLC'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 or UMLLC employees, students or visitors that impair or prejudice the University or UMLLC or their 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 this Agreement.

Section 11.9. Conflict of Interest. The Concessionaire certifies and warrants to UMLLC that neither it nor any of its agents, Representatives, or employees who will participate in any way in the performance of the 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 UMLLC 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. 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 UMLLC within seven (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.

Section 11.11. Diverse Businesses. The Concessionaire and its Representatives shall use good faith and commercially reasonable efforts to provide opportunities to minority- and women-owned and small and historically underutilized businesses (collectively, "Diverse Businesses") that are either certified by the State or another certifying entity in a diverse category as a contractor, subcontractor, supplier, or capital provider. The Concessionaire and its Representatives shall (i) implement the Diversity, Inclusion and Equity Plan attached hereto as Schedule 17 (the "Diversity Plan"), which Diversity Plan outlines the Concessionaire's commitment and obligation to provide

opportunities to Diverse Businesses, (ii) provide to UMLLC and the University on a quarterly basis during the Term a list of all Diverse Businesses engaged or utilized in connection with any Capital Improvements, including but not limited to the Initial Modernization Project, which list shall identify as to each Diverse Business contained thereon (A) the legal name thereof, (B) the principal office or address thereof, (C) ownership thereof, and (D) the services or good provided or supplied (or to be provided or supplied) and the value of the goods or services procured therefrom, and (iii) following written notice from UMLLC or the University, take all reasonable measures required by the University to ensure accountability, compliance, and transparency in complying with the commercially reasonable, the University system-wide disadvantaged business enterprise goals or policies established by the University's Office of Supplier Diversity. To the extent that any Law would require that this Section 11.11 or comparable language in this Agreement be modified or voided, the Parties agree that such provision can be amended or severed from any such agreement without affecting any of the other terms thereof.

Section 11.12. Accreditation. The Concessionaire shall ensure that the Utility System provides a sufficient quantity of Utilities in a timeframe sufficient such that the University and UMLLC may maintain any third-party accreditation or other third-party standard of which the University or UMLLC have provided the Concessionaire notice prior to the Turnover Date.

Section 11.13. Permits and Other Campus-Wide Authorizations. The Concessionaire acknowledges and agrees that, in connection with the Campus-Wide Permits: (i) UMLLC or the University, as applicable, will continue to be the "owner" identified in the Campus-Wide Permits during the Term; (ii) the Concessionaire will become the "operator" of permitted emission sources from the Utility System identified in the Campus-Wide Permits during the Term, to the extent applicable; (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; (iv) the Concessionaire shall promptly provide to the University's Office of Environmental Health and Safety, as the responsible UMLLC official for communications with the Louisiana Department of Environmental Quality ("DEQ"), all records that the DEQ inspectors request the University or UMLLC provide with respect to the Utility System; and (v) the Concessionaire shall provide to UMLLC (a) complete drafts of all required reports with respect to the Utility System portion of the Campus-Wide Permits for UMLLC to review and Approve at least 15 Business Days prior to the deadline to submit such reports, (b) any information regarding utility operations required for reports related to the Campus-Wide Permits by the later of (1) ten (10) Days after the end of the applicable reporting period and (2) (A) thirty (30) Days prior to the applicable submission deadline or (B) ten (10) Days after a UMLLC 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 UMLLC and (d) applications for new permits or modifications to any Campus-Wide Permit for review and Approval at least thirty (30) Days prior to submission to a regulatory agency; and (v) the Parties shall reasonably cooperate with each other in connection with any matters relating to the Campus-Wide Permits. The Concessionaire shall comply with all Campus-Wide Permits to the extent applicable to the Utility System or Utility System Operations.

Section 11.14. Financial and Audit Standards. The Concessionaire shall comply, and its financial statements shall be prepared in accordance, with GAAP or IFRS, provided that if such

financial statements are prepared in accordance with IFRS, such financial statements shall include a reconciliation statement setting forth any material discrepancies between IFRS and GAAP reporting with respect to the subject matter thereof.

Section 11.15. Pay If Paid; Non-Appropriation and Termination.

- (a) *Pay If Paid.* Notwithstanding anything to the contrary contained in this Agreement, whenever a provision in this Agreement provides (i) that the Concessionaire shall only be entitled to compensation in the event and only to the extent that UMLLC receives the corresponding compensation under the University Lease, (ii) that the Concessionaire's entitlement to compensation shall be conditional upon and only to the extent that UMLLC receives the corresponding compensation under the University Lease, (iii) that a payment or other compensation obligation of UMLLC is subject to the Pass-Down Provisions, or (iv) other similar language providing that a payment to the Concessionaire is conditional upon receipt of the relevant amount by UMLLC from the University, including without limitation for purposes of [Section 1.1 "Concessionaire Compensation", Section 2.4(h), Section 3.7(a), Section 3.7(c), Section 3.7(d), Section 3.14, Section 3.21, Section 3.26(d), Section 3.26(g), Section 3.26(h), Section 3.26(i), Section 3.30, Section 4.3(e), Section 4.3(g), Section 5.1, Section 5.3(b), Section 6.3, Section 7.1(b), Section 12.2, Section 13.3, Section 14.1(d), Section 14.2(a), Section 15.1, Section 16.3, Section 16.4, and Section 19.7] of this Agreement, payment of the amount in question by the University to UMLLC pursuant to the University Lease will be strict conditions precedent to the obligation of UMLLC to make a payment to the Concessionaire under the relevant provision of this Agreement.
- (b) *Non-Appropriation.* The Concessionaire acknowledges and agrees that the University's ability to make payments to UMLLC pursuant to the University Lease, and UMLLC's corresponding ability to make payments to the Concessionaire pursuant to this Agreement (including with respect to payment of the Utility Fee), require that the Legislature appropriate to the University funds sufficient therefor and to make such funds available to the University following appropriation. UMLLC (i) has the right, pursuant to the University Lease, to cause the University to include in the University's annual budget request to the Legislature for each fiscal year of the University the funds necessary for payment of the amounts payable by the University to UMLLC pursuant to the University Lease and (ii) agrees to use its best efforts to enforce such right to cause the University to include such amounts in its annual budget request to the Legislature; but makes no representations, warranties or covenants, express or implied, that the Legislature will make such appropriations.
- (c) *Termination.* In the event the Legislature fails to appropriate sufficient moneys that would enable the University to pay its obligations to UMLLC to provide for the continuation of the University Lease and this Agreement, this Agreement shall terminate on the last day of that fiscal year, and the UMLLC shall adopt resolutions stating that there has been an event of non-appropriation. Such termination shall be without penalty or expense to the University or UMLLC; *provided, however,*

that UMLLC shall pay to the Concessionaire the amounts payable to the Concessionaire for termination pursuant to Section 16.4. In such event and for the avoidance of doubt, UMLLC agrees to use its reasonable efforts to cause the University to include in one or more of the University's annual budget request(s) to the Legislature the funds necessary for any such refunds and/or termination fees due the Concessionaire pursuant to this Agreement until such refunds and/or termination fees are paid in full.

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 UMLLC 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 UMLLC 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 UMLLC 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, subject to Section 12.5 Claims shall be made in writing within a period of three (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 or prescriptive period. The Parties agree that the Representatives of UMLLC are intended to be third party beneficiaries of the obligations of the Concessionaire pursuant to this Article 12.

Section 12.2. Certain Payment Obligations of UMLLC. 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) UMLLC 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 UMLLC or any of its employees, officers, or agents (collectively, the "UMLLC Responsible Parties") 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 UMLLC 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 UMLLC or any UMLLC Responsible Party 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 and therefore not

paid to the Concessionaire as Uncapped O&M Costs; *provided, however*, that, except with respect to Claims resulting from Third Party Claims, subject to Section 12.5 Claims are made in writing within a period of three (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 or prescriptive period. The Parties agree that the Representatives of the Concessionaire are intended to be third party beneficiaries of the obligations of UMLLC pursuant to this Article 12.

Section 12.3. Agency for Representatives. Each of UMLLC 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 UMLLC 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 thirty (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.
- (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 Obligees to the Obligor hereunder, which expense shall not exceed the actual cost to the Obligees 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 Obligees 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 thirty (30) Days after receiving notice from the Obligees that the Obligees believe on reasonable grounds that the Obligor has failed to take such steps, the Obligees 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 Obligees 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 Obligees are UMLLC, in no event may the Obligor settle or compromise any Third Party Claim without obtaining the prior written consent of the Obligees.

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 sixty (60) Days after the Obligees become aware of such Direct Claim. The Obligor shall then have a period of thirty (30) Days within which to respond in writing to such Direct Claim. If the Obligor does not so respond within such thirty (30) -Day period, the Obligor shall be deemed to have rejected such Direct Claim, and in such event the Obligees 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 whatsoever 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 Obligees 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, not including deductibles or self-insured retentions or insurance proceeds, 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, AA-Compensation, or KPI Compensation as provided in this Agreement), the maximum aggregate liability of UMLLC to the Concessionaire or its Representatives, in respect of Losses pursuant to this Article 12 shall not exceed the Maximum Budgeted IMP Amount; *provided* 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), (g), and (j); (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)(iii)(2); (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 UMLLC and its Representatives, in respect of Losses pursuant to this Article 12 shall not exceed the Maximum Budgeted IMP Amount; *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), (g) and (j) 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 or gross negligence of the other Party or its Representatives (or UMLLC Responsible Parties in the case of UMLLC). Notwithstanding anything herein to the contrary, the provisions of this Agreement do not waive or abrogate, nor are they intended to waive or abrogate, any limitation of liability for the University or UMLLC provided by Louisiana law, including without limitation under La. R.S. 13:5106.

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 the Concessionaire's obligations to defend, indemnify, hold harmless, or contribute to any sums due under any Losses.

- (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 UMLLC and its officers, employees, and agents 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 Law or otherwise available to UMLLC and its officers, employees, and agents.

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 INSURANCE³

Section 13.1. Insurance Coverage Required – Concessionaire. The Concessionaire and any sub-contractors of the Concessionaire shall provide and maintain at the Concessionaire's own expense; (without limitation of the Concessionaire's right to recover any Uncapped O&M Cost pursuant to clause (o) of the definition thereof), 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

³~~*-Note to Draft: To be reviewed by University's insurance advisors; subject to revision in all respects.*~~

Prudent Industry Practices, including, at a minimum, the insurance coverages and requirements specified below, insuring the Utility System and all Utility System Operations (the “Concessionaire Required Coverages”). For the avoidance of doubt, Concessionaire Required Coverages may be provided and maintained as part of a corporate insurance program of a direct or indirect holder of equity in the Concessionaire and each of the insurance coverage limits set out in Section 13.1(b), Section 13.1(c), and Section 13.1(d) may be achieved through a combination of primary, excess, and/or umbrella coverage. Any coverage provided under a self-insured program *MUST* first be approved in writing by UMLLC and the University.

- (a) *Workers’ Compensation and Employer’s Liability.* The Concessionaire shall provide or cause to be provided statutory Workers’ Compensation Insurance, to cover liability imposed by Federal and State statutes having jurisdiction over the Concessionaire’s employees engaged in the performance of this Agreement and Employer’s Liability Insurance coverage with limits of not less than \$1,000,000 each employee disease, \$1,000,000 each accident, \$1,000,000 each disease policy limit.
- (b) *Commercial General Liability.* The Concessionaire shall provide or cause to be provided Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate. Coverage shall include the following: bodily injury and property damage including personal injury, coverage for contractual employees (excluding any employees of UMLLC), all premises and on going and completed operations, including blanket contractual and products/completed operations, explosion, collapse, mobile equipment not suitable for roadways, underground, separation of insureds, and liability assumed under an insured contract and shall be written on ISO form CG 00 01 12-07 or its equivalent.
- (c) *Commercial Automobile Liability.* 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 Commercial Automobile Liability Insurance with limits of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The policy shall be endorsed with CA 99 48 and MCS 90 (or their equivalents), if such exposure exists. The employee versus employee exclusion shall be removed.
- (d) *Umbrella Liability.* The Concessionaire shall provide or cause to be provided follow form Umbrella Liability Insurance with a minimum limit of \$50,000,000 per occurrence and shall apply in excess of the coverages for the Concessionaire Required Coverages set forth in Section 13.1(a), Section 13.1(b) and Section 13.1(c)). In the event that such Umbrella Liability Insurance applies in excess of the coverages for the Concessionaire Required Coverage in Section 13.1(e), then the minimum limit for the Concessionaire Required Coverage in Section 13.1(e) shall be \$12,000,000 rather than \$15,000,00, and in the event that such Umbrella Liability Insurance applies in excess of the coverages for the Concessionaire Required Coverage in Section 13.1(g), then the minimum aggregate

limit for the Concessionaire Required Coverage in Section 13.1(g) shall be \$10,000,000 rather than \$15,000,000.

- (e) *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 maintain or require such architects, engineers, construction managers or other professional consultants to maintain Professional Liability Insurance, with limits not less than \$15,000,000 per claim and in the aggregate or such other limit (whether lower or higher) as UMLLC and the Concessionaire may agree (each, acting reasonably) with respect to such policy for a particular Capital Improvement or Material Change, which other limit shall be included as part of the Approval of such Capital Improvement or Material Change in accordance with Section 4.3. The policy shall include: contingent bodily injury liability, rectification and punitive damages. The faulty workmanship exclusion should be modified to cover losses arising out of professional services. Should the Concessionaire self-perform any work of the nature noted in this Section 13.1(e), evidence of Professional Liability Insurance meeting the standards for such work set forth above shall be required. Such insurance *shall remain* in place following completion of turnover date through the timing set forth in the applicable statute of repose.
- (f) *Network Security and Privacy Insurance.* The Concessionaire shall also maintain Cyber Liability Insurance for network security and privacy liability with limits of not less than \$10,000,000 per claim and in the aggregate inclusive of cybersecurity event management. Additionally coverage shall include: naming UMLLC and the University as Additional Insureds, \$10,000,000 per claim/aggregate Business Income/Network Interruption coverage, system failure cover, cyber extortion full limits, and physical damage ensuing from a cyber attack. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this Agreement.
- (g) *Pollution Legal Liability.* The Concessionaire shall provide Pollution Legal Liability Insurance and Site Pollution Insurance (third party or first party) or cause to be provided Pollution Legal Liability Insurance or Site Pollution Insurance (third party or first party) or equivalent, in each case with limits of not less than \$10,000,000 per incident and \$15,000,000 in the aggregate during any 3 year period for environmental and pollution damage liability arising out of pollution events occurring after the Turnover Date.
- (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 excluding any building in which the Shared Spaces are located), 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; provided, however, that the limits of such coverage may be based on replacement cost value agreed by UMLLC and the University and the Concessionaire acting reasonably or on a probable maximum loss analysis, subject

to UMLLC's and the University's approval of such probable maximum loss analysis by an independent third party that is reasonably acceptable to UMLLC. 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, earthquake, flood, ground up terrorism (certified and non-certified) and named wind including storm surge. Coverage shall include flood insurance with a sublimit of not less than \$10,000,000 in the aggregate. UMLLC and 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 UMLLC property caused by the Concessionaire or its Representatives at full replacement cost, except to the extent such loss or damage is covered by the insurance described in Section 13.2(c), in which case the Concessionaire shall be responsible for the deductible only in accordance with Section 13.2(c) as well as any uninsured damages resulting from direct or indirect peril.

- (i) *All Risk Builder's Risk.* When the Concessionaire undertakes, pursuant to this Agreement, any construction, maintenance or repairs to the Utility System (including Capital Improvements, Material Changes and betterments), the Concessionaire shall provide or cause to be provided, All Risk Builder's Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Utility System. Coverage shall include, but not be limited to, the following: right to partial occupancy, boiler and machinery, business income, valuable papers, ground up terrorism (including certified and non-certified incidents), and other consequential loss, when applicable with aggregate sublimits for catastrophic perils of earthquake, flood and named wind including storm surge which are the best available on commercially reasonable terms. UMLLC and the University and any Leasehold Mortgagee may be named as Additional Insured and as loss payees and included in any claim payment for signature prior to execution of the payment.
- (j) The Concessionaire's insurance, including Contractors and sub-contractors shall be primary and any insurance or self-insurance carried by UMLCC and/or the University shall not contribute with it. Any limits carried by the Concessionaire in excess of the required limits shown herein shall be available to UMLCC and the University..

Section 13.2. Insurance Coverage Required – UMLLC. UMLLC shall provide and maintain at UMLLC'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 "UMLLC Required Coverages" together with the Concessionaire Required Coverages, the "Required Coverages").

- (a) *Workers' Compensation.* UMLLC shall provide or cause to be provided Workers' Compensation coverage, as prescribed by applicable Law, covering all UMLLC employees who agree to provide a service under this Agreement.
- (b) [*UMLLC Liability Coverage.* UMLLC's liability coverage administered by the State's Office of Risk Management.]
- (c) *Property.* UMLLC shall obtain All Risk Property Insurance at full replacement cost, covering all loss, damage or destruction to UMLLC's or the University's owned property (other than any property leased to the Concessionaire hereunder), including improvements and betterments and the buildings in which the Shared Spaces are located, which insurance may be provided on a blanket basis with reported building values, which shall include the value of the coverage for UMLLC'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, earthquake and named wind. Coverage shall include flood insurance with limits which are commercially available. The Concessionaire shall be responsible for the property deductible payable by UMLLC and/or the State of Louisiana for any loss or damage to UMLLC property caused by the Concessionaire or its Representatives.

Section 13.3. Additional Requirements.

- (a) *Evidence of Insurance.* The Parties shall deliver or cause to be delivered to each other's Representative designated in writing by each Party and to the University's representative as noticed to the Concessionaire, an original, latest edition standard ACORD form Certificates of Insurance, or equivalent documentation acceptable to the Parties, evidencing the Concessionaire Required Coverages or UMLLC Required Coverages, as applicable, on or before the Turnover 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.
- (b) *Notice of Cancellation or Violation.* Each carrier shall be required to notify the Certificate Holder, including the University, of notice of cancellation in accordance with policy provisions, and each Party to this contract shall notify the other Party

in writing 30 Days (or in the case of cancellation for non-payment of premiums, 10 Days) prior to cancellation, non-renewal or any material change of any UMLLC Required Coverages (in the case of UMLLC) or Concessionaire Required Coverages (in the case of the Concessionaire). Without limiting Section 13.3(g), UMLLC 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 the Concessionaire shall reimburse UMLLC for any delinquent premiums paid by UMLLC on demand without any Days of grace and without prejudice to any other rights and remedies of the Parties hereunder.

- (c) *Deductibles.* All deductibles or self-insured retentions for Concessionaire Required Coverages or Concessionaire Contractors in excess of \$200,000 (Adjusted for Inflation annually) shall not exceed amounts approved by UMLLC in writing. Except as expressly provided herein, 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) *Adjustment of Insurance Coverages.* The amounts of coverage required by Section 13.1 and Section 13.2 shall be reasonably adjusted, as agreed by UMLLC, the University and the Concessionaire, based on limits maintained for comparable property each succeeding fifth anniversary of the Turnover Date, but in no event shall the amounts of coverage be less than specified in Section 13.1 and Section 13.2.
- (e) *Waiver of Subrogation.* Each of the Required Coverages provided by the Concessionaire pursuant to this agreement (other than those set forth in Section 13.2(a) and Section 13.2(b)) 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 (and, in the case of the Concessionaire Required Coverages, against the State of Louisiana; UMLLC, the University, their agents, officials, and employees. The Concessionaire shall cause each of its Contractors and subcontractors to waive all their rights of subrogation against the State of Louisiana; UMLLC, the University their agents, officials, and employees.
- (f) *UMLLC's Right to Insure.* Without limiting Section 13.3(b), if the Concessionaire fails to obtain and maintain or cause to be obtained and maintained the Concessionaire Required Coverage in accordance with this Article 13, UMLLC shall have the right (without any obligation to do so), upon 2 Business Days' notice to the Concessionaire 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 in connection therewith shall be payable by the Concessionaire on demand without any Days of grace and without prejudice to any other rights and remedies of UMLLC hereunder. Such insurance taken out by UMLLC shall not relieve the Concessionaire of its obligations to insure

hereunder and UMLLC and the University shall not be liable for any loss or damage suffered by the Concessionaire in connection therewith.

- (g) *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.
- (h) *No Contribution by UMLLC.* The Concessionaire expressly understands and agrees that any insurance or self-insurance programs maintained by UMLLC, the State of Louisiana, or the University shall not contribute with insurance provided by the Concessionaire under this Agreement.
- (i) *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, in each case to the nature of the contract with the Contractor. Such coverages shall insure the interests of the State of Louisiana, UMLLC, the University, their agents, officials, and employees (provided that such agents, officials or employees shall not be included if not permitted by applicable Law or commercially available), 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 State of Louisiana, the University, UMLLC, their agents, officials and employees as Additional Insureds 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 UMLLC or the University, the Concessionaire shall provide, or cause to be provided, to UMLLC 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 UMLLC.
- (j) *Cooperation.* UMLLC 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.
- (k) *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 insured on any liability policy.

- (l) *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 UMLLC as to such Additional Coverages at least 10 Business Days in advance of purchasing such Additional Coverages and make such modifications as UMLLC may reasonably require so that such Additional Coverage does not conflict with UMLLC’s insurance coverages, (ii) provide UMLLC with any documentation relating to the Additional Coverages, including Certificates of Insurance, that UMLLC reasonably requests and (iii) at UMLLC’s election, acting reasonably, cause the State of Louisiana, the University, UMLLC, their agents, officials and employees, to be named as additional insureds under such Additional Coverages, if that is normally allowed in accordance with good industry practice.
- (m) *UMLLC’s Right to Modify.* UMLLC 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 13.3. 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, each acting reasonably, 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 UMLLC 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.
- (n) *Commercial Availability.* To the extent any of the Required Coverages are not available on a commercially reasonable basis or on commercially reasonable terms, the Party responsible for obtaining such Required Coverage shall obtain insurance that is available on a commercially reasonable basis or on commercially reasonable terms that best approximates the applicable Required Coverages, but said substitute coverage shall, at the other Party’s request, be subject to review of an independent insurance consultant, and such independent insurance consultant shall have delivered to UMLLC and the Concessionaire its opinion to the effect that the substitute coverages meet the above-stated criteria.
- (o) *Endorsements.* All Concessionaire Required Coverages (except for the professional liability, workers’ compensation and employer’s liability policies) shall be endorsed to include the State of Louisiana, UMLLC, the University, their agents, officials, and employees as Additional Insureds, in each case to the extent permitted by Law and commercially available. For the avoidance of doubt, Blanket Additional Insured endorsements that provide coverage “where required by

contract” shall be acceptable for this purpose. The General Liability Additional Insured provisions will include both on-going and completed operations and confirmed accordingly in the Certificates of Insurance.

- (p) *Concessionaire Required Coverage Requirements.* All Concessionaire Required Coverages and UMLLC’s All Risk Property Insurance described in Section 13.2(c) shall be issued by reputable insurance companies duly authorized to engage in the insurance business in the State of Louisiana, with an A.M. Best’s rating of A-, VII or better, be primary noncontributory coverage and contain severability of interests provisions.
- (q) *Defense of Coverage Outside Limits of Liability.* All Concessionaire Required Coverages shall include defense coverage outside the limits of liability, except for the Professional Liability Insurance required to be carried by the Concessionaire.
- (r) *Requirements for Concessionaire Required Coverages for Liability Policies.* All Concessionaire Required Coverages that are liability policies shall be occurrence-based, except where not commercially available, in which case they shall be on a claims-made basis, provided that such policies shall extend for a period of 5 years after the expiration or earlier termination of this Agreement, which obligation shall survive the expiration or earlier termination of this Agreement.
- (s) *Payment for Insurance Coverage.* To the extent that UMLLC 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 UMLLC, then UMLLC shall be responsible for purchasing those certain Concessionaire Required Coverages, which shall satisfy the Concessionaire’s obligation to do so hereunder. UMLLC 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 UMLLC 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 or with such modifications, including as to location or configuration, as directed by UMLLC provided such

modifications shall not materially and adversely affect the Concessionaire's ability to perform the Utility System Operations once completed and such cost shall be included in the Casualty Costs (any such activity being a "Restoration"); and

- (iii) if the Casualty Cost cumulatively exceeds \$1,000,000, deposit all insurance proceeds received by the Concessionaire in connection with the relevant Restoration with the Depositary selected by UMLLC pursuant to Section 13.4(b); provided, however, that if at any time the Casualty Cost exceeds the net insurance proceeds then 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 deposited pursuant to this Section 13.4(a)(iii) and Section 13.4(b) (the "Restoration Shortfall Amount"), except to the extent such difference is caused by the negligence or willful misconduct of, or violation of applicable Law by, UMLLC or is the result of any modifications made by UMLLC pursuant to Section 13.4(a)(ii) in which case UMLLC shall be responsible to make such deposit (collectively, with (A) any insurance proceeds received by the Concessionaire with respect to such Casualty not on deposit with the Depositary and (B) any interest earned on all such funds, the "Restoration Funds").

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 UMLLC for Approval by UMLLC the plans for the Restoration work and such work shall not be undertaken unless the plans for such work have been Approved by UMLLC in writing. For the avoidance of doubt, and notwithstanding any direction by UMLLC to modify the location or configuration of the Utility System pursuant to Section 13.4(a)(ii), the Restoration Shortfall Amount shall not be considered a New Approved Capital Improvement Cost.

- (b) *Rights of UMLLC.* 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, UMLLC 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 UMLLC's reasonable Restoration expenses, less amounts received by UMLLC 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 UMLLC for all amounts spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depositary to pay over to UMLLC 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 Depositary to pay over to UMLLC, for allocation to UMLLC, within 30 Days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depositary 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 Depositary shall pay to the Concessionaire from time to time, any Restoration Funds then held by the Depositary, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as UMLLC, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and UMLLC 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 UMLLC with an estimate of the cost of such Restoration, prepared by an architect or engineer;
 - (ii) the Restoration Funds then held by the Depositary 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 Depositary and UMLLC 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 UMLLC and the Depositary a release of such lien executed by the lienholder 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 Depositary 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 materials 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 Depositary are sufficient to complete the Restoration; and

- (iv) except as provided in Section 13.4(b) and subject to Section 13.4(h), upon completion of and payment for the Restoration by the Concessionaire, the Depositary 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, provided the deficiency in funds necessary to complete the Restoration is provided in accordance with Section 13.4(a)(iii).

For the avoidance of doubt, the costs incurred for Capital Improvements made as part of the Restoration shall not be considered Capital Improvement Costs for purposes of Schedule 5 or otherwise included in the calculation of the Utility Fee.

- (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 Depositary and UMLLC the certificate of the architect or engineer (or other evidence reasonably satisfactory to UMLLC) 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 liens or other Encumbrances 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 Depositary in accordance with Section 13.4(c)(ii)), or insured over by title insurance reasonably acceptable to UMLLC, (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 Depositary 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 State of Louisiana, UMLLC, their agents, officials, and employees, the Concessionaire and the Leasehold Mortgagee, as their interests may appear as additional obligees, and shall deliver copies of any such bonds to UMLLC promptly upon obtaining them. The claims of any such additional obligee with respect to such payment of performance bonds shall rank *pari passu* in priority with the claims of all other additional obligees.
- (f) *Benefit of UMLLC.* The requirements of this Section 13.4 are for the benefit only of UMLLC, and no Contractor or other Person shall have or acquire any claim against UMLLC as a result of any failure of UMLLC 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 Depositary 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) *Lien of Leasehold Mortgage.* Any Restoration Funds not used for the Restoration shall be subject to the lien of the applicable Leasehold Mortgage, but only after such Restoration is complete.
- (i) *Personal 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 UMLLC.

Section 13.5. Additional UMLLC Requirements.

- (a) The Concessionaire shall submit, at the Concessionaire's cost and expense, all design documents for proposed Capital Improvements to the Utility System to the standard UMLLC design and construction review process, including, but not limited to submitting documents to the University's Facilities and Property Oversight Department, c/o the Associate Vice President, Facility & Property Oversight, and UMLLC's property insurance carrier for a plan review.
- (b) The Concessionaire shall cooperate and participate, at the Concessionaire's cost and expense, in any and all Utility System Land visits or site inspections by or for any UMLLC insurance carrier.

ARTICLE 14 ADVERSE ACTIONS

Section 14.1. Adverse Action.

- (a) An "Adverse Action" shall occur if the City-Parish, the State of Louisiana, or any agency, political division, or unit or commission thereof, the University, or UMLLC, 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 (x) to be principally borne by the Concessionaire or by private sector utility concessionaires at universities and other public institutions in Louisiana, including the Concessionaire, and, in either case, not by other Persons and (y) 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; or (C) any action of the Louisiana Public Service Commission 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 by the Concessionaire in accordance with this Agreement.
- (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 UMLLC the Concession Compensation with respect thereto (such Concession Compensation, the "AA-Compensation") or (ii) terminate this Agreement and be paid by UMLLC 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 UMLLC within thirty (30) Days following the date on which the Concessionaire first became aware of the Adverse Action stating that an Adverse Action has occurred. Within one hundred eighty (180) Days following the date of delivery of the AA-Preliminary Notice, the Concessionaire shall give UMLLC 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. UMLLC shall, after receipt of the AA-Notice, be entitled by notice delivered to the Concessionaire no later than thirty (30) Days following the date of receipt of the AA-Notice, to require the Concessionaire to provide such further supporting particulars as UMLLC may reasonably consider necessary. If UMLLC wishes to dispute the occurrence of an Adverse Action or the amount of AA-Compensation, if any, claimed in the AA-Notice, UMLLC shall give written notice of dispute (the “AA-Dispute Notice”) to the Concessionaire within thirty (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 thirty (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), UMLLC 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 UMLLC 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, UMLLC 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, but the Concessionaire may not change its election to receive AA-Compensation with respect to such Adverse Action.

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), then this

Agreement, subject to Section 14.3, shall terminate sixty (60) Days following the date of receipt of the AA-Notice by UMLLC, and UMLLC 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 unpaid Concession and KPI Compensation Balance (for the avoidance of doubt, including any Unrecovered Balances), plus (iii) 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 (iv) the Concession Compensation calculated for the period between the date of the Adverse Action and the date of termination less (v) 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 sixty (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 UMLLC from the date of receipt of the AA-Dispute Notice to the date on which payment is made, UMLLC may defer any such payment for an additional one hundred twenty (120) Days in UMLLC’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 UMLLC to the Concessionaire, so long as UMLLC 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 UMLLC the written consent of the Leasehold Mortgagee to such termination.

Section 14.3. Right of UMLLC to Remedy. If UMLLC wishes to remedy the occurrence of an Adverse Action (other than an Adverse Action by UMLLC 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, UMLLC shall give written notice thereof to the Concessionaire within thirty (30) Days following the date of receipt of the AA-Notice. If UMLLC gives such notice it must remedy the applicable Adverse Action within one hundred twenty (120) Days following the date of receipt of the AA-Notice or, if a AA-Dispute Notice has been given, within one hundred twenty (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, UMLLC shall be deemed to have remedied the applicable Adverse Action as of the date that UMLLC 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 UMLLC 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 or by private sector utility concessionaires at universities and other public institutions in Louisiana, including 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, UMLLC 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 UMLLC 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 UMLLC 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 UMLLC 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 UMLLC 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 ten (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. UMLLC shall, after receipt of any such notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as UMLLC may reasonably consider necessary.

- (b) The Concessionaire shall notify UMLLC within five (5) Business Days following the date on which it first became aware that a 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 UMLLC and the Concessionaire jointly determine, each acting reasonably. If UMLLC 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 UMLLC 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 commercially 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 to the Concessionaire or the Operator for the performance of obligations under this Agreement and such effect continues for a period in excess of one hundred twenty (120) continuous Days or one hundred twenty (120) non-continuous Days within a three hundred sixty (360) -Day period and has a Material Adverse Effect, for which the Concessionaire is not made whole through Concession Compensation, 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), 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 and the Concessionaire is not otherwise made whole through Concession Compensation, then, notwithstanding Section 2.1, in either case, the Concessionaire shall have the right, but not the obligation, by written notice to UMLLC within thirty (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 UMLLC to a leasehold tax, conveyance fee or similar charge under applicable Law. If the Concessionaire timely elects to exercise the right to the Delay Event Remedy but such exercise is prohibited by Law or would subject the Concessionaire or UMLLC 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 UMLLC 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 five (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 Remedy Notice”) to UMLLC 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. UMLLC shall, after receipt of the Delay Event Remedy Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as UMLLC may reasonably consider necessary. If UMLLC wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Remedy Notice, UMLLC shall give written notice to dispute (the “Delay Event Remedy Dispute Notice”) to the Concessionaire within thirty (30) Days following the date of receipt of the Delay Event Remedy Notice stating the grounds for such dispute, and if neither the Delay Event Remedy Notice nor the Delay Event Remedy Dispute Notice has been withdrawn within thirty (30) Days following the date of receipt of the Delay Event Remedy 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 two (2) opportunities to provide a Delay Event Remedy 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 UMLLC within forty-five (45) 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, UMLLC shall give written notice to the Concessionaire within forty-five (45) Days following the date on which UMLLC 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 fourteen (14) Days after each Compensation Calculation Date, the Concessionaire shall send UMLLC notice setting forth all Concession Compensation due for the immediately preceding Compensation Calculation Measuring Period, and UMLLC 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, as applicable, is claimed therein, including an explanation of the reasons that such event(s) constitute Compensation Event(s), Adverse Action(s) and KPI Event(s), as applicable, under the terms of this Agreement; and (iii) the amount claimed as Concession Compensation and KPI Compensation, as applicable, with respect to each such Compensation Event, Adverse Action and KPI Event, as applicable, 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 thirty (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 thirty (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) UMLLC 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, subject to Section 3.12.
- (d) UMLLC 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 in equal monthly installments.

- (e) Following the final determination of the Concession Compensation and KPI Compensation, (i) if the Concession and KPI Compensation Balance is positive, then UMLLC shall pay, within ninety (90) 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 in accordance with Section 15.3(d), if applicable or (ii) if the Concession and KPI Compensation Balance is negative, then the Concessionaire shall pay, within ninety (90) Days of such final determination, to UMLLC, the absolute amount of the Concession and KPI Compensation Balance or, with UMLLC's consent, offset such amount against the immediately succeeding payment of the Utility Fee, if applicable.
- (f) 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 all 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 UMLLC'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 UMLLC's sole and exclusive remedy for any KPI Event.

Section 15.5. Maximum Annual Amount of KPI Compensation. Notwithstanding anything to the contrary contained herein, the maximum amount of KPI Compensation for which the Concessionaire may be liable in any given Fiscal Year shall be the greater of (a) ten percent (10%) of the Utility Fee otherwise payable during such Fiscal Year, or (b) two million five hundred thousand dollars (\$2,500,000); *provided that* any KPI Compensation in excess of such cap in any Fiscal Year for which the Concessionaire would otherwise be liable shall become due and owing in the subsequent Fiscal Year (but subject to the same cap in such Fiscal Year) until the earlier of (x) the second (2nd) anniversary of the Fiscal Year in which the KPI Compensation was incurred and (y) the time that all such outstanding amounts are paid to UMLLC pursuant to this Section 15.5, and such deferred amounts shall accrue interest at a rate equal to the lesser of (A) the sum of the Bank Rate plus three percent (3%) per annum and (B) the maximum interest rate permitted by Law. For the avoidance of doubt, the limitation on the maximum amount of KPI Compensation shall not limit the number of KPI Events that have occurred, including the determination of the number of KPI Events in a Fiscal Year for purposes of Section 3.3 or the determination of future KPI Compensation.

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) 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, a KPI Event, or a breach of Section 21.1(a)), and such failure continues unremedied for a period of ninety (90) Days following notice thereof (giving particulars of the failure in reasonable detail) from UMLLC 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 UMLLC, 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 UMLLC, and (C) such failure is, in fact, cured within such period of time;
- (ii) the Concessionaire fails to remedy any Transfer of this Agreement or all or any portion of the Concessionaire Interest in contravention of Article 17 within ten (10) Business Days following notice thereof from UMLLC to the Concessionaire;
- (iii) 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 [fifty (50)] Days following notice thereof from UMLLC 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 UMLLC, 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 UMLLC, and (C) such failure is, in fact, cured within such period of time;
- (iv) 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 such petition is filed against it and an order for relief is entered, or 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) within ninety (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, within ninety (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, within ninety (90) Days after the expiration of any such stay, such appointment has not been vacated;
 - (vi) 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 sixty (60) Days after the Concessionaire becomes aware of such levy, unless such levy resulted from actions or omissions of UMLLC or its Representatives;
 - (vii) the Concessionaire Abandons the Initial Modernization Project or otherwise repudiates in writing any of its material obligations under this Agreement;
 - (viii) the Concessionaire fails to achieve IMP Substantial Completion by the IMP Substantial Completion Long Stop Date, or the Concessionaire fails to achieve IMP Final Acceptance by the IMP Final Acceptance Long Stop Date, and in either case, such failure continues unremedied for a period of thirty (30) Days following notice thereof (giving particulars of the failure in reasonable detail) from UMLLC to the Concessionaire; or
 - (ix) the Concessionaire fails to obtain, provide, or maintain the D&C Security in accordance with the terms of this Agreement and such failure continues unremedied for a period of thirty (30) Days following notice thereof from UMLLC to the Concessionaire.
- (b) *Remedies of UMLLC upon Concessionaire Default.* Upon the occurrence, and during the continuance, of a Concessionaire Default, UMLLC 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 UMLLC, in its discretion, shall determine:
- (i) subject to the cure rights of the Leasehold Mortgagee set forth in Section 19.3, UMLLC may terminate this Agreement by giving fifty (50) 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) or Section 16.1(a)(viii) by (i) agreeing within such fifty (50) -Day period to pay any Losses sustained as a result of such Concessionaire Default and (ii) providing UMLLC with a written work plan within such fifty (50) -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 UMLLC, 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 thirty (30) Days' notice of such failure from UMLLC to the Concessionaire shall be deemed to be a Concessionaire Default described in Section 16.1(a)(i) or Section 16.1(a)(viii), as applicable, 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, UMLLC 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 UMLLC shall be payable by the Concessionaire to UMLLC within three (3) Business Days after demand therefor;
- (iii) subject to the cure rights of the Leasehold Mortgagee set forth in Section 19.3, UMLLC may cure the Concessionaire Default (but this shall not obligate UMLLC 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 UMLLC in curing or attempting to cure the Concessionaire Default, shall be payable by the Concessionaire to UMLLC within three (3) Business Days after written demand therefor; *provided, however*, that: (A) UMLLC shall not incur any liability to the Concessionaire for any act or omission of UMLLC or any other Person in the course of remedying or attempting to remedy any Concessionaire Default unless resulting from UMLLC's recklessness, gross negligence or willful misconduct; (B) UMLLC's cure of any Concessionaire Default shall not affect UMLLC's rights against the Concessionaire by reason of the Concessionaire Default; and (C) UMLLC may seek specific performance, injunction, or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;
- (iv) UMLLC 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 UMLLC to terminate this Agreement pursuant to Section 16.1(b)(i), UMLLC may terminate the Concessionaire's right to use, operate, maintain, possess, control, and rehabilitate the Utility System and the Concessionaire's right to collect from UMLLC and retain the Utility Fee, and in such event, UMLLC or UMLLC'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 UMLLC 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) UMLLC may exercise any of its other rights and remedies provided for hereunder or at law or equity.

Section 16.2. Default by UMLLC.

- (a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a "UMLLC Default" under this Agreement:
 - (i) UMLLC fails to pay the Utility Fee, the Forecast Utility Fee or the Concession and KPI Compensation Balance to the extent UMLLC is required to do so pursuant to Section 15.3(f), each in accordance herewith and such failure continues unremedied for a period of five (5) Business Days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to UMLLC;
 - (ii) UMLLC 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 UMLLC is required to do so pursuant to Section 15.3(f)) and such failure continues unremedied for a period of ninety (90) Days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to UMLLC or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that UMLLC 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, (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) UMLLC 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 fifty (50) Days following notice thereof from the Concessionaire to UMLLC, or for such

longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that UMLLC 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) 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 UMLLC Encumbrance) created, incurred, assumed or suffered to exist by UMLLC 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 sixty (60) Days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or all or a material part of the Utility System shall be subject to a condemnation or similar taking by UMLLC or any agency thereof;
- (v) UMLLC (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 such petition is filed against it and an order for relief is entered, or UMLLC 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 UMLLC, 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 within ninety (90) Days after the commencement of any proceeding against UMLLC 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, within ninety (90) Days after the appointment, without the consent or acquiescence of UMLLC, of any trustee, receiver, custodian, assignee, sequestrator, liquidator, or other similar official of UMLLC 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, within ninety (90) Days after the expiration of any such stay, such appointment has not been vacated; or

- (vi) UMLLC repudiates in writing any of its material obligations under this Agreement.
- (b) *Remedies of Concessionaire Upon UMLLC Default.* Upon the occurrence, and during the continuance, of a UMLLC Default, the Concessionaire may by notice to UMLLC declare UMLLC 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 ninety (90) Days' prior notice to UMLLC; *provided, however*, that UMLLC shall be entitled to cure a UMLLC Default pursuant to Section 16.2(a)(ii) or Section 16.2(a)(iii) by (i) agreeing within such sixty (60) -Day period to pay any Losses sustained as a result of such UMLLC Default or (ii) providing the Concessionaire with a written work plan within such sixty (60) -Day period outlining the actions by which UMLLC will ensure future compliance with either (x) the obligation, covenant, agreement, term, or condition in this Agreement that UMLLC failed to perform or observe or (y) the requirements or directives of the final award issued in accordance with Article 18 that UMLLC failed to perform or observe, which work plan is approved by the Concessionaire, but any failure of UMLLC to comply in any material respect with such approved work plan following thirty (30) Days' notice of such failure from the Concessionaire to UMLLC shall be deemed to be a UMLLC Default described in Section 16.2(a)(ii) and the entitlement of UMLLC to cure such UMLLC Default by the delivery of an approved work plan shall not apply thereto; and upon such termination, UMLLC shall be obligated to pay to the Concessionaire the Utility System Concession Value plus, without duplication, the unpaid Concession and KPI Compensation Balance (for the avoidance of doubt, including any Unrecovered Balances) and the out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination together with any Taxes payable by the Concessionaire on the foregoing that exceed the Taxes the Concessionaire would have paid on future receipts of the Utility Fee if the termination of this Agreement pursuant to this Section 16.2(b)(i) had not occurred (using the Tax rates in effect when such damages would be payable);
 - (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 UMLLC 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 UMLLC (other than any payment obligations of UMLLC with respect to such termination (including, for the avoidance of doubt, any payment obligations pursuant to Sections 14.2(a), 15.3(f) or 16.2(b)(i), if any, and the payment obligation set forth in this Section 16.3(a)), surrender, transfer and deliver to UMLLC 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 or 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 UMLLC Encumbrances, (y) those created by or suffered to exist or consented to by UMLLC or any Person claiming through it, and (z) with respect to any property added to the Utility System after the Time of Turnover, title defects affecting such property in existence on the date such property is added to the Utility System, all in exchange for one dollar (\$1) paid by UMLLC on the Reversion Date;
- (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) UMLLC 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 UMLLC shall be liable for all costs, expenses and amounts incurred in connection with the Utility System Operations on and after the Reversion Date;
- (e) UMLLC shall have the option, subject to the rights of any Leasehold Mortgagee, or its designee or nominee, to enter into a New Agreement with a third party, by providing notice to the Concessionaire 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 UMLLC or its nominee for the remainder of their respective terms; *provided, however*, that if UMLLC exercises such option, the right, title and interest of the Concessionaire in, to and under such Operating Agreements and Authorizations shall be assigned to UMLLC or its nominee as of the Reversion Date and the Concessionaire shall

surrender the Utility System to UMLLC and shall cause all Persons claiming under or through the Concessionaire to do likewise, and UMLLC 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 UMLLC 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 UMLLC 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 UMLLC, acting reasonably, may request;
- (g) the Concessionaire shall execute and deliver to UMLLC transfer of title documents and other instruments reasonably required by UMLLC to evidence such termination;
- (h) the Concessionaire shall assist UMLLC in such manner as UMLLC 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 UMLLC, take all steps as may be necessary to enforce the provisions of the Operating Agreements pertaining to the surrender of the Utility System;
- (i) UMLLC and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to UMLLC, 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 one hundred eighty (180) Days following the Reversion Date; *provided, however*, that UMLLC and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to UMLLC 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 UMLLC 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 UMLLC 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 UMLLC may reasonably require to give effect to the foregoing;

- (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 UMLLC, and the Concessionaire shall promptly deliver to UMLLC 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); and
- (l) UMLLC and the Concessionaire shall undertake reasonable efforts to transition Concessionaire Utility System Employees to the University, UMLLC, or their designee, subject to the University's and/or UMLLC's then-applicable employment policies and legal requirements.

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 (i) is terminated by UMLLC other than pursuant to Section 16.1, (ii) is canceled, rescinded or voided during the Term for any reason over the objection and without action by the Concessionaire, or (iii) terminates as provided in Section 11.15(c), then UMLLC shall (without limiting any payment obligations set forth in Section 15.3(f)) pay to the Concessionaire the Utility System Concession Value as of the date of such termination, cancellation, rescinding, or voiding, plus, without duplication, (A) unpaid Concession and KPI Compensation Balance (for the avoidance of doubt, including any Unrecovered Balances), and (B) 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, and (C) any Taxes payable by the Concessionaire on the foregoing (A) through (B) that exceed the Taxes the Concessionaire would have paid on future receipts of the Utility Fee if the termination of this Agreement pursuant to this Section 16.4 had not occurred (using the Tax rates in effect when such damages would be payable). UMLLC 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. For the avoidance of doubt, the termination of this Agreement as provided in Section 11.15(c) shall not constitute termination for convenience by either UMLLC or the Concessionaire.

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:

- (i) Prior to the second (2nd) anniversary of the IMP Substantial Completion Date, 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 or nominee/designee of a Leasehold Mortgagee under Article 19);
- (ii) On or after the second (2nd) anniversary of the IMP Substantial Completion Date, 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 or nominee/designee of a Leasehold Mortgagee under Article 19) that would result in the Concessionaire directly owning fifty percent (50%) or less of the Concessionaire Interest granted to the Concessionaire as of the date hereof;

unless:

- (A) in the case of clause (i) of this Section 17.1(a), the UMLLC Liaison has Approved such Transfer in his or her sole discretion; and
- (B) in the case of clause (ii) of this Section 17.1(a), (x) the UMLLC Liaison has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee, and the proposed Transferee (other than a Transferee that is an Affiliate or a Leasehold Mortgagee under Article 19) enters into an agreement with UMLLC in form and substance satisfactory to the UMLLC Liaison, 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.
- (iii) Any Transfer made in violation of this Section 17.1(a) shall be null and void ab initio and of no force and effect.

In no event shall the Concessionaire permit a Transfer of the Concessionaire Interest to a Restricted Person.

- (b) Approval of a proposed Transfer pursuant to Section 17.1(a)(ii) may be withheld if the UMLLC Liaison reasonably determines that (i) such proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with UMLLC 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 UMLLC (unless UMLLC shall have received indemnification, as determined in the UMLLC Liaison'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 engaged by the proposed Transferee in operating a Comparable 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 IMP Contractor or the Operator, as the case may be, engaged by the proposed Transferee, including the ability of the IMP Contractor or the Operator, as the case may be, to comply with, respectively, the Design Documents and the Performance Standards. If the Concessionaire disputes the UMLLC Liaison'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 UMLLC Liaison shall, on a confidential basis (unless disclosure is required by applicable Law) and at the Concessionaire's sole cost and expense, evaluate one or more proposed Transferees (including as provided in Section 17.1(b), as applicable) and notify the Concessionaire within thirty (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 as provided in Section 17.1(a) and (as applicable) 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) 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:
 - (i) Prior to the second (2nd) anniversary of the IMP Substantial Completion Date, the Initial Investors, collectively, shall not cease to own one hundred percent (100%) of the ownership of the Concessionaire (or otherwise possess less than all of the power to direct or cause the direction of the management of the Concessionaire).
 - (ii) On or after the second (2nd) anniversary of the IMP Substantial Completion Date, a Change in Control of the Concessionaire shall be deemed to be a Transfer of the Concessionaire Interest for purposes of Section 17.1(a) (thus

requiring UMLLC's Approval) and shall be evaluated by the UMLLC Liaison (including as provided in Section 17.1(b) and Section 17.1(c), as applicable).

- (iii) Any transfer of an interest in a Person that, directly or indirectly, owns an interest in the Concessionaire to a Restricted Person shall be a violation of this Agreement, unless such transfer is made pursuant to a bona fide open market transaction on the New York Stock Exchange, NASDAQ, Toronto Stock Exchange, London Stock Exchange, or comparable U.S. or foreign securities exchange.
- (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.

Section 17.2. Assignment by UMLLC. UMLLC shall have the right to Transfer any or all of its interest in the Utility System and this Agreement (a) without the Concessionaire's consent, to any Person that (i) is a successor to UMLLC or similarly organized under and operated for the tax-exempt purposes of the Foundation, (ii) has (A) the sources of funding available for the payment of Concession Compensation (including AA-Compensation) that are at least as adequate and secure as UMLLC's at the time of the assignment, and (B) has access to debt markets that is at least as adequate as UMLLC's at the time of the assignment, and (iii) is able to receive such assignment without causing, directly or indirectly, the Concessionaire to experience any adverse tax consequence as a result of such assignment, or (b) to others with the prior consent of the Concessionaire; *provided that*, in either of the foregoing clauses (a) or (b), UMLLC shall be jointly and severally liable with such proposed transferee for the performance and observance of the obligations and covenants of UMLLC under this Agreement, and any agreement entered into by UMLLC 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 UMLLC 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 UMLLC's ability to meet its obligations under this Agreement and, provided further, that any such Transfer shall be subject to the rights and Encumbrances of the Concessionaire and of the Leasehold Mortgagee under any Leasehold Mortgage. In the event that UMLLC (x) ceases to be organized and operated for the tax-exempt purposes of the Foundation or (y) no longer has access to substantially the same funding sources or debt markets as UMLLC had as of the Effective Date, then by notice from the Concessionaire to UMLLC and the University, a process by which UMLLC's rights to the Utility System and this Agreement will be Transferred to the University shall commence within thirty (30) days after the date of such notice and shall conclude with a Transfer that is otherwise in compliance with this Section 17.2 within ninety (90) days after such notice.

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 fifteen (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 fifteen (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) fifteen (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 thirty (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 20.7.

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, 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 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, UMLLC's interest hereunder or UMLLC's or the University's reversionary interests and estates in and to the Utility System or any part thereof; in addition, any termination of this Agreement, following the expiration of the Leasehold Mortgagee's cure period in Section 19.3, if any, without a cure, by UMLLC shall simultaneously terminate the Leasehold Mortgage; *provided, however,* such termination of the Leasehold Mortgage and the Concessionaire's leasehold interest in the Utility System, shall not affect, modify or terminate the Concessionaire's obligations to the Leasehold Mortgagee with respect to the Leasehold Mortgage Debt;
- (d) UMLLC 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 UMLLC of express obligations set forth herein with respect to the Leasehold Mortgagee or in any other agreement with the Leasehold Mortgagee, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against UMLLC for any or all of the same;
- (e) UMLLC shall have no obligation to any Leasehold Mortgagee in the enforcement of the rights and remedies of UMLLC 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 UMLLC 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 UMLLC;
- (g) subject to the terms of this Agreement and the terms of any direct consent agreement executed by and between UMLLC 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 UMLLC 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 UMLLC for the payment of all sums owing to UMLLC under this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement;
- (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, UMLLC, 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;
- (j) a Leasehold Mortgagee shall, within ten (10) days after receipt of written request from UMLLC, execute an amendment to its recorded Leasehold Mortgage to conform the legal description of the real property encumbered by such Leasehold Mortgage to conform to the legal description in the Memorandum of Sub-Lease to the extent properly modified pursuant to Section 2.8; and
- (k) a Leasehold Mortgagee shall, within ten (10) days after receipt of written request from UMLLC, execute documentation reasonably acceptable to UMLLC releasing any land or other real property owned by UMLLC from the lien of any Leasehold Mortgage such that such land or real property may be conveyed to a third party without being subject to this Agreement or the Leasehold Mortgage, provided such request is accompanied by an affidavit from UMLLC that such land or other real property does not contain any Utility Facilities or Utility System Assets.

While any Leasehold Mortgage is outstanding, UMLLC 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 UMLLC has been provided notice by the holder thereof in accordance with the Leasehold Mortgage Notice Requirements, UMLLC 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 UMLLC in accordance with the Leasehold Mortgage Notice Requirements (or any subsequent change of address notice given to UMLLC pursuant to the requirements of Section 20.1). With respect to a Leasehold Mortgage regarding which UMLLC has been provided notice in accordance with the Leasehold Mortgage Notice Requirements, unless the Leasehold Mortgagee has otherwise advised UMLLC in writing, all payments to the Concessionaire to be made by UMLLC 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 UMLLC 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 ninety (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 ninety (90) -Day period shall be extended if the Concessionaire Default may be cured but cannot reasonably be cured within such period of ninety (90) Days, and the Leasehold Mortgagee begins to cure such default within such ninety (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 UMLLC, 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 UMLLC shall not exercise its right to terminate this Agreement by reason of such Concessionaire Default. In furtherance of the foregoing, UMLLC shall permit the Leasehold Mortgagee and its Representatives the same access to the Utility System as is permitted to the Concessionaire hereunder. UMLLC 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 all 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 Mortgage 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 UMLLC 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, UMLLC 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 UMLLC 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, without any charge, penalty, assessment or consideration not specifically provided for in this Section 19.5 (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 UMLLC, in a notice delivered to UMLLC, within thirty (30) Days after UMLLC 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 thirty (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 UMLLC, 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 UMLLC furnishes a statement or invoice for such costs the Leasehold Mortgagee pays or causes to be paid to UMLLC all reasonable costs and expenses (including legal, advisory and other fees), Taxes, fees, charges and disbursements paid or incurred by UMLLC 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 UMLLC 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 UMLLC’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 UMLLC, 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 UMLLC, 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 UMLLC determines, based on the written legal advice of counsel, that termination of this Agreement and the entry into a New Agreement by and among UMLLC and the Leasehold Mortgagee could violate applicable provisions of the Laws of the State of Louisiana governing procurement by UMLLC then, in lieu of entering in a New Agreement and in satisfaction of its obligations under this Section 19.5, UMLLC 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 (who, for the avoidance of doubt, may act on behalf of one or more lender groups as contemplated by Section 19.1), to the exclusion of all other Leasehold Mortgagees, whose notice was earliest received by UMLLC pursuant to the Leasehold Mortgagee Notice Requirements, shall have the right to exercise the rights as a Leasehold Mortgagee under this Article 19 vis-à-vis UMLLC, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights in which case the other Leasehold Mortgagee may exercise such rights, provided that such requirement shall not limit such additional Leasehold Mortgagees' rights hereunder. 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. UMLLC'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 UMLLC shall have thirty (30) Days after the date on which such Leasehold Mortgagee shall serve notice upon UMLLC 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 thirty (30) -Day period UMLLC shall have the right and option (the "UMLLC'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) UMLLC's Option shall be exercised by notice served upon the Concessionaire and all Leasehold Mortgagees within such thirty (30) -Day period. If UMLLC's Option is duly and timely exercised, UMLLC shall purchase and all Leasehold Mortgagees shall assign their Leasehold Mortgages to UMLLC (or its designee) on the date

which is sixty (60) Days after the date on which a Leasehold Mortgagee's Notice is served upon UMLLC. The closing shall take place at a mutually convenient time and place.

- (c) The purchase price payable by UMLLC 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 UMLLC 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 UMLLC, 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 UMLLC 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. UMLLC 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 UMLLC'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 UMLLC 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) UMLLC has made the determination contemplated by Section 19.5(c) or (ii) UMLLC, 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) UMLLC 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, UMLLC 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 without any charge, penalty, assessment, or consideration not specifically provided for in this Section 19.8.

- (c) Upon notification and satisfaction of all of the conditions and requirements in Section 19.8(d), UMLLC 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 UMLLC 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 UMLLC 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 UMLLC, in a notice delivered to UMLLC within the later of thirty (30) Days after UMLLC 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 thirty (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 UMLLC, 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 UMLLC all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by UMLLC 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. UMLLC 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 five (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 UMLLC 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 UMLLC a notice as provided in Section 19.8(d)(i), UMLLC 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 UMLLC 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 UMLLC 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 UMLLC in accordance with Article 18; *provided* that the Leasehold Mortgagee agrees to be bound by the outcome of the dispute resolution process.

ARTICLE 20 MISCELLANEOUS

Section 20.1. Notice. All notices by the Concessionaire or UMLLC, approvals or consents by the Concessionaire, and Approvals by UMLLC (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 email, 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 or email addresses shown below (or such other persons, address or email addresses as either Party may from time to time designate by a Notice to the other):

(a) in the case of UMLLC:

(i) for delivery by mail:

Utilities Modernization LLC
c/o LSU Real Estate and Facilities Foundation
Attn: Vice President & General Counsel
3796 Nicholson Drive
Baton Rouge, LA 70802

With a copy to:

[•]

(ii) for delivery by email:

Vice President & General Counsel (Foundation)
Email: lgreco@lsufoundation.org

With a copy to:

[•]

Email: [•]

(b) in the case of the Concessionaire:

(i) for delivery by mail:

[•]

With a copy to:

[•]

(ii) for delivery by email:

[•]

With a copy to:

[•]

Email: [•]

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 fourth (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 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 UMLLC:

[•]

Email: [•]

(c) in the case of the Concessionaire:

[•]

Email: [•]

Section 20.2. 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 20.3. Amendment. This Agreement may be amended, changed, or supplemented only by a written agreement signed by the Parties.

Section 20.4. 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 20.5. 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 UMLLC to have the same rights after the aforesaid determination of invalidity or unenforceability as before, UMLLC 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 20.6. 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 Louisiana (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 20.7. 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 state courts in the State of Louisiana in the Parish of East Baton Rouge, and each of the Concessionaire and UMLLC 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 Concessionaire may be made either (i) by delivery to the Concessionaire's registered agent for service of process in the State of Louisiana, or (ii) by such other lawful means under the Laws of the State of Louisiana. Service of process on UMLLC may be made either (i) by delivery to UMLLC's registered agent for service of process in the State of Louisiana, or (ii) by such other lawful means under the Laws of the State of Louisiana. 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 UMLLC. UMLLC 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 20.8. 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 20.9. 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 20.10. 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 20.11. 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 20.12. 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 UMLLC 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 20.13. 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 UMLLC for a breach of the Performance Standards or a KPI Event, which shall be limited to those expressly set forth herein. Notwithstanding the foregoing, where this Agreement provides for liquidated damages (except with respect to the liquidated damages described in Section 15.4 and Section 22.4), such liquidated damages shall be the sole exclusive remedy of UMLLC or the Concessionaire, as applicable, and UMLLC 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 20.14. Counterparts; Electronic 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 email or other means of electronic transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such email or other means of electronic transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

Section 20.15. Time of the Essence. Time is of the essence for this Agreement.

ARTICLE 21

DESIGN AND CONSTRUCTION

Section 21.1. General Duties. In connection with the Initial Modernization Project, the Concessionaire shall:

- (a) furnish all design, engineering, and other services, provide construction management and all D&C Work, including the supply of all materials, equipment, labor, and installations, and undertake all efforts necessary or appropriate to construct the Initial Modernization Project and maintain it during construction, so as to achieve IMP Substantial Completion by the IMP Substantial Completion Long Stop Date and IMP Final Acceptance by the IMP Final Acceptance Long Stop Date;
- (b) perform the Construction Work in accordance with the approved Final Design;
- (c) ensure that the Concessionaire's Representative, or a designated person approved by the UMLLC, is present at the Initial Modernization Project at all times during performance of the Construction Work;
- (d) comply with, and require that all Contractors comply with, all requirements of all applicable Laws;
- (e) cooperate with UMLLC and any Governmental Authority with jurisdiction in all matters relating to the applicable portions of the D&C Work, including their review, inspection and oversight of the design and construction;
- (f) provide quality management and quality assurance of all the work in respect of the D&C Work in accordance with [●]; and
- (g) use commercially reasonable efforts to mitigate delay to design and construction of the Initial Modernization Project, including by re-sequencing, reallocating, or redeploying the Concessionaire's and its Contractors' forces to other work, as appropriate.

Section 21.2. Performance of D&C Work. The Concessionaire and its Contractor shall perform or cause to be performed the D&C Work in accordance with:

- (a) good industry practice;
- (b) the requirements, terms and conditions set out in this Agreement, including the approved Final Design;
- (c) all applicable Laws; and
- (d) the requirements, terms and conditions set forth in all Authorizations.

Section 21.3. Design Development and Construction Commencement. Except for the development of the Final Design in accordance with Section 2.4(f), neither the Concessionaire nor

its Contractor shall commence any D&C Work until authorized in accordance with Section 22.1(a), Section 22.1(b) and Section 22.1(c).

Section 21.4. Suspension of Construction Work.

- (a) UMLLC shall at any time have the right and authority to suspend, in whole or in part, the Construction Work by written order to the Concessionaire. Any such written order will be supported by UMLLC's reasons for the required suspension of the Construction Work.
- (b) Any suspension of the Construction Work by UMLLC pursuant to this Section 21.4 will entitle the Concessionaire to relief pursuant to Section 15.1(c) and constitute a Compensation Event except where the suspension order is made in response to:
 - (i) any failure by the Concessionaire to comply with any applicable Law, safety standard or Authorization (including failure to handle, preserve, and protect archaeological, paleontological, or cultural remains or failure to handle Hazardous Substances, in accordance with applicable Laws and Governmental Approvals);
 - (ii) the Concessionaire's failure to ensure skilled and experienced personnel are furnished for the proper performance of the Construction Work in accordance with the requirements set out in [•];
 - (iii) the Concessionaire's failure to provide UMLLC with proof of (i) insurance coverage and payment in accordance with Section 13.3(a) or (ii) the D&C Security; or
 - (iv) the existence of conditions unsafe for workers, other Initial Modernization Project personnel or the general public, including failures to comply with safety standards (but only if such condition does not arise as a direct result of a Compensation Event or an event that entitles the Concessionaire to relief pursuant to Section 15.1(c)).
- (c) Any suspension order made in response to matters referred to in Section 21.4(b) shall cease to apply as soon as the relevant matter has been rectified or remedied to the reasonable satisfaction of UMLLC.

Section 21.5. Removal of IMP Contractor.

- (a) The IMP Contractor shall, at all times in connection with the design, construction, delivery and completion of the Initial Modernization Project, be under the direction, supervision and control (by ownership, contract or otherwise) of the Concessionaire, and no delegation by the Concessionaire to the IMP Contractor

(including pursuant to the Drop-Down DB Contract) shall relieve the Concessionaire of any obligations, duties or liability hereunder.

- (b) The Concessionaire shall have the right, to the extent provided in the Drop-Down DB Contract or any other agreement between the Concessionaire and the IMP Contractor, to terminate and replace the IMP Contractor, provided that the Concessionaire shall not engage or appoint a replacement IMP Contractor unless UMLLC has Approved such replacement IMP Contractor and the terms of any such engagement. The Concessionaire shall immediately notify UMLLC upon the termination or resignation of the IMP Contractor. UMLLC shall have the right, acting reasonably, to withhold Approval of any proposed replacement IMP Contractor, including for any of the following reasons: (i) UMLLC reasonably determines that the engagement of such proposed IMP Contractor is prohibited by applicable Law or this Agreement; (ii) UMLLC reasonably determines that such proposed IMP Contractor is not capable of performing the Initial Modernization Project in accordance with this Agreement, which determination may be based upon one or more of the following factors: (1) the ability of the proposed IMP Contractor to construct and deliver the Initial Modernization Project in a manner that complies with the Final Design; (2) the financial strength, capitalization and integrity of the proposed IMP Contractor, its direct or indirect beneficial owners and some or all of their respective Affiliates providing a guaranty of the IMP Contractor's obligations (which guaranty shall not be required to run to the benefit of UMLLC); (3) the experience of the proposed IMP Contractor in performing work and projects substantially similar to the Initial Modernization Project; (4) the background and reputation of the proposed IMP Contractor, 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 (5) the proposed terms of the engagement of the proposed IMP Contractor, including the fee being charged by the IMP Contractor, length of the term of the engagement and any restrictions on transfer by the IMP Contractor of its obligations and change in control of the proposed IMP Contractor. No termination or replacement of the IMP Contractor shall relieve the Concessionaire of any obligations, duties or liability hereunder or extend any time period for the Concessionaire's performance hereunder.
- (c) A Change in Control of the IMP Contractor shall be deemed to be the appointment of a replacement IMP Contractor subject to UMLLC's Approval pursuant to Section 21.5(b).

Section 21.6. Performance and Payment Security

- (a) Prior to the commencement of D&C Work, the Concessionaire shall furnish, [or cause the IMP Contractor to furnish,] the following:
 - (i) a performance bond (substantially in the form of the most current version of The American Institute of Architects AIA Document 312) in an amount

equal to one hundred percent (100%) of the Approved Budgeted Amount for the Initial Modernization Project (the “Performance Bond”); and

- (ii) a payment bond (substantially in the form of the most current version of The American Institute of Architects AIA Document 312) in an amount equal to one hundred percent (100%) of the Approved Budgeted Amount for the Initial Modernization Project (the “Payment Bond”).
- (b) Each of the Performance Bond and the Payment Bond must be issued by a surety or an insurance company authorized to issue bonds in the State that is rated in the top two categories by two of the three nationally recognized rating agencies or at least “A” or better and “Class VIII” or better according to A.M. Best’s Financing Strength Rating and Financial Size Category and listed on U.S. Treasury Circular 570.
- (c) Each of the Performance Bond and the Payment Bond shall name the State of Louisiana, UMLLC, their agents, officials, and employees, the Concessionaire and the Leasehold Mortgagee, as their interests may appear as additional obligees. The claims of any such additional obligee with respect each of the Performance Bond and the Payment Bond shall rank *pari passu* in priority with the claims of all other additional obligees.
- (d) The Concessionaire shall maintain, or cause the IMP Contractor to maintain, each of the Performance Bond and the Payment Bond until the second (2nd) anniversary of the IMP Substantial Completion Date.

ARTICLE 22

NOTICES TO PROCEED; IMP SUBSTANTIAL COMPLETION; IMP FINAL ACCEPTANCE

Section 22.1. Notices to Proceed. With respect to the Initial Modernization Project:

- (a) *Notice to Proceed – 1.*
 - (i) UMLLC anticipates issuing a notice to the Concessionaire (“NTP1”) promptly following approval of the Final Design and the Approved Budgeted Amount for the Initial Modernization Project in accordance with Section 2.4(f), and shall in any case issue NTP1 within three (3) Business Days after approval of the Final Design and such Approved Budgeted Amount.
 - (ii) Following issuance of NTP1, the Concessionaire is authorized to perform the works and activities specified in Section 1 (*NTP1 Conditions*) of Part 1 of Schedule 21.
- (b) *Notice to Proceed – 2.*

- (i) Upon satisfaction of the conditions precedent set out in Section 2 of Part 1 (*NTP2 Conditions*) of Schedule 21, UMLLC shall issue a notice to the Concessionaire (“NTP2”).
 - (ii) Following issuance of NTP2, the Concessionaire is authorized to perform the works and activities specified in Section 2 (*NTP2*) of Schedule 21.
- (c) *Notice to Proceed – 3.*
 - (i) Upon satisfaction of the conditions precedent set out in Section 3 (*NTP3 Conditions*) of Part 1 of Schedule 21, UMLLC shall issue a notice to the Concessionaire (“NTP3”).
 - (ii) Following issuance of NTP3, the Concessionaire is authorized to commence all other work and activities pertaining to the Initial Modernization Project, subject to any requirement to obtain acceptance of applicable submittals in accordance with Section 3 (*NTP3 Conditions*) of Part 3 of Schedule 21.
 - (iii) If the Concessionaire has not satisfied all the conditions precedent set out in Section 3 (*NTP3 Conditions*) of Part 1 of Schedule 21, UMLLC may elect to issue a notice to the Concessionaire authorizing the Concessionaire to commence certain works prior to the satisfaction of the remaining conditions precedent, as specified and subject to any conditions in UMLLC’s notice.

Section 22.2. IMP Substantial Completion.

- (a) UMLLC will issue a written certificate that the Concessionaire has achieved IMP Substantial Completion upon satisfaction (or waiver by UMLLC, in its sole discretion) of each of the conditions set forth in Part 2 of Schedule 21 and in accordance with the terms of this Section 22.2. On the IMP Substantial Completion Date, the IMP shall be (i) deemed to be part of the Utility System and the Utility System Facilities for purposes of this Agreement, and (ii) included in the Utility System to be operated and the Utility System Services to be performed by the Concessionaire pursuant to this Agreement.
- (b) The Concessionaire shall prepare a detailed plan for the completion of all remaining D&C Work (“D&C Closeout Plan”), which shall include:
 - (i) the SC Punch List and the draft FA Punch List; and
 - (ii) the timetable for carrying out Construction Work, including:
 - (A) the activities to be carried out between IMP Substantial Completion and IMP Final Acceptance and included in the FA Punch List; and
 - (B) any other activities to be carried out after IMP Final Acceptance; and

The Concessionaire shall submit the D&C Closeout Plan to UMLLC at least ninety (90) days prior to the date on which the Concessionaire anticipates achieving IMP Substantial Completion.

- (c) The Concessionaire shall implement the accepted D&C Closeout Plan and regularly update the SC Punch List and the FA Punch List, provided that the Concessionaire will not transfer any items from the SC Punch List to the FA Punch List without the prior written acceptance of UMLLC.
- (d) The Concessionaire shall provide UMLLC with not less than thirty (30) days' prior written notification of the date the Concessionaire anticipates achieving IMP Substantial Completion.
- (e) During the thirty (30)-day period specified in Section 22.1(d):
 - (i) the Concessionaire and UMLLC shall meet and confer and exchange information on a regular cooperative basis and shall at a minimum meet twice a week;
 - (ii) UMLLC may conduct:
 - (A) an inspection of the entire Initial Modernization Project and its components;
 - (B) a review of the IMP Design Documents and Construction Documents; and
 - (C) such other investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the conditions to IMP Substantial Completion have been satisfied; and
 - (iii) the Concessionaire and UMLLC shall agree the final FA Punch List.
- (f) Within five (5) Business Days of completion of the inspections, reviews and investigations specified in Section 22.1(e)(ii), UMLLC may either:
 - (i) issue the written certificate of IMP Substantial Completion ("Certificate of IMP Substantial Completion"); or
 - (ii) notify the Concessionaire in writing setting forth, as applicable, why the Initial Modernization Project has not reached IMP Substantial Completion.
- (g) If UMLLC issues a notice under Section 22.1(f)(ii) and the Concessionaire:
 - (i) does not dispute UMLLC's assessment, then the processes set forth in Sections 22.2(d), 22.2(e) and 22.2(f) shall be repeated until UMLLC issues a Certificate of IMP Substantial Completion; or

- (ii) disputes UMLLC's assessment, the Concessionaire may refer the dispute for resolution in accordance with Section 18 and:
 - (A) where the dispute is determined in favor of the Concessionaire, UMLLC shall issue the Certificate of IMP Substantial Completion; or
 - (B) where the dispute is determined in favor of UMLLC, then the processes set forth in Sections 22.2(d), 22.2(e) and 22.2(f) shall be repeated.
- (h) If Sections 22.2(g)(i) or 22.2(g)(ii)(B) apply and UMLLC determines that it does not require the full thirty (30) day period under Section 22.2(e) to re-conduct relevant inspections and investigations, UMLLC may notify the Concessionaire that a shorter period will apply.
- (i) On the IMP Substantial Completion Date, the Concessionaire shall pay to the University in readily available funds (according to instructions provided by the University to the Concessionaire not later than three (3) Days prior to such date) the Unexpended Contingency Amount.

Section 22.3. IMP Final Acceptance.

- (a) UMLLC will issue a written certificate that the Concessionaire has achieved IMP Final Acceptance upon satisfaction (or waiver by UMLLC, in its sole discretion) of each of the conditions set forth in Part 3 of Schedule 21 and in accordance with the terms of this Section 22.3.
- (b) Promptly after achieving IMP Substantial Completion, the Concessionaire shall perform all remaining Construction Work for the Initial Modernization Project in accordance with the accepted D&C Closeout Plan, including completion of all FA Punch List items.
- (c) The Concessionaire shall provide UMLLC with not less than thirty (30) days' prior written notification of the date the Concessionaire anticipates achieving IMP Final Acceptance.
- (d) During the thirty (30) day period specified in Section 22.3(c):
 - (i) the Concessionaire and UMLLC shall meet and confer and exchange information on a regular cooperative basis; and
 - (ii) UMLLC may conduct:
 - (A) an inspection of the FA Punch List items;
 - (B) a review of the Record Design Documents; and

- (C) such other investigation as may be necessary to evaluate whether the conditions to IMP Final Acceptance are satisfied.
- (e) Within five (5) Business Days of completion of the inspections, reviews and investigations specified in Section 22.3(d)(ii), UMLLC may either:
 - (i) issue a certificate of IMP Final Acceptance ("Certificate of IMP Final Acceptance"); or
 - (ii) notify the Concessionaire in writing setting forth, as applicable, why IMP Final Acceptance has not been achieved in which case the processes set out in Sections 22.3(c), 22.3(d) and 22.3(e) shall be repeated until UMLLC issues a Certificate of IMP Final Acceptance.

Section 22.4. Liquidated Damages for Failure to Achieve IMP Substantial Completion or IMP Final Acceptance.

- (a) The Parties acknowledge and agree that breaches or failures by the Concessionaire of the kind identified in this Section 22.4 would cause significant harm to UMLLC and the University, including loss of use, enjoyment and benefit of the Initial Modernization Project, injury to the credibility and reputation of UMLLC and the University with policy makers and with the University community who depend on and expect availability of service, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs); and that such harm is incapable of being accurately determined. The Parties further acknowledge and agree that the liquidated damages stipulated in this Section 22.4 as remedies for such breaches or failures reasonably approximate the appropriate compensation for the anticipated harm.
- (b) UMLLC's right to, and imposition of, liquidated damages pursuant to this Section 22.4 are in addition, and without prejudice, to any other rights and remedies available to UMLLC under this Agreement, at law or in equity respecting the breach, failure to perform or the Concessionaire Default that is the basis for the liquidated damages or any other breach, failure to perform or the Concessionaire Default, except for recovery of the monetary damage that the liquidated damages are intended to compensate. Liquidated damages are not intended to, and do not, liquidate the Concessionaire's liability under the payment obligation provisions of Section 12, even though third-party claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to such liquidated damages. Permitting or requiring the Concessionaire to continue and finish the Construction Work or any part thereof after the Planned IMP Substantial Completion Date or IMP Final Acceptance Deadline shall not act as a waiver of UMLLC's right to receive liquidated damages hereunder or any rights or remedies otherwise available to UMLLC.
- (c) The Concessionaire shall pay any liquidated damages owing under this Section 22.4 within thirty (30) days after UMLLC delivers invoice or demand therefor to the

Concessionaire. Liquidated damages shall be due and payable to UMLLC without right of offset, deduction, reduction or other charge.

- (d) The amounts set forth in this Section 22.4 shall be increased annually on July 1 of each year by a percentage equal to the percentage increase in the CPI Index between the CPI Index of the second (2nd) immediately preceding year and the CPI Index of the immediately preceding year (in no event shall the amount be less than the amount in effect during the immediately preceding year).
- (e) UMLLC shall be entitled to immediate and automatic liquidated damages from the Concessionaire equal to [twenty thousand dollars (\$20,000)] per day for each day that the IMP Substantial Completion Date is later than the Planned IMP Substantial Completion Date. Such liquidated damages shall constitute UMLLC's sole right to monetary damages for such delay.
- (f) UMLLC shall be entitled to immediate and automatic liquidated damages from the Concessionaire equal to [ten thousand dollars (\$10,000)] per day for each day that the IMP Final Acceptance Date is later than the IMP Final Acceptance Deadline. No liquidated damages shall be owing under this Section 22.4(f) for any day for which liquidated damages are owing under Section 22.4(e). Such liquidated damages shall constitute UMLLC's sole right to monetary damages for such delay.

[Signature page follows]

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

Utilities Modernization LLC,
a Louisiana limited liability company

BY: _____

PRINTED: [•]

ITS: [•]

[•]

By: [•]

BY: _____

PRINTED:

ITS:

SCHEDULE 21
Notices to Proceed; Conditions to IMP Substantial Completion and IMP Final Acceptance
of Initial Modernization Project

PART 1 – NOTICES TO PROCEED

Section 1 NTP1 Conditions

(a) Approval by UMLLC of (i) the Final Design and (ii) the Approved Budgeted Amount with respect to the Initial Modernization Project pursuant to Section 4.3(f) of the Agreement;

(b) The D&C Security has been obtained (and copies thereof furnished to UMLLC) and is in full force and effect in accordance with Section 21.6 of the Agreement;

(c) [●]

Section 2 NTP2 Conditions

[●]

Section 3 NTP3 Conditions

[●]

PART 2 – IMP SUBSTANTIAL COMPLETION

1. COMPLETED D&C WORK

The Concessionaire has completed the D&C Work with respect to the Initial Modernization Project, including all SC Punch List items, in accordance with the approved Final Design, the D&C Closeout Plan, and the terms and conditions of this Agreement, except with respect to any FA Punch List items.

2. FUNCTIONAL UTILITY SYSTEM

- (a) The Utility System, as upgraded via the Initial Modernization Project, is fully operational and capable of being operated full-time, uninterrupted, and continuously in accordance with the [Final Design].
- (b) The Utility System, as upgraded via the Initial Modernization Project, meets the Performance Standards.
- (c) All ancillary items including equipment, supplies, spare parts and manuals are in place for the Utility System, as upgraded via the Initial Modernization Project.
- (d) The Concessionaire has updated the Operations Plan.
- (e) All establishment and commissioning procedures for the Utility System, as upgraded via the Initial Modernization Project, have been successfully completed in accordance with the testing and commissioning requirements set forth in [●].

3. INSURANCE

All Concessionaire Required Coverages required to be obtained under Section 13.1 (*Insurance Coverage Required – Concessionaire*) of the Agreement have been obtained and are in full force and effect in accordance with Section 13.1 (*Insurance Coverage Required – Concessionaire*) of the Agreement.

4. NO CONCESSIONAIRE DEFAULT

There exists no uncured Concessionaire Default that is the subject of a notice, unless the achievement of IMP Substantial Completion will effect its full and complete cure.

5. AUTHORIZATIONS

All Authorizations (if any) required to perform the Utility System Operations with respect to the Utility System, as upgraded via the Initial Modernization Project, are in place, have been provided to UMLLC, and are not subject to appeal.

6. FA PUNCH LIST

The Concessionaire and UMLLC shall have agreed the final FA Punch List.

7. PAYMENT OF THE UNEXPENDED CONTINGENCY AMOUNT

The Concessionaire shall have paid to the University the Unexpended Contingency Amount pursuant to Section 22.2(i).

PART 3 – IMP FINAL ACCEPTANCE

1. FA PUNCH LIST

The Concessionaire has achieved IMP Substantial Completion and completed all FA Punch List items in accordance with the approved Final Design, the D&C Closeout Plan, and the terms and conditions of this Agreement.

2. DEMOBILIZATION

All demobilization from the Property is complete, including the removal of temporary work and equipment used in the performance of the D&C Work, but not required for Utility System Operations.

3. NO CONCESSIONAIRE DEFAULT

There exists no uncured Concessionaire Default that is the subject of a notice, unless the achievement of IMP Final Acceptance will effect its full and complete cure.

4. RELEASE OF LIENS

The Concessionaire has provided evidence to UMLLC that all Contractors have waived any rights to liens against the Utility System and the Property.

5. INSURANCE

All Concessionaire Required Coverages required to be obtained under Section 13.1 (*Insurance Coverage Required – Concessionaire*) of the Agreement have been obtained and are in full force and effect in accordance with Section 13.1 (*Insurance Coverage Required – Concessionaire*) of the Agreement.

6. RECORD DRAWINGS

The Concessionaire has provided UMLLC with a complete set of [as-built drawings/final Construction Documents], in form and content required by [●].

7. PAYMENTS TO UMLLC

The Concessionaire has paid in full all [liquidated damages] arising or resulting from the D&C Work that are owing to UMLLC pursuant to the Agreement and are not in dispute.

Summary report: Litera® Change-Pro for Word 10.12.0.75 Document comparison done on 10/25/2021 7:09:20 PM	
Style name: Firm Standard - Show Moves	
Intelligent Table Comparison: Active	
Original DMS: iw://EMFUS.HUNTON.COM/HW_US/85574786/49	
Modified DMS: iw://EMFUS.HUNTON.COM/HW_US/85574786/52	
Changes:	
<u>Add</u>	36
Delete	36
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	72

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

R.S. 9:2742

EXTRACT OF LEASE/OPTION/AMENDMENT

LESSOR'S COMPANY NAME: ADMIRAL INVESTMENTS, LLC
LESSOR'S REPRESENTATIVE: MICHAEL S. DIVINCENTI, JR.
LESSEES NAME: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
LEASE NUMBER: 10-9880
LEASE TERM: 08/01/2015 THROUGH 07/31/2020
OPTION TERM: FIVE (5) YEARS

BRIEF DESCRIPTION OF PROPERTY:

"24,358 square feet of usable space located at 160 South Ardenwood, Baton Rouge, Louisiana, to be used by the Child Welfare Division, as an office, with ninety-two (92) parking spaces provided."

WITNESS:

LESSOR: ADMIRAL INVESTMENTS, LLC


Printed Name: Stephanie P. Couet

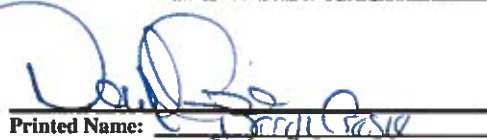
BY: 
Michael S. DiVincenzi, Jr.
Date: 12/18/14


Printed Name: Taylor L. Wagner

LESSEE: DEPARTMENT OF CHILDREN AND FAMILY SERVICES


Printed Name: Jeanine LeBlanc

BY: 
Etta J. Harris, Undersecretary
Date: 12/23/14


Printed Name: David B. Case

APPROVED:

This 5th day of January, 2015.

Office of the Governor
Division of Administration

BY: 
Mark A. Moses, Director
Facility Planning and Control

RECEIVED

DEC 17 2014

DCFS GENERAL COUNSEL

LEASE
STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

The following contract of lease is made and entered into this 3rd day of December, 2014, by and between Admiral Investments, LLC, herein represented by, Mr. Michael S. DiVincenti, Jr., hereinafter referred to as "Lessor", and the State of Louisiana, Department of Children and Family Services, herein represented by the undersigned, hereinafter referred to as "Lessee".

1.

For the consideration and upon the terms and conditions hereinafter expressed, the Lessor has this day rented, let and leased unto Lessee, here present and accepting the same, for a period of Five (5) Years, commencing August 1, 2015, and ending July 31, 2020, the following described property:

"24,358 square feet of usable space located at 160 South Ardenwood, Baton Rouge, Louisiana, to be used by the Child Welfare Division, as an office, at the rate of \$14.756630 per square foot per annum with ninety-two (92) parking spaces provided."

2.

The consideration of this lease is the payment by Lessee to Lessor in the sum of **ONE MILLION, SEVEN HUNDRED NINETY-SEVEN THOUSAND, TWO HUNDRED TEN AND NO/100 (\$1,797,210.00) DOLLARS in SIXTY (60) equal installments of TWENTY-NINE THOUSAND, NINE HUNDRED FIFTY-THREE AND 50/100 (\$29,953.50) DOLLARS** each, the first installment being due and payable on the 1st day of August, 2015, and the remaining installments being due and payable, respectively on 1st day of each month thereafter; however, in the event occupancy by Lessee occurs subsequent to the due date of the first rental payment, Lessor waives any right to receipt of rental payments for a period of thirty (30) days after Lessee actually occupies the leased premises. In any event rent is earned from the date of occupancy.

3.

Lessor grants to the Lessee the option to extend this lease from the end of its term for an additional period of Five (5) years, on the same terms and conditions as specified in the primary lease upon giving sixty (60) days written notice prior to the expiration date of this lease. The rental rate per square foot shall also be the same as specified in the primary lease, unless the United State Government Consumer Price Index reflects an increase in excess of 15% during the term of the primary lease, and Lessor requests in writing within sixty (60) days of notification of the Lessee's intent to exercise the option term, a rental increase during the option term to reflect said increase. In that event, the rental payments shall increase the same percentage as the Consumer Price Index, but in no event shall the rental payments increase in excess of 20% of the primary rental payment.

Any increase in rental due to increases in the United States Government Consumer Price Index is contingent upon approval by the Division of Administration and legislative funding. In the event said increase is not approved by the Division of Administration and/or the Louisiana Legislature does not provide funds for the increase in rental, said increase will not go into effect, in which event Lessor shall have the right to terminate said lease upon six (6) months written notice to the Lessee.

4.

The parties hereto agree that Lessor is to provide Lessee with THIRTY (30) days prior written notice that the leased premises are in compliance with all Parts of Solicitation RL-886 and are ready for occupancy. Upon receipt of said written notice, Lessee has the right to verify compliance by site visit and to provide Lessor with written notice of all deficient items. However, in no event shall Lessee accept occupancy prior to the Commencement date established in paragraph one (1) herein, except by express consent of Lessor and approval of Division of Administration. Furthermore, under no circumstances shall Lessee occupy the leased premises until the documentation provided for, relative to asbestos and State Fire Marshal's Office requirements, elsewhere herein is furnished as required.

5.

Should the Lessor fail, for whatever reason, acts of God and military expedience excepted, to deliver possession and occupancy in accordance with all Parts of Solicitation RL-886 within two hundred ten (210) days after approval of this lease by the Division of Administration, the Lessee shall be entitled to liquidated damages in the amount of the daily rental rate for every day thereafter that the Lessor fails to deliver possession and occupancy in accordance with said solicitation. If the date on which occupancy is required to be delivered, as determined in accordance with this paragraph, differs from the commencing date specified in Paragraph 1, then the date on which occupancy is required to be delivered shall be the date as determined in accordance with this paragraph. The commencing and ending dates of the lease may be adjusted by amendment to coincide with the date of actual occupancy. However, the issuance of an amendment adjusting the commencing and ending dates of the lease to coincide with the date of actual occupancy does not waive the rights of the Lessee to assess liquidated damages as specified in these bid specifications.

6.

Should the Lessor fail, for whatever reason, acts of God and military expedience excepted, to deliver possession and occupancy in accordance with all Parts of Solicitation RL-886 within two hundred forty (240) days after approval of this lease by the Division of Administration, the Lessee may, at its option, and with the approval of the Division of Administration, cancel this lease at any time after expiration of such time. If the Lessee elects not to cancel the lease, the Lessee is entitled to liquidated damages in the amount of the daily rental rate for every day thereafter that the Lessor fails to deliver occupancy in accordance with all Parts of Solicitation RL-886 until such time as occupancy is delivered or the lessee cancels the lease and advertises for rebidding.

7.

Should the Lessee be unable, for whatever reason, to maintain possession of the leased premises in accordance with the terms set forth herein, the Lessee shall be entitled to the remission of rent for such term during which the Lessee is deprived of possession.

8.

All monthly payments of rent as herein fixed shall be paid by Lessee to: **Admiral Investments, LLC, Post Office Box 80063, Baton Rouge, LA 70898**, until notified in writing differently by Lessor.

9.

LESSOR agrees that the building, grounds, and facilities herein leased shall comply with the requirements of La. R.S. 40:Part V. EQUAL ACCESS TO GOVERNMENTAL AND PUBLIC FACILITIES FOR DISABLED COMMUNITY, specifically Articles La. R.S. 40:1731 through 40:1744.

10.

Lessor further agrees to make, at Lessor's own expense, all changes and additions to the leased premises required by reason of any laws, ordinances, orders or regulations of any municipality, parish, state, federal, or other public authority including the furnishing of required sanitary facilities and fire protection facilities, and Lessor shall furnish and maintain all fire extinguishers and equipment necessary to comply with the order of the Louisiana State Fire Marshal. Lessor shall be responsible for costs associated with any required periodic inspections and servicing of fire extinguishers and equipment.

11.

Lessor must provide written evidence of compliance with all requirements of the State Fire Marshal's Office. Lessor further agrees to comply with any order issued during the lease term by the State Fire Marshal's Office within the time frame mandated by that office. Failure to do so will constitute a breach of the terms of said lease.

12.

All parts of Solicitation RL-886, as bid by Lessor on August 28, 2014, are hereby incorporated into this lease and made a part thereof. The building, grounds, and facilities herein leased shall conform in all respects to the requirements set forth in that solicitation. To the extent that any inconsistency may be found between the language of this lease and of the Solicitation, the language of the Solicitation shall govern.

13.

Lessor shall deliver the leased premises to the Lessee at the beginning of this lease in a thoroughly sanitary and tenantable condition, and, by assuming possession, Lessee admits that it has examined the leased premises and found them to be in good, safe, and acceptable condition. Provided, however, that Lessee shall provide to Lessor, no later than fifteen (15) days after occupancy, a list of all deficiencies in need of correction in order to bring the leased premises into compliance with the terms of the lease and all Parts of Solicitation RL-886. Where Lessee already occupies these premises under a prior lease, possession and occupancy under this lease shall not be deemed to occur until Lessee inspects the premises and certifies in writing to the Division of Administration that all requirements set out in all Parts of Solicitation RL-886 have been satisfied.

14.

Lessor further agrees to do painting and wall covering of the interior of the leased premises and all hallways and corridors associated with such premises at not less than three (3) year intervals. All costs associated with this work will be the Lessor's responsibility, including, but not limited to, moving of all furniture and equipment.

15.

Should Lessor fail to keep the leased premises in good and tenantable condition, to make any such repairs, replacements or changes, or to do painting or wall covering within thirty (30) days after written notice from Lessee of the necessity therefore, or should Lessor commit any other breach of the lease terms and conditions, the Lessee may at its option, with approval of the Division of Administration, correct the same and deduct the cost thereof from the rental payments, or Lessee may, with approval of the Division of Administration, quit and surrender possession of the premises without further liability to Lessor hereunder, upon sixty (60) days written notice. Provided, however, that in the event of conditions requiring immediate maintenance and/or repair, including but not limited to flooding, roof leaks, failure of electrical system, etc., Lessee may at its option, and with notice to the Division of Administration, correct the same and deduct the cost thereof from the rental payments after reasonable attempts to contact the Lessor.

16.

Lessor agrees to do at Lessor's expense such painting and other maintenance to the exterior of the building as is necessary to maintain the building in good condition and appearance. Exterior clean-up shall be maintained constantly to insure that areas outside of leased premises, including parking facilities, are trash-free. All grass and weeds shall be cut weekly during growing season and otherwise as needed. Shrubberies shall be maintained in a neat condition, with pruning as necessary. Lessor shall have sole responsibility for all maintenance and repair to the heating and air conditioning systems, plumbing systems (including plumbing fixtures), sewerage disposal systems (including septic tanks), electrical systems, light fixtures (including replacement of light bulbs and fluorescent tubes), and all other equipment furnished by the Lessor.

The Lessor shall be responsible for maintaining the entire building and site in good condition throughout the term of the lease. Lessor shall make all such repairs to the premises as may become necessary because of breakage or other damages not attributable to the negligence of the Lessee, its agents, or its employees. Lessor shall be responsible for any damages to Lessee's employees, agents, invitees, visitors, and property and/or equipment that are a result of Lessor's negligence to properly maintain the premises.

17.

Any water intrusion in the building will require the following action by the Lessor:

Carpet: The following work shall be performed by a restoration contractor that is knowledgeable and experienced in remediation of wet carpet. Excess water shall be immediately vacuumed out of the carpet. The wet carpet shall be sanitized with a chemical approved for indoor use. Area fans shall be installed until the carpet is completely dry. If carpet is not professionally dried and sanitized within 24 hours of notification of the occurrence by Lessee, all areas of wet carpet and padding must be removed and replaced with new carpet and padding to match the existing.

Walls & Ceilings: The following work shall be performed by a restoration contractor that is knowledgeable and experienced in remediation of water damaged sheetrock. All sections of walls, baseboards, insulation and ceilings subjected to water intrusion shall be removed and replaced, within 24 hours of notification of the occurrence from Lessee and finished to match existing wall within 7 calendar days. The restoration contractor

shall certify that the interior wall or ceiling cavities were completely dry prior to installing the replacement sheetrock.

Ceiling Tiles: All ceiling tiles subjected to water intrusion shall be removed and replaced within 24 hours of notification of the occurrence from the Lessee. Replacement ceiling tiles shall match existing.

18.

All communications desktop devices (intercom/paging instruments, line status indicators, computer terminals, radio/paging consoles, telephone answer-machines/consoles/sets, etc.) will be installed, maintained, and paid for by the Lessee.

Communications cable/wire shall be provided in the lease space by the Lessor. The cable/wire shall conform to a wire plan as specified in Solicitation RL-886 and made a part hereof.

All communications equipment (computer controllers, modems, multiplexers, telephone system controllers, etc.) will be installed, maintained, and paid for by the Lessee.

The Lessor shall provide space and environment for this equipment according to Solicitation RL-886 and made a part hereof. The Lessor's cable/wire shall terminate in the same space as the Lessee's equipment and will be placed according to said Solicitation RL-886.

The Lessor shall have the local telephone company provide a service entrance cable into the leased space. The telephone company's service cable shall terminate in the same room/space as the Lessor's inside cable/wire and have a minimum capacity of one pair of twisted copper wires per 100 square feet of lease-space to be occupied. The Lessor shall provide the pathway(s) (conduit, trench, etc.) for the service cable according to the telephone company's requirements and Solicitation RL-886.

The Lessee will order and pay for, through the Office of Telecommunications Management, dial tone and data services from the telephone company. The Lessor shall provide interconnection between the telephone company's RJ21X demarc and the Lessor's wiring connection demarc.

If the lease space has elevators, the Lessor shall provide each elevator that will be used by Lessee personnel with an emergency telephone as required by building codes. All associated cable/wire shall be as specified in the Solicitation RL-886. Charges for this line(s) (elevator dial tone service) shall be borne by the Lessor.

19.

LESSOR shall pay for all utilities such as electricity, gas, water, sewer, septic tank service, trash/garbage pickup and disposal.

20.

Complete janitorial services, including rest room and custodial supplies shall be provided by the LESSOR. LESSOR shall provide pest control services in accordance with the bid specifications.

21.

The parties hereto agree that no expense incurred as a result of Lessor originated changes, renovations or improvements made during the term of the lease shall be borne by the Lessee.

22.

Lessor herewith grants Lessee the right to add to or to install in the leased premises at its own expense any fixtures, appurtenances, appliances, coverings, or other such objects as Lessee may desire, provided that the installations and alterations made by Lessee do not diminish the value of the leased premises, and the right to remove at Lessee's expense upon the termination of this lease, all such fixtures, appurtenances, appliances, covering or other improvements placed in or on the leased premises by Lessee, provided that the Lessee restores the leased premises to substantially the same condition as existed at the time of occupancy by Lessee.

23.

If, prior to the termination of this lease, through no fault, neglect or design of Lessee, the leased premises and/or said building be destroyed by fire or other casualty, or be unfit for occupancy, then this lease shall be canceled ipso facto, unless the leased premises can be rendered fit for occupancy within one hundred twenty (120) days from the happening of such fire or other casualty, and the Lessor commences the repairs to the damages within thirty (30) days of the occurrence. The Lessee shall be entitled to such reduction or remission of rent as shall be just and proportionate. If this lease be cancelled for such cause, Lessee shall be entitled to a credit corresponding to the unexpired term of this lease, the unearned proportion of rent shall be annulled and returned to Lessee, and Lessor shall have the right to take possession of the leased premises, discharged of this lease.

If the leased premises and/or said building be only so slightly injured by fire or other casualty as not to render the leased premises unfit for occupancy, Lessor agrees that same shall be repaired with reasonable diligence, in which event Lessee shall not be entitled to any reduction or remission of rent whatever.

24.

Lessor agrees to carry Property Insurance to the replacement cost value of the building structure. Lessee agrees to carry commercial general liability insurance of \$1,000,000 per occurrence for Bodily Injury/Property Damage claims for those incidents in which the occurrence is the result of the negligence of the lessee.

For other than intentional and/or negligent acts of the Lessee, Lessor agrees to waive rights or claims against the Lessee, its agents, or employees for any loss to the premises that arises due to force majeure, Acts of God, and other conditions outside the control of Lessee.

25.

It is agreed that any assignment of this lease or the proceeds thereof must be approved in advance of such assignment, in writing, by the appropriate party. If the request to assign is by the Lessee, such assignment must be approved by the Lessor. If the request to assign is by the Lessor, such assignment must be approved by the Commissioner of Administration. Approval of requested assignment shall not be unreasonably or arbitrarily withheld by either party. Provided, however, that the Commissioner may condition approval of an assignment of this lease or the proceeds of this lease upon receipt of reasonable assurances from assignee of his ability and willingness to assume responsibility for performance of the terms of the lease in the event of failure of performance by the assignor.

26.

It is agreed by both Lessee and Lessor that in the event the Lessee requires adjacent additional space which could not reasonably have been foreseen at the time of execution of the lease or of the exercise of Lessee's option to extend, it shall promptly notify Lessor in writing of such requirement. Lessor shall respond in writing within fifteen (15) days of receipt of such notification whether such additional space is available.

In the event such additional space is available, the Lessor shall provide such additional space on the same basis and at the same rate as for such comparable space under the then current lease.

27.

In the event the State of Louisiana provides the Lessee with adequate space in a building owned by the state or owned or leased by the Office Facilities Corporation established by L.A.R.S. 39:1798 et seq, the Lessor agrees to terminate said lease after sixty (60) days notice, PROVIDED, HOWEVER, THAT THIS RIGHT OF LESSEE SHALL NOT BE EFFECTIVE UNTIL THREE (3) YEARS FROM THE DATE OF OCCUPANCY.

28.

In the event that public funding for Lessee becomes inadequate to meet the obligations of this lease, Lessee may, with the approval of the Division of Administration, terminate the lease or reduce the space provided and the rental due by giving sixty (60) days written notice to Lessor. The rental payment due when such a reduction in space is exercised shall be on the same terms and at the same rate per square foot as for the original space under the then current lease.

29.

All notices required under this lease shall be in writing and shall be sent by United States Mail and in the case of notices to the Lessor shall be addressed as follows or in such manner as the Lessor shall from time to time make notification to the Lessee:

Mr. Michael S. DiVincenti, Jr.
Admiral Investments, LLC
Post Office Box 80063
Baton Rouge, LA 70898
(225) 505-0042

Division of Administration
Facility Planning and Control
Real Estate Leasing Section
P. O. Box 94095, Capital Station
Baton Rouge, Louisiana 70804-9095

30.

Upon execution and approval of the lease, it will be the responsibility of the Lessor to have the lease or extract of lease recorded in the office of the parish recorder of the parish where the property herein leased is located. Before any payments can be made on the lease, the Lessor must provide a certified copy of the recorded lease or extract of lease to the Real Estate Leasing Section of Facility Planning and Control.

31

All requirements of this section shall be in accordance with the Louisiana Administrative Code, Title 33, Part III, Chapter 27, and regulations promulgated pursuant thereto.

The Lessor must provide appropriate documentation from the Architect, Engineer, or Contractor of Record of the proposed leased space that no asbestos containing building material was specified in any construction documents for the building, or, to the best of his or her knowledge, no asbestos containing building material was used in the building. This documentation must be approved by the Department of Environmental Quality, Air Quality Division, prior to submission to the Office of Facility Planning and Control, Real Estate Leasing Section. If the documentation as mentioned above cannot be obtained, the Lessor shall conduct an asbestos inspection in accordance with LAC 33:III.2707.A of the building indicating therein locations of all materials containing more than one percent (1%) asbestos, as determined by Polarized Light Microscopy. This inspection shall be performed by a Louisiana Department of Environmental Quality accredited Inspector with current accreditation. If any asbestos is detected (friable or non-friable) and allowed to remain while the building is occupied, the Lessor shall also provide an ASBESTOS MANAGEMENT PLAN WHICH HAS BEEN

APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

All Management Plans must be developed by a Louisiana Department of Environmental Quality accredited Management Planner and must be submitted in the format as outlined in the Department of Environmental Quality's document "Required Elements for LEA and LSPBA Management Plans". The Lessor must maintain, update, and comply with the Management Plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspections, re-inspections, response action activities, and training of maintenance and custodial personnel. Any updates to the Management Plan shall be submitted to the Division of Administration for record purposes as well as updating the Management Plan located at the facility that is being leased. Failure by the Lessor to maintain, update, and comply with any required Management Plans will cause automatic termination of the lease effective three (3) months after the anniversary date of the lease.

All documentation required under this section shall be forwarded to the Division of Administration, Facility Planning and Control, Real Estate Leasing Section by the Lessor AT LEAST SIXTY (60) DAYS PRIOR TO OCCUPANCY OF THE LEASED SPACE BY THE STATE OF LOUISIANA.

32.

The State is not liable for any costs incurred by any Lessor prior to the statutory approval of a lease by the Commissioner of Administration in accordance with La. R.S. 39:1641(A).


33.

When requested by the State, Lessor shall execute a Subordination of Lessor's Lien with respect to equipment in favor of a third party, whenever the third party is financing the acquisition of the equipment. The State will supply the document to be executed.

IN WITNESS WHEREOF, the parties hereto have signed their names on the dates listed below, in the presence of the undersigned competent witnesses:

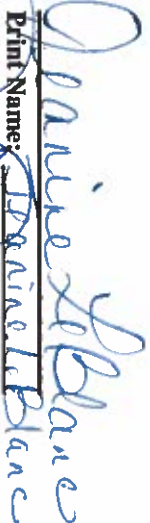
WITNESSES:


Print Name: Stephen H. Howell


Print Name: Mark A. Moses

LESSOR: ADMIRAL INVESTMENTS, LLC

BY: 
Michael S. DiVincenti, Jr.
Date: 12/16/14


Print Name: Danielle Blanc


Print Name: Danielle Blanc

LESSEE: DEPARTMENT OF CHILDREN AND
FAMILY SERVICES

BY: 
Etta J. Harris, Undersecretary
Date: 12/23/14

APPROVED:

This 5th day of January 2015.
Office of the Governor
DIVISION OF ADMINISTRATION

BY: 
Mark A. Moses, Director
Facility Planning and Control

Steve Anderson Construction

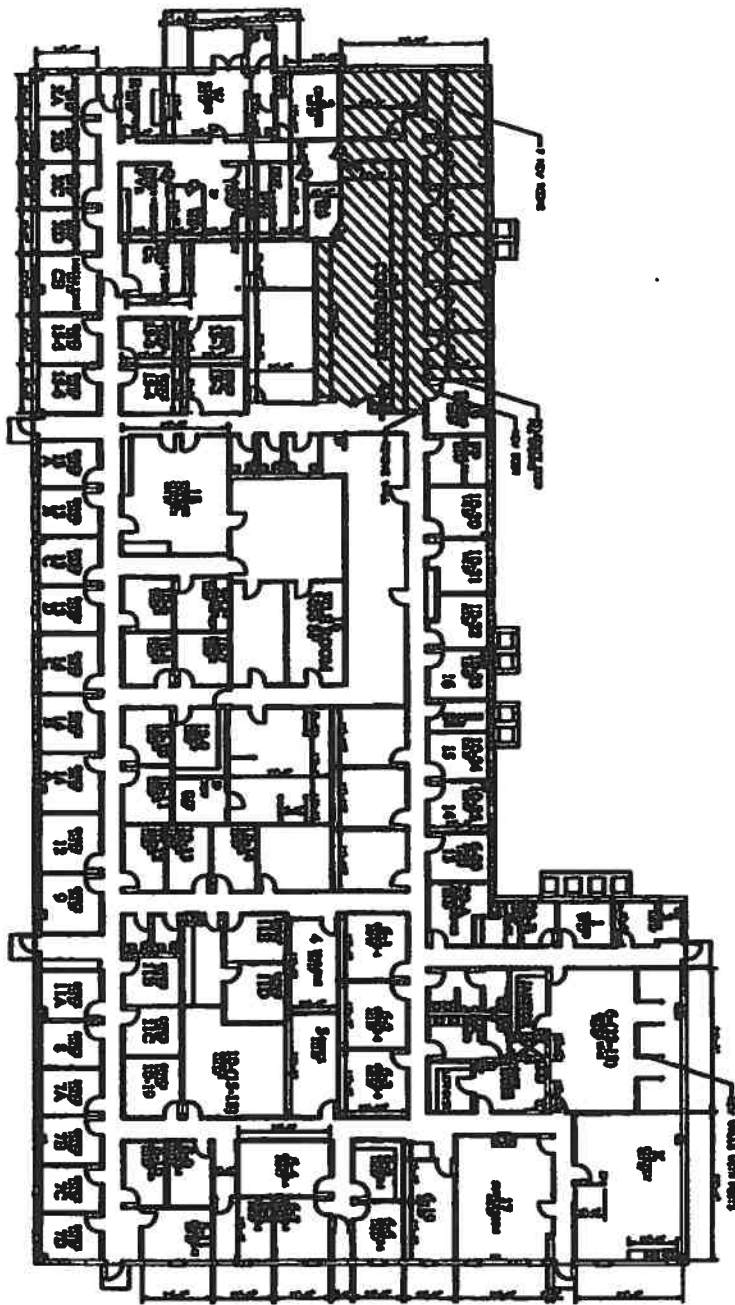
PROJECT **FAMILY SERVICES ARDENWOOD**

SHEET: _____

160 SOUTH ARDENWOOD

DATE: 11/8/20

[illegible]



FLOOR PLAN
0 5 10 25 50

REVISION 10-20-20 C14-933

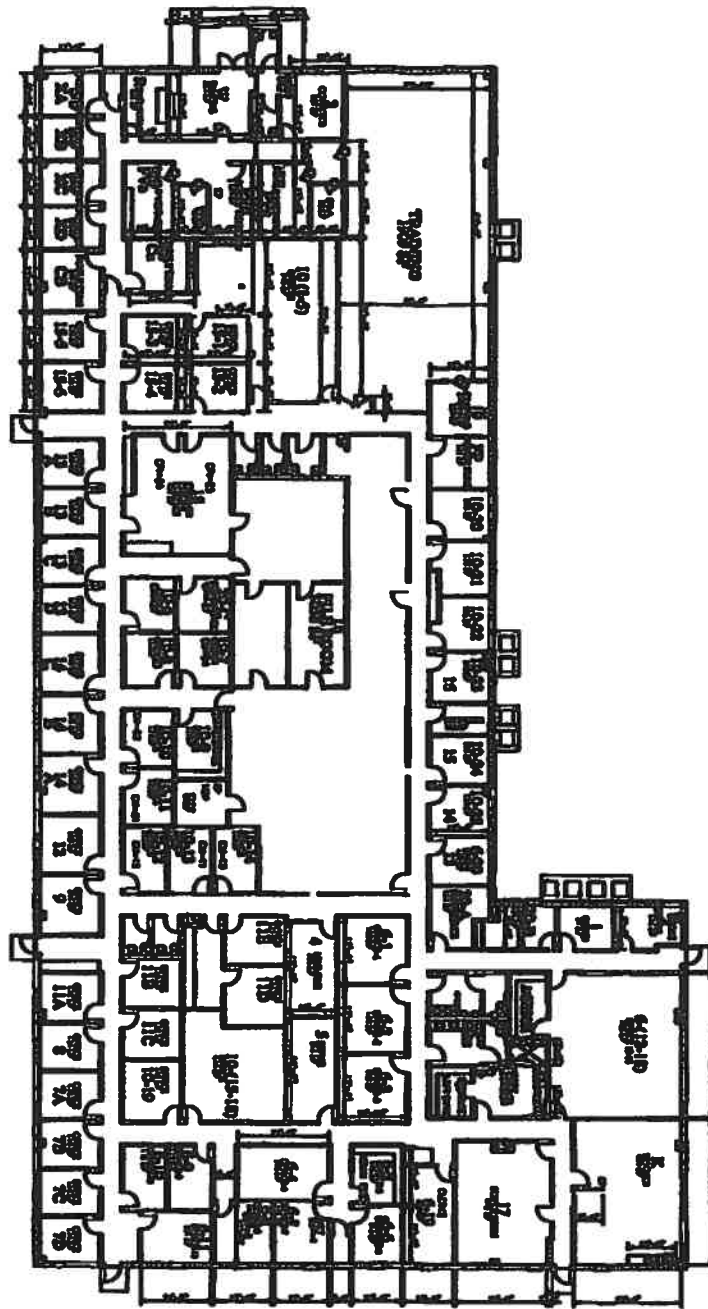
A1



Ardenwood
City of Ardenwood

ARDENWOOD

FLOOR PLAN



FLOOR PLAN
0 5 10 25 50

REVISED 5-28-19 (14-933)

A1



DEPARTMENT OF PUBLIC HEALTH

San Joaquin County

ARDENWOOD

FLOOR PLAN

Initiative	Description	Budget	Encumbered Total	Total Spend thru 9/30/21	Notes:
Louisiana Homecoming	The best way to inspire visitors to participate in this important effort is through the use of media, especially with video offering warm images of friends and families reuniting after months of separation. The content will include traditional fall holidays, reunions of various sorts encouraging pod travel and into the spring festival season which is one of our biggest draws of visitors. Collateral digital, print, radio and one long form video will be included in the creative package.	2,267,000	1,344,995	342,108	campaign underway
Sportsman's Paradise	LOT is about to launch its new Sportsman's Paradise campaign which was created due to the spike in outdoor activities in 2019 and which has sustained into 2020 - 2021. We'll be adding new creative elements and additional activities based on the analytics we garner from this Initial campaign. We know we are currently only scratching the surface in what we're currently able to present to the world. The production will be digital and print.	875,000	45,573	25,053	this campaign ran only briefly as it was crowding out other LOT campaigns, notably <i>You are My Sunshine</i> and <i>Louisiana is a Trip</i> . LOT paused this campaign as it was watering down our marketing presence. We are evaluating whether or not to bring this campaign back in the spring of 2022 or redirect the funding to other marketing initiatives.
Ambassadors	Campaign provides for high level state ambassadors to keep Louisiana on a premier stage	610,000	168,700	18,251	program in place. Slowed by affects of COVID on live performers
Advertising & New Initiatives	Long haul advertising; out-of-state activations; airline advertising	1,350,000	1,200,000	3,766	campaign underway
Attractions Development	Grant support provided to Louisiana attractions	1,075,000			grant portal went live 10/27/2021 - https://www.crt.state.la.us/Assets/press-releases/LA_Attractions_Support_Grant_Supplement.pdf
Recovery Support	Enhancement of visual asset collection for use in advertising; user generated content and additional research tools for use by LOT and CVBs	700,000	783,500	219,219	all elements in place and underway
Major Event Support	Jazz Fest	1,000,000			fall show cancelled - will go on in May 2021
Museums	This ambitious project will assist all state museums (not just those under DCRT) recover from lost visitation in 2020. Our smaller museums provide some very unique and under-recognized opportunities, yet have the smallest budgets for promotion. The three spots will include one for children's interests, one for DCRT properties and one that is generic. Collateral print, digital ads and radio ads will be produced as well as some roll-up banners to display at state conventions, Welcome Centers, etc.	1,193,000	617,244	620	Videos being produced using content from existing footage. On-site filming to begin in 2022.
Louisiana Civil Rights Trail Exhibit	This is a project that would fabricate and build out an exhibit on the Louisiana Civil Rights Trail and create a trail head and anchor for the Louisiana Civil Rights Trail. This could be housed at the Louisiana Cabildo and/or the Capitol Park Museum or both.	1,000,000			Site visits taking place. Once selection is complete, work will begin on the interpretive panels at the trail head.
National Events	Macy's Parade; Tournament of Roses Parade	3,380,000	1,183,650	281,832	
Louisiana Seafood	Support for an industry that has been adversely impacted by man-made and natural disasters yet are a critical component in the Tourism toolbox	800,000	548,421	173,017	progress being made toward highlighting the importance of seafood to our state, culture, and tourism
International	Continued marketing/advertising in International markets	3,250,000	1,120,945	555,102	progress slowed due to affects of COVID but advertising and promotion continue
TOTAL		17,500,000	7,013,028	1,618,968	



Act 410 of the 2021 Regular Session created the Louisiana Nonprofit and Small Business Assistance Program utilizing \$10 million in American Rescue Plan funds. The application period opened on August 16, 2021.

LDR received over 175,000 applications from nonprofits, faith-based organizations, and small businesses requesting more than \$4.1 billion in grant requests. Over 98% of applications did not pass Tier 1 Review, meaning the applications did not meet the Act 410 eligibility requirements. Additionally, LDR has determined that some applications were submitted fraudulently and LDR's Criminal Investigations Division is actively reviewing those applicants.

Overview – Three Step Review Process

Tier 1 Review	Tier 2 Review	Tier 3 Review
<ul style="list-style-type: none">• <u>Confirm Compliance with Eligibility Requirements:</u><ul style="list-style-type: none">• Entity existed as of June 17, 2021• Good standing with LA SOS• Filed taxes for 2019 and 2020• Tax exempt status with IRS, if applicable	<ul style="list-style-type: none">• <u>Evaluation of Proposals:</u><ul style="list-style-type: none">• Proposed use of grant funds supports COVID-19 response and relief efforts• Whether applicant received other federal or state relief funding• Extent of proposal's impact on community• Compliance with American Rescue Plan guidelines on use of funds	<ul style="list-style-type: none">• <u>Ranking of Proposals:</u><ul style="list-style-type: none">• Based on Act 410 legislative priorities for nonprofits:<ul style="list-style-type: none">• Food assistance• Employment assistance• Education assistance• Based on Act 410 legislative priorities for small businesses:<ul style="list-style-type: none">• Workforce development

Program Status:

- Initial round of grant awards were issued to organizations in Hurricanes Ida and Laura impacted parishes (Commenced September 13)
- Approved applications: 179 (\$4.27M)
Each grant recipient is required to sign a CEA.
- Applications pending Tier 3 Review: 244 (\$5.9M)
- LDR expects to finalize Tier 3 reviews before the end of November and issue the remaining funds.

Next Steps:

- Each grant recipient is assigned a direct contact at LDR to communicate with while grant proposals are implemented over the next five months.
- Grant recipients must report back to LDR by April 1, 2022, detailing how funds were utilized and provide required documentation.

This Report was prepared by LDR to provide information to the Joint Legislative Committee on the Budget at its November 19, 2021 meeting.

Projects Funded through American Recovery Plan (ARP)

Page 1 of 2

Widening I-12, LA 1077 to LA 21, St. Tammany Parish

- Estimated cost = \$38 million
- Funding available: ARP = \$38 million
- Letting/Construction Award = FY 22/23

Widening I-10, LA 73 to LA 30, Ascension Parish

- Estimated cost = \$75 million
- Funding available: ARP = \$50 million
- Letting/Construction Award = Not Scheduled

Widening I-20, Ouachita & Caddo Parishes

- Project in Ouachita to be determined
- Funding available: ARP = \$25 million
- Project in Caddo Parish = I-20, Monkhouse Road to I-49
- Estimated cost = \$35 million
- Funding available: ARP = \$10 million, COVID Relief = \$15 million, HPP = \$10 million
- Letting/Construction Award = FY 24/25

LA 3241 (I-12 to Bush), Segment 1, St. Tammany Parish

- Estimated cost = \$80 million
- Funding available: ARP = \$75 million, HPP = \$5 million (reserved for TIMED projects)
- Letting/Construction Award = FY 23/24

Widening LA 408 (Hooper Road), LA 3034 to LA 37, EBR Parish

- Estimated cost = \$78 million
- Funding available: ARP = \$20 million, Act 443 = \$15 million, State GO Bonds = \$8.56 million, State Surplus = \$2 million
- CMAR Design Consultant Selection = Spring 2022
- CMAR Contractor Selection = Late Fall 2022
- Letting/Construction Award = FY 23/24 for first phase

LA 1/LA 415 Connector, WBR Parish

- Estimated cost = \$166 million (construction)
- Funding available: ARP = \$20 million, Act 433 = \$125 million
- CMAR Design Consultant = under contract
- CMAR Contractor Selection = Late Fall 2022
- Letting/Construction Award = FY 23/24 for first phase

Various Preservation Projects, Statewide

- Funding available: ARP = \$50 million
- Projects not yet selected
- Letting/Construction Award = No later than December 31, 2024

Projects Funded through American Recovery Plan (ARP)

Page 2 of 2

Rail/Transit/Ports, Statewide

- Funding available: ARP = \$50 million
- Pursue opportunities to leverage other federal funds available through Infrastructure Investment & Jobs Act (IIJA)

I-49 South Connector, Lafayette Parish

- Estimated cost = \$1.3 billion
- Funding available: ARP = \$75 million, COVID Relief = \$50 million
- Completion of Supplemental EIS = Spring 2023

I-10 Calcasieu River Bridge, Calcasieu Parish

- Estimated cost = \$860 million
- Funding available: ARP = \$50 million, COVID Relief = \$30 million, State GO Bonds = \$82.5 million
- EIS underway
- P3 procurement underway
- Notice to Proceed (NTP) to P3 developer = Summer 2023

Jimmy Davis Bridge, Bossier/Caddo Parishes

- Estimated cost = \$150 million
- Funding available: ARP = \$100 million, State GO Bonds = \$24 million, HPP = \$26 million
- Design-Build procurement underway
- Notice to Proceed (NTP) to Design-Builder = Fall 2022

Water Sector Program

Approved Guidelines



Water Sector Program – Guidance

Federal Guidance

- US Department of Treasury requirements pursuant to American Rescue Plan Act, 31 CFR Part 35
- Interim Rule published on May 17, 2021 in the Federal Register Notice Vol. 86 No. 93
- FAQs located on US Treasury’s website at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

State Guidance

- Act 410 of the 2021 Regular Session of the Louisiana Legislature

Important Dates

- June 30, 2021 – First meeting of Commission must occur by this date
- July 15, 2021 – DOA shall submit proposed guidance to Commission for review and approval
- August 1, 2021 – DOA must begin accepting applications
- January 1, 2022 – DOA shall begin submitting a quarterly construction progress report for projects funded by JLCB.
- December 31, 2024 – All funds must be obligated by this date
- December 31, 2026 – All funds must be expended by this date

Definitions

DOA	Louisiana Division of Administration
OCD-LGA	Louisiana Office of Community Development – Local Government Assistance
LDH	Louisiana Department of Health
DEQ	Louisiana Department of Environmental Quality
OFPC	Louisiana Office of Facility Planning & Control
JLCB	Joint Legislative Committee on the Budget
The Act	Act 410 of the 2021 Regular Session of the Louisiana Legislature
Commission	Water Sector Commission

Application Process

Applications will be accepted via the online portal created by the Office of Technology Services. The applications will be reviewed by the Louisiana Department of Health (LDH) and the Department of Environmental Quality (DEQ) based on documentation submitted and data available to the reviewing agency. OCD-LGA and OFPC will review scores submitted by LDH and DEQ and develop funding recommendations for submittal to Commission. No additional information or documents can be submitted to the working panel unless requested by a member of the working panel.

Late applications will not be accepted.

All of the following applies to the application process:

Timeline

- Online portal will be open August 1-September 24, 2021 to receive applications.
- DOA will provide panel ratings to Commission by November 8, 2021.
- Online portal will be open January 3-February 18, 2022 to receive applications.
- DOA will provide panel ratings to Commission by April 4, 2022.

Eligible Applicants

Public water system – System for the provision to the public of water for potable water purposes through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year (LAC 51:XII).

Community sewerage system – System which serves multiple connections and consists of a collection and/or pumping/transport system and treatment facility (LAC 51:XIII)

Eligible Activities

Guidance has aligned the use of these funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).

The following are types of projects that are eligible under this program:

- Improvements to enable systems to comply with drinking water regulations
- Infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems
- Consolidation of existing drinking water systems
- Construct, improve, and repair wastewater treatment plants
- Control non-point sources of pollution
- Improve resilience of infrastructure to severe weather events
- Create green infrastructure
- Protect waterbodies from pollution
- Storm water repairs and improvements

Ineligible Activities

- Development of new systems for new housing construction or developments
- Improvements to eligible water/sewer systems owned by federal agencies
- Improvements to eligible water/sewer systems to foster growth
- Refinancing debt of eligible water/sewer systems

Projects Originating in HB 2

Capital Outlay water and sewer projects that are identified by the Office of Facility Planning and Control (OFPC) will be imported into the online system by August 1, 2021. Although HB 2 projects are not required to apply by the Act, additional information can be requested by the Division of Administration (DOA) in order for the working panel to review the projects. Applicant will receive notification when to upload required additional information and will be required to do so during the open application period. When all additional information is uploaded by the applicant, OCD-LGA will begin the review process. Upon completion of the review process, OCD-LGA will generate a list for submittal to the Water Sector Commission.

Match Requirements

All grantees will be required to pay for all engineering fees, including resident inspection fees, which will be applied toward a minimum match requirement of 25%. Applicants may request a waiver or reduction of the match requirement by completing the appropriate forms in the online portal. Projects that involve consolidation will be considered for a waiver or reduction of the match requirement. Commission recommendations to the Joint Legislative Committee on the Budget (JLCB) shall include proposed matching funds unless the Commission recommends a waiver of matching funds or decreased match for any project based on the determination that the local governing authority or water system is unable to provide the match.

Applicants may propose a match larger than the 25%. The Commission shall consider such increased match and may recommend that a project be advanced beyond the rating and recommendation made by the working panel based upon the weight the Commission chooses to give the increased match.

Grant Funding Cap

A maximum of \$5 million will be allowed per application with the following exceptions:

- Projects involving a consolidation of systems can aggregate based on a \$5 million cap for each system involved in the project. For example, if System A applies to consolidate System B and System C into System A, then a maximum of \$15 million can be allowed.
- If an exception to the cap is approved by the Commission and JLCB.

Commission

OCD-LGA and OFPC will provide the working panel's ratings and recommendations for funding to the commission for review. The working panel's recommendations to the Commission shall include recommendations for utilization of existing funding

sources including the Drinking Water Revolving Loan Fund, Clean Water State Revolving Fund, and Community Water Enrichment and Other Improvements Fund. The lists will include scoring criteria as well as the total score for each applicant. One list will consist of applicants initially applying through the online portal. Another list will consist of projects originating in HB2. OCD-LGA will denote applicants that are seeking a waiver of the match requirement and include documentation supporting the request for the Commission's review.

The Commission shall review the ratings and recommendations submitted by the working panel. The Commission shall submit its recommendations for projects to receive monies from the fund and funding amounts to the Joint Legislative Committee on the Budget. The recommendations shall include proposed matching funds unless the Commission recommends a waiver of matching funds or decreased match for any project based on the determination that the local governing authority or water system is unable to provide the match.

JLCB

The JLCB shall review the recommendations submitted by the Commission and have final approval of funding for projects. No monies shall be expended from the fund without approval of the JLCB.

Communication Efforts

Upon Commission approval of the program guidelines, the OCD-LGA will send information regarding the Water Sector Program, including eligibility requirements to all water and sewer systems. A variety of methods may be used to disseminate information, including mail, e-mail, Facebook, and through Louisiana Municipal Association and Louisiana Rural Water Association. OCD-LGA will conduct a virtual workshop to discuss the program and post the recording of the workshop online.

After completion of Round 1 and funding recommendations are submitted to the Commission, the working panel will host a webinar to discuss application deficiencies noted in Round 1 and ways to improve applications for Round 2. Information regarding additional funding sources for similar projects will be discussed during the webinar as well.

Scoring Criteria for Application Review – Up to 115 points

Project Severity and Needs – Up to 40 points

Project Severity is the existence of conditions in violation of Federal Safe Drinking Water Act (SDWA) and provisions of the State Sanitary Code that most directly protect public health and the adequacy of the proposed improvements to eliminate such conditions. Compliance with federal and state laws and regulations will be considered. Verification of existing conditions based on records or field investigations.

A lower score could result due to the submittal of incomplete or inaccurate information.

Consolidation – Up to 20 points

Consolidation is considered two (or more) existing water/sewer systems combining into one larger system. The responsible consolidated system must own, operate and maintain all other systems post consolidation. Purchase only systems or bulk sale systems are not considered a consolidation.

Resiliency – Up to 10 points

This will include completion of a risk assessment and resilience assessment and emergency response plan required for water systems by Section 2013 of America's Water Infrastructure Act (AWIA) of 2018. A resiliency plan, including local standards or guidelines that can be applied to sewer systems and increase resilience of the system, must be completed. Resiliency plans should include extreme weather events and the effect of water and wind damage to critical infrastructure as well as what must be done during and after an extreme weather event to maintain operating capabilities of critical infrastructure. The items identified in risk assessment/resiliency plan must be included in the cost estimate to increase resilience.

Sustainability – Up to 15 points

This category is broken down into technical, managerial and financial capacity. Technical capacity refers to the infrastructure of the system, the technical ability of the system personnel to implement and operate the project, and an analysis of alternatives including but not limited to consolidation. Managerial Capacity refers to management structure of the system, including ownership, accountability, staffing, and organization. Financial Capacity refers to financial resources of the system including revenue sufficiency, credit worthiness, fiscal controls, and a financial strategy reflecting the full lifecycle costs and adequate revenues to ensure the system is sufficiently funded, maintained, and replaced as needed.

Ready to Proceed – Up to 15 points

Points will be awarded if agreements (engineering, consolidation, etc.) are executed, an engineering report is complete (System Improvement Plan, Preliminary Engineering Report, etc.), and/or plans and specifications are complete.

Increased Local Cost Share – Up to 15 points

Points will be awarded for those applicants willing to provide local funds in excess of the 25% required match as follows:

- 26-30% local match – 3 points
- 31-40% local match – 6 points
- 41-50% local match – 9 points
- 51-75% local match – 12 points
- 76+% local match – 15 points



PROGRAM STATUS

NOVEMBER 16, 2021 | UPDATED AS OF 7 A.M.

Parish	Parish Population	Rental Assistance Allocation	Total Applications	Amount Approved for Payment
Acadia	62,045	\$2,702,017.67	1208	\$1,066,131.30
Allen	25,627	\$1,116,038.47	339	\$178,905.52
Ascension	126,604	\$5,513,518.33	1864	\$2,943,542.08
Assumption	21,891	\$953,338.20	265	\$196,435.89
Avoyelles	40,144	\$1,748,243.97	698	\$423,965.10
Beauregard	37,497	\$1,632,968.92	290	\$241,685.31
Bienville	13,241	\$576,636.57	278	\$226,819.06
Bossier	127,039	\$5,532,462.29	2342	\$3,415,681.78
Caldwell	9918	\$431,922.17	132	\$108,539.78
Cameron	6973	\$303,669.42	16	\$0.00
Catahoula	9494	\$413,457.26	89	\$66,410.70
Claiborne	15,670	\$682,417.87	150	\$100,536.22
Concordia	19,259	\$838,716.39	300	\$178,545.52
De Soto	27,463	\$1,195,995.02	362	\$445,742.46
East Carroll	6861	\$298,791.90	55	\$2,730.57
East Feliciana	19,135	\$833,316.27	154	\$141,086.65
Evangeline	33,395	\$1,454,329.60	598	\$350,497.17
Franklin	20,015	\$871,639.67	417	\$297,463.53
Grant	22,389	\$975,025.76	288	\$308,477.65
Iberia	69,830	\$3,041,049.14	1942	\$2,182,046.34
Iberville	32,511	\$1,415,832.00	655	\$972,484.53
Jackson	15,744	\$685,640.52	203	\$100,292.21
Jefferson Davis	31,594	\$1,375,897.27	379	\$270,405.24
Lafourche	97,614	\$4,251,023.49	1422	\$1,678,887.50
La Salle	14,892	\$648,536.50	103	\$31,715.93
Lincoln	46,742	\$2,035,582.40	989	\$928,993.88
Livingston	140,789	\$6,131,265.46	2004	\$3,010,211.88
Madison	10,951	\$476,908.62	280	\$200,808.84
Morehouse	24,874	\$1,083,245.83	589	\$343,990.16
Natchitoches	38,158	\$1,661,755.02	914	\$822,098.16
Ouachita	153,279	\$6,675,196.49	6193	\$6,955,097.71
Plaquemines	23,197	\$1,010,213.62	178	\$201,877.48
Pointe Coupee	21,730	\$946,326.76	329	\$490,571.28



Parish	Parish Population	Rental Assistance Allocation	Total Applications	Amount Approved for Payment
Rapides	129,648	\$5,646,082.47	3865	\$4,154,345.51
Red River	8442	\$367,643.37	122	\$85,625.00
Richland	20,122	\$876,299.45	426	\$331,829.98
Sabine	23,884	\$1,040,132.00	245	\$98,876.93
St. Bernard	47,244	\$2,057,444.16	1257	\$2,557,217.59
St. Charles	53,100	\$2,312,468.99	590	\$783,780.04
St. Helena	10,132	\$441,241.73	201	\$269,846.46
St. James	21,096	\$918,716.49	300	\$362,536.31
St. John the Baptist	42,837	\$1,865,522.30	1031	\$1,587,758.37
St. Landry	82,124	\$3,576,444.50	1656	\$1,293,137.74
St. Martin	53,431	\$2,326,883.81	731	\$861,034.85
St. Mary	49,348	\$2,149,071.93	1122	\$1,084,312.74
Tangipahoa	134,758	\$5,868,619.50	3917	\$4,277,358.64
Tensas	4334	\$188,742.76	32	\$13,839.00
Terrebonne	110,461	\$4,810,501.63	2289	\$2,450,112.06
Union	22,108	\$962,788.41	207	\$180,669.33
Vermilion	59,511	\$2,591,663.69	748	\$660,143.65
Vernon	47,429	\$2,065,500.78	491	\$359,440.68
Washington	10,830	\$471,639.15	837	\$712,817.80
Webster	15,568	\$677,975.84	717	\$599,041.36
West Baton Rouge	46,194	\$2,011,717.37	504	\$734,751.50
West Carroll	38,340	\$1,669,681.00	110	\$129,211.18
West Feliciana	26,465	\$1,152,532.80	86	\$165,286.80
Winn	13,904	\$605,509.77	127	\$60,501.77
TOTAL	2,437,875	\$106,167,802.77	47,636	\$52,696,152.72



LGU-Administered Program Summary

Data reported below last updated on 11/16/21.

Parish	Total # Applications Received	Total # Applications Approved	Total Dollar Amount Approved	Total Dollar Amount Disbursed
Caddo	10,134	ERAP1: 5,870	ERAP1: 16,101,812.70	ERAP1: 16,101,812.70
		ERAP2: 3,136	ERAP2: 7,008,768.98	ERAP2: 7,008,768.98
Calcasieu	1,843	318	2,081,003	1,981,437
East Baton Rouge*	12,025	4,535	25,115,480	16,948,170
Jefferson	4,797	1,234	9,295,149	7,397,169
Lafayette	5,725	3,014	10,041,636	10,041,636
Orleans	19,281	8,860*	ERAP1: 24,484,374	ERAP1: 17,252,163
			ERAP2: 15,838,032	ERAP2: 15,838,032
St. Tammany	1,067	597	3,965,405	3,965,405
TOTAL	54,809	27,564	113,931,660.68	96,534,593.68

*Includes City of Baton Rouge

Payments Made from State Allocation

Parish	State Allocations to LGU's	Directly Disbursed by State to LGUs
Caddo	\$15,729,765	\$14,941,892
Calcasieu	\$7,414,137	
East Baton Rouge*	\$29,349,945	\$11,629,393
Jefferson	\$22,325,478	
Lafayette	\$8,906,688	
Orleans	\$37,483,468	\$9,097,306
St. Tammany	\$9,490,858	
TOTAL	\$130,700,342.00	\$35,668,591

*Includes City of Baton Rouge

KEY:

* There is a week delay in initial and continued claim data from Bureau Labor Statistics. This data is released on Fridays.

^ Other Activity is the net of combined wage claim reimbursements and taxes and interest collected for that week.

^^ Money comes from 3rd quarter tax collections.

** Typically payments do not occur on Saturday but the final numbers can change with any adjustments made by the end of the week.

Weekly Trust Fund Update

Week ending	Benefits Paid	Other Activity ^	UI Trust Fund Balance	UI Borrowing Account Balance	Initial Claims*	Continued Claims*
3/14/2020	\$2,234,949.96	(\$588,970.88)	\$1,051,551,910.29		2,255	13,987
3/21/2020	\$2,222,543.37	(\$1,966,460.99)	\$1,047,362,905.93		72,438	14,143
3/28/2020	\$4,802,281.94	\$2,337,155.64	\$1,044,897,779.63		97,400	58,027
4/4/2020	\$21,200,360.13	\$6,871,152.23	\$1,030,568,571.73		102,172	120,744
4/11/2020	\$28,152,999.29	\$950,000.00	\$1,003,365,572.44		79,653	217,532
4/18/2020	\$40,964,287.87	\$2,685,835.11	\$965,087,119.68		91,923	246,296
4/25/2020	\$47,029,129.98	\$3,473,708.74	\$921,531,698.44		66,141	300,657
5/2/2020	\$52,714,647.38	\$8,509,209.07	\$877,326,260.13		50,941	310,013
5/9/2020	\$54,699,717.54	\$66,126,538.73	\$888,753,081.32		40,125	325,136
5/16/2020	\$55,105,823.09	\$628,109.02	\$834,275,367.25		28,545	326,504
5/23/2020	\$54,330,661.04	\$6,048,304.91	\$785,993,011.12		23,961	328,409

**KEY:**

* There is a week delay in initial and continued claim data from Bureau Labor Statistics. This data is released on Fridays.

^ Other Activity is the net of combined wage claim reimbursements and taxes and interest collected for that week.

^^ Money comes from 3rd quarter tax collections.

** Typically payments do not occur on Saturday but the final numbers can change with any adjustments made by the end of the week.

Weekly Trust Fund Update

Week ending	Benefits Paid	Other Activity ^	UI Trust Fund Balance	UI Borrowing Account Balance	Initial Claims*	Continued Claims*
5/30/2020	\$47,326,472.92	\$1,297,802.05	\$739,964,340.25		19,334	301,598
6/6/2020	\$53,622,579.90	\$1,082,999.47	\$687,424,759.82		21,879	305,083
6/13/2020	\$50,556,547.36	\$6,198,431.73	\$643,066,644.19		23,122	306,358
6/20/2020	\$50,904,761.46	\$4,935,063.20	\$597,096,945.93		19,524	300,389
6/27/2020	\$51,313,091.38	\$856,365.76	\$546,640,220.31		21,976	306,089
7/4/2020	\$50,344,019.97	\$7,367,796.25	\$503,663,996.59		31,417	313,157
7/11/2020	\$52,907,778.17	\$3,656,652.06	\$454,412,870.48		26,351	312,893
7/18/2020	\$52,078,441.92	\$359,828.12	\$402,694,256.68		32,079	313,117
7/25/2020	\$52,764,310.61	\$1,532,868.29	\$351,462,814.36		18,511	324,357
8/1/2020	\$52,396,259.80	\$2,629,391.93	\$301,695,946.49		13,402	327,467
8/8/2020	\$50,567,494.04	\$14,779,923.53	\$265,908,375.98		11,131	299,974

**KEY:**

* There is a week delay in initial and continued claim data from Bureau Labor Statistics. This data is released on Fridays.

^ Other Activity is the net of combined wage claim reimbursements and taxes and interest collected for that week.

^^ Money comes from 3rd quarter tax collections.

** Typically payments do not occur on Saturday but the final numbers can change with any adjustments made by the end of the week.

Weekly Trust Fund Update

Week ending	Benefits Paid	Other Activity ^	UI Trust Fund Balance	UI Borrowing Account Balance	Initial Claims*	Continued Claims*
8/15/2020	\$42,060,807.30	\$513,150.35	\$224,360,719.03		14,365	255,068
8/22/2020	\$42,331,816.97	\$59,059,943.40	\$241,088,845.46		12,529	250,720
8/29/2020	\$41,081,472.92	\$392,981.84	\$200,400,354.38		16,191	249,610
9/5/2020	\$40,624,632.25	\$615,697.13	\$160,391,419.26		24,566	256,184
9/12/2020	\$38,743,318.69	\$2,029,191.66	\$123,677,292.23		16,182	250,244
9/19/2020	\$40,475,397.85	\$1,710,263.15	\$84,912,157.53		14,842	238,724
9/26/2020	\$35,835,929.16	(\$981,193.23)	\$48,095,035.14		16,296	214,860
10/3/2020	\$31,275,433.91	\$1,749,863.67	\$18,569,464.90		13,461	195,223
10/10/2020	\$27,451,459.76	(\$1,354,987.81)	\$0.00	(\$10,236,982.67)	13,577	165,320
10/17/2020	\$23,760,103.10	(\$27,087,095.89)	\$0.00	(\$61,084,181.66)	13,039	146,622
10/24/2020	\$20,467,122.14	\$1,183,413.91	\$0.00	(\$80,367,889.89)	9,943	128,378

**KEY:**

* There is a week delay in initial and continued claim data from Bureau Labor Statistics. This data is released on Fridays.

^ Other Activity is the net of combined wage claim reimbursements and taxes and interest collected for that week.

^^ Money comes from 3rd quarter tax collections.

** Typically payments do not occur on Saturday but the final numbers can change with any adjustments made by the end of the week.

Weekly Trust Fund Update

Week ending	Benefits Paid	Other Activity ^	UI Trust Fund Balance	UI Borrowing Account Balance	Initial Claims*	Continued Claims*
10/31/2020	\$22,269,521.25	\$1,386,154.81	\$0.00	(\$101,251,256.33)	8,419	115,350
11/7/2020	\$16,266,367.57	\$14,338,700.70	\$5,577,170.53 ^^	(\$108,756,093.73)	10,045	98,935
11/14/2020	\$14,515,589.51	\$4,333,702.53	\$0.00	(\$118,937,980.71)	43,618	91,023
11/21/2020	\$13,281,553.17	(\$2,023,455.75)	\$0.00	(\$133,460,334.29)	10,045	83,338
11/28/2020	\$11,615,879.75	\$85,470,618.48	\$73,854,738.73	(\$133,460,334.29)	11,780	74,863
12/5/2020	\$11,223,499.06	\$772,884.83	\$63,404,124.50	(\$133,460,334.29)	9,114	75,004
12/12/2020	\$9,983,869.95	(\$751,260.32)	\$52,668,994.23	(\$133,460,334.29)	9,289	66,810
12/19/2020	\$8,823,006.24	\$1,705,279.11	\$45,551,267.10	(\$133,460,334.29)	7,926	64,448
12/26/2020	\$7,886,671.18	\$553,623.11	\$38,218,219.03	(\$133,460,334.29)	8,246	60,641
1/2/2021	\$8,485,145.85	\$9,283,522.91	\$39,016,596.09	(\$133,460,334.29)	25,365	64,404
1/9/2021	\$7,790,034.19	\$1,125,556.17	\$32,352,118.07	(\$133,460,334.29)	20,497	85,773

**KEY:**

* There is a week delay in initial and continued claim data from Bureau Labor Statistics. This data is released on Fridays.

^ Other Activity is the net of combined wage claim reimbursements and taxes and interest collected for that week.

^^ Money comes from 3rd quarter tax collections.

** Typically payments do not occur on Saturday but the final numbers can change with any adjustments made by the end of the week.

Weekly Trust Fund Update

Week ending	Benefits Paid	Other Activity ^	UI Trust Fund Balance	UI Borrowing Account Balance	Initial Claims*	Continued Claims*
1/16/2021	\$6,359,294.23	\$46,941.92	\$26,039,765.76	(\$133,460,334.29)	16,340	63,888
1/23/2021	\$5,917,679.70	\$1,229,133.73	\$21,351,219.79	(\$133,460,334.29)	12,004	64,916
1/30/2021	\$6,898,259.38	\$517,770.58	\$14,970,730.99	(\$133,460,334.29)	10,376	65,649
2/6/2021	\$6,809,829.02	\$15,604,543.37	\$23,765,445.34	(\$133,460,334.29)	9,010	60,711
2/13/2021	\$7,608,542.68	\$1,044,383.09	\$17,201,285.75	(\$133,460,334.29)	6,458	54,587
2/20/2021	\$6,233,982.22	\$252,961.79	\$11,220,265.32	(\$133,460,334.29)	6,447	52,721
2/27/2021	\$6,301,861.15	\$574,702.04	\$5,493,106.21	(\$133,460,334.29)	6,981	53,212
3/6/2021	\$6,581,466.60	\$801,833.98	\$0.00	(\$133,746,860.70)	7,100	48,016
3/13/2021	\$6,702,335.24	\$1,109,951.62	\$0.00	(\$139,339,244.32)	7,195	46,170
3/20/2021	\$6,574,691.83	\$841,342.70	\$0.00	(\$145,072,593.45)	6,468	40,840
3/27/2021	\$6,329,352.50	(\$3,482,645.82)	\$0.00	(\$154,884,591.77)	12,845	42,546

**KEY:**

* There is a week delay in initial and continued claim data from Bureau Labor Statistics. This data is released on Fridays.

^ Other Activity is the net of combined wage claim reimbursements and taxes and interest collected for that week.

^^ Money comes from 3rd quarter tax collections.

** Typically payments do not occur on Saturday but the final numbers can change with any adjustments made by the end of the week.

Weekly Trust Fund Update

Week ending	Benefits Paid	Other Activity ^	UI Trust Fund Balance	UI Borrowing Account Balance	Initial Claims*	Continued Claims*
4/3/2021	\$5,919,942.38	\$1,303,348.28	\$0.00	(\$159,501,185.87)	12,263	46,530
4/10/2021	\$6,216,392.63	(\$11,048,544.49)	\$0.00	(\$176,766,122.99)	9,809	50,796
4/17/2021	\$4,955,541.08	\$2,270,541.99	\$313,222.59	(\$179,764,344.67)	8,829	52,698
4/24/2021	\$8,554,828.69	\$5,128,784.19	\$1,240,774.95	(\$184,117,941.53)	7,114	51,308
5/1/2021	\$6,644,824.39	\$11,081,192.17	\$5,705,142.74	(\$184,145,941.54)	6,783	52,018
5/8/2021	\$6,355,949.63	\$73,289,934.33	\$72,639,127.44	(\$184,145,941.54)	7,129	50,556
5/15/2021	\$7,480,528.43	(\$853,764.90)	\$64,304,834.11	(\$184,145,941.54)	6,327	51,726
5/22/2021	\$6,491,901.58	\$778,012.87	\$58,590,945.40	(\$184,145,941.54)	5,976	51,031
5/29/2021	\$8,077,285.81	\$1,134,207.87	\$51,647,867.46	(\$184,145,941.54)	5,573	47,680
6/5/2021	\$7,025,025.35	\$354,220.48	\$44,977,062.59	(\$184,145,941.54)	5,569	50,040
6/12/2021	\$7,198,740.33	\$308,424.98	\$38,086,747.24	(\$184,145,941.54)	5,242	49,355

**KEY:**

* There is a week delay in initial and continued claim data from Bureau Labor Statistics. This data is released on Fridays.

^ Other Activity is the net of combined wage claim reimbursements and taxes and interest collected for that week.

^^ Money comes from 3rd quarter tax collections.

** Typically payments do not occur on Saturday but the final numbers can change with any adjustments made by the end of the week.

Weekly Trust Fund Update

Week ending	Benefits Paid	Other Activity ^	UI Trust Fund Balance	UI Borrowing Account Balance	Initial Claims*	Continued Claims*
6/19/2021	\$7,708,108.29	\$14,690,198.42	\$45,068,837.37	(\$184,145,941.54)	4,278	49,503
6/26/2021	\$7,820,986.24	\$1,752,554.64	\$39,000,405.77	(\$184,145,941.54)	4,129	49,163
7/3/2021	\$7,510,618.27	\$4,017,556.17	\$35,507,343.67	(\$184,145,941.54)	4,222	49,973
7/10/2021	\$7,306,020.42	(\$441,762.50)	\$27,759,560.75	(\$184,145,941.54)	4,558	49,230
7/17/2021	\$7,022,454.40	\$483,431,374.50	\$504,168,480.85	(\$184,145,941.54)	5,492	48,045
7/24/2021	\$6,973,128.58	\$1,737,384.14	\$314,786,794.87	\$0.00	3,122	44,996
7/31/2021	\$6,905,932.85	\$3,941,939.36	\$311,822,801.38	\$0.00	3,228	47,230
8/7/2021	\$6,473,692.10	\$22,330,742.83	\$327,679,852.11	\$0.00	2,411	43,992
8/14/2021	\$6,154,325.88	\$357,644.69	\$321,883,170.92	\$0.00	2,332	40,433
8/21/2021	\$5,741,463.08	\$300,707.46	\$316,442,415.30	\$0.00	2,217	37,315
8/28/2021	\$5,784,067.63	\$454,816.95	\$311,113,164.62	\$0.00	2,060	35,659

**KEY:**

* There is a week delay in initial and continued claim data from Bureau Labor Statistics. This data is released on Fridays.

^ Other Activity is the net of combined wage claim reimbursements and taxes and interest collected for that week.

^^ Money comes from 3rd quarter tax collections.

** Typically payments do not occur on Saturday but the final numbers can change with any adjustments made by the end of the week.

Weekly Trust Fund Update

Week ending	Benefits Paid	Other Activity ^	UI Trust Fund Balance	UI Borrowing Account Balance	Initial Claims*	Continued Claims*
9/4/2021	\$4,757,627.86	\$9,195.47	\$306,364,732.23	\$0.00	9,724	33,598
9/11/2021	\$7,059,479.80	\$120,095.61	\$299,425,348.04	\$0.00	14,042	37,364
9/18/2021	\$6,485,208.32	\$249,649.26	\$293,189,788.98	\$0.00	7,107	43,034
9/25/2021	\$6,642,210.51	(\$1,028,096.42)	\$285,519,482.05	\$0.00	3,947	43,003
10/2/2021	\$6,098,460.83	\$2,379,834.54	\$281,800,855.76	\$0.00	3,130	40,302
10/9/2021	\$5,486,896.19	(\$27,778,996.93)	\$248,534,962.64	\$0.00	3,141	36,425
10/16/2021	\$4,881,554.03	\$447,335.17	\$244,100,743.78	\$0.00	2,804	31,305
10/23/2021	\$4,847,283.30	\$462,241.95	\$239,715,702.43	\$0.00	2,102	26,314
10/30/2021	\$4,358,114.04	\$2,414,187.84	\$237,771,776.23	\$0.00	3,009	24,791
11/6/2021	\$4,099,105.59	\$17,421,788.28	\$251,094,458.92	\$0.00	1,981	24,227
11/13/2021	\$3,320,693.70	(\$506,076.66)	\$247,267,688.56	\$0.00	TBD	TBD



FORMULA FUNDS TO LOUISIANA

INFRASTRUCTURE INVESTMENT & JOBS ACT IIJA



\$4.8B



Highways

\$1.013B



Bridges

\$470M



Public
Transportation

\$73M



EV Infrastructure

\$179M



Airports

\$20M



Resiliency



COMPETITIVE FUNDING OPPORTUNITIES

INFRASTRUCTURE INVESTMENT & JOBS ACT IIJA



\$28.5B



Economic
Significant
Bridges and
major projects

\$17B



Ports &
Waterways

\$2.5B



Hurricane and
Storm Risk
Reduction

\$2.5B



EV Charging

\$3.5B



Weatherization

\$66B



Rail

The Infrastructure Investment and Jobs Act will Deliver for Louisiana

President Biden and Vice President Harris support the Senate's passage of the Infrastructure Investment and Jobs Act, the largest long-term investment in our infrastructure and competitiveness in nearly a century. **The need for action in Louisiana is clear and recently released state-level data demonstrates that the Infrastructure Investment and Jobs Act will deliver for Louisiana.** For decades, infrastructure in Louisiana has suffered from a systemic lack of investment. In fact, the American Society of Civil Engineers gave Louisiana a **D+ grade** on its infrastructure report card. The historic Infrastructure Investment and Jobs Act will make life better for millions of Louisiana residents, create a generation of good-paying union jobs and economic growth, and position the United States to win the 21st century. Specifically, the Infrastructure Investment and Jobs Act will:

- **Repair and rebuild our roads and bridges with a focus on climate change mitigation, resilience, equity, and safety for all users, including cyclists and pedestrians.** In Louisiana there are 1,634 bridges and over 3,411 miles of highway in poor condition. Since 2011, commute times have increased by 9.3% in Louisiana and on average, each driver pays \$667 per year in costs due to driving on roads in need of repair. The Infrastructure Investment and Jobs Act is the single largest dedicated bridge investment since the construction of the interstate highway system. **Based on formula funding alone, Louisiana would expect to receive \$4.8 billion for federal-aid highway apportioned programs and \$1.013 billion for bridge replacement and repairs under the Infrastructure Investment and Jobs Act over five years¹.** Louisiana can also compete for the \$12.5 billion Bridge Investment Program for economically significant bridges and nearly \$16 billion of national funding in the bill dedicated for major projects that will deliver substantial economic benefits to communities.
- **Improve healthy, sustainable transportation options for millions of Americans.** Louisianans who take public transportation spend an extra 62.1% of their time commuting and non-White households are 4.3 times more likely to commute via public transportation. 25% of transit vehicles in the state are past useful life. **Based on formula funding alone, Louisiana would expect to receive \$470 million over five years under the Infrastructure Investment and Jobs Act to improve public transportation options across the state².**
- **Build a network of EV chargers to facilitate long-distance travel and provide convenient charging options.** The U.S. market share of plug-in electric vehicle (EV) sales is only one-third the size of the Chinese EV market. The President believes that must

¹ These values are estimates and may change based on updated factor data each fiscal year.

² Transit formula funding amounts are subject to changes resulting from the 2020 census or from annual transit service data reported to FTA's National Transit Database.

change. The bill invests \$7.5 billion to build out the first-ever national network of EV chargers in the United States and is a critical element in the Biden-Harris Administration's plan to accelerate the adoption of EVs to address the climate crisis and support domestic manufacturing jobs. **Under the Infrastructure Investment and Jobs Act, Louisiana would expect to receive \$73 million over five years to support the expansion of an EV charging network in the state³. Louisiana will also have the opportunity to apply for the \$2.5 billion in grant funding dedicated to EV charging in the bill.**

- **Help connect every American to reliable high-speed internet.** 10.1% of Louisianans live in areas where, under the FCC's benchmark, there is no broadband infrastructure. Even where infrastructure is available, broadband may be too expensive to be within reach. 19% of Louisiana households do not have an internet subscription. **Under the Infrastructure Investment and Jobs Act, Louisiana will receive a minimum allocation of \$100 million to help provide broadband coverage across the state, including providing access to the at least 470,000 Louisianans who currently lack it. And, under the Infrastructure Investment and Jobs Act, 1,698,000 or 37.2% of people in Louisiana will be eligible for the Affordability Connectivity Benefit, which will help low-income families afford internet access.**
- **Prepare more of our infrastructure for the impacts of climate change, cyberattacks, and extreme weather events.** From 2010 to 2020, Louisiana has experienced 30 extreme weather events, costing the state up to \$50 billion in damages. **Under the Infrastructure Investment and Jobs Act, based on historical formula funding levels, Louisiana will expect to receive \$20 million over five years to protect against wildfires and \$17 million to protect against cyberattacks. Louisianans will also benefit from the bill's historic \$3.5 billion national investment in weatherization which will reduce energy costs for families.**
- **Deliver clean drinking water to every American and eliminate the nation's lead service lines and pipes.** Currently, up to 10 million American households and 400,000 schools and child care centers lack safe drinking water. **Under the Infrastructure Investment and Jobs Act, based on the traditional state revolving fund formula, Louisiana will expect to receive \$580 million over five years to improve water infrastructure across the state and ensure that clean, safe drinking water is a right in all communities.**
- **Improve our nation's airports.** The United States built modern aviation, but our airports lag far behind our competitors. **Under the Infrastructure Investment and Jobs Act,**

³ These values are estimates and may change based on updated factor data each fiscal year.

airports in Louisiana would receive approximately \$179 million for infrastructure development for airports over five years⁴.

Over the coming days and weeks, we will expect to receive additional data on the impact of the Infrastructure Investment and Jobs Act in Louisiana.

⁴ Precise allocations would change each year because the formulas use current passenger boarding and cargo data, and this estimate is based on 2019 data.