

**ARTICLE 18
INDEMNIFICATION**

Section 18.1 Indemnification by Operator. Subject to the limitations on liability set forth in Section 18.3 (*Limitation on Liability*), [REDACTED] (*Liability Limitation for Certain Damages*) and [REDACTED] (*Additional Liability Limitation for Certain Damages*) of this Agreement, Operator shall indemnify, defend and hold harmless Owner, Administrator and their respective Affiliates and Representatives (each, including Owner, an “Owner Indemnitee”), from and against (and pay the full amount of) any and all Losses resulting from a Third Party Claim incurred by an Owner Indemnitee to the extent arising or resulting from, in each case as determined pursuant to the Dispute Resolution Procedure, ~~by~~ by a final and non-appealable judgment by a court of competent jurisdiction. [REDACTED]

[REDACTED]: (a) any breach by Operator of any representation or warranty of Operator in this Agreement that has a material adverse effect on the T&D System or on the performance by any Party of its respective obligations under this Agreement; or (b) the negligence (including gross negligence) or willful misconduct of ManagementCo or Operator in connection with the performance of ManagementCo’s or Operator’s obligations under this Agreement. Operator’s indemnification obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Operator which is intended to respond to such events. Notwithstanding the foregoing, Operator shall not be required to reimburse or indemnify any Owner Indemnitee for any Losses to the extent caused by Owner Fault or the negligence or willful misconduct (including gross negligence) of any other Owner Indemnitee, as determined pursuant to the Dispute Resolution Procedure or by a final and non-appealable judgment by a court of competent jurisdiction. An Owner Indemnitee shall as promptly as practicable notify Operator in writing pursuant to [REDACTED] (*Notices*) of this Agreement of the assertion of any claim against it for which it is potentially entitled to be indemnified hereunder, and Operator shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim, such approval not to be unreasonably withheld. For avoidance of doubt, any Fees-and-Costs associated with Operator defending Owner Indemnitees pursuant to this Section 18.1 (*Indemnification by Operator*) shall be T&D Pass-Through Expenditures except to the extent Operator’s liability to pay such Fees-and-Costs is determined pursuant to the Dispute Resolution Procedure or by a final and non-appealable judgment by a court of competent jurisdiction. These indemnification provisions are for the protection of Owner Indemnitees only and shall not establish, of themselves, any liability to any Person not party to this Agreement. The provisions of this Section 18.1 (*Indemnification by Operator*) shall survive termination of this Agreement.

Section 18.2 Indemnification by Owner. Subject to the limitations on liability set forth in [REDACTED] (*Liability Limitation for Certain Damages*) and [REDACTED] (*Additional Liability Limitation for Certain Damages*) of this Agreement, Owner shall indemnify, defend and hold harmless Operator and its Affiliates and Representatives (each, including Operator, an “Operator Indemnitee”), from and against (and pay the full amount of) any and all Losses incurred by an Operator Indemnitee to the extent arising or resulting from, in each case as determined pursuant to the Dispute Resolution Procedure, ~~or~~ by a final and non-appealable judgment by a court of competent jurisdiction. [REDACTED]

(a) any breach by Owner or Administrator of any of its respective representations or warranties in this Agreement; (b) any failure by Owner or Administrator to perform its obligations under this Agreement or any other Transaction Document or resulting from any Owner Fault; (c) claims arising from or in connection with the T&D System or the O&M Services, including without limitation any Environmental Claims and Cleanup Liability, whether the same are brought by a bondholder, trustee, lender, government entity, regulatory authority, or any third party whatsoever, or whether the same is found in tort, contract, fraud or any other theory, legal or otherwise, or whether the same occurs prior to the Effective Date or after the Effective Date; (d) the negligence (including gross negligence) or willful misconduct of Owner Indemnitees in connection with this Agreement; (e) claims brought by employees or former employees of Owner with respect to the non-payment or underfunding of benefits under any pension or other employee benefit plans; (f) claims brought against Operator by a T&D Customer in connection with the T&D System or Operator's performance of the O&M Services; or (g) claims brought against Operator by a Person not party to this Agreement in connection with the T&D System or Operator's performance of the O&M Services for loss of profits or revenues or special, exemplary, punitive, indirect or consequential damages. Owner's indemnification obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Owner which is intended to respond to such events. Notwithstanding the foregoing, but subject to Section 18.3(b)(i) (*Operator Negligence Limitations*), Owner shall not be required to reimburse or indemnify any Operator Indemnitee for any Losses to the extent caused by the gross negligence or willful misconduct of any other Operator Indemnitee, as determined by a final and non-appealable judgment by a court of competent jurisdiction. An Operator Indemnitee shall as promptly as practicable notify Owner in writing pursuant to [REDACTED] (*Notices*) of this Agreement of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Owner shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim, such approval not to be unreasonably withheld. These indemnification provisions are for the protection of Operator Indemnitees only and shall not establish, of themselves, any liability to any Person not party to this Agreement or the Guarantee. The provisions of this Section 18.2 (*Indemnification by Owner*) shall survive termination of this Agreement.

Section 18.3 Limitation on Liability. Notwithstanding anything contained in this Agreement to the contrary:

(a) Operator General Limitations. Except as set forth in [REDACTED] (*Limitation on Liability* - [REDACTED] - [REDACTED] - [REDACTED] - [REDACTED] - [REDACTED]), Operator Indemnitees' total liability to Owner Indemnitees under this Agreement, including Delay Liquidated Damages, Disallowed Costs and Owner Termination Fee, shall be limited to:

(i) \$[•] in the aggregate for Losses occurring in any Contract Year; and

¹ Note to Draft: The revised contract contemplates Operator's liability under the contract (other than for gross negligence or willful misconduct) being capped for each Contract Year and for the Term. Owner's liability is not capped.

(ii) \$[●]³ in the aggregate for all Losses during the Term.

(b) Operator Negligence Limitations. With respect to the Operator's indemnity obligation set forth in Section 18.1(b),²

(i) from the Effective Date until the [x] anniversary of the Service Commencement Date, Operator Indemnitees' liability to Owner Indemnitees shall not include any Losses arising from or related to any negligent act ~~_____~~ gross negligence) ~~_____~~ or willful misconduct, in connection with the performance by any Operator Indemnitee of any of Operator's ~~_____~~ obligations under this Agreement; ~~_____~~

(ii) following the expiry of the time period set forth in subsection (i) above, and subject to the same, Operator Indemnitees' liability to Owner Indemnitees shall not include any Losses arising from or related to any negligent act or omission or willful misconduct in connection with the performance by any Operator Indemnitee of any of Operator's or ManagementCo's obligations under this Agreement unless and until the aggregate amount of such Losses in any given Contract Year exceeds \$[●], in which event the Operator shall then be liable for all such Losses in excess of \$[●] up to a maximum aggregate amount of \$[●] of such Losses incurred in any given Contract Year.

(c) Gross Negligence; Willful Misconduct. Except as expressly provided in ~~_____~~ Section 18.6(b), there shall be no limitation on Operator's liability for any Losses attributable to Operator's gross negligence or willful misconduct.

(d) No Administrator Liability. Administrator shall not be liable to Operator Indemnitees under this Agreement.

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

~~_____~~

² Note to Qualified Respondent: Please indicate a proposed amount.

³ Note to Qualified Respondent: Please indicate a proposed amount.