EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in this Agreement and the Technical Provisions, they have the meanings set forth below:

A-C	Alternating Current
AASHTO	American Association of State Highway and Transportation Officials
AAT	Area Advisory Team
ACHP	Advisory Council on Historic Preservation
ADA	Americans with Disabilities Act
AFPs	ARIES Field Processors
AM	Acquisition Manager
AMRL	AASHTO Material Reference Laboratory
ANSI	American National Standards Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATIS	Advanced Traveler Information System
ATMS	Advanced Traffic Management System
ATS	Automatic Transfer Switch
ATVA	Accident and Terrorist Vulnerabilities Assessment
AVI	Automatic Vehicle Identification
AWS	American Welding Society
BA	Biological Assessment
BFO	Bloomington Field Office
BIS	Bypass Isolation Switch
BMP	Best Management Practice
BO	Biological Opinion
BSHCT	Bi-State Historic Consultation Team
BSMT	Bi-State Management Team
CADD	Computer Aided Drafting and Design
CB	Citizens' Band
CCTV	Closed Circuit Television
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended
CFD	Computational Fluid Dynamics
CFR	Code of Federal Regulations
CMMS	Computerized Maintenance Management System
CMP	Construction Monitoring Plan

CPESC	Certified Professional in Erosion and Sedimentation Control
CQCM	Construction Quality Control Manager
CO	Carbon Monoxide
COMS	Carbon Monoxide Monitoring System
CPI	Consumer Price Index
CPM	Critical Path Method
CSM	Context Sensitive Mitigation
CVISNP	Commercial Vehicle Information Systems Networks Program
CVO	Commercial Vehicle Operations
CWA	Clean Water Act
CWTS	Certified Worksite Traffic Supervisor
D&C	Design and Construction
DBE	Disadvantaged Business Enterprise
DDI	Diverging Diamond Interchange
DDO	Definitive Design of Operations
DMV	Indiana Department of Motor Vehicles
DMS	Dynamic Message Sign
DQAM	Design Quality Assurance Manager
DSRC	Dedicated Short-Range Communications
DSS	Decent, Safe and Sanitary
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
ECP	Erosion Control Plan
EDA	Earth Disturbance Area
EDMS	Electronic Document Management System
EIA	Electronic Industries Alliance
EMP	Environmental Management Plan
EMS	Environmental Management System
eNOI	Electronic Notice of Intent
eNOT	Electronic Notice of Termination
EP	Extraction Procedure
EPIC	Environmental Permits Issues and Commitments
ERP	Emergency Response Plan
ESA	Endangered Species Act of 1973, 16 U.S.C. §§1531 *et seq.* as amended and as it may be amended from time to time
ESCP	Erosion and Sediment Control Plan
ET	Eastern Time
ETC	Electronic Toll Collection
ETL	Electronic Testing Laboratories
FAA	Federal Aviation Administration
FCC	Federal Communications Commission

FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FFO	Frankfort Field Office
FHWA	U.S. Federal Highway Administration
FSP	Field Sampling Plan
FTP	File Transfer Protocol
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§661 *et seq.*, as amended and as it may be amended from time to time
FWD	Falling Weight Deflectometer
GAAP	U.S. Generally Accepted Accounting Principles
GBR	Geotechnical Baseline Report
GIS	Geographical Information System
GPS	Global Positioning System
HAR	Highway Advisory Radio
HEC	Hydraulic Engineering Circular
HMA	Hot Mix Asphalt
HMCP	Hazardous Materials Control Plan
HMHSP	Hazardous Materials Health and Safety Plan
HMMP	Hazardous Materials Management Plan
HPP	Historic Preservation Plan
HSPPD	"handling, storage, packaging, preservation and delivery"
IAC	Indiana Administrative Code
IC	Indiana Statute
IDM	Indiana Department of Transportation Design Manual
IES	Illuminating Engineering Society
IRI	International Roughness Index
ISPLS	Indiana Society of Professional Land Surveyors
IDEM	Indiana Department of Environmental Management
IFA	Indiana Finance Authority
IHPAT	Indiana Historic Preservations Advisory Team
IHRS	Indiana Heritage Resource Survey
IMUTCD	Indiana Manual on Uniform Traffic Control Devices
INDOT	Indiana Department of Transportation
IPDC	Initial Project Debt Competition
IPDES	Indiana Pollutant Discharge Elimination System
IRI	International Roughness Index
IRR	Internal Rate of Return
IRS	Internal Revenue Service
ISA	Initial Site Assessment
ISO	International Organization for Standardization
ITS	Intelligent Transportation System

IVHS	Intelligent Vehicle Highway System
IVR	Interactive Voice Response
KDM	Kentucky Design Manual
KDW	Kentucky Division of Water
KPTIA	Kentucky Public Transportation Infrastructure Authority
KY HPAT	Kentucky Historic Preservation Advisory Team
KYTC	Kentucky Transportation Cabinet
LC	Lucent Connector
LCS	Lane Control Signal
LED	Light-Emitting Diode
LIDAR	Laser Image Detection and Ranging
LOS	Level of Service
LPR	License Plate Reader
LRFD	Load and Resistance Factor Design (an AASHTO specification)
LRFR	Load and Resistance Factor Rating
LWC	Louisville Water Company
LUS	Lane Use Signal
MACS	Mainline Automated Clearance System
MHHW	Mean Higher High Water
MLLW	Mean Lower Low Water
MOA	Memorandum of Agreement
MOMS	Maintenance On-line Management Subsystem
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MOV	Metal Oxide Varistor
MP	Maintenance Plan
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSE	Mechanically Stabilized Earth
MSDS	Materials Safety Data Sheets
MTTR	Mean Time to Repair
MTBF	Mean Time Between Failure
MTTR	Mean Time to Repair
MUTCD	Indiana Manual on Uniform Traffic (Control) Devices or FHWA Manual on Uniform Traffic (Control) Devices, as further defined in Section 26 of the Technical Provisions.
N/A	Not Applicable
NAVD88	North American Vertical Datum of 1988
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program

NDE	Nondestructive Examination
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*., as amended and as it may be amended from time to time
NFIP	National Flood Insurance Program
NFPA	National Fire Protection Association
NHS	National Highway System
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent submitted to USEPA
NORPASS	North America Preclearance and Safety System
NOT	Notice of Termination submitted to USEPA
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
NTCIP	National Transportation Communications for ITS Protocol
NTP	Notice to Proceed
O&M	Operation and Maintenance
OCR	Optical Character Recognition
OER	Office of Emergency Response
OHMP	Indiana Department of Natural Resources-Office of Habitat Management and Permitting
OIT	Operator Interface Terminal
OMMP	Operations and Maintenance Monitoring Plan
OMP	Operations and Maintenance Plan
OPMP	Indiana Department of Natural Resources Office of Project Management and Permitting
OSHA	Occupational Safety and Health Administration
OTDR	Optical Time-Domain Reflectometer
PA	Section 106 Programmatic Agreement
PABs	Private Activity Bonds
PABX	Private Automatic Branch Exchange
PC	Point of Curvature
PCB	Printed Circuit Board
PCC	Portland Cement Concrete
PCM	Preconstruction Manual
PDA	Pile Driving Analyzer
PDF	Portable Document Format
PE	Preliminary Engineering
PI	Point of Intersection
PIC	Public Information Coordinator
PIP	Public Involvement Plan

PIV	Post Indicator Valve
PLC	Programmable Logic Controller
PMIS	Pavement Management Information System
PMP	Project Management Plan
PPA	Public-Private Agreement between IFA and Developer for the Ohio River Bridges Program, East End Crossing, as it may be amended from time to time.
PS&E	Plans, Specifications, and Estimates
PT	Point of Tangency
PTZ	Pan-Tilt-Zoom
PVE	Passenger Vehicle Equivalent
QA	Quality Assurance
QAPP	Quality Assurance Program Plan
QC	Quality Control
QCP	Quality (Control) Checkpoints
QMP	Quality Management Plan
RBF	Riverbank Filtration
RCU	Remote Control Unit
RF	Radio Frequency
RFC	Released for Construction
RFP	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, dated _____, 2012, issued by IFA, as amended by addenda
RID	Reference Information Document
RIO	Remote Input/Output
RLM	Residual Life Methodology
RMS	Root Mean-Square
ROD	Record of Decision
ROW	Right of Way
ROW AM	Right of Way Acquisition Manager
ROWIS	Right of Way Information System
RPLS	Registered Professional Land Surveyor
RSS	Reinforced Soil Slope
RTM	Real Time Monitor
RWIS	Road Weather Information System
SAP	Sampling and Analysis Plan
SC	Subscriber Connector
SCADA	Supervisory Control and Data Acquisition
SF	Square Feet
SFEIS	Supplemental Final Environmental Impact Statement
SHP	Safety and Health Program

SHPO	State Historic Preservation Officer
SICP	Snow and Ice Control Plan
SIR	Self-insured retention
SPCP	Spill Prevention and Control Plan
SSHP	Site Safety and Health Plan
SSTR	Single Slope Traffic Railing
STIP	Statewide Transportation Improvement Program
SUE	Subsurface Utility Engineering
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
TCLP	Toxicity Characteristic Leaching Procedure
TCP	Traffic Control Plan
TCC	Tolling Collection Center
TCS	Toll Collection System
TDC	Toll Data Center
TIA	Telecommunications Industry Association
TIFIA	Transportation Infrastructure Finance and Innovation Act of 1988, codified at 23 U.S.C. § 601 *et seq*., as amended and as it may be amended from time to time
TIP	Transportation Improvement Program
TMC	Traffic Management Center
TMP	Transportation Management Plan
TMS	Traffic Monitoring Stations
TOC	Traffic Operations Center
TOP	Traffic Operations Plan
TP	Technical Provisions
TRIMARC	Louisville-Southern Indiana Regional Traffic Management Center
TTCP	Temporary Traffic Control Plan
TVS	Tunnel Ventilation System
TVSS	Transient Voltage Surge Suppressors
UNRS	USDOT Number Recognition System
UPS	Uninterruptible Power Source
US	United States Highway
USACE	United States Army Corps of Engineers
USCG	United States Coast Guard
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USPAP	Uniform Standard of Professional Appraisal Practices
VBI	Voice Break-In
VWS	Virtual Weigh Station

WBS	Work Breakdown Structure
WEAP	Wave Equation Analysis of Pile Driving
WHPA	Wellhead Protection Area
WIM	Weigh in Motion

Abandonment means that Developer abandons all or a material part of the East End Crossing, which abandonment shall have occurred if (a) Developer demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event that materially interferes with ability to continue, to design, construct, operate or maintain all or a material part of the East End Crossing or (b) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the East End Crossing or a material part thereof is performed for a continuous period of more than 45 days.

Access and Mobility Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Act has the meaning set forth in Recital A of the Agreement.

Activity has the meaning set forth in the Department's recurring SP CPM Schedule 108-C-215.

Actual Benchmark Policies has the meaning set forth in Section 17.1.9.2 of the Agreement.

Actual Insurance Policies has the meaning set forth in Section 17.1.9.4 of the Agreement.

Additional Properties means properties that are both (a) outside the boundaries for the Project Right of Way as set forth in the ROW Maps and (b) either (i) added to the Project Right of Way for permanent use for East End Crossing-related purposes or (ii) added for temporary use as Project Specific Locations.

Adjust means to perform a Utility Adjustment.

Adjustment means a Utility Adjustment.

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the East End Crossing) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the PPA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 5.5.3 of the Agreement.

Aesthetic Design Guidelines means Reference Information Documents that are so described and have been prepared by IFA in consultation with the BSHCT, IHPAT, KY HPAT, other advisory groups, agencies and the public that are appropriate for the project setting and are to be implemented and refined during final design through continuing consultations with these entities.

Aesthetics and Enhancement Implementation Plan means the plan that is to be prepared by the Developer per Section 5.3.1 of the Technical Provisions that applies the Aesthetic Design Guidelines and incorporates context sensitive solutions for all project aesthetics and landscape work, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Affiliate means:

(a) any Equity Member;

(b) any Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any Equity Member; and

(c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any Equity Member or (iii) any Affiliate of Developer under clause (b) of this definition.

For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

Affiliated means having the status of an Affiliate.

Age means the elapsed time since an Element was first constructed or installed or, if applicable, last reconstructed, rehabilitated, restored, renewed or replaced.

Agreement means that certain Public-Private Agreement, to which this Exhibit 1 (Abbreviations and Definitions) is attached, executed by IFA and Developer, including any and all Exhibits and amendments thereto.

Airspace means any and all real property, including the surface of the ground and submerged lands, within the vertical column extending above and below the surface boundaries or water surface, as applicable, of the Project Right of Way and not necessary or required for the East End Crossing or for developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the East End Crossing or Developer's timely fulfillment of its obligations under the PPA Documents.

Annual MAP Limit means the limit for the MAP in each year of the Term as set forth in Exhibit 9 to the Agreement.

AP Appropriations Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

AP Disputed Amounts Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

AP Payment Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

AP Relief Event and Termination Compensation Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

Arbitrator means the individual appointed to hear and resolve disputes between the parties as provided in Section 19.6 of the Agreement.

Area Advisory Teams has the meaning set forth in Section 7.1.3 of the SFEIS.

As-Built Models means the deliverable described at Table 25-1 of the Technical Provisions.

ATVA has the meaning set forth at Section 24.1.1 of the Technical Provisions.

ATVA Report means the deliverable described at Table 25-1 of the Technical Provisions.

Authorized Representative has the meaning set forth in Section 25.6 of the Agreement.

Availability Payment means the amount earned in each given Fiscal Year commencing at the Operating Period by Developer as determined in accordance with Exhibit 10 (Payment Mechanism) to the Agreement.

Backward Looking Termination for Convenience Amount means the amount calculated in accordance with Exhibit 22 (Terms for Termination Compensation) to the Agreement.

Barge Impact Analysis Report has the meaning set forth in Section 15.5.11 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Base Maximum Availability Payment has the meaning set forth in Attachment 1 to Exhibit 10 (Payment Mechanism) to this Agreement.

Baseline Substantial Completion Date means the scheduled date for Substantial Completion set forth in Exhibit 2-B (Preliminary Project Baseline Schedule) and Exhibit 4 (Milestone Payment Amounts) to the Agreement (in no event later than June 30, 2017), as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Best Management Practices (BMP) has the meaning set forth in *Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA Document 832 R 92-005).

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreement(s) applicable to the Utility; in all other cases, "Betterment" means any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the construction of the East End Crossing and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility. Notwithstanding the foregoing, the following are not considered Betterments unless otherwise provided in the applicable Utility Agreement(s):

(a) Any upgrading which is required for accommodation of the East End Crossing;

(b) Replacement devices or materials that are of equivalent standards although not identical;

(c) Replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) Any upgrading required by applicable Law;

(e) Replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);

(f) Any upgrading required by the Utility Owner's applicable Adjustment Standards; and

(g) Any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

With respect to any Replacement Utility Property Interest, "Betterment" has the meaning (if any) set forth in the applicable Utility Agreement(s). In all other cases, a Replacement Utility Property Interest shall be considered a Betterment, except to the extent that reinstallation of a Utility in the Replacement Utility Property Interest (i) is necessary in order to meet the requirements of the PPA Documents, or (ii) is called for by Developer in the interest of overall economy for the East End Crossing.

Bi-State Historic Consultation Team means an advisory group for the Project that was formed pursuant to the Section 106 Memorandum of Agreement.

Bi-State Management Team means appointed representatives of the Indiana Department of Transportation, the Kentucky Transportation Cabinet and Federal Highway Administration who as a group are responsible for overall management of the Project.

Blasting Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Books and Records means any and all documents, books, records, papers, or other information relating to the East End Crossing, including (i) all design and construction documents, and operations and maintenance documents (including but not limited to drawings, specifications, submittals, subcontracts, subconsultant agreements, purchase orders, invoices, schedules, meeting minutes, budgets, forecasts, change orders, (ii) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding Toll Revenues (including information regarding the collection thereof), operating income, expenses, capital expenditures and budgeted operating results relating to the East End Crossing, (iii) all budgets, certificates, claims, contract agreements, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Developer or any of its Representatives in connection with the East End Crossing or the Project and (iv) with respect to all of the above, any Information that is stored electronically or on computer-related media, including in the Electronic Document Management System; provided however, that nothing in this Agreement shall require the disclosure by any Party of Books and Records that is protected

by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party.

Breakage Costs means any commercially reasonable prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate hedging, swap, collar or cap arrangements, that Developer must pay, or that may be payable or credited to Developer, under any Funding Agreement or Security Document or otherwise as a result of the payment of all or any portion of the principal amount of Project Debt prior to its scheduled payment date, excluding, however, any such amounts included in the principal amount of any Refinancing.

Bridge Construction Manager is the Key Personnel listed at Exhibit 2-H to this Agreement.

Bridge Load Rating Report means the deliverable described at Table 25-1 of the Technical Provisions.

Bridge Type Selection Process means the process that was followed in selection of proposed bridge types for the East End Crossing and the Downtown Crossing as described in the Reference Information Document MS-5.06.

Business Day means any weekday (i.e., Monday through Friday) except for those weekdays on which banks are not required or authorized by applicable Law to be open in the State.

Business Opportunities has the meaning set forth in Sections 8.2.2 and 8.2.3 of the Agreement.

CADD Drafting Standards means the deliverable described at Table 25-1 of the Technical Provisions.

Category 1 Defect has the meaning set forth in Attachment 22-1 to the Technical Provisions.

Category 2 Defect has the meaning set forth in Attachment 22-1 to the Technical Provisions.

Certified Worksite Traffic Supervisor has the meaning set forth in Section 12.4.2 of the Technical Provisions.

Change in Adjustment Standards means any change in Adjustment Standards that directly affects the design or construction of Utility Adjustments and is (a) necessary to conform to applicable Law or Change in Law or (b) adopted by the applicable Utility Owner after the Setting Date. A Change in Law that changes, adds to or replaces Adjustment Standards, as well as revisions to the Technical Provisions to conform to such Change in Law, shall be treated as a Change in Adjustment Standards rather than an IFA Change to the Technical Provisions.

Change in Law means

(a) the adoption of any Law of the State or the Commonwealth of Kentucky after the Setting Date, provided such new Law is materially inconsistent with the Laws of the State or the Commonwealth of Kentucky in effect on the Setting Date,

(b) any change in any Law of the State or the Commonwealth of Kentucky or in the interpretation or application thereof by any Governmental Entity after the Setting Date, provided such change is materially inconsistent with Laws of the State or the Commonwealth of Kentucky in effect on the Setting Date;

excluding, however,

(i) any such change in or new Law of the State or the Commonwealth of Kentucky that also constitutes or causes a Change in Adjustment Standards,

(ii) any change in or new Law of the State or the Commonwealth of Kentucky pending, passed or adopted but not yet effective as of the Setting Date,

(iii) any change in State or the Commonwealth of Kentucky labor Laws, and

(iv) any change in State or the Commonwealth of Kentucky tax Laws of general application except the adoption after the Setting Date of any Law not otherwise excluded that results in the levy of State or the Commonwealth of Kentucky *ad valorem* property taxes on the Developer's Interest (it being understood that any change in State or the Commonwealth of Kentucky tax laws shall not be deemed of general application if it is solely directed at and the effect of which is solely borne by Developer or private operators of transportation assets or transportation asset developers, in each case, in the State or the Commonwealth of Kentucky).

New or revised statutes adopted after the Setting Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards and Project Standards, but excluding Adjustment 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 (subject to the foregoing exclusions) rather than an IFA Change to the Technical Provisions.

Change of Control means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member may constitute a Change of Control of Developer if such Equity Member possesses, immediately prior to such Change of Control, the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of an

Equity Member, (but not if the Equity Member is the ultimate parent organization), provided, however, that this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, subject to an agreement for voluntary exclusion, or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(b) An upstream reorganization or transfer of direct or indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;

(c) A transfer of interests between managed funds that are under common ownership or control, except a change in the management or control of a fund that manages or controls Developer;

(d) An Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

(e) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(f) The exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, IFA has received copies of such agreements; or

(g) The grant of Security Documents, in strict compliance with Section 13.3 of the Agreement, or the exercise of Lender remedies thereunder, including foreclosure.

Change Order means a written order issued by IFA to Developer delineating changes in Work within the general scope of the PPA Documents or in terms and conditions of the Technical Provisions (including changes in the standards applicable to the Work in accordance with Section 16.1.1 of the Agreement) and establishing, if appropriate, an adjustment to Developer's compensation or Milestone Schedule.

Change Request means a written request from Developer seeking to change the character, quantity, quality, description, scope or location of any part of the Work, or to modify or deviate from the PPA Documents.

Chief Executive Officer of Developer means the chief executive officer, president or other senior officer of Developer, or the governing body of Developer, in each case having authority to negotiate and resolve a Dispute with the Executive Director and bind Developer by his, her or its decision in regard to such Dispute.

Claim means (a) a demand by Developer, which is disputed by IFA, for a time extension under the PPA Documents, payment of money or damages from IFA to Developer, or for payment from IFA of a Compensation Amount or Termination Compensation, or (b) a demand by IFA, which is disputed by Developer, for payment of money or damages from Developer to IFA.

Claim Deductible means the following amounts, as applicable: (a) the first $40,000 of Extra Work Costs, subject to adjustment as provided in Section 15.6.2.3 of the Agreement; and (b) the amount equal to the Delay Costs for the first seven days of delay.

Closure means that all or part of any traffic lanes, ramps, direct connectors or cross roads or shoulders are closed or blocked, or that the normal use thereof is otherwise restricted or reduced for any reason, during the Operating Period.

Collateral Agent means the Institutional Lender listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the other Lenders in the Security Documents, or the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document, a copy of which shall be delivered by Developer to IFA. In the event of any Project Debt issued and held by a single Lender, Collateral Agent means such Lender. The bond trustee for PABs, if an Institutional Lender, may also be the Collateral Agent.

Commercially Reasonable Insurance Rates means insurance premiums, except Excluded Insurance Premiums, up to but not exceeding 200% of the applicable Insurance Premium Benchmark Amount for all required Insurance Policies; provided that for the period before any Insurance Premium Benchmark Amount commences, commercially reasonable rates are the greater of (i) rates that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude are justified by the risk protection afforded, and (ii) the rates indicated for the period in question in the Financial Model and related Financial Modeling Data.

Committed Investment means:

(a) Any form of direct investment of good and immediately available funds by Equity Members, including the purchase of equity shares in and/or the provision of Subordinate Debt to Developer; or

(b) An irrevocable written commitment to make the direct investment referenced in clause (a) of this definition, in good and immediately available funds, by a date which is no later than the Baseline Substantial Completion Date, coupled with an on-demand letter of credit issued by or for the account of an Equity Member naming Developer as beneficiary, satisfying the requirements of Section 17.3.1 of the Agreement and guaranteeing such commitment.

Communications Plan means Developer's plan for communications between IFA and Developer as set forth in Section 1.5.2.5 of the Technical Provisions.

Community Outreach Plan has the meaning set forth in Section 6.3 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Comparable Facilities means highways and bridges, as applicable, that are substantially similar to the East End Crossing and associated facilities including frontage roads, as applicable. For purposes of this definition, determination of what highways or bridges are substantially similar to the East End Crossing shall be based on any one or more of similar age, design, engineering, construction, topographical features**,** operating systems and features, or other features or situations**,** and/or based on a geographical area in which highways or bridges have been or are susceptible to being affected by a common event (such as but not limited to flood or tornado). The presence or absence of tolling and tolling facilities shall not be a factor in determining whether a highway or bridge is substantially similar to the East End Crossing.

Compensation Amount means the amount, if any, owing to Developer under Article 15 of the Agreement on account of occurrence of a Relief Event.

Concept of Operations Report has the meaning set forth in Section 19.7.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the East End Crossing and/or the Utility Adjustments included in the Construction Work, in accordance with the PPA Documents and the Special Provisions.

Construction Manager is the Key Personnel listed at Exhibit 2-H to this Agreement.

Construction Noncompliance Adjustment means the amount assigned to each Construction Noncompliance Event as set forth in Exhibit 10 (Payment Mechanism).

Construction Noncompliance Event means the failure to meet one of the minimum performance requirements as set forth in Exhibit 12 (Noncompliance Points System and Persistent Developer Default) within the applicable cure period (if any).

Construction QA/QC Plan means the IFA-approved plan for quality assurance and quality control of the Construction Work, as set forth in Section 1.5.2.5 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Construction Quality Manager has the meaning set forth in Section 4.8.1 of the Technical Provisions. The Construction Quality Manager is a Key Personnel listed at Exhibit 2-H to this Agreement.

Construction Quality Control Manager or **CQCM** has the meaning set forth in Section 4.8.1 of the Technical Provisions. The Construction Quality Control Manager is a Key Personnel listed at Exhibit 2-H to this Agreement.

Construction Noncompliance Point has the meaning set forth in Section 4.2 of Exhibit 10 (Payment Mechanism) to the Agreement.

Construction Work means all Work to build or construct, reconstruct, rehabilitate, make, form, manufacture, furnish, install, integrate, supply, deliver or equip the East End Crossing and/or the Utility Adjustments. Construction Work includes Landscaping Work and aesthetic treatments.

Construction Work Commencement Deadline means the outside date set forth in the Milestone Schedule that Developer is obligated under the Agreement to satisfy all conditions to commencement of Construction Work for.

Consumer Price Index, or **CPI**, means the Consumer Price Index for All Urban Consumers (CPI-U), All Items, for the Midwest Region, as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-84 = 100, or if such publication ceases to be in existence, a comparable index selected by IFA and approved by Developer, acting reasonably. If such index is revised so that the base year differs from that set forth above, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

Contract means any agreement, and any supplement or amendment thereto, by Developer with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" excludes Utility Agreements.

Contractor means any Person with whom Developer has entered into any Contract to perform any part of the Work or provide any materials, equipment, hardware or supplies for any part of the Work, on behalf of Developer, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Controlling Work Item means the activity or work item on the Critical Path of the D&C Work having the least amount of Total Float.

Core Lender(s) has the meaning set forth in the RFP.

Corrosion Protection Plan has the meaning set forth in Section 15.5.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Cost to Cure means an appraisal method applied to estimate a proper adjustment for damages to a property that can be physically and economically corrected, as described in further detail in the IFA Appraisal and Review Manual.

Critical Path means the longest chain(s), in terms of time, of logically connected activities on the Project Schedule ending with Final Acceptance. Any delay along a Critical Path will affect the calculated Substantial Completion Date or Final Acceptance Date.

Custodial Account has the meaning set forth in Exhibit 15 (Summary of Terms for Custody Agreement) to the Agreement.

Custodian means the financial institution that will enter into the Custody Agreement as custodian.

Custody Agreement has the meaning set forth in Section 14.7.1 of the Agreement.

Custody Arrangement has the meaning set forth in Section 14.7.1 of the Agreement.

Day or **day** means calendar day unless otherwise expressly specified.

D&C Work means the Design Work and Construction Work, including those obligations of Developer pertaining to design and construction set forth in the Technical Provisions.

DB Substantial Completion means satisfaction of all the conditions as set forth in Section 5.8.2 of the Agreement, as and when confirmed by IFA's issuance of a certificate in accordance with the procedures and within the time frame established in Section 5.8.2 of the Agreement.

DBE Coordinator is the Key Personnel listed at Exhibit 2-H to this Agreement.

DBE Goal means the goal for percent of work to be performed by certified DBEs that is established by IFA and specified in Section 7.10.2 of the Agreement.

DBE Performance Plan means Developer's plan for meeting the DBE Goal. The preliminary DBE Performance Plan is Exhibit 2-L (Developer's Preliminary DBE Performance Plan) to the Agreement.

DBE Special Provisions means IFA's special provisions for the IFA Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions) to the Agreement.

Deductible Relief Event means the Relief Events referenced in clauses (g) (but only as to performance or failure to perform work by a Governmental Entity), (j), (m) (but only as to releases by a third party), (n), (o), (q) and (u) of the definition of Relief Event.

Default Termination Event means each of the Developer Defaults listed in Section 20.3.1 of the Agreement.

Defect means a defect, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Element of the East End Crossing, which would cause or have the potential to cause one or more of the following:

(a) A hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;

(b) A structural deterioration of the affected Element or any other part of the East End Crossing;

(c) Damage to a third party or a third party's property or equipment;

(d) Damage to the Environment;

(e) Failure of the affected Element or any other part of the East End Crossing to meet a Performance Requirement or any other requirement of the PPA Documents;

(f) Failure of an Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table; or

(g) Loss of Toll Revenues.

Deferral of Compensation means the election of IFA to pay Extra Work Costs or Delay Costs through any one of the following or a combination thereof:

(a) Extension of the Term;

(b) Adjustment of the Availability Payment; or

(c) Periodic payments over the Term.

Definitive Design of Operations has the meaning set forth in Section 19.4.1 of the Technical Provisions.

Definitive Design of Operations Document means the deliverable described at Table 25-1 of the Technical Provisions.

Delay Costs means Developer's additional costs that result to Controlling Work items from a Relief Event Delay, which are limited to (a) direct costs for the actual idle labor and equipment, (b) the indirect costs and expenses thereof excluding cost of funds (whether debt or equity) and excluding Lender charges, damages and penalties, and (c) profit thereon, all as calculated pursuant to Exhibit 17 (Extra Work Costs and Delay Costs Specifications) to the Agreement; provided that for delays to non-Controlling Work Items incident to a Relief Event Delay, the term Delay Costs does not include any indirect costs, expenses or profit thereon; provided, further, that, 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, Developer shall not be entitled to Delay Costs. Delay Costs do not include any costs that Developer can or could reasonably mitigate.

Department has the meaning set forth in Recital M of the Agreement.

Department MOUs means a memorandum of understanding between the Department and another federal, state or local agency, railroad company or utility.

Deputy Project Manager is the Key Personnel listed at Exhibit 2-H to this Agreement.

Design-Build Contract means that certain agreement between Developer and the Design-Build Contractor of even date herewith for the design and construction of the East End Crossing and the related Utility Adjustments included in the Construction Work.

Design-Build Contractor means [INSERT NAME], a [_____].

Design Documents means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the East End Crossing and/or the Utility Adjustments included in the Design Work and/or the Construction Work. Design Documents include the Final Design Documents.

Design Life means, for an Element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

Design QA/QC Plan means the IFA-approved plan for quality assurance and quality control of the Design Work, as set forth in Section 1.5.2.5 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Design Quality Assurance Manager or **DQAM** has the meaning set forth in Section 3.2.6 of the Technical Provisions. The Design Quality Assurance Manager is a Key Personnel listed at Exhibit 2-H to this Agreement.

Design Requirements means all requirements in respect of the Design Work and the Design Documents, including IFA-approved Deviations, in each case as set forth in Sections 5.2.1 and 5.2.4 of the Agreement.

Design Review means any of the reviews of the Design Documents by IFA or its representatives, as described in Section 3.9 of the Technical Provisions.

Design Review Plan and Schedule has the meaning set forth in Section 3.7 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Design Unit means any logical grouping of component(s) of the East End Crossing design assembled into a single package for the purposes of design.

Design Work means all Work of design, engineering or architecture for the East End Crossing, Project Right of Way acquisition or Utility Adjustments.

Design Workshop has the meaning set forth in Section 3.16 of the Technical Provisions.

Designer means the design consulting firm(s) with primary responsibility for the design of the Work.

Developer means [INSERT NAME], a [_____], together with its permitted successors and assigns.

Developer Default has the meaning set forth in Section 19.1.1 of the Agreement.

Developer-Related Entities means (a) Developer, (b) Developer's Equity Members, (c) Contractors (including Suppliers), (d) any other Persons (except IFA and the Department) performing any of the Work, (e) any other Persons except IFA and the Department) for whom Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors and assign of any of the foregoing.

Developer Release(s) of Hazardous Material means (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity;

regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the PPA Documents or any applicable Law or Governmental Approval.

Developer Utility Agreement has the meaning set forth in Section 18.1.5 of the Technical Provisions.

Developer's Interest means all right, title and interest of Developer in, to, under or derived from the Agreement and the other PPA Documents, including Developer's right, title and interest in and to the Project Right of Entry, Principal Project Documents, Project Management Plan, Contracts, Submittals, Claims and Intellectual Property.

Developer's Schematic Design means the schematic design for the East End Crossing submitted by Developer and set forth in Exhibit 2-A (Developer's Schematic Design) to the Agreement.

Deviation means any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions.

Direct Agreement means the agreement in the form attached as Exhibit 21 to the Agreement by and among IFA, Developer, and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders) respecting certain of Lenders' rights under the PPA Documents. Direct Agreement(s) shall follow the "Form of Direct Agreement" provided as Exhibit 21 to the Agreement in all material respects.

Directive Letter means the letter described in Section 16.3 of the Agreement.

Disadvantaged Business Enterprise or **DBE** has the meaning set forth in Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions) to the Agreement.

Discriminatory O&M Change means (a) materially more onerous application to Developer or the East End Crossing of alterations or changes (including additions) to the Technical Provisions and Safety Standards relating to the O&M Work than the application thereof to other comparable the Department projects, or (b) selective application of alterations or changes (including additions) to the Technical Provisions and Safety Standards relating to the O&M Work to Developer or the East End Crossing and not to other comparable the Department projects. Notwithstanding the foregoing, such application in response to any negligence, willful misconduct, or breach of applicable Law, Governmental Approval or contract by Developer or any Developer-Related Entity shall not be Discriminatory O&M Changes. A Discriminatory O&M Change is an IFA Change.

Dispute means any Claim, dispute, disagreement or controversy between IFA and Developer concerning their respective rights and obligations under the PPA Documents, including concerning any alleged breach or failure to perform and remedies.

Disputed Amounts has the meaning set forth in Section 10.3 of the Agreement.

Dispute Resolution Procedures means the procedures for resolving Disputes set forth in Section 19.6 of the Agreement, including the Informal Resolution Procedures.

Distribution means:

Whether in cash or in kind, and both made and projected to be made:

(a) Any:

(i) Dividend or other distribution in respect to share or other capital;

(ii) Payment or other distributions in reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;

(iii) Payments (whether of principal, interest, breakage costs or otherwise) on Subordinate Debt;

(iv) Payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it is neither in the ordinary course of business nor on reasonable commercial terms; and

(v) Receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms, or

(b) The early release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

Such dividends, distributions payments or other benefits include proceeds of any Refinancing.

Downtown Crossing means that portion of the Project that excludes the East End Crossing.

Early Termination Date means the effective date of termination of the Agreement for any reason prior to the stated expiration of the Term.

East End Bridge means the entire structure — from abutment to abutment including approach slabs — over the Ohio River, Upper River Road, and Transylvania Beach Road carrying Indiana State Route 265/KY 841. For purposes of the Technical Provisions, and consistent with the Reference Information Documents, the East End Bridge is divided into two separate sections: the East End Bridge Main Spans and the East End Bridge Kentucky Approach Spans.

East End Bridge Kentucky Approach Spans means a portion of Project Section 4 – Sta. 167+82.86 to Sta. 187+51.86 of the Reference Information Documents.

East End Bridge Main Spans means Project Section 5 – Sta. 187+40.00 (ahead) to Sta. 212+74.51 of the Reference Information Documents. The East End Bridge Main Spans include the Indiana approach slab and Pier 1 (Sta. 187+40.00) in Kentucky.

East End Crossing means the transportation facilities and all related structures and improvements used in connection with operation of such transportation facilities, to be financed, developed, designed, constructed, operated and maintained, or any of the foregoing, pursuant to the terms of the PPA Documents. The East End Crossing is divided into the Project Sections. For avoidance of doubt, the East End Crossing does not include the design and

construction of the Old Salem Road realignment or the new bridge carrying Old Salem Road over proposed SR 265.

Effective Date means the date of the execution of the Agreement by IFA and Developer or such other date as shall be mutually agreed upon in writing by IFA and Developer.

Electrical Safety Observer means an individual competent to assist the individual person performing electrical work, to rescue such individual person performing electrical work, and who has been certified in the last six months to provide cardiopulmonary resuscitation.

Electronic Document Management System means Developer's computerized system for East End Crossing document and records management established pursuant to Section 1.5.2.6 of the Technical Provisions.

Element means an individual component, system or subsystem of the East End Crossing or of a Utility Adjustment, and shall include at a minimum a breakdown into the items described in the Performance and Measurement Criteria, further subdivided by Performance Sections where appropriate.

Element Category means each of the main headings in the column entitled "Element" in the Performance and Measurement Criteria.

Eligible Investments means any one or more of the following instruments or securities:

(a) Direct obligations of, and obligations fully and unconditionally guaranteed by, (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;

(b) Demand or time deposits, federal funds or bankers' acceptances issued by any depository institution or trust company, provided that (i) any demand or time deposit or certificate of deposit is fully insured by the Federal Deposit Insurance Corporation or (ii) any commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have been rated "A" or higher by a Rating Agency;

(c) Commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated "A" or higher by a Rating Agency at the time of such investment;

(d) Any money market funds, the investments of which consist of cash and obligations fully and unconditionally guaranteed by (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" or higher by a Rating Agency; and

(e) Other investments then customarily accepted by the State in similar circumstances;

provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

Emergency means any unforeseen event affecting the East End Crossing, whether directly or indirectly, which (a) causes or has the potential to cause disruption to the free flow of traffic on the East End Crossing or a threat to the safety of the public; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the East End Crossing, to the Environment or to property adjacent to the East End Crossing; (c) is recognized by the Indiana Department of Public Safety as an emergency; or (d) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

Emergency Plan means Developer's plan for emergency prevention, response and services, as part of the PMP, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Emergency Repair Work means any Work performed pursuant to Section 9.3 of the Agreement.

Emergency Services means law enforcement, fire, paramedic, ambulance service and other similar services from agencies with which Developer establishes protocols for incident response, safety and security procedures, as set forth in the Incident Management Plan and Emergency Plan.

Engineer has the meaning set forth in Section 101.20 of the Standard Specifications.

Environment means air, soils, submerged lands, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and historic, archeological and paleontological resources.

Environmental Approvals means all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project as applicable to the East End Crossing and/or the East End Crossing, including the NEPA Documents.

Environmental Compliance and Mitigation Plan (ECMP) means Developer's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, including the NEPA Documents and similar Governmental Approvals for the East End Crossing or the Work, or set forth in the PPA Documents, and for complying with all other conditions and requirements of the Environmental Approvals, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Environmental Compliance Manager (ECM) means the individual retained or employed by Developer who has the authority and responsibility for monitoring, documenting and reporting environmental compliance for the Work as more particularly described in Section 7.3 of the Technical Provisions. The Environmental Compliance Manager is a Key Personnel listed at Exhibit 2-H to this Agreement.

Environmental Law means any Law applicable to the East End Crossing or the Work requiring consideration of environmental impacts or addressing, regulating or imposing liability, actions or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations ordinances or other Governmental Approvals adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the East End Crossing or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

(a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;

(b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(c) Releases of Hazardous Materials;

(d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;

(e) The operation and closure of underground storage tanks;

(f) and safety of employees and other persons; and

(g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term “Environmental Laws” shall also include the following:

(i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;

(ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;

(iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), as may be further amended;

(iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;

(v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);

(vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq*.), as amended;

(viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;

(ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;

(x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq*.), as amended;

(xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;

(xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;

(xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), as amended;

(xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;

(xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;

(xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;

(xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;

(xix) The Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668 *et seq*.), as amended;

(xx) The Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq*.), as amended;

(xxi) The Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq*.), as amended;

(xxii) Indiana Statutes, Title 46, Water, Air, Energy, and Environmental Conservation, as amended; and

(xxiii) Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303(c), as amended).

Environmental Litigation means any lawsuit that is filed in a court of competent jurisdiction and seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of a federal, state, or local agency's approval of the Louisville-Southern Indiana Ohio River Bridges Project based on the agency's alleged non-compliance with applicable Laws (including Environmental Laws), including but not limited to: the National Environmental Policy Act, 42 U.S.C. § 4231 *et seq.*; Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c); the National Historic Preservation Act, 16 U.S.C. § 470; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq*.; and the Endangered Species Act, 16 U.S.C. § 1531 *et seq.;* and other federal, state, or local Laws.

Environmental Management System or **EMS** has the meaning set forth in Section 7.3 of the Technical Provisions.

Equity IRR means the nominal post-tax internal rate of return to the Committed Investment described in clause (a) of the definition of Committed Investment, over the full Term calculated, using the Financial Model, as the discount rate that, when applied to Committed Investment cash flows, gives a zero net present value. The Equity IRR initially is equal to the Original Equity IRR. For purposes of this definition:

(a) The phrase "post-tax" refers only to U.S. federal and state income tax liability of Developer or its Equity Members and specifically excludes (i) any foreign income tax and other tax of any kind, and (ii) any withholding tax, including any tax that Developer or an Equity Member is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt of or equity interests in an Equity Member under 26 U.S.C. §§ 1441 – 1446, notwithstanding 26 U.S.C. § 1461; and

(b) The phrase "cash flows" refers to Distributions described in clause (a) of the definition of Distributions, minus Committed Investment described in clause (a) of the definition of Committed Investment.

Equity Member means any Person with a direct equity interest in Developer.

Equity Transfer means any assignment, mortgage, encumbrance, conveyance, sale, or other transfer of equity interest in Developer.

Erection Procedure Report mean the deliverable described at Table 25-1 of the Technical Provisions.

Erosion and Sediment Control Plan means 327 IAC 15-5--the Erosion and Sediment Control chapter of the Indiana Design Manual.

Erosion Control Supervisor has the meaning set forth in Section 8.3.2 of the Technical Provisions.

Escalated Benchmark Insurance Premiums has the meaning set forth in Section 17.1.9.7 of the Agreement.

Escrow Agent has the meaning set forth in Section 23.5.2 of the Agreement.

Excluded Insurance Premiums has the meaning set forth in Section 17.1.9.1 of the Agreement.

Excluded Premium Increases has the meaning set forth in Section 17.1.9.1 of the Agreement.

Executive Director means the Executive Director of IFA and any successor thereto having substantially similar powers and authority.

Exempt Refinancing means:

(a) Any Refinancing that was fully and specifically identified and taken into account in the Financial Model and calculation of the Original Equity IRR;

(b) Amendments, modifications, supplements or consents to Funding Agreements and Security Documents, excluding extensions and renewals, and the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision that do not, individually or in the aggregate, provide a financial benefit to Developer;

(c) Any changes in taxation or Developer's accounting treatment or policies; and

(d) Any of the following acts by a Lender of senior lien priority Project Debt:

(i) The syndication of any of such Lender's rights and interests in the senior Funding Agreements;

(ii) The grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, in respect of the senior Funding Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or

(iii) The grant by such Lender of any other form of benefit or interest in either the senior Funding Agreements or the revenues or assets of Developer, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor.

Existing Utility Property Interest means any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

Extra Work means any Work in the nature of additional work, altered work or deleted work which is directly attributable to occurrence of a Relief Event and absent the Relief Event would not be required by the PPA Documents. The term "Extra Work" does not include Relief Event Delay.

Extra Work Costs means the incremental increase in the following costs of Developer directly attributable to Extra Work, which shall be calculated pursuant to Exhibit 17 (Extra Work Costs and Delay Costs Specifications) to the Agreement:

(a) Labor and burden costs;

(b) Material and supply costs;

(c) Equipment costs;

(d) Indirect costs and expenses excluding cost of funds (whether debt or equity) and excluding Lender charges, damages and penalties; and

(e) Profit.

Federal Requirements means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 23 (Federal Requirements) to the Agreement.

Final Acceptance means the occurrence for all Project Sections of all the events and satisfaction of all the conditions set forth in Section 5.8.4 of the Agreement, as and when confirmed by IFA's issuance of a certificate in accordance with the procedures and within the time frame established in Section 5.8.4 of the Agreement.

Final Acceptance Date means the date that Final Acceptance has been achieved for all Project Sections.

Final Acceptance Deadline means the deadline for achieving Final Acceptance for all Project Sections, as set forth in the Milestone Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Final Acceptance Milestone Payment Adjustment means the amount determined in accordance with Sections 4.1 and 4.2 of Exhibit 10 (Payment Mechanism) to the Agreement.

Final Acceptance Milestone Payment Amount means the amount determined in accordance with Sections 4.1 and 4.2 of Exhibit 10 (Payment Mechanism) to the Agreement.

Final CPM Schedule means the deliverable described in Section 1.5.2.1.4 and at Table 25-1 of the Technical Provisions.

Final Design means, depending on the context: (a) the Final Design Documents, which is a deliverable described at Table 25-1 of the Technical Provisions, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents, in either case.

Final Design Documents means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, specifications, reports, studies, calculations, electronic files, records and submittals, necessary or related to construction and maintenance of the East End Crossing or any portion thereof and any Utility/ies included in the Design Work or the Construction Work.

Final Environmental Impact Statement (FEIS) means the certain "Louisville-Southern Indiana Ohio River Bridges Project Final Environmental Impact Statement and Section 4(f) Evaluation" signed by the Federal Highway Administration on April 8, 2003.

Financial Close means the satisfaction or waiver of all conditions precedent set forth in Section 13.7.5 of the Agreement to the first utilization under the Initial Funding Agreements relating to the long-term financing of the Initial Project Debt.

Financial Close Deadline means the deadline for achieving Financial Close, which shall be either: (a) the date scheduled for Financial Close as set forth in the written Notice from Developer to IFA as provided in Section 13.7.2 of the Agreement, or (b) the date scheduled for Financial Close as set forth in the written Notice from IFA to Developer extending the date for Financial Close as provided in Section 13.7.2 of the Agreement, or (c) 120 days after issuance of the IPDC Commencement Notice by IFA as provided in Section 13.7.2 of the Agreement.

Financial Close Security means the bond or letter of credit in the amount of $20,000,000 provided by Developer to IFA under Section 6.6 of Volume I of the RFP (Instructions to Proposers).

Financial Director is the Key Personnel listed at Exhibit 2-H to this Agreement.

Financial Escrow has the meaning set forth in Section 23.6.2 of the Agreement.

Financial Model means the financial computer model, including the Financial Model Formulas and the related output, assumptions and information used by or incorporated in each of the Financial Model Formulas, that is:

(a) Represented by material contained on computer disks and printouts held as of the Effective Date in the escrow established under Section 23.6 of the Agreement and copies of which are held by IFA and Developer;

(b) Used as of the Effective Date, with inputs of the interest rates under the Initial Project Debt, to produce the financial forecasts, projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to initial Equity Members that result in achievement of the Equity IRR;

(c) The basis on which Developer and IFA entered into this Agreement; and

(d) Subject to an updated audit and opinion by an independent model auditor within two Business Days after the Effective Date, as provided in Section 12.2 of the Agreement.

Financial Model Formulas means the mathematical formulas that Developer and IFA have agreed upon as of the Effective Date, as the same may be changed by mutual written agreement of the Parties, for projecting Equity IRR, which mathematical formulas are used as part of the Financial Model and each Financial Model Update, but without the data and information used by or incorporated in the Financial Model or Financial Model Update.

Financial Model Update or **Update** means any update to the Financial Model prepared pursuant to Section 12.1 of the Agreement.

Financial Modeling Data means all back-up information in any media or format regarding the basis for Developer's assumptions, estimates, projections and calculations in its Proposal, in the Financial Model and in Financial Model Updates of revenues, pricing, costs, expenses, repayment of Project Debt, Distributions and internal rate of return, including:

(a) Appendix D-2 of the Proposal (Detailed Costing Form);

(b) The data book submitted with the Proposal, fully describing all assumptions underlying the estimates, projections and calculations in the Financial Model, revisions thereto pursuant to Section 12.1.1, and updates to such data book related to the Financial Model and Financial Model Updates;

(c) The step-by-step instructions on the procedure to run and to optimize the Financial Model Formulas, the Financial Model and Financial Model Updates;

(d) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for Appendix D-2 of the Proposal, as revised pursuant to Section 14.3.1;

(e) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) related to any Relief Event;

(f) All other supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge, fee, financing, equity return and revenue information used by Developer in the creation and derivation of its Proposal or the revisions pursuant to Section 12.1.1 of the Agreement, or of the Financial Model, or any Financial Model Update, or related to any Relief Event or Change Order.

Financial Plan means Developer's plan for financing the East End Crossing, which plan is set forth in Exhibit 2-C (Financial Plan) to the Agreement.

First Priority Costs means the following costs payable from the IFA First Priority Costs Fund:

(a) IFA's Costs incurred from and after the Baseline Substantial Completion Date, up to an annual cap equal to two million U.S. dollars ($2,000,000) for calendar year 2013 and an annual cap each calendar year thereafter equal to the cap for the immediately preceding calendar year increased by two and one-half percent (2.5%); provided that for any calendar year in which items of major maintenance and repair (including due to occurrence of Relief Events or due to Rehabilitation Work or Handback Requirements) are reasonably anticipated to be under design or construction, IFA shall have the right to increase the cap by its estimated increase in IFA's Costs of Oversight of such design and construction;

(b) The fees and costs of the custodian properly incurred under, and in accordance with, the Custody Agreement; and

(c) The fees and costs of the Project Trustee properly incurred under, and in accordance with, the Project Trust Agreement.

Fiscal Year means the consecutive 12-month period starting on July 1 and ending on June 30.

Flood Event means a "flood" (as defined by the Federal Emergency Management Agency) where flood waters reach two (2) or more acres of the Site measured, at or in excess of: (a) for the period commencing on the Effective Date up to and including the earlier of (i) the Final Acceptance Date and (ii) early termination of this Agreement, NAVD88 Elevation 438.88 (or its equivalent, successor measurement); or (b) for the period commencing the day subsequent to the Final Acceptance Date up to and including the end of the Term, NAVD88 Elevation 457.00 (or its equivalent, successor measurement), in each case as such measurement is officially determined and recorded by the U.S. National Oceanic and Atmospheric Administration's National Weather Service for the geographic region that includes the Site.

Force Account Estimate means an itemized estimate prepared by the railroad for the prescribed work to be done by the railroad to accommodate the East End Crossing. Prescribed work is paid for on the basis of actual costs and appropriate additives.

Force Majeure Event means the occurrence of any of the following events that materially and adversely affects performance of Developer's obligations, provided that such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of caution, due diligence, or reasonable efforts, by Developer or any Developer-Related Entity: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the East End Crossing, in each case occurring within the State of Indiana and/or the Commonwealth of Kentucky; (b) any act of terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to the East End Crossing; (c) nuclear explosion that causes direct physical damage to the East End Crossing, or radioactive contamination of the East End Crossing, (d) Flood Event, fire, explosion, gradual inundation caused by natural events, a tornado with an enhanced Fujita Score Rating of EF2, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting the physical improvements of the East End Crossing or performance of Work at the Site, (e) any governor-declared Emergency within the limits of the Project Right of Way, except one consisting of or arising out of traffic accidents and (f) a Seismic Event.

Forest Mitigation Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Forward Looking Termination for Convenience Amount means the amount calculated in accordance with Exhibit 22 (Terms for Termination Compensation) to the Agreement.

Funding Agreement means:

(a) Any loan agreement, funding agreement, account maintenance or control agreement, insurance or reimbursement agreement, intercreditor agreement, subordination agreement, trust indenture, agreement from any Equity Member in favor of any Lender, hedging agreement, interest rate swap agreement, guaranty, indemnity agreement, agreement between any Contractor and any Lender, or other agreement by, with or in favor of any Lender pertaining to Project Debt (including any Refinancing), other than Security Documents;

(b) Any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Developer for Project Debt (including any Refinancing); and

(c) Any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

GBR Envelope means the zone for Tunnel construction, as defined in Section 16.1.7 of the Technical Provisions, which limits the applicability of the baseline conditions set forth in the GBR.

General Inspection means an inspection to identify Defects and assess asset condition, as more particularly set forth in Section 22.5.3 of the Technical Provisions.

General Reserve Fund means the trust account of that name established and maintained under the Project Trust Agreement.

Geotechnical Baseline Report means the Geotechnical Engineering Report, LSIORBP Section 4 Tunnel Geotechnical Baseline Report, April 2012, by Golder Associates.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced professional designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Governmental Approvals, using accepted design and construction standards and criteria normally used on similar projects in Indiana, and engaged in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions.

Governmental Approval means any registration, permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided or issued by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the East End Crossing or the Work.

Governmental Entity means any federal, State, Commonwealth of Kentucky or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than IFA.

Guarantor means any Person that is the obligor under any guaranty in favor of IFA required under the Agreement, including any guaranty of the Design-Build Contract or any O&M Contract.

Handback Plan means the plan by that name described in Section 23.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Handback Requirements means the terms, conditions, requirements and procedures governing the condition in which Developer is to deliver the East End Crossing and the related Project Right of Way and Toll Collection System Locations to IFA upon expiration or earlier termination of the Agreement, as set forth in Section 23 of the Technical Provisions.

Handback Requirements Letter of Credit means a letter of credit delivered to IFA in lieu of the Handback Requirements Reserve Account, in accordance with Sections 6.13.5 and 17.3 of the Agreement.

Handback Requirements Reserve Account has the meaning set forth in Section 6.13.1 of the Agreement.

Hazardous Materials means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Law, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. For the avoidance of doubt, unexploded ordnance is not considered a Hazardous Material, although substances contained in or leaking from unexploded ordnance may be within this definition of Hazardous Material. "Hazardous Materials" includes the following:

(a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);

(b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(d) Any flammable substances or explosives;

(e) Any radioactive materials;

(f) Any asbestos or asbestos-containing materials;

(g) Any lead and lead-based paint;

(h) Any radon or radon gas;

(i) Any methane gas or similar gaseous materials;

(j) Any urea formaldehyde foam insulation;

(k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(l) Pesticides;

(m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, Users or any Persons in the vicinity of the East End Crossing or to the indoor or outdoor Environment; and

(n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials and Recognized Environmental Conditions encountered, impacted, disturbed, released, caused by or occurring in connection with the East End Crossing, Project Right of Way or the Work, as well as investigation, characterization and remediation of such Hazardous Materials and Recognized Environmental Conditions. Hazardous Materials Management may include sampling, handling, stock-piling, storing, backfilling in place, asphalt batching, recycling, dewatering, treating, cleaning up, excavating, removing, remediating, transporting and/or disposing off-site of Hazardous Materials and otherwise managing Recognized Environmental Conditions, whichever approach is effective, most cost-efficient and authorized under applicable Law.

Hazardous Materials Management Plan (HMMP) means Developer's plan for Hazardous Materials Management both within and outside the Project Right of Way during construction of the East End Crossing and Utility Adjustments included in the Construction Work, and during operation of O&M Limits, as more particularly set forth in Section 7.9.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Historic Preservation Plans means studies that have been prepared by IFA pursuant to the Section 106 Memorandum of Agreement that include contextual descriptions of various historic districts or properties and recommended mitigation measures.

Holiday means New Years Day, Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day. In years when one of these days fall on a weekend, that particular Holiday will be the observed Holiday

Hourly Flows means the number of passenger car units (pcus) traveling in one direction on Project Section 4 in one hour per lane passing by or through a measurement location for each direction of travel approved by IFA, measured and reported by Developer if, as and when required under the PPA Documents for each approved measurement location for hour long time periods commencing every 15 minutes of every hour commencing on and after the Substantial Completion Date, 24 hours a day, seven days per week.

Hydraulic Report means the deliverable described at Table 25-1 of the Technical Provisions.

IFA means the Indiana Finance Authority, its duly appointed designees, and any entity succeeding to the powers, authorities and responsibilities of IFA invoked by or under the PPA Documents.

IFA Appropriations Fund means the fund by the name established under the Project Trust Agreement.

IFA-Caused Delays means any of the following events, to the extent they result in a delay or interruption in performance of any material Developer obligation under the Agreement, and provided such events are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract, the requirements of the PPA Documents (including Developer's obligations set forth in Section 4.3.10 of the Agreement) or Law of any of the Developer-Related Entities, and further provided that such events (or the

effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer:

(a) Failure of IFA:

(i) To issue NTP1 within 30 days after satisfaction of all of the conditions precedent to issuance of NTP1 as set forth in Section 5.3.1 of the Agreement, or

(ii) To issue NTP2 within 30 days after satisfaction of all of the conditions precedent to issuance of NTP2 as set forth in Section 5.6.1 of the Agreement; or

(iii) To issue the certificate of Substantial Completion within 5 days after DB Substantial Completion and satisfaction of all O&M Conditions Precedent as provided in Section 5.8.1;

(b) IFA Changes;

(c) Failure or inability of IFA to make available to Developer for construction:

(i) A Project Right of Way parcel other than Additional Properties by the applicable "Anticipated Date Available" set forth in Attachment 21-1 of the Technical Provisions; or

(ii) An Additional Property that IFA is to acquire, within 550 days after IFA's receipt and approval of Developer's written request, information required under Section 21.1 of the Technical Provisions, and drawing in accordance with Section 5.4.3 of the Agreement, subject, however, to (A) the exceptions and limitations set forth in Section 15.7.2 of the Agreement and (B) IFA's right to extension of such time period as necessary due to IFA's curtailment, suspension or cessation of acquisition activities as set forth in Section 5.4.8 of the Agreement;

provided that "make available" means that Developer shall have the right to enter the parcel for the purpose of commencing and completing construction in accordance with the PPA Documents as the result of IFA's having secured a temporary or final right of entry, permit or other agreement, or an order of possession, through settlement, negotiation, the eminent domain process or otherwise;

(d) Failure or inability of IFA to make available to Developer for operations any of the property described in clauses (c)(i) and (ii) above by the Substantial Completion Date, subject, however, in the case of clause (c)(ii) above to the exception and right of extension described in such clause, and provided that "make available" means that Developer shall have the right to enter the parcel for the purposes and activities of Developer contemplated under the PPA Documents after the Substantial Completion Date, as the result of IFA's having secured a temporary or final right of entry, permit or other agreement, or an order of possession, through settlement, negotiation, the eminent domain process or otherwise;

(e) Failure of IFA to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters submitted to IFA after the Effective Date for which response is required under the PPA Documents as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the PPA Documents, or if no time period is indicated, within a reasonable time, taking into consideration (i) the nature, importance and complexity of the Submittal or matter, (ii) the number of Submittals or such other items which are then pending for IFA's response, (iii) the completeness and accuracy of the Submittal or such other item, and (iv) Developer's performance and history of Nonconforming Work under the PPA Documents, following delivery of written Notice from Developer requesting such action in accordance with the terms and requirements of the PPA Documents;

(f) Suspension of Work orders issued by IFA pursuant to Section 19.2.8.3 of the Agreement, provided that:

(i) Any suspension of Work arising from Force Majeure Events, litigation, or security threat rule, order or directive shall not be considered an IFA-Caused Delay (although it may qualify as a Relief Event under clause (j), (s) or (t), respectively of the definition of "Relief Event"), despite the fact that IFA may specifically direct Developer to suspend the Work; and

(ii) Any suspension of Work arising from presence or Release of Hazardous Materials, IFA's performance of data recovery respecting archeological, paleontological, historical or cultural resources, or IFA's actions related to endangered or threatened species shall not be considered an IFA-Caused Delay (although it may qualify as a Relief Event under clause (m), (n), (o) or (q), respectively, of the definition of "Relief Event"), despite the fact that IFA may specifically direct Developer to suspend the Work. Any proper suspension of Work pursuant to Section 19.2.8.1 of the Agreement shall not be considered an IFA-Caused Delay;

(g) Uncovering of the Construction Work, so long as (i) Developer shall have given IFA prior notification (in accordance with the terms of the PPA Documents, but in no case less than five (5) Business Days' prior notification prior to covering the relevant portion of the Construction Work) of Developer's intent to cover such portion of the Construction Work, (ii) such portion has, in fact, been covered, (iii) the covering itself is not Defective and otherwise in accordance with the PPA Documents and (iv) upon uncovering, that portion of the Construction Work that had been covered is determined not to be Defective and is otherwise in accordance with the PPA Documents. For purposes of clarity:

(i) all costs and delays arising out of or relating to uncovering of the Construction Work is not, nor shall be deemed to be, an IFA-Caused Delay if such Construction Work was (1) covered without proper prior notification to IFA, (2) Defective or (3) contrary to the requirements in the PPA Documents;

(ii) Construction Work that becomes Defective by virtue of the uncovering, where such uncovering would otherwise be an IFA-Caused Delay shall

itself be an IFA-Caused Delay, so long as Developer conducts the uncovering in accordance with Project Standards; and

(iii) Developer bears the burden of proof to establish that it had given, or caused to be given, and IFA received, or was deemed to receive, proper prior notification of the covering;

(h) IFA's issuance of the notice to Developer extending the date for Financial Close as provided in Section 13.7.2 of the Agreement, if the new date for Financial Close as set forth in IFA's notice is more than 45 days after the original date for Financial Close as set forth in Developer's notice to IFA as provided in Section 13.7.2 of the Agreement, for the period commencing on the 46th date after the original date for Financial Close until the date of Financial Close set forth in IFA's notice to Developer; and

(i) Failure or inability on the part of IFA to obtain the IFA-Provided Approvals on the dates set forth in Attachment 07-01 of the Technical Provisions except delay to the extent attributable to any of the differences described in Section 4.3.4 of the Agreement unless such differences are due to an IFA Change.

IFA Change means any of the following events:

(a) Any change in the scope of the Work that IFA has directed Developer to perform through a Change Order as described in Section 16.1 of the Agreement or a Directive Letter pursuant to Section 16.3 of the Agreement;

(b) Unless expressly provided otherwise in the PPA Documents, any change in the Technical Provisions or Safety Standards applicable to the Work pursuant to, and compliant with the conditions of, Section 5.2.5, that IFA has directed Developer to perform through a Change Order pursuant to Section 16.1 of the Agreement or a Directive Letter pursuant to Section 16.3 of the Agreement; and

(c) Any other event that the PPA Documents expressly state shall be treated as an "IFA Change."

IFA Construction Quality Manager has the meaning set forth in Figure 2-1 of the Technical Provisions.

IFA Default has the meaning set forth in Section 19.3.1 of the Agreement.

IFA Design Quality Manager has the meaning set forth in Figure 2-1 of the Technical Provisions.

IFA First Priority Costs Fund means the fund by the name established under the Project Trust Agreement.

IFA-Initiated Approvals means the Environmental Approvals identified in Section 7.4 of the Technical Provisions that have not been obtained as of the Effective Date.

IFA Landscaping Work Accounting has the meaning set forth in Section 5.10.9.2 of the Agreement.

IFA Notice has the meaning set forth in Section 21.2.1 of the Agreement.

IFA-Provided Approvals means the Governmental Approvals for the East End Crossing obtained by IFA as of the Setting Date as specifically listed and identified as such in Attachment 07-01 to the Technical Provisions.

IFA Quality Manager has the meaning set forth in Section 4.3.1 of the Technical Provisions.

IFA Quality Oversight Verification Reports means reports prepared by IFA documenting results of IFA quality verification activities as described in Section 4.3.1 of the Technical Provisions.

IFA REAA Accounting has the meaning set forth in Section 15.8.4 of the Agreement.

IFA Release(s) of Hazardous Material means, except as provided below, the introduction in, on or under the Project Right of Way of Hazardous Material directly by IFA, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any Developer-Related Entity). IFA Release(s) of Hazardous Material excludes, however, (a) any Hazardous Materials so introduced that are in or part of construction or other materials, equipment and hardware incorporated into the East End Crossing and (b) any Known or Suspected Hazardous Materials.

IFA Utility Agreement has the meaning set forth at Section 18.1.2 of the Technical Provisions.

IFA's Costs means for any month or any Fiscal Year, as applicable, fees, costs and expenses of all kinds incurred by IFA after the Effective Date, including:

(a) Salaries, wages and benefits of employees, rent, office costs, advisor and consultant costs, including costs of traffic and revenue studies and updates thereto, and attorneys' fees;

(b) Costs to acquire property, easements, rights of entry, rights of access and other interests necessary for construction, operation or maintenance of the East End Crossing; and

(c) All other organizational, administrative, operating and overhead fees, costs and expenses of IFA;

provided that "IFA's Costs" excludes (i) payments due from IFA to Developer under the Agreement and (ii) IFA's Recoverable Costs, and other amounts, due from Developer under the Agreement.

IFA's Recoverable Costs means:

(a) The costs of any assistance, action, activity or Work undertaken by IFA for which Developer is liable or is to reimburse IFA under the terms of the PPA Documents, including the charges of third party experts, consultants and contractors and reasonably allocated wages, salaries, compensation, benefits

and overhead of IFA staff and employees performing such action, activity or Work; plus

(b) Third-party costs IFA incurs to publicly procure any such third party experts, consultants or contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Indiana Department of Law or IFA in-house counsel), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with investigating and defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the PPA Documents (or if none, at the time incurred by IFA) and continuing until paid in full.

Incident means a localized disruption to the free flow of traffic or safety of Users on the East End Crossing.

Incident Management Plan means Developer's plan for detection and response to Incidents, as part of the PMP, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Incidental Charges means:

(a) Reasonable fees approved by IFA in writing for recovering the costs of issuing paper account statements;

(b) Reasonable fees approved by IFA in writing for recovering the costs of issuing invoices to post-paid commercial account customers;

(c) Reasonable fees approved by IFA in writing chargeable to a customer for insufficient funds in bank accounts against which customer checks are drawn; and

(d) Other reasonable fees and charges approved by IFA in writing in its good faith discretion for provision to customers of optional incidental services that IFA approves in writing in its good faith discretion.

Indemnified Parties means IFA, the Department, KYTC, KPTIA, the State, the Commonwealth of Kentucky and each of their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, agents, consultants and employees.

Indiana Approach has the meaning set forth in Section 1.1 of the Technical Provisions.

Indiana Design Manual means the current INDOT Design Manual, which is posted on the INDOT website at http://www.in.gov/indot/design_manual/.

Indiana Historic Preservation Advisory Team means an Indiana advisory group for the Project that was formed pursuant to the Section 106 Memorandum of Agreement.

Indiana Revenue Share means 50% of the Toll Revenues for the Project.

Indiana Revenue Share Account means the account by that name established under the Custody Agreement.

Informal Resolution Procedures has the meaning set forth in Section 19.6.3 of the Agreement.

Initial Funding Agreements means the Funding Agreements establishing the rights and obligations pertaining to the Initial Project Debt, as specifically identified in Exhibit 13 (List of Initial Funding Agreements and Initial Security Documents) to the Agreement.

Initial Project Debt means the Project Debt to originally finance the East End Crossing and Work, in the total face amount at each lien priority, and with the particular Lenders, set forth in Exhibit 13 (List of Initial Funding Agreements and Initial Security Documents) to the Agreement, which Project Debt is evidenced by the Initial Funding Agreements and secured by the Initial Security Documents.

Initial Security Documents means the Security Documents securing the Initial Project Debt, as specifically identified in Exhibit 13 (List of Initial Funding Agreements and Initial Security Documents) to the Agreement.

Initial Senior Project Debt means Initial Project Debt, other than Subordinate Debt, in the face amount of at least that set forth in the Financial Plan attached to the Agreement as Exhibit 2-C (Financial Plan) to the Agreement from one or more Institutional Lenders (or other Lenders if the Collateral Agent is an Institutional Lender), evidenced or to be evidenced by the applicable Initial Funding Agreements and secured by the applicable Initial Security Documents in favor of such Lender(s).

Installation Practices for Outdoor Fiber-Optic Cable Systems Manual means the deliverable described at Table 25-1 of the Technical Provisions.

Institutional Lender means:

(a) The United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(b) Any (i) commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of any state, or (iii) pension fund, foundation or university or college endowment fund (provided that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions);

(c) Any "qualified institutional buyer" under Rule 144(a) under the U.S. Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or

(d) Any other financial institution or entity designated by Developer and approved in writing by IFA (provided that such institution or entity, in its activity under this Agreement, is acceptable under then current guidelines and practices of IFA);

provided, however, that each such entity (other than entities described in clause (c) and clause (d) of this definition), or combination of such entities if the Institutional Lender is a combination of such entities, shall have individual or combined assets, as the case may be, of not less than $1 billion. The foregoing dollar minimums shall automatically increase at the beginning of each calendar year by the percentage increase, if any, in the CPI during the immediately preceding calendar year, determined by comparing the CPI most recently published for the immediately preceding year with the CPI most recently published for the second preceding year.

Insurance Policies means all of the insurance policies Developer is required to carry pursuant to Section 17.1 and Exhibit 19 (Insurance Coverage Requirements) to the Agreement.

Insurance Premium Benchmark Amount has the meaning set forth in Section 17.1.9.8 of the Agreement.

Insurance Review Report has the meaning set forth in Section 17.1.9.2 of the Agreement.

Insurance Unavailability means either:

(a) Any Insurance Policy coverage required under Section 17.1 of the Agreement and Exhibit 19 (Insurance Coverage Requirements) to the Agreement is completely unavailable from insurers meeting the financial requirements set forth in Section 17.1.2.1; or

(b) Provision of all such Insurance Policy coverages has become unavailable at Commercially Reasonable Insurance Rates from insurers meeting the financial requirements set forth in Section 17.1.2.1.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the East End Crossing, East End Crossing design data or East End Crossing traffic data. Intellectual Property includes traffic management algorithms, and software, source code and source code documentation used in connection with the East End Crossing (including software, source code and source code documentation used for management of traffic on the East End Crossing). Intellectual Property also includes the Financial Model Formulas, Financial Model and Financial Modeling Data. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Intellectual Property Escrow has the meaning set forth in Section 23.5.2 of the Agreement.

Intelligent Transportation System (ITS) has the meaning set forth in Section 19 of the Technical Provisions.

Intelligent Vehicle Highway System (IVHS) means smart vehicle and smart highway technologies to improve the safety, efficiency and environmental impact of highway facilities.

Interpretive Engineering Decision has the meaning set forth in Section 3.7.1 of the Agreement.

IPDC Commencement Notice has the meaning set forth in Section 13.7.2 of the Agreement.

ITS Operations and Maintenance Plan has the meaning set forth in Section 19.7.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Kentucky Approach has the meaning set forth in Section 1.1 of the Technical Provisions.

Kentucky Historic Preservation Advisory Team means a Kentucky advisory group for the Project that was formed pursuant to the Section 106 Memorandum of Agreement.

Kentucky Revenue Share means 50% of the Toll Revenues for the Project.

Kentucky Revenue Share Account means account by that name established under the Custody Agreement.

Key Contract means any one of the following Contracts for Work Developer causes to be performed:

(a) All prime construction Contracts, including each Design-Build Contract;

(b) The Contract or Contracts with the Lead Engineering Firm;

(c) All O&M Contracts, including the Contracts with the Lead Operations and Maintenance Contractor;

(d) All project or program management services Contracts; and

(e) All other prime Contracts with a single contractor (or a single contractor and its Affiliates) which individually or in the aggregate total in excess of $25 million.

The term "Key Contracts" shall mean all such Contracts in the aggregate or more than one of such Contracts.

Key Contractor means the Contractor under any Key Contract.

Key Personnel means those individuals appointed by Developer and approved by IFA from time to time to fill the “Key Personnel” positions identified in Section 1.5.1 of the Technical

Provisions. The specific individuals appointed by Developer and approved by IFA to initially fill certain of the Key Personnel positions are identified in Exhibit 2-H (Equity Members, Contractors and Key Personnel Commitments) to the Agreement.

Known or Suspected Hazardous Materials means Hazardous Materials and Recognized Environmental Conditions that are known or reasonably suspected to exist as of the Setting Date from information or analysis contained in or referenced in the Reference Information Documents, including any of the phase 1 environmental site assessments and reports contained in the Reference Information Documents as of the Setting Date. Known or Suspected Hazardous Materials include Hazardous Materials and Recognized Environmental Conditions arising in or from any of the Hazardous Materials sites listed in the Final Environmental Impact Statement, the Supplemental Final Environmental Impact Statement and Section 7.9 of the Technical Provisions.

Landscaping Statement has the meaning set forth in Section 5.10.6.1 of the Agreement.

Landscaping Work has the meaning set forth in Section 5.10.1 of the Agreement.

Landscaping Work Allowance has the meaning set forth in Section 5.10.3 of the Agreement.

Law or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by IFA within the scope of its administration of the PPA Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the East End Crossing or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws," however, excludes Governmental Approvals.

Lead Bridge Engineer is the Key Personnel listed at Exhibit 2-H to this Agreement.

Lead Engineer has the meaning set forth in Section 3.2.4 of the Technical Provisions. The Lead Engineer is Key Personnel listed at Exhibit 2-H to this Agreement.

Lead Engineering Firm means [INSERT NAME], a [_____].

Lead Operations and Maintenance Contractor means [INSERT NAME], a [_____].

Lead Underwriter has the meaning set forth in the RFP.

Lead Tunnel Engineer is the Key Personnel listed at Exhibit 2-H to this Agreement.

Lender means each of the holders and beneficiaries of Security Documents and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

Lender Notice has the meaning set forth in Section 21.3.1 of the Agreement.

LIBOR means the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the bases of a 360-day year for the actual days elapsed.

Lockbox Account has the meaning set forth in Exhibit 15 (Summary of Terms for Custody Agreement) to the Agreement.

Long Stop Date means the outside deadline for achieving Substantial Completion, as set forth in the Milestone Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Losses means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Mainline means the main alignment of the East End Crossing roadway, which is continuous through all Project Sections.

Maintenance-of-Traffic Manager has the meaning set forth in Section 12.3.2 of the Technical Provisions.

Maintenance Plan (MP) means Developer's plan for managing maintenance during the Operating Period, as more particularly described in Section 22.4.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Maintenance Work Report has the meaning set forth in Section 22.4.1.3 of the Technical Provisions.

Major Environmental Approvals means those Environmental Approvals identified in Attachment 7-1 of the Technical Provisions that are not IFA-Provided Approvals.

Major Environmental Approval Deadline means the end of the expected time necessary to secure each of the Major Environmental Approvals as set forth in Attachment 7-1 of the Technical Provisions.

Mass Concrete Thermal Control Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Maximum Availability Payment or **MAP** means the maximum Availability Payment that Developer can earn in a given Fiscal Year from and after the Substantial Completion Date, as calculated in accordance with Exhibit 10 (Payment Mechanism) to the Agreement, and as may be further adjusted in accordance with the PPA Documents.

Milestone means each of the milestones set forth at Exhibit 4 (Milestone Payment Amounts) to the Agreement.

Milestone Agreement has the meaning set forth in Section 10.1.1.1 of the Agreement.

Milestone Payment means the payment(s) identified in Section 10.1.1 of the Agreement.

Milestone Payment Amount means the amount of the Milestone Payment(s) identified in Section 10.1.1, calculated pursuant to Section 4 of Exhibit 10 (Payment Mechanism) and payable on the dates identified in Exhibit 4 (Milestone Payment Amounts) of the Agreement, subject to adjustment as provided in Section 10.1.3 and Exhibit 10.

Milestone Schedule means the schedule of deadlines set forth in Exhibit 4 (Milestone Payment Amounts) to the Agreement.

Milestone Schedule Deadline means one or more of the NTP2 Conditions Deadline, Construction Work Commencement Deadline, Baseline Substantial Completion Date, Final Acceptance Deadline and Long Stop Date, as the case may be.

MP Appropriations Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

MP Disputed Amounts Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

MP Payment Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

MP Relief Event and Termination Compensation Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

NEPA Documents means each document issued by FHWA pursuant to NEPA for the East End Crossing and/or the Project as it relates to the East End Crossing, including the Final Environmental Impact Statement, the Supplemental Final Environmental Impact Statement any record of decision entered in respect thereof, and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

New Agreements has the meaning set forth in Section 21.11.2 of the Agreement.

Noncompliance Event means any Developer breach or failure to meet the minimum performance requirements set forth in Attachment 12-1 of Exhibit 12 to the Agreement, as those requirements may be revised from time to time. Any given "Noncompliance Event" is either a Construction Noncompliance Event or an O&M Noncompliance Event.

Noncompliance Points means the points that may be assessed for certain breaches or failures to perform by Developer, as set forth in Attachment 12-1 of Exhibit 12 to the Agreement.

Nonconformance Report means a report issued by either IFA or Developer pursuant to the terms and conditions of the Quality Plan.

Nonconforming Work means Work that does not conform to (and does not exceed) the requirements of the PPA Documents, the Governmental Approvals, applicable Law, the Design Documents or the Construction Documents.

Non-Discriminatory O&M Change means any alteration or change (including addition) to provisions in the Technical Provisions and Safety Standards relating to the O&M Work of general application to the Department transportation facilities, including revision to manuals, publications and guidelines, adoption of new manuals, publications and guidelines, changed, added or replacement standards, criteria, requirements, conditions, procedures and specifications, including Safety Standards, relating to O&M Work of general application to the Department transportation facilities. A Non-Discriminatory O&M Change is an IFA Change.

Notice means a written notice, notification, correspondence, order or other communication given under this Agreement to a Party that complies with the prescriptions set forth in Section 25.11.

Notice of Determination has the meaning set forth in Section 11.2.1 of the Agreement.

Notice of Termination for Convenience means written Notice issued by IFA to Developer terminating the Agreement for convenience.

Noxious Weed Control Plan means the deliverable described at Table 25-1 of the Technical Provisions.

NTP1 means a written Notice issued by IFA to Developer authorizing Developer to proceed with the portion of the Work described in Section 5.3.1 of the Agreement.

NTP1 Conditions Deadline means the outside date set forth in the Milestone Schedule by which Developer is obligated under the Agreement to perform and complete the Work and obtain IFA's approval of such Work necessary to issuance of NTP1, as set forth in Section 5.3.1 of the Agreement, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

NTP2 means a written Notice issued by IFA to Developer authorizing Developer to proceed with the balance of the Work described in Section 5.6.1 of the Agreement.

NTP2 Conditions Deadline means the outside date set forth in the Milestone Schedule by which Developer is obligated under the Agreement to perform and complete the Work and obtain IFA's approval of such Work necessary to issuance of NTP2, as set forth in Section 5.6.1 of the Agreement, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Nutrient Management Plan means the deliverable described at Table 25-1 of the Technical Provisions.

O&M Conditions Precedent means the conditions set forth in Section 5.8.4 of the Agreement, as and when confirmed by IFA's issuance of a certificate in accordance with the procedures and within the time frame established in Section 5.8.4 of the Agreement.

O&M Contract means any Contract between Developer or an Affiliate and a third party (i.e. a Person other than IFA) for management, direction, supervision or performance of the

O&M Work or any portion thereof. The term "O&M Contract" includes the Contract with the Tolling Systems Integrator. There may be more than one O&M Contract concurrently in effect.

O&M Contractor means the Contractor under any O&M Contract. There may be more than one O&M Contractor concurrently performing O&M Work.

O&M Limits has the meaning set forth in Section 22.1.4.1 of the Technical Provisions.

O&M Noncompliance Event means the failure to meet one of the minimum performance requirements during the Operating Period in Attachment 12-1 of Exhibit 12 within the applicable cure period (if any).

O&M Period Noncompliance Point has the meaning set forth in Section 3.8 of Exhibit 10 (Payment Mechanism) to the Agreement.

O&M Quality Plan has the meaning set forth in Section 22.1.8 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

O&M Records means all data in connection with the O&M Work, including (a) all inspection and inventory records, whether generated by Developer or a third party, (b) any communication to and/or from IFA or a third party, and (c) any information system (as may be introduced or amended by IFA from time to time) in connection with the O&M Work that IFA requires Developer to use, implement or operate.

O&M Safety Plan has the meaning set forth in Section 22.1.7 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

O&M Work means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including Planned Maintenance, Rehabilitation Work and Handback Requirements Work, during the Operating Period.

Open Book Basis means allowing IFA to review all underlying assumptions, data, documents and information associated with the Financial Model, each Financial Model Update, pricing or compensation or adjustments thereto, costs of the Work, Extra Work Costs, Delay Costs, costs claims under Section 15.2 or 15.3 of the Agreement, schedule, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, swap and hedge rates, insurance rates, bonding rates, letter of credit fees, overhead, profit, traffic volumes, and other items reasonably required by IFA to satisfy itself as to validity or reasonableness.

Operating Period means for the period starting on the Substantial Completion Date and ending at the end of the Term.

Operations and Maintenance Manager is the Key Personnel listed at Exhibit 2-H to this Agreement.

Operations and Maintenance Plan (OMP) means Developer's plan for managing operations and maintenance during the Operating Period, as more particularly described in

Section 22.1.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Operations Report means the quarterly operations report Developer submits to IFA for the O&M Work as set forth in Section 22.2.2 of the Technical Provisions.

Optical Character Recognition (OCR) means the process of converting an image to text.

Original Equity IRR means the Equity IRR projected in the Financial Model, which is equal to ___%.

Other IFA Costs Fund means the fund by that name established under the Project Trust Agreement.

Oversight means monitoring, inspecting, sampling, measuring, spot checking, attending, observing, testing, investigating and conducting any other oversight respecting any part or aspect of the East End Crossing or the Work, including all the activities described in Section 3.4.1.2 of the Agreement.

Owner means IFA, for purposes of the Technical Provisions.

Owner Verification Tests means the material tests performed in accordance with the applicable IFA test method to verify the accuracy of the tests, inspections and audits performed by or on behalf of Developer pursuant to the approved Construction QA/QC Plan to ensure that only materials of specified quality or better are accepted and incorporated into the East End Crossing.

PABs means bonds, notes or other evidence of indebtedness issued by the PABs Issuer pursuant to the provisions of Internal Revenue Code Sections 142(a)(15) and (m) (which acronym stands for "private activity bonds").

PABs Issuer means IFA solely in its capacity of exercising its authority under Indiana Law to issue the PABs.

Party means Developer or IFA, as the context may require, and "**Parties**" means Developer and IFA, collectively.

Pavement Design Reports means the deliverable described at Section 10.3.2 of the Technical Provisions.

Payment Bond means one or more payment bonds in place as a condition to issuance of NTP2 and commencement of the D&C Work, as more particularly set forth in Section 17.2.1 of the Agreement.

Performance and Measurement Criteria means Attachment 12-1 of Exhibit 12 to the Agreement.

Performance and Measurement Table means Attachment 22-1 to the Technical Provisions.

Performance Inspection means a detailed inspection of the Performance Sections undertaken by Developer during the Operating Period in accordance with Section 22.5.5 of the Technical Provisions to establish an Asset Condition Score for each Element Category and verify compliance with the Performance Requirements and the other requirements of the PPA Documents.

Performance Requirements means for each Element of the East End Crossing during the Operating Period, the requirements set forth in Performance and Measurement Criteria in the column headed "Performance Requirement" or in succeeding Performance and Measurement Tables under such column, in Attachment 12-1 of Exhibit 12 to the Agreement.

Performance Section means a defined section of the East End Crossing for the purpose of audit, inspection and measurement. A Performance Section includes all travel lanes including Mainline lanes, shoulders and ramps of the roadway operating in one direction over a length of approximately 0.1 miles, together with all Elements of the East End Crossing and Related Transportation Facilities within the Project Right of Way associated with the relevant approximately 0.1 mile length of roadway.

Performance Security means one or more performance bonds or letters of credit in place as a condition to issuance of NTP2 and commencement of the D&C Work, as more particularly set forth in Section 17.2.1 of the Agreement.

Permitted Closure means, subject to Section 15.11 of the Agreement:

(a) Closures for performance of properly scheduled and executed Planned Maintenance as provided in Section 22.4 of the Technical Provisions;

(b) A Closure due to an Emergency that is not the result of the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity nor considered a Relief Event, provided Developer is using commercially reasonable efforts to:

(i) Respond to the Emergency in accordance with the requirements of the PPA Documents;

(ii) Mitigate the impact of the Emergency;

(iii) Reopen the affected traffic lane(s) and ramps as quickly as possible to traffic; and

(iv) Minimize the impact of Developer's activities to traffic flow;

(c) A Closure due to utility installation work during the Operating Period as provided in Section 6.1.5 of the Agreement, provided Developer is using commercially reasonable efforts to:

(i) Avoid or minimize the impact thereof on traffic flow, and

(ii) Reopen the affected traffic lane(s) and ramps as quickly as possible to traffic;

(d) A Closure specified, caused or ordered by, and continuing only for so long as required by, IFA or any Governmental Entity (other than in its capacity as a Utility Owner), including Closures caused by a Relief Event described in clause (e), (s) or (t) of the definition of Relief Event, except to the extent (i) otherwise provided in Section 15.11 as to clause (s) or (t), or (ii) such Closure is the result of the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity;

(e) A Closure as a result of a Relief Event described in clause (g), (h), (j), (k) or (n) of the definition of Relief Event, except to the extent otherwise provided in Section 15.11 as to clause (j) or (n) and provided Developer is using commercially reasonable efforts to:

(i) Mitigate the impact of the Relief Event;

(ii) Reopen the affected traffic lane(s) and ramps as quickly as possible to traffic; and

(iii) Minimize the impact of Developer's activities to traffic flow;

(f) A Closure due to any other Relief Event not covered under clause (d) or (e) of this definition of Permitted Closure shall be deemed a Permitted Closure only insofar as Developer's response to such Relief Event is undertaken as Planned Maintenance in order to manage, mitigate or resolve the effects of the Relief Event; or

(g) A Closure necessary to accommodate future construction of Related Transportation Facilities constructed by others, provided Developer is using commercially reasonable efforts to:

(i) Mitigate the impact of the Closure; and

(ii) Reopen the affected traffic lane(s) and ramps as quickly as possible to traffic.

Notwithstanding the foregoing, in the event that any traffic lane is the subject of a Permitted Closure, and an Unavailability Event occurs in the traffic lane(s) remaining in service, then the traffic lanes subject to the Permitted Closure also shall be deemed to be subject to an Unavailability Event.

Persistent Developer Default means:

(a) Accumulation of assessed Noncompliance Points, including those assessed on account of breaches or failures that have been cured, at or above any of the trigger points set forth in Section 2.1 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default) to the Agreement; or

(b) Accumulation at or above any of the trigger points set forth in Section 2.2 of Exhibit 12 (Noncompliance Points System and Persistent Developer Default) to the Agreement of non-material breaches or failures to timely observe or perform or to cause to be observed or performed any covenant, agreement, obligation,

term or condition required to be observed or performed by Developer under the PPA Documents and not otherwise the subject of a Notice declaring a Developer Default, including non-material breaches or failures to perform the Design Work, Construction Work or O&M Work in accordance with the PPA Documents.

For the purpose of clause (b) above, a breach or failure to perform shall be counted:

(i) Only if it is the subject of a written Notice from IFA to Developer, except that no Notice shall be required to count continuation of the breach or failure to perform beyond the applicable cure period as a new and separate breach or failure to perform, as described in Section 11.3.5 of the Agreement;

(ii) Regardless of whether it is cured;

(iii) Regardless of whether it is of the same or different type, nature or character as any other breach or failure to perform included in the count; and

(iv) Regardless of whether it is the basis for assessment of Noncompliance Points.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity, as well as IFA.

Planned Maintenance means O&M Work that has been properly scheduled and executed in accordance with Section 22.4 of the Technical Provisions.

Plans means (only where capitalized) the plans, profiles, typical cross sections, standard drawings, working drawings, and supplemental drawings or exact reproductions thereof which show the location, character, dimensions, and details of the work to be done.

Plant and Turf Establishment Certification Package has the meaning set forth in Section 5.7.1 of the Technical Provisions.

Post-Delivery Test Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Post Termination Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

PPA Documents has the meaning set forth in Section 1.2 of the Agreement.

Preliminary Project Baseline Schedule means the high level, logic-based critical path schedule representing Developer's plan to complete performance of the Work beginning on the date of NTP1 and concluding with Final Acceptance, as set forth in Exhibit 2-B (Preliminary Project Baseline Schedule) to the Agreement.

Prepaid Customers Account has the meaning set forth in Exhibit 15 (Summary of Terms for Custody Agreement) to the Agreement.

Pre-Refinancing Data means all relevant data in relation to a proposed Refinancing other than a proposed Exempt Refinancing under clause (c) or (d) of the definition of Exempt Refinancing and calculation of the estimated Refinancing Gain, including:

(a) Details of actual and projected timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the anticipated date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the anticipated date of Refinancing to the end of the Term;

(b) Information on the actual and projected cash flows of Developer from the Effective Date to the anticipated date of Refinancing, and of projected cash flows of Developer from the anticipated date of Refinancing to the end of the Term;

(c) Details of the actual and projected timing and amounts of Distributions from the Effective Date to the anticipated date of Refinancing and of projected timing and amounts of Distributions from the anticipated date of Refinancing to the end of the Term;

(d) A copy of the pre-Refinancing Financial Model as updated by Developer, which shall be identical to any presented to the proposed Refinancing Lender(s);

(e) A copy of all term sheets or all other relevant documentation and information in relation to the terms of the proposed Refinancing;

(f) A copy of the proposed post-Refinancing Financial Model as updated by Developer, which shall be identical to any presented to the proposed Refinancing Lender(s);

(g) Information on all relevant assumptions, including tax assumptions and where appropriate back up data and tax opinions, for the projections in the pre-Refinancing and post-Refinancing Financial Models as updated by Developer;

(h) A detailed calculation of the estimated Refinancing Gain and IFA's share thereof (if any) following the procedures set forth in Exhibit 14 (Calculation and Payment of Refinancing Gain) to the Agreement; and

(i) All other information IFA may reasonably request in relation to the proposed Refinancing and related calculations and assumptions.

Principal Project Documents means each Design-Build Contract, each O&M Contract, and the escrow agreements for the Intellectual Property Escrow(s) and Financial Model Escrow.

Progress Report has the meaning set forth in Section 1.5.2.1.3 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Project means the Louisville-Southern Indiana Ohio River Bridges Project, of which the East End Crossing is a part.

Project Adjusted Costs means those costs and expenses that have actually been incurred by or on behalf of Developer directly in connection with the design, acquisition or

construction of the East End Crossing, as well as in connection with Rehabilitation Work, less the Milestone Payment Amount actually paid by IFA. Notwithstanding the foregoing, Project Adjusted Costs do not include capitalized interest and other financing costs, professional and advisory fees, Developer overhead and administrative expenses, Redundancy Payments or demobilization costs.

Project Baseline Schedule means the logic-based critical path schedule for all Work through Final Acceptance, as more particularly described in Section 1.5.2.1.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Project Debt means bona fide indebtedness (including subordinated indebtedness) for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more Security Documents. Project Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations, and Breakage Costs. Project Debt excludes any indebtedness of Developer or any shareholder, member, partner or joint venture member of Developer that is secured by anything less than the entire Developer's Interest, such as indebtedness secured only by an assignment of economic interest in Developer or of rights to cash flow or dividends from Developer. Project Debt also excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination, including Developer's receipt of a Notice of Termination for Convenience and occurrence of an IFA default of the type entitling Developer to terminate the Agreement. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides IFA with Notice thereof and the related Funding Agreements and Security Documents in accordance with Article 21 of the Agreement. Subject to the foregoing exclusions, Project Debt includes the PABs and obligations arising thereunder and TIFIA loans, guaranties and credit support, and obligations arising thereunder.

Project Debt Termination Amount means:

(a) All amounts outstanding in respect of the Project Debt; plus

(b) Without double counting in relation to such Project Debt, all Breakage Costs payable by Developer as a result of prepayment of the outstanding amounts of such Project Debt, subject to Developer and the Lenders mitigating all such costs to the extent reasonably possible; minus

(c) To the extent it is a positive amount, the aggregate of all Breakage Costs payable by the Lenders to Developer as a result of prepayment of any outstanding Project Debt; minus

(d) To the extent it is a positive amount, such amounts under clause (a) and (b) above that constitute or accumulate by reason of default rates of interest, late charges and penalties, including any such items added to principal.

Project Limits has the meaning set forth in Tables 9-1 and 9-2 of the Technical Provisions, as the context requires.

Project Management Plan or **PMP** means the document, including approved changes, additions and revisions, prepared by Developer and approved by IFA describing quality assurance, quality control and other activities necessary to manage the development, design, construction, operation and maintenance of the East End Crossing, containing the IFA-approved component parts, plans and documentation described in Section 1.5.2.2 of the Technical Provisions, and which is a deliverable described at Attachment 01-1 of the Technical Provisions.

Project Manager means the individual designated by Developer and approved in writing by IFA in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Developer as described in the approved Project Management Plan. The Project Manager is a Key Personnel listed at Exhibit 2-H to this Agreement.

Project Office has the meaning set forth in Section 1.5.3 of the Technical Provisions.

Project Right of Entry has the meaning set forth in Section 2.1.2 of the Agreement.

Project Right of Way or **Project ROW** means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines delineating the outside boundaries of the East End Crossing set forth in the ROW Maps contained in the Reference Information Documents, as such boundaries may be adjusted from time to time in accordance with the PPA Documents (including adjustments for Additional Properties). The term specifically includes all air space, surface rights and subsurface rights within the boundaries of the Project Right of Way.

Project Schedule means one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule and the Project recovery schedule) for all Work leading up to and including Substantial Completion and Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 1.5.2.1 of the Technical Provisions.

Project Section means each of "sections" 4 through 6 inclusive of the East End Crossing as identified in the NEPA Documents and described in Section 1.1 of the Technical Provisions.

Project Specific Locations means areas in which Developer proposes temporary East End Crossing-specific activities in connection with the Construction Work not within the Project Right of Way boundaries identified in the NEPA Documents, such as construction work sites, temporary work areas, lay down areas, staging areas, storage areas, stockpiling areas, earth work material borrow sites, equipment parking areas, and similar areas.

Project Standards has the meaning set forth in Section 26 of the Technical Provisions.

Project Status Schedule has the meaning set forth in Section 1.5.2.1.2 of the Technical Provisions.

Project Trust Agreement means the agreement by that name dated as of the Effective Date between IFA and the Project Trustee.

Project Trustee means [_____], a [_____], as the trustee under the Project Trust Agreement, and any successor or replacement trustee thereunder.

Proposal means Developer's response to the RFP.

Proposal Due Date means October 26, 2012, the deadline for submission of the Proposal to IFA.

Proprietary Intellectual Property means Intellectual Property created, used, applied or reduced to practice in connection with the East End Crossing or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

Protected Characteristics has the meaning set forth in Section 7.9.2 of the Agreement.

Protection in Place means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Protection Plan has the meaning set forth in Section 18.1.11 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Public Finance Director has the meaning set forth in Recital H of the Agreement.

Public Information Coordinator is the Key Personnel listed at Exhibit 2-H to this Agreement.

Public Involvement Plan (PIP) has the meaning set forth in Section 6.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Public Involvement Plan Manager means the person designated by IFA to oversee Developer's public information activities as more particularly described in Section 6.5.2 of the Technical Provisions.

Public Records Act means IC 5-14-3, as amended from time to time.

Punch List means an itemized list of Construction Work which remains to be completed after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the East End Crossing.

Quality Management Plan has the meaning set forth in Section 2.1 of the Technical Provisions.

Quality Manager means the individual retained by Developer as the Key Personnel with the authority and responsibility for ensuring establishment and maintenance of, and compliance

with, the Design QA/QC Plan and Construction QA/QC Plan. The Quality Manager is a Key Personnel listed at Exhibit 2-H to this Agreement.

Quality Oversight means IFA's activities with respect to quality, as described in Section 4.3.1 of the Technical Provisions.

Quality Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Quarter means a time period comprised of three calendar months. Each Fiscal Year contains four Quarters: July – September; October – December; January – March; and April – June.

Quarterly Noncompliance Adjustment means an amount equal to the sum of the deductions for Noncompliance Events or cumulative Noncompliance Events as set forth in Attachment 12-1 of Exhibit 12 to the Agreement, incurred during a given Quarter and calculated as provided in Section 3.8 of Exhibit 10 (Payment Mechanism) to the Agreement.

Quarterly Other Payment Adjustment means the adjustment, positive or negative, to derive the Quarterly Payment Adjustment, calculated as provided in Section 3.9 of Exhibit 10 (Payment Mechanism) to the Agreement.

Quarterly Payment means the amount of the portion of Availability Payment payable by IFA to Developer for a given Quarter, calculated as provided in Exhibit 10 (Payment Mechanism).

Quarterly Payment Adjustment means the adjustment, positive or negative, to derive the amount of the Quarterly Payment, calculated as provided in Section 3 of Exhibit 10 (Payment Mechanism) to the Agreement.

Quarterly Unavailability Adjustment means an amount equal to the sum of the adjustments for each Unavailability Event incurred during a given Quarter, calculated as provided in Section 3.4 of Exhibit 10 (Payment Mechanism) to the Agreement.

Railroad Agreement means the agreements described at Section 18.6 of the Technical Provisions.

Railroad Force Account Work means work performed by, or on behalf of, any railroad arising out of or relating to the East End Crossing. This work may involve: flagging for train operations, work involving road crossing surfaces, track adjustments, installation of warning devices, relocation of existing warning devices, installation or extension of drainage structures under tracks, wire line adjustments, and other related work.

Rating Agency means any of Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., or Fitch Investors Service, Inc.

REAA Statement has the meaning set forth in Section 15.8.1 of the Agreement.

Reach has the meaning set forth in Section 5.3.1 of Attachment 13-1 to the Geotechnical Baseline Report.

Reasonable Accuracy means with respect to the description or identification of a Utility in the Utility Information:

(a) The Utility's actual centerline location is located at or less than five (5) feet distant from the horizontal centerline location indicated therefor in the Utility Information (without regard to vertical location);

(b) The Utility Information does not show the Utility as abandoned (i.e., nonexistent except "on paper", or existent but no longer active) when in fact the Utility exists and is active;

(c) The Utility Information shows non-existent or inactive Utilities as abandoned; or

(d) The Utility has an actual nominal diameter (excluding casings and any other appurtenances) greater than 12 inches, and its actual nominal diameter is either greater than or less than the diameter shown in the Utility Information by 25% or less of the diameter shown in the Utility Information

Any other inaccuracies in the Utility Information (e.g., as to type of material or encasement status) shall have no impact on "reasonable accuracy" of its identification and shall not result in a determination that the Utility was not identified with "reasonable accuracy." If there is any discrepancy between any of the components of the Utility Information, only the most accurate information shall be relevant for purposes of determination of “reasonable accuracy.”

Reasonable Investigation means the following activities by appropriate, qualified professionals prior to the Setting Date:

(a) Visit and visual, non-intrusive inspection of the Site and adjacent locations, except areas to which access rights have not been made available by the Setting Date;

(b) Review and analysis of all Reference Information Documents;

(c) Review and analysis of IFA-Provided Approvals available prior to the Setting Date;

(d) Reasonable inquiry with Utility Owners, including request for and review of Utility plans provided by Utility Owners;

(e) Review and analysis of material Laws applicable to the Project or the Work as of the Setting Date; and

(f) Other activities, including research of public records, sufficient to familiarize Developer with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations;

except that none of the foregoing activities includes conducting field studies, geotechnical investigations, or original research of private records not contained or referenced in the Reference Information Documents or Technical Provisions.

Recognized Environmental Condition has the meaning set forth in ASTM 1527-05.

Record Drawings means construction drawings and related documentation revised to show significant changes made to the East End Crossing during the construction process or during the Operating Period; usually based on marked-up Final Design Documents furnished by Developer; also known as as-built plans. The Record Drawings is a deliverable described at Table 25-1 of the Technical Provisions.

Recurring Special Provision means a special provision that is issued by the Department's Standards Committee for particular situations that is applicable, in accordance with Section 105.04 of the Department's Standard Specifications, and may be included in a contract on a case-by-case basis.

Redundancy Payments means the payment of all wages earned, accrued unused vacation time, and any other payments required by Law or required by the employer's employment agreement with the employees.

Reference Design means and consists of all the design elements of the East End Crossing consistent with the applicable Environmental and Governmental Approvals existing prior to the Setting Date and contained in the Reference Information Documents.

Reference Information Documents means the collection of information, data, documents and other materials that IFA has made available to Developer in connection with the East End Crossing or the Work (including those contained in the RFP documents) for general or reference information only and without any warranty as to their accuracy, completeness or fitness for any particular purpose. The Reference Information Documents are not PPA Documents. Prior to the Effective Date, IFA made available to Developer a non-exclusive list of Reference Information Documents.

Refinancing means:

(a) Any amendment, variation, novation, extension, renewal, supplement, refunding, defeasance or replacement of any Project Debt, Funding Agreement or Security Document (other than any Subordinate Debt and Subordinated Security Documents);

(b) The issuance by Developer of any indebtedness in addition to the Initial Project Debt, secured or unsecured;

(c) The disposition of any rights or interests in, or the creation of any rights of participation in respect of, Project Debt, Funding Agreements and Security Documents or the creation or granting by Developer or any Lender of any other form of benefit or interest in either Project Debt, Funding Agreements and Security Documents or the Developer's Interest whether by way of security or otherwise; or

(d) Any other arrangement put in place by Developer or another Person which has an effect similar to any of clauses (a) through (c) above.

Refinancing Data means all relevant data in relation to a Refinancing other than an Exempt Refinancing under clause (c) or (d) of the definition of Exempt Refinancing and calculation of the Refinancing Gain, including:

(a) Details of actual timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the date of Refinancing to the end of the Term;

(b) Information on the actual cash flows of Developer from the Effective Date to the date of Refinancing, and of projected cash flows of Developer from the date of Refinancing to the end of the Term;

(c) Details of the actual timing and amounts of Distributions from the Effective Date to the date of Refinancing and of projected timing and amounts of Distributions from the date of Refinancing to the end of the Term;

(d) A copy of the final pre-Refinancing Financial Model as updated by Developer, which shall be identical to any presented to the Refinancing Lender(s);

(e) A copy of the final post-Refinancing Financial Model as updated by Developer, which shall be identical to any presented to the Refinancing Lender(s);

(f) Information on all relevant assumptions, including tax assumptions and where appropriate back up data and tax opinions (if any), for the projections in the pre-Refinancing and post-Refinancing Financial Models as updated by Developer;

(g) A detailed calculation of the Refinancing Gain and IFA's share thereof (if any) following the procedures set forth in Exhibit 14 (Calculation and Payment of Refinancing Gain) to the Agreement; and

(h) All other information IFA may reasonably request in relation to the Refinancing and related calculations and assumptions.

Refinancing Gain means the amount calculated as provided in Exhibit 14 (Calculation and Payment of Refinancing Gain) to the Agreement.

Registered Professional Engineer means a person who is duly licensed and registered by the State of Indiana or the Commonwealth of Kentucky to engage in the practice of engineering in the State where the work is being performed.

Registered Professional Land Surveyor means a person registered by the State of Indiana or the Commonwealth of Kentucky to practice the profession of land, boundary, or property surveying or other similar professional practices in the State where the work is being performed.

Regulations has the meaning set forth in Section 7.9.1 of the Agreement.

Rehabilitation Work means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element of the East End Crossing that is not

normally included as an annually recurring cost in maintenance and repair budgets for transportation facilities of similar natures and in similar environments as the East End Crossing.

Rehabilitation Work Schedule means the schedule for Rehabilitation Work to be prepared and updated by Developer pursuant to Section 6.7 of the Agreement.

Related Transportation Facility(ies) means all existing and future bridges, tunnels, highways, streets and roads, or other transportation facilities of any mode, including upgrades and expansions thereof, that are or will be connecting with or crossing under or over the East End Crossing.

Release of Hazardous Materials or **Release** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, surface water, groundwater, submerged lands or Environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Released-for-Construction means the certification that is issued by the Lead Engineer when formally issuing final design documents for construction as described in Section 3.9.3 of the Technical Provisions.

Released-for Construction Design means the deliverable described at Table 25-1 of the Technical Provisions.

Relief Event means any of the following events, subject to the requirements, limitations, deductibles and the duty to prevent and to mitigate consequences that are set forth in the Agreement for such events:

(a) IFA failure to perform or observe any of its material covenants or obligations under the PPA Documents, including unreasonable failure to issue a certificate of Substantial Completion or certificate of satisfaction of conditions precedent to Service Commencement, Substantial Completion or Final Acceptance after Developer fully satisfies all applicable conditions and requirements for obtaining such a certificate (except where such failure is within another defined Relief Event);

(b) IFA Change (other than a Discriminatory O&M Change and Non-Discriminatory O&M Change);

(c) Discriminatory O&M Change;

(d) Non-Discriminatory O&M Change;

(e) Safety Compliance Orders;

(f) IFA-Caused Delay;

(g) (i) Performance of works by or (ii) failure to perform works required of, IFA, the Department or another Governmental Entity or their contractors (other than Developer) in the vicinity of the Project Right of Way, in either case excluding any Utility Adjustment Work by a Utility Owner, and in either case that materially disrupts Developer's onsite Work;

(h) Development or operation of a Business Opportunity in the Airspace by IFA, the Department, KYTC or anyone (other than a Developer-Related Entity) claiming under or through IFA, the Department or KYTC, to the extent set forth in Section 8.2.4 of the Agreement;

(i) (i) IFA's lack of good and sufficient title to or right to enter and occupy any parcel in the Project Right of Way, including Additional Properties required due to IFA Changes but excluding all other Additional Properties, after conclusion of IFA's purported acquisition of the parcel or right of entry and occupancy through negotiation, settlement or condemnation proceeding in accordance with the schedule for acquisition of the parcels in the Project Right of Way as described in Attachment 21-1 of the Technical Provisions, to the extent it interferes with physical performance of Work, or (ii) the existence, at any time following issuance of NTP2, of any title reservation, condition, easement or encumbrance, of record or not of record, on any parcel in the Project Right of Way, including Additional Properties required due to IFA Changes but excluding all other Additional Properties, to the extent it interferes with physical performance of Work, except in both cases any title reservations, covenants, conditions, restrictions, easements or encumbrances (A) concerning Utilities, (B) described in Section 2.1.6 of the Agreement and either contained in the Reference Information Documents as they exist on the Setting Date or as may be particularly described in the Technical Provisions, or (C) caused, permitted or suffered by a Developer-Related Entity, and also excepting in all cases rights of access for Governmental Entities and Utility Owners as provided by Law other than a Change in Law;

(j) Force Majeure Event;

(k) Delays in obtaining Major Environmental Approvals by the applicable Major Environmental Approval Deadline or, once obtained, the unlawful revocation or suspension of a Major Environmental Approval by the relevant Governmental Entity, except delay to the extent attributable to any of the differences described in Section 4.3.4 of the Agreement unless such differences are due to an IFA Change;

(l) Unreasonable and unjustified delay by a Utility Owner (i) with whom Developer has been unable to enter into a Developer Utility Agreement in connection with a Utility Adjustment or (ii) with whom Developer or IFA, as the case may be, has entered into a Developer Utility Agreement or IFA Utility Agreement, as the case may be, in connection with a Utility Adjustment and such delay by a Utility Owner is contrary to or in violation of the terms and provisions of the Developer Utility Agreement or IFA Utility Agreement, as the case may be, provided that, in either case (A) all of the "conditions to assistance" described in Section 5.5.7.2 of the Agreement have been satisfied and (B) delay due to, among other things, the failure by any Developer-Related Entity to locate or design the East End Crossing or carry out the Work in accordance with the PPA Documents, the Adjustment Standards, the applicable IFA Utility Agreement, Developer Utility Agreement, the NEPA Documents, other Governmental Approval or applicable Law shall be deemed reasonable and justified;

(m) Discovery at, near or on the Project Right of Way, including Additional Properties required due to IFA Changes but excluding all other Additional Properties, of any Hazardous Materials (including IFA Release(s) of Hazardous Material), excluding Developer Releases of Hazardous Materials and Known or Suspected Hazardous Materials;

(n) Any spill of Hazardous Material by a third party who is not acting in the capacity of a Developer-Related Entity which (i) occurs during the Term, (ii) is required to be reported to a Governmental Entity and (iii) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;

(o) Discovery on or under the Project Right of Way, including Additional Properties required due to IFA Changes but excluding all other Additional Properties, of any archeological, paleontological or cultural resources, excluding any such resources known to Developer prior to Setting Date or that would become known to Developer by undertaking Reasonable Investigation;

(p) Discovery of (i) for the "Drumanard Tunnel" in Project Section 4, actual subsurface or latent physical conditions that differ materially from the baseline subsurface conditions indicated in the Geotechnical Baseline Report, provided, however, that the tunnel is constructed within the GBR Envelope, and excluding any such conditions known to Developer prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in the Geotechnical Baseline Report, (ii) for the balance of the East End Crossing, actual subsurface or latent physical conditions at boring holes identified in the geotechnical data reports included among the Reference Information Documents that differ materially from the subsurface conditions indicated in such report at such boring holes, excluding any such conditions known to Developer prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such geotechnical data reports (for avoidance of doubt, encountering conditions away from the actual boring holes that differ from conditions extrapolated from such boring data and that are not within this clause (ii) is not a Relief Event) or (iii) for the entire East End Crossing (including the "Drumanard Tunnel"), actual subsurface physical conditions within the Project Right of Way, including Additional Properties required due to IFA Changes but excluding any other Additional Properties, of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement, excluding any such conditions known to Developer prior to the Setting Date or that would become known to Developer by undertaking Reasonable Investigation;

(q) Discovery at, near or on the Project Right of Way, including Additional Properties required due to IFA Changes but excluding any other Additional Properties, of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), excluding any such presence of the American Bald Eagle, the Indiana Bat or other species known to Developer prior to the Setting Date or that would become known to Developer by undertaking Reasonable Investigation;

(r) Change in Law or Change in Adjustment Standards, except a Change in Adjustment Standards that is consistent with the terms and limitations, if any, on changes in Adjustment Standards set forth in any Utility Memorandum of Agreement or Utility Agreement to which the Developer is a party;

(s) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the Work, except if based on the wrongful act or omission of any Developer-Related Entity;

(t) Issuance of a rule, order or directive from the U.S. Department of Homeland Security or comparable State agency regarding specific security threats to the East End Crossing or the region in which the East End Crossing is located or which the East End Crossing serves, to the extent such rule, order or directive requires specific changes in Developer's normal design, construction, operation or maintenance procedures in order to comply; or

(u) Discovery of Unknown Utilities that directly affects the Construction Work, including Construction Work on Additional Properties required due to IFA Changes but excluding Construction Work on any other Additional Properties, except where the identification of a Utility in the Utility Information was Reasonably Accurate, was known to Developer as of the Setting Date, or that would become known to Developer by undertaking Reasonable Investigation.

Relief Events Allowance has the meaning set forth in Section 15.6.1.1 of the Agreement.

Relief Events Allowance Account means the account of that name established and maintained pursuant to Section 15.6.1 of the Agreement.

Relief Event Delay means a delay to a Controlling Work Item, after consumption of all Total Float available pursuant to Section 5.7.6 of the Agreement, provided that such delay excludes delay due to loss, damage or destruction described in Section 15.7.9.

Relief Event Notice means the written Notice required to be provided by Developer under Section 15.1.1 of the Agreement.

Relief Request has the meaning set forth in Section 15.1.2 of the Agreement.

Replacement Utility Property Interest means any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, Contractor, other person from whom such Person is, at law, responsible or an other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its "representative."

Request for Change Proposal means a written Notice issued by IFA to Developer setting forth a proposed IFA Change and requesting Developer's assessment of cost, financial, schedule, Performance Requirement and other impacts thereof, as set forth in Section 16.1.2 of the Agreement.

Required Minimum Insurance Policies has the meaning set forth in Section 17.1.9.3 of the Agreement.

Responsible Engineer has the meaning set forth in Section 3.2.5 of the Technical Provisions.

Rescue Refinancing means any Refinancing that:

(a) Occurs due to the failure or imminent failure of Developer to comply with any material financial obligation under any Funding Agreement or Security Document;

(b) Results in the cure of such failure or imminent failure;

(c) Does not result in an increase in the Equity IRR beyond the Original Equity IRR; and

(d) Does not result in an actual or potential increase of the Project Debt Termination Amount by more than 10%.

Residual Life means, for an Element, the period remaining until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement. The Residual Life of an Element would be equal to its originally calculated Useful Life less its Age if (a) the Element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Developer as reflected in the Financial Model and (b) Developer has performed the Routine Maintenance of the Element, and as a result thereof the Element complies throughout its originally calculated Useful Life with each applicable Performance Requirement. The Residual Life of an Element would be different from its originally calculated Useful Life minus its Age if any of the foregoing conditions is not true.

Residual Life at Handback means the calculated duration that any Element will continue to comply with any applicable Performance Requirement or standard after Handback and before Rehabilitation Work is required, determined through the application of the Residual Life Methodology and Residual Life Inspections and by assuming that the Element is subject to Routine Maintenance.

Residual Life Inspection means an inspection undertaken in accordance with the "Inspection Requirements" set forth in Section 22.5 of the Technical Provisions (including any testing undertaken by an independent testing organization), or for Elements not listed in Table 23-1 of the Technical Provisions, in accordance with Good Industry Practice, to determine the Residual Life of all Elements.

(a) **First Inspection** means the first Residual Life Inspection as set forth in Section 23.3 of the Technical Provisions.

(b) **Second Inspection** means the second Residual Life Inspection as set forth in Section 23.3 of the Technical Provisions.

(c) **Final Inspection** means the final Residual Life Inspection as set forth in Section 23.3 of the Technical Provisions.

Residual Life Methodology (RLM) is the evaluation and calculation methodology by which the Residual Life of any Element will be calculated at Handback and contains the method by which any necessary Rehabilitation Work will be identified to ensure that each Element for which a minimum Residual Life at Handback is required under Section 23.2 of the Technical Provisions meets such requirement.

RFP or **Request for Proposals** has the meaning set forth in Recital E of the Agreement.

Routine Maintenance means maintenance activities that are scheduled in advance and occur on a regular basis, such as weekly, monthly, quarterly, semi-annually or annually which are normally included as an annually recurring cost in maintenance and repair budgets for transportation facilities (and associated equipment) of similar natures and in similar environmental conditions as the East End Crossing.

ROW Maps means and consists of right of way maps prepared for the East End Crossing and contained in the Reference Information Documents, depicting within the boundary lines shown therein the land or property which IFA has made or will make available for the East End Crossing.

Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the East End Crossing to correct a specific safety condition or risk of the East End Crossing that IFA or a Governmental Entity has reasonably determined to exist by investigation or analysis.

Safety Compliance Order means a written order or directive from IFA to Developer to implement Safety Compliance. For purposes of clarity, a Safety Compliance Order may not be issued by IFA that effects a change to the Technical Provisions, Safety Standards or safety-related portions of the Work affected by a Change in Law.

Safety Manager is the Key Personnel listed at Exhibit 2-H to this Agreement.

Safety Plan means the safety plan for Developer's personnel and the general public that Developer is to prepare and implement in accordance with Section 6.5.5 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Safety Standards means those provisions of the Technical Provisions that IFA indicates that it, the Department, FHWA or AASHTO considers to be important measures to protect public safety, worker safety or the safety of property. As a matter of clarification, provisions of Technical Provisions primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Section 106 Memorandum of Agreement means the multi-party agreement pursuant to 36 CFR Part 800 implementing Section 106 of the National Historic Preservation Act that is included in the RID, EV-0.04 First Amended MOA.

Security Document means any mortgage, deed of trust, pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, financing statement under the Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender as security for Project Debt or Developer's obligations pertaining to Project Debt and encumbering the Developer's Interest.

Seismic Event means the trembling or shaking movement of the earth's surface that produces ground motions at the Site that exceed the Design Requirements and which directly impacts, and causes damage to, the physical improvements of the East End Crossing.

Senior Debt Termination Amount means:

(a) All amounts outstanding at the Early Termination Date, including accrued unpaid interest as of such date, on Project Debt that (i) is secured by Funding Agreements and Security Documents satisfying the terms and conditions set forth in Section 13.3 of the Agreement, (ii) is not Subordinate Debt and (ii) is not an equity bridge loan. For purposes hereof, an equity bridge loan is a loan provided to Developer during the construction period of the East End Crossing for an amount of equity to be contributed by Equity Members or Affiliates, typically (but not necessarily) supported by one or more of a parent guaranty, recourse to the parent or letter of credit from another lending institution; plus

(b) Without double counting in relation to such Project Debt, all Breakage Costs payable by Developer as a result of prepayment of the outstanding amounts of such Project Debt, subject to Developer and the Lenders mitigating all such costs to the extent reasonably possible; minus

(c) To the extent it is a positive amount, the aggregate of:

(i) So much of the amounts under subsections (a) and (b) above that constitute or accumulate by reason of (A) accrued interest that Developer failed to pay when due, including any such interest that has been added to principal, or (B) default rates of interest, late charges and penalties, including any such items added to principal;

(ii) All amounts, refunds, and reimbursements, including costs of early termination of interest rate hedging, swap, collar or cap arrangements and other breakage costs, payable by the Lenders to Developer as a result of prepayment of outstanding amounts of such Project Debt; and

(iii) All other amounts received by the Lenders of such Project Debt on or after the Early Termination Date and before the date on which any compensation is payable by IFA to Developer as a result of insurance or enforcing any other rights they may have, to the extent such amounts reduce principal or accrued interest (or would have done so if not applied to default rates of interest, late charges or penalties).

The foregoing amount shall be determined without regard to any Refinancing that is excluded from Project Debt or that may occur between the date Notice of termination is delivered and the Early Termination Date.

Service Line means:

(a) A Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or

(b) Any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize IFA's or a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

Setting Date means the date that is 45 days before the Proposal Due Date.

Site means Project Right of Way and any temporary rights or interests that Developer may acquire in connection with the East End Crossing or the Utility Adjustments included in the Construction Work, including Project Specific Locations but excluding Toll Collection System Locations.

Snow and Ice Control Plan has the meaning set forth in Section 22.3.1.12.2 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Special Provisions has the meaning set forth in Section 101.53 of the Standard Specifications.

Spill Prevention Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Stage 1 Design means pre-final design information as defined by the Developer, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Stage 2 Design means pre-final design information as defined by the Developer that is more complete than Stage 1 Design but not fully complete, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Standard Drawings means drawings published by the Department's Standards Committee at http://www.in.gov/dot/div/contracts/standards/drawings/index.html from time to time.

Standard Specifications means the Department's "Standard Specifications," included among the Project Standards set forth in the Table 26-1 to the Technical Provisions.

Starting Insurance Benchmarking Premiums has the meaning set forth in Section 17.1.9.6 of the Agreement.

State has the meaning set forth in Recital A of the Agreement, and such term includes the State's authorized representatives.

Submittal means any document, work product or other written or electronic end product or item required under the PPA Documents to be delivered or submitted to IFA. "Submittal" does not include Notices or correspondence.

Subordinate Debt means the bona fide indebtedness for funds borrowed that (a) is held by any Equity Member or an Affiliate, or by a purchaser or assignee of such indebtedness held at any previous time by any Equity Member or Affiliate, and (b) is inferior in priority of payment and security to all Project Debt held by Persons who are not Equity Members or Affiliates.

Subordinated Security Documents means any Security Documents securing Subordinate Debt.

Substantial Completion means satisfaction of the criteria for completion of construction of each of Project Section as set forth in Section 5.8.1 of the Agreement, as and when confirmed by IFA's issuance of a certificate in accordance with the procedures and within the time frame established in Section 5.8.1 of the Agreement after occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 5.8.3.1 of the Agreement.

Substantial Completion Date means the date that Substantial Completion has been achieved for the entire East End Crossing.

Substituted Entity means any person or entity selected by Lenders and approved by IFA in accordance with Section 21.8 of the Agreement to perform Developer's obligations and succeed to Developer's rights hereunder after any such Lender has acquired the Developer's Interest by foreclosure or other lawful means or has otherwise assumed possession and control of the East End Crossing.

Subsurface Utility Engineering (SUE) means an engineering process for accurately identifying the quality of subsurface utility information needed for highway and bridge plans, and for acquiring and managing that level of information during the development of a highway or bridge project, as more particularly described at the FHWA website http://www.fhwa.dot.gov/programadmin/sueindex.htm on the Setting Date.

Supplemental Final Environmental Impact Statement (SFEIS) means the certain "Supplemental Final Environmental Impact Statement and Section 4(f) Evaluation," signed by the Federal Highway Administration on April 20, 2012.

Supplier means any Person not performing work at or on the Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the East End Crossing to Developer or to any Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

Surety means each properly licensed surety company, insurance company or other Person approved by IFA which has issued any of the Payment and Performance Bonds.

Sustainability Management Plan has the meaning set forth in Section 7.10 of the Technical Provisions.

Target means, for each Element of the East End Crossing, the target during the Operating Period for the measurement record set forth in the column headed "Target" in the Performance and Measurement Table.

Taxes means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the East End Crossing, the performance of the Work, the Milestone Payment, Availability Payments, other compensation or act, business, status or transaction of Developer, including any interest, penalty or addition thereto, and including utility rates or rents, in all cases whether disputed or undisputed.

Technical Provisions means the "East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project), Technical Provisions," executed by the Parties concurrently with the Agreement, constituting the document describing the scope of the Work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the East End Crossing and/or the Utility Adjustments, as such provisions may be changed, added to, deleted or replaced pursuant to the Agreement.

Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to or in place of the ITS or any other computer systems or other technology or system used for the operation of the East End Crossing, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. The term specifically includes modifications, updates, revisions, replacements and upgrades made to or in place of software, source code or any related documentation that correct errors or safety hazards or support new models of computer hardware with which the software is designed to operate. Technology Enhancements also include such new models of ITS or other computer hardware, including computers, monitors, cameras, antenna, loops, lasers and lighting.

Temporary Traffic Control Plan means the Developer's plan for temporary traffic control, which is a deliverable described in Section 12.3, and listed at Table 25-1, of the Technical Provisions.

Term has the meaning set forth in Section 2.1.7 of the Agreement.

Termination by Court Ruling means, except in the circumstances described in Section 5.3 or 5.4 of Exhibit 22 (Terms for Termination Compensation) to the Agreement, any of the following:

(a) Issuance of a final, non-appealable order by a court of competent jurisdiction to the effect that this Agreement and the Project Trust Agreement are void and/or unenforceable or impossible to perform in their entirety, except where void, unenforceable or impossible to perform by reason of Developer's acts, omissions, negligence, willful misconduct, fraud or breach of warranty or representation;

(b) Issuance of a final, non-appealable order by a court of competent jurisdiction (i) permanently enjoining or prohibiting performance or completion of the Construction Work for a material portion of the East End Crossing, except where such injunction or prohibition is attributable to Developer's acts, omissions, negligence, willful misconduct, fraud, breach of an obligation under the PPA Documents or violation of Law or an applicable Governmental Approval, or (ii) requiring the Department, either individually or in concert with KYTC and/or FHWA, to undertake additional or supplemental evaluations, studies or other work under NEPA that, in the Department's sole discretion, is impracticable in light of the purpose and intent of the Agreement;

(c) Issuance of a final, non-appealable order by a court of competent jurisdiction upholding the binding effect on Developer or IFA of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or IFA under the PPA Documents or impossibility of exercising a fundamental right of Developer or IFA under the PPA Documents; or

(d) Occurrence of the circumstances described in Section 25.13.2 of the Agreement.

Termination Compensation means each measure of compensation, if any, owing from IFA to Developer upon termination of the Agreement prior to the stated expiration of the Term, as set forth in Exhibit 22 (Terms for Termination Compensation) to the Agreement.

Termination Date means (a) the date of expiration of the Term or (b) if applicable, the Early Termination Date.

Termination for Convenience has the meaning set forth in Section 20.1.1 of the Agreement.

Third Party Claims means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

Threatened or Endangered Species means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

TIFIA Loans means a loan from the United States Department of Transportation pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998, § 1501 *et. seq*. of Public Law 105-178, as amended by the TEA 21 Restoration Act, Public Law 105-206 and the Safe, Accountable, Flexible, Effective Transportation Equity Act, A Legacy for Users, Public Law 109-59, codified as 23 U.S.C. §§ 601 *et seq.*, as further amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141.

Toll Collection System (TCS) means the electronic toll collection system for the East End Crossing, including its components, systems and subsystems (including the CSC, VPS, VES and AVCS, CSC Storefronts, kiosks and toll information signs), the hardware and physical infrastructure, and the related software.

Toll Collection System Locations or **TCS Locations** means all locations outside the Project Right of Way of any portion or component of the TCS that is intended by the PPA Documents to serve the East End Crossing, including the locations of (the) customer service center(s), storefronts, kiosks, toll information signs and dedicated communications lines and equipment.

Toll Policy has the meaning set forth in Section 14.4.1 of the Agreement.

Toll Policy Agreement has the meaning set forth in Section 14.4.1 of the Agreement.

Toll Revenue Collections Account has the meaning set forth in Exhibit 15 (Summary of Terms for Custody Agreement) to the Agreement.

Toll Revenue Fund means the trust account of that name established and maintained under the Project Trust Agreement.

Toll Revenues means all revenues actually received by or on behalf of IFA or [Kentucky entity] in connection with the Project or the tolling thereof, including:

(a) Gross user fees and tolling toll revenues;

(b) Administrative fees;

(c) violation charges;

(d) Other revenues from the Project or the Users thereof the disposition of which is not specifically addressed by an agreement regarding Business Opportunities;

(e) Proceeds of business interruption or other insurance against loss of revenues from operation of the Project;

(f) Payments from any Governmental Entity in replacement of or substitution for toll revenues;

(g) Amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues;

(h) Amounts received as liquidated or other damages under contracts to which IFA is a party with respect to any of the foregoing revenues; and

(i) Interest earned on any of the foregoing amounts.

Toll Revenues exclude insurance proceeds, judgments and awards, to the extent they do not replace, reimburse, compensate or substitute for any of the foregoing revenues.

Toll System Collection Expenses means amounts payable as tolling operations and maintenance expenses by IFA under the Toll Operations Agreement.

Toll System Collection Expense Fund means the trust fund of that name established and maintained under the Project Trust Agreement.

Tolling Body has the meaning set forth in Section 14.5.1 of the Agreement.

Tolling Infrastructure has the meaning given that term in Section 20.3 of the Technical Provisions.

Tolling Infrastructure Turnover Date means the date the Developer is required to make the Tolling Infrastructure available to the Tolling Systems Integrator as provided in Section 20.6.1 of the Technical Provisions.

Toll Operations Agreement has the meaning set forth in Section 14.6 of the Agreement.

Toll Operator has the meaning set forth in Section 14.3.2 of the Agreement. The Toll Systems Integrator and the Toll Operator may be the same firm.

Toll Systems Integrator means the Contractor with whom the State and the Commonwealth of Kentucky will contract to install the electronic toll collection system for the Project.

Total Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will delay occurrence of either the Substantial Completion Date or the Final Acceptance Date. Such Total Float is generally identified as the difference between the early start date and late start date, or early completion date and late completion date, for each of the activities shown on the Project Schedule.

Total Project Capital Cost means the total capital cost for the East End Crossing set forth in Exhibit 2-I(2) (Capital Cost Table) to the Agreement.

Traffic Management Center (TMC) means, depending on the context (as determined by IFA), (a) within the existing and/or future Louisville-Southern Indiana Regional Traffic Management Center (TRIMARC) traffic operations center (in Louisville, Kentucky) or (b) the Indiana Department of Transportation Traffic Management Center (in Indianapolis, Indiana), in either case where information about the regional transportation network is collected and combined with other operational and control data to manage the regional transportation network and to produce traveler information.

Traffic Operations Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Transponder means a wireless communications, monitoring or control device mounted in a vehicle that picks up and automatically responds to an incoming electronic signal from the toll zone TCS equipment, or any other technological device that serves the same purpose of identifying a vehicle on the East End Crossing for the purpose of recording a tolling transaction for automatic payment from a customer account associated with the particular device.

Transportation Management Plan (TMP) means Developer's plan for traffic management, prepared under the Project Management Plan and approved by IFA, which is a deliverable described at Table 25-1 of the Technical Provisions.

Tunnel has the meaning set forth in Section 16.1 of the Technical Provisions.

Tunnel Construction Manager is the Key Personnel listed at Exhibit 2-H to this Agreement.

Tunnel Emergency Response Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Tunnel O&M Training Syllabus means the deliverable described at Table 25-1 of the Technical Provisions.

Tunnel Operations & Maintenance Manual means the deliverable described at Table 25-1 of the Technical Provisions.

Tunnel Work Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Type 1 Utility Adjustment has the meaning set forth in Section 18.1.2 of the Technical Provisions.

Type 2 Utility Adjustment has the meaning set forth in Section 18.1.2 of the Technical Provisions.

Type 3 Utility Adjustment has the meaning set forth in Section 18.1.2 of the Technical Provisions.

Unavailability Adjustment has the meaning set forth in Section 3.6 of Exhibit 10 (Payment Mechanism) to the Agreement.

Unavailability Event means a Closure that is not a Permitted Closure during the Operating Period.

Unavailability Type Factor has the meaning set forth in Section 3.5 of Exhibit 10 (Payment Mechanism) to the Agreement.

Uncured Noncompliance Points means Noncompliance Points assessed on account of breaches or failures that remain uncured. Uncured Noncompliance Points also includes Noncompliance Points assessed for breaches or failures identified by the assessment category "C" in Attachment 1 to Exhibit 12 (Noncompliance Points System and Persistent Developer Default) to the Agreement (no applicable cure period).

Unknown Utility means a Utility, other than a Service Line, where the Utility Information incorrectly indicates that the subject Utility does not exist anywhere within the boundary lines of the Project Right of Way or that is otherwise not identified with Reasonable Accuracy. If any discrepancy exists between the information provided by one component of the Utility Information and that provided by any other component of the Utility Information, only the more accurate information shall be relevant for purposes of this definition.

Uniform Act means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

Use Agreement means that Master Use Agreement, by and between IFA and the Department, as amended from time to time.

Useful Life means, for an Element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

User(s) means the registered owner of a vehicle traveling on the East End Crossing or any portion thereof.

Utilities Manager or **Utility Manager** has the meaning set forth in Section 18.2.1 of the Technical Provisions. The Utility Manager is a Key Personnel listed at Exhibit 2-H to this Agreement.

Utility or **utility** means and includes poles, plants, lines, trenches, bridges, tunnels, pipelines, and any other system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, coal or other mineral slurry, steam, heat, light, chemicals, air, sewage, drainage not connected with a highway drainage system, irrigation, or another substance. The term "Utility" or "utility" also includes a system for furnishing transportation of goods or persons by means of railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline, or a similar means. The term "Utility" or "utility" excludes (a) storm water facilities providing drainage for the Project ROW, (b) street lights and traffic signals, and (c) ITS and IVHS facilities. The necessary appurtenances to each Utility Owner Project shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

Utility Adjustment means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the East End Crossing; provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project Right of Way, the Utility Adjustment Work for each crossing of the Project Right of Way by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project Right of Way, the Utility Adjustment Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Adjustment.

Utility Adjustment Master Plan has the meaning set forth in Section 18.5.5 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

Utility Adjustment Plans means the plans, specifications, and cost estimates furnished for a particular Utility Adjustment.

Utility Adjustment Work means all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners that is Developer's responsibility pursuant to Section 5.5 of the Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Damage Report has the meaning set forth in Section 18.5.4 of the Technical Provisions.

Utility Enhancement means a Betterment or a Utility Owner Project, as referenced in Section 5.5.6 of the Agreement.

Utility Information means the information regarding Utilities included in the Reference Information Documents, together with any other information IFA provided to Developer 30 days prior to the Proposal Date with regard to identification of Utilities. The Utility Information includes survey information regarding existing utilities; utility maps included as an overlay on the survey; SUE maps depicting existing Utilities potentially impacted by the East End Crossing, and other as-built maps for existing Utilities. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

Utility Owner means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Owner Project means the design and construction by or at the direction of a Utility Owner (or by Developer) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects are entirely the financial obligation of the Utility Owner.

Vibration Monitoring Plan means the deliverable described at Table 25-1 of the Technical Provisions.

Warning Notice means a written Notice that IFA delivers to Developer pursuant to Section 19.2.9 of the Agreement.

Wellhead Protection Area has the meaning set forth in Section 7.5.1.1 of the Technical Provisions.

Wind Engineering Report means the deliverable described at Table 25-1 of the Technical Provisions.

Wind Study Report means the deliverable described at Table 25-1 of the Technical Provisions.

WIZARD CB Radio means CB channel 19 (broadcasting to make Users aware of particular hazardous conditions).

Work means the work required to be furnished and provided by Developer under the PPA Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, construction, Landscaping Work, Rehabilitation Work, Utility Adjustment, utility accommodation, support services, financing services, operations, maintenance and management services, except for those efforts which such PPA Documents expressly specify will be performed by Persons other than Developer-Related Entities.

Workforce Diversity and Small Business Performance Plan means Developer's plan for meeting the goals for on-the-job and other training in accordance with Exhibit 8 (Equal Employment Opportunity Trainees Special Provisions) to the Agreement. The Preliminary

Diversity and Small Business Performance Plan is Exhibit 2-N (Developer's Preliminary Workforce Diversity and Small Business Performance Plan) to the Agreement.