PUBLIC-PRIVATE AGREEMENT

THE EAST END CROSSING

(LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT)

BETWEEN

Indiana Finance Authority

and

_____

Dated December __, 2012

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS; PPA DOCUMENTS; ORDER OF PRECEDENCE; OTHER DOCUMENTS 2
1.1 Definitions 2
1.2 PPA Documents; Rules to Reconcile Conflicting Provisions 2
1.3 Order of Precedence of Project Management Plan 4
1.4 Reference Information Documents 4

ARTICLE 2. GRANT OF CONCESSION; TERM 5
2.1 Grant of Concession 5

ARTICLE 3. MANAGEMENT SYSTEMS AND OVERSIGHT 7
3.1 Submittal, Review and Approval Terms and Procedures 7
3.1.1 General 7
3.1.2 Time Periods 7
3.1.3 IFA Discretionary Approvals 8
3.1.4 Other IFA Approvals 8
3.1.5 IFA Review and Comment 9
3.1.6 Submittals Not Subject to Prior Review, Comment or Approval 9
3.1.7 Resolution of IFA Comments and Objections 9
3.1.8 Limitations on Developer's Right to Rely 11
3.2 Project Management Plan 12
3.3 Traffic Management 14
3.4 Oversight, Inspection and Testing 15
3.4.1 Oversight by IFA, FHWA, the Department; Assistance with Federal Financial Plan Requirement 15
3.4.2 Increased Oversight, Testing and Inspection 18
3.5 Rights of Cooperation and Access 19
3.6 Testing and Test Results 20
3.7 Interpretive Engineering Decisions 20
3.8 Meetings 21

ARTICLE 4. EAST END CROSSING PLANNING, CONDITIONS AND APPROVALS; ENVIRONMENTAL COMPLIANCE; PUBLIC INFORMATION 21
4.1 Preliminary Planning and Engineering Activities 21
4.2 Site Conditions 22
4.3 Governmental Approvals 22
4.4 Major Environmental Approvals 25
4.5 Environmental Compliance 26
4.6 Third Party Agreements 26

4.7 Community Outreach and Public Information 27

ARTICLE 5. DESIGN AND CONSTRUCTION 27
5.1 General Obligations of Developer; Scope of Initial Design and Construction 27
5.2 Performance, Design and Construction Standards; Deviations 28
5.3 Conditions to Commencement of Design; Design Implementation and Submittals 30
5.3.1 Conditions to Commencement of Design 30
5.3.2 Design Implementation 31
5.3.3 Design Submittals 31
5.4 Project Right of Way Acquisition 31
5.5 Utility Adjustments 33
5.5.1 Developer's Responsibility 33
5.5.2 Utility Agreements 33
5.5.3 Requirements 35
5.5.4 Utility Adjustment Costs 35
5.5.5 FHWA Utility Requirements 36
5.5.6 Utility Enhancements 36
5.5.7 Failure of Utility Owners to Cooperate 37
5.5.8 Applications for Utility Permits 38
5.5.9 Security for Utility Adjustment Costs; Insurance 39
5.5.10 Utility-Related Claims 39
5.6 Conditions to Commencement of Construction 40
5.6.1 Construction Work Generally 40
5.6.2 Utility Adjustments 42
5.7 Schedule, Notices to Proceed and Milestone Schedule Deadlines 42
5.8 Substantial Completion, Punch List, Final Acceptance 44
5.8.1 Substantial Completion 44
5.8.2 Conditions to IFA Issuing Certificate Evidencing DB Substantial Completion 44
5.8.4 Conditions to issuance by IFA of Certificate Evidencing Satisfaction of O&M Conditions Precedent 47
5.8.5 Final Acceptance 48
5.9 Hazardous Materials Management 50
5.10 Landscaping 53
5.11 Design and Construction Warranties 57
5.12 Assignment of Certain Causes of Action 57

ARTICLE 6. OPERATIONS AND MAINTENANCE 58
6.1 General 58
6.1.1 General Obligations 58

6.1.2 Changes in Performance, Operation and Maintenance Standards 58
6.1.3 Duration of Hazardous Materials Management 60
6.1.4 Utility Accommodation 60
6.1.5 Accommodation of Third Party Signage and Lighting 61
6.1.6 Speed Limits 61
6.1.7 Updates of Record Drawings 62
6.2 O&M Contracts 62
6.3 Coordination of Operations and Maintenance Responsibilities 62
6.4 [reserved] 63
6.5 Annual Budget 63
6.6 Developer Inspection, Testing and Reporting 63
6.7 Rehabilitation Work 63
6.8 Rehabilitation Work Schedule 64
6.9 [reserved] 65
6.10 [reserved] 65
6.11 Policing, Security and Incident Response 65
6.11.1 Police Services 65
6.11.2 Security and Incident Response 66
6.12 Handback Requirements 67
6.12.1 Handback Condition 67
6.12.2 Handback Inspections 67
6.12.3 Rehabilitation Work under Handback Requirements 67
6.13 Handback Requirements Reserve Account 68
6.13.1 Establishment 68
6.13.2 Funding 68
6.13.3 Use 68
6.13.4 Disposition at End of Term 69
6.13.5 Handback Requirements Letters of Credit 70

ARTICLE 7. CONTRACTING AND LABOR PRACTICES 71
7.1 Disclosure of Contracts and Contractors 71
7.2 Responsibility for Work, Contractors and Employees 71
7.3 Key Contracts; Contractor Qualifications 72
7.3.1 Key Contract Approvals, Amendments and Termination; Use of and Change in Key Contractors 72
7.3.2 Key Contract Provisions 73
7.4 Key Personnel 75
7.5 [Reserved] 76
7.6 Contracts with Affiliates 76
7.7 Labor Standards 77

7.8 Ethical Standards 77
7.9 Non-Discrimination; Equal Employment Opportunity 78
7.10 Disadvantaged Business Enterprise 80
7.10.1 General 80
7.10.2 DBE Participation Goals 80
7.10.3 DBE Performance Plan 81
7.10.4 Changes in the D&C Work 82
7.10.5 DBE Participation in O&M Work 82
7.10.6 Cancellation of DBE Contracts 82
7.11 Workforce Diversity and Small Business Performance Plan 82
7.12 Additional Diversity Initiatives 84
7.13 Prevailing Wages 84
7.14 Prompt Payment to Contractors 85
7.15 Retainage 85
7.16 Suspension and Debarment 85
7.17 Uniforms 86

ARTICLE 8. RELATED FACILITIES; RESERVED RIGHTS 86
8.1 Integration with Related Transportation Facilities 86
8.2 Reserved Airspace and Business Opportunities 87

ARTICLE 9. TECHNOLOGY ENHANCEMENTS; SAFETY COMPLIANCE; EMERGENCY REPAIR WORK 90
9.1 Technology Enhancements 90
9.2 Safety Compliance 90
9.3 Emergency Repair Work 91

ARTICLE 10. PAYMENTS TO DEVELOPER; IFA'S COSTS 91
10.1 Milestone Payment and Adjustments 91
10.2 Availability Payments 94
10.2.1 Timing and Basis for Availability Payments 94
10.2.2 Availability Payment Calculation 95
10.2.3 Availability Payment Invoicing 95
10.2.4 IFA Budgeting and Appropriations 96
10.2.5 Sources for Availability Payments 97
10.2.6 [reserved] 98
10.2.7 Proration of Availability Payments for Partial Quarters 98
10.3 Disputed Amounts 98
10.4 Interest on Delinquent Payments and Overpayments 98
10.5 IFA's Costs 99
10.6 IFA Right of Withholding. 100

ARTICLE 11. NONCOMPLIANCE EVENTS AND NONCOMPLIANCE POINTS.....100
11.1 Noncompliance Points System.....100
11.2 Assessment Notification and Cure Process.....101
11.2.1 Notification Initiated by Developer.....101
11.2.2 Notification Initiated by IFA.....102
11.2.3 Cure Periods.....102
11.2.4 Notification of Cure.....102
11.3 Assessment of Noncompliance Points.....103
11.4 Records Regarding Assessment of Noncompliance Points.....104
11.5 Quarterly Noncompliance Adjustments and Quarterly Unavailability Adjustments for Certain Noncompliance Events and Closures.....104
11.5.1 General.....104
11.5.2 Basis for Deductions.....104
11.6 Special Provisions for Certain Noncompliance Events.....105
11.7 Special Provisions for IFA Step-in.....106
11.8 Provisions Regarding Dispute Resolution.....107

ARTICLE 12. FINANCIAL MODEL AND FINANCIAL MODEL UPDATES.....108
12.1 Financial Model and Financial Model Updates.....108
12.2 Model Audits.....109
12.3 Financial Model Formulas.....109

ARTICLE 13. DEVELOPER FINANCING; REFINANCING; EQUITY.....109
13.1 Developer Right and Responsibility to Finance.....109
13.2 No IFA Liability.....110
13.3 Mandatory Terms of Project Debt, Funding Agreements and Security Documents.....111
13.4 Refinancing.....114
13.4.1 Right of Refinancing.....114
13.4.2 Notice of Refinancing.....114
13.4.3 Refinancing Limitations, Requirements and Conditions.....115
13.5 Refinancing Gain Sharing.....115
13.6 Equity Requirements.....115
13.7 Financial Close.....116

ARTICLE 14. TOLLING OPERATIONS; DISPOSITION OF TOLL REVENUES; TOLLING COVENANTS; APPROPRIATIONS.....120
14.1 Tolling Operations--General.....120
14.2 Schedule for Tolling Operations.....120
14.3 Ownership of Indiana Revenue Share.....120
14.4 Further Agreements.....121
14.5 Toll Policy Agreement; Terms.....121

14.6 Toll Operations Agreement; Terms 121
14.7 Custodial Arrangements 122
14.8 Appropriations 123

ARTICLE 15. RELIEF EVENTS 123
15.1 Relief Event Claim Process 123
15.1.1 Relief Event Notice 123
15.1.2 Relief Request 124
15.1.3 IFA Evaluation and Response to Relief Request; Negotiations 126
15.1.4 Final Documentation of Relief Event Claim 126
15.1.5 IFA Response to Final Documentation 127
15.1.6 Waiver 127
15.1.7 Open Book Basis 128
15.2 Compensation to Developer due to Missed Availability Payment as a Result of Relief Event Delay of Substantial Completion 128
15.3 Delayed Milestone Payment Due to Relief Event Delays 130
15.4 Payment for Extra Work Costs and Delay Costs 131
15.5 Restoration of Financial Balance for Deferral of Compensation 133
15.6 Relief Events Allowance Account; Relief Events Allowance; Claim Deductible 133
15.6.1 Relief Events Allowance Account, Relief Events Allowance 133
15.6.2 Claim Deductible 134
15.7 Other Deductibles; Special Provisions 135
15.7.1 Non-Discriminatory O&M Change 135
15.7.2 Project Right of Way Acquisition 135
15.7.3 Use of Airspace for Business Opportunity 136
15.7.4 Flood Event 136
15.7.5 Major Environmental Approval Delay 136
15.7.6 Utility Owner Delay 137
15.7.7 Hazardous Materials 137
15.7.8 Change in Law 137
15.7.9 Damage and Destruction to Specified Property 137
15.7.10 Change in Adjustment Standards 138
15.7.11 Seismic Event 138
15.7.12 Inaccurate Utility Information 139
15.8 Accounting for Relief Event Work pertaining to the Relief Events Allowance Account 139
15.9 Insurance Deductible 141
15.10 Sources for Payment of Compensation Amounts 141
15.11 Certain Relief Events Causing Closures 142

15.12 Effect of Relief Events on Milestone Schedule Deadlines, Performance, Developer Default, Noncompliance Points and Deductions 142
15.13 Interest on Late Payments....143
15.14 Exclusive Relief; Release of Claims 143
15.15 Mitigation....143

ARTICLE 16. IFA CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS 144
16.1 IFA Changes 144
16.1.1 IFA Right to Issue Change Order 144
16.1.2 Request for Change Proposal....144
16.1.3 Response to Request for Change Proposal 145
16.1.4 Negotiation and Directed Changes 145
16.1.5 Payment and Schedule Adjustment 145
16.1.6 Reductive IFA Changes 146
16.2 Developer Initiated Changes 147
16.3 Directive Letters 148

ARTICLE 17. INSURANCE; PAYMENT AND PERFORMANCE SECURITY; INDEMNITY.148
17.1 Insurance 148
17.1.1 Insurance Policies and Coverage....148
17.1.2 General Insurance Requirements 148
17.1.3 Lender Insurance Requirements; Additional Insurance Policies 153
17.1.4 Notice and Prosecution of Claims 153
17.1.5 Application of Insurance Proceeds....154
17.1.6 Umbrella and Excess Policies....154
17.1.7 Inadequacy of Required Coverages....155
17.1.8 Unavailability of Required Coverages 155
17.1.9 Insurance Premium Benchmarking 156
17.2 Payment and Performance Security 159
17.2.1 Design and Construction Security Requirements 159
17.2.2 Payment Certifications 162
17.2.3 Operations and Maintenance Security 162
17.3 Letters of Credit....163
17.3.1 General Provisions....163
17.3.2 Special Letter of Credit Provisions 165
17.4 Guarantees 165
17.5 Indemnity by Developer; No Indemnity by IFA....165
17.6 Defense and Indemnification Procedures 167
17.7 Disclaimer 169

ARTICLE 18. REPRESENTATIONS AND WARRANTIES 169
18.1 Developer Representations and Warranties 169
18.2 IFA Representations and Warranties 173
18.3 Survival of Representations and Warranties 174
18.4 Special Remedies for Mutual Breach of Warranty 174
18.5 "Bring Down" of Developer Representation and Warranties at Financial Close 174

ARTICLE 19. DEFAULT; REMEDIES; DISPUTE RESOLUTION 175
19.1 Default by Developer; Cure Periods 175
19.1.1 Developer Default 175
19.1.2 Cure Periods 177
19.2 IFA Remedies for Developer Default 178
19.2.1 Termination 178
19.2.2 Immediate IFA Entry and Cure of Wrongful Use or Closure 178
19.2.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance 179
19.2.4 IFA Step-in Rights 180
19.2.5 Damages; Offset 182
19.2.6 Remedial Plan Delivery and Implementation 183
19.2.7 Payment Bond and Performance Security 184
19.2.8 Suspension of Work 184
19.2.9 Warning Notices 186
19.2.10 Other Rights and Remedies 186
19.2.11 Cumulative, Non-Exclusive Remedies 186
19.2.12 Limitation on Consequential Damages 186
19.2.13 Other Limitation on IFA's Remedies 187
19.3 Default by IFA; Cure Periods 188
19.3.1 IFA Default 188
19.3.2 Cure Periods 188
19.4 Developer Remedies for IFA Default 188
19.4.1 Termination 188
19.4.2 Damages and Other Remedies 188
19.4.3 Offset Rights 189
19.4.4 Limitations on Remedies 189
19.5 Partnering 191
19.6 Dispute Resolution Procedures 192
19.6.1 General Provisions 192
19.6.2 Informal Resolution as Condition Precedent 192
19.6.3 Informal Resolution Procedures 192
19.6.4 Formal Resolution Procedures 194

19.6.5 Confidentiality of Settlement Negotiations and Other Documents Used in Dispute Resolution Process 197
19.6.6 Administrative Hearings; Venue and Jurisdiction 197
19.6.7 Continuation of Disputed Work and Payments 197

ARTICLE 20. TERMINATION 198
20.1 Termination for Convenience 198
20.2 Termination for Extended Relief Event, Extended Permitted Closure or Insurance Unavailability 198
20.2.1 Notice of Conditional Election to Terminate – Extended Relief Event or Extended Permitted Closure 198
20.2.2 Notice of Election to Terminate – Insurance Unavailability 199
20.2.3 Developer Options upon IFA Notice 199
20.2.4 IFA Options upon Developer Notice 200
20.2.5 Unconditional Right to Terminate 201
20.2.6 No Waiver 201
20.2.7 Concurrent Notices 202
20.2.8 Early Termination Date and Amount 202
20.3 Termination for Developer Default 202
20.3.1 Developer Defaults Triggering IFA Termination Rights 202
20.3.2 Compensation to Developer 203
20.3.3 Finality 203
20.4 Termination for IFA Default, Suspension of Work or Delayed Notice to Proceed 203
20.5 Termination by Court Ruling 204
20.6 Termination for Failure of Financial Close 204
20.7 Termination Procedures and Duties 205
20.7.1 Performance of Work Pending Early Termination Date 206
20.7.2 Transition Plan 206
20.7.3 Relinquishment and Possession of East End Crossing 206
20.7.4 Continuance or Termination of Key Contracts Prior to Work Completion 207
20.7.5 [reserved] 208
20.7.6 Other Close-Out Activities 208
20.7.7 Compensation; Proration of Costs 210
20.8 Effect of Termination 210
20.8.1 Cessation of Developer's Interest and Liens and Encumbrances 210
20.8.2 Right of Developer to Payments 211
20.8.3 Contracts and Agreements 211
20.9 Liability after Termination; Final Release 211
20.10 Exclusive Termination Rights 211

20.11 Payment of Termination Compensation....212
20.12 Termination Due to Filing of Action to Protest Validity of Agreement....212
20.13 Access to Information....213

ARTICLE 21. LENDERS' RIGHTS....213
21.1 Conditions and Limitations Respecting Lenders' Rights....213
21.2 Effect of Amendments....214
21.3 Notices to Collateral Agent....214
21.4 Opportunity to Cure and Step-In....214
21.5 Forbearance....215
21.6 Substituted Entities....215
21.7 Receivers....217
21.8 Other Lender Rights....217
21.9 Consents and Estoppel Certificates....218
21.10 No Surrender....219
21.11 Lenders as Third-Party Beneficiaries of the Provisions of Article 21....219

ARTICLE 22. ASSIGNMENT AND TRANSFER....220
22.1 Restrictions on Assignment and Other Transfers of Developer's Interest....220
22.2 Restrictions on Equity Transfers and Change of Control....220
22.3 Standards and Procedures for IFA Approval....221
22.4 Assignment by IFA....222
22.5 Notice and Assumption....223
22.6 Change of Organization or Name....223

ARTICLE 23. RECORDS AND AUDITS; INTELLECTUAL PROPERTY....224
23.1 Maintenance and Inspection of Records....224
23.2 Audits....225
23.3 Public Records Act; Confidential IFA Information....227
23.4 Intellectual Property....228
23.5 Intellectual Property Escrows....230
23.6 Escrow of Financial Model and Financial Modeling Data....232

ARTICLE 24. FEDERAL REQUIREMENTS; COMPLIANCE WITH OTHER LAWS....234
24.1 Compliance with Federal Requirements....234
24.2 TIFIA Compliance....234
24.3 Federal Status of East End Crossing....234
24.4 Role of and Cooperation with FHWA....234
24.5 Conflicting Provisions....234
24.6 Compliance with other Laws....235

ARTICLE 25. MISCELLANEOUS....235

25.1 Taxes 235
25.2 Amendments 235
25.3 Waiver 235
25.4 Independent Contractor; No Joint Venture or Partnership 236
25.5 Successors and Assigns 237
25.6 Designation of Representatives; Cooperation with Representatives 237
25.7 Survival 237
25.8 Limitation on Third Party Beneficiaries 237
25.9 No Personal Liability of IFA Employees; No Tort Liability 237
25.10 Governing Law 238
25.11 Notices and Communications 238
25.12 Integration of PPA Documents 239
25.13 Severability 239
25.14 Construction and Interpretation of Agreement 239
25.15 Usury Savings 240
25.16 Approvals under PPA Documents 241
25.17 Entire Agreement 241
25.18 Authority to Bind Developer 241
25.19 Counterparts 241

LIST OF EXHIBITS

Exhibit 1 Abbreviations and Definitions

Exhibit 2 Developer's Schematic Design of East End Crossing and Proposal Commitments
- 2-A Developer's Schematic Design
- 2-B Preliminary Project Baseline Schedule
- 2-C Financial Plan
- 2-D [reserved]
- 2-E Preliminary Project Management Plan
- 2-F Initial Design and Construction Commitment
- 2-G Operations and Maintenance Plan
- 2-H Equity Members, Contractors and Key Personnel Commitments
- 2-I Cost Tables
  - 2-I(1) Summary Cost Table
  - 2-I(2) Capital Cost Table
  - 2-I(3) Operating Period Cost Table
- 2-J Termination for Convenience Calculation Method
- 2-K Equal Employment Opportunity Certification
- 2-L Developer's Preliminary DBE Performance Plan
- 2-M DBE Certification
- 2-N Developer's Preliminary Workforce Diversity and Small Business Performance Plan
- 2-O Buy America Certification
- 2-P Use of Contract Funds for Lobbying Certification
- 2-Q Debarment and Suspension Certification
- 2-R Drug-Free Workplace Certification
- 2-S Form of Bring Down Certificate

Exhibit 3 [Reserved]

Exhibit 4 Milestone Payment Amounts

Exhibit 5 Hazardous Materials Risk Allocation Terms

Exhibit 6 Handback Requirements Reserve Elements and Reserve Funding Mechanism

Exhibit 7 IFA's Disadvantaged Business Enterprise (DBE) Special Provisions

Exhibit 8 Equal Employment Opportunity Trainees Special Provisions

Exhibit 9 Annual MAP Limits

Exhibit 10 Payment Mechanism

Exhibit 11 [Reserved]

Exhibit 12 Noncompliance Points System and Persistent Developer Default

Exhibit 13 List of Initial Funding Agreements and Initial Security Documents

Exhibit 14 Calculation and Payment of Refinancing Gain

Exhibit 15 Summary of Terms for Custody Agreement

Exhibit 16 Summary of Terms for Project Trust Agreement

Exhibit 17 Extra Work Costs and Delay Costs Specifications

Exhibit 18 Initial Project Debt Competition

Exhibit 19 Insurance Coverage Requirements

Exhibit 20 Forms of Payment Bond and Performance Security
- 20-A Form of Payment Bond
- 20-B Form of Performance Bond
- 20-C Form of Multiple Obligee Rider for Payment Bond
- 20-D Form of Multiple Obligee Rider for Performance Bond
- 20-E Form of Performance Letter of Credit

Exhibit 21 Form of Direct Agreement

Exhibit 22 Early Termination Dates and Terms for Termination Compensation

Exhibit 23 Federal Requirements

Exhibit 24 Initial Designation of Authorized Representatives

PUBLIC PRIVATE AGREEMENT

THE EAST END CROSSING (LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT)

This Public-Private Agreement (the "**Agreement**") is entered into and effective as of December __, 2012 by and between the Indiana Finance Authority, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the State of Indiana ("**IFA**"), and _____, a _____ ("**Developer**").

R E C I T A L S

A. The State of Indiana (the "State") desires to facilitate private sector investment and participation in the development of the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) via a public-private agreement, and has enacted Indiana Code 8-15.5, as amended (the "Act"), to accomplish that purpose.

B. The Act grants IFA the authority to enter into agreements with private entities to design, build, finance, operate and maintain transportation facilities.

C. Pursuant to the provisions of the Act, IFA issued a Request for Qualifications on March 9, 2012, as amended.

D. IFA received six (6) responsive statement of qualification submittals on April 9, 2012, and subsequently shortlisted four (4) responsive proposers.

E. On April 23, 2012, IFA issued to the shortlisted proposers a Request for Proposals to Design, Construct, Finance, Operate and Maintain the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) through a Public-Private Agreement (as amended, the "RFP").

F. On October __, 2012 IFA received responses to the RFP, including the response of Developer (the "Proposal").

G. An RFP evaluation committee determined that Developer was the proposer which best met the selection criteria contained in the RFP and that its Proposal was the one which provided the best value to the State.

H. On November __, 2012, IFA accepted the recommendation of the Public Finance Director of the State of Indiana (the "Public Finance Director") and the RFP evaluation committee and authorized IFA staff to negotiate, execute and deliver this Agreement.

I. On _____, 2012, the Developer's governing body authorized Developer to negotiate, execute and deliver this Agreement.

J. As required by the Act, IFA held a public hearing on the preliminary selection of the Developer and the Proposal and has received approval of such selection by the Governor of the State of Indiana and the review of such selection by the State Budget Committee.

K. This Agreement, the other PPA Documents, the Financial Escrow, the Intellectual Property Escrows and other ancillary agreements collectively constitute a public-private agreement as contemplated under the Act, and are entered into in accordance with the provisions of the RFP.

L. The Public Finance Director has been authorized to enter into this Agreement, the other PPA Documents, the Financial Escrow, the Intellectual Property Escrows and other ancillary agreements pursuant to the Act, and IFA Resolution No. _____.

M. The Act authorizes IFA to provide that the Indiana Department of Transportation (the "Department") or any other agency of the State of Indiana may perform any duties or exercise powers of IFA under the Act or the public-private agreement. IFA has entered into a memorandum of understanding with the Department ("Department MOUs") to perform certain of the duties and exercise certain of the powers of IFA under the Act and this Agreement.

NOW, THEREFORE, in consideration of the sums to be paid by IFA to Developer, the Work to be financed and performed by Developer, the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS; PPA DOCUMENTS; ORDER OF PRECEDENCE; OTHER DOCUMENTS

1.1 Definitions

Definitions for the terms used in this Agreement and the other PPA Documents are contained in Exhibit 1 (Abbreviations and Definitions).

1.2 PPA Documents; Rules to Reconcile Conflicting Provisions

1.2.1 The term "PPA Documents" shall mean the documents listed in this Section 1.2. Each of the PPA Documents is an essential part of the agreement between the Parties. The PPA Documents are intended to be complementary and to be read together as a complete agreement.

1.2.2 Subject to Sections 1.2.3 and 1.2.4, in the event of any irreconcilable conflict, ambiguity or inconsistency among the PPA Documents, the order of precedence, from highest to lowest, shall be as follows:

1. Change Orders and Agreement amendments and supplements, and all exhibits, appendices and attachments to such amendments and supplements;

2. This Agreement, including all Exhibits other than Exhibit 2 (Developer's Schematic Design of Project and Proposal Commitments) which has a lower order of precedence, and the executed originals of Exhibits that are contracts;

3. Technical Provisions amendments, including all exhibits and attachments to such amendments;

4. The Technical Provisions, including all exhibits and attachments to the Technical Provisions, except that Attachment 16-1 to the Technical Provisions has a lower order of precedence as noted below;

5. Attachment 16-1 to the Technical Provisions;

6. Supplements and amendments to Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments); and

7. Developer's Proposal commitments set forth in Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments), including Developer's Schematic Design.

1.2.3 In the event of any irreconcilable conflict, ambiguity or inconsistency among the PPA Documents or provisions within a PPA Document, the following rules of interpretation shall apply.

1.2.3.1 Notwithstanding the order of precedence among PPA Documents set forth in this Section 1.2, if Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments) includes statements, offers, terms, concepts or designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the other PPA Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contain terms or designs which are more advantageous to IFA than the requirements of the other PPA Documents, as reasonably determined by IFA, then Developer's obligations hereunder shall include compliance with all such statements, offer, terms, concepts and designs, which shall have the priority of Agreement amendments and Technical Provisions amendments, as applicable.

1.2.3.2 Notwithstanding the order of precedence among PPA Documents set forth in this Section 1.2, if the PPA Documents contain differing provisions on the same subject matter, the provisions that establish the higher quality, manner or method of performing the Work, establish higher or better Good Industry Practice, or use more stringent standards will prevail.

1.2.3.3 Additional details in a lower priority PPA Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority PPA Document.

1.2.3.4 If the PPA Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the foregoing rules, then the provisions (whether setting forth performance or prescriptive requirements) contained in the document of higher order of precedence shall prevail over the provisions (whether setting forth performance or prescriptive requirements) contained in the document of lower order of precedence unless IFA, in its sole discretion, approves otherwise in writing.

1.2.3.5 In the event of an irreconcilable conflict between or among provisions in PPA Documents having the same order of precedence, the provisions that establish the higher quality, manner or method of performing the Work, exceed Good Industry Practice, or use more stringent standards will prevail.

1.2.3.6 In the event of an irreconcilable conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the East End Crossing established by reference to a described manual or publication within a PPA Document or set of PPA Documents with the same order of priority (including within documents referenced therein), the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless IFA, in its sole discretion, approves or directs otherwise in writing.

1.2.3.7 In the event of an irreconcilable conflict between the standards, criteria, requirements, conditions, procedures, specifications or other provisions of the Technical Provisions and those established by reference to a described manual or publication within a PPA Document, the Technical Provisions shall prevail.

1.2.4 If either Party becomes aware of any such conflict, it shall promptly notify the other Party of the conflict. IFA will issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict which determination shall be subject to the Dispute Resolution Procedures.

1.2.5 Erroneous provisions shall not be treated as inconsistent or conflicting provisions of the PPA Documents under this Section 1.2, but instead shall be reconciled under Section 5.2.5.

1.3 Order of Precedence of Project Management Plan

In the event of any irreconcilable conflict, ambiguity or inconsistency between the Project Management Plan and any of the PPA Documents, the latter shall take precedence and control and Developer shall promptly modify the Project Management Plan to cure the conflict, ambiguity or inconsistency, unless IFA, in its sole discretion, approves otherwise in writing.

1.4 Reference Information Documents

1.4.1 IFA has provided and disclosed to Developer the Reference Information Documents. The Reference Information Documents are provided only for the purposes of disclosure and, in the case of general industry and general governmental manuals and publications, of guidance regarding Good Industry Practice. Except as set forth in Section 1.4.5, and except for any Reference Information Document that is a Governmental Approval or Utility Agreement, the Reference Information Documents are for information only and are not mandatory or binding on Developer. Except for (i) the Utility Information for purposes of the Relief Event under clause (u) of the definition of Relief Event, (ii) the Geotechnical Baseline Report for purposes of the Relief Event under clause (p)(i) of the definition of Relief Event and the "Geotechnical Data Report" included among the Reference Documents for the purposes of the Relief Event under clause (p)(ii) of the definition of Relief Event, Developer is not entitled to rely on the Reference Information Documents or any opinions or recommendations therein as accurately describing existing conditions, presenting financing, design, engineering, construction, operating or maintenance solutions or directions, or defining means or methods for complying with the requirements of the PPA Documents, Governmental Approvals or Law. For the avoidance of doubt, the foregoing does not affect use of information in Reference Information Documents for determining Known or Suspected Hazardous Materials.

1.4.2 IFA shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any Developer-Related Entity by reason of any use of information, opinions or recommendations contained in, any conclusions Developer may draw from, or any action or forbearance in reliance on, the Reference Information Documents, except to the extent that information in Reference Information Documents is expressly made (a) the basis for any schedule or monetary relief available hereunder in the case of clauses (m), (o), (p), (q), (r) or (u) of the definition of Relief Event or (b) a contractual requirement as part of the Technical Provisions. For the avoidance of doubt, the foregoing does not affect use of information in Reference Information Documents for determining Known or Suspected Hazardous Materials.

1.4.3 Except for (i) the Utility Information for purposes of the Relief Event under clause (u) of the definition of Relief Event, (ii) the Geotechnical Baseline Report for purposes of the Relief Event under clause (p)(i) of the definition of Relief Event and the "Geotechnical Data Report" included among the Reference Documents for the purposes of the Relief Event under clause (p)(ii) of the definition of Relief Event, IFA does not represent, warrant or guarantee the accuracy, completeness or fitness of the Reference Information Documents or the information contained in the Reference Information Documents or that such information is in conformity with the requirements of the PPA Documents, Governmental Approvals or Laws. Except to the extent expressly provided otherwise in this Agreement, Developer shall have no right to additional compensation, time or deadline extension or other Claim or relief based on any incompleteness or inaccuracy in the Reference Information Documents, except to the extent directly attributable to the fraud, willful misconduct or intentional misrepresentation by IFA with respect only to Reference Information Documents originally prepared by IFA or its agents. For the avoidance of doubt, the foregoing does not affect use of information in Reference Information Documents for determining Known or Suspected Hazardous Materials.

1.4.4 The Parties acknowledge that general industry or general government manuals and publications that are part of the Reference Information Documents may be revised, changed, added to or replaced from time to time by the agencies or organizations that issue such manuals and publications. All such revisions, changes, additions or replacements shall, when issued, automatically become part of the Reference Information Documents.

1.4.5 Where the Technical Provisions expressly require compliance with specified general industry or general government manuals and publications or portions thereof, then the manual, publication or portion thereof to be complied with is not considered a Reference Information Document and instead is considered to be part of, and at the same level of priority as, the Technical Provisions.

1.4.6 Nothing contained in this Section 1.4 is intended to diminish to derogate from the rights of the Developer for compensation or time relief in connection with Relief Events or pursuant to Article 16 of the Agreement.

ARTICLE 2. GRANT OF CONCESSION; TERM

2.1 Grant of Concession

2.1.1 Pursuant to the provisions of the Act and subject to the terms and conditions of the PPA Documents, IFA hereby grants to Developer the exclusive right, and Developer accepts the obligation and agrees, during the Term, to finance, develop, design, construct, insure,

manage, and in respect of the O&M Limits, to operate, maintain and repair, and perform Rehabilitation Work on and for, the East End Crossing.

2.1.2 On or after the Effective Date, Developer and its authorized Developer-Related Entities shall have the right and license to enter onto Project Right of Way, and other lands, owned by or in the possession and control of IFA or subject to a right of entry or access in favor of IFA for the purpose of carrying out Developer's obligations under this Agreement (the "Project Right of Entry"). Prior to issuance of NTP2, the Project Right of Entry shall be limited solely to the activities and Work authorized under NTP1, as well as surveys, instrumentation, erosion control, erection of project signs, and test pits whether NTP1 has been issued or not. The Project Right of Entry also is subject to conditions to commencement of Construction Work and Utility Adjustments as set forth in Section 5.5, and may be subject to interim limits on activities as set forth in the Technical Provisions, including Section 21.1 thereof. Absent agreement by the Parties as to a later date pursuant to an approved transition plan as set forth in Section 20.7, the Project Right of Entry shall automatically terminate at the end of the Term.

2.1.3 Developer has no fee title, leasehold estate, possessory interest, permit, easement or other real property interest of any kind in or to the East End Crossing or the Project Right of Way by virtue of this Agreement, any of the other PPA Documents or otherwise.

2.1.4 Developer's property interests under this Agreement are limited to contract rights constituting intangible personal property (and not real estate interests). Developer's property interests under this Agreement are solely those of an independent contracting party, and IFA and Developer are not in a relationship of co-venturers, partners, lessor-lessee or principal-agent (except to the extent the PPA Documents expressly appoint Developer as IFA's agent for specified purposes).

2.1.5 Developer's rights granted in this Section 2.1 are limited by and subject to the terms and conditions of the PPA Documents, including the following:

2.1.5.1 Receipt of all Governmental Approvals necessary for the Work to be performed and satisfaction of any requirements applicable under the Governmental Approvals (including the NEPA Approval) for the Work to be performed;

2.1.5.2 IFA's ownership, as joint tenant with KPTIA of fee simple title to or other property interest or right in the East End Crossing and Project Right of Way and all improvements constructed thereon; and

2.1.5.3 IFA's rights and remedies under the PPA Documents.

2.1.6 Developer's rights granted in this Section 2.1 are limited by and subject to, and Developer shall be responsible for compliance with, the provisions of all agreements, easements, rights of entry and other instruments under which IFA has received or will receive title, rights of entry or rights of access on and to lands owned by public entities, including the State of Indiana, the Commonwealth of Kentucky, including paying all applicable charges and related fees and obtaining all consents or approvals for access by any Developer-Related Entity to the Project Right of Way to perform any Work required under this Agreement, as such matters are described in the Reference Information Documents. IFA shall provide reasonable assistance in accordance with Section 3.2.3 to Developer in obtaining any consents or approvals required from such public entities to access such lands.

2.1.7 Term of Concession

This Agreement shall take effect on the Effective Date, and shall remain in effect until the earliest of (a) 35 years after the Baseline Substantial Completion Date, (b) 35 years after the Substantial Completion Date, or (c) the termination of this Agreement as provided herein (the "Term"); provided that IFA may extend the Term as provided in Section 15.4.2(e).

ARTICLE 3. MANAGEMENT SYSTEMS AND OVERSIGHT

3.1 Submittal, Review and Approval Terms and Procedures

3.1.1 General

This Section 3.1 sets forth uniform terms and procedures that shall govern all Submittals to IFA pursuant to the PPA Documents or Project Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Section 3.1 and any other provisions of the PPA Documents or Project Management Plan and component plans thereunder concerning submission, review and approval procedures, this Section 3.1 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 3.1.

3.1.2 Time Periods

3.1.2.1 Except as otherwise provided in this Section 3.1.2, whenever IFA is entitled to review, comment on, review and comment on, or to affirmatively approve or accept, a Submittal, IFA shall have a period of 28 days to act after the date it receives an accurate and complete Submittal in conformity with the PPA Documents, together with a completed transmittal form in form to be mutually agreed and all necessary or requested information and documentation concerning the subject matter.

3.1.2.2 Notwithstanding the provisions of Section 3.1.2.1, and except as otherwise mutually agreed by the Parties at the Design Workshop, whenever IFA is entitled to review, comment on, review and comment on, or to affirmatively approve or accept, a Submittal consisting of Design Documents or Construction Documents, IFA shall have a period of 15 days to act after the date it receives an accurate and complete Submittal or re-submittal in conformity with the PPA Documents, together with a completed transmittal form in form to be mutually agreed and all necessary or requested information and documentation concerning the subject matter. If IFA determines that a Submittal of Design Documents or Construction Documents is not complete, it will notify Developer of such determination within such 15-day period. The Parties shall agree in good faith upon any necessary extensions of the review-comment-and-approval period to accommodate particularly complex or comprehensive Submittals.

3.1.2.3 If any other provision of the PPA Documents expressly provides a longer or shorter period for IFA to act, such period shall control over the time periods set forth in Section 3.1.2.1 and 3.1.2.2. If the time period for IFA to act should end on a day when IFA is closed, the time period shall automatically be extended to the next day when IFA is open.

3.1.2.4 If at any given time IFA is in receipt of more than (a) ten concurrent Submittals in the aggregate (or other number of aggregate concurrent Submittals mutually agreed in writing by IFA and Developer) that are subject to IFA's review and comment or

approval, except Submittals of parts or components of the Project Management Plan prior to issuance of NTP2, or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the PPA Documents, IFA may extend the applicable period for it to act to that period in which IFA can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the PPA Documents, and no such extension shall constitute an IFA-Caused Delay, IFA Change, Relief Event or other basis for any Claim. However, if at any time IFA is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether IFA may extend the applicable period. Submittals are deemed to be concurrent to the extent the review time periods available to IFA under this Section 3.1.2 regarding such Submittals entirely or partially overlap. Whenever IFA is in receipt of excess concurrent Submittals, Developer may establish by written Notice to IFA an order of priority for processing such Submittals; and IFA shall comply with such order of priority.

3.1.2.5 All time periods for IFA to act shall be extended by the period of any delay caused by any Relief Event (for this purpose modified where applicable to refer to Developer acts or omissions rather than IFA) or caused by delay, act, omission, breach, fault or negligence of any Developer-Related Entity.

3.1.2.6 During any time that IFA is entitled under Section 3.4.2 to increase the level of its Oversight of Developer's compliance with its obligations under the PPA Documents, the applicable period for IFA to act on any Submittals received during such time and not related to curing the Developer Default(s) that instigated the Section 3.4.2 action shall automatically be extended by 14 days.

3.1.2.7 IFA shall endeavor to reasonably accommodate a written request from Developer for expedited action on a specific Submittal, within the practical limitations on availability of IFA personnel appropriate for acting on the types of Submittal in question; provided Developer sets forth in its request specific, abnormal circumstances, not caused by a Developer-Related Entity, demonstrating the need for expedited action. This provision shall not apply, however, during any time described in Section 3.1.2.5 or 3.1.2.6.

3.1.3 IFA Discretionary Approvals

If the Submittal or other approval, consent, determination, acceptance, decision or other action or matter is one where the PPA Documents indicate approval, consent, determination, acceptance, decision or other action is required from IFA in its sole discretion or good faith discretion, then IFA's lack of approval, consent, determination, acceptance, decision or other action within the applicable time period under Section 3.1.2 shall be deemed disapproval. If the approval, consent, determination, acceptance, decision or other action is subject to the sole discretion of IFA, then its approval, consent, determination, decision or other action shall be final, binding and not subject to dispute resolution, and such approval, consent, determination, acceptance, decision or other action shall not constitute an IFA-Caused Delay, IFA Change, Relief Event or other basis for any Claim. If the approval, consent, determination, acceptance, decision or other action is subject to the good faith discretion of IFA, then its approval, consent, determination, acceptance, decision or other action shall be binding.

3.1.4 Other IFA Approvals

3.1.4.1 Whenever the PPA Documents indicate that a Submittal or other matter is

subject to IFA's approval or consent but the approval or consent is one not governed by Section 3.1.3 concerning discretionary approvals, then the standard shall be reasonableness.

3.1.4.2 If the reasonableness standard applies and IFA delivers no approval, consent, determination, decision or other action within the applicable time period under Section 3.1.2, then Developer may deliver to IFA a written Notice stating the date within which IFA was to have decided or acted and that if IFA does not decide or act within five Business Days after receipt of the Notice, delay from and after lapse of the applicable time period under Section 3.1.2 may constitute IFA-Caused Delay for which Developer may be entitled to issue a Relief Event Notice under Section 15.1.

3.1.5 IFA Review and Comment

Whenever the PPA Documents indicate that a Submittal or other matter is subject to IFA's review, comment, review and comment, disapproval or similar action not entailing a prior approval and IFA delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.1.2, then Developer may proceed thereafter at its election and risk, without prejudice to IFA's rights to later object or disapprove in accordance with Section 3.1.7.1. No such failure or delay by IFA in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.1.2 shall constitute an IFA-Caused Delay, IFA Change, Relief Event or other basis for any Claim. When used in the PPA Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) IFA has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without IFA providing any comments, exceptions, objections, rejections or disapprovals.

3.1.6 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the PPA Documents indicate that Developer is to deliver a Submittal to IFA but express no requirement for IFA review, comment, disapproval, prior approval or other IFA action, then Developer is under no obligation to provide IFA any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and IFA shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 3.1.7.1. No failure or delay by IFA in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute an IFA-Caused Delay, IFA Change, Relief Event or other basis for any Claim.

3.1.7 Resolution of IFA Comments and Objections

3.1.7.1 If the Submittal is one not governed by Section 3.1.3, IFA's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds or other grounds set forth elsewhere in the PPA Documents:

a. The Submittal or subject provision thereof fails to comply, or is inconsistent, with any applicable covenant, condition, requirement, standard (including Safety Standards), term or provision of the PPA Documents or Project Management Plan and component plans thereunder;

b. The Submittal or subject provision thereof is not to a standard equal to or better than Good Industry Practice;

c. Developer has not provided all content or information required or reasonably requested in respect of the Submittal or subject provisions thereof, provided that (i) IFA assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, and (ii) Developer shall have the subsequent opportunity to resubmit the Submittal with the required content or information;

d. Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval; or

e. In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are (i) inconsistent with the PPA Documents, the Project Management Plan (and component plans thereunder), applicable Law, the requirements of Good Industry Practice, or the Department policy (except for policies that are incompatible with the East End Crossing's public-private contracting methodology) or (ii) not usual and customary arrangements that the Department offers or accepts for addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the East End Crossing's public-private contracting methodology).

3.1.7.2 Developer shall respond in writing to all of IFA's comments, exceptions, disapprovals and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments, exceptions, disapprovals and objections, in accordance with the review processes set forth in this Section 3.1. Developer acknowledges that IFA may provide comments, exceptions, disapprovals and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Section 3.1.7.1. Developer agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments, exceptions, disapprovals or objections through the review processes described in this Section 3.1. However, if the Submittal is not governed by Section 3.1.3, the foregoing shall in no way be deemed to obligate Developer to incorporate any comments or resolve exceptions, disapprovals or objections that (a) are not on any of the grounds set forth in Section 3.1.7.1 (and not on any other grounds set forth elsewhere in the PPA Documents), (b) are otherwise not reasonable with respect to subject matter or length, and (c) would result in a delay to a Critical Path on the Project Schedule, in Extra Work Costs or in Delay Costs, except pursuant to an IFA Change. If, however, Developer does not accommodate or otherwise resolve any comment, exception, disapproval or objection, Developer shall deliver to IFA within a reasonable time period, not to exceed 30 days after receipt of IFA's comments, exceptions, disapprovals or objections, a written explanation why modifications based on such comment, exception, disapproval or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion.

3.1.7.3 The foregoing shall in no way be deemed to obligate Developer to

incorporate any comments or resolve exceptions, disapprovals and objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to an IFA Change.

3.1.7.4 If Developer fails to notify IFA within such time period, IFA may deliver to Developer a written Notice stating the date by which Developer was to have addressed IFA's comments and that if Developer does not address those comments within five Business Days after receipt of this Notice, then that failure shall constitute Developer's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to an IFA-Caused Delay, Change Order, Relief Event or other Claim, including any Claim that IFA assumes design or other liability.

3.1.7.5 After IFA receives Developer's explanation as to why the modifications are not required as provided in Sections 3.1.7.2, 3.1.7.3 and 3.1.7.4, if IFA is not satisfied with Developer's explanation the Parties shall attempt in good faith to resolve the Dispute. If they are unable to resolve the Dispute and the Submittal is not one governed by Section 3.1.3, the Dispute shall be resolved according to the Dispute Resolution Procedures; provided that if IFA elects to issue a Directive Letter pursuant to Section 16.3 with respect to the matter in Dispute, Developer shall proceed in accordance with IFA's Directive Letter while retaining any Claim as to the matter in Dispute.

3.1.8 Limitations on Developer's Right to Rely

3.1.8.1 No review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification (including certificates of Substantial Completion, Substantial Completion and Final Acceptance), or Oversight by or on behalf of IFA, including review and approval of the Project Management Plan, and no lack thereof by IFA, shall constitute acceptance by IFA of materials or Work or waiver of any legal or equitable right under the PPA Documents, at Law, or in equity. IFA shall be entitled to remedies for unapproved Deviations, Nonconforming Work and Developer Defaults and to identify additional Work which must be done to bring the Work and East End Crossing into compliance with requirements of the PPA Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification, or Oversight was conducted or given by IFA. Regardless of any such activity or failure to conduct any such activity by IFA, Developer at all times shall have an independent duty and obligation to fulfill the requirements of the PPA Documents. Developer agrees and acknowledges that any such activity or failure to conduct any such activity by IFA:

a. Is solely for the benefit and protection of IFA;

b. Does not relieve Developer of its responsibility for the selection and the competent performance of all Developer-Related Entities;

c. Does not create or impose upon IFA any duty or obligation toward Developer to cause it to fulfill the requirements of the PPA Documents;

d. Shall not be deemed or construed as any kind of warranty, express or implied, by IFA;

e. May not be relied upon by Developer or used as evidence in determining

whether Developer has fulfilled the requirements of the PPA Documents;

f. Shall not be deemed or construed as any assumption of risk by IFA as to design, construction, operations, maintenance, performance or quality of Work or materials; and

g. May not be asserted by Developer against IFA as a defense, legal or equitable, to, or as a waiver of or relief from, Developer's obligation to fulfill the requirements of the PPA Documents.

3.1.8.2 Developer shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the PPA Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 3.1.8.1 or failure to conduct any such activity by IFA. Such activity by IFA shall not relieve Developer from liability for, and responsibility to cure and correct, any unapproved Deviations, Nonconforming Work or Developer Defaults.

3.1.8.3 To the maximum extent permitted by Law, Developer hereby releases and discharges IFA from any and all duty and obligation to cause Developer's Work or the East End Crossing to satisfy the standards and requirements of the PPA Documents.

3.1.8.4 Notwithstanding the provisions of Sections 3.1.8.1, 3.1.8.2 and 3.1.8.3:

a. Developer shall be entitled to rely on written approvals and acceptances from IFA (i) for the limited purpose of establishing that the approval or acceptance occurred or (ii) that are within its sole or absolute discretion, but only to the extent that Developer is prejudiced by a subsequent decision of IFA to rescind such approval or acceptance;

b. Developer shall be entitled to rely on specific written Deviations IFA approves under Section 5.2.4 or 6.1.2.7;

c. Developer shall be entitled to rely on the certificates of Substantial Completion, Substantial Completion and Final Acceptance from IFA for the limited purpose of establishing the commencement of IFA's payment obligations and Developer's entitlement to receive Availability Payments, and the respective dates thereof, nevertheless without prejudice to any rights and remedies available to IFA respecting unapproved Deviations, Nonconforming Work and Developer Defaults;

d. IFA is not relieved from any liability arising out of a knowing and intentional material misrepresentation under any written statement IFA delivers to Developer; and

e. IFA is not relieved from performance of its express responsibilities under the PPA Documents in accordance with all standards applicable thereto.

3.2 Project Management Plan

3.2.1 Developer is responsible for all quality assurance and quality control activities necessary to manage the Work, including the Utility Adjustment Work. Developer shall undertake all aspects of quality assurance and quality control for the East End Crossing and

Work in accordance with the approved Project Management Plan, Good Industry Practice and applicable Law.

3.2.2 Developer shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in Section 1.5.2.5 of the Technical Provisions and Good Industry Practice. The Project Management Plan shall include all the parts, Management Plans and other documentation identified in Section 25 and Attachment 01-1 of the Technical Provisions. In accordance with the Request for Proposals, Developer was authorized to commence work on the Project Management Plan prior to the Effective Date, and is authorized to continue such work, as necessary, after the Effective Date.

3.2.3 Developer shall ensure that the Project Management Plan meets all requirements of Good Industry Practice, including those for quality assurance and quality control, and all FHWA oversight requirements.

3.2.4 Developer shall submit to IFA for approval in its good faith discretion, in accordance with the procedures described in Section 3.1 and the time line set forth in Attachment 01-1 of the Technical Provisions, each component part, plan and other documentation of the Project Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. It is deemed good faith for IFA to disapprove and/or require changes to comply with Good Industry Practice, applicable provisions of the PPA Documents, FHWA oversight requirements or applicable Law.

3.2.5 Developer shall not commence or permit the commencement of any aspect of the design, construction, operation or maintenance before the relevant component parts, plans and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by IFA in accordance with the procedures described in Section 3.1 and the time line set forth in Attachment 01-1 of the Technical Provisions. The schedule for submission of each component part, plan and other documentation of the Project Management Plan or any proposed changes or additions thereto is included in Sections 1.5.2.5 and Attachment 01-1 of the Technical Provisions.

3.2.6 If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document, then all such referenced or incorporated materials shall be submitted to IFA for approval at the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to IFA.

3.2.7 Developer shall carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan.

3.2.8 Developer shall cause each of its Contractors at every level to comply with the applicable requirements of the approved Project Management Plan.

3.2.9 The Quality Manager shall, irrespective of his or her other responsibilities, have defined authority for ensuring the establishment and maintenance of the Project Management Plan and reporting to IFA on the performance of the Project Management Plan. The Quality Manager shall have authority independent of the Project Manager and at least equivalent in level of authority to that of the Project Manager. The Quality Manager shall have direct reporting obligations to superiors that are above the level of the Project Manager. The Project

Management Plan, including the Design QA/QC Plan and Construction QA/QC Plan, shall be consistent with this Section. Refer to Sections 2.1 and 3.1 of the Technical Provisions for additional terms and conditions applicable to the Quality Manager and quality assurance staff.

3.3 Traffic Management

3.3.1 Developer shall be responsible for the management of traffic on the East End Crossing (a) from the Effective Date until commencement of the Operating Period, for the entire East End Crossing and (b) from commencement of the Operating Period through the Term, for the O&M Limits only. Developer shall manage traffic so as to preserve and protect safety of traffic on the East End Crossing and Related Transportation Facilities and, to the maximum extent practicable, to avoid disruption, interruption or other adverse effects on traffic flow, throughput or level of service on the East End Crossing and Related Transportation Facilities. Developer shall conduct traffic management in accordance with all applicable Technical Provisions, Laws and Governmental Approvals, and in accordance with the Transportation Management Plan and Temporary Traffic Control Plans.

3.3.2 Developer shall prepare and submit to IFA for its approval a Transportation Management Plan for managing traffic. It shall address (a) during the initial construction of the East End Crossing, orderly and safe movement and diversion of traffic on Related Transportation Facilities, (b) throughout the Term after commencement of traffic operations, orderly and safe movement and diversion of traffic on the East End Crossing and Related Transportation Facilities, and (c) between Substantial Completion and Final Acceptance, orderly and safe movement and diversion of traffic on the East End Crossing and Related Transportation Facilities. Developer shall prepare the Transportation Management Plan in accordance with Section 12.3 of the Technical Provisions. The Transportation Management Plan shall comply with the Technical Provisions concerning traffic management and traffic operations. Throughout the Term, Developer shall carry out all construction, maintenance, repair and operational activities, including Incident and Emergency response and Rehabilitation Work in accordance with the approved Transportation Management Plan.

3.3.3 Developer shall prepare and implement Temporary Traffic Control Plans in accordance with Section 12.3.1 of the Technical Provisions and the approved Transportation Management Plan to promote safe and efficient operation of the East End Crossing and Related Transportation Facilities at all times during the course of any construction or operation of the East End Crossing by Developer and during the Utility Adjustment Work.

3.3.4 IFA shall have at all times, without obligation or liability to Developer, the right to:

3.3.4.1 Issue Directive Letters to Developer regarding traffic management and control (with which Developer shall promptly comply), or directly assume or enable the Department to directly assume traffic management and control, of the East End Crossing or any portion thereof during any period IFA or the Department designates the East End Crossing or a portion thereof for immediate use as an emergency evacuation route or route to respond to a disaster proclaimed by the Governor of Indiana or his/her designee, including reversing the direction of traffic flow during such period; and

3.3.4.2 Provide on the East End Crossing, via variable message signs or other means consistent with Good Industry Practice, traveler and driver information, and other public information (e.g. Amber alerts), provided that the means to disseminate such information does

not materially interfere with the functioning of the TCS; provided, however, that notwithstanding any such material interference, Developer shall nonetheless provide such traveler, driver and other public information as is required to comply with the Technical Provisions and applicable Law.

3.4 Oversight, Inspection and Testing

3.4.1 Oversight by IFA, FHWA, the Department; Assistance with Federal Financial Plan Requirement

3.4.1.1 IFA shall have the right at all times to conduct Oversight, to the extent necessary or advisable, including as provided in the Technical Provisions, (a) to comply with FHWA, U.S. Army Corps of Engineers, U.S. Coast Guard or other applicable federal agency requirements, (b) to verify Developer's compliance with the PPA Documents and Project Management Plan and (c) otherwise to comply with other applicable Law. IFA may designate any Person or Persons to carry out any Oversight on IFA's behalf. IFA shall conduct Oversight in accordance with Developer's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance activity.

3.4.1.2 Without limiting Section 3.4.1.1, IFA's Oversight rights shall include the following:

a. Monitoring and auditing Developer and its Books and Records to determine compliance with requirements of the PPA Documents and the approved Project Management Plan, including (i) audit review of compliance with quality procedures and processes under the Design QA/QC Plan and Construction QA/QC Plan, (ii) audit review of Design Documents, Plans, Construction Documents, field work plans, land surveys, mapping, other data collection tasks, other Submittals and other Books and Records, and (iii) audit of performance of the activities set forth in the Public Involvement Plan, as provided in Section 6 of the Technical Provisions;

b. Conducting audits of all design and pre-design activities for the East End Crossing as needed to ascertain and evaluate Developer's design quality and safety control processes, including (i) review of engineering calculations, engineering reports, and findings, (ii) review of the work of Developer's Environmental Compliance Manager (set forth in Section 7.3 of the Technical Provisions) for compliance with the Environmental Compliance and Mitigation Plan, and (iii) review of certifications that Developer's quality control checks of final Construction Documents have been performed and documented, and that the Construction Documents conform to the requirements of the PPA Documents;

c. Conducting audits of all construction-related activities for the East End Crossing as needed to audit Developer's construction quality and safety control processes, including (i) auditing the services of Developer's accredited laboratories and associated testing devices and equipment, (ii) reviewing Developer's construction quality procedures, including conducting limited field monitoring and inspections as needed for audit purposes of construction activities, materials, and system components, as indicated in the PPA Documents, (iii) auditing Developer's records of all materials, materials tests, materials certifications, and performance tests for East End Crossing systems, (iv) reviewing and investigating East End Crossing progress, East End Crossing quality, Deviations, Defects, and rectification of Nonconforming

Work, and (v) conducting field monitoring and inspections in connection with IFA's certifications of Substantial Completion, Substantial Completion and Final Acceptance;

d. Conducting monthly reviews of East End Crossing documentation and files as set forth in Section 1.5.2.6 of the Technical Provisions;

e. Conducting material tests, according to the Department's test methods, to verify Developer's compliance with all testing frequencies and requirements, including performance and acceptance testing, set forth in the PPA Documents and the approved Project Management Plan, the accuracy of the tests, inspections and audits performed by or on behalf of Developer pursuant to the approved Design QA/QC Plan and approved Construction QA/QC Plan, and compliance of materials incorporated into the East End Crossing with the applicable requirements, conditions and standards of the PPA Documents, Governmental Approvals, the Project Management Plan and Law;

f. Reviewing and commenting on Submittals;

g. Reviewing, commenting on and giving recommendations, objections or exceptions regarding the Rehabilitation Work Schedule and revisions thereto, as provided in Section 6.8.5;

h. Participating in meetings to discuss design progress, construction progress, Developer's quality control processes, audit activities, and other PMP issues;

i. Accompanying Developer on physical inspections associated with Developer's Performance Inspections, conducting its own Performance Inspections, assessing and scoring Developer's O&M Records, and assessing and scoring the condition of Elements, as provided in Section 22 of the Technical Provisions;

j. Attending and witnessing Developer's other tests and inspections, including system start-up and acceptance tests and inspections;

k. Reviewing Developer's certification of Record Drawings and surveys;

l. Auditing the Books and Records of Key Contractors to confirm compliance with this Agreement and applicable Law;

m. Investigating, analyzing and reporting on Safety Compliance and performance of Safety Compliance Orders; and

n. Monitoring and auditing Developer's detection, reporting, response times and time to achieve rectification of breaches and failures for which Noncompliance Points may be assessed pursuant to Section 11.3 and deductions or withholdings may be made from the Availability Payments for Unavailability Events and Noncompliance Events in accordance with Exhibit 10 (Payment Mechanism).

3.4.1.3 Refer to Section 23.2 for IFA's rights to audit Developer and its Contractors.

3.4.1.4 IFA will have the right to conduct, formal prior reviews of every Design

Document and Construction Document, except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements. IFA shall have the right, but not the obligation, to conduct "over-the-shoulder" reviews of Design Documents and other Submittals.

3.4.1.5 Nothing in the PPA Documents shall preclude, and Developer shall not interfere with, any review, inspection or oversight of Submittals or of Work that FHWA, the Department or any regulatory agency with jurisdiction may desire to conduct pursuant to their agreements with IFA and applicable Law.

3.4.1.6 Developer acknowledges that FHWA is involved with the East End Crossing in a funding and oversight role of the East End Crossing. By virtue of the Project being an FHWA "Major Project," IFA has certain reporting and coordination requirements with FHWA. To assist IFA in the preparation of its financial plan in respect of IFA's obligations to FHWA, no later than July 31 of each year, commencing on the July 31 following the Effective Date:

For the period commencing on the Effective Date up to and including the Substantial Completion Date, Developer shall: (1) provide to IFA the current estimate of the total cost of the East End Crossing and the remaining cost to complete the East End Crossing, identify any significant cost changes since the previous submission, discuss reasons for and implications of the cost changes, and include a summary table showing the history of Project Costs by major activity or category since the preceding submission; (2) provide to IFA the current schedule and implementation plan for completing the East End Crossing, including a date on which Substantial Completion is expected to occur, identify major milestones for each phase of the East End Crossing and compare current milestone dates with milestone dates in the Baseline Project Schedule and the preceding submission, and discuss reasons for changes in such milestones; (3) provide to IFA current estimates of sources and uses of funds for the East End Crossing, identify any significant funding changes since the preceding submission, discuss reasons for and implications of the funding changes, and include a summary table showing the history of East End Crossing funding since the prior submission; (4) provide to IFA an updated cash flow schedule showing annual cash needs versus available revenue and funding to meet those needs and identify any potential revenue and funding shortfalls, addressing contingency measures that will or may be taken to address any shortfalls; (5) provide to IFA cost containment strategies and risk mitigation plans that have been or may be implemented to address factors that are affecting or could affect the scheduled completion or financial viability of the East End Crossing; (6) provide to IFA the total value of approved changes in project design or scope, and provide a listing of each individual change valued at $2,500,000 or more, setting forth the rationale or need for the proposed change and describing the impact of such change on the East End Crossing; and (7) provide to IFA, in form and substance satisfactory to IFA, a written narrative report on the progress of design, permitting, acquisition and construction of the East End Crossing since Developer's previous submission to IFA, describing in reasonable detail all significant activities concerning East End Crossing status.

For the period following the Substantial Completion Date until the end of the Term, Developer shall: (1) provide to IFA an updated cash flow schedule showing annual cash inflows (revenues, interest and other income) and outflows (operating costs, capital costs, Project Debt Service, replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to

address any shortfalls; (2) provide to IFA current and estimated amounts of revenues received and the amounts deposited into each fund and account held under this Agreement and the Funding Agreements and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts; and (3) provide to IFA a written narrative report explaining any variances in costs or revenues since Developer's previous submission to IFA and describing in reasonable detail any material matters that may affect the future performance of the Developer's obligations under this Agreement and the causes thereof to include all operational contracts and third-party transactions.

3.4.2 Increased Oversight, Testing and Inspection

3.4.2.1 In addition to other remedies available under this Agreement, IFA shall be entitled to change the type and/or increase the level of its Oversight of the East End Crossing and Developer's compliance with its obligations under the PPA Documents, in such manner and to such level as IFA sees fit, if at any time:

a. The number of Uncured Noncompliance Points assessed against Developer equals or exceeds (i) 70, for any date occurring prior to three months after the Substantial Completion Date or (ii) 50, for any date occurring on or after three months after the Substantial Completion Date;

b. There exists a Persistent Developer Default; or

c. Developer receives one or more Warning Notices or Notices of Developer Default that may become a Default Termination Event as set forth in Section 20.3.1.

3.4.2.2 If IFA changes the type or increases the level of its Oversight pursuant to Section 3.4.2.1, then Developer shall pay and reimburse IFA within 30 days after receipt of written demand and reasonable supporting documentation for all increased costs and fees IFA incurs in connection with such action, including IFA's Recoverable Costs. Such obligation to pay and reimburse shall apply to all changes in the type or increases in the level of IFA's Oversight occurring until Developer has:

a. Reduced the number of Uncured Noncompliance Points below the threshold triggering such heightened scrutiny;

b. Reduced by 50% the number of Uncured Noncompliance Points outstanding on the date IFA delivers the written Notice invoking such heightened scrutiny;

c. Fully and completely cured the breaches and failures that are the basis for a potential Default Termination Event and any other then-existing Developer Defaults; and

d. Completed delivery to IFA and performance of an approved remedial plan, if at any time during which IFA is so entitled IFA changes the type and/or increases the level of Oversight and IFA also requires Developer to prepare and implement a remedial plan pursuant to Section 19.2.6.

3.4.2.3 The foregoing does not preclude IFA, at its sole discretion and expense, from increasing its level of monitoring, inspection, sampling, measuring, testing, auditing and other Oversight at other times.

3.5 Rights of Cooperation and Access

3.5.1 Developer at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with IFA, its Authorized Representative and the Department to facilitate IFA's and the Department's Oversight activities. Developer shall cause its representatives to be available at all reasonable times for consultation with IFA or its designee. Developer at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with (i) IFA's and the Department's contractors performing work on or around the Project Right of Way relating to the portion of Project Section 6 that is not included in the East End Crossing scope of Work as described in the Technical Provisions, and (ii) the Tolling Systems Integrator in connection with its activities relating to the installation and testing of the TCS and the Tolling Equipment.

3.5.2 Without limiting the foregoing, IFA, its Authorized Representative and the Department shall have the right to, and Developer shall afford each of them, (a) safe and unrestricted access to the East End Crossing at all times, (b) safe access during normal business hours to Developer's East End Crossing offices and operations buildings, (c) safe access during normal business hours to the Project Specific Locations, and (d) unrestricted access to data respecting the East End Crossing design, construction, operations and maintenance, and the Utility Adjustment Work.

3.5.3 Without limiting the foregoing in Sections 3.5.1 and 3.5.2, Developer shall deliver to IFA, upon request, accurate and complete Books and Records, data and other information regarding Work, the East End Crossing and the Utility Adjustment Work, in the format required by the Technical Provisions. The following provisions apply to the materials and information described in the preceding sentence:

3.5.3.1 Developer shall have the right to designate conspicuously any documents that it believes contains confidential financial information, trade secret, proprietary information or other information exempted from disclosure in response to a public records request by placing "CONFIDENTIAL" in the header or footer of such page or record affected. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for IFA to treat the entire document or record as public information. Nothing contained in this Section 3.5.3.1 shall modify or amend requirements and obligations imposed on IFA by the Public Records Act or other applicable Law. 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.

3.5.3.2 If a request is made for disclosure of Books and Records that have been designated by Developer as "CONFIDENTIAL", IFA will notify the Developer and submit a request for advice from IFA's general counsel prior to disclosing any such documents in accordance with the Public Records Act and other applicable Law. The Developer shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under the Public Records Act or other applicable Law to IFA's general counsel within the time period specified in the notice issued by IFA (if any) and prior to the deadlines for release set forth in the Public Records Act and other applicable Law. However, it is the responsibility of the Developer to monitor such proceedings and make timely filings. IFA may, but is not obligated to, make filings of its own concerning possible disclosure; however, IFA is under no obligation to support the positions of the Developer. By entering this

Agreement, Developer consents to, and expressly waives any right to contest, the provision by IFA to IFA's general counsel of all, or representative samples of, the Books and Records in accordance with the Public Records Act. IFA shall have no responsibility or obligation for a failure of IFA's general counsel to respond or to respond timely to any IFA request for advice and IFA shall not be required to wait therefor if it is required to disclose or otherwise take action under the Public Records Act or other applicable Law. **Under no circumstances will IFA be responsible or liable to Developer or any other party as a result of disclosing any such materials, including materials marked "CONFIDENTIAL," whether the disclosure is deemed required by Law or by an order of court or IFA's general counsel or occurs through inadvertence, mistake or negligence on the part of IFA or its officers, employees, contractors or consultants.**

3.5.3.3 IFA will not advise a submitting party or Developer as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable Laws, as to the interpretation of such Laws, or as to definition of trade secret. The Developer shall be solely responsible for all determinations made by it under applicable Laws and for clearly and prominently marking each and every page or sheet of materials with "CONFIDENTIAL" as it determines to be appropriate. Developer is advised to contact its own legal counsel concerning the effect of applicable Laws to Developer's Books and Records.

3.5.3.4 In the event of any proceeding or litigation concerning the disclosure of any Books and Records to third parties, the Developer shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that IFA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by IFA in connection with any litigation, proceeding or request for disclosure of Books and Records shall be reimbursed and paid by Developer.

3.6 Testing and Test Results

Each of IFA and the Department shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and applicable Management Plans. Developer shall provide to IFA all test results and reports (which may be provided in electronic format in accordance with the Technical Provisions) within ten days after Developer or its Contractor receives them.

3.7 Interpretive Engineering Decisions

3.7.1 Developer may apply in writing to IFA for approvals of an interpretive engineering decision concerning the meaning, scope, interpretation and application of the Technical Provisions (an "Interpretive Engineering Decision"). IFA may issue a written approval of Developer's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision or may disapprove any Interpretive Engineering Decision Developer proposes.

3.7.2 Within 14 days after Developer applies for an Interpretive Engineering Decision, or such other time period as IFA and Developer may agree to at the time of such application, IFA shall provide its written determination including explanation of any disapproval of such application or any differing interpretation; provided that no presumption of approval or disapproval shall arise by reason of IFA's delay in issuing its written determination. If Developer

disputes IFA's disposition of the application, such dispute shall be subject to resolution in accordance with the Dispute Resolution Procedures.

3.7.3 Accepted Interpretive Engineering Decisions shall constitute provisions of the Technical Provisions and shall not constitute an IFA Change or entitle Developer to any additional compensation, time or deadline extension or other Claim or relief. Subsequent IFA orders and directives that are contrary to the Interpretive Engineering Decision shall constitute an IFA Change.

3.8 Meetings

3.8.1 Developer shall conduct regular progress meetings with IFA at least once a month during the course of design and construction, including any design and construction occurring during the Operating Period. At IFA's request, Developer will require each Design-Build Contractor and engineer of record to attend the progress meetings.

3.8.2 At IFA's request, Developer shall conduct regular quarterly meetings with IFA during the Operating Period. At IFA's request, Developer will require each O&M Contractor to attend the quarterly meetings.

3.8.3 [reserved]

3.8.4 The Parties shall hold any other meetings, at such times, frequency and locations, as applicable, as set forth in the Technical Provisions.

3.8.5 IFA and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Design Work, Construction Work, O&M Work or the East End Crossing.

3.8.6 Developer shall schedule all meetings with IFA at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide IFA with written Notice and a meeting agenda at least five Business Days in advance of each meeting.

3.8.7 Developer shall schedule all progress and periodic meetings with its Design-Build Contractor and its O&M Contractor(s) at a date, time and place reasonably convenient for IFA to attend and, except in the case of urgency, shall provide IFA with written Notice and an agenda for such meetings at least five Business Days in advance of each meeting. IFA is authorized to attend all such meetings and is permitted to raise any questions, concerns or opinions without restriction.

ARTICLE 4. EAST END CROSSING PLANNING, CONDITIONS AND APPROVALS; ENVIRONMENTAL COMPLIANCE; PUBLIC INFORMATION

4.1 Preliminary Planning and Engineering Activities

Developer, through the appropriately qualified and licensed design professionals identified in the Project Management Plan, shall perform or cause to be performed all engineering activities appropriate for development of the East End Crossing and the Utility Adjustments included in the Design Work and/or the Construction Work in accordance with the PPA Documents and Good Industry Practice, including (a) technical studies and analyses; (b)

geotechnical, seismic, flooding and biological investigations; (c) right-of-way mapping, surveying and appraisals; (d) Utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) design and construction surveys.

4.2 Site Conditions

4.2.1 Subject to the specific relief available to Developer under Article 15 for Relief Events under clauses (m), (n), (o), (p), (q) and (u) of the definition of Relief Event, Developer shall bear the risk of any incorrect or incomplete review, examination and investigation by it of the Site and surrounding locations (even if Developer conducted a Reasonable Investigation), and of any incorrect or incomplete information resulting from preliminary engineering activities conducted by Developer, IFA or any other Person. IFA makes no warranties or representations as to any surveys, data, reports or other information provided by IFA or other Persons concerning surface conditions and subsurface conditions, including information relating to Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological, cultural and historic resources, flooding conditions, seismic conditions, and Threatened or Endangered Species, affecting the Work, the Site or surrounding locations. Except for (i) the Utility Information for purposes of the Relief Event under clause (u) of the definition of Relief Event, (ii) the Geotechnical Baseline Report for purposes of the Relief Event under clause (p)(i) of the definition of Relief Event and the "Geotechnical Data Report" included among the Reference Documents for the purposes of the Relief Event under clause (p)(ii) of the definition of Relief Event, Developer acknowledges that such information is for Developer's reference only and has not been verified.

4.2.2 Subject to the specific relief available to Developer under Article 15 for Relief Events under clauses (m), (n), (o), (p), (q) and (u) of the definition of Relief Event, Developer shall bear the risk of all conditions occurring on, under or at the Site, including (a) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area, (b) changes in surface topography, (c) variations in subsurface moisture content, (d) variations in speeds and ranges; (e) Utility facilities, (f) the presence or discovery of Hazardous Materials, including contaminated groundwater, (g) the discovery at, under or on the Project Right of Way of any archeological, paleontological, cultural or historical resources, and (h) the discovery at, near or on the Project Right of Way of any Threatened or Endangered Species.

4.3 Governmental Approvals

4.3.1 IFA has obtained the IFA-Provided Approvals for the East End Crossing, based on the Reference Design contained in the Reference Information Documents. IFA has applied for, but has not obtained as of the Effective Date, the IFA-Initiated Approvals, based on the Reference Design. Developer acknowledges it has received and is familiar with the applications and supporting documentation for the Environmental Approvals as contained in the Reference Information Documents.

4.3.2 Developer hereby assumes responsibility for continuing application and processing for the Environmental Approvals other than the IFA-Provided Approvals but including IFA-Initiated Approvals, and shall obtain all other Governmental Approvals required in connection with the East End Crossing, the Project Right of Way or the Work. In addition, Developer hereby assumes responsibility for, and shall obtain, any modifications, renewals and extensions of the IFA-Provided Approvals required in connection with (a) Developer's

Schematic Design or Final Design or (b) a Relief Event. Developer shall deliver to IFA true and complete copies of all new or amended Governmental Approvals.

4.3.3 Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), Developer shall submit the same, together with any supporting environmental studies, analyses and data, to IFA (a) for approval or (b) for review and comment, as specified in the Technical Provisions, including as specified in Section 7.4 of the Technical Provisions.

4.3.4 As between IFA and Developer, Developer shall perform all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of (a) any differences between Developer's design for any portion of the East End Crossing and the Reference Design or Developer's Schematic Design, including differences due to any alternative technical concepts approved by IFA and included in Developer's Schematic Design, but excluding any differences due to an IFA Change, or (b) differences between the construction means and methods (including temporary works) Developer chooses for any portion of the East End Crossing and those set forth, referred to or contemplated in any IFA-Provided Approval or applications and submissions made by IFA for IFA-Initiated Approvals, excluding any differences due to an IFA Change. Such actions and risks shall include:

4.3.4.1 Any associated with change in the East End Crossing location;

4.3.4.2 Conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws;

4.3.4.3 Obtaining and complying with all necessary new Governmental Approvals or amendments to existing Governmental Approvals;

4.3.4.4 Obtaining and complying with all necessary modifications, renewals and extensions of the existing IFA-Provided Approvals, other existing Governmental Approvals or of pending applications for IFA-Provided Approvals or other Governmental Approvals; and

4.3.4.5 All risk and cost of litigation.

4.3.5 If Developer is unable to obtain any of the items described in Sections 4.3.4.3 or 4.3.4.4, then Developer shall be obligated to design and build the East End Crossing according to the Reference Design and the construction means and methods (including temporary works) set forth, referred to or contemplated in any IFA-Provided Approval or applications and submissions made by IFA for IFA-Initiated Approvals, or such other design, means and methods for which Developer is able to obtain necessary Governmental Approvals and that comply with the PPA Documents; and no such circumstance shall (a) constitute an IFA-Caused Delay or IFA Change, Relief Event or other basis for any Claim, or (b) be, or be deemed to be, a representation or warranty by IFA as to the feasibility, accuracy or completeness of, or absence of errors in, the Reference Design.

4.3.6 If Developer pursues Additional Properties outside the Project Right of Way, or any other modification of or Deviation from any Governmental Approvals, including IFA-Provided Approvals, Developer shall first comply with, and obtain any consent or waiver required pursuant to, then-existing agreements between IFA and other Governmental Entities.

4.3.7 At Developer's request and subject to Sections 4.3.8 and 4.3.9, IFA shall reasonably assist and cooperate with Developer in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by Developer under the PPA Documents. Such assistance and cooperation shall include:

4.3.7.1 Joining in conferences and meetings with such Governmental Entities;

4.3.7.2 Sharing data, information and documents available to IFA relevant to the application for the Governmental Approvals;

4.3.7.3 Coordinating and working with elected and other public officials as necessary and appropriate;

4.3.7.4 Assisting with evaluation and definition of solutions;

4.3.7.5 If necessary, acting as the lead agency and directly coordinating with such Governmental Entities; and

4.3.7.6 Otherwise partnering to facilitate issuance of such Governmental Approvals.

4.3.8 IFA and Developer shall work jointly to establish a scope of work and budget for IFA's Recoverable Costs related to the assistance and cooperation IFA will provide for Governmental Approvals. Subject to any agreed scope of work and budget and to any rights of Developer in the case of a Relief Event, Developer shall fully reimburse IFA for all costs and expenses, including IFA's Recoverable Costs, it incurs in providing such cooperation and assistance, including those incurred to conduct further or supplemental environmental studies.

4.3.9 IFA's obligation to assist and cooperate pursuant to Section 4.3.7 shall not require IFA to:

4.3.9.1 Take a position which it believes to be inconsistent with the PPA Documents, the Project Management Plan (and component plans thereunder), applicable Law, Governmental Approval(s), the requirements of Good Industry Practice, or the Department policy (except policies that are incompatible with the East End Crossing's public-private contracting methodology);

4.3.9.2 Take a position that is not usual and customary for the Department to take in addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the East End Crossing's public-private contracting methodology); or

4.3.9.3 Refrain from concurring with a position taken by a Governmental Entity if IFA believes that position to be correct.

4.3.10 Litigation involving Environmental Approvals is subject to the following provisions:

4.3.10.1 In the event any IFA-Initiated Approval is denied, (a) the Parties

shall promptly confer to analyze the circumstances and determine what further action to take, and (b) either Party may elect to appeal such denial and to bring legal action challenging the denial. If either Party elects, or both Parties elect, to appeal and bring legal action, then the Parties shall reasonably assist and cooperate with one another, each at its own expense, in the conduct of such appeal and legal action. If both Parties elect to pursue appeal and legal action, then they shall enter into, or cause their respective legal counsel to enter into, a joint prosecution agreement setting forth terms for their joint cooperation and prosecution of the appeal and legal action; provided, however, that such agreement shall provide that IFA shall lead any joint cooperation arrangement at IFA's sole option. The Parties also may mutually choose, but are not obligated, to be jointly represented by legal counsel in such appeal and legal action.

4.3.10.2 In the event any administrative proceeding, litigation or other legal action is brought by a third party challenging the issuance of an Environmental Approval for the Project and/or the East End Crossing, the Parties shall actively assist and cooperate with one another, each at its own expense, to defend their interests and the subject Environmental Approval. At the request of either Party, both Parties shall enter into, or cause their respective legal counsel to enter into, a joint defense agreement setting forth terms for their joint cooperation and defense. The Parties also may mutually choose, but are not obligated, to be jointly represented by legal counsel in such administrative proceeding, litigation or other legal action.

4.3.11 Certain Governmental Entities may require that Governmental Approvals from them be applied for or issued in IFA's or the Department's name and/or that IFA or the Department directly coordinate with such Governmental Entities in connection with obtaining Governmental Approvals. In such event, Sections 4.3.8 and 4.3.9 shall apply, and Developer at its expense shall provide all necessary support and efforts to apply for and obtain the Governmental Approval. Such support shall include conducting necessary field investigations, preparing mitigation analyses and studies and plans, preparing surveys, and preparing any required reports, applications and other documents in form approved by IFA. Such support also may include joint coordination and joint discussions and attendance at meetings with the applicable Governmental Entity. Refer to Section 7.4 of the Technical Provisions for more specific provisions on applications in IFA's name for Environmental Approvals.

4.3.12 Developer shall be solely responsible for compliance with all applicable Laws in relation to Project Specific Locations and for obtaining any Environmental Approval or other Governmental Approval required in connection with Project Specific Locations.

4.4 Major Environmental Approvals

4.4.1 Attachment 7-1 of the Technical Provisions identifies those Governmental Approvals that are classified under the PPA Documents as Major Environmental Approvals to be obtained by Developer. If an environmental Governmental Approval is not listed as a Major Environmental Approval in Attachment 7-1 of the Technical Provisions, then it shall not constitute a Major Environmental Approval for purposes of the PPA Documents, regardless of the subject matter, scope, necessity or requirements of the Governmental Approval.

4.4.2 Attachment 7-1 of the Technical Provisions also identifies the Major Environmental Approval Deadline for each Major Environmental Approval. If a Major

Environmental Approval Deadline is tied to submission to the Governmental Entity of a completed application that must be submitted by IFA pursuant to Section 4.3.11, then, subject to Sections 4.3.8 and 4.3.9, IFA shall submit it to the Governmental Entity within five days after IFA receives the completed application from Developer.

4.5 Environmental Compliance

4.5.1 Except as provided otherwise in Section 4.5.2, IFA delegates to Developer, and Developer accepts, all IFA obligations, commitments and responsibilities under all Environmental Approvals (including, without limitation, the NEPA Documents). Except as provided otherwise in Section 4.5.2, throughout the Term and the course of the Work, Developer shall:

4.5.1.1 Comply with all Environmental Laws;

4.5.1.2 Comply with all conditions, and requirements imposed by all Environmental Approvals (including the NEPA Documents) to be obtained by Developer;

4.5.1.3 Comply with the conditions and requirements of the Environmental Approvals to be obtained by IFA as part of the IFA-Provided Approvals, to the extent identified in the Technical Provisions;

4.5.1.4 Perform all commitments and mitigation measures set forth in all Environmental Approvals which are expressly identified in the Technical Provisions as delegated to Developer; and

4.5.1.5 Undertake all actions required by, or necessary to maintain in full force and effect, all Environmental Approvals to be obtained by Developer.

4.5.1.6 Undertake all actions required by, or necessary to maintain in full force and effect, those Environmental Approvals to be obtained by IFA as part of the IFA-Provided Approvals, to the extent identified in the Technical Provisions.

4.5.2 IFA retains sole responsibility for payment and performance of the environmental obligations, commitments and responsibilities expressly identified as not delegated to Developer in the Technical Provisions.

4.5.3 Developer shall perform or cause to be performed all environmental mitigation measures required under the PPA Documents.

4.5.4 Developer shall comply with the provisions, requirements and obligations regarding environmental compliance set forth at Section 7.3 of the Technical Provisions.

4.6 Third Party Agreements

Developer shall not enter into any agreement with any Governmental Entity, Utility, property owner or other third party having regulatory jurisdiction over any aspect of the East End Crossing or Work or having any property interest affected by the East End Crossing or the Work that in any way purports to obligate IFA, or states or implies that IFA has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation,

control, supervision, regulation or other activity after the end of the Term, unless IFA otherwise approves in writing in its sole discretion. Developer has no power or authority to enter into any such agreement with a third party in the name or on behalf of IFA.

4.7 Community Outreach and Public Information

Developer shall provide ongoing information to the public concerning the development, construction, operation and maintenance of the East End Crossing, in accordance with the Public Involvement Plan prepared by Developer pursuant to Section 6 of the Technical Provisions.

ARTICLE 5. DESIGN AND CONSTRUCTION

5.1 General Obligations of Developer; Scope of Initial Design and Construction

5.1.1 Developer, in addition to performing all other requirements of the PPA Documents, shall:

5.1.1.1 Furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the PPA Documents expressly specify will be undertaken by IFA or other Persons) to construct the East End Crossing and maintain it during construction, so as to achieve Substantial Completion and Final Acceptance by the applicable Milestone Schedule Deadlines;

5.1.1.2 At all times ensure that the Project Manager identified in Exhibit 2-H (Equity Members, Contractors and Key Personnel Commitments) or otherwise approved by IFA (a) will have full responsibility for the prosecution of the D&C Work, (b) will act as agent and be a single point of contact in all matters on behalf of Developer at least until Final Acceptance, (c) is present (or his or her approved designee is present) at the Site at all times that Design Work or Construction Work is performed, and (d) will be available to respond promptly to IFA or its Authorized Representative;

5.1.1.3 Comply with, and require that all Contractors comply with, all requirements of all applicable Laws applicable to the D&C Work;

5.1.1.4 Cooperate with IFA and Governmental Entities with jurisdiction in all matters relating to the Work, including their review, inspection and oversight of D&C Work;

5.1.1.5 Use commercially reasonable efforts to mitigate delay to design and construction of the East End Crossing and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating or redeploying Developer's and its Contractors' forces to other work, as appropriate; and

5.1.2 The scope of the initial D&C Work shall consist of all Work necessary to complete the East End Crossing as set forth in Section 1 of the Technical Provisions.

5.2 Performance, Design and Construction Standards; Deviations

5.2.1 Developer shall furnish all aspects of the Design Work and all Design Documents, including design required in connection with the operation and maintenance of the East End Crossing and Rehabilitation Work and shall construct the East End Crossing and/or Utility Adjustments included in the Construction Work as designed, free from Defects, and in accordance with

5.2.1.1 Good Industry Practice;

5.2.1.2 The requirements, terms and conditions set forth in the PPA Documents;

5.2.1.3 The Milestone Schedule and Project Schedule;

5.2.1.4 All Laws;

5.2.1.5 The requirements, terms and conditions set forth in all Governmental Approvals; and

5.2.1.6 The approved Project Management Plan and all component plans prepared or to be prepared thereunder.

5.2.2 Developer also shall construct the East End Crossing and/or Utility Adjustments included in the Construction Work in accordance with (a) the Final Design Documents, and (b) the Construction Documents, in each case taking into account the Project Right of Way limits and other constraints affecting the East End Crossing.

5.2.3 The East End Crossing design and construction shall be subject to certification pursuant to the procedures contained in the approved Design QA/QC Plan and approved Construction QA/QC Plan.

5.2.4 Developer may apply for IFA approval of Deviations from applicable Technical Provisions regarding design or construction. The Deviation approval process shall be as follows.

5.2.4.1 All applications shall be in writing. Where Developer applies for a Deviation as part of the Submittal of a component plan of the Project Management Plan, Developer shall specifically identify and label the proposed Deviation.

5.2.4.2 IFA shall consider in its sole discretion, but have no obligation to approve, any such application. Developer shall bear the burden of persuading IFA that the Deviation sought constitutes sound and safe design, engineering and or construction practices consistent with Good Industry Practice and achieves IFA's applicable Safety Standards and criteria and does not jeopardize the quality, integrity, life-cycle performance, service performance or extreme event performance of the East End Crossing.

5.2.4.3 No Deviation shall be deemed approved or be effective unless and until stated in writing signed by IFA's Authorized Representative. IFA's affirmative written approval of a component plan of the Project Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless IFA takes exception to

any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein.

5.2.4.4 IFA's lack of issuance of a written approval of a Deviation within 14 days after Developer applies therefor in writing shall be deemed a disapproval of such application.

5.2.4.5 IFA's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures.

5.2.4.6 IFA may elect to process the application as a Change Request under Section 16.2 rather than as an application for a Deviation.

5.2.5 Developer shall use reasonable care to identify any provisions of the Technical Provisions that are erroneous, create a potentially unsafe condition (including with respect to extreme event performance of the East End Crossing), or are or become inconsistent with the PPA Documents, Good Industry Practice or applicable Law. Whenever Developer knows or, in the exercise of reasonable care, should have known that a provision of the Technical Provisions is erroneous, creates a potentially unsafe condition or is or becomes inconsistent with the PPA Documents, Good Industry Practice or applicable Law, Developer shall have the duty to provide Notice to IFA of such fact and of the changes to the provision that Developer believes are the minimum necessary to render it correct, safe and consistent with the PPA Documents, Good Industry Practice and applicable Law. If it is reasonable or necessary to adopt changes to rectify the Technical Provisions after the Effective Date, such changes shall not be grounds for a Relief Event or other Claim, unless (a) Developer neither knew nor, with the exercise of reasonable diligence and care, should have known of the need for the changes prior to commencing or continuing any D&C Work affected by the problematic provision, or (b) Developer knew of and reported to IFA the problematic provision prior to commencing or continuing any D&C Work affected by the problematic provision and IFA did not adopt reasonable and necessary changes. If Developer commences or continues any D&C Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, Developer shall bear any additional costs and time associated with redoing the Work already performed. Inconsistent or conflicting provisions of the PPA Documents shall not be treated as erroneous provisions under this Section 5.2.5, but instead shall be reconciled under Section 1.2.

5.2.6 References in the Technical Provisions to manuals or other publications relating to the Design Work or Construction Work prior to the Substantial Completion Date shall mean the most recent editions in effect as of the Setting Date, unless expressly provided otherwise. Any changes to the Technical Provisions, including Safety Standards, respecting Design Work or Construction Work prior to the Substantial Completion Date shall be subject to the Change Order process for an IFA Change in accordance with Article 15. Safety Compliance changes shall be in accordance with Section 9.2.

5.2.7 The Parties anticipate that from time to time after the Setting Date IFA will adopt, including through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to D&C Work of general application to the Department transportation facilities. Pursuant to Section 16.1 and subject to Sections 9.2 and 5.2.6, IFA shall have the right in its sole discretion to add such

changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to the Technical Provisions by Notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Provisions and replace and supersede inconsistent provisions of the Technical Provisions. IFA will identify superseded provisions in its Notice to Developer. For any D&C Work undertaken after the Substantial Completion Date (e.g. Rehabilitation Work), Developer shall comply with the changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including changed, added or replacement Safety Standards, and the same shall constitute an IFA Change or other Relief Event.

5.2.8 Developer shall implement Safety Compliance prior to Substantial Completion, at such time as is more fully set forth in Section 9.2.

5.2.9 The Tolling Systems Integrator shall be responsible for installing and testing all Tolling Equipment for the East End Crossing. Developer shall coordinate the scheduling and performance of the Work with IFA and the Tolling Systems Integrator in accordance with the PPA Documents and to minimize impacts and delays to the East End Crossing.

5.2.10 Developer shall not be entitled to submit a claim for Extra Work Costs, Delay Costs, time extensions or other relief that could have been avoided through proper sequencing, scheduling and coordination of the Work in accordance with the PPA Documents.

5.3 Conditions to Commencement of Design; Design Implementation and Submittals

5.3.1 Conditions to Commencement of Design

Except to the extent expressly permitted in writing by IFA, Developer shall not commence or permit or suffer commencement of Design Work until IFA issues NTP1. The following are conditions to IFA issuing NTP1:

5.3.1.1 IFA has received and approved all the component parts, plans and documentation of the Project Management Plan that are labeled “A” in the column titled “Required By” in Attachment 01-1 to the Technical Provisions;

5.3.1.2 IFA has received and approved any required revisions to the DBE Performance Plan;

5.3.1.3 IFA has received, commented on and approved the Project Baseline Schedule;

5.3.1.4 Insurance Policies then required at or prior to issuance of NTP1 under Section 17.1 have been obtained and are in full force and effect, and Developer has delivered to IFA written binding verifications of coverage from the relevant issuers of such Insurance Policies;

5.3.1.5 Developer has certified to IFA that Developer’s relevant personnel, or Developer’s Contractors’ relevant personnel, hold all necessary or required registrations, permits or approvals and valid licenses to practice in the State and necessary for performance of relevant portions of the D&C Work;

5.3.1.6 Developer has made all deposits to the Intellectual Property Escrow(s) and Financial Escrow required at or prior to issuance of NTP1 pursuant to Sections 23.5 and 23.6; and

5.3.1.7 Developer has satisfied any other requirements or conditions for commencing Design Work set forth in the Technical Provisions, including participation in an environmental orientation workshop and training as is obligated under the Environmental Compliance and Mitigation Training Program as set forth in Section 7.3 of the Technical Provisions.

5.3.2 Design Implementation

Developer, through the appropriately qualified and Registered Professional Engineers identified in Developer's Project Management Plan in accordance with Section 3.2.5 of the Technical Provisions, shall furnish designs, plans and specifications in accordance with the PPA Documents. Developer shall cause the engineer of record for the East End Crossing to sign and seal all Final Design Documents.

5.3.3 Design Submittals

Developer shall deliver to IFA accurate and complete duplicates of all interim, revised and final Design Documents (including Final Design Documents), Plans and Construction Documents within seven days after Developer completes preparation thereof, in form as provided in the Technical Provisions.

5.4 Project Right of Way Acquisition

5.4.1 All Project Right of Way, including Additional Properties other than temporary interests in property for Project Specific Locations, shall be held or acquired, as applicable, in the name of IFA, as joint tenant with KPTIA.

5.4.2 IFA or KPTIA, as applicable, has completed, or shall undertake and complete at its own cost and expense, in accordance with Section 21 and Attachment 21-1 of the Technical Provisions, the acquisition of Project Right of Way, except that (a) acquisition of Additional Properties, except those required solely due to an IFA Change, shall be solely at Developer's expense as more particularly provided in Section 5.4.5 and (b) Developer shall be solely responsible for acquisition of rights in Project Specific Locations, as more particularly provided in Section 5.4.9.

5.4.3 If Developer identifies Additional Properties as permanently needed to construct or maintain the East End Crossing, Developer shall submit to IFA in writing a request to acquire the Additional Properties. The request shall include a drawing of the limits necessary for each parcel of Additional Property and the information required under Section 21.1 of the Technical Provisions. The request, drawing and information are subject to IFA's approval. IFA shall undertake and complete acquisition of Additional Properties, including undertaking eminent domain proceedings, if necessary, after IFA approves Developer's written request, drawing and information for the requested Additional Properties.

5.4.4 IFA shall not be obligated to approve a request for acquisition of any other Additional Property where, in IFA's good faith judgment, (a) to do so would materially adversely

affect political, community or public relations, or (b) successful timely completion of the acquisition is not likely. Within 14 days after receipt of a written request from Developer identifying an Additional Property for acquisition, IFA will state in writing to Developer whether IFA regards acquisition (whether by negotiation or condemnation) of the Additional Property as potentially materially adversely affecting political, community or public relations, or regards successful timely acquisition as not likely. No such statement, or lack thereof, shall preclude IFA from later changing its determination based on changed political, community or public relations events or circumstances.

5.4.5 Developer shall be responsible for all costs and expenses associated with IFA's acquisition of Additional Properties, except those costs and expenses actually and properly incurred solely due to an IFA Change. Such costs and expenses include:

5.4.5.1 The cost of acquisition services and document preparation;

5.4.5.2 The cost of negotiations;

5.4.5.3 The cost of condemnation proceedings handled by the Attorney General of the State of Indiana or KYTC, as applicable, through master proceedings, jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production;

5.4.5.4 The purchase prices, master awards, settlements, offers of judgment, court awards or judgments, including pre-judgment and post-judgment interest, costs, and attorney's fees, or other consideration for interests in real property for all parcels required for the East End Crossing or the Work, whether within or outside of the Project Right of Way;

5.4.5.5 The cost of permanent or temporary acquisition of leases, easements, rights of entry, licenses and other interests in real property, including for drainage, temporary work space, Project Specific Locations, and any other convenience of Developer;

5.4.5.6 The cost of permitting;

5.4.5.7 Closing costs associated with parcel acquisitions in accordance with the Uniform Act, IC 32-24-1 *et seq*. and IFA policies;

5.4.5.8 Relocation assistance payments and costs, in accordance with the Uniform Act and IC 8-23-17-1 *et seq*.

5.4.6 If IFA incurs any such costs and expenses on Developer's behalf, including any related IFA Recoverable Costs, IFA may submit to Developer, not more often than monthly, invoices for such costs and expenses. Developer shall reimburse IFA within 30 days of IFA's submittal to Developer of each such invoice. In addition to any other remedy, IFA shall have the right to curtail or suspend acquisition activities if Developer for any reason fails to pay any such invoice in full when due. IFA will resume acquisition activities promptly after delinquent amounts are paid in full with interest.

5.4.7 Except for an IFA-Caused Delay under clause (c)(ii) of the definition thereof, Developer shall solely bear the risk of any time and cost impacts to the Work related to IFA's acquisition of Additional Properties.

5.4.8 Developer shall not negotiate with any owners or occupants of any property, including Additional Properties, with respect to activities under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

5.4.9 Neither IFA nor the Department shall be obligated to acquire or exercise its power of eminent domain in connection with Developer's acquisition of any temporary right or interest for Project Specific Locations. Neither IFA nor the Department shall have any obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests; and Developer shall have no obligation to submit acquisition packages to IFA for, or obtain IFA's approval of Developer's acquisition of, any such temporary right or interest.

5.5 Utility Adjustments

5.5.1 Developer's Responsibility

Except for Type 1 Utility Adjustments as described in Section 18.1.2 of the Technical Provisions, Developer is responsible for causing, in accordance with the Project Schedule, all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the East End Crossing as located under the Final Design. All Utility Adjustment Work performed by Developer shall comply with the PPA Documents. Except for Type 1 Utility Adjustments, Developer shall coordinate, monitor and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the PPA Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Article 15, and except for Type 1 Utility Adjustments, Developer shall continue to be the responsible party to IFA for timely performance of all Utility Adjustment Work so that upon completion of the Construction Work, all Utilities that might impact the East End Crossing (whether located within or outside the Project Right of Way) are compatible with the East End Crossing.

5.5.2 Utility Agreements

5.5.2.1 Prior to the Effective Date IFA entered into the IFA Utility Agreements described in Section 18 to the Technical Provisions. Each IFA Utility Agreement identifies, in concept, the portion of the Utility Adjustment Work for which Developer and the Utility Owner, respectively, will be responsible. Each IFA Agreement also identifies the basis for compensation, preliminary engineering agreements, extent of design reviews, allowable Utility Adjustment Work by Developer or its utility Contractor, and other basic information. Developer is hereby delegated, and hereby accepts, the responsibilities and obligations of IFA under the IFA Utility Agreements. Developer shall comply with, be bound by and timely perform all such responsibilities and obligations except to the extent specifically changed by the Utility Agreement between Developer and the applicable Utility Owner.

5.5.2.2 Except for Type 1 Utility Adjustments, Developer is responsible for preparing, negotiating and entering into instruction-specific, construction-detailed Developer Utility Agreements with all Utility Owners, regardless of whether the Utility Owners are identified in the Reference Information Documents and regardless of whether IFA has secured an IFA Utility Agreement with that Utility Owner, in each case prior to commencement of any Utility Adjustment Work for each such Utility Owner. Developer will use the terms and information in

each applicable IFA Utility Agreement, if any, as a basis for negotiating a Developer Utility Agreement with each Utility Owner affected by the East End Crossing. The general procedures and framework for preparing the Developer Utility Agreements and processing utility issues within the East End Crossing area shall comply with Section 18 of the Technical Provisions and shall follow the standard practices of the respective Utility Owners for such Developer Utility Agreements, which in each case shall not be less than Good Industry Practice. Developer shall cause each Developer Utility Agreement it negotiates and executes to name IFA as an intended third party beneficiary thereof and to permit assignment of Developer's right, title and interest thereunder to IFA without necessity for Utility Owner consent.

5.5.2.3 Each Developer Utility Agreement shall clearly specify and distinguish the scope of Utility Adjustment Work Developer is to perform, and the scope the Utility Owner is to perform. Each Developer Utility Agreement shall contain provisions for payments, payment terms, controlling specifications, and work description. Each Developer Utility Agreement shall also include specific procedures for resolving scheduling, design, construction and payment issues arising due to errors or omissions in information the Utility Owner provides to Developer.

5.5.2.4 IFA agrees to cooperate as reasonably requested by Developer in pursuing Developer Utility Agreements, including attendance at negotiation sessions and review of Developer Utility Agreements. Developer shall keep IFA informed of the status of any such negotiations. Developer shall submit each such Developer Utility Agreement and supplements and amendments thereto to IFA for approval in its reasonable discretion, in accordance with the procedures described in Section 3.1. Developer shall deliver to IFA, within ten days after execution, a true and complete copy of each such Developer Utility Agreement entered into by Developer. IFA will not be a party to Developer Utility Agreements, and Developer shall cause each Developer Utility Agreement to expressly provide that IFA shall have no liability under the Developer Utility Agreement unless and until IFA receives a written assignment of the Developer's interests in the Developer Utility Agreement and assumes in writing Developer's obligations thereunder. Developer shall not enter into any agreement with a Utility Owner that purports to bind IFA in any way, unless IFA has executed such agreement as a party thereto (IFA's signature indicating approval or review of an agreement between Developer and a Utility Owner, or its status as a third-party beneficiary, shall not satisfy this requirement).

5.5.2.5 Except for Type 1 Utility Adjustments, Developer is solely responsible for the terms and conditions of all Developer Utility Agreements into which it enters (subject to the requirements of the PPA Documents, including Section 18 of the Technical Provisions). Except for Type 1 Utility Adjustments, Developer is responsible for proper completion of the Utility Adjustment Work required for the East End Crossing, in accordance with the PPA Documents, regardless of the nature or provisions of the Developer Utility Agreements and regardless of whether Developer or its Contractors, or the Utility Owner or its contractors, is performing the Utility Adjustment Work.

5.5.2.6 If a conflict occurs between the terms of an agreement between Developer and a Utility Owner and those of the PPA Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Developer and IFA; if the foregoing criteria are not relevant to the terms at issue, then the PPA Documents shall prevail, unless expressly provided otherwise in the PPA Documents.

5.5.2.7 Developer shall comply with and timely perform all obligations imposed on Developer by any Developer Utility Agreement.

5.5.3 Requirements

Each Utility Adjustment (whether performed by Developer or by the Utility Owner) shall comply with the Adjustment Standards in effect as to each Utility as of the Setting Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law, or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable IFA Utility Agreements or Developer Utility Agreement(s). Developer is solely responsible for negotiating any terms and conditions of Developer Utility Agreements that might limit a Utility Owner's amendments and additions to its Adjustment Standards after the Proposal Due Date. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable IFA Utility Agreement(s) and Developer Utility Agreements, and all other requirements specified in Section 18 of the Technical Provisions.

5.5.4 Utility Adjustment Costs

5.5.4.1 Subject to Section 5.5.4.2 and except for (a) costs under Type 1 Utility Adjustments, (b) costs for acquisition of any other real property interests shown on the ROW Maps (for which IFA is responsible to acquire) and (c) as otherwise provided in Section 18.1 of the Technical Provisions, Developer is responsible for all costs of the Utility Adjustment Work, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding costs attributable to Betterment and any other costs for which the Utility Owner is responsible under applicable Law. Developer shall fulfill this responsibility either by performing at its own cost the Utility Adjustment Work itself if permitted by the Utility Owner (except that any assistance provided by any Developer-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work), or by reimbursing the Utility Owner for its Utility Adjustment Work (however, Developer has no obligation to reimburse Utility Adjustment costs for any Service Line Adjustment for which the affected property owner has been compensated in connection with Project Right of Way acquisition). Developer is solely responsible for collecting directly from the Utility Owner any reimbursement due to Developer for Betterment costs or other costs incurred by Developer for which the Utility Owner is responsible under applicable Law.

5.5.4.2 For each Utility Adjustment under Developer Utility Agreements, the eligibility of Utility Owner costs (both indirect and direct) for reimbursement by Developer, as well as the determination of any Betterment or other costs due to Developer, shall be established in accordance with applicable Law and the applicable IFA Utility Agreement(s) and Developer Utility Agreement(s).

5.5.4.3 Except for (a) costs under Type 1 Utility Adjustments, (b) costs for acquisition of any other real property interests shown on the ROW Maps (for which IFA is responsible to acquire) and (c) as otherwise provided in Section 18.1 of the Technical Provisions, Developer shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith, and shall reimburse IFA for any such compensation and costs IFA pays to Utility Owners.

5.5.4.4 If for any reason Developer is unable to collect any amounts due to

Developer from any Utility Owner, then (a) IFA shall have no liability for such amounts, (b) Developer shall have no right to collect such amounts from IFA or to offset such amounts against amounts otherwise owing from Developer to IFA, and (c) Developer shall have no right to stop Work or to exercise any other remedies against IFA on account of such failure to pay.

5.5.4.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, Developer shall coordinate with IFA and such local Governmental Entity regarding accounting for and approval of those costs.

5.5.4.6 Developer shall maintain a complete set of records for the costs of each Utility Adjustment under each Developer Utility Agreement (whether incurred by Developer or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and Developer costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Developer also shall indicate in these records the source of funds used for each such Utility Adjustment under each Developer Utility Agreement. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the PPA Documents.

5.5.5 FHWA Utility Requirements

Unless IFA advises Developer otherwise, the East End Crossing will be subject to, and Developer shall comply with, 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies. Utility Agreements for Utilities in the East End Crossing shall incorporate by reference 23 CFR Part 645 Subparts A and B, and assign the obligations arising pertaining thereto. Developer shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subparts A and B as necessary for any Utility Adjustment costs to be eligible for reimbursement from the Federal-Aid Amount (or from any other federal financing or funding). Developer acknowledges, however, that without regard to whether such compliance is required, (a) it is not anticipated that Developer will be eligible for FHWA reimbursement of any Utility Adjustment outlays other than from the Federal-Aid Amount and/or TIFIA financing, if any, and (b) Developer will not have any share in any reimbursement from FHWA or other federal financing or funding that IFA may receive on account of Utility Adjustments (other than the Federal-Aid Amount).

5.5.6 Utility Enhancements

Developer shall be responsible for addressing any requests by Utility Owners that Developer design and/or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancement"). Any Betterment performed as part of a Utility Adjustment, whether by Developer or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Developer Utility Agreement. Developer shall perform any work on a Utility Owner Project only by separate contract outside of the Work, and such work shall be subject to Section 5.5.8. Under no circumstances shall Developer proceed with any Utility Enhancement that is incompatible with the East End Crossing or is not in compliance with applicable Law, the Governmental Approvals or the PPA Documents, including the Milestone Schedule Deadlines. Under no circumstances will Developer be entitled to any additional compensation or time extension hereunder as the

result of any Utility Enhancement, whether performed by Developer or by the Utility Owner. Developer may, but is not obligated to, design and construct Utility Enhancements.

5.5.7 Failure of Utility Owners to Cooperate

5.5.7.1 Developer shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for Utility Adjustments to be performed pursuant to a Developer Utility Agreement. Developer shall notify IFA immediately if (a) Developer is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Developer Utility Agreement within a reasonable time, (b) Developer reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the East End Crossing or in accordance with Law, the Governmental Approvals or the PPA Documents, (c) Developer becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between Developer and a Utility Owner with respect to the East End Crossing, despite Developer's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such Notice may include a request that IFA assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Developer shall provide IFA with such information as IFA requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to IFA any Notice or request for assistance, Developer shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

5.5.7.2 If Developer requests IFA's assistance pursuant to Section 5.5.7.1, then, subject to Section 5.5.7.3, the following provisions shall apply:

a. Developer shall provide evidence reasonably satisfactory to IFA that (i) the subject Utility Adjustment is necessary, (ii) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (iii) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (iv) the Utility Owner is not cooperating (the foregoing clauses (a)(i) through (iv) are referred to herein as the "conditions to assistance").

b. Following IFA's receipt of satisfactory evidence, IFA shall take such reasonable steps as Developer may request to obtain the cooperation of the Utility Owner or resolve the dispute; however, IFA shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless IFA elects to do so in its sole discretion.

c. If IFA holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and IFA elects in its sole discretion not to exercise those rights, then IFA shall assign those rights to Developer upon Developer's request; however, such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights.

d. At Developer's request, IFA and Developer shall work jointly to establish a scope of work and budget for IFA's Recoverable Costs in connection with providing such assistance to Developer; provided, that IFA shall not be entitled to receive any Recoverable Costs incurred in connection with such assistance if the Developer has established that the action or inaction on the part of the Utility constitutes a Relief Event under clause (l) of the

definition of "Relief Event". Subject to any agreed scope of work and budget, Developer shall reimburse IFA for IFA's Recoverable Costs in connection with providing such assistance to Developer (including all reasonable costs of litigation if IFA agrees to pursue litigation against a Utility Owner).

e. Any assistance IFA provides shall not relieve Developer of its sole responsibility for satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth herein.

5.5.7.3 If IFA objects in writing to a request for assistance pursuant to Section 5.5.7.1, based on Developer's failure to satisfy one or both of the conditions to assistance described in Sections 5.5.7.2(a)(i) and (ii), then Developer shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter. If IFA objects in writing to a request for assistance pursuant to Section 5.5.7.1 based on Developer's failure to satisfy one or both of the conditions to assistance described in Sections 5.5.7.2(a)(iii) and (iv), then Developer shall take such action as Developer deems advisable during the next ten days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all IFA objections have been addressed in accordance with the preceding two sentences. This process shall be followed until Developer succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until IFA determines, based on evidence Developer presents, that the conditions to assistance have been satisfied. Developer shall have the right to submit the question of the reasonableness of IFA's determination for resolution according to the Dispute Resolution Procedures.

5.5.7.4 In certain cases where a Utility Owner is not cooperating with Developer or IFA, IFA may, in its sole discretion and where applicable Law authorizes IFA to take unilateral action, issue a Directive Letter directing Developer to proceed with a Utility Adjustment without an agreement or other written consent by the Utility Owner. If IFA directs Developer to perform work pursuant to this Section 5.5.7.4, then Developer, without cost to IFA, shall proceed with such work as if Developer has entered into a Developer Utility Agreement providing for Developer to perform such work, and shall perform such work in accordance with applicable Adjustment Standards and the requirements of the PPA Documents otherwise applicable to Developer's performance of Utility Adjustment Work.

5.5.8 Applications for Utility Permits

5.5.8.1 It is anticipated that during the design and construction phases of the Work, from time to time Utility Owners may apply to IFA for utility permits to install new Utilities that would cross or longitudinally occupy the Project Right of Way, or to modify, upgrade, relocate or expand existing Utilities within the Project Right of Way for reasons other than accommodation of the East End Crossing. The provisions of Sections 5.5.8.2 through 5.5.8.4 shall apply to all such permit applications, except as otherwise provided in Section 5.5.8.5. Except as otherwise provided in Section 5.5.8.4(b) or in Article 15 with respect to a Relief Event under clause (h) of the definition of Relief Event (development or operation of a Business Opportunity), no accommodation of new Utilities or of modifications, upgrades, relocations or expansions of existing Utilities pursuant hereto shall entitle Developer to additional compensation, time extension or other Claim hereunder.

5.5.8.2 For all such utility permit applications pending as of or submitted after the Effective Date, Developer shall furnish the most recent East End Crossing design information and/or as-built plans, as applicable, to the applicants, and shall assist each applicant with information regarding the location of other proposed and existing Utilities. Developer shall keep records of its costs related to new Utilities separate from other costs.

5.5.8.3 Developer, at its cost, shall assist IFA in deciding whether to approve a permit described in Section 5.5.8.2. Within 14 days after receiving an application for a utility permit, Developer shall analyze the application and provide to IFA a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. Developer shall limit the grounds for its recommendation to the grounds (as IFA communicates to Developer from time to time) on which IFA is legally entitled to approve or deny the application or to impose conditions on its approval.

5.5.8.4 If Developer and IFA disagree on the response to a permit application described in Section 5.5.8.2, such disagreement shall be resolved according to the Dispute Resolution Procedures; provided that if Developer recommends against issuance of the permit and IFA determines issuance is appropriate or required, then:

a. IFA's determination shall control unless it is arbitrary and capricious;

b. IFA may elect to issue the utility permit in advance of resolution of the Dispute, but if it is finally determined that issuance of the permit was arbitrary and capricious, its issuance shall be deemed an IFA Change (and therefore a potential Relief Event); and

c. If IFA elects to delay issuance of a utility permit pending final resolution of the Dispute, Developer's indemnity under Sections 17.5.1.10 shall be deemed to apply with respect to any applicant claim of wrongful delay or denial.

5.5.8.5 Where IFA is pursuing a Business Opportunity involving a Utility in the Project Right of Way, (a) IFA shall have the right to issue utility permits in its sole discretion, (b) any decision by IFA to issue utility permits shall be final, binding and not subject to the Dispute Resolution Procedures, (c) Sections 5.5.8.2 through 5.5.8.4 shall not apply, and (d) instead, Section 8.2 shall apply.

5.5.9 Security for Utility Adjustment Costs; Insurance

5.5.9.1 Developer shall satisfy all requirements in IFA Utility Agreements and Developer Utility Agreements to provide security for reimbursement of Utility Adjustment costs to which the Utility Owner is entitled, in form, type and amount and on terms provided by the IFA Utility Agreements and Developer Utility Agreements.

5.5.9.2 Developer shall satisfy all requirements in IFA Utility Agreements and Developer Utility Agreements to provide liability insurance for the protection of the Utility Owner.

5.5.10 Utility-Related Claims

Developer shall have no Claim to a Relief Event or Change Order on account of:

5.5.10.1 Any difference in the cost or time to complete Utility Adjustment

Work from that anticipated by Developer, except to the extent set forth in Article 15 with respect to a Utility Owner delay under clause (l) of the definition of Relief Event;

5.5.10.2 Any inaccuracies in the Utility Information (including information as to the existence or nature of any rights or interests relating to the occupancy of any real property by any Utility), in any other Reference Information Documents or in public and private records with respect to any Utilities, whether the inaccuracies are as to the existence, location (horizontal or vertical), length, activity or inactivity, ownership, type, and/or any other characteristic of Utilities, except to the extent set forth in Article 15 with respect to clause (u) of the definition of Relief Event;

5.5.10.3 Any change in the proposed type or method of Utility Adjustment or any other change in the Utility Adjustment work from that described in the Utility Information or otherwise anticipated by Developer;

5.5.10.4 Any inaccuracy in any information included in the Reference Information Documents as to the existence or nature of any rights or interests relating to the occupancy of any real property by any Utility; and

5.5.10.5 Costs incurred or paid by Developer for the Adjustment of any Service Line or any Utility on or above the surface of the ground.

5.6 Conditions to Commencement of Construction

5.6.1 Construction Work Generally

Except to the extent expressly permitted in writing by IFA, Developer shall not commence or permit or suffer commencement of construction of the East End Crossing until IFA issues NTP2. The following are conditions to IFA issuing NTP2:

5.6.1.1 All Governmental Approvals necessary to begin Construction Work in the applicable portion of the East End Crossing have been obtained, and Developer has furnished to IFA fully executed copies of such Governmental Approvals;

5.6.1.2 On or before the "Anticipated Date Applicable" set forth in Attachment 21-1 to the Technical Provisions for the parcels identified therein, fee simple title or other property rights or rights of entry acceptable to IFA, in its good faith discretion, for the Project Right of Way necessary for commencement of construction of the applicable portion of the East End Crossing and Utility Adjustments included in the Construction Work have been identified, conveyed and recorded to IFA, IFA has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement therefor on terms acceptable to IFA;

5.6.1.3 Developer has satisfied, for the applicable portion of the East End Crossing, all applicable pre-construction requirements contained in the NEPA Approval and other Governmental Approvals;

5.6.1.4 Each Payment Bond and instrument of Performance Security, in form and from a Surety or issuer approved by IFA, required under Section 17.2.1 has been obtained, meets the prescriptions under Section 17.2.1 and is in full force and effect, and Developer has

delivered to IFA either the originals of each Payment Bond and instrument of Performance Security or, if the originals are to be held by the Collateral Agent for the Initial Senior Project Debt, certified and conformed copies of the originals;

5.6.1.5 The guarantees in favor of IFA, if any, required under Section 17.4 have been executed, obtained and delivered to, and accepted by, IFA and are in full force and effect;

5.6.1.6 Insurance Policies then required under Section 17.1 have been obtained and are in full force and effect, and Developer has delivered to IFA written binding verifications of coverage, as prescribed thereunder, from the relevant issuers of such Insurance Policies;

5.6.1.7 Developer has caused to be developed and delivered to IFA and IFA has approved, in accordance with Section 10.1 of this Agreement and Section 1.5.2.5 of the Technical Provisions, the component parts, plans and documentation of the Project Management Plan that are labeled "A" and "B" in the column titled "Required By" in Attachment 01-1 to the Technical Provisions;

5.6.1.8 Developer has developed and delivered to IFA, and IFA has approved, a Temporary Traffic Control Plan for the applicable portion of the East End Crossing, as required under Section 12.3 of the Technical Provisions, and the Submittal review period for such Temporary Traffic Control Plan set forth in Section 12.1 of the Technical Provisions has run without comment from IFA or with all comments addressed in accordance with Section 3.1.7;

5.6.1.9 Developer has delivered to IFA, and IFA has accepted and approved, as applicable, all Submittals relating to the Construction Work required by the Project Management Plan and PPA Documents, in the form and content required by the Project Management Plan or PPA Documents;

5.6.1.10 Developer has satisfied any other requirements or conditions for commencing Construction Work set forth in the Technical Provisions, including in Section 7.4 of the Technical Provisions, including survey of eagle nests and implementation of mitigation measures for the Indiana bat, gray bat and federally-listed mussels pursuant to the BA approved by the USFWS on February 18, 2012;

5.6.1.11 All representations and warranties of Developer set forth in Section 18.1 shall be and remain true and correct in all material respects, and Developer has delivered to IFA a certificate certifying to the same;

5.6.1.12 Developer has adopted written policies, approved by IFA, establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel in dealing with (a) IFA and the Department and (b) employment relations, in accordance with Section 7.8.1;

5.6.1.13 There exists no uncured Developer Default for which Developer has received written Notice from IFA, unless (a) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the MP Disputed Amounts Fund, in accordance with the Project Trust Agreement regarding the amount in dispute, or (b) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period; and

5.6.1.14 IFA has approved Developer's proposed-final Workforce Diversity and Small Business Performance Plan pursuant to Section 7.11.1.

5.6.2 Utility Adjustments

5.6.2.1 Developer shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until IFA issues NTP2, all of the conditions set forth in Section 5.6.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

5.6.2.2 Except as otherwise provided in Section 5.5.7.4, the Utility Adjustment is covered by an executed Developer Utility Agreement; and

5.6.2.3 Developer has obtained any IFA review and approval of a Utility Adjustment Plan or other matters respecting the Utility Adjustment that are required under any applicable federal requirements.

5.7 Schedule, Notices to Proceed and Milestone Schedule Deadlines

5.7.1 As a material consideration for entering into this Agreement, Developer hereby commits, and IFA is relying upon Developer's commitment, to develop the East End Crossing in accordance with the milestones and time periods set forth in this Agreement, Section 1.5.2 of the Technical Provisions, and the Milestone Schedule, subject only to delays caused by Relief Events specifically provided hereunder. Except where this Agreement expressly provides for extension of time due to a Relief Event or allows delay subject to remedies in favor of IFA other than termination of this Agreement, the time limitations set forth in the PPA Documents, including the dates by which milestones are to be achieved as set forth in the Milestone Schedule, for Developer's performance of its covenants, conditions and obligations are of the essence, and Developer waives any right at Law or in equity to tender or complete performance beyond the applicable time period or date, or to require IFA to accept such performance.

5.7.2 Authorization allowing Developer to proceed with certain portions of the Work hereunder shall be provided through IFA's issuance of NTP1 and NTP2, as applicable.

5.7.2.1 Developer shall satisfy all conditions to issuance of NTP1 by the NTP1 Conditions Deadline. Issuance of NTP1 authorizes:

a. Developer to perform (or continue performance of) the portion of the Work necessary to obtain IFA's approval of the component parts, plans and documentation of the Project Management Plan that are labeled "A" in the column titled "Required By" in Attachment 01-1 to the Technical Provisions;

b. Developer to make any required revisions to the DBE Performance Plan;

c. Developer to enter the Project Right of Way IFA owns or holds a valid right of entry in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and to engage in the other activities referenced in the Technical Provisions as permitted following issuance of NTP1;

d. Developer to prepare and submit to IFA for its review, comment and approval the Project Baseline Schedule, as provided in Section 5.7.5 and Section 1.5.2.1 of the Technical Provisions;

e. Developer to identify and acquire Project Specific Locations, but not the set up, mobilization or opening of any pit, borrow area, laydown area, equipment location or fabrication yard or plant;

f. Developer to commence equipment purchase or rental, and to place orders for the purchase of materials and components with long lead times for fabrication and delivery, subject to IFA's prior written approval in its good faith discretion; and

g. Developer to carry out mobilization and management reasonably necessary for the foregoing activities, and, subject to IFA's prior written approval in its good faith discretion, to carry out other mobilization for the D&C Work.

5.7.3 Developer shall satisfy all conditions to issuance of NTP2 by the NTP2 Conditions Deadline. Developer shall commence bona fide and continuous Construction Work by the Construction Work Commencement Deadline. Issuance of NTP2 authorizes Developer to perform all other Work and activities pertaining to the East End Crossing, subject to satisfaction of conditions precedent to commencement of the Construction Work set forth in the PPA Documents.

5.7.4 Developer shall achieve Substantial Completion and Final Acceptance in accordance with the procedures, requirements and conditions set forth in Section 5.8, and shall achieve Substantial Completion by the Baseline Substantial Completion Date and Final Acceptance by the Final Acceptance Deadline.

5.7.5 Developer hereby represents and warrants that the Preliminary Project Baseline Schedule attached to this Agreement as Exhibit 2-B (Preliminary Project Baseline Schedule) (i) is in the form described in the Technical Provisions, (ii) as of the Proposal Due Date and the Effective Date represents a practical schedule for Developer to complete performance of the Work through Final Acceptance (absent Relief Events that delay performance), and (iii) is consistent with the Milestone Schedule. Developer shall use the Preliminary Project Baseline Schedule as a foundation to prepare a Project Baseline Schedule for IFA's review, comment and approval prior to issuance of NTP2, as set forth in Section 1.5.2.1 of the Technical Provisions. The Parties shall use the Project Baseline Schedule for planning and monitoring the progress of the Design Work and Construction Work. The Project Baseline Schedule shall include the Baseline Substantial Completion Date set forth in the Preliminary Project Baseline Schedule.

5.7.6 Total Float shall be considered as a jointly owned, expiring resource available to the East End Crossing and shall not be considered as time for the exclusive use or benefit of either IFA or the Developer. All Total Float contained in the Project Schedule, as shown in the initial Project Baseline Schedule or as generated thereafter, shall be considered a shared, jointly owned, resource among IFA, Developer and each Design-Build Contractor available to any or all such parties as needed to absorb delay caused by Relief Events or other events, achieve interim completion dates and achieve Milestone Schedule Deadlines. All Total Float and the Controlling Work Item shall be shown as such in the Project Schedule on each affected schedule path. IFA shall have the right to examine the identification of (or failure to identify)

Total Float and Controlling Work Items on the Project Schedule in determining whether to approve the Project Schedule. Once identified, Developer shall monitor, account for and maintain Total Float in accordance with critical path methodology. Further provisions regarding Total Float are set forth in Section 1.5.2.1 of the Technical Provisions.

5.8 Substantial Completion, Punch List, Final Acceptance

5.8.1 Substantial Completion

IFA shall issue a written certificate of Substantial Completion on the date that all conditions to DB Substantial Completion have been met as provided in section 5.8.2 and that all O&M Conditions Precedent have been met as provided in Section 5.8.4.

5.8.2 Conditions to IFA Issuing Certificate Evidencing DB Substantial Completion

5.8.2.1 IFA will issue a written certificate of DB Substantial Completion upon satisfaction of all the following conditions for all Project Segments:

a. Developer has completed the design and construction of all Project Sections in accordance with the PPA Documents, including all traffic ramps, entry and exit points, noise/sound walls (if any), lanes, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, fire safety systems, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections, crash attenuators, illumination, signals and other major safety features, and including all East End Crossing equipment (including the electronic vehicle detection required under Section 19 of the Technical Provisions), such that all of the Project Sections are in a condition that can be opened for normal and safe vehicular travel in all lanes and at all points of entry and exit, as determined in IFA's good faith discretion, subject only to Punch List items;

b. The need for temporary traffic controls or for Closures at any time, including due to the existence of or need to complete Punch List items, has ceased (except for any then required for Planned Maintenance), and otherwise set forth in Section 5.8.2.2;

c. The systems and equipment installed by Developer comply, in all respects, with applicable Laws, are operational and functional, and have passed the fire marshal and any other inspections and tests required under the PPA Documents, and Developer has delivered to IFA all reports, data and documentation relating to such tests;

d. The Parties have completed preparation of the applicable Punch List (other than resolution of items included under protest);

e. The ITS (i) is completed, (ii) complies with applicable Laws, (iii) has passed the fire marshal inspections and tests required under the PPA Documents and Law, (iv) has passed all demonstration, performance and acceptance testing in accordance with the Technical Provisions and Project Management Plan, including interconnection with the regional Traffic Management Center (TMC) as provided in the Technical Provisions, and (v) is ready for normal operation;

f. All Submittals required by the Project Management Plan or PPA

Documents to be submitted to IFA prior to Substantial Completion have been submitted to and approved by IFA, in the form and content required by the Project Management Plan or PPA Documents;

g. Developer and IFA have completed preparation of the Punch Lists for the entire East End Crossing;

h. Developer has satisfied any other requirements or conditions for Substantial Completion set forth in the Technical Provisions, including Sections 22.6.1 (preliminary Rehabilitation Work Schedule), 22.3 (annual Performance and Measurement Table), 17.5 and 19 (completion, testing and commissioning of IFA work stations), and 22.5.5 (IFA approval of Developer's plans identifying Performance Sections);

i. Developer has made all deposits to the Intellectual Property Escrow(s) and the Financial Escrow required at or prior to Substantial Completion pursuant to Sections 23.5 and 23.6;

j. Developer has submitted to IFA (i) documentation of DBE utilization and (ii) if the DBE Goal is not met, documentation supporting good faith efforts, as required under Exhibit 7 (DBE Special Provisions);

k. There exists no uncured Developer Default that is the subject of a Notice, unless (i) Substantial Completion will effect its full and complete cure, (ii) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the MP Disputed Amounts Fund in accordance with the Project Trust Agreement regarding the amount in dispute, or (iii) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period;

l. Developer has delivered to IFA all manufacturer warranties required under, and in the form and content specified by the Technical Provisions; and

m. The date specified under Section 5.8.2.4 has passed.

5.8.2.2 The Parties shall disregard the status of Landscaping Work and non-structural aesthetic features included in the Final Design Documents in determining whether DB Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 5.8.2.1(b), which determination shall be made by IFA in its good faith discretion.

5.8.2.3 No later than 120 Days prior to the date of expected DB Substantial Completion, Developer shall complete all Work required to achieve Tolling Infrastructure Turnover as determined by IFA in its good faith discretion and shall provide access to the Site for the Toll Systems Integrator to commence installation and testing of the Toll Collection System.

5.8.2.4 Notwithstanding the foregoing and the satisfaction by Developer of all other conditions to DB Substantial Completion, DB Substantial Completion shall not be deemed to have occurred until the earlier of (i) the passage of 120 days after IFA's determination that the Developer has achieved the Tolling Infrastructure Turnover Date or (ii) the Tolling Systems Integrator's completion of its work and acceptance thereof by IFA.

5.8.2.5 Developer shall provide IFA with written Notice in respect of the date Developer determines that it will satisfy all of the conditions in Sections 5.8.2.1 and the Parties shall undertake such actions, as follows:

a. Developer shall provide IFA with 270, 180, 120 and 20 Days' advanced Notice of the date of expected DB Substantial Completion, in each case to afford the Toll Systems Integrator the opportunity to plan, mobilize and test the Toll Collection System.

b. During the 20-Day period following receipt of the 20 Days' Notice, Developer and IFA shall meet, confer and exchange information on a regular cooperative basis, and IFA shall conduct an inspection of the entire East End Crossing, and its components, a review of the Final Design Documents and Construction Documents and such other investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the conditions to DB Substantial Completion have been satisfied.

c. After Developer has given the 20 Days' Notice, Developer shall provide IFA a final written Notice when Developer determines it has achieved DB Substantial Completion. The Notice shall include a written certification, in form reasonably acceptable to IFA, that Developer has met all the conditions set forth in Sections 5.8.2.1.

5.8.3 Within five days after receipt of the Notice and certification given by Developer to IFA pursuant to Section 5.8.2.5(c), IFA shall either (a) issue a certificate authorizing DB Substantial Completion or (b) provide Notice to Developer setting forth, as applicable, why the conditions to Substantial Completion have not been satisfied. If IFA provides Notice under subsection (b) of this Section 5.8.2.6, and Developer does not Dispute IFA's assessment, then the processes set forth in Sections 5.8.2.5(b), (c) and this 5.8.3 shall be repeated until (i) IFA issues a certificate authorizing Substantial Completion or (ii) IFA and Developer refer the Parties' disagreement either as to whether one or more criteria for DB Substantial Completion have been met or the date of DB Substantial Completion is referred to, and resolved according to, the Dispute Resolution Procedures.

5.8.3.1 The Project Management Plan shall establish procedures and schedules for preparing a Punch List, for each of (a) Project Section 4, (b) Project Section 5, and (c) Project Section 6, and for completing Punch List work. Such procedures and schedules shall conform to the following provisions.

5.8.3.2 The schedule for preparation of the Punch List shall be consistent and coordinated with the inspections regarding DB Substantial Completion.

5.8.3.3 Developer shall prepare and maintain the Punch List. Developer shall deliver to IFA not less than five days' prior written Notice stating the date when Developer will commence Punch List field inspections and Punch List preparation. The Design-Build Contractor shall, and IFA may, but is not obligated to, participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If Developer objects to the addition of an item by IFA, the item shall be noted as included under protest, and if the Parties thereafter are unable to resolve the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures. Developer shall deliver to IFA a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

5.8.3.4 Developer shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the PPA Documents, the Final Design Documents and the Construction Documents within the time period to be set forth in the Project Management Plan and in any case by the Final Acceptance Deadline.

5.8.4 Conditions to issuance by IFA of Certificate Evidencing Satisfaction of O&M Conditions Precedent

5.8.4.1 IFA will issue a written certificate evidencing satisfaction of O&M Conditions Precedent upon satisfaction of all the following:

a. Developer demonstrates to IFA's reasonable satisfaction that Developer has completed training of operations and maintenance personnel, which demonstration shall consist of (i) delivery to IFA of a written certificate, in form acceptable to IFA, executed by Developer that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the entire East End Crossing in accordance with the terms and conditions of the PPA Documents and Project Management Plan pertaining to the Operating Period, (ii) delivery to IFA of training records and course completion certificates issued to each of the subject personnel and (iii) IFA's verification that the training program and number of trained personnel meet the standards in the Hazardous Material Management Plan and Section 22.1 of the Technical Provisions;

b. IFA has received and approved, in its good faith discretion, the Maintenance Plan (MP) that Developer prepares pursuant to Section 22.4 of the Technical Provisions and the Operations and Maintenance Plan (OMP) that Developer prepares pursuant to Section 22.1 of the Technical Provisions;

c. Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other third party approvals required for use and operation of the entire East End Crossing, such Governmental Approvals and other third party approvals are in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third party approvals;

d. All Insurance Policies required under this Agreement during the Operating Period for the East End Crossing have been obtained and are in full force and effect and Developer has delivered to IFA verification thereof as required under Section 17.1.2.4;

e. Any security for payment and for performance, including bonds and multiple obligee riders in favor of IFA, required under Section 17.2.3 for the Operating Period has been obtained and is in full force and effect and Developer has delivered the same to IFA; and

f. Any other guaranty of payment or performance required pursuant to Section 17.4 for the Operating Period has been delivered to IFA and is in full force and effect.

5.8.4.2 Developer shall provide IFA with written Notice in respect of the date Developer determines that it will satisfy all of the conditions in Section 5.8.4.1, and the Parties shall undertake such actions, as follows:

a. Developer shall provide IFA with 30 Days' advanced Notice of the date of expected satisfaction of the O&M Conditions Precedent.

b. During the 30-Day period following receipt of the 30 Days' Notice, Developer and IFA shall meet, confer and exchange information on a regular cooperative basis, and IFA shall conduct such investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the O&M Conditions Precedent have been satisfied.

c. After Developer has given the 30 Days' Notice, Developer shall provide IFA a final written Notice when Developer determines it has satisfied the O&M Conditions Precedent. The Notice shall include a written certification, in form reasonably acceptable to IFA, that Developer has satisfied all the criteria set forth in Sections 5.8.4.2.

5.8.4.3 Within five days after receipt of the Notice and certification given by Developer to IFA pursuant to Section 5.8.4.2(c), IFA shall either (a) issue a certificate of satisfaction of O&M Conditions Precedent or (b) provide Notice to Developer setting forth, as applicable, why the O&M Conditions Precedent have not been satisfied. If IFA provides Notice under subsection (b) of this Section 5.8.4.3, and Developer does not Dispute IFA's assessment, then the processes set forth in Sections 5.8.4.2(b), (c) and this 5.8.4.3 shall be repeated until (i) IFA issues a certificate that the O&M Conditions Precedent have been satisfied, or (ii) IFA and Developer refer the Parties' disagreement either as to whether one or more O&M Conditions Precedent have been met or the date of satisfaction of O&M Conditions Precedent is referred to, and resolved according to, the Dispute Resolution Procedures.

5.8.5 Final Acceptance

5.8.5.1 Promptly after achieving Substantial Completion for all Project Sections, Developer shall perform all remaining Construction Work, including completion of all Punch List items, all Landscaping Work, and non-structural aesthetic features. Developer shall prepare and adhere to a timetable for planting and establishing the landscaping for the East End Crossing, if any, taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for landscaping to be planted and established by 12 months after Substantial Completion for the applicable Project Section(s).

5.8.5.2 IFA will issue a written certificate of Final Acceptance for all Project Sections at such time as all of the following have occurred for all Project Section(s):

a. The Substantial Completion Date has occurred, all requirements for Substantial Completion remain satisfied, and IFA has issued a certificate of Substantial Completion encompassing all Project Sections;

b. All Punch List items have been completed and delivered to the reasonable satisfaction of IFA;

c. All Landscaping Work and non-structural aesthetic features have been completed in accordance with Section 5 of the Technical Provisions and the plans and designs prepared in accordance therewith;

d. Developer demonstrates to IFA's reasonable satisfaction that Developer has acquired and properly stored, or arranged for immediate availability, a reasonable inventory

of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for operation and maintenance of the East End Crossing during the Operating Period as identified in the Operations and Maintenance Plan and Maintenance Plan;

e. IFA has received a complete set of the Record Drawings in form and content required by Section 3.12.2.2 of the Technical Provisions;

f. IFA has received as-built survey sheets for the East End Crossing;

g. If any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the East End Crossing or any portion thereof, including any certifications from the engineer of record and architect of record for the East End Crossing, Developer has caused such certificates to be executed and delivered and has concurrently issued identical certificates to IFA;

h. All Utility Adjustment Work and other work that Developer is obligated to perform for or on behalf of third parties has been accepted by such third parties, and Developer has paid for all work by third parties that Developer is obligated to pay for, other than disputed amounts;

i. Developer has made all deposits to the Intellectual Property Escrow(s) and Financial Escrow required at or prior to Final Acceptance pursuant to Sections 23.5 and 23.6;

j. IFA has received the final certifications regarding suspension or debarment as set forth in Section 7.16; and

k. There exist no uncured Developer Defaults that are the subject of a Notice, or with the giving of Notice or passage of time, or both, could become the subject of a Warning Notice (except any Developer Default for which Final Acceptance will affect its full and complete cure).

5.8.5.3 Developer shall provide IFA with written Notice of the date Developer determines that it will satisfy all of the conditions in Section 5.8.5.2. During the 20-day period following receipt of such Notice, Developer and IFA shall meet, confer and exchange information on a regular cooperative basis, and IFA shall conduct an inspection of the Punch List items and the East End Crossing, a review of the Record Drawings, and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied.

5.8.5.4 Developer shall provide IFA a second written Notice when Developer determines it has achieved Final Acceptance for all Project Sections. The Notice shall include a written certification, in form reasonably acceptable to IFA, that Developer has satisfied all the criteria set forth in Section 5.8.5.2. Within five days after expiration of the period specified in Section 5.8.5.3 and IFA's receipt of the second Notice and Developer certification, and provided the condition precedent set forth in Section 5.8.5.2(a) is satisfied, IFA shall either (a) issue a certificate of Final Acceptance for all Project Sections or (b) provide Notice to Developer setting forth, as applicable, why Final Acceptance has not been achieved. If IFA and Developer cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to the

Dispute Resolution Procedures. The Notice of Final Acceptance will indicate the actual date on which Developer achieved Final Acceptance.

5.9 Hazardous Materials Management

5.9.1 Without limiting IFA's role or responsibilities set forth in Section 5.9.6 and Exhibit 5, and except as provided otherwise below, Developer shall undertake Hazardous Materials Management of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the PPA Documents.

5.9.2 Developer shall have the following duties to avoid or mitigate adverse financial and schedule impacts of Hazardous Materials and Recognized Environmental Conditions in respect of the East End Crossing and otherwise arising under or relating to the Work.

5.9.2.1 Without cost to IFA, Developer shall adopt a design and construction techniques for the East End Crossing that, to the maximum extent possible using Good Industry Practice, avoid the need for Hazardous Materials Management, which practices shall be in no case less than Good Industry Practice.

5.9.2.2 If, having met its obligation under Section 5.9.2.1, Developer is unable to avoid Hazardous Materials or a Recognized Environmental Condition, Developer shall use Good Industry Practice, including design modifications and construction techniques, to minimize costs of Hazardous Materials Management, including minimization of IFA's long-term costs for Hazardous Materials Management, which practices shall be in no case less than Good Industry Practice.

5.9.2.3 Where Hazardous Materials Management is unavoidable or is required by applicable Law, Developer shall utilize appropriately trained Contractors or personnel to conduct the Hazardous Materials Management activities.

5.9.3 If during the course of the Work, Developer encounters Hazardous Materials or a Recognized Environmental Condition in connection with the East End Crossing, the Site or Work, in an amount, type, quality or location that would require reporting or notice to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the PPA Documents, Developer shall promptly provide Notice to IFA and advise IFA of any obligation to notify State or federal agencies under applicable Law. If during the Term IFA discovers Hazardous Materials or a Recognized Environmental Condition in connection with the East End Crossing, the Site or Work, IFA shall promptly provide Notice to Developer of such fact.

5.9.4 The right of IFA to step in to carry out the Hazardous Materials Management obligations of Developer are as follows:

5.9.4.1 If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of action required and the potential impact upon Developer's schedule for use of and operations on the Project Right of Way, Developer has not undertaken the Hazardous Materials Management required of it under Section 5.9.1, IFA may provide

Developer with written Notice that it will undertake the Hazardous Materials Management itself. IFA thereafter may undertake the Hazardous Materials Management actions in compliance with a remediation plan approved by applicable Governmental Entities, if applicable, and in compliance with applicable Laws. Without limiting IFA's role or responsibilities set forth in Section 5.9.6, Developer shall reimburse to IFA on a current basis within ten days of request therefor, the reasonable costs, including IFA's Recoverable Costs, that IFA incurs in carrying out such Hazardous Materials Management actions. IFA shall have no liability or responsibility to Developer arising out of IFA's Hazardous Materials Management actions and such actions shall in no event constitute the basis of a Relief Event or other Claim.

5.9.4.2 Notwithstanding the foregoing, if Developer notifies IFA that Developer desires to preserve claims against other potentially responsible parties, then IFA shall take all commercially reasonable efforts to preserve such claims consistently with either the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300, or comparable State (or, in respect of Project Section 4, Commonwealth of Kentucky) regulations and standards; and a reasonable period of time for Developer to perform the Hazardous Materials Management actions shall include a sufficient period for Developer to comply with the National Oil and Hazardous Substances Pollution Contingency Plan or such comparable State (or, as applicable, Commonwealth of Kentucky) regulations and standards.

5.9.5 Refer to Section 15.7.7 regarding Developer's rights to compensation and schedule relief with respect to Hazardous Materials.

5.9.6 Off-site disposal of Hazardous Materials is subject to the following provisions.

5.9.6.1 Except as provided otherwise in Section 5.9.7, as between Developer and IFA, IFA shall be considered the sole generator and arranger under 40 CFR, Part 262 and shall sign all manifests using its generator identification number for the off-site disposal of Hazardous Materials other than (a) Developer Release(s) of Hazardous Material and (b) Hazardous Materials that migrate into, onto or under the Project Right of Way from points of origin located outside the boundaries of such Project Right of Way where the source of such Hazardous Materials is a Developer-Related Entity in the course of performing Work.

5.9.6.2 Notwithstanding any contrary provision of the PPA Documents, under no circumstances whatsoever shall any IFA-Caused Delay arising out of or relating to (a) its review and approval or disapproval of aspects of remediation plans as set forth in Section 7.9 of the Technical Provisions, (b) any act or failure to act by IFA in its capacity as generator or arranger for off-Site disposal of Hazardous Materials, or (c) any Dispute over whether Hazardous Materials are Known or Suspected Hazardous Materials entitle Developer to any compensation from IFA.

5.9.6.3 To the extent permitted by applicable Law, as between IFA and Developer, IFA shall take and assume sole responsibility and liability for third party claims, causes of action and Losses arising out of or resulting from the off-site disposal of Hazardous Materials for which IFA is the generator or arranger pursuant to this Section 5.9.6, specifically excluding liability for actual and threatened Developer Releases of Hazardous Materials and liability for off-site disposal that IFA elects to have a responsible party assume as provided in Section 5.9.6.1. It is the intent of the Parties that Developer has no exposure to any such third party claims, causes of action and Losses.

5.9.7 Whenever after issuance of NTP2 there occurs a Release of Hazardous Materials onto the East End Crossing or Project Right of Way by a Person other than IFA and a Developer-Related Entity in the course of performing Work (a "third party") and is from a vehicle operating or located within the Project Right of Way or from such vehicle's cargo, Developer shall use diligent efforts to handle disposal of the Hazardous Materials in a manner that does not place either Developer or IFA in the position of assuming generator or arranger liability. Measures to accomplish this objective include the following:

5.9.7.1 Obtaining from the vehicle operator a "transportation manifest" or "bill of lading" and a Material Safety Data Sheet (MSDS) and contacting the owner of the cargo, so that such owner assumes responsibility as generator and arranger for disposal of the Hazardous Materials;

5.9.7.2 If a transportation manifest or bill of lading and MSDS are incomplete and the owner of the cargo is not immediately available, causing the removal of the Hazardous Materials to protect human health and the environment and storing the Hazardous Materials in the vehicle responding to the incident pending contact with and further guidance from the owner of the cargo; and

5.9.7.3 If no third party assumes generator and arranger responsibility for the Release of Hazardous Materials, immediately reporting the Release to the Indiana Department of Environmental Management (or, in respect of Project Section 4, the Kentucky Department of Environmental Protection) and/or the local health department and having such agency handle the Release, so that the State is aware that the Release is from a fugitive disposer.

5.9.8 If despite such diligent efforts Developer is unable to avoid generator and arranger liability for the Parties with respect to the third party Release of Hazardous Materials onto the East End Crossing or Project Right of Way and such Release is not governed by Section 5.9.10, then IFA will undertake arranger (and, if necessary, generator) liability under 40 CFR, Part 262 for such third party spills.

5.9.9 IFA has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials will be transported whenever it acts as generator or arranger. The foregoing shall not preclude or limit any rights or remedies that IFA may have against Developer-Related Entities (other than Developer), Governmental Entities or other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project Right of Way.

5.9.10 As between Developer and IFA, Developer shall be considered the sole generator and arranger for (a) Developer Releases of Hazardous Materials and (b) Hazardous Materials that migrate into, onto or under the Project Right of Way from points of origin located outside the boundaries of such Project Right of Way where the source of such Hazardous Materials is a Developer-Related Entity in the course of performing Work, whereupon, in any of the foregoing cases, IFA shall be considered the sole generator and arranger under 40 CFR Part 262. The foregoing shall not preclude or limit any rights or remedies that Developer may have against any Governmental Entity or any other third parties, including existing or prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project Right of Way, excluding, however, the State, IFA, the Department and their respective agents. To the extent permitted by applicable Law, Developer shall indemnify, save, protect

and defend IFA from claims, causes of action and Losses arising out of or resulting from the off-site disposal of such Hazardous Materials for which Developer is considered the generator or arranger pursuant to this Section. The foregoing indemnity shall survive the expiration or termination of this Agreement.

5.10 Landscaping

5.10.1 Developer shall be solely responsible for all costs, including all Extra Work Costs and Delay Costs, relating to the design and other services, procurement of all materials, equipment and labor, and performance of all services necessary or appropriate (excluding only those materials, services and efforts which the PPA Documents expressly specify will be undertaken by IFA or other Persons) relating to landscaping for the East End Crossing, including the design, procurement (including transportation and handling), construction, installation, establishment, maintenance, protection, preservation and replacement of landscaping for the East End Crossing (collectively, the "Landscaping Work").

5.10.2 Due to the presence of a number of historic resources and historic districts on or near the Site, the landscaping design and materials for Project Section 4 must be designed and constructed with sensitivity to aesthetic values, historic cultural landscapes, and the historic context of the setting. As part of the Work and the Rehabilitation Work, Developer shall implement elements of the Historic Preservation Plans and Aesthetics and Enhancement Implementation Plan, incorporate the Aesthetic Design Guidelines and continue consultations, and cooperate, with the Bi-State Historic Consultation Team (BSHCT), the Kentucky Historic Preservation Advisory Team (KY HPAT) and the public in development of the design and construction of Project Section 4, all as more fully set forth in Section 7 of the Technical Provisions.

5.10.3 The "Landscaping Work Allowance" is $10,000,000. Landscaping Work in respect of Project Section 4 includes Landscaping Work prescribed under this Agreement and additional Landscaping Work prescribed by, or on behalf of, the Commonwealth of Kentucky, as more specifically set forth in Section 5.1.1 of the Technical Provisions. The Landscaping Work Allowance pertains to the costs relating to such additional Landscaping Work. References to Landscaping Work in this Section 5.10.3 and in Sections 5.10.6 to 5.10.11 are to such additional Landscaping Work. Developer and IFA, by and through the Department as IFA's designee, shall allocate, in respect of such additional Landscaping Work, the remaining amounts of the Landscaping Work Allowance that are less than $10,000,000 and additional Landscaping Work costs in excess of $10,000,000 as follows:

5.10.3.1 If, at Final Acceptance, the aggregate total of actual and documented costs for the Landscaping Work is less than $10,000,000, then IFA shall be entitled to 85% of the positive difference between such total and $10,000,000. IFA shall receive such positive difference as a deduction from the Milestone Payment (subject to the Milestone Payment Adjustment Cap set forth in Exhibit 10);

5.10.3.2 If, at Final Acceptance, the aggregate total of actual and documented costs for the Landscaping Work is equal to or exceeds $10,000,000 but is less than or equal to $20,000,000, then IFA and Developer shall each bear 50% of any such excess costs and IFA shall pay to Developer 50% of any such excess costs either as a lump sum payment or as an adjustment to the Maximum Availability Payment; and

5.10.3.3 If, at Final Acceptance, the aggregate total of actual and documented costs for the Landscaping Work exceeds $20,000,000, then IFA shall bear (a) $5,000,000 (i.e., 50% of the costs incurred above $10,000,000 and $20,000,000) and (b) 100% of the costs in excess of $20,000,000, and IFA shall pay to Developer the entire sum either as a lump sum payment or as an adjustment to the Maximum Availability Payment.

5.10.3.4 The following examples are provided to aid in application of the provisions in the foregoing Sections 5.10.1, 5.10.2 and this Section 5.10.3:

Aggregate total of actual and documented costs for Landscaping Work	***Result***
$8,000,000	*IFA* is entitled to deduction from the Milestone Payment of: $1,700,000 (i.e., 85% of $2,000,000, which is the positive difference between the Landscaping Work Allowance and $8,000,000)
$10,000,000	*No adjustment* (i.e., no positive difference between the Landscaping Work Allowance and $10,000,000)
$15,000,000	*Developer* is entitled to payment from IFA, or adjustment to the Maximum Availability Payment, in either case equal to: $2,500,000 (i.e. 50% of $5,000,000, which is the positive difference between the Landscaping Work Allowance and $15,000,000)
$25,000,000	*Developer* is entitled to payment from IFA, or adjustment to the Maximum Availability Payment, in either case equal to: $10,000,000 (i.e. 50% of costs between $10,000,000 and $20,000,000 ($5,000,000) plus 100% of costs in excess of $20,000,000 ($5,000,000)).

5.10.4 For the purpose of this Section 5.10, (a) the costs for Landscaping Work and (b) the assessments in respect of the Landscaping Work Allowance in Section 5.10.3 shall, in each case, be limited to only those costs that are incurred between the date of issuance of NTP1 and the Final Acceptance Date.

5.10.5 Developer shall, or cause the Design-Build Contractor to, competitively bid Contracts for the Landscaping Work after Developer both completes, and IFA accepts, final design for the Landscaping Work under competitive bidding procedures previously approved in writing by IFA, by and through the Department as IFA's designee.

5.10.6 Accounting for Landscaping Work pertaining to the Landscaping Work Allowance

5.10.6.1 Developer shall submit to IFA a statement, in a format acceptable to IFA in its good faith discretion, meeting the requirements of Section 5.10.6.2 (each, a "Landscaping Statement"), setting forth amounts paid by Developer for eligible Landscaping Work performed, and costs actually incurred in respect of the same, since the date of the preceding statement (or, in respect of the first statement, since the commencement date of such eligible Landscaping Work).

5.10.6.2 The Landscaping Statement shall, at a minimum, itemize, and set forth the amount for each such itemized portion of, eligible Landscaping Work. The statement must be accompanied by information sufficient, in IFA's sole determination, for IFA to verify that such amounts were for costs and expenses incurred in the performance of eligible Landscaping Work. Such attached report shall include:

a. A description of the Landscaping Work;

b. invoices from Contractors substantiating or supporting some or all of those costs and expenses, if any;

c. the sum of all prior amounts paid by Developer through the last day of the prior statement;

d. any amounts, if any, the Developer claims exceeds the Landscaping Work Allowance for which IFA is partially or wholly responsible to pay pursuant to Section 5.10.3;

e. a certification by Developer's Authorized Representative that:

i. Developer has fully and completely cured all Developer Defaults for which Developer received Notice from IFA prior to IFA's receipt of the Landscaping Statement;

ii. the subject Landscaping Work is free and clear of all pledges, liens, hypothecations or other charges, offsets or encumbrances of any kind, except those pledges, liens, hypothecations or other charges, offsets or encumbrances agreed to by IFA or otherwise pursuant to an approved Financing Plan and given to any Lender as security for Project Debt or Developer's obligations pertaining to Project Debt and encumbering the Developer's Interest;

iii. Developer has met all the conditions set forth in Section 3.4.2.2, if there exist any of the circumstances described in Section 3.4.2.1 prior to IFA's receipt of the Landscaping Statement; and

iv. the Landscaping Statement and all supporting documentation are

each, and is collectively, true, correct and complete.

5.10.6.3 IFA shall return to Developer any Landscaping Statement that is incomplete and/or incorrect in any material respect for correction and resubmission. Developer shall correct or complete, as applicable, such returned Landscaping Statement, which shall include a recertification by Developer as to all items, up to the subsequent date of submission, listed in Section 5.10.6.2. IFA's obligation to fund amounts in excess of the Landscaping Work Allowance shall also be suspended during such period.

5.10.6.4 IFA will examine submitted Landscaping Statements, including through IFA's independent oversight and auditing process, and reconcile the total amount drawn against the Landscaping Work Allowance, as detailed in such Landscaping Statements, against IFA's independent assessment of the proper amount to which Developer is entitled (the "IFA Landscaping Work Accounting"). If IFA disagrees with, or is unable to verify, the accuracy of any amount drawn by Developer against the Landscaping Work Allowance, then IFA shall promptly, but in no case later than 10 Business Days following receipt of the subject Landscaping Statement, provide Notice to Developer of such disagreement or inability to verify. Any draw by Developer upon the Landscaping Work Allowance during the period commencing upon receipt by IFA of such Notice until IFA is able, in its sole determination, to agree with Developer's statement, shall be a Developer Default. IFA's obligation to fund amounts in excess of the Landscaping Work Allowance shall also be suspended during such period.

5.10.6.5 IFA shall have the right to dispute, in good faith, any amount specified in any Landscaping Statement, whether incurred by Developer, drawn by Developer against the Landscaping Work Allowance, or to be paid by IFA. If applicable, IFA shall pay the amount identified in the Landscaping Statement that is not in Dispute. Developer and IFA shall use their reasonable efforts to resolve any such Dispute within 30 days after the Dispute arises. If the Parties fail to resolve the Dispute within that period, then the Dispute shall be resolved according to the Dispute Resolution Procedures. Any amount determined to be due pursuant to the Dispute Resolution Procedures will be paid within 20 days following resolution of the Dispute.

5.10.6.6 For purposes of clarity, nothing in this Section 5.10, including any review by IFA of the statement provided pursuant to Section 5.10.6.1, shall entitle Developer to any interest on any amount drawn, to be drawn against the Landscaping Work Allowance, to be paid by IFA or in Dispute, in each case, in respect of eligible Landscaping Work.

5.10.7 Developer shall perform, or cause to be performed, all Landscaping Work in accordance with the PPA Documents.

5.10.8 Landscape Establishment.

5.10.8.1 On or about May 1 following the first anniversary date of Final Acceptance, IFA will conduct an inspection of the Landscaping outside of the O&M Limits and no later than 60 days after such date will prepare or cause to be prepared a report describing what, if any, of such Landscaping has (i) died, (ii) failed to establish a root system reasonably expected for Landscaping of a similar type, nature and maturity or (iii) failed to show a growth habit reasonably expected for the Landscaping of a similar type, nature and maturity. If the report described in this Section 5.10.8.1 did not identify any of the conditions set forth in (i) – (iii) herein, then IFA will pay Developer $1,000,000. If the report described in this Section 5.10.8.1

identified any of the conditions set forth in (i) – (iii) herein, within 30 days of the receipt of said report by Developer, Developer shall submit a written plan to IFA which will be subject to IFA's reasonable approval, setting forth the actions Developer will take to replace dead and underperforming Landscaping and to ensure that the conditions described in said report will not reoccur. Replacement plantings shall be completed within the same calendar year as the inspection. Upon completion of replacement plantings, IFA will pay Developer $1,000,000.

5.10.8.2 On or about May 1 following the second anniversary date of Final Acceptance, IFA will again inspect the Landscaping outside of the O&M Limits and will prepare or cause to be prepared a report as described in Section 5.10.8.1 no later than 60 days after the second anniversary date of Final Acceptance. If said report did not identify any of the conditions described in (i) – (iii) of Section 5.10.8.1 IFA shall pay Developer $1,000,000. If said report identified any of the conditions set forth in (i) – (iii) of Section 5.10.8.1 within 30 days of the receipt of said report by Developer, Developer shall submit a written plan to IFA, which will be subject to IFA's reasonable approval, setting forth the actions Developer will take to replace dead and under-performing Landscaping and to ensure that the conditions described in said report will not reoccur. Replacement plantings shall be completed within the same calendar year as the inspection. Upon completion of replacement plantings, IFA will pay Developer $1,000,000.

5.11 Design and Construction Warranties

5.11.1 Developer shall obtain from all Contractors representations, warranties, guarantees and obligations, in accordance with Good Industry Practice for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Contractors, which shall extend not only to Developer but also to Utility Owners and any third parties for whom Work is being performed. All representations, warranties, guarantees and obligations of Contractors (a) shall be written so as to survive all IFA and Utility Owner inspections, tests and approvals, and (b) shall provide that upon expiration or any early termination of the Agreement prior to the expiration of such representations, warranties, guarantees and obligations they shall automatically be for the benefit of and enforceable by IFA and its successors and assigns, subject to the rights of the Lenders as provided in any Direct Agreement and Article 21.

5.11.2 To the extent that any Contractor warranty or guaranty is voided after termination of the Agreement by reason of Developer's negligence or failure to comply with the requirements of the PPA Documents in incorporating material or equipment into the Work, Developer shall be responsible for correcting any defects in the Work performed by such Contractor which would otherwise have been covered by such warranty.

5.11.3 Contractor warranties are in addition to all rights and remedies available under the PPA Documents or applicable Law, and shall not limit Developer's liability or responsibility imposed by the PPA Documents or applicable Law with respect to the Work, including liability for design defects, construction defects, strict liability, breach, negligence, willful misconduct or fraud.

5.12 Assignment of Certain Causes of Action

Developer agrees to assign to IFA all rights, title, and interest in and to all causes of action Developer may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under

comparable State or Commonwealth of Kentucky Law, arising from purchases of goods, services or materials pursuant to this Agreement. This assignment shall be made and become effective automatically upon tender of the Milestone Payments (with adjustments and deductions as permitted under this Agreement), without further acknowledgment by the Parties.

ARTICLE 6. OPERATIONS AND MAINTENANCE

6.1 General

6.1.1 General Obligations

6.1.1.1 Developer shall be responsible for managing, operating, maintaining, repairing, and performing Rehabilitation Work (including with respect to Handback Requirements) on and for the O&M Limits throughout the Operating Period.

6.1.1.2 At all times during the Operating Period, Developer shall carry out the O&M Work in accordance with (a) Good Industry Practice, as it evolves from time to time, (b) the requirements, terms and conditions set forth in the PPA Documents, as the same may change from time to time, (c) all Laws, (d) the requirements, terms and conditions set forth in all Governmental Approvals, (e) the approved Project Management Plan and all component parts, plans and documentation prepared or to be prepared thereunder, and all approved updates and amendments thereof (f) the approved Operations and Maintenance Plan, and all approved updates and amendments thereof, (g) the approved Maintenance Plan, and all approved updates and amendments thereof, (h) Best Management Practices, (i) Safety Compliance, the Safety Plan and Safety Standards and (j) all other applicable safety, environmental and other requirements, taking into account the Project Right of Way limits and other constraints affecting the East End Crossing. If Developer encounters a contradiction between subsections (a) through (h), Developer shall advise IFA of the contradiction and IFA shall instruct Developer as which subsection shall control in that instance. No such instruction shall be construed as an IFA Change. Developer is responsible for keeping itself informed of and applying current Good Industry Practice.

6.1.1.3 Developer, at its sole cost and expense unless expressly provided otherwise in this Agreement, shall comply with all Technical Provisions, including Safety Standards, during the Operating Period. Attachment 22-1 of the Technical Provisions sets forth minimum performance requirements related to the O&M Work. Developer's failure to comply with such requirements shall entitle IFA to the rights and remedies set forth in the PPA Documents, including the assessment of Noncompliance Points, deductions from payments otherwise owed to Developer, and termination for uncured Developer Default.

6.1.1.4 In addition to performing all other requirements of the PPA Documents, Developer shall cooperate with IFA and Governmental Entities with jurisdiction in all matters relating to the O&M Work, including their review, inspection and oversight of the operation and maintenance of the East End Crossing.

6.1.2 Changes in Performance, Operation and Maintenance Standards

6.1.2.1 IFA shall have the right to adopt at any time, and Developer acknowledges it must comply with all, Discriminatory O&M Changes and Non-Discriminatory O&M Changes. Refer to Section 15.7.1.1 for Developer's rights to compensation regarding

Non-Discriminatory O&M Changes. IFA shall provide Developer with prompt written Notice of Discriminatory O&M Changes and Non-Discriminatory O&M Changes. Without limiting the foregoing, the Parties anticipate that from time to time after the Setting Date, IFA will adopt Non-Discriminatory O&M Changes. IFA shall have the right in its sole discretion to add such Discriminatory O&M Changes and Non-Discriminatory O&M Changes to the Technical Provisions by Notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Provisions and replace and supersede inconsistent provisions of the Technical Provisions. IFA will identify the superseded provisions in its Notice to Developer.

6.1.2.2 If compliance with a Non-Discriminatory O&M Change requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element, Developer shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement not later than the first to occur of (a) any deadline recommended or prescribed in or for the Non-Discriminatory O&M Change, (b) the date when Developer next performs Rehabilitation Work on such Element, (c) the date when Developer is first obligated to perform Rehabilitation Work on such Element, or (d) provided IFA gives no less than 30 days prior written Notice to Developer, the date the Department first commences actions to implement the Non-Discriminatory O&M Change on any Comparable Facilities. If, however, IFA adopts the Non-Discriminatory O&M Change prior to the Substantial Completion Date, IFA shall issue a written Notice informing Developer when to implement such Non-Discriminatory O&M Change. Following commencement of any Work pursuant to this Section 6.1.2.2, Developer shall diligently prosecute the Work until completion, and in any event by any deadline for completion reasonably required by IFA for such Non-Discriminatory O&M Change. Should Developer dispute the timing for commencement or completion of Work as described in this Section 6.1.2.2, Developer may submit the Dispute for resolution according to the Dispute Resolution Procedures; pending such resolution Developer shall prosecute the Work in accordance with IFA's Change Order or Directive Letter.

6.1.2.3 If compliance with a Non-Discriminatory O&M Change requires construction or installation of new improvements at, for or on the East End Crossing (vs. major repair reconstruction, etc. of existing improvements, governed by Section 6.1.2.2), Developer shall complete construction and installation of the new improvements according to the implementation period recommended or prescribed in or for the Non-Discriminatory O&M Change. If no such implementation period is recommended or prescribed, Developer shall complete construction and installation of the new improvements according to the implementation period reasonably required by IFA for such Non-Discriminatory O&M Change. Should Developer dispute the timing for commencement or completion of such new improvements, Developer may submit the issue for resolution according to the Dispute Resolution Procedures; pending such resolution Developer shall diligently prosecute the Work in accordance with IFA's Change Order or Directive Letter.

6.1.2.4 Developer shall be obligated to implement a Discriminatory O&M Change only after IFA issues a Change Order or Directive Letter therefor pursuant to Article 16. If a Discriminatory O&M Change requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element during the Operating Period, or requires construction or installation of new improvements, Developer shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement or the new improvement work according to the schedule therefor adopted in the Change Order for such work. If a Discriminatory O&M change requires implementation not entailing such work, Developer shall implement it from and

after the date IFA issues the Change Order.

6.1.2.5 Section 9.2 establishes the timing by which Developer must implement Safety Compliance during the Operating Period.

6.1.2.6 In the case of any other Discriminatory O&M Change or Non-Discriminatory O&M Change, Developer shall be obligated to comply from and after the date it becomes effective and Developer is notified or otherwise obtains knowledge of it. For the avoidance of doubt, if Developer has Notice or knows of the Discriminatory O&M Change or Non-Discriminatory O&M Change on or prior to the date Developer commences maintenance, routine repair or routine replacement of damaged, worn or obsolete components or materials of the East End Crossing, then Developer shall comply with such changes, additions or replacements in carrying out such maintenance, routine repair or replacement.

6.1.2.7 Developer may apply for IFA approval of Deviations from applicable Technical Provisions regarding O&M Work. All applications shall be in writing. Where Developer requests a Deviation as part of the submittal of a component plan of the Project Management Plan, Developer shall specifically identify and label the Deviation. IFA shall consider in its sole discretion, but have no obligation to approve, any such application, and Developer shall bear the burden of persuading IFA that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves or substantially achieves IFA's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by IFA's Authorized Representative. IFA's affirmative written approval of a component plan of the Project Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless IFA takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. IFA's lack of issuance of a written Deviation within 14 days after Developer applies therefor in writing shall be deemed a disapproval of such application. IFA's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. IFA may elect to process the application as a Change Request under Section 16.2 rather than as an application for a Deviation.

6.1.3 Duration of Hazardous Materials Management

The provisions of Section 5.9 and Exhibit 5 in respect of Hazardous Materials Management that are not specific to the original construction of the East End Crossing shall apply throughout the Operating Period.

6.1.4 Utility Accommodation

6.1.4.1 It is anticipated that from time to time during the course of the Operating Period, Utility Owners will apply for additional utility permits to install new Utilities that would cross or longitudinally occupy the Project Right of Way, or to modify, repair, upgrade, relocate or expand existing Utilities within the Project Right of Way. In such circumstances, the provisions of Section 5.5.8 shall apply, including the application of Section 8.2 to those circumstances where IFA is pursuing a Business Opportunity involving a Utility in the Project Right of Way.

6.1.4.2 Throughout the Operating Period, Developer shall monitor Utilities and Utility Owners within the Project Right of Way that are within the O&M Limits for compliance with

applicable utility permits, Utility Agreements, easements, and applicable Law, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the Project Right of Way that is within the O&M Limits. If (a) Developer reasonably believes that any Utility Owner is not complying with the terms of a utility permit, Utility Agreement, easement, or applicable Law affecting a Utility within the Project Right of Way, or (b) any other dispute arises between Developer and a Utility Owner with respect to a Utility within the Project Right of Way that is within the O&M Limits, despite Developer having exercised its diligent efforts to obtain the Utility Owner's cooperation, Developer shall promptly notify IFA, and IFA and Developer shall work together in the manner described in Section 5.5.7; provided, however, that the "conditions to assistance" (as that term is used in Section 5.5.7) are that Developer shall provide evidence reasonably satisfactory to IFA that (i) Developer's position in the dispute is reasonable, (ii) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (iii) the Utility Owner is not cooperating. With respect to the Parties' rights and obligations described in Section 5.5.7.3, for purposes of this Section 6.1.4.2 the conditions to assistance described in clause (i) of the preceding sentence shall be treated in the same manner as those described in Sections 5.5.7.2 (a) and (b), and the conditions to assistance described in clauses (ii) and (iii) of the preceding sentence shall be treated in the same manner as those described in Sections 5.5.7.2 (c) and (d).

6.1.4.3 At Developer's request, IFA and Developer shall work jointly to establish a scope of work and budget for IFA's Recoverable Costs in connection with providing such assistance to Developer. Subject to any agreed scope of work and budget, Developer shall reimburse IFA for IFA's Recoverable Costs in connection with providing such assistance to Developer (including all reasonable costs of litigation if IFA agrees to pursue litigation against a Utility Owner).

6.1.5 Accommodation of Third Party Signage and Lighting

6.1.5.1 In addition to the warning, regulatory, and guide signs within the Project ROW, Developer shall accommodate within the Project ROW third party signs, including logo type signs. Developer shall coordinate and cooperate with any third party performing such work. Developer shall review with IFA all third party requests for new signs in the Project Right of Way. Such requests are subject to IFA's approval. IFA may solicit input from Developer in reviewing applications for new third party signs, but will retain sole authority for approving installation of these signs. All costs associated with fabricating and installing third party signs shall be borne by the sign applicant. IFA may require Developer to fabricate and/or install any of these signs as an IFA Change.

6.1.5.2 All third party requests for lighting within the Site shall be subject to IFA approval, and IFA retains sole authority for approving installation of such lighting.

6.1.6 Speed Limits

6.1.6.1 Maximum posted speed limits for the East End Crossing or portions of the East End Crossing shall be set from time to time by authorized Governmental Entities in accordance with applicable Law.

6.1.6.2 Nothing in the PPA Documents authorizes Developer to set or adjust posted speed limits on the East End Crossing, except temporary reductions during the Operating Period in accordance with the approved Transportation Management Plan and

Planned Maintenance. Such authority is reserved solely to authorized Governmental Entities.

6.1.6.3 Developer shall post and maintain speed limit signs on the East End Crossing during the Operating Period so that they accurately display at all times the maximum speed limits in effect under applicable Law.

6.1.7 Updates of Record Drawings

Within 30 days after undertaking any O&M Work that results in a significant change to the East End Crossing design or construction, Developer shall update the Record Drawings to reflect such change.

6.2 O&M Contracts

6.2.1 If Developer elects not to self-perform any aspect of the O&M Work, it shall enter into an O&M Contract for such O&M Work. Each O&M Contract will be a Principal Project Document.

6.2.2 Each O&M Contractor shall have the expertise, qualifications, experience, competence, skills and know-how to perform the O&M Work and related obligations of Developer in accordance with this Agreement.

6.3 Coordination of Operations and Maintenance Responsibilities

6.3.1 Developer recognizes and acknowledges that (i) the Department will control operation and maintenance of that portion of the East End Crossing that is not included within the O&M Limits and (ii) KYTC will control operation and maintenance of that portion of the East End Crossing outside of the O&M Limits and in Kentucky, and that IFA will not have or assume responsibility for operation and maintenance of those portions of the East End Crossing identified in subparagraphs (i) and (ii).

6.3.2 Developer is responsible for coordinating its traffic management and control, Planned Maintenance, other maintenance activities, and other O&M Work on or for the O&M Limits with that of the Department, KYTC and any other Governmental Entity that may assume responsibility for such operation and maintenance.

6.3.3 At Developer's request from time to time, IFA will assist Developer in seeking the cooperation and coordination of the Department, KYTC and any other Governmental Entity that may assume responsibility for such operation and maintenance, with respect to their operation and maintenance activities. The objectives of such assistance will be to minimize disruptions of traffic on the East End Crossing and ensure that such operation and maintenance activities are carried out in accordance with then-current maintenance standards and then-current traffic management standards, practices and procedures of the Department, KYTC or such other Governmental Entities.

6.3.4 No interference with or disruption of traffic due to activities on or the management or condition of that portion of the East End Crossing that is not included within the O&M Limits, and no failure to meet such standards, practices and procedures, by the Department, KYTC or such other Governmental Entities, shall entitle Developer to any Claim, Relief Event or relief from any Quarterly Payment Adjustment.

6.4 [reserved]

6.5 Annual Budget

Developer shall deliver to IFA any budget for O&M Work, and any updates thereto, required by or delivered to any Lender. Developer shall deliver the same to IFA concurrently with Developer's delivery thereof to any Lender.

6.6 Developer Inspection, Testing and Reporting

6.6.1 Developer shall carry out General Inspections, Specialist Inspections and Performance Inspections in accordance with the Technical Provisions, including Section 22.5 of the Technical Provisions, and the Project Management Plan. Developer shall use the results of General Inspections, Specialist Inspections and Performance Inspections to develop and update the Rehabilitation Work Schedule, to maintain asset condition and service levels, and to develop programs of maintenance and Rehabilitation Work to minimize the effect of O&M Work on Users and other members of the public. Developer shall deliver to IFA not less than seven days' prior written Notice of any General Inspection, Specialist Inspection or Performance Inspection. IFA may attend and observe any General Inspection, Specialist Inspection or Performance Inspection.

6.6.2 Developer shall submit all reports relating to the O&M Work, including the O&M annual reports, in the form, with the content and within the time required under the PPA Documents.

6.6.3 Such inspections and reports are in addition to maintenance and reporting of the Noncompliance Event data base under Section 11.2.1.

6.7 Rehabilitation Work

6.7.1 The Performance and Measure Report and related provisions of the Technical Provisions set forth Performance Requirements for the Elements. Developer shall diligently perform Rehabilitation Work as and when necessary to maintain compliance with such Performance Requirements and restore the Useful Life of each Element at the end of its Residual Life. Developer also shall perform Rehabilitation Work according to the other applicable terms of the Technical Provisions, including, when applicable, the Handback Requirements. Developer shall use the Rehabilitation Work Schedule, as updated from time to time, as the principal guide for scheduling and performing Rehabilitation Work; but complying with the Rehabilitation Work Schedule shall not excuse or be a defense to any failure to comply with the Performance Requirements.

6.7.2 Not later than 90 days after the end of each calendar year, Developer shall deliver to IFA a written report of the Rehabilitation Work performed in the immediately preceding calendar year. The report shall describe, by location, Element as listed in the Rehabilitation Work Schedule and other component, the type of work performed, the dates of commencement and completion and the cost, as well as the total cost of all Rehabilitation Work performed during the calendar year. During the period the Handback Requirements Reserve Account is in effect, the report also shall set forth the total draws from the Handback Requirements Reserve Account in the immediately preceding calendar year and the date, amount and use of each draw (including any use for Safety Compliance work).

6.8 Rehabilitation Work Schedule

6.8.1 Not later than 90 days before the beginning of the second full calendar year after the Substantial Completion Date, Developer shall prepare and submit to IFA for review and comment a Rehabilitation Work Schedule. Using the results of its O&M Limits inspections under Section 22.5 of the Technical Provisions, Developer shall set forth in the Rehabilitation Work Schedule, by Element, (a) the estimated Useful Life, (b) the estimated Residual Life, (c) a brief description of the type of Rehabilitation Work anticipated to be performed at the end of the Element's Residual Life, (d) a brief description of any Rehabilitation Work anticipated to be performed before the end of the Element's Residual Life, including reasons why this work should be performed at the proposed time, (e) the estimated cost in current dollars of such Rehabilitation Work and (f) the total estimated cost in current dollars of Rehabilitation Work in each of the years Rehabilitation Work is anticipated to be performed under the Rehabilitation Work Schedule.

6.8.2 Developer shall estimate the Useful Life of each Element within the Rehabilitation Work Schedule based on (a) Developer's reasonable expectations respecting the manner of use, levels and mix of traffic, environmental conditions, and wear and tear and (b) the assumption that, when subject to Routine Maintenance, the Element will comply throughout its Useful Life with each applicable Performance Requirement. Developer shall estimate the Residual Life of each Element within the Rehabilitation Work Schedule based on its Age and whether (i) the Element has performed in service in the manner and with the levels and mix of traffic and wear and tear originally expected by Developer (ii) Developer has performed Routine Maintenance of the Element, and (iii) the Element has complied throughout its Age with each applicable Performance Requirement.

6.8.3 Not later than 90 days before the beginning of the third full calendar year after the Substantial Completion Date and each calendar year thereafter, Developer shall prepare and submit to IFA for review and comment either (a) a revised Rehabilitation Work Schedule or (b) the then-existing Rehabilitation Work Schedule accompanied by a statement that Developer intends to continue in effect the then-existing Rehabilitation Work Schedule without revision (in either case, referred to as the "updated Rehabilitation Work Schedule"). Developer shall make revisions as reasonably indicated by experience and then-existing conditions respecting the O&M Limits, the factors described in Section 6.8.2, changes in estimated costs of Rehabilitation Work, changes in technology, changes in Developer's planned means and methods of performing Rehabilitation Work, and other relevant factors. The updated Rehabilitation Work Schedule shall show the revisions, if any, to the prior Rehabilitation Work Schedule and include an explanation of reasons for revisions. If no revisions are proposed, Developer shall include an explanation of the reasons no revisions are necessary. During the period the Handback Requirements Reserve Account is in effect, the updated Rehabilitation Work Schedule also shall set forth, by Element, Developer's planned draws from the Handback Requirements Reserve Account during the forthcoming calendar year.

6.8.4 At IFA's request, Developer and its O&M Contractor(s) shall promptly meet and confer with IFA to review and discuss the original or updated Rehabilitation Work Schedule.

6.8.5 Within 30 days after receiving the original or any updated Rehabilitation Work Schedule, IFA shall have the right to object to the original or updated Rehabilitation Work Schedule or any of its elements. IFA may base its comments, objections or exceptions on

whether the original or updated Rehabilitation Work Schedule and underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, East End Crossing experience and condition, applicable Technical Provisions, Governmental Approvals and Laws. If Developer has not received written comments, objections, exceptions and recommendations from IFA within the applicable time period set forth above, Developer may deliver a written Notice to IFA stating that IFA's failure to issue written comments, objections, exceptions and recommendations within ten days shall constitute waiver of the right to do so with respect (and only with respect) to the subject Rehabilitation Work Schedule or update.

6.8.6 Within 30 days after receiving timely written Notice of comments, objections, exceptions, recommendations, objections or disapprovals from IFA, Developer shall submit to IFA a revised original or updated Rehabilitation Work Schedule rectifying such matters and, for matters it disagrees with, a written Notice setting forth those comments, objections, exceptions, recommendations and disapprovals that Developer disputes. Such Notice shall give details of Developer's grounds for dispute. If Developer fails to give such Notice within such time period, it shall be deemed to have accepted the comments, objections, exceptions and recommendations and the original or updated Rehabilitation Work Schedule, as applicable, shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections and exceptions. After timely delivery of any such Notice, Developer and IFA shall endeavor in good faith to reach agreement as to the matters listed in the Notice. If no agreement is reached as to any such matter within 30 days after Developer delivers its Notice, either Party may refer the Dispute to the Disputes Resolution Procedures for determination.

6.8.7 Until resolution of any portion of the original Rehabilitation Work Schedule that is in Dispute, the treatment of that portion in the original Rehabilitation Work Schedule shall remain in effect and govern. Until resolution of any portion of the updated Rehabilitation Work Schedule that is in Dispute, the treatment of that portion in the immediately preceding Rehabilitation Work Schedule shall remain in effect and govern.

6.9 [reserved]

6.10 [reserved]

6.11 Policing, Security and Incident Response

6.11.1 Police Services

6.11.1.1 Developer, without expense to IFA, shall permit the Indiana State Police, Kentucky State Police, Louisville Metro Police Department and any other public law enforcement agency with jurisdiction to provide traffic patrol, traffic law enforcement and the other police and public safety services on or for the O&M Limits in accordance with applicable Laws and agreements with State and local agencies, including permitting at least the type and level of service that the Indiana State Police, Kentucky State Police and Louisville Metro Police Department provides on Comparable Facilities owned and operated by the Department or KYTC. In addition, Developer, without expense to IFA, may engage, on mutually acceptable reasonable terms and conditions, either the Indiana State Police, Kentucky State Police, Louisville Metro Police Department or another qualified public law enforcement agency with jurisdiction to provide enhanced levels of traffic patrol, traffic law enforcement services, special traffic operations services, accident assistance and investigation, and other enhanced police and Emergency services as needed due to any Developer-Related Entity's construction,

operation, maintenance or other activities on or affecting the O&M Limits.

6.11.1.2 Developer shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services on the O&M Limits unless otherwise approved by IFA in its sole discretion.

6.11.1.3 At Developer's request and expense, IFA shall assist Developer in securing the agreement of the Indiana State Police and the Kentucky State Police to perform enhanced services on or for the O&M Limits. Such assistance may include accompanying Developer to meetings with the Indiana State Police and the Kentucky State Police, requesting the involvement of the Public Finance Director and taking any other reasonable action within its powers.

6.11.1.4 Nothing in this Section 6.11.1 shall be construed as conferring upon IFA in any way responsibility for funding enhanced policing services.

6.11.1.5 Developer acknowledges that the Indiana State Police, Kentucky State Police and Louisville Metro Police Department are empowered to enforce all applicable Laws and to enter the O&M Limits at any and all times to carry out their law enforcement duties. No provision of this Agreement is intended to surrender, waive or limit any police powers of the Indiana State Police, Kentucky State Police and Louisville Metro Police Department or any other Governmental Entity, and all such police powers are hereby expressly reserved.

6.11.1.6 IFA shall not have any liability or obligation to Developer resulting from, arising out of or relating to the failure of the Indiana State Police, Kentucky State Police and Louisville Metro Police Department as applicable or any other public law enforcement agency to provide services, or any of their, or their respective agents' or employees', acts, omissions, negligence or misconduct in providing services.

6.11.2 Security and Incident Response

6.11.2.1 Developer is responsible for the safety and security of the O&M Limits and the workers and public thereon during all construction, operation and maintenance activities under the control of any Developer-Related Entity.

6.11.2.2 Developer shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services. Without limiting the foregoing, whenever the National Terrorism Advisory System (NTAS) or successor system has issued an "elevated" or "imminent" alert or comparable level of threat or alert for any region in which the O&M Limits is located or which the East End Crossing serves, Developer, at its expense, shall assign management personnel with decision-making authority to be personally present at the relevant emergency operations center serving the region. Developer shall provide such service 24 hours a day, seven days a week, until such level or threat or alert expires pursuant to its "sunset period" or is cancelled, or until the lead agency at the operations center determines such staffing level is no longer necessary.

6.11.2.3 Developer shall perform and comply with the provisions of Section 22 of the Technical Provisions concerning Incident response, safety and security.

6.11.2.4 Developer shall implement all Incident response, safety and security procedures, protocols and requirements set forth in the Incident Management Plan and Emergency Plan (components of the Project Management Plan).

6.12 Handback Requirements

6.12.1 Handback Condition

Subject to Section 6.12.3.2, on the Termination Date Developer shall cause the O&M Limits, at no charge to IFA, to be in the condition and meet all of the requirements for Residual Life at Handback specified in the Handback Requirements.

6.12.2 Handback Inspections

The Parties shall conduct inspections of the O&M Limits at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of:

6.12.2.1 Determining and verifying the condition of all Elements and their Residual Lives;

6.12.2.2 Adjusting, to the extent necessary based on inspection and analysis, Element Useful Lives, Ages, Residual Lives, estimated costs of Rehabilitation Work and timing of Rehabilitation Work;

6.12.2.3 Revising and updating the Rehabilitation Work Schedule to incorporate such adjustments;

6.12.2.4 Determining the Rehabilitation Work required to be performed and completed prior to the Termination Date, based on the requirements for Residual Life at Handback specified in the Handback Requirements, the foregoing adjustments and the foregoing changes to the Rehabilitation Work Schedule;

6.12.2.5 Verifying that such Rehabilitation Work has been properly performed and completed in accordance with the Handback Requirements; and

6.12.2.6 Adjusting Developer's funding of the Handback Requirements Reserve Account so that it is funded according to the schedule and amounts required under Exhibit 6 (Handback Requirements Reserve Elements and Reserve Funding Mechanism).

6.12.3 Rehabilitation Work under Handback Requirements

6.12.3.1 Developer shall diligently perform and complete all Rehabilitation Work required to be performed and completed prior to the Termination Date, based on the required adjustments and changes to the Rehabilitation Work Schedule resulting from the inspections and analysis under the Handback Requirements.

6.12.3.2 In the event of an early termination of this Agreement, this Section 6.12 shall apply to the extent of any Rehabilitation Work required to be performed and completed prior to the Early Termination Date, based on the required adjustments and changes to the Rehabilitation Work Schedule resulting from the inspections and analysis under the

Handback Requirements.

6.13 Handback Requirements Reserve Account

6.13.1 Establishment

6.13.1.1 Beginning five full calendar years before the end of the Term, Developer shall establish and fund a reserve account (the "Handback Requirements Reserve Account") exclusively available for the uses set forth in Section 6.13.3. Developer shall provide to IFA the details regarding the account, including the name, address and contact information for the depository institution and the account number. IFA shall have a first priority perfected security interest in the Handback Requirements Reserve Account, and the right to receive directly from the depository institution monthly account statements.

6.13.1.2 In lieu of establishing the Handback Requirements Reserve Account, Developer may deliver to IFA Handback Requirements Letters of Credit, on the terms and conditions set forth in Sections 6.13.5 and 17.3.

6.13.2 Funding

6.13.2.1 Developer shall make deposits to the Handback Requirements Reserve Account at the times and in the amounts set forth in Exhibit 6 (Handback Requirements Reserve Elements and Reserve Funding Mechanism).

6.13.2.2 Funds held in the Handback Requirements Reserve Account may be invested and reinvested only in Eligible Investments. Eligible Investments in the Handback Requirements Reserve Account must mature, or the principal of and accrued interest on such Eligible Investments must be available for withdrawal without penalty, not later than such times as shall be necessary to provide funds when needed for payment of draws to Developer, and in any event not later than the end of the Term. All interest earned or profits realized from the investment of funds in the Handback Requirements Reserve Account shall be retained therein.

6.13.2.3 If Developer fails to make any quarterly deposit into the Handback Requirements Reserve Account when due, including funding any increases or shortfalls required under Sections 3 and 5 of Exhibit 6 (Handback Requirements Reserve Elements and Reserve Funding Mechanism), IFA shall be entitled to deduct the amount due from the Quarterly Payment due to Developer at the time of payment of the Quarterly Payment to Developer, and shall deposit such amount to the Handback Requirements Reserve Account on behalf of Developer.

6.13.3 Use

6.13.3.1 Developer will have the right to payments from the Handback Requirements Reserve Account to be used only to make progress and final payments for the following costs, provided the Handback Requirements Reserve Account is not at any time reduced below the amount of funds then required under Exhibit 6 (Handback Requirements Reserve Elements and Reserve Funding Mechanism):

a. Costs of Rehabilitation Work for those Elements that have a number of years stated in the "Useful Life" column in Table 23-1 (Residual Life Requirements at

Handback) of the Technical Provisions, to the extent such Rehabilitation Work is to be performed prior to the end of the Term pursuant to Section 6.7;

b. Costs of Rehabilitation Work for those Elements that have a number of years stated in the "Residual Life at Handback" column in Table 23-1 (Residual Life Requirements at Handback) of the Technical Provisions, to the extent such Rehabilitation Work is necessary in order to return the Element to IFA at the end of the Term with a Residual Life equal to or greater than such number of years; and

c. Costs of Safety Compliance work.

6.13.3.2 Amounts in the Handback Requirements Reserve Account can only be used for the purposes described in this Section 6.13.3 and are not available as security for repayment of Project Debt or making Distributions. The use of amounts in the Handback Requirements Reserve Account for any purpose other than as permitted in this Section 6.13.3 shall be a Developer Default.

6.13.4 Disposition at End of Term

6.13.4.1 At the expiration or any earlier termination of the Term for any reason, including termination due to IFA Default, all funds in the Handback Requirements Reserve Account (except as provided in Section 6.13.4.2) shall automatically be and become the sole property of IFA, free and clear of all liens, pledges, encumbrances, offsets and deductions. Thereupon, Developer shall deliver such transfers, assignments and other documents, and take such other actions, as IFA or the depository institution for the Handback Requirements Reserve Account shall require to confirm transfer to IFA of the Handback Requirements Reserve Account and funds therein, free and clear of all liens, pledges, encumbrances, offsets and deductions.

6.13.4.2 In the event the amount in the Handback Requirements Reserve Account at such time is different from the amount then required pursuant to Exhibit 6 (Handback Requirements Reserve Elements and Reserve Funding Mechanism), Developer shall be obligated to pay any shortfall to IFA upon demand, or IFA on demand shall authorize release to Developer of any excess, as the case may be. IFA, at its election, may offset any Termination Compensation owing to Developer by the amount of such shortfall. IFA, at its election, also may offset any excess to be released to Developer by any amount Developer still owes IFA for the cost of the independent inspections conducted pursuant to the Handback Requirements. The foregoing offset rights are in addition to IFA's offset rights under Section 19.2.5. For the avoidance of doubt, if at the expiration of the Term Developer has completed and paid in full all Rehabilitation Work required on all Elements that have a number of years stated in the "Residual Life at Handback" column in Table 23-1 (Residual Life Requirements at Handback) of the Technical Provisions and funds in the Handback Requirements Reserve Account exceed the total amount required under Section 2(a) of Exhibit 6 (Handback Requirements Reserve Elements and Reserve Funding Mechanism) and the 10% contingency thereon required under Section 2(c) of Exhibit 6 (Handback Requirements Reserve Elements and Reserve Funding Mechanism), then IFA shall on demand authorize release of such excess to Developer or, at Developer's direction, the Collateral Agent, subject to the foregoing offset rights in favor of IFA.

6.13.5 Handback Requirements Letters of Credit

6.13.5.1 In lieu of establishing the Handback Requirements Reserve Account, Developer may deliver to IFA one or more letters of credit (each, a "Handback Requirements Letter of Credit"), on the terms and conditions set forth in this Sections 6.13.5 and 17.3. If the Handback Requirements Reserve Account has been previously established, Developer at any time thereafter may substitute one or more Handback Requirements Letters of Credit for all or any portion of the amounts required to be on deposit in the Handback Requirements Reserve Account, on the terms and conditions set forth in this Section 6.13.5 and Section 17.3. Upon receipt of the required substitute Handback Requirements Letter of Credit, IFA shall authorize the release to Developer of amounts in the Handback Requirements Reserve Account equal to the face amount of the substitute Handback Requirements Letter of Credit. IFA shall be named as the sole beneficiary under each Handback Requirements Letter of Credit.

6.13.5.2 If the face amount of any Handback Requirements Letter of Credit falls below the total amount required to be funded to the Handback Requirements Reserve Account prior to expiry of the Handback Requirements Letter of Credit, Developer shall be obligated to pay, when due, the shortfall into the Handback Requirements Reserve Account. Alternately, Developer may deliver a Handback Requirements Letter of Credit with a face amount equal to at least the total amount required to be funded to the Handback Requirements Reserve Account during the period up to the expiry of the Handback Requirements Letter of Credit, or may deliver additional Handback Requirements Letters of Credit or cause the existing Handback Requirements Letter of Credit to be amended to cover the shortfall before deposits of the shortfall to the Handback Requirements Reserve Account are due. If Developer fails to satisfy such obligation, IFA shall be entitled to deduct the amount due from the Quarterly Payment due to Developer at the time of payment of the Quarterly Payment to Developer, and shall deposit such amount to the Handback Requirements Reserve Account on behalf of Developer.

6.13.5.3 At the beginning of each calendar year, Developer shall have the right and obligation (in lieu of funding the Handback Requirements Reserve Account) to adjust the amount of the Handback Requirements Letter of Credit to equal the maximum amount required to be funded in the Handback Requirements Reserve Account during the forthcoming calendar year under Exhibit 6 (Handback Requirements Reserve Elements and Reserve Funding Mechanism), taking into account the most recent Rehabilitation Work Schedule and Rehabilitation Work performed to date under the Handback Requirements. No adjustment that serves to reduce the (aggregated) stated amount(s) of the Handback Requirements Letter of Credit shall be made without the prior, written consent of IFA, which, for purposes of clarity, shall be given if IFA is satisfied, in its good faith discretion, that such reduced (aggregated) stated amount(s) equals the maximum amount required to be funded in the Handback Requirements Reserve Account during the forthcoming calendar year.

6.13.5.4 IFA shall have the right to draw on the Handback Requirements Letter of Credit (a) as provided in Section 17.3.1.2 or (b) upon expiration or earlier termination of the Term for any reason, including termination due to IFA Default, as necessary to obtain the Handback Requirements Reserve Account funds to which IFA is then entitled under Section 6.13.4.

6.13.5.5 If IFA draws on a Handback Requirements Letter of Credit, IFA shall have the right to use and apply the proceeds of such drawing as provided in Section 6.13.3. Notwithstanding the foregoing, if IFA draws on the Handback Requirements Letter of Credit due to Developer's failure for any reason to deliver to IFA a new or replacement Handback Requirements Letter of Credit, on the same terms, or at least a one year extension of the expiration date of the existing Handback Requirements Letter of Credit, not later than 45 days before such expiration date, IFA shall deposit the proceeds from drawing on the expiring Handback Requirements Letter of Credit into the Handback Requirements Reserve Account.

ARTICLE 7. CONTRACTING AND LABOR PRACTICES

7.1 Disclosure of Contracts and Contractors

7.1.1 Developer shall provide IFA a monthly report listing (a) all Key Contracts in effect, (b) all Contracts in effect to which Developer is a party and (c) where Developer and an Affiliate are under direct Contract, all lower tier Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract with Developer are delegated to the Contractor. Developer also shall list in the monthly report the Contractors under such Contracts, guarantees of Key Contracts in effect and the Guarantors thereunder. Developer shall allow IFA ready access to all Contracts and records regarding Contracts and shall deliver to IFA, (i) within ten days after execution, copies of all Key Contracts, guarantees thereof and amendments and supplements to Key Contracts and guarantees thereof, and (ii) within ten days after receipt of a request from IFA, copies of all other Contracts and amendments and supplements thereto as may be requested.

7.1.2 As soon as Developer identifies a potential Contractor for a potential Contract described in the first sentence of Section 7.1.1, but in no event later than five days after Contract execution, Developer shall provide Notice to IFA of the name, address, phone number and authorized representative of such Contractor.

7.2 Responsibility for Work, Contractors and Employees

7.2.1 Developer shall retain or cause to be retained only Contractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. Developer shall ensure that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses, bonds and insurance required by applicable Laws.

7.2.2 The retention of Contractors by Developer does not relieve Developer of its responsibilities hereunder or for the quality of the Work or materials or services provided by it.

7.2.3 Each Contract shall include terms and conditions sufficient to ensure both the acknowledgement of and compliance by the Contractor with the requirements of the PPA Documents, and shall include those terms that are specifically required by the PPA Documents to be included therein, including, to the extent applicable, those set forth in Exhibit 23 (Federal Requirements) and any other applicable federal requirements.

7.2.4 Developer shall require each Contractor to familiarize itself with the requirements of any and all applicable Laws, including those Laws applicable to the use of federal-aid funds, and the conditions of any required Governmental Approvals.

7.2.5 Nothing in this Agreement will create any contractual relationship between IFA and any Contractor. No Contract entered into by or under Developer shall impose any obligation or liability upon any Indemnified Party to any Contractor or any of its employees.

7.2.6 Developer shall supervise and be fully responsible for the actions, omissions, negligence, willful misconduct, fraud, bad faith or breach of applicable Law or contract by any Developer-Related Entity or by any member or employee of Developer or any Developer-Related Entity, as though Developer directly employed all such individuals.

7.3 Key Contracts; Contractor Qualifications

7.3.1 Key Contract Approvals, Amendments and Termination; Use of and Change in Key Contractors

7.3.1.1 The Key Contract with each of the Design-Build Contractor(s), the Lead Engineering Firm(s), and Lead Operations and Maintenance Contractor (if applicable) shall be subject to IFA's prior written approval in its good faith discretion, which approval shall be based on compliance with the requirements for such contracts contained in Section 7.3.2.

7.3.1.2 Amendment of any Key Contract with respect to a matter set forth in Section 7.3.2 shall be subject to IFA's prior written approval in its good faith discretion. Amendment in any other material respect of the Key Contract with the Design-Build Contractor(s), the Lead Engineering Firm(s), or Lead Operations and Maintenance Contractor (if applicable) shall be subject to IFA prior written approval in its good faith discretion.

7.3.1.3 Developer shall retain, employ and utilize the firms and organizations specifically listed in Exhibit 2-H (Equity Members, Contractors and Key Personnel Commitments) to fill the corresponding Key Contractor positions listed therein. Developer shall not terminate any Key Contract, or permit or suffer any substitution or replacement (by way of assignment of the Key Contract, transfer to another of any material portion of the scope of work, or otherwise) of any Key Contractor, except in the case of material default by the Key Contractor or with IFA's prior written approval in its good faith discretion. For Key Contractors not known as of the Effective Date, Developer's selection thereof shall be subject to IFA's prior written approval in its good faith discretion.

7.3.1.4 Developer shall not terminate or permit termination of a Key Contract except:

a. In the case of material uncured default by the Key Contractor;

b. Termination of this Agreement and IFA's election not to assume the Key Contract;

c. If there occurs any suspension, debarment, disqualification or removal (distinguished from ineligibility due to lack of financial qualifications) of the Contractor, or there goes into effect an agreement for voluntary exclusion of the Contractor, from bidding, proposing or contracting with any federal, State or local department or agency; or

d. With IFA's prior written approval in its good faith discretion.

7.3.2 Key Contract Provisions

Each Key Contract shall:

7.3.2.1 Require the Key Contractor to carry out its scope of work in accordance with the PPA Documents, the Governmental Approvals, applicable Law, and plans, systems and manuals developed and used by Developer pursuant to the PPA Documents;

7.3.2.2 Include a covenant to maintain all licenses required by applicable Law;

7.3.2.3 Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the PPA Documents and in accordance with Good Industry Practice for work of similar scope and scale;

7.3.2.4 Set forth representations, warranties, guaranties and liability provisions of the Key Contractor in accordance with Good Industry Practice for work of similar scope and scale;

7.3.2.5 Expressly state that all remaining warranties and guarantees, express or implied, shall inure to the benefit of IFA and its successors and assigns upon expiration of the term or earlier termination of this Agreement;

7.3.2.6 Require the Key Contractor to procure the applicable Payment Bond and Performance Security (as applicable) required under Section 17.2, if any, prior to commencement of any work by or on behalf of the Key Contractor;

7.3.2.7 Expressly provide that the Key Contractor shall have no right to suspend or demobilize unless and until it delivers to IFA written Notice of the other contracting party's breach or default;

7.3.2.8 Require the personal services of and not be assignable by the Key Contractor without Developer's and IFA's prior written consent, provided that this provision shall not prohibit the subcontracting of portions of the Work;

7.3.2.9 Expressly include the requirements and provisions set forth in this Agreement applicable to Contractors regarding Intellectual Property rights and licenses;

7.3.2.10 Expressly require the Key Contractor to participate in meetings between Developer and IFA concerning matters pertaining to such Key Contractor, its work or the coordination of its work with other Contractors, provided that all direction to such Key Contractor shall be provided by Developer or other party to the Key Contract, and provided further that nothing in this Section shall limit the authority of IFA to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

7.3.2.11 Include an agreement by the Key Contractor to give evidence in any dispute resolution proceeding pursuant to Section 19.6, if such participation is requested by either IFA or Developer;

7.3.2.12 Without cost to Developer or IFA, and subject to the rights of the

Collateral Agent set forth in Article 21 and any Direct Agreement, expressly permit assignment to IFA or its successor, assignee or designee of all Developer's or other contracting party's rights under the Key Contract, contingent only upon delivery of written request from IFA following termination or expiration of this Agreement, allowing IFA or its successor, assign or designee to assume the benefit of Developer's or other contracting party's rights with liability only for those remaining obligations of Developer or the other contracting party accruing after the date of assumption, such assignment to include the benefit of all Key Contractor warranties, indemnities, guarantees and professional responsibility;

7.3.2.13 Expressly state that assumption of the Key Contract by IFA or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Key Contract by Developer or the other contracting party or for any amounts due and owing under the Key Contract for work or services rendered prior to assumption, without prejudice, however, to any rights of the Contractor under the Key Contract or applicable Law to suspend work or terminate the Key Contract by reason of any such breach or failure to pay amounts due;

7.3.2.14 Expressly include (a) a covenant to recognize and attorn to IFA upon receipt of written Notice from IFA that it has exercised step-in rights under this Agreement, without necessity for consent or approval from Developer or to determine whether IFA validly exercised its step-in rights, and (b) Developer's covenant to waive and release any claim or cause of action against the Key Contractor arising out of or relating to its recognition and attornment in reliance on any such written Notice;

7.3.2.15 Expressly include a covenant, expressly stated to survive termination of the Key Contract, to promptly execute and deliver to IFA or its successor, assign or designee a new contract between the Key Contractor and IFA or its successor, assign or designee on the same terms and conditions as the Key Contract, in the event (a) the Key Contract is rejected by Developer in bankruptcy or is wrongfully terminated by Developer and (b) IFA delivers written request for such new contract within 60 days following termination or expiration of this Agreement. The Key Contract also shall include a covenant, expressly stated to survive termination of the Key Contract, to the effect that if the Key Contractor was a party to an escrow agreement for an Intellectual Property Escrow and Developer terminates it, then the Key Contractor also shall execute and deliver to IFA, concurrently with such new contract, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property Escrow as made or provided under the terminated escrow agreement. The obligation to include the same terms and conditions is subject to the following exceptions: (i) terms and conditions of a Key Contract or Intellectual Property Escrow agreement rendered moot or inapplicable solely due to change in the identity of the contracting party to IFA or its successor, assign or designee; and (ii) terms and conditions of a Key Contract that must be adjusted due to schedule delay caused solely by Developer's rejection in bankruptcy or wrongful termination. This Section shall not apply to Key Contracts with IFA or Governmental Entities;

7.3.2.16 Expressly include requirements that: the Key Contractor (a) will maintain usual and customary Books and Records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider), and retain such Books and Records for the period set forth in Section 23.1.4 or other applicable period set forth in the PPA Documents, (b) permit audit thereof by both Developer

and IFA and (c) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish IFA under this Agreement;

7.3.2.17 Expressly include the Indemnified Parties as indemnitees, with direct right of enforcement, in any indemnity given by the Key Contractor under the Key Contract;

7.3.2.18 Expressly include an acknowledgement that the Key Contractor has no right or claim to any lien or encumbrance upon the East End Crossing or Project Right of Way for failure of the other contracting party to pay amounts due the Key Contractor, and a waiver of any such right or claim that may exist at Law or in equity;

7.3.2.19 Include the right of Developer to terminate the Key Contract in whole or in part upon any termination of this Agreement, in each case without liability of Developer or IFA for the Key Contractor's lost profits or business opportunity;

7.3.2.20 Not contain any terms that do not comply or are inconsistent with the terms of the PPA Documents, including terms that do not comply or are inconsistent with this Article 7 or with the applicable requirements of Section 23.1 regarding maintenance of Books and Records, that fail to incorporate the applicable federal requirements set forth in Exhibit 23 (Federal Requirements), or that are inconsistent with the requirements of the relevant scope of Work; and

7.3.2.21 Expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of IFA shall be null and void.

7.4 Key Personnel

7.4.1 Developer shall retain, employ and utilize the individuals specifically listed in Exhibit 2-H (Equity Members, Contractors and Key Personnel Commitments) or in the Project Management Plan to fill the corresponding Key Personnel positions listed therein. Developer shall not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by IFA pursuant to Section 7.4.2.

7.4.2 Developer shall provide Notice to IFA of any proposed replacement for any Key Personnel position. IFA shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual.

7.4.3 Developer shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Work. The following Key Personnel are intended to be full-time positions: Project Manager – full time during design/construction; Deputy Project Manager – full time during design/construction; Lead Engineer – full time during design; Construction Manager -full time during construction; Quality Manager – full time during design/construction; Safety Manager – full time during design/construction; Environmental Compliance Manager – full time during design/construction; Operations and Maintenance Manager – full time during operations period. Developer shall

commit each of these Key Personnel exclusively to the East End Crossing, and each such person shall have no other conflicting assignments during the periods indicated in this Section 7.4.3.

7.4.4 Developer shall provide IFA with office and cell phone numbers and email addresses for each Key Personnel. IFA shall have the ability to contact any Key Personnel 24 hours per day, seven days per week.

7.5 [Reserved]

7.6 Contracts with Affiliates

7.6.1 Developer shall have the right to have Work and services performed by Affiliates only under the following terms and conditions:

7.6.1.1 Developer shall execute a written Contract with the Affiliate;

7.6.1.2 The Contract shall comply with all applicable provisions of the PPA Documents, including this Article 7, be consistent with Good Industry Practice, and be in form and substance substantially similar to Contracts then being used by Developer or Affiliates for similar Work or services with unaffiliated Contractors;

7.6.1.3 The Contract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;

7.6.1.4 The pricing, scheduling and other terms and conditions of the Contract shall be no less favorable to Developer than those that Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor. Developer shall bear the burden of proving that the same are no less favorable to Developer; and

7.6.1.5 No Affiliate (other than a Design-Build Contractor if it is an Affiliate) shall be engaged to perform any Work or services which any PPA Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice.

7.6.2 Before entering into a written Contract with an Affiliate or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Contract to IFA for review and comment. IFA shall have 20 days after receipt to deliver its comments to Developer. If the Contract with the Affiliate is a Key Contract, it shall be subject to IFA's approval as provided in Section 7.3.1.

7.6.3 Developer shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

7.7 Labor Standards

7.7.1 In the performance of its obligations under the PPA Documents, Developer at all times shall comply, and require by contract that all Contractors and vendors comply, with all applicable federal and State labor, occupational safety and health Laws and federal and State orders.

7.7.2 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them, and shall possess the skill and experience necessary to fulfill the standards and requirements of the PPA Documents applicable to the Work assigned to them, including any applicable minimum levels of skill and experience set forth in the Technical Provisions.

7.7.3 If any individual employed by Developer or any Contractor lacks such skill, experience, licensing and certification, or is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the Work. If, after Notice and reasonable opportunity to cure, such individual is not removed or if Developer fails to ensure that skilled, experienced, licensed and certified personnel are furnished for the proper performance of the Work, then IFA may suspend the affected portion of the Work by delivering to Developer written Notice of such suspension. Such suspension shall in no way relieve Developer of any obligation contained in the PPA Documents or entitle Developer to any additional compensation, time extension or other Claim.

7.8 Ethical Standards

7.8.1 Within 90 days after the Effective Date, Developer shall adopt written policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel, in dealing with (a) IFA and the Department and (b) employment relations. Such policy shall be subject to review and comment by IFA prior to adoption. Such policy shall include standards of ethical conduct concerning the following:

7.8.1.1 Restrictions on gifts and contributions to, and lobbying of, IFA, the Department and any of their respective members, commissioners, directors, officers and employees, and elected State officials;

7.8.1.2 Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

7.8.1.3 Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any Developer-Related Entity;

7.8.1.4 Restrictions on directors, members, officers or supervisory or management personnel of any Developer-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper

discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the East End Crossing or employees;

7.8.1.5 Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of Developer or the East End Crossing, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

7.8.1.6 Restrictions on directors, members, officers or employees of any Developer-Related Entity performing any of the Work if the performance of such services would be prohibited under IFA's conflict of interest rules and policies.

7.8.2 Developer shall cause its directors, members, officers and supervisory and management personnel, and require those of all other Developer-Related Entities, to adhere to and enforce the adopted policy on ethical standards of conduct. Developer shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

7.8.3 Notwithstanding the foregoing in this Section 7.8, Developer has an affirmative obligation under this Agreement to disclose to IFA and to the Indiana State Ethics Commission when an interested party is or becomes an employee of IFA or the State. This obligation extends only to those facts that Developer knows or reasonably could know. For purposes of this Section 7.8.3, "interested party" means (a) the individual executing this Agreement, (b) an individual who has an interest of three percent (3%) or more of Developer, (c) any member of the immediate family of an individual specified in clause (a) or (b). For purposes of the preceding sentence, "immediate family" means the spouse and the unemancipated children of an individual.

7.9 Non-Discrimination; Equal Employment Opportunity

During the performance of this Agreement, Developer, for itself, its assignees and successors in interest agrees as follows:

7.9.1 Compliance with Regulations: Developer shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Parts 21, 24, 26 and 60 as they relate to nondiscrimination, and with Executive Order 11246 titled Equal Employment Opportunity as amended by Executive Order 11875, as they may be amended from time to time, (hereinafter collectively referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

7.9.2 Nondiscrimination: This covenant is enacted, in part, pursuant to the Indiana Age Discrimination in Employment Act, and the Americans with Disabilities Act.

Pursuant to the Indiana Civil Rights Law, specifically IC 22-9-1-10, and in keeping with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, Developer shall not discriminate against any employee or applicant for employment in the performance of this Agreement 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 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"). Furthermore, Developer certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on Protected Characteristics in the provision of services.

Developer, with regard to the Work performed by it during this Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Contractors, including procurement of materials and leases of equipment. Developer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in Appendix B and C of the Regulations.

7.9.3 Solicitations for Contracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Developer for work to be performed under a Contract, including procurement of materials or leases of equipment, each potential Contractor or Supplier shall be notified by Developer of Developer's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

7.9.4 Information and Reports: Developer shall provide to IFA or its designee all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to Books and Records, accounts, other sources of information and its facilities as may be determined by IFA to be pertinent to ascertain compliance with such regulations or directives. Where any information required of Developer is in the exclusive possession of another who fails or refuses to furnish this information, Developer shall so certify to IFA and shall set forth what efforts it has made to obtain this information.

7.9.5 Sanctions for Noncompliance: In the event of Developer's non-compliance with the nondiscrimination provisions of this Agreement, IFA shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including:

7.9.5.1 Withholding of payments to Developer under this Agreement until Developer complies; and/or

7.9.5.2 Cancellation, termination or suspension of this Agreement in whole or in part for Developer Default.

7.9.6 Certification of Nonsegregated Facilities: Developer hereby certifies that Developer does not maintain or provide for Developer's employees any segregated facilities at any of Developer's establishments, and that Developer does not permit employees to perform their services at any location, under Developer's control, where segregated facilities are maintained. Developer certifies further that Developer will not maintain or provide for employees any segregated facilities at any of Developer's establishments, and that Developer will not permit Developer's employees to perform their services at any location, under Developer's control, where segregated facilities are maintained. Developer agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Agreement (Exhibit 23 (Federal Requirements), Attachment 4). As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and

housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, or national origin, because of habit, local custom or otherwise.

7.9.7 Incorporation of Provisions: Developer shall include the provisions of Sections 7.9.1 through 7.9.6 in every Contract to which Developer is a party, including procurement of materials and leases of equipment unless exempt by the Regulations, or directives issued pursuant thereto. Developer shall require that they be included in all Contracts at lower tiers, so that such provisions will be binding upon each Contractor and Supplier. Developer shall take such action with respect to any Contractor or procurement as IFA or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided however, that in the event Developer becomes involved in, or is threatened with, litigation with a Contractor or Supplier as a result of such direction, Developer may request IFA to enter into such litigation to protect the interests of the State, and in addition, Developer may request the United States to enter into such litigation to protect the interests of the United States. IFA is not obligated, however, to enter into such litigation.

7.9.8 Developer shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions, including those set forth in Exhibit 23 (Federal Requirements), and shall require its Contractors to comply with such provisions. Such provisions shall apply to the entire East End Crossing and all the Work.

7.10 Disadvantaged Business Enterprise

7.10.1 General

7.10.1.1 IFA's Disadvantaged Business Enterprise (DBE) Special Provisions are set forth in Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions). The purpose of the DBE Special Provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of design and construction contracts financed in whole or in part with federal funds. Developer shall comply with all applicable requirements set forth in the DBE Special Provisions and the Department's Disadvantaged Business Enterprise Program Manual adopted pursuant to 49 CFR Part 26, and the provisions in Developer's IFA-approved DBE Performance Plan.

7.10.1.2 Developer shall include provisions to effectuate the DBE Special Provisions in every applicable Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all applicable Contracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each applicable Contractor.

7.10.2 DBE Participation Goals

The DBE Goal for DBE participation in the Work required under this Agreement for East End Crossing design, including professional services, and construction of the East End Crossing is nine percent (9%) of the total design and construction costs for the East End Crossing. For purposes of clarity, assessment as to whether Developer has achieved the DBE Goal will be measured against the aggregated design and construction costs, and not separately as to each of the design costs and construction costs. This DBE Goal reflects only the anticipated ability of DBE firms to participate on the East End Crossing and is to be used as

a measurement of success. Developer shall demonstrate that it will make good faith efforts to meet the DBE Goal for the East End Crossing in accordance with 49 CFR 26, Appendix A.

7.10.3 DBE Performance Plan

7.10.3.1 Developer has submitted to IFA as part of its Proposal the Preliminary DBE Performance Plan attached to this Agreement as Exhibit 2-L (Developer's Preliminary DBE Performance Plan). If not previously approved in writing by IFA, IFA will deliver to Developer comments of IFA and the Department's Economic Opportunity Division on the Preliminary DBE Performance Plan within 30 days after the Effective Date. Developer shall submit to IFA, within 30 days after receiving such comments, a proposed final DBE Performance Plan. The proposed final DBE Performance Plan is subject to further review and comment by IFA and the Department's Economic Opportunity Division and to IFA's approval prior to and as a condition to issuance of NTP2.

7.10.3.2 In preparing the final DBE Performance Plan, Developer shall include, to the extent known at the time of preparation:

a. The names of currently-certified DBE firms to which the Developer or the Design-Build Contractor has made commitments, the percentage of each such entity's DBE participation and a description of the types of work each such DBE firm listed is to perform;

b. The dates and manner in which each of the listed DBE firms were contacted for their respective interest in DBE sub-contracting opportunities for the East End Crossing;

c. A description of each such currently-certified and listed DBE firm's respective interest in sub-contracting for the East End Crossing;

d. An explanation of how the Developer plans to recruit, solicit and evaluate potential DBEs to utilize on the East End Crossing;

e. A description of demonstrated success with the DBE program on other projects;

f. a breakdown of anticipated DBE commitments (i.e. anticipated percentages to go to design, construction, and supplies);

g. Estimated time frames for achieving DBE participation (i.e. in what years of the project will DBE participation by realized);

h. Strategies for monitoring DBE utilization and contract compliance, including proper DBE credit, performance of commercially useful function, and proper payment to DBEs;

i. The name of Developer's "DBE Compliance Manager" and description of the DBE Compliance Manager's reporting structure and responsibilities; and

j. Commitment to communicate with IFA and the Department on DBE participation and compliance efforts throughout the life of the Project.

7.10.3.3 The final DBE Performance Plan shall respond to the comments of IFA and the Department's Economic Opportunity Division, comply with all applicable Laws and Governmental Approvals, including 49 CFR Part 26, include all the matters described in Section 120-3.01 of Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions), and be consistent with Developer's DBE certification set forth in Exhibit 2-M (DBE Certification).

7.10.3.4 Developer shall exercise good faith efforts to achieve the DBE Goal for the East End Crossing through implementation of Developer's approved DBE Performance Plan.

7.10.3.5 Developer shall comply with provisions relating to 25 IAC 5 as set forth in Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions).

7.10.4 Changes in the D&C Work

7.10.4.1 If the scope of the D&C Work changes after the Effective Date such that there are additional opportunities for DBE firms to participate, Developer shall amend and update the DBE Performance Plan to show how it will include, or undertake good faith efforts to include, additional DBE participation in order to achieve the DBE Goal.

7.10.4.2 If the scope of the D&C Work changes after the Effective Date based on an IFA Change Order or Directive Letter, or if Developer encounters unknown conditions on the East End Crossing, in either case resulting in reduced DBE participation than originally proposed and committed to by Developer, then Developer will not be held responsible for the reduced DBE participation; provided that the Developer has followed the procedures in 49 CFR 26.53(f), IFA has approved the change in DBE utilization and IFA has verifiable evidence that these changes or unknown conditions are not a result of actions by any Developer-Related Entity.

7.10.5 DBE Participation in O&M Work

Developer agrees to use good faith efforts to encourage DBE participation in the O&M Work.

7.10.6 Cancellation of DBE Contracts

Developer shall not cancel or terminate any Contract with a DBE firm except with IFA's prior written consent and in accordance with all requirements and provisions of 49 CFR 26.53.

7.11 Workforce Diversity and Small Business Performance Plan

7.11.1 Developer has submitted to IFA as part of its Proposal the Preliminary Workforce Diversity and Small Business Performance Plan attached to this Agreement as Exhibit 2-N (Developer's Workforce Diversity and Small Business Performance Plan). If not previously approved in writing by IFA, IFA will deliver to Developer comments of IFA and the Department's Economic Opportunity Division on the Preliminary Workforce Diversity and Small Business Performance Plan within 30 days after the Effective Date. Developer shall submit to IFA, within 30 days after receiving such comments, a proposed-final Workforce Diversity and Small Business Performance Plan. The proposed-final Workforce Diversity and Small Business

Performance Plan is subject to further review and comment by IFA and the Department's Economic Opportunity Division and to IFA's approval.

7.11.2 Developer's Workforce Diversity and Small Business Performance Plan shall incorporate and be consistent with Exhibit 8 (Equal Employment Opportunity Trainees Special Provisions) and shall include a commitment to participate in the Department's Equal Employment Opportunity Trainee Program. The Workforce Diversity and Small Business Performance Plan shall apply to all the original Construction Work for the East End Crossing.

7.11.3 The purpose of the Workforce Diversity and Small Business Performance Plan is to ensure that inexperienced and untrained women, disabled veterans and other minority workers, have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Developer shall perform and comply with all requirements set forth in of the Workforce Diversity and Small Business Performance Plan.

7.11.4 Developer shall include provisions to effectuate the Workforce Diversity and Small Business Performance Plan in every applicable Contract to which it is a party (including purchase orders and task orders for Work), and shall require that such provisions be included in all applicable Contracts, except for Contracts with IFA or Governmental Entities, so that such provisions will be binding upon each Contractor performing Work to which the Plan applies. The foregoing shall not apply to Contracts at any tier with IFA or Governmental Entities (excepting this Agreement).

7.11.5 If Developer does not comply with the Workforce Diversity and Small Business Performance Plan, IFA shall have the right to withhold payment of the Milestone Payments and Availability Payments until Developer submits to IFA good faith efforts documentation and takes acceptable remedial action.

7.11.6 IFA shall be entitled to a reduction of each annual MAP on account of the costs assumed in the Financial Model relating to implementation of the Workforce Diversity and Small Business Performance Plan if Developer fails to meet any of the following requirements and where such failure indicates a lack of good faith in meeting these requirements:

7.11.6.1 Ensure construction contractors included as part of the Developer's team comply with the requirements of the Department's "Equal Employment Opportunity Trainee Program," including meeting reporting requirements and documenting good faith efforts to meet the training goals assigned to each construction contractor, or

7.11.6.2 Provide the required hours of training for Department-approved trainees/apprentices in the proposed training program in Developer's final Workforce Diversity and Small Business Performance Plan.

7.11.7 Failure to provide the required training damages the effectiveness and integrity of the Workforce Diversity and Small Business Performance Plan and thwarts IFA's and the Department's federal mandate to bring inexperienced and untrained disadvantaged individuals, women and minorities into the construction industry. Although precise damages to the program are impractical to calculate, they are, at a minimum, equivalent to the loss to the individuals who were the intended beneficiaries of the program. Therefore, where Developer fails, by the Final Acceptance Date, to provide the required number of hours of training and fails to submit

acceptable good faith efforts documentation which establishes why Developer was unable to do so, IFA shall have the right to assess damages against Developer, and deduct such damages from the Milestone Payments or from the Maximum Availability Payment, in an amount equal to (a) the number of hours of training not provided times the journey worker hourly scale, plus (b) benefits. The journey worker scale is that for the classification identified in the Workforce Diversity and Small Business Performance Plan.

7.12 Additional Diversity Initiatives

Developer is encouraged to make additional efforts to solicit and recruit minority and women-owned businesses and small businesses to participate in the East End Crossing.

7.13 Prevailing Wages

7.13.1 Developer shall pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Construction Work not less than the highest prescribed prevailing rates of wages, as provided in the statutes and regulations applicable to public construction projects and public work contracts, including IC 5-16-7 and, to the extent provided in Exhibit 23 (Federal Requirements), the Davis-Bacon Act. For purposes of clarity, as between the prescriptions under the Davis-Bacon Act (if applicable) and the "Common Wage" prescribed pursuant to IC 5-16-7, the "prevailing rate of wages" shall be, in respect of each labor category, the higher value prescribed. Developer shall comply and cause its Contractors performing Construction Work to comply with all Laws pertaining to prevailing wages, including arranging for a "Common Wage" hearing pursuant to IC 5-16-7.

7.13.2 The provisions of Section IV of Attachment 2 to Exhibit 23 (Federal Requirements) shall apply to the entire East End Crossing and to all covered classifications of employees (other than employees of IFA or Governmental Entities acting as Contractors) regardless of the contractual relationship between Developer or Contractors and laborers, mechanics or field surveyors.

7.13.3 It is Developer's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Agreement is in effect, Developer shall bear the cost of such changes and shall have no Claim against IFA on account of such changes. Without limiting the foregoing, no Claim will be allowed which is based upon Developer's lack of knowledge or a misunderstanding of any such requirements or Developer's failure to include in the Financial Model or Financial Model Updates adequate increases in such wages over the duration of this Agreement.

7.13.4 Developer shall comply and cause its Contractors performing Construction Work, other than IFA or Governmental Entities acting as Contractors, to comply with all Laws, regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

7.13.5 If it is found that a laborer, mechanic or field surveyor employed by Developer or a Contractor has been or is being paid a rate of wages less than the rate of wages required by this Agreement to be paid, IFA may declare a Developer Default under Section 19.1.1.12, and such a Developer Default may be the subject of a Warning Notice pursuant to Section 19.2.9 and lead to termination of this Agreement pursuant to Section 20.3.1.3.

7.14 Prompt Payment to Contractors

Developer shall require that the following provisions be incorporated in each Design-Build Contract:

7.14.1 The Design-Build Contractor shall pay each subcontractor for Work satisfactorily performed within ten days after receiving payment from Developer for the Work satisfactorily performed by the subcontractor, and shall pay any retainage on a subcontractor's Work within ten days after satisfactory completion of all of the subcontractor's Work after receiving payment from Developer of such retainage amount. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor. For the purpose of this Section 7.14, satisfactory completion is accomplished when:

7.14.1.1 The subcontractor has fulfilled the requirements of both the Design-Build Contract and the subcontract for the subcontracted Work, including the submittal of all information required by the specifications and the Design-Build Contractor; and

7.14.1.2 The work done by the subcontractor has been inspected and approved by Developer and the final quantities of the subcontractor's work have been determined and agreed upon.

7.14.2 The foregoing payment requirements apply to all tiers of subcontractors and shall be incorporated into all subcontracts.

7.15 Retainage

Developer shall comply and cause its Contractors to comply with 49 CFR 26.29 concerning prompt payment of retainage to subcontractors.

7.16 Suspension and Debarment

7.16.1 Developer certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Section 7.16.1, the term “principal” for purposes of this Agreement means an officer, director, owner, partner, Key Personnel, 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 Developer.

7.16.2 Developer shall deliver to IFA, not later than January 31 of each year through Final Acceptance, and upon Final Acceptance, signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from Developer, from each affiliate of Developer (as “affiliate” is defined in 29 CFR 105 or successor regulation of similar import), and from each Contractor whose Contract amount equals or exceeds $100,000. The annual certification shall be substantially in the form of paragraphs 1.a through 1.d of Attachment 6 to Exhibit 23 (Federal Requirements).

7.17 Uniforms

Any uniforms, badges, logos and other identification worn by personnel of Developer-Related Entities shall bear colors, lettering, design or other features to ensure clear differentiation from those of IFA, the Department, KYTC and their respective employees.

ARTICLE 8. RELATED FACILITIES; RESERVED RIGHTS

8.1 Integration with Related Transportation Facilities

8.1.1 Developer shall locate, configure, design, construct, operate and maintain the termini, interchanges, ramps, intersections, crossings, entrances and exits of the East End Crossing so that the East End Crossing will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe and orderly transition of traffic to and from, Related Transportation Facilities. The design for the East End Crossing shall include and provide for such compatibility, integration and transition. The design, construction, operation and maintenance of the East End Crossing shall satisfy all provisions of the PPA Documents and Project Management Plan relating to compatibility, integration and transition with or at Related Transportation Facilities, including those concerning signage, signaling and communications with Users. Developer shall not block, hinder, change or restrict, partially or wholly, access to or from the East End Crossing from or to any Related Transportation Facility without the prior express written consent of, and on such terms and conditions as may be specified by, IFA and the applicable Governmental Entity or other party, as the case may be.

8.1.2 [reserved].

8.1.3 Without limiting the foregoing, Developer shall cooperate and coordinate with IFA and any third party that owns, manages, operates or maintains a Related Transportation Facility with regard to the construction, maintenance and repair programs and schedules for the East End Crossing and the Related Transportation Facility, in order to minimize disruption to the operation of the East End Crossing and the Related Transportation Facility.

8.1.4 To assist Developer, IFA shall provide to Developer during normal working hours, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of IFA or its contractors and consultants pertaining to Related Transportation Facilities. Developer, at its expense, shall have the right to make copies of the same. Developer, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to identify the Related Transportation Facilities and achieve such compatibility, integration and transition.

8.1.5 At Developer's request from time to time, IFA shall provide reasonable assistance to Developer in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Developer may have against any such third parties. Such assistance may include IFA's participation in meetings and discussions. In no event shall IFA be required to bring any legal action or proceeding against any such third party. At Developer's request, IFA and Developer shall work jointly to establish a scope of work and budget for IFA's Recoverable Costs in connection with providing such cooperation to Developer. Subject to any agreed scope of work and budget, Developer shall reimburse IFA for all costs, including IFA's Recoverable

Costs, it incurs in connection with rendering such assistance within ten days after written request therefor.

8.1.6 Each of IFA and the Department shall have at all times, without obligation or liability to Developer, the right to conduct traffic management activities on its Related Transportation Facilities and all other facilities of the State transportation network in the area of the East End Crossing in accordance with its standard traffic management practices and procedures in effect from time to time.

8.2 Reserved Airspace and Business Opportunities

8.2.1 Developer's rights and interests in the East End Crossing and Project Right of Way are and shall remain specifically limited only to such rights and interests that are necessary or required for performing the Work and Developer's timely fulfillment of its obligations under the PPA Documents. Developer's rights and interests specifically exclude any and all Airspace and any and all improvements, rights and personal property above, on or below the surface of the Project Right of Way which are not necessary and required for such purposes.

8.2.2 IFA reserves to itself, and Developer hereby relinquishes, all right and opportunity to develop and pursue, and to permit or assign to others the right and opportunity to develop and pursue, anywhere in the world entrepreneurial, commercial and business activities that are ancillary or collateral to the use and operation of the East End Crossing and Project Right of Way as provided in this Agreement (collectively, "Business Opportunities"). Unless expressly authorized by IFA in its sole discretion, Developer will not grant permission for any Person (other than IFA) to use or occupy the East End Crossing for any ancillary or collateral purpose. The foregoing reservation in no way precludes Developer or any Affiliate, Contractor or other Developer-Related Entity from:

8.2.2.1 Carrying out the Financial Plan;

8.2.2.2 Arranging and consummating Refinancings;

8.2.2.3 Creating and using brochures and other promotional and marketing material, responses to requests for qualifications or proposals, and similar communications that include descriptions, presentations and images of the East End Crossing or the Work for the purpose of promoting its business of developing, financing and operating transportation projects; or

8.2.2.4 Competing on any request or solicitation for proposals or bids issued by IFA in connection with Business Opportunities.

8.2.3 The Business Opportunities reserved to IFA include all the following:

8.2.3.1 All rights to finance, design, construct, operate and maintain any passenger or freight rail facility, roads and highways or other mode of transportation in the Airspace, including bridges, tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways, and to grant to others such rights, subject to the provisions of Sections 8.2.4, provided that construction and operation of any expansion of the Hourly Flow of traffic on the East End Crossing, whether by Developer or IFA or their respective contractors, is not a Business Opportunity;

8.2.3.2 All rights of IFA to derive revenues and other direct benefits from the installation, use, lease, grant of indefeasible rights to use, sale or operation by anyone of electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware, software and capacity, over, on, under or adjacent to any portion of the Project Right of Way, whether before or after the Effective Date, except for the capacity of any such improvement installed by Developer that is necessary for and devoted exclusively to the operation of the East End Crossing. For avoidance of doubt:

a. If Developer installs any such improvements, all use and capacity thereof not necessary for operation of the East End Crossing are reserved to, and shall be the sole property of, IFA; and

b. All conduit, innerduct and other Utility space, and all hangers and supports for future conduit or Utility installations, installed as part of the East End Crossing are reserved to, and shall be the sole property of, IFA;

8.2.3.3 All rights of IFA to derive revenues and other direct benefits from the installation, use, lease, grant of indefeasible rights to use, sale or operation by anyone of any oil or gas pipeline, water line, fuel line, power line or other Utility in, on, under, above or along the East End Crossing, Project Right of Way or Airspace, except only to the extent required solely for construction, operation or maintenance of the East End Crossing;

8.2.3.4 All rights to use, sell and derive revenues from traffic data and other data generated from operation of the East End Crossing except use of such data as required solely for operation of the East End Crossing;

8.2.3.5 All ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and operation of service areas, rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate East End Crossing within the Airspace;

8.2.3.6 All ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or arising out of design, development, use, operation or maintenance of the East End Crossing;

8.2.3.7 All rights to install, use and derive information, services, capabilities and revenues from Intelligent Transportation Systems and applications, except installation and use of any such systems and applications by Developer as required solely for operation of the East End Crossing. For avoidance of doubt, if Developer installs any such systems or applications, all use and capacity thereof not necessary for operation of the East End Crossing are reserved to, and shall be the sole property of, IFA;

8.2.3.8 All rights and opportunities to use, or allow others to use, the East End Crossing to generate and sell, or as a platform to install equipment to generate and sell, power from wind action;

8.2.3.9 All rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature, pseudonym, reputation or other representation, in any form or medium, of IFA or the East End

Crossing, or that may be confused with those of IFA or the East End Crossing;

8.2.3.10 All rights and opportunities to grant to others sponsorship, advertising, branding and naming rights with respect to the East End Crossing or any portion thereof;

8.2.3.11 All rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or Transponders to purchase services or goods other than payment of tolls;

8.2.3.12 All rights to toll, collect tolls and perform tolling activities in the Airspace and Project Right of Way and to grant to others such rights; and

8.2.3.13 Any other commercial or noncommercial development or use of the Airspace for other than operation of the East End Crossing.

8.2.4 If the development, use or operation of the Airspace by IFA or anyone claiming under or through IFA, or if the development or operation of a Business Opportunity in the Airspace, prevents Developer from performing its fundamental obligations under this Agreement or materially adversely affects its costs, such impacts will be treated as a Relief Event under Section 15.1.

8.2.5 Prior to deciding whether to pursue or implement a Business Opportunity, IFA may require Developer to provide analysis of the impacts thereof on Developer's costs and schedule, as if it were a Request for Change Proposal, in which case the Parties shall follow the procedures under Section 16.1.

8.2.6 Developer may propose Business Opportunities, including expected financial and other terms, for IFA consideration. In the event Developer desires to utilize, develop or take advantage of any Business Opportunity, it may submit to IFA its ideas and proposals for development thereof. If and only if IFA, in its sole discretion, is interested in the proposed Business Opportunity, IFA and Developer shall thereafter negotiate cooperatively and in good faith to formulate a structure, terms and conditions and written agreement(s) for such Business Opportunity and its use and development, which may include a development agreement, concession or franchise agreement, license agreement, royalty agreement, joint venture, or other form of lawful joint enterprise or lawful joint participation concerning the Business Opportunity. Nothing herein, however, creates any legally binding obligation on the part of IFA or Developer to continue such negotiations or to enter into any structure or agreement for development or use of a Business Opportunity. Neither Developer's submission to IFA of a proposed Business Opportunity or related ideas, concepts, financial models or other information, nor IFA's election not to engage in such proposed Business Opportunity with Developer, shall preclude IFA from thereafter pursuing such Business Opportunity or using, adapting and disclosing the ideas, concepts, financial models or other information presented, provided IFA pursues it through a competitive procurement process in which Developer is afforded a fair and non-discriminatory opportunity to compete.

8.2.7 In the event a Developer Default concerns a breach of the provisions of this Section 8.2, in addition to any other remedies, IFA shall be entitled to Developer's disgorgement of all profits from the prohibited activity, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 400 basis points, from the date of collection until the

date disgorged, and to sole title to and ownership of the prohibited assets and improvements and revenues derived therefrom.

8.2.8 Developer is prohibited from placing or permitting any outdoor advertising within the boundaries of the Project Right of Way.

ARTICLE 9. TECHNOLOGY ENHANCEMENTS; SAFETY COMPLIANCE; EMERGENCY REPAIR WORK

9.1 Technology Enhancements

9.1.1 Developer shall be obligated to make Technology Enhancements on the systems it provides as and when necessary (a) to correct Defects, (b) under the Rehabilitation Work Schedule, or (c) to comply with State-wide changes in interoperability, compatibility and reciprocity standards, requirements, agreements and protocols in accordance with applicable provisions of the Technical Provisions.

9.1.2 Each Technology Enhancement described in Section 9.1.1(a) and (b) shall be at Developer's sole cost, and Developer shall have no right to a Relief Event, additional compensation, schedule relief or other relief on account of such Technology Enhancements; for each Technology Enhancement described in section 9.1.1(c) Developer shall be entitled to submit a Relief Event Notice and such Technology Enhancements shall be treated as a Relief Event under clause (d) of the definition of "Relief Event" (Non-Discriminatory O&M Change).

9.2 Safety Compliance

9.2.1 IFA is entitled from time to time to issue Safety Compliance Orders to Developer with respect to the East End Crossing to correct a specific safety condition or risk involving the East End Crossing that IFA has reasonably determined exists through investigation or analysis.

9.2.2 IFA shall use good faith efforts to inform Developer at the earliest practicable time of any circumstance or information relating to the East End Crossing which in IFA's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of Emergency, IFA shall consult with Developer prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Developer resources to fund the Safety Compliance work.

9.2.3 Subject to conducting such prior consultation (unless excused in the case of Emergency), IFA may issue Safety Compliance Orders to Developer at any time from and after the Effective Date.

9.2.4 Developer shall implement each Safety Compliance Order as expeditiously as reasonably possible following its issuance. Developer shall diligently prosecute the work necessary to achieve such Safety Compliance until completion. In no event shall Developer be entitled to claim that any Force Majeure Event or Relief Event relieves Developer from compliance with any Safety Compliance Order.

9.3 Emergency Repair Work

9.3.1 Developer shall be responsible for procuring and overseeing temporary and/or permanent repair work in response to an Emergency for the East End Crossing from and after issuance of NTP2. Developer shall solicit competitive bids for such work if FHWA or FEMA regulations, policies or procedures require competitive bidding in order to obtain reimbursement for eligible costs. IFA shall provide oversight relating to such Emergency-related repair work in accordance with the PPA Documents.

9.3.2 Developer shall ensure that such repair work is performed in accordance with the PPA Documents and State and federal Law applicable to such Emergency-related repair work, including the requirements of the FHWA Emergency Relief Manual as most recently published by the FHWA (http://www.fhwa.dot.gov/reports/erm/). Further, Developer shall maintain estimates, cost records and supporting documentation in accordance with such Laws, and in a form and content to enable IFA to seek reimbursement for eligible costs from FHWA or FEMA, if applicable.

ARTICLE 10. PAYMENTS TO DEVELOPER; IFA'S COSTS

10.1 Milestone Payment and Adjustments

10.1.1 Subject to Sections 10.1.2.1, 10.1.2.2 and 5.10.8, IFA agrees to make payments (each a "Milestone Payment") in the amounts as calculated pursuant to Exhibit 10 and according to the schedule set forth in Exhibit 4 (in the aggregate, the "Milestone Payment Amount"). The Milestone Payments are payments IFA chooses to make as an economic measure in lieu of larger Availability Payments, in order to maximize the overall value to IFA of this Agreement.

10.1.1.1 IFA has entered into an agreement (the "Milestone Agreement") with the Department, pursuant to which the Department will agree to make payments to IFA for deposit with the Project Trustee in an amount at least equal to the Milestone Payments owed by IFA under this Agreement. The Milestone Payments are limited obligations of the IFA, payable solely from the amounts held by the Project Trustee under the Project Trust Agreement for this purpose. The obligation of the IFA to make Milestone Payments does not constitute an indebtedness of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The obligation of the IFA to make Milestone Payments does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The IFA has no taxing power. The Developer has no right to have taxes levied or compel appropriations by the Indiana General Assembly for any payment of the Milestone Payments.

10.1.1.2 In the Milestone Agreement, the Department covenants that it will do all things lawfully within its power to obtain and maintain funds from which to meet its payment obligations to IFA under the Milestone Agreement, including, but not limited to, requesting an appropriation in an amount sufficient to meet its payment obligations to IFA under the Milestone Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved. In addition, the IFA hereby covenants that it

will do all things lawfully within its power to obtain and maintain funds from which to meet its Milestone Payment obligations owed to the Developer under this Agreement, including, but not limited to (i) requesting, or causing the Department to request, an appropriation to, or for the benefit of the Department, in an amount sufficient to meet its payment obligations to IFA under the Milestone Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved; and (ii) requesting an appropriation in an amount sufficient to meet its Milestone Payment obligations owed to the Developer under this Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved.

10.1.1.3 IFA hereby covenants and agrees to use its best efforts to enforce the provisions of the Milestone Agreement and the obligations of the Department thereunder.

10.1.1.4 IFA shall provide written notice to the Developer within 5 days of receiving a notice of non-extension issued by the Department under the Milestone Agreement.

10.1.2 Except as otherwise set forth in Section 5.8 (in respect of the Milestones of Substantial Completion and Final Acceptance), Developer shall provide Notice to IFA when Developer believes it has achieved a Milestone. IFA shall inspect the Work and either (a) certify such completion or (b) provide Notice to Developer why it is not certifying such completion (setting forth reasons why IFA is not certifying), in either case within 20 Business Days of the date IFA receives Developer's Notice. Upon receipt of an IFA certificate certifying completion of (a) Milestone(s), Developer shall submit an invoice for the Milestone Payment(s) due and payable, in each instance, in the amount (as may be adjusted pursuant to Sections 10.1.3 and 10.1.4) in respect of the relevant Milestone, in each case as set forth in Exhibit 4, in a format acceptable to IFA, upon IFA certification of completion of such Milestone. IFA shall make payment to Developer of each Milestone Payment Amount within 45 days after the receipt of Developer's invoice therefor, provided:

10.1.2.1 Developer has fully and completely cured all Developer Defaults for which Developer received written Notice from IFA prior to IFA's receipt of the foregoing invoice and written certification; and

10.1.2.2 Developer has met all the conditions set forth in Section 3.4.2.2, if there exist any of the circumstances described in Section 3.4.2.1 prior to IFA's receipt of the foregoing invoice and written certification.

10.1.3 The Milestone Payment due and payable at Final Acceptance shall be subject to adjustment by the total amount of the Milestone Payment Adjustments in respect of Noncompliance Events and other adjustments in accordance with Exhibits 10 and 12. Developer acknowledges that such adjustments to the Milestone Payments are reasonable liquidated damages in order to compensate IFA for damages it will incur by reason of Developer's failure to comply with the requirements set forth in Attachment 1 to Exhibit 12 ("Pre-Substantial Completion Events" portion), as such amounts are calculated pursuant to Section 4.2 of Exhibit 10. Such damages include:

10.1.3.1 IFA's increased costs of administering this Agreement, including the increased costs of legal, accounting, monitoring, oversight and overhead, and may include obligations to pay or reimburse Governmental Entities with regulatory jurisdiction over the East End Crossing for violation of applicable Governmental Approvals or for their increased costs of monitoring and enforcing Developer's compliance with applicable Governmental Approvals;

10.1.3.2 Potential harm and future costs to IFA or the Department from reduction in the condition and Design Life of the East End Crossing;

10.1.3.3 Potential harm to the credibility and reputation of the Department's transportation improvement program with other Governmental Entities, with policy makers and with the general public who depend on and expect availability of service;

10.1.3.4 Potential harm or detriment to the general public, which may include loss of the use, enjoyment and benefit of the East End Crossing and of facilities connecting to the East End Crossing;

10.1.3.5 Loss of economic benefits by other Governmental Entities owning and operating transportation facilities that connect to or are affected by the East End Crossing; and

10.1.3.6 IFA's or the Department's or KYTC's increased costs of addressing potential harm to the Environment, including increased harm to air quality caused by congestion, and harm to water quality, soils conditions, historic structures and other environmental resources.

10.1.4 Developer further acknowledges that these damages would be difficult and impracticable to measure and prove because, among other things, (a) the East End Crossing is of a unique nature and no substitute for it is available; (b) the costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely difficult to quantify; (c) the nature and level of increased monitoring and oversight will be variable depending on the circumstances; and (d) the variety of factors that influence use of and demand for the East End Crossing make it difficult to sort out causation of the matters that will trigger these liquidated damages and to quantify actual damages.

10.1.5 The Milestone Payment Adjustments are each subject to the Milestone Payment Adjustment Cap and such other adjustments as are set forth in Exhibit 10.

10.1.6 On or before the first day of August of each even numbered year, IFA shall prepare an annual budget forecast for the ensuing two Fiscal Years which shall set forth in reasonable detail (i) the Milestone Payment owed by IFA to the Developer under this Agreement for each such Fiscal Year, (ii) the amount of funds held in the MP Appropriations Fund held under the Project Trust Agreement expected to be available to make Milestone Payments in such Fiscal Year and (iii) the amount of funds to be appropriated to the Department to make the payments to the IFA under the Milestone Agreement. As soon as available after the end of each session of the Indiana General Assembly during an odd numbered year but in any event prior to the beginning of the ensuing Fiscal Year, IFA shall adopt annual budgets for each of the ensuing two Fiscal Years in such Biennium which shall set forth in reasonable detail (i) the Milestone Payment owed by IFA to the Developer under this Agreement for each such Fiscal Year, (ii) the amount of funds held in the MP Appropriations Fund held under the Project Trust

Agreement expected to be available to make Milestone Payments in such Fiscal Year, and (iii) the actual amount of funds appropriated to the Department to make the payments to the IFA under the Milestone Agreement.

In the event the annual budget forecast for any Fiscal Year forecasts a deficiency in the amount necessary to make the Milestone Payments, IFA shall cause a budget request to be made at the next session of the Indiana General Assembly to cure such deficiency. IFA shall establish the payments to be made by the Department to IFA under the Milestone Agreement in an amount which is expected to be at least equal the Milestone Payments to be made by the IFA to the Developer under this Agreement in such Fiscal Year, after taking into account the amount of funds held in the MP Appropriations Fund held under the Project Trust Agreement expected to be available to make Milestone Payments in such Fiscal Year. Prior to the beginning of each Fiscal Year, the IFA shall review the payments under the Milestone Agreement and promptly establish or revise such payments as may be necessary to comply with the foregoing requirements.

10.2 Availability Payments

10.2.1 Timing and Basis for Availability Payments

10.2.1.1 IFA shall pay Availability Payments to Developer as provided in this Section 10.2. The obligation of IFA to pay the Availability Payments to the Developer shall commence upon the Substantial Completion Date.

a. The obligation of IFA to make Availability Payments following the Substantial Completion Date is based on, and is subject to, the O&M Limits being open and available for public travel as measured through Developer's compliance with the PPA Documents.

b. IFA has entered into the Use Agreement with the Department, pursuant to which the Department will agree to make payments to IFA for deposit with the Project Trustee in an amount equal to the Availability Payments and certain other amounts owed by IFA under this Agreement. The Availability Payments are limited obligations of IFA, payable solely from funds held for that purpose under the Project Trust Agreement. The obligation of the IFA to make Availability Payments does not constitute an indebtedness of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The obligation of IFA to make Availability Payments does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The IFA has no taxing power. The Developer has no right to have taxes levied or to compel appropriations by the Indiana General Assembly for any payment of the Availability Payments.

c. In the Use Agreement, the Department covenants that it will do all things lawfully within its power to obtain and maintain funds from which to meet its payment obligations to IFA under the Use Agreement, including, but not limited to, requesting an appropriation in an amount sufficient to meet its payment obligations to IFA under the Use Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved. In addition, the IFA hereby covenants that it will do all things lawfully within its

power to obtain and maintain funds from which to meet its Availability Payment obligations to the Developer under this Agreement, including, but not limited to (i) requesting, or causing the Department to request, an appropriation to, or for the benefit of the Department, in an amount sufficient to meet its obligations to IFA under the Use Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved; and (ii) requesting an appropriation in an amount sufficient to meet its Availability Payment obligations to the Developer under this Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved.

d. IFA hereby covenants and agrees to use its best efforts to enforce the provisions of the Use Agreement and the obligations of the Department thereunder.

e. IFA shall provide written notice to Developer within 5 days upon receiving notice issued by the Department under the Use Agreement that the Use Agreement will not be renewed.

10.2.2 Availability Payment Calculation

10.2.2.1 Availability Payments shall be calculated and earned by Developer according to the methodology set forth in Exhibit 10 (Payment Mechanism). The Availability Payments payable during any given Fiscal Year shall never exceed the MAP for that Fiscal Year, determined as set forth in Exhibit 10 (Payment Mechanism).

10.2.2.2 Each Availability Payment constitutes a single, all-inclusive payment with no fixed component and no separation of payments for operations, capital, maintenance, Rehabilitation Work, Handback or Rehabilitation Work. Availability Payments are not intended and shall not be construed as progress payments or retention under Indiana Law.

10.2.2.3 In addition to any other deductions or withholdings allowed under this Agreement, the Availability Payments shall be subject to adjustment for Unavailability Events, Noncompliance Events and other adjustments in accordance with Exhibit 10 (Payment Mechanism), subject to the limitation on adjustments during an IFA step-in as set forth in Section 11.7.

10.2.3 Availability Payment Invoicing

10.2.3.1 The Availability Payments shall be payable in Quarterly Payments. The Availability Payment for any partial Quarter shall be prorated. IFA shall pay Developer a Quarterly Payment within 45 days after IFA receives a proper invoice for the applicable Quarter that meets the requirements of this Section 10.2.3. The 45 day period within which to make payment of a Quarterly Payment shall not begin until Developer submits and IFA receives a proper invoice therefor in accordance with this Section 10.2.3.

10.2.3.2 Developer shall submit the invoice no earlier than two and no later than 45 days after the end of the prior Quarter. The invoice must set forth the amount and calculation of the Quarterly Payment due, including the calculation of the Quarterly Payment

Adjustment for all applicable Unavailability Events and Noncompliance Events in accordance with Exhibit 10 (Payment Mechanism), if any, for the prior Quarter. In addition, the invoice must be accompanied by an attached report containing information that IFA can use to verify the Quarterly Payment and all components of the Quarterly Payment Adjustment for Unavailability Events and Noncompliance Events for the prior Quarter. Such attached report shall include:

a. The calculation of the actual Availability Payment earned during the prior Quarter using the methodology set forth in Exhibit 10 (Payment Mechanism) for determining the Quarterly Payment Adjustment;

b. A description of any Unavailability Events, including the date and time of occurrence and duration;

c. A description of any Noncompliance Events;

d. Any adjustments to reflect previous over-payments and/or under-payments;

e. A detailed calculation of any interest payable in respect of any amounts owed; and

f. Any other amount due and payable from Developer to IFA or from IFA to Developer under this Agreement, including deductions IFA is entitled to make under Section 6.13.2.1 (quarterly Handback Requirements Reserve Account deposit) and Section 11.5 (Noncompliance Points).

10.2.3.3 IFA shall return any invoices that are incomplete and/or incorrect in any material respect to Developer for correction and resubmission.

10.2.3.4 IFA will verify the amount of each Quarterly Payment by (a) examining the invoice for the applicable Quarter, (b) verifying the results reported therein by Developer, including through IFA's independent oversight and auditing process, and (c) reconciling the actual Quarterly Payment earned and any other amount due and payable from Developer to IFA or from IFA to Developer under this Agreement.

10.2.3.5 IFA shall not be required to pay any quarterly invoice if Developer has failed to file the reports required to be filed for that Quarter as required by Section 22.1.9 of the Technical Provisions, unless and until the required reports are filed. If it is determined that any quarterly report required to be filed pursuant to Section 22.1.9 of the Technical Provisions is inaccurate, which, had it been accurate, would have revealed that an Unavailability Event or Noncompliance Event had occurred, then IFA shall not be required to pay any quarterly invoice submitted by Developer unless and until Developer submits to IFA a revised report which is accurate to the reasonable satisfaction of IFA. Once the required or revised reports are filed, IFA shall process the quarterly invoice for payment. The failure to file a quarterly report or the filing of an inaccurate report may result in the assessment of Noncompliance Points.

10.2.4 IFA Budgeting and Appropriations

10.2.4.1 On or before the first day of August of each even numbered year, IFA shall prepare an annual budget forecast for the ensuing two Fiscal Years which shall set

forth in reasonable detail (i) the estimated Indiana Revenue Share for each such Fiscal Year, (ii) the Maximum Availability Payment for each such Fiscal Year, (iii) the estimated Toll System Collection Expense First Priority Costs and IFA's Costs for such Fiscal Years, (iv) the estimated amount of additional payments owed under this Agreement, including Termination Compensation and payments with respect to Relief Events for such Fiscal Years, and (v) the estimated required deposits, if any, to funds or accounts created under the Project Trust Agreement for such Fiscal Years, (vi) the amount of funds to be appropriated to the Department to make the payments to the IFA under the Use Agreement; and (vii) the amount of funds to be appropriated to IFA to make the payments to the Developer under this Agreement.

10.2.4.2 As soon as available after the end of each session of the Indiana General Assembly during an odd numbered year, but in any event prior to the beginning of the ensuing Fiscal Year, IFA shall adopt annual budgets for each of the ensuing two Fiscal Years in such Biennium which shall set forth in reasonable detail (i) the estimated Indiana Revenue Share for each such Fiscal Year, (ii) the Maximum Availability Payment for each such Fiscal Year, (iii) the estimated Toll System Collection Expenses, First Priority Costs and IFA's Costs for such Fiscal Years, (iv) the estimated amount of additional payments owed under this Agreement, including Termination Compensation and payments with respect to Relief Events for such Fiscal Years, (v) the required deposits, if any, to funds or accounts created under the Project Trust Agreement for such Fiscal Years, (vi) the actual amount of funds appropriated for each such Fiscal Year to the Department to make the payments to the IFA under the Use Agreement; and (vii). the amount of funds appropriated to IFA for each Fiscal Year to make the payments to the Developer under this Agreement.

10.2.4.3 In the event the proposed annual budget forecast for any Fiscal Year forecasts a deficiency in the amount necessary to make the payments described in (ii) through (v) of Section 10.2.4.2, IFA shall cause a budget request to be made at the next session of the Indiana General Assembly to cure such deficiency.

10.2.4.4 IFA shall establish the payments to be made by the Department under the Use Agreement for each Fiscal Year in an amount which is expected to be at least equal to the sum of (i) the Toll System Collection Expenses, the First Priority Costs and the IFA's Costs during such Fiscal Year, and (ii) the Maximum Availability Payment for such Fiscal Year. Prior to the onset of each Fiscal Year, the IFA shall review the use payments so established and promptly establish or revise such use payments as necessary to comply with the foregoing requirements.

10.2.5 Sources for Availability Payments

Each Quarterly Payment is payable from amounts held in the AP Payment Fund, which amounts are to be funded, as more fully provided in the Project Trust Agreement, in the following order of priority:

10.2.5.1 By transfer of amounts from the Toll Revenue Fund established under the Project Trust Agreement which amounts are to be funded from the Toll Revenue Fund after payment of the Toll System Collection Expenses and the First Priority Costs, as more fully provided in the Project Trust Agreement, until the Quarterly Payment and all prior Quarterly Payments are paid in full, or any lesser balance in such Fund is exhausted;

10.2.5.2 By transfer of amounts from the AP Appropriations Fund

established under the Project Trust Agreement, as necessary to pay the remaining balance of such Quarterly Payment; and

10.2.5.3 If the prior two sources are insufficient, by transfer from amounts in the General Reserve Fund established under the Project Trust Agreement to make up any deficiencies.

10.2.6 [reserved]

10.2.7 Proration of Availability Payments for Partial Quarters

10.2.7.1 The Quarterly Payment for the Quarter in which the Substantial Completion Date occurs shall be prorated, before applying the Quarterly Payment Adjustment, based on the ratio that the number of days in such Quarter from and after the Substantial Completion Date bears to the total number of days in such Quarter.

10.2.7.2 The Quarterly Payment for the Quarter in which the Termination Date occurs shall be prorated, before applying the Quarterly Payment Adjustment, based on the ratio that the number of days in such Quarter up to and including the Termination Date bears to the total number of days in such Quarter.

10.3 Disputed Amounts

10.3.1 IFA shall have the right to dispute, in good faith, any amount specified in an invoice submitted pursuant to Section 10.1 or 10.2. IFA shall pay the amount of the invoice in question that is not in Dispute, and pending resolution of the Dispute is entitled and obligated to deposit the balance in the MP Disputed Amounts Fund or the AP Disputed Amounts Fund, respectively, held under the Project Trust Agreement. Refer to Section 19.2.5.6 for further provisions regarding IFA deductions and offsets and deposits of disputed amounts.

10.3.2 Developer and IFA shall use their reasonable efforts to resolve any such Dispute within 30 days after the Dispute arises. If they fail to resolve the Dispute within that period, then the Dispute shall be resolved according to the Dispute Resolution Procedures.

10.3.3 Any amount determined to be due pursuant to the Dispute Resolution Procedures will be paid within 20 days following resolution of the Dispute, together with interest thereon in accordance with Section 10.4.

10.4 Interest on Delinquent Payments and Overpayments

10.4.1 The Milestone Payments and Availability Payments owed to Developer under this Agreement and not paid when due shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 400 basis points, commencing on the date due and continuing until paid; provided, however, that if all or any portion of such a payment is withheld due to a good faith Dispute over whether it is due, then from the date withheld until the date it is finally determined pursuant to the Dispute Resolution Procedures to be due such payment shall bear interest at the rate of earnings during such period on funds in the account under the Project Trust Agreement where the disputed amount is held pending resolution of the Dispute.

10.4.2 If as a result of any inaccuracy in an invoice any overpayment is made by IFA to Developer then, in addition to the adjustments to a Quarterly Payment as provided in Section 10.2.2.4, IFA shall be entitled to deduct or receive as a payment from Developer interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 400 basis points, commencing on the date of IFA's payment of the invoice to the date the overpayment is deducted or paid. IFA will provide Notice to Developer of any IFA determination that it is entitled to deduct or receive payment for interest owed on any such overpayment. Such right of IFA to deduct or receive payment of interest is without prejudice to any other rights IFA may have under this Agreement.

10.4.3 Amounts determined to be due pursuant to the Dispute Resolution Procedures shall accrue interest at the foregoing rate.

10.5 IFA's Costs

10.5.1 IFA has established or will establish sources for funding of IFA's Costs and First Priority Costs incurred prior to the Baseline Substantial Completion Date, which may include funds held under the Project Trust Agreement.

10.5.2 IFA's Costs and First Priority Costs incurred from and after the Baseline Substantial Completion Date shall be paid monthly as follows:

10.5.2.1 Toll System Collection Expenses shall be paid from amounts held in the Toll System Collection Expense Fund established under the Project Trust Agreement, which amounts are to be funded by a transfer from the Toll Revenue Fund up to the amount of such monthly Toll System Collection Expenses or until any lesser balance in the Toll Revenue Fund is exhausted, then by a transfer from the AP Appropriations Fund up to the amount of the balance of such monthly Toll System Collection Expenses or until any lesser balance in the AP Appropriations Fund is exhausted but only after making the required deposits to the AP Payment Fund, and if the prior two sources are insufficient, then by a transfer from the General Reserve Fund;

10.5.2.2 the First Priority Costs shall be funded from the IFA First Priority Costs Fund established under the Project Trust Agreement, which amounts are to be funded by a transfer from the Toll Revenue Fund up to the amount of such monthly First Priority Costs or until any lesser balance in the Toll Revenue Fund is exhausted, then by a transfer from the AP Appropriations Fund up to the amount of the balance of such monthly First Priority Costs or until any lesser balance in the AP Appropriations Fund is exhausted and if the prior two sources are insufficient then by a transfer from the General Reserve Fund; and

10.5.2.3 IFA's Costs shall be funded from the Other IFA Costs Fund established under the Project Trust Agreement, which amounts are to be funded by a transfer from the Toll Revenue Fund, then from the AP Appropriations Fund after making the required monthly deposits to the Toll System Collection Fund, the IFA First Priority Costs Fund and the AP Payment Fund, then if the prior two sources are insufficient then by a transfer from the General Reserve Fund.

10.6 IFA Right of Withholding.

IFA will in good faith perform its required obligations hereunder. Except as otherwise provided under this Agreement, IFA does not agree to pay any penalties, liquidated damages, or attorney's fees. Developer agrees that any payments in arrears and currently due to IFA may be withheld from payments due by IFA to Developer.

ARTICLE 11. NONCOMPLIANCE EVENTS AND NONCOMPLIANCE POINTS

11.1 Noncompliance Points System

11.1.1 Attachment 12-1 of Exhibit 12 to the Agreement sets forth a table for the identification of Noncompliance Events and the Cure Period (if any) available to Developer for each such Noncompliance Event. Noncompliance Points are a system to measure Developer performance levels and trigger the remedies set forth or referenced in this Article 11. The inclusion in Attachment 12-1 of Exhibit 12 to the Agreement of a breach or failure to perform bears no implication as to whether the breach or failure is material.

11.1.2 Attachment 12-1 of Exhibit 12 to the Agreement contain a representational, but not exhaustive, list of Noncompliance Events possible under the PPA Documents. Accordingly, subject to Sections 11.1.3 and 11.1.4, IFA may from time to time add an entry to Attachment 12-1 of Exhibit 12 to the Agreement describing a Noncompliance Event under the existing PPA Documents that was not previously included, establishing the Noncompliance Points applicable to such Noncompliance Event by assigning to it one of the Noncompliance Event assessment categories (A, B and C) as set forth in Attachment 1 to Exhibit 12 (Noncompliance Points System and Persistent Developer Default), and setting a Cure Period therefor (or no Cure Period). IFA's right to make additions or adjustments to Attachment 12-1 of Exhibit 12 to the Agreement is not intended to expand, nor shall it be deemed to expand, Developer's existing contractual obligations as set forth in the PPA Documents, but rather to add existing contractual obligations with greater detail as set forth in the PPA Documents to the list of Noncompliance Events for which Noncompliance Points may be assessed.

11.1.3 IFA's right to add or adjust existing contractual obligations to Attachment 12-1 of Exhibit 12 to the Agreement is limited to obligations respecting O&M Work and is limited such that the total number of Noncompliance Points set forth in Attachment 12-1 of Exhibit 12 to the Agreement as they exist on the Effective Date shall not increase by more than 10% for the Term. IFA may elect to remove contractual obligations and reduce Noncompliance Points allocated to listed contractual obligations through re-categorization between the Noncompliance Event assessment categories (A, B and C) in order to comply with the 10% growth limit. Further, IFA shall have no right to assess Noncompliance Points on account of a Noncompliance Event that occurs prior to the date it is added to Attachment 12-1 of Exhibit 12 to the Agreement.

11.1.4 On or within 30 days following the third anniversary of the Substantial Completion Date, and every third anniversary thereafter for the Term, and only upon such dates (and not at any other time, except by mutual agreement of the Parties), IFA shall provide Notice to Developer that IFA proposes to make additions or other adjustments to Attachment 12-1 of Exhibit 12 to the Agreement, subject to the aggregate limit set forth in Section 11.1.3. Developer shall have 15 days after receipt of any recommended additions or adjustments to deliver written comments to IFA. IFA shall consider Developer's comments and, within 15 days

after receipt of Developer's written comments, and subject to the limitations otherwise set forth in this Section 11.1, IFA shall deliver to Developer a revised Attachment 12-1 of Exhibit 12, which shall be determined in IFA's good faith discretion, which revised Attachment 12-1 of Exhibit 12 shall set forth the revised terms and/or additions or other adjustments to the Noncompliance Points regime therein. Such revised Attachment 12-1 of Exhibit 12 shall be effective upon the earlier of receipt by Developer and three (3) days after transmittal to Developer by IFA.

11.2 Assessment Notification and Cure Process

11.2.1 Notification Initiated by Developer

11.2.1.1 As an integral part of Developer's self-monitoring obligations, Developer shall establish and maintain an electronic data base of each Noncompliance Event specified in Attachment 12-1 of Exhibit 12 to the Agreement, as it may be revised from time to time; and Developer shall enter each Noncompliance Event into the data base in real time upon discovery. The format and design of the data base shall be subject to IFA's reasonable approval. At a minimum, the data base shall:

a. Include a description of each Noncompliance Event in reasonable detail, including its assessment category as set forth in Attachment 12-1 of Exhibit 12 to the Agreement;

b. Identify the East End Crossing location (if applicable);

c. Identify the date and time of occurrence;

d. Identify the applicable response time, if any;

e. Indicate the applicable cure period, if any, as set forth in Attachment 12-1 of Exhibit 12 to the Agreement;

f. Indicate status; and

g. Indicate date and time of cure.

11.2.1.2 Developer shall ensure that IFA has electronic access to the data base at all times and ability to make entries as provided in Section 6.2.2. Developer shall retain each Noncompliance Event entry into the database until at least four years after the date of cure.

11.2.1.3 Each Operations Report to IFA shall include a report of all Noncompliance Events occurring during the preceding quarter. At its sole discretion, IFA may require more frequent reports of Noncompliance Events; provided, however, that IFA may not require a frequency greater than monthly except that IFA may require reports more frequently during any period of a Persistent Developer Default. The Operations Report (or more frequent report) shall include all the same information required in the electronic data base and shall identify each Noncompliance Event for which the cure has not yet occurred. Within a reasonable time after receiving the Operations Report (or more frequent report), IFA shall deliver to Developer a written Notice setting forth for each Noncompliance Event the applicable

cure period (if any), IFA's determination whether the Noncompliance Event was cured during the applicable cure period (if any), and the Noncompliance Points to be assessed with respect thereto (a "Notice of Determination").

11.2.2 Notification Initiated by IFA

If IFA believes there has occurred any Noncompliance Event specified in Attachment 12-1 of Exhibit 12 to the Agreement, as it may be revised from time to time, IFA may deliver to Developer a Notice of Determination setting forth the Noncompliance Event, the applicable cure period (if any), IFA's determination whether the Noncompliance Event was cured during the applicable cure period (if any), and the Noncompliance Points to be assessed with respect thereto. IFA may deliver the Notice of Determination via the electronic data base, and delivery shall be deemed given upon entry of the information into the electronic data base.

11.2.3 Cure Periods

11.2.3.1 Developer shall cure each Noncompliance Event by the end of the cure period (if any) for each such Noncompliance Event set forth in Attachment 12-1 of Exhibit 12 to the Agreement.

11.2.3.2 For each Noncompliance Event identified by the assessment category "A" in Attachment 12-1 of Exhibit 12 to the Agreement, Developer's cure period (if any) with respect to the Noncompliance Event shall be deemed to start upon the date Developer first obtained knowledge or reason to know of the Noncompliance Event. For this purpose, if the Notice of the Noncompliance Event is initiated by IFA, Developer shall be deemed to first obtain knowledge of the Noncompliance Event not later than the date of delivery of the Notice to Developer.

11.2.3.3 For each Noncompliance Event identified by the assessment category "B" in Attachment 12-1 of Exhibit 12 to the Agreement, Developer's cure period shall be deemed to start upon the date that the Noncompliance Event occurred, regardless of whether IFA has delivered a Notice to Developer.

11.2.3.4 Each of the cure periods set forth in Attachment 12-1 of Exhibit 12 to the Agreement shall be the only cure period for Developer applicable to the Noncompliance Event; and in the event it differs from any cure period set forth in Section 19.1.2 that might otherwise apply to the Noncompliance Event, it shall control.

11.2.4 Notification of Cure

11.2.4.1 When Developer determines that it has completed cure of any Noncompliance Event for which it is being assessed Noncompliance Points, Developer shall enter in the electronic data base, as well as in the next Operations Report (or more frequent report), Notice identifying the Noncompliance Event, stating that Developer has completed cure and briefly describing the cure, including any modifications to the Project Management Plan to protect against future similar Noncompliance Events.

11.2.4.2 Thereafter, IFA shall have the right, but not the obligation, to inspect to verify completion of the cure. If satisfied that the Noncompliance Event is fully cured, IFA shall deliver to Developer a certification of cure either by entry into the data base or in a

separate writing.

11.2.4.3 IFA may reject any Developer Notice of cure if IFA determines that Developer has not fully cured the Noncompliance Event. Upon making this determination, IFA shall deliver a written Notice of rejection to Developer either by entry into the data base or in a separate writing. Any Dispute regarding rejection of cure shall be resolved according to the Dispute Resolution Procedures.

11.3 Assessment of Noncompliance Points

If (a) the electronic data base or Operations Report (or more frequent report) indicates or IFA is notified or otherwise becomes aware of a Noncompliance Event or (b) IFA serves Notice of Determination under Section 11.2.2, IFA may assess Noncompliance Points in accordance with Exhibit 12 (Noncompliance Points System and Persistent Developer Default), subject to the following terms and conditions.

11.3.1 The date of assessment shall be deemed to be the date of the initial Notice under Section 11.2.

11.3.2 IFA shall not be entitled to assess Noncompliance Points under more than one assessment category for any particular Noncompliance Event.

11.3.3 A failure by Developer to keep record of or report to IFA a Noncompliance Event as and when required under Section 11.2.1.1 or 11.2.1.2, on the one hand, and the subject Noncompliance Event, on the other hand, constitute separate and distinct breaches and failures to perform for the purpose of assessing Noncompliance Points.

11.3.4 The number of points listed in Attachment 12-1 of Exhibit 12 to the Agreement for any particular Noncompliance Event is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a Noncompliance Event. IFA may, but is not obligated to, assess less than the maximum.

11.3.5 If a Noncompliance Event for which a cure period is provided in Attachment 12-1 of Exhibit 12 to the Agreement is not fully and completely cured within the applicable cure period, then continuation of such Noncompliance Event beyond such cure period shall be treated as a new and separate Noncompliance Event, without necessity for further Notice, for the purpose of assessing Noncompliance Points. Accordingly, without further Notice, (a) a new cure period equal to the prior cure period shall commence upon expiration of the prior cure period and (b) if applicable, a further Quarterly Noncompliance Adjustment under Exhibit 10 (Payment Mechanism) shall be made. Regardless of the continuing assessment of Noncompliance Points under this Section 11.3.1, IFA shall be entitled to exercise its step-in rights in accordance with Section 19.2.4 and, if applicable, its work suspension rights in accordance with Section 19.2.8, after expiration of the initial cure period available to Developer.

11.3.6 For each Noncompliance Event identified by the assessment category "A" in Attachment 12-1 of Exhibit 12 to the Agreement, provided that the Noncompliance Event is not cured, the Noncompliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, as described in Section 11.3.5.

11.3.7 For each Noncompliance Event identified by the assessment category "B" in Attachment 12-1 of Exhibit 12 to the Agreement, the Noncompliance Points shall first be assessed on the date of the initial Notice under Section 11.2 (the start of the first cure period). Provided that the Noncompliance Event is not then cured, Noncompliance Points shall be assessed again at the end of the first and each subsequent cure period, as described in Section 11.3.5.

11.3.8 For each Noncompliance Event identified by the assessment category "C" in Attachment 12-1 of Exhibit 12 to the Agreement (no applicable cure period), the Noncompliance Points shall first be assessed on the date of the initial Notice under Section 19.2. Continuation of such Noncompliance Event shall not be treated as a new or separate breach or failure.

11.3.9 Any Noncompliance Points assessed prior to Substantial Completion shall be eliminated on the date of Final Acceptance, provided Developer has fully cured the Noncompliance Events relating to the assessment of such Noncompliance Points.

11.4 Records Regarding Assessment of Noncompliance Points

Developer is responsible for keeping and providing IFA with current records of the number of assessed Noncompliance Points for each Noncompliance Event, the date of each assessment, and the date when the Noncompliance Event is cured.

11.5 Quarterly Noncompliance Adjustments and Quarterly Unavailability Adjustments for Certain Noncompliance Events and Closures

11.5.1 General

In addition to Noncompliance Points, certain Noncompliance Events shall result in monetary deductions in the form of Quarterly Noncompliance Adjustments as set forth in Exhibit 10 (Payment Mechanism). In addition to Noncompliance Points, Unavailability Events shall result in monetary deductions in the form of Quarterly Unavailability Adjustments as set forth in Exhibit 10 (Payment Mechanism).

11.5.2 Basis for Deductions

11.5.2.1 Developer acknowledges that the Quarterly Noncompliance Adjustments and Quarterly Unavailability Adjustments assessed in accordance with the PPA Documents are reasonable liquidated damages in order to compensate IFA for damages it will incur by reason of Developer's failure to comply with the availability and performance standards. Such damages include:

a. IFA's increased costs of administering this Agreement, including the increased costs of engineering, legal, accounting, monitoring, oversight and overhead, and could also include obligations to pay or reimburse Governmental Entities with regulatory jurisdiction over the O&M Limits for violation of applicable Governmental Approvals or for their increased costs of monitoring and enforcing Developer's compliance with applicable Governmental Approvals;

b. Potential harm and future costs to IFA from reduction in the condition and Useful Life of the O&M Limits;

c. Potential harm to the credibility and reputation of IFA with other Governmental Entities, with policy makers and with the general public who depend on and expect timely and quality O&M Limits delivery and availability of service;

d. Potential harm and detriment to Users, which may include loss of use, enjoyment and benefit of the O&M Limits and of facilities connecting to the O&M Limits, additional wear and tear on vehicles, and increased costs of congestion, travel time and accidents;

e. IFA's increased costs of addressing potential harm to the Environment, including increased harm to air quality caused by congestion, and harm to water quality, soils conditions, historic structures and other environmental resources caused by Noncompliance Events; and

f. Loss of Toll Revenues.

11.5.2.2 Developer further acknowledges that these damages would be difficult and impracticable to measure and prove, because, among other things:

a. The O&M Limits are of a unique nature and no substitute for them is available;

b. The costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely difficult to quantify;

c. The nature and level of increased monitoring and oversight will be variable depending on the circumstances; and

d. The variety of factors that influence use of and demand for the O&M Limits make it difficult to sort out causation of the matters that will trigger these liquidated damages and to quantify actual damages.

11.6 Special Provisions for Certain Noncompliance Events

11.6.1 The provisions of this Section 11.6 apply to a Noncompliance Event that has an assessment category of A or B as set forth in Attachment 1 to Exhibit 12 (Noncompliance Points System and Persistent Developer Default) and is directly attributable to:

11.6.1.1 A Relief Event; or

11.6.1.2 Unexpected loss, disruption, break, explosion, leak or other damage of a Utility serving or in the vicinity of the East End Crossing but not within the maintenance responsibility of Developer (a "Utility incident").

11.6.2 If any such Noncompliance Event occurs, then:

11.6.2.1 The applicable cure period for any such Noncompliance Event shall be extended if such Noncompliance Event is not reasonably capable of being cured within the applicable cure period solely due to the occurrence of such Relief Event or Utility incident. The extension shall be for a reasonable period of time under the circumstances, taking into

account the scope of the efforts necessary to cure, the effect of the Relief Event or Utility incident on Developer's ability to cure, availability of temporary remedial measures, and need for rapid action due to impact of the Noncompliance Event on safety or traffic movement;

11.6.2.2 It shall not be counted toward a Persistent Developer Default for purposes of Section 2.1 or 2.2 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default), provided the Noncompliance Event is cured within the applicable cure period, as it may be extended pursuant to Section 11.6.2.1;

11.6.2.3 Regardless of which Party initiates Notice of such Noncompliance Event, no Noncompliance Points shall be assessed if Developer cures such Noncompliance Event within the applicable cure period, as it may be extended pursuant to Section 11.6.2.1; and

11.6.2.4 Such Noncompliance Event shall not result in monetary deductions under Section 11.5 if the Noncompliance Event is cured within the applicable cure period, as it may be extended pursuant to Section 11.6.2.1.

11.7 Special Provisions for IFA Step-in

11.7.1 If IFA exercises a step-in right under Section 19.2.4 with respect to any portion of the East End Crossing (the "affected East End Crossing portion"), then:

11.7.1.1 During the period that IFA is in control of the Work for the affected East End Crossing portion (the "step-in or suspension period"), neither the condition of the affected East End Crossing portion nor the performance of or failure to perform Work respecting the affected East End Crossing portion shall result in a new Noncompliance Event, assessment of new Noncompliance Points or new monetary deductions under Section 11.5;

11.7.1.2 All cure periods that are available for Noncompliance Events respecting the affected East End Crossing portion and that arose prior to and are pending as of the date the step-in or suspension period commences shall be deemed forfeited by Developer;

11.7.1.3 During the step-in or suspension period for the affected East End Crossing portion, Section 11.3.5 shall not be applied to Noncompliance Events that arose prior to the date such step-in or suspension period commences;

11.7.1.4 The step-in or suspension period for the affected East End Crossing portion shall be disregarded for purposes of determining a Persistent Developer Default under Section 2.1 or 2.2 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default). For avoidance of doubt, this means that (a) such step-in or suspension period shall not be included in counting the consecutive time periods set forth in Section 2.1 or 2.2 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default) and (b) such consecutive time periods shall be treated as consecutive notwithstanding the intervening step-in or suspension period; and

11.7.1.5 No Quarterly Unavailability Adjustment shall apply to Unavailability Events respecting the affected East End Crossing portion first occurring during the step-in period.

11.7.2 Refer to Section 19.2.5 for IFA's right to damages and to offset the Milestone Payments and Availability Payments in the event IFA incurs costs arising out of exercise of its step-in right under Section 19.2.4.

11.8 Provisions Regarding Dispute Resolution

11.8.1 Developer may object to the assessment of Noncompliance Points or the starting point for the cure period respecting any Noncompliance Event by delivering to IFA written Notice of such objection not later than five days after IFA delivers its written Notice of Determination. Such Notice also shall constitute Notice for purposes of Section 19.6.

11.8.2 Developer may object to IFA's rejection of any certification of completion of a cure given pursuant to Section 11.2.4.3 by delivering to IFA written Notice of such objection not later than 15 days after IFA delivers its written Notice of rejection. Such Notice also shall constitute Notice for purposes of Section 19.6.

11.8.3 If for any reason Developer fails to deliver its written Notice of objection within the applicable time period, Developer shall be conclusively deemed to have accepted the matters set forth in the applicable IFA Notice, and shall be forever barred from challenging them.

11.8.4 If Developer gives timely Notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the Dispute Resolution Procedures. The Parties agree to such ten day period in lieu of (and not in addition to) the period for Informal Resolution Procedures set forth in Section 19.6.

11.8.5 In the case of any Dispute as to the number of Noncompliance Points to assign for Noncompliance Events added to Attachment 12-1 of Exhibit 12 to the Agreement, the sole issue for decision shall be how many Noncompliance Points should be assigned in comparison with the number of Noncompliance Points set forth in Attachment 12-1 of Exhibit 12 to the Agreement for Noncompliance Events of equivalent severity.

11.8.6 Pending the resolution of any Dispute arising under this Section 11.8, the provisions of this Article shall take effect as if the matter were not in Dispute. If the final decision regarding the Dispute is that (a) the Noncompliance Points should not have been assessed, (b) the number of Noncompliance Points must be adjusted, (c) the starting point or duration of the cure period must be adjusted, or (d) a Noncompliance Event has been cured, then the number of Noncompliance Points assigned or assessed, the uncured Noncompliance Points balance and the related liabilities of Developer shall be adjusted to reflect such decision.

11.8.7 For the purpose of determining whether IFA may issue a Notice of Developer Default under Section 19.2.9 for failure to timely submit or comply with the remedial plan, the number of Noncompliance Points in Dispute:

11.8.7.1 Shall not be counted pending resolution of the Dispute if Developer initiates the Dispute Resolution Procedures and, if applicable, any proceedings available following action by the Arbitrator within the applicable time limit set forth in Section 19.6;

11.8.7.2 Shall be counted if Developer for any reason does not initiate the

Dispute Resolution Procedures or any, if applicable, proceedings available following action by the Arbitrator within the applicable time limit set forth in Section 19.6, or does not diligently pursue the Dispute Resolution Procedures to conclusion (and in any such case Developer shall be deemed to have irrevocably waived the Dispute).

ARTICLE 12. FINANCIAL MODEL AND FINANCIAL MODEL UPDATES

12.1 Financial Model and Financial Model Updates

12.1.1 The Financial Model, Financial Model Updates and Financial Modeling Data are to be held in escrow pursuant to Section 23.6. IFA is entitled to hold a copy thereof in its files, but such copies, and any copies Developer holds, are unofficial and the material held in escrow shall constitute the originals for all purposes under this Agreement.

12.1.2 Developer shall run new projections and calculations under the Financial Model Formulas to establish a Financial Model Update:

12.1.2.1 Whenever there occurs a Relief Event for which IFA owes a Compensation Amount;

12.1.2.2 Whenever there occurs a Relief Event resulting in an extension of the Term pursuant to Section 15.4.2(e);

12.1.2.3 Whenever there occurs a Refinancing with Refinancing Gain in which IFA participates;

12.1.2.4 Whenever there occurs an event for which IFA is entitled to compensation pursuant to Section 16.1.6.2 or 16.2.5;

12.1.2.5 As required under Section 13.7.10; and

12.1.2.6 Whenever the PPA Documents are amended and the Parties agree that the amendment has a material effect on the Financial Model.

12.1.3 Developer shall prepare the Financial Model Updates by running new projections and calculations under the Financial Model Formulas. Developer shall deliver to IFA each Financial Model Update and the related Financial Modeling Data as updated as and when prepared.

12.1.4 Financial Model Updates pursuant to Section 12.1.2.5 require the mutual written approval of the Parties. Where the Financial Model Update is pursuant to Section 12.1.2.1, 12.1.2.2, 12.1.2.3 or 12.1.2.4, IFA shall have the right to challenge, according to the Dispute Resolution Procedures, the validity, accuracy or reasonableness of any Financial Model Update or the related updated and revised Financial Modeling Data. In the event of a challenge, the immediately preceding Financial Model Update that has not been challenged (or, if there has been no unchallenged Financial Model Update, the Financial Model) shall remain in effect pending the outcome of the challenge or until a new Financial Model Update is issued and not challenged.

12.2 Model Audits

12.2.1 Within two Business Days after Financial Close, Developer shall deliver to IFA an update of the audit and opinion obtained from the independent model auditor that provided to IFA an opinion on the suitability of the Financial Model. The updated audit and opinion shall be in the same form as that delivered for the Proposal and shall be co-addressed to IFA, and IFA shall be expressly identified therein as an entity entitled to rely thereon. The updated audit and opinion shall take into account the final terms and conditions of the Initial Funding Agreements and Initial Security Documents.

12.2.2 IFA may require that Financial Model Updates be audited by an independent audit firm satisfactory to IFA prior to Financial Model Update becoming effective under this Agreement. The Parties shall bear equally the cost of the audit. The audit of the Financial Model Update may be the same one required by the Lenders, in which case IFA shall have no liability for the cost of the audit.

12.3 Financial Model Formulas

In no event shall the Financial Model Formulas be changed except with the prior written approval of both Parties, each in its sole discretion.

ARTICLE 13. DEVELOPER FINANCING; REFINANCING; EQUITY

13.1 Developer Right and Responsibility to Finance

13.1.1 Developer may grant security interests in or assign the entire Developer's Interest (but not less than the entire Developer's Interest) to Lenders for purposes of securing the Project Debt, subject to the terms and conditions contained in this Agreement. Developer is strictly prohibited from pledging or encumbering the Developer's Interest, or any portion thereof, to secure any indebtedness of any Person other than (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has purposes and powers limited to the East End Crossing and Work, (c) a special purpose entity subsidiary owned by either Developer or an entity described in clause (b) above, or (d) the PABs Issuer.

13.1.2 Developer is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to IFA, necessary for the Work, including (i) the design, permitting, development, construction, equipping, of the East End Crossing, (ii) the operation, maintenance, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the O&M Limits and (iii) the Utility Adjustment Work. Developer will diligently pursue its obligations to obtain the necessary financing as described in Exhibit 2-C to this Agreement (Financial Plan).

13.1.3 If Developer seeks to utilize PABs or TIFIA Loans, then Developer bears all risks relating to a delay in receiving the necessary approvals and for compliance with all Federal Requirements except as specifically provided otherwise in Section 13.7.7. At Developer's written request, IFA will cooperate in good faith in order to assist Developer's efforts to obtain necessary federal approvals for PABs or TIFIA Loans.

13.1.4 Except as provided in Section 13.7.7, Developer exclusively bears the risk of any changes in the interest rate, payment provisions, collateral requirements, financing charges, breakage charges or the other terms of its financing.

13.1.5 Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Developer shall remain liable to IFA for the payment of all sums owing to IFA under this Agreement and the performance and observance of all of Developer's covenants and obligations under the PPA Documents.

13.2 No IFA Liability

13.2.1 None of the State, IFA or any other agency, instrumentality or political subdivision of the State, and no member, director, officer, employee, agent or representative of any of them, shall have any obligation to pay debt service on any debt issued or incurred in connection with the East End Crossing or the PPA Documents. IFA shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness incurred in connection with the East End Crossing or this Agreement, any other Funding Agreement or any Security Document.

13.2.2 None of the State, IFA or any other agency, instrumentality or political subdivision of the State, and no member, director, officer, employee, agent or representative of any of them, shall have any liability whatsoever for payment of the principal sum of any Project Debt, any other obligations described in Section 4.3.2 issued or incurred by any Person in connection with this Agreement or the East End Crossing, or any interest accrued thereon or any other sum secured by or accruing under any Funding Agreement or Security Document. Except for a violation by IFA of its express obligations to Lenders set forth in Article 21 or any Direct Agreement, no Lender is entitled to seek any damages or other amounts from IFA, whether for Project Debt or any other amount. IFA's review of any Funding Agreements or Security Documents or other East End Crossing financing documents is not a guarantee or endorsement of the Project Debt, any other obligations described in Section 4.3.2 issued or incurred by any Person in connection with this Agreement or the East End Crossing, and is not a representation, warranty or other assurance as to the ability of any such Person to perform its obligations with respect to the Project Debt or any other obligations issued or incurred by such Person in connection with this Agreement or the East End Crossing, or as to the adequacy of the Toll Revenues to provide for payment of the Project Debt or any other obligations issued or incurred by such Person in connection with this Agreement or the East End Crossing. For the avoidance of doubt, the foregoing does not affect IFA's liability to Developer under Article 20 and Exhibit 22 (Early Termination Dates and Terms for Termination Compensation) for Termination Compensation that is measured in whole or in part by reference to outstanding Project Debt.

13.2.3 IFA shall not have any obligation to any Lender pursuant to the PPA Documents, except, if the Collateral Agent has notified IFA of the existence of its Security Documents, for the express obligations to Lenders set forth in Article 21, any Direct Agreement or in any other instrument or agreement signed by IFA in favor of such Lender or Collateral Agent. The foregoing does not preclude Lender enforcement of this Agreement against IFA where the Lender has succeeded to the rights, title and interests of Developer under the PPA Documents, whether by way of assignment or subrogation.

13.3 Mandatory Terms of Project Debt, Funding Agreements and Security Documents

Project Debt, Funding Agreements and Security Documents and any amendments or supplements thereto, shall comply with the following terms and conditions.

13.3.1 The Security Documents may only secure Project Debt the proceeds of which are obligated to be used exclusively for the purposes of:

13.3.1.1 Designing, permitting, building, constructing, improving and equipping the East End Crossing, and modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing or replacing the East End Crossing, performing the Utility Adjustment Work or the Rehabilitation Work, or performing other Work;

13.3.1.2 Paying interest and principal on other existing Project Debt;

13.3.1.3 Paying reasonable development fees to Developer-Related Entities or to a Design-Build Contractor or its affiliates for services related to the East End Crossing;

13.3.1.4 Paying fees and premiums to any Lender of the Project Debt or such Lender's agents;

13.3.1.5 Paying costs and fees in connection with the closing of any permitted Project Debt;

13.3.1.6 Making payments due under the PPA Documents to IFA or any other Person;

13.3.1.7 Making payment of Taxes;

13.3.1.8 Funding reserves required under this Agreement, Funding Agreements or Security Documents, applicable securities laws, or Environmental Laws;

13.3.1.9 Making Distributions, but only from the proceeds of Refinancings permitted under this Agreement; and

13.3.1.10 Refinancing any Project Debt under Sections 13.3.1.1 through 13.3.1.9.

13.3.2 The Security Documents may only secure Project Debt and Funding Agreements issued and executed by (a) Developer, (b) its permitted successors and permitted assigns, (c) a special purpose entity that owns Developer but no other assets and has purposes and powers limited to the East End Crossing and the Work, (d) any special purpose entity-subsidiary wholly owned by Developer or such entity, or (e) the PABs Issuer.

13.3.3 Project Debt under a Funding Agreement and secured by a Security Document must be issued and held only by Institutional Lenders who qualify as such at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (a) qualified investors other than Institutional Lenders may acquire and hold interests in Project Debt in connection with the

securitization or syndication of Project Debt through a public or private offering, but only if an Institutional Lender acts as Collateral Agent for such Project Debt, (b) PABs may be issued, acquired and held by parties other than Institutional Lenders but only if an Institutional Lender acts as indenture trustee for the PABs and (c) Subordinate Debt is not subject to this provision.

13.3.4 The Security Documents, as a whole, securing each separate issuance of debt shall encumber the entire Developer's Interest, provided that the foregoing does not preclude entry by Developer into subordinate Security Documents or equipment lease financing.

13.3.5 No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Developer's Interest shall extend to or affect the right, title and interest of IFA in the East End Crossing or the Project Right of Way or IFA's rights or interests under the PPA Documents.

13.3.6 Each note, bond or other negotiable or non-negotiable instrument evidencing Project Debt, or evidencing any other obligations issued or incurred by any Person described in Section 13.3.2 in connection with this Agreement or the East End Crossing must include or refer to a document controlling or relating to the foregoing that includes a conspicuous recital on its face to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the obligor and the security pledged by Developer or the obligor therefor, is not an obligation, moral or otherwise, of the State, IFA, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power, and no assets, of the State, IFA, or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

13.3.7 Each Funding Agreement and Security Document containing provisions regarding default by Developer shall require that if Developer is in default thereunder and the Collateral Agent gives notice of such default to Developer, then the Collateral Agent shall also give concurrent notice of such default to IFA. Each Funding Agreement and Security Document that provides Lender remedies for default by Developer or the borrower shall require that the Collateral Agent deliver to IFA, concurrently with delivery to Developer or any other Person, every notice of election or enforcement of remedies, including an election to sell or foreclose, notice of sale or foreclosure or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document.

13.3.8 No Funding Agreement or Security Document that may be in effect during any part of the period that the Handback Requirements apply shall grant to the Lender any right to apply funds in the Handback Requirements Reserve Account or to apply proceeds from any Handback Requirements Letter of Credit to the repayment of Project Debt, to any other obligation owing the Lender or to any other use except the uses set forth in Section 6.13.3, and any provision purporting to grant such right shall be null and void, provided, however, that (a) any Lender or Substituted Entity shall, following foreclosure or transfer in lieu of foreclosure, automatically succeed to all rights, claims and interests of Developer in and to the Handback Requirements Reserve Account and (b) a Funding Agreement or Security Document may create such rights regarding excess funds described in Section 6.13.4.2.

13.3.9 Each relevant Funding Agreement and Security Document that may be in effect during any part of the period that the Handback Requirements apply shall expressly permit,

without condition or qualification, Developer to (a) use and apply funds in the Handback Requirements Reserve Account in the manner contemplated by the PPA Documents, (b) issue additional Project Debt, secured by the Developer's Interest, for the added limited purposes of funding work pursuant to Handback Requirements and Safety Compliance as set forth in Section 9.2 and (c) otherwise comply with its obligations in the PPA Documents regarding Rehabilitation Work, the Rehabilitation Work Schedule, Safety Compliance, the Handback Requirements and the Handback Requirements Reserve Account. Subject to the foregoing, any protocols, procedures, limitations and conditions concerning draws from the Handback Requirements Reserve Account set forth in any Funding Agreement or Security Document or the issuance of additional Project Debt as described in clause (b) above shall be consistent with the permitted uses of the Handback Requirements Reserve Account, and shall not constrain Developer's or IFA's access thereto for such permitted uses, even during the pendency of a default under the Funding Agreement or Security Document. For the avoidance of doubt:

13.3.9.1 The Lenders then holding Project Debt may reasonably limit additional Project Debt if other funds are then, in IFA's determination, readily available to Developer for the purpose of funding the work;

13.3.9.2 No Lender then holding Project Debt is required hereby to grant *pari passu* lien or payment status to any such additional Project Debt; and

13.3.9.3 The Lenders then holding Project Debt may impose reasonable, customary requirements as to performance and supervision of the Work that are no more onerous than those set forth in their respective existing Funding Agreements or Security Documents.

13.3.10 Each Funding Agreement and Security Document shall expressly state that the Lender shall not name or join IFA, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Project Debt or other obligations secured thereby or the foreclosure or other enforcement of the Funding Agreement or Security Document.

13.3.11 Each Funding Agreement and Security Document shall expressly state that the Lender shall not seek any damages or other amounts from IFA, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them, whether for Project Debt or any other amount, except (a) damages from IFA only for a violation by IFA of its express obligations to Lenders set forth in Article 21 and any Direct Agreement, if applicable, and (b) amounts due from IFA under this Agreement where the Lender has succeeded to the rights and interests of Developer under the PPA Documents, whether by way of assignment or subrogation. IFA shall be entitled to take reasonable steps to ensure Developer's compliance with this Section 13.3.11, including contacting the Lenders prior to execution of the Funding Agreement and Security Document.

13.3.12 Each Funding Agreement and Security Document shall expressly state that the Lender and the Collateral Agent shall respond to any request from IFA or Developer for consent to a modification or amendment of any of the PPA Documents within a reasonable period of time.

13.4 Refinancing

13.4.1 Right of Refinancing

Developer from time to time may consummate Refinancings under the Funding Agreements, subject to IFA's prior written approval except in the case of Exempt Refinancings and Rescue Refinancings. IFA shall have no obligations or liabilities in connection with any Refinancing except for the rights, benefits and protections set forth in Article 21. If the Refinancing is with a new Lender, the new Lender may be added to an existing Direct Agreement or IFA shall enter into a new Direct Agreement with the new Lender, if Lender so elects.

13.4.2 Notice of Refinancing

13.4.2.1 In connection with any proposed Refinancing, except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing, Developer shall as soon as practicable submit to IFA a summary outline of the proposed Refinancing, together with a schedule setting forth the various activities, each with schedule durations, to be accomplished from the commencement through the close of the proposed Refinancing.

13.4.2.2 At least 30 days prior to the proposed date for closing any Refinancing except an Exempt Refinancing under clause (b) of the definition of Exempt Refinancing, Developer shall submit to IFA draft proposed Funding Agreements and Security Documents and the Pre-Refinancing Data, and any other matters required by Exhibit 14 (Calculation and Payment of Refinancing Gain). If Developer believes the Refinancing is an Exempt Refinancing or Rescue Refinancing, it shall concurrently provide Notice to IFA that Developer considers the Refinancing to be an Exempt Refinancing or Rescue Refinancing. Developer shall include in such Notice facts to support the basis on which Developer believes the Refinancing is an Exempt Refinancing or Rescue Refinancing.

13.4.2.3 Within 15 days after receipt of the materials required under Section 13.4.2.2, IFA will review and determine whether the proposed Refinancing is an Exempt Refinancing or Rescue Refinancing, if neither, whether to approve or disapprove the proposed Refinancing, and whether the proposed Refinancing will result in a Refinancing Gain. If applicable, IFA also will select the means for payment of its portion of the Refinancing Gain. IFA's failure to deliver to Developer written Notice of such determination and selection within such time period shall not prejudice IFA's right to disapprove the proposed Refinancing or to receive its portion of Refinancing Gain, if any, or its selection of the means for payment of such portion.

13.4.2.4 Developer shall submit to IFA final drafts of the proposed Funding Agreements and Security Documents, together with updated versions of the Pre-Refinancing Data, not later than seven days prior to the proposed date for closing the Refinancing.

13.4.2.5 Developer shall deliver to IFA, not later than ten days after close of the Refinancing, copies of all signed Funding Agreements and Security Documents in connection with the Refinancing, and the Refinancing Data.

13.4.2.6 Developer shall include with each submission of Pre-Refinancing Data and Refinancing Data Developer's financial model showing how Developer has calculated

the Refinancing Gain, if any, following the procedures set forth in Exhibit 14 (Calculation and Payment of Refinancing Gain), and any other matters required by Exhibit 14.

13.4.2.7 No later than 15 days after close of the Refinancing, IFA and Developer shall meet and confer to agree upon the final calculation of the Refinancing Gain, at which time Developer shall pay IFA its portion of the Refinancing Gain if the selected means of payment is a lump sum payment.

13.4.3 Refinancing Limitations, Requirements and Conditions

13.4.3.1 Other than an Exempt Refinancing and a Rescue Refinancing, no Refinancing is permitted prior to the Substantial Completion Date, except to the extent Developer demonstrates to IFA's reasonable satisfaction that (a) the Committed Investment will not decrease as a result of the Refinancing, and (b) the Refinancing will produce Refinancing Gain in which IFA will be entitled to a portion in accordance with Exhibit 14 (Calculation and Payment of Refinancing Gain).

13.4.3.2 If IFA renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under Section 21.9, then concurrently with close of the Refinancing, and as a condition precedent to Developer's right to close the Refinancing, Developer shall reimburse IFA all of IFA's Recoverable Costs incurred in connection therewith. IFA shall deliver to Developer a written invoice and demand therefor prior to the scheduled date of closing. If for any reason the Refinancing does not close, Developer shall reimburse such IFA's Recoverable Costs within ten days after IFA delivers to Developer a written invoice and demand therefor.

13.4.3.3 Developer shall bear all risks for any Refinancing that negatively affects its Equity IRR, debt coverage ratios or financial performance.

13.5 Refinancing Gain Sharing

13.5.1 IFA shall be entitled to receive a payment equal to 50% of any Refinancing Gain attributable to any Refinancing other than an Exempt Refinancing; provided, that if Developer utilizes a TIFIA loan or other form of TIFIA assistance in connection with a Refinancing and IFA has obtained a reservation of funding and invitation to submit an application for such TIFIA assistance IFA shall be entitled to receive a payment equal to 75% of any Refinancing Gain attributable to such Refinancing. The Parties shall calculate Refinancing Gain, and IFA shall receive its portion of the Refinancing Gain, in the manner set forth in Exhibit 14 (Calculation and Payment of Refinancing Gain).

13.5.2 The Parties shall negotiate in good faith to determine the Refinancing Gain; and if the Parties fail to agree, the Dispute shall be resolved according to the Dispute Resolution Procedures.

13.6 Equity Requirements

Developer shall have and maintain Committed Investments totaling not less than 10 percent of the Total Project Capital Cost, less the cumulative Milestone Payments, each expressed in year of expenditure terms, throughout the period between the Effective Date and the Substantial Completion Date, except to the extent:

13.6.1 IFA otherwise approves in writing in its sole discretion;

13.6.2 Developer must reduce the amount of Committed Investments below ten percent as part of a workout of a breach or default under the Initial Funding Agreements or Initial Security Documents; or

13.6.3 The amount of Committed Investments is reduced below ten percent because Developer incurs additional Project Debt pursuant to a Rescue Refinancing.

13.7 Financial Close

13.7.1 Concurrently with execution of this Agreement, Developer shall deliver, or has delivered, to IFA the Financial Close Security.

13.7.2 Developer shall give IFA 45 days written Notice of the date scheduled for Financial Close, which date shall not be earlier than February 15, 2013. If IFA desires to extend the date for Financial Close, IFA shall give Developer 30 days written notice thereof, setting forth the new scheduled date for Financial Close, which date shall not exceed 120 days from the date originally scheduled for Financial Close as set forth in Developer's notice to IFA and Developer shall extend the Financial Close Security to the new scheduled date for Financial Close. Concurrently with giving written Notice to Developer of the extension of the date scheduled for Financial Close, if the new date scheduled for Financial Close as set forth in IFA's written Notice to Developer occurs after the date of expiration of any commitments of Lenders contained in the Proposal, IFA shall also have the right to issue a written Notice to Developer commencing a competition among eligible Lenders for providing the Initial Project Debt (the "IPDC Notice") authorizing and directing Developer to commence a competition among eligible Lenders for providing the Initial Project Debt.

13.7.3 Commencing upon issuance of the IPDC Commencement Notice, Developer shall conduct a competition among eligible Lenders to provide the Initial Project Debt. Developer shall conduct such competition in compliance with the provisions of Exhibit 18. Exhibit 18 sets forth several phases of such competition.

13.7.4 Unless Developer or IFA elects to terminate this Agreement pursuant to Section 20.6.1, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and complete closing for all the Initial Project Debt (including any sub-debt), in a total amount which, when combined with all unconditional equity commitments acceptable to the Collateral Agent, is sufficient to fund all capital requirements set forth in the Financial Model, by not later than the Financial Close Deadline.

13.7.5 Except to the extent expressly permitted in writing by IFA, Developer shall not be deemed to have achieved Financial Close until all of the following conditions have been satisfied:

13.7.5.1 If TIFIA financing is part of the IFA-approved Financing Plan, completed all necessary steps to obtain and close any TIFIA financing;

13.7.5.2 If IFA has issued the IPDC Commencement Notice, Developer has completed the IPDC in accordance with the terms and conditions therefor set forth in Exhibit 18;

13.7.5.3 Developer has delivered to IFA for review and comment drafts of those proposed Initial Funding Agreements and Initial Security Documents that will contain the material commercial terms relating to the Initial Project Debt not later than 20 days prior to the proposed date for Financial Close, and, if IFA has issued the IPDC Commencement Notice, such Initial Funding Agreements and Initial Security Documents are consistent with, or no less favorable to Developer than, the terms and conditions offered by the Lenders selected pursuant to the IPDC;

13.7.5.4 IFA has received for the Financial Model an update of the audit and opinion obtained from the independent model auditor that provided to IFA an opinion on suitability of the Financial Model, which update shall (a) be co-addressed to IFA, (b) expressly identify IFA as an entity entitled to rely thereon, and (c) take into account only the change in the Base Maximum Availability Payment and differences between the financial terms assumed in the Financial Model and the financial terms obtained through the IPDC, as provided for in Section 13.7.8, and (d) be delivered within two Business Days after the date of Financial Close;

13.7.5.5 Developer has delivered to IFA a true and complete executed copy of each Direct Agreement requested by the Lenders, if any; and

13.7.5.6 All applicable parties have entered into and delivered the Initial Funding Agreements and Initial Security Documents (except to the extent that such documents are not required to be executed on such date) meeting the requirements of Section 13.3, and Developer has delivered to IFA true and complete copies of the executed Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after Financial Close and containing no new material commercial terms).

13.7.6 Developer shall provide IFA with written Notice of Developer's satisfaction of the conditions set forth in Section 13.7.5 within one Business Day after all such conditions are satisfied.

13.7.7 Developer's obligation to achieve Financial Close by the Financial Close Deadline is excused only if such failure is directly attributable to one of the following (and in such event this Agreement may be terminated pursuant to Section 20.6.1):

13.7.7.1 If IFA has issued the IPDC Commencement Notice, Developer has diligently and timely conducted the IPDC in accordance with Section 13.7.3, but (a) despite such efforts Developer is unable to close financing for the Project in the principal amount indicated in Exhibit 2-C, or (b) the IPDC results in a Maximum Availability Payment in any year that exceeds the Annual MAP Limit for that year;

13.7.7.2 After the adjustments to the Base Maximum Availability Payment as provided in Section 13.7.8, the Maximum Availability Payment in any year exceeds the Annual MAP Limit for that year and IFA gives written Notice to Developer of its exercise of the right to terminate this Agreement as provided in 20.6.1;

13.7.7.3 IFA gives written Notice to Developer that Developer should not proceed to Financial Close because the risk of Environmental Litigation is unacceptable

13.7.7.4 A court with jurisdiction issues a temporary restraining order or other form of injunction that prohibits prosecution of any material portion of the Work, where the

order or injunction remains pending on the Financial Close Deadline;

13.7.7.5 If IFA has obtained a reservation of funding and invitation to submit an application for TIFIA assistance and Developer revises its Project Plan of Finance as set forth in Exhibit 2-C to utilize a TIFIA loan or other form of TIFIA assistance, a decision of the TIFIA Joint Program Office not to provide credit assistance to Developer, or to provide credit assistance in an amount which the Parties mutually determine is likely to be insufficient to achieve Availability Payments below the Annual MAP Limit, taking into account increases in the TIFIA contract and budget authority for the East End Crossing that are available through payment of subsidies to the U.S. Department of Transportation and the cost of such subsidies that are to be factored in the Base Maximum Availability Payment as provided in Section 13.7.8;

13.7.7.6 If IFA has obtained a reservation of funding and invitation to submit an application for TIFIA assistance and Developer revises its project Plan of Finance as set forth in Exhibit 2-C to utilize a TIFIA loan or other form of TIFIA assistance, the failure of the TIFIA Joint Program Office to close financing on or prior to the Financial Close Deadlines despite commercially reasonable efforts by Developer to do so (including making reasonable financial and commercial concessions as necessary and appropriate under the circumstances); provided, however, that the failure of Developer, prior to the expiration of any TIFIA credit commitment, to satisfy any of the conditions precedent for the TIFIA financing set forth in the term sheet and/or credit agreement shall be deemed not to be a failure by the TIFIA Joint Program Office to close financing by the Financial Close Deadline;

13.7.7.7 If PABs are part of the initial financing under Developer's Project Plan of Finance as set forth in Exhibit 2-C, the refusal or unreasonable delay of IFA to issue bonds in the amount that Developer's underwriters are prepared to underwrite, provided that such refusal or delay is not due to any fault or less than diligent efforts of Developer, including Developer's failure to satisfy all requirements that it is obligated to satisfy under the rules and regulations of IFA in place as of the Setting Date. Delay by IFA shall not be considered unreasonable where the financing schedule Developer establishes does not provide IFA normal and customary time periods for carrying out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds; or

13.7.7.8 If PABs are part of the initial financing under Developer's Project Plan of Finance as set forth in Exhibit 2-C, (i) the refusal of IFA's counsel to allow closing of the PABs where the bond counsel is ready to give an unqualified opinion regarding the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs, unless the basis for such refusal is that it would be unreasonable for bond counsel to deliver the opinion or (ii) the delay of IFA's counsel in authorizing closing of the PABs. Delay by IFA's counsel shall not be considered where the financing schedule Developer establishes does not provide IFA's counsel normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds.

13.7.8 Provided that Developer completes the IPDC in accordance with Exhibit 18 if IFA has issued the IPDC Commencement Notice and subject to Section 13.7.9 and IFA's rights to terminate under Sections 20.6.1, IFA will bear the risk and have the benefit of the following:

13.7.8.1 100% of the impact (either positive or negative) on the Base Maximum Availability Payment of changes in the base interest rates set forth in Exhibit 2-C (the

"base interest rates") for the period beginning at 10:00 a.m. ET on October 26, 2012 and ending on the earliest of (a) 10:00 a.m. ET on the date of Financial Close, (b) 10:00 a.m. ET on the Financial Close Deadline, or (c) the date of execution of any interest rate hedging instrument by Developer (the "last date of the base interest rate protection period"). The interest rate adjustment will be based on the movement, if any, in the base interest rates. Developer and IFA shall both adjust the Financial Model as of the last date of the base interest rate protection period to reflect the changes (if any) in the base interest rates and any revisions approved by the Parties but not any potential errors identified as part of the updated audit opinion provided pursuant to Section 12.2.2; and

13.7.8.2 85% of the impact (either positive or negative) on the Base Maximum Availability Payment of the differences between the financial terms assumed and indicated in the Financial Model and in Developer's financial plan as set forth in Exhibit 2-C and the financial terms of the Initial Project Debt and initial Financing Documents as obtained at Financial Close. For the purpose of this Section 13.7.8.2 only, "financial terms" shall consist of and be limited to: the ratio of Project Debt to Committed Investment (subject to the provisions of Section 13.7.9), base case annual debt service coverage ratio (ADSCR), base case loan life coverage ratio (LLCR), senior debt margins, interest on reserves, reserve requirements, swap credit spreads, bond spreads, underwriting fees, conduit fees, bank commitment fees and bank draw fees.

13.7.9 IFA's risk and benefit under Section 13.7.8 is subject to the following limitation. In no event shall the ratio of Initial Project Debt to Committed Investment at Financial Close be less than 85: 15, unless Developer agrees that the decrease shall be assigned an amended Equity IRR for the purpose of determining adjustments to the Base Maximum Availability Payment equal to the blended average cost of the Initial Project Debt as determined from the IPDC final submissions, evaluation and selection.

13.7.10 The Parties will use the Financial Model to calculate the change under Section 13.7.8, positive or negative, in the Base Maximum Availability Payment. The Parties shall make such calculation and produce the Financial Model Update and Equity IRR at Financial Close as follows:

13.7.10.1 First, the Financial Model shall be run to solve for a "first interim" Base Maximum Availability Payment, inputting only the changes, if any, in base interest rates as described in Sections 13.7.8.1, and holding the Original Equity IRR constant;

13.7.10.2 Second, the interim Financial Model resulting from the first step shall be run to solve for a "second interim" Base Maximum Availability Payment, inputting only the changes, if any, in financial terms recognizable under Section 13.7.8.2, and holding the Original Equity IRR constant;

13.7.10.3 Third, the changed Base Maximum Availability Payment shall be determined as the sum of (a) the first interim Base Maximum Availability Payment plus (b) 85% of the difference, positive or negative, between the first interim and the second interim Base Maximum Availability Payments;

13.7.10.4 Fourth, the interim Financial Model resulting from the first step shall be run to solve for the Equity IRR, inputting (a) the Base Maximum Availability Payment determined under Section 13.7.10.3, (b) all the changes in the financial terms recognizable

under Section 13.7.8.2 (without regard to Section 13.7.9), and (c) all other changes in terms of financing between those assumed and indicated in the Financial Model and in Developer's financial plan as set forth in Exhibit 2-C and those set forth in the Initial Project Debt and initial Financing Documents as obtained at Financial Close. The resulting model shall constitute a Financial Model Update, and the resulting internal rate of return on equity shall be the Equity IRR as of Financial Close.

13.7.11 The Parties shall prepare and execute an amendment to this Agreement adding Exhibit 13 at Financial Close.

13.7.12 Within two Business Days after the date of Financial Close, IFA shall return to Developer the original of the Financial Close Security.

13.7.13 Developer shall deliver copies of any ancillary supporting documents (e.g., UCC financing statements) to IFA within 30 days after the date of Financial Close.

ARTICLE 14. TOLLING OPERATIONS; DISPOSITION OF TOLL REVENUES; TOLLING COVENANTS; APPROPRIATIONS

14.1 Tolling Operations--General

14.1.1 Tolling operations shall be conducted on a unified and consistent basis for both the East End Crossing and the Downtown Crossing, through the services of a Toll Operator, acting with the Tolling Body, pursuant to the terms of the Toll Policy Agreement and the Toll Operations Agreement.

14.2 Schedule for Tolling Operations

14.2.1 Tolling operations for the East End Crossing and the Downtown Crossing shall commence, in each case, as soon as each is open to traffic.

14.2.2 Tolling operations for the existing Kennedy bridge shall commence upon the earlier of: (i) completion of the new Downtown bridge (i.e., portion of the Downtown Crossing), (ii) completion of the new East End Bridge, and (iii) June 30, 2018.

14.3 Ownership of Indiana Revenue Share

14.3.1 The Indiana Revenue Share shall be the exclusive property of IFA, subject to the provisions of the Custody Agreement and Project Trust Agreement. Developer hereby disclaims any and all right, title and interest in and to the Indiana Revenue Share, including administrative fees and violation charges, except its beneficial interests under the Project Trust Agreement.

14.3.2 If any User, court or public official remits to IFA (or the Toll Operator) any tolls, administrative fees, violation charges, Incidental Charges, fees, penalties and other charges collected via toll collection proceedings, or if any User in response to or settlement of a grace period Notice or violation Notice or Notice of any collection proceeding remits to IFA (or the Toll Operator) any such tolls, administrative fees, violation charges, Incidental Charges, fees, penalties and other charges, then IFA (or the Toll Operator) shall forthwith remit such payments to the Custodian. Any amounts so remitted to IFA (or the Toll Operator) shall be deemed

received merely as a bailee or collection agent for the Custodian, and shall not constitute funds or property of IFA (or the Toll Operator).

14.4 Further Agreements

14.4.1 IFA and [Kentucky entity], will develop a tolling policy in accordance with the NEPA Documents and will enter into an agreement establishing a comprehensive tolling policy for the Project (the "Toll Policy Agreement," and such policy, the "Toll Policy").

14.4.2 IFA and [Kentucky entity], together with, or acting through, the Tolling Body, agree to engage a qualified toll system operator (the "Toll Operator") to develop, operate and manage a comprehensive toll system for the Project pursuant to an agreement with the Toll Operator, which may be a public private agreement under IC 8-15.5 (the "Toll Operations Agreement").

14.4.3 IFA, together with [Kentucky entity] and a custodial bank, shall enter into the Custody Agreement as described in Section 14.7 below.

14.5 Toll Policy Agreement; Terms

14.5.1 The Toll Policy Agreement may establish either a separate legal entity or a joint board, representing each of the parties to the Toll Policy Agreement (the "Tolling Body"), which shall exercise the designated powers of each of the parties thereto, subject to such limitations as may be contained therein. The Toll Policy Agreement may require consent of the parties thereto for certain changes in the Toll Policy or in maximum rates or fees which may be charged pursuant to the Toll Policy Agreement and the Toll Operations Agreement.

14.5.2 The Toll Policy Agreement shall include, among other appropriate terms:

14.5.2.1 Expected initial toll rates, including identification of vehicle classes, unit toll rates by vehicle class, allowable toll variations by time of day or day of week, and toll variations tied to levels of traffic congestion, and

14.5.2.2 Toll rate adjustments and adjustment mechanisms, including allowable frequency of toll rate adjustments, market or other external indices underlying adjustment mechanisms, and any forced triggers for rate adjustments.

14.6 Toll Operations Agreement; Terms

14.6.1 The Toll Operations Agreement shall provide that IFA and [Kentucky entity] shall have consent rights over key operational considerations, as specified therein (including changes to maximum toll rates and rate adjustment mechanisms), as well as audit rights related to the activities of the Toll Operator.

14.6.2 IFA agrees that the parties to the Toll Operations Agreement, for so long as either shall have outstanding obligations related to their portions of the Project, shall agree on a mechanism for annual or more frequent periodic review of existing toll schedules and adjustment mechanisms to support payment and covenant obligations with respect to such outstanding obligations.

14.6.3 The Toll Operations Agreement will establish procedures for operations, insurance, management, repair, replacement, of tolling activities by the Toll Operator on the affected portions of the Project within the Toll Operations Agreement, as well as appropriate provisions for oversight, removal, termination or replacement of the Toll Operator by the Tolling Body or the governmental parties.

14.6.4 No party to the Toll Operations Agreement shall have discretionary authority over any element of cash collections, account deposits or distributions.

14.7 Custodial Arrangements

14.7.1 [Kentucky entity] and IFA will establish, no later than the date that is six months prior to the Substantial Completion Date, a lockbox and custodial account arrangement (the "Custody Arrangement") for the purpose of receiving, administering and distributing funds prepaid by Transponder holder customers, Toll Revenue receipts from such customers for Transactions not prepaid, administrative fees, violation charges, and other amounts on account of nonpayment of tolls, Incidental Charges, and Toll Revenues received from Transponder Issuers. The Custody Arrangement will be created and administered pursuant to a lockbox and custodial account agreement (the "Custody Agreement") that will incorporate in substance the terms set forth on Exhibit 15 (Summary of Terms for Custody Agreement). The Custodian may, but need not, be the Project Trustee.

14.7.2 Pursuant to the Custody Arrangement and the terms of the Custody Agreement, such revenue receipts and prepaid amounts described above will be deposited with the Custodian on a daily basis and held, free and clear of any claim, lien, charge, security interest or encumbrance in favor of any creditor of Developer or IFA or [Kentucky entity], pending distribution thereof from the Custodian to the Project Trustee. The terms of the Custody Agreement also shall provide for the Custodian's access to IFA and [Kentucky entity] customer and account information (subject to compliance with applicable confidentiality requirements and customer account agreements) for the sole purpose of determining appropriate receipt and disbursement of amounts held pursuant to the Custody Arrangement.

14.7.3 The Custody Agreement shall require:

14.7.3.1 the daily deposit of Toll Revenues into an account or accounts for the benefit of the IFA and [Kentucky entity],

14.7.3.2 the division of such Toll Revenue deposits on a 50/50 basis (i.e., the Kentucky Revenue Share and the Indiana Revenue Share) into accounts for the benefit of IFA and [Kentucky entity], and

14.7.3.3 procedures for the periodic withdrawal of funds from the accounts or subaccounts as more particularly described in Exhibit 15 Summary of Terms for Custody Agreement.

14.7.4 No party to the Custody Agreement or the Toll Operations Agreement shall have discretionary authority over any element of cash collections, account deposits or distributions.

14.7.5 The fees and charges of the Custodian payable by IFA shall be a First Priority Cost.

14.8 Appropriations

Except with respect to those sources of funds that as a matter of Law are not subject to annual appropriations, including the Indiana Revenue Share, the Parties acknowledge that the source of funds for payment of the Milestone Payments, Availability Payments and other amounts due to Developer under this Agreement is subject to the availability of funds appropriated by the Indiana General Assembly and approved by the Governor of the State of Indiana.

ARTICLE 15. RELIEF EVENTS

This Article 15 sets forth the requirements for obtaining schedule and monetary relief under the PPA Documents due to Relief Events. Developer hereby acknowledges and agrees that the Milestone Payments and Availability Payments provide for full compensation for performance of all the Work, and the Milestone Schedule Deadlines provide reasonable and adequate time to perform the Work required within the Milestone Schedule Deadlines, subject only to those exceptions specified in this Article 15. The compensation amounts, deadline extensions and performance relief specified in this Article 15 shall represent the sole and exclusive right against IFA, the Department, the State, and their respective successors, assigns, agencies, divisions, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees to compensation, damages, deadline extension and performance relief for the adverse financial and schedule effects of any event affecting the Work, the East End Crossing or Developer. No award of compensation or damages shall be duplicative. Developer unconditionally and irrevocably waives the right to any claim against IFA, the Department, the State, and their respective successors, assigns, agencies, divisions, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees for any monetary compensation, schedule relief or other relief except to the extent specifically provided in this Article 15. The foregoing waiver is limited solely to the occurrence of Relief Events and encompasses all theories of liability, whether in contract, tort (including negligence), strict liability, equity, *quantum meruit* or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual or unilateral mistake and frustration of purpose. Nothing in the Technical Provisions shall have the intent or effect or shall be construed to create any right of Developer to any claim for additional monetary compensation, schedule relief or other relief, any provision in the Technical Provisions to the contrary notwithstanding with respect to Relief Events. The provisions of this paragraph shall not affect Developer's remedies under the PPA Documents in the event of an IFA Default or upon termination of this Agreement prior to the stated expiration of the Term.

15.1 Relief Event Claim Process

This Section 15.1 applies to all Relief Events, except Relief Events that are an IFA Change. The process for IFA Changes shall be through a Change Order or Directive Letter pursuant to Sections 16.1 and 16.3, respectively.

15.1.1 Relief Event Notice

15.1.1.1 If at any time Developer determines that a Relief Event has occurred or is imminent, Developer shall submit a written Relief Event Notice to IFA. IFA shall promptly acknowledge receipt of each Relief Event Notice.

15.1.1.2 The Relief Event Notice shall include, to the maximum extent of the information then-available:

a. A description of the Relief Event and its date of occurrence or inception in reasonable detail;

b. Developer's current estimate of the anticipated adverse and beneficial effects of the Relief Event and the basis for such estimate;

c. Developer's estimate of the Critical Path impact directly attributable to the Relief Event and the basis for such estimate;

d. If the Relief Event will likely impact the O&M Work, Developer's initial analysis whether a Permitted Closure will be claimed;

e. Developer's initial analysis of any adverse effect of the Relief Event on its ability to perform its obligations under this Agreement; and

f. The actions Developer has taken prior to the Relief Event Notice to prevent, and proposes to take thereafter to mitigate, the cost, delay and other consequences of the Relief Event.

15.1.1.3 The nature and scope of the potential Claim stated in the Relief Event Notice shall remain consistent (except for reductions) for the remainder of the Claim process and, if applicable, during any subsequent Dispute Resolution Procedures, except with respect to consequences of a Relief Event that (a) are of a different nature or scope, (b) first arise or occur after the Relief Event Notice is delivered, and (c) could not have been anticipated through the exercise of reasonable diligence and Good Industry Practice prior to delivering the Relief Event Notice. If any such new consequences arise or occur prior to submission of the Relief Request, Developer shall report them to IFA by a supplemental Relief Event Notice.

15.1.1.4 Developer shall submit the Relief Event Notice on a standardized form approved by IFA.

15.1.1.5 Developer shall assign an exclusive identification number for each Relief Event Notice, determined by chronological sequencing. The exclusive identification number shall be used on each of the following corresponding documents: (i) Relief Request; (ii) supplemental Notices and submissions pertaining to the Relief Event Notice; and (iii) full and final documentation of the Claim.

15.1.1.6 If a single Relief Event is a continuing cause of delay, only one Relief Event Notice shall be necessary.

15.1.2 Relief Request

15.1.2.1 Developer shall, within a further 45 days after the date of the Relief Event Notice, submit to IFA a Relief Request that provides Developer's complete reasoning for additional compensation, Milestone Schedule Deadline adjustments and other requested relief relating to the Relief Event. IFA shall promptly acknowledge receipt of each Relief Request. The Relief Request shall include the following information, to the maximum

extent then-available:

a. Full details of the Relief Event, including its nature, the date of its occurrence, its duration, affected locations, and items of Work affected. Impacts to the O&M Work, if any, shall be stated by Fiscal Year.

b. Identification of all pertinent documents and the substance of any oral communications, if any, relating to the Relief Event and the name of the person or persons making such material oral communications.

c. Identification of the particular provisions of the PPA Documents that are claimed to entitle Developer to the relief sought, and a statement that sets forth the reasons why such provisions entitle Developer to such relief. If Developer seeks relief for IFA's alleged breach of the PPA Documents, then Developer shall identify the provisions of the PPA Documents which allegedly have been breached and the actions constituting such breach.

d. Where a request for a Milestone Schedule Deadline adjustment is made, a Critical Path time impact analysis of the Project Schedule that (i) identifies Controlling Work Items and Critical Path (with activity durations, predecessor and successor activities and resources, including Total Float, and illustrates the effect of schedule changes or disruptions on the Milestone Schedule Deadlines and (ii) complies with the requirements of Section 1.5.2.3 of the Technical Provisions.

e. A detailed, itemized estimate of all amounts claimed under Sections 15.2, 15.3 and 15.4 to the extent such amounts are eligible for compensation under the terms of the PPA Documents for the Relief Event in question. All such amounts shall be broken down in terms of the eligible direct costs for labor (including burden), Materials, supplies, Equipment, indirect costs, including expenses and profit, and any other cost category or categories IFA reasonably specifies. The estimate shall include, to the extent applicable, the Extra Work Costs for future O&M Work, stated by Fiscal Year and by net present value using Developer's then-current weighted average cost of Project Debt and Committed Investment as the discount rate.

f. The effect of the Relief Event on Developer's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the precise effect on each such obligation, and the likely duration of that effect.

g. If applicable, the cause of any claimed Permitted Closure and the actual and projected duration and impacts thereof.

h. An explanation of the measures that Developer has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay and other consequences of the Relief Event.

15.1.2.2 Developer shall submit the Relief Request on a standardized form approved by IFA.

15.1.2.3 If, following issuance of any Relief Request, Developer receives or becomes aware of any further information or estimates relating to the Relief Event and/or its impact on cost, schedule, Closures or performance of Work, including information on new consequences as described in Section 15.1.1.3, it shall submit such further information to IFA

as soon as possible. IFA may request from Developer any further information that IFA may reasonably require, and Developer shall supply the same within a reasonable period after such request.

15.1.2.4 Neither the fact that Developer submits to IFA a Relief Request, nor the fact that IFA keeps account of the costs of labor, Materials, or Equipment, or time, shall in any way be construed as establishing the validity of the Relief Request or the Claims therein or method of computing any compensation or extension of Milestone Schedule Deadlines.

15.1.3 IFA Evaluation and Response to Relief Request; Negotiations

15.1.3.1 IFA will evaluate the information presented in the Relief Request and provide a written response to Developer within 45 days after its receipt. If Developer complies with the Notice and information requirements in Sections 15.1.1 and 15.1.2, but IFA does not provide Developer a written response within such 45-day period, then, except as provided otherwise in Section 15.1.6, Developer shall have the right to assert a Claim against IFA for the relevant Relief Event and have such Claim determined according to the Dispute Resolution Procedures.

15.1.3.2 If Developer timely complies with Notice and information requirements in Sections 15.1.1 and 15.1.2 and IFA provides a written response within such 45-day period indicating that there are any matters in Dispute regarding the Relief Request, then the Parties may mutually elect to commence good faith negotiations to determine the matters in Dispute, or Developer may elect to assert a Claim against IFA for the matters in Dispute and have such Claim determined according to the Dispute Resolution Procedures.

15.1.3.3 If IFA or Developer determines after engaging in good faith negotiations that continuation of such negotiations is not likely to resolve the matters in Dispute, then, except as provided otherwise in Sections 15.1.6, Developer may initiate the Dispute Resolution Procedures.

15.1.4 Final Documentation of Relief Event Claim

15.1.4.1 Within 30 days of the completion of work related to a Relief Event that is the subject of a Relief Request, Developer shall submit to IFA the full and final documentation of the Claim. Pertinent information, references, arguments, and data to support the Claim shall be included in the full and final documentation, including updated analyses, descriptions, actual amounts and impacts, specific dates for Milestone Schedule Deadline adjustments, and other documentation covering the same scope of information as required for the Relief Request.

15.1.4.2 Without limiting the foregoing, if Developer claims compensation under Sections 15.2, 15.3 or 15.4, and except to the extent that the same are the subject of a previous written agreement by the Parties to be paid as a negotiated fixed price, Developer shall provide an itemized accounting of the actual direct costs broken down in terms of labor (including burden), Materials, supplies, Equipment, indirect costs, including expenses and profit, and any other cost category reasonably requested by IFA. The documentation also shall include, to the extent applicable, the Extra Work Costs for future O&M Work, stated by Fiscal Year and by net present value using Developer's then-current weighted average cost of capital as the discount rate. The labor, Materials, and Equipment cost categories shall account for the

following items:

a. Labor. A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested payment of labor costs.

b. Materials. Invoices, purchase orders, location of materials either stored or incorporated into the East End Crossing, dates materials were transported to the Site or incorporated into the East End Crossing, and other pertinent information related to the requested payment of material costs.

c. Equipment. Listing of detailed description (make, model, and serial number), hours of use, dates of use and equipment rates. Equipment rates shall be at the applicable State rental rate as listed in the Department's publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the affected work related to the Claim was performed.

15.1.4.3 Developer shall submit the full and final documentation of the Claim on a standardized form approved by IFA, and shall certify the Claim to be accurate, truthful and complete. Information submitted subsequent to the full and final documentation submittal will not be considered. No full and final documentation of Claim will be considered that does not have the same nature, scope (except for reductions) and circumstances, and basis of Claim, as those specified in the Relief Event Notice and any supplements submitted in accordance with Section 15.1.1.3 and in the Relief Request.

15.1.5 IFA Response to Final Documentation

IFA's failure to respond to a full and final documentation of a Claim arising out of a Relief Event within 45 days after receipt shall constitute IFA's rejection of the Claim. If IFA finds the Claim or any part thereof to be valid, IFA will:

15.1.5.1 Deliver to Developer written Notice of Determination authorizing such partial or whole Claim;

15.1.5.2 Pay such Claim to the extent deemed valid (as to Extra Work Costs and Delay Costs, by one of the methods set forth in Section 15.4.5); and

15.1.5.3 Grant a commensurate Milestone Schedule Deadline adjustment, if applicable, as provided in the PPA Documents.

15.1.6 Waiver

Time is of the essence in Developer's delivery of its written Relief Event Notice, supplemental Relief Event Notice and Relief Request. Accordingly:

15.1.6.1 If for any reason Developer fails to deliver such written Relief Event Notice or supplement thereto in substantial compliance with all applicable requirements:

a. Within 45 days following the date (herein the "starting date") on which Developer first became aware (or should have been aware, using all reasonable due diligence)

of the Relief Event (or, in the case of a supplement, the new consequences described in Section 15.1.1.3), Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to relief for adverse effect attributable to the Relief Event accruing after such 45-day deadline and until the date Developer submits the written Relief Event Notice or supplement thereto; and

b. Within 90 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief for any adverse effect attributable to such Relief Event.

15.1.6.2 If for any reason Developer fails to deliver such written Relief Request in substantial compliance with all applicable requirements within 45 days after the date of the Relief Event Notice, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term) for any adverse effect attributable to such Relief Event.

15.1.7 Open Book Basis

Developer shall share with IFA all data, documents and information, and shall conduct all discussions and negotiations, pertaining to a claimed Relief Event on an Open Book Basis.

15.2 Compensation to Developer due to Missed Availability Payment as a Result of Relief Event Delay of Substantial Completion

15.2.1 The Parties acknowledge that Developer may incur certain losses if Availability Payments scheduled in the Financial Model to commence accruing on the original Baseline Substantial Completion Date are delayed due to Relief Event Delays. For the delay in commencing accrual of Availability Payments on the original Baseline Substantial Completion Date IFA agrees to compensate Developer for its losses, but only to the extent such losses are caused by Relief Event Delays. Such compensation shall be calculated in accordance with the formulas set forth in Sections 15.2.2.

15.2.2 Subject to the other limitations set forth in this Section 15.2, the total compensation owed to Developer for the delay in receiving Availability Payments scheduled in the Financial Model to commence accruing on the original Baseline Substantial Completion Date shall equal the following:

15.2.2.1 The greater of:

a. The average daily accrual of scheduled debt service payments (except the repayment of principal scheduled to be funded by the Milestone Payment which has been delayed by a Relief Event Delay) on the outstanding portion of the Initial Senior Project Debt during the period commencing on the original Baseline Substantial Completion Date and ending on the Substantial Completion Date, multiplied by the lesser of (i) 1 or (ii) a ratio the numerator of which is the number of days of Relief Event Delays and the denominator of which is the number of days from and including the original Baseline Substantial Completion Date to the Substantial Completion Date; or

b. 90% of the average daily Availability Payment scheduled to accrue during the period commencing on the original Baseline Substantial Completion Date and ending on the

Substantial Completion Date, multiplied by the lesser of (i) 1 or (ii) a ratio the numerator of which is the number of days of Relief Event Delays and the denominator of which is the number of days from and including the original Baseline Substantial Completion Date to the Substantial Completion Date;

minus, in either case

15.2.2.2 The proceeds available to Developer from any delayed start up or business interruption insurance policy procured to cover any loss of Availability Payment during the period commencing on the original Baseline Substantial Completion Date and ending on the Substantial Completion Date, multiplied by the lesser of (a) 1 or (b) a ratio the numerator of which is the number of days of Relief Event Delays and the denominator of which is the number of days from and including the original Baseline Substantial Completion Date to the Substantial Completion Date, excluding any insurance proceeds paid to Developer to cover the loss of the Availability Payment, if any, during the 60 day period provided in Section 15.2.3;

minus, in either case

15.2.2.3 The amount of any deduction or offset allowed under this Agreement.

15.2.3 If a Deductible Relief Event causes a Relief Event Delay, no compensation under this Section 15.2 shall be due or payable for the first 60 days of Relief Event Delays attributable to such Deductible Relief Event, and such deductible shall not be included in calculating the number of days of Relief Event Delays under Section 15.2.2. Such 60 day deductible as applied to Section 15.2.2 shall be cumulative and apply in the aggregate for all Deductible Relief Events affecting Substantial Completion.

15.2.4 Except to the extent that Section 20.2.4 applies and provides otherwise, in no event shall Developer be entitled to compensation under this Section 15.2 in excess of 220 days for Relief Event Delays that in the aggregate affect Substantial Completion. If Relief Event Delays affecting Substantial Completion exceed 220 days in the aggregate, the Parties' rights and remedies shall be as set forth in Section 20.2.

15.2.5 Compensation owed under this Section 15.2 shall be paid quarterly, commencing on the last day of the Quarter when Substantial Completion would have been achieved had the Relief Event Delays not occurred and continuing on the last day of each Quarter thereafter until all compensation owed under this Section 15.2 is paid.

15.2.6 Notwithstanding any provision to the contrary, Developer shall not be entitled to any payments under this Section 15.2 if Developer achieves Substantial Completion on or before the original Baseline Substantial Completion Date.

15.2.7 Claims under this Section 15.2 shall be submitted and subject to the claims procedures and requirements set forth in Section 15.1, and Developer shall be required to prove the existence, cause, effect, and timing of a Relief Event Delay in accordance with Section 15.1.

15.3 Delayed Milestone Payment Due to Relief Event Delays

15.3.1 If a Relief Event Delay extends the date described in Section 10.1.2, then subject to Sections 15.3.2 through 15.3.7 Developer shall be entitled to submit Claims for the additional interest incurred resulting from a delay in making any Initial Senior Project Debt principal payment beyond the later of:

15.3.1.1 The reasonably expected date for payment under Section 10.1.2 absent impact of the Relief Event Delay, taking into consideration the reasonably expected timing for incurring costs of eligible Construction Work as indicated in the Project Baseline Schedule IFA approves pursuant to Section 1.5.2.1.1 of the Technical Provisions; or

15.3.1.2 The date for payment scheduled in the Financial Model absent impact of the Relief Event Delay.

15.3.2 Compensation under this Section 15.3 shall be due and owing only if:

15.3.2.1 Such Initial Senior Project Debt principal payment was scheduled to be funded by the Milestone Payment;

15.3.2.2 Receipt of the Milestone Payment was delayed by a Relief Event Delay; and

15.3.2.3 The delay in making such Initial Senior Project Debt principal payment was directly caused by the delayed receipt of the Milestone Payment.

15.3.3 The compensation owed under this Section 15.3 shall be calculated based on the number of days of Relief Event Delays from and after the later of the dates described in Sections 15.3.1.1 and 15.3.1.2, up to a maximum of 365 days, multiplied by the daily interest charged for the relevant principal amount under the applicable Funding Agreement.

15.3.4 If a Deductible Relief Event causes a Relief Event Delay, no compensation shall be due or payable for the first 60 days of Relief Event Delays from and after the later of the dates described in Sections 15.3.1.1 and 15.3.1.2 attributable to such Deductible Relief Event, and such deductible shall not be included in calculating the number of days of Relief Event Delays under Section 15.3.1. Such 60 day deductible shall be cumulative and apply in the aggregate for all Deductible Relief Events. If a Relief Event Delay is caused concurrently by a Deductible Relief Event and a non-Deductible Relief Event, such delay shall be deemed caused solely by the Deductible Relief Event.

15.3.5 The compensation owed shall be reduced by the proceeds from any delayed start up or business interruption insurance policy procured to cover any extra cost of funds during the period of delay in payment of the Milestone Payment, excluding any insurance proceeds paid to Developer to cover the cost of funds during the 60 day period provided in Sections 15.3.4.

15.3.6 Claims for the additional interest shall be due and payable the later of (a) 30 days after each date Developer delivers to IFA a request for payment together with documentation demonstrating the next interest payment date under the terms of the applicable Funding Agreement and the amount of the additional interest owing under this Section 15.3 or (b) two

Business Days before such interest payment date, provided that payments shall not be due earlier or more frequently than 30 days after the end of each Quarter.

15.3.7 Claims under this Section 15.3 shall be submitted and subject to the claims procedures and requirements set forth in Section 15.1, and Developer shall be required to prove the existence, cause, effect and timing of a Relief Event Delay in accordance with Section 15.1.

15.4 Payment for Extra Work Costs and Delay Costs

15.4.1 Except as provided otherwise in this Agreement, IFA shall compensate Developer for Extra Work Costs and Delay Costs directly attributable to occurrence of a Relief Event.

15.4.2 IFA shall compensate Developer for amounts due for Extra Work Costs and Delay Costs (a) to the extent permitted by Law, as a lump sum payment, (b) as periodic payments over the Term, (c) as an adjustment to the MAP over the Term, (d) as progress payments invoiced as Work is completed, (e) through an extension of the Term if the event giving rise to the Claim occurs after the Construction Period, or (f) through any combination of the above, as determined by IFA in its sole discretion but subject to Section 15.4.4; provided, further that, if such amounts are less than $20 million in total in each Fiscal Year during the Construction Period, IFA shall pay such amounts as a lump sum payment. Subject to Section 15.5, IFA shall pay for any Extra Work Costs and Delay Costs resulting from Relief Events that are IFA Changes as progress payments invoiced as Work is completed.

15.4.3 IFA shall provide Developer with a written Notice of the method chosen for paying Developer for the amounts of Extra Work Costs and Delay Costs owed. The Parties shall conduct all discussions and negotiations to determine any compensation amount (including additional compensation amounts under Section 15.5, if any), and Developer shall provide IFA with all data, documents and information pertaining thereto, on an Open Book Basis.

15.4.4 If IFA elects to compensate Developer through Deferral of Compensation, Developer shall use diligent efforts to obtain (a) funding from the Lenders, or other lenders if permitted by the Funding Agreements, and/or (b) equity support from existing and potentially new Equity Members of Developer, in either case, to finance the applicable Extra Work Costs and the Delay Costs relating to the Relief Event in advance of receiving the required compensation payments from IFA. If despite such diligent efforts and the additional compensation that would be paid pursuant to this Section 15.4 Developer is unable to obtain such funding and equity support, then IFA's election to compensate through Deferral of Compensation shall be deemed void, and IFA shall pay the applicable Extra Work Costs and Delay Costs through another method set forth in Section 15.4.2.

15.4.5 If IFA chooses to compensate Extra Work Costs and Delay Costs owed under this Section 15.4:

15.4.5.1 As a lump sum payment other than a negotiated fixed price, then payment of all undisputed amounts shall be due and owing 30 days following IFA's receipt of (a) all required Claim documentation in full compliance with Section 15.1, and (b) all pertinent data, documents and information on an Open Book Basis;

15.4.5.2 As a lump sum payment that is a negotiated fixed price, then payment(s) of all undisputed amounts shall be due and owing 30 days after IFA receives from Developer (a) all required Claim documentation in full compliance with Section 15.1, (b) all pertinent data, documents and information on an Open Book Basis and (c) documentation required pursuant to the negotiated fixed price terms in order to receive scheduled payments under the negotiated fixed price terms; and

15.4.5.3 As progress payments invoiced as Work is completed, then payment of all undisputed amounts shall be due and owing 30 days after each date IFA receives from Developer (a) all required Claim documentation in full compliance with Section 15.1 and (b) an invoice, not more often than monthly, of such Extra Work Costs and Delay Costs incurred for such Work during the previous month, which invoice shall be itemized as set forth in Section 15.1.4 and by the components of Extra Work Costs and Delay Costs allowable under Exhibit 17 (Extra Work Costs and Delay Costs Specifications).

15.4.6 If any portion of the Extra Work Costs and Delay Costs consists of costs of design or construction to be performed, or other future capital expenditures, then IFA shall have no obligation to make advance payments and shall have the right to pay such portion in monthly progress payments according to the Department's standard practices and procedures for paying its contractors and applicable Laws.

15.4.7 If IFA elects to make quarterly or other periodic payments, at any later time it may choose to complete compensation through a lump sum payment of the present value of the remaining Extra Work Costs and Delay Costs.

15.4.8 For the purpose of any discounting of future cost impacts, the Parties shall use the same present value methodology for calculating the weighted average cost of capital as incorporated into the Financial Model Update (or, if there has been no Update, into the Financial Model).

15.4.9 Extra Work Costs and Delay Costs attributable to a Relief Event shall:

15.4.9.1 Exclude:

a. Third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of IFA in the regular course of business, and

b. Unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings);

15.4.9.2 Exclude amounts paid or to be paid to Affiliates in excess of the pricing Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor;

15.4.9.3 Exclude those costs incurred in investigating, analyzing, asserting, pursuing or enforcing any Claim or Dispute, including legal, accounting, financial advisory and technical advisory fees and expenses, and including such costs in connection with preparing Relief Event Notices, Relief Requests and final documentation of Claims in respect of Relief Events;

15.4.9.4 Take into account any savings in costs or time resulting from the Relief Event;

15.4.9.5 Be subject to Developer's obligation to prevent and to mitigate cost increases and augment cost decreases in accordance with Section 15.15;

15.4.9.6 IFA, at its election, may offset any amounts owing to Developer in respect of costs for which IFA against any amounts due and owing to IFA from Developer pursuant to this Agreement, such offset rights being in addition to IFA's offset rights under Section 19.2.5.

15.5 Restoration of Financial Balance for Deferral of Compensation

15.5.1 If IFA elects to compensate Developer through Deferral of Compensation, Developer shall be entitled to additional compensation as necessary to restore the reduction in the Original Equity IRR resulting from the Deferral of Compensation and to debt service coverage ratios.

15.5.2 Developer shall provide IFA with the total amount of compensation that Developer considers owed to restore the Original Equity IRR and debt service ratios as a result of the Deferral of Compensation, including supporting calculations and documentation. In no event shall Developer be entitled to any compensation for losses unrelated and not directly caused by the Deferral of Compensation.

15.5.3 If through mutual consent of the Parties, IFA is to compensate Developer through Deferral of Compensation for any Extra Work Costs and Delay Costs resulting from an IFA Change, the Equity IRR assumed to be earned on the additional invested equity in connection with the IFA Change shall be equal to the Original Equity IRR.

15.6 Relief Events Allowance Account; Relief Events Allowance; Claim Deductible

15.6.1 Relief Events Allowance Account, Relief Events Allowance

15.6.1.1 On or before the date of Financial Close, Developer shall establish and fund an escrow account (the "Relief Events Allowance Account") exclusively available for the uses set forth in Section 15.6.1. Developer shall provide to IFA the details regarding the account, including the name, address and contact information for the depository institution and the account number. The IFA shall have a first priority perfected security interest in the Relief Events Allowance Account, and the right to receive directly from the depository institution monthly account statements. On the date of Financial Close, the Developer shall deposit into the Relief Events Allowance Account the sum of $45,000,000 (the "Relief Events Allowance").

15.6.1.2 The Relief Events Allowance shall be available and used as the first source of funds to pay undisputed Extra Work Costs and Delay Costs due to Developer

(after taking into consideration the Claim Deductible) for occurrence prior to the Substantial Completion Date of Relief Events under clauses (j) (other than a Seismic Event), (m), (o), (p), (q) and (u) of the definition of Relief Events, and for no other purpose.

15.6.1.3 If concurrent Relief Events occur that cause or contribute to the same Extra Work Costs or Delay Costs and one of such Relief Events is subject to the Relief Events Allowance, then such Extra Work Costs or Delay Costs shall be payable from the Relief Events Allowance Account.

15.6.1.4 After payment in full of all undisputed Extra Work Costs and Delay Costs payable from the Relief Events Allowance, Developer shall promptly deliver to IFA a written waiver and release of all known and unknown, suspected and unsuspected, Claims payable from the Relief Events Allowance Account, and the Parties shall share equally any funds remaining in the Relief Events Allowance Account, including accrued interest.

15.6.1.5 Funds held in the Relief Events Allowance Account may be invested and reinvested only in Eligible Investments. Eligible Investments in the Relief Events Allowance Account must mature, or the principal of and accrued interest on such Eligible Investments must be available for withdrawal without penalty, not later than such times as shall be necessary to provide funds when needed for payment of draws to Developer, and in any event not later than the end of the Term. All interest earned or profits realized from the investment of funds in the Relief Events Allowance Account shall be retained therein.

15.6.1.6 At the earlier of (a) any earlier termination of this Agreement for any reason, including termination due to IFA Default or (b) the Substantial Completion Date, all funds in the Relief Events Allowance Account shall automatically be shared equally between IFA and Developer, and IFA's share shall automatically become the sole property of IFA, free and clear of all liens, pledges, encumbrances, offsets and deductions. Thereupon, Developer shall deliver such transfers, assignments and other documents, and take such other actions, as IFA or the Project Trustee shall require to confirm transfer to IFA of its share of the funds in the Relief Events Allowance Account, free and clear of all liens, pledges, encumbrances, offsets and deductions.

15.6.1.7 The Relief Events Allowance is not in and of itself a limitation on IFA's liability for Extra Work Costs and Delay Costs directly attributable to the Relief Events payable from the Relief Events Allowance Account which limitations are set forth elsewhere in this Article 15.

15.6.2 Claim Deductible

15.6.2.1 Except as provided in Section 15.6.2, each separate occurrence of a Relief Event for which a Claim is made seeking the recovery of Extra Work Costs and Delay Costs, as applicable, shall be subject to the Claim Deductible. The Claim Deductible reflects the Parties' agreement that: (a) Developer shall bear the financial risks for Extra Work Costs and Delay Costs, as applicable, for each separate occurrence of a Relief Event, up to the Claim Deductible; and (b) except as otherwise provided in this Article 15, IFA will compensate Developer for Extra Work Costs and Delay Costs, as applicable, in excess of the Claim Deductible, provided that each Claim complies with Section 15.1.

15.6.2.2 The Claim Deductible shall not apply to a Claim seeking recovery

for the following:

a. IFA Change (other than a Non-Discriminatory O&M Change);

b. A Relief Event set forth in clause (a), (e), (f), (g) (but only as to performance or failure to perform work by IFA), (h), (i), (m) (but only as to IFA Releases of Hazardous Materials), (n) (but only as to IFA Releases of Hazardous Materials) of the definition of Relief Event or (s);

c. Extra Work Costs and Delay Costs directly attributable to a Flood Event;

d. Extra Work Costs and Delay Costs directly attributable to a Seismic Event, which are subject to the deductible set forth in Section 15.7.11; and

e. Compensation under Sections 15.2 and 15.3.

15.6.2.3 The amount of the Claim Deductible shall be adjusted annually at the beginning of each Fiscal Year after the Effective Date by a percentage equal to the percentage adjustment in the CPI between the CPI most recently published for the second immediately preceding Fiscal Year and the CPI most recently published for the immediately preceding Fiscal Year.

15.7 Other Deductibles; Special Provisions

Developer's rights and remedies respecting certain Relief Events and Losses are subject to the provisions of this Section 15.7. The provisions of this Section 15.7 supersede any contrary provisions of this Agreement.

15.7.1 Non-Discriminatory O&M Change

15.7.1.1 In no event shall Developer be entitled to compensation for increases in costs of O&M Work, whether Extra Work Costs or Delay Costs, due to a Non-Discriminatory O&M Change, except for capital costs of required major new improvements or required major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any affected Element. Developer shall be entitled to Extra Work Costs only if IFA directs Developer to implement the Non-Discriminatory O&M Changes prior to the date when Developer performs or is scheduled to perform the Rehabilitation Work (if any) on the affected Element or otherwise outside the ordinary course of performing the O&M Work. In such case, the amount of the Extra Work Costs shall equal the lesser of (a) the actual, reasonable Extra Work Costs incurred or (b) the net present value (applying Developer's then-current weighted average cost of capital as the discount rate) of the cost of funds for such actual, reasonable Extra Work Costs from the date of funding until the next scheduled Rehabilitation Work for the affected Element. Developer shall not be entitled to any Extra Work Costs for implementing Non-Discriminatory O&M Changes if Developer replaces the affected Element during the ordinary course of performing the O&M Work.

15.7.2 Project Right of Way Acquisition

Respecting the Relief Event under clause (f) of the definition of Relief Event (concerning IFA-Caused Delay) where the IFA-Caused Delay is under clause (c)(ii) of such definition

(concerning a time period to make available to Developer Additional Property being acquired), Developer shall have no Claim to a Relief Event or Change Order on account of, and Developer shall have the sole risk arising out of:

15.7.2.1 The refusal of any Governmental Entity that owns or controls an Additional Property to grant necessary rights of access, entry and use to IFA after IFA makes diligent efforts to negotiate acquisition of such Additional Property; or

15.7.2.2 The holding by the court in any condemnation action for the taking of an Additional Property to the effect that (a) IFA's power of eminent domain does not extend to such Additional Property or (b) the proposed condemnation does not satisfy legal requirements for necessity of the taking.

15.7.3 Use of Airspace for Business Opportunity

Prior to deciding whether to pursue or implement a Business Opportunity, at IFA's request Developer shall promptly provide analysis of the impacts thereof on Developer's costs and schedule.

15.7.4 Flood Event

15.7.4.1 For each Flood Event, Developer shall bear (a) the amount of its deductible or self-insured retention under its then applicable Insurance Policy for the Flood Event, plus (b) all cost impacts other than the Extra Work Costs and Delay Costs to repair or replace tangible property damage to the East End Crossing caused by the Flood Events. If Developer is excused from insuring the Flood Event pursuant to Section 17.1.8, then Developer shall be deemed to have self-insured the Flood Event risk in the amount of the deductible under the most recent Insurance Policy Developer carried for such risk, inflated annually by the increase, if any, in the CPI between the CPI most recently published before January 1 of the last year covered by such Insurance Policy and the CPI most recently published before January 1 of the applicable year.

15.7.4.2 If the East End Crossing fails to meet flooding or other design requirements under the Technical Provisions, then IFA shall have no liability for any Extra Work Costs or Delay Costs arising out of the Flood Event that would not have been suffered had Developer met such flooding or other design requirements. (Refer to Section 15.9 regarding reduction of IFA's liability for Extra Work Costs and Delay Costs by insurance or deemed self-insurance).

15.7.4.3 Unless specified otherwise by IFA, from and after issuance of NTP2 Developer shall comply with the requirements for performance of emergency repair work and maintenance of documents as set forth in Section 9.3 of this Agreement and other provisions of the PPA Documents.

15.7.5 Major Environmental Approval Delay

Developer shall not be entitled to any Claim for Extra Work Costs relating to a Relief Event under clause (k) of the definition of Relief Event (concerning Major Environmental Approvals).

15.7.6 Utility Owner Delay

Developer shall not be entitled to any Claim for Extra Work Costs relating to a Utility Owner delay set forth in clause (l) of the definition of Relief Event (concerning Utility Owner delay).

15.7.7 Hazardous Materials

15.7.7.1 Developer's rights to compensation and schedule relief with respect to Hazardous Materials under clauses (m) and (n) of the definition of Relief Event (concerning certain Hazardous Materials) are limited to those set forth in Exhibit 5 (Hazardous Materials Risk Allocation Terms).

15.7.7.2 The terms and provisions of Exhibit 5 (Hazardous Materials Risk Allocation Terms) shall exclusively govern Developer's rights in the case of any presence, existence or Release of Hazardous Materials. Without limiting the foregoing, this Section 15.7.7 supersedes any Relief Event other than that under clauses (m) and (n) of the definition of Relief Event that might otherwise be triggered by the presence, existence or Release of Hazardous Materials.

15.7.8 Change in Law

15.7.8.1 New or revised statutes adopted after the Proposal Due Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards and Project Standards, relating to the D&C Work or O&M Work, as well as revisions to the Technical Provisions to conform to such new or revised statutes, shall be treated as a Change in Law (clause (r) of the definition of Relief Event) rather than an IFA Change to Technical Provisions; however, changes in Adjustment Standards caused by new or revised statutes shall constitute neither a Change in Law nor an IFA Change.

15.7.8.2 A Non-Discriminatory O&M Change that IFA requires in order to comply with or implement a Change in Law shall be treated under this Agreement as a Change in Law.

15.7.8.3 In no event shall Developer be entitled to compensation for increases in costs of O&M Work, whether Extra Work Costs or Delay Costs, due to a Change in Law, except for capital costs of required major new improvements or required major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element.

15.7.8.4 Notwithstanding any contrary provision of this Agreement, if the Change in Law is the lawful levy of State or local real property taxes on the Developer's Interest, Developer shall be entitled to compensation for the full amount of such property taxes.

15.7.9 Damage and Destruction to Specified Property

Developer shall bear all costs, including Extra Work Costs and Delay Costs, to repair or replace, and shall not be entitled to any compensation for delay due to, any loss, damage or destruction caused by a Relief Event or other event (except IFA's gross negligence, recklessness or willful misconduct) to:

15.7.9.1 Solely in respect of Project Sections 4 and 6, any tools, machinery, equipment, protective fencing, job trailers, scaffolding or other items used in the performance of the Work but not intended for permanent installation into the East End Crossing;

15.7.9.2 Any equipment, materials, inventory, supplies and other property at locations outside the Project Right of Way; or

15.7.9.3 Any equipment, materials, inventory, supplies and other property while in transit to the Site.

15.7.10 Change in Adjustment Standards

Developer shall not be entitled to any Claim for Delay Costs due to a Change in Adjustment Standards.

15.7.11 Seismic Event

15.7.11.1 Developer shall promptly repair or replace any damage to the East End Crossing arising out of, relating or otherwise attributable to any Seismic Event, and Developer shall bear all costs and expenses associated with such repair or replacement work, including design and engineering costs necessary for the repair and replacement work, in each case except as set forth in this Section 15.7.11. In respect of Seismic Events, if the applicable Property Insurance deductible for any seismic event exceeds $10,000,000, then Developer shall bear the first $10,000,000 of Extra Work and Delay Costs resulting therefrom in the aggregate for all Seismic Events for reconstruction of the East End Crossing and temporary works associated therewith, and IFA shall pay Extra Work and Delay costs for such reconstruction and temporary works in excess thereof up to the point at which insurance attaches. Developer shall, within five days of such occurrence, submit to IFA written notice thereof. Developer shall thereafter follow the procedures for notification set forth in Section 15.1, or such shorter or extended periods of time for notification and Claim submission as the Parties agree is reasonable under the circumstances, Developer shall submit complete written and photographic documentation supporting its Claim, and provide detailed quantification of the damages caused thereby. Such written documentation shall include detailed identification of the property damage, the scope of necessary repair work, the proposed approach to performing the necessary repair work, and the projected costs of repair together with a supporting cost-loaded repair schedule. According to the time periods set forth in Section 15.1, or such shorter or extended period of time as the Parties agree is reasonable under the circumstances, IFA shall evaluate the documentation supplied by Developer and provide IFA's provisional determination of the cost to repair the property damage to the East End Crossing, which determination shall be subject to the Dispute Resolution Procedures. Developer shall comply with any IFA request for explanation, elaboration or additional information reasonably necessary to facilitate IFA's analysis.

15.7.11.2 IFA shall not be responsible for, or obligated or deemed to be obligated to pay, any Extra Work Costs, Delay Costs, or other compensation to any Developer-Related Entity for:

a. Seismic Events for which Developer is to bear all costs and expense, pursuant to Section 15.7.11;

b. Damage or destruction caused by any Seismic Event to any property or items of any kind except as described in Section 15.7.11.1; and

c. Damage or destruction caused by any Seismic Event that would not have been suffered had Developer met the Design Requirements, including specifically seismic or other design requirements under the Technical Provisions, in the event the East End Crossing fails to meet such Design Requirements. Developer bears the burden of proof in establishing that the affected portions of the East End Crossing met the Design Requirements at the occurrence of the Seismic Event.

15.7.12 Inaccurate Utility Information

For the Relief Event set forth in clause (u) of the definition thereof (concerning Utility Information that is not Reasonably Accurate):

15.7.12.1 Compensation for Extra Work Costs shall be limited to the aggregate Extra Work Costs of the Utility Work (including reimbursements payable to Utility Owners) that would not have been incurred had the Utility been identified; and

15.7.12.2 Developer shall not be entitled to any Claim for Delay Costs.

15.8 Accounting for Relief Event Work pertaining to the Relief Events Allowance Account

15.8.1 Developer shall submit to IFA a statement, in a format acceptable to IFA in its good faith discretion, meeting the requirements of Section 15.8.2 (each, a "REAA Statement"), setting forth Extra Work Costs and Delay Costs paid to Developer (after taking into consideration the Claim Deductible) in respect of Relief Events, since the date of the preceding statement (or, in respect of the first statement, since the commencement date of Construction Work).

15.8.2 The REAA Statement shall, at a minimum, itemize, and set forth the amount for each such itemized portion of, eligible Extra Work Costs and Delay Costs paid to Developer (after taking into consideration the Claim Deductible) in respect of Relief Events. The statement must be accompanied by information sufficient, in IFA's good faith determination, for IFA to verify that such amounts were for Extra Work Costs and Delay Costs actually incurred in respect of Relief Events. Such attached report shall include:

a. citation to Claims that are subject to draws on the Relief Events Allowance Account since the preceding REAA Statement

b. to the extent not fully captured therein, a description of the basis for Extra Work Costs and Delay Costs paid to Developer (after taking into consideration the Claim Deductible) in respect of Relief Events;

c. invoices from Contractors substantiating or supporting some or all of those costs and expenses, if any;

d. the sum of all prior amounts paid by Developer through the last day of the prior statement;

e. a certification by Developer's Authorized Representative that:

i. Developer has fully and completely cured all Developer Defaults for which Developer received Notice from IFA prior to IFA's receipt of the REAA Statement;

ii. Developer has met all the conditions set forth in Section 3.4.2.2, if there exist any of the circumstances described in Section 3.4.2.1 prior to IFA's receipt of the REAA Statement; and

iii. the REAA Statement and all supporting documentation are each, and is collectively, true, correct and complete.

15.8.3 IFA shall return to Developer any REAA Statement that is incomplete and/or incorrect in any material respect for correction and resubmission. Developer shall correct or complete, as applicable, such returned REAA Statement, which shall include a recertification by Developer as to all items, up to the subsequent date of submission, listed in Section 15.8.2. IFA's obligation to fund Extra Work Costs or Delay Costs in excess of the Relief Events Allowance shall also be suspended during such period.

15.8.4 IFA will examine submitted REAA Statements, including through IFA's independent oversight and auditing process, and reconcile the total amount drawn against the Relief Events Allowance, as detailed in such REAA Statements, against IFA's independent assessment of the proper amount to which Developer is entitled (the "IFA REAA Accounting"). If IFA disagrees with, or is unable to verify, the accuracy of any amount drawn by Developer against the Relief Events Allowance, then IFA shall promptly, but in no case later than 10 Business Days following receipt of the subject REAA Statement, provide Notice to Developer of such disagreement in inability. Any draw by Developer upon the Relief Events Allowance during the period commencing upon receipt by IFA of such Notice until IFA is able, in its sole determination, to agree with Developer's statement, shall be a Developer Default. IFA's obligation to fund Extra Work Costs or Delay Costs in excess of the Relief Events Allowance shall also be suspended during such period.

15.8.5 IFA shall have the right to dispute, in good faith, any amount specified in any REAA Statement, whether incurred by Developer, drawn by Developer against the Relief Events Allowance, or to be paid by IFA. If applicable, IFA shall pay the amount identified in the REAA Statement that is not in Dispute pursuant to this Article 15. Developer and IFA shall use their reasonable efforts to resolve any such Dispute within 30 days after the Dispute arises. If the Parties fail to resolve the Dispute within that period, then the Dispute shall be resolved according to the Dispute Resolution Procedures. Any amount determined to be due pursuant to the Dispute Resolution Procedures will be paid within 20 days following resolution of the Dispute.

15.8.6 For purposes of clarity, nothing in this Section 15.8, including any review by IFA of the statement provided pursuant to Section 15.8.1, shall entitle Developer to any interest on any amount drawn, to be drawn against the Relief Events Allowance, to be paid by IFA or in Dispute, in each case, in respect of eligible Extra Work Costs or Delay Costs in excess of the Relief Events Allowance.

15.9 Insurance Deductible

15.9.1 Each Claim seeking the recovery of compensation for Extra Work Costs and Delay Costs, as applicable, shall be net of all insurance available to Developer, or deemed to be self-insured by Developer under Section 17.1.4.4, with respect to the Relief Event giving rise to the Extra Work Costs or Delay Costs. The amount of such insurance or deemed self-insurance shall be netted out before determining the amount of Extra Work Costs and Delay Costs to be charged against the Relief Events Allowance Account.

15.9.2 Each Claim seeking the recovery of compensation under Sections 15.2 and 15.3, as applicable, shall be net of all delayed opening or business interruption insurance available to Developer (if any). Proceeds from delayed opening or business interruption insurance payable to IFA shall not reduce the amount of compensation due Developer under Sections 15.2 and 15.3.

15.10 Sources for Payment of Compensation Amounts

15.10.1 Compensation Amounts not addressed through Deferral of Compensation and due on or prior to the Substantial Completion Date are payable first from the Relief Events Allowance Account, as applicable, and then from the MP Relief Event and Termination Compensation Fund or other sources available to IFA.

15.10.2 Compensation Amounts not addressed through Deferral of Compensation and due after the Substantial Completion Date are payable from amounts held in the AP Relief Event and Termination Compensation Fund, until such Compensation Amount is paid in full or any lesser balance in the AP Relief Event and Termination Compensation Fund is exhausted and then from the General Reserve Fund as necessary to pay the remaining balance of such Compensation Amount.

15.10.3 IFA hereby covenants and agrees to use its best efforts to cause the Indiana General Assembly to appropriate amounts that will be sufficient to enable the IFA to pay the Compensation Amounts owed by IFA to the Developer under this Agreement. Further, IFA hereby covenants that it will do all things lawfully within its power to obtain and maintain funds from which to pay the Compensation Amounts owed by IFA to the Developer under this Agreement, including, but not limited to requesting an appropriation in an amount sufficient to pay the Compensation Amounts owed by IFA to the Developer under this Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved. The Compensation Amounts are limited obligations of the IFA, payable solely from amounts held by the Project Trustee under the Project Trust Agreement for this purpose. The obligation of the IFA to pay Compensation Amounts does not constitute an indebtedness of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The obligation of the IFA to pay Compensation Amounts does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The IFA has no taxing power. The Developer has no right to have taxes levied or compel appropriations by the Indiana General Assembly for any payment of Compensation Amounts.

15.11 Certain Relief Events Causing Closures

15.11.1 If a Relief Event described in clauses (j), (m) (but excluding IFA Release of Hazardous Materials), (n), (s) or (t) of the definition of Relief Event results in a Closure, then solely for purposes of the definition of Unavailability Event such a Closure shall not be deemed a Permitted Closure; provided that:

15.11.2 For up to the first 30 days that such Closure persists, Developer shall be assessed 100% of the adjustment due to such Unavailability Event as calculated under Exhibit 10 (Payment Mechanism);

15.11.3 For up to the next 30 days that such Closure persists, Developer shall be assessed only 50% of the adjustment due to such Unavailability Event as calculated under Exhibit 10 (Payment Mechanism); and

15.11.4 For any further period that such Closure persists, Developer shall be assessed only 10% of the adjustment due to such Unavailability Event as calculated under Exhibit 10 (Payment Mechanism).

15.11.5 For the avoidance of doubt, such Relief Events may constitute Permitted Closures under the definition of Permitted Closure for all other purposes under this Agreement other than for purposes of making adjustments to the Availability Payment, including for determining a Developer Default under Section 19.1.1.8, and determining Noncompliance Points.

15.12 Effect of Relief Events on Milestone Schedule Deadlines, Performance, Developer Default, Noncompliance Points and Deductions

15.12.1 Developer shall be entitled to extension of applicable Milestone Schedule Deadlines by the period that the end of the Critical Path extends beyond the original Milestone Schedule Deadline due to any Relief Event Delay that Developer cannot reasonably avoid through mitigation as required under Section 15.15, subject to satisfaction of any conditions or requirements set forth in the PPA Documents, including in Section 15.7. In the event of a Relief Event Delay resulting from concurrent IFA-Caused Delay(s) and delays for which Developer is responsible under the PPA Documents, subject to Developer's continuing obligation to reasonably avoid and/or mitigate such delay(s) and other conditions or requirements herein, Developer shall be entitled to extension of applicable Milestone Schedule Deadlines by the period that the end of the Critical Path extends beyond the original Milestone Schedule Deadline following conclusion of the concurrent IFA-Caused Delay.

15.12.2 Developer shall not be excused from timely payment of monetary obligations under this Agreement due to the occurrence of a Relief Event. Developer shall not be excused from compliance with the PPA Documents or applicable Laws due to the occurrence of a Relief Event, except temporary inability to comply due solely and directly to the Relief Event.

15.12.3 Developer shall be entitled to rely upon the occurrence of a Relief Event as a defense against a Developer Default where the occurrence of the Relief Event causes such Developer Default.

15.12.4 Refer to Section 11.6 regarding the effect of a Relief Event on the accrual of Noncompliance Events and Noncompliance Points and assessment of monetary deductions for Noncompliance Events.

15.13 Interest on Late Payments

If IFA does not make any required lump sum payment or periodic payment of a Compensation Amount within 45 days after the determination of the Compensation Amount by mutual agreement or the Dispute Resolution Procedures, it shall thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus 400 basis points, until the date the amount due is paid.

15.14 Exclusive Relief; Release of Claims

The relief provided through agreement or pursuant to Dispute Resolution Procedures for a Relief Event shall represent the sole right to compensation, damages and other relief from the adverse effects of a Relief Event. As a condition precedent to IFA's obligation to pay any Compensation Amount or grant or abide by such relief, Developer shall execute a full, unconditional, irrevocable waiver and release, in form reasonably acceptable to IFA, of any other Claims, Losses or rights to relief associated with such Relief Event.

15.15 Mitigation

15.15.1 Developer shall take all steps reasonably necessary to mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. Without limiting the foregoing, Developer shall not be entitled to submit a claim for Compensation Amounts, time or Milestone Schedule Deadline extensions, or other relief for impacts that could have been avoided through re-sequencing and re-scheduling of the Work and/or other work-around measures whose cost is justified by equal or greater savings in Extra Work Costs, Delay Costs and additional interest costs. Developer shall not be entitled to submit a claim for Compensation Amounts, time or Milestone Schedule Deadline extension or other relief if the Relief Event occurred as a result of any act, omission, negligence, recklessness, willful misconduct, fault, breach of contract, or breach by any of the Developer-Related Entities of the requirements of the PPA Documents (including Safety Standards), or violation of Law or a Governmental Approval of or by any of the Developer-Related Entities.

15.15.2 Whenever a Relief Event occurs and Developer submits a Relief Event Notice or Relief Request for a Compensation Amount, Developer shall concurrently submit to IFA an analysis of potential re-sequencing, re-scheduling and other work-around measures and a comparison of the estimated costs thereof to the estimated savings in the Compensation Amount that would result. Developer shall cooperate with IFA thereafter to identify the re-sequencing, re-scheduling and other work-around measures that will maximize mitigation of costs to IFA taking into account the cost of potential re-sequencing, re-scheduling and other work-around measures. IFA shall compensate Developer for the reasonable costs of re-sequencing, re-scheduling and other work-around measures authorized in writing by IFA pursuant to this provision, in the same manner it compensates for Extra Work Costs and Delay Costs under Sections 15.4 and 15.5.

15.15.3 For further mitigation obligations of Developer respecting Hazardous Materials and Recognized Environmental Conditions, refer to Section 5.9.2.

ARTICLE 16. IFA CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS

This Article 16 sets forth the exclusive requirements, terms and conditions for obtaining Change Orders under this Agreement.

16.1 IFA Changes

This Section 16.1 concerns (a) Change Orders unilaterally issued by IFA and (b) Change Orders issued by IFA following a Request for Change Proposal.

16.1.1 IFA Right to Issue Change Order

16.1.1.1 IFA may, at any time and from time to time, without Notice to any Lender or Surety, authorize and/or require, pursuant to a Change Order, changes in the Work (including reductions in the scope of the D&C Work or O&M Work) or in terms and conditions of the Technical Provisions (including changes in the standards applicable to the Work), except IFA has no right to require any change that:

a. Is not in compliance with applicable Laws;

b. Would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval;

c. Would cause a material insured risk to become uninsurable, unless IFA, in issuing the Change Order, agrees to self-insure the risk; or

d. Is not technically feasible to design or construct.

16.1.1.2 Developer shall have no obligation to perform any work within any such exception unless on terms mutually acceptable to IFA and Developer.

16.1.2 Request for Change Proposal

16.1.2.1 If IFA desires to initiate or evaluate whether to initiate a Change Order, then IFA may, at its discretion, issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed IFA Change.

16.1.2.2 Within five Business Days after Developer receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, IFA and Developer shall consult to define the proposed scope of the change. Within five days after the initial consultation, or such longer period to which the Parties may mutually agree, IFA and Developer shall consult concerning the estimated financial, schedule and other impacts.

16.1.3 Response to Request for Change Proposal

As soon as possible through the exercise of diligent efforts, and in any event within 60 days, following IFA's delivery to Developer of the Request for Change Proposal, Developer shall provide IFA with a written response as to whether, in Developer's opinion, the IFA Change constitutes a Relief Event, and if so, a detailed assessment of the cost, schedule and other impacts of the proposed IFA Change, including the following:

16.1.3.1 Developer's detailed estimate of the impacts on costs of carrying out the proposed IFA Change;

16.1.3.2 If the Change Notice is issued prior to the Final Acceptance Date, the effect of the proposed IFA Change on the Project Schedule and Milestone Schedule, including achievement of the Milestone Schedule Deadlines, taking into consideration Developer's duty to mitigate any delay;

16.1.3.3 The effect (if any) of the proposed IFA Change on Performance Requirements, the Rehabilitation Work Schedule and Handback Requirements; and

16.1.3.4 Any other relevant information related to carrying out the proposed IFA Change.

16.1.4 Negotiation and Directed Changes

16.1.4.1 Following IFA's receipt of Developer's detailed assessment and of such further assessment by IFA and its consultants of the cost, schedule and other impacts of the proposed IFA Change, IFA and Developer, giving due consideration to such assessments, shall exercise good faith efforts to negotiate a mutually acceptable Change Order, including (a) adjustment of the Project Schedule and Milestone Schedule Deadlines, and either (b) if applicable, any Compensation Amount to which Developer is entitled, and the timing and method for payment of any Compensation Amount (in accordance with Section 15.4.5 with respect to Extra Work Costs and Delay Costs, if any) or (c) if applicable, any net cost savings and schedule savings to which IFA is entitled under Section 16.1.6 and the timing and method for realizing such cost savings.

16.1.4.2 If IFA and Developer are unable to reach agreement on a Change Order, IFA may, in its sole discretion, resolve the Dispute according to the Dispute Resolution Procedures without issuing a Directive Letter, or deliver to Developer a Directive Letter pursuant to Section 16.3.1 directing Developer to proceed with the performance of the Work in question notwithstanding such disagreement. Upon receipt of such Directive Letter, pending final resolution of the relevant Change Order according to the Dispute Resolution Procedures, (a) Developer shall implement and perform the Work in question as directed by IFA and (b) IFA will make interim payment(s) to Developer on a monthly progress payment basis for the reasonable documented Extra Work Costs and Delay Costs in question, subject to subsequent adjustment through the Dispute Resolution Procedures.

16.1.5 Payment and Schedule Adjustment

IFA shall be responsible for payment of the Compensation Amount agreed upon or determined through the Dispute Resolution Procedures (and with respect to Extra Work Costs

and Delay Costs through one of the payment mechanisms set forth in Section 15.4.5), and the Project Schedule and Milestone Schedule shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures, and in accordance with Section 15.11, to reflect the effects of the Change Order.

16.1.6 Reductive IFA Changes

16.1.6.1 IFA reserves the right to make alterations or changes in the Work that reduce the scope of the Work up to a cap of 25% of the value of the total cost of the D&C Work (inclusive of labor, material, equipment and overhead costs) in accordance with the schedule of values. Within 60 days following IFA's delivery to Developer of the Request for Change Proposal, IFA may deliver to Developer a written analysis as to whether, in IFA's opinion, the IFA Change will reduce Developer costs, or save time, and if so, a detailed assessment of the advantageous cost and schedule impacts of the proposed IFA Change, including the following:

a. IFA's detailed estimate of the advantageous impacts on costs of carrying out the proposed IFA Change;

b. If the Change Notice is issued prior to the Final Acceptance Date, the effect of the proposed IFA Change on shortening the Project Schedule and Milestone Schedule Deadlines;

c. The effect (if any) of the proposed IFA Change upon traffic flow and traffic volume on the East End Crossing during the Operating Period;

d. The effect (if any) of the proposed IFA Change on Performance Requirements, the Rehabilitation Work Schedule and Handback Requirements; and

e. Any other relevant information related to carrying out the proposed IFA Change.

16.1.6.2 IFA shall be entitled to 100% of the estimated net cost savings, if any, attributable to any reductive IFA Change. Such net cost savings shall include the net reduction, if any, in labor, material, equipment and overhead costs associated with the IFA Change, and 100% of the savings in financing costs associated with any savings in capital costs, which Developer shall pay to IFA (a) as periodic payments over the Term, (b) as an adjustment to the MAP over the Term, (c) through a reduction in the Term or (d) through any combination of the above, as selected by IFA, in its sole discretion. IFA also may take such reduction in labor, material, equipment and overhead costs as a credit against IFA's liability for Extra Work Costs and Delay Costs during the Term. If IFA selects periodic payments over the Term, such payments shall be due and owing to IFA quarterly on the last day of each calendar quarter. If Developer does not make any such payment when due, it shall thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus 400 basis points, until the date the amount due is paid.

16.1.6.3 IFA shall be entitled to 100% of the effect of the proposed IFA Change on shortening the Project Schedule and Milestone Schedule Deadlines.

16.2 Developer Initiated Changes

16.2.1 By submittal of a written Change Request using a form approved by IFA, Developer may request IFA to approve (a) modifications to the Technical Provisions, (b) modifications to Developer's proposal commitments as set forth in Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments), or (c) adjustments to the Project Right of Way not already indicated in Developer's Schematic Design. The Change Request shall set forth Developer's detailed estimate of net impacts (positive and negative) on costs and schedule attributable to the requested change.

16.2.2 IFA, in its sole discretion (and, if it so elects in its good faith discretion, after receiving a comprehensive report, at no cost to IFA, from an independent engineer and IFA's traffic and revenue consultant regarding the proposed Change Request), may accept or reject any Change Request proposed by Developer. If IFA accepts such Change Request, Developer shall execute a Change Order and shall implement such change in accordance with the Change Order, applicable Technical Provisions, the Project Management Plan, Good Industry Practice, and all applicable Laws.

16.2.3 Developer shall be solely responsible for payment of any increased costs, for any Toll Revenue losses and for any Project Schedule and Milestone Schedule delays or other impacts resulting from a Change Request accepted by IFA.

16.2.4 Without limiting the foregoing, Developer shall compensate IFA for any incremental increase in IFA's overhead, administrative and out-of-pocket costs resulting from a Change Request accepted by IFA. Developer shall make payment in the amount and at the time or times agreed upon in the Change Order or determined through the Dispute Resolution Procedures. If Developer does not make any payment within 30 days after the determination of the amount due by mutual agreement or the Dispute Resolution Procedures, it shall thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus 400 basis points, until the date the amount due is paid.

16.2.5 To the extent a Change Request accepted by IFA results in a net cost savings to Developer, IFA shall be entitled to 50% of such savings that the analysis indicates will occur in the first five years after approval of the Change Request, and 100% of such savings that the analysis indicates will occur thereafter. IFA shall obtain its share of the savings in the manner described in Section 16.1.6.2.

16.2.6 Developer may implement and permit a Utility Owner to implement, without a Change Request or Change Order, changes to a Utility Adjustment design that do not vary from the Technical Provisions.

16.2.7 No Change Request shall be required to implement any change to the Work that is not a Deviation and is not specifically regulated or addressed by the PPA Documents or applicable Law.

16.2.8 Certain minor changes without significant cost savings or revenue benefits may be approved in writing by IFA as Deviations, as described in Sections 5.2.4 and 6.1.2.7, and in such event shall not require a Change Order. Any other change in the requirements of the PPA Documents shall require a Change Order.

16.3 Directive Letters

16.3.1 IFA may at any time issue a Directive Letter to Developer regarding any matter for which a Change Order can be issued or in the event of any Dispute regarding the scope of the Work or whether Developer has performed in accordance with the requirements of the PPA Documents. The Directive Letter will state that it is issued under this Section 16.3, will describe the Work in question and will state the basis for determining compensation, if any and schedule adjustment, if any. Subject to Section 16.1.5, Developer shall proceed immediately as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within Developer's original scope of Work or is necessary to comply with the requirements of the PPA Documents, Developer shall proceed with the Work as directed but shall have the right to assert a Claim that an IFA Change has occurred).

16.3.2 The fact that a Directive Letter was issued by IFA shall not be considered evidence that in fact an IFA Change occurred. The determination whether an IFA Change in fact occurred shall be based on an analysis of the original requirements of the PPA Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements.

ARTICLE 17. INSURANCE; PAYMENT AND PERFORMANCE SECURITY; INDEMNITY

17.1 Insurance

17.1.1 Insurance Policies and Coverage

At minimum Developer shall procure and keep in effect the Insurance Policies, or cause them to be procured and kept in effect, and in each case satisfy the requirements therefor set forth in this Section 17.1 and Exhibit 19 (Insurance Coverage Requirements). Developer shall also procure or cause to be procured and kept in effect the Contractors' insurance coverages as required in Section 17.1.2.5 and Exhibit 19 (Insurance Coverage Requirements).

17.1.2 General Insurance Requirements

17.1.2.1 Qualified Insurers

Each of the Insurance Policies required hereunder shall be procured from an insurer that at the time coverage under the applicable policy commences and throughout the term that coverage is required is:

a. Licensed or authorized to do business in the State and in the Commonwealth of Kentucky and has a current policyholder's management and financial size category rating of not less that "A–: VIII" according to A.M. Best's Financial Strength Rating and Financial Size Category; or

b. Otherwise approved in writing by IFA in its good faith discretion.

17.1.2.2 Deductibles and Self-Insured Retentions

a. IFA shall have no liability for deductibles (whenever the term deductible is used, it shall also mean self-insured retention) and amounts in excess of the coverage provided, unless part of a Compensation Amount or Termination Compensation.

b. If an Insurance Policy provides coverage with respect to a Relief Event, then Developer's deductible liability shall be the greater of (i) the insurance deductible or (ii) the Claim Deductible (if any), subject to Sections 15.6.2.3 and 15.9.

c. If an Insurance Policy provides coverage with respect to an occurrence or event other than a Relief Event, then Developer shall be responsible for paying all insurance deductibles, and IFA shall have no liability for deductibles and claim amounts in excess of the required coverage.

d. IFA will have the right to recover deductibles under casualty or property insurance policies, and claim amounts in excess of the required coverage, through deductions from the Availability Payments, direct billing, or any other method deemed appropriate by IFA.

17.1.2.3 Primary Coverage

Each Insurance Policy shall provide that the coverage thereof is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary. For each property policy, such policy shall provide that the coverage thereof is primary and noncontributory with respect to all insureds, as their interest may appear. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

17.1.2.4 Verification of Coverage

a. At each time Developer is required to initially obtain or cause to be obtained each Insurance Policy, including insurance coverage required of Key Contractors, and thereafter not later than ten Business Days prior to the expiration date of each Insurance Policy, Developer shall deliver to IFA a certificate of insurance and a written evidence of insurance. The certificate and evidence must be consistent in all respects. The evidence of insurance shall be on the most recent ACORD form, without disclaimer. Each required certificate must be in standard form, state the identity of all carriers, named insureds and additional insureds required under this Agreement, state the type and limits of coverage, deductibles and termination provisions of the policy, include as attachments all applicable additional insured endorsements, include endorsements consistent with Section 17.1.2.8(a) and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker. The evidence must state the signer's company affiliation, title and phone number, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage, deductibles, subrogation waiver, termination provisions of the policy and other essential policy terms, list and describe all endorsements, include as attachments all additional insured endorsements, including endorsements consistent with Section 17.1.2.8(a), and otherwise must be in form reasonably satisfactory to IFA.

b. If Developer has not provided IFA with the foregoing proof of coverage within five days after IFA delivers to Developer written request therefor or written Notice of a Developer Default under Section 19.1.1.10 and demand for the foregoing proof of coverage, IFA

may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force, (i) obtain such an Insurance Policy; and Developer shall reimburse IFA for the cost thereof upon demand, and (ii) suspend all or any portion of Work and close the East End Crossing until IFA receives from Developer such proofs of coverage in compliance with this Section 17.1 (or until IFA obtains an Insurance Policy, if it elects to do so).

17.1.2.5 Contractor Insurance Requirements

a. Developer's obligations regarding Contractors' insurance are contained in Exhibit 19 (Insurance Coverage Requirements).

b. If any Contractor fails to procure and keep in effect the insurance required of it under Exhibit 19 (Insurance Coverage Requirements) and IFA asserts the same as a Developer Default hereunder, Developer may, within the applicable cure period, cure such Developer Default by (i) causing such Contractor to obtain the requisite insurance and providing to IFA proof of insurance, (ii) procuring the requisite insurance for such Contractor and providing to IFA proof of insurance or (iii) terminating the Contractor and removing its personnel from the Site.

c. A consolidated insurance program is acceptable to satisfy all insurance requirements, provided that it otherwise meets all requirements described in this Section 17.1 and Exhibit 19 (Insurance Coverage Requirements).

17.1.2.6 East End Crossing-Specific Insurance

Except as expressly provided otherwise in Exhibit 19 (Insurance Coverage Requirements), all Insurance Policies required hereunder shall be purchased specifically and exclusively for the East End Crossing and extend to all aspects of the Work, with coverage limits devoted solely to the East End Crossing. Insurance coverages with dedicated East End Crossing-specific limits and identified premiums are acceptable, provided that they otherwise meet all requirements described in this Section 17.1 and Exhibit 19 (Insurance Coverage Requirements).

17.1.2.7 Policies with Insureds in Addition to Developer

All Insurance Policies that are required to insure additional insureds in addition to Developer shall comply or be endorsed to comply with the following provisions.

a. The Insurance Policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the Insurance Policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the East End Crossing or Developer's Interest shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and East End Crossing consultants).

b. The insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the

limits of the insurer's liability.

c. All endorsements adding additional insureds to required Insurance Policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the Insurance Policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. Additional insured endorsements may exclude liability due to the sole negligence of the additional insured party. The commercial general liability shall include completed operations coverage.

17.1.2.8 Additional Terms and Conditions

a. Each Insurance Policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior written Notice (or ten days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to IFA and each other insured or additional insured party; provided that Developer may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 17.1.8.1. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such Notice.

b. If Developer's or any Contractor's activities involve transportation of materials (including Hazardous Materials) that require endorsement MCS 90 (as described below), the automobile liability Insurance Policy for Developer or such Contractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean up (MCS-90) and shall be endorsed to provide coverage for liability arising from release of pollutants (CA 99 48 – Pollution Liability – Broadened Coverage for Covered Autos – Business Auto, Motor Carrier and Truckers Coverage Form).

c. Each Insurance Policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability and pollution liability Insurance Policies).

17.1.2.9 Waivers of Subrogation

IFA waives all rights against the Developer-Related Entities, and Developer waives all rights against the Indemnified Parties, for any claims to the extent covered and paid by insurance obtained pursuant to this Section 17.1, except such rights as they may have to the proceeds of such insurance. If Developer is deemed to self-insure a claim or loss under Section 17.1.4.4, then Developer's waiver shall apply as if it carried the required insurance. Developer shall require all Contractors to provide similar waivers in writing each in favor of all other parties enumerated above. Subject to Section 17.1.6, each Insurance Policy, including workers' compensation if permitted under the applicable worker's compensation insurance Laws, shall include a waiver of any right of subrogation against the Indemnified Parties or a consent to the insured's waiver of recovery in advance of loss.

17.1.2.10 No Recourse

Except as may be inclusive within the MAP or as expressly provided otherwise in this Section 17.1, there shall be no recourse against IFA for payment of premiums or other amounts with respect to the Insurance Policies.

17.1.2.11 Support of Indemnifications

a. The commercial general liability Insurance Policy shall provide standard ISO contractual liability or greater coverage of Developer's indemnity liability under the PPA Documents.

b. Developer's indemnification and defense obligations under the PPA Documents are not limited to the type or amount of insurance coverage that Developer is required to provide hereunder.

17.1.2.12 Adjustments in Coverage Amounts

a. At least once every two years during the Term (commencing initially on the Substantial Completion Date), IFA and Developer shall review and increase, as appropriate, the per occurrence and aggregate limits or combined single limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 19 (Insurance Coverage Requirements). At the same frequency IFA and Developer shall review and adjust, as appropriate, the deductibles for the Insurance Policies.

b. Developer shall retain a qualified and reputable insurance broker or independent, unaffiliated advisor not involved in the East End Crossing, experienced in insurance brokerage and underwriting practices for major bridge, highway or other relevant transportation facility projects, to analyze and recommend adjustments, if any, to such limits and adjustments to deductibles. Developer shall deliver to IFA, not later than 90 days before each two-year adjustment date, a written report including such analysis and recommendations for IFA's approval. IFA shall have 45 days after receiving such report to approve or disapprove the proposed adjustments to limits and adjustments to deductibles or self-insured retentions.

c. In determining adjustments to limits and adjustments to deductibles, Developer and IFA shall take into account (i) claims and loss experience for the East End Crossing, provided that premium increases due to adverse claims experience shall not be a basis for justifying increased deductibles; (ii) the condition of the East End Crossing, including records of Asset Condition Scores, (iii) the Rehabilitation Work record for the East End Crossing, (iv) the Safety Compliance and Noncompliance Points record for the East End Crossing and (v) then-prevailing Good Industry Practice for insuring comparable transportation projects.

d. Any Dispute regarding adjustments to limits or adjustments to deductibles or self-insured retentions shall be resolved according to the Dispute Resolution Procedures.

17.1.2.13 Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that litigation and mediation defense costs may be included within the limits of coverage of professional and pollution liability policies.

17.1.2.14 Contesting Denial of Coverage

If any insurance carrier under an Insurance Policy denies coverage with respect to any claims reported to such carrier, upon Developer's request, IFA and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Developer shall bear all costs of contesting the denial of coverage.

17.1.2.15 Bankrupt Insurer

In the event an Insurer providing any of the Insurance Policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the Indiana Department of Insurance or the Kentucky Department of Insurance, or has its rating lowered by A.M. Best below A-1 as required in Section 17.1.2.1(a), Developer shall exercise best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Section 17.1 so as to avoid any lapse in insurance coverage.

17.1.3 Lender Insurance Requirements; Additional Insurance Policies

17.1.3.1 If under the terms of any Funding Agreement or Security Document Developer is obligated to, and does, carry insurance coverage with higher limits, lower deductibles, or broader coverage than required under this Agreement, Developer's provision of such insurance shall satisfy the applicable requirements of this Agreement provided such Insurance Policy meets all the other applicable requirements of this Section 17.1.

17.1.3.2 If Developer carries insurance coverage in addition to that required under this Agreement, then Developer shall include the Indemnified Parties as additional insureds thereunder, if and to the extent they have an insurable interest. The additional insured endorsements shall be as described in Section 17.1.2.7(c); and Developer shall provide to IFA and, upon request, the remaining additional insured parties in this Section 17.1.3.2, the proofs of coverage and copy of the policy described in Section 17.1.2.4. The provisions of Sections 17.1.2.4, 17.1.2.7, 17.1.2.9, 17.1.2.10 and 17.1.4 shall apply to all such policies of insurance coverage, as if they were within the definition of Insurance Policies.

17.1.4 Notice and Prosecution of Claims

17.1.4.1 IFA shall have the right, but not the obligation, to report directly to insurers and process IFA's claims against applicable Insurance Policies. Unless otherwise directed by IFA in writing with respect to IFA's insurance claims, Developer shall be responsible for reporting and processing all potential claims by IFA or Developer against the Insurance Policies required hereunder. Developer agrees to report timely to the insurer(s) under such Insurance Policies any and all matters which may give rise to an insurance claim by Developer or IFA or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be

deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

17.1.4.2 Developer shall immediately notify IFA, and thereafter keep IFA fully informed, of any incident, potential claim, claim or other matter of which Developer becomes aware that involves or could conceivably involve an Indemnified party as a defendant.

17.1.4.3 IFA agrees to promptly notify Developer of IFA's incidents, potential claims against IFA, and matters which may give rise to an insurance claim against IFA, and to tender to the insurer IFA's defense of the claim under such Insurance Policies. IFA shall cooperate with Developer as necessary for Developer to fulfill its duties hereunder, including providing Developer a copy of all written materials IFA receives asserting a claim against IFA that is subject to defense by an insurer under an Insurance Policy.

17.1.4.4 If in any instance Developer has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then, for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from IFA to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Developer performed such obligations and not committed such failure. In addition, if Developer elects under Section 20.2.4 to keep this Agreement in effect despite existence or occurrence of Insurance Unavailability, then, notwithstanding Section 17.1.8, for purposes of determining Developer's liability for harm and loss, including harm or loss to IFA and third parties, and the limits thereon, or determining reductions in compensation due from IFA to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which it would have been obligated to carry had such coverage been commercially available. Nothing in this Section 17.1.4 or elsewhere in this Section 17.1 shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 17.1.

17.1.5 Application of Insurance Proceeds

All insurance proceeds received for physical property damage to the East End Crossing under any Insurance Policies, other than any business interruption insurance maintained as part of such Insurance Policies, shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the East End Crossing in respect of which such proceeds were received.

17.1.6 Umbrella and Excess Policies

Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

17.1.7 Inadequacy of Required Coverages

IFA makes no representation that the scope of coverage and limits of liability specified for any Insurance Policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Developer against its undertakings under this Agreement to IFA, or its liabilities to any third party. It is the responsibility of Developer and each Contractor to determine if any changes or additional coverages are required to adequately protect their interests. No such limits of liability or approved variances therefrom shall preclude IFA from taking any actions as are available to it under the PPA Documents, or otherwise at Law.

17.1.8 Unavailability of Required Coverages

17.1.8.1 If Developer demonstrates to IFA's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to procure the required Insurance Policy coverages, and if despite such diligent efforts and through no fault of Developer any Insurance Unavailability exists or occurs, IFA will consider in good faith alternative insurance packages and programs that provide coverage as comparable to that contemplated in this Section 17.1 as is possible under then-existing insurance market conditions.

17.1.8.2 If IFA approves modification or elimination of insurance requirements because of Insurance Unavailability, then:

a. IFA will act as the insurer of last resort to cover the unavailable Insurance Policy or portion thereof; and

b. IFA will be entitled to a reduction in the Maximum Availability Payment equal to 100% of the insurance premiums that Developer avoids as a result of the modification or elimination of the insurance requirements. In determining Developer's avoided insurance premiums, the Parties shall calculate the amount of insurance premiums Developer would have been obligated to pay under this Section 17.1.8 (up to the Commercially Reasonable Insurance Rates) had there been no modification or elimination of insurance requirements; provided that (i) if no benchmarks are then applicable it shall be assumed that Developer would have been obligated to pay 100% of the total avoided insurance premiums up to the greater of (A) the Commercially Reasonable Insurance Rates or (B) the premiums assumed in the Financial Model, and (ii) if the coverage is completely unavailable, the Parties shall reasonably estimate the premiums that would have been paid by Developer in the most recent market conditions under which the coverage was available.

17.1.8.3 If the required Insurance Policies are available from insurers meeting the financial requirements set forth in Section 17.1.2.1 but not at Commercially Reasonable Insurance Rates, then IFA may elect, at its sole option, exercisable by delivering written Notice to Developer, to not approve modification or elimination of insurance requirements and to pay 100% of the premiums that exceed the Commercially Reasonable Rates.

17.1.8.4 In IFA's sole option exercisable by delivering to Developer a written Notice of termination, in the event of Insurance Unavailability, IFA may elect not to proceed under either Section 17.1.8.2 or Section 17.1.8.3 and instead terminate this Agreement pursuant to Section 20.2.2.

17.1.8.5 If the required insurance coverage is available in the market, IFA's decision to approve or disapprove a variance from the requirements of this Section 17.1 shall be final and not subject to the Dispute Resolution Procedures.

17.1.8.6 If Insurance Unavailability exists or occurs, Developer shall review the global insurance and reinsurance markets quarterly to track changes in market conditions and adjust insurance coverages as soon as the coverages become available at Commercially Reasonable Insurance Rates. Developer shall keep IFA currently informed of insurance market conditions and deliver to IFA the information obtained from such quarterly reviews.

17.1.9 Insurance Premium Benchmarking

This Section 17.1.9 allocates the risk between IFA and Developer of significant increases in insurance premiums for Insurance Policies required during the period commencing upon the Final Acceptance Date and ending at the end of the Term through an insurance benchmarking process. The benchmarking process will occur at each annual insurance renewal period according to the following provisions.

17.1.9.1 Increases in insurance premiums attributable to any of the following factors ("Excluded Premium Increases") shall not be considered in determining and comparing insurance premiums under the benchmarking process described in this Section 17.1.9:

a. Additional or extended coverages beyond those required under this Article 17 and Exhibit 19;

b. Deductibles less than the maximum deductibles set forth in this Article 17 and Exhibit 19; or

c. Premium increases due to poor loss experience, defined as a loss ratio greater than 50%. The loss ratio will be based on three completed years of data plus partial data from the most recent policy year (once available) and shall be calculated 90 days before the policy anniversary date. The formula shall include paid and reserved claims valued 120 days before the policy anniversary date in excess of any deductible or SIR divided by the appropriate premium for the same time period. Before the third year, all available data shall be used. Premiums shall not include any broker's fees and agent's commission. For purposes of this Section 17.1.9, "broker's fees and agent's commissions" means any fees paid to the broker by Developer, any commissions received and any indirect, incentive, or contingent commissions or other amounts received in relation to policies placed or services provided by the broker.

d. Other variations from the requirements for Insurance Policies under this Article 17 and Exhibit 19.

17.1.9.2 Not later than 60 days after the end of each the first three full annual insurance periods after the Final Acceptance Date, Developer shall submit a report ("Insurance Review Report") to IFA that includes the following elements:

a. The written binders of insurance in the form and content required under this Article 17 and Exhibit 19 for the actual Insurance Policies required hereunder and thereunder for the subject annual insurance period ("Actual Benchmark Insurance Policies");

b. The premium invoices for the Actual Benchmark Insurance Policies;

c. If any of the Actual Benchmark Insurance Policies varies from the requirements under this Article 17 or Exhibit 19, then a comprehensive written analysis and explanation by Developer's independent insurance broker setting forth (i) the effect (if any) that factors described in Section 17.1.9.1(a) through (d) have had on the premiums, (ii) the Excluded Premium Increases, if any, and (iii) the increase, if any, in the insurance premiums that would have occurred absent the factors described in Section 17.1.9.1(a) through (d); and

d. Detailed calculations of the final amount of the insurance premiums for the Actual Benchmark Insurance Policies, adjusted for surcharges, refunds, Excluded Premium Increases, and increases due to the factors described in Section 17.1.9.1(a) through (d).

17.1.9.3 At 60 days prior to each annual insurance period thereafter, Developer shall submit an Insurance Review Report to the Department that includes the following elements:

a. Firm quotes from established and recognized insurance providers for the Insurance Policies required under this Article 17 and Exhibit 19 for the upcoming annual insurance period, without any variation from such requirements ("Required Minimum Insurance Policies"). The quotes shall represent the current and fair market cost of providing the Required Minimum Insurance Policies; and

b. No less than every three years, Developer shall obtain firm quotes from three or more established and recognized insurance providers for the Insurance Policies required under this Article 17 and Exhibit 19 for the upcoming annual insurance period, without any variation from such requirements. The quotes shall represent the current and fair market cost of providing the Required Minimum Insurance Policies; and

c. A comprehensive written analysis and explanation by Developer's independent insurance broker setting forth (i) industry trends in premiums for the Required Minimum Insurance Policies, (ii) any claims (paid or reserved) since the last review period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided, (iii) the effect (if any) that factors described in Section 17.1.9.1(a) through (d) have had on the premiums for the Required Minimum Insurance Policies, and (iv) a confirmation that there is no Excluded Insurance Premium or the dollar amount of any Excluded Insurance Premium and an explanation of the reason there is Excluded Insurance Premium.

17.1.9.4 Thereafter, Developer shall place actual Insurance Policies required under Article 17 of the Agreement and Exhibit 19 for the subject annual insurance period (the "Actual Insurance Policies"). Not later than 60 days after the end of such annual insurance period, Developer shall provide an updated Insurance Review Report to IFA for the period just ended, with the information specified in Section 17.1.9.2 with respect to the Actual Insurance Policies. Developer shall be responsible for maintaining copies of the Actual Insurance Policies and the Insurance Review Report and making these documents available upon request of IFA or its designee for the entire Term plus ten years.

17.1.9.5 IFA, at its sole discretion, may independently assess the accuracy of the information in any Insurance Review Report or update and retains the right to perform its own independent insurance review, which may include retaining advisors, obtaining independent quotes for the Required Minimum Insurance Policies or performing its own assessment as to the impact of factors described in Sections 17.1.9.1(a) through (d), the amount of Excluded Premium Increases, and the amount of increases in the insurance

premiums for the Actual Benchmark Insurance Policies that would have occurred absent the factors described in Sections 17.1.9.1(a) through (d). If IFA elects to independently assess, then Developer shall cooperate in good faith with any reasonable requests for additional information from IFA or its insurance advisor.

17.1.9.6 The initial benchmark amount of insurance premiums for the Actual Benchmark Insurance Policies shall be calculated and established promptly after receipt of the Insurance Review Reports for the first three full annual insurance periods following the Final Acceptance Date. The initial benchmark amount of insurance premiums shall equal one-third of the total premiums for the Actual Benchmark Insurance Policies as adjusted pursuant to Section 17.1.9.2(c) above or, if the Department deems appropriate in its reasonable discretion, as adjusted based on information obtained pursuant to Section 17.1.9.5 above (the "Starting Insurance Benchmarking Premiums").

17.1.9.7 The Starting Insurance Benchmarking Premiums shall be escalated for the first annual insurance period occurring after the end of the first three full annual insurance periods to an amount equal to 105% of the Starting Insurance Benchmarking Premiums. For each annual insurance period thereafter, the benchmark premiums shall equal 105% of the benchmark premiums for the immediately preceding annual insurance period. The benchmark premium amount as so determined for each annual insurance period is referred to as the "Escalated Benchmark Insurance Premiums." Broker's fees and agent's commissions will not be considered as part of the benchmarking exercise described in this Section 17.1.9, and are the exclusive responsibility of Developer.

17.1.9.8 The Escalated Benchmark Insurance Premiums for each annual insurance period shall be compared to the total amount of annual insurance premiums for Insurance Policies shown in the Financial Model and related Financial Modeling Data for the same annual insurance period, as such modelled premiums may have been adjusted due to Relief Events. The higher of the two figures shall be the "Insurance Premium Benchmark Amount" for such annual insurance period.

17.1.9.9 The Insurance Premium Benchmark Amount shall be used in the benchmarking process for each annual insurance period during the remainder of the Term in accordance with the following procedures:

a. IFA will use the applicable Insurance Premium Benchmark Amount to measure the difference in premium costs for the applicable annual insurance period.

b. Developer may voluntarily choose to procure an insurance package which exceeds the Required Minimum Insurance Policies in scope of coverage or limits, has more additional insureds, or has lower deductibles. In such case, both Parties recognize that: the actual insurance premiums are to be reduced by the Excluded Insurance Premiums for the purpose of the insurance benchmarking process and the Maximum Availability Payment adjustment described in Section 17.1.9.10.

c. No later than 30 days after Developer's submission of each updated Insurance Review Report pursuant to Section 17.1.9.4, IFA shall make its determination of the eligible premium increases subject to the Maximum Availability Payment adjustment described in Section 17.1.9.10. In the event of a dispute, the Department's determination shall be subject to the Dispute Resolution Procedures.

17.1.9.10 If the annual insurance premiums for the Actual Insurance Policies, as such premiums may be adjusted for Excluded Insurance Premiums as set forth in Section 17.1.9.9(b), are in excess of 130% of the applicable Insurance Premium Benchmark Amount, IFA shall increase the Maximum Availability Payment in an amount equal to 85% of such premiums that are in excess of 130% of the applicable Insurance Premium Benchmark Amount (subject to 17.1.9.11) until the next benchmarking period. If the annual insurance premiums for the Actual Insurance Policies, as such premiums may be adjusted for Excluded Insurance Premiums as set forth in Section 17.1.9.9(b) above, are less than 70% of the applicable Insurance Premium Benchmark Amount, IFA shall reduce the Maximum Availability Payment in an amount equal to 85% of the difference between such premiums and 70% of the applicable Insurance Premium Benchmark Amount until the next benchmarking period.

17.1.9.11 No adjustment shall be made to the Availability Payment unless the Developer has demonstrated that it obtained firm quotes from three or more established and recognized insurance providers for the Insurance Policies required under this Article 17 and Exhibit 19 and that all premium quotes are above the 130% threshold after adjustments for Excluded Insurance Premiums.

17.2 Payment and Performance Security

17.2.1 Design and Construction Security Requirements

17.2.1.1 As a further condition precedent to commencement of any D&C Work, Developer shall have obtained, delivered to IFA and maintain a separate Payment Bond in an amount equal to 5% of the total cost of the Design-Build Contract and separate Performance Security in an amount equal to 25% of the total cost of the Design-Build Contract, as are required prior to issuance of NTP2 pursuant to Section 5.6.1.4.

17.2.1.2 Developer may elect to (a) procure the Payment Bond and Performance Security directly, so that they are security for Developer's payment obligations to Contractors and laborers performing D&C Work and Developer's performance obligations under the PPA Documents respecting the D&C Work, or (b) deliver multiple Payment Bonds and multiple Performance Security (i) from each Design-Build Contractor and (ii) from any other prime Contractor performing D&C Work, so that each such Payment Bond and Performance Security is security for payment to subcontractors and laborers and performance of the respective entity's obligations under its Contract. If Developer makes the election under clause (b) above, then Developer also may elect to provide Performance Security in the form of a bond from one such Contractor and Performance Security in the form of a letter of credit from another such Contractor.

17.2.1.3 The Payment Bond and, if chosen by Developer, a bond for the Performance Security shall be in the form set forth in Exhibits 20-A and 20-B (Form of Payment Bond, Form of Performance Bond). Each such bond must be issued by a Surety or an insurance company that is authorized to issue bonds in the State and is rated in the top two categories by two of the three Rating Agencies or at least A-: VIII or better according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise approved in writing by IFA in its good faith discretion.

17.2.1.4 If Developer makes the election under Section 17.2.1.2(a), then a multiple obligee rider is not necessary, and the language of the bond form set forth in Exhibits

20-A and 20-B (Form of Payment Bond, Form of Performance Bond) shall be adjusted to reflect the election, but only as necessary to identify this Agreement as the bonded contract, to eliminate references to the Design-Build Contractor (or other prime Contractor), to change the obligee to IFA, and to clarify that references to "Work" are limited to the Work to be performed until Final Acceptance.

17.2.1.5 If the Performance Security is in the form of a bond and Developer makes the election under Section 17.2.1.2(b), then:

a. The amount of each bond shall be in the same ratio to the total amount of Performance Security required under Section 17.2.1.1 as the relevant contract price bears to the Total Project Capital Cost; provided that the aggregate face amount of such bond and the other Performance Security must at least equal 25% of the Total Project Capital Cost; and

b. Each such bond shall include a multiple obligee rider in which IFA is named as an additional obligee, and the riders shall be in the respective forms set forth in Exhibits 20-C and 20-D (Forms of Multiple Obligee Rider for Payment and Performance Bonds).

17.2.1.6 If the Performance Security is in the form of a letter of credit and Developer makes the election under Section 17.2.1.2(a), then:

a. The letter of credit must be in the form of Exhibit 20-E (Form of Performance Letter of Credit); and

b. The letter of credit shall be subject to draw as and when provided in Section 19.2.7 due to breach or failure to perform Developer's obligations to Contractors performing D&C Work or Developer's obligations under the PPA Documents respecting the D&C Work.

17.2.1.7 If the Performance Security is in the form of a letter of credit and Developer makes the election under Section 17.2.1.2(b), then:

a. The letter of credit form set forth in Exhibit 20-E (Form of Performance Letter of Credit) shall be adjusted to reflect this fact, but only as necessary to identify each applicable Contractor as the applicant in place of Developer and to identify the Contract between Developer and the Contractor rather than this Agreement;

b. The amount of each such letter of credit shall be in the same ratio to the total amount of Performance Security required under Section 17.2.1.1 as the relevant contract price bears to the Total Project Capital Cost; provided that the aggregate face amount of such letter of credit and the other Performance Security must at least equal 25% of the Total Project Capital Cost; and

c. Each such letter of credit shall be subject to draw as and when provided in Section 19.2.7 due to the Contractor's breach or failure to perform its obligations under its Contracts for the D&C Work.

17.2.1.8 Regardless of which election Developer makes under Section 17.2.1.2, if the Performance Security is in the form of a letter of credit, then the provisions and requirements of Section 17.3.1 shall apply, except:

a. The letter of credit shall expressly provide an original expiry date not earlier than six months after the Final Acceptance Date indicated in the Project Baseline Schedule;

b. The letter of credit shall expressly provide for successive automatic renewals of at least six months each, taking effect no later than 30 days prior to the expiry date, until the Final Acceptance Date; and

c. As permitted otherwise in Section 17.2.1.9.

17.2.1.9 If the Performance Security is in the form of a letter of credit, then notwithstanding Section 17.3.1.1(g), Developer may name the Collateral Agent as the beneficiary thereof instead of IFA, or may transfer the beneficiary's rights under the letter of credit from Developer to the Collateral Agent rather than IFA. However, the foregoing right is available to Developer only if (1) the Collateral Agent is restricted in making draws on such letter of credit solely for the purpose of causing Developer to perform its obligations to Contractors performing D&C Work or its obligations under the PPA Documents respecting the D&C Work (or, if Developer makes the election under Section 17.2.1.2(b), causing the Contractor to perform its performance obligations under its Contract respecting the D&C Work) and (2) Developer delivers to IFA, concurrently with the issuance of such letter of credit, documents reasonably satisfactory to IFA:

a. Naming IFA as automatic and exclusive transferee beneficiary under such letter of credit upon the Final Acceptance of all Project Sections; and

b. Prior thereto, permitting IFA to become the transferee beneficiary under such letter of credit and to make drawings thereunder if IFA determines that

i. (A) Developer (or, if Developer makes the election under Section 17.2.1.3(b), the Contractor) has breached or failed to perform such obligations, (B) the letter of credit has become subject to IFA's right to draw thereon under Section 19.2.7 and (C) the Collateral Agent has failed to draw on such letter of credit for the purpose of causing the performance of such obligations by or on behalf of Developer (or, if Developer makes the election under Section 17.2.1.2(b), the Contractor) within ten days after IFA delivers written Notice of such breach to Developer and the Collateral Agent, or

ii. (A) The letter of credit will expire within 45 days, (B) IFA has not received a certified copy of a replacement or extension of the letter of credit with required transfer documents, and (C) IFA has no actual knowledge of a prior, full draw on the expiring letter of credit by the Collateral Agent.

At a minimum, such transfer documents shall include a certified copy of the letter of credit and a present, executed transfer and assignment of the beneficiary rights from the Collateral Agent to IFA; and the letter of credit shall expressly authorize such transfer without condition and permit draw without presentation of the original letter of credit.

17.2.1.10 Each Payment Bond and Performance Security shall be released upon Final Acceptance of all Project Sections.

17.2.1.11 The requirements of this Section 17.2.1 shall apply to new,

reconstructed or rehabilitated improvements during the Term, and any other D&C Work Developer performs for which a bond is required under IC 8-23-9. Prior to commencing any such D&C Work after Final Acceptance, Developer shall obtain IFA's written approval of the form and amount of Payment Bond and Performance Security for such D&C Work.

17.2.2 Payment Certifications

17.2.2.1 As further security against stop notices, liens and claims for failure of Developer, any Design-Build Contractor, or any other prime Contractor for the Design Work and Construction Work to pay amounts due for work, services, materials, equipment and supplies, Developer shall deliver to IFA the items set forth in this Section.

17.2.2.2 Within 20 days after the end of each calendar month until Final Acceptance of all Project Sections, Developer shall deliver to IFA:

a. A written certificate of Developer certifying as to all Design Work and Construction Work that each Design-Build Contractor, and all subcontractors, laborers, Suppliers, Utility Owners and other third parties, have been paid all amounts due to date under their respective Contracts or purchase agreements, except only for (i) services, materials and equipment provided in the immediately preceding month, (ii) retainage provided in the relevant Contract and (iii) amounts in honest dispute, and any amounts in honest dispute shall be set forth in detail in an attachment to the certificate;

b. A written certificate and release signed by each Design-Build Contractor, each other prime Contractor for Design Work or Construction Work, and each subcontractor or Supplier that provided services, materials or equipment in the preceding month, certifying that it has received payment in full for all services, materials or equipment, except only for (i) that provided in the immediately preceding month, (ii) retainage and (iii) amounts in dispute, stating any amounts in dispute, and waiving and releasing any and all claims, liens or security interests, known or unknown, suspected or unsuspected, for payment arising out of such services, materials or equipment against IFA, the State, the East End Crossing and any Payment Bonds provided to IFA under this Section 17.2; and

c. Certified payrolls submitted by each Design-Build Contractor, each other prime Contractor for Construction Work and each subcontractor to the Indiana Department of Labor certifying wages paid and compliance with applicable prevailing wage requirements.

17.2.2.3 If IFA does not receive any such certificate or certified payroll, it may require Developer to immediately increase the amount of the Payment Bond and Performance Security to such amount as IFA determines is appropriate to protect its interests and the East End Crossing.

17.2.3 Operations and Maintenance Security

In the event Developer obtains security for payment and/or performance from any O&M Contractor, Developer shall cause IFA to be named at issuance of such payment and performance security as an additional obligee or beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to IFA within ten days after issuance.

17.3 Letters of Credit

17.3.1 General Provisions

Wherever in the PPA Documents Developer has the option or obligation to deliver to IFA a letter of credit, the following provisions shall apply except to the extent expressly provided otherwise in the PPA Documents:

17.3.1.1 The letter of credit shall:

a. Be a standby letter of credit;

b. Be issued by a financial institution that is not an Affiliate, has a credit rating for long-term, unsecured debt of not less than "A-/A3" from one of the Rating Agencies, and has an office in the United States at which the letter of credit can be presented for payment by facsimile or by electronic means. If the bank issuing the letter of credit fails to maintain such credit rating, Developer shall deliver a substitute letter of credit issued by a qualified financial institution within 30 days of the date that the prior financial institution failed to maintain such credit rating or otherwise furnish additional security acceptable to IFA as may be required from time to time to protect the interests of IFA;

c. Be in form approved by IFA in its good faith discretion;

d. Be payable immediately, conditioned only on written presentment from IFA to the issuer of a sight draft drawn on the letter of credit and a certificate stating that IFA has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to IFA, without requirement to present the original letter of credit;

e. Be in place for the entire period of time for which the letter of credit is providing security. Letters of credit with an expiration date shall provide for automatic renewal unless the issuer provides notice to IFA and to Developer to the contrary no later than 30 days prior to the expiration date;

f. Allow for multiple draws;

g. Name IFA beneficiary, and not provide dual or multiple beneficiaries; and

h. Be consistent with the requirements of this Section 17.3.

17.3.1.2 If Developer has failed to pay or perform when due the duty, obligation or liability under the PPA Documents for which the letter of credit is held, IFA shall have the right to draw on the letter of credit as and when provided in Section 19.2.7. If IFA makes such a draw on the letter of credit, IFA shall use and apply the proceeds as provided in this Agreement for such letter of credit.

17.3.1.3 IFA shall have the right to draw on the letter of credit, without prior Notice to Developer, if (a) for any reason Developer fails to deliver to IFA a new or replacement letter of credit, on the same terms, by not later than 45 days before such expiration date, unless the applicable terms of the PPA Documents expressly require no further letter of credit with respect to the duty, obligation or liability in question, or (b) the financial institution issuing the

letter of credit fails to meet the requirements set forth in Section 17.3.1.1(b) and Developer fails to provide a substitute letter of credit issued by a qualified financial institution within 45 days before its expiration date. If IFA makes such a draw on the letter of credit, IFA shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit, without payment of interest to Developer.

17.3.1.4 Draw on letters of credit shall not be conditioned on prior resort to Developer or any other security of Developer. For all draws conditioned on prior written Notice from IFA to Developer, no such Notice shall be required if it would preclude draw before the expiration date of the letter of credit. IFA shall use and apply draws on letters of credit (or cash security held from draws on letters of credit) toward satisfying the relevant obligation of Developer (or, if applicable, any other Person for which the letter of credit is performance security). Subject to IFA's rights under Sections 17.3.1.2 and 17.3.1.3, if IFA receives proceeds of a draw in excess of the relevant obligation, IFA shall promptly refund the excess to Developer (or such other Person) after all relevant obligations are satisfied in full.

17.3.1.5 Developer's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from IFA a refund of the proceeds which are misapplied, and subject to Section 19.4.4, reimbursement of the reasonable costs Developer incurs as a result of such misapplication; provided that at the time of such refund Developer increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Developer acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Developer injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Developer covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Developer irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

17.3.1.6 Developer shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with IFA's presentment of sight drafts and drawing against letters of credit or replacements thereof.

17.3.1.7 In the event IFA makes a permitted assignment of its rights and interests under this Agreement, Developer shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Developer.

17.3.1.8 IFA acknowledges that if the letter of credit is performance security for a Person other than Developer (e.g., a Key Contractor), IFA's draw may only be based on the underlying obligations of such Person.

17.3.2 Special Letter of Credit Provisions

Any terms and conditions applicable to a particular letter of credit which Developer or a Lender is required to or may provide under this Agreement are set forth in the provisions of this Agreement describing such letter of credit.

17.4 Guarantees

17.4.1 In the event Developer, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, Developer shall cause such Person to (a) expressly include IFA as a guaranteed party under such guaranty, with the same protections and rights of Notice, enforcement and collection as are available to any other guaranteed party, and (b) deliver to IFA a duplicate original of such guaranty. Such guaranty shall provide that the rights and protections of IFA shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party.

17.4.2 IFA agrees to forebear from exercising remedies under any such guaranty so long as Developer or a Lender is diligently pursuing remedies thereunder.

17.5 Indemnity by Developer; No Indemnity by IFA

17.5.1 Subject to Section 17.5.2, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party, arising out of, relating to or resulting from:

17.5.1.1 The breach or alleged breach of the PPA Documents by Developer;

17.5.1.2 The failure or alleged failure by any Developer-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management);

17.5.1.3 Any alleged patent or copyright infringement or other allegedly improper appropriation or use by any Developer-Related Entity of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the East End Crossing of methods, processes, designs, information, or other items furnished or communicated to IFA or another Indemnified Party pursuant to the PPA Documents; provided that this indemnity shall not apply to any infringement resulting from IFA's failure to comply with specific written instructions regarding use provided to IFA by Developer;

17.5.1.4 The actual or alleged fraud, bad faith, willful misconduct, negligence, breach of applicable Law or contract, or other culpable act, culpable error or misconduct of any Developer-Related Entity in or associated with performance of the Work;

17.5.1.5 Any and all claims by any governmental or taxing authority claiming Taxes based on gross receipts, purchases or sales, the use of any property or income

of any Developer-Related Entity with respect to any payment for the Work made to or earned by any Developer-Related Entity;

17.5.1.6 Any and all stop Notices, liens and claims filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop Notice, lien or claim, and any other liability to Contractors. laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, provided that IFA is not in default in payments owing (if any) to Developer with respect to such Work;

17.5.1.7 Any actual or threatened Developer Release of Hazardous Materials;

17.5.1.8 The claim or assertion by any other developer or contractor that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or contractor, so as to cause inconvenience, disruption, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Work;

17.5.1.9 Any dispute between Developer and a Utility Owner, or any Developer-Related Entity's performance of, or failure to perform, the obligations under any Utility Agreement; provided, however, that in respect of the indemnification obligation arising in respect of this Section 17.5.1.9, this obligation shall not apply to any dispute arising as a result of Developer's compliance with a Directive Letter issued by IFA under Section 5.5.7.4;

17.5.1.10 Any Developer-Related Entity's breach of or failure to perform an obligation that IFA owes to a third Person, including Governmental Entities, under Law or under any agreement between IFA and a third Person, where performance of the obligation is delegated to Developer under the PPA Documents or (b) the acts or omissions of any Developer-Related Entity which render IFA unable to perform or abide by an obligation that IFA owes to a third Person, including Governmental Entities, under any agreement between IFA and a third Person, where the agreement is previously disclosed or known to Developer;

17.5.1.11 Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (a) the failure of any Developer-Related Entity to comply with Good Industry Practice, requirements of the PPA Documents, Project Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (b) the intentional misconduct or negligence of any Developer-Related Entity, or (c) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity;

17.5.1.12 If applicable, any violation of any federal or state securities or similar law by any Developer-Related Entity;

17.5.1.13 If applicable, the authorization, issuance, sale, trading, redemption or servicing of the PABs or any other bonds issued to finance the East End Crossing (whether IFA or another entity is the issuer), or Developer's failure to comply with any requirement necessary to preserve the tax exempt status of interest paid on the PABs or other bonds; or

17.5.1.14 Any errors, inconsistencies or other Defects in the design or construction of the East End Crossing and/or of Utility Adjustments included in the D&C Work.

17.5.2 Subject to the releases and disclaimers herein, Developer's indemnity obligation shall not extend to any third party Loss to the extent directly caused by:

17.5.2.1 The negligence, recklessness or willful misconduct, bad faith or fraud of the Indemnified Party;

17.5.2.2 IFA's breach of any of its material obligations under the PPA Documents;

17.5.2.3 An Indemnified Party's violation of any Laws or Governmental Approvals; or

17.5.2.4 Any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the Technical Provisions, but only where prior to occurrence of the third party Loss Developer complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if Developer actually knew of the deficiency, unsuccessfully sought IFA's waiver of or approval of a Deviation from such specification.

17.5.3 In claims by an employee of Developer, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 17.5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

17.5.4 For purposes of this Section 17.5, "third party" means any Person other than an Indemnified Party, the Department and Developer, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (a) against an Indemnified Party, (b) within the scope of the indemnities and (c) not covered by the Indemnified Party's worker's compensation program.

17.5.5 IFA, the Department and the State shall have no obligation to indemnify the Developer.

17.6 Defense and Indemnification Procedures

17.6.1 If IFA receives Notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 17.5, and if IFA gives Notice thereof pursuant to Section 17.1.4.3, then IFA shall have the right to conduct its own defense unless either an insurer accepts defense of the claim within the time required by Law or Developer accepts the tender of the claim in accordance with Section 17.6.3.

17.6.2 If the insurer under any applicable Insurance Policy accepts the tender of defense, IFA and Developer shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Section 17.6.3 shall apply.

17.6.3 If the defense is tendered to Developer, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written Notice stating that Developer:

17.6.3.1 Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

17.6.3.2 Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

17.6.3.3 Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

17.6.4 If Developer accepts the tender of defense under Section 17.6.3.1, Developer shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Developer shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

17.6.4.1 Developer shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

17.6.4.2 The Indemnified Party shall fully cooperate in said defense, provide to Developer all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Developer concerning such defense.

17.6.5 If Developer responds to the tender of defense as specified in Section 17.6.3.2 or 17.6.3.3, the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

17.6.6 Notwithstanding Sections 17.6.3.1 and 17.6.3.2, the Indemnified Party may revocably assume its own defense at any time by delivering to Developer written Notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives Notice of the claim or at any time thereafter, reasonably determines that:

17.6.6.1 A conflict exists between it and Developer which prevents or potentially prevents Developer from presenting a full and effective defense;

17.6.6.2 Developer is otherwise not providing an effective defense in connection with the claim; or

17.6.6.3 Developer lacks the financial capacity to satisfy potential liability or to provide an effective defense.

17.6.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Developer shall reimburse on a

current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

17.6.7.1 In the case of a defense that otherwise would be conducted under Section 17.6.3.1, the Indemnified Party shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed;

17.6.7.2 In the case of a defense that otherwise would be conducted under Section 17.6.3.2, the Indemnified Party shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or Arbitrator following reasonable Notice to Developer and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Developer; and

17.6.7.3 In the case of a defense conducted under Section 17.6.3.3, the Indemnified Party shall have the right to settle or compromise the claim without Developer's prior written consent and without prejudice to its rights to be indemnified by Developer.

17.6.8 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 17.6.6, shall be resolved according to the Dispute Resolution Procedures. Developer shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

17.7 Disclaimer

Nothing in this Article 17 or elsewhere in the PPA Documents is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of the insurance or indemnifications described in this Article 17.

ARTICLE 18. REPRESENTATIONS AND WARRANTIES

18.1 Developer Representations and Warranties

Developer hereby represents and warrants to IFA as follows:

18.1.1 The Financial Model Formulas (a) were prepared by or on behalf of Developer in good faith, (b) are the same financial formulas that Developer utilized and is utilizing in the Financial Model, in making its decision to enter into this Agreement and in making disclosures to potential equity investors and Lenders under the Initial Funding Agreements, and (c) as of the Effective Date are mathematically correct and suitable for making reasonable projections.

18.1.2 The Financial Model (a) was prepared by or on behalf of Developer in good faith, (b) was audited and verified by an independent recognized model auditor immediately prior to the Effective Date and such audit will be updated within 48 hours after the Effective Date, (c) fully discloses all cost, traffic, revenue and other financial assumptions and projections that Developer has used or is using in making its decision to enter into this Agreement and in making disclosures to potential equity investors and Lenders under the Initial Funding

Agreements and (d) as of the Effective Date represents the projections that Developer believes in good faith are the most realistic and reasonable for the East End Crossing; provided, however, that such projections (i) are based upon a number of estimates and assumptions, (ii) are subject to significant business, economic and competitive uncertainties and contingencies and (iii) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

18.1.3 Developer certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Section 18.1.3, the term "principal" for purposes of this Agreement means an officer, director, owner, partner, Key Personnel, 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 Developer.

18.1.4 As of the Effective Date, Developer has reviewed all applicable Laws relating to Taxes, and has taken into account all requirements imposed by such Laws in preparing the Financial Model.

18.1.5 Developer, its employees and its Contractor(s) and its employees have maintained and complied with, and throughout the term of this Agreement will maintain and comply with, all required authority, license status, applicable licensing standards, certification standards, accrediting standards, professional ability, skills and capacity to perform the Work.

18.1.6 As of the Effective Date, based upon its Reasonable Investigation, Developer has evaluated the constraints affecting design and construction of the East End Crossing, including the Project Right of Way limits, the terms and conditions of the NEPA Approval, IFA-Provided Approvals obtained prior to the Setting Date, the surface and subsurface conditions discoverable through such Reasonable Investigation, and applicable Laws, and Developer has reasonable grounds for believing and does believe that the East End Crossing can be designed and built within such constraints.

18.1.7 Except as to parcels that IFA lacked title or access to prior to the Setting Date, prior to the Setting Date Developer, in accordance with Good Industry Practice, conducted a Reasonable Investigation, and as a result of such Reasonable Investigation, Developer is familiar with and accepts the physical requirements of the Work, subject to IFA's obligations regarding Hazardous Materials under Section 5.9 and Developer's rights to seek relief under Article 15.

18.1.8 Prior to the Effective Date, Developer familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals. Except as specifically permitted under Article 15 or 16, Developer shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the PPA Documents or would have an adverse affect on costs. As of the Effective Date, Developer has no reason to believe that any Governmental Approval required to

be obtained by Developer will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the PPA Documents.

18.1.9 Developer shall obtain and maintain, and all Work furnished by Developer will be performed by or under the supervision of Persons who hold, all necessary or required registrations, permits or approvals and valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the PPA Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

18.1.10 As of the Effective Date, Developer is a _____ duly organized and validly existing under the laws of _____, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver the PPA Documents and the Principal Project Documents to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein. Developer is duly qualified to do business, and is in good standing, in the State and in the Commonwealth of Kentucky, in each case, as of the Effective Date, and will remain duly qualified and in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under the PPA Documents. Developer affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

18.1.11 The execution, delivery and performance of the PPA Documents and the Principal Project Documents to which Developer is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Developer; each person executing the PPA Documents and such Principal Project Documents on behalf of Developer has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Developer; and the PPA Documents and such Principal Project Documents have been (or will be) duly executed and delivered by Developer.

18.1.12 Neither the execution and delivery by Developer of the PPA Documents and the Principal Project Documents to which Developer is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Developer or any agreement, judgment or decree to which Developer is a party or is bound.

18.1.13 The execution and delivery by Developer of the PPA Documents and the Principal Project Documents to which Developer is (or will be) a party, and the performance by Developer of its obligations thereunder, will not conflict with any Laws applicable to Developer that are valid and in effect on the date of execution and delivery. As of the Effective Date, Developer is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the PPA Documents.

18.1.14 Each of the PPA Documents and the Principal Project Documents to which Developer is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Developer, enforceable against Developer and, if applicable, each Equity Member of Developer, in accordance with its terms, subject only

to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

18.1.15 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the PPA Documents and the Principal Project Documents to which Developer is a party, or which challenges the authority of the Developer official executing the PPA Documents or such Principal Project Documents; and Developer has disclosed to IFA prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware. Developer has no current, pending or outstanding criminal, civil, or enforcement actions initiated by IFA or the State, and agrees that it will immediately notify IFA of any such actions.

18.1.16 As of the Proposal Due Date Developer disclosed to IFA in writing all organizational conflicts of interest of Developer and its Contractors of which Developer was actually aware; and between the Proposal Due Date and the Effective Date Developer has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Developer or its Contractors identified in its Proposal, which have not been approved in writing by IFA. For this purpose, organizational conflict of interest has the meaning set forth in the Request for Proposals.

18.1.17 To the extent the Design-Build Contractor, the Lead Engineering Firm and/or the Lead Operations and Maintenance Contractor is not Developer, Developer represents and warrants, as of the effective date of the relevant Key Contract, as follows: (a) each of the Design-Build Contractor(s), Lead Engineering Firm and Lead Operations and Maintenance Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business, and is in good standing, in the State and in the Commonwealth of Kentucky, (b) the ownership interests of each of them that is a single purpose entity formed for the East End Crossing (including options, warrants and other rights to acquire ownership interests), is owned by the Persons whom Developer has set forth in a written certification delivered to IFA prior to the Effective Date; (c) each of them has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) each of them has (i) obtained and will maintain all necessary or required registrations, permits, licenses and approvals required under applicable Law and (ii) expertise, qualifications, experience, competence, skills and know-how to perform the Design Work, Construction Work and O&M Work, as applicable, in accordance with the PPA Documents; (e) each of them will comply with all health, safety and environmental Laws in the performance of any work activities for, or on behalf of, Developer for the benefit of IFA; and (f) none of them is in breach of any applicable Law that would have a material adverse effect on any aspect of the Work.

18.1.18 Developer has no authority or right to impose any fee, toll, charge or other amount for the use of the East End Crossing.

18.1.19 Developer represents, warrants and certifies by entering into this Agreement, 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 IFA, the State or the Commonwealth of Kentucky.

18.1.20 As required by IC 5-22-3-7: Developer and any principals of Developer certify that, (i) in accordance with IC 5-22-3-7 (A) Developer, except for *de minimis* and nonsystematic violations, has not violated the terms of (1) IC 24-4.7 (Telephone Solicitation Of Consumers), (2) IC 24-5-12 (Telephone Solicitations), or (3) IC 24-5-14 (Regulation of Automatic Dialing Machines) in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal Law; and (B) Developer will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal Law; and (ii) an Affiliate or principal of Developer and any agent acting on behalf of Developer or on behalf of an Affiliate or principal of Developer (A) except for *de minimis* and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal Law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal Law.

18.1.21 The individual signing this Agreement on behalf of Developer, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of Developer, that he/she has not, nor has any other member, employee, representative, agent or officer of Developer, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

18.2 IFA Representations and Warranties

IFA hereby represents and warrants to Developer as follows:

18.2.1 As of the Effective Date, IFA has full power, right and authority to execute, deliver and perform the PPA Documents and the Principal Project Documents to which IFA is (or will be) a party and to perform each and all of the obligations of IFA provided for herein and therein.

18.2.2 Each person executing on behalf of IFA the PPA Documents and the Principal Project Documents to which IFA is (or will be) a party has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of IFA; and the PPA Documents and such Principal Project Documents have been (or will be) duly executed and delivered by IFA.

18.2.3 The PPA Documents and the Principal Project Documents to which IFA is (or will be) a party have each been duly authorized by IFA, and each constitutes (or at the time of execution and delivery will constitute) a legal, valid and binding obligation of IFA enforceable against IFA in accordance with its terms.

18.2.4 As of the date of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on IFA which challenges IFA's authority to execute, deliver or perform, or the validity or enforceability of, the PPA Documents and the Principal Project Documents to which IFA is a party or which challenges the authority of the IFA official executing the PPA Documents and such Principal Project Documents; and IFA has disclosed to Developer prior to the Effective Date any pending and un-served or threatened

action, suit, proceeding, investigation or litigation with respect to such matters of which IFA is aware.

18.2.5 Neither the execution and delivery by IFA of the PPA Documents, nor the consummation of the transactions contemplated thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the enabling legislation of IFA or any agreement, judgment or decree to which IFA is a party or is bound.

18.2.6 The execution and delivery by IFA of the PPA Documents, and the performance by IFA of its obligations thereunder, will not conflict with any Laws applicable to IFA that are valid and in effect on the date of execution and delivery. IFA is not in breach of any applicable Law that would have a material adverse effect on the performance of any of its obligations under the PPA Documents.

18.2.7 No consent of any party and no Governmental Approval is required to be made in connection with the execution, delivery and performance of this Agreement, which as not already been obtained.

18.3 Survival of Representations and Warranties

The representations and warranties of Developer and IFA contained herein shall survive expiration or earlier termination of this Agreement.

18.4 Special Remedies for Mutual Breach of Warranty

Notwithstanding any other provision of this Agreement, if there exists or occurs any circumstance or event that constitutes or results in a concurrent breach of any of the parallel warranties set forth in this Article 18 by both Developer and IFA but does not also constitute or result in any other breach or default by either Party, then such breaches shall not form the basis for a Relief Event or damage claim by IFA against Developer. Instead, the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the PPA Documents as set forth in Section 25.13, or Termination by Court Ruling as set forth in Section 20.5 and Exhibit 22 (Early Termination Dates and Terms for Termination Compensation).

18.5 "Bring Down" of Developer Representation and Warranties at Financial Close

On the date of Financial Close, Developer shall execute and deliver to IFA a certificate substantially in the form of Exhibit 2-S updating certain of Developer's representations and warranties in this Article 18 and effective as of the date of Financial Close (which date shall be the effective date of the Initial Funding Agreements). Failure to execute and deliver such certificate shall be a Developer Default hereunder.

ARTICLE 19. DEFAULT; REMEDIES; DISPUTE RESOLUTION

19.1 Default by Developer; Cure Periods

19.1.1 Developer Default

Subject to relief from its performance obligations pursuant to Section 15.12, Developer shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "Developer Default"):

19.1.1.1 Developer (a) fails to begin Work within 30 days following issuance of NTP1 or NTP2, or (b) fails to satisfy all conditions to commencement of Construction Work, and commence Construction Work with diligence and continuity, by any applicable Construction Work Commencement Deadline, as the same may be extended pursuant to this Agreement;

19.1.1.2 An Abandonment;

19.1.1.3 Developer fails to achieve (a) Substantial Completion by the Long Stop Date, or (b) Final Acceptance by the Final Acceptance Deadline;

19.1.1.4 [reserved];

19.1.1.5 Developer (a) fails to make any payment due IFA under the PPA Documents when due, or (b) fails to deposit funds to any custodial account, trust account or other reserve or account in the amount and within the time period required by the PPA Documents;

19.1.1.6 [reserved];

19.1.1.7 There occurs any use of the East End Crossing or Airspace or any portion thereof by any Developer-Related Entity in violation of this Agreement, the Technical Provisions, Governmental Approvals or Laws;

19.1.1.8 [reserved];

19.1.1.9 Subject to Section 18.4, any representation or warranty in the PPA Documents made by Developer, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to IFA pursuant to the PPA Documents is false, misleading or inaccurate in any material respect when made or omits material information when made;

19.1.1.10 Developer fails to obtain, provide, maintain and deliver originals, certificates or required evidence of any insurance, bonds, guarantees, letters of credit or other payment or performance security as and when required under this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same;

19.1.1.11 Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the East End Crossing

or Developer's Interest, or there occurs an Equity Transfer or a Change of Control, in violation of Article 22;

19.1.1.12 Developer fails, within 30 days of receipt of notice from IFA that the Developer has failed to timely observe or perform or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the PPA Documents, including failure to pay for or perform the Design Work, Construction Work, O&M Work or any portion thereof in accordance with the PPA Documents, to cure any such failure identified in such IFA notice;

19.1.1.13 After exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (a) Developer, (b) any affiliate of Developer (as "affiliate" is defined in 29 CFR 105 or successor regulation of similar import), (c) any Equity Member or (d) any Key Contractor whose work is not completed;

19.1.1.14 There occurs any Persistent Developer Default, IFA delivers to Developer written Notice of the Persistent Developer Default, and either (a) Developer fails to deliver to IFA, within 45 days after such Notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 19.2.6 or (b) Developer fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan;

19.1.1.15 Developer fails to comply with IFA's written suspension of Work order issued in accordance with Section 19.2.8 within the time reasonably allowed in such order;

19.1.1.16 Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

19.1.1.17 An involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Developer or any substantial part of Developer's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Developer in good faith or shall remain undismissed and unstayed for a period of 60 days;

19.1.1.18 Any voluntary or involuntary case or other act or event described in Sections 19.1.1.16 and 19.1.1.17 shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (a) any Equity Member, partner or joint venture member of Developer with a material financial obligation owing to Developer for equity or loan contributions, (b) any Equity

Member, partner or joint venture member of Developer for whom transfer of ownership or management authority would constitute a Change of Control, or (c) any Guarantor of material Developer obligations to IFA under the PPA Documents, unless another Guarantor of the same material Developer obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty; or

19.1.1.19 Developer draws against or makes a false or materially misleading representation in connection with a draw against any custodial account, trust account or other reserve or account (including the Relief Events Allowance Account) in violation of the terms and conditions of the PPA Documents.

19.1.2 Cure Periods

Subject to Section 19.2.2, for Developer breaches or failures listed in Attachment 12-1 of Exhibit 12 to the Agreement, the cure periods set forth therein shall exclusively govern for the sole purpose of assessing Noncompliance Points and Quarterly Payment Adjustments. For Category A breaches or failures listed in Attachment 12-1 of Exhibit 12 to the Agreement, the cure period set forth therein shall exclusively govern for the sole purpose of accumulation under clause (b) of the definition of Persistent Developer Default. For the purpose of IFA's exercise of other remedies, subject to Section 19.2.2 and subject to remedies that this Article 19 expressly states may be exercised before lapse of a cure period, Developer shall have the following cure periods with respect to the following Developer Defaults:

19.1.2.1 Respecting a Developer Default under Section 19.1.1.14(a), a period of five days after IFA delivers to Developer written Notice of the Developer Default;

19.1.2.2 Respecting a Developer Default under Section 19.1.1.1, 19.1.1.5, 19.1.1.10, 19.1.1.11 or 19.1.1.19, a period of 15 days after IFA delivers to Developer written Notice of the Developer Default; provided that IFA shall have the right, but not the obligation, to effect cure, at Developer's expense, if a Developer Default under Section 19.1.1.10 continues beyond five days after such Notice is delivered;

19.1.2.3 Respecting a Developer Default under Section 19.1.1.2, 19.1.1.7 or 19.1.1.14(b), a period of 30 days after IFA delivers to Developer written Notice of the Developer Default;

19.1.2.4 Respecting a Developer Default under Section 19.1.1.9 or 19.1.1.13, a period of 30 days after IFA delivers to Developer written Notice of the Developer Default; provided that (a) if the Developer Default, including a Developer Default under Section 19.1.1.12, is of such a nature that the cure cannot with diligence be completed within such time period and Developer has commenced immediately after receiving the default Notice meaningful steps to cure, Developer shall have such additional period of time, up to a maximum cure period of 120 days, as is reasonably necessary to diligently effect cure, (b) as to Section 19.1.1.9, cure will be regarded as complete when the adverse effects of the breach are cured, and (c) as to Section 19.1.1.13, if the debarred, suspended or voluntarily excluded Person possesses such ownership or management authority that the transfer thereof would constitute a Change of Control, cure will be regarded as complete when Developer proves it has removed such Person from any position or ability to manage, direct or control the decisions of Developer or to perform Work and replaced such Person with one IFA first approves in writing as provided

in Section 22.3, and if the debarred, suspended or voluntarily excluded Person is a Key Contractor cure will be regarded as complete when Developer replaces the Key Contractor with IFA's prior written approval in its good faith discretion as provided in Section 7.3.1;

19.1.2.5 Respecting a Developer Default under Section 19.1.1.3, there shall be no cure period, and there shall be no right to Notice of such Developer Default;

19.1.2.6 Respecting a Developer Default under Section 19.1.1.15, 19.1.1.16 or 19.1.1.17, there shall be no cure period, and there shall be no right to Notice of a Developer Default under Section 19.1.1.16 or 19.1.1.17; and

19.1.2.7 Respecting a Developer Default under Section 19.1.1.18, a period of ten days from the date of the Developer Default to commence diligent efforts to cure, and 30 days to effect cure of such default by providing a letter of credit or payment to IFA or the Collateral Agent for the benefit of the East End Crossing, in the amount of, as applicable, (a) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of Developer or (b) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor.

19.2 IFA Remedies for Developer Default

19.2.1 Termination

In the event of any Developer Default that is or becomes a Default Termination Event set forth in Section 20.3.1, IFA may terminate this Agreement as provided in Section 20.3. Such termination shall, among other things, automatically terminate all of Developer's rights under Article 2, whereupon Developer shall take all action required to be taken by Developer under Section 20.7.

19.2.2 Immediate IFA Entry and Cure of Wrongful Use or Closure

Without Notice and without awaiting lapse of the period to cure, in the event of any Developer Default under Section 19.1.1.7 (use of the East End Crossing in violation of the PPA Documents), IFA may enter and take control of the relevant portion of the East End Crossing to restore the permitted uses and reopen and continue traffic operations for the benefit of the public, until such time as such breach is cured or IFA terminates this Agreement. Developer shall pay to IFA on demand IFA's Recoverable Costs in connection with such action. So long as IFA undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Developer Default, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose IFA to any liability to Developer and shall not entitle Developer to any other remedy except if IFA's action constitutes gross negligence, recklessness or willful misconduct. Developer acknowledges that IFA has a high priority, paramount public interest in maintaining the authorized uses of the East End Crossing and continuous public access to the East End Crossing. IFA's good faith determination that such action is needed shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Developer Default, as determined by IFA, acting reasonably, IFA shall relinquish control and possession of the relevant portion of the East End Crossing back to Developer.

19.2.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance

19.2.3.1 If at any time Developer or its Surety under Payment Bonds and bonds for Performance Security fails to meet any Safety Standard or timely perform Safety Compliance or IFA and Developer cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to IFA, acting reasonably, IFA shall have the absolute right and entitlement to undertake or direct Developer to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by IFA or with the Safety Compliance Order. If at any time a condition or deficiency of the East End Crossing violates any Law respecting health, safety or right of use and access, including the Americans With Disabilities Act and regulations of the Occupational Safety and Health Administration (OSHA), IFA may take any immediate corrective actions required.

19.2.3.2 To the extent that any work done pursuant to Section 19.2.3.1 is undertaken by IFA and is reasonably necessary to comply with Safety Standards, perform validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, Developer shall pay to IFA on demand IFA's Recoverable Costs in connection with such work, and IFA (whether it undertakes the work or has directed Developer to undertake the work) shall have no obligation or liability to compensate Developer for any Losses Developer suffers or incurs as a result thereof.

19.2.3.3 To the extent that any work done pursuant to Section 19.2.3.1 is undertaken by IFA and is not reasonably necessary to comply with Safety Standards, perform validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, IFA shall compensate Developer only for Losses Developer suffers or incurs as a direct result thereof.

19.2.3.4 To the extent that any Safety Compliance Order work pursuant to Section 19.2.3.1 is undertaken by Developer under written protest delivered prior to starting the work and it is finally determined that the Safety Compliance work was not necessary, the unnecessary work under the Safety Compliance Order shall be treated as an IFA Change.

19.2.3.5 Notwithstanding anything to the contrary contained in this Agreement, if in the good faith judgment of IFA Developer has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property, and if Developer is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, IFA may (but is not obligated to), without Notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Developer shall pay to IFA on demand the cost of such action, including IFA's Recoverable Costs, or (b) suspend Construction Work and/or close or cause to be closed any and all portions of East End Crossing affected by the Emergency or danger. So long as IFA undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose IFA to any liability to Developer and shall not entitle Developer to any other remedy, except if IFA's action constitutes gross negligence, recklessness or willful misconduct. Developer acknowledges that

IFA has a high priority, paramount public interest in protecting public and worker safety at the East End Crossing and adjacent and connecting areas. IFA's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by IFA, acting reasonably, IFA shall allow the Construction Work to continue or such portions of the East End Crossing to reopen, as the case may be.

19.2.4 IFA Step-in Rights

19.2.4.1 Subject to the rights of the lenders under any Direct Agreement and Article 21, upon the occurrence of a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, without waiving or releasing Developer from any obligations, IFA shall have the right, but not the obligation, for so long as such Developer Default remains uncured by IFA or Developer, to pay and perform all or any portion of Developer's obligations and the Work that are the subject of such Developer Default, as well as any other then-existing breaches or failures to perform for which Developer received prior written Notice from IFA but has not commenced or does not continue diligent efforts to cure. Exercise of such cure rights is subject to the terms and conditions of this Section 19.2.4.

19.2.4.2 IFA may, to the extent reasonably required for or incident to curing the Developer Default or such other breaches or failures to perform and subject to the provisions of the Direct Agreement:

a. Perform or attempt to perform, or caused to be performed, such Work;

b. Employ security guards and other safeguards to protect the East End Crossing;

c. Spend such sums as IFA deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Work, without obligation or liability to Developer or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment;

d. In accordance with Section 19.2.7, draw on and use proceeds from the Payment Bond and Performance Security and any other available security to the extent such instruments provide recourse to pay such sums;

e. Execute all applications, certificates and other documents as may be required;

f. Make decisions respecting, assume control over and continue Work as may be reasonably required;

g. Modify or terminate any contractual arrangements in IFA's good faith discretion, without liability for termination fees, costs or other charges;

h. Meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors

and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Developer irrevocably appoints IFA as its attorney-in-fact with full power and authority to act for and bind Developer in its place and stead;

i. Take any and all other actions it may in its sole discretion consider necessary to effect cure and perform the Work; and

j. Prosecute and defend any action or proceeding incident to the Work.

19.2.4.3 Developer shall reimburse IFA on demand IFA's Recoverable Costs in connection with the performance of any act or Work authorized by this Section 19.2.4.

19.2.4.4 In addition to its continuing ownership and rights of access and entry onto the East End Crossing and Project Right of Way, Project Specific Locations and Toll Collection System Locations throughout the Term, including under Section 3.5, IFA shall have and is hereby granted a perpetual, non-rescindable right of entry by IFA and its Authorized Representatives, contractors, subcontractors, vendors and employees onto all Project Specific Locations and Toll Collection System Locations, exercisable at any time or times without Notice, for the purpose of carrying out IFA's step-in rights under this Section 19.2.4. Neither IFA nor any of its Authorized Representatives, contractors, subcontractors, vendor and employees shall be liable to Developer in any manner for any inconvenience or disturbance arising out of its entry onto the East End Crossing, the Project Right of Way or Project Specific Locations in order to perform under this Section 19.2.4, unless caused by the gross negligence, recklessness or willful misconduct of such Person. If any Person exercises any right to pay or perform under this Section 19.2.4, it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness or willful misconduct of such Person.

19.2.4.5 IFA's rights under this Section 19.2.4 are subject to the right of any Surety under Payment Bonds and bonds for Performance Security to assume performance and completion of all bonded work.

19.2.4.6 In the case of a Developer Default which would either immediately or, following the applicable grace period or the giving of Notice or both, constitute a Default Termination Event enabling IFA to terminate or suspend its obligations under this Agreement, IFA's rights under this Section 19.2.4 are subject to Lender rights to cure under Article 21; provided that IFA may continue exercise of its step-in rights until the Lender obtains possession and control and notifies IFA that it stands ready to commence good faith, diligent curative action. In the case of any other Developer Default, IFA's rights under this Section 19.2.4 are subject to the exercise of step-in rights by the Collateral Agent under the senior Security Documents, provided that the Collateral Agent (a) delivers to IFA written Notice of the Collateral Agent's decision to exercise step-in rights, and commences the good faith, diligent exercise of such step-in rights, within the cure period available to Developer with respect to the Developer Default in question, and (b) thereafter continues such good faith, diligent exercise of remedies until the Developer Default is fully and completely cured.

19.2.4.7 In the event IFA takes action described in this Section 19.2.4 and it is later finally determined that IFA lacked the right to do so because there did not occur a Developer Default and expiration, without full and complete cure, of the cure period, if any,

available to Developer, then IFA's action shall be treated as a Directive Letter for an IFA Change.

19.2.5 Damages; Offset

19.2.5.1 Subject to Sections 19.2.10 and 19.2.11, IFA shall be entitled to recover any and all damages available at Law on account of the occurrence of a Developer Default. Developer shall owe any such damages that accrue after the occurrence of the Developer Default regardless of when Notice thereof is given or whether the Developer Default is subsequently cured.

19.2.5.2 Where this Agreement is not terminated, such damages include (a) costs IFA incurs to complete the Design Work and Construction Work in excess of the Milestone Payment Amount, and amounts due under Change Orders, not previously paid to Developer, (b) compensation and reimbursements due but unpaid to IFA under the PPA Documents, (c) costs to remedy any defective part of the Work, and (d) costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the East End Crossing to that required by the PPA Documents.

19.2.5.3 Where this Agreement is terminated, such damages include the present value of (a) any compensation and reimbursements due but unpaid to IFA under the PPA Documents on or prior to the Early Termination Date, (b) actual and projected costs to remedy any defective part of the Work, (c) actual and projected costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the East End Crossing to the standard it would have been in if Developer had complied with its obligations to carry out and complete the Work in accordance with the PPA Documents, (d) actual and projected costs to IFA to terminate, take over the East End Crossing, re-procure and replace Developer, (e) actual and projected delay costs, (f) actual and projected increases in costs to IFA to complete the East End Crossing if not completed as of the Early Termination Date, and (g) actual and projected increases in costs to IFA to operate and maintain the East End Crossing over the balance of the Term (as if termination had not occurred) following the Early Termination Date.

19.2.5.4 Damages owed IFA shall bear interest from and after the date any amount becomes due to IFA until paid at a floating rate equal to the LIBOR in effect from time to time plus 400 basis points or other rate specified therefor in this Agreement.

19.2.5.5 IFA may deduct and offset any damages owing to it under the PPA Documents from and against any amounts IFA may owe to Developer. Without limiting the foregoing:

a. The Milestone Payments are subject to deduction and offset for the amount of any damages attributable to any Developer Default that concerns the D&C Work and is the subject of a Notice delivered to Developer prior to the date for payment of the Milestone Payments; and

b. Except for damages liquidated by the Quarterly Payment Adjustments under Exhibit 10 (Payment Mechanism), the Availability Payments are subject to deduction and offset for the amount of any damages attributable to any Developer Default.

19.2.5.6 If the amount of damages owing IFA, including the amount of any

Quarterly Payment Adjustment, is not liquidated or known with certainty at the time a payment is due from IFA to Developer, IFA may deduct and offset up to 100% of the amount it reasonably estimates will be due and deposit such amount in dispute into the AP Disputed Amounts Fund or MP Disputed Amounts Fund, as applicable, which amount, or such lesser amount, if any, shall be paid by IFA to Developer as directed pursuant to the resolution of the dispute.

19.2.6 Remedial Plan Delivery and Implementation

19.2.6.1 Developer recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous Noncompliance Events, whether such Noncompliance Events are cured or not, will undermine the confidence and trust essential to the success of the public-private arrangement under this Agreement and will have a material, cumulative adverse impact on the value of this Agreement to IFA. Developer acknowledges and agrees that measures for determining the existence of such a pattern or practice described in the definition of Persistent Developer Default are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

19.2.6.2 Upon the occurrence of a Persistent Developer Default (refer to the trigger points in Sections 2.1 and 2.2 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default)), Developer shall, within 45 days after written Notice of the Persistent Developer Default, be required to prepare and submit a remedial plan for IFA approval in its good faith discretion. The remedial plan shall set forth a schedule and specific actions to be taken by Developer to improve its performance and reduce (a) Developer's cumulative number of Noncompliance Points assessed under Section 11.3 and cumulative number of breaches and failures to perform to the point that such Persistent Developer Default will not continue and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least 50%. IFA may require that such actions include improving Developer's quality management practices, plans and procedures, revising and restating Management Plans, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, replacement of Contractors, and delivering security to IFA.

19.2.6.3 If (a) Developer complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan, (b) as a result thereof Developer achieves the requirements set forth in Sections 19.2.6.2(a) and (b), and (c) as of the date it achieves such requirements there exist no other uncured Developer Defaults for which a Notice was given, then IFA shall reduce the number of cured Noncompliance Points that would otherwise then be counted toward Persistent Developer Default by 25%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Developer Default.

19.2.6.4 Developer's failure to deliver to IFA the required remedial plan within such 45 day period shall constitute a material Developer Default, which may result in issuance of a Warning Notice triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material Developer Default which may result in issuance of a Warning Notice triggering a 30-day cure period. Either such Warning Notice may trigger a Default Termination Event under Article 20.

19.2.7 Payment Bond and Performance Security

19.2.7.1 Subject to Sections 19.2.7.2 and 19.2.7.3, upon the occurrence of a Developer Default and expiration, without full and complete cure, of the applicable cure period, if any, under Section 19.1.2, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, IFA shall be entitled to make demand upon and enforce any Payment Bond and bond provided as Performance Security, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security (including the Handback Requirements Reserve Account) available to IFA under this Agreement with respect to the Developer Default in question in any order in IFA's sole discretion. IFA will apply the proceeds of any such action to the satisfaction of Developer's obligations under this Agreement, including payment of amounts due IFA.

19.2.7.2 If IFA is an additional obligee under a Payment Bond or bond for Performance Security, or is a transferee beneficiary under any letter of credit, then IFA shall forebear from exercising remedies as additional obligee or transferee beneficiary so long as (a) Developer or the Collateral Agent as provided in the Direct Agreement commences the good faith, diligent exercise of remedies thereunder within ten days after IFA delivers written Notice to Developer and the Collateral Agent of its intent to make a claim thereunder, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured. The foregoing obligation of IFA to forebear shall not apply, however: where access to a bond, letter of credit or other payment or performance security is to satisfy damages owing to IFA, in which case IFA shall be entitled to make demand, draw, enforce and collect regardless of whether the Developer Default is subsequently cured.

19.2.7.3 No prior Notice from IFA shall be required if it would preclude draw on the bond, letter of credit, guaranty or other payment or performance security before its expiration date; and in the case of an expiring letter of credit, the provisions of Section 17.3.1.3 shall apply.

19.2.7.4 For the avoidance of doubt, Payment Bonds and Performance Security provided by or on behalf of a Design-Build Contractor or other prime Contractor pursuant to Section 17.2 to secure its obligations will not be available with respect to a Developer Default (although it will be available for a corresponding breach, if any, by the Design-Build Contractor or other prime Contractor).

19.2.8 Suspension of Work

19.2.8.1 IFA shall have the right and authority, without obligation or liability, to suspend, in whole or in part, the Work by written order to Developer, due to any of the following, regardless of whether a Developer Default has been declared or any cure period (other than the cure period provided below) has not yet lapsed:

a. Failure to perform the Work in compliance with, or other breach of, the PPA Documents, except Noncompliance Events where no Persistent Developer Default exists where such failure is not substantially cured within 15 days after IFA delivers written notice thereof to Developer;

b. Failure to comply with any Law or Governmental Approval (including failure to implement protective measures for Endangered and Threatened Species, failure to

handle, preserve and protect archeological, paleontological, cultural or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

c. Performance of Design Work prior to issuance of NTP1 or of Construction Work prior to issuance of NTP2;

d. Discovery of Nonconforming Work or of any activity that is proceeding or about to proceed that would constitute or cause Nonconforming Work where the Nonconforming Work or activity is not substantially cured within 15 days after IFA delivers written notice thereof to Developer, unless Developer demonstrates to IFA's reasonable satisfaction that full and complete cure of the Nonconforming Work, and verification of such cure, will remain practicable despite continuation of Work without suspension;

e. Developer has failed to (i) pay in full when due sums owing any Contractor for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute, or (ii) deliver any certificate, release or certified payroll required under Section 17.2.2.2 where the Nonconforming Work or activity is not substantially cured within 15 days after IFA delivers written notice thereof to Developer;

f. Failure to provide proof of required insurance coverage as set forth in Section 17.1.2.4(c) (which suspension is also available in the case of such failure following a written request rather than Notice of Developer Default, as set forth in Section 17.1.2.4(c));

g. Failure to deliver or maintain Payment Bonds and Performance Security;

h. The existence of conditions unsafe for workers, other East End Crossing personnel or the general public, including failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 19.2.3 (and in any such case the order of suspension may be issued without awaiting any cure period); and

i. Failure to carry out and comply with Directive Letters where the Nonconforming Work or activity is not substantially cured within 15 days after IFA delivers written notice thereof to Developer.

19.2.8.2 In addition to the protections from liability under Section 19.2.3.5, IFA shall have no liability to Developer, and Developer shall have no right to Extra Work Costs, Delay Costs, time extension, extension of Milestone Schedule Deadlines, compensation for losses due to delays in commencement of Availability Payments or for additional interest costs due to delayed receipt of the Milestone Payment, or other relief, due to any suspension under Section 19.2.8.1.

19.2.8.3 IFA shall have the right and authority to suspend, in whole or in part, the Work for reasons other than those set forth in Section 19.2.8.1. If IFA purports to order suspension of Work under Section 19.2.8.1 but it is finally determined under the Dispute Resolution Procedures that there exist no grounds under Section 19.2.8.1 for such suspension, then it shall be deemed a suspension under this Section 19.2.8.3. If IFA orders (or is deemed to order) suspension of Work under this Section 19.2.8.3 and such suspension is an IFA-Caused Delay, then Developer shall be entitled to submit a Claim for Extra Work Costs, Delay Costs, compensation for losses due to delays in commencement of Availability Payments and for

additional interest costs due to delayed receipt of the Milestone Payment, Milestone Schedule Deadline extensions and performance relief to the extent permitted under Article 15.

19.2.8.4 Developer shall promptly comply with any such written suspension order, even if Developer disputes the grounds for suspension. Developer shall promptly recommence the Work upon receipt of written Notice from IFA directing Developer to resume work. IFA will lift the suspension order promptly after Developer fully cures and corrects the applicable breach or failure to perform or any other reason for the suspension order ceases to apply.

19.2.9 Warning Notices

19.2.9.1 Without prejudice to any other right or remedy available to IFA, IFA may deliver a written Notice (a "Warning Notice") to Developer, with a copy to the Collateral Agent, stating explicitly that it is a "Warning Notice" of a material Developer Default and stating in reasonable detail the matter or matters giving rise to the Notice and, if applicable, amounts due from Developer, and reminding Developer of the implications of such Notice, whenever there occurs a Developer Default.

19.2.9.2 The issuance of a Warning Notice may trigger a Default Termination Event as provided in Section 20.3.1.

19.2.9.3 IFA may issue a Warning Notice at the same time it delivers a Notice of Developer Default, and a Notice of Developer Default may be issued as a Warning Notice. In either such case, the cure period available to Developer, if any, shall be as set forth in Section 19.1.2. If IFA issues a Warning Notice for any Developer Default after it issues a Notice of such Developer Default, then the remaining cure period available to Developer, if any, for such Developer Default before IFA may terminate this Agreement on account of such Developer Default shall be extended by the time period between the date the Notice of such Developer Default was issued and the date the Warning Notice is issued. However, this shall not affect the time when IFA may exercise any other remedy respecting such Developer Default.

19.2.10 Other Rights and Remedies

Subject to Sections 19.2.12 and 20.9, IFA shall also be entitled to exercise any other rights and remedies available under this Agreement, or available at Law or in equity.

19.2.11 Cumulative, Non-Exclusive Remedies

Subject to Sections 18.4, 19.2.12 and 20.9, and subject to the stipulated remedial measures for the breaches and failures to perform for which Noncompliance Points may be assessed, each right and remedy of IFA hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by IFA of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by IFA of any or all other such rights or remedies.

19.2.12 Limitation on Consequential Damages

19.2.12.1 Notwithstanding any other provision of the PPA Documents and

except as set forth in Section 19.2.12.2, to the extent permitted by applicable Law, Developer shall not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach by Developer of this Agreement or any other PPA Document, tort (including negligence) or any other theory of liability, and IFA releases Developer from any such liability.

19.2.12.2 The foregoing limitation on Developer's liability for consequential damages shall not apply to or limit any right of recovery IFA may have respecting the following:

a. Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 17.1, (ii) covered by the proceeds of insurance actually carried by or insuring Developer under policies solely with respect to the East End Crossing and the Work, regardless of whether required to be carried pursuant to Section 17.1, or (iii) Developer is deemed to have self-insured the Loss pursuant to Section 17.1.4.4;

b. Losses arising out of or relating to fraud, criminal conduct, intentional misconduct (which does not include any intentional Developer Default), recklessness, bad faith or gross negligence on the part of any Developer-Related Entity;

c. Developer's indemnities set forth in Sections 5.9.10 and 17.5 or elsewhere in the PPA Documents;

d. Developer's obligation to pay liquidated damages in accordance with the PPA Documents, including by way of the Quarterly Payment Adjustments;

e. Losses arising out of or relating to Developer Releases of Hazardous Materials;

f. Amounts Developer may owe or be obligated to reimburse to IFA under the express provisions of the PPA Documents, including, subject to any agreed scope of work and budget, IFA's Recoverable Costs;

g. Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the PPA Documents expressly state are due from Developer to IFA; and

h. Any credits, deductions or offsets that the PPA Documents expressly provide to IFA against amounts owing Developer.

19.2.12.3 All insurance policies purchased shall be endorsed to provide coverage as if no limitation on Developer's liability for consequential damages exists.

19.2.13 Other Limitation on IFA's Remedies

IFA's remedies for certain breaches of warranties are limited as provided in Section 18.4.

19.3 Default by IFA; Cure Periods

19.3.1 IFA Default

IFA shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "IFA Default"):

19.3.1.1 IFA fails to make any payment due Developer under this Agreement when due, provided that such payment is not subject to a Dispute;

19.3.1.2 Subject to Section 18.4, any representation or warranty made by IFA under Section 18.2 is false, misleading or inaccurate in any material respect when made or omits material information when made;

19.3.1.3 IFA fails to observe or perform any other covenant, agreement, term or condition required to be observed or performed by IFA under this Agreement; or

19.3.1.4 IFA or the Department or KYTC confiscates, condemns or appropriates any material part of the Developer's Interest, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement.

19.3.2 Cure Periods

IFA shall have the following cure periods with respect to the following IFA Defaults:

19.3.2.1 Respecting an IFA Default under Section 19.3.1.1, a period of 45 days after Developer delivers to IFA written Notice of the IFA Default; and

19.3.2.2 Respecting an IFA Default under Section 19.3.1.2, 19.3.1.3 or 19.3.1.4, a period of 90 days after Developer delivers to IFA written Notice of the IFA Default; provided that (a) if the IFA Default is of such a nature that the cure cannot with diligence be completed within such time period and IFA has commenced meaningful steps to cure immediately after receiving the default Notice, IFA shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, and (b) as to Section 19.3.1.2, cure will be regarded as complete when the adverse effects of the breach are cured.

19.4 Developer Remedies for IFA Default

19.4.1 Termination

Subject to Section 20.9, Developer will have the right to terminate this Agreement and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, Section 20.4.

19.4.2 Damages and Other Remedies

Developer shall have and may exercise the following remedies upon the occurrence of an IFA Default and expiration, without cure, of the applicable cure period.

19.4.2.1 If Developer does not terminate this Agreement, then, subject to Section 19.4.4, Developer may treat the IFA Default as a Relief Event on the terms and conditions set forth in Article 15;

19.4.2.2 If the IFA Default is a failure to pay when due any undisputed portion of the Milestone Payment Amount under Section 10.1 or any undisputed portion of a progress payment owing under a Change Order and IFA fails to cure such IFA Default within 90 days after receiving from Developer written Notice thereof, Developer shall be entitled to suspend Design Work and Construction Work, subject to the following terms and conditions:

a. Developer shall be responsible for safely securing and monitoring the Site and all materials and equipment;

b. Developer shall continue to provide traffic management in accordance with the Transportation Management Plan and Temporary Traffic Control Plan;

c. The right to suspend Work does not include the right to suspend or cancel Insurance Policies or any Payment Bond and Performance Security; and

d. The suspension of Work shall cease, and Developer shall resume performance of the Work, within ten days after the default is cured.

19.4.2.3 Subject to Section 19.4.4 and except as specifically provided otherwise in this Agreement (including the first paragraph of Article 15 and Section 20.9), Developer also shall be entitled to exercise any other remedies available under this Agreement or at Law or in equity, including offset rights to the extent and only to the extent available under Section 19.4.3.

19.4.2.4 Subject to Section 19.4.4 and except as specifically provided otherwise in this Agreement (including the first paragraph of Article 15 and Section 20.9), each right and remedy of Developer hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

19.4.3 Offset Rights

19.4.3.1 Developer may deduct and offset any Claim amount owing to it, provided such Claim amount is undisputed or has been fully and finally liquidated through Dispute Resolution Procedures or otherwise, from and against any amounts Developer may owe to IFA.

19.4.3.2 Except as specifically set forth in this Section, Developer shall have no rights of offset or deduction, whether available at Law or in equity, and Developer hereby irrevocably waives and releases any such rights.

19.4.4 Limitations on Remedies

19.4.4.1 Notwithstanding any other provision of the PPA Documents and

except as forth in Section 19.4.4.2, to the extent permitted by applicable Law, IFA shall not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of this Agreement, tort (including negligence) or any other theory of liability, and Developer releases IFA from any such liability.

19.4.4.2 The foregoing limitation on IFA's liability for consequential damages shall not apply to or limit any right of recovery Developer may have respecting the following:

a. Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional IFA Default), recklessness, bad faith or gross negligence on the part of IFA;

b. IFA's liabilities set forth in Section 5.9.6.3;

c. Losses arising out of IFA Release(s) of Hazardous Materials;

d. Any amounts IFA may owe or be obligated to reimburse under the express provisions of this Agreement for Relief Events or events of termination;

e. Amounts IFA may owe or be obligated to reimburse to Developer under the express provisions of the PPA Documents;

f. Interest and charges that the PPA Documents expressly state are due from IFA to Developer; and

g. Any credits, deductions or offsets that the PPA Documents expressly provide to Developer against amounts owing IFA.

19.4.4.3 The measure of compensation available to Developer as set forth in this Agreement for an event of termination shall constitute the sole and exclusive monetary relief and damages available to Developer from IFA arising out of or relating to such event; and Developer irrevocably waives and releases any right to any other or additional damages or compensation from IFA. No award of compensation or damages shall be duplicative.

19.4.4.4 Developer shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against IFA, except (a) for any sustainable action for relief in the nature of that formerly available in *mandamus*, (b) for any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 23.4, or to specifically enforce IFA's duty of confidentiality under Section 23.4.6, (c) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the PPA Documents, or (d) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute.

19.4.4.5 Without limiting the effect of Section 19.4.4.3 and notwithstanding Section 19.4.4.4, in the event IFA wrongfully withholds an approval or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, Developer's sole remedies against IFA shall be compensation and

extensions of time to the extent provided in Article 15.

19.4.4.6 Without limiting the effect of Section 19.4.4.3, Developer shall have no right to suspend Work except as set forth in Section 19.4.2.2.

19.4.4.7 Developer's remedies for certain breaches of warranties are limited as provided in Section 18.4.

19.5 Partnering

19.5.1 The provisions of this Section 19.5 are not part of the Informal Resolution Procedures or the Dispute Resolution Procedures contemplated under this Agreement. Compliance with the provisions of this Section 19.5 or the terms of any partnering charter is not required as a condition precedent to any Party's right to initiate a claim or seek resolution of any Dispute under the relevant procedures specified in Section 19.6.

19.5.2 IFA and Developer have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Agreement through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

19.5.3 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 Work in accordance with the PPA Documents, and (d) to create mutual trust and respect for each Party's respective roles and interests in the East End Crossing while recognizing the respective risks inherent in those roles.

19.5.4 In continuance of their existing partnering process, within 90 days after the Effective Date IFA and Developer shall attend a team-building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the East End Crossing. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter shall call for the formation and meetings of a partnering panel, identify the Key Personnel of Developer and key representatives of IFA who shall serve on the partnering panel, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, subject to Section 19.6.5, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter shall recognize and be consistent with the obligations of IFA and Developer contained in this Agreement with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes.

19.5.5 Under the non-binding procedures, rules and guidelines of the partnering charter, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters.

19.5.6 If Developer and IFA succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

19.6 Dispute Resolution Procedures

19.6.1 General Provisions

19.6.1.1 Disputes Governed by These Procedures

a. Any Claim or Dispute arising out of, relating to, or in connection with this Agreement that is not resolved by partnering per Section 19.5, including the question as to whether such dispute is subject to nonbinding arbitration, shall be resolved pursuant to this Section 19.6.

b. Resolutions of Claims and Disputes pursuant to this Section 19.6 shall be final, binding, conclusive and enforceable as set forth in this Section 19.6.

c. FAILURE OF DEVELOPER TO CONFORM TO THE DISPUTE RESOLUTION PROCEDURES IN ALL MATERIAL RESPECTS AS TO ANY DISPUTE OR CLAIM SUBJECT THERETO SHALL CONSTITUTE A FAILURE TO PURSUE DILIGENTLY AND EXHAUST THE ADMINISTRATIVE PROCEDURES IN THE PPA DOCUMENTS AND SHALL OPERATE AS A BAR TO THE DISPUTE OR CLAIM. THIS SECTION 19.6.1.1(C) SHALL NOT BAR A CLAIM OR DISPUTE IF THE FAILURE TO MEET APPLICABLE DEADLINES IS DUE TO CONDUCT ON BEHALF OF IFA OR ITS REPRESENTATIVES.

d. The Parties adopt these expedited methods for resolving disputes between or among the IFA, the Developer, and units of local government that contain any part of the East End Crossing, all of whom are proper parties to these dispute resolution procedures.

19.6.1.2 Burden of Proof

The Party bringing a Claim or Dispute shall bear the burden of proving the same.

19.6.2 Informal Resolution as Condition Precedent

As a condition precedent to the right to have any Dispute resolved pursuant to the Dispute Resolution Procedures or by the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the Informal Resolution Procedures described in Section 19.6.3. Time limitations set forth for those Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for Informal Resolution Procedures applicable to any other or subsequent Disputes.

19.6.3 Informal Resolution Procedures

19.6.3.1 Notice of Dispute to Designated Agent

a. A Party desiring to pursue a Dispute against the other Party shall initiate the informal resolution procedures by serving a written Notice on the other Party's designated agent. Unless otherwise indicated by written Notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The Notice shall contain a concise statement describing:

i. The date of the act, inaction or omission giving rise to the Dispute;

ii. An explanation of the Dispute, including a description of its nature, circumstances and cause;

iii. A reference to any pertinent provision(s) from the PPA Documents;

iv. If applicable, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);

v. If applicable, an analysis of the Project Schedule and Milestone Schedule Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Milestone Schedule Deadlines);

vi. If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;

vii. The claiming Party's desired resolution of the Dispute; and

viii. Any other information the claiming Party considers relevant.

b. The Notice shall be signed by the Authorized Representative of the claiming Party, and shall contain a written certification by the claiming Party that:

i. The Notice of Dispute is served in good faith;

ii. Except as to specific matters stated in the Notice as being unknown or subject to discovery, all supporting information is reasonably believed by the claiming Party to be accurate and complete;

iii. The Dispute accurately reflects the amount of money or other right, remedy or relief to which the claiming Party reasonably believes it is entitled; and

iv. The Authorized Representative is duly authorized to execute and deliver the Notice and such certification on behalf of the claiming Party.

c. The Parties shall attempt in good faith to resolve such Dispute within 15 days of delivery of the Notice of Dispute to the responding Party. If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The Notice of the Dispute and such response shall suffice to evidence the

Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing.

19.6.3.2 Public Finance Director Meetings

If the Dispute is not resolved pursuant to Section 19.6.3.1(c), then commencing within ten Business Days after the Notice of Dispute is served and concluding ten Business Days thereafter, the Chief Executive Officer of Developer and the Public Finance Director or the Public Finance Director's designee whose rank is not lower than the first tier of officers below that of Public Finance Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's Notice of Dispute. If they succeed in resolving the Dispute, Developer and IFA shall memorialize the resolution in writing.

19.6.3.3 Failure to Resolve Dispute with Informal Resolution Procedures

a. If a Dispute is not timely resolved under the Informal Resolution Procedures, then the Parties may mutually agree to initiate mediation.

b. 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 within the jurisdiction of the Arbitrator pursuant to Section 19.6.4.2(a) resolved by the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, refer the Dispute to the Arbitrator for an Arbitrator Decision; or

ii. With respect to all other Disputes, as well as Disputes submitted to but not finally resolved through the Arbitrator, pursue any other relief that may be available in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, pursuant to Section 19.6.4.2.

19.6.4 Formal Resolution Procedures

19.6.4.1 Non-binding Arbitration

a. It is the intent of the Parties to resolve the Dispute between them whenever possible by mutual and voluntary settlement rather than through any binding dispute resolution process. In support of this, the Parties acknowledge that, except as otherwise provided herein, if the Dispute cannot be settled through the Informal Resolution Procedures set forth in Section 19.6.3, the Parties agree first to submit their Dispute to non-binding arbitration as a condition precedent to filing litigation under Section 19.6.4.2. The Parties recognize that non-binding arbitration is a process to assist them in resolving their disputes by making their own free and informed choices and that the neutral Arbitrator will have no authority to impose a binding award on any Party but only to issue an advisory decision. The non-binding award cannot be entered as a judgment in any court, except on mutual consent of the Parties, nor can it be cited as evidence or precedent with any preclusive effect in any court or other proceeding.

b. A Party shall initiate the non-binding arbitration process by serving a written demand for arbitration on the other Party's designated agent. Unless otherwise indicated by written Notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The arbitration demand shall contain a concise statement of the following:

i. The date of the act, inaction or omission giving rise to the Dispute;

ii. An explanation of the Dispute, including a description of its nature, circumstances and cause;

iii. A reference to any pertinent provision(s) from the PPA Documents; and

iv. If applicable, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected).

c. The receiving Party may respond to the demand for arbitration within 10 days of receipt thereof.

d. The Parties shall attempt in good faith to select an arbitrator to which they mutually agree within 10 days of the Notice of non-binding arbitration. If the Parties are unable to agree on an arbitrator, the Parties agree to select from the most current list of arbitrators as maintained by the Indiana Supreme Court Division of State Court Administration. In the event the Parties cannot agree, the arbitrator shall be selected through a striking process by which the initiating Party shall strike first. The Parties shall proceed with the striking process until only one arbitrator remains on the list. In the event that remaining arbitrator does not serve, then the arbitrator's whose name was stricken immediately before shall be selected. This procedure shall be repeated, if necessary, until an arbitrator who agrees to serve is selected. Unless mutually agreed otherwise, the Parties shall complete the process of selecting an arbitrator within 20 days of the Notice initiating non-binding arbitration.

e. The cost of the arbitration shall be equally divided between the Parties, regardless of outcome.

f. Unless otherwise agreed, the arbitration hearing shall take place in Indianapolis, Indiana, at a location to be mutually agreed upon or determined by the Arbitrator. The hearing shall be scheduled for a date no later than 90 days after the demand for arbitration is sent.

g. The rules of discovery shall apply. Unless agreed otherwise, each Party shall be entitled to take no more than two depositions.

h. No later than thirty days before the hearing, each Party shall provide the Arbitrator and the opposing Party with a listing of witnesses and documentary evidence to be considered. The listing of witnesses shall designate those to be called in person, by deposition and/or by written report.

i. Unless otherwise agreed, all documents the Parties desire to be considered in the arbitration process shall be filed with the Arbitrator and exchanged between the Parties no later than 15 days prior to the arbitration hearing. In addition, no later than 5 days prior to hearing, each Party may file with the Arbitrator a pre-arbitration brief setting forth the factual and legal positions as to the issues being arbitrated.

j. Unless agreed otherwise, the arbitration hearing shall be limited to three days, and the Arbitrator shall issue its written determination within 20 days of the close of the hearing and shall serve a copy of this determination on the Parties who participated in the arbitration.

k. If the non-binding arbitration is not completed and the Parties do not reach a mutually agreeable settlement within 120 days after initiation of the non-binding arbitration, either Party may continue to pursue the Dispute by filing a complaint in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, or the Parties may mutually agree to extend the time for non-binding arbitration.

l. If neither Party rejects the Arbitrator's non-binding determination within 30 days of its being issued by the Arbitrator, such decision shall become final and binding as between the Parties, and shall be enforceable in any court of competent jurisdiction.

m. In the event one Party rejects the Arbitrator's determination, it shall send a Notice of its objection/rejection to the other Party within 30 days of such decision and either Party may proceed with state court litigation as provided in Section 19.6.4.2.

n. The non-binding arbitration proceedings shall be considered as settlement negotiations and shall be governed by Section 19.6.5.1.

o. In the event the amount at issue in the Dispute is greater than $15,000,000, then at IFA's sole discretion the Dispute may proceed directly from the Informal Resolution Procedures in Section 19.6.3 to state court litigation per Section 19.6.4.2. IFA shall advise Developer of its decision to forgo the non-binding arbitration procedures by written Notice submitted no later than the date by which the response to an arbitration demand is due. For clarification, if there is no arbitration hearing and decision under the paragraph, then the attorneys' fees provisions in Section 19.6.4.2(b) shall not apply.

19.6.4.2 State Court Litigation

a. In the event a Party rejects the Arbitrator's determination in accordance with Section 19.6.4.1(m), or the IFA determines to forego non-binding arbitration in accordance with Section 19.6.4.1(o), then either Party may thereafter file a lawsuit in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

b. In the event the Party that rejected to the Arbitrator's decision does not obtain a more favorable result at the trial court level in the state court litigation, that Party shall be responsible to pay for the litigation costs, including the attorneys' fees, incurred by the other Party in the state court litigation.

19.6.5 Confidentiality of Settlement Negotiations and Other Documents Used in Dispute Resolution Process

19.6.5.1 All discussions, negotiations, Informal Resolution Procedures described in Section 19.6.3 and non-binding arbitration proceedings described in Section 19.6.4 between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, procedures or proceedings shall be considered confidential and not subject to disclosure by either Party.

19.6.5.2 During any arbitration, alternative dispute resolution or judicial proceeding regarding a Dispute, all information that has been deposited in an Intellectual Property Escrow pursuant to Section 23.5 shall be available as evidence but treated as confidential and subject to a protective order issued by the Arbitrator or court to protect the information from public disclosure.

19.6.5.3 The Parties may also request a protective order in any arbitration, alternative dispute resolution or judicial proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the Arbitrator or court shall be governed by the standards in the Indiana Rules of Evidence and Indiana Rules of Trial Procedure and/or Indiana's Administrative Rules, as applicable.

19.6.6 Administrative Hearings; Venue and Jurisdiction

19.6.6.1 IFA acknowledges that Developer Claims are not subject to the jurisdiction of any Indiana administrative agency, and IFA agrees that no defense based on failure to exhaust administrative remedies not otherwise set forth in this Agreement may be raised in any court proceeding arising out of or relating to the East End Crossing.

19.6.6.2 The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at Law or in equity, that is permitted to be brought by a Party in court arising out of the PPA Documents shall be the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

19.6.7 Continuation of Disputed Work and Payments

19.6.7.1 At all times during Dispute Resolution Procedures, Developer and all Contractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by IFA in its sole discretion. Developer acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the course of Dispute Resolution Procedures relating to the disputed Work even if Developer's position in connection with the Dispute ultimately prevails.

19.6.7.2 During the course of any Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of the PPA Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

19.6.7.3 Throughout the course of any disputed Work, Developer shall

keep complete records that provide a clear distinction between the incurred direct and indirect costs of disputed Work and that of undisputed Work. Developer shall provide IFA access to all East End Crossing-related Books and Records on an Open Book Basis as IFA desires to evaluate the Dispute. The Arbitrator shall have similar access to all such records. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the PPA Documents).

19.6.7.4 During the course of any Dispute Resolution Procedures, IFA shall continue to pay to Developer when due all undisputed amounts owing under this Agreement.

ARTICLE 20. TERMINATION

20.1 Termination for Convenience

20.1.1 IFA may terminate this Agreement in whole, but not in part, if IFA determines, in its sole discretion, that termination is in IFA's best interest (a "Termination for Convenience"). Termination of this Agreement shall not relieve Developer or any Guarantor or Surety of its obligation for any claims arising prior to termination.

20.1.2 IFA may exercise Termination for Convenience by delivering to Developer a written Notice of Termination for Convenience specifying the election to terminate. Termination for Convenience shall be effective as and when provided in Section 1 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation).

20.1.3 In the event of a Termination for Convenience, Developer will be entitled to compensation determined in accordance with Section 1 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Payment will be due and payable as and when provided in Section 1 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation).

20.1.4 If IFA terminates this Agreement on grounds or in circumstances beyond IFA's termination rights specifically set forth in this Agreement, such termination shall be deemed a Termination for Convenience for the purpose of determining the amount of Termination Compensation due (but not for any other purpose).

20.2 Termination for Extended Relief Event, Extended Permitted Closure or Insurance Unavailability

20.2.1 Notice of Conditional Election to Terminate – Extended Relief Event or Extended Permitted Closure

Either Party may deliver to the other Party written Notice of its conditional election to terminate this Agreement under the following circumstances:

20.2.1.1 One or both of the following have occurred:

a. One or more Relief Events occur before the Substantial Completion Date and the resulting Relief Event Delays exceed 220 days in the aggregate, except that in the case of a Relief Event under clause (s) of the definition thereof (court order prohibits prosecution of

any portion of the Work), in which case IFA may elect to deliver such written Notice if the resulting Relief Event Delay exceeds, or IFA establishes to a high degree of certainty that the resulting Relief Event Delays will exceed 180 days in the aggregate, even if such date arrives or would arrive before 220 days of aggregate Relief Event Delays; or

b. A Permitted Closure affecting all or substantially all of the lanes of travel through the East End Crossing persists for a consecutive period of 220 days or more, provided that IFA may elect to deliver such written Notice before such time period elapses if IFA establishes to a high degree of certainty that such a Permitted Closure will persist for a consecutive period of 220 days or more, provided such Permitted Closure has persisted for a consecutive period of 90 days;

20.2.1.2 The written Notice sets forth:

a. The notifying Party's intent to terminate this Agreement;

b. In reasonable detail the Relief Event or Permitted Closure;

c. A description of the direct result and its duration;

d. In the case of Notice from IFA given before the applicable period of time has elapsed, facts and analysis establishing the high degree of certainty required; and

e. In the case of a Notice from Developer, an estimate (with supporting documentation) of the compensation that would be paid or reimbursed to Developer under Section 20.2.4.1.

20.2.1.3 Except as specifically provided above, the written Notice is delivered after such result has occurred, and such result is continuing at the time of delivery of the written Notice; and

20.2.1.4 Developer could not have mitigated or cured, or will not be able to mitigate or cure, such result through the exercise of diligent efforts.

20.2.2 Notice of Election to Terminate – Insurance Unavailability

IFA may deliver to Developer written Notice of its conditional election to terminate this Agreement in the event of Insurance Unavailability.

20.2.3 Developer Options upon IFA Notice

20.2.3.1 If IFA gives written Notice of conditional election to terminate, Developer shall have the option either to accept such Notice or to continue this Agreement in effect by delivering to IFA written Notice of Developer's choice not later than 30 days after IFA delivers its Notice. If Developer desires to dispute IFA's right to terminate, then it shall include in its written Notice both Developer's choice and a Notice of protest and dispute, in which case Developer's choice will be effective contingent upon resolution of the protest and dispute in favor of IFA. If Developer does not deliver such written Notice within such 30-day period, then it shall be conclusively deemed to have accepted IFA's election to terminate this Agreement.

20.2.3.2 In the case of a conditional election to terminate under Section 20.2.1, if Developer delivers timely written Notice choosing to continue this Agreement in effect, then:

a. IFA shall have no obligation to compensate Developer for any costs of restoration and repair arising out of the Relief Event or Permitted Closure, as applicable;

b. IFA shall have no obligation to compensate Developer for any loss of Availability Payments or for any other Extra Work Costs or Delay Costs arising out of the continuation of the Relief Event or Closure beyond the applicable time period set forth in Section 20.2.1, and for this purpose the Closure shall not qualify as a Permitted Closure beyond 270 consecutive days;

c. If the Relief Event occurs prior to the Final Acceptance Date and results in a Relief Event Delay, Developer shall be entitled to an extension of the applicable Milestone Schedule Deadlines in accordance with the PPA Documents; provided that IFA may require delivery and implementation of a logic-based critical path recovery schedule for reducing further delay in the D&C Work; and

d. This Agreement shall continue in full force and effect and IFA's election to terminate shall not take effect.

20.2.3.3 In the case of existence or occurrence of Insurance Unavailability, if Developer delivers timely written Notice choosing to continue this Agreement in effect, then:

a. IFA shall have no liability for harm or loss from the risks that are the subject of Insurance Unavailability, except to the extent caused by IFA's fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the PPA Documents;

b. Developer shall be irrevocably deemed to self-insure all such harm and loss, including harm or loss to IFA and third parties, as provided in Section 17.1.4.4, except to the extent caused by IFA's fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the PPA Documents;

c. Developer shall solely bear and pay all insurance premiums in excess of the Commercially Reasonable Insurance Rates during the period of Insurance Unavailability;

d. Developer shall promptly and diligently repair and restore all damage and destruction to the East End Crossing arising out of occurrence at any time during Insurance Unavailability of the risks that are the subject of the Insurance Unavailability, in order to put the East End Crossing in a safe, good and sound condition in compliance with all applicable provisions of the PPA Documents; and

e. This Agreement shall continue in full force and effect and IFA's election to terminate shall not take effect.

20.2.4 IFA Options upon Developer Notice

If Developer gives written Notice of conditional election to terminate as provided in Section 20.2.1 IFA shall have the option either to accept such Notice or to continue this

Agreement in effect by delivering to Developer written Notice of IFA's choice not later than 30 days after Developer delivers its Notice. If IFA desires to dispute Developer's right to terminate, then it shall include in its written Notice both IFA's choice and a Notice of protest and dispute, in which case IFA's choice will be effective contingent upon resolution of the protest and dispute in favor of Developer. If IFA does not deliver such written Notice within such 30-day period, then it shall be conclusively deemed to have accepted Developer's election to terminate this Agreement. If IFA delivers timely written Notice choosing to continue this Agreement in effect, then the following provisions shall apply.

20.2.4.1 IFA shall be obligated to pay or reimburse Developer an amount equal to (without duplicative counting):

a. Only as to Relief Event Delays under Section 20.2.1.1(a), the Extra Work Costs to repair and restore any physical damage or destruction to the East End Crossing and Delay Costs, if any, directly caused by the Relief Event which are not excluded under Section 15.7.9 and are incurred after the date Developer delivers its written Notice of conditional election to terminate; plus

b. Compensation calculated and paid in accordance with Sections 15.2 and 15.3, provided that if Developer delivers its written Notice of conditional election to terminate prior to Substantial Completion, then the 220-day limitation in Sections 15.2.4 and 15.3.3 shall not apply; minus

c. The sum of (i) the greater of (A) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried pursuant to Section 17.1 and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses or (B) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring Developer under policies solely with respect to the East End Crossing and the Work, regardless of whether required to be carried pursuant to Section 17.1, and that provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, and (ii) the foregoing costs and losses that Developer is deemed to have self-insured pursuant to Section 17.1.4.4.

20.2.4.2 Developer's rights to delay and relief from performance obligations under Article 15 shall continue to apply to the Relief Event.

20.2.4.3 This Agreement shall continue in full force and effect and Developer's election to terminate shall not take effect.

20.2.5 Unconditional Right to Terminate

If either the Relief Event Delay or Closure described in Section 20.2.1.1 continues for 24 months or more from its inception, either Party may deliver to the other Party a new written Notice of its unconditional election to terminate this Agreement, in which case neither Party shall have any further option to continue this Agreement in effect.

20.2.6 No Waiver

No election by IFA under Section 20.2.4 to continue this Agreement in effect shall prejudice or waive IFA's right to thereafter give a written Notice of conditional election to

terminate with respect to the same or any other Relief Event Delay, Permitted Closure or Insurance Unavailability.

20.2.7 Concurrent Notices

In the event IFA and Developer deliver concurrent written Notices of conditional election to terminate under this Section 20.2, Developer's Notice shall prevail. Notices shall be deemed to be concurrent if each Party sends its written Notice before actually receiving the written Notice from the other Party. Knowledge of the other Party's written Notice obtained prior to actual receipt of the Notice shall have no effect on determining whether concurrent Notice has occurred.

20.2.8 Early Termination Date and Amount

If either Party accepts the other Party's conditional election to terminate, or if either Party delivers written Notice of its unconditional election to terminate under Section 20.2.5, then this Agreement shall be deemed terminated on an Early Termination Date as described in Section 2 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation); and Developer will be entitled to compensation determined in accordance with Section 2 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Payment will be due and payable as and when provided in Section 2 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation).

20.3 Termination for Developer Default

20.3.1 Developer Defaults Triggering IFA Termination Rights

Developer agrees, acknowledges and stipulates that any of the following Developer Defaults would result in material and substantial harm to IFA's rights and interests under this Agreement and therefore constitute a material Developer Default justifying termination if not cured within the applicable cure period, if any. After expiration of the applicable cure period (if any) provided to Developer under this Agreement, the following Developer Defaults (each a "Default Termination Event") shall, subject to the provisions of Article 21 and any Direct Agreement, entitle IFA, at its sole election, to terminate this Agreement and the other PPA Documents by delivering written Notice of termination to Developer and the Collateral Agent under the Security Documents and the Direct Agreement other than Subordinated Security Documents. Termination shall be effective as and when provided in Section 3 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation).

20.3.1.1 There occurs any Developer Default under Section 19.1.1.1, 19.1.1.2, 19.1.1.3(a), 19.1.1.5 (but only for a material failure to pay or deposit), 19.1.1.7, 19.1.1.11, 19.1.1.14, 19.1.1.15, 19.1.1.16, 19.1.1.17, or 19.1.1.18; or

20.3.1.2 There occurs any other Developer Default for which IFA issues a Warning Notice under Section 19.2.9 and such Developer Default is not fully and completely cured within the applicable cure period, if any, set forth in Section 19.2.2 or available to Lenders under Article 21 or a Direct Agreement, provided that this provision shall have no effect in the circumstances governed by Section 18.4.

20.3.1.3 Notwithstanding anything herein to the contrary, IFA shall not

have the right to terminate this Agreement solely due to Developer's failure to achieve Substantial Completion by the Baseline Substantial Completion Date.

20.3.2 Compensation to Developer

If IFA issues Notice of termination of this Agreement due to a Default Termination Event, or if Developer terminates this Agreement on grounds or in circumstances beyond Developer's termination rights specifically set forth in this Agreement, Developer will be entitled to compensation to the extent (if any), and only to the extent, provided in Section 3 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Payment (if any) shall be due and payable as and when provided in Section 3 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation).

20.3.3 Finality

If IFA issues Notice of termination of this Agreement due to a Default Termination Event, termination shall be effective and final regardless of whether IFA is correct in determining that it has the right to terminate for Developer Default. In the event it is determined that IFA lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Section 20.1.4 for the purpose of determining the Termination Compensation due.

20.4 Termination for IFA Default, Suspension of Work or Delayed Notice to Proceed

20.4.1 In the event of a material IFA Default under Section 19.3.1.1 that remains uncured following Notice and expiration of the applicable cure period under Section 19.3.2, Developer may deliver to IFA a further written Notice setting forth such IFA Default and warning IFA that Developer may elect to terminate this Agreement if IFA does not cure such IFA Default within 30 days after the delivery of such Notice. IFA may avoid termination by effecting cure within such 30-day period. Failing such cure, Developer shall have the right to terminate this Agreement, effective as and when provided in Section 4 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation).

20.4.2 In the event of an IFA Default under Section 19.3.1.3 that remains uncured following Notice and expiration of the applicable cure period under Section 19.3.2, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written Notice of termination to IFA.

20.4.3 In the event IFA orders Developer to suspend Work on all or any material portion of the East End Crossing for a reason other than those set forth in Section 19.2.8.1 and such suspension of Work continues for a period of 270 days or more, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written Notice of termination to IFA.

20.4.4 In the event of termination under Section 20.4.1, 20.4.2 or 20.4.3, Developer will be entitled to compensation determined in accordance with Section 4 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Payment shall be due and payable as and when provided in Section 4 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures. This provision

shall have no effect, however, where, at the time such right to terminate would arise, circumstances exist entitling either Party to terminate under Section 20.2, 20.4.3 or 20.5.

20.4.5 In the event IFA for any reason does not issue NTP1 or NTP2 within 60 days after satisfaction of the conditions set forth in Sections 5.3.1 and 5.6.1, respectively, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written Notice of termination to IFA. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section 4 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Payment shall be due and payable as and when provided in Section 4 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.4.6 If Developer issues written Notice of termination of this Agreement under this Section 20.4, termination shall be effective and final immediately upon delivery of such written Notice regardless of whether Developer is correct in determining that it has the right to terminate. In the event it is determined that Developer lacked such right, then such termination shall be treated as a termination due to material Developer Default and Section 20.3.2 shall govern the measure of the Termination Compensation (if any).

20.5 Termination by Court Ruling

20.5.1 Termination by Court Ruling becomes effective as and when provided in Section 5 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation).

20.5.2 Once Termination by Court Ruling becomes effective, IFA and Developer shall cooperate to implement Sections 20.7, 20.8, 20.9 and 20.10.

20.5.3 Notwithstanding Section 20.5.2, if a Termination by Court Ruling occurs, Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section 5 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Payment shall be due and payable as and when provided in Section 5 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.6 Termination for Failure of Financial Close

20.6.1 Developer or IFA may terminate this Agreement without fault or penalty if Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to any of the contingencies set forth in Section 13.7.7. However, Notice of termination shall obligate IFA and Developer to engage in good faith negotiations for a minimum period of 30 days before such termination is effective. Termination shall take effect at the end of such 30-day period unless the Parties otherwise agree in writing. In the event of such a termination:

20.6.1.1 All the PPA Documents shall be deemed terminated;

20.6.1.2 IFA and Developer shall take all actions specified to occur on or about the Termination Date set forth in Section 20.7; and

20.6.1.3 Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section 6 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Payment shall be due and payable as and when provided in Section 6 of Exhibit 22 (Early Termination Dates and Terms for Termination Compensation). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.6.2 If Developer fails to achieve Financial Close by the Financial Close Deadline, such failure is not directly attributable to any of the contingencies set forth in Section 13.7.7, and neither Party is then entitled to terminate this Agreement under Section 20.5, then the following terms and conditions shall apply.

20.6.2.1 IFA shall have the right to terminate this Agreement upon five days' prior written Notice to Developer, without need for Warning Notice or any other Notice and without any additional cure period, unless Developer achieves Financial Close in accordance with the conditions set forth in Section 13.7.5 within such five-day period.

20.6.2.2 In the event of such termination, Developer shall be liable for and pay to IFA liquidated damages for such failure in the amount of the Financial Close Security. Such liquidated damages shall constitute IFA's sole right to damages on account of such failure.

20.6.2.3 Upon or after the effective date of termination, IFA shall be entitled to collect the liquidated damages owing under this Section 20.6 through a draw on or forfeiture of the Financial Close Security, as applicable, without prior Notice to or demand upon Developer for such liquidated damages.

20.6.3 Developer acknowledges that the time period IFA has provided to Developer to achieve Financial Close is ample and reasonable, and that such liquidated damages are reasonable in order to compensate IFA for damages it will incur as a result of the lost opportunity to IFA represented by the PPA Documents. Such damages include the harm from the difficulty, and substantial additional expense, to IFA, to procure and deliver, operate and maintain the Project through other means, loss of or substantial delay in use, enjoyment and benefit of the Project by the general public, and injury to the credibility and reputation of IFA's transportation improvement program, with policy makers, other Governmental Entities and the general public who depend on and expect availability of service. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the East End Crossing and the unavailability of a substitute for it.

20.7 Termination Procedures and Duties

Upon expiration of the Term, the provisions of this Section 20.7 shall apply. Developer shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Developer or IFA on account of termination. If Developer fails to timely comply with the provisions of this Section 20.7, IFA shall have the right thereupon to enter and take possession and control of the East End Crossing and Project Right of Way by summary proceeding available to landlords under applicable Law.

20.7.1 Performance of Work Pending Early Termination Date

In any case where Notice of termination precedes the effective Early Termination Date, Developer shall continue performing the Work in accordance with, and without excuse from, all the standards, requirements and provisions of the PPA Documents, and without curtailment of services, quality and performance.

20.7.2 Transition Plan

20.7.2.1 Not later than 90 days prior to expiration of the Term, or, if applicable, within three days after Developer receives or delivers a Notice of termination, Developer shall meet and confer with IFA for the purpose of developing a transition plan for the orderly transition of Work, demobilization and transfer of East End Crossing management, maintenance, operation and control to IFA. The Parties shall use diligent efforts to complete preparation of the transition plan not later than 30 days prior to expiration of the Term or, if applicable, within 15 days after the date Developer receives or delivers the Notice of termination.

20.7.2.2 The transition plan shall include a plan to promptly deliver to IFA or its designee possession of all the property, data and documents described in Sections 20.7.6.1 and 20.7.6.2.

20.7.2.3 The transition plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the transition plan. Neither Party shall be liable for the other Party's transition costs and expenses, regardless of the reason for termination.

20.7.2.4 The transition plan shall be in form and substance acceptable to IFA in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this Section 20.7, all of which procedures Developer shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.

20.7.3 Relinquishment and Possession of East End Crossing

20.7.3.1 On the Termination Date, or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall relinquish and surrender all management, custody and control of the East End Crossing, including the TCS, and Project Right of Way to IFA or IFA's Authorized Representative, and shall cause all persons and entities claiming under or through Developer to do likewise, in at least the condition required by the Handback Requirements.

20.7.3.2 On the later of the Termination Date or the date Developer relinquishes all management, custody and control, IFA shall have the exclusive right to, and shall assume responsibility at its expense for, management, custody and control of the East End Crossing and the Project Right of Way, including all components of the TCS, subject to any rights to damages against Developer where the termination is due to a Default Termination Event.

20.7.3.3 On the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall execute, acknowledge and deliver to

IFA a quitclaim deed, in form and substance acceptable to IFA, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the East End Crossing and Project Right of Way.

20.7.3.4 On the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, at IFA's option and request, Developer shall execute, acknowledge and deliver to IFA warranty deeds and other instruments of transfer and assignment, with all necessary third party consents and in form and substance acceptable to IFA, acting reasonably, granting, assigning and transferring to IFA all of Developer's right, title, interest and estate in and to all the Toll Collection System Locations, free and clear of all liens and encumbrances, including Developer's right, title and interest under any lease or rental agreement for the Customer Service Center, CSC Storefronts or kiosks serving customers of the East End Crossing. Developer shall assist and cooperate with IFA in connection with its investigation and decision regarding any such lease or rental agreement, including providing IFA access to the premises for inspection.

20.7.4 Continuance or Termination of Key Contracts Prior to Work Completion

20.7.4.1 If as of the Termination Date Developer has not completed the Work, in whole or in part, IFA shall elect, by written Notice to Developer not later than 30 days after the Termination Date, to continue in effect the relevant Key Contracts or to require their termination. IFA may elect to keep certain Key Contracts in effect and require termination of other Key Contracts. If IFA does not deliver written Notice of election within such time period, IFA shall be deemed to elect to require termination of the applicable Key Contract(s). If IFA elects to continue any Key Contracts, then Developer shall execute and deliver to IFA a written assignment, in form and substance acceptable to IFA, acting reasonably, of all Developer's right, title and interest in and to such Key Contracts, and IFA shall assume in writing Developer's obligations thereunder that arise from and after the later of the Termination Date or the effective date of assignment.

20.7.4.2 If IFA elects (or is deemed to elect) to require termination of any Key Contracts, then Developer shall:

a. Unless IFA has entered into a New Agreement with a Lender or its Substituted Entity, take such steps as are necessary to terminate the relevant Key Contracts, including notifying each Key Contractor that its Key Contract is being terminated and that each of them is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by IFA;

b. Immediately demobilize and secure in a safe manner Project Specific Locations, Toll Collection System Locations and any other staging, lay down and storage areas used by such Key Contractors for the East End Crossing in a manner satisfactory to IFA, and remove all debris and waste materials (including Hazardous Materials that are in the process of removal) except as otherwise approved by IFA in writing;

c. Take such other actions as are necessary or appropriate to mitigate further cost;

d. Subject to IFA's reasonable prior written approval, settle all outstanding liabilities and all claims arising out of such Key Contracts;

e. As a condition to Developer receiving all payments required to be paid by IFA under Article 20 and pursuant to the requirements of the transition plan, cause each of the Key Contractors to execute and deliver to IFA a written assignment, in form and substance acceptable to IFA, acting reasonably, of all of their right, title and interest in and to (i) all Governmental Approvals, Utility Agreements and other third party agreements and permits pertaining to the East End Crossing or the Work, including for the TCS or Toll Collection System Locations, except subcontracts for performance of the Work, provided IFA assumes in writing all of the Key Contractor's obligations thereunder that arise after the Termination Date, and (ii) all warranties, to the extent assignable, claims and causes of action held by each of them against subcontractors and other third parties pertaining to the East End Crossing or the Work; and

f. As a condition to Developer receiving all payments required to be paid by IFA under Article 20 and pursuant to the requirements of the transition plan, carry out such other directions as IFA may give for termination of the Work in accordance with the transition plan.

20.7.5 [reserved]

20.7.6 Other Close-Out Activities

20.7.6.1 Not later than 90 days prior to the expiration of the Term, or within 30 days after any earlier Notice of termination is delivered, Developer shall provide IFA with a true and complete list of all materials, goods, machinery, equipment, hardware, parts, supplies and other tangible property in inventory or storage (whether held by Developer or any Person on behalf of or for the account of Developer) for use in or respecting the Work or the East End Crossing, including the TCS, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the East End Crossing, including the TCS. In addition, on or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall transfer title through bills of sale or other documents of title, as directed by IFA, and deliver to IFA or IFA's Authorized Representative, all such materials, goods, machinery, equipment, hardware, parts, supplies and other property, provided IFA assumes in writing all of Developer's obligations under any contracts relating to the foregoing that arise after the later of the Termination Date or the effective date of the transfer.

20.7.6.2 Not later than 90 days prior to the expiration of the Term, or within 30 days after any earlier Notice of termination is delivered, Developer shall provide IFA with a true and complete list of all the data and documents identified in this Section 20.7.6.2. On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall deliver to IFA the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to IFA, acting reasonably, assigning and transferring to IFA all right, title and interest of Developer and its Contractors in and to the following:

a. All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Drawings, plans, surveys, and other documents and information pertaining to the design or construction of the East End Crossing or the Utility Adjustments, free of any intellectual property rights or claims of Developer or any Contractor;

b. All samples, borings, boring logs, geotechnical data and similar data and information relating to the East End Crossing or Project Right of Way;

c. All Books and Records, reports, test reports, studies and other documents of a similar nature relating to the Work, the East End Crossing or the Project Right of Way; and

d. All other work product and other Intellectual Property used or owned by Developer or any Affiliate relating to the Work, the East End Crossing or the Project Right of Way, provided that the transfer of any such Intellectual Property shall be subject to Sections 23.4 and 23.5.

20.7.6.3 Developer shall take all action that may be necessary, or that IFA may direct, for the protection and preservation of the East End Crossing, the Work and such materials, goods, machinery, equipment, hardware, parts, supplies, data, documentation and other property.

20.7.6.4 If applicable, on the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall transfer to IFA the amount in the Handback Requirements Reserve Account due IFA in accordance with Section 6.13.4.

20.7.6.5 On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall execute and deliver to IFA a written assignment, in form and substance acceptable to IFA, acting reasonably, all of Developer's right, title and interest in and to any Intellectual Property Escrows or similar arrangements for the protection source code or source code documentation of others used for or relating to the East End Crossing or the Work.

20.7.6.6 On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall execute and deliver to IFA a written assignment, in form and substance acceptable to IFA, acting reasonably, of all Developer's right, title and interest in and to all warranties, claims and causes of action held by Developer against third parties in connection with the East End Crossing or the Work, including claims under casualty and business interruption insurance.

20.7.6.7 Developer shall otherwise assist IFA in such manner as IFA may require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of management, maintenance, operation and control of the East End Crossing, including the TCS, to IFA, and shall, if appropriate and if requested by IFA, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of East End Crossing management, maintenance, operation and control.

20.7.6.8 For a period of four years following the Termination Date, Developer shall maintain a secure archive copy of all electronic data transferred to IFA.

20.7.6.9 All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by Developer prior to execution of this Agreement, but specifically developed under this Agreement shall be considered "work for hire" and Developer transfers any ownership claim to IFA and all such materials will be the

property of IFA. Use of these materials, other than related to contract performance by Developer, without the prior written consent of IFA, is prohibited. During the performance of this Agreement, Developer shall be responsible for any loss of or damage to these materials developed for or supplied by IFA and used to develop or assist in the services provided while the materials are in the possession of Developer. Any loss or damage thereto shall be restored at Developer's expense. The Developer shall provide full, immediate, and unrestricted access to the work product during the term of this Agreement.

20.7.7 Compensation; Proration of Costs

20.7.7.1 From and after the Termination Date, even though Developer may be continuing services temporarily pursuant to a transition plan, Developer shall cease to have any right to (a) Availability Payments except for those accrued and owing prior to the Termination Date (and subject to proration as provided in Section 10.2.7.2) and (b) any beneficial interests under the Project Trust Agreement except with respect to compensation that remains due to Developer under this Agreement, if any.

20.7.7.2 Within 90 days after the Termination Date, the Parties shall adjust and prorate as of the Termination Date costs of operation and maintenance of the East End Crossing, including utility costs and deposits. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and thereafter promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of error in calculation and not due to lack of complete and accurate information shall be irrevocably waived unless the Party seeking readjustment delivers written request therefor to the other Party not later than 180 days following the Termination Date.

20.8 Effect of Termination

20.8.1 Cessation of Developer's Interest and Liens and Encumbrances

20.8.1.1 Except as provided in Section 20.11 and the Project Trust Agreement, termination of this Agreement under any provision of this Article 20 shall automatically cause, as of the Termination Date, the cessation of any and all interest of Developer, tangible and intangible, in or with respect to the East End Crossing, the Project Right of Way, the Project Right of Entry and the Handback Requirements Reserve Account, which thereupon shall be and remain free and clear of any lien or encumbrance created, permitted or suffered by Developer or anyone claiming by, through or under Developer, including the liens, pledges, assignments, collateral assignments, security interests and encumbrances of any and all Funding Agreements and Security Documents.

20.8.1.2 In order to confirm the foregoing, at IFA's request, Developer shall promptly obtain and deliver to IFA recordable reconveyances, releases and discharges of all Security Documents, executed by the Lenders, but no such reconveyances, releases and discharges shall be necessary to the effectiveness of the foregoing.

20.8.2 Right of Developer to Payments

Except as provided otherwise in Section 20.11 and the Project Trust Agreement, the Developer's interests in the right to receive payments from the AP Payment Fund and the MP Payment Fund shall cease and terminate at the end of the Term, at which time the Project Trustee shall distribute all funds remaining in each account as solely directed by IFA.

20.8.3 Contracts and Agreements

Regardless of IFA's prior actual or constructive knowledge thereof, and except for the Project Trust Agreement, no Contract or agreement, including agreements regarding TCS Locations and equipment, to which Developer is a party as of the Termination Date shall bind IFA, unless IFA elects to assume such Contract or agreement in writing. Except in the case of IFA's express written assumption, no such Contract or agreement shall entitle the contracting party to continue performance of work or services respecting the East End Crossing following Developer's relinquishment to IFA of East End Crossing management, custody and control, or to any claim, legal or equitable, against IFA.

20.9 Liability after Termination; Final Release

20.9.1 No termination of this Agreement shall excuse either Party from any liability arising out of any default as provided in this Agreement that occurred prior to termination. Notwithstanding the foregoing, any termination of this Agreement under Section 20.2, 20.3, 20.5 or 20.6 shall automatically extinguish any Claim of Developer to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date from Relief Events that occurred prior to termination.

20.9.2 [reserved].

20.9.3 Subject to Section 20.9.1, if this Agreement is earlier terminated for any reason, then IFA's payment to Developer of the amounts required under this Agreement (if any) shall constitute full and final satisfaction of, and upon payment IFA shall be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against IFA arising out of or relating to this Agreement or termination thereof, the other PPA Documents, or the East End Crossing, except for specific Claims and Disputes that are asserted by Developer in accordance with Section 19.6.3.1 not later than 30 days after the effective date of termination, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, Developer shall execute and deliver to IFA all such releases and discharges as IFA may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

20.10 Exclusive Termination Rights

This Article 20, together with the express provisions on termination set forth in Sections 19.2.1, 19.4.1 and Article 21 and in Exhibit 22 (Early Termination Dates and Terms for Termination Compensation), contain the entire and exclusive provisions and rights of IFA and Developer regarding termination of this Agreement, and any and all other rights to terminate at Law or in equity are hereby waived to the maximum extent permitted by Law.

20.11 Payment of Termination Compensation

20.11.1 In the event there exists as of the expiration of the Term, any outstanding unpaid amount owing from IFA to Developer, or any outstanding, unsatisfied Claim for sums owing from IFA to Developer, including any unpaid Termination Compensation, then the terms and conditions of this Section 20.11 shall apply, and shall survive termination.

20.11.2 Termination Compensation due after the Substantial Completion Date is payable from amounts held in the AP Relief Event and Termination Compensation Fund until such Termination Compensation amount is paid in full or any lesser balance in the AP Relief Event and Termination Compensation Fund is exhausted and then from the General Reserve Fund as necessary to pay the remaining balance of the Termination Compensation.

20.11.3 IFA hereby covenants and agrees to use its best efforts to cause the Indiana General Assembly to appropriate amounts that will be sufficient to enable the IFA to pay the Termination Compensation owed by IFA to the Developer under this Agreement. Further, the IFA hereby covenants that it will do all things lawfully within its power to obtain and maintain funds from which to pay the Termination Compensation (including any interest thereon) owed by IFA to the Developer under this Agreement, including, but not limited to requesting an appropriation in an amount sufficient to pay the Termination Compensation (including interest thereon) owed by IFA to the Developer under this Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its bona fide best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved. The Termination Compensation is a limited obligation of the IFA, payable solely from amounts held by the Project Trustee under the Project Trust Agreement for this purpose. The obligation of the IFA to pay Termination Compensation does not constitute an indebtedness of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The obligation of the IFA to pay Termination Compensation does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The IFA has no taxing power. The Developer has no right to have taxes levied or compel appropriations by the Indiana General Assembly for any payment of the Termination Compensation.

20.12 Termination Due to Filing of Action to Protest Validity of Agreement

Notwithstanding any other provision herein, IFA, in its sole discretion, may terminate this Agreement in whole in the event any action to contest the validity of this Agreement is brought within the time period permitted by Indiana Code 8-15.5-4-12. IFA shall exercise its right of termination as provided in this Section 20.12 by giving written notice thereof to Developer within 45 days of the date of the filing of such action. Such termination shall be at no cost, expense, damage or penalty to IFA, except Developer shall be entitled to payment of compensation from, or on behalf of, IFA, as the Termination Compensation, the sum of $2,500,000, which amount shall be due and payable within 60 days of the date IFA gives Developer its Notice of termination as provided in this Section 20.12.

20.13 Access to Information

Developer shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with IFA all data, documents and information pertaining thereto, on an Open Book Basis.

ARTICLE 21. LENDERS' RIGHTS

21.1 Conditions and Limitations Respecting Lenders' Rights

21.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 21 or the Direct Agreement, unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 13.3.

21.1.2 No Security Document relating to any Refinancing shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 21 or the Direct Agreement, where the Refinancing violates or causes violation of Section 13.4.

21.1.3 No Funding Agreement or Security Document shall affect IFA in the enforcement of its rights and remedies as provided herein and by Law, and no Lender shall be entitled to the rights, benefits and protections of this Article 21 or the Direct Agreement, unless and until (a) a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, has been delivered to IFA and (b) IFA has received written Notice of the address of the Collateral Agent to which Notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, such assignment shall not be binding upon IFA unless and until IFA has received a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, and IFA has received written Notice of the assignee thereof to which Notices may be sent. In the event of any change in the identity of the Collateral Agent, such change shall not be binding upon IFA unless and until IFA has received a written Notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which Notices may be sent.

21.1.4 No Lender shall be entitled to the rights, benefits and protections of this Article 21 unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents, and the Department shall only enter into Direct Agreements with such Lenders. For avoidance of doubt, no Lender holding Subordinate Debt or Subordinated Security Document shall have any rights, benefits or protections under this Article 21.

21.1.5 A Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interest in the East End Crossing or Toll Revenues than Developer has at any applicable time under this Agreement, other than the provisions in this Article 21 for the specific protection of Lenders.

21.1.6 All rights acquired by Lenders under any Funding Agreement or Security Document shall be subject to the provisions of this Agreement and the other PPA Documents and to the rights of IFA hereunder and thereunder.

21.1.7 The provisions of this Article 21 that are binding on IFA shall inure only to the benefit of such Lenders, and create no rights in favor of Developer.

21.1.8 To further evidence the rights, benefits and protections afforded to Lenders, IFA will enter into a Direct Agreement at a Lender's request.

21.2 Effect of Amendments

While any Security Document is in effect, no agreement between IFA and Developer for the modification or amendment of this Agreement shall be binding without the Collateral Agent's consent, except to the extent expressly provided otherwise in this Agreement (e.g. Sections 16.1, 16.2, 16.3).

21.3 Notices to Collateral Agent

As long as any Security Document shall remain unsatisfied of record, IFA shall promptly provide the Collateral Agent with a copy of any Notice it sends to Developer concerning an actual or potential breach of this Agreement or an actual or potential Developer Default, including any Warning Notice.

21.4 Opportunity to Cure and Step-In

As long as any Security Document shall remain unsatisfied of record, the following provisions shall apply with respect to any such Security Document and the related Lender or Lenders and Funding Agreements.

21.4.1 Should any Developer Default occur which would either immediately or, following the applicable grace period or the giving of Notice or both, constitute a Default Termination Event enabling IFA to terminate this Agreement, IFA shall not terminate this Agreement until it first delivers to the Collateral Agent a written Notice and provides the Collateral Agent a reasonable opportunity to cure such Developer Default, as provided in the Direct Agreement. The Lender shall have the right (but not the obligation) to remedy such Developer Default or cause the same to be remedied by its Substituted Entity as provided in the Direct Agreement; and IFA shall accept such performance by or at the instigation of the Lender or Substituted Entity as if Developer had done the same.

21.4.2 If Developer fails to achieve Substantial Completion by the Baseline Substantial Completion Date, then the Collateral Agent shall have until the Long Stop Date, as the same may be extended pursuant to this Agreement, to achieve or cause Developer to achieve Substantial Completion. If Substantial Completion is not achieved by such date, then it shall constitute a material Developer Default and IFA may proceed to terminate this Agreement without further Notice to, or opportunity to cure by, the Lender.

21.4.3 If the Developer Default is under Section 19.1.1.11, 19.1.1.16 or 19.1.1.17, or if the Developer Default is a failure to timely deliver and perform a remedial plan required under

Section 19.2.6, then IFA may terminate this Agreement without providing a cure period to any Lender.

21.4.4 Noncompliance Points assessed for Noncompliance Events occurring prior to the date the Collateral Agent or its Substituted Entity obtains management, custody and control of the East End Crossing shall not be counted during the period available to the Collateral Agent or its Substituted Entity to cure the Noncompliance Events for the purpose of determining Persistent Developer Default. Once all such Noncompliance Events have been cured, IFA shall cancel any Noncompliance Points assessed with respect to such Noncompliance Events. The foregoing shall not, however, excuse the Collateral Agent or its Substituted Entity from any obligation to cure prior uncured breaches or failures to perform under the PPA Documents, and except for determination of Persistent Developer Default shall not affect any rights and remedies available to IFA respecting uncured breaches or failures to perform.

21.4.5 Any curing of any Default Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Developer under the PPA Documents or any Principal Project Documents, except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent.

21.4.6 Nothing in this Section 21.4 shall preclude or delay IFA from exercising any remedies other than termination of this Agreement due to Developer Default, including, subject to IFA's express covenants to forebear, IFA's rights to cure the Developer Default at Developer's expense and to remove and replace Developer.

21.5 Forbearance

21.5.1 To the extent IFA has rights to enforce any Design-Build Contract or any O&M Contract, whether as assignee of Developer's rights or otherwise, so long as this Agreement remains in effect IFA shall forbear from exercising remedies against the Design-Build Contractor or O&M Contractor if (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies available to Developer under the Design-Build Contract or O&M Contract within 15 days after IFA delivers written Notice to Developer and the Collateral Agent of default by the Design-Build Contractor or O&M Contractor, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured.

21.5.2 At IFA's request from time to time, Developer shall provide to IFA written reports on the status of any such default, cure and exercise of remedies.

21.6 Substituted Entities

21.6.1 Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Collateral Agent if a Substituted Entity proposed by the Collateral Agent and approved by IFA makes such payment or takes such action. IFA shall have no obligation to recognize any claim to the Developer's Interest by any person or entity that has acquired the Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity.

21.6.2 Notwithstanding the foregoing, any entity that is wholly owned by a Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for IFA approval, upon delivery to IFA of documentation proving that the entity is duly formed, validly existing and wholly owned by such Lender or group of Lenders, including a certificate signed by a duly authorized officer of each such Lender in favor of IFA certifying, representing and warranting such ownership.

21.6.3 IFA shall have no obligation to approve a person or entity as a Substituted Entity unless the Lender demonstrates that:

21.6.3.1 The proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Developer's obligations under the PPA Documents and Principal Project Documents; and

21.6.3.2 The proposed Substituted Entity and its contractors are in compliance with IFA's rules, regulations and adopted written policies regarding organizational conflicts of interest.

21.6.4 IFA will approve or disapprove a proposed Substituted Entity within 30 days after it receives from the Lender a request for approval together with (a) such information, evidence and supporting documentation concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as IFA may request, and (b) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as IFA may reasonably request. If for any reason IFA does not act within such 30-day period, or any extension thereof by mutual agreement of IFA and the Lender, IFA shall be deemed to disapprove.

21.6.5 IFA will request information on, and evaluate, the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to IFA requests for qualifications for concession or similar agreements for comparable projects and facilities.

21.6.6 Lender may request approval of more than one Substituted Entity. A Lender may request approval at any time or times. Any approval by IFA of a Substituted Entity shall expire one year after the approval is issued, unless IFA approves an extension in its sole discretion or unless within such one-year period (or any approved extension thereof) the Substituted Entity has succeeded to the Developer's Interest.

21.6.7 IFA may revoke an approval if at any time prior to succeeding to the Developer's Interest:

21.6.7.1 The Substituted Entity ceases to be in compliance with IFA's rules and regulations regarding organizational conflicts of interest; or

21.6.7.2 There occurs, after exhaustion of all rights of appeal, any suspension or debarment of the Substituted Entity or any managing member, general partner or

controlling investor of the Substituted Entity from bidding, proposing or contracting with any federal or State department or agency.

21.7 Receivers

21.7.1 The appointment of a receiver at the behest of Developer shall be subject to IFA's prior written approval in its sole discretion. The appointment of a receiver at the behest of any Lender shall be subject to the following terms and conditions:

21.7.1.1 IFA's prior approval shall not be required for the appointment of the receiver or the selection of the person or entity to serve as receiver;

21.7.1.2 Whenever any Lender commences any proceeding for the appointment of a receiver, it shall serve on IFA not less than five days' prior written Notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;

21.7.1.3 IFA may appear in any such proceeding to challenge the selection of the person or entity to serve as receiver, but waives any other right to oppose the appointment of the receiver; and

21.7.1.4 IFA may at any time seek an order for replacement of the receiver by a different receiver.

21.7.2 No receiver appointed at the behest of Developer or any Lender shall have any power or authority to replace any Design-Build Contractor or any O&M Contractor except by reason of default or unless the replacement is a Substituted Entity approved by IFA.

21.8 Other Lender Rights

21.8.1 In addition to all other rights herein granted, the Lender shall have the right to be subrogated to any and all rights of Developer under this Agreement with respect to curing any Developer Default. IFA shall permit the Collateral Agent and its Substituted Entity the same access to the East End Crossing and Project Right of Way as is permitted to Developer hereunder. IFA hereby consents to Developer constituting and appointing any Collateral Agent as Developer's authorized agent and attorney-in-fact with full power, in Developer's name, place and stead, and at Developer's sole cost and expense, to enter upon the East End Crossing and Project Right of Way and to perform all acts required to be performed herein, and in any Principal Project Document, but only in the event of a Developer Default or a default under the Lender's Funding Agreement or Security Document. IFA shall accept any such performance by the Collateral Agent as though the same had been done or performed by Developer.

21.8.2 The creating or granting of a Security Document shall not be deemed to constitute an assignment or transfer of this Agreement, the Project Right of Entry or the Developer's Interest, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Agreement, the Project Right of Entry or the Developer's Interest so as to require such Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed hereunder or thereunder. No Lender, nor any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder

thereof, shall become personally liable under the provisions of this Agreement unless and until such time as the Lender or such owner becomes the owner of the Developer's Interest.

21.8.3 Upon any permitted assignment of this Agreement, the Project Right of Entry and the Developer's Interest by a Lender or any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder or thereunder from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to IFA a recordable instrument of assumption as required under Section 22.5.

21.8.4 A Lender or the Collateral Agent may exercise its rights and remedies under its Security Documents with respect to all, but not less than all, of the Developer's Interest.

21.8.5 The exercise by a Lender of its rights with respect to the Developer's Interest under its Security Documents, this Article 21, the Direct Agreement, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Security Documents, or by any conveyance from Developer to the Lender in lieu of foreclosure thereunder, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of IFA or constitute a breach of any provision of or a default under the PPA Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities pursuant to Section 21.6 (and the definition of Substituted Entity).

21.8.6 Whenever IFA or Developer obtains knowledge of any condemnation proceedings by a third party affecting the East End Crossing or Project Right of Way, it shall promptly give Notice thereof to each Lender. Each Lender shall have the right to intervene and be made a party to any such condemnation proceedings, and IFA and Developer do hereby consent that each Lender may be made such a party or an intervener.

21.9 Consents and Estoppel Certificates

21.9.1 At any time and from time to time, within 15 days after written request of any Lender or proposed Lender entitled to the rights, benefits and protections of this Article 21, IFA, without charge, shall consent to:

21.9.1.1 The exercise by any Lender of its rights under and in accordance with this Article 21 in the event of a Developer Default; and

21.9.1.2 A pledge and hypothecation by Developer of the Developer's Interest to any Lender or proposed Lender.

21.9.2 At any time and from time to time, within 15 days after written request of any Lender or proposed Lender entitled to the rights, benefits and protections of this Article 21, IFA, without charge, shall certify to its best knowledge by written instrument duly executed and acknowledged, to any Lender or proposed Lender as follows:

21.9.2.1 As to whether this Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, attaching a copy thereof to such certificate;

21.9.2.2 As to the validity and force and effect of this Agreement, in accordance with its terms;

21.9.2.3 As to the existence of any Developer Default;

21.9.2.4 As to the existence of events which, by the passage of time or Notice or both, would constitute a Developer Default;

21.9.2.5 As to the then accumulated amount of Noncompliance Points;

21.9.2.6 As to the existence of any claims by IFA regarding this Agreement;

21.9.2.7 As to the Effective Date and the commencement and expiration dates of the Term;

21.9.2.8 As to whether a specified acceptance, approval or consent of IFA called for under this Agreement has been granted;

21.9.2.9 Whether the Lender and its Funding Agreements and Security Documents, or the proposed Lender and its proposed Funding Agreements and Security Documents, meet the conditions and limitations set forth in Sections 13.3 and 21.1; and

21.9.2.10 As to any other matters of fact within IFA's knowledge about the PPA Documents, Developer, the East End Crossing or the Work as may be reasonably requested.

21.9.3 IFA shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within 15 days after receiving its written request, provided that the request is delivered to IFA either before the Substituted Entity or proposed Substituted Entity succeeds to the Developer's Interest or within 60 days after the Substituted Entity has succeeded to the Developer's Interest.

21.9.4 Any such certificate may be relied upon by, and only by, the Lender, proposed Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on IFA.

21.10 No Surrender

No mutual agreement to cancel or surrender this Agreement shall be effective unless consented to in writing by the Collateral Agent, which consent Developer shall be solely responsible to obtain, or unless the Senior Debt Termination Amount is paid in full in connection with such cancellation or surrender.

21.11 Lenders as Third-Party Beneficiaries of the Provisions of Article 21

The Lenders are expressly recognized as being intended, direct third-party beneficiaries under the provisions of this Article 21 and may enforce any rights, remedies or claims conferred, given or granted thereunder.

ARTICLE 22. ASSIGNMENT AND TRANSFER

22.1 Restrictions on Assignment and Other Transfers of Developer's Interest

22.1.1 Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber the Developer's Interest or any portion thereof without IFA's prior written approval in accordance with Section 22.3, except:

22.1.1.1 To Lenders for security as permitted by this Agreement, provided Developer retains responsibility for the performance of Developer's obligations under the PPA Documents;

22.1.1.2 To any Lender affiliate that is a Substituted Entity or to any other Substituted Entity approved by IFA; provided that such Substituted Entity assumes in writing full responsibility for performance of the obligations of Developer under this Agreement, the other PPA Documents, and the Principal Project Documents arising from and after the date of assignment; or

22.1.1.3 To any entity in which the organizations signing this Agreement for Developer, or the shareholder(s), general partner(s) or member(s) that exercise management control over such organizations, hold and exercise effective management control and hold at least 50 percent of the equity interest.

22.1.2 Developer shall not grant any special right of entry onto, use of, or right to manage and control the East End Crossing to any other Person that is not in the ordinary course of Developer performing the Work, without IFA's prior written approval in accordance with Section 22.3.

22.1.3 Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control of the East End Crossing in violation of this Section 22.1 shall be null and void *ab initio* and IFA, at its option, may declare any such attempted action to be a material Developer Default.

22.2 Restrictions on Equity Transfers and Change of Control

22.2.1 Except as provided in Section 22.2.3, no voluntary or involuntary Equity Transfers by or among Equity Members are allowed from the Effective Date to the second anniversary of the Substantial Completion Date, unless Developer obtains IFA's approval as provided in Section 22.3.

22.2.2 Except as provided in Section 22.2.3, from and after the second anniversary of the Substantial Completion Date, any voluntary or involuntary Change of Control of Developer, including any Equity Transfer that would result in a Change of Control, shall be subject to IFA's prior written approval in accordance with Section 22.3.

22.2.3 Transfers and transactions within any of the exceptions described in clauses (a) through (e) of the definition of Change of Control are allowed at any time without necessity for IFA's approval but, in the case of exceptions described in clauses (a) through (g), subject to the condition that Developer deliver to IFA, within ten days prior to the effectiveness of the transfer

or transaction, written notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception.

22.2.4 Any purported voluntary or involuntary Equity Transfer or Change of Control in violation of this Section 22.2 shall be null and void *ab initio*, and IFA, at its option, may declare it to be a material Developer Default.

22.3 Standards and Procedures for IFA Approval

22.3.1 Where IFA's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control, or for any proposed Equity Transfer or Change of Control (each a "transaction"), and such transaction is proposed at any time during the period ending two years after the Substantial Completion Date, IFA may withhold or condition its approval in its sole discretion. Any such decision of IFA to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

22.3.2 Thereafter, IFA shall not unreasonably withhold its approval of such a transaction. Among other reasonable factors and considerations, it shall be reasonable for IFA to withhold its approval if:

22.3.2.1 Developer fails to demonstrate to IFA's reasonable satisfaction that the proposed assignee, grantee or transferee, or the proposed transferee of rights and/or equity interests that would amount to a Change of Control (collectively the "transferee"), and its proposed contractors (a) have the financial resources, qualifications and experience to timely perform Developer's obligations under the PPA Documents and Principal Project Documents and (b) are in compliance with IFA's rules, regulations and adopted written policies regarding organizational conflicts of interest;

22.3.2.2 Less than all of Developer's Interest is proposed to be assigned, conveyed, transferred, pledged, mortgaged, encumbered or granted; or

22.3.2.3 At the time of the proposed transaction, there exists any uncured Developer Default or any event or circumstance that with the lapse of time, the giving of Notice or both would constitute a Developer Default, unless IFA receives from the proposed transferee assurances of cure and performance acceptable to IFA in its good faith discretion.

22.3.3 For transactions subject to IFA's prior reasonable approval, IFA will approve or disapprove within 30 days after it receives from Developer:

22.3.3.1 A request for approval;

22.3.3.2 A reasonably detailed description of the proposed transaction;

22.3.3.3 Such information, evidence and supporting documentation as IFA may request concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed transferee and its proposed contractors; and

22.3.3.4 Such evidence of organization and authority, and such

incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as IFA may reasonably request.

22.3.4 For transactions subject to IFA's prior reasonable approval, IFA will evaluate the identity, financial resources, qualifications, experience and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to IFA requests for qualifications for concession or similar agreements for comparable projects and facilities.

22.3.5 If for any reason IFA does not act within such 30-day period, or any extension thereof by mutual agreement of the Parties, then the proposed assignment shall not be permitted, subject to Developer's right, in the case of a proposed assignment governed by Section 22.3.2, to submit a Dispute for resolution according to the Dispute Resolution Procedures.

22.3.6 Notwithstanding the foregoing, prior to the period ending two years after the Substantial Completion Date, initial Equity Members whose role is restricted solely to financial matters and who have no role in the performance of the Work (other than performance of the administrative or management services to Developer not involving direct technical supervision over the Work) may assign, sell or transfer their interest (whether direct or indirect) in Developer. Any such assignment, sale, transfer or Equity Transfer prior to the period ending two years after the Substantial Completion Date shall be subject to IFA's prior reasonable approval unless such assignment, sale, transfer or Equity Transfer constitutes a Change in Control (in which case it shall be subject to IFA's approval in its good faith discretion); provided, any assignment, sale, transfer or Equity Transfer to an infrastructure fund that is affiliated with or under common ownership, management or control with an Equity Member shall not be subject to IFA's prior written approval, subject to the condition that Developer deliver to IFA, within ten days prior to the effectiveness of the transfer or transaction, written notice describing the transfer or transaction and the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is to such an infrastructure fund. Any such assignment, sale, transfer or Equity Transfer after the period ending two years after the Substantial Completion Date shall not be subject to IFA's prior written approval unless such assignment, sale, transfer or Equity Transfer constitutes a Change in Control (in which case it shall be subject to IFA's approval in its good faith discretion).

22.4 Assignment by IFA

22.4.1 IFA may assign all or any portion of its rights, title and interests in and to the East End Crossing, Project Right of Way, Toll Revenues, appropriations, PPA Documents, Payment Bonds and Performance Security, guarantees, letters of credit and other security for payment or performance, (a) without Developer's consent, to any other Person that succeeds to the governmental powers and authority of IFA, and (b) to others with the prior written consent of Developer. Developer shall provide such consent if (i) the sources of funding of IFA's assignee for the Milestone Payments and Availability Payments are at least as adequate and secure as IFA's at the time of the assignment, and (ii) IFA's assignee shall have an unsecured long-term debt credit rating equal to or better than the unsecured long-term debt credit rating of IFA at the time of the assignment as measured by two Rating Agencies.

22.4.2 IFA also may assign, without Developer's consent, all or any portion of its rights, title and interests in and to funds in the General Reserve Fund, and IFA's rights to enforce the transfer and deposit of funds into the General Reserve Fund in accordance with the Project Trust Agreement, to any trustee, credit enhancer or swap counterparty with respect to bonds or other indebtedness issued by IFA or a related entity or instrumentality as security for repayment of the bonds or other indebtedness.

22.4.3 IFA may assign to KYTC all or any portion of its rights to assert claims for breach of express or implied warranty or suitability for fitness or any Developer Default relating to the design, construction, installation or acquisition of the Drumanard Tunnel or any equipment or machinery therein.

22.5 Notice and Assumption

22.5.1 Assignments and transfers of the Developer's Interest permitted under this Article 22 (other than pursuant to Section 22.1.1.1) or otherwise approved in writing by IFA shall be effective only upon IFA's receipt of written Notice of the assignment or transfer and a written instrument executed by the transferee, in form and substance acceptable to IFA, in which the transferee, without condition or reservation, assumes all of Developer's obligations, duties and liabilities under this Agreement, the other PPA Documents and the Principal Project Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer.

22.5.2 Each transferee of Developer's Interest, including any Person who acquires the Developer's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take the Developer's Interest subject to, and shall be bound by, the Project Management Plan, including the Design QA/QC Plan and Construction QA/QC Plan, the Key Contracts, the Utility Agreements, the Governmental Approvals, all agreements between the transferor and third parties, and all agreements between the transferor and Governmental Entities with jurisdiction over the East End Crossing or the Work, except to the extent otherwise approved by IFA in writing in its good faith discretion.

22.5.3 Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, the transferor and transferee shall give IFA written Notice of the assignment not less than 30 days prior to the effective date thereof.

22.6 Change of Organization or Name

22.6.1 Developer shall not change the legal form of its organization in a manner that adversely affects IFA's rights, protections and remedies under the PPA Documents without the prior written approval of IFA, which consent may be granted or withheld in IFA's sole discretion.

22.6.2 In the event either Party changes its name, such Party agrees to promptly furnish the other Party with written Notice of change of name and appropriate supporting documentation.

ARTICLE 23. RECORDS AND AUDITS; INTELLECTUAL PROPERTY

23.1 Maintenance and Inspection of Records

23.1.1 Developer shall keep and maintain in Indianapolis, Indiana, or in another location IFA approves in writing in its sole discretion, all Books and Records relating to the East End Crossing, Project Right of Way, Utility Adjustments and Work, including copies of all original documents delivered to IFA. Developer shall keep and maintain such Books and Records in accordance with applicable provisions of the PPA Documents, including the Technical Provisions, applicable provisions of the Project Management Plan, and in accordance with Good Industry Practice. Developer shall notify IFA where such records and documents are kept.

23.1.2 Without limiting the foregoing, Developer shall maintain accurate and complete all such Books and Records, as set forth in the Technical Provisions.

23.1.3 Developer shall make all its Books and Records available for inspection by IFA and its Authorized Representatives, designees and legal counsel. Developer shall make the same available at Developer's principal offices in Indiana, or pursuant to each Intellectual Property Escrow, at all times during normal business hours, or at other reasonable times, in each case, without charge, through the term of the PPA Documents until the time set forth in Section 23.1.6. Developer shall furnish copies at no cost to IFA, if requested. Developer shall provide to IFA, or make available to IFA for review pursuant to each Intellectual Property Escrow, copies thereof as and when reasonably requested by IFA, without charge. IFA may conduct any such inspection upon 48 hours' prior written Notice, or unannounced and without prior Notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. To avoid confusion, this paragraph shall remain in full force and effect regardless of whether either Party or both of the Parties have invoked the Dispute Resolution Procedures herein.

23.1.4 Developer shall retain all Books and Records for a minimum of three years after the date of final payment under the PPA Documents; provided that if the PPA Documents specify any different time period for retention of particular records, such time period shall control, and if applicable Law specifies any longer period, such time period shall control. Any provision of the PPA Documents establishing a stated period for records retention means the period of time, as stated, after the date the record or document is generated, unless specifically provided otherwise. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved.

23.1.5 Developer shall permit IFA, upon 10 days prior written Notice to Developer (which Notice shall identify the persons the IFA requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of the Developer under this Agreement with any of the directors, chief executive officer and chief financial officer of the Developer or its Representatives, for the purpose of enabling the IFA to determine whether the Developer is in compliance with this Agreement and applicable Law. To avoid confusion, this paragraph shall remain in full force and effect regardless of whether either Party or both of the Parties have invoked the Dispute Resolution Procedures herein.

23.1.6 Refer to Attachment 1 to Exhibit 23 (Federal Requirements) regarding applicable federal requirements in respect of maintenance and inspection of Books and Records, with which Developer shall comply.

23.1.7 The provisions of Section 3.5.3 apply to those Books and Records that Developer deems confidential or proprietary.

23.2 Audits

23.2.1 IFA shall have such rights to review and audit Developer, its Contractors and their respective Books and Records as and when IFA deems necessary for purposes of verifying compliance with the PPA Documents and applicable Law and verifying Claims. Without limiting the foregoing:

23.2.1.1 IFA shall have the right to audit Developer's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation;

23.2.1.2 The audits may be performed by employees of IFA or by an auditor under contract with IFA;

23.2.1.3 Developer, Contractors or their agents shall provide adequate facilities, acceptable to IFA, for the audits;

23.2.1.4 Developer shall allow auditor(s) access to such Books and Records during normal business hours, allow interviews of any employee who might have information related to such Books and Records, and otherwise cooperate with the auditors; and

23.2.1.5 Developer shall cause each Contract to include a similar right of the State to audit records and interview staff of the Contractor, and a similar covenant to cooperate with the auditors.

Refer to Section 1.5.2.5 of the Technical Provisions regarding audits of performance of the activities set forth in the Project Management Plan, including the Public Involvement Plan.

23.2.2 IFA may conduct any such audit of Books and Records as follows:

23.2.2.1 In the case of an audit of a Claim, at any time following the filing of the Claim, without Notice for an audit commenced any time before 60 days after the expiration of the Term, and with five days prior written Notice to Developer, any Contractors or their respective agents for an audit commenced thereafter; and

23.2.2.2 In the case of any other audit, upon 48 hours' prior written Notice, or unannounced and without prior Notice where there is good faith suspicion of fraud.

23.2.3 Failure of Developer, Contractors or their agents to maintain and retain sufficient Books and Records to allow the auditors to verify all or a portion of a Claim or to permit the auditor access to its Books and Records to verify a Claim shall constitute a waiver of the Claim

and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the Claim:

23.2.3.1 Daily time sheets and supervisor's daily reports;

23.2.3.2 Union agreements;

23.2.3.3 Insurance, welfare, and benefits records;

23.2.3.4 Payroll registers;

23.2.3.5 Earnings records;

23.2.3.6 Payroll tax forms;

23.2.3.7 Material invoices and requisitions;

23.2.3.8 Material cost distribution work sheet;

23.2.3.9 Equipment records (list of company equipment, rates, etc.);

23.2.3.10 Contractors' (including Suppliers') invoices;

23.2.3.11 Contractors' and agents' payment certificates;

23.2.3.12 Canceled checks (payroll and Suppliers);

23.2.3.13 Job cost report;

23.2.3.14 Job payroll ledger;

23.2.3.15 General ledger;

23.2.3.16 Cash disbursements journal;

23.2.3.17 All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and

23.2.3.18 Work sheets used to prepare the Claim establishing (a) the cost components of the Claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (b) the lost revenue components of the Claim.

23.2.4 Full compliance by Developer with the provisions of Section 23.2.3 is a contractual condition precedent to Developer's right to seek relief on a Claim under Section 19.6.

23.2.5 Any rights of the federal government and any agency thereof, including FHWA, to review and audit Developer, its Contractors and their respective Books and Records are set

forth in Exhibit 23 (Federal Requirements) and applicable Law. Without limiting the foregoing, the U.S. Comptroller General and his/her representatives shall have the authority to:

23.2.5.1 Examine any records of Developer or any of its Contractors, or any State or local government agency administering this Agreement, that directly pertain to and involve transactions relating to this Agreement or any Contract; and

23.2.5.2 Interview any officer or employee of Developer or any of its Contractors, or of any State or local government agency administering this Agreement, regarding such transactions.

23.2.6 IFA's rights of audit include the right to observe the business operations of Developer and its Contractors to confirm the accuracy of Books and Records.

23.2.7 Developer shall include in the Project Management Plan internal procedures to facilitate review and audit by IFA and, if applicable, FHWA.

23.2.8 Developer represents and warrants the completeness and accuracy of all information it or its agents provides in connection with IFA audits, and shall cause all Contractors to warrant the completeness and accuracy of all information such Contractors provide in connection with IFA audits.

23.2.9 Developer's internal and third-party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements referred to in Section 3.2.7 and described in Section 2.2 of the Technical Provisions. In addition, Developer shall perform Performance Inspections as set forth in Section 22 of the Technical Provisions.

23.2.10 Nothing in the PPA Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the Indiana Auditor of State, in carrying out his or her legal authority. Developer understands and acknowledges that:

23.2.10.1 The Indiana Auditor of State may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a Contract;

23.2.10.2 Acceptance of funds directly under this Agreement or indirectly through a Contract acts as acceptance of the authority of the Indiana Auditor of State, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and

23.2.10.3 An entity that is the subject of an audit or investigation must provide the Indiana Auditor of State with access to any information the Indiana Auditor of State considers relevant to the investigation or audit.

23.3 Public Records Act; Confidential IFA Information

23.3.1 Developer acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in IFA's possession, including materials

submitted by Developer to IFA, are subject to the provisions of the Public Records Act. If Developer believes information or materials submitted to IFA constitute trade secrets, proprietary information or other information that is exempt from disclosure under the Public Records Act pursuant to IC 5-14-3-4, Developer 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 secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that authorizes the confidentiality and the specific Law that exempts the material from disclosure under the Public Records Act. Nothing contained in this Section 23.3 shall modify or amend requirements and obligations imposed on 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. Developer is advised to contact legal counsel concerning such Law and its application to Developer.

23.3.2 If IFA receives a request for public disclosure of materials marked "CONFIDENTIAL," IFA will use reasonable efforts to notify Developer of the request and give Developer 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 IFA and allowed under the Public Records Act. Under no circumstances, however, will IFA be responsible or liable to Developer 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 IFA or its officers, employees, contractors or consultants.

23.3.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to IFA, 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 Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that IFA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Developer shall pay and reimburse IFA within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, IFA incurs in connection with any litigation, proceeding or request for disclosure.

23.4 Intellectual Property

23.4.1 Subject to Section 23.5, Developer shall deliver to IFA copies of all Proprietary Intellectual Property owned by Developer which it uses in providing the Work. Except as provided otherwise in Section 20.7.6.2 or elsewhere in the PPA Documents, all Proprietary Intellectual Property, including with respect to Technology Enhancements, source code and source code documentation, shall remain exclusively the property of Developer or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to IFA.

23.4.2 IFA shall have and is hereby granted a perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the

Proprietary Intellectual Property of Developer, including with respect to Technology Enhancements, source code and source code documentation, solely in connection with the East End Crossing and any other transportation facility, tolled or not tolled, owned and operated by IFA or a State or regional Governmental Entity; provided that IFA shall have the right to exercise such license only at the following times:

23.4.2.1 From and after the expiration or earlier termination of the Term for any reason whatsoever;

23.4.2.2 During any time that IFA is exercising its step-in rights pursuant to Section 19.2.2 or 19.2.4, in which case IFA may exercise such license only in connection with the East End Crossing;

23.4.2.3 During any time that a receiver is appointed for Developer, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Developer is the debtor; and

23.4.2.4 During any time that Developer has been replaced.

23.4.3 IFA shall no right to sell any Proprietary Intellectual Property of Developer or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any purpose other than as set forth in Section 23.4.2.

23.4.4 The right to transfer the license is limited to any Governmental Entity that succeeds to IFA's interests in all or any portion of the East End Crossing, or to the power and authority of IFA generally or with respect to all or any portion of the East End Crossing. The license is divisible in the event of a transfer of or with respect to a portion of the East End Crossing.

23.4.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a transportation facility, tolled or not tolled, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of IFA or any such State or regional Governmental Entity in connection with the East End Crossing or another transportation facility, tolled or un-tolled. All such sublicenses shall be subject to Section 23.4.6.

23.4.6 Subject to Section 23.3, IFA shall:

23.4.6.1 Not disclose any Proprietary Intellectual Property of Developer to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of IFA relating thereto;

23.4.6.2 Enter into a commercially reasonable confidentiality agreement if requested by Developer with respect to the licensed Proprietary Intellectual Property; and

23.4.6.3 Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to

protect all Proprietary Intellectual Property of Developer and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

23.4.7 Notwithstanding any contrary provision of this Agreement, in no event shall IFA or any of its directors, officers, employees, consultants or agents be liable to Developer, any Affiliate or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 23.4.6 unless such breach is the result of gross negligence or intentional misconduct. Developer hereby irrevocably waives all claims to any such damages. The foregoing provisions do not limit Developer's equitable remedies set forth in Section 19.4.4.4.

23.4.8 Developer shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

23.4.9 The following provisions shall apply with respect to any Proprietary Intellectual Property, including with respect to Technology Enhancements, source code and source code documentation, owned by a Person other than Developer, including any Affiliate, except for mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to IFA using commercially reasonable efforts.

23.4.9.1 Developer shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the East End Crossing, both for Developer and IFA, perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the East End Crossing and any transportation facility, tolled or not tolled, owned and operated by IFA or a State or regional Governmental Entity.

23.4.9.2 Each such license shall be of at least identical scope, purpose, duration and applicability as the license granted under Section 23.4.2.

23.4.9.3 The limitations on sale, transfer, sublicensing and disclosure by IFA set forth in Sections 23.4.3 through 23.4.6 shall also apply to IFA's licenses in such Proprietary Intellectual Property.

23.4.9.4 Developer shall also either cause to be delivered to IFA copies of such Proprietary Intellectual Property or obtain from such owner consent to have the relevant Proprietary Intellectual Property deposited into an Intellectual Property Escrow pursuant to the provisions of Section 23.5.

23.5 Intellectual Property Escrows

23.5.1 IFA and Developer acknowledge that Developer and/or Contractors that supply software, source code and source code documentation, including related modifications, updates, revisions, replacements and upgrades (collectively "such Proprietary Intellectual Property"), may not wish to deliver this Proprietary Intellectual Property directly to IFA, as public disclosure could deprive Developer and/or Contractors of commercial value. Developer further

acknowledges that IFA nevertheless must be given access to such Proprietary Intellectual Property at any time, and that such Proprietary Intellectual Property is released and delivered to IFA in either of the following circumstances:

23.5.1.1 In the case of such Proprietary Intellectual Property owned by Developer or any Affiliate, (a) this Agreement is terminated for Developer Default, (b) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Developer occurs, (c) Developer is dissolved or liquidated or (d) Developer fails or ceases to provide services as necessary to permit continued use of such Proprietary Intellectual Property pursuant to the license or any sublicense thereof.

23.5.1.2 In the case of such Proprietary Intellectual Property owned by a Contractor (other than a Contractor that is an Affiliate), this Agreement is terminated for any reason (excluding terminations under Sections 20.4.1 or 20.4.2 relating to certain IFA Defaults) and either (a) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Contractor occurs or (b) the Contractor is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing such Proprietary Intellectual Property that is the subject of a license under Section 23.4.

23.5.2 In lieu of delivering such Proprietary Intellectual Property directly to IFA, Developer may elect to deposit it with a neutral custodian. In such event, Developer shall (a) select, subject to IFA's prior approval, one or more escrow companies or other neutral custodian (each an "Escrow Agent") engaged in the business of receiving and maintaining escrows of source code and source code documentation, and (b) establish one or more escrows (each an "Intellectual Property Escrow") with the Escrow Agent on terms and conditions reasonably acceptable to IFA and Developer for the deposit, retention, upkeep and release of such Proprietary Intellectual Property. The location of such escrows is limited to Indianapolis, Indiana or another location IFA approves in writing in its sole discretion. Intellectual Property Escrows also may include Affiliates and Contractors as parties and may include deposit of such Proprietary Intellectual Property owned by Affiliates and Contractors. IFA shall not be responsible for the fees and costs of the Escrow Agent.

23.5.3 If Developer elects to deliver such Proprietary Intellectual Property to an Intellectual Property Escrow, Developer shall make such delivery to the Escrow Agent not later than the following times:

23.5.3.1 For pre-existing software, source code and source code documentation, immediately upon execution of this Agreement or, if provided by a Contractor, execution of the relevant Contract;

23.5.3.2 For software, source code and source code documentation incorporated into or used on or for the East End Crossing or any portion thereof, by the first to occur of (a) 15 days after it is first incorporated or used, or (b) the Substantial Completion Date; and

23.5.3.3 For any Technology Enhancement, update, upgrade or correction of software, source code and source code documentation incorporated into or used on or for the East End Crossing or any portion thereof, not later than 15 days after the end of the calendar quarter in which it is first incorporated or used.

23.5.4 IFA shall be a named, intended third party beneficiary of each escrow agreement and each Intellectual Property Escrow with direct rights of enforcement against Developer and the Escrow Agent. Each escrow agreement shall provide that neither Developer nor the Escrow Agent shall have any right to amend or supplement it, or waive any provision thereof, without IFA's prior written approval in its sole discretion.

23.5.5 Intellectual Property Escrows shall provide rights of access and inspection to IFA and its designees at any time, subject to terms and conditions reasonably necessary to protect the confidentiality and proprietary nature of the contents of such Intellectual Property Escrows.

23.5.6 The Intellectual Property Escrows shall survive Substantial Completion, Final Acceptance, and expiration or earlier termination of this Agreement regardless of the reason, until such time as both Parties mutually agree, in their respective sole discretion, that the Intellectual Property contained therein is of no further use or benefit to the East End Crossing.

23.6 Escrow of Financial Model and Financial Modeling Data

23.6.1 IFA and Developer shall, within ten Business Days after the Effective Date, diligently examine and inventory all the Financial Modeling Data to verify that the Financial Modeling Data is authentic, legible and in accordance with the terms of this Section 23.6. The examination (whether done before or after the Effective Date) does not include review, nor does it constitute approval, of proposed construction methods, estimating assumptions, or interpretation of or compliance with the PPA Documents. The examination does not alter any conditions or terms of the PPA Documents.

23.6.2 Promptly after the Parties complete the examination, IFA and Developer shall seal and jointly deposit the Financial Model and Financial Modeling Data in an escrow at a commercial business mutually acceptable to the Parties located in Indianapolis, Indiana (the "Financial Escrow").

23.6.3 The Parties shall follow comparable procedures for examining, verifying and depositing into the Financial Escrow Financial Model Updates and all Financial Modeling Data developed after the Effective Date. The Parties shall complete the examination and make the deposit within ten Days after the Financial Model Update or such Financial Modeling Data are developed.

23.6.4 If IFA elects, in its sole discretion, not to be a signatory party to the escrow agreement establishing the Financial Escrow, then IFA shall be a named, intended third party beneficiary of the escrow agreement and the Financial Escrow with direct rights of enforcement against Developer and the escrow agent. The escrow agreement shall provide that neither Developer nor the escrow agent shall have any right to amend or supplement it, or waive any provision thereof, without IFA's prior written approval in its sole discretion. Provisions in the escrow agreement for access to the escrowed materials shall be consistent with this Section 23.6.

23.6.5 Developer shall submit the Financial Model, Financial Model Updates and Financial Modeling Data into the Financial Escrow as a paper copy and on electronic storage media in a sealed container, clearly marked with Developer's name, date of submittal, East End Crossing contract number and the words, "Financial Model and Financial Modeling Data for Escrow." Developer certifies that the material initially submitted to the Financial Escrow

constitutes the Financial Model and all the Financial Modeling Data included in or used in preparation of the Proposal and close of the Initial Project Debt, that Developer has personally examined the contents of the container, and that they are complete.

23.6.6 Whenever Developer makes an additional deposit of the Financial Model, a Financial Model Update or Financial Modeling Data to the Financial Escrow, Developer shall certify to IFA in writing at the time of deposit that (a) the material deposited into the Financial Escrow constitutes the true Financial Model or Financial Model Update, and constitutes all the Financial Modeling Data used in preparation of the Financial Model or Financial Model Update, Claim, Change Proposal or other matter, as the case may be, (b) Developer has personally examined the contents of the container, and (c) they are complete.

23.6.7 The deposit and examination of Contractors' documentation that forms part of the Financial Modeling Data shall be accomplished in the same manner as for Developer's documentation.

23.6.8 Each of IFA and Developer shall have the right to examine, through one or more designated representatives, any and all components of the escrowed material in the Financial Escrow at any time during the escrow agent's normal business hours. The Party scheduling an examination need not have or state a specific reason to examine. Without limiting the foregoing, the Parties recognize that examination of the escrowed material may assist in the negotiation or determination of MAP adjustments, compensation, damages, extension of Milestone Schedule Deadlines, Request for Change Proposals, IFA Changes, Change Requests and Refinancing Gain calculations, or may assist in the potential resolution or settlement of Claims or Disputes.

23.6.9 Except as provided below, examinations shall be performed jointly within five days of receipt of a written request to do so by either Party. If either Party fails or refuses to participate in a joint examination at the scheduled time, the Party requesting the examination may proceed with the examination on condition that it is accompanied at all times by an employee of the escrow agent and signs a written certification before departing certifying that the examining Party did not alter the escrowed material, and did not add any materials to or remove any materials from the Financial Escrow.

23.6.10 If Developer fails or refuses to participate in a joint examination at a scheduled time, such failure or refusal shall be deemed to be a failure by Developer to exhaust administrative claim remedies with respect to the particular Claim or Dispute and a bar to its continuing existing legal proceedings or bringing future legal proceedings upon the Claim or Dispute.

23.6.11 The escrowed material in the Financial Escrow is, and shall remain, the property of Developer or its Contractors.

23.6.12 Either Party may introduce the escrowed material in the Financial Escrow into evidence before the Arbitrator and in court proceedings. The Parties shall promptly abide by any request from the Arbitrator to receive, review and utilize escrowed material to assist the Arbitrator in its deliberations.

23.6.13 The Financial Escrow shall remain in effect throughout the Term and thereafter until final resolution of all Disputes, subject to any mutual agreement of the Parties to discard materials therein from time to time.

23.6.14 IFA shall not be responsible for the fees and costs of the escrow agent for the Financial Escrow.

ARTICLE 24. FEDERAL REQUIREMENTS; COMPLIANCE WITH OTHER LAWS

24.1 Compliance with Federal Requirements

Subject to Section 24.2, Developer shall comply and require its Contractors to comply with all federal requirements applicable to transportation projects that receive federal credit or funds, including those set forth in Exhibit 23 (Federal Requirements).

24.2 TIFIA Compliance

If Developer uses TIFIA credit or loans to finance the East End Crossing or any portion thereof, Developer shall provide any compliance certifications and milestone payment schedules required in connection with TIFIA, as specified in the TIFIA Funding Agreements and TIFIA Security Documents.

24.3 Federal Status of East End Crossing

24.3.1 Developer acknowledges that the FHWA has designated the East End Crossing as a "Major Project" under 23 USC 106, which requires submission and approval of a project management plan, a finance plan and annual updates thereto, as provided in 23 USC 106(h), and that the Project Management Plan, Financial Plan and the annual updates thereto required under the PPA Documents are intended to fulfill these requirements.

24.3.2 Developer also acknowledges that the East End Crossing will be part of the National Highway System, as defined in 23 CFR 470, that as such the East End Crossing must meet federal design and construction requirements for facilities on the National Highway System, and that the Technical Provisions are intended to incorporate such federal design and construction requirements.

24.4 Role of and Cooperation with FHWA

Developer acknowledges that the FHWA may have certain approval and oversight rights respecting the Project Management Plan, Financial Plan and design and construction standards for the entire East End Crossing. Developer shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the East End Crossing.

24.5 Conflicting Provisions

In the event of any conflict between any applicable federal requirements and the other requirements of the PPA Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

24.6 Compliance with other Laws

24.6.1 Developer and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with IFA or the State, as set forth in IC 4-2-6 *et seq*., IC 4-2-7 *et seq*., the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004. If Developer is not familiar with these ethical requirements, Developer should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If Developer or its agents violate any applicable ethical standards, the Selected Firm may be subject to penalties under IC 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable Laws.

24.6.2 Developer and its agents shall abide by all requirements of IC 8-15.5-13-7 in respect of the prohibition on political contributions by Developer. Neither Developer nor any individual who has an interest in Developer, may make any contribution to any candidate, or committee, during and up to and including three (3) years following the Term.

24.6.3 Developer shall comply with all applicable federal, state and local Laws, and all provisions required thereby to be included herein are hereby incorporated by reference.

ARTICLE 25. MISCELLANEOUS

25.1 Taxes

Developer shall pay, prior to delinquency, all applicable Taxes, including, pursuant to IC 8-15.5-8-3, all sales and use Taxes, in each case for which Developer is responsible in carrying out the Work and its other obligations hereunder. Developer accepts sole responsibility, and agrees that it shall have no right to a Relief Event or to any other Claim, due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes. IFA is exempt from state, federal, and local Taxes; IFA will not be responsible for any Taxes levied on the Developer or any Developer-Related Entities as a result of this Agreement.

25.2 Amendments

The PPA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement (e.g. Sections 5.2.6, 6.1.2, 16.1, 16.3).

25.3 Waiver

25.3.1 No waiver of any term, covenant or condition of this Agreement or the other PPA Documents shall be valid unless in writing and signed by the obligee Party. No right conferred on either Party under this Agreement or the other PPA Documents shall be deemed waived, and no breach of this Agreement or other PPA Documents excused, unless such waiver is in writing and signed by the Party claimed to have waived such right. The exercise by a Party of any right or remedy provided under this Agreement or the other PPA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Agreement or the other PPA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other PPA Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of

consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

25.3.2 Except as provided otherwise in the PPA Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Agreement or the other PPA Documents.

25.3.3 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the PPA Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the PPA Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

25.3.4 Neither IFA's review, approval or acceptance of, nor payment for, the services required under this Agreement or the other PPA Documents shall be construed to operate as a waiver of any rights under this Agreement or any of the other PPA Documents or for any cause of action arising out of the performance of this Agreement or the other PPA Documents, and Developer shall be and remain liable to IFA in accordance with applicable Law for all damages to IFA as set forth in the PPA Documents.

25.4 Independent Contractor; No Joint Venture or Partnership

25.4.1 Developer is an independent contractor, and nothing contained in the PPA Documents shall be construed as constituting any relationship with IFA other than that of East End Crossing developer and independent contractor.

25.4.2 Both Parties, in the performance of the PPA Documents, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. Nothing in the PPA Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between IFA and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give IFA control or joint control over Developer's financial decisions or discretionary actions concerning the East End Crossing and Work.

25.4.3 In no event shall the relationship between IFA and Developer be construed as creating any relationship whatsoever between IFA and Developer's employees or agents. Neither Developer nor any of its employees or agents is or shall be deemed to be an employee or agent of IFA. Except as otherwise specified in the PPA Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Developer or any Contractor hires to perform or assist in performing the Work.

25.5 Successors and Assigns

The PPA Documents shall be binding upon and inure to the benefit of IFA and Developer and each of their permitted successors, assigns and legal representatives.

25.6 Designation of Representatives; Cooperation with Representatives

25.6.1 IFA and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the PPA Documents ("Authorized Representative"). Exhibit 24 (Initial Designation of Authorized Representatives) provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing delivered to the other Party in accordance with Section 25.11.

25.6.2 Developer shall cooperate with IFA and all representatives of IFA designated as described above.

25.7 Survival

Developer's and IFA's representations and warranties, the dispute resolution provisions contained in Section 19.6, the indemnifications, limitations and releases contained in Sections 5.9.10 and 17.5, the express obligations of the Parties following termination (including those set forth in Sections 17.1.9.4, 20.7, 20.8 and 20.10, 21.11 and 23.5.6), and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work. The jurisdiction of the Arbitrator shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the PPA Documents that are subject to its jurisdiction as set forth in Section 19.6.

25.8 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the PPA Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under Article 21 and any Direct Agreement) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 25.8, the duties, obligations and responsibilities of the Parties to the PPA Documents with respect to third parties shall remain as imposed by Law. The PPA Documents shall not be construed to create a contractual relationship of any kind between IFA and a Contractor or any Person other than Developer.

25.9 No Personal Liability of IFA Employees; No Tort Liability

25.9.1 IFA's Authorized Representatives are acting solely as agents and representatives of IFA when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of IFA for actions in their ordinary course of employment.

25.9.2 The Parties agree to provide to each other's Authorized Representative written Notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide Notice in such form and within such period as is required by Law.

25.10 Governing Law

The PPA Documents shall be governed by and construed in accordance with the laws of the State of Indiana. Any suit must be brought in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana. Developer hereby specifically consents to this jurisdiction.

25.11 Notices and Communications

25.11.1 Notices under the PPA Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

25.11.2 All Notices to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

[Developer address]
Telephone: _____
Facsimile: _____
E-mail: _____

In addition, copies of all notices to proceed, Notices regarding Disputes, and suspension, termination and default Notices shall be delivered to the following persons:

[Name]
[addresses]

25.11.3 All Notices to IFA shall be marked as regarding the East End Crossing and shall be delivered to the following address or as otherwise directed by IFA's Authorized Representative:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Public Finance Director
Telephone: 317-233-4332
Facsimile: 317-232-6786

In addition, copies of all Notices to proceed, Notices regarding Disputes, and suspension, termination and default Notices shall be delivered to the following persons:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: General Counsel
Telephone: 317-233-4332
Facsimile: 317-232-6786

25.11.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, Notices sent by facsimile after 4:00 p.m. ET and all other Notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by IFA.

25.12 Integration of PPA Documents

IFA and Developer agree and expressly intend that, subject to Sections 1.2.2, 1.2.3 and 25.13, this Agreement and other PPA Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

25.13 Severability

25.13.1 If any clause, provision, section, subsection or part of the PPA Documents is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Financial Model Update (or, if there has been no Update, the Financial Model) and Developer's compensation to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section, subsection or part shall not affect the validity or enforceability of the balance of the PPA Documents, which shall be construed and enforced as if the PPA Documents did not contain such invalid or unenforceable clause, provision, section, subsection or part.

25.13.2 If after the efforts required by Section 25.13.1 there is no interpretation or reformation of the PPA Documents that can reasonably be adopted which will return the Parties to the benefits of their original bargain, then the court order shall be treated as a Termination by Court Ruling pursuant to Section 20.5.

25.14 Construction and Interpretation of Agreement

25.14.1 The language in all parts of the PPA Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that the PPA Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers,

information and drafts during the Proposal preparation process, that each Party has been given the opportunity to independently review the PPA Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the PPA Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the PPA Documents, the PPA Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized. IFA's final answers to the questions posed during the Proposal preparation process for the PPA Documents shall in no event be deemed part of the PPA Documents and shall not be relevant in interpreting the PPA Documents except as they may clarify provisions otherwise considered ambiguous.

25.14.2 The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

25.14.3 References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument, and all amendments hereto and thereto. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Exhibits, Articles and Sections refer to the Exhibits, Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the other PPA Documents, words that have well-known technical or construction industry meanings are used in this Agreement or the other PPA Documents in accordance with such recognized meaning. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "including," "includes" or "include" is used in the PPA Documents, it is deemed to be followed by the words "without limitation." Wherever reference is made in the PPA Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

25.14.4 As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

25.14.5 All monetary amounts and obligations set forth in the PPA Documents are expressed and payable in U.S. dollars.

25.15 Usury Savings

The PPA Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of

the maximum non-usurious interest rate permitted by Indiana Law (the "maximum legal rate"), if any. If, by the terms of the PPA Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the PPA Documents shall, to the extent permitted by applicable Indiana Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

25.16 Approvals under PPA Documents

25.16.1 Refer to Sections 3.1.3 and 3.1.4.1 regarding the standards for IFA approval or consent.

25.16.2 In all cases where approvals or consents are required to be provided under the PPA Documents by Developer and no particular standard for such approvals or consents is expressly provided, such approvals or consents shall not be unreasonably withheld or delayed. In cases where sole discretion is specified, Developer's decision shall be final, binding and not subject to the Dispute Resolution Procedures.

25.17 Entire Agreement

The PPA Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

25.18 Authority to Bind Developer

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

25.19 Counterparts

This instrument 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.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the date first written above.

Developer	**IFA**
	INDIANA FINANCE AUTHORITY
By: _____	By: _____
Name: _____	Name: Kendra York
Title: _____	Title: Public Finance Director