

COLLECTION SERVICES CONTRACT – ADDENDUM 1

FOR OHIO RIVER BRIDGES

This non-exclusive Collection Services Contract for Ohio River Bridges (“Contract”), entered into by and between the Indiana Finance Authority (the “IFA”), a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions pursuant to Indiana Code 5-1.2-1-1 *et seq.*, and the entity authorized to procure this Contract by Resolution JB-2022-2 of the Louisville-Southern Indiana Ohio River Bridges Joint Board (“Joint Board”), and _____ (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

- 1. Abbreviations and Definitions.** Volume I of the RFP, which is attached hereto and incorporated herein by reference, contains the meaning of various terms used in this Contract. Depending upon the context, in this Contract references to the Joint Board mean the Joint Board, IFA as the procuring agency, and/or INDOT, KPTIA, and/or KYTC.
- 2. Duties of Contractor.** The Contractor agrees to use its best efforts to collect past-due amounts owed to the Joint Board, as are more particularly described in the Scope of Work in Volume I of the RFP, which is attached hereto and incorporated herein by reference. The Contractor agrees to comply with all federal, state and local laws while collecting any amounts owed under the Contract.
- 3. Contract Term.** The Contract will become effective upon its final execution by both parties and satisfaction of the requirements of the IFA and the Joint Board, and all other applicable legal requirements. The Operations Term of the Contract is anticipated to last four (4) years. The Joint Board may, in its sole discretion, choose to exercise one or both of two (2) two-year extension options.
- 4. Designation of Authorized Representatives.** The following persons are authorized to act on behalf of the Joint Board, the IFA, and the Contractor:

Joint Board Authorized Representatives:

Jerry Hoover
Director of Ohio River Bridges
Indiana Department of Transportation

Matthew Fulkerson
Deputy Director of Tolling
Indiana Department of Transportation

Amanda R. Spencer, PE
Kentucky Transportation Cabinet

IFA Authorized Representative:

Dan Huges
Public Finance Director

The Contractor:

5. Joint Board Review and Approval/Disapproval Process. All documents required by the Contract Documents to be submitted to Joint Board for review, comment, approval, and disapproval shall be subject to the applicable processes and provisions set forth in this Section (collectively, the “Approval Process”).

CONTRACTOR shall deliver the applicable document to the Joint Board with written notice stating that the document is subject to the Approval Process.

The Joint Board shall have a period of up to ten (10) days after receipt of such submission or such other time period as the Joint Board and CONTRACTOR may agree, to issue written comments, proposed changes, approval, conditional approval and/or disapproval of the submission, provided, however, that such period shall be subject to extension at the election of the Joint Board if the CONTRACTOR delivers an unreasonable number of submissions for concurrent Joint Board review.

If the Joint Board issues comments, proposed changes, conditional approval and/or disapproval within such 10-day period, CONTRACTOR, upon receipt thereof, shall reflect the comments, proposed changes and/or other response in a proposed final draft of the submission, and shall deliver to the Joint Board such proposed final draft on or before the earlier to occur of the date set forth in the approved Detailed Project Schedule, or 30 days following CONTRACTOR’s receipt of the Joint Board’s comments, proposed changes, conditional approval and/or disapproval.

The Joint Board shall have a period of up to ten (10) days to issue further comments, proposed changes, approval, conditional approval and/or disapproval of the proposed final submission, provided that if the Joint Board’s comments, proposed changes, conditional approval and/or disapproval includes any item that (i) reasonably could have been but was not raised or included in the Joint Board’s initial response, (ii) does not concern determining whether CONTRACTOR adequately addressed comments included in the Joint Board’s initial response and (iii) is not based on a failure of the proposed final draft to satisfy a standard or requirement expressly set forth in the Contract Documents, then such action by the Joint Board shall be deemed to constitute a Joint Board-Caused Delay. In addition, in the event of a Joint Board-Caused Delay, upon compliance with the Change Order notification process and if the Change Order requirements are met, CONTRACTOR shall be entitled to a Change Order adjusting the Contract Price for the Costs, if any, which could have been reasonably avoided had the Joint Board requested such changes in a timely manner.

If the Joint Board issues comments, proposed changes, conditional approval and/or disapproval within such ten-day period, CONTRACTOR, upon receipt thereof, shall make further changes or revisions and

submit the document to the Joint Board, and the foregoing process shall continue in like fashion until either the Joint Board issues written approval or the Parties submit any dispute to dispute resolution.

The Joint Board shall complete its reviews as expeditiously as reasonably practical. The Joint Board shall endeavor to reasonably accommodate CONTRACTOR's requests for a quick turnaround of specific submittals. Notwithstanding the foregoing, in no event shall the Joint Board's failure to respond within the time period specified for its review be deemed to be a Joint Board approval of a submission.

The time periods for submissions, reviews, comments, approvals, conditional approvals and disapprovals shall be extended by the period of any delay due to a Force Majeure Event.

6. Responsibility for Submittals. CONTRACTOR agrees that it has full responsibility for the Work and that CONTRACTOR shall perform the Work regardless of the fact that certain Reference Information Documents may be provided to CONTRACTOR by the Joint Board. The foregoing is not intended to make CONTRACTOR responsible for the activities of TSP1 or TSP2.

CONTRACTOR expressly understands and agrees that the Joint Board shall not be responsible or liable in any respect for any Losses whatsoever suffered by any CONTRACTOR-Related Entity by reason of any use of any information contained in the Reference Information Documents, or any action or forbearance in reliance thereon, except to the extent that the Joint Board has specifically agreed that CONTRACTOR shall be entitled to an increase in the Contract Price and/or extension of a deadline with respect to such matter. CONTRACTOR further acknowledges and agrees that (a) if and to the extent CONTRACTOR or anyone on CONTRACTOR's behalf uses any of said information in any way, such use is made on the basis that CONTRACTOR, not the Joint Board, has approved and is responsible for said information, and (b) CONTRACTOR is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at CONTRACTOR's own risk and at its own discretion.

CONTRACTOR expressly acknowledges and agrees that the Joint Board's rights as specified under this Contract (i) to review, comment on, approve, disapprove, monitor, inspect, test and/or accept Deliverables, Change Orders, schedules, equipment, Software, installation, manuals, books, records, reports or statements or (ii) to communicate with the CONTRACTOR: (A) exist solely for the benefit and protection of the Joint Board, (B) do not create or impose upon the Joint Board any standard or duty of care toward CONTRACTOR, all of which are hereby disclaimed, (C) may not be relied upon, nor may the Joint Board's exercise or failure to exercise any such rights be relied upon, by CONTRACTOR in determining whether CONTRACTOR has satisfied the standards and requirements set forth in the Contract Documents, and (D) may not be asserted, nor may the Joint Board's exercise or failure to exercise any such rights be asserted, against the Joint Board by CONTRACTOR as a defense, legal or equitable, to CONTRACTOR's obligation to fulfill such standards and requirements.

To the maximum extent permitted by law, CONTRACTOR expressly agrees that the Joint Board does not have a duty or obligation to cause CONTRACTOR's permitting, installation, equipping, supply, start up, testing, quality assurance, and quality control hereunder to satisfy the standards and requirements set forth in the Contract Documents.

7. Initial Work Schedule, Completion, and Acceptance. Time is of the essence of this Contract. Authorization allowing CONTRACTOR to proceed with Work hereunder shall be provided through issuance of a Notice to Proceed (NTP). The Joint Board Representatives shall not issue the NTP unless and until the following requirements for the Work have been satisfied:

- CONTRACTOR shall have delivered to the Joint Board the required Performance Bond;
- CONTRACTOR shall have delivered to the Joint Board the required Payment Bond;
- CONTRACTOR shall have provided to the Joint Board the insurance policies, certificates of insurance, riders to its existing insurance policies or other evidence reasonably required by the Joint Board to confirm the existence of all the required insurance coverages;
- The Joint Board Representatives shall have approved any changes to the Key Personnel; and
- CONTRACTOR shall have provided to the Joint Board any other documents, things or assurances reasonably required by the Contract Documents.

If, at any time, CONTRACTOR's actual progress in performing the Work as measured against the Detailed Project Schedule or any of the Progress Milestone Dates is inadequate to meet the requirements of this Contract, the Joint Board Representatives may so notify CONTRACTOR. Within thirty (30) days thereafter, CONTRACTOR shall either (i) demonstrate to the Joint Board's reasonable satisfaction that such interim delay in progress will have no adverse effect on CONTRACTOR's ability to perform and complete the Work in accordance with the Completion Deadlines, as the same may be adjusted pursuant to this Contract, even though other Progress Milestone Dates may be missed, or (ii) submit for the Joint Board's review and approval a Recovery Plan for restoring within a reasonable period of time compliance with forthcoming Progress Milestone Dates Completion Deadline(s). If a Recovery Plan is required and submitted, CONTRACTOR shall take such steps as may be necessary to improve CONTRACTOR's progress in accordance with the approved Recovery Plan. If within a reasonable period thereafter CONTRACTOR does not improve performance in accordance with the approved Recovery Plan, the Joint Board Representatives may require an increase in CONTRACTOR's resources. Such requirements shall be implemented by CONTRACTOR without additional cost to the Joint Board, provided they are reasonable measures to mitigate delays for which CONTRACTOR is not entitled to an extension of time pursuant to this Contract. Failure of CONTRACTOR to comply with the provisions of this Section may be grounds for determination by the Joint Board that CONTRACTOR is not prosecuting the Work with such diligence as will assure completion in accordance with the requirements of this Contract, whereupon the Joint Board shall be entitled to exercise its remedies for a CONTRACTOR Event of Default

8. Contractor Compensation. The Contractor will receive a fixed amount for activities associated to the development and implementation of the Scope of Work; with the Collection Agency's System Acceptance milestone's payout occurring thirty (30) days after the Go-Live date. In addition, the Contractor will receive the Collection Agency Commission on funds and/or Accounts placed with the Contractor that were successfully collected.

All costs incurred by the Contractor to collect Transactions shall be covered by the Collection Agency Commission, and no additional amounts will be charged. These costs may include, but are not limited to,

the costs of postage, mail processing, skip tracing, voice and data communications, and staging expenses. Moreover, the Contractor is not authorized to charge a Customer/Violator any additional Collection Fees.

The Contractor shall earn the Collection Agency Commission unless the Transactions collected meets one or more of the conditions below.

- On funds received on Transactions that have not been placed with the Contractor;
- On funds received for Transactions that have been placed in error;
- On funds received for Transactions that have been recalled more than 15 days ago;
- On funds received for Transactions that have been returned to TSP2 more than 15 days ago;
- On funds received for Transactions that have been adjusted to \$0.00; and, or
- On funds where the Collection Agency Commission Fee has already been paid.

To receive payment, the Contractor is required to submit to INDOT and KYTC a monthly Invoice by the fifth (5th) Business Day of each month for one-half of all the prior month's paid Transactions, that are not excluded as listed above along with reporting on how the Contractor aligned to any KPIs. The Contractor shall submit any associated reporting on KPIs in support of this along with its their monthly Invoice. Such invoice shall specify that fifty percent (50%) of the invoiced amount is due and payable by KYTC, and fifty percent (50%) of the amount invoiced is due and payable by INDOT and shall indicate the actual amount owing by each such States' Party.

9. CONTRACTOR Standards of Performance. The CONTRACTOR shall perform and provide all Work required under the Contract Documents in accordance with the CONTRACTOR Standards of Performance.

Exclusions From and Limitations of Standards of Performance. The CONTRACTOR Standards of Performance exclude damage or defect caused by abuse or accidents (unless such accident was due in part to CONTRACTOR's failure to comply with the CONTRACTOR Standards of Performance), adaptations or modifications (including, without limitation, adaptations, or modifications of Software) not executed by CONTRACTOR or its agents, employees, Suppliers and/or Subcontractors, and normal wear and tear under normal usage.

Notice of Breach of Standards of Performance. The Joint Board shall give a Breach of Standards of Performance Notice to CONTRACTOR promptly after the Joint Board obtains Actual Knowledge that any Work does not comply with the CONTRACTOR Standards of Performance. If the Joint Board fails to provide written notice promptly after obtaining Actual Knowledge thereof, such failure shall not constitute a waiver of the Joint Board's rights under this Section, but CONTRACTOR shall not be responsible for the increase in Cost, if any, resulting from the Joint Board's failure to provide timely written notice.

Correction of Work. If CONTRACTOR has Actual Knowledge that any Work does not comply with the CONTRACTOR Standards of Performance or has received a Breach of Standards of Performance Notice from the Joint Board, CONTRACTOR shall promptly re-perform, correct, repair, or replace such Work and

promptly repair any damages to the extent caused by such Work failing to comply with the CONTRACTOR Standards of Performance.

10. Key Performance Indicators Guarantees and Performance Liquidated Damages

Key Performance Guarantees.

CONTRACTOR hereby guarantees that the Work shall comply with each of the Key Performance Indicators set forth in Exhibit ____.

Key Performance Reporting.

As a part of the Operational and Acceptance Test conducted by CONTRACTOR, CONTRACTOR shall demonstrate the Work will allow for the review of each Key Performance Indicator in the Monthly Operations and Maintenance Report. Such reports will be reviewed as a part of the implementation of the Project and shall be agreed upon by the Joint Board Representatives.

If the Monthly Operations and Maintenance Reports or the Key Performance Indicators or its subsequent and corresponding Performance Liquidated Damages shall deviate from one another or require further development to assure that all parties agree to the Key Performance Indicators and Performance Liquidated Damages, the Joint Board Representatives shall include these Deviations or clarifications within the Requirements Traceability Matrix.

Key Performance Liquidated Damages.

CONTRACTOR and the Joint Board acknowledge that in the event that the Work fails to comply with Key Performance Indicators as demonstrated by the Monthly Operations and Maintenance Report, the Joint Board and/or Joint Board Representatives shall incur damages that are incapable of accurate measurement. Such damages include, without limitation, loss of toll revenues and additional operating costs for the Project with respect to certain of the Key Performance Indicators. These damages are incapable of accurate measurement because of, among other things, the unique nature of the Project. CONTRACTOR and the Joint Board agree that, as of the Execution Date, the amounts of Performance Liquidated Damages set forth herein represent a good faith estimate as to a portion only of the potential actual damages that the Joint Board would incur as a result of the failure of the Project to comply with the Key Performance Indicators for which Performance Liquidated Damages are established herein (each a "Guaranteed Key Performance Indicator"), and do not constitute a penalty. CONTRACTOR shall pay any Performance Liquidated Damages owing under this Contract.

Notwithstanding clause (a), CONTRACTOR shall not be responsible for the payment of Performance Liquidated Damages if (i) CONTRACTOR has fully complied with its obligations regarding coordination with Other Joint Board Contractors; (ii) notwithstanding such coordination, CONTRACTOR is required to shut down the Project or otherwise delay its performance of a Guaranteed Key Performance Indicator in order to accommodate maintenance; (iii) the need for such maintenance does not arise out of or relate, in whole or in part, to any action, omission, fault, breach, negligence, willful misconduct or recklessness by any CONTRACTOR-Related Entity; and (iv) such shut down or delay is the direct and sole cause of the

failure of the Project in a manner that directly and solely causes CONTRACTOR to fail to meet such Guaranteed Key Performance Indicator.

CONTRACTOR shall bear the burden of proof that the conditions in clauses (b)(i) through (iii) herein are satisfied. CONTRACTOR further acknowledges and agrees that Performance Liquidated Damages may be owing even though no CONTRACTOR Event of Default has occurred.

Except as provided in, pursuant to or as a result of this Section or in connection with a Persistent Breach, the Performance Liquidated Damages payable hereunder are the Joint Board's sole monetary remedy for CONTRACTOR's failure to comply with certain Key Performance Indicators set forth in this Contract. The Performance Liquidated Damages under this Section are cumulative and may be aggregated if multiple or cumulative failures occur.

Failure to Meet Key Performance Indicators.

(a) In the event any of the ongoing operating performance do not yield results which meet or are better than a Guaranteed Key Performance Indicator, CONTRACTOR shall become obligated hereunder to pay Performance Liquidated Damages in the amounts set forth herein for any shortfall in performance below the Key Performance Indicators based upon such test results.

(b) CONTRACTOR's obligation to pay Performance Liquidated Damages for failure to meet Guaranteed Key Performance Indicators shall be deferred for a period of time following the Go-Live date to allow the system and operations to stabilize. This period of allowable time is anticipated to be sixty (60) days. Thereafter, if CONTRACTOR becomes obligated to pay Performance Liquidated Damages, such Performance Liquidated Damages shall be due and payable directly to the Joint Board or to such other person as directed by the Joint Board Representatives in writing, without notice or demand, on the tenth day of the following month and if not paid when due shall thereafter accrue interest as provided herein. The Joint Board may, in its sole discretion, offset such Performance Liquidated Damages against amounts otherwise payable by the Joint Board to the CONTRACTOR.

~~Key Performance Stipulated Damages.~~

~~CONTRACTOR understands and agrees that if the Key Performance Indicators specified herein are not met at any time after the Revenue Service Date, the Joint Board will suffer substantial Losses. CONTRACTOR agrees that it shall be liable for all such Losses to the extent set forth in this Section and elsewhere in this Contract. CONTRACTOR and the Joint Board have agreed to stipulate to a process to determine the amount of damages payable for such failure. CONTRACTOR acknowledges and agrees that such Performance Stipulated Damages are intended to compensate the Joint Board solely for its damages caused by the failure to meet the Guaranteed Key Performance Indicators specified in this Section, beyond any compensation to the Joint Board as a result of any Key Performance Liquidated Damages assessed against CONTRACTOR as a result of such failure to meet such Guaranteed Key Performance Indicator, and shall not excuse CONTRACTOR from liability to correct any defects in the Project or from any other breach of requirements of the Contract Documents. The Joint Board agrees to accept Performance Stipulated Damages as its sole compensation for damages caused by such failure,~~

~~provided that the Joint Board shall (i) not assess or accept Performance Stipulated Damages to the extent such failure are wholly compensated by any Key Performance Liquidated Damages assessed against CONTRACTOR and (ii) not be precluded from exercising its other rights and remedies respecting such failure, including requiring CONTRACTOR to make adjustments to the Project that will cause it to meet the Key Performance Indicators after the Joint Board's written notice to CONTRACTOR of the failure.~~

~~Notwithstanding clause (a), CONTRACTOR shall not be responsible for the payment of Performance Stipulated Damages if (i) CONTRACTOR has wholly compensated the Joint Board for such failure to meet a Key Performance Indicator by payment of any Key Performance Liquidated Damages (ii) CONTRACTOR has fully complied with its obligations regarding coordination with Other Joint Board Contractors; (iii) notwithstanding such coordination CONTRACTOR is required to shut down the Project or otherwise delay its performance of a Guaranteed Key Performance Indicator in order to accommodate maintenance or other activities; (iv) the need for such maintenance does not arise out of or relate, in whole or in part, to any action, omission, fault, breach, negligence, willful misconduct or recklessness by any CONTRACTOR-Related Entity; and (v) such shut down or delay is the direct and sole and cause of the failure of the Project in a manner that directly and solely causes CONTRACTOR to fail to meet such Guaranteed Key Performance Indicator.~~

~~CONTRACTOR's obligation to pay Performance Stipulated Damages for failure to meet Guaranteed Key Performance Indicators shall apply from and after the Revenue Service Date. If CONTRACTOR becomes obligated to pay Performance Stipulated Damages, such Performance Stipulated Damages shall be due and payable directly to the Joint Board or to such other person as directed by the Joint Board Representatives in writing, without notice or demand, on the tenth day of the following month and if not paid when due shall thereafter accrue interest as provided herein. The Joint Board may, in its sole discretion, offset such Performance Stipulated Damages against amounts otherwise payable by the Joint Board to the CONTRACTOR.~~

~~CONTRACTOR shall bear the burden of proof that the conditions in clauses (b)(i) through (iv) herein are satisfied. CONTRACTOR further acknowledges and agrees that Performance Stipulated Damages may be owing even though no CONTRACTOR Event Default has occurred.~~

~~Amount of Key Performance Stipulated Damages.~~

~~_____ (a) _____ CONTRACTOR acknowledges and agrees that because of the unique nature of the Project, and the fact that performance of the Project in conformance with the Guaranteed Key Performance Indicators is essential to the Joint Board's ability to collect toll revenue to enable each of the states to continue to finance, construct, operate and maintain and improve their respective highway systems, it is not possible to ascertain and determine the actual Losses, including lost toll revenues, which would accrue to the Joint Board and the public from such failures. Therefore, commencing upon the Revenue Service Date, CONTRACTOR shall pay to the Joint Board an amount determined as follows (the "Performance Stipulated Damages") as deemed compensation to the Joint Board for lost toll revenues from failure to meet the Guaranteed Key Performance Indicators.~~

~~_____ (b) _____ With respect to any failure to meet the Key Performance Indicators set forth in Form K, the Parties hereby agree that the Performance Stipulated Damages payable for lost toll revenues shall be calculated based upon a comparison of the number of transactions identified by the Toll Collection System during the period of failure to meet the Guaranteed Key Performance Indicators and the number of transactions identified by the Toll Collection System during a comparable prior period determined by the Joint Board.~~

~~_____ (c) _____ In no event shall the foregoing calculation ever be a negative number or result in CONTRACTOR being entitled to additional payment from the Joint Board. CONTRACTOR understands and agrees that any Performance Stipulated Damages payable in accordance with this Section are in the nature of stipulated damages and not a penalty and that the methodology for determining such sums was established based on the Parties' agreement that the amounts so determined will constitute a reasonable approximation of the actual damages from lost toll revenues that the Joint Board will accrue as a result of the circumstances giving rise to such Performance Stipulated Damages. CONTRACTOR further acknowledges and agrees that Performance Stipulated Damages may be owing even though no CONTRACTOR Event of Default has occurred.~~

~~_____ (d) _____ Except as provided in, pursuant to, or as a result of this Section or in connection with Persistent Breach, the Performance Stipulated Damages payable hereunder are the Joint Board's sole monetary remedy for CONTRACTOR's failure to comply with the Guaranteed Key Performance Indicators. The Performance Stipulated Damages under this Section are cumulative and may be aggregated if multiple or cumulative failures occur, but in no event shall the Joint Board be entitled to payments in excess of lost revenue stipulated hereby.~~

Cap on Total Performance Liquidated Damages ~~and Performance Stipulated Damages.~~

Subject to the provisions of Section 9, CONTRACTOR shall have no monetary liability under this Contract for damages arising out of an individual failure of the Project to meet the Guaranteed Key Performance Indicators, except (i) if such failure also results in or triggers a separate or additional default or breach of this Contract; (ii) for the Performance Liquidated Damages ~~and the Performance Stipulated Damages~~, accruing in total up to such capped amount plus any interest due, and (iii) for all reasonable sums the Joint Board incurs to enforce its rights to such damages.

11. Assignment; Successors.

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the IFA, provided that the Contractor gives written notice (including evidence of such assignment) to the IFA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the IFA's prior written consent. Additionally, the Contractor shall provide prompt written notice to the IFA of

any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

12. Assignment of Antitrust Claims. As part of the consideration for the award of this Contract, the Contractor assigns to the IFA all right, title, and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

13. Audits. On an annual basis after System Acceptance, the Contractor shall provide the IFA with a copy of its Service Organization Control Report (SOC 1, Type 2) demonstrating that an independent audit has been performed in accordance with Statement on Standards for Attestation Engagement No. 18 (SSAE).

In instances where there is a gap between the SSAE 18, SOC 1, Type 2 reporting period and the Contractor's financial reporting period, a "bridge letter" should be provided to provide additional comfort over the controls for the period not covered by the SOC 1, Type 2 report. The Contractor shall ensure the SSAE 18 audit commences in and covers the Contractor's fiscal year which includes the effective date of this Contract. The independent audit shall also note that no deterioration of controls has occurred over the operating systems and no significant control deficiencies were noted during the applicable period. This audit Requirement shall continue until the expiration date or upon the termination of this Agreement.

The IFA reserves the right to periodically examine and review the Contractor's systems, procedures, internal controls, financial Transactions and supporting documentation to verify fiscal and contractual compliance. The Contractor is required to show that it is PCI compliant including attestation for the applicable period and conform to the latest PCI Requirements.

The Contractor will not be compensated or reimbursed for time or expenses incurred either providing or responding to audit requests.

14. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed.

15. Changes in Work. The Contractor shall not commence any additional work or change the Scope of Work until authorized in writing by the IFA. The Contractor shall make no claim for additional compensation in the absence of a prior, written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented, or modified by a written document executed in the same manner as this Contract.

16. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by

reference. The enactment or modification of any applicable state or federal statute, or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the IFA and the Contractor to determine whether the provisions of this Contract require formal modification. Specifically, the Contractor must follow professional standards in accordance with the federal Fair Debt Collection Practices Act (FDCPA), and all other applicable laws, rules, and regulations. Further, Contractor shall provide training to all its employees regarding compliance with all federal and state laws including, but not limited to, the FDCPA, including any amendments thereto that become effective during the term of this Contract.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the IFA as set forth in Indiana Code § 4-2-6, et seq., Indiana Code § 4-2-7, et seq., and the regulations promulgated thereunder. If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in Indiana Code § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in Indiana Code § 4-2-6-10.5 prior to the execution of this Contract. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the IFA may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees, or other statutory, regulatory, or judicially required payments to the State of Indiana and the Commonwealth of Kentucky. The Contractor agrees that any payments currently due to the State of Indiana and the Commonwealth of Kentucky may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the States.

D. The Contractor warrants that it has no current, pending, or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana or the Commonwealth of Kentucky, and agrees that it will immediately notify the IFA of any such actions. During the term of such actions, the Contractor agrees that the IFA may delay, withhold, or deny work under any supplement, amendment, change order, or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or the Commonwealth of Kentucky, or their agencies, and the IFA decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the IFA following the procedures for disputes outlined herein. A determination by IFA shall be binding on the parties. Any payments that the IFA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by Indiana Code § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the IFA. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination.

G. The Contractor affirms that it is properly registered and qualified to transact business in the State of Indiana and the Commonwealth of Kentucky, and owes no outstanding reports to the Indiana Secretary of State or to the Kentucky Secretary of State. This compliance will continue uninterrupted during the term of this Contract. The Contractor must follow professional standards in accordance with the federal Fair Debt Collection Practices Act (FDCPA), and other applicable laws, rules, and regulations.

H. As required by Indiana Code § 5-22-3-7:

The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for *de minimis* and nonsystematic violations, has not violated the terms of Indiana Code §24-4.7 [Telephone Solicitation Of Consumers];

Indiana Code §24-5-12 [Telephone Solicitations]; or

Indiana Code §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of Indiana Code § 24-4.7 for the duration of the Contract, even if Indiana Code §24-4.7 is preempted by federal law.

The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for *de minimis* and nonsystematic violations,

(A) has not violated the terms of Indiana Code § 24-4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code §24-4.7 is preempted by federal law; and

(B) will not violate the terms of Indiana Code § 24-4.7 for the duration of the Contract, even if Indiana Code §24-4.7 is preempted by federal law.

I. The Contractor and any Principal of the Contractor certify that:

(A) The Contract has met all requirements of Kentucky law and the Kentucky Attorney General, including, but not limited to KRS 367.469, KRS 367.46971 and KRS 367.6981.

17. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the IFA's reasonable satisfaction, which shall not be unreasonably withheld, and in accordance with the KPI requirements, and all applicable federal, state, local laws, ordinances, rules, and regulations. The IFA shall not be required to pay for work found to be unsatisfactory, inconsistent with

this Contract, or performed in violation of any federal, state, or local statute, ordinance, rule, or regulation.

18. Confidentiality of Information. The Contractor understands and agrees that toll collection customer account information, which means any information collected or received from or about any person who is assessed a toll, including contact information, payment information, trip data, and any other relevant data is confidential and will not be disclosed to or discussed with anyone other than representatives of members of the Joint Board (IFA, INDOT, KPTIA, and KYTC), the Toll Service Advisor, and/or TSP2. The parties acknowledge that the services to be performed by Contractor for the IFA under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the States of Indiana and Kentucky in their computer systems or other records. In addition to the covenant made above in this section and pursuant to 10 Indiana Administrative Code 5-3-1(4), the Contractor and the IFA agree to comply with the provisions of Indiana Code § 4-1-10 and Indiana Code § 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

19. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the States of Indiana or Kentucky. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the IFA if any subcontractor becomes debarred or suspended, and shall, at the IFA’s request, take all steps required by the IFA to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

20. Default by the IFA. If the IFA, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract, and institute measures to collect monies due up to and including the date of termination.

21. Disputes.

A. Should any disputes arise with respect to this Contract, the Contractor and the IFA agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Partnering will be encouraged in preference to formal dispute resolution mechanisms. Partnering in this context is

intended to be a voluntary, non-binding procedure available for use by the Parties to resolve any issues that may arise during performance of the Contract.

The objectives of the partnering process are: (a) to identify potential problem areas, issues, and differences of opinion early; (b) to develop and implement procedures for resolving them in order to prevent them from becoming claims and disputes; (c) to achieve effective and efficient performance and completion of the services in accordance with the Contract; and (d) to create mutual trust and respect for each Party's respective roles and interests in the Contract while recognizing the respective risks inherent in those roles.

If the Contractor and the IFA succeed in resolving a claim or dispute through the partnering process, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

B. The Contractor agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the IFA or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the IFA for such costs.

C. If the dispute is not resolved pursuant to the partnering process, then commencing within fifteen (15) Business Days after the notice of the dispute is served and concluding ten (10) Business Days thereafter, the Chief Executive Officer of the Contractor, the Public Finance Director of the IFA (or the Public Finance Director's designee), and the Joint Board's Authorized Representatives, shall meet and confer, in good faith, to seek to resolve the dispute raised in the claiming Party's notice of the dispute. If they succeed in resolving the dispute, the Contractor and the IFA shall memorialize the resolution in writing.

If a dispute is not timely resolved under the informal resolution procedures, then the Parties may mutually agree to initiate mediation. If a dispute is not timely resolved under the informal resolution procedures or by mediation, or the Parties do not mutually agree to initiate mediation or other alternative dispute resolution process, either Party may: (i.) as a condition precedent to the right to have any dispute resolved by the Circuit/Superior Court located in Clark County, Indiana; or (ii.) with respect to all other disputes, as well as disputes submitted to but not finally resolved through mediation, pursue any other relief that may be available in the Circuit/Superior Court located in Clark County, Indiana.

22. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the IFA within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal-drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the IFA for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee-assistance programs; and (4) the penalties that may be imposed upon an employee for drug-abuse violations occurring in the workplace;

Notifying all employees in the statement required by subparagraph (A) above that, as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

Notifying the IFA in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug- abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug-abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and

Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

23. Employment Eligibility Verification. As required by Indiana Code § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The IFA may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the IFA.

24. Employment Option. If the IFA, INDOT, KYTC, or KPTIA determine that it would be in any of their best interests to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the IFA, INDOT, KYTC, KPTIA, or the employee.

25. Force Majeure. If Contractor's failure to perform is caused solely and directly by an event or events beyond Contractor's control, which event was not due, in whole or in part, to the breach, default, fault, act, omission, negligence, recklessness, gross negligence, or willful misconduct of Contractor or anyone acting on Contractor's behalf, and which event could not have been avoided by due diligence and the use of reasonable efforts by Contractor, such failure shall not constitute a default for that particular element of the Work impacted by the event. However, the IFA shall have the right, but not the obligation, to engage third parties to perform such Work and, in such instance, the cost of such Work shall be deducted from the compensation owed to Contractor. Contractor shall promptly notify the Joint Board in writing of any occurrence of a delay event and describe the steps Contractor intends to implement to mitigate the delays arising therefrom.

26. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Clark County in the State of Indiana. The Contractor specifically consents to this jurisdiction and venue.

27. Indemnification. The Contractor agrees to indemnify, defend, and hold harmless the IFA, INDOT, the State of Indiana, KPTIA, KYTC, the Commonwealth of Kentucky, the Joint Board, and any other State Party and any and all of their agents, officials, and employees from all third-party claims and suits including court costs, attorney's fees, and other expenses caused indirectly or directly by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. Neither the IFA, INDOT, the State of Indiana, KPTIA, KYTC, the Commonwealth of Kentucky, the Joint Board, nor any other State Party will provide indemnification to the Contractor.

28. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership, or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance

for the Contractor's employees, and Contractor shall provide the IFA with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

29. Insurance.

A. ~~Without limiting the Contractor's indemnification responsibilities, the Contractor shall provide and maintain at its own expense during the term of this Agreement the following insurance coverage and provisions. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract, including, but not limited to:~~

- ~~1. Liability Insurance. Commercial General Liability (CGL) with a limit not less than \$1,000,000 each occurrence and a general aggregate limit of not less than \$2,000,000 providing coverage for bodily injury, property damage, and personal and advertising injury through any combination of primary and excess or umbrella liability insurance policies. The IFA, INDOT, KYTC, KPTIA, and the Joint Board are to be included as additional insureds on the general liability policy. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the IFA. The IFA, INDOT, KYTC, KPTIA, and the Joint Board are to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.~~
- ~~2. Workers' Compensation and Employer's Liability Insurance. During this Agreement, the Contractor shall provide evidence of Workers' Compensation insurance as required under statute including coverage for Employer's Liability with limits of at least \$1,000,000 each accident, \$1,000,000 each employee by disease, and a policy limit of \$1,000,000 by disease. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the IFA, INDOT, KYTC, KPTIA, and the Joint Board shall continue for a period of two (2) years after the date of service provided under this Contract.~~
- ~~3. Crime Insurance or Fidelity Bond. Maintain evidence of commercial crime insurance or a fidelity bond naming the Joint Board as a loss payee. The policy or bond shall cover theft, dishonesty, disappearance, forgery, alteration, and destruction caused by any employee of the Contractor in an amount not less than \$1,000,000. Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.~~
- ~~4. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.~~
- ~~5. Surety or Fidelity Bond(s) if required by statute or by the IFA.~~

~~6. Cyber Liability addressing risks associated with electronic transmissions, the internet, networks, and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 in the aggregate.~~

~~7. Liability for any claim associated with the Fair Debt Collection Practices Act, Fair Credit Reporting Act and all other federal or state consumer protection laws with limits no less than X USD per cause of action and Y USD in the aggregate, where X and Y are TBD.~~

The Contractor shall provide proof of such insurance coverage by tendering to the undersigned IFA representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of Indiana Code § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State of Indiana is required because services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. The IFA, INDOT, KYTC, KPTIA, and the Joint Board will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the IFA, INDOT, KYTC, KPTIA, and the Joint Board.

5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against IFA, INDOT, KYTC, KPTIA, the Joint Board, the State of Indiana, and the Commonwealth of Kentucky.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the IFA to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the IFA before the commencement of this Contract.

30. Key Person(s).

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for

whatever reason, the IFA shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without the prior, express, written consent of the IFA, which shall not be unreasonably withheld.

Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are _____

31. Licensing Standards. The Contractor, its employees, and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards, and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The Contractor will not be paid for any services performed when the Contractor, its employees, or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification, or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the IFA immediately and the IFA, at its option, may immediately terminate this Contract.

32. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

33. Disadvantaged Business Enterprises Compliance. The Contractor shall exercise good faith efforts to encourage participation by minority-, women-, and veteran-owned businesses in the performance of the Contract.

34. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically Indiana Code § 22-9-1-10, the Kentucky Civil Rights Act, specifically KRS 344.010 *et seq.*, and any other applicable state civil rights code, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal and state laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material

breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the IFA and any applicant or employee of the Contractor or any subcontractor.

The IFA is a recipient of federal funds, and therefore, where applicable, the Contractor and any subcontractors shall comply with requisite affirmative-action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

35. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first-class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the IFA shall be sent to:

Attn: Public Finance Director
Indiana Finance Authority
One North Capitol Ave., Suite 900
Indianapolis, IN 46204
E-mail: Projects@ifa.in.gov

B. Notices to the Contractor shall be sent to:

E-mail: _____

C: Notices to KPTIA shall be sent to:

Attn: Chairperson
Kentucky Public Transportation Infrastructure Authority
200 Mero St.
Frankfort, KY 40622

Amanda R. Spencer, PE
Kentucky Transportation Cabinet
200 Mero St.
Frankfort, KY 40622

Attn: Director of Legal Services
Kentucky Transportation Cabinet
200 Mero St.

Frankfort, KY 40622

D: Notices to KYTC shall be sent to:

Amanda R. Spencer, PE
Kentucky Transportation Cabinet
200 Mero St.
Frankfort, KY 40622

Attn: Director of Legal Services
Kentucky Transportation Cabinet
200 Mero St.
Frankfort, KY 40622

E: Notices to INDOT shall be sent to:

ADDRESS(ES)

36. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract; (2) attachments prepared by the IFA; (3) RFP; (4) the Contractor's response to RFP; and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

37. Ownership of Documents and Materials. Except for those documents delivered to the IFA to be held in escrow, all documents submitted by the Contractor in response to the RFP became the property of IFA, on behalf of the Joint Board.

All materials submitted by the Contractor in its Proposal shall be subject to the Public Records Act and any other laws applicable to the disclosure of documents submitted under the RFP. For purposes of this section and the Public Records Act, financial information shall be considered part of the Proposal. Specifically, the Contractor acknowledges that, except for portions of the Proposals that fall under a specific exemption of the Public Records Act, this Contract and the Contractor's Proposal will be made available to the public pursuant to a request submitted under the Public Records Act. In furtherance thereof, the Contractor submitted a redacted copy of its Proposal to the IFA, with redactions limited to only those portions of the Proposal that the IFA determines fall under a specific exemption of the Public Records Act (and the Contractor submitted for the IFA's review and approval documentation identifying the specific exemption asserted and such other information requested by the IFA in order for the IFA to assess the eligibility of such portions of the Proposal for exemption from publication). Notwithstanding any proposed redactions and/or claims of exemption asserted by the Contractor, the IFA shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder. Failure of the Contractor to submit a redacted form of its Proposal, containing only those redactions consistent with the IFA's determination as to the content that may be redacted, to the IFA by fifteen (15) days after execution of the Contract by the IFA shall constitute consent by the Contractor to, and a waiver of any right to contest, disclosure by

the Joint Board, the IFA, or any States' Party of the Contractor's Proposal in its entirety, without redaction, in response to a request submitted under the Public Records Act. As between the Contractor and a third-party requesting disclosure under the Public Records Act (as opposed to as between the Contractor and the IFA exercising its sole discretion rights pursuant to this Section), this Section shall not constitute a waiver of the Contractor's rights under the Public Records Act.

In no event shall the Joint Board, the IFA any other States' Party, or any of their respective agents, representatives, consultants, directors, officers, or employees be liable to the Contractor for the disclosure of any materials or information submitted by the Contractor.

38. Payments.

A. All payments shall be made thirty-five (35) days in arrears in conformance with the IFA's policies and procedures and the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract.

B. If the Contractor is being paid in advance for the maintenance of equipment, software, or a service as a subscription, then the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the IFA, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

39. Penalties/Interest/Attorney's Fees. The IFA will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1, and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the IFA's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

40. Reporting. The Contractor shall, at a minimum, provide the report capabilities on ORB-placed Transactions as specified below.

- Ability to access ORB specific data;
- Monthly standard reporting to support KPI Requirements;
- Standard reporting to support settlement and Reconciliation efforts within the TSP2 BOS.

In addition, the Contractor shall be prepared to provide up to ten (10) additional reports as needed over the term of the Contract to meet the Joint Board's operational Requirements and information needs. The required frequency of submission of the reports will be determined by the Joint Board prior to operations unless otherwise identified in the Scope of Work.

The reports are identified as follows:

- **Customer Service**

- Inbound (“IB”) monthly call volumes, average time in the queue, percentage answered within 60 seconds, average handle time;
- Outbound (“OB”) monthly call volumes, percentage answered;
- Average Call Abandon Rate;
- Amount of time (minutes & seconds) each customer is waiting after selecting to speak with a CSR;
- Percentage of calls forwarded to TSP2 CSC when an Unregistered Customer requests a Payment Plan; and
- Percentage of inquiries able to be responded to and resolved within the first call.
- **Collection Performance**
 - Dollars collected vs dollars placed comparison: Bar graph with monthly dollars collected vs. dollars placed. The bar graph should show Toll dollars and Fee dollars in different colors and add up to total collected. Secondary axis should show percentage collected for Tolls and Fees;
 - Number of Invoices sent by the Contractor to each Customer/Violator each month with number of attempts made for that month. Bar graph should show different customer contact attempt types (calls, Invoices, letters, emails, etc.);
 - Number of Invoices sent by the Contractor to each Customer/Violator where the Customer/Violator was skip traced for better address within each month; include the percentage of successful ‘finds’;
 - Batch Dollars Collected by the Contractor: chart showing time to achieve desired Toll collection target; and
 - Summary and detail to support the calculation of the KPI’s and associated liquidated damages on a periodic basis, typically monthly.
- **Skip Tracing out- of- state lookups**
 - Monthly referral volume vs. successful finds; and
 - Percentage found within 1, 2, 3, 3+ days from Placement sent.
- **Correspondence**
 - Number of account Placements sent to the Contractor, number of letters mailed. Secondary axis percentage mailed by the Contractor within 7 days of receipt from TSP2; and
 - Number of returned mails pieces/percentage updated with new address within 7 days.
- **Complaint Management**
 - Monthly complaints (non-regulatory) percentage responded to within 48 hours;
 - Top 5 reasons for complaints and actions to reduce volume (if appropriate); and
 - Complaints submitted by Customer/Violator in writing and number of days after received before issued to TSP2.
- **Collection Agency Monthly Statement**
 - The Collection Agency Statement is created by the Contractor and provided to the JB for the JB’s use in reconciling the JB’s debt. The statement consists of a summary of all

payments and adjustment Transactions for the previous month and details the current balance for each ORB Customer/Violator with placed Transactions.

- Additional analytics
 - Reasons for calls other than to pay;
 - Forwarded Payment Mail; and
 - Leverage Call monitoring or text analytics to provide other applicable insights.
- **Reconciliation**
 - Transactions placed and their outstanding debts owed;
 - Transactions paid;
 - Transactions dismissed or adjusted;
 - Transactions removed; and
 - Transactions flagged as disputed or in bankruptcy;

41. Public Record.

A. Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the IFA's possession, including materials submitted by Contractor to the IFA, are subject to the provisions of the Public Records Act. If Contractor believes information or materials submitted to the IFA constitute trade secrets or otherwise are exempt from disclosure under the Public Records Act pursuant to IC 5-14-3-4 and/or KRS 61.870 – 61.884, Contractor shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary information, trade secret or other basis for exemption shall be clearly identified as such and shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that exempts the material from disclosure under the Public Records Act. Nothing contained in this Section shall modify or amend requirements and obligations imposed on the IFA by the Public Records Act or other applicable Law, and the provisions of the Public Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Contractor is advised to consult legal counsel of its own choosing concerning such Law and its application to Contractor.

B. If either the IFA or the Joint Board receives a request for public disclosure of materials marked "CONFIDENTIAL," they will use reasonable efforts to notify Contractor of the request and give Contractor an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Records Act or other applicable law within the time period specified in the notice issued by the Joint Board and allowed under the Public Records Act. Under no circumstances, however, will the Joint Board be responsible or liable to CONTRACTOR or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, or court order, or occurs through inadvertence, mistake, or negligence on the part of the IFA, the Joint Board or their officers, employees, Contractors, or consultants.

C. In the event of any proceeding or litigation concerning the disclosure of any material submitted by Contractor to the IFA, the IFA's sole involvement will be as a stakeholder retaining the material until

otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the IFA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Contractor shall pay and reimburse the IFA within thirty (30) days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, the IFA incurs in connection with any litigation, proceeding, or request for disclosure.

42. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the parties, for up to two (2) two-year extensions. The term of the renewed contract may not be longer than the term of the original Contract.

43. Severability. The invalidity of any section, subsection, clause, or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Contract. Moreover, the invalidity of any section, subsection, clause, or provision of this Contract shall not result in IFA, INDOT, KYTC, KPTIA, or the Joint Board being liable to Contractor.

44. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

45. Taxes. The IFA is exempt from most state and local taxes, and many federal taxes. The IFA will not be responsible for any taxes levied on the Contractor as a result of this Contract.

46. Termination for Convenience. This Contract may be terminated, in whole or in part, by the IFA whenever, for any reason, the IFA determines that such termination is in its best interest. Termination of services shall be affected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The IFA will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

47. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the IFA may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the IFA determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;

3. Make progress so as to endanger performance of this Contract; or

4. Perform any of the other provisions of this Contract.

B. If the IFA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the IFA considers appropriate, supplies, or services similar to those terminated, and the Contractor will be liable to the IFA for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The IFA shall pay the contract price for completed services accepted. Failure to agree will be a dispute under the Disputes clause. The IFA may withhold from these amounts any sum the IFA determines to be necessary to protect the IFA against loss because of outstanding claims or claims of third parties.

D. The rights and remedies of the IFA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

48. Travel. No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid in accordance with the Indiana Department of Administration Travel Policy and Procedures in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the IFA for conformance with Travel Policy guidelines.

49. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the IFA's review, approval, or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the IFA in accordance with applicable law for all damages to the IFA caused by the Contractor's negligent performance of any of the services furnished under this Contract.

50. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the IFA becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the IFA may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

51. Headings. The captions of the sections of this Contract are for convenience only and shall not be deemed part of this Contract or considered in construing this Contract.

52. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[The remainder of this page has intentionally been left blank.]

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member, or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in Indiana Code § 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in Indiana Code § 4-2-6-10.5.

In Witness Whereof, the Contractor and the IFA have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

The Contractor

Indiana Finance Authority

By: _____

By: _____

Cristopher R. Johnston
Board Chair

Name and Title, Printed

Date: _____

Attest:

By: _____

Dan Huge
Public Finance Director