

REQUEST FOR PROPOSALS

**to Design and Build the
I-65/I-70 North Split Project
through a Public Private Agreement**

VOLUME II PUBLIC-PRIVATE AGREEMENT

**A Project of the
INDIANA DEPARTMENT OF TRANSPORTATION
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ADDENDUM #1 ISSUED: DECEMBER 10, 2019
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**Indiana Department of Transportation
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[Exhibit 14	Form of Guaranty] <i>[NTD: To be conformed in execution version based on whether a guarantor is used]</i>
Exhibit 15	NTP + 180 Schedule

PUBLIC-PRIVATE AGREEMENT

I-65/I-70 North Split Project

This public-private agreement (“PPA”) is entered into and effective as of [____], 2020 by and between the Indiana Department of Transportation, an agency of the State of Indiana (“INDOT”) and ***[insert name of Design-Build Contractor]***, a ***[insert type of entity]*** (“Design-Build Contractor”), with reference to the definitions contained in Exhibit 1 hereto and the following facts:

A. The State of Indiana (the “State”) desires to facilitate private sector investment and participation in the development of the Project via a public-private agreement, and has enacted IC § 8-15.7, as amended (the “Act”), to accomplish that purpose.

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

C. Pursuant to the provisions of the Act, INDOT issued a Request for Qualifications on April 4, 2019, as amended.

D. INDOT received three responsive statements of qualifications submittals on or before May 17, 2019, and subsequently short-listed three responsive proposers.

E. On October 11, 2019, INDOT issued to the short-listed proposers a Request for Proposals to Design and Construct the I-65/I-70 North Split Project through a Public-Private Agreement (as amended, the “RFP”).

F. On or before March 10, 2020, INDOT received responses to the RFP, including the response of Design-Build Contractor (the “Proposal”).

G. After completion of the evaluation of the Proposals of submitting short-listed proposers, the Deputy Commissioner of Districts (the “Deputy Commissioner”), with the assistance of INDOT representatives, determined that Design-Build Contractor’s Proposal as the one which provided the best value to the State and preliminarily selected Design-Build Contractor as the “Preferred Proposer,” as defined under, and all in accordance with, the RFP.

H. As required by the Act, INDOT held a public hearing on the preliminary selection of Design-Build Contractor as the Preferred Proposer and the terms of the proposed PPA.

I. On ***[NTD: date to come before execution]***, 2020, after the public hearing, INDOT, on the recommendation of the Deputy Commissioner, determined that Design-Build Contractor as Preferred Proposer should be designated as operator for the Project and the “Design-Build Contractor” hereunder, and INDOT authorized INDOT staff to negotiate, execute and deliver this PPA.

J. On ***[NTD: date to come before execution]***, 2020, Design-Build Contractor’s governing body authorized Design-Build Contractor to negotiate, execute and deliver this PPA.

K. INDOT submitted its determination that Design-Build Contractor be designated as the operator for the Project to the Governor of the State and the Governor of the State has

accepted the determination of INDOT after review of such determination by the State Budget Committee and receipt of the approval of the State Budget Director. On [**NTD: date to come before execution**], 2020, the Governor of the State of Indiana designated Design-Build Contractor as the operator for the Project and Design-Build Contractor hereunder and notice thereof was published on [**NTD: date to come before execution**], 2020, in accordance with the Act.

L. This PPA and the other PPA Documents collectively constitute a public-private agreement as contemplated under the Act, and are entered into in accordance with the provisions of the RFP.

M. The Deputy Commissioner has been authorized, on behalf of INDOT, to enter into this PPA and the other PPA Documents.

NOW, THEREFORE, in consideration of the sums to be paid by INDOT to Design-Build Contractor, the foregoing premises and the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. COMPONENTS; INTERPRETATION OF PPA DOCUMENTS

1.1 Certain Definitions

Unless the context otherwise requires, capitalized terms and acronyms used in the PPA Documents have the meanings given in Exhibit 1.

1.2 PPA Documents

The term "PPA Documents" shall mean the documents listed in Section 1.3.

1.3 Order of Precedence

1.3.1 Each of the PPA Documents is an essential part of the PPA, and a requirement occurring in one is as binding as though occurring in all. The PPA Documents are intended to be complementary and to describe and provide for a complete agreement. In the event of any conflict among the PPA Documents, the order of precedence shall be as set forth below.

- (a) For design and other non-Construction Work:
 - (i) Change Orders and PPA amendments;
 - (ii) This PPA, including exhibits, except for Proposal Commitments, which have a lower order of precedence as noted below;
 - (iii) Technical Provisions including all attachments to the Technical Provisions, except the Project Standards listed in Attachment 3-1 of the Technical Provisions have a lower order of precedence as noted below;
 - (iv) Unique Special Provisions approved by INDOT;
 - (v) Recurring Special Provisions;

- (vi) Standard Specifications;
 - (vii) Standard Drawings;
 - (viii) Design-Build Contractor's Proposal Commitments (as set forth in Attachment 1 of Exhibit 7);
 - (ix) Design-Build Contractor's approved Deviations pursuant to the ATC process (as set forth in Attachment 2 of Exhibit 7);
 - (x) Design-Build Contractor's Proposal (other than the Proposal Commitments set forth in Attachment 1 of Exhibit 7), to the extent compliant with the PPA Documents and excluding any qualifications, assumptions, conditions and disclaimers therein; and
 - (xi) Any other Project Standards listed in Attachment 3-1 to the Technical Provisions not otherwise listed above.
- (b) For construction-related standards, specifications and requirements, the same order of precedence shall apply, except that the Released for Construction Documents shall also be considered PPA Documents and shall be added following the Proposal Commitments in the order of precedence; provided, however, that (i) the Unique Special Provisions approved by INDOT shall have precedence over Plans, and Plans shall have precedence over "Recurring Special Provisions," which, in turn, shall have precedence over Standard Specifications, (ii) no conflict shall be deemed to exist between the Released for Construction Documents and the other PPA Documents with respect to requirements of the Released for Construction Documents that INDOT determines are more beneficial than the requirements of the other PPA Documents; and (iii) any Deviations contained in the Released for Construction Documents shall have priority over conflicting requirements of other PPA Documents (excluding those of the PPA Documents listed in Section 1.3.1(a)(i) and Section 1.3.1(a)(ii)) only to the extent that the conflicts are specifically identified to INDOT by Design-Build Contractor and such Deviations are approved in writing by INDOT.

1.3.2 Notwithstanding the order of precedence among PPA Documents set forth in Section 1.3.1 in the event and to the extent that Exhibit 7 expressly specifies that it is intended to supersede specific provisions of the PPA Documents, Exhibit 7 shall control over the specified provisions. Moreover, if the Proposal includes statements, offers, terms, concepts and designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the PPA Documents or to perform services in addition to those otherwise required, or otherwise contains statements, offers, terms, concepts, or designs which INDOT considers to be more advantageous than the requirements of the other PPA Documents, Design-Build Contractor's obligations hereunder shall include compliance with all such statements, offers, terms, concepts or designs which shall have the priority of PPA amendments and Technical Provision amendments, as applicable. The commitments set forth in Attachment 1 of Exhibit 7 hereto and Design-Build Contractor's Proposal, as described in Section 1.3.1, shall be considered part of this PPA.

1.3.3 Portions of the Reference Plans and other Reference Information Documents are referenced in the PPA Documents for the purpose of defining requirements of the PPA

Documents. The Reference Information Documents shall be deemed incorporated in the PPA Documents only to the extent that they are so expressly referenced, with the referenced aspects having the same order of priority as the PPA Document in which the reference occurs.

1.3.4 Additional details and more stringent requirements contained in a lower priority PPA Document will control except to the extent they irreconcilably conflict with the requirements of the PPA Document with the higher precedence, as determined by INDOT, in its good faith discretion.

1.3.5 Notwithstanding the order of precedence among PPA Documents set forth in this Section 1.3, unless otherwise directed by INDOT, in its sole discretion, if a PPA Document contains differing provisions on the same subject matter than another PPA Document, the provisions that establish the higher standard, quantum, quality, manner or method of performing the Work or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a PPA Document or set of PPA Documents, the standard, criterion, requirement, condition, procedure, specification or other provision that use more stringent standards or better performance will apply, unless INDOT, in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly provide Notice of the conflict to the other Party. INDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.4 Interpretation of PPA Documents

In the PPA Documents, where appropriate: words in the singular number include the plural number and vice versa; references to a Section is a reference to the Section in the body of this PPA, Exhibit, Attachment, or other of the PPA Documents in which the reference appears; references to time is to Eastern Time; the meaning of “or” will be that of the inclusive “or,” that is meaning one, some, or all of a number of possibilities; references to statutes or regulations (including any orders, by-laws, ordinances, codes of practice, or instruments made under the relevant statute or regulation) include all statutory or regulatory provisions consolidating, amending, extending, or replacing the statute or regulation referred to; unless otherwise indicated, references to Codes are to the codified laws of the State; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; unless otherwise indicated, references to sections, appendices or schedules are to this PPA; words such as “herein,” “hereof” and “hereunder” shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions, responsibilities and capacities, and in the case of Persons other than Governmental Entities, such Persons’ legal representatives, trustees, executors, and administrators, including any Person taking party by way of novation; reference to a right includes any benefit, remedy, discretion, authority, or power associated with such right; reference to an agreement, document, standard, principle, or other instrument includes a reference to that agreement, document, standard, principle, or instrument as amended, supplemented, amended and restated, substituted, novated, or assigned (except where otherwise stated); reference to “\$” is to the United States Dollar; except as otherwise expressly provided, the term “may,” when used in the context of a power or right exercisable by INDOT or any INDOT designee means that INDOT can exercise that right or power in its sole and unfettered discretion and has no obligation to Design-Build Contractor to do so.

Words of any gender used herein shall include each other gender where appropriate. The use of the word “remedy” or any form of it in the PPA Documents means that the event to be remedied must be cured or its effects overcome. If PPA Documents require calculation of an amount payable to a Party, there must be no double counting in calculating that amount such that the Party would receive more than the amount owed or payable. Unless otherwise specified, lists contained in the PPA Documents defining the Project or the Work shall not be deemed all-inclusive. Design-Build Contractor acknowledges and agrees that it had the opportunity and obligation, prior to the Proposal Date, to review the terms and conditions of the PPA Documents (including those Reference Information Documents that are referenced in the PPA Documents and, pursuant to Section 1.3.3, are considered PPA Documents) and to bring to the attention of INDOT any conflicts, errors, inconsistencies or ambiguities contained therein. Design-Build Contractor further acknowledges and agrees that it has independently reviewed the PPA Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the PPA Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the PPA Documents, they shall not be interpreted or construed against the Party that prepared them, and instead other rules of interpretation and construction shall be used. INDOT’s interim or final answers to the questions posed during the Proposal process for the PPA Documents shall in no event be deemed part of the PPA Documents and shall not be relevant in interpreting the PPA Documents except and solely to the extent as they may clarify provisions otherwise considered ambiguous by INDOT. On plans, Working Drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.5 Referenced Standards and Specifications

1.5.1 Except as otherwise specified in the PPA Documents or otherwise directed by INDOT, material and workmanship specified by the number, symbol or title of any standard established by reference to a described publication affecting any portion of the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Setting Date.

1.5.2 In interpreting Project Standards, the following apply:

- (a) References to the project owner shall mean INDOT.
- (b) References to “plan(s)” shall mean the Released for Construction Documents.
- (c) Cross-references to measurement and payment provisions contained in the Project Standard shall be deemed to refer to the measurement and payment provisions contained in the PPA Documents.

1.6 Explanations; Omissions and Misdescriptions

Design-Build Contractor shall not take advantage of or benefit from any apparent or actual Error in the PPA Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the PPA Documents, Design-Build Contractor shall request in writing such further written explanations from INDOT as may be necessary and shall comply with the explanation provided. Design-Build Contractor shall promptly provide to INDOT Notice of all Errors which it may discover in the PPA Documents (including the Reference Plans and those other Reference Information Documents that are referenced in the PPA Documents, and pursuant to Section 1.3.3, are considered PPA Documents), and shall obtain specific

instructions in writing from INDOT regarding any such Error before proceeding with the Work affected thereby, it being understood that correction of Errors shall not itself be the basis for any Claim hereunder. The fact that the PPA Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the PPA Documents, or which are customarily performed, shall not relieve Design-Build Contractor from performing such omitted Work or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the PPA Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

1.7 Computation of Periods

References to “days” contained in the PPA Documents shall mean calendar days unless otherwise specified; provided that (a) if the date to perform any act or give any Notice specified in the PPA Documents (including the last date for performance or provision of Notice “within” a specified time period) falls on a non-Business Day, such act or Notice may be timely performed on the next succeeding day which is a Business Day; (b) Holidays are not “calendar days” (except in the case of assessment of Liquidated Damages or Movement Charges hereunder); and (c) the date of delivery of a Submittal will be considered to be the date of the email notification during the regular business hours of 8 am to 5 pm to the required INDOT personnel. Notwithstanding the foregoing, requirements contained in the PPA Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 5.3.1, and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

1.8 Standard for Approvals

In all cases where approvals, consents, determinations, acceptance, decisions or other action are required to be provided or made by INDOT under the PPA Documents, including with respect to Submittals, such approvals, consents, determinations, acceptance, decisions or other actions shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. If the approval, consent, determination, acceptance, decision or other action is subject to the good faith discretion of INDOT, then its approval, consent, determination, acceptance, decision or other action shall be binding, unless it is finally determined through the Dispute Resolution Procedures that such approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) or matter was arbitrary or capricious. In cases where sole discretion is specified, the decision shall not be subject to the Dispute Resolution Procedures or other legal challenge.

1.9 Reference Information Documents

1.9.1 INDOT has provided and disclosed the Reference Information Documents to Design-Build Contractor, including a reference design.

1.9.2 Design-Build Contractor acknowledges and agrees that (a) the Reference Plans and/or the other Reference Information Documents may include interpretations, extrapolations, analyses, and recommendations concerning data, design solutions, technical issues and solutions and constructions means and methods; (b) such interpretations, extrapolations, analyses and recommendations are preliminary in nature and, in many cases, are obsolete; (c) such interpretations, extrapolations, analyses and recommendations are not intended to express the views or preferences of INDOT or any other Governmental Entity or represent any statement of approval or acceptance thereof by INDOT or any other Governmental Entity; (d) such

interpretations, extrapolations, analyses, and recommendations are not intended to form the basis of Design-Build Contractor's design solutions, technical solutions or construction means and methods; (e) except as expressly provided in Section 1.3.3, Design-Build Contractor is not entitled to rely on such interpretations, extrapolations, analyses and recommendations and the use or consideration thereof by Design-Build Contractor is at the sole risk of Design-Build Contractor and without representation or warranty by, or recourse to, INDOT or any other Governmental Entity, and (f) any reliance by or on behalf of Design-Build Contractor on such interpretations, extrapolations, analyses and recommendations and the use or consideration thereof shall not be the basis of any INDOT-Caused Delay, INDOT-Directed Change or Claim.

1.9.3 Except as expressly provided in Section 1.3.3: (a) the Reference Information Documents are not mandatory or binding on Design-Build Contractor, (b) Design-Build Contractor is not entitled to rely on the Reference Information Documents as presenting a feasible, complete, accurate, viable or desirable technical, design, engineering, construction, operations or maintenance solution or other direction, means or methods for complying with the requirements of the PPA Documents, Governmental Approvals or Governmental Rules; (c) use by Design-Build Contractor of any element, aspect or portion of the Reference Information Documents shall be at the sole risk of Design-Build Contractor, and (d) use by or on behalf of Design-Build Contractor of any element, aspect or portion of the Reference Information Documents shall not be the basis of any INDOT-Caused Delay, INDOT-Directed Change or Claim.

1.9.4 Except to the extent that INDOT has specifically agreed herein that Design-Build Contractor shall be entitled to an increase in the Contract Price and/or extension of any Completion Deadline with respect to such matter, Design-Build Contractor understands and agrees that INDOT shall not be responsible or liable in any respect for any Losses whatsoever suffered by any DB-Related Entity by reason of any use of any information contained in the Reference Plans or other Reference Information Documents (including any information, reports, or studies about site conditions, geotechnical conditions, Utilities, or structures and bridge design, and any interpretations, extrapolations, analyses, and recommendations contained therein), or any action or forbearance in reliance thereon. Design-Build Contractor further acknowledges and agrees that (a) if and to the extent Design-Build Contractor or anyone on Design-Build Contractor's behalf uses any of said information in any way, such use is made on the basis that Design-Build Contractor, not INDOT, has approved and is responsible for said information, and (b) Design-Build Contractor is capable of conducting and obligated hereunder to conduct any and all studies, analyses, and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at Design-Build Contractor's own risk and at its own discretion.

1.9.5 Subject to Design-Build Contractor's right to schedule or monetary relief available hereunder as set forth in Section 13, INDOT shall not be responsible or liable in any respect for any Claims or Losses whatsoever suffered or incurred by any DB-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Plans or any other Reference Information Documents.

1.9.6 Notwithstanding the foregoing in this Section 1.9, INDOT may rely on the disclosure of information within the Reference Information Documents as a basis to establish whether Design-Build Contractor acted in accordance with Good Industry Practice, and Design-Build Contractor acknowledges and agrees that it is on constructive notice of conditions, Utilities, structures, interpretations, extrapolations, analyses, and recommendations located therein.

1.9.7 SUBJECT TO SECTION 1.9.3 AND EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS PPA, INDOT DOES NOT REPRESENT OR WARRANT, AND HEREBY DISCLAIMS, THAT THE INFORMATION CONTAINED IN THE REFERENCE PLANS OR OTHER REFERENCE INFORMATION DOCUMENTS IS EITHER COMPLETE, ACCURATE, OR SUITABLE FOR USE OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF INDOT-PROVIDED APPROVALS, OTHER PPA DOCUMENTS, GOVERNMENTAL APPROVALS, OR GOVERNMENTAL RULES. INDOT DOES NOT REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY ITEMIZED LIST SET FORTH IN THE TECHNICAL PROVISIONS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 1.9.3. DESIGN-BUILD CONTRACTOR SHALL HAVE NO RECOURSE TO INDOT FOR ANY CLAIM ARISING OUT OF OR RELATING TO ANY DB-RELATED ENTITY'S RELIANCE ON THE REFERENCE PLANS, OTHER REFERENCE INFORMATION DOCUMENTS, OR ANY INFORMATION CONTAINED THEREIN.

1.10 Incorporation of Deviations Approved via the ATC Process

1.10.1 In the event that the Deviations identified in Attachment 2 of Exhibit 7 (the "ATCs") incorporated into the PPA Documents require Other Approvals, additional Environmental Approvals, other Governmental Approvals, analysis, or assessment prior to implementation, Design-Build Contractor shall (a) be solely responsible for the cost and schedule impact of any related review, analysis, assessment, approvals, permits and findings; (b) be solely responsible for the risk that any approvals, permits or findings are not granted, issued, approved or obtained or timely granted, issued, approved or obtained; and (c) not be entitled to any increase in the Contract Price or extension of any Completion Deadline as a result of any delay or cost associated with the environmental review, analysis, approvals, permits or findings related to such ATC, including the inability to obtain such approvals, permits or findings.

1.10.2 If the PPA Documents incorporate any approved ATCs and: (a) Design-Build Contractor does not comply or is unable to comply with one or more of INDOT conditions of pre-approval for the ATC (including the obligation to obtain any Other Approvals, required additional Environmental Approvals, other Governmental Approvals, or analysis or assessment), (b) Design-Build Contractor is unable to obtain a third party approval required for the ATC, or (c) the ATC otherwise proves to be infeasible, then Design-Build Contractor shall comply with the PPA Document requirements that would have been applicable but for the ATC, without any increase in the Contract Price, extension of any Completion Deadline or any other Change Order. In such case and depending upon the circumstances (including if Design-Build Contractor fails to use all reasonable efforts to implement the ATC or obtain any Other Approvals, required Environmental Approvals, or other Governmental Approvals), INDOT may also be entitled to (i) a reduction in the Contract Price in an amount equal to the estimated value of the ATC on the Price Proposal, as reasonably determined by INDOT, but which in no event shall be less than cost (plus mark-up and profit) of the ATC as reflected in the Price Proposal, and (ii) a reduction in the time allowed to achieve Substantial Completion in an amount equal to the estimated schedule savings as a result of the ATC not being implemented, as reasonably determined by INDOT.

1.10.3 ATCs contained in proposals submitted by unsuccessful proposers may, in INDOT's sole discretion, be presented to Design-Build Contractor as a Change Notice in accordance with Section 13.2.2.

1.11 Federal Requirements

1.11.1 The Work to be performed under this PPA will be financed in part with federal funds and is therefore subject to federal Governmental Rules applicable to work financed with federal funds, including the Federal Requirements set forth in Exhibit 11. Design-Build Contractor shall comply and require its Subcontractors to comply with all applicable Federal Requirements. In the event of any conflict between any applicable Federal Requirements and the other requirements of the PPA Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

1.11.2 The Parties understand and agree that, because the Project is subject to the Federal Requirements, and because INDOT will maintain the facility after Final Acceptance using federal aid funds, the Project must remain eligible for federal funding participation. Further, Design-Build Contractor shall not, and shall not permit any other DB-Related Entity to, take any actions or failures to act in the course of performance of the Work that would have the effect of removing the Project from the federal aid system or making the Project ineligible for the future use of federal funds. Should INDOT receive written notice that the Project will lose its eligibility for federal funding and that INDOT will be required to reimburse FHWA as a result of the acts or omissions of any DB-Related Entity, INDOT will provide Notice to Design-Build Contractor and will reasonably attempt to solicit input from Design-Build Contractor in connection with its discussions with FHWA.

SECTION 2. OBLIGATIONS OF DESIGN-BUILD CONTRACTOR; REPRESENTATIONS, WARRANTIES AND COVENANTS; DESIGN REQUIREMENTS

2.1 Performance Requirements

2.1.1 Performance of Work; Project Management Plan

2.1.1.1 The Work shall include the design and construction of the Project, conforming to the Basic Configuration as set forth in the Reference Plans and otherwise complying with the requirements of the PPA Documents, except as otherwise approved in writing by INDOT, in its sole discretion. All materials, services and efforts necessary to achieve Substantial Completion and Final Acceptance on or before the applicable Completion Deadline shall be Design-Build Contractor's sole responsibility, except as otherwise specifically provided in the PPA Documents. Design-Build Contractor shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly or indirectly impacted by the Work. Subject to the terms of Section 13, the costs of all Work, including all such materials, services and efforts are included in the Contract Price.

2.1.1.2 Design-Build Contractor shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in the PPA Documents, including Section 20.2.1, Section 1.3.3 of the Technical Provisions, Governmental Approvals, Governmental Rules and Good Industry Practice. The Project Management Plan shall include all the parts and other documentation identified in the Technical Provisions.

2.1.1.3 Design-Build Contractor shall submit to INDOT, for approval in its good faith discretion, in accordance with the procedures described in Section 3 and the time line set forth in Section 3.2 and in Section 1.4 of the Technical Provisions, each component part, plan and other documentation of the Project Management Plan, including the Project Schedule. Design-Build Contractor shall submit to INDOT, for approval in its good faith discretion, (a) any proposed changes or additions to or revisions of any such component part, plan or other documentation in accordance with the procedures and time lines set forth in Section 1.4 of the Technical Provisions and (b) any updates or revisions to the Project Schedule in accordance with Section 1.4 of the Technical Provisions.

2.1.1.4 Except as authorized by this PPA, Design-Build Contractor shall not commence or permit the commencement of any aspect of the Work before the relevant component parts, plans and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by INDOT in accordance with the procedures described in this Section 2.1, Section 3 and the time line set forth in Section 1.4 of the Technical Provisions. If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document, then all such referenced or incorporated materials shall be submitted to INDOT for approval in its good faith discretion at the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to INDOT.

2.1.1.5 Design-Build Contractor shall undertake all aspects of quality assurance and quality control in accordance with the approved Project Management Plan, the PPA Documents, Governmental Approvals, Governmental Rules, Good Industry Practice, and FHWA oversight requirements.

2.1.1.6 Design-Build Contractor shall cause each of its Subcontractors at every level to comply with the applicable requirements of the approved Project Management Plan.

2.1.2 Performance Standards

2.1.2.1 Design-Build Contractor shall furnish all aspects of the Work and shall construct the Project as designed, free from defects and in accordance with: (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the PPA Documents, (c) the Project Schedule, (d) all Governmental Rules, (e) the requirements, terms and conditions set forth in all Governmental Approvals, (f) the approved Project Management Plan and all component plans prepared or to be prepared thereunder, and (g) the Construction Documents, in each case taking into account the Planned ROW Limits and other constraints affecting the Project.

2.1.2.2 The Project design and construction shall be subject to certification pursuant to the procedure contained in the approved Project Management Plan.

2.1.2.3 Design-Build Contractor acknowledges that, prior to the Effective Date, it had the opportunity to identify any provisions of the PPA Documents, including the Technical Provisions, that are erroneous or create a potentially incorrect or unsafe condition, and the opportunity and duty to provide to INDOT Notice of such fact and of the changes to the provision that Design-Build Contractor believed were the minimum necessary to render it correct and safe. If it is reasonable or necessary to adopt changes to the PPA Documents, including the Technical Provisions, after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for any adjustment to the Contract Price, Completion Deadline or other Claim, unless: (a) Design-Build Contractor neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) Design-Build Contractor knew of and reported to INDOT the erroneous or potentially unsafe provision prior to the Effective Date and INDOT did not adopt reasonable and necessary changes. If Design-Build Contractor commences or continues any Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, Design-Build Contractor shall bear any additional costs and schedule delay associated with redoing the Work already performed. Inconsistent or conflicting provisions of the PPA Documents shall not be treated as erroneous provisions under this Section 2.1.2.3, but instead shall be governed by Section 1.3.

2.1.2.4 Deviations; Design Exceptions

2.1.2.4.1 Subject to Section 2.1.2.4.2, Design-Build Contractor may apply for INDOT approval of Deviations from applicable technical requirements of the PPA Documents (e.g., those of the PPA Documents listed in Section 1.3.1(a)(iii) to Section 1.3.1(a)(ix), inclusive, and Section 1.3.1(a)(xi)). All applications shall be in writing. Where Design-Build Contractor requests a Deviation as part of the submittal of a component plan of the Project Management Plan, including the Project Schedule and any updates thereto, Design-Build Contractor shall specifically identify and label the proposed Deviation. INDOT shall consider requested Deviations in its sole discretion, but has no obligation to approve any such application. Design-Build Contractor acknowledges that FHWA also has approval rights with respect to design exceptions. INDOT may also require Design-Build Contractor to submit the proposed Deviation as a Change Request. No Deviation shall be deemed approved or be effective unless and until stated in a writing signed by INDOT's Authorized Representative. INDOT's affirmative written approval of a component plan of the Project Management Plan shall constitute: (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless INDOT takes

exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. INDOT's lack of issuance of a written Deviation within 14 days after Design-Build Contractor applies therefor in writing shall be deemed a disapproval of such application. For purposes of clarity, any change that would amend the PPA Documents other than those listed in the first sentence of this Section 2.1.2.4.1 will not be considered a Deviation and may only be implemented through the Change Request process under Section 13.3.2 (solely for "no cost"/"zero sum" changes that also do not affect the Project Schedule) or (for all other changes) through an amendment to the PPA Documents under Section 24.1.

2.1.2.4.2 Design-Build Contractor may use the approved Design Exceptions in Sections 8.4 and 14.8 of the Technical Provisions without requesting a new Deviation or obtaining approval of the Design Exception, unless the Design Exception or its use is modified by Design-Build Contractor's design. In such event, Design-Build Contractor shall request a Deviation and follow the processes for Deviations and Design Exceptions set forth in Section 3.6 of the Technical Provisions and where:

- (a) The justification under which the Design Exception as approved by INDOT and FHWA has, in the determination of INDOT and FHWA, in their respective sole discretion, been changed or otherwise modified as a result of Design-Build Contractor's design or utilization of the Design Exception;
- (b) The basis upon which the Design Exception was approved by INDOT and FHWA has, in the determination of INDOT and FHWA, in their respective sole discretion, been changed or otherwise modified as a result of Design-Build Contractor's design or utilization of the Design Exception;
- (c) The submittal by or on behalf of INDOT upon which the Design Exception was approved by INDOT and FHWA is, in the determination of INDOT and FHWA, in their respective sole discretion, no longer accurate or no longer reflects the Project design and impacts as a result of Design-Build Contractor's design or utilization of the Design Exception; or
- (d) Design-Build Contractor's utilization of the Design Exception differs in any way from that which was expressly approved by INDOT and FHWA (including as it relates to the location, length, station position or impact of the Design Exception), unless INDOT and FHWA, in their respective sole discretion, determine such difference is not material, and Design-Build Contractor may utilize such Design Exception in the express manner indicated in Design-Build Contractor's design.

2.1.2.4.3 Design-Build Contractor shall be solely responsible for specifically and expressly identifying to INDOT and FHWA (both in writing and in Plan sheets) any eliminations, changes, improvements, differences or deviations in Design-Build Contractor's proposed use of any Design Exception approved by INDOT and FHWA and listed in Sections 8.4 and 14.8 of the Technical Provisions.

2.1.2.4.4 Should Design-Build Contractor utilize any Design Exceptions listed in Sections 8.4 or 14.8 of the Technical Provisions, Design-Build Contractor shall assume sole responsibility therefor, including the responsibility for any Errors set forth therein, and INDOT shall not have any responsibility or liability arising out of such Design Exceptions or Design-Build Contractor's use thereof, including delays in seeking or obtaining Design Exceptions.

2.1.2.4.5 If Design-Build Contractor requests a Deviation that is a Design Exception, but not a Design Exception listed in Sections 8.4 and 14.7 of the Technical Provisions, then Design-Build Contractor shall follow the processes for design exceptions set forth in Section 3.6 of the Technical Provisions. Design-Build Contractor shall be responsible for securing all Design Exceptions required for the Project other than those listed in Sections 8.4 and 14.7 of the Technical Provisions (which existing INDOT-provided Design Exceptions may be used as set forth in this Section 2.1.2 and the Technical Provisions) and acknowledges that the Design Exceptions listed in Sections 8.4 and 14.7 of the Technical Provisions represent a non-exhaustive list.

2.1.2.5 References in the Technical Provisions to manuals or other publications governing the Work shall mean the most recent editions in effect on the Setting Date, unless expressly provided otherwise. Any changes to the Technical Provisions related to the Work shall be subject to the Change Order process for an INDOT-Directed Change in accordance with Section 13.

2.1.3 Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any Dispute, Design-Build Contractor shall perform as directed by INDOT in a diligent manner and without delay, shall abide by any decision or order by INDOT, and shall comply with all applicable provisions of the PPA Documents. If a Dispute arises regarding such performance or direction, the Dispute shall be resolved in accordance with Section 19.

2.2 General Obligations of Design-Build Contractor

Design-Build Contractor, in addition to performing all other requirements of the PPA Documents, shall:

2.2.1 Furnish all design and other services, provide all materials, equipment, and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the PPA Documents specify will be undertaken by INDOT or other Persons) (a) to design and construct the Project and maintain it during construction in accordance with the requirements of the PPA Documents, the Project Schedule, all Governmental Rules, all Governmental Approvals, the Railroad Agreement, applicable Utility Agreements, the approved Project Management Plan and all component plans prepared or to be prepared thereunder, the approved Design-Build Contractor's Safety Plan, the approved Construction Documents and all other applicable safety, environmental and other requirements, taking into account the Planned ROW Limits, Type 1 Utility Adjustments and Type 2 Utility Adjustments and other constraints affecting the Project, so as to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines, and (b) otherwise to do everything required by and in accordance with the PPA Documents.

2.2.2 At all times provide a Project Manager approved by INDOT who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of Design-Build Contractor, (c) will be present (or its approved designee will be present) at the Site at all times that Work is performed, and (d) will be available to execute instructions and directions from INDOT or its Authorized Representatives.

2.2.3 Use the design firm or firms identified in the Proposal to perform the design services required by the PPA Documents (or other firms approved in writing by INDOT, which

approval shall not be withheld provided that INDOT shall first have determined, in its reasonable discretion, that such firm has the demonstrated competence and professional qualifications necessary for the satisfactory performance of the required design services, and that the designated Key Personnel at such firm have sufficient experience with requirements applicable to the Project). Design-Build Contractor shall not shift Design Work from one firm to another without the prior written approval of INDOT, in its good faith discretion.

2.2.4 Obtain and pay the cost of obtaining all (a) Governmental Approvals required in connection with the Project (except for INDOT-Provided Approvals and New Approvals for which INDOT has expressly agreed to be responsible therefor under Section 6.11) and (b) any Other Approval; and prior to beginning any construction activities in the field, furnish INDOT with fully executed copies of all Governmental Approvals (other than the Governmental Approvals obtained by INDOT) and all Other Approvals required for the Project.

2.2.5 Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including performance of all environmental mitigation measures required by the PPA Documents, and Other Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to another Person in the PPA Documents.

2.2.6 Provide such assistance as is reasonably requested by INDOT in dealing with any Governmental Entity and/or in prosecuting and defending lawsuits in any and all matters relating to the Project. Such assistance may include providing information and reports regarding the Project as well as executing declarations and attending meetings and hearings. This provision is not intended to require Design-Build Contractor to provide legal services for the benefit of INDOT.

2.2.7 Comply with, and require all Subcontractors to comply with, all requirements of all applicable Governmental Rules, including:

- (a) The State labor requirements and implementing regulations and federal labor requirements, including requirements with respect to non-discrimination and employment and training of apprentices, as more specifically described in Section 7 and in Exhibit 11;
- (b) All Environmental Laws, including environmental mitigation and monitoring measures required for the Project, including those set forth in the Technical Provisions, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Materials, with due regard to the health and safety of persons and property and the protection of health, safety, welfare, and environment;
- (c) The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*, including any amendments, as well as all applicable regulations and guidelines; and
- (d) All other applicable Federal Requirements, including those set forth in Exhibit 11.

2.2.8 Cooperate fully with INDOT, INDOT's consultants, and Governmental Entities with jurisdiction over the Project in review and oversight of the design or construction of the

Project, performing oversight and conducting inspections during the construction of the Project, and other matters relating to the Work.

2.2.9 Supervise and be responsible to INDOT for any DB-Related Entity, as though all such Persons were directly employed by Design-Build Contractor.

2.2.10 Pay all applicable federal, State and local sales, consumer, use and similar taxes, pursuant to Section 107.02 of the Standard Specifications, and property taxes and any other taxes, fees, charges or levies imposed by a Governmental Entity, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

2.2.11 Without limiting Section 13, mitigate delay to the Project and Losses due to delay to the extent possible, including by resequencing, reallocating, or redeploying personnel and resources to other Work, as appropriate.

2.2.12 Ensure labor harmony on the Site during all stages of the Project, including taking appropriate steps to prevent strikes, walkouts, Work stoppages, Work slowdowns, Work curtailments, cessations or interruptions of production due to labor disputes. If failure to maintain labor harmony results in delay in completion of the Project, Design-Build Contractor shall not be entitled to a time extension or increase in compensation under Section 13, unless such matter falls expressly within the scope of clause (k) of the definition of Force Majeure Event.

2.3 Representations, Warranties and Covenants

Design-Build Contractor represents, warrants and covenants that:

2.3.1 During all periods necessary for the performance of the Work, Design-Build Contractor and its design and construction Subcontractor(s) will maintain all required authority, license status, professional ability, skills, and capacity to perform the Work, and shall perform them in accordance with the requirements contained in the PPA Documents.

2.3.2 Design-Build Contractor has evaluated the constraints affecting design and construction of the Project, including the Basic Configuration, Planned ROW Limits, conditions of INDOT-Provided Approvals, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

2.3.3 Design-Build Contractor has evaluated the feasibility of performing the Work within the time and for the amount herein, accounting for constraints affecting the Project and has reasonable grounds for believing and does believe that such performance (including achievement of Substantial Completion and Final Acceptance by the applicable Completion Deadline, for the Contract Price) is feasible and practicable.

2.3.4 As of the Effective Date, based upon its Reasonable Investigation, Design-Build Contractor has evaluated the constraints affecting design and construction of the Project, including the Planned ROW Limits, the status of environmental review and the identified environmental commitments in the PPA Documents, including Section 7 and Attachment 7-5 of the Technical Provisions, INDOT-Provided Approvals obtained prior to the Setting Date, the surface and subsurface conditions discoverable through such Reasonable Investigation, and applicable Governmental Rules, and Design-Build Contractor has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints. Design-Build Contractor, in accordance with Good Industry Practice, conducted a Reasonable

Investigation prior to the Setting Date, and as a result of such Reasonable Investigation, Design-Build Contractor is familiar with and accepts the physical requirements of the Work, subject to INDOT's obligations regarding Hazardous Materials under Section 6.10 and Design-Build Contractor's rights to seek relief under Section 13. Design-Build Contractor further acknowledges and agrees that changes in conditions at the Site may occur after the date hereof, and that Design-Build Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under Section 13. Before commencing any Work on a particular aspect of the Project, Design-Build Contractor shall verify all governing dimensions at the Site, and shall examine all adjoining work which may have an impact on such Work. Design-Build Contractor shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5 In addition, as of the Effective Date, based upon its Reasonable Investigation, Design-Build Contractor has satisfied itself as to the character of the Site, including quality and quantity of surface and surface materials or obstacles to be encountered at the Site (including the presence of Utilities, Hazardous Materials, Contaminated Groundwater, Recognized Environmental Conditions, archaeological, paleontological, biological, cultural, and other protected resources or artifacts, and threatened or endangered species at or affecting the Site or surrounding locations), subject to INDOT's obligations regarding Hazardous Materials under Section 6.10 and Design-Build Contractor's rights to seek relief under Section 13.

2.3.6 Design-Build Contractor has familiarized itself with the requirements of any and all applicable Governmental Rules and the conditions of any required Governmental Approvals prior to entering into this PPA. Except as specifically permitted under Section 13, Design-Build Contractor shall, and shall cause its Subcontractors to, comply with the foregoing at its sole cost and without any increase in Contract Price or extension of any Completion Deadline on account of such compliance. Design-Build Contractor has no reason to believe that any Other Approval or Governmental Approval required to be obtained by Design-Build Contractor will not be granted in due course in a timely fashion and thereafter remain in effect so as to enable the Work to proceed in accordance with the PPA Documents.

2.3.7 All Work furnished by Design-Build Contractor shall be performed by or under the supervision of Persons who hold all necessary and valid licenses, registrations, certifications, permits, approvals, and qualifications to perform the Work in the State, by personnel who are careful, skilled, experienced, and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the PPA Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents, and other documents prepared or checked by them.

2.3.8 Design-Build Contractor shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Substantial Completion, and Final Acceptance by the applicable Completion Deadlines and in accordance with the approved Project Schedule, including furnishing such employees, materials, facilities, and equipment and working such hours, extra shifts, overtime operations, Sundays and Holidays as may be necessary to achieve such goal, all at Design-Build Contractor's own cost except as otherwise specifically provided in Section 13.

2.3.9 The award of the PPA Documents by INDOT to Design-Build Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal, Design-Build Contractor's commitment that such individuals will be available to undertake and

perform the Work, and that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work.

2.3.10 Design-Build Contractor is a [____], duly organized and validly existing under the laws of the [State]/[Commonwealth] of [____], with full power, right, and authority to own its properties and assets and carry on its business as now conducted or proposed to be conducted. ***[NTD: To be conformed in execution version based on entity type and state of organization.]***

2.3.11 Design-Build Contractor is a duly authorized business, and is valid and existing, in the State, and will remain duly authorized to transact business, and valid and existing in the State throughout the term of this PPA and for as long thereafter as any obligations remain outstanding under the PPA Documents. ***[NTD: If Design-Build Contractor is a joint venture, identify its members and provide organizational information, qualification to do business and good standing representations regarding each member.]***

2.3.12 Each member of Design-Build Contractor is duly authorized to do business and is valid and existing in the State, and will remain in duly authorized, valid and existing throughout the term of this PPA and for as long thereafter as any obligations remain outstanding under the PPA Documents. ***[NTD: To be conformed in execution version based on entity]***

2.3.13 Design-Build Contractor has full power, right, and authority to execute and deliver this PPA and to perform all of Design-Build Contractor's obligations provided for hereunder. ***[NTD: If Design-Build Contractor is a joint venture, identify its members and provide organizational information, qualification to do business and valid/existing representations regarding each member.]***

2.3.14 [Each]/[The] individual executing this PPA on behalf of Design-Build Contractor has been duly authorized to execute and deliver this PPA on behalf of Design-Build Contractor. ***[NTD: To be conformed in execution version based on Design-Build Contractor's signature authority.]***

2.3.15 The execution, delivery and performance of this PPA have been duly authorized by all necessary action of Design-Build Contractor and Design-Build Contractor's members and will not result in a breach of or a default under Design-Build Contractor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Design-Build Contractor or any member of Design-Build Contractor is a party or by which its properties and assets may be bound or affected.

2.3.16 This PPA constitutes the legal, valid, and binding obligation of Design-Build Contractor and, if applicable, of each member of Design-Build Contractor, in accordance with its terms, subject only to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

2.3.17 There is no action, suit, proceeding, investigation or litigation pending and served on Design-Build Contractor which challenges (a) Design-Build Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this PPA, (b) Design-Build Contractor's assets, properties, or operations as relate to the Project, or (c) the authority of Design-Build Contractor's individual executing the PPA Documents; and Design-Build Contractor has disclosed to INDOT any pending and un-served or threatened action, suit, proceeding,

investigation or litigation with respect to such matters of which Design-Build Contractor is aware or should be aware after reasonable inquiry and investigation.

2.3.18 As of the Proposal Date, Design-Build Contractor disclosed to INDOT in writing all organizational conflicts of interest of Design-Build Contractor and/or any other DB-Related Entities of which Design-Build Contractor had Actual Knowledge; and between the Proposal Date and execution of this PPA, Design-Build Contractor has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Design-Build Contractor or its Subcontractors identified in its Proposal which have not been approved in writing by INDOT. For this purpose, organizational conflict of interest has the meaning set forth in the Instructions to Proposers under which Design-Build Contractor submitted its Proposal.

2.3.19 Design-Build Contractor shall avoid organizational conflicts of interest. For purposes of the PPA Documents, an “organizational conflict of interest” means that because of other activities or relationships with other Persons, a Person is unable or potentially unable to render impartial assistance or advice to INDOT, or the Person’s objectivity in performing the contract work for INDOT is or might be otherwise impaired, or a Person has an unfair competitive advantage. As of the Proposal Date, to the extent Design-Build Contractor was actually aware, Design-Build Contractor provided to INDOT Notice of all organizational conflicts of interest involving Design-Build Contractor and/or any other DB-Related Entity. Between the Proposal Date and the Effective Date, Design-Build Contractor has not obtained knowledge of any additional organizational conflict of interest.

2.3.20 Design-Build Contractor, any member of Design-Build Contractor, and any Subcontractor engaged by Design-Build Contractor, at any tier, is not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal or State Governmental Entity.

2.3.21 Design-Build Contractor, any member of Design-Build Contractor, any Subcontractor engaged by Design-Build Contractor, at any tier, has not, in the past three years, been convicted of or had a civil judgment rendered against it for (a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (e.g., federal, state or local) transaction or public contract, (b) violation of federal or state antitrust Governmental Rules, or (c) commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.

2.3.22 Design-Build Contractor, any member of Design-Build Contractor, and any Subcontractor engaged by Design-Build Contractor, at any tier, is not indicted for or otherwise criminally or civilly charged by any Governmental Entity with commission of any of the offenses enumerated in Section 2.3.21.

2.3.23 Design-Build Contractor, any member of Design-Build Contractor, and any Subcontractor engaged by Design-Build Contractor, at any tier, has not, in the past three years, had one or more public transactions (federal, state or local) terminated for cause or for default.

2.3.24 Design-Build Contractor, any member of Design-Build Contractor, and any Subcontractor engaged by Design-Build Contractor, at any tier, has not received any communication or notice (written or oral), whether from a Governmental Entity, employee, citizens group, or any other Person, that alleges that any of the foregoing is not in full compliance with all Governmental Rules and Governmental Approvals in connection with the Project and, to the

knowledge of Design-Build Contractor, there are no circumstance that may prevent or interfere with full compliance in the future.

2.3.25 Design-Build Contractor has been qualified by INDOT for the Work it is to perform and will maintain those qualifications at all times during the Work.

2.3.26 [Each of] Design-Build Contractor [and Guarantor] (a) is not in violation of (i) any applicable United States anti-money laundering laws, including those contained in the Bank Secrecy Act and the regulations promulgated thereunder; (ii) any applicable economic sanction laws administered by Office of Foreign Assets Control of the United States Department of the Treasury (“OFAC”) or by the United States Department of State; or (iii) any applicable United States anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; and (b) is not a Person (i) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws; (ii) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws; (iii) that is named on the list of “Special Designated Nationals or Blocked Persons” maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list); (iv) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated under any applicable Governmental Rule; (v) that is owned, controlled by, or affiliated with any Person identified in clauses (b)(i) through (iv) above; or (vi) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business. ***[NTD: To be conformed in execution version based on whether Design-Build Contractor is required to have a Guarantor.]***

2.3.27 Design-Build Contractor has, prior to submitting the Proposal and in accordance with Good Industry Practice, reviewed the PPA Documents and the Reference Information Documents and has brought to INDOT’s attention any Errors, conflicts and ambiguities therein.

2.3.28 [Guarantor is duly organized and validly existing under the laws of the [State]/[Commonwealth of _____], with full power, right, and authority to own its properties and assets and carry on its business as now conducted or proposed to be conducted.] ***[NTD: To be conformed in execution version based on entity type and state of organization and whether a guarantor is used.]***

2.3.29 [The Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.] ***[NTD: To be conformed in execution version based on whether a guarantor is used.]***

2.3.30 [The execution, delivery and performance of the Guaranty have been duly authorized by all necessary action of Guarantor and will not result in a breach of or a default under Guarantor’s organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Guarantor is a party or by which its properties and

assets may be bound or affected.][*NTD: To be conformed in execution version based on whether a guarantor is used.*]

2.4 Survival of Representations and Warranties

The representations and warranties of Design-Build Contractor contained herein shall survive expiration or earlier termination of this PPA.

SECTION 3. INFORMATION SUPPLIED TO DESIGN-BUILD CONTRACTOR; SUBMITTALS, DESIGN REQUIREMENTS AND DISCLAIMER; ROLE OF FHWA; GOVERNMENTAL APPROVALS

3.1 Information Supplied

INDOT has made available to Design-Build Contractor information which is described in the Technical Provisions and has allowed Design-Build Contractor access to the Site for purposes of inspection and testing.

3.2 Submittals

3.2.1 General

3.2.1.1 This Section 3.2 sets forth terms and procedures that shall govern all Submittals to INDOT pursuant to the PPA Documents or Project Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Section 3.2 and any other provisions of the PPA Documents or Project Management Plan and component plans thereunder concerning submission, review and approval procedures, this Section 3.2 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 3.2.

3.2.1.2 Whenever Design-Build Contractor provides a Governmental Entity (other than FHWA), Utility Owner, Railroad, or property owners with a submittal, notice, application, or other communication relating to the Project, Design-Build Contractor shall also concurrently submit a duplicate thereof to INDOT; except that Design-Build Contractor shall provide INDOT a proposed-final submittal, notice, application, or other such communication to or with FHWA at least 7 days prior to the earlier of the deadline or expected submission date. Design-Build Contractor shall also provide INDOT with copies of all correspondence or communications by or between Design-Build Contractor and Governmental Entities, Utility Owners, Railroad, or property owners relating to the Project. Submittals and correspondence with FHWA shall only be made through INDOT.

3.2.1.3 Where Design-Build Contractor is required to obtain an action (e.g., review, comment, approval) from the Railroad in connection with a Submittal under this PPA, Design-Build Contractor shall make the Submittal directly to the Railroad in accordance with Section 16 of the Technical Provisions, with a concurrent duplicate thereof to INDOT. Design-Build Contractor shall coordinate with all Railroads to determine and comply with their applicable requirements such that Railroad actions in connection with Submittals do not cause delay to the Project Schedule.

3.2.2 Time Periods

3.2.2.1 Except as otherwise provided in this Section 3.2.2, whenever INDOT is entitled to review, comment on, or to affirmatively approve or accept, a Submittal, INDOT shall have a period of 21 days to act after the date it receives an accurate and complete Submittal in conformity with the PPA Documents, together with all necessary information and documentation concerning the subject matter to enable INDOT to perform a meaningful review. If INDOT determines that a Submittal is not accurate, complete or materially noncompliant with the

requirements of the PPA Documents, it will notify Design-Build Contractor of such determination within seven days after receipt.

3.2.2.2 Notwithstanding the provisions of Section 3.2.2.1, whenever INDOT is entitled to review, comment on, review and comment on, or to affirmatively approve or accept, a Submittal consisting of Design Documents or Construction Documents, INDOT shall have a period of 14 days to act after the date it receives an accurate and complete Submittal or re-submittal in conformity with the PPA Documents, together with all necessary or requested information and documentation concerning the subject matter to enable INDOT to perform a meaningful review. If INDOT determines that a Submittal of Design Documents or Construction Documents is not accurate, complete or materially noncompliant with the requirements of the PPA Documents, it will notify Design-Build Contractor of such determination within seven days. The Parties shall agree in good faith upon any necessary extensions of the review, comment, and approval period to accommodate particularly complex or comprehensive Submittals of Design Documents or Construction Documents; provided, however, that if the Parties are unable to agree, then INDOT may, in its reasonable discretion, notify Design-Build Contractor of the extensions that INDOT will commit to observe.

3.2.2.3 If any other provision of the PPA Documents expressly provides a longer or shorter period for INDOT to act, such period shall control over the time periods set forth in Section 3.2.2.1 and Section 3.2.2.2.

3.2.2.4 If, at any given time, INDOT is in receipt of more than (a) 10 concurrent Submittals in the aggregate (or other number of aggregate concurrent Submittals agreed to in writing by INDOT and Design-Build Contractor) that are subject to INDOT's review and comment or approval, or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the PPA Documents, INDOT may extend the applicable period for it to act to that period in which INDOT can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the PPA Documents, and no such extension shall constitute an INDOT-Caused Delay, INDOT-Directed Change or other basis for any Claim. However, if at any time INDOT is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether INDOT may extend the applicable period. Submittals are deemed to be concurrent to the extent the review time periods available to INDOT under this Section 3.2.2 regarding such Submittals either entirely or partially overlap. Whenever INDOT is in receipt of excess concurrent Submittals, Design-Build Contractor may provide to INDOT Notice establishing an order or priority for processing such Submittals; and INDOT shall reasonably comply with such order of priority.

3.2.2.5 Notwithstanding Section 3.2.2.4, during the first 30 days after Environmental Determination, Design-Build Contractor may, in one instance, submit up to 25 concurrent Submittals in the aggregate that are subject to INDOT's review and comment or approval. If and once Design-Build Contractor submits more than 10 concurrent Submittals pursuant to this Section 3.2.2.5, Design-Build Contractor must then wait until the number of pending concurrent Submittals reduces to 10 or less before it may submit any additional Submittal.

3.2.2.6 All time periods for INDOT to act shall be extended by the period of any delay caused, in whole or in part, by a Design-Build Contractor Fault.

3.2.2.7 INDOT shall endeavor to reasonably accommodate a written request from Design-Build Contractor for expedited action on a specific Submittal, within the reasonable and practical limitations on availability of INDOT personnel appropriate for acting on the types of Submittal in question; provided Design-Build Contractor sets forth in its request specific, abnormal and exigent circumstances, not caused by any DB-Related Entity (including Design-Build Contractor Fault), demonstrating the need for expedited action. Such accommodation, if undertaken, may result in extension of the time period for review, response and/or approval of other Submittals. This provision shall not apply, however, during any time described in Section 3.2.2.6.

3.2.2.8 Whenever INDOT is entitled to affirmatively approve a Submittal or other matter under the PPA Documents, and INDOT delivers no approval, disapproval, acceptance, consent, denial, determination, decision or other action within the applicable time period under this Section 3.2.2, then Design-Build Contractor may deliver to INDOT, a Notice stating the date within which INDOT was to have decided or acted and that if INDOT does not decide or act within five days after receipt of Design-Build Contractor's Notice, delay from and after such five-day period may constitute an INDOT-Caused Delay for which Design-Build Contractor may be entitled to relief under Section 13.

3.2.2.9 Whenever the PPA Documents or the Railroad Agreement specify that the Railroad is entitled to review, comment on, or to affirmatively approve or accept, a Submittal, the Railroad shall have the longest of the periods specified in the (a) Railroad Agreement; (b) PPA Documents; and (c) approved Project Baseline Schedule to act after the date that the Railroad receives an accurate and complete Submittal in conformity with the PPA Documents and the Railroad Agreement, if applicable, together with all necessary information and documentation concerning the subject matter to enable the Railroad to perform its review. Absent any such specified time period, as between INDOT and Design-Build Contractor, the Railroad shall have the time periods, and additional rights, set forth for INDOT in Section 3.2.2.1.

3.2.2.10 Whenever the PPA Documents or any Governmental Approval (or in the process imposed to obtain or maintain such Governmental Approval) specify that a Governmental Entity (e.g., permitting authority or FHWA) is entitled to review, comment on, or to affirmatively approve or accept, a Submittal, then such Governmental Entity shall have the longer of the period specified (a) in the Governmental Approval (or in such process) and (b) the PPA Documents to act after the date the Governmental Entity receives an accurate and complete Submittal in conformity with the PPA Documents, the Governmental Approval (or such process), as applicable, together with all necessary information and documentation concerning the subject matter to enable the Governmental Entity to perform its review.

3.3 Responsibility for Design

3.3.1 Design-Build Contractor Responsibility

Design-Build Contractor agrees that it has full risk and responsibility for the design of the Project and that Design-Build Contractor will furnish the design of the Project, regardless of the fact that aspects of the Reference Plans have been provided to Design-Build Contractor prior to the Effective Date. Design-Build Contractor specifically acknowledges and agrees that:

- (a) Except to the extent specifically permitted in the PPA Documents, but without limiting Section 1.9.2 and Section 1.9.3, Design-Build Contractor is not entitled to rely on (i) the Reference Plans, except as expressly specified in Section 3.3.2.2,

- (ii) the other Reference Information Documents, or (iii) any other documents or information provided by or on behalf of INDOT.
- (b) Design-Build Contractor is responsible for correcting any Errors in the Reference Plans through the design and/or construction process without any increase in the Contract Price, extension of any Completion Deadline or any other relief, subject only to the right to a Change Order with respect to any Necessary Basic Configuration Changes to the extent permitted by Section 13.8.
- (c) INDOT's liability for Errors in the Reference Plans is limited to its obligations relating to Necessary Basic Configuration Changes and is subject to the requirements and limitations of Section 13.
- (d) Design-Build Contractor's warranties and indemnities hereunder cover Errors in the Project even though they may be related to, result from or arise out of Errors in the Reference Plans.
- (e) Design-Build Contractor is responsible for verifying all calculations and quantity takeoffs contained in the Technical Provisions or otherwise provided by INDOT.

3.3.2 Reference Plans

3.3.2.1 Design-Build Contractor acknowledges and agrees that constraints set forth in the PPA Documents, including the Planned ROW Limits, Basic Configuration, conditions of INDOT-Provided Approvals, and Site conditions will impact Design-Build Contractor's ability to revise the concepts contained in the Reference Plans.

3.3.2.2 Design-Build Contractor may rely on the Planned ROW Limits identified in the Reference Plans, and shall have the right to obtain a Change Order only for Necessary Basic Configuration Changes as provided herein, but acknowledges that the Reference Plans is otherwise conceptual in nature and cannot be relied upon as presenting a design solution that is feasible, practical or complies with all of the requirements of the PPA Documents.

3.3.3 Design Review Process and Compliance with Released for Construction Documents

3.3.3.1 Design-Build Contractor, through the appropriately qualified and licensed design professionals identified in Design-Build Contractor's Project Management Plan, shall prepare designs, plans, and specifications in accordance with the PPA Documents. Design-Build Contractor shall cause Registered Professional Engineers to sign and seal all Released for Construction Documents.

3.3.3.2 Design-Build Contractor shall furnish the Design Documents and Construction Documents to INDOT and shall obtain INDOT approval of any Deviations from Project Standards (including Design Exceptions) as specified in Section 2.1.2.4 and in Section 3.6 of the Technical Provisions. INDOT shall have the right to review and comment on all Design Documents and Construction Documents for compliance with the requirements of the PPA Documents in accordance with Section 3.2 and this Section 3.3.3, and with Sections 2.3 and 3.6 of the Technical Provisions, and shall have rights to approve certain other Submittals as set forth in the PPA Documents.

3.3.4 Railroad Approvals; Other INDOT Approvals

3.3.4.1 If the reasonableness standard applies and INDOT (or the Railroad, as applicable) delivers no approval, consent, determination, decision or other action within the applicable time period set forth in Section 3.2.2, then Design-Build Contractor must comply with the requirements of the PPA Documents, including Section 3.2.2.7, in order to be eligible for relief under Section 13.

3.3.4.2 In no event shall Design-Build Contractor proceed with any Work related to a Hold Point without receiving affirmative release of the Hold Point from INDOT (and, if applicable, the subject Railroad).

3.3.5 Review and Comment by INDOT and Railroad

3.3.5.1 Whenever the PPA Documents indicate that a Submittal or other matter (other than a Hold Point) is subject to INDOT's review, comment, disapproval or similar action not entailing a prior approval, including those identified as Witness Points in Section 2.2.1 of the Technical Provisions, and INDOT delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.2.2, then Design-Build Contractor may proceed thereafter at its election and risk, without prejudice to INDOT's rights to later object or disapprove on any of the grounds set forth in Section 3.3.7.1. No such failure or delay by INDOT in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.2.2 shall constitute an INDOT-Caused Delay, INDOT-Directed Change or other basis for any Claim.

3.3.5.2 Whenever the PPA Documents or the Railroad Agreement indicate(s) that a Submittal or other matter (other than a Hold Point) is subject to the Railroad's review, comment, review and comment, disapproval or similar action not entailing a prior approval, including those identified as Witness Points in Section 2.2.1 of the Technical Provisions, and the Railroad delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.2.2, then Design-Build Contractor may not proceed with the Work, unless otherwise directed by INDOT, in its sole discretion. On the date such applicable time period ends, Design-Build Contractor shall deliver to INDOT Notice of the Railroad's failure to respond.

3.3.5.3 When used in the PPA Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) INDOT and/or the Railroad, as applicable, has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) subject to Section 3.3.5.1 and Section 3.3.5.2, as applicable, the applicable time period has passed without INDOT and/or the Railroad, as applicable, providing any comments, exceptions, objections, rejections or disapprovals.

3.3.6 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the PPA Documents indicate that Design-Build Contractor is to deliver a Submittal to INDOT but express no requirement for INDOT to review, comment, disapprove, provide prior approval or other INDOT action, then Design-Build Contractor is under no obligation to provide INDOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and INDOT shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with

Section 3.3.7.1. No failure or delay by INDOT in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute an INDOT-Caused Delay, INDOT-Directed Change or other basis for any Claim.

3.3.7 Resolution of Comments and Objections from INDOT

3.3.7.1 INDOT's exception, objection, rejection or disapproval of a Submittal shall be deemed reasonable, valid, and binding if based on any of the following grounds or other grounds set forth elsewhere in the PPA Documents:

- (a) The Submittal or subject provision thereof fails to comply, or is inconsistent, with any applicable covenant, condition, requirement, standard (including Safety Standards), term or provision of the PPA Documents or Project Management Plan and component plans thereunder;
- (b) The Submittal or subject provision thereof is not to a standard equal to or better than Good Industry Practice;
- (c) Design-Build Contractor has not provided all content or information required or reasonably requested in respect of the Submittal or subject provisions thereof, provided that (i) INDOT assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, and (ii) Design-Build Contractor shall have the subsequent opportunity to resubmit the Submittal with the required content or information;
- (d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Governmental Rule or Governmental Approval; or
- (e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are inconsistent with the PPA Documents, the Project Management Plan (and component plans thereunder), applicable Governmental Rules, the requirements of Good Industry Practice, or policies of INDOT (except for policies that are incompatible with the Project's design-build contracting methodology).

3.3.7.2 Design-Build Contractor shall respond in writing to all comments, exceptions, disapprovals, and objections to a Submittal from INDOT and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments, exceptions, disapprovals, and objections, in accordance with the review processes set forth in this Section 3.3. Design-Build Contractor acknowledges that INDOT may provide comments, exceptions, disapprovals, and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Section 3.3.7.1. Design-Build Contractor agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments, exceptions, disapprovals, or objections through the review processes described in this Section 3.3. However, if the Submittal is not

governed by Section 1.8, the foregoing shall in no way be deemed to obligate Design-Build Contractor to incorporate any comments or resolve exceptions, disapprovals or objections that (a) are not on any of the grounds set forth in Section 3.3.7.1 (and not on any other grounds set forth elsewhere in the PPA Documents), (b) are otherwise not reasonable with respect to subject matter or length, and (c) would result in a significant delay to the Critical Path or significant increase in Design-Build Contractor's costs, except pursuant to an INDOT-Directed Change. If, however, Design-Build Contractor does not accommodate or otherwise resolve any comment, exception, disapproval, or objection, Design-Build Contractor shall deliver to INDOT within a reasonable time period, not to exceed 14 days after receipt of INDOT's comments, exceptions, disapprovals or objections, a written explanation as to why modifications based on such comment, exception, disapproval or objection are not required. The explanation shall include the facts, analyses, and reasons that support the conclusion.

3.3.7.3 The foregoing shall in no way be deemed to obligate Design-Build Contractor to incorporate any comments or resolve exceptions, disapprovals, and objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to an INDOT-Directed Change.

3.3.7.4 If Design-Build Contractor fails to provide Notice to INDOT within the time period set forth in Section 3.3.7.2, then that failure shall constitute Design-Build Contractor's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without a right to an INDOT-Caused Delay, Change Order or other Claim, including any Claim that INDOT assumes design or other liability.

3.3.7.5 After INDOT receives Design-Build Contractor's explanation as to why the modifications are not required as provided in Section 3.3.7.2, Section 3.3.7.3 and Section 3.3.7.4, if INDOT is not satisfied with Design-Build Contractor's explanation, the Parties shall attempt in good faith to resolve the Dispute. If they are unable to resolve the Dispute and the Submittal or other matter is not one subject to the sole discretion of INDOT under Section 1.8, the Dispute shall be resolved according to the Dispute Resolution Procedures; provided, however, that if INDOT elects to issue a Directive Letter pursuant to Section 13.1.2 with respect to the matter in Dispute, Design-Build Contractor shall proceed in accordance with the Directive Letter while retaining the right to make a Claim as to the matter in Dispute.

3.3.7.6 Limitations on Design-Build Contractor's Right to Rely

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

- (a) Is solely for the benefit and protection of INDOT;
- (b) Does not relieve Design-Build Contractor of its responsibility for the selection and the competent performance of all DB-Related Entities;
- (c) Does not create or impose upon INDOT any duty or obligation whatsoever toward Design-Build Contractor to cause it to fulfill the requirements of the PPA Documents;
- (d) Shall not be deemed or construed as any kind of warranty, express or implied, by INDOT;
- (e) May not be relied upon by Design-Build Contractor or used as evidence in determining whether Design-Build Contractor has fulfilled the requirements of the PPA Documents;
- (f) Shall not be deemed or construed as any assumption of risk by INDOT as to design, construction, performance or quality of Work or materials; and
- (g) May not be asserted by Design-Build Contractor against INDOT as a defense, legal or equitable, to, or as a waiver of or relief from, Design-Build Contractor's obligation to fulfill the requirements of the PPA Documents.

3.3.7.7 Design-Build Contractor shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the PPA Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 3.3.7.6 or failure to conduct any such activity by INDOT. Such activity by INDOT shall not relieve Design-Build Contractor from liability for, and responsibility to cure and correct, any unapproved Deviations, Nonconforming Work, or Design-Build Contractor Defaults.

3.3.7.8 To the maximum extent permitted by applicable Governmental Rules, Design-Build Contractor hereby releases and discharges INDOT from any and all duty and obligation to cause Design-Build Contractor's Work or the Project to satisfy the standards and requirements of the PPA Documents.

3.3.7.9 Notwithstanding the provisions of Section 3.3.7.6, Section 3.3.7.7 and Section 3.3.7.8:

- (a) Design-Build Contractor shall be entitled to rely on written approvals, releases and acceptances from INDOT for the limited purpose of establishing that the approval, release or acceptance occurred, but only to the extent that Design-Build Contractor is materially prejudiced by such approval, release or acceptance, or by a subsequent decision of INDOT to rescind such approval, release or acceptance; and
- (b) Design-Build Contractor shall be entitled to rely on specific written direction from INDOT, including Deviations that INDOT approves under Section 2.1.2.4.

3.3.7.10 Design-Build Contractor shall be responsible for coordination and the timing of all design reviews by, and obtaining all required design approvals from (a) Governmental Entities (other than INDOT), (b) Railroads, and (c) Utility Owners in connection with the Work in accordance with the Technical Provisions.

3.3.7.11 Design-Build Contractor shall construct the Project in accordance with the Released for Construction Documents and the Construction Documents. The Released for Construction Documents may be changed only with written approval of INDOT.

3.3.8 Basic Configuration Changes

3.3.8.1 If a VECP results in a change in Basic Configuration, any cost savings from such VECP shall be shared in accordance with Section 22.

3.3.8.2 Design-Build Contractor shall not make any change in the Basic Configuration, except as approved by INDOT and authorized by a Change Order in accordance with Section 13, and subject to the limitations contained in Section 6.11.

3.3.8.3 Except as provided in Sections 13.2.4 or 13.5.5, for an INDOT-Directed Change or Necessary Basic Configuration Change involving less than \$10,000 in additional direct costs, Design-Build Contractor shall not be entitled to an adjustment in the Contract Price or a Completion Deadline or any other relief for any changes in the Basic Configuration.

3.4 Design Professional Licensing Requirements

INDOT does not intend to contract for, pay for, or receive any Professional Services which are in violation of any professional licensing or registration laws, and by execution of this PPA. It is the intent of the Parties that Design-Build Contractor is fully responsible for furnishing the Professional Services of the Project through Subcontracts with licensed/registered/qualified Professional Services firm(s) as provided herein. Any references in the PPA Documents to Design-Build Contractor's responsibilities or obligations to "perform" the Professional Services portions of the Work shall be deemed to mean that Design-Build Contractor shall "furnish" the Professional Services for the Project. The terms and provisions of this Section 3.4 shall control and supersede every other provision of all PPA Documents.

3.5 Role of FHWA

3.5.1 Design-Build Contractor acknowledges that FHWA will have certain review and approval rights with respect to the Project as well as the right to provide certain oversight and technical services with respect to the Project. Design-Build Contractor shall fully cooperate with FHWA in the exercise of its duties and responsibilities in connection with the Project.

3.5.2 INDOT shall reasonably assist Design-Build Contractor with its duty to cooperate with FHWA under the PPA Documents.

3.6 Governmental Approvals and Other Approvals

3.6.1 Design-Build Contractor shall obtain all Governmental Approvals other than INDOT-Provided Approvals required in connection with the Project, the Site and the Work, including any New Approvals for which Design-Build Contractor is responsible pursuant to Section 6.11.

3.6.2 Upon Design-Build Contractor's receipt of any Governmental Approval for which Design-Build Contractor is responsible under the PPA Documents, Design-Build Contractor shall submit to INDOT a copy of the issued permit and related documentation.

3.6.3 If Design-Build Contractor wishes to pursue Additional Properties or any deviation from any Governmental Approvals, including INDOT-Provided Approvals, Design-Build Contractor shall first comply with, and obtain any consent, approval or waiver required pursuant to, then-existing agreements between INDOT and other Governmental Entities.

3.6.4 Upon Design-Build Contractor's request, INDOT will reasonably cooperate with Design-Build Contractor in providing Design-Build Contractor with copies of the applicable agreements between INDOT and other Governmental Entities.

3.6.5 If any Governmental Approvals required to be obtained by Design-Build Contractor (which exclude the INDOT-Provided Approvals) must formally be issued in the name of INDOT, Design-Build Contractor shall undertake all efforts to obtain such approvals subject to INDOT's reasonable cooperation with Design-Build Contractor, at Design-Build Contractor's expense (except in connection with Governmental Approvals required solely due to an INDOT-Directed Change), including execution and delivery of appropriate applications and other documentation in form approved by INDOT. Design-Build Contractor shall assist INDOT in obtaining any Government Approvals which INDOT may be obligated to obtain, including providing information requested by INDOT and participating in meetings regarding such approvals. In the event that INDOT must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals which are the responsibility of Design-Build Contractor, Design-Build Contractor shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support shall include conducting necessary field investigations, surveys, and preparation of any required reports, documents, and applications.

3.6.6 Design-Build Contractor shall comply with all conditions and constraints imposed by and undertake all actions required by and all actions necessary to obtain, maintain in full force and effect, and renew all Governmental Approvals, including performance of all environmental mitigation measures required by the PPA Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to INDOT in the PPA Documents. Design-Build Contractor shall bear all associated costs and schedule risks arising out of such Work. Design-Build Contractor shall also support INDOT in completing the appropriate public involvement associated with all Governmental Approvals other than INDOT-Provided Approvals, or as otherwise required under Section 6.11.2.1.

3.6.7 Design-Build Contractor shall obtain all Other Approvals required in connection with the Project, the Site and the Work; provided, however, that Design-Build Contractor shall not obtain any Other Approval or otherwise enter into any agreement with any Governmental Entity, Utility Owner, Railroad, property owner or other third party relating to the Project that in any way purports to obligate INDOT or states or implies that INDOT has an obligation to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the expiration or termination of this PPA, unless INDOT otherwise approves such agreement prior to execution, in writing, and in its sole discretion. Design-Build Contractor has no power or authority to act as an agent or representative of INDOT or to enter into any such agreement with a third party in the name or on behalf of INDOT.

3.6.8 Except as provided in Section 13, Design-Build Contractor shall not be entitled to any increase in the Contract Price or extension of any Completion Deadline as a result of any delay, inability or cost associated with securing (a) any Other Approval and (b) those Governmental Approvals that the PPA Documents specify are the responsibility of Design-Build Contractor.

SECTION 4. TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; PROJECT SCHEDULE AND PROGRESS

4.1 Time of Essence; Notice to Proceed

4.1.1 As a material consideration for entering into this PPA, Design-Build Contractor hereby commits, and INDOT is relying upon Design-Build Contractor's commitment, to design and construct the Project and complete the Work in accordance with the time periods and on or before deadlines set forth in this PPA. Except where this PPA expressly provides for an extension of time, the time limitations set forth in the PPA Documents for Design-Build Contractor's performance of its covenants, conditions, and obligations are of the essence, and Design-Build Contractor waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require INDOT to accept such performance.

4.1.2 Authorization allowing Design-Build Contractor to proceed with Work shall be provided by INDOT's issuance of a Notice to Proceed. Issuance of the NTP authorizes Design-Build Contractor to perform the Work; provided, however, that any such activities shall be subject to Section 4.4, Section 4.5, and Section 4.7. INDOT anticipates issuing the NTP concurrently with the execution and delivery of this PPA. Conditions to issuance of the NTP shall be:

- (a) receipt by INDOT of the Performance Bond and the Payment Bond, in form and from a Surety approved by INDOT, as required under Section 8, and Design-Build Contractor has delivered to INDOT certified and conformed copies of the originals of each such bond, with the original of each such bond delivered to Design-Build Contractor;
- (b) [the Guaranties, if any, required under Section 8.3 have been obtained and delivered to INDOT and are in full force and effect;]***[NTD: To be conformed in execution version based on whether a guarantor is used.]***
- (c) all required insurance has been obtained and is in full force and effect, as evidenced by insurance policies, certificates of insurance, endorsements to existing insurance policies or other evidence reasonably required by INDOT to confirm the existence of all required insurance;
- (d) INDOT has approved, in writing, any changes in Key Personnel, in accordance with Section 7.3.1; and
- (e) Design-Build Contractor has provided to INDOT any other documents, materials or assurances required by the PPA Documents as a condition of the NTP.

4.1.3 Design-Build Contractor shall begin performance of the Work as directed in the NTP, and Design-Build Contractor shall not proceed with the Work until directed by INDOT through issuance of the NTP.

4.1.4 Design-Build Contractor acknowledges and agrees that (a) INDOT has no obligation to issue the NTP, and (b) subject to Section 15.14, INDOT has no liability to Design-Build Contractor under the PPA Documents unless and until the NTP is issued. Once the NTP is issued, Design-Build Contractor is entitled to payment for Work performed pursuant to this PPA, subject to any limitations and constraints set forth in the PPA Documents.

4.1.5 Without limiting Section 4.4.3 and Section 6.11.3.1, Design-Build Contractor may not commence Final Design and Construction until Environmental Determination and INDOT has notified Design-Build Contractor that such condition has been satisfied.

4.2 Completion Deadlines

4.2.1 Substantial Completion Deadline

Design-Build Contractor shall achieve Substantial Completion within [***NTD: To be inserted from Form L of Proposer's Proposal, which will in no case be later than the "Substantial Completion Deadline" as identified in the RFP***] days after the effective date of the NTP. Said date for achieving Substantial Completion, as it may be extended pursuant to Section 13, is referred to herein as the "Substantial Completion Deadline."

4.2.2 Final Acceptance Deadline

Design-Build Contractor shall achieve Final Acceptance no later than 150 days after the Substantial Completion Date. Such deadline, as it may be extended hereunder, is referred to herein as the "Final Acceptance Deadline."

4.2.3 Time Extensions

Except as otherwise specifically provided in Section 13, INDOT shall have no obligation to extend a Completion Deadline and Design-Build Contractor shall not be relieved of its obligation to comply with the Project Schedule and to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines for any reason.

4.3 Scheduling of Design, Construction and Payment

4.3.1 Project Schedule

The Work shall be undertaken and completed in accordance with the Project Schedule prepared in conformance with Section 1.3.2 of the Technical Provisions; provided, however, that, and subject to Section 4.7, the Work shall be undertaken in accordance with the NTP + 180 Schedule until INDOT approves the Project Baseline Schedule. The Project Schedule shall be used by the Parties for planning and monitoring the progress of the Work and as the basis for determining the amount of monthly progress payments to be made to Design-Build Contractor. Design-Build Contractor shall submit to INDOT, for approval in its good faith discretion, any updates or revisions to the Project Schedule in accordance with Section 1.3.2.4 of the Technical Provisions.

4.3.2 Float

All Float contained in the Project Baseline Schedule or generated thereafter shall be considered a Project resource available to either Party or both Parties as needed to absorb delays caused by any event and achieve schedule milestones, interim completion dates and/or Completion Deadlines. All Float shall be shown as such in the Project Schedule on each affected schedule path. Identification of (or failure to identify) Float on the schedule shall be examined by INDOT in determining whether to approve the Project Schedule. Once identified, Design-Build Contractor shall monitor, account for and maintain Float in accordance with critical path methodology.

4.3.3 Reliance by INDOT; Disclaimer

4.3.3.1 The Parties shall use the then-applicable Project Schedule to plan and monitor the progress of the Work, and as the basis to determine the amount of payments owing from INDOT to Design-Build Contractor.

4.3.3.2 INDOT has no obligation to accept a Project Schedule that sets forth Completion Deadlines that differ from those set forth in the Preliminary Project Baseline Schedule, NTP + 180 Schedule, Project Baseline Schedule, or previously-approved Project Baseline Schedule (as applicable), as those durations may be extended pursuant to the PPA Documents; provided, however, that, if INDOT accepts a Project Schedule with Completion Deadlines forecasted earlier than the previously-approved Project Schedule, then the difference between the forecasted early Completion Deadline and the specified Completion Deadline shall be considered Float; provided, further, that if Design-Build Contractor plans to achieve any Completion Milestone prior to the Completion Deadline, INDOT shall not be responsible for any delays or compensation related to delays, however caused, that affect Design-Build Contractor's planned early completion.

4.3.3.3 Acceptance by INDOT of a Project Schedule shall not:

- (a) Imply acceptance by INDOT of any particular construction methods, or relieve Design-Build Contractor from its responsibility to provide sufficient materials, equipment, and labor to guarantee completion of the Project in accordance with the PPA Documents;
- (b) Attest to the validity of assumptions, activities, relationships, sequences, resource allocations, or any other aspect of the applicable Project Schedule;
- (c) Imply that Design-Build Contractor is entitled to any Change Order extending a Completion Deadline or adjusting the Contract Price; or
- (d) Modify the PPA Documents.

4.3.3.4 Design-Build Contractor's failure to include in the applicable Project Schedule any element of Work required by the PPA Documents shall not relieve Design-Build Contractor of its responsibility to perform that element of Work.

4.4 Commencement of Design

4.4.1 Conditions to Commencement of Design

Except to the extent expressly permitted in writing by INDOT, Design-Build Contractor shall not commence or permit commencement of Design Work until satisfaction of the following conditions:

- (a) INDOT has received Project-specific safety plans for field investigations, and INDOT has approved the Design Quality Management Plan;
- (b) INDOT has received and approved Design-Build Contractor's DBE Performance Plan and EEO/Workforce Project Plan;
- (c) Design-Build Contractor has certified to INDOT that Design-Build Contractor's relevant personnel, or Design-Build Contractor's Subcontractors' relevant

personnel, hold all necessary or required registrations, permits or approvals and valid licenses to practice as are necessary for performance of relevant portions of the Work and as are otherwise necessary to comply with the Technical Provisions;

- (d) Design-Build Contractor has notified INDOT of the design consultant that will perform ITS-related Work as described in Section 17 of the Technical Provisions;
- (e) Design-Build Contractor has submitted the draft Project Baseline Schedule, as described in Section 1.3.2.1 of the Technical Provisions;
- (f) INDOT has delivered the NTP to Design-Build Contractor;
- (g) The Performance Bond and Payment Bond shall remain in full force and effect;
- (h) [The Guaranties, if any, remain in full force and effect;]***[NTD: To be conformed in execution version based on whether a guarantor is used.]***
- (i) All required insurance remains in full force and effect;
- (j) Design-Build Contractor has satisfied all other conditions to commencement of design Work in the PPA Documents; and
- (k) Design-Build Contractor has provided to INDOT at least 10 days' advance Notice of the date Design-Build Contractor determines that it will satisfy all of the conditions set forth in this Section 4.4 and INDOT has not objected in writing.

4.4.2 Additional Obligations Relating to Commencement of Design

- (a) Within 45 days after the later of: (i) achievement of all of the conditions to commencement of Design Work set forth in Section 4.4.1; and (ii) commencement of Design Work, Design-Build Contractor shall:
 - (i) Obtain approval from INDOT of all the remaining component parts, plans and documentation of the Project Management Plan, each as described in Section 1.3.3 of the Technical Provisions; and
 - (ii) Satisfy all other requirements or conditions to commencement of Design Work set forth in the Technical Provisions, including participation in environmental training as is obligated under the environmental compliance and mitigation training program as set forth in Section 7.4.2 of the Technical Provisions;
- (b) If Design-Build Contractor does not satisfy each of the conditions set forth in clause (a) above, INDOT may direct suspension of Design Work and/or cease reviewing Submittals of Design Documents, in its sole discretion (and such suspensions shall not be, nor be deemed to be, a suspension for convenience of INDOT under Section 14.1 and shall be considered Design-Build Contractor Fault).

4.4.3 Additional Obligations Relating to Final Design and Construction, Environmental Determination

- (a) Notwithstanding anything to the contrary in the PPA Documents, INDOT shall not, nor shall be construed to be obligated to, accept and/or review any Submittal that constitutes the Final Design and Construction or relates to construction prior to Environmental Determination. INDOT shall not be obligated to pay, and Design-Build Contractor shall not be entitled to receive, payment for any such design or construction Work.
- (b) The draft and final Project Baseline Schedules shall include a Hold Point for (i) Design Work that constitutes Final Design and Construction; and (ii) Construction Work.
- (c) INDOT shall cease review of all Submittals upon expiration of the NTP + 180 Schedule if the Project Baseline Schedule is not approved by INDOT.
- (d) (i) INDOT's refusal to accept and/or review any Submittal that constitutes the Final Design and Construction or relates to construction, received prior to receipt of the Environmental Determination, and (ii) INDOT's cessation of review of all Submittals upon expiration of the NTP + 180 Schedule under Section 4.4.3(c) shall not be the basis for any Claim, request for additional compensation or extension of any Completion Deadline, nor shall be (or be construed to be) an INDOT-Caused Delay.

4.5 Conditions to Commencement of Construction

4.5.1 Construction Work Generally

Design-Build Contractor shall not start construction (or recommence construction following any suspension) of the Project prior to occurrence of all the following events except with the prior written approval of INDOT, in its sole discretion, and Design-Build Contractor shall commence such construction promptly following occurrence of such events:

- (a) INDOT shall have delivered the NTP to Design-Build Contractor;
- (b) INDOT shall have approved the Project Baseline Schedule;
- (c) INDOT has provided the Written Release with respect to all Hold Points that require satisfaction prior to commencement of construction in Section 2.2.2 of the Technical Provisions that are designated as requiring approval prior to commencement of construction of the Project, including the Hold Point relating to Environmental Determination;
- (d) INDOT shall have approved the Transportation Management Plan in accordance with Section 12.3.1 of the Technical Provisions;
- (e) Design-Build Contractor has met all requirements of the approved Construction Quality Management Plan that are a condition to commencement of construction;
- (f) Design-Build Contractor has delivered to INDOT, and obtained all required approvals from INDOT and any other applicable Governmental Entity with respect

to, the Submittals relating to the Construction Work required by the Project Management Plan and PPA Documents, in the form and content required by the Project Management Plan and PPA Documents, as applicable;

- (g) INDOT has reviewed and commented on all applicable Design Documents and Construction Documents, including Released for Construction Documents, and Design-Build Contractor has addressed and incorporated such comments in accordance with Section 3.3;
- (h) All Governmental Approvals necessary for construction of the Project (including the Environmental Determination and final, approved NEPA Documents) have been obtained and, except for INDOT-Provided Approvals, Design-Build Contractor has furnished to INDOT fully executed copies of such Governmental Approvals;
- (i) Design-Build Contractor has obtained all Other Approvals necessary for construction of the applicable portion of the Project, and Design-Build Contractor has furnished to INDOT fully executed copies of such Other Approvals;
- (j) Design-Build Contractor has performed and satisfied all conditions of Governmental Approvals necessary for construction of the applicable portion of the Project which are a prerequisite to commencement of such construction;
- (k) Design-Build Contractor has identified all rights of access acceptable to INDOT, in its good faith discretion, in the Project ROW necessary for commencement of construction of the Project, all necessary parties have validly executed and delivered any required possession and use agreement therefor on terms acceptable to INDOT, and INDOT has issued the ROW Certification for the Project ROW;
- (l) Design-Build Contractor has completed all pre-construction environmental surveys and mitigation as required by the Governmental Approvals or otherwise under the PPA Documents for construction, and Design-Build Contractor has performed all other survey work and delivered all Notices required by the PPA Documents to be delivered prior to commencement of construction of the Project;
- (m) All representations and warranties of Design-Build Contractor set forth in Section 2.3 shall be and remain true and correct in all material respects;
- (n) There exists no uncured breach or Event of Default for which Design-Build Contractor has received Notice from INDOT;
- (o) Each of the Performance Bond and the Payment Bond remains in full force and effect;
- (p) [The Guaranties, if any, remain in full force and effect;]***[NTD: To be conformed in execution version based on whether a guarantor is used.]***
- (q) All required insurance remains in full force and effect;

- (r) Design-Build Contractor has provided to INDOT at least 10 days advance Notice of the date Design-Build Contractor determines that it will satisfy all of the conditions set forth in Section 4.4 and INDOT has not objected in writing;
- (s) Design-Build Contractor has certified to INDOT that Design-Build Contractor's relevant construction personnel, or Design-Build Contractor's Subcontractors' relevant personnel, hold all necessary or required registrations, permits or approvals, and valid licenses to practice as are necessary for performance of relevant portions of the Work and as are otherwise necessary to comply with the PPA Documents;
- (t) INDOT-Provided Approvals as listed on Table 7-1 of the Technical Provisions (incorporated as Exhibit 2 to this PPA) have been obtained and associated requirements have been incorporated into the Project design;
- (u) The Incident Management Liaison has conducted an Incident management training session for all Key Personnel, superintendents, and lead foremen in accordance with Section 12.3.4.1 of the Technical Provisions; and
- (v) Design-Build Contractor has satisfied all other conditions to commencement of construction Work expressed in the PPA Documents.

As used in this Section 4.5.1, the term "construction" specifically excludes subsurface utility investigations and geotechnical investigations incidental to Design Work. Design-Build Contractor may not commence Hazardous Materials Management, mobilization, Site security, or establish any work yard(s) or storage site(s) within or outside the Project ROW until after, and subject to the constraints, requirements and restrictions in, the Environmental Determination.

4.5.2 Utility Adjustment Work

Design-Build Contractor shall not commence or permit commencement of construction of a Utility Adjustment included in the Construction Work until INDOT issues the NTP, all of the conditions set forth in Section 4.5.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

- (a) The Utility Adjustment is covered by an executed Utility Agreement;
- (b) The review and comment process has been completed or Design-Build Contractor has obtained approval of INDOT, as applicable, for the Utility Plans covering the Utility Adjustment;
- (c) Design-Build Contractor has obtained any other required approvals for the Utility Plans covering the Utility Adjustment;
- (d) Design-Build Contractor has submitted and INDOT has approved the Utility Work Plans pursuant to Section 15.2.2 of the Technical Provisions.

4.6 Recovery Schedule

4.6.1 If at any time, the Work on any Critical Path item is delayed for a period which exceeds the greater of either 30 days in the aggregate or that number of days in the aggregate

equal to 10% of the days remaining until a Completion Deadline (including delays to which Design-Build Contractor may be entitled to a time extension under Section 13), then within the earliest of (a) 10 days after Design-Build Contractor first has Actual Knowledge of such schedule delay, (b) with the next Project Status Schedule, or (c) otherwise at the request of INDOT, Design-Build Contractor, shall prepare and submit to INDOT for review and approval a Recovery Schedule demonstrating Design-Build Contractor's proposed plan to regain lost schedule progress and to achieve the original contractual milestones in accordance with this PPA, including Substantial Completion by the Substantial Completion Deadline. Design-Build Contractor's submittal shall comply with Section 1.3.2.6 of the Technical Provisions. INDOT shall notify Design-Build Contractor within 10 days after receipt of each such Recovery Schedule whether the schedule is accepted or rejected. Within five days after any rejection of the schedule by INDOT, Design-Build Contractor will resubmit a revised Recovery Schedule incorporating the comments of INDOT. When INDOT accepts Design-Build Contractor's Recovery Schedule, Design-Build Contractor shall, within five days after such acceptance, incorporate and fully include such schedule into the Project Schedule and deliver same to INDOT.

4.6.2 All costs incurred by Design-Build Contractor in preparing, implementing and achieving the Recovery Schedule shall be borne by Design-Build Contractor and shall not result in a change to the Contract Price, except to the extent that a change in the Contract Price is permitted in accordance with Section 13.

4.6.3 In the event that Design-Build Contractor fails to provide an acceptable Recovery Schedule within 30 days after Design-Build Contractor's receipt of a Notice to do so, INDOT may withhold 15% of each progress payment until such time as Design-Build Contractor has prepared and INDOT has approved such Recovery Schedule. In the event that Design-Build Contractor fails to provide an acceptable Recovery Schedule within 60 days after Design-Build Contractor's receipt of a Notice to do so, INDOT may withhold 25% of each progress payment until such time as Design-Build Contractor has prepared and INDOT has approved such Recovery Schedule. Any failure or delay in the submittal or approval of a Recovery Schedule shall not result in any time extension or increase in the Contract Price or other compensation under the PPA Documents.

4.7 Submission and Approval of the Project Baseline Schedule

4.7.1 Design-Build Contractor shall submit to INDOT, for INDOT's review, comment and approval, the Project Baseline Schedule no later than the commencement of Design Work following satisfaction of the conditions under Section 4.4. Design-Build Contractor shall, until approved by INDOT, resubmit successive revised drafts of the Project Baseline Schedule to INDOT for INDOT's review, comment and approval no later than 15 days after delivery of comments by INDOT to each revision of the Project Baseline Schedule.

4.7.2 Without limiting Section 4.4.3, Design-Build Contractor acknowledges and agrees that: (a) if Design-Build Contractor fails to obtain INDOT's approval of the Project Baseline Schedule on or before 150 days after issuance of the NTP, INDOT may withhold up to 25% from each progress payment until INDOT approves the Project Baseline Schedule; and (b) if Design-Build Contractor fails to obtain INDOT's approval of the Project Baseline Schedule on or before 180 days after issuance of the NTP, INDOT may withhold up to 50% from each progress payment thereafter until INDOT approves the Project Baseline Schedule.

SECTION 5. CONTROL OF WORK

5.1 Control and Coordination of Work

Design-Build Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures and Site safety and shall be solely responsible for coordinating all portions of the Work under the PPA Documents, subject, however, to all requirements and conditions contained in the PPA Documents.

5.2 Safety

5.2.1 Design-Build Contractor shall take all reasonable precautions and, as between INDOT and Design-Build Contractor, be solely liable and responsible for the safety of, and shall provide protection to prevent Losses to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of INDOT and its consultants, employees of FHWA, visitors to the Site and members of the public who may be affected by the Work. Design-Build Contractor shall at all times comply with all safety requirements of the PPA Documents, the approved Safety Plan, and all such requirements under applicable Governmental Rules. Notwithstanding the above, Design-Build Contractor shall not be liable or responsible for the failure of any employee of INDOT, consultant of INDOT, or employee of FHWA to comply with Design-Build Contractor's approved Safety Plan. During periods in which INDOT personnel are on the Site, such personnel shall comply with reasonable safety procedures and rules that have been provided by Design-Build Contractor by Notice in advance.

5.2.2 INDOT has the authority to stop any Work activity or remove any personnel that constitutes or is perceived to present a threat of imminent danger. If, in the discretion of INDOT, any conditions or activities or personnel may present an imminent danger that could result in serious injury, death or extensive property damage, the affected portion of the Work will be stopped immediately and shall not recommence until the practices or conditions are corrected to the satisfaction of INDOT. In the event the Work or any portion thereof is suspended by INDOT or any other Governmental Entity because of an unsafe condition or as a result of any unsafe behavior by any personnel of any DB-Related Entity, such suspension shall be treated in accordance with Section 14.2, and Design-Build Contractor shall have no right to any Change Order, including any adjustment in the Contract Price or Completion Deadline(s) in connection with such suspension.

5.3 Process To Be Followed Upon Discovery of Certain Site Conditions

5.3.1 Notification to INDOT

5.3.1.1 If Design-Build Contractor becomes aware of (a) any on-Site material that Design-Build Contractor believes may contain Hazardous Materials required to be removed or treated, (b) any Differing Site Conditions, or (c) any other protected resources that may affect the Work, as a condition precedent to Design-Build Contractor's right to a potential Change Order, Design-Build Contractor shall promptly (but in no event later than 24 hours after becoming aware of such item) notify INDOT thereof telephonically or in person, to be followed by Notice within 24 hours thereafter. Design-Build Contractor shall immediately stop Work in and secure the area. In addition, irrespective as to whether such matter constitutes a Differing Site Condition, if Design-Build Contractor encounters any actual or suspected archaeological, paleontological, biological

or cultural resources or artifacts, Design-Build Contractor shall, and shall cause all DB-Related Entities to, leave (and not to remove) any such resources or artifacts in place in compliance with applicable State Governmental Rules.

5.3.1.2 Design-Build Contractor's Notice under Section 5.3.1.1 shall:

5.3.1.2.1 Specify whether any Hazardous Materials and/or Differing Site Conditions (including, irrespective as to whether such matter constitutes a Differing Site Condition, any archaeological, paleontological, biological, or cultural resources or artifacts) have been identified, and if the Hazardous Materials, Differing Site Conditions, or such resources or artifacts is/are located within the Planned ROW Limits; and

5.3.1.2.2 Advise INDOT of any obligation to notify Governmental Entities under applicable Governmental Rules and Governmental Approvals.

5.3.1.3 INDOT will view the location within three Business Days after receipt of Notice and shall advise Design-Build Contractor at that time whether Work should be resumed or whether further investigation or other action is required. No time extension or costs will be allowed in connection with any Work stoppage in affected areas during the investigation period described in this Section 5.3.1, except that if Design-Build Contractor demonstrates that compensable Hazardous Materials or a Differing Site Condition exist, the investigation period shall be considered a Force Majeure Event.

5.3.1.4 Except for Design-Build Contractor's obligations relating to resources or artifacts described in Section 5.3.1.1, Design-Build Contractor shall not be obligated to stop Work upon discovery of any materials or conditions that the PPA Documents or Technical Provisions indicate are present in the location; provided, however, that Design-Build Contractor shall provide to INDOT prompt Notice of any such discovery. Furthermore, if any Governmental Approval specifies an additional procedure to be followed which differs from the procedure set forth herein, Design-Build Contractor shall also follow the additional procedure set forth in the Governmental Approval. Refer to Section 6.10.1 for additional requirements relating to Hazardous Materials.

5.3.2 Further Investigation of Hazardous Materials

INDOT shall promptly conduct such further investigation as INDOT deems appropriate. INDOT shall use reasonable efforts to determine within five days after receipt of such notification whether the situation falls within the scope of Section 5.3.1.1(a), (b) or (c), and shall notify Design-Build Contractor of its determination once it is made. INDOT shall, at that time, also advise Design-Build Contractor of any action to be taken regarding the situation. If Hazardous Materials, Recognized Environmental Conditions or Contaminated Groundwater are involved, the Notice shall describe the type of remediation measures, if any, which Design-Build Contractor is to undertake with respect thereto.

5.3.3 Recommencement of Work

INDOT shall have the right to require Design-Build Contractor to recommence Work in the area at any time, even though an investigation may still be ongoing. Design-Build Contractor shall promptly recommence Work in the area upon receipt of notification from INDOT to do so. Upon recommencing Work, Design-Build Contractor shall follow all applicable procedures contained in the PPA Documents and all Governmental Rules with respect to such Work, consistent with

INDOT's determination or preliminary determination regarding the nature of the material or condition and the basis upon which Design-Build Contractor may recommence Work. In no event shall Design-Build Contractor be directed to recommence Work in an area of identified Hazardous Materials that creates a material risk of unsafe working conditions, as determined by INDOT, in its good faith discretion.

5.4 Obligation to Minimize Impacts

Design-Build Contractor shall ensure that all of its activities and the activities of all other DB-Related Entities are undertaken in a manner that will minimize any adverse effect on surrounding property and the public to the maximum extent practicable.

5.5 Quality Assurance, Quality Control, Oversight, Inspection and Testing

5.5.1 INDOT Rights and Responsibilities

5.5.1.1 INDOT will perform materials and equipment acceptance testing as described in the Project Standards. INDOT and FHWA representatives shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, as set forth in the Technical Provisions to the extent necessary or advisable (as determined by each of such entities) to comply with FHWA or other applicable federal agency requirements and verify Design-Build Contractor's compliance with the PPA Documents and Project Management Plan, to include specifically performing periodic review of Design-Build Contractor's performance of quality assurance and quality control for the Project, in each case, at such times, and with respect to such matters, as INDOT determines in its sole discretion; provided, however, that INDOT shall use reasonable efforts to conduct such activities in accordance with Design-Build Contractor's reasonable safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Project.

5.5.1.2 INDOT shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and the Project Management Plan. Design-Build Contractor shall provide to INDOT all test results and reports within five days after Design-Build Contractor receives them.

5.5.1.3 All materials and each part or detail of the Work shall also be subject to oversight, inspection and testing by INDOT, FHWA, and other Persons designated by INDOT. At all points in performance of the Work at which specific inspections or approvals by INDOT or FHWA are required by the PPA Documents or Project Management Plan, Design-Build Contractor shall not proceed beyond that point until INDOT or FHWA, as applicable, have made such inspection or approval or waived their respective rights to inspect or approve, which waiver shall be in writing. In addition, if any Utility Owner or Railroad is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect and test the Work. If applicable, such oversight, inspection and/or testing does not make such Person a party to this PPA nor will it change the rights of the Parties hereto. Design-Build Contractor hereby irrevocably consents to such oversight, inspection and testing. Upon request from INDOT, Design-Build Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

5.5.1.4 Design-Build Contractor at all times shall coordinate and cooperate, and require its Subcontractors to coordinate and fully cooperate, with INDOT and FHWA to

facilitate the inspection, review, and oversight activities of INDOT and FHWA. Design-Build Contractor shall cause its representatives to be available at all reasonable times for consultation with INDOT.

5.5.1.5 Without limiting the foregoing, Design-Build Contractor shall afford INDOT and FHWA, and their respective authorized representatives: (a) safe and unrestricted access to the Project and the Site at all times, (b) safe access during normal business hours to Design-Build Contractor's Project offices and operations buildings, and (c) unrestricted access to Books and Records related to the Work, subject to Section 21.4. Without limiting the foregoing, Design-Build Contractor shall deliver to INDOT upon request accurate and complete Books and Records regarding the Work, the Project, the Site, and the Utility Adjustment Work, in the format required by the Technical Provisions.

5.5.2 Design-Build Contractor Responsibilities

Design-Build Contractor shall perform any inspection, sampling, testing, quality control and quality assurance in accordance with Section 2.1.1.5, and otherwise with the PPA Documents and the approved Design-Build Contractor's Quality Management Plan.

5.5.3 Obligation to Uncover Finished Work

Design-Build Contractor shall provide to INDOT Notice of any part of the Work which is about to be covered or otherwise hidden from view and offer a full and adequate opportunity to INDOT to inspect and test such part of the Work before it is covered. At all times before Final Acceptance, Design-Build Contractor shall remove or uncover such portions of the finished or covered Construction Work as directed by INDOT. After examination by INDOT and any other Persons designated by INDOT, Design-Build Contractor shall restore the Work to the standard required by the PPA Documents. If the Work exposed or examined is not in conformance with the requirements of the PPA Documents, then uncovering, removing, and restoring the Work and recovery of any delay to the Critical Path occasioned thereby shall be at Design-Build Contractor's cost and Design-Build Contractor shall not be entitled to any adjustment to the Contract Price or any time extension or any other relief. Furthermore, any Work done or materials used without adequate Notice to and opportunity for prior inspection by INDOT or without inspection in accordance with the PPA Documents, including failure to provide Notice of matters subject to Witness Points and Hold Points, may be ordered uncovered, removed or restored by INDOT at Design-Build Contractor's cost and without an adjustment to the Contract Price or a time extension, or any other relief, even if the Work proves acceptable and in compliance after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.5.3 is in conformance with the requirements of the PPA Documents, then any delay in the Critical Path caused by uncovering, removing and restoring Work shall be considered an INDOT-Caused Delay, and Design-Build Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to the Critical Path occasioned thereby.

5.6 Effect of Oversight, Spot Checks, Audits, Tests, Acceptances and Approvals

5.6.1 Oversight and Acceptance

The oversight, spot checks, audits, tests, acceptances, and approvals conducted by INDOT and others do not constitute acceptance of the materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. INDOT may request remedies for Nonconforming

Work and/or identify additional Work which must be done to bring the Project into compliance with the requirements of the PPA Documents, whether or not previous oversight, spot checks, inspections, verifications, audits, reviews, comments, tests, acceptances or approvals were conducted or waived by INDOT or any such Persons.

5.6.2 No Estoppel

Design-Build Contractor shall not be relieved of obligations to perform the Work in accordance with the PPA Documents, or any of its Warranty or indemnity obligations, as the result of oversight, spot checks, inspections, verifications, audits, reviews, comments, or tests performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. INDOT shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after Final Acceptance, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the Work performed and materials furnished by Design-Build Contractor, or from showing that the Work or materials do not conform in fact to the requirements of the PPA Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, INDOT shall not be precluded or estopped from recovering from Design-Build Contractor and its [Guarantor(s) or *[NTD: To be conformed in execution version based on whether a guarantor is used]* Surety(ies) such Losses as INDOT may sustain by reason of Design-Build Contractor's failure to comply or to have complied with the terms of the PPA Documents.

5.7 Nonconforming Work

5.7.1 Rejection, Removal and Replacement of Work

Nonconforming Work rejected by INDOT shall be removed and replaced so as to conform to the requirements of the PPA Documents, at Design-Build Contractor's cost and without any adjustment to the Contract Price or time extension or any other relief; and Design-Build Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that INDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If Design-Build Contractor fails to correct any Nonconforming Work within 10 days after receipt of Notice from INDOT requesting correction, or if such Nonconforming Work cannot be corrected within 10 days, and Design-Build Contractor fails to (a) provide to INDOT a schedule for correcting any such Nonconforming Work acceptable to INDOT within such 10-day period, (b) commence such corrective Work within such 10-day period and (c) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then INDOT may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so (plus an administrative charge equal to 10% of the cost) from any moneys due or to become due to Design-Build Contractor and/or obtain reimbursement from Design-Build Contractor for such cost (plus an administrative charge equal to 10% of the cost).

5.7.2 Agreement to Accept Nonconforming Work

5.7.2.1 If INDOT agrees to accept any Nonconforming Work without requiring it to be fully corrected, INDOT shall be entitled to reimbursement of a portion of the Contract Price in an amount equal to the greater of: (a) the amount deemed appropriate by INDOT to provide compensation for future impacts, maintenance and/or other costs relating to the Nonconforming Work, or (b) 100% of Design-Build Contractor's cost savings associated with

its failure to perform the Work in accordance with the requirements of the PPA Documents. Such reimbursement shall be payable to INDOT within 10 days after Design-Build Contractor's receipt of an invoice therefor. Alternatively, INDOT may deduct the amount of such costs and expenses from any sums owed by INDOT to Design-Build Contractor pursuant to this PPA. Design-Build Contractor acknowledges and agrees that INDOT shall have sole discretion regarding acceptance or rejection of Nonconforming Work and shall act in good faith in determining the amount payable in connection therewith. Payment, reimbursement or deduction of the amounts owing to INDOT under this Section 5.7.2 shall be a condition precedent to the acceptance of the applicable Nonconforming Work.

5.7.2.2 No acceptance of any Nonconforming Work in any instance shall waive or preclude any other right of INDOT to reject other Nonconforming Work, including Nonconforming Work of the same kind as that accepted, nor waive or preclude any further exercise of any other right of INDOT or remedy available to INDOT hereunder.

SECTION 6. ACCESS TO SITE; UTILITY ADJUSTMENTS; ENVIRONMENTAL MITIGATION; COOPERATION WITH LOCAL AGENCIES

6.1 Access to Site

6.1.1 Planned ROW Limits

In the event of any changes in right of way requirements in connection with any INDOT-Directed Change or Necessary Basic Configuration Change, the Planned ROW Limits shall automatically be deemed modified to incorporate the changed requirements.

6.1.2 Access to the Planned ROW Limits and Project ROW

Design-Build Contractor shall have the right and license to enter the Planned ROW Limits (as of the Effective Date) and the remainder of the Project ROW (as and when acquired pursuant to this PPA), in each case, subject to the provisions of the PPA Documents. With respect to any real property rights within the Planned ROW Limits, Design-Build Contractor (not INDOT) shall be responsible for obtaining encroachment permits and other permits and rights of entry to gain access to areas within the jurisdiction of any Local Agency, Governmental Entity (excluding INDOT) or with respect to the Railroad. Design-Build Contractor shall be responsible for being informed of and complying with any access restrictions that may be set forth in any documents granting access to any Project ROW, and such access restrictions shall not be, nor be deemed to be, failure by INDOT to “ensure access” to such parcel under this Section 6.1.2.

6.1.3 Additional Properties

6.1.3.1 INDOT may also obtain access rights to certain other parcels identified by Design-Build Contractor (the “Additional Properties”), if (i) the property is intended for permanent improvements for the Project or for Utility Adjustments being performed by the Utility Owners; and (ii) acquisition of the property is otherwise consistent with applicable Governmental Rules and Governmental Approvals. Acquisition of Additional Properties shall be solely at Design-Build Contractor’s expense as more particularly provided in Section 6.1.3.4.

6.1.3.2 If Design-Build Contractor identifies Additional Properties, Design-Build Contractor shall submit to INDOT in writing a request, including a drawing of the limits necessary for each parcel and any other information necessary for INDOT’s review, to acquire the Additional Properties. The request, drawing and information are subject to INDOT’s approval. INDOT will undertake and complete acquisition of Additional Properties, including undertaking eminent domain proceedings, if necessary, if and after INDOT approves Design-Build Contractor’s written request, drawing and information for the requested Additional Properties.

6.1.3.3 INDOT will not be obligated to approve a request for acquisition of any Additional Property where, in good faith judgment of INDOT, (a) to do so would materially adversely affect the Project, Governmental Approvals or political, community or public relations, (b) acquisition is not consistent with Governmental Rules; or (c) successful timely completion of the acquisition is not likely. Within 14 days after receipt of a Notice from Design-Build Contractor identifying and requesting an Additional Property for acquisition, INDOT will state in writing to Design-Build Contractor whether INDOT regards acquisition (whether by negotiation or condemnation) of the Additional Property as potentially materially adversely affecting the Project, Governmental Approvals or political, community or public relations, or regards successful timely

acquisition as not likely. No such statement, or lack thereof, will preclude INDOT from later changing the determination based on changed political, community or public relations events or circumstances.

6.1.3.4 Design-Build Contractor shall be responsible for all costs and expenses associated with acquisition of Additional Properties by INDOT. In paying all such costs and expenses, Design-Build Contractor is not acquiring, and shall not be deemed to be acquiring, any interest in real property for Design-Build Contractor. Such costs and expenses include:

- (a) The cost of acquisition services and document preparation;
- (b) The cost of negotiations;
- (c) The cost of condemnation proceedings handled by the Attorney General of the State through master proceedings, jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production;
- (d) The purchase prices, master awards, settlements, offers of judgment, court awards or judgments, including pre-judgment and post-judgment interest, costs, and attorney's fees, or other consideration for interests in real property for all parcels required for the Project or the Work, whether within or outside of the Project ROW;
- (e) The cost of permanent or temporary acquisition of leases, easements, rights of entry, licenses and other interests in real property, including for drainage, temporary work space, or other Project-Specific Locations, and any other convenience of Design-Build Contractor;
- (f) The cost of permitting;
- (g) Closing costs associated with parcel acquisitions in accordance with the Uniform Act, IC § 32-24-1 *et seq.*, and policies and procedures of INDOT;
- (h) Relocation assistance payments and costs, in accordance with the Uniform Act and IC § 8-23-17-1 *et seq.*;
- (i) The cost for separate property survey(s) in addition to the Planned ROW Limits survey(s); and
- (j) The cost of all claims for goodwill, severance damages or inverse condemnation in connection with the acquisition of the Additional Properties.

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

6.1.3.6 Design-Build Contractor shall solely bear the risk of any time and cost impacts to the Work related to INDOT's acquisition of Additional Properties.

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

6.1.3.8 INDOT will not be obligated to acquire or exercise its power of eminent domain in connection with Design-Build Contractor's acquisition of any temporary right or interest for Project-Specific Locations. INDOT will not have any obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests; and Design-Build Contractor shall have no obligation to submit acquisition packages to INDOT for, or obtain INDOT's approval of Design-Build Contractor's acquisition of, any such temporary right or interest.

6.1.3.9 In the event that the acquisition of Additional Properties necessitates any Governmental Approvals, Design-Build Contractor shall: (i) be solely responsible for the cost and schedule impact of any related review, analysis, assessment, approvals, permits and findings; (ii) be solely responsible for the risk that any Governmental Approvals are not (1) granted, issued, approved or obtained or (2) timely granted, issued, approved or obtained; and (iii) not be entitled to any increase in the Contract Price or extension of any Completion Deadline as a result of any delay, inability or cost associated with the Governmental Approvals related to such Additional Properties.

6.1.3.10 Design-Build Contractor shall not be entitled to any increase in the Contract Price or any extension of any Completion Deadline under the PPA Documents or otherwise entitled to make a Claim as a result of (i) Site conditions associated with any Additional Properties (including those relating to Hazardous Materials, Differing Site Conditions or Utilities); or (ii) any delay, liability or cost associated with the acquisition of any Additional Properties, including Additional Properties required to implement any ATCs.

6.1.3.11 Design-Build Contractor shall support any requests for acquisition of Additional Properties with such information as may be reasonably required by INDOT. In all cases, INDOT's obligation to provide such access is subject to the following conditions: (i) if requested by INDOT, Design-Build Contractor's providing an analysis regarding alternative courses of action; (ii) INDOT's agreement that the property acquisition is in the best interest of the Project; (iii) Design-Build Contractor's providing such evidence as INDOT may require to enable issuance of a determination of necessity; and (iv) if required, issuance of a determination of necessity by INDOT.

6.1.4 Acquisition of Temporary Interests by Design-Build Contractor

6.1.4.1 Design-Build Contractor's activities with respect to (a) acquisition of temporary interests in real property to be used in connection with the Work and (b) Utility Adjustment Work performed pursuant to Section 6.3 through Section 6.9 shall be completed and documented in compliance with all applicable Governmental Rules, including the Uniform Act, and the rules and regulations implementing the Uniform Act. Design-Build Contractor shall provide INDOT with a ROW Certification for all Project-Specific Locations and a "utility certification," in a form acceptable to INDOT, that such activities comply with the Uniform Act and implementing regulations as well as 23 CFR § 635.309 (b) and (c), as well as 105 IAC 13, as may be amended from time to time. INDOT reserves the right to supervise Design-Build Contractor's activities described in this Section 6.1.4.1 to ensure Design-Build Contractor acts in accordance with the INDOT "Real Estate Division Manual," dated August 2018, as amended (available at:

<https://www.in.gov/indot/2493.htm>) and in compliance with all applicable Governmental Rules, including the Uniform Act and the rules and regulations implementing the Uniform Act.

6.1.4.2 Design-Build Contractor, at its sole cost, shall be solely responsible for acquisition of any Project-Specific Locations or other temporary interests in property which Design-Build Contractor determines are necessary, desirable or advisable in order to complete the Project, other than temporary interests provided as of the Effective Date as among the real property rights comprising the Planned ROW Limits and any Additional Properties to be acquired by INDOT under Section 6.1.3. Such temporary interests may include rights for temporary Project-specific activities in connection with the Construction Work outside the Project ROW, 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, as well as any property needed for any temporary utility facilities being constructed by Design-Build Contractor. Design-Build Contractor shall pay the purchase price for all such property interests directly. In the event that the property is within the Planned ROW Limits and is intended to be used for permanent improvements or Design-Build Contractor intends to request INDOT to acquire such parcel as an Additional Property, Design-Build Contractor shall not negotiate with the owner(s) of such interests. INDOT will have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests or the condition of such rights or interests, and will not be obligated to use its powers of eminent domain in connection therewith. Design-Build Contractor shall comply with all applicable Governmental Approvals and Governmental Rules in acquiring and maintaining or disposing of any such property rights or interests. Design-Build Contractor shall cause the documentation of any such property interest to contain the grantor's express acknowledgment that INDOT shall have no liability or obligations with respect thereto.

6.1.5 Conveyance Documents

Design-Build Contractor shall prepare all documents necessary to evidence any easements or other real property interests relating to the Project to be granted by INDOT to Utility Owners and other Persons.

6.1.6 Avoidance of Acquisition of Additional Properties

Design-Build Contractor shall use its best efforts to avoid the necessity to acquire Additional Properties. To the extent reasonably possible, consideration shall be given to using retaining walls or making other engineering adjustments as an alternative to acquisition of Additional Properties.

6.2 Railroad Interface

6.2.1 Railroad Coordination

INDOT will reasonably support Design-Build Contractor in connection with Design-Build Contractor's coordination with the Railroad under this PPA and reasonably coordinate with the Railroad in its review and response to Submittals under the Railroad Agreement and Section 16 of the Technical Provisions.

6.2.2 Design-Build Contractor's Responsibilities

6.2.2.1 Design-Build Contractor agrees to be bound by the contractor requirements in the Railroad Agreement and is responsible for timely and proper completion of the Work required for the Project, in accordance with the PPA Documents, all applicable Governmental Rules, and all provisions of the Railroad Agreement, regardless of whether Design-Build Contractor, the Railroad or its contractors, is performing the Work. The costs of all such compliance and payments required under the Railroad Agreement are the responsibility of Design-Build Contractor and are included in the Contract Price.

6.2.2.2 If a conflict occurs between the terms of the Railroad Agreement entered into by the Parties and those of the PPA Documents, then, unless INDOT, in its good faith discretion, directs otherwise, the terms that establish the higher quality, manner or method of performing the Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Design-Build Contractor and INDOT; if the foregoing criteria are not relevant to the terms at issue, then the PPA Documents shall prevail, unless expressly provided otherwise in the PPA Documents.

6.2.2.3 If Design-Build Contractor desires to modify the Railroad Agreement or a new or modified Railroad Agreement is required for a reason other than as a direct result of a Necessary Basic Configuration Change, INDOT-Directed Change or Force Majeure Event, including as a result of Design-Build Contractor's design or construction means and methods, then Design-Build Contractor shall bear the sole risk, schedule impact, and cost of preparing and negotiating such new or modified Railroad Agreement with the Railroad that may be impacted by the Project, or any cost or schedule impact of the Work arising out of such new or modified Railroad Agreement. Each such Railroad Agreement or modification shall (i) clearly specify and distinguish the scope of Work that Design-Build Contractor is to perform, and the scope that the applicable Railroad is to perform; (ii) contain provisions for payments, payment terms, controlling specifications, and work description, where applicable; and (iii) include specific procedures for resolving scheduling, design, construction, and payment issues. In no event shall Design-Build Contractor ascribe, shift or allocate liability or responsibility to INDOT through a Railroad Agreement or modification without INDOT written consent, in its sole discretion. Subject to the prior review and reasonable approval of INDOT and provided that such new or modified Railroad Agreement complies with the requirements of the PPA Documents and does not increase INDOT's liability for the Project or to the Railroad, INDOT shall execute such new or modified Railroad Agreement. Sections 6.2.2.1 and 6.2.2.2 shall apply to Design-Build Contractor's compliance and timely performance of obligations under any new or modified Railroad Agreement.

6.2.3 Access to Railroad Property; Maintenance Responsibilities

6.2.3.1 As pertains to the Railroad, Design-Build Contractor shall comply with all requirements in the Railroad Agreement, modification of such Railroad Agreement or any separate agreement entered into pursuant to Section 6.2.2.3, and any Other Approval regarding access to any parcel for which the Railroad has relevant real property rights.

6.2.3.2 Design-Build Contractor shall pay all fees associated with access to any such parcel.

6.2.3.3 Notwithstanding anything to the contrary contained in any Railroad Agreement or modification, Design-Build Contractor shall maintain the structures as and to the

extent described in the Technical Provisions and any Railroad Agreement (including modifications) until it is relieved of maintenance liability in accordance with Section 10.2.2.

6.2.4 Railroad Flagging Services

6.2.4.1 As pertains to the Railroad, Design-Build Contractor shall comply with all requirements, whether addressed in any Railroad Agreement, modification or otherwise, regarding scheduling and use of such Railroad's flagging services. Notwithstanding anything to the contrary, Design-Build Contractor shall not request or provide written notice to INDOT or the Railroad requesting flagging services prior to Environmental Determination.

6.2.4.2 As between INDOT and Design-Build Contractor, Design-Build Contractor shall bear the cost of the Railroad's flagging services required for Design-Build Contractor to perform Work on Railroad property. INDOT shall initially pay the Railroad for flagging services related to the Project and Design-Build Contractor, on a monthly basis, shall reimburse INDOT for any costs incurred in connection with such flagging services. The amounts reimbursed shall be due and payable within 10 days after receipt of INDOT's invoice for such flagging services. INDOT, in its sole discretion, may also deduct the amount to be reimbursed from any payment due and payable to Design-Build Contractor should Design-Build Contractor fail to reimburse INDOT for such flagging services.

6.3 Utility Adjustments

6.3.1 Utility Agreements for Type 1 and Type 2 Utility Adjustments

6.3.1.1 INDOT is responsible for negotiating and entering into Utility Agreements necessary to accomplish Type 1 Utility Adjustments and Type 2 Utility Adjustments. The Utility Agreements will be based on the Reference Plans.

6.3.1.2 Design-Build Contractor will not be a party to these Utility Agreements entered into by INDOT; provided, however, that: (a) Design-Build Contractor shall cooperate and provide access to the Project for all Utility Adjustments in accordance with Section 6.3.2.2, and (b) if any Utility Agreement for a Type 2 Utility Adjustment requires that Design-Build Contractor enter into a separate agreement with the Utility Owner, then Design-Build Contractor shall, as an obligation under the PPA Documents, enter into such agreement and deliver an executed copy thereof to INDOT within five days after execution, so long as such agreement is substantially in the form attached to any such Utility Agreement. If such agreement is not substantially in the form attached to any such Utility Agreement, Design-Build Contractor shall obtain approval of INDOT, in its sole discretion, of the form of such agreement prior to execution.

6.3.1.3 In preparing, negotiating, and entering into Utility Agreements for Type 2 Utility Adjustments, INDOT will use commercially reasonable efforts to distinguish the scope of Utility Adjustment Work that Design-Build Contractor is to perform, and the scope that the Utility Owner is to perform, and to include provisions for payments, payment terms, controlling specifications, work description, inspection, where applicable, and specific procedures for resolving scheduling, design, construction, and payment issues arising due to errors or omissions in information the Utility Owner provides to INDOT.

6.3.1.4 If a conflict occurs between the terms of a Utility Agreement or any other agreement between INDOT and a Utility Owner and those of the PPA Documents, then, unless INDOT, in its good faith discretion, directs otherwise, the terms that establish the higher

quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Design-Build Contractor and INDOT; if the foregoing criteria are not relevant to the terms at issue, then the PPA Documents shall prevail, unless expressly provided otherwise in the PPA Documents.

6.3.2 Type 1 Utility Adjustments

6.3.2.1 INDOT shall complete the Type 1 Utility Adjustments within the Site by the later of: (i) the dates set forth in Attachment 15-1 of the Technical Provisions for the applicable Utility; and (ii) the late date for starting Design-Build Contractor's Work requiring such Type 1 Utility Adjustments set forth in the approved Project Baseline Schedule, as updated.

6.3.2.2 Design-Build Contractor shall not perform any Utility Adjustment Work for any Type 1 Utility Adjustment, but shall schedule, coordinate, and perform the Work to accommodate and avoid conflicts and interference with the Utility Owners and contractors undertaking the Type 1 Utility Adjustments.

6.3.2.3 Design-Build Contractor shall consider the location of Type 1 Utility Adjustments in developing and finalizing the design of the Project, with the goal of avoiding further Utility Adjustment Work of any Type 1 Utility Adjustment.

6.3.2.4 If INDOT incurs any additional costs, risks or delays as a result of Design-Build Contractor's design or for any reason other than a Necessary Basic Configuration Change, INDOT-Directed Change or Force Majeure Event (including e.g., increased Utility Easement acquisition costs or the need for further Utility Adjustment Work for any Type 1 Utility Adjustment that is unusable or must be redone), then (i) Design-Build Contractor shall bear the associated cost, risk, and delay associated with such additional Utility Adjustment Work; (ii) such Utility Adjustment Work shall not be the basis of any INDOT-Caused Delay or Claim; and (iii) such Utility Adjustment shall be treated as a Type 3 Utility Adjustment. Design-Build Contractor shall reimburse INDOT for such costs incurred by INDOT or a Utility Owner within 10 days after receipt of INDOT's invoice for such work. INDOT, in its sole discretion, may also deduct the amount to be reimbursed from any payment due and payable to Design-Build Contractor should Design-Build Contractor fail to reimburse INDOT for such costs.

6.3.3 Type 2 Utility Adjustments

6.3.3.1 Design-Build Contractor is responsible for (and the scope of the Utility Adjustment Work includes) completing or causing the completion of all Type 2 Utility Adjustments necessary to accommodate the Project in accordance with the Project Schedule. Design-Build Contractor shall ensure that these Utility Adjustments are compatible with and interface properly with the Project. Utility Adjustments may be necessitated by: (a) a physical conflict between the Utility and the Project (including their respective construction, operation, maintenance or use), and/or (b) a conflict between the Project as designed by Design-Build Contractor and the Utility based on the applicable Adjustment Standards, Governmental Approvals and/or Governmental Rules (even though there is no physical conflict). The limits of Utility Adjustments extend as far as is necessary to accommodate or permit construction of the Project in accordance with the foregoing, whether inside or outside the Project ROW.

6.3.3.2 All Utility Adjustment Work performed by Design-Build Contractor shall comply with the PPA Documents, the applicable Utility Agreement and applicable Utility Work Plans. Design-Build Contractor shall coordinate, monitor, and otherwise undertake the

necessary efforts to cause Utility Owners to perform Type 2 Utility Adjustments timely, in coordination with the Work, and in compliance with the PPA Documents, the applicable Utility Agreement and applicable Utility Work Plans. In doing so, Design-Build Contractor shall be the responsible party to INDOT for timely performance of Type 2 Utility Adjustments, regardless of any arrangements made with Utility Owners.

6.3.3.3 Except as provided otherwise in this Section 6 and Section 13, Design-Build Contractor assumes all risk of increased costs and delays associated with Type 2 Utility Adjustments. Accordingly, Design-Build Contractor agrees that: (i) the Contract Price covers all of the Utility Adjustment Work for Type 2 Utility Adjustments, (ii) it is feasible to obtain and/or perform all Type 2 Utility Adjustments within the Completion Deadlines, and (iii) the Contract Price includes contingencies deemed adequate by Design-Build Contractor to account for the potential risks of additional costs and delays relating to Type 2 Utility Adjustments, taking into consideration the constraints affecting the Project and the fact that Design-Build Contractor may be entitled to Change Orders only as provided in this Section 6 and Section 13.

6.3.3.4 Design-Build Contractor shall consider the location of Type 2 Utility Adjustments in developing and finalizing the design of the Project, with the goal of avoiding further Utility Adjustment Work of any Type 2 Utility Adjustment.

6.3.3.5 If INDOT incurs any additional costs, risks or delays as a result of Design-Build Contractor's design or for any reason other than a Necessary Basic Configuration Change, INDOT-Directed Change or Force Majeure Event (including e.g., increased Utility Easement acquisition costs or the need for further Utility Adjustment Work for any Type 2 Utility Adjustment that is unusable or must be redone), then (i) Design-Build Contractor shall bear the associated cost, risk, and delay associated with such additional Utility Adjustment Work; (ii) such Utility Adjustment Work shall not be the basis of any INDOT-Caused Delay or Claim; and (iii) such Utility Adjustment shall be treated as a Type 3 Utility Adjustment. Design-Build Contractor shall reimburse INDOT for such costs incurred by INDOT or a Utility Owner within 10 days after receipt of INDOT's invoice for such work. INDOT, in its sole discretion, may also deduct the amount to be reimbursed from any payment due and payable to Design-Build Contractor should Design-Build Contractor fail to reimburse INDOT for such costs.

6.3.4 Type 3 Utility Adjustments

6.3.4.1 Design-Build Contractor shall be responsible for preparing and negotiating any new or modified Utility Agreement with the Utility Owner for Type 3 Utility Adjustments that may be impacted by the Project. Design-Build Contractor is required to use the template for INDOT's standard utility agreement provided in Attachment 15-4 of the Technical Provisions and follow INDOT's Utility Accommodation Policy. Each new or modified Utility Agreement shall (i) clearly specify and distinguish the scope of Utility Adjustment Work that Design-Build Contractor is to perform, and the scope the Utility Owner is to perform; (ii) contain provisions for payments, payment terms, controlling specifications, and work description; and (iii) include specific procedures for resolving scheduling, design, construction, and payment issues arising due to errors or omissions in information the Utility Owner provides to Design-Build Contractor.

6.3.4.2 INDOT agrees to cooperate as reasonably requested by Design-Build Contractor in pursuing new or modified Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. Design-Build Contractor shall keep INDOT informed of the status of any such negotiations. Design-Build Contractor shall submit each such

Utility Agreement and supplements and amendments thereto to INDOT for approval in its reasonable discretion, in accordance with the procedures described in Section 3.2.

6.3.4.3 Subject to the prior review and reasonable approval of INDOT and provided that such new or modified Utility Agreement complies with the requirements of the PPA Documents and does not increase INDOT's liability for the Project or to the Utility Owner, INDOT shall execute such new or modified Utility Agreement.

6.3.4.4 Design-Build Contractor shall bear the sole risk, schedule impact, cost of negotiating and entering into a new or modified Utility Agreement and cost and schedule impact of the Work arising out of such new or modified Utility Agreement other than, subject to Section 6 and Section 13, as a direct result of a Necessary Basic Configuration Change, INDOT-Directed Change, Force Majeure Event, Misidentified Utility or Unidentified Utility.

6.3.4.5 If a conflict occurs between the terms of a new or modified Utility Agreement or any other agreement between INDOT and a Utility Owner and those of the PPA Documents, then, unless INDOT, in its good faith discretion directs otherwise, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Design-Build Contractor and INDOT; if the foregoing criteria are not relevant to the terms at issue, then the PPA Documents shall prevail, unless expressly provided otherwise in the PPA Documents.

6.3.5 Avoiding Adjustments and Minimizing Costs

6.3.5.1 Design-Build Contractor shall use its best efforts to minimize costs for which Design-Build Contractor may be entitled to additional compensation pursuant to Sections 6.3 through 6.9, to the extent practical and allowable pursuant to the PPA Documents.

6.3.5.2 Subject to Section 6.3.5.1, Design-Build Contractor shall consider the location of Utilities and the potential impact of Utility Adjustments in developing and finalizing the design of the Project, with the goal of minimizing Utility Adjustments to the extent practical and allowable pursuant to the PPA Documents.

6.3.5.3 Design-Build Contractor shall reimburse INDOT for any costs INDOT incurs as a result of Design-Build Contractor's failure to comply with the requirements of this Section 6.3.5.

6.3.6 FHWA Utility Requirements

Unless INDOT advises Design-Build Contractor otherwise, the Project will be subject to, and Design-Build Contractor shall comply with, 23 CFR Part 645 Subparts A and B (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies. Utility Agreements for Utilities in or related to the Project shall incorporate by reference 23 CFR Part 645 Subparts A and B, and assign the obligations arising pertaining thereto. Design-Build Contractor shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subparts A and B for any Utility Adjustment costs to be eligible for reimbursement from any other federal financing or funding. Design-Build Contractor acknowledges, however, that without regard to whether such compliance is required: (a) it is not anticipated that Design-Build Contractor will be eligible for FHWA reimbursement of any Utility Adjustment outlays other than from any federal financing or funding,

if any, and (b) Design-Build Contractor will not have any share in any reimbursement from FHWA or other federal financing or funding that INDOT may receive on account of Utility Adjustments.

6.3.7 Allocation of Work Responsibility

6.3.7.1 Except for Type 1 Utility Adjustments, the initial allocation of responsibility for performing Utility Adjustment design, construction, and/or materials procurement for each Utility Adjustment as between Design-Build Contractor and the Utility Owner shall be determined in accordance with the Utility Agreement and Section 15 of the Technical Provisions. For purposes of this Section 6 and Section 15 of the Technical Provisions, references to responsibility for performing Utility Adjustment design and construction include all tasks customarily associated therewith; provided, however, that Design-Build Contractor shall be responsible for all coordination with Utility Owners that is necessary in order to accomplish the Utility Adjustments in compliance with the requirements of the PPA Documents, except for Type 1 Utility Adjustments.

6.3.7.2 Except for Type 1 Utility Adjustments, Design-Build Contractor is responsible for scheduling all Utility Adjustments so as to meet all applicable Completion Deadlines, without regard to whether a Utility Adjustment is performed by Design-Build Contractor or by the affected Utility Owner (or its contractors). Accordingly, under no circumstances shall any reallocation of responsibility for Utility Adjustment Work between Design-Build Contractor and a Utility Owner be considered grounds for a time extension hereunder.

6.3.7.3 No increase or decrease in the Contract Price shall be made pursuant to this Section 6.3.7 on account of any change in the allocation of responsibility for Incidental Utility Work, or any other matter for which the PPA Documents specify how liability, cost or risk is to be allocated between INDOT and Design-Build Contractor.

6.3.8 Utility Adjustment Costs

6.3.8.1 Except for Type 1 Utility Adjustments and Type 4 Utility Adjustments, but subject to Section 6.3.1, Design-Build Contractor is responsible for all costs of the Utility Adjustment Work, including costs of acquiring Utility Easements, Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding (a) costs attributable to Betterments (as between INDOT and Design-Build Contractor, for which the Utility Owner or Design-Build Contractor is responsible); (b) costs attributable to negotiating and entering into Utility Agreements and developing the Work Plans for Type 2 Utility Adjustments prior to the Effective Date, and (c) any other costs for which the Utility Owner is responsible under Governmental Rules. Design-Build Contractor shall fulfill this responsibility either by performing the Utility Adjustment Work at its own cost, if permitted by the Utility Owner (except that any assistance provided by any DB-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work), or by reimbursing the Utility Owner for the Utility Owner's performance of the Utility Adjustment Work, in accordance with Section 6.3.8.5. Design-Build Contractor shall bear the costs due to the Utility Owner and all costs and expenses associated therewith, including the costs of Utility Owner inspections and any overtime charges incurred by the Utility Owner. Design-Build Contractor is solely responsible for collecting directly from the Utility Owner any amount due to Design-Build Contractor for Betterment costs or other costs incurred by Design-Build Contractor for which the Utility Owner is responsible, whether under Governmental Rules or otherwise. The eligibility of Utility Owner costs (both indirect and direct, including inspection and review costs) for reimbursement by Design-Build Contractor, as well as the determination of any Betterment or

other costs due to Design-Build Contractor, shall be established in accordance with Governmental Rules, including rules pertaining to Existing Utility Property Interests, and the applicable Utility Agreement(s).

6.3.8.2 If for any reason Design-Build Contractor is unable to collect any amounts due to Design-Build Contractor from any Utility Owner, then as between INDOT and Design-Build Contractor, (a) INDOT shall have no liability for such amounts, (b) Design-Build Contractor shall have no right to collect such amounts from INDOT or to offset such amounts against amounts otherwise owing from Design-Build Contractor to INDOT, and (c) Design-Build Contractor shall have no right to stop Work, sue for *mandamus*, demand or plead in any court for INDOT's participation in resolution of any dispute with the Utility Owner, or seek to exercise any other remedies against INDOT on account of the Utility Owner's failure to pay.

6.3.8.3 If any Local Agency or other Governmental Entity is participating in any portion of Utility Adjustment costs, Design-Build Contractor shall coordinate with INDOT and such Local Agency regarding accounting for and approval of those costs.

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

6.3.8.5 INDOT shall initially pay the Utility Owner for any costs related to Utility Owner's performance of Utility Adjustment Work under this Section 6.3.8, and Design-Build Contractor, on a monthly basis, shall reimburse INDOT for any costs incurred in connection with such Utility Adjustment Work. The amounts reimbursed shall be due and payable within 10 days after receipt of INDOT's invoice for such Utility Adjustment Work. INDOT, in its sole discretion, may also deduct the amount to be reimbursed from any payment due and payable to Design-Build Contractor should Design-Build Contractor fail to reimburse INDOT for such Utility Adjustment Work.

6.3.9 Incidental Utility Work

Notwithstanding any contrary provision of the PPA Documents, Design-Build Contractor shall be responsible for all Incidental Utility Work without regard to the allocation of Work responsibility otherwise established pursuant to this Section 6. Without limiting the provision of Section 6.3.3.1 and Section 6.3.4.4, Design-Build Contractor also shall be responsible for furnishing all designs for Incidental Utility Work that Design-Build Contractor performs, unless such designs are included among that portion of the Utility Adjustment Work to be performed by the Utility Owner pursuant to the applicable Utility Agreement. Design-Build Contractor shall not be entitled to any adjustment in the Contract Price or Completion Deadlines on account of costs incurred, cost savings or delays associated with the performance of Incidental Utility Work by Design-Build Contractor or by any Utility Owner; provided, however, that the foregoing limitation shall not apply to Contract Price increases pursuant to Section 6.4.2 or to time extensions pursuant to Section 6.8 for which Design-Build Contractor would otherwise be eligible.

6.3.10 Bonds and Insurance; Security for Utility Adjustment Costs

6.3.10.1 Except for Type 1 Utility Adjustments, all Utility Adjustment Work shall automatically be covered by the Payment Bonds and Performance Bonds described in Section 8 and by the insurance described in Section 9.

6.3.10.2 Design-Build Contractor shall satisfy all requirements in Utility Agreements to provide security for reimbursement of Utility Adjustment costs to which the Utility Owner is entitled and that are the responsibility of Design-Build Contractor hereunder, in form, type, and amount and on terms provided by the Utility Agreements.

6.4 Updating Utility Information; Supplemental Utility Investigation by Design-Build Contractor

6.4.1 Utility Information and Supplemental Utility Investigation

INDOT has provided the Utility Information among the Reference Information Documents and, with respect to Main or Trunkline Utilities, in Section 15 of the Technical Provisions. Design-Build Contractor shall analyze the Utility Information, contact and make inquiries of Utility Owners, perform surface inspections of the Project ROW and such additional inspections, including additional subsurface utility investigations, as it deems appropriate and as are required by the PPA Documents and in keeping with Good Industry Practice to verify, fully and accurately identify all Utilities (including contacting and accessing Non-Indiana 811-Mapped Utilities), address all field conditions, and validate the Utility Information. Within 90 days from the effective date of the NTP, Design-Build Contractor shall prepare and submit to INDOT for review and comment a "Utility Conflict Matrix," reflecting the existence of any and all Utilities likely to be impacted by the Project.

6.4.2 Claims for Inaccuracies in Utility Information; Type 4 Utility Adjustments

6.4.2.1 Subject to the provisions of this Section 6.4.2, if (a) an Unidentified Utility or (b) a Misidentified Utility, or both, in each case, is timely identified by Design-Build Contractor in Design-Build Contractor's Utility Conflict Matrix pursuant to this Section 6.4, then Design-Build Contractor shall be entitled to a Change Order increasing the Contract Price to compensate Design-Build Contractor for any material increase in Design-Build Contractor's costs of performing the Work that is directly attributable to such lacking or inaccurate information. The amount of such Change Order shall be determined in accordance with Section 13.6.4.

6.4.2.2 If Design-Build Contractor's Utility Conflict Matrix or Utility Work Plans (including updates to Design-Build Contractor's Utility Conflict Matrix or Utility Work Plans to the extent allowed under Section 6.4.1) indicate the existence of any Unidentified Utility or reveal any Misidentified Utility, in either case, likely to be impacted by the Work, Design-Build Contractor shall provide a DCR Notice in accordance with the timeframes and other provisions set forth in Section 13.3.2.1. Except for Non-Indiana 811-Mapped Utilities, if Design-Build Contractor fails to timely provide such DCR Notice as required by this Section 6.4.2 and Section 13 or fails to include an impacted Utility in Design-Build Contractor's Utility Conflict Matrix (including updates to Design-Build Contractor's Utility Conflict Matrix to the extent allowed under Section 6.4.1), Design-Build Contractor shall be deemed to have irrevocably waived any right to later seek or obtain relief for any such Unidentified Utility or Misidentified Utility impacted by the Work, notwithstanding (a) any contrary provision of the PPA Documents, (b) knowledge on the

part of INDOT and (c) any alleged lack of prejudice to INDOT from the late Notice or late identification of the alleged inaccuracy.

6.4.2.3 Design-Build Contractor shall not be entitled to any increase in the Contract Price pursuant to this Section 6.4.2 for any of the following:

- (a) Increased costs of the Work attributable to Unidentified Utilities or Non-Indiana 811-Mapped Utilities, to the extent that the existence of the facility was known to Design-Build Contractor as of the Proposal Date or could have been inferred from a Reasonable Investigation or otherwise from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying markers, visible during a surface inspection of the area conducted prior to the Proposal Date;
- (b) Increased costs of the Work attributable to Misidentified Utilities, to the extent that the existence of the facility in the correct location and/or size, as applicable, was known to Design-Build Contractor as of the Proposal Date or could have been inferred from a Reasonable Investigation or the presence of other facilities, such as buildings, meters, junction boxes, manholes, or identifying markers, visible during a surface inspection of the area conducted prior to the Proposal Date;
- (c) Without limiting the provisions of Section 6.4.1, increased costs of the Work attributable to Unidentified Utilities (other than Non-Indiana 811-Mapped Utilities) or Misidentified Utilities, to the extent that the existence of the facility did not appear on Design-Build Contractor's Utility Conflict Matrix or Utility Work Plans (including updates to Design-Build Contractor's Utility Conflict Matrix or Utility Work Plans to the extent allowed under this Section 6.4);
- (d) Increased costs of the Work attributable to Unidentified Utilities (including Non-Indiana 811-Mapped Utilities) or Misidentified Utilities where Design-Build Contractor failed to provide timely Notice in accordance with Section 6.4.2.2;
- (e) Increased costs of the Work attributable to Unidentified Utilities, Non-Indiana 811-Mapped Utilities, or Misidentified Utilities that can be protected in place or removed rather than physically relocated;
- (f) The costs of Design-Build Contractor's supplemental utility investigation performed in accordance with Section 6.4.1;
- (g) Any additional costs incurred by Utility Owners (that are not reimbursable or payable to the Utility Owner) as a result of the Unidentified Utility or a Misidentified Utility;
- (h) Increased costs of the Work attributable to all other Utilities that are not Unidentified Utilities, Misidentified Utilities, or Non-Indiana 811-Mapped Utilities; and
- (i) Delay and disruption damages, except as specifically set forth in the PPA Documents.

6.4.2.4 INDOT is responsible for negotiating and entering into Utility Agreements for Type 4 Utility Adjustments and Design-Build Contractor agrees to cooperate as

reasonably requested by INDOT in pursuing such Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements.

6.4.3 Non-Indiana 811-Mapped Utilities

Subject to Section 6.4.1 and Section 6.4.2, if during performance of Construction Work, Design-Build Contractor encounters any Non-Indiana 811-Mapped Utility located within the Planned ROW Limits that requires Adjustment, and such Utility is (i) an Unidentified Utility or a Misidentified Utility; (ii) not a Service Line; and (iii) not identified or reflected in whole or in part in the Utility Information or the Design-Build Contractor's Utility Conflict Matrix, then, subject to the provisions of Section 13, Design-Build Contractor shall be entitled to a Change Order increasing the Contract Price to compensate Design-Build Contractor for any material increase in Design-Build Contractor's actual direct costs of performing the Work that is directly attributable to Adjusting such Non-Indiana 811-Mapped Utility. The amount of such Change Order shall be determined in accordance with Section 13.6.4.

6.4.4 Inaccuracies in Other Information Supplied by INDOT Concerning Existing Utilities

Except as otherwise provided in this Section 6.4, any information with respect to Utilities (including their existence, location, ownership, occupancy rights, type, material, status, usage, and/or any other characteristic) provided in the Utility Information or elsewhere in the Reference Information Documents or PPA Documents is for informational purposes only, is preliminary and has not been verified, and shall not be relied upon by Design-Build Contractor. Design-Build Contractor shall verify all information with respect to Utilities included in the Utility Information or elsewhere in the Reference Information Documents or PPA Documents and shall perform its own investigations as provided in this Section 6.4 and in Section 15 of the Technical Provisions. Accordingly, there shall be no changes in the Contract Price (either up or down) and no extensions of any Completion Deadlines on account of any inaccuracies in the Reference Information Documents or PPA Documents with respect to any Utility (including its existence, location, ownership, type, material, status, usage, and/or any other characteristic), unless otherwise expressly allowed pursuant to Section 6.4.2 and/or Section 6.8.

6.4.5 Acknowledgments and Waivers

6.4.5.1 Except as otherwise provided in Sections 6.4.2, 6.4.3, and 6.8, the Parties specifically intend by Section 6.4 to delegate to Design-Build Contractor the obligation to perform all responsibilities with respect to identification of all Utilities and to allocate to Design-Build Contractor all risk of increased costs and time of the Utility Adjustment Work resulting from inaccuracies in the reputed locations of such facilities (and in any other relevant information with respect to such facilities).

6.4.5.2 Design-Build Contractor acknowledges that prior to the Proposal Date, Design-Build Contractor had ample opportunity to analyze the Utility Information provided by INDOT, to undertake a Reasonable Investigation within the Planned ROW Limits, to perform such additional investigations as Design-Build Contractor deemed appropriate to verify and supplement such information, and that such investigations constituted the basis for establishing its Price Proposal.

6.4.5.3 Design-Build Contractor acknowledges that prior to the submittal of Design-Build Contractor's Utility Conflict Matrix, Design-Build Contractor had ample opportunity

to analyze the Utility Information provided by INDOT, to contact and inquire of Utility Owners, and to perform such additional investigations as Design-Build Contractor deemed appropriate to verify and supplement such information. Furthermore, Design-Build Contractor acknowledges that it has ample opportunity to analyze the Utility Information provided by INDOT, to contact and inquire of Utility Owners, and to perform such additional investigations as Design-Build Contractor deems appropriate to verify and supplement the Utility Information in support of updates to Design-Build Contractor's Utility Conflict Matrix to the extent allowed under this Section 6.4.

6.4.5.4 Design-Build Contractor further acknowledges and agrees that the acknowledgements, waivers, and agreements set forth in Section 6.4.4 and this Section 6.4.5 extend to and include any rights that Design-Build Contractor might otherwise utilize under INDOT's Right of Way Policies and Procedures Manual.

6.5 Changes in Design

6.5.1 For purposes of this Section 6.5, a Project design change impacting Utility Adjustments is a change in Project Plans that: (a) requires Adjustment of a Utility that was not listed in the Utility Information or Design-Build Contractor's Utility Conflict Matrix; (b) requires a modification or additional work associated with a Type 1 Utility Adjustment or a Type 2 Utility Adjustment; or (c) necessitates acquisition of a Utility Easement not included in the real property rights comprising the Planned ROW Limits.

6.5.2 Inasmuch as Design-Build Contractor is both furnishing the design of and constructing the Project, Design-Build Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work or of Utility Adjustment Work to be performed by Utility Owners. In considering such opportunities, Design-Build Contractor shall consider the impact of Project design changes on Utility Adjustments with the overall goal of minimizing the necessity for Utility Adjustments to the extent practical, in compliance with Section 6.3.5. Accordingly, except for cost increases or decreases resulting from Necessary Basic Configuration Changes or INDOT-Directed Changes in Project design affecting Utility Adjustment Work, and notwithstanding any other contrary provision of the PPA Documents, the following rules shall apply with respect to Project design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature, extent, or costs of anticipated Utility Adjustments:

- (a) Design-Build Contractor shall not be entitled to extension of any Completion Deadline on account of delays resulting from any such design changes (including delays in acquisition of Utility Easements by INDOT or Utility Owners);
- (b) Design-Build Contractor shall not be entitled to any increase in the Contract Price for any additional costs which Design-Build Contractor incurs as a result of such design changes (including additional costs of Utility Adjustment Work, the costs of any additional Work on other aspects of the Project undertaken in order to facilitate the avoidance or minimization of Utility Adjustments, and/or increased costs resulting from any Site conditions associated with Utility Easements made necessary by such design changes);
- (c) If INDOT incurs any additional costs as a result of such design changes (including any increases in amounts owed by INDOT to Utility Owners, e.g., for work which is unusable or which must be redone), then Design-Build Contractor shall

reimburse INDOT for such costs within 10 days after receipt of INDOT's invoice therefor, or in the sole discretion of INDOT, INDOT may deduct the amount of reimbursement due from any payment due and payable to Design-Build Contractor under the PPA Documents should Design-Build Contractor fail to reimburse INDOT for such costs; and

- (d) INDOT shall not be entitled to a credit on account of reductions in the cost of the Work due to any such avoided or minimized Utility Adjustments.

This Section 6.5 shall not apply to any changes in design made to accommodate any Change in Adjustment Standards or Change in Law.

6.6 Utility Enhancements

Design-Build Contractor shall be responsible for addressing any requests by Utility Owners that Design-Build Contractor design and/or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancement"). Notwithstanding any other provision of this Section 6.6, no work, Utility Adjustments or other Utility-related items initially included in the Work shall be considered as a Betterment, including any Utility Agreement. Any Betterment performed as part of a Utility Adjustment, whether by Design-Build Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the applicable Utility Agreement. Design-Build Contractor shall perform any work on a Utility Owner Project only by separate contract outside of the Work. Under no circumstances shall Design-Build Contractor proceed with any Utility Enhancement that is incompatible with the Project or is not in compliance with applicable Governmental Rules, the Governmental Approvals or the PPA Documents, including the Completion Deadlines. Under no circumstances will Design-Build Contractor be entitled to any additional compensation or time extension under the PPA Documents as the result of any Utility Enhancement, whether performed by Design-Build Contractor or by the Utility Owner. Design-Build Contractor may, but is not obligated under this PPA to, design and construct Utility Enhancements. Design-Build Contractor shall provide INDOT with such information, analyses, and certificates as INDOT may request in order to determine compliance with this Section 6.6.

6.7 Failure of Utility Owners to Cooperate

6.7.1 Design-Build Contractor shall make diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. Design-Build Contractor is responsible for verifying the progress of each Utility Owner's work. Design-Build Contractor shall provide to INDOT Notice within 5 days after the occurrence of any of the following: (a) Design-Build Contractor is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Utility Agreement within a reasonable time, (b) Design-Build Contractor reasonably believes for any reason that any Utility Owner would not undertake or permit Utility Adjustment Work in a manner consistent with the timely completion of the Project or in accordance with Governmental Rules, the Governmental Approvals or the PPA Documents, (c) Design-Build Contractor becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals in accordance with the PPA Documents, or (d) any other dispute arises between Design-Build Contractor and a Utility Owner with respect to the Project, despite Design-Build Contractor's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such Notice may include a request that INDOT assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Design-Build Contractor shall provide INDOT with such information as INDOT requests regarding

the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to INDOT any Notice or request for assistance, Design-Build Contractor shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

6.7.2 If Design-Build Contractor requests INDOT's assistance pursuant to Section 6.7.1, the following provisions apply:

- (a) Design-Build Contractor shall provide evidence reasonably satisfactory to INDOT that (i) the subject Utility Adjustment Work is necessary, (ii) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (iii) Design-Build Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (iv) the Utility Owner is not cooperating (clauses (a)(i) through (iv) above are referred to herein as the "Conditions to Assistance").
- (b) Following INDOT's receipt of satisfactory evidence, INDOT shall take such reasonable steps as INDOT may reasonably determine to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, INDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other legal remedy available to it under Governmental Rules or existing contract, unless INDOT elects to do so in its sole discretion. INDOT may, at its sole discretion, participate in the resolution of any dispute between Design-Build Contractor and a Utility Owner, whether or not requested to do so by Design-Build Contractor.
- (c) Without limiting INDOT's obligations under clause (b) above, if INDOT holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate, INDOT shall have the right not to exercise those rights. The decision not to exercise those rights shall be in the sole discretion of INDOT.

6.7.3 Any assistance provided by INDOT shall not relieve Design-Build Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations under the PPA Documents and its obligations with respect to timely completion of all necessary Utility Adjustments.

6.8 Utility Delays

6.8.1 Definition of Utility Delay

Except as set forth in clause (b) below, the term "Utility Delay" shall mean:

- (a) Any unreasonable and unjustified delay by a Utility Owner in connection with a Utility Adjustment following receipt by INDOT of proper Notice pursuant to Section 6.7.1, provided that, all of the "Conditions to Assistance" described in Section 6.7.2 have been satisfied.
- (b) Notwithstanding the foregoing, the term "Utility Delay" does not include (i) INDOT-Directed Changes relating to Utilities, (ii) any additional Utility Adjustments beyond Type 1 Utility Adjustments, Type 2 Utility Adjustments, and Type 4 Utility Adjustments other than as a direct result of an INDOT-Caused Delay or Force Majeure Event; (iii) the necessity to negotiate and enter into a new or modified

Utility Agreement other than as a direct result of a Type 4 Utility Adjustment, INDOT-Caused Delay or Force Majeure Event; (iv) additional work associated with a Type 1 Utility Adjustment or a Type 2 Utility Adjustment arising out of a Project design change as described in Section 6.5; or (v) any event described in this Section 6.8.1 which results from or arises out of the actions or omissions of any DB-Related Entity or any Design-Build Contractor Fault. Design-Build Contractor shall not rely upon any proposed schedules, durations or deadlines included in the Reference Information Documents with respect to Utility Adjustments, and Design-Build Contractor may not base any Claims for a time extension or additional compensation upon such proposed schedules, durations, and deadlines.

6.8.2 Allocation of Risk of Utility Delays

6.8.2.1 Subject to the limitations and restrictions in this Section 6.8 and Section 13.5.3, any Completion Deadline(s) affected by a Utility Delay shall be extended by one day for each day of Critical Path delay caused by such Utility Delay; provided, however, that if one or more Utility Delays is or are concurrent with another delay to the Critical Path which is Design-Build Contractor's responsibility hereunder but is not a Utility Delay, then such Utility Delay(s) shall not be grounds for a time extension. Furthermore, if two Utility Delays occur that are concurrent with each other but are not concurrent with any other delay, then the period of concurrent delay shall be considered a Utility Delay but shall only be counted once for purposes of any time extension.

6.8.2.2 Design-Build Contractor shall not be entitled to extension of any Completion Deadline for a Utility Delay pursuant to Section 6.8.2.1 unless all of the following conditions are satisfied (in addition to satisfaction of any conditions specified in Section 6.8.1):

- (a) Design-Build Contractor has timely complied with the monitoring and notification requirements of Section 6.7.1 and satisfied the "Conditions to Assistance" requirements described in Section 6.7.2;
- (b) If applicable, Design-Build Contractor has provided a reasonable Utility Adjustment plan to the Utility Owner that has been approved by INDOT;
- (c) Design-Build Contractor has provided evidence satisfactory to INDOT that (i) Design-Build Contractor took advantage of Float available early in the Project Schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates, (ii) Design-Build Contractor has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such delays, and (iii) Design-Build Contractor has otherwise made diligent efforts to obtain timely performance by the Utility Owner but has been unable to obtain such timely performance;
- (d) There exist no circumstances which have delayed or are delaying (including concurrent delay) the affected Utility Adjustment(s), other than those that fit within the definition of a Utility Delay; and
- (e) The delay is otherwise allowable under Section 13.5.3.

6.8.3 Delays Relating to Utility Easements

If, pursuant to the applicable Utility Agreements, the Utility Owner is responsible for handling acquisition efforts for a particular Utility Easement, then any failure by the Utility Owner to provide Design-Build Contractor with timely access to such Utility Easement shall not be treated as an INDOT-Caused Delay. Instead, any such failure to provide Design-Build Contractor with access before the applicable deadline (determined in accordance with Section 6.8.1) shall be treated as a Utility Delay, to the extent that it delays the Critical Path and otherwise satisfies the requirements of this Section 6.8 applicable to Utility Delays.

6.8.4 Other Utility-Related Delays

Design-Build Contractor shall be entitled to an extension of any affected Completion Deadline to the extent that any delay in the Critical Path is directly attributable to a circumstance for which Design-Build Contractor is entitled to a Change Order for increased costs pursuant to Section 6.4.2.

6.8.5 Delay and Disruption Damages

Design-Build Contractor shall not be entitled to compensation for delay and disruption damages or for any other increased costs attributable to delays described in this Section 6.8.

6.9 Utility-Related Claims; Additional Restrictions on Change Orders Relating to Utility Adjustments

In addition to all of the other requirements and limitations contained in this Section 6 and/or in Section 13, Design-Build Contractor's entitlement to any Change Order relating to Utility Adjustments shall be subject to the restrictions and limitations set forth in this Section 6.9.

6.9.1 Burden of Proof

Design-Build Contractor shall provide documentation satisfactory to INDOT showing that the required analysis was performed and an appropriate determination made regarding the need for the Utility Adjustment, and shall also bear the burden of proving that the amount of any additional costs and/or time incurred by Design-Build Contractor are both necessary and reasonable.

6.9.2 Incremental Costs Only

Any Change Order increasing the Contract Price pursuant to this Section 6 shall include only the incremental costs arising from the circumstances giving rise to such Change Order, i.e., the amount payable shall take into account the costs that would have been incurred absent such circumstances and a credit shall be allowed for any avoided costs.

6.9.3 Coordination Costs

Design-Build Contractor shall not be entitled to any increase in the Contract Price for any costs of coordinating with Utility Owners.

6.9.4 Orders Only as Specified

Except as specified in this Section 6 or in Section 13, Design-Build Contractor shall not be entitled to any time extension or Contract Price increase with respect to any Utility Adjustments, in either

case, without regard to any act of or failure to act by any Utility Owner that may result in a delay to the Critical Path or in Design-Build Contractor's incurring costs not included in the Contract Price.

6.10 Hazardous Materials Management

6.10.1 Procedures and Compensation for Hazardous Materials Management

6.10.1.1 Subject to Section 6.10.1.3, Design-Build Contractor shall manage, treat, handle, store, remediate, remove, transport (where applicable), document and dispose of all Hazardous Materials and Recognized Environmental Conditions, including Contaminated Groundwater, and perform all other aspects of Hazardous Materials Management as appropriate, in accordance with applicable Governmental Rules, Governmental Approvals, and all applicable provisions of the PPA Documents. If during the course of the Work, Design-Build Contractor encounters material quantities of Hazardous Materials or Recognized Environmental Conditions in connection with the Project, Site, or Work, Design-Build Contractor shall promptly (a) provide to INDOT Notice of such encounter and advise INDOT of any obligation to notify any Governmental Entities under applicable Governmental Rules and Governmental Approvals; and (b) develop a plan to undertake Hazardous Materials Management, which plan shall take reasonable steps, including design modifications and/or construction techniques, to avoid excavation, dewatering or other active, intrusive management in areas where Hazardous Materials or Recognized Environmental Conditions are encountered. For purposes of this Section 6.10, the term "material quantities" means quantities that trigger any reporting, investigation, remediation or other response action requirements under any Environmental Law. Where excavation, dewatering or other active, intrusive management is unavoidable, Design-Build Contractor shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by INDOT. All Hazardous Materials Management shall be conducted in accordance with applicable Governmental Rules, Governmental Approvals, the approved plans required to be provided under Section 7.3.2 of the Technical Provisions and the approved Safety Plan.

6.10.1.2 Except where Design-Build Contractor is required to take immediate action under the PPA Documents or applicable Governmental Rules, Design-Build Contractor shall afford INDOT the opportunity to inspect sites containing Hazardous Materials or Recognized Environmental Conditions and to consult with Design-Build Contractor about the recommended approach before any Hazardous Materials Management or other action is taken which would inhibit INDOT's ability to ascertain the nature and extent of the contamination.

6.10.1.3 Subject to the limitations and exceptions set forth in Section 5.3, this Section 6.10.1 and Section 13, Design-Build Contractor shall be entitled to a Change Order as set forth in Section 13 with respect to additional costs and/or delays directly attributable to the discovery of (a) Unknown Hazardous Materials within the Planned ROW Limits, and (b) Hazardous Materials other than Design-Build Contractor Release of Hazardous Materials on any parcels added to the Planned ROW Limits by an INDOT-Directed Change or required to be added to the Planned ROW Limits due to a Force Majeure Event or Necessary Basic Configuration Change. The amount of additional compensation or extension of time in any Change Order allowed hereunder shall be determined in accordance with Section 13.9.4. Entitlement to compensation or a time extension shall be limited to costs of Work performed pursuant to this Section 6.10 and Section 104.06 of the Standard Specifications.

6.10.1.4 No compensation or time extension shall be allowed with respect to:

- (a) Removal, disposal and/or remediation of lead, lead-containing materials, asbestos or asbestos-containing materials on or in the Site that shall be removed in accordance with Section 7.3 of the Technical Provisions and the approved Environmental Quality Management Plan;
- (b) Any Hazardous Materials that do not fall within the definition for Unknown Hazardous Materials;
- (c) Release(s) of Hazardous Materials or threatened Release(s) of Hazardous Materials for which Design-Build Contractor is responsible under Section 18.1.1(g);
- (d) Less than “material quantities” as defined in Section 6.10.1.1;
- (e) Any (i) Known or Suspected Hazardous Materials; and (ii) Hazardous Materials of which Design-Build Contractor has Actual Knowledge, in each case, that could have been avoided by reasonable design modifications or construction techniques, means and methods; or
- (f) Any Hazardous Materials on property outside of the Planned ROW Limits, except that compensation will be allowed for environmental remediation work on such property to the extent that it is required by Governmental Rule to be undertaken with Hazardous Materials Management work required within Planned ROW Limits.

6.10.1.5 To the extent that any proceeds of insurance are available to pay the cost of any Hazardous Materials Management, Design-Build Contractor shall rely on insurance to provide compensation, in lieu of requesting a Change Order.

6.10.2 Hazardous Materials Generator Responsibilities

As between Design-Build Contractor and INDOT, INDOT shall be considered the generator and assume generator responsibility for Hazardous Materials other than any Design-Build Contractor Release of Hazardous Materials. INDOT has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials other than Design-Build Contractor Release(s) of Hazardous Materials will be transported. With regard to Hazardous Materials other than Design-Build Contractor Release of Hazardous Materials, INDOT shall comply with the applicable standards for generators including those found at 40 CFR Part 262, including the responsibility to sign manifests and other waste tracking records for the transport of Hazardous Materials. The foregoing shall not preclude or limit any rights, remedies or defenses that INDOT or Design-Build Contractor may have against any Governmental Entity or other third parties, including prior owners, lessees, licensees, and occupants of any parcel of land that is or becomes part of the Site. Notwithstanding the foregoing, Design-Build Contractor (and not INDOT) shall be considered the generator with respect to any (a) Design-Build Contractor Release(s) of Hazardous Materials and (b) Release(s) of Hazardous Materials for which Design-Build Contractor is responsible under Section 18.1.1(g).

6.10.3 Materials Brought to Site by Design-Build Contractor

Design-Build Contractor shall be solely responsible for: (a) compliance with all Governmental Rules and Governmental Approvals applicable to Hazardous Materials brought onto the Site by

any DB-Related Entity; (b) use, containment, storage, management, transport and disposal of all such Hazardous Materials in accordance with the PPA Documents and all Governmental Rules and Governmental Approvals; and (c) payment of all Losses (including damages to natural resources, property or Persons) associated with, arising out of or related to such Hazardous Materials.

6.10.4 Environmental Approvals Relating to Hazardous Materials

Design-Build Contractor shall obtain all Governmental Approvals relating to Hazardous Materials Management performed by Design-Build Contractor, including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials. Design-Build Contractor shall be solely responsible for compliance with such Governmental Approvals and applicable Governmental Rules, including those governing the preparation of waste profiles, waste manifests and bills of lading.

6.11 Environmental Compliance, Mitigation and Approval Requirements

6.11.1 Environmental Compliance

Design-Build Contractor shall comply with all Environmental Laws in performance of the Work, and with all other conditions and requirements of the PPA Documents and Governmental Approvals issued thereunder, whether obtained by INDOT or Design-Build Contractor, including the requirements set forth in INDOT-Provided Approvals and Section 7 of the Technical Provisions. The Contract Price includes compensation for Design-Build Contractor's performance of all environmental requirements and conditions, including mitigation measures, except for those items expressly described in Section 6.11.2 as being the responsibility of INDOT. Throughout the course of the Work, Design-Build Contractor shall perform or cause to be performed all environmental mitigation measures required under the PPA Documents and the Environmental Approvals and similar Governmental Approvals for the Work, and shall comply with all other conditions and requirements thereof. Design-Build Contractor, at its sole cost and expense, shall also abide by and comply with the commitments contained in subsequent re-evaluations, re-validations, and modifications of Environmental Approvals. Subject to Section 13, if INDOT directs Design-Build Contractor to comply with commitments contained in re-evaluations, re-validations, and modifications of Environmental Approvals submitted after the Proposal Date that affect the Work, such directive shall be deemed an INDOT-Directed Change only to the extent such re-evaluations, re-validations, and modifications are directly due to a Necessary Basic Configuration Change pursuant to Section 13. Design-Build Contractor shall reimburse INDOT for the costs of technical studies and documentation, including biological and cultural resource studies, prepared by or on behalf of INDOT in connection with any such environmental re-evaluations, re-validation, and new or modified Environmental Approvals, other Governmental Approvals and any Other Approvals, authorizations and consents required for the Work, unless such items are due to an INDOT-Directed Change or a Necessary Basic Configuration Change pursuant to Section 13. Except as specifically provided otherwise, the cost incurred for, and the delay to the Project Schedule resulting from, restoration and, as applicable, mitigation of any inadvertent impacted areas shall be the sole responsibility of Design-Build Contractor.

6.11.2 Performance of Mitigation Measures

6.11.2.1 Design-Build Contractor shall perform all environmental mitigation measures arising from (i) New Approvals which Section 6.11.4 provides are Design-Build Contractor's responsibility, (ii) from any modifications, renewals, and extensions of the INDOT-

Provided Approvals required in connection with Design-Build Contractor's design of the Project, or (iii) as otherwise required by the PPA Documents.

6.11.2.2 Design-Build Contractor shall monitor the progress of performance of environmental mitigation measures and provide periodic reports to INDOT as required by the Environmental Compliance and Mitigation Plan and Section 7.4.1 of the Technical Provisions. Design-Build Contractor acknowledges and agrees that the plan may be updated from time to time to account for any revisions in mitigation requirements. Whenever a New Approval is obtained which changes the existing environmental mitigation requirements or adds new environmental mitigation requirements, the Environmental Compliance and Mitigation Plan will be revised to include such amendments or new requirements, and Design-Build Contractor shall comply with the revised plan from and after the date it receives the revised plan. No Change Order shall be allowed in connection with any update or revision to the Environmental Compliance and Mitigation Plan except that (a) Change Orders shall be issued for additional Work resulting from those New Approvals which are the responsibility of INDOT as specified in Section 6.11.4.1, and (b) if Design-Build Contractor believes that any revision represents an INDOT-Directed Change pursuant to Section 6.11.3.2, it shall have the right to seek a Change Order on that basis in accordance with the requirements of, and subject to the limitations in, Section 13.

6.11.3 INDOT-Provided Approvals

6.11.3.1 Design-Build Contractor is responsible for complying with all the requirements and conditions of INDOT-Provided Approvals. Design-Build Contractor acknowledges that INDOT makes no commitment to any alternative being evaluated in the NEPA process, and the comparative merits of all alternatives presented in the NEPA Documents, including the no-build alternative, will be evaluated and fairly considered. Design-Build Contractor shall be aware that, as of the Effective Date, the NEPA Documents developed for the Project are not complete. Environmental Determination by INDOT and FHWA is anticipated no later than October 15, 2020 and failure by INDOT to obtain Environmental Determination by such date shall, subject to Section 13, be an INDOT-Caused Delay. Design-Build Contractor shall not proceed with Final Design and Construction prior to (i) the completion of the NEPA process and receipt of the Environmental Determination; and (ii) receipt from INDOT of notification of the satisfaction of the items in clause (i) above. Nothing contained in this PPA, including any description of the Project, is intended to modify, limit, or otherwise constrain the environmental process or commit INDOT or any other entity to undertake any action with respect to applicable segments of the Project, including Final Design and Construction.

6.11.3.2 INDOT has obtained or is in the process of obtaining the INDOT-Provided Approvals for the Project, based on the Reference Plans contained in the Reference Information Documents. All mitigation requirements and/or conditions contained in the final INDOT-Provided Approvals shall automatically be deemed included in the scope of Work. Subject to the provisions of Sections 6.11.1, 13.5 and 13.9.6, any activities to be performed by Design-Build Contractor as a result of an alteration in mitigation requirements from any change in the commitments listed in Section 7 or Attachment 7-5 of the Technical Provisions that (a) have a material adverse impact on Design-Build Contractor's obligations hereunder, and (b) were not caused by modifications to the Reference Plans that were initiated by Design-Build Contractor or result from the design solutions furnished by or construction means, methods, and techniques employed by Design-Build Contractor, shall be treated as an INDOT-Directed Change; provided, however, that Design-Build Contractor complies with the notification and other requirements set forth in this Section 6.11.3 and Section 13. Any Change Order issued for such INDOT-Directed

Change shall be in accordance with Section 13.6.4 (for added Work), Section 13.6.5 (for deleted Work) or Section 13.6.6 (for both added and deleted Work).

6.11.3.3 Design-Build Contractor hereby assumes responsibility for the Environmental Approvals other than the INDOT-Provided Approvals and shall obtain all other Governmental Approvals required in connection with the Project, the Site and the Work. In addition, Design-Build Contractor hereby assumes responsibility for, and shall obtain, any modifications, renewals and extensions of the INDOT-Provided Approvals required in connection with Design-Build Contractor's design of the Project. Design-Build Contractor shall deliver to INDOT true and complete copies of all new or amended Governmental Approvals. For avoidance of doubt, INDOT shall remain the permitting Party with respect to any reevaluation of the Environmental Determination or NEPA Documents arising out of or relating to Design-Build Contractor's design, but Design-Build Contractor shall bear the sole risk of any such reevaluation and shall be solely responsible for INDOT's costs incurred in such role. In such instance, no act or omission by INDOT, nor the requirement for or duration of any reevaluation itself, shall be the basis for any Claim, request for additional compensation or extension of any Completion Deadline, nor shall be (or be construed to be) an INDOT-Caused Delay.

6.11.4 New Approvals

6.11.4.1 Approvals To Be Obtained at the Expense of INDOT

INDOT shall be responsible for obtaining any New Approvals necessitated by an INDOT-Directed Change, Force Majeure Event or Necessary Basic Configuration Change. Design-Build Contractor, at its sole cost, shall provide support services to INDOT with respect to obtaining any such New Approval. Any Change Order covering a New Approval necessitated by an INDOT-Directed Change, Force Majeure Event or Necessary Basic Configuration Change shall include compensation to Design-Build Contractor for any material changes in the Work (including performance of material additional mitigation measures, but excluding performance of such support services) resulting from such New Approvals, as well as any time extension necessitated by such New Approvals, subject to the conditions and limitations contained in Section 13.

6.11.4.2 New Approvals To Be Obtained at Design-Build Contractor's Expense

If a New Approval becomes necessary for any reason other than those specified in Section 6.11.4.1, Design-Build Contractor shall be fully responsible for the cost, risk and delay of obtaining the New Approval and any other Governmental Approvals, including Environmental Approvals, that may be necessary, and for all mitigation, conditions, requirements and delays resulting therefrom, as well as for any litigation, challenges or proceedings arising in connection therewith. If Design-Build Contractor wishes to adopt any design or construction approach that would require a revision, modification or amendment to an INDOT-Provided Approval, Design-Build Contractor shall consult with INDOT. Design-Build Contractor shall not implement any such approach unless concurrence of INDOT has first been obtained and arrangements have been made to reimburse INDOT for the costs of the proposed change. If any New Approval is associated with a VECP, the costs of obtaining and complying with the terms of the New Approval shall be considered in determining the Contract Price adjustment under Section 22.6.

6.11.5 Environmental Compliance by Design-Build Contractor for Off-Site Activities

If Design-Build Contractor chooses to add or select any ground or resource disturbing features such as material (gravel, borrow, disposal or re-use) sites, equipment staging sites, office sites, water lines, holding ponds, Hazardous Materials and/or non-Hazardous Materials staging areas, etc., for which a new Governmental Approval is required, Design-Build Contractor shall obtain and provide to INDOT such Governmental Approvals before commencing any activity within the feature(s). Design-Build Contractor is responsible for all costs of pursuing, obtaining, and complying with all such Governmental Approvals and any others which may be necessary, and is not entitled to any time extension for delays encountered in obtaining these approvals.

6.12 Cooperation with Local Agencies

6.12.1 Compliance with Local Agency Requirements

Design-Build Contractor shall comply with Local Agency requirements applicable to the Work, including payment of all plan review and construction inspection costs charged by Local Agencies relating to the Work.

6.12.2 Bonds and Insurance

Upon request by INDOT, Design-Build Contractor shall: (a) provide additional obligee riders to the Payment Bond(s) and Performance Bond(s) in favor of Local Agencies, and (b) provide certificates naming Local Agencies as additional insureds to the insurance policies as and where required under Section 9.

SECTION 7. SUBCONTRACTORS AND LABOR

7.1 DBE Performance Plan and Workforce/EEO Project Plan

7.1.1 General

7.1.1.1 This Project contains a 9% DBE expenditure goal for participation of Indiana certified Disadvantaged Business Enterprises. This PPA and Design-Build Contractor are subject to the provisions of 49 CFR Parts 23 and 26 and 23 CFR Part 230 regarding administration of the DBE and Workforce/EEO Project Plan consistent with applicable federal law. The purpose of these provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of design, supply and construction contracts for the Project. Design-Build Contractor shall comply with all applicable requirements set forth herein, including compliance with applicable federal law and regulations and the provisions in Design-Build Contractor's DBE Performance Plan and Workforce/EEO Project Plan approved by INDOT. Collectively these shall constitute the DBE Performance Requirements.

7.1.1.2 Design-Build Contractor shall include provisions to effectuate the DBE Performance Requirements in every applicable Subcontract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all applicable Subcontracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each applicable Subcontractor.

7.1.2 DBE Participation Goals

The DBE Goal for DBE participation in the Project required under this PPA, including consultants, Subcontractors and Suppliers is 9%. For purposes of clarity, assessment as to whether Design-Build Contractor has achieved the DBE Goal will be measured against the aggregate design, construction, and supply costs, and not separately as to each category of the design, construction and supply costs. Design-Build Contractor shall demonstrate that it will make good faith efforts to meet the DBE Goals for the Project in accordance with applicable federal laws.

7.1.3 DBE Performance Plan and EEO/Workforce Project Plan

7.1.3.1 Design-Build Contractor has submitted to INDOT as part of its Proposal a draft DBE Performance Plan and preliminary EEO/Workforce Project Plan. The proposed final DBE Performance Plan and EEO/Workforce Project Plan are subject to further review and comment by INDOT prior to final approval and such approvals are a condition to commencement of design, per Section 4.4.

7.1.3.2 In preparing the final DBE Performance Plan and EEO/Workforce Project Plan, Design-Build Contractor shall include, to the extent known at the time of preparation:

- (a) Demonstrated ability to meet or exceed the 9% DBE expenditure goal, inclusive of how they will identify Indiana certified DBE's who perform/provide professional services, equipment, materials and supplies; their potential scope of work; potential dollar amount; and the percentage of the total project. In addition to identifying certified DBEs, Design-Build Contractor shall provide a DBE subcontracting plan that includes, but may not be limited to: examples of sub-agreements to be utilized with certified DBEs, example of a DBE subcontracting plan procurement and expenditure report; a dispute resolution process; a process

for effective and timely communications with DBE Subcontractors; assistance with insurance and bonding; a process for managerial and technical performance reviews, feedback and improvement; a process for the accurate tracking of hauling dollars for DBE and non-DBE subcontractors; and an explanation of the invoice and payment process;

- (b) Estimated time frames for achieving DBE participation (i.e., in what years of the Project will DBE participation be realized);
- (c) Design-Build Contractor shall enter into an “On-the-Job Training Partnership Agreement” (in the form of Attachment 7 to Exhibit 11) with INDOT prior to commencement of any Work;
- (d) The name of Design-Build Contractor’s “DBE Compliance Manager,” a resume and explanation regarding that individual’s qualifications for the position and description of the DBE Compliance Manager’s reporting structure and responsibilities; and
- (e) Commitment to communicate and fully cooperate with INDOT on DBE participation and compliance efforts throughout the term of this PPA.

7.1.3.3 The final DBE Performance Plan and EEO/Workforce Project Plan shall respond to the comments of INDOT and comply with the DBE Performance Requirements and Governmental Rules and Governmental Approvals.

7.1.3.4 Design-Build Contractor shall exercise good faith efforts to achieve the DBE Goal for the Project through implementation of Design-Build Contractor’s approved DBE Performance Plan and EEO/Workforce Project Plan.

7.1.3.5 Design-Build Contractor shall report payments made to DBE Subcontractors on a monthly basis. Monthly reports shall be made using the Project’s EDMS and shall identify any payments outstanding to DBE Subcontractors, track any payment issues identified by DBE Subcontractors and report the resolution of any payment issue, and confirm that the prompt payment provisions required by federal law (49 CFR 26.29) and pursuant to Section 108 of the Standard Specifications have been adhered to by Design-Build Contractor. DBE Subcontractor payments shall also be reported to INDOT as reasonably requested for any purpose and in a format to be determined by INDOT.

7.1.3.6 Design-Build Contractor’s EEO/Workforce Project Plan shall incorporate and be consistent with Attachment 4 to Exhibit 11, and shall include a commitment to participate in INDOT’s “Equal Employment Opportunity Trainee Program.”

7.2 Subcontracts

7.2.1 Limitations on Subcontracting

This PPA, or portions hereof, or the right, title, or interest herein, shall not be subcontracted, sold, transferred, assigned, or otherwise disposed of without the written approval of INDOT. In case such approval is given, Design-Build Contractor will be allowed to subcontract a portion thereof, but shall perform with its own organization, work amounting to not less than 30% of the original or revised contract amount, whichever is less. All items designated in the contract as specialty items may be performed by Subcontract. The cost of such specialty items so performed by

Subcontracts may be deducted from the total cost before computing the amount of work required to be performed by Design-Build Contractor with its own organization. No Subcontracts or transfer of contracts will release Design-Build Contractor of liability under this PPA. Approved Subcontractors will not be allowed to further subcontract their work, except that Major Subcontractors shall be able to subcontract one further tier below, subject to compliance with all subcontracting requirements in this PPA, including approval of INDOT, and that Design-Build Contractor shall remain fully responsible and liable for such subcontracting and Work. Design-Build Contractor shall not be entitled to any payment for subcontracted Work or materials unless it is performed or supplied by a Subcontractor approved by INDOT prior to the Work being performed.

7.2.2 Subcontracting Requirements

7.2.2.1 Subcontracting shall be in accordance with the requirements of 105 IAC 11-2-10, Subcontractors.

7.2.2.2 Design consultants and subconsultants shall satisfy the INDOT Prequalification Work Type Certification requirements for the type of Design Work they are engaged in for the Project.

7.2.3 Subcontractor Listing

Within 10 days after issuance of the Notice to Proceed, Design-Build Contractor shall complete and provide to INDOT a schedule updating the list of Subcontractors and Suppliers included in the Proposal and identifying all intended Subcontractors and Suppliers. Design-Build Contractor shall provide an updated schedule each month thereafter so that INDOT will have, at all times, a current and accurate list of Subcontractors along with the Work that they will perform and Suppliers along with the material that they will supply. Design-Build Contractor shall allow INDOT access to all Subcontracts and records regarding the Subcontracts and shall deliver to INDOT certified copies of each Subcontract within the later of: (i) 10 days after execution thereof; and (ii) issuance of the Notice to Proceed.

7.2.4 Leases and Subcontractor Payment Tracking

7.2.4.1 Design-Build Contractor or Subcontractors may enter into leases or rental agreements for equipment with operators or trucks with drivers. When certified payrolls are required, they shall be submitted for all such equipment operators and truck drivers who perform the scope of services under such lease or rental agreement.

7.2.4.2 Design-Build Contractor shall submit payment records through INDOT's Subcontractor Payment Tracking System (<http://itap.indot.in.gov>) of all payments made to Subcontractors and DBE firms approved by INDOT. Reports shall be submitted no later than 10 days after the end of each month in which a Subcontractor is paid for the work it performs under its Subcontract. Reports shall include any release of retainage payments made to Subcontractors.

7.2.5 Responsibility for Work and Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, Design-Build Contractor shall be fully responsible for all of the Work. The retention of Subcontractors by Design-Build Contractor will not relieve Design-Build Contractor of its responsibility hereunder or for the quality

of the Work or materials provided by it. Design-Build Contractor shall supervise and be fully responsible to INDOT for the acts and omissions of any DB-Related Entity and any Design-Build Contractor Fault or by any member or employee of Design-Build Contractor or any DB-Related Entity, as though Design-Build Contractor directly employed all such individuals. No Subcontract entered into by Design-Build Contractor will impose any obligation or liability upon INDOT to any such Subcontractor or any of its employees. Nothing in this PPA will create any contractual relationship between INDOT and any Subcontractor. INDOT shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind it. Each Subcontract shall include the following provision:

Nothing contained herein shall be deemed to create any privity of contract between INDOT and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of INDOT to the Subcontractor except those specified under State law. In the event of any claim or dispute arising under a Subcontract and/or the PPA Documents with INDOT, the Subcontractor shall look only to Design-Build Contractor for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against INDOT arising out of the Subcontract or otherwise arising in connection with the Subcontractor's Work.

7.2.6 Subcontract Work

7.2.6.1 INDOT Approval

Design-Build Contractor shall coordinate the Work performed by Subcontractors. If INDOT makes a good faith objection to the use or continued use of a Subcontractor, the Subcontractor shall be replaced at the request of INDOT and shall not again be employed on the Project. No Subcontractor may start any Work until after INDOT receives a copy of its Subcontract, a copy of such Subcontractor's valid Indiana Certificate of Qualification, Indiana state business license, and any insurance documents required pursuant to Section 9.

7.2.6.2 Form of Subcontract

Design-Build Contractor shall ensure that each Subcontract (at all tiers) shall include those terms that are specifically required by the PPA Documents to be included therein as well as such additional terms and conditions as are appropriate to ensure compliance by the Subcontractor with all applicable requirements of the PPA Documents. Each Subcontract shall:

- (a) Except for any obligations and risks to be expressly retained by Design-Build Contractor and which do not flow through to the Subcontractor, set forth a standard of professional responsibility or a standard for commercial practice equal to or better than the requirements of the PPA Documents and Good Industry Practice for work of similar scope and scale and shall set forth effective procedures for claims and change orders;
- (b) Require the Subcontractor to carry out its scope of Work in accordance with the PPA Documents, applicable Other Approvals, the Governmental Approvals and Governmental Rules, including the applicable requirements of the DBE Performance Plan and EEO/Workforce Project Plans, and to be joined in any

Dispute Resolution Proceeding if such joinder is determined by INDOT to be reasonably necessary to resolve the Dispute;

- (c) Set forth effective procedures for claims and change orders which are consistent with the Change Order process set forth in the PPA Documents;
- (d) Set forth warranties, guaranties and liability provisions of the contracting party in accordance with Good Industry Practice for work of similar scope and scale;
- (e) Expressly state that all remaining warranties and guarantees, express or implied, shall inure to the benefit of INDOT and its successors and assigns upon expiration of the term or earlier termination of this PPA;
- (f) Include the following: (i) requirement to maintain usual and customary Books and Records for the type and scope of operations of business in which the Subcontractor is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) provision permitting audits to be conducted by Design-Build Contractor, INDOT, and FHWA; (iii) provision that Subcontractor warrants the completeness and accuracy of all information the Subcontractor (or its agents) provide in connection with Section 21.2; (iv) requirement to provide progress reports to Design-Build Contractor appropriate for the type of work it is performing sufficient to enable Design-Build Contractor to provide the reports it is required to furnish INDOT under this PPA; (v) requirement for the Subcontractor to maintain all appropriate licenses and qualifications; (vi) provision prohibiting assignment of the Subcontract by the Subcontractor without Design-Build Contractor's prior written consent; and (vii) provisions implementing the requirements of Section 21.2;
- (g) For Major Subcontracts: (i) be terminable by the Subcontractor only for cause unless INDOT terminates this PPA pursuant to Section 15, in which case Design-Build Contractor may terminate the Subcontractor for convenience in accordance with clause (t) below; (ii) include an indemnity from the Subcontractor in favor of Design-Build Contractor and the Indemnified Parties against any and all Losses arising out of, related to or associated with, the actions, omissions, negligence, fraud, recklessness, willful misconduct, breach or other violation of Other Approvals, or breach or other violation of Governmental Approvals, violation of Governmental Rules or breach of contract by the Subcontractor or any of its officers, employees, agents or representatives; provided, however, that such Subcontractor indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on the Subcontractor for the gross negligence of INDOT, or to relieve INDOT of liability for such gross negligence; and (iii) include a covenant, expressly stated to survive termination of the Major Subcontract, to promptly execute and deliver to INDOT a new contract between the Subcontractor and INDOT on the same terms and conditions as the Major Subcontract, in the event: (A) the Major Subcontract is rejected by Design-Build Contractor in bankruptcy or otherwise wrongfully terminated by Design-Build Contractor or (B) INDOT delivers written request for such new contract following termination or expiration of this PPA;
- (h) Expressly require the Subcontractor to participate in meetings between Design-Build Contractor and INDOT, upon INDOT's request, concerning matters

pertaining to such Subcontract or its work; provided, however, that all direction to such Subcontractor shall be provided by Design-Build Contractor, and provided further that nothing in this clause (h) shall limit the authority of INDOT to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property;

- (i) Contain certification by the Subcontractor that the Subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted Work;
- (j) Include the right of Design-Build Contractor to terminate the Subcontract in whole or in part upon any Termination for Convenience of this PPA without liability of Design-Build Contractor or INDOT for the Subcontractor's lost profits or business opportunity, consequential or other damages, in accordance with clause (dd) below;
- (k) Expressly provide that all Liens, Claims and charges of the Subcontractor and its Subcontractors at any time shall not attach to any interest of INDOT in the Project or the Project ROW;
- (l) Include a covenant to maintain all licenses required by applicable Governmental Rules;
- (m) Expressly provide that the Major Subcontractor shall have no right to suspend or demobilize unless and until it delivers to INDOT Notice of the other contracting party's breach or default;
- (n) Require the personal services of and not be assignable by the Major Subcontractor without prior written consent of Design-Build Contractor and INDOT, provided that this provision shall not prohibit the subcontracting of portions of the Work;
- (o) Expressly include the requirements and provisions set forth in this PPA applicable to Subcontractors regarding Intellectual Property rights and licenses;
- (p) Include an agreement by the Subcontractor to give evidence in any Dispute proceeding pursuant to the Dispute Resolution Procedures if such participation is requested by either INDOT or Design-Build Contractor;
- (q) Expressly include requirements that: the Subcontractor will (i) maintain usual and customary Books and Records for the type and scope of operations of business in which it is engaged, and retain such Books and Records for the period set forth in Section 21.5 or other applicable period set forth in the PPA Documents, (ii) permit audit thereof by INDOT and FHWA, (iii) provide progress reports to Design-Build Contractor appropriate for the type of work it is performing sufficient to enable Design-Build Contractor to provide the reports it is required to furnish INDOT under this PPA, and (iv) provide copies of Books and Records to INDOT upon reasonable request and at no cost to INDOT (and without limiting other reasonable requests, it shall be deemed reasonable if the request relates to any of the foregoing: (1) a potential or actual breach of the PPA Documents, (2) a potential or actual violation of the PPA, Governmental Rule or Governmental Approval, (3) a Claim or Dispute, (4) a Change Order, (5) an invoice, (6) any Warranty Work, (7) any unit-priced

work or pay item; (8) any claim or matter covered by indemnity or insurance; or (9) if required by FHWA);

- (r) Expressly provide that INDOT is a third party beneficiary of the Subcontract and shall have the independent right to enforce all of the terms of the Subcontract for its own benefit in accordance with the terms thereof;
- (s) Provide that all guarantees and warranties, express or implied, shall inure to the benefit of INDOT, and its successors and assigns;
- (t) Without cost to Design-Build Contractor or INDOT, expressly permit assignment to INDOT or its successors, assignees or designees of all Design-Build Contractor's rights under the Subcontract, contingent only upon delivery of written request from INDOT following termination or expiration of this PPA, allowing INDOT or its successor, assign or designee to assume the benefit of Design-Build Contractor's rights with liability only for those remaining obligations of Design-Build Contractor accruing after the date of assumption, such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility;
- (u) Expressly state that assumption of the Subcontract by INDOT or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Subcontract by Design-Build Contractor or the other contracting party or for any amounts due and owing under the Subcontract for work or services rendered prior to assumption, without prejudice, however, to any rights of the Subcontractor under the Subcontract or applicable Governmental Rules to suspend work or terminate the Subcontract by reason of any such breach or failure to pay amounts due;
- (v) Expressly include (i) a covenant to recognize and attorn to INDOT upon receipt of notice from INDOT that it has exercised step-in rights under this PPA, without necessity for consent or approval from Design-Build Contractor or to determine whether INDOT validly exercised its step-in rights, and (ii) Design-Build Contractor's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such notice;
- (w) Be consistent in all other respects with the terms and conditions of the PPA Documents to the extent such terms and conditions are applicable to the scope of work of such Subcontractors, and include all provisions required by this PPA;
- (x) Not impose upon INDOT any obligation or liability whatsoever;
- (y) Not create any contractual relationship between INDOT and the applicable Subcontractor, and specifically state that INDOT is not bound by any Subcontract, and no Subcontract shall include a provision purporting to bind it;
- (z) Include a copy of FHWA Form 1273, and require compliance to the extent applicable to the subcontracted scope of Work;

- (aa) Include prompt payment requirements consistent with those under Section 12.5.1, and otherwise require the Subcontractor to make payments to its sub-subcontractors, vendors, and Suppliers in a similar manner;
- (bb) Expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of INDOT shall be null and void;
- (cc) Expressly include provisions regarding terminations for convenience, allowing terminations under Section 15 to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with Section 15;
- (dd) Expressly provide that, in the event of a Termination for Convenience by INDOT, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination;
- (ee) Include the provisions required under Section 21.2 pertaining to pricing;
- (ff) If the Subcontract includes a right to withhold payments due Subcontractors as retainage, expressly provide that the withholding party shall release such retainage to the Subcontractor within 30 days after satisfactory completion of the work performed by the Subcontractor, and that “satisfactory completion” means when the Subcontractor has completed all physical work and completed other contract requirements, including submission of all submittals; and
- (gg) Include the provisions of Section 7.3.7.5.1 through Section 7.3.7.5.5, inclusive, unless exempt by the Regulations, or directives issued pursuant to a Subcontract.

7.2.6.3 INDOT shall have the right, but not the obligation, to review the form of subcontract used by Design-Build Contractor for the Project and require modifications thereto to conform to the requirements set forth herein.

7.2.6.4 Design-Build Contractor shall allow INDOT access to all Subcontracts and records regarding Subcontracts and shall deliver to INDOT, within the later of: (i) 10 days after execution; or (ii) 10 days after issuance of the Notice to Proceed, true and complete copies of all Major Subcontracts and Subcontracts with DBEs and, within 10 days after receipt of a request from INDOT, true and complete copies of all other Subcontracts as may be requested. At Design-Build Contractor’s option, copies of the pages of the Subcontracts delivered to INDOT may be redacted to remove pricing information; provided, however, that in such event a full copy of the Subcontract shall be added to the EPDs maintained under Section 21.1.

7.2.7 Subcontracts with Affiliates

7.2.7.1 Design-Build Contractor shall have the right to have Work and services performed by Affiliates only under the following terms and conditions:

- (a) Design-Build Contractor shall execute a written Subcontract with the Affiliate;
- (b) The Subcontract shall comply with all applicable provisions of this Section 7, be consistent with Good Industry Practice, and be in form and substance substantially

similar to Subcontracts then being used by Design-Build Contractor or Affiliates for similar Work or services with unaffiliated Subcontractors;

- (c) The Subcontract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;
- (d) The pricing, scheduling and other terms and conditions of the Subcontract shall be no less favorable to Design-Build Contractor than those that Design-Build Contractor could reasonably obtain in an arms' length, competitively procured transaction with an unaffiliated Subcontractor. Design-Build Contractor shall bear the burden of proving that the same are no less favorable to Design-Build Contractor; and
- (e) No Affiliate shall be engaged to perform any Work or services which any PPA Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice or other PPA Document requirements.

7.2.7.2 Before entering into a written Subcontract with an Affiliate or any supplement or amendment thereto, Design-Build Contractor shall submit a true and complete copy of the proposed Subcontract to INDOT for review and comment. INDOT shall have 20 days after receipt to deliver comments to Design-Build Contractor.

7.2.7.3 Design-Build Contractor shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope.

7.2.8 Other Requirements

No Subcontractor shall perform Work if that Subcontractor is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from public works projects by any federal agency or by any department, agency or political subdivision of the State.

7.3 Key Personnel; Character of Employees; Key Personnel Liquidated Damages

7.3.1 Design-Build Contractor, in its Proposal, identified certain personnel to fill specified categories of "Key Personnel" for the Project. Exhibit 3 hereto identifies certain job categories of "Key Personnel" for the Project and the personnel identified by Design-Build Contractor in its Proposal (or such other personnel as were approved by INDOT prior to the Effective Date). INDOT may, acting in good faith, at any time elect to add job categories to the "Key Personnel" list, but those new Key Personnel positions shall not be subject to liquidated damages as set forth below. Design-Build Contractor shall not change, or permit any change in, Key Personnel without the prior written consent of INDOT and only as described through the process below.

7.3.2 Design-Build Contractor shall designate an Authorized Representative who shall have onsite field and office authority to represent and act for Design-Build Contractor. An Authorized Representative shall be present at the jobsite at all times while Work is actually in

progress. INDOT requires the ability to contact the following Key Personnel 24 hours per day, seven days per week for the duration of the Project: (a) Project Manager; (b) Construction Manager, (c) Maintenance of Traffic Manager, and (d) Safety Manager. Design-Build Contractor shall provide phone, e-mail addresses and mobile telephone numbers for such Key Personnel, and shall provide the phone and mobile telephone number for an alternate contact, with appropriate authority, for each such Key Personnel in the event that Key Personnel is not available.

7.3.3 INDOT shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Subcontractors) and approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual or during the prosecution of the Work. Design-Build Contractor shall provide to INDOT Notice of any proposed changes in any Key Personnel. Individuals proposed to fill Key Personnel positions must meet the minimum qualifications specified in Section 1.3.1 of the Technical Provisions for that position and shall be subject to any requirements, restrictions or limitations therein. Consent regarding a change in any Key Personnel shall be within the good faith discretion of INDOT.

7.3.4 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If INDOT determines, in its good faith discretion, that any individual employed by Design-Build Contractor or by any Subcontractor is not performing the Work in a proper, safe and skillful manner, then at the written request of INDOT, Design-Build Contractor or such Subcontractor shall promptly remove such individual and such individual shall not be re-employed on the Project without the prior written approval of INDOT, in its good faith discretion. If Design-Build Contractor or the Subcontractor fails to remove such individual or individuals or fails to furnish skilled and experienced personnel for the proper performance of the Work, then INDOT may, in its good faith discretion, suspend the affected portion of the Work by delivery of Notice of such suspension to Design-Build Contractor. Such suspension shall in no way relieve Design-Build Contractor of any obligation contained in the PPA Documents or entitle Design-Build Contractor to a time extension or other Change Order. Once compliance is achieved, as determined by INDOT, INDOT will notify Design-Build Contractor and Design-Build Contractor shall be entitled to and shall promptly resume the Work.

7.3.5 Design-Build Contractor acknowledges and agrees that the award of this PPA by INDOT to Design-Build Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Design-Build Contractor's commitment that such individuals would be available to undertake and perform the Work. Design-Build Contractor represents, warrants, and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Unless otherwise agreed to by INDOT in writing, individuals filling Key Personnel roles shall be available for the Work and shall maintain active involvement in the prosecution and performance of the Work. In the event that any Key Persons will not be 100% dedicated to the Project, Design-Build Contractor shall so advise INDOT and shall obtain approval from INDOT of the amount of time to be spent by each such individual on the Project, which amount shall in all events be sufficient for satisfactory and full performance of the tasks to be performed by such Key Person. Upon the request of INDOT, Design-Build Contractor shall document the percentage time commitment for each Key Personnel to the satisfaction of INDOT. In addition to the foregoing, INDOT reserves the right to require a 100% time commitment per position from any Key Personnel if INDOT, in its good faith discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.

7.3.6 Key Personnel Liquidated Damages

7.3.6.1 If an individual filling a Key Personnel role is not available for, or actively involved in, the performance of the Work, as determined by INDOT in its good faith discretion, then:

- (a) Design-Build Contractor acknowledges that INDOT and the Project will suffer significant and substantial damages and that it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to INDOT in such event; and
- (b) Design-Build Contractor agrees to pay INDOT a liquidated damage as follows, for each position held by such individual, as deemed compensation for such damages:

POSITION	LIQUIDATED DAMAGE
Project Manager	\$150,000
Design Manager	\$150,000
Structural Design Lead Engineer	\$100,000
Construction Manager	\$100,000
Design-Build Coordinator	\$100,000
Design Quality Manager	\$20,000
Construction Quality Manager	\$20,000
Utility Coordination Manager	\$20,000
Safety Manager	\$20,000
Maintenance of Traffic Manager	\$20,000
Environmental Compliance Manager	\$20,000
Project Scheduler	\$20,000

7.3.6.2 A further liquidated damage in accordance with Section 7.3.6.1 for the positions listed above in the amount of \$20,000 will be payable from Design-Build Contractor to INDOT for each three month period where any Key Personnel position is vacant or not being fulfilled in accordance with the PPA Documents as determined by INDOT.

7.3.6.3 Design-Build Contractor agrees that any damages payable in accordance with this Section 7.3.6 are liquidated damages, not a penalty and are reasonable under the circumstances existing as of the Proposal Date. Design-Build Contractor is not liable

for liquidated damages under Section 7.3.6.1 if: (a) Design-Build Contractor removes or replaces such personnel at the direction of INDOT; (b) such individual is unavailable due to retirement, death, disability, incapacity, injury or voluntary or involuntary termination of employment with the applicable DB-Related Entity (provided that moving to an Affiliate of Design-Build Contractor or a Subcontractor is not considered grounds for avoiding liquidated damages); or (c) such individual is unavailable due to INDOT's failure to issue the NTP within 270 days of the Proposal Date for a reason other than the acts or omissions of any DB-Related Entity, or any Design-Build Contractor Fault; provided that Design-Build Contractor promptly proposes to INDOT a replacement for such personnel for review and approval within 21 days after unavailability, in the case of clauses (a) or (b) or 21 days from the issuance of the NTP, in the case of clause (c).

7.3.6.4 Upon approval of any Key Personnel replacement under Section 7.3.1, the new individual shall be considered a Key Personnel for all purposes under the PPA Documents.

7.3.7 Nondiscrimination

7.3.7.1 Pursuant to the Indiana Civil Rights Law, specifically including IC § 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, Design-Build Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this PPA with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran or any other characteristic protected by federal, state or local law ("Protected Characteristics"). Design-Build Contractor certifies compliance with applicable federal Governmental Rules prohibiting discrimination based on the Protected Characteristics in the provision of services under the PPA Documents. Breach of this covenant may be regarded as a material breach of this PPA.

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

7.3.7.3 Design-Build Contractor agrees that if Design-Build Contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, Design-Build Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. Design-Build Contractor shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by reference. Breach of this covenant may be regarded as a material breach of this PPA.

7.3.7.4 It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and federal protections. INDOT's nondiscrimination enforcement shall include the following

additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran.)

7.3.7.5 During the performance of this PPA, Design-Build Contractor agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

7.3.7.5.1 Compliance with Regulations: Design-Build Contractor shall comply with the Regulations, which are incorporated herein by reference and made a part of this PPA.

7.3.7.5.2 Nondiscrimination: Design-Build Contractor, with regard to the Work, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of Subcontractors or Suppliers. Design-Build Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the PPA covers a program set forth in Appendix B of the Regulations.

7.3.7.5.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Design-Build Contractor for work to be performed under a Subcontract, each potential Subcontractor or Supplier shall be notified by Design-Build Contractor of Design-Build Contractor's obligations under this PPA, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

7.3.7.5.4 Information and Reports: Design-Build Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its Books and Records as well as other accounts, sources of information, and its facilities as may be determined by INDOT and FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Design-Build Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Design-Build Contractor shall so certify to INDOT and/or FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

7.3.7.5.5 Sanctions for Noncompliance: In the event of Design-Build Contractor's noncompliance with the nondiscrimination provisions of this PPA, INDOT shall impose such contract sanctions as it or FHWA may determine to be appropriate, including: (a) withholding payments to Design-Build Contractor under this PPA until Design-Build Contractor complies, and/or (b) cancellation, termination or suspension of this PPA, in whole or in part.

7.3.7.6 Design-Build Contractor shall take such action with respect to any Subcontract or procurement as INDOT or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event Design-Build Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Supplier as a result of such direction, Design-Build Contractor may request INDOT to enter into such litigation to protect the interests of INDOT, and, in addition, Design-Build Contractor may request the United States of America to enter into such litigation to protect the interests of the United States of America.

7.4 Prevailing Wages

Design-Build Contractor shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Work not less than the highest prescribed prevailing rates of wages, as provided in the statutes and regulations applicable to public construction projects and public work contracts, to the extent provided in Exhibit 11, and the Davis-Bacon Act and any other laws applicable to the Project. For purposes of clarity, (a) as between the prescriptions under the Davis-Bacon Act (if applicable), the “prevailing rate of wages” shall be, in respect of each labor category, the higher value prescribed and (b) notwithstanding any term of this PPA to the contrary, to the extent that FHWA and the U.S. Department of Labor approve project-specific wage rates for the Project, then Design-Build Contractor shall pay, and shall cause all Subcontractors to pay, such project-specific wage rates when performing or when contracting for the performance of any of Design-Build Contractor’s obligations under this PPA. Design-Build Contractor shall comply and cause its Subcontractors performing Work to comply with all Governmental Rules pertaining to prevailing wages.

7.5 Federal On-the-Job Training Participation Goal

This PPA is subject to federal on-the-job training participation provisions as set forth in Title 23 CFR, Part 230 and FHWA Form 1273 (Exhibit 11). Design-Build Contractor will be signatory to INDOT’s “On-the-Job Training Program and Partnership Agreement” and will make good faith efforts to achieve the training goal established therein (Attachment 7 to Exhibit 11).

7.6 Lobbying

The certification and disclosure of lobbying activities described in Exhibit 11 shall be included in each Subcontract (including any lower-tier Subcontracts exceeding \$100,000). All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by INDOT’s Ethics Officer.

SECTION 8. PERFORMANCE AND PAYMENT BONDS

8.1 Provisions of Bonds

8.1.1 Design-Build Contractor shall provide INDOT with a Performance Bond, Payment Bond, and Warranty Bond as provided herein, securing Design-Build Contractor's obligations under the PPA Documents, and shall maintain such bonds in full force and effect as described below (or other assurance satisfactory to INDOT in its sole discretion). Each bond required hereunder shall be provided by an Eligible Surety. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer is an Eligible Surety, Design-Build Contractor shall, within seven days after such event, deliver to INDOT a replacement bond in the required form issued by an Eligible Surety, or other assurance satisfactory to INDOT, in its sole discretion.

8.1.2 On or before the issuance by INDOT of the NTP, Design-Build Contractor shall deliver to INDOT a performance bond in an amount equal to the Contract Price, in the form attached hereto as Exhibit 4-A (the "Performance Bond"). INDOT will release the Performance Bond upon Final Acceptance provided that all of the following conditions have been met: (a) Design-Build Contractor is not in default under the PPA Documents and no event has occurred which, with the passage of time or the giving of Notice, would constitute a default under the PPA Documents and (b) INDOT has received the Warranty Bond in accordance with Section 8.1.4. If the Contract Price is increased in connection with a Change Order, INDOT may, in its good faith discretion, require a corresponding proportionate increase in the amount of the Performance Bond or a new performance bond covering the Change Order Work.

8.1.3 On or before the issuance by INDOT of the NTP, Design-Build Contractor shall deliver to INDOT a payment bond in an amount equal to the Contract Price, in the form attached hereto as Exhibit 4-B (the "Payment Bond"). Design-Build Contractor shall maintain the Payment Bond in full force and effect until (a) INDOT has received the Warranty Bond in accordance with Section 8.1.4, and either (b) Design-Build Contractor has delivered to INDOT (i) evidence satisfactory to INDOT that all Persons eligible to file a Claim against the Payment Bond have been fully paid and (ii) unconditional releases of Liens and notices from all Subcontractors who filed preliminary notices of a Claim against the Payment Bond, or (c) expiration of the statutory period for Subcontractors to file a Claim against the Payment Bond. If the Contract Price is increased in connection with a Change Order, INDOT may, in its good faith discretion, require a corresponding proportionate increase in the amount of the Payment Bond or a new payment bond covering the Change Order Work.

8.1.4 Upon achieving Final Acceptance, subject to the requirements herein, Design-Build Contractor may obtain a release of the Performance Bond and Payment Bond by providing to INDOT a warranty bond in an amount equal to 20% of the Contract Price, in the form attached hereto as Exhibit 4-C, with such nonmaterial modifications, if any, as INDOT may approve, in its sole discretion (the "Warranty Bond"). The Warranty Bond shall guarantee performance of Work required to be performed during the period following Final Acceptance, including Warranty Work and Work during the Plant Establishment Period, which shall also constitute a payment bond guaranteeing payment to Persons performing such Work. To the extent INDOT is required to do so by Governmental Rules or pursuant to any agreement between INDOT and the Utility Owners, Local Agencies or the Railroad, the Warranty Bond shall include a multiple obligee rider, in the form attached to the form of Warranty Bond provided in Exhibit 4-C, in favor of such entities. INDOT will release the Warranty Bond upon the later of: (x) expiration of the Warranty Period;

and (y) expiration of the Plant Establishment Period; provided, however, that all of the following conditions have been met: (a) Design-Build Contractor is not in default under the PPA Documents and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under the PPA Documents, (b) receipt by INDOT of (i) evidence satisfactory to INDOT that all Persons eligible to file a Claim against the Warranty Bond have been fully paid and (ii) unconditional releases of Liens and notices from all Subcontractors who filed preliminary notices of a Claim against the Warranty Bond, (c) the statutory period for Subcontractors to file a Claim against the Warranty Bond has expired and no Claims have been filed, and (d) Design-Build Contractor assigns to INDOT any Subcontractor and Supplier warranties that may still be in effect as of the effective date of Final Acceptance.

8.2 No Relief of Liability

Notwithstanding any other provision set forth in the PPA Documents, performance by a Surety [or Guarantor]of any of the obligations of Design-Build Contractor shall not relieve Design-Build Contractor of any of its obligations hereunder. ***[NTD: To be conformed in execution version based on whether a guarantor is used]***

8.3 [Guaranty]

[NTD: To be conformed in execution version based on whether a guarantor is used]

8.3.1 The Guarantor shall provide and maintain the Guaranty, in the form of Exhibit 14, in full force and effect throughout the term of this PPA.

8.3.2 Design-Build Contractor shall periodically report to INDOT regarding the financial capacity of the Guarantor. If, at any point during the term of this PPA, the Guarantor's financial capacity is materially negatively affected, as determined by INDOT in its good faith discretion, INDOT may require, and Design-Build Contractor shall provide, one or more additional guarantees so that the combined financial capacity of the Guarantor and the additional guarantors provides equivalent security to INDOT as the Guaranty provided as of the Effective Date. Each such Guaranty shall be substantially in the form provided in Exhibit 14, together with appropriate evidence of authorization, execution, delivery and validity of such Guaranty.

SECTION 9. INSURANCE

Design-Build Contractor shall purchase and continuously maintain in full force and effect the insurance coverages specified in this Section 9. Coverage shall be maintained from and after PPA execution through the expiration of the later of (i) the Warranty Period or (ii) the Plant Establishment Period, except as may be specifically provided in this Section 9.

9.1 General Provisions Relating to Insurance

9.1.1 Commencement of Work.

Design-Build Contractor and its Subcontractors shall not commence Work under this PPA or any applicable Subcontract until Design-Build Contractor or the applicable Subcontractor:

- (a) Obtains the insurance coverage required under this Section 9 for the applicable Work;
- (b) Provides INDOT with evidence that the required insurance, as specified in this Section 9, is in effect for the applicable Work; and
- (c) INDOT approves such insurance.

INDOT has no duty to pay or perform under this PPA until such evidence of insurance, in compliance with all requirements of this Section 9, has been provided.

9.1.2 Non-Limitation of Insurance Requirements.

The Parties acknowledge and agree that:

- (a) The insurance coverage provided and limits required under this PPA are minimum requirements and are not intended to limit Design-Build Contractor's indemnification obligations under this Section 9 and Section 18, nor do the indemnity obligations limit the rights of the Indemnified Parties to the coverage afforded by their insured status;
- (b) Requirements of specific coverage features or minimum limits contained in this Section 9 are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by insurance;
- (c) Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type;
- (d) All insurance coverage and limits provided by Design-Build Contractor, or by third parties pursuant to Design-Build Contractor's obligations under this PPA, and, in each case, available or applicable to this PPA are intended to apply to the full extent of the insurance policies, and nothing contained in this PPA limits, or shall be deemed to limit, the application of such insurance coverage; and

- (e) No liability policy shall contain any provision or definition that would serve to eliminate so-called “third-party-over action” claims, including any exclusion for bodily injury to an employee of the insured or of any Subcontractor.

9.1.3 Limitation of Coverage to a Specific Location

With the exception of any insurance required by the Railroad, liability insurance coverage shall not be limited to the specific location designated as the Site, except that if Design-Build Contractor arranges project-specific general liability, excess liability, or workers’ compensation coverage, limitations of coverage to the Site will be permitted subject to INDOT approval and use of the broadest available Site-specific endorsements.

9.1.4 Premiums, Deductibles and Self-Insured Retentions.

Design-Build Contractor shall pay all insurance premiums required under this Section 9. Design-Build Contractor acknowledges and agrees that for each Claim made against insurance policies provided under this PPA, with respect to all matters for which Design-Build Contractor is responsible under this PPA, Design-Build Contractor shall be solely responsible for all deductibles, self-insured retentions, and loss amounts in excess of the coverage limits provided. Any self-insured retentions maintained by Design-Build Contractor over \$500,000 must be declared to and approved by INDOT; except that (i) self-insured retentions for professional liability insurance shall be governed by Section 9.2.6(a), and (ii) self-insured retentions for commercial general liability insurance shall be governed by Section 9.2.1(d). In the event INDOT determines, in its good faith discretion, that conditions exist that could result in substantial financial peril to Design-Build Contractor, INDOT may require Design-Build Contractor to post collateral to INDOT guaranteeing payment of losses and related investigations, claims administration, and defense expenses or require Design-Build Contractor to reduce the amount of self-insured retentions under the policies.

9.1.5 Required Endorsements or Policy Provisions.

All insurance policies that Design-Build Contractor is required to provide under this PPA shall contain provisions or be endorsed to comply with the following requirements:

- (a) Each of the Indemnified Parties, either through endorsement or policy provision, shall be an additional insured under Design-Build Contractor’s and Subcontractors’ commercial general liability, automobile liability, umbrella or excess liability, pollution liability, and builder’s risk insurance policies. Insured status for Indemnified Parties under any commercial general liability policy shall be as specified in Section 9.2.1. Insured status for Indemnified Parties under any builder’s risk insurance policies shall be as specified in Section 9.2.7.
- (b) For claims covered by the insurance required under this PPA, said insurance coverage shall be primary and noncontributory insurance with respect to the additional insured Indemnified Parties, their directors, officers, employees, agents, or consultants. Any insurance or self-insurance beyond that required in this PPA that is maintained by an Indemnified Party, their directors, officers, employees, agents, or consultants shall be excess of such insurance required by this PPA.

- (c) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought except with respect to the limits of the insurer's liability.
- (d) Each insurance policy required under this PPA shall be endorsed to state that coverage shall not be canceled or non-renewed except after providing to INDOT 30 days' prior Notice (or 10 days' prior Notice in the case of cancellation for non-payment of premium), and such endorsement shall not include any limitation of liability of the insurer for failure to provide such Notice.
- (e) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability), and no policy issued on an occurrence basis shall have any sunset clause requiring reporting within a specified period of time, except as specified for pollution liability policies in Section 9.2.5(d).

9.1.6 Waivers of Subrogation.

The Indemnified Parties and Design-Build Contractor waive all rights against each other, against each other's agents and employees, and their respective members, directors, officers, employees, agents, and consultants for any Third-Party Claims to the extent covered by insurance obtained pursuant to this Section 9, except such rights as they may have to the proceeds of such insurance. Workers' compensation policies must be endorsed to waive the insurer's right of subrogation against the parties identified above. All other policies, except professional liability, shall waive any right of subrogation by endorsement, or by policy provision that would waive any right of recovery of the insurer against the Indemnified Parties and their respective members, directors, officers, employees, agents and consultants "before loss." These waivers of subrogation requirements must be included in all Subcontracts.

9.1.7 Verification of Coverage.

Design-Build Contractor shall:

- (a) Prior to its commencement of the applicable Work, cause each Subcontractor to provide certificates of insurance and amendatory endorsements effecting coverage required by this Section 9. Design-Build Contractor shall maintain such evidence until the fifth anniversary of the expiration of the last Warranty Period, at which time Design-Build Contractor shall forward to INDOT all collected evidence of insurance relating to the Project, or copies thereof;
- (b) Permit, and cause each Subcontractor to permit, INDOT to inspect any insurance policies that have not been delivered to INDOT; except that this requirement shall not apply to the corporate or practice professional liability insurance policies of design Subcontractors; and
- (c) Promptly deliver to INDOT evidence of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified in this PPA. Such evidence shall be delivered to INDOT not less than 15 Business Days prior to the expiration date of any policy, or such shorter period as approved in advance by INDOT.

9.1.8 Review of Coverage.

INDOT may at any time review the coverage, form, and amount of insurance required under this Section 9, and may require Design-Build Contractor to make changes in such insurance reasonably sufficient in coverage, form, and amount to provide adequate protection against the kind and extent of risk that exists at that time. INDOT may change the insurance coverages, terms and limits required under this Section 9 by Notice to Design-Build Contractor, whereupon Design-Build Contractor shall, within sixty (60) days of such Notice date, procure the additional and/or modified insurance. Upon such change, any additional cost from such change shall be paid by INDOT and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

9.1.9 Commercial Unavailability of Required Coverages.

If, through no fault of Design-Build Contractor, any of the coverages required in this Section 9 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only at commercially unreasonable premiums, INDOT will consider, in good faith, alternative insurance packages and programs that Design-Build Contractor proposes, with the goal of reaching agreement on a package that provides coverage substantially equivalent to that specified in this PPA. Design-Build Contractor shall demonstrate to INDOT's satisfaction that Design-Build Contractor used diligent efforts in the global insurance markets to place the required insurance coverages and shall advise INDOT of the specific results of those efforts. Design-Build Contractor shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide reasonably acceptable alternatives. INDOT, however, may receive a reduction in the Contract Price if it accepts alternative policies that provides less than equivalent coverage, with the amount of such reduction to be determined by extrapolation.

9.1.10 Notice of Prosecution of Claims.

Responsibility for Notice and prosecution of Claims shall be in accordance with the following provisions:

- (a) To the extent permitted by Governmental Rules, INDOT may submit Claims and tenders of defense and indemnity under applicable insurance policies. Unless otherwise directed by INDOT by Notice with respect to INDOT's insurance Claims, Design-Build Contractor shall report and process all potential claims by INDOT or Design-Build Contractor against the insurance policies. Design-Build Contractor agrees to report timely to the insurer(s) under such policies any and all matters that may give rise to an insurance Claim by Design-Build Contractor or INDOT, and to promptly and diligently pursue such insurance Claims in accordance with the Claims procedures specified in such policies, whether for defense or indemnity or both. Design-Build Contractor shall enforce all legal rights against the insurer under the applicable insurance policies and Governmental Rules in order to collect thereon, including pursuing necessary litigation and enforcement of judgments;
- (b) Design-Build Contractor shall immediately provide to INDOT Notice, and thereafter keep INDOT fully informed, of any incident, occurrence, claim, or other matter of which Design-Build Contractor becomes aware that involves or could conceivably involve an Indemnified Party as a defendant. Design-Build Contractor shall cooperate with INDOT and shall work with, and require its insurance broker to

agree in writing to work with, INDOT to assure compliance with all requirements of IC § 34-13-3-8 *et seq.* regarding form of and timely response to claims. Design-Build Contractor shall provide to INDOT a letter signed by Design-Build Contractor's insurance broker stating that the insurance broker shall comply with this requirement;

- (c) INDOT shall promptly provide to Design-Build Contractor Notice of incidents, potential Claims against INDOT, and matters of which INDOT is actually aware and that may give rise to an insurance claim, or to a right of defense and indemnification under Section 18. Delivery of any such Notice will constitute a tender of defense of the Claim to Design-Build Contractor and the insurer under any applicable insurance policies, subject to the rights of INDOT to control its own defense to the extent provided in Section 18.2 or by Governmental Rules. INDOT shall cooperate with Design-Build Contractor as necessary for Design-Build Contractor to fulfill its duties under this PPA, including providing Design-Build Contractor a copy of all written materials INDOT receives asserting a claim against INDOT that is subject to defense by an insurer under an insurance policy or by Design-Build Contractor under Section 18.2; and
- (d) If an insurer providing any of the insurance policies required under this Section 9 becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive given by any Governmental Entity, including the State, limiting the insurer's business activities, Design-Build Contractor shall promptly secure alternative coverage that complies with the insurance requirements in this Section 9, so as to avoid any lapse in insurance coverage.

9.1.11 Design-Build Contractor's Failure to Comply.

If Design-Build Contractor or any Subcontractor fails to provide and maintain insurance as required in this PPA, then INDOT may terminate this PPA, purchase such insurance as INDOT deems appropriate, or suspend Design-Build Contractor's right to proceed with the Work until proper evidence of insurance is provided. Any amounts paid by INDOT pursuant to this Section 9.1.11 (plus an administrative charge equal to 10% of the cost) shall, at the sole option of INDOT, be deducted from amounts payable to Design-Build Contractor or reimbursed by Design-Build Contractor upon demand. Nothing in the PPA Documents shall preclude INDOT from exercising its rights and remedies under Section 16 as a result of the failure of Design-Build Contractor or any Subcontractor to satisfy the obligations of this Section 9. If on account of Design-Build Contractor's failure to comply with the provisions of this Section 9, INDOT is adjudged to be responsible for all or any portion of a judgment, loss, or settlement (through admission or stipulation by Design-Build Contractor or court decision) that would have been covered by insurance but for non-compliance with this Section 9, then any loss or damage INDOT sustains by reason thereof shall be borne by Design-Build Contractor, and Design-Build Contractor shall immediately pay the same to INDOT, upon receipt of Notice. Design-Build Contractor acknowledges and agrees that any actual or alleged failure on the part of INDOT to inform Design-Build Contractor of non-compliance with any requirement imposes no additional obligations on INDOT nor does it waive any rights under the PPA Documents.

9.1.12 Subcontractor Insurance Requirements.

Design-Build Contractor shall cause each Subcontractor to provide insurance that complies with the requirements for Design-Build Contractor-provided insurance in this Section 9 in

circumstances where Subcontractor acts or omissions are not covered by Design-Build Contractor-provided insurance, including automobile liability. Except as otherwise specified in this Section 9, Design-Build Contractor has sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Design-Build Contractor shall cause each such Subcontractor to include the Indemnified Parties as additional insureds under such Subcontractor's general liability and excess liability insurance policies. If requested by INDOT, Design-Build Contractor shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. INDOT may contact the Subcontractors directly in order to verify the above coverage. Design-Build Contractor's determination of such insurance shall not be interpreted as relieving Design-Build Contractor or its insurer of any liability otherwise imposed on Design-Build Contractor or its insurers under this the PPA Documents.

9.1.13 Coverage to be Provided by Design-Build Contractor During Warranty Period and Plant Establishment Period.

During the period from the Final Acceptance Date and through the expirations of the Warranty Period and Plant Establishment Period, Design-Build Contractor shall continue to comply with all insurance requirements, including requirements for Subcontractors, which shall be the same as required during the construction period except that builder's risk insurance shall not be required during these periods and the minimum limit for general liability insurance shall be reduced to \$50,000,000.

9.1.14 Disclaimer

Design-Build Contractor and each Subcontractor shall ensure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage they deem advisable, whether or not specified in this PPA, and to fulfill their defense and indemnity obligations as specified under this PPA. INDOT makes no representation or warranty that the coverage, limits of liability, or other terms specified for the insurance policies required under this Section 9 are adequate to protect Design-Build Contractor against its undertakings under this PPA or its liability to any third party, nor shall the existence of any such terms preclude INDOT from taking any actions as are available to it under this PPA or otherwise at law.

9.2 Design-Build Contractor's Insurance Policy Requirements

All insurance required under the PPA Documents shall be procured from insurance companies authorized to do business in Indiana, with an A.M. Best and Company rating level of A-:VI or better, or as otherwise approved by INDOT. All limits of liability set forth in this Section 9.2 are in U.S. dollars.

9.2.1 Primary Commercial General Liability Insurance

- (a) During the period beginning with the Effective Date and ending upon Final Acceptance, or for such longer period as otherwise specifically provided for in this Section 9, Design-Build Contractor shall obtain and maintain a policy or policies of commercial general liability insurance for bodily injury, property damage, personal injury, and advertising injury. Coverage shall be written on an occurrence form that shall provide coverage at least as broad as the coverage provided by ISO form CG 00 01. The Indemnified Parties shall be additional insureds using ISO form

CG 20 10 07 04 and ISO form CG 20 37 07 04 for completed operations. Design-Build Contractor may use alternative forms, provided such forms provide equivalent coverage, as approved by INDOT in its sole discretion. The policy or policies shall be endorsed to remove exclusions pertaining to Railroads. There shall be no coverage-limiting endorsements unless reviewed and approved by INDOT or its representative. There shall be no endorsement or modification of the commercial general liability policy limiting the scope of coverage for liability assumed under an insured contract.

- (b) The commercial general liability insurance coverage shall have limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate. The general aggregate limit shall, by endorsement or otherwise, provide a designated aggregate limit solely for the Project using ISO form CG 25 03 05 09 or equivalent form, unless a project-specific insurance policy is purchased.
- (c) Completed operations coverage shall extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute. Coverage shall continue either through continuous maintenance of completed operations coverage in Design-Build Contractor's corporate insurance program or by purchase of extended completed operations for a project-specific policy. If coverage is maintained by continuous renewal for corporate policies, each subsequent general liability insurance policy issued through the statute of repose period, commencing with Final Acceptance, shall be endorsed with ISO form CG 20 37 07 04, or the equivalent, with the Indemnified Parties and their respective members, directors, officers, employees, agents and consultants scheduled as additional insureds.
- (d) No self-insured retentions of more than \$1,000,000 for general liability insurance policies shall be allowed unless disclosed to, and approved by, INDOT. All general liability insurance policies approved by INDOT shall allow, but not require, additional insureds as applicable to pay self-insured retentions if the named insured fails to do so; except that for each insurance policy that has an approved self-insured retention provision, Design-Build Contractor shall be responsible for paying any applicable self-insured retentions for its insurance policy(ies) and shall be liable to INDOT for said payments in the same manner as those interests would have been protected had the policies not contained a self-insured retention provision. Any deductible or self-insured retention amount shall be shown on any evidence of insurance provided to INDOT.

9.2.2 Automobile Liability Insurance

- (a) Design-Build Contractor shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain, a business auto liability policy or policies using ISO form CA 00 01 or other form providing coverage at least as broad. Each policy shall cover accidental bodily injury or property damage arising from the ownership, maintenance, or use of all owned, non-owned, and hired vehicles connected with performance of the Work, including loading and unloading. Design-Build Contractor's auto liability policies shall cover "any auto" ("symbol 1"). For Design-Build Contractor or a Subcontractor of any tier, who will be involved in any way with the transportation of Hazardous Materials using its own vehicles,

pollution liability coverage at least as broad as that provided under the ISO Pollution Liability-Broadened Coverage For Covered Autos endorsement (CA 99 48) shall be endorsed on the policy.

- (b) Design-Build Contractor's automobile liability coverage shall have a combined single limit per policy period of not less than \$10,000,000 per accident or shall be scheduled under the excess or umbrella liability policies so as to achieve the required minimum limit of \$10,000,000. Excess or umbrella policies also shall cover "any auto" ("symbol 1"). Subcontractors' policies shall have a combined single limit of no less than \$2,000,000 per accident. Such limit may be achieved through any combination of primary and following form excess insurance. At its discretion, Design-Build Contractor may reduce the required combined single limit to \$1,000,000 for a Subcontractor who is unable to obtain the \$2,000,000 limit. Design-Build Contractor's determination regarding any such reductions shall not be interpreted as relieving Design-Build Contractor or its insurers of any liability otherwise imposed on Design-Build Contractor or its insurers under the PPA Documents.
- (c) Design-Build Contractor and Subcontractors of all tiers shall maintain such insurance through Final Acceptance; except that such coverage shall be maintained for vehicles used in the performance of Warranty Work and any Work during the Plant Establishment Period until the expiration of the Warranty Period and Plant Establishment Period, respectively. The required limits can be satisfied by a combination of a primary policy and an excess policy or policies.

9.2.3 Umbrella or Excess Liability Insurance

- (a) During the period beginning with the effective date and ending upon Final Acceptance or for such longer period as otherwise specifically provided for in this Section 9, Design-Build Contractor shall obtain and maintain an umbrella or excess liability insurance policy that when combined with underlying insurance, shall attain total limits of not less than \$100,000,000 per occurrence and annual aggregate in excess of the amounts set forth in Section 9.2.1 (general liability) and Section 9.2.4 (employer's liability). Design-Build Contractor may use its corporate insurance program or a combination of corporate insurance and stand-alone policies to meet this requirement provided that the limits available for this Project are not subject to erosion by losses on other projects not related to this Project.
- (b) Such policy or policies shall include the following terms and conditions:
 - (i) drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted or for occurrences covered by an umbrella policy but not covered in the underlying insurance;
 - (ii) pay on behalf of wording as opposed to reimbursement;
 - (iii) concurrency of effective dates with primary policies;
 - (iv) the policies shall "follow form" to the underlying primary policies, including the provision of additional insured status and completed operations coverage to the additional insured Indemnified Parties and their respective

members, directors, officers, employees, agents and consultants as required under this Section 9; and

- (v) there shall be no “contractors’ limitation” endorsements, as that term is defined in the International Risk Management Institute Insurance Glossary (available online at <http://irmi.com/glossary>), that have not been reviewed and approved by the Indemnified Parties or their authorized representatives.

9.2.4 Workers’ Compensation/Employer’s Liability Insurance

During all phases of the Project, or for such longer period as otherwise specifically provided for in this Section 9, Design-Build Contractor shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain, a policy or policies of insurance providing workers’ compensation statutory benefits and employer’s liability in conformance with the laws of the State. Employer’s liability limits shall be no less than \$1 million by accident, \$1 million by disease, and \$1 million policy limit by disease. Design-Build Contractor, and any Subcontractors performing Plant Establishment Work and Work during the Plant Establishment Period, shall maintain such insurance through the expiration of the Plant Establishment Period. Design-Build Contractor and/or Subcontractor, whichever is the applicable employer, shall be the named insured on these policies. The workers’ compensation policies shall provide the following:

- (a) A provision extending coverage to “all states” operations on an “if any” basis;
- (b) Coverage for liability under the Longshore and Harbor Workers’ Compensation Act, by adding a Longshore and Harbor Workers’ Compensation Act coverage endorsement (WC 00 01 06 A) on an “if any” basis if appropriate; and
- (c) Coverage for liability under the Jones Act (Title 46 of the United States Code § 688) on an “if any” basis, if appropriate.

9.2.5 Contractor’s Pollution Liability Insurance

- (a) During the period beginning at the NTP, Design-Build Contractor shall procure and maintain contractor’s pollution liability insurance as specified below. Pollution liability insurance limits shall be no less than \$5,000,000 per claim and aggregate.
- (b) The CPL policy shall include coverage for cleanup costs, third-party bodily injury, and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by Design-Build Contractor’s operations or operations of its Subcontractors. Coverage as required in this Section 9.2.5(b) shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-Site disposal of materials and environmental or “natural resource” damage.
- (c) Each of the Indemnified Parties and their respective members, directors, officers, employees, agents and consultants shall be an additional insured under such a

policy. The policy shall not contain any provision or exclusion (including any so-called “insured versus insured” exclusion or “cross-liability” exclusion) the effect of which would be to prevent, bar, or otherwise preclude any additional insured under the policy from making a claim which would otherwise be covered by such policy.

- (d) If the CPL policy is written on a claims made basis, the policy shall be continuously renewed for five years after the expiration of the Warranty Period, with a retroactive date on or before the first date of any Work performed under the PPA Documents, or shall have an extended reporting period of no less than 5 years from the expiration of the Warranty Period.
- (e) Design-Build Contractor shall require any Subcontractor that performs environmental remediation or related work, including transportation, disposal, or environmental engineering consulting, to provide pollution and environmental impairment liability or pollution legal liability insurance with limits and scope of coverage appropriate to the exposure, and to include the Indemnified Parties as additional insureds on the policy. The policy shall not contain a “cross suits” exclusion or other provisions that would eliminate Indemnified Party claims against the Subcontractor.

9.2.6 Professional Liability Insurance

- (a) During all phases of the Project, Design-Build Contractor shall obtain and maintain contractor’s professional liability insurance with limits not less than \$10,000,000 per claim and in the aggregate. If Design-Build Contractor joint ventures with or subcontracts with lead design professionals or other lead professional service providers, the design and other professional service providers shall obtain and maintain professional liability insurance specific to their profession with limits not less than \$5,000,000 per claim and in the aggregate. Design-Build Contractor may, at its discretion, require lower limits of professional liability insurance from lower-tier design Subcontractors (e.g., smaller design firms and DBE design firms). No self-insured retention for Design-Build Contractor shall exceed \$500,000 without prior written approval from INDOT, in its good faith discretion.
- (b) Coverage shall apply specifically to all professional activities performed under the PPA Documents. The policy(ies) shall have a retroactive date consistent with the inception of design and/or project/construction management activities related to this project, and no later than October 11, 2019. Design-Build Contractor agrees to maintain this required coverage for a period of no less than five years after Substantial Completion or to purchase an extended reporting period for no less than five years after Substantial Completion. Design-Build Contractor shall require the design professional Subcontractors to agree to maintain this coverage for a period of no less than five years after Substantial Completion or to purchase an extended reporting period for no less than five years after Substantial Completion. If Design-Build Contractor arranges a project-specific policy to meet this requirement, that policy shall provide for a total period of no less than 10 years, including policy period and extended reporting period.

9.2.7 Builder's Risk

Upon commencement of construction and with approval of INDOT, Design-Build Contractor shall obtain and maintain a policy of builder's risk insurance for the Project as specified below. The policy may be a Design-Build Contractor corporate master builder's risk insurance program or a stand-alone policy as long as the requirements of this Section 9.2.7 are met. The named insureds shall be Design-Build Contractor, all Subcontractors (excluding those solely responsible for design Work) of any tier, INDOT, and the Indemnified Parties. The status of the insureds under this requirement shall not be limited by the phrase "as their interests may appear" or similar language. Design-Build Contractor is not required to maintain property insurance for any portion of the Project following acceptance thereof by INDOT.

(a) Minimum Scope

A builder's risk insurance policy on an "all risk" basis, including earthquake, flood, and windstorm. Policy must include: (i) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications using a form that is no more restrictive than LEG 3/06; (ii) coverage for removal of debris, subject to a sub-limit of no less than 25% of the loss, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (iii) transit coverage, including ocean marine coverage (unless insured by the Supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (iv) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form reasonably acceptable to INDOT to ensure adequacy of terms and sublimits. There shall be no coinsurance penalty provision in any such policy. Deductibles or self-insured retentions shall be no greater than 5% of the total value insured at the time of loss, subject to a maximum deductible of \$2 million. All deductibles or self-insured retentions shall be the responsibility of Design-Build Contractor.

(b) Limits

All insurance coverage shall be for the full replacement value of the completed project. Catastrophic exposures, such as earthquake, flood and windstorm, may be subject to sublimits in reasonable amounts and larger deductibles with approval by INDOT. If full replacement value for the LEG 3 form is not available, or only available at a prohibitive price, each as determined by INDOT, in its good faith discretion, INDOT may approve a lower sublimit for this coverage but not less than a \$50,000,000 sublimit.

9.2.8 Railroad Protective Liability

Design-Build Contractor shall provide coverage as may be required by the Railroad as a condition of the Railroad's consent for entry into or work nearby Railroad facilities or property. Such policy shall be consistent with the requirements under Section 16.7.6 of the Technical Provisions and effective during the period any Work is being performed within 50 feet of the Railroad right of way or as required by the Railroad.

9.2.9 Aircraft Liability

If any aircraft that is owned, leased or chartered by any DB-Related Entity is used on the Project, Design-Build Contractor shall provide, or cause to be provided, aircraft liability insurance

protecting against claims for damages resulting from such use. The minimum limit for such coverage is \$5,000,000 combined single limit or higher limits as may be required by INDOT. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Site or on any property owned by INDOT shall be subject to review and written acceptance by INDOT prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable to meet these requirements but must be provided prior to use of the aircraft. For use of unmanned aircraft vehicles, Design-Build Contractor or applicable Subcontractor, may provide insurance either through an aircraft liability insurance policy, or by endorsement to Design-Build Contractor's commercial general liability insurance policy and excess liability policies. Use of unmanned aircraft must comply with all state and federal rules and regulations, including FAA requirements.

SECTION 10. SITE SECURITY; MAINTENANCE AND REPAIR; TITLE

10.1 Site Security

Design-Build Contractor shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, vandalism, theft or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at or on the Site, whether owned by Design-Build Contractor, INDOT or any other Person.

10.2 Obligation to Maintain and Repair

10.2.1 Maintenance and Repair Liability; Use of Insurance Proceeds

10.2.1.1 Design-Build Contractor shall assume all liabilities regarding, and maintain, rebuild, repair, restore or replace, all Work, including Design Documents, Construction Documents, materials, equipment, supplies, and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, and any property within the Project ROW, in each case, that is damaged prior to the date that Design-Build Contractor's maintenance responsibility ends as set forth in Section 10.2.2, regardless of who has title thereto under the PPA Documents and regardless of the cause of the damage or injury, at no additional cost to INDOT. Design-Build Contractor, at its cost, shall also have the sole responsibility from the commencement of construction Work until the Final Acceptance Date for rebuilding, repairing, and restoring all other property within the Project ROW whether owned by Design-Build Contractor, INDOT or any other Person. Without limiting Section 5.2.1, Section 13.2.4, Section 13.5.1, Section 13.5.5, and Section 23.1, if directed by INDOT, Design-Build Contractor shall rebuild, repair, restore, or replace, and INDOT will pay the actual, direct, and documented costs for rebuilding, repairing, restoring, or, in INDOT's sole discretion, replacing any such property damaged by third parties prior to the date that Design-Build Contractor's maintenance responsibility commences. For avoidance of doubt, INDOT's obligations in the preceding sentence are solely with respect to direct costs (net of any proceeds of insurance that are available to pay any such costs or would have been available if Design-Build Contractor had provided all required insurance coverage), and Design-Build Contractor shall not be entitled to any delay and disruption damages or extension of any Completion Deadline in the event of any such damage to existing facilities on the Site. If INDOT elects to rebuild, repair, restore, or replace damaged property prior to the date upon which Design-Build Contractor's maintenance responsibility commences, no work by INDOT or any INDOT contractor shall be the basis for any Claim, request for additional compensation or extension of any Completion Deadline, nor shall be (or be construed to be) an INDOT-Caused Delay, nor shall any such work preclude INDOT from pursuing any proceeds of insurance that are available to pay any such costs, where such insurance is required to be placed under the PPA Documents.

10.2.1.2 Notwithstanding Section 10.2.1.1, but subject to Section 13, Design-Build Contractor shall be eligible for compensation and a time extension in the event that Work is damaged due to a matter that falls expressly within the scope of clause (e) of the definition of INDOT-Caused Delay.

10.2.1.3 At all times prior to receipt of the IDEM Notice of Termination, Design-Build Contractor shall maintain in a growing condition all plantings, seedlings, and sodding furnished under the PPA Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during said establishment

period, in accordance with Project Standards and the requirements of Governmental Approvals, including the Rule 5 Permit.

10.2.1.4 If insurance proceeds with respect to any Losses are paid to INDOT under any insurance policies required to be provided hereunder, then INDOT shall arrange for such proceeds to be paid to Design-Build Contractor as repair or replacement work is performed by Design-Build Contractor to the extent that INDOT has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to Design-Build Contractor shall not be a condition precedent to Design-Build Contractor performing such repair or replacement work or indicate that such repair or replacement work has been approved and accepted by INDOT, and Design-Build Contractor shall remain obligated to pay deductibles and self-insured retentions as specified in Section 9.

10.2.1.5 Design-Build Contractor shall protect from damage existing property, structures, Utilities, curbs, walks, drives, trees, shrubs, lawns, and landscape work of third parties on or adjacent to the Site or affected by its activities and shall provide such guards, protection, and covering as is necessary. Design-Build Contractor shall immediately notify affected third parties of any damage to their property caused by any DB-Related Entity. Damaged or destroyed items of the Work and Site shall be repaired or replaced to the condition required by the PPA Documents for the initial construction of the Project. Damaged or destroyed items that are the property of other affected parties shall be repaired or replaced to their prior condition; provided, however, that they shall be repaired or replaced to any better or different condition to the extent required by the PPA Documents, applicable Governmental Rules, or pursuant to any agreement between the property owner and either INDOT or Design-Build Contractor. Design-Build Contractor shall either perform such repair or replacement itself, or the affected third party may elect to make its own repairs at Design-Build Contractor's expense. Should Design-Build Contractor not repair or replace such damaged or destroyed items (or not reimburse a property owner electing to do its own repair or replacement), INDOT shall have the right to take corrective measures and to deduct the amount of such costs and expenses (including an administrative charge equal to 10% of the costs) from any sums owed by INDOT to Design-Build Contractor pursuant to this PPA and/or obtain reimbursement from Design-Build Contractor for such costs (plus an administrative charge equal to 10% of the costs).

10.2.2 Relief from Maintenance Liability

10.2.2.1 The Project shall remain Design-Build Contractor's responsibility for maintenance purposes until the Final Acceptance Date, except that Design-Build Contractor's responsibility for (i) Work during the Plant Establishment Period shall remain until the expiration of the Plant Establishment Period, and (ii) conditions of the Rule 5 Permit until Design-Build Contractor obtains the IDEM Notice of Termination. Notwithstanding the foregoing, all elements of the Work which will be owned by Persons other than INDOT, Local Agencies, or Utility Owners will be considered accepted for maintenance purposes only as of the date of acceptance of maintenance responsibilities by such Persons.

10.2.2.2 INDOT may monitor Design-Build Contractor's maintenance practices and take such actions, consistent with the terms of this PPA that INDOT considers appropriate to ensure the Work is properly maintained. Such monitoring and action by INDOT shall not relieve or modify Design-Build Contractor of its obligations or liabilities under the PPA Documents and Design-Build Contractor is not entitled to rely on such monitoring.

10.3 Title

Design-Build Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for INDOT for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools, and supplies which shall have been delivered to the Site shall pass to INDOT, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by INDOT to Design-Build Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Design-Build Contractor shall retain risk of loss and sole care, custody, and control of such materials, equipment, tools, and supplies and shall exercise due care with respect thereto until Final Acceptance or until Design-Build Contractor is removed from the Project.

SECTION 11. WARRANTIES

11.1 Warranties

11.1.1 Warranty

The general warranty contained in this Section 11 is in addition to any express warranties provided for elsewhere in the PPA Documents. Design-Build Contractor warrants that (a) all Design Work furnished pursuant to the PPA Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State; (b) the Project shall be free of defects, except to the extent that such defects are inherent in prescriptive specifications included in the PPA Documents; (c) materials and equipment furnished by or on behalf of any DB-Related Entity under the PPA Documents shall be of good quality and when installed, shall be new; (d) equipment furnished by or on behalf of any DB-Related Entity shall be of modern design and in good working condition; (e) the Work shall meet all of the requirements of the PPA Documents; (f) the Work shall be free of Deviations that have not been approved by INDOT; and (g) the Project shall be fit for use for the intended function. All Warranties under the PPA Documents shall also run to the benefit of INDOT. The warranties set forth in this Section 11 shall expressly apply to Plant Establishment Work.

11.1.2 Warranty Period

The Warranty Period for each element of the Project shall commence upon Final Acceptance. Subject to extension under Section 11.2, the Warranties regarding all elements of the Project shall remain in effect until two years after Final Acceptance. If INDOT determines that any of the Work has not met the standards set forth in this Section 11.1 at any time within the Warranty Period, then Design-Build Contractor shall correct such Work as specified below, even if the performance of such corrective Work extends beyond the stated Warranty Period. INDOT and Design-Build Contractor shall conduct a walkthrough of the Site prior to expiration of the Warranty Period and shall produce a punch list of those items requiring Warranty Work.

11.1.3 Warranty Work

Within seven days after receipt by Design-Build Contractor of Notice from INDOT specifying a failure of any of the Work to satisfy Design-Build Contractor's Warranties, or of any Subcontractor representation, warranty, guarantee or obligation which Design-Build Contractor is responsible to enforce, Design-Build Contractor and INDOT shall mutually agree when and how Design-Build Contractor shall remedy such violation; provided, however, that in case of an emergency requiring immediate curative action, Design-Build Contractor shall implement such action as it deems necessary and shall provide to INDOT Notice of the urgency of a decision. Design-Build Contractor and INDOT shall promptly meet in order to agree on a remedy. If Design-Build Contractor does not effectuate such remedy within the agreed time, or should Design-Build Contractor and INDOT fail to reach such an agreement within such seven-day period (or immediately in the case of emergency conditions) or should INDOT disapprove of the actions being taken, INDOT, after Notice to Design-Build Contractor, shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof and further warranty obligations with respect to such work performed by INDOT shall be borne by Design-Build Contractor. Reimbursement therefor (plus an administrative charge equal to 10% of the costs) shall be payable to INDOT within 10 days after Design-Build Contractor's receipt of an invoice therefor. Alternatively, INDOT may deduct the amount of such costs and

expenses (including the administrative charge equal to 10% of the costs) from any sums owed by INDOT to Design-Build Contractor pursuant to this PPA.

11.1.4 Permits and Costs

Design-Build Contractor shall be responsible for obtaining any required encroachment permits from Local Agencies and required encroachment permits, access rights, rights of entries, and consents from any other Persons in connection with Warranty Work. Design-Build Contractor shall bear all costs of Warranty Work, and additional testing and inspections, and shall reimburse INDOT or pay its expenses made necessary thereby within 10 days after Design-Build Contractor's receipt of invoices therefor. Alternatively, INDOT may deduct the amount of such costs and expenses from any sums owed by INDOT to Design-Build Contractor pursuant to this PPA.

11.2 Applicability of Warranties to Re-Done Work

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of the PPA Documents. The Warranties as to each re-done, repaired, corrected, or replaced element of the Work shall extend beyond the original Warranty Period if necessary to provide at least a two year Warranty Period regarding all elements of the Project (but not to exceed three years from the Final Acceptance Date), following acceptance by INDOT of the re-done, repaired, corrected or replaced Work. In addition to the foregoing extension, if during the Warranty Period (i) two or more of the same type of parts, components or subsystems of the Project require repair, replacement or renewal or re-performance; or (ii) any part, component or subsystem fails more than twice after Design-Build Contractor's preceding repair, replacement, renewal or re-performance, then, in each case, the Warranty for that type of part, component or subsystem shall be automatically extended for three years from the Final Acceptance Date.

11.3 Subcontractor Warranties

11.3.1 Warranty Requirements

11.3.1.1 Without in any way derogating the Warranties and Design-Build Contractor's own representations and warranties and other obligations with respect to all of the Work, Design-Build Contractor shall obtain from all Subcontractors for periods at least coterminous with the Warranties and cause to be extended to INDOT and INDOT, appropriate representations, warranties, guarantees, and obligations with respect to design, materials, workmanship, equipment, tools, and supplies furnished by such Subcontractors to effectuate the provisions of this Section 11.

11.3.1.2 Design-Build Contractor shall cause Subcontractor warranties to be extended to INDOT and any other parties for whom Work is being performed or equipment, tools, supplies or software is being supplied by such Subcontractor; provided; however; that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to INDOT using commercially reasonable efforts. INDOT agrees to forebear from exercising remedies under any such warranty so long as Design-Build Contractor is diligently pursuing remedies thereunder and such forbearance does not materially prejudice the rights and remedies of INDOT.

11.3.1.3 All representations, warranties, guarantees, and obligations of Subcontractors shall: (a) be written so as to survive all inspections, tests and approvals hereunder, and (b) run directly to and be enforceable by Design-Build Contractor, INDOT and/or their respective successors and assigns. Design-Build Contractor hereby assigns to INDOT all of Design-Build Contractor's rights and interest in all extended warranties for periods exceeding the Warranty Period which are received by Design-Build Contractor from any of its Subcontractors. To the extent that any Subcontractor warranty would be voided by reason of any Design-Build Contractor Fault, Design-Build Contractor shall be responsible for correcting such defect.

11.3.2 Enforcement

Upon receipt from INDOT of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Design-Build Contractor shall enforce or perform any such representation, warranty, guarantee or obligation, in addition to Design-Build Contractor's other obligations hereunder. The rights of INDOT under this Section 11.3.2 shall commence at the time such representation, warranty, guarantee or obligation is furnished and shall continue until the expiration of Design-Build Contractor's relevant warranty (including extensions thereof under Section 11.2). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Design-Build Contractor if such cost is covered by such a warranty, guarantee or obligation, and Design-Build Contractor shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

11.4 No Limitation of Liability

The foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the PPA Documents, Governmental Rules or in equity, and shall not limit Design-Build Contractor's liability or responsibility imposed by the PPA Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud. The fact that INDOT may not have discovered the Nonconforming Work prior to Final Acceptance shall not constitute an acceptance of such Nonconforming Work.

11.5 Damages for Breach of Warranty

In addition to the other rights and remedies of INDOT hereunder, at law or in equity, Design-Build Contractor shall be liable for Losses suffered by INDOT arising out of or relating to any breach of an express or implied warranty, Subcontractor warranty, or any defect in the Work, including the cost of performance of such obligations by others.

11.6 Warranty Disputes

Any Dispute relating to this Section 11 shall be subject to Dispute Resolution Procedures.

SECTION 12. PAYMENT FOR SERVICES

12.1 Contract Price

12.1.1 PPA Amount

Subject to Section 13, as full compensation for the Work and all other obligations to be performed by Design-Build Contractor under the PPA Documents, INDOT shall pay to Design-Build Contractor a lump sum Contract Price. The term “Contract Price” as used herein shall be subject to adjustment from time to time only to account for (i) Change Orders and (ii) as required by Attachment 3-1 of the Technical Provisions. The Contract Price shall be increased or decreased only in accordance with Section 13 or by a PPA amendment. The Contract Price shall be paid in accordance with Section 12.2. The initial Contract Price shall be the lump sum amount of \$[_____] [*NTD: insert amount from Form I in Design-Build Contractor’s Proposal, subject to negotiations*], which includes the Allowances.

12.1.2 Items Included in Contract Price

Design-Build Contractor acknowledges and agrees that, subject only to Design-Build Contractor’s rights under Section 13, the Contract Price includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit, and services, including Professional Services as provided for in Section 12.1.1, relating to Design-Build Contractor’s performance of its obligations under the PPA Documents (including all Work, equipment, materials, labor, and services provided by Subcontractors and Intellectual Property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in Section 2.2.4); (d) all costs of compliance with and maintenance of the Other Approvals and the Governmental Approvals and compliance with Governmental Rules, except to the extent compliance with or maintenance of Governmental Approvals is the responsibility of Utility Owners pursuant to Section 15 of the Technical Provisions; (e) payment of any taxes, duties, permit, and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; (f) all cooperation and coordination with Utility Owners, and all other Persons and parties; (g) compensation for all risks and contingencies assigned to Design-Build Contractor under the PPA Documents; and (h) the Allowances. Except as otherwise provided in this PPA, each Party shall perform its obligations in accordance with the PPA Documents at its own cost and risk, including, in the case of Design-Build Contractor, all Work.

12.1.3 Allowances

12.1.3.1 Allowances, Generally

- (a) Each of the Allowances is available to pay for certain portions of the Work, with payments from the Allowance to be made on the basis identified with respect to each such Allowance under this Section 12.1.3.
- (b) Design-Build Contractor shall be paid for each Allowance as set forth in this Section 12.1.3.
- (c) The initial amount of each Allowance is identified in Exhibit 8.

- (d) Design-Build Contractor shall keep detailed records of the quantities, units, or other agreed metrics with respect to each Allowance listed below and shall submit to INDOT supporting documentation of such quantities with its invoices, and such other information as INDOT may require, in its sole discretion.
- (e) INDOT may elect to use some or all of any Allowance as a source of payment for Work for which Design-Build Contractor may be entitled under Section 13.
- (f) No Change Order is required for invoicing amounts remaining (with respect to relevant portions of the Work) within any Allowance.
- (g) As part of Final Acceptance, a Change Order will be issued deducting any unused Allowance values from the Contract Price.

12.1.3.2 Patching Allowances

Design-Build Contractor shall be eligible to invoice against the Patching Allowances to address patching Work on facilities existing as of the Effective Date and until Design-Build Contractor has commenced construction of permanent improvements thereon, as set forth herein.

- (a) Temporary patching Work shall be paid for on a unit price basis out of the Temporary Patching Allowance. As applicable for patching Work performed, Design-Build Contractor may invoice and receive payment of (i) \$250 per square yard for Partial Depth PCCP Patching, (ii) \$325 per ton for Partial Depth HMA Patching, (iii) \$85 per square foot for Bridge Deck Patching, Full Depth, and (iv) \$60 per square foot for Bridge Deck Patching, Partial Depth (as each such term is defined in the Standard Specifications). Partial Depth patching will only be paid for bridges not utilizing hydrodemolition. Bridge Deck Overlay, Additional shall apply to either Latex Modified Concrete or Silica Fume Modified Overlays at: (w) \$550 per cubic yard for LMC, (x) \$650 per cubic yard for LMC-VE, (y) \$200 per cubic yard for Silica Fume Modified Overlays, and (z) \$15 per linear foot for additional surface preparation. Invoicing for completed patching shall be included in the monthly invoice described in Section 12.2.
- (b) Permanent patching shall be paid for on a unit price basis out of the Permanent Patching Allowance. As applicable for permanent patching Work performed, Design-Build Contractor may invoice and receive payment of: (i) \$85 per square foot for Bridge Deck Patching, Full Depth, and (ii) \$60 per square yard for Hydrodemolition (as each such term is defined in the Standard Specifications). Bridge Deck Overlay, Additional shall apply to very early strength Latex Modified Concrete Overlays at \$650 per cubic yard and \$15 per linear foot for additional surface preparation. Invoicing for completed patching shall be included in the monthly invoice described in Section 12.2.
- (c) Any temporary patching Work conducted after the Temporary Patching Allowance has been exhausted, or any permanent patching Work conducted after the Permanent Patching Allowance has been exhausted, shall be invoiced and paid in accordance with Section 13 at the relevant unit prices listed in clauses (a) and (b) above, respectively, as full compensation for any additional units of patching.

- (d) This Section 12.1.3.2 shall not apply to patching associated with underdrains, all of which is included in the Contract Price. Such patching shall not be subject to additional compensation or unit price payment as described in this Section 12.1.3.2.
- (e) In no event shall Design-Build Contractor be entitled to any additional time or extension of any Completion Deadline as a result of patching, including any additional patching described in this Section 12.1.3.2.
- (f) In no event shall Design-Build Contractor be entitled to draw against the Temporary Patching Allowance or Permanent Patching Allowance for correction of any Nonconforming Work or Work performed during any Prohibited Closure.
- (g) The Temporary Patching Allowance and Permanent Patching Allowance are not intended to address patching work on portions of the Project where construction of permanent improvements has commenced, nor shall it be used to correct or address Nonconforming Work.

12.1.3.3 Geotech Allowance

Design-Build Contractor shall be eligible to invoice against the Geotech Allowance for Work to address Obstructions encountered during pile driving as set forth herein.

- (a) Obstructions encountered, for which Design-Build Contractor expects to invoice against the Geotech Allowance, shall be verified by Design-Build Contractor in-place and approved by INDOT.
- (b) Additional Work directly relating to Obstructions encountered during pile driving shall be paid for on a time and materials basis out of the Geotech Allowance.
- (c) Invoicing for completed Work eligible for the Geotech Allowance shall be included in the monthly invoice described in Section 12.2. Design-Build Contractor shall keep detailed records of the time, material, and equipment to address the Obstructions and shall submit supporting documentation of such quantities with its invoices. Design-Build Contractor shall not be entitled to any relief, compensation or time for any Work relating to Obstructions in excess of the Geotech Allowance.
- (d) Design-Build Contractor shall provide Notice to INDOT when the number of Obstructions invoiced, in any amount, against the Geotech Allowance has reached 40. No more than one Obstruction shall be counted at each bridge substructure unit. Design-Build Contractor shall not be entitled to any relief, compensation or time for any Work in excess of the 40 Obstructions in the Planned ROW Limits, irrespective of whether the full Geotech Allowance has been used.
- (e) In no event shall Design-Build Contractor be entitled to any additional time or extension of any Completion Deadline as a result of additional Work eligible for payment out of the Geotech Allowance.
- (f) In no event shall Design-Build Contractor be entitled to draw against the Geotech Allowance for correction of any Nonconforming Work or for Work performed during any Prohibited Closure.

12.2 Invoicing and Payment.

The following process shall apply to invoicing and payment:

12.2.1 Schedule of Values

12.2.1.1 Within 14 days after the Effective Date, Design-Build Contractor shall prepare and submit a detailed Schedule of Values giving a complete breakdown of the lump sum portion of the Contract Price, setting forth the estimated value of the various categories of the Work. The Schedule of Values shall be subject to INDOT's approval, in its good faith discretion.

12.2.1.2 The Schedule of Values shall be developed by Design-Build Contractor by dividing the lump sum amounts making up the Contract Price into components that represent the work and, where possible, can be defined by key quantities installed. INDOT may provide a template defining the minimum items into which the Contract Price shall be divided in the Schedule of Values. The template may include the requirement that Design-Build Contractor define key quantities associated with certain Schedule of Value line items. The Schedule of Values shall take into consideration schedule monitoring and cost reporting requirements, and shall be cost coded to identify costs uniquely by physical location, element of work,) or any other coding requirements deemed necessary by INDOT.

12.2.1.3 Design-Build Contractor shall ensure that the dollar amounts of each scheduled value in the Schedule of Values in fact represent fair market cost allocations for the work items listed. Each item in the Schedule of Values shall include its proportionate share of Design-Build Contractor overhead and profit. If requested by INDOT, Design-Build Contractor shall provide a detail cost breakdown for any work item in the Schedule of Values.

12.2.1.4 Design-Build Contractor shall not increase the cost of early activities, i.e., "front loading." If INDOT determines that "front loading" has occurred, it may direct Design-Build Contractor to conduct a complete reallocation of moneys until such "front loading" is corrected. Repeated attempts at "front loading" may result in refusal to process payment until such time as the Schedule of Values is acceptable to INDOT.

12.2.1.5 The Schedule of Values is for the purpose of enabling the parties to determine the amount of progress payments owing. INDOT will base payments on an estimate of the percentage of Work completed. No progress payment shall be made for any Work that is not included in a Schedule of Values approved by INDOT.

12.2.1.6 Following INDOT's approval of the Schedule of Values, the Parties shall revise and finalize the form of Invoice Certificate to correspond to the Schedule of Values, and INDOT will make progress payments based on the Schedule of Values and the Work performed through the payment period. The invoice showing progress made against the Schedule of Values shall be provided in both paper and electronic format (Excel or similar acceptable to INDOT). Invoicing for progress payments may be made no more frequently than once per month.

12.2.1.7 INDOT shall at any time have the right to conduct a detailed examination of the Schedule of Values. Design-Build Contractor shall cooperate with and, to the best of its ability, assist INDOT Representative in such review, including providing all such information as may be reasonably required in connection therewith. INDOT may determine that, in relation to any work Item, the relationship between progress payments and progress and control

of the work envisaged at the date of INDOT approval of the Schedule of Values has not been or will not be maintained. In such event, INDOT may require Design-Build Contractor to prepare a revised Schedule of Values that will, in INDOT's good faith opinion, restore, so far as reasonably practicable, said relationship and degree of control. The revised Schedule of Values will be due 30 days after delivery of Notice from INDOT. If Design-Build Contractor fails to provide an acceptable revised schedule within said 30-day period, INDOT may revise the Schedule of Values in any manner that it sees fit, based on the rate of progress of the work which INDOT anticipates and with the objective of restoring, so far as is reasonably practicable, said relationship and degree of control.

12.2.1.8 The Schedule of Values shall be updated in connection with each Change Order that modifies the Contract Price, and submitted to INDOT for approval. Each Change Order shall be reflected on the Schedule of Values as a separate line item.

12.2.1.9 Design-Build Contractor shall not be entitled to submit any invoice or seek any payment for Final Design and Construction unless and until Environmental Determination has been obtained.

12.2.1.10 Design-Build Contractor shall not be entitled to submit any invoice or seek any payment for a design Submittal (or Design Work related thereto) until the later of: (i) when such design Submittal is submitted to INDOT; and (ii) when Design-Build Contractor is entitled to submit such design Submittal (including, for any sequential design Submittal, that all prerequisites to such design Submittal have been satisfied).

12.2.2 Draft Invoice and Progress Meeting

On or about the 25th day of each month following the issuance of the NTP and continuing through Final Acceptance, Design-Build Contractor shall deliver a draft invoice and draft Invoice Certificate for that month to INDOT. Design-Build Contractor's draft invoice package shall include all materials, reports, schedules, and other submittals identified in Attachment 1-1 of the Technical Provisions. At each Progress Meeting, Design-Build Contractor's and INDOT's Authorized Representatives shall ascertain the progress of the Work. Each Progress Meeting shall be attended by Design-Build Contractor and INDOT and/or its representatives. Design-Build Contractor's and INDOT's Authorized Representatives shall review the draft invoice and draft Invoice Certificate reflecting the value of Work completed as of the date of the Progress Meeting (based on quantities and unit prices for unit-priced Work (including any amounts paid out of the Allowances)), based on time and materials for Time and Materials Work and, for all other Work, based on the percentage completion of Project Schedule activities and the values distributed to such activities in the Schedule of Values). Design-Build Contractor's and INDOT's Authorized Representatives shall sign the draft invoice, indicating the portions of it that have been approved and setting forth the proposed total payment amount, which shall be the approved value of the Work then completed, calculated in accordance with the Project Schedule and Schedule of Values, plus the value of unit-priced and Time and Materials Work (including any amounts paid out of the Allowances)), less progress payments previously made. The amounts set forth in the draft invoice shall be used by Design-Build Contractor in preparation of its monthly payment request described in Section 12.2.3. Invoices which cover Utility Work shall include documentation as required by Section 15 of the Technical Provisions, and shall separately identify the total amount due for (a) Utility Betterments and (b) any other Work for which the Utility Owner has Cost Liability.

12.2.3 Delivery of Invoice

Within seven days after each Progress Meeting, Design-Build Contractor shall submit to INDOT five copies of an invoice in the forms attached hereto as Exhibit 5, or such other form as may be approved in INDOT's sole discretion, for the Work performed under the PPA Documents during the immediately preceding month. The form of invoice shall be modified as appropriate to account for unit-priced and Time and Materials Work. Each invoice shall be based upon the approved draft invoice and may not include any amounts not approved by INDOT in the Progress Meeting reviewing the draft invoice. No invoice shall be considered complete unless it (a) describes the status of completion as it relates to the Project Schedule; (b) sets forth the related payments which are then due in accordance with the Project Schedule, as of the date of the most recent Progress Meeting; (c) includes all materials, reports, certifications, and other submittals identified in Attachment 1-1 of the Technical Provisions; (d) includes Design-Build Contractor's monthly Project Status Schedule as accepted by INDOT in accordance with Section 1.3.2.2 of the Technical Provisions; (e) includes any other documents or submittals that the PPA Documents require to be included with invoice packages; and (f) satisfies the requirements set forth in Section 12.2.4. Within 14 days after INDOT's receipt of the invoice, INDOT will review the invoice and all attachments thereto for consistency with the draft invoice prepared at the most recent Progress Meeting and conformity with all requirements of the PPA Documents, and shall notify Design-Build Contractor of the amount approved for payment and specify the reason for disapproval of any remaining invoiced amounts. Design-Build Contractor may include such disapproved amounts in the next month's invoice after correction of the deficiencies noted by INDOT (all such disapproved amounts shall be deemed in Dispute unless otherwise agreed).

12.2.4 Form of Invoice

12.2.4.1 Each invoice submitted by Design-Build Contractor shall include the invoice and Invoice Certificate in the form included in Exhibit 5 hereto or such other form as may be approved in INDOT's sole discretion, with no additions or deletions other than those approved by INDOT. Each invoice and Invoice Certificate shall be executed by Design-Build Contractor's Authorized Representative.

12.2.4.2 Each invoice shall have a cover sheet that shall indicate each of the following items: (a) Project number and title; (b) invoice number (numbered consecutively, starting with "1"); (c) period covered by the invoice (specific beginning and ending days); (d) total amount authorized; (e) total invoiced through last period; (f) current invoice amount; (g) total invoiced to-date; (h) percent invoiced; (i) remaining Allowances; (j) remaining Contract Price; (k) net amount due Design-Build Contractor; (l) total amount earned to date for the Project as a whole; and (l) authorized signature, title of signer and date of signature.

12.2.4.3 In addition, no invoice shall be considered complete unless it: (a) describes in detail the status of completion as it relates to the Project Schedule; (b) sets forth separately and in detail the related payments which are then due in accordance with the Project Schedule, as of the end of the prior month; (c) in the case of amounts to be paid on a unit-price basis, includes invoices, receipts or other evidence establishing the number of units delivered; (d) in the case of amounts invoiced for Time and Materials Work, includes all supporting documentation described in Section 13.7; (e) sets forth in detail the amounts paid to Subcontractors (including Suppliers and Subcontractors at lower tiers) from the payments made by INDOT to Design-Build Contractor with respect to the prior month's invoice; (f) includes affidavits of payment and unconditional waivers of Liens and Claims executed by Design-Build Contractor (and affidavits of payment and unconditional waivers of Liens and Claims executed by

each Subcontractor) with respect to all amounts paid in the prior month's invoice; and (g) includes all materials, reports, certifications, and other submittals identified in Section 12.2.3.

12.2.5 Payment by INDOT

Within 35 days after receipt by INDOT of each complete invoice (including all required materials and reports) and the related Invoice Certificate, INDOT shall pay Design-Build Contractor the amount of the invoice approved for payment less any amounts which INDOT is otherwise entitled to withhold or deduct. In no event shall INDOT have any obligation to pay Design-Build Contractor any amount (a) which would result in payment for any activity in excess of the value of the activity times the completion percentage of such activity (for non-unit-priced Work); (b) which was not approved during the Progress Meeting reviewing the draft invoice for such month; or (c) which would result in aggregate payments hereunder in excess of the overall completion percentage for the Project multiplied by the Contract Price (for non-unit-priced Work) for the month to which the invoice applies, plus amounts allowed by Change Orders.

12.3 Deductions, Exclusions and Limitations on Payment

12.3.1 Deductions

INDOT may deduct from any progress payment and the Final Payment the following:

- (a) Any (i) Losses of INDOT or Third-Party Claims for which Design-Build Contractor is responsible hereunder, and (ii) any Liquidated Damages or Movement Charges that have accrued as of the date of the application for payment or which are anticipated to accrue based on the dates shown in the current Project Schedule for (x) Substantial Completion and (y) Final Acceptance;
- (b) Any Liquidated Damages, Movement Charges, or other charges for which Design-Build Contractor is liable pursuant to Section 17 or Section 7.3.6 (or both) that have accrued as of the date of the application for payment;
- (c) Any amounts INDOT is required to retain under applicable Governmental Rules;
- (d) Any sums expended by or owing to INDOT as a result of Design-Build Contractor's failure to complete and maintain the Record Drawings;
- (e) Any sums expended by INDOT for Railroad flagging services payments related to the Project and/or the Work;
- (f) Any sums expended by INDOT in performing any of Design-Build Contractor's obligations under the PPA Documents which Design-Build Contractor has failed to perform or which INDOT may elect to undertake itself plus an administrative charge equal to 10% of such costs;
- (g) Any sums expended by or owing to INDOT as a result of Design-Build Contractor's failure to obtain the IDEM Notice of Termination;
- (h) Any amounts for Final Design and Construction unless and until Environmental Determination has been obtained; and

- (i) Any other sums which INDOT is entitled to recover or withhold from Design-Build Contractor under the terms of the PPA Documents.

The failure by INDOT to deduct any of these sums from a progress payment shall not constitute a waiver of INDOT's rights (i) to such sums or (ii) with respect to any breach or default related thereto. All amounts owing by Design-Build Contractor to INDOT under this PPA shall earn Interest from the date on which such amount is owing.

12.3.2 Unincorporated Materials

INDOT will not pay for materials not yet incorporated in the Work unless all of the following conditions are met:

12.3.2.1 Environmental Determination has been obtained.

12.3.2.2 Material shall be delivered to the Site, or delivered to Design-Build Contractor and promptly stored by Design-Build Contractor in bonded storage at a location and pursuant to terms approved by INDOT. Design-Build Contractor shall submit certified bills and certifications for such materials with the invoice, as a condition to payment for such materials. INDOT shall allow and pay only such portion of the amount represented by these bills and certifications as in its opinion is consistent with the reasonable cost of such materials.

12.3.2.3 All such materials that meet the requirements of the PPA Documents and are accepted by INDOT shall be and become the property of INDOT. Design-Build Contractor at its own cost shall promptly execute, acknowledge, and deliver to INDOT proper bills of sale or other instruments in writing in a form acceptable to INDOT conveying and assuring to INDOT title to such material included in any invoice, free and clear of all Liens. Design-Build Contractor at its own cost shall conspicuously mark such material as the property of INDOT, shall not permit such materials to become commingled with non-INDOT-owned property and shall take such other steps, if any, as INDOT may require or regard as necessary to vest title to such material in INDOT free and clear of Liens. Nothing contained herein shall modify or diminish the responsibilities, liabilities and obligations of Design-Build Contractor in the event of damage or loss of such materials.

12.3.2.4 Material included in an invoice but which is subsequently lost, damaged or unsatisfactory shall be deducted from succeeding invoices.

12.3.2.5 Payment for material furnished and delivered as indicated in this Section 12.3.2 will not exceed the amount paid by Design-Build Contractor as evidenced by a bill of sale supported by the paid invoice.

12.3.3 Mobilization Payments; Bond and Insurance Premiums

12.3.3.1 Design-Build Contractor shall be entitled to payment for mobilization in installments, in an amount equal to the bid item price for mobilization set forth in the Proposal, not to exceed 10% of the initial Contract Price. The first payment for mobilization shall be in an amount not to exceed 25% of the bid item price for mobilization, payable as part of the first invoice following issuance of the NTP. The second payment for mobilization shall be in an amount not to exceed 50% of the bid item price for mobilization, payable upon the earlier of: (i) Environmental Determination; and (ii) when at least 5% of the Contract Price (less mobilization) is earned. The

third payment for mobilization shall be in the remaining amount of the bid item price for mobilization, payable when at least 10% of the Contract Price (less mobilization) is earned.

12.3.3.2 The portion of the Contract Price allocable to bond and insurance premiums, as set forth in the Proposal, shall be payable to reimburse Design-Build Contractor for bond and insurance premiums actually paid, without markup, not to exceed the line item for such premiums in the Proposal, with such pass-through amounts invoiced as part of the first invoice following issuance of the NTP. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following Substantial Completion.

12.3.4 Equipment

INDOT shall not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 12.3.3, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 13.7.3.

12.3.5 Plant Establishment Work

Design-Build Contractor shall not be entitled to payment of an amount equal to \$200,000 of the Contract Price until the later of: (a) the end of the Plant Establishment Period; and (b) INDOT's receipt of a certification from Design-Build Contractor that there are no outstanding Claims of Design-Build Contractor or any Claims, Liens or stop payment notices of any Subcontractor, Supplier, laborer or third party with respect to the Plant Establishment Work.

12.3.6 Record Drawings

The amount payable for Record Drawings acceptable to INDOT shall equal 0.5% of the Contract Price. Design-Build Contractor shall not be entitled to payment for the last 0.5% of the Contract Price until acceptable Record Drawings have been delivered to INDOT.

12.3.7 IDEM Notice of Termination

The amount payable for obtaining the IDEM Notice of Termination and providing evidence thereof acceptable to INDOT shall equal \$250,000 of the Contract Price. Design-Build Contractor shall not be entitled to payment for such amount until Design-Build Contractor has obtained the IDEM Notice of Termination and provided evidence thereof acceptable to INDOT.

12.4 Final Payment

Final Payment for all Work (other than Plant Establishment Work and Work during the Plant Establishment Period, the IDEM Notice of Termination, unused amounts of the Allowances and any other amounts that INDOT is authorized to withhold in accordance with the PPA Documents) will be made as follows:

12.4.1 On or before the date of delivery of its Affidavit of Final Acceptance, Design-Build Contractor shall prepare and submit a proposed Application for Final Payment to INDOT showing the proposed total amount due Design-Build Contractor. The Application for Final Payment shall include a deduction for any remaining amount of the Allowances and shall include a Change Order evidencing such deduction. The Application for Final Payment shall list all outstanding or pending DCR Notices and all existing or threatened Claims, and Liens by Subcontractors, Utility Owners, Railroads or other third parties relating to the Project, including

any Notices filed or to be filed with the Affidavit of Final Acceptance, stating the amount at issue associated with each such Notice. The Application for Final Payment shall be accompanied by: (a) complete and legally effective releases or waivers of Liens and Claims satisfactory to INDOT (which releases or waivers may be conditional, in INDOT's sole discretion, if payment is to be paid from receipt of the Final Payment), from all Persons legally eligible to file Liens or Claims in connection with the Work; (b) consent of any Guarantors and Surety(ies) to final payment; (c) an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to INDOT; and (d) such other documentation as INDOT may reasonably require. All releases and waivers of Liens and Claims shall be written to apply to and be in favor of INDOT. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. DCR Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Section 13.

12.4.2 As a condition to its obligation to make payment to Design-Build Contractor based on the Application for Final Payment, INDOT shall have received an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to INDOT. The payment amount will be adjusted by any deductions under Section 12.3.1, any deductions or credits under Attachment 3-1 to the Technical Provisions relating to quality adjustments, and any amounts that INDOT is entitled to withhold under Section 12.4.3.

12.4.3 If the Application for Final Payment lists any existing or threatened Claims, Liens of Subcontractors, Suppliers, laborers, Utility Owners, Railroads or other third parties against Design-Build Contractor, INDOT or the Project, or if any is thereafter filed, INDOT may withhold from payment such amount as INDOT deems advisable to cover any amounts owing or which may become owing to INDOT by Design-Build Contractor, including costs to complete or remediate uncompleted Work or Nonconforming Work, and 125% of the amount of any existing or threatened Claims, Liens and stop payment notices of Subcontractors, Suppliers, laborers, Utility Owners, and other third parties against Design-Build Contractor, INDOT or the Project.

12.4.4 The executed release from Design-Build Contractor shall be from any and all Claims arising from the Work, shall include an express and unconditional waiver and release sufficient to waive any rights and benefits Design-Build Contractor may have under applicable law and shall release and waive any Claims against the Indemnified Parties, excluding only those matters identified in any DCR Notices listed as outstanding in the Application for Final Payment. The release shall be accompanied by an affidavit from Design-Build Contractor certifying that:

- (a) all Work has been performed in strict accordance with the requirements of the PPA Documents;
- (b) it has resolved any Claims made by Subcontractors, Utility Owners, Railroads and others against Design-Build Contractor or the Project;
- (c) it has no reason to believe that any Person has a valid Claim against Design-Build Contractor or the Project which has not been communicated in writing by Design-Build Contractor to INDOT as of the date of the certificate; and
- (d) all guarantees and warranties are in full force and effect.

12.4.5 The release and the affidavit shall survive Final Payment.

12.4.6 All prior partial estimates and payments shall be subject to correction in the final estimate of payments.

12.4.7 INDOT will review Design-Build Contractor's proposed Application for Final Payment, and any changes or corrections, including adjustments described in Section 12.4.2, will be forwarded to Design-Build Contractor for correction within 30 days. Any changes or corrections made pursuant to this Section 12.4.7 will be reflected in an updated monthly payment schedule showing the net amount owed to Design-Build Contractor by month.

12.4.8 INDOT shall fulfill its payment obligations under this PPA by paying the amounts identified in Section 12.4.7, in accordance with the schedule described in Section 12.4.7.

12.5 Payment to Subcontractors

12.5.1 Design-Build Contractor shall pay each Subcontractor for satisfactory performance of the Subcontract no later than 10 days after Design-Build Contractor's receipt of payment from INDOT, and each Subcontractor shall in turn make payment to its Subcontractors within 10 days after receipt of payment. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of INDOT, in its sole discretion. Any violation of the prompt payment requirements in this Section 12.5.1 shall be a material breach of this PPA. These requirements shall not be construed to limit or impair any contractual, administrative, judicial or equitable remedies otherwise available to the Subcontractor in the event of a Dispute involving late payment or nonpayment by Design-Build Contractor. Each Subcontract shall include the prompt payment requirements set forth in this Section 12.5.1.

12.5.2 INDOT shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Governmental Rules.

12.6 Disputes

Failure by INDOT to pay any amount in Dispute shall not alleviate, diminish or modify in any respect Design-Build Contractor's obligation to perform under the PPA Documents, including Design-Build Contractor's obligation to achieve the Completion Deadlines and perform all Work in accordance with the PPA Documents, and Design-Build Contractor shall not cease or slow down its performance under the PPA Documents on account of any such amount in Dispute. Any Dispute regarding such payment shall be resolved pursuant to the Dispute Resolution Procedures. Design-Build Contractor shall proceed as directed by INDOT pending resolution of the Dispute. Upon resolution of any such Dispute, each Party shall promptly pay to the other any amount owing.

12.7 Appropriation of Funds

12.7.1 The continuation of this PPA beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Indiana State Legislature or federal sources. INDOT may terminate (or "cancel" under State law) this PPA in accordance with Section 15.1, if for any reason INDOT's funding from State and/or federal sources is not appropriated or is withdrawn, limited or impaired. In the event INDOT's funding is not appropriated or is withdrawn, limited or impaired and INDOT is unable to access other funds to satisfy INDOT's obligations under this PPA, INDOT will provide prompt Notice to Design-Build Contractor upon obtaining actual knowledge thereof. The obligation of INDOT to make payments pursuant to this PPA does not constitute an indebtedness of the State

or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The obligation of INDOT to make payments pursuant to this PPA does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. INDOT has no taxing power. Design-Build Contractor shall have no right to have taxes levied or compel appropriations by the General Assembly of the State for any payments required by INDOT pursuant to this PPA. For avoidance of doubt, determinations by or on behalf of INDOT as to the sufficiency of funds being appropriated, budgeted, and otherwise made available for the Project shall be final and conclusive and not subject to dispute resolution hereunder.

SECTION 13. CHANGES IN THE WORK

This Section 13 sets forth the requirements for obtaining all Change Orders under the PPA Documents. Design-Build Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section 13, and that INDOT is subject to substantial constraints limiting its ability to increase the Contract Price or extend the Completion Deadlines. Design-Build Contractor hereby waives the right to make any Claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in this PPA for any reason whatever, except as specifically set forth in this Section 13. To the extent that any other provision of this PPA expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 13.

13.1 Circumstances Under Which Change Orders May Be Issued

13.1.1 Definition of Change Order

The term "Change Order" shall mean a written amendment to the terms and conditions of the PPA Documents issued in accordance with this Section 13. INDOT may issue unilateral Change Orders as specified in Section 13.2.3. Change Orders may be requested by Design-Build Contractor only pursuant to Section 13.3. A Change Order shall not be effective for any purpose unless executed by INDOT. Change Orders may be issued for the following purposes (or combination thereof):

- (a) to modify the scope of the Work, including additions and reductions to the Work;
- (b) to revise a Completion Deadline;
- (c) to revise the Contract Price;
- (d) to approve a Necessary Basic Configuration Change, subject to Section 13.8; and
- (e) to revise other terms and conditions of the PPA Documents.

Upon INDOT's approval of the matters and terms and conditions set forth in the Change Order (whether it is initiated by INDOT or requested by Design-Build Contractor) and after receipt of any required approvals from FHWA, INDOT shall sign such Change Order form indicating approval thereof. A Change Order may, at the sole discretion of INDOT, direct Design-Build Contractor to proceed with the Work with the amount of any adjustment of any Completion Deadline or Contract Price to be determined in the future.

13.1.2 Issuance of Directive Letter

INDOT may, at any time and for any reason, issue a Directive Letter to Design-Build Contractor in the event of any desired change in the Work or in the event of any Dispute regarding the scope of Work. The Directive Letter will state that it is issued under this Section 13.1.2, will describe the Work in question and will state the basis for determining compensation, if any. Design-Build Contractor shall proceed immediately as directed in the letter, pending the execution of a formal Change Order (or, if the Directive Letter states that the Work is within Design-Build Contractor's original scope of Work, Design-Build Contractor shall proceed with the Work as directed but shall

have the right pursuant to Section 13.3 to request that INDOT issue a Change Order with respect thereto).

13.1.3 Directive Letter as Condition Precedent to Assertion that INDOT-Directed Change Has Occurred

13.1.3.1 Receipt of a Directive Letter from INDOT shall be a condition precedent to Design-Build Contractor's right to assert that the work is an INDOT-Directed Change, in addition to provision of a DCR Notice and subsequent Design-Build Contractor Change Request pursuant to Section 13.3.2; provided; however, that no Directive Letter shall be required for any INDOT-Directed Changes directly attributable to delays caused by bad faith actions, active and intentional interference, gross negligence or comparable tortious conduct by INDOT. Except when a Directive Letter is not required pursuant to this Section 13.1.3, Design-Build Contractor shall be deemed to have waived any right to an extension of time or payment for work performed prior to receipt of a Directive Letter from INDOT stating that it is issued pursuant to Section 13.1.2, or a Change Order for such Work signed by INDOT, notwithstanding that Design-Build Contractor believes such work is outside of its original scope.

13.1.3.2 The fact that a Directive Letter was issued by INDOT shall not be considered evidence that, in fact, an INDOT-Directed Change occurred. The determination whether an INDOT-Directed Change in fact occurred shall be based on an analysis of the original requirements of the PPA Documents and a determination whether the Directive Letter, in fact, constituted a change in those requirements. The requirements of Section 13.1.3.1 shall not, other than in the context of an INDOT-Directed Change, imply that a Directive Letter would be required in order for Design-Build Contractor to have the right to receive additional time or compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13.

13.2 Change Orders Initiated by INDOT

This Section 13.2 concerns (a) Change Orders issued by INDOT following a Change Notice and (b) Change Orders unilaterally issued by INDOT.

13.2.1 Right of INDOT to Issue Change Orders

INDOT may, at any time and from time to time, without notice to any Surety or Guarantor, authorize and/or require changes in the Work within the general scope of the PPA Documents pursuant to a Change Order. For the purpose of this Section 13.2.1, any direction to perform work shall be considered within the general scope of the PPA Documents if it is related to the Project; any direction to delete or modify Work shall be considered within the general scope unless as a result the PPA Documents would no longer be considered a design-build contract for the Project of the nature generally described in the RFP. Design-Build Contractor shall have no obligation to perform any work outside the general scope of the PPA Documents, except on terms mutually acceptable to INDOT and Design-Build Contractor.

13.2.2 Change Notice

13.2.2.1 If INDOT desires to issue an INDOT-Directed Change or to evaluate whether to initiate such a change, then INDOT may, at its sole discretion, issue a Change Notice. A Directive Letter may also constitute a Change Notice.

13.2.2.2 Within five days after Design-Build Contractor's receipt of a Change Notice, or such longer period as may be mutually agreed to by INDOT and Design-Build Contractor, INDOT and Design-Build Contractor shall consult to define the proposed scope of the change. Within five days after the initial consultation, or such longer period as may be mutually agreed to by INDOT and Design-Build Contractor, INDOT and Design-Build Contractor shall consult concerning the estimated cost and time impacts, if any. Design-Build Contractor shall provide data regarding such matters as requested by INDOT.

13.2.2.3 Within five days after the second consultation and provision of any data described in Section 13.2.2.2, INDOT shall notify Design-Build Contractor whether INDOT (a) wishes to issue a Change Order, (b) wishes to request Design-Build Contractor to provide a Cost and Schedule Proposal as discussed at the meeting, (c) wishes to request Design-Build Contractor to prepare a modified work plan for the change and a Cost and Schedule Proposal based on the modified plan, or (d) no longer wishes to issue a Change Order. INDOT may at any time, in its good faith discretion, require Design-Build Contractor to provide two alternative Cost and Schedule Proposals, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. Notwithstanding the obligation to undertake the two consultations described above, INDOT may, in its sole discretion, proceed directly under clauses (a) through (d) above without having one or both of the consultations.

13.2.2.4 If so requested, Design-Build Contractor shall, within 14 days after receipt of the notification described in Section 13.2.2.3, or such longer period as may be mutually agreed to by INDOT and Design-Build Contractor, prepare and submit to INDOT for review and approval by INDOT a Cost and Schedule Proposal (in the format provided by INDOT) for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by INDOT. Design-Build Contractor shall bear the cost of developing the Cost and Schedule Proposal, including any modifications thereto requested by INDOT, except that actual and reasonable out-of-pocket costs of design and engineering work required for preparation of plans or exhibits necessary to the Cost and Schedule Proposal, as pre-authorized by INDOT, may be included in the Change Order as reimbursable items. If the Change Order is approved, such actual and reasonable out-of-pocket design and engineering costs will be included within the Change Order; otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.2.5 If Design-Build Contractor and INDOT agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or a Completion Deadline, INDOT may, in its sole discretion, order Design-Build Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at INDOT's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 13.7 or (b) a Directive Letter under Section 13.1.2.

13.2.2.6 If it is not practicable, due to the nature and/or timing of the event giving rise to a proposed Change Order, for Design-Build Contractor to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 13.4, Design-Build Contractor shall provide an incomplete proposal which includes all information capable of being ascertained. Said incomplete proposal shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to INDOT stating why such requirements cannot be met, (b) provide such information regarding projected impact on the

Critical Path and Completion Deadlines as is requested by INDOT, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any Contract Price increase associated therewith, to the extent such amount is then ascertainable. Design-Build Contractor shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Design-Build Contractor Change Requests under Section 13.3.2.3.2.

13.2.3 Unilateral Change Orders

INDOT may issue a Change Order at any time, regardless of whether it has issued a Change Notice. At INDOT's option, Design-Build Contractor shall be entitled to compensation for additional Work which is required to be performed as the result of any unilateral Change Order in accordance with either (a) Section 13.6.7 for additional Work for which Design-Build Contractor has provided unit prices, or (b) Section 13.7, and shall have the right to submit the issue of entitlement to an extension of any Completion Deadline to Dispute resolution in accordance with Section 19. For deductive unilateral Change Orders, the Change Order may contain a Contract Price deduction deemed appropriate by INDOT, and Design-Build Contractor shall have the right to submit the amount of such price deduction to Dispute resolution in accordance with Section 19.

13.2.4 INDOT-Directed Changes Under \$10,000

Design-Build Contractor shall not be entitled to an increase in the Contract Price for each of the first 20 instances of an INDOT-Directed Change involving less than \$10,000 in additional direct costs incurred by Design-Build Contractor. If the additional direct costs exceed \$10,000 in additional direct costs in any such instance, subject to the terms of the PPA Documents, Design-Build Contractor is entitled to the full amount of such additional direct costs (including the initial \$10,000). The instances under this Section 13.2.4 shall be aggregated with the instances under Section 13.5.5 for purposes of determining if 20 instances have occurred.

13.2.5 Changes in Law

INDOT shall be entitled to a decrease in the Contract Price for any Change in Law that reduces the cost of the Work, if and to the extent that the Change in Law (i) allows a material modification in the design of the Project resulting in a net cost savings, or (ii) reduces the mitigation requirements for the Project associated with archaeological, paleontological, biological or cultural resources or artifacts. The decrease in Contract Price shall be calculated in accordance with Section 13.6.5. Design-Build Contractor shall be entitled to an increase in the Contract Price for any Change in Law pursuant to Section 13.9.5.

13.3 Design-Build Contractor-Initiated Change Orders

13.3.1 Eligible Changes

13.3.1.1 Design-Build Contractor may request a Change Order to extend a Completion Deadline only for delays to the Critical Path directly attributable to one or more of the following events or circumstances:

- (a) Force Majeure Event;
- (b) INDOT-Caused Delay;
- (c) Utility Delay, to the extent permitted by Section 6.8 and Section 13.9.2;

- (d) Delay relating to any Differing Site Condition, discovery of Hazardous Materials, and/or Change in Law, to the extent permitted by Section 13.9;
- (e) Delay relating to any Necessary Basic Configuration Change, to the extent permitted by Section 13.8;
- (f) Material, unreasonable interference with Design-Build Contractor's performance of the Work by INDOT; provided, however, that the delay is not caused, in whole or in part, by Design-Build Contractor's failure to cooperate and coordinate as required under Section 23 or other acts or omissions of any DB-Related Entity or any Design-Build Contractor Fault; or
- (g) New or changed condition or requirement to the environmental commitments and conditions described in Section 6.11.3.1, to the extent permitted under Section 13.9.6.

13.3.1.2 Design-Build Contractor may request a Change Order to increase the Contract Price only for increased costs of performance of the Work as follows:

- (a) Subject to Section 13.2.4, additional costs directly attributable to additional Work resulting from INDOT-Directed Changes and INDOT-Caused Delays for which INDOT has not submitted a Change Order or a Change Notice;
- (b) Additional costs directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 13.8;
- (c) Additional costs directly attributable to Differing Site Conditions, Hazardous Materials, Changes in Law and maintenance and repair of the Project, to the extent provided in Section 13.9;
- (d) Certain additional costs relating to Utilities, as described in Section 13.9.2, to the extent provided therein;
- (e) Additional costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.5.2;
- (f) Certain additional costs directly attributable to Force Majeure Events, to the extent provided in Section 13.9.3;
- (g) Additional costs, excluding delay and disruption damages, directly attributable to material, unreasonable interference with Design-Build Contractor's performance of the Work by INDOT; provided, however, that the delay is not caused by Design-Build Contractor's failure to cooperate and coordinate as required under Section 23 or other acts or omissions of any DB-Related Entity or any Design-Build Contractor Fault; or
- (h) New or changed condition or requirements to the commitments and conditions described in Section 6.11.3.1, to the extent permitted under Section 13.9.6.

13.3.1.3 Design-Build Contractor's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13 and furthermore is subject to Design-Build Contractor's compliance with all notification and other requirements

identified herein. Design-Build Contractor shall initiate the Change Order process by delivery of a DCR Notice as described in Section 13.3.2, followed by submittal of a Design-Build Contractor Change Request and supporting documentation to INDOT.

13.3.2 Procedures

The requirements set forth in this Section 13.3.2 constitute conditions precedent to Design-Build Contractor's entitlement to request and receive a Change Order, except those involving a Change Notice. Design-Build Contractor understands that it shall be forever barred from recovering against INDOT under this Section 13 or otherwise if it fails to give Notice of any act, or failure to act, by INDOT or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper DCR Notice, or fails to comply with the remaining requirements of this Section 13.3 or any other provisions of the PPA Documents relating to Change Orders.

13.3.2.1 Design-Build Contractor Change Request Notice

13.3.2.1.1 Design-Build Contractor shall deliver to INDOT a Notice ("DCR Notice") stating that an event or situation has occurred within the scope of Section 13.3.1 which Design-Build Contractor believes justifies a change in the Contract Price and/or a Completion Deadline and shall state which subsection(s) thereof is applicable. DCR Notices, INDOT-initiated changes to the Work under Section 13.1 or Section 13.2, and Changes Notices or Directive Letters, etc. shall correspond to the number of a Change Order, with the intent that the first Notice would be assigned "No. 1", regardless of whether it was a DCR Notice or Change Notice (or otherwise). Subsequent Notices shall be numbered sequentially. Any Notice regarding a situation involving a Necessary Basic Configuration Change shall specifically state that it involves such a change.

13.3.2.1.2 Each DCR Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any DCR Notice is delivered later than 10 days after Design-Build Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Design-Build Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the DCR Notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in the Critical Path which accrued prior to the date of delivery of the DCR Notice. Furthermore, if a DCR Notice concerns any condition or material described in Section 5.3.1, Design-Build Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that INDOT is not afforded the opportunity to inspect such material or condition before it is disturbed. Design-Build Contractor's failure to provide a DCR Notice within 30 days after Design-Build Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Design-Build Contractor from any relief, compensation or time extension related to the event or situation.

13.3.2.1.3 The DCR Notice shall: (a) state in detail the facts underlying the anticipated Design-Build Contractor Change Request, the reasons why Design-Build Contractor believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each INDOT representative knowledgeable of the facts underlying the anticipated Design-Build Contractor Change Request, (c) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Design-Build Contractor Change Request, (d) state in detail the basis for necessary accelerated schedule performance, if applicable, (e) state in detail the basis that the work is not

required by the PPA Documents, if applicable, (f) identify particular elements of PPA Document performance for which additional compensation may be sought under this Section 13.3.2, (g) identify any potential delays to the Critical Path and Completion Deadlines, (h) provide an estimate of the time within which a response to the Notice is required to minimize cost, delay or disruption of performance, (i) state in detail the steps that Design-Build Contractor has undertaken and is undertaking to minimize, mitigate and eliminate the impacts of the event or situation, and (j) identify the specific sections of the PPA Documents that justify and support Design-Build Contractor's belief or assertion that it is entitled to additional compensation or time.

13.3.2.1.4 If the Design-Build Contractor Change Request relates to a decision which the PPA Documents leave to the discretion of a Person or as to which the PPA Documents provide that such Person's decision is final, the DCR Notice shall set out in detail all facts supporting Design-Build Contractor's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence; provided, however, that the foregoing shall not apply to matters within the sole discretion of INDOT, as such matters are not subject to Dispute or Claim.

13.3.2.1.5 The Notice described in Section 5.3.1.1 may also serve as a DCR Notice provided it meets all of the requirements for DCR Notices.

13.3.2.1.6 Any adjustments made to this PPA shall not include increased costs or time extensions for delay resulting from Design-Build Contractor's failure to timely provide requested additional information under this Section 13.3.2.1. Unless otherwise specified in the request, all such additional information shall be provided within seven days after the date of such request.

13.3.2.2 Delivery of Design-Build Contractor Change Request

Design-Build Contractor shall deliver all Design-Build Contractor Change Requests, in the form set forth in Exhibit 9 or such other form as INDOT may approve, in its sole discretion, under this Section 13.3 to INDOT within 20 days after delivery of the DCR Notice, or such longer period of time as may be allowed in writing by INDOT. INDOT may require design and construction costs to be covered by separate Design-Build Contractor Change Requests. If Design-Build Contractor requests a time extension, then INDOT, in its sole discretion, may require Design-Build Contractor to provide two alternative Design-Build Contractor Change Requests, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the original Completion Deadline or if Design-Build Contractor believes that the costs associated with such a recovery are prohibitive, then Design-Build Contractor shall recommend a date to be shown in the alternative Design-Build Contractor Change Request. If Design-Build Contractor fails to deliver a complete Design-Build Contractor Change Request meeting all of the requirements of Section 13.3.2.3 within the appropriate time period, Design-Build Contractor shall be required to provide a new DCR Notice before it may submit a Design-Build Contractor Change Request, the initial DCR Notice shall not be deemed to have been given and the time periods set forth in Section 13.3.2.1.2 relating to forfeiture of the rights to claim additional compensation and a time extension shall apply.

13.3.2.3 Incomplete Design-Build Contractor Change Requests

13.3.2.3.1 Each Design-Build Contractor Change Request provided under Section 13.3.2.2 shall meet all requirements set forth in Section 13.4; provided, however, that if any such requirements cannot be met due to the nature and/or timing of the occurrence, Design-Build Contractor shall provide an incomplete Design-Build Contractor Change Request which provides all information capable of being ascertained. Said incomplete Design-Build Contractor Change Request shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to INDOT stating why such requirements cannot be met, (b) provide such information regarding projected delays to the Critical Path and Completion Deadlines as is requested by INDOT, and (c) in all events, include sufficient detail to ascertain the basis for the proposed Change Order and for any Contract Price increase associated therewith, to the extent such amount is then ascertainable.

13.3.2.3.2 Design-Build Contractor shall furnish, when requested by INDOT or its designee, such further information and details as may be required to determine the facts or contentions involved. Design-Build Contractor agrees that it shall give INDOT and its designee(s) access to any and all Books and Records, and shall cause its Subcontractors to do the same, so that INDOT and its designees can investigate the basis for such proposed Change Order. Design-Build Contractor shall provide INDOT with a monthly update to all outstanding Design-Build Contractor Change Requests describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to INDOT, expenditures to date and time anticipated for completion of the activities for which a time extension is claimed. INDOT may reject the Design-Build Contractor Change Request at any point in the process. Once a complete Design-Build Contractor Change Request is provided, INDOT's failure to respond thereto within 21 days after delivery of the request shall be deemed a rejection of such Design-Build Contractor Change Request.

13.3.2.4 Compliance With Other Requirements

Design-Build Contractor shall comply with all applicable requirements contained in Section 5.3.1, Section 13.9.1, and Section 13.9.4, unless precluded from doing so by emergency circumstances.

13.3.2.5 Review of Subcontractor Claims

Prior to submission by Design-Build Contractor of any Design-Build Contractor Change Request which is based in whole or in part on a request by a Subcontractor to Design-Build Contractor for a price increase or time extension under its Subcontract, Design-Build Contractor shall have reviewed and analyzed all Claims by the Subcontractor which constitute the basis for the Design-Build Contractor Change Request and determined in good faith that each such Claim has sufficient merit to warrant Design-Build Contractor requesting an increase in the Contract Price and change in Completion Deadlines in the amounts specified in the Design-Build Contractor Change Request. Each Design-Build Contractor Change Request involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work, shall include a summary of Design-Build Contractor's analysis of all Subcontractor Claims components and shall include a certification signed by Design-Build Contractor's Project Manager stating that Design-Build Contractor has (a) investigated the basis for the Subcontractor's Claims and believes that there is sufficient merit as to entitlement and the amount of money and/or time requested, (b) reviewed and verified the adequacy of all back-up documentation to be placed in escrow pursuant to Section 21.2, and (c) no reason to believe and does not believe that the factual basis for the

Subcontractor's Claim is falsely represented. Any Design-Build Contractor Change Request involving Subcontractor Work which is not accompanied by such analysis and certification shall be considered incomplete and not eligible for a Change Order or additional compensation or time extension.

13.3.3 Performance of Disputed Work

If INDOT refuses to issue a Change Order based on Design-Build Contractor's request, Design-Build Contractor shall nevertheless perform all work as specified by Directive Letter, and shall have the right to submit the issue to Dispute resolution pursuant to Section 19. Design-Build Contractor shall maintain and deliver to INDOT, upon request, contemporaneous records, meeting the requirements of Section 13.10, for all work performed which Design-Build Contractor believes constitutes extra work (including non-Construction Work), until all Disputes regarding entitlement or cost of such work are resolved.

13.4 Contents of Change Orders

13.4.1 Form of Change Order

Each Cost and Schedule Proposal and Design-Build Contractor Change Request shall be prepared in substantially the form appearing in Exhibit 9 or such other form approved by INDOT, in its sole discretion, and shall meet all applicable requirements of this Section 13. Each Design-Build Contractor Change Request shall specify whether it is the result of an INDOT-Directed Change. All Change Orders, regardless as to the Notice or Directive Letter giving rise to it, shall be numbered sequentially consistent with the intent of Section 13.3.2.1.

13.4.2 Scope of Work, Cost Estimate, Delay Analysis and Other Supporting Documentation

Design-Build Contractor shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 13.4.2 for each Cost and Schedule Proposal and Design-Build Contractor Change Request.

13.4.2.1 Scope of Work

The scope of work shall describe in detail satisfactory to INDOT all activities associated with the Change Order, including a description of additions, deletions, and modifications to the existing requirements of the PPA Documents.

13.4.2.2 Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, and any allowable markups for overhead and profit, unless INDOT agrees otherwise. The estimate shall include costs allowable under Section 13.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Design-Build Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, and markups for overhead and profit) on the Subcontractor's letterhead and shall include such quotes as back-up for Design-Build Contractor's estimate. No markup shall be allowed in excess of the amounts allowed under Section 13.5.2 and Section 13.7. Design-Build Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event. If

the cost estimate involves unit priced work based on previously agreed unit prices or relates to the Allowances, the cost estimate shall include a breakdown of quantities/units and the applicable prices.

13.4.2.3 Delay Analysis

If Design-Build Contractor asserts that such event, situation or change delays the Critical Path, it shall provide a time impact analysis in accordance with Section 1.3.2.5 of the Technical Provisions, indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to INDOT, which compares the proposed new schedule to the current approved Project Schedule.

13.4.2.4 Other Supporting Documentation

Design-Build Contractor shall provide such other supporting documentation as may be required by INDOT.

13.4.3 Justification

All Design-Build Contractor Change Requests shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of this Section 13 which permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 13.10) which establish the necessity and amount of such proposed change.

13.4.4 Design-Build Contractor Representation

Each Design-Build Contractor Change Request shall contain a certification under penalty of perjury according to the laws of the State, in a form acceptable to INDOT, executed by Design-Build Contractor and stating that (a) the amount of time and/or compensation requested is justified as to entitlement and amount, (b) Design-Build Contractor has independently investigated the Change Request and determined it to be justified as to entitlement and amount, (c) the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect, and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change, and (d) the cost and pricing data forming the basis for the Change Order is complete, accurate, and current. Each Change Order involving Work by a Subcontractor for which pricing data is required to be provided under Section 21.2 shall include a statement that the Subcontractor pricing data has been provided and shall include a copy of the certification required to be provided by the Subcontractor under Section 21.2.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude: (a) costs caused by the acts or omissions of any DB-Related Entity or any Design-Build Contractor Fault; (b) costs to the extent that they are unnecessary or could reasonably be mitigated or avoided by Design-Build Contractor, including by resequencing, reallocating or redeploying its personnel and resources to other portions of the Work or to other activities unrelated to the Work (while including in the equation any additional costs reasonably incurred in connection with such reallocation or redeployment); and (c) costs for remediation of any Nonconforming Work.

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by INDOT as an alternative to allowing an extension of any Completion Deadline as contemplated by Section 13.2.2.3 and Section 13.3.2.2. Delay and disruption damages shall be compensable hereunder only in the case of (a) delays which qualify as INDOT-Caused Delays entitling Design-Build Contractor to an extension of any Completion Deadline, and (b) Necessary Basic Configuration Changes, to the extent allowed under Section 13.8. Without limiting the generality of the foregoing, the costs of rearranging, resequencing or reallocating Design-Build Contractor's work plan to accommodate INDOT-Directed Changes not associated with an extension of any Completion Deadline shall not be compensable hereunder.

13.5.2.2 Other Limitations

Design-Build Contractor is not entitled to any delay and disruption damages except as expressly allowed under the PPA Documents. Where allowed, delay and disruption damages shall be limited to (i) direct costs solely and directly attributable to the delays described in Section 13.5.2.1 and markups thereon in accordance with Section 13.7, and (ii) any additional field office and jobsite overhead costs incurred by Design-Build Contractor solely and directly attributable to such delays. In addition, before Design-Build Contractor may obtain any increase in the Contract Price to compensate for additional or extended overhead, Acceleration Costs or other Losses relating to delay to which Design-Build Contractor may be entitled as expressly provided under the PPA Documents, Design-Build Contractor shall have demonstrated to INDOT's satisfaction that:

- (a) its schedule which defines the Critical Path and Completion Deadline in fact sets forth a reasonable method for completion of the Work;
- (b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to achieve Substantial Completion or Final Acceptance beyond the applicable Completion Deadline);
- (c) the delay or damage was not due, in whole or in part, to any act or omission of any DB-Related Entity or any Design-Build Contractor Fault, and could not reasonably have been avoided by Design-Build Contractor, including by resequencing, reallocating or redeploying its personnel and resources to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment);
- (d) the delay for which compensation is sought is not concurrent with any delay for which any DB-Related Entity is responsible hereunder; and
- (e) Design-Build Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to INDOT.

13.5.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it (a) did not delay the Critical Path; (b) was due, in whole or in part, to the acts or omissions of any DB-Related Entity or any Design-Build Contractor Fault; (c) is concurrent with any other unrelated delay to the Critical Path that is Design-Build Contractor's responsibility hereunder; or (d) could reasonably have been avoided by Design-Build Contractor, including by resequencing, reallocating or redeploying its personnel and resources to other portions of the Work. Design-Build Contractor shall be required to demonstrate to INDOT's satisfaction that the change in the Work or other event or situation which is the subject of the Design-Build Contractor Change Request seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has delayed the Critical Path activity (i.e., consumed all available Float and extended the time required to achieve Substantial Completion or Final Acceptance beyond the applicable Completion Deadline.

13.5.4 Work Performed Without Direction

To the extent that Design-Build Contractor undertakes any efforts outside of the scope of Work, unless Design-Build Contractor has received a Directive Letter or Change Order signed by INDOT to undertake such efforts, Design-Build Contractor shall be deemed to have undertaken the extra work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, INDOT may require Design-Build Contractor to remove or otherwise undo any such work, at Design-Build Contractor's sole cost and without any time extension.

13.5.5 Necessary Basic Configuration Changes Under \$10,000

Design-Build Contractor shall not be entitled to an increase in the Contract Price for each of the first 20 instances giving rise to any Necessary Basic Configuration Changes involving less than \$10,000 in additional direct costs incurred by Design-Build Contractor. If the additional direct costs exceed \$10,000 in additional direct costs in any such instance, subject to the terms of the PPA Documents, Design-Build Contractor is entitled to the full amount of such additional direct costs (including the initial \$10,000). The instances under this Section 13.5.5 shall be aggregated with the instances under Section 13.2.4 for purposes of determining if 20 instances have occurred.

13.6 Change Order Pricing

The price of a Change Order under this Section 13.6 shall be a negotiated lump sum price or unit prices as provided below. Lump sum price or unit prices shall be based on the original allocations of the Contract Price to comparable activities, whenever possible. If reference to price allocations is inappropriate (as determined by INDOT) and if requested by INDOT, negotiation for lump sum or unit price Change Orders shall be on an Open Book Basis and may be based on the pricing contained in Escrowed Proposal Documents as well as competitive Subcontractors' bid prices.

13.6.1 Detailed Cost Proposal

Design-Build Contractor may be required to submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 13.7: (a) showing all impacts on this PPA from Work additions, deletions, and modifications shown in the Change Order being priced; and (b) setting out the proposed costs in such a way that a fair and transparent evaluation can be made.

13.6.2 Identification of Conditions

Design-Build Contractor shall identify all conditions with respect to prices or other aspects of the proposal, such as pricing contingent on firm orders being made by a certain date or the occurrence or nonoccurrence of an event.

13.6.3 Contents

A negotiated Change Order shall specify costs, scheduling requirements, time extensions, and all costs of any nature arising out of the Work covered by the Change Order. Notwithstanding the foregoing, the Parties may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated construction cost and which provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and further definition of the estimated construction cost.

13.6.4 Added Work

When the Change Order adds Work to Design-Build Contractor's scope, the increase in the Contract Price shall be negotiated based on (a) estimated costs of labor, material and equipment, (b) unit prices in accordance with Section 13.6.7, or (c) actual costs in accordance with Section 13.7. For negotiated Change Orders, markups for profit and overhead shall be consistent with Section 13.5.2 and Section 13.7.3. Risk associated with the Work described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such Work.

13.6.5 Deleted Work

When the Change Order deletes Work from Design-Build Contractor's scope (including deletion of any Work contained in the PPA Documents that is found to be unnecessary), the amount of the reduction in the Contract Price shall be based upon a current estimate including a bill of material, a breakdown of labor, material, and equipment costs and overhead and profit associated with the deleted work. The current estimated amount of risk associated with such Work shall be a factor in determining the markup for the deduction. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

13.6.6 Change Order Both Adding and Deleting Work

When the Change Order includes both added and deleted Work, Design-Build Contractor shall prepare a statement of the cost of labor, material, and equipment for both added and deleted Work. If the cost of labor, material, and equipment for the Work added and deleted results in a:

- (a) Net increase in cost, the change shall be treated as Work added and the provisions of Section 13.6.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Contract Price;
- (b) Net decrease in cost, the change shall be treated as Work deleted and the provisions of Section 13.6.5 shall be used on the net decrease in cost in order to establish the amount deducted from the Contract Price; or
- (c) Net change of zero, there will be no change in the Contract Price.

13.6.7 Unit Priced Change Orders

Measurement of unit-priced quantities will be in accordance with Section 109.01 of the Standard Specifications. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, INDOT will issue a modified Change Order setting forth the final adjustment to the Contract Price. Design-Build Contractor shall keep detailed records of the quantities for unit-priced Work, and shall submit supporting documentation of such quantities with its invoices.

13.7 Time and Materials Change Orders

13.7.1 Issuance

INDOT may, at its sole discretion, issue a Time and Materials Change Order whenever INDOT determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct Design-Build Contractor to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, INDOT shall issue a modified Change Order setting forth the final adjustment to the Contract Price.

13.7.2 Pricing and Payment

13.7.2.1 Time and Materials Change Orders shall be issued in accordance with Section 109.05(b) of the Standard Specifications. Design-Build Contractor shall comply with all record keeping and other obligations set forth in Section 109.05(b) of the Standard Specifications.

13.7.2.2 Payments for Time and Materials Work shall be invoiced with the regular monthly invoice, based on the extra work reports furnished by Design-Build Contractor for each period. Costs evidenced by daily extra work reports furnished less than seven days prior to preparation of the invoice shall be included in the subsequent month's invoice.

13.7.3 Overhead Items

The following items are considered overhead costs and are included in the Change Order markups set forth in Section 109.05 of the Standard Specifications:

- (a) Salary and expenses of executive officers, supervising officers or supervising employees;
- (b) Design-Build Contractor's superintendent (general foreman);
- (c) Clerical or stenographic employees;
- (d) Charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, etc., consumables, and other miscellaneous supplies and services;
- (e) Any and all field and home office overhead and operating expenses whatsoever; and

- (f) Subsistence and travel expenses for personnel (craft personnel excluded).

With respect to non-construction related labor costs, overhead is covered by the labor surcharge, and includes accessories such as computer assisted drafting and design (CADD) systems, software and computers, facsimile machines, scanners, plotters, etc.

13.7.4 Bond and Insurance Premiums

Design-Build Contractor shall be reimbursed for any additional bond and insurance premiums actually paid directly in connection with a Change Order, without markup, not to exceed the line item for such premiums in the Change Order. Any excess portion shall be payable following Substantial Completion.

13.7.5 Change Order Data

13.7.5.1 Design-Build Contractor shall contemporaneously collect, record in writing, segregate, and preserve: (a) all data necessary to determine the costs described in this Section 13.7 with respect to all Work which is the subject of a Change Order or a requested Change Order (excluding negotiated Change Orders previously executed and delivered), specifically including costs associated with Design Work as well as Design-Build Contractor's costs for Utility Adjustment Work, and (b) all data necessary to show the actual delay (if any) to the Critical Path, the Project Schedule, and Completion Deadlines with respect to all Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to INDOT and any Authorized Representative of INDOT reviewing any Claim or Dispute regarding compensation or time extension for such Work. Design-Build Contractor hereby waives the right to obtain compensation or time extensions for any Work for which cost or schedule data is required to be maintained and provided hereunder, if Design-Build Contractor fails to maintain and timely provide to INDOT cost or schedule data meeting the requirements of the PPA Documents.

13.7.5.2 Design-Build Contractor shall maintain its Books and Records in such a manner as to provide a clear distinction between: (a) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and (b) the costs of other Work or operations. Design-Build Contractor shall furnish daily, on forms approved by INDOT, reports of all costs described in clause (a) above. The reports shall itemize all costs for labor, materials, and equipment rental and give a total of costs through the date of the report. For workers, the reports shall include hours worked, rates of pay, names, and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and actual working hours of operation. All such records and reports shall be made immediately available to INDOT upon its request. The cost of furnishing such reports are deemed to be included in Design-Build Contractor's overhead and fee percentages.

13.7.5.3 All reports shall be signed by Design-Build Contractor and certified as true, accurate, and complete. INDOT will compare its records with Design-Build Contractor's reports, make the necessary adjustments and compile the costs of Work completed under a Time and Materials Change Order. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

13.8 Necessary Basic Configuration Changes

13.8.1 Subject to Section 13.5.5, this Section 13.8 provides for an increase in the Contract Price to be made in conjunction with Necessary Basic Configuration Changes. If Design-Build Contractor commenced any Construction Work affected by the Necessary Basic Configuration Change prior to delivery of an appropriate DCR Notice, the Change Order shall allow INDOT a credit for the cost of any unnecessary work performed and/or shall exclude any additional costs associated with redoing the work already performed.

13.8.2 Design-Build Contractor shall be responsible for any cost increases and/or delays (including those which delay the Critical or a Completion Deadline) resulting from changes in requirements and obligations of Design-Build Contractor relating to the Project due to Errors in the Reference Plans other than those which require a Necessary Basic Configuration Change.

13.9 Change Orders for Differing Site Conditions, Utilities, Force Majeure Events, Hazardous Materials, Changes in Law, Changes in Identified Environmental Commitments

13.9.1 Differing Site Conditions

13.9.1.1 Upon Design-Build Contractor's fulfillment of all applicable requirements of Section 5.3.1 and Section 13, and subject to the limitations contained therein, INDOT shall be responsible for, and agrees to issue Change Orders, (a) to compensate Design-Build Contractor for additional direct costs (excluding delay and disruption damages) directly attributable to changes in the scope of the Work arising from Differing Site Conditions, and (b) to extend the Completion Deadlines as the result of any delay in the Critical Path directly caused by any such conditions.

13.9.1.2 Design-Build Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Design-Build Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Build Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

13.9.1.3 Prior to filing any request for a Change Order relating to a Differing Site Condition, Design-Build Contractor shall inquire if insurance proceeds may be available to cover costs in connection with such item. If Design-Build Contractor finds that reasonable grounds for filing an insurance Claim exist, then Design-Build Contractor shall provide to INDOT Notice of such grounds. INDOT shall not be in default for failure to pay any amounts which Design-Build Contractor or INDOT finds may be covered by insurance, unless and until the Claim is denied by the insurance company, at which time Design-Build Contractor may invoice INDOT for the amount of such Claim, to the extent permitted by this PPA. Design-Build Contractor shall maintain contemporaneous records of all costs incurred by it with respect to the Differing Site Condition pending the insurance company's determination regarding the Claim. Upon denial of any such Claim by the insurance company and receipt of a Change Order request, INDOT will consider and process the Design-Build Contractor Change Request as set forth in this Section 13. INDOT shall have the right to contest the denial of any insurance Claim, and Design-Build

Contractor shall cooperate with INDOT in that regard. Notwithstanding anything to the contrary contained in Section 13.3.2, Design-Build Contractor shall not be obligated to include amounts which may be covered by insurance in any Change Order request until 20 days after the insurance company has denied the Claim. However, the Notice requirements of Section 13.3.2 shall remain effective with respect to the event in question.

13.9.2 Utilities

Design-Build Contractor shall be entitled to a Change Order with respect to certain additional costs and/or delays relating to Utility Adjustments, as specified in Section 6 and subject to the restrictions and limitations set forth in Section 6 and in this Section 13. In all other respects, Design-Build Contractor is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs and delays due to changes in Design-Build Contractor's obligations relating to the Work resulting from the existence of any Utilities on the Site.

13.9.3 Force Majeure Events

Subject to the limitations contained in, and upon Design-Build Contractor's fulfillment of all applicable requirements of this Section 13, INDOT shall be responsible for, and agrees to issue Change Orders (a) to compensate Design-Build Contractor for additional direct costs (excluding (i) delay and disruption damages, (ii) insurance deductibles or self-insured retentions paid or incurred in accordance with Section 9, and (iii) any costs covered by insurance proceeds received by (or on behalf of) Design-Build Contractor) directly attributable to a Force Majeure Event, and (b) to extend the applicable Completion Deadlines as the result of any delay in the Critical Path directly caused by a Force Majeure Event.

13.9.4 Hazardous Materials Management

If Design-Build Contractor is entitled to a Change Order pursuant to Section 6.10 with respect to performance of Hazardous Materials Management, such Change Order shall be subject to the applicable limitations and requirements set forth in Section 5.3, Section 6.10, this Section 13.9.4 and elsewhere in this Section 13. The amount of the Change Order for Hazardous Materials Management shall either be a negotiated amount acceptable to the Parties, or an amount determined in accordance with Section 13.7 and this Section 13.9.4 for the work in question. Design-Build Contractor shall not be entitled to a Change Order for additional compensation or extension of any Completion Deadline with respect to the Hazardous Materials Management responsibilities set forth in Section 6.10.1.4.

13.9.4.1 Determination of Reimbursable Amount

13.9.4.1.1 Design-Build Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain an extension of any Completion Deadline if INDOT is not provided Notice of the discovery of Hazardous Materials and afforded the opportunity pursuant to Section 5.3 to inspect sites containing Hazardous Materials before any action is taken which would inhibit the ability of INDOT to ascertain, based on a Site inspection, the nature and extent of the Hazardous Materials. In the event of an emergency involving Hazardous Materials, Design-Build Contractor may take limited actions as are required by Governmental Rules without providing to INDOT advance Notice, but shall provide such Notice immediately thereafter (which

in no event shall be more than two hours after the incident by phone and 24 hours after the incident by Notice).

13.9.4.1.2 In cases involving reimbursement for Hazardous Materials Management under this Section 13.9.4, allowable costs shall be limited to the incremental direct costs but excluding delay and disruption damages and markup for overhead and profit incurred after completion of the testing process to determine whether Hazardous Materials are present, associated with the Hazardous Materials at issue (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Investigating and characterizing Hazardous Materials are included in the Contract Price and Design-Build Contractor shall not be entitled to additional compensation therefor. Design-Build Contractor shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that Design-Build Contractor demonstrates to INDOT's satisfaction that (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) Design-Build Contractor's plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public. Design-Build Contractor shall provide INDOT with such information, analyses, and certificates as may be requested by INDOT in order to enable a determination regarding eligibility for payment.

13.9.4.2 Time Extensions

If Design-Build Contractor encounters Hazardous Materials for which Design-Build Contractor is entitled to compensation under Section 6.10 and this Section 13.9.4 which, due to no act or omission of any DB-Related Entity or any Design-Build Contractor Fault, results in a delay to the Critical Path, then INDOT shall bear the risk of such delay (excluding those conditions for which Design-Build Contractor has agreed to be responsible as described in Section 18.1.1(g)), and subject to the limitations set forth in this Section 13.9.4.

13.9.4.3 Limitations on Change Orders

Notwithstanding any contrary provision of the PPA Documents, Design-Build Contractor shall have no right to receive (a) any compensation for delay and disruption damages or markup for overhead and profit related to Hazardous Materials Management, (b) any compensation for any Hazardous Materials Management resulting from a situation described in Section 18.1.1(g), or (c) any compensation or time extension in connection with any work stoppage in affected areas during the investigation period described in Section 5.3.1. Design-Build Contractor shall also not be entitled to receive any compensation or time extension for Hazardous Materials as described in Section 6.10.1.4. Such limitations shall apply to all Change Orders related to Hazardous Materials Management.

13.9.4.4 Insurance Proceeds

If the cost of any Hazardous Materials Management is covered by the insurance described in Section 9, Design-Build Contractor shall be entitled to reimbursement of its costs from proceeds of insurance and self-insurance, up to the limits of the applicable policy, less any deductibles which shall be Design-Build Contractor's responsibility. To the extent that such proceeds are available, Design-Build Contractor shall not be entitled to payment hereunder on any other basis for such Hazardous Materials Management.

13.9.5 Change in Law; New Approvals

13.9.5.1 Upon Design-Build Contractor's fulfillment of all applicable requirements of this Section 13, and subject to the restrictions and limitations contained therein, INDOT shall be responsible for, and agrees to issue Change Orders (a) to compensate Design-Build Contractor for additional direct costs directly attributable to a Change in Law, to the extent that the Change in Law (i) requires a material modification in the design of the Project, or (ii) results in imposition of material additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources or artifacts; and/or (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any Change in Law described in clauses (a)(i) or (ii) above.

13.9.5.2 Upon Design-Build Contractor's fulfillment of all applicable requirements of this Section 13, and subject to the restrictions and limitations contained therein, INDOT shall be responsible for, and agrees to issue Change Orders: (a) to compensate Design-Build Contractor for additional direct costs directly attributable to a New Approval required as the result of a Force Majeure Event, to the extent that the New Approval (i) requires a material modification in the design of the Project or (ii) results in imposition of material additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources or artifacts; and/or (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any New Approval described in clauses (a)(i) or (ii) above.

13.9.6 Changes to Identified Environmental Commitments and Conditions

Upon Design-Build Contractor's fulfillment of all applicable requirements of this Section 13, and subject to the restrictions and limitations contained therein, INDOT shall be responsible for, and agrees to issue Change Orders: (a) to compensate Design-Build Contractor for additional actual, direct, and documented costs directly attributable to the addition of any new or changed commitment, condition or requirement in the NEPA Documents, subject to the limitations and conditions described in Section 6.11.3, and as compared to the commitments and conditions set forth in Section 7 or Attachment 7-5 of the Technical Provisions, if any such new or changed condition or requirement (i) necessitates a material modification in the design of the Project or (ii) results in imposition of material additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources or artifacts; and/or (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any such new or changed condition or requirement described in clauses (a)(i) or (ii) above.

13.10 Change Order Records

Design-Build Contractor shall maintain its Books and Records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and the costs of other operations. Design-Build Contractor shall contemporaneously collect, record in writing, segregate, and preserve (a) separate daily occurrence logs, (b) all other data necessary to determine the costs of all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with Design Work as well as Utility Adjustments, and (c) all data necessary to show the actual delay (if any) of the change on the Critical Path and Completion Deadline with respect to all Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to the Disputes Review Team (if a Change Order or requested Change Order is under Dispute), INDOT and its Authorized Representatives as directed by INDOT, on forms approved by INDOT. The cost of furnishing such reports is included in Design-Build Contractor's

predetermined overhead and profit markups and shall not be the subject of any additional Claims for compensation.

13.10.1 Daily Work Reports and Data Collection

Design-Build Contractor shall furnish INDOT completed daily work reports for each day's Work which is to be paid for on a time and material basis. The daily time and material Work reports shall be detailed as follows:

- (a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested;
- (b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;
- (c) Quantities of materials, prices, and extensions;
- (d) Transportation of materials; and
- (e) The total costs to date for the Time and Materials Change Order Work.

13.10.2 Supplier's Invoices

Materials charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily time and material Work reports, or if not available, they shall be submitted with subsequent daily time and material Work reports. Should said Supplier's invoices not be submitted within 60 days after the date of delivery of the materials, INDOT shall have the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available, in the quantities concerned, delivered to the location of Work, less any discounts available.

13.10.3 Execution of Reports

All Time and Materials Change Order reports shall be signed by Design-Build Contractor's Project Manager.

13.10.4 Adjustment

INDOT will compare its records with the completed daily time and material Work reports furnished by Design-Build Contractor and make any necessary adjustments. When these daily time and material Work reports are agreed upon and signed by both Parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit. Design-Build Contractor's cost records pertaining to Work paid for on a time and material basis shall be open, during all regular business hours, to inspection or audit by representatives of INDOT during the term of this PPA and for a period of not less than five years after the Final Acceptance Date, and Design-Build Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than Design-Build Contractor, Design-Build Contractor shall make every reasonable effort to insure that the cost records of each such other Person will be open to inspection and audit by representatives of INDOT on the same terms and conditions as the cost records of Design-Build Contractor. Payment for such costs may be deleted if the records of such third parties are not

made available to INDOT's representatives. If an audit is to be commenced more than 120 days after the Final Acceptance Date, Design-Build Contractor will be given reasonable Notice of the time when such audit is to begin.

13.11 Matters Not Eligible for Change Orders and Waiver

13.11.1 Design-Build Contractor acknowledges and agrees that no compensation or increase in the Contract Price or extension of any Completion Deadline is available except in the specific circumstances expressly provided for in this PPA, that such compensation or increase in the Contract Price and time extension shall be available only as expressly provided in this Section 13, and that Design-Build Contractor shall bear full responsibility for the consequences of all other conditions, events and circumstances. A non-exhaustive list of matters which are Design-Build Contractor's exclusive responsibility include the following:

- (a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the Reference Plans or other Reference Information Documents), subject only to the right to a Change Order to the extent permitted by Sections 13.8 or 13.9;
- (b) any design changes requested by INDOT as part of the process of approving the Design Documents that are necessary for consistency and compliance with the requirements of the PPA Documents, the Governmental Approvals, and/or applicable Governmental Rules and other matters set forth in Section 3.3.7;
- (c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes which otherwise give rise to a right to a Change Order);
- (d) action or inaction of any DB-Related Entity;
- (e) action or inaction of adjoining property owners or other agents, representatives, and contractors of third parties (including Railroads, except as set forth in clauses (h) through (j) of the definition of Force Majeure Event), including failure to organize and integrate their work with Design-Build Contractor's Work;
- (f) impacts on Design-Build Contractor's Work caused by the action or inaction of contractors of INDOT except as otherwise expressly provided in Section 13.3.1.1(f) and Section 13.3.1.2(g);
- (g) groundwater levels or subsurface moisture content;
- (h) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the PPA Documents to be furnished by or on behalf of any DB-Related Entity, except to the extent resulting directly from a Force Majeure Event;
- (i) any costs covered by insurance proceeds received by (or on behalf of) Design-Build Contractor;
- (j) assessment, remediation, and correction of Nonconforming Work and review and acceptance thereof by INDOT (including rejected Submittals and other submittals);

- (k) Design-Build Contractor Fault (including any failure to provide the notifications to property owners, Utility Owners, Railroads and others required by the PPA Documents);
- (l) delays not on the Critical Path;
- (m) obtaining all Governmental Approvals, except as specified in Section 2.2.4 and compliance with the terms and conditions of all Governmental Approvals;
- (n) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by Design-Build Contractor, or any failure to obtain such Governmental Approval;
- (o) any increased costs or delays related to any Utility Adjustments or failure to timely obtain any approval, work or other action from a Utility Owner, except as specified in Section 6.3 through Section 6.9 and in Section 13.9.2;
- (p) any increased costs or delays related to any railroad Work or failure to timely obtain any approval, work or other action from the Railroad, except as specified in Section 13.9.3;
- (q) patching in areas, sizes, depths or amounts in addition to or other than as identified in the Reference Information Documents;
- (r) the addition and implementation by INDOT of Hold Points in addition to the list of Hold Points set forth in Section 2.2.2 of the Technical Provisions;
- (s) matters pertaining to any Other Approval;
- (t) any situations (other than Force Majeure Events) which, while not within one of the categories delineated in this Section, were or should have been anticipated because such situations are referred to elsewhere in the PPA Documents or are reasonably expected to arise out of the Work; and
- (u) all other events beyond the control of INDOT for which INDOT has not expressly agreed to assume liability hereunder.

13.11.2 Design-Build Contractor hereby assumes responsibility for all such matters and all other matters not expressly subject to a Change Order under this Section 13, and acknowledges and agrees that assumption by Design-Build Contractor of responsibility for such risks, and the consequences and costs and delays resulting therefrom, is reasonable under the circumstances of the PPA Documents and that contingencies included in the Price Proposal and in developing the Project Schedule, in Design-Build Contractor's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

13.11.3 DESIGN-BUILD CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH DESIGN-BUILD CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY DESIGN-BUILD CONTRACTOR CHANGE REQUEST, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION FOR LOSSES OR TIME EXTENSION

WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE PPA DOCUMENTS EXPRESSLY SPECIFY THAT DESIGN-BUILD CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION FOR LOSSES OR TIME EXTENSION.

13.12 Disputes

13.12.1 If INDOT and Design-Build Contractor agree that Design-Build Contractor is entitled to an increase the Contract Price and/or an extension of any Completion Deadline under this Section 13.12, but are unable to agree as to the amount of such Contract Price increase and/or time extension, INDOT agrees to mark up the Design-Build Contractor Change Request or Cost and Schedule Proposal, as applicable, provided by Design-Build Contractor to reduce the amount of the Contract Price increase or time extension as deemed appropriate by INDOT. In such event, INDOT will execute and deliver the marked-up Change Order to Design-Build Contractor within a reasonable period after receipt of a request by Design-Build Contractor to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order.

13.12.2 Except as otherwise specified in the Change Order, execution of a Change Order by both Parties shall be deemed accord and satisfaction of all Claims by Design-Build Contractor of any nature arising from or relating to the Work covered by the Change Order and Design-Build Contractor shall be deemed to have expressly released, waived, and disclaimed any further compensation and time extension related thereto. Design-Build Contractor's Claim and any award by the Dispute resolver shall be limited to the incremental costs incurred by Design-Build Contractor with respect to the Disputed matter (crediting INDOT for any corresponding reduction in Design-Build Contractor's other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

13.12.3 Except for items which are subject to INDOT's sole discretion, the failure of INDOT and Design-Build Contractor to agree to any Change Order under this Section 13 (including agreement as to merit, the amount of compensation allowed under a Time and Materials Change Order and the Disputed amount of the increase in the Contract Price and/or extension of any Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 19.

13.13 Changes Not Requiring Change Order

Subject to Section 13.8, Deviations from design standards specified in the PPA Documents which have a neutral net cost effect and do not delay the Critical Path or a Completion Deadline shall not require a Change Order provided such Deviations are approved by INDOT pursuant to Section 2.1.2.4. Any other change in the requirements of the PPA Documents shall require either a Directive Letter or a Change Order.

13.14 No Release or Waiver

13.14.1 No extension of time granted hereunder shall release Design-Build Contractor's Surety or any Guarantor from its obligations. Work shall continue and be carried on in accordance with all the provisions of the PPA Documents and the PPA Documents shall be and shall remain in full force and effect during the continuance unless formally suspended or terminated by INDOT in accordance with the terms hereof. Permitting Design-Build Contractor to finish the Work or any part thereof after a Completion Deadline, or the making of payments to Design-Build Contractor

after such date, shall not constitute a waiver on the part of INDOT of any rights or remedies under the PPA Documents, at law or in equity.

13.14.2 Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or materials specified by this PPA after a Completion Deadline, shall be deemed to be a waiver by INDOT of any of its rights and remedies under the PPA Documents, at law or in equity, including its right to terminate this PPA for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct Losses or seek recovery of Losses as may be provided.

13.14.3 No course of conduct or dealings between the Parties nor express or implied acceptance of alterations or additions to the Work, and no claim that INDOT has been unjustly enriched shall be the basis for any Claim, request for additional compensation or extension of any Completion Deadline. Further, Design-Build Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a Person in excess of that Person's authority as provided herein, or included in any oral request. Design-Build Contractor shall be deemed to have performed such work as a volunteer and at its sole risk and cost. In addition, INDOT may require Design-Build Contractor to remove or otherwise undo any such work, at Design-Build Contractor's sole risk and cost.

SECTION 14. SUSPENSION

14.1 Suspension for Convenience

INDOT may, at any time and for any reason, by Notice, order Design-Build Contractor to suspend all or any part of the Work required under the PPA Documents for the period of time that INDOT deems appropriate for the convenience of INDOT. Design-Build Contractor shall promptly comply with any such written suspension order. Design-Build Contractor shall promptly recommence the Work upon receipt of Notice from INDOT directing Design-Build Contractor to resume Work. Any such suspension for convenience shall be considered an INDOT-Directed Change and such suspensions shall be considered an INDOT-Caused Delay, if the Critical Path is delayed; provided, however, that INDOT shall have the right to direct suspensions for convenience not exceeding 48 hours each, up to a total of 144 hours, of Work otherwise scheduled by Design-Build Contractor pursuant to the most recent summary of planned Work activities provided in accordance with Section 1.3 of the Technical Provisions, which shall not be considered an INDOT-Caused Delay or entitle Design-Build Contractor to any compensation, time extension or other relief.

14.2 Suspension for Cause

14.2.1 INDOT has the authority to suspend the Work by written order, wholly or in part, for Design-Build Contractor's failure to:

- (a) Correct conditions unsafe for the Project personnel, INDOT personnel, Other INDOT Contractor personnel, the general public or the property of INDOT or any third parties;
- (b) Comply with any Governmental Approval, Governmental Rule or otherwise carry out the requirements of the PPA Documents;
- (c) Carry out orders of INDOT or Directive Letters;
- (d) Comply with requirements for developing and implementing the Quality Management System;
- (e) Certain failures to remove and replace personnel as set forth in Section 7.3.4;
- (f) Provide proof of required insurance coverage as set forth in Section 9;
- (g) Reopen lanes closed to public traffic as part of a Permitted Closure by the time specified in the approved closure request as set forth in Section 12.4.10 of the Technical Provisions; or
- (h) Comply with environmental requirements.

14.2.2 Design-Build Contractor shall promptly comply with any such written suspension order. Design-Build Contractor shall promptly recommence the Work upon receipt of Notice from INDOT directing Design-Build Contractor to resume the Work. INDOT shall have no liability to Design-Build Contractor in connection with any such suspension, and Design-Build Contractor shall have no right to any adjustment in the Contract Price or Completion Deadline(s) in connection with any suspension of Work founded on any of the grounds set forth in this

Section 14.2. If INDOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, it shall be treated as a suspension for INDOT's convenience under Section 14.1.

14.3 Responsibilities of Design-Build Contractor During Suspension Periods

During periods that Work is suspended, Design-Build Contractor shall continue to be responsible for the Work and shall prevent Losses to the Project, provide for drainage and erosion control and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. During any suspension period, Design-Build Contractor shall maintain in a growing condition all newly established plantings, seedlings, and sod furnished under the PPA Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during the suspension period. Additionally, Design-Build Contractor shall continue other Work that is not subject to the suspension, if any, and that has been or can be performed on-Site or off-Site during the period that Work is suspended.

SECTION 15. TERMINATION FOR CONVENIENCE; TERMINATION FOR ADVERSE ENVIRONMENTAL DETERMINATION

15.1 Termination for Convenience

15.1.1 INDOT may, at any time, terminate this PPA and the performance of the Work by Design-Build Contractor in whole or in part, if INDOT determines, in its sole discretion, that a termination is in INDOT's best interest ("Termination for Convenience"). INDOT shall terminate by delivering to Design-Build Contractor a Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of this PPA shall not relieve any Surety or Guarantor of its obligation for any Claims arising out of the Work performed.

15.1.2 Within three days after receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Design-Build Contractor shall meet and confer with INDOT for the purpose of developing an interim transition plan for the orderly transition of the terminated Work, demobilization, and transfer of the Project to INDOT or its designee. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date Design-Build Contractor receives such Notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and substance acceptable to INDOT, in its good faith discretion, and shall include and be consistent with the other provisions and procedures set forth in Section 15.2, all of which provisions and procedures Design-Build Contractor shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.

15.1.3 Design-Build Contractor acknowledges and agrees that INDOT has no obligation to issue a Notice to Proceed hereunder, and further agrees that unless and until a Notice to Proceed is issued, INDOT shall have no liability to Design-Build Contractor for a Termination of Convenience hereunder.

15.2 Design-Build Contractor's Responsibilities After Receipt of a Notice of Termination for Convenience

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by INDOT, Design-Build Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 15:

- (a) Stop Work as specified in the Notice;
- (b) Notify all affected Subcontractors that this PPA is being terminated and that their Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by INDOT;
- (c) Place no further Subcontracts (including orders for materials, services, equipment or facilities), except as necessary to complete the continued portion of the Work, if any, or for mitigation of Losses;
- (d) Unless instructed otherwise by INDOT, terminate all Subcontracts to the extent they relate to the Work terminated;

- (e) To the extent directed by INDOT, in its sole discretion, execute and deliver to INDOT, or its designee, written assignments, in form and substance acceptable to INDOT, acting reasonably, of all of Design-Build Contractor's right, title, and interest in and to (i) Subcontracts and Utility Agreements that relate to the terminated Work provided INDOT, or its designee, assumes in writing all of Design-Build Contractor's obligations thereunder that arise after the effective date of the termination and (ii) all assignable warranties and, Claims held by Design-Build Contractor against Subcontractors and other third parties in connection with the terminated Work;
- (f) Subject to the prior written approval of INDOT, settle all outstanding liabilities and all termination settlement proposals arising from termination of Subcontracts;
- (g) No later than 30 days from the effective date of termination, unless extended in writing by INDOT upon written request of Design-Build Contractor within this 30-day period, provide INDOT with an inventory list of all materials and equipment previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to INDOT, and such other information as INDOT may request; and transfer title and deliver to INDOT, or its designee, through bills of sale or other documents of title, as directed by INDOT, (i) the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated, and (ii) the Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, samples, information, and other property that would have been required to be furnished to INDOT if the Work had been completed;
- (h) Complete performance in accordance with the PPA Documents of all Work not terminated;
- (i) Take all action that may be necessary, or that INDOT may direct, for the safety, protection, and preservation of (i) the public, including public and private vehicular movement, (ii) the Work, and (iii) equipment, machinery, materials and property related to the Project that is in the possession of Design-Build Contractor and in which INDOT, or its designee, has or may acquire an interest;
- (j) As authorized by INDOT in writing, use its best efforts to sell at reasonable prices any property of the types referred to in clause (g) above; provided, however, that (i) Design-Build Contractor is not required to extend credit to any purchaser, (ii) Design-Build Contractor may acquire the property under the conditions prescribed and at prices approved by INDOT, and (iii) the proceeds of any transfer or disposition will be applied to reduce any payments to be made by INDOT under the PPA Documents or paid in any other manner directed by INDOT;
- (k) If requested by INDOT, withdraw from the portions of the Site designated by INDOT and remove such materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, Design-Build Contractor and any Subcontractor in the performance of the Work as INDOT may direct; and

- (l) Take other actions as directed by INDOT.

15.3 Acceptance

15.3.1 Design-Build Contractor shall continue to be responsible for Losses to materials after issuance of the Notice of Termination for Convenience, except as follows:

- (a) Design-Build Contractor's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when INDOT's Authorized Representative certifies that those materials have been stored in the manner and at the locations directed by INDOT; and
- (b) Design-Build Contractor's responsibility for damage to materials purchased by INDOT subsequent to the issuance of the Notice that this PPA is to be terminated shall terminate when title and delivery of those materials has been taken by INDOT.

15.3.2 When INDOT determines that Design-Build Contractor has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the Project for termination, INDOT's Project Manager will recommend that INDOT formally accept such Work, and immediately upon and after the acceptance by INDOT, Design-Build Contractor will not be required to perform any further work thereon (except for such work that otherwise would have been required with respect to the terminated Work after Final Acceptance) and shall be relieved of maintenance responsibility for such terminated Work after the formal acceptance of such Work by INDOT.

15.4 Settlement Proposal

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Design-Build Contractor shall submit a final termination settlement proposal to INDOT in the form and with the certification prescribed by INDOT. Design-Build Contractor shall submit the proposal promptly, but no later than 90 days from the effective date of termination unless Design-Build Contractor has requested a time extension in writing within such 90-day period and INDOT has agreed in writing to allow such an extension. Design-Build Contractor's termination settlement proposal shall then be reviewed by INDOT and acted upon, returned with comments, or rejected. If Design-Build Contractor fails to submit the proposal within the time allowed, INDOT may determine, on the basis of information available, the amount, if any, due Design-Build Contractor because of the termination and shall pay Design-Build Contractor the amount so determined and Design-Build Contractor shall not have the right or ability to Dispute such amount. If INDOT returns the termination settlement proposal with comments, Design-Build Contractor shall address such comments and resubmit the termination settlement proposal within 30 days after receiving INDOT's comments.

15.5 Amount of Negotiated Termination Settlement

Design-Build Contractor and INDOT may agree (or be deemed to agree), as provided in Section 15.4, upon the whole or any part of the amount or amounts to be paid to Design-Build Contractor by reason of the total or partial termination of Work for convenience pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently inspected and accepted by INDOT. Such agreed amount or amounts, exclusive of settlement costs, shall not

exceed the total Contract Price as reduced by the amount of payments otherwise made and the Contract Price of Work not terminated. Upon determination of the settlement amount, this PPA will be amended accordingly, and Design-Build Contractor will, subject to Section 15.7, be paid the agreed amount as described in this Section 15.5. Nothing in Section 15.6, prescribing the amount to be paid to Design-Build Contractor in the event that Design-Build Contractor and INDOT fail to agree upon the amount to be paid to Design-Build Contractor by reason of the termination of Work pursuant to this Section 15, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Design-Build Contractor pursuant to this Section 15.5. INDOT's execution and delivery of any settlement agreement shall not affect any of its rights under the PPA Documents with respect to completed Work, relieve Design-Build Contractor from its obligations with respect thereto, including Warranties, or affect Design-Build Contractor's obligations under the Performance Bond, Payment Bond, Warranty Bond [and/or Guaranty]**[NTD: To be conformed in execution version based on whether a guarantor is used]**as to such completed or non-terminated Work.

15.6 No Agreement as to Amount of Termination Settlement

15.6.1 If Design-Build Contractor and INDOT fail to agree upon the amount to be paid Design-Build Contractor by reason of the termination of Work for convenience pursuant to this Section 15, the amount payable (exclusive of Interest charges and any amounts deducted pursuant to Section 15.7 and Section 15.8) shall be determined by INDOT in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Section 15.4 and Section 15.5:

15.6.2 Subject to Section 15.7, INDOT will pay Design-Build Contractor the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

- (a) Design-Build Contractor's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted by Section 13.7.3, for all Work performed, including mobilization, demobilization, and work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to INDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by Design-Build Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. Deductions will also be made, when this PPA is terminated as the result of a Force Majeure Event, for the cost of materials damaged by the "occurrence." When, in the opinion of INDOT, the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work or Nonconforming Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the PPA Documents and the excessive actual cost shall be disallowed;
- (b) As profit on clause (a) above, a sum determined by INDOT to be fair and reasonable; provided, however, that if it appears that Design-Build Contractor would have sustained a loss on this entire PPA had it been completed, no profit shall be included or allowed under this Section 15.6.2;

- (c) The cost of settling and paying Claims arising out of the termination of Work under Subcontracts as provided in Section 15.2(f), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience under this PPA, which amounts shall be included in the cost on account of which payment is made under clause (a) above; and
- (d) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2(i) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the PPA Documents, including the reasonable cost to Design-Build Contractor of handling material returned to the vendor, delivered to INDOT, or its designee, or otherwise disposed of as directed by INDOT, and including a reasonable allowance for Design-Build Contractor's administrative costs in determining the amount payable due to termination of this PPA.

15.6.3 Design-Build Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 15.6.2) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of this PPA. The total amount to be paid to Design-Build Contractor, exclusive of costs described in Section 15.6.2(c) and Section 15.6.2(d), may not exceed the total Contract Price less the amount of payments previously made and the Contract Price of Work not terminated. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to INDOT by Design-Build Contractor, such refund shall be paid directly to INDOT or otherwise credited to INDOT. Except for normal spoilage, and except to the extent that INDOT, or its designee, will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Design-Build Contractor under Section 15.6.2, the fair value, as determined by INDOT, of equipment, machinery, materials, and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to INDOT or its designee, or sold pursuant to Section 15.2(j). Information contained in the Escrowed Proposal Documents may be a factor in determining the value of the Work terminated. Upon determination of the amount of the termination payment, this PPA shall be amended to reflect the agreed termination payment, Design-Build Contractor shall be paid the agreed amount, and the Contract Price shall be reduced to reflect the reduced scope of Work.

15.6.4 If a termination hereunder is partial, Design-Build Contractor may file a proposal with INDOT for an equitable adjustment of the Contract Price for the continued portion of this PPA. Any proposal by Design-Build Contractor for an equitable adjustment under this Section 15.6.4 shall be requested within 90 days from the effective date of termination unless extended in writing by INDOT. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this PPA.

15.7 Conditions to Payment; Reduction in Amount of Claim

15.7.1 As a condition to its obligation to make payment to Design-Build Contractor of amounts due under this Section 15, INDOT shall have received the following:

- (a) A list of all outstanding or pending DCR Notices and all existing or threatened Claims, and Liens by Subcontractors, Utility Owners, or other third parties relating to the Project;
- (b) Complete and legally effective releases or waivers of Liens and Claims satisfactory to INDOT, from all Persons legally eligible to file Liens, Claims and stop payment notices in connection with the Work;
- (c) Consent of any Guarantors and Surety(ies);
- (d) Executed release(s) meeting the requirements of Section 12.4.4 and Section 15.10.2 and otherwise satisfactory in form and content to INDOT;
- (e) An affidavit from Design-Build Contractor meeting the requirements of Section 12.4.4; and
- (f) Such other documentation as INDOT may reasonably require.

15.7.2 The amount otherwise due Design-Build Contractor under this Section 15 shall be reduced by (a) any Losses of INDOT or Third-Party Claims for which Design-Build Contractor is responsible hereunder; (b) the amount of any Claim which INDOT may have against any DB-Related Entity in connection with the PPA Documents; (c) any unpaid Liquidated Damages or Movement Charges; (d) the agreed price for, or the proceeds of sale, of property, materials, supplies or other things acquired by Design-Build Contractor or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to INDOT; (e) all unliquidated advances or other payments made to or on behalf of Design-Build Contractor applicable to the terminated portion of the Work or PPA; (f) amounts that INDOT deems advisable, in its good faith discretion, including attorneys' fees and other legal or consultant costs, to retain to cover any existing or threatened Claims, and Liens relating to the Project, including Claims by Utility Owners; (g) the cost of repairing any Nonconforming Work plus an administrative charge equal to 10% of such costs; (h) any amounts INDOT is required to retain under applicable federal law; and (i) any amounts due or payable by Design-Build Contractor to INDOT or which INDOT is otherwise entitled to recover from Design-Build Contractor under the terms of the PPA Documents.

15.8 Payment

INDOT may from time to time, under such terms and conditions as it may prescribe and, in its good faith discretion, make partial payments on account against costs incurred by Design-Build Contractor in connection with the terminated portion of this PPA, whenever, in the opinion of INDOT, the aggregate of such payments shall be within the amount to which Design-Build Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by Design-Build Contractor to INDOT upon demand together with Interest.

15.9 No Consequential Damages

Under no circumstances shall Design-Build Contractor be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 15. The payment to Design-Build Contractor determined in accordance with this Section 15 constitutes Design-Build Contractor's exclusive remedy for a termination hereunder.

15.10 No Waiver; Release

15.10.1 Anything contained in the PPA Documents to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or Claim that INDOT may have and INDOT may pursue any cause of action which it may have by law, in equity or under the PPA Documents.

15.10.2 INDOT's payment to Design-Build Contractor of the amounts required under this Section 15 shall constitute full and final satisfaction of, and, upon payment, INDOT shall be forever released and discharged from, any and all Claims and Losses, known or unknown, suspected or unsuspected, that Design-Build Contractor may have against INDOT arising out of or relating to the terminated Work. Concurrently with such payment, Design-Build Contractor shall execute and deliver to INDOT all such releases and discharges as INDOT may reasonably require to confirm the foregoing (which release shall include an express and unconditional waiver and release sufficient, in INDOT's good faith discretion, to waive any rights and benefits Design-Build Contractor may have), but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

15.11 Dispute Resolution

Subject to Section 15.4, the failure of the Parties to agree on amounts due under this Section 15 shall be a Dispute to be resolved in accordance with Section 19.

15.12 Allowability of Costs

All costs Claimed by Design-Build Contractor under this Section 15 shall be allowable, allocable, and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

15.13 Termination for Adverse Environmental Determination; Defending Environmental Determination

15.13.1 If INDOT determines, in its sole discretion, that the Environmental Determination (a) creates an unreasonable risk of delay or increased cost to INDOT, or (ii) would otherwise prevent or significantly delay implementation of the Project, then, subject to Section 15.13.2, the Parties shall promptly meet and confer to analyze the circumstances and determine what further action to take.

15.13.2 If (i) INDOT makes the determination listed under Section 15.13.1, or (ii) following the consultation described in Section 15.13.1, the Parties are not able to reach a mutually-acceptable solution, INDOT may, in its sole discretion, terminate this PPA pursuant to this Section 15, except that the amount of Design-Build Contractor's termination settlement under this PPA may only include amounts due and owing, excluding specifically (a) any design Work conducted at risk or other Work conducted at risk; (b) any Work with respect to Final Design and Construction; (c) any amounts incurred or invoiced which are not consistent with Sections 4.4, 12.2.1.9, and 12.2.1.10; and (d) any amount of expected profit on Work not yet undertaken. All remaining provisions of this Section 15 shall apply to any such termination by INDOT. Termination under this Section 15.13.1 is not a Termination for Convenience.

15.13.3 If any administrative proceeding, litigation or other legal action is brought by a third party challenging any Environmental Determination for the Project and INDOT elects to proceed with the Project under the PPA Documents, the Parties shall reasonably assist and

cooperate with one another, each at its own expense, to defend their respective interests and the Environmental Determination.

15.14 Termination for Failure to Issue NTP

15.14.1 Design-Build Contractor shall be entitled to terminate this PPA and receive the following payments from INDOT if INDOT fails to issue the NTP within 180 days following Design-Build Contractor's timely satisfaction of all conditions to issuance of the NTP set forth in Section 4.1.2:

- (a) Bond and insurance premiums, as set forth in the Proposal, actually paid, without markup or profit; and
- (b) Stipulated stipend payment of \$650,000.

15.14.2 Termination under this Section 15.14 is not a Termination for Convenience.

SECTION 16. DEFAULT

16.1 Default of Design-Build Contractor

16.1.1 Design-Build Contractor shall be in default under this PPA upon the occurrence of any one or more of the following events or conditions (each a “Design-Build Contractor Default”):

- (a) Design-Build Contractor fails (i) promptly to begin the Work under the PPA Documents following issuance of the Notice to Proceed, or (ii) to resume performance of Work which has been suspended or stopped within a reasonable time after receipt of Notice from INDOT to do so or (if applicable) after cessation of the event preventing performance;
- (b) Design-Build Contractor fails to perform the Work in accordance with the PPA Documents, including conforming to applicable standards set forth therein in design and construction of the Project, or refuses to remove, replace, and correct rejected materials or Nonconforming Work or unacceptable Work;
- (c) Design-Build Contractor suspends, ceases, stops or abandons the Work (exclusive of authorized Work stoppage (i) due to termination by INDOT, (ii) due to and during the continuance of a Force Majeure Event or suspension by INDOT, or (iii) in accordance with Section 16.3);
- (d) Design-Build Contractor fails to continuously and diligently prosecute the Work (exclusive of authorized Work stoppage (i) due to termination by INDOT, (ii) due to and during the continuance of a Force Majeure Event or suspension by INDOT, or (iii) in accordance with Section 16.3);
- (e) Design-Build Contractor fails to obtain, provide, and maintain in full force and effect any insurance, bonds, guarantees, or other performance security as and when required hereunder for the benefit of relevant parties, or fails to comply with any requirement of this PPA pertaining to the amount, terms or coverage of the same;
- (f) Design-Build Contractor makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of the PPA Documents or any right or interest herein, except as expressly permitted under Section 24.4;
- (g) Design-Build Contractor shall have failed, absent a valid Dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or shall have failed to comply with any Governmental Rule or failed reasonably to comply with the instructions of INDOT consistent with the PPA Documents;
- (h) Design-Build Contractor shall have failed to make payment when due to INDOT of any amounts owing to INDOT under the PPA Documents, including Liquidated Damages or Movement Charges assessed;
- (i) Design-Build Contractor fails to timely observe or perform or cause to be observed or performed any other agreement or covenant to be performed by Design-Build Contractor contained in the PPA Documents;

- (j) [Any Guarantor revokes or attempts to revoke its obligations under its Guaranty or otherwise takes the position that such instrument is no longer in full force and effect;]***[NTD: To be conformed in execution version based on whether a guarantor is used.]***
- (k) Any representation or warranty made by Design-Build Contractor [or any Guarantor]***[NTD: To be conformed in execution version based on whether a guarantor is used]*** in the PPA Documents (including the Responsible Proposer Questionnaire included in the Proposal and the questionnaire included in the Statement of Qualifications) or any certificate, schedule, instrument or other document delivered by Design-Build Contractor pursuant to the PPA Documents shall have been false or materially misleading when made;
- (l) Design-Build Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any Surety or Guarantor;
- (m) An involuntary case is commenced against Design-Build Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Design-Build Contractor or Design-Build Contractor's debts under any bankruptcy, insolvency or other similar Governmental Rules now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Design-Build Contractor or any substantial part of Design-Build Contractor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Design-Build Contractor in good faith or shall remain undismissed and unstayed for a period of 60 days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any Surety or Guarantor;
- (n) Design-Build Contractor commences Final Design and Construction before Environmental Determination;
- (o) Design-Build Contractor fails to comply with an approved Recovery Schedule except as a sole and direct result of any event or circumstance which entitles Design-Build Contractor to an extension of a Completion Deadline under this PPA;
- (p) Design-Build Contractor fails to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this PPA; or
- (q) Design-Build Contractor fails to achieve Substantial Completion by the Long-Stop Date.

16.1.2 Except with respect to the Design-Build Contractor Defaults described in Section 16.1.1(c), Section 16.1.1(e), Section 16.1.1(f), Section 16.1.1(h), and Section 16.1.1(j) through Section 16.1.1(q), Design-Build Contractor and Surety shall be entitled to 15 days' Notice and opportunity to cure any Design-Build Contractor Default before an Event of Default is declared; provided, however, that no such Notice and opportunity to cure is required for any Design-Build Contractor Default which by its nature cannot be cured. Failure to provide Notice to Surety or any Guarantor shall not preclude INDOT from exercising its remedies against Design-Build Contractor. If a Design-Build Contractor Default (other than the Design-Build Contractor Defaults described in Section 16.1.1(c), Section 16.1.1(e), Section 16.1.1(f), Section 16.1.1(h) and Section 16.1.1(j) through Section 16.1.1(q)), is capable of cure but, by its nature, cannot be cured within 15 days, as determined by INDOT, such additional period of time shall be allowed as may be reasonably necessary to cure the Design-Build Contractor Default so long as Design-Build Contractor commences such cure within such 15-day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed 60 days in total. In the event of a Design-Build Contractor Default under Section 16.1.1(c), Section 16.1.1(e), Section 16.1.1(h) or Section 16.1.1(o), Design-Build Contractor shall be entitled to seven days' Notice and opportunity to cure. In the event of a Design-Build Contractor Default under Section 16.1.1(k), Design-Build Contractor shall be entitled to five days' Notice and opportunity to cure. Design-Build Contractor hereby acknowledges and agrees that the Design-Build Contractor Defaults described in Section 16.1.1(f), Section 16.1.1(j), Section 16.1.1(l) through Section 16.1.1(n) and Section 16.1.1(p) through Section 16.1.1(q) are not curable and no notice or cure period shall apply; provided, however, that in the event of a Design-Build Contractor Default under Section 16.1.1(l) or Section 16.1.1(m) that arises solely due to the specified acts or events as they pertain to Guarantor, Design-Build Contractor shall have an opportunity to cure such Design-Build Contractor Default within five days by providing INDOT with alternative security and/or a new guarantor, which security and/or new guarantor must be in a form satisfactory to INDOT, in its sole discretion.

16.1.3 Notwithstanding the foregoing, INDOT may, without Notice and without awaiting lapse of the period to cure any Design-Build Contractor Default, in the event of existence of a condition on or affecting the Project which INDOT believes poses an immediate and imminent danger to revenues or public health or safety, rectify the dangerous condition at Design-Build Contractor's cost, and so long as INDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such Design-Build Contractor Default, such action shall not expose INDOT to any liability to Design-Build Contractor and shall not entitle Design-Build Contractor to any other remedy, it being acknowledged that INDOT has a paramount public interest in providing and maintaining safe public use of and access to the Project. INDOT's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

16.2 Remedies

16.2.1 If any Design-Build Contractor Default described in Section 16.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 16.1.2, INDOT may declare that an "Event of Default" has occurred. The declaration of an Event of Default shall be in writing and given to Design-Build Contractor. In addition to all other rights and remedies provided by law or in equity and such rights and remedies as are otherwise available under the PPA Documents, the Performance Bond, the Warranty Bond [and/or the Guaranty][***NTD: To be conformed in execution version based on whether a guarantor is used***], if an Event of Default shall occur, then, subject to Section 16.4, INDOT shall have the following rights without further Notice and

without waiving or releasing Design-Build Contractor from any obligations, and Design-Build Contractor shall have the following obligations (as applicable):

- (a) Subject to Section 17.7, INDOT shall be entitled to recover any and all Losses available at law or in equity on account of the occurrence of a Design-Build Contractor Default, including all Losses that accrue after the occurrence of the Design-Build Contractor Default regardless of when any applicable Notice is given or whether the Design-Build Contractor Default is subsequently cured;
- (b) INDOT may terminate this PPA or a portion thereof, including Design-Build Contractor's rights of entry upon the Site and possession, control, and operation of the Project, in which case, the provisions of Section 15.2 and Section 15.3 shall apply;
- (c) If and as directed by INDOT, Design-Build Contractor shall discontinue the Work, withdraw from the Site, and shall remove materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, any DB-Related Entity in the performance of the Work;
- (d) If and as directed by INDOT, Design-Build Contractor shall deliver to INDOT possession of any or all Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files and other documents and facilities related to the Project that INDOT deems necessary for completion of the Work;
- (e) If and as directed by INDOT, Design-Build Contractor shall confirm the assignment to INDOT, or its designee, of the Subcontracts requested by INDOT, and Design-Build Contractor shall terminate, at its sole cost, all other Subcontracts;
- (f) INDOT may deduct from any amounts payable by INDOT to Design-Build Contractor such amounts payable by Design-Build Contractor to INDOT, including the aggregate of (i) reimbursements owing; (ii) Liquidated Damages and Movement Charges owing pursuant to Section 7.3.6 or Section 17; (iii) 125% of the amounts INDOT deems advisable to cover any existing or threatened Claims, and Liens of Subcontractors, laborers or other Persons; (iv) amounts of any Losses or Third-Party Claims that have accrued; (v) the cost to complete or remediate uncompleted Work or Nonconforming Work plus an administrative charge equal to 10% of such costs; and (vi) the amount of other Losses that INDOT has determined are or may be payable to INDOT under the PPA Documents;
- (g) INDOT shall have the right, but not the obligation, to pay such amounts and/or perform such act as may then be required from Design-Build Contractor under the PPA Documents or Subcontracts;
- (h) INDOT may appropriate any or all materials and equipment on the Site as may be suitable and acceptable and, consistent with the terms of the Performance Bond, may direct the Surety to complete the Work and the Project or may enter into an agreement for the completion of the Work and the Project according to the terms and provisions hereof with another contractor or the Surety, or use such other

methods as may be required for the completion of the Work and the Project, including completion of the Work by INDOT; and/or

- (i) If INDOT exercises any right to perform any obligations of Design-Build Contractor, in the exercise of such right, INDOT may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as INDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors and obtain materials and equipment as may be required for the purpose of completing such work; (iii) execute all applications, certificates, and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may, in its sole discretion, consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.2 If an Event of Default shall have occurred, Design-Build Contractor, any Guarantor and Surety shall be jointly and severally liable to INDOT for all Losses incurred by INDOT or any party acting on INDOT's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs and throw away costs for unused portions of the completed Work). Upon occurrence of an Event of Default and so long as it continues, INDOT shall be entitled to withhold all or any portion of further payments to Design-Build Contractor until the Final Acceptance Date or the date on which INDOT otherwise accepts the Project as complete or determines that it will not proceed with completion, at which time INDOT will determine whether Design-Build Contractor is entitled to further payments. Promptly following the Final Acceptance Date or the date on which INDOT otherwise accepts the Project as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and INDOT shall notify Design-Build Contractor, Surety, and each Guarantor in writing of the amount, if any, that Design-Build Contractor, each Guarantor and the Surety shall pay INDOT or INDOT shall pay Design-Build Contractor or its Surety with respect thereto. INDOT will deduct, from any moneys due or which will become due to Design-Build Contractor or its Surety, all costs and charges incurred by INDOT, including attorneys', accountants' and expert witness fees and costs; together with (a) the cost of completing the Work (which shall include all Plant Establishment Work and Work during the Plant Establishment Period) under the PPA Documents together with an administrative charge of 10% of such costs; (b) any reimbursements owing to INDOT; (c) Liquidated Damages or Movement Charges for which Design-Build Contractor is liable to INDOT pursuant to Section 17 or Section 7.3.6; (d) 125% of the amounts INDOT deems advisable to cover any existing or threatened Claims, and Liens of Subcontractors, laborers or other Persons; (e) the amounts of any Losses or Third-Party Claims that have accrued; and (f) the amount of other Losses that INDOT has determined are or may be payable to INDOT under the PPA Documents. If such expense exceeds the sum which would have been payable under this PPA, then Design-Build Contractor, each Guarantor and its Surety(ies) shall be liable and shall pay to INDOT the amount of such excess. If any Guarantor or the Surety fails to pay such amount immediately upon INDOT's demand, then INDOT shall be entitled to collect Interest from the Surety and/or such Guarantor(s) on the amounts Design-Build Contractor is required to pay in excess of the remaining balance of the Contract Price. Interest shall accrue on all amounts INDOT has had to pay in excess of the remaining balance of the Contract Price from the date of INDOT payment.

16.2.3 Design-Build Contractor acknowledges that if a Design-Build Contractor Default under Section 16.1.1(l) or Section 16.1.1(m) occurs, such event could impair or frustrate Design-Build Contractor's performance of the Work. Accordingly, Design-Build Contractor agrees that,

upon the occurrence of any such Design-Build Contractor Default, INDOT shall be entitled to request of Design-Build Contractor, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 10 days after delivery of the request shall entitle INDOT to terminate this PPA and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, INDOT shall be entitled to proceed with the Work with its own personnel and resources or with other contractors on a time and material or other appropriate basis, the cost of which (plus an administrative charge of 10% of such cost) will be credited against and deducted from INDOT's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the PPA Documents, the Performance Bond, [and the Guaranty]. ***[NTD: To be conformed in execution version based on whether a guarantor is used.]***

16.2.4 In lieu of the provisions of this Section 16.2 for terminating this PPA and completing the Work, INDOT may pay Design-Build Contractor for the Work already done according to the provisions of the PPA Documents (including INDOT's right to deduct certain amounts therefrom) and may treat the Work remaining undone as if they had never been included or contemplated by this PPA. No Claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by Design-Build Contractor.

16.2.5 In the event that this PPA is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

16.2.6 The exercise or beginning of the exercise by INDOT of any one or more rights or remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by INDOT of any or all other such rights or remedies, each of which shall be cumulative.

16.2.7 In the event INDOT suffers Losses as a result of any Design-Build Contractor Fault, INDOT shall be entitled to recovery of such Losses from Design-Build Contractor regardless of whether the breach or failure that gives rise to the Losses ripens into an Event of Default.

16.2.8 Design-Build Contractor, each Guarantor, and Surety shall not be relieved of liability for continuing Liquidated Damages or Movement Charges on account of a Design-Build Contractor Default by Design-Build Contractor hereunder or by INDOT's declaration of an Event of Default, or by actions taken by INDOT under this Section 16.2.

16.2.9 INDOT's remedies associated with a Design-Build Contractor Default under Section 16.1.1(k) shall include the right to rescind this PPA.

16.3 Failure by INDOT to Make Undisputed Payment

16.3.1 Design-Build Contractor shall have the right to stop Work if (i) INDOT fails to make an undisputed payment due hereunder within 60 days after receipt of Notice of nonpayment, or (ii) upon 10 days' Notice if INDOT provides Notice under Section 12.7 that funding is not appropriated or is withdrawn, limited or impaired and INDOT is or will be unable to access other funds to satisfy INDOT's obligations under this PPA. Any such Work stoppage shall be considered a suspension for convenience under Section 14.1 and shall be subject to the following terms and conditions:

- (a) Design-Build Contractor shall be responsible for safely securing and monitoring the Site and all materials and equipment;
- (b) Design-Build Contractor shall continue to provide traffic management in accordance with the Transportation Management Plan and Temporary Traffic Control Plan;
- (c) The right to suspend Work does not include the right to suspend or cancel insurance policies or any Payment Bond and Performance Security;
- (d) The suspension of Work shall cease, and Design-Build Contractor shall resume performance of the Work, within 10 days after the default is cured; and
- (e) Promptly after INDOT receives Notice described in this Section 16.3.1, INDOT and Design-Build Contractor shall coordinate to effect a smooth, uninterrupted transition of the maintenance from Design-Build Contractor and its Subcontractors to INDOT or its designated contractor. INDOT shall use diligent efforts to complete such transition and assume performance of the maintenance not later than 30 days after receipt of such Notice.

16.3.2 Design-Build Contractor shall not have the right to terminate this PPA for default as the result of any failure by INDOT to make an undisputed payment due hereunder. However, if such nonpayment continues for more than 180 days, upon Notice from Design-Build Contractor to INDOT, Design-Build Contractor shall have the right to declare a Termination for Convenience under Section 15 by delivering to INDOT a Notice of termination specifying its effective date. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 15.

16.4 Event of Default Due Solely to Design-Build Contractor's Failure to Achieve Certain Completion Deadlines

16.4.1 If an Event of Default consists solely of Design-Build Contractor's failure to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadline, INDOT's sole monetary remedy for such Event of Default shall be the right to assess the Liquidated Damages determined under Section 17.1; provided, however, that: (a) such Event of Default does not delay Substantial Completion or Final Acceptance beyond 180-days after the applicable Completion Deadline; and (b) Design-Build Contractor continues to diligently perform the Work despite such Event of Default. Nothing in this Section 16.4 shall prejudice any other rights or remedies that INDOT may have due to any other Event of Default during such 180-day period.

16.4.2 If Substantial Completion or Final Acceptance has not occurred within 180-days after the applicable Completion Deadline, INDOT shall have the right to: (a) terminate this PPA; (b) continue to assess such Liquidated Damages subject only to the limitations set forth in Section 17.1; and/or (c) exercise any other right or remedy under the PPA Documents, at law or in equity.

SECTION 17. LIQUIDATED DAMAGES; MOVEMENT CHARGES FOR MOVEMENT CLOSURES; AND LIMITATION OF LIABILITY

Design-Build Contractor understands and agrees that if Design-Build Contractor fails to complete the Work in accordance with the PPA Documents, INDOT will suffer damages which cannot be quantified as of the date of execution hereof. Therefore, Design-Build Contractor and INDOT have agreed to stipulate the amount payable by Design-Build Contractor in the event of its failure to meet a Completion Deadline; failure to timely open lanes, ramps, local streets or movements after a Permitted Closure; making Prohibited Closures; and failure to meet other requirements as described in this Section 17 and Exhibit 10. Design-Build Contractor may use Permitted Closures during the Work subject to the requirements of this Section 17 and Sections 12.4.9 and 12.4.10 of the Technical Provisions.

17.1 Liquidated Damages for Late Completion

17.1.1 Subject to Section 17.1.3, Design-Build Contractor shall be liable for and pay to INDOT liquidated damages with respect to any failure to achieve Substantial Completion and/or Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this PPA. Such liability shall apply even though: (a) a cure period remains available to Design-Build Contractor, or (b) a cure occurs. The amounts of such liquidated damages are as follows:

- (a) \$100,000 for each day after the Substantial Completion Deadline until Substantial Completion is achieved; and
- (b) \$5,000 for each day after the Final Acceptance Deadline until Final Acceptance is achieved.

17.1.2 Liquidated damages under this Section 17.1 shall commence on the applicable Completion Deadline, as the same may be extended pursuant to this PPA, and shall continue to accrue until the date of Substantial Completion or Final Acceptance, as applicable, or until termination of this PPA.

17.1.3 If the original Substantial Completion Deadline as of the Effective Date is extended to a date during a Winter Suspension Period solely due to an INDOT-Caused Delay or Force Majeure Event, Design-Build Contractor shall not be assessed the liquidated damages under Section 17.1.1(a) until after the Extended Substantial Completion Deadline, provided that Design-Build Contractor has, as of the date determined by adding the Winter Delay Period to the day before the Winter Suspension Period (November 30), satisfied the Winter Completion Requirements. Under such circumstances, liquidated damages under Section 17.1.1(a) shall not be commenced after the original Substantial Completion Deadline and shall, instead, be commenced and assessed after the Extended Substantial Completion Deadline. This Section 17.1.3 provides limited relief to Design-Build Contractor from the assessment of liquidated damages under Section 17.1.1(a) and shall only apply in the context of an INDOT-Caused Delay or Force Majeure Event and only in the limited circumstances and subject to the conditions set forth in this Section 17.1.3.

17.1.4 For purposes of Section 17.1.3, by way of example and illustration only, if (a) the original Substantial Completion Deadline was November 30, 2022; (b) the original Substantial Completion Deadline would have been extended to December 15, 2022 (e.g., a 15-day extension) due to INDOT-Caused Delays and Force Majeure Events; and (c) Design-Build Contractor has

satisfied the Winter Completion Requirements by December 15, 2022, INDOT shall not assess liquidated damages under Section 17.1.1(a) as of December 15, 2022, but, instead, shall commence assessment of such liquidated damages as of the Extended Substantial Completion Deadline (in this example, such date would be April 15, 2023). If, in the above example, Design-Build Contractor has not satisfied the Winter Completion Requirements by December 15, 2022, INDOT shall assess liquidated damages under Section 17.1.1(a) from December 15, 2022 until the Winter Completion Requirements are satisfied, after which, liquidated damages under Section 17.1.1(a) shall not be further assessed until the Extended Substantial Completion Deadline.

17.1.5 In no event shall more than 270 total days of liquidated damages be assessed under each of Section 17.1.1(a) and Section 17.1.1(b).

17.2 Movement Closures and Movement Charges

Movement Closures at times and locations not consistent with the restrictions, constraints, and requirements of the PPA Documents could result in traffic obstructions, inconvenience to the public and delay of vital commerce, and increased risk to highway users. All of these consequences result in direct and indirect financial impacts to INDOT, road users, businesses, communities, and taxpayers. These impacts are not readily calculable and, therefore, the Parties agree that in addition to liquidated damages that may be payable by Design-Build Contractor under Section 7.3.6 or this Section 17, Design-Build Contractor shall be liable for and pay Movement Charges to INDOT in the amounts set forth in Section 17.3.

17.3 Movement Charges for Prohibited Closures

17.3.1 Design-Build Contractor shall be liable for and pay Movement Charges to INDOT, as set forth in (i) Table 10-1 of Exhibit 10 (“Movement Charges for Prohibited Closures - Mainline Interstate Closures”) for Movement Closures for any duration; (ii) Table 10-2-2 of Exhibit 10 (“Movement Charges for Prohibited Closures -- Exceeding Maximum Movement Closure Durations for Allowable Mainline Interstate Movement Closures”) for exceeding the maximum Movement Closure durations set forth in Table 10-2-1 of Exhibit 10 (“Allowable Mainline Interstate Permitted Closures”), (iii) Table 10-3-2 of Exhibit 10 (“Movement Charges for Prohibited Closures -- Exceeding Maximum Movement Closure Durations for Allowable Ramp Movement Closures”) for exceeding the maximum Movement Closure durations and limitations set forth in Table 10-3-1 of Exhibit 10 (“Allowable Ramp Movement Closures”), (iv) Table 10-4-2 of Exhibit 10 (“Movement Charges for Exceeding Maximum Movement Closure Durations for Allowable Local Street Movement Closures”) for exceeding the maximum Movement Closure durations and limitations set forth in Table 10-4-1 of Exhibit 10 (“Allowable Local Street Movement Closures”), and (v) Table 10-6 of Exhibit 10 (“Movement Charges for Prohibited Closures – Late Off-Peak Closures, Temporary Traffic Stoppages and Overnight Local Street Closures”) for any off-peak Movement Closure, temporary traffic stoppage under Section 801.16(c) of the Standard Specifications, or Overnight Local Street Closure that commences before or extends beyond the time allowed under the Technical Provisions, including Section 12.4.9.1 of the Technical Provisions.

17.3.2 A Movement Closure that would otherwise qualify as a Permitted Closure if Design-Build Contractor complied with all applicable requirements related thereto shall be considered a Prohibited Closure pursuant to Section 17.3.1 if Design-Build Contractor did not comply with all applicable requirements of the PPA Documents and approvals, if any, relating to Permitted Closures, including the notice, planning and, as applicable, pre-approval requirements relating thereto (to include, location, duration, timing). Any Movement Closure that arises out of

or relates to any act or omission of any DB-Related Entity not in compliance with the PPA Documents shall be a Prohibited Closure, even if occurring during a period which otherwise would be a Permitted Closure.

17.4 Other Liquidated Damages

17.4.1 Faulty Temporary Pavement

For each occurrence of non-conformance with pavement performance standards in Section 9.2.4 of the Technical Provisions that continues without full cure for the periods set forth in Table 10-5 of Exhibit 10, liquidated damages shall be assessed against Design-Build Contractor according to Table 10-5 of Exhibit 10.

17.4.2 Maintaining Lights, Electrical and Related Items (Other than Traffic Signals)

Design-Build Contractor shall repair light outages, pole knockdowns, or any other electrical or lighting problem within the time periods set forth in Table 10-5 of Exhibit 10. For any failure of Design-Build Contractor to fully repair such items within such time periods so that they comply with the Technical Provisions, liquidated damages will be assessed against Design-Build Contractor as set forth in Table 10-5 of Exhibit 10. The provisions of this Section 17.4.2 shall not apply to traffic signals, which are addressed in Section 17.4.3.

17.4.3 Maintaining Traffic Signals

Design-Build Contractor shall repair traffic signals within the time periods set forth in Table 10-5 of Exhibit 10. For any failure of Design-Build Contractor to fully repair traffic signals within such time periods so that they comply with the Technical Provisions, liquidated damages will be assessed against Design-Build Contractor as set forth in Table 10-5 of Exhibit 10.

17.4.4 Proceeding with Construction Before Hold Point is Released

No construction related to a Hold Point shall take place before Released for Construction Documents have been posted on the Project website, an e-mail notification has been sent to the appropriate INDOT personnel and any other requirements relating to release of a Hold Point set forth in the PPA Documents have been satisfied. If Design-Build Contractor proceeds with construction prior to a Hold Point release pursuant to Table 10-5 of Exhibit 10, liquidated damages will be assessed against Design-Build Contractor in the amounts set forth in Table 10-5 of Exhibit 10. Hold Points added to the lists by INDOT in addition to those set forth in Section 2.1 of the Technical Provisions based on Design-Build Contractor's design shall be subject to assessment of liquidated damages as set forth in this Section 17.4.4.

17.4.5 Maintaining ITS

Design-Build Contractor shall repair ITS outages, electrical power, pole knockdowns, cameras, or any other functionality and infrastructure problem within the time periods set forth in Table 10-5 of Exhibit 10. For any failure of Design-Build Contractor to fully repair such items within such time periods so that they comply with the Technical Provisions, liquidated damages will be assessed against Design-Build Contractor as set forth in Table 10-5 of Exhibit 10.

17.5 Acknowledgements Regarding Liquidated Damages and Movement Charges

17.5.1 Design-Build Contractor acknowledges that the Liquidated Damages and Movement Charges are reasonable in order to compensate INDOT for Losses it will incur by reason of the matters that result in liquidated damages in this Section 17. Such Losses include loss of use, enjoyment, and benefit of the Project, not connecting INDOT transportation facilities for the general public who depend on and expect availability of service, and injury to the credibility and reputation of INDOT's transportation improvement program with policy makers and the general public, which injury may directly result in loss of use of the Project and connecting INDOT transportation facilities, and/or additional costs administering this PPA (including engineering, legal, accounting, overhead and other administrative costs). Design-Build Contractor further acknowledges that these Losses are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.5.2 As of the Proposal Date, the amounts of Liquidated Damages and Movement Charges represent good faith estimates and evaluations by the Parties as to the actual potential Losses that INDOT would suffer as a result of the matters set forth above, and do not constitute a penalty.

17.5.3 The Parties have agreed to Liquidated Damages and Movement Charges in order to fix and limit Design-Build Contractor's costs and to avoid later Disputes over what amounts of Losses are properly chargeable to Design-Build Contractor.

17.5.4 Such sums are reasonable in light of the anticipated or actual harm caused by the matters set forth above, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy.

17.5.5 Liquidated Damages and Movement Charges are not intended to, and do not, liquidate Design-Build Contractor's liability under the indemnification provisions of Section 18.1, even though Third-Party Claims against Indemnified Parties may arise out of the same event, breach, or failure that gives rise to the Liquidated Damages.

17.6 Payment; Offset; Reduction; Waiver; Non-Exclusive Remedy

17.6.1 Design-Build Contractor shall pay any Liquidated Damages and Movement Charges owing under this Section 17 or under Section 7.3.6 within 10 days after Design-Build Contractor's receipt of INDOT's invoice or demand therefor.

17.6.2 INDOT shall have the right to deduct and offset any unpaid Liquidated Damages and Movement Charges from any amounts owed by INDOT to Design-Build Contractor. INDOT also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by Design-Build Contractor pursuant to the PPA Documents to satisfy Liquidated Damages and Movement Charges not paid when due.

17.6.3 Permitting or requiring Design-Build Contractor to continue and finish the Work or any part thereof after a Completion Deadline as applicable shall not act as a waiver of the right to receive Liquidated Damages and Movement Charges hereunder or any rights or remedies otherwise available to INDOT.

17.6.4 If Design-Build Contractor fails to timely make payment of any Movement Charges, then, in addition to any other remedies INDOT may have under the PPA Documents, at

law, or in equity, (a) INDOT may prohibit Design-Build Contractor from pursuing or implementing any further Permitted Closures until such past-due payments are made; and (b) Design-Build Contractor shall not be entitled to any Change Order, compensation, or time extension arising out of any inability to pursue or implement such Permitted Closures.

17.6.5 Subject to Section 16.4, INDOT's right to, and imposition of, Liquidated Damages and Movement Charges are in addition, and without prejudice, to any other rights and remedies available to INDOT under the PPA Documents, at law or in equity respecting the breach, failure to perform or Design-Build Contractor Default, except for recovery of Losses that the Liquidated Damages or Movement Charges are intended to compensate.

17.7 Consequential Damages

17.7.1 Except as otherwise specified in the PPA Documents, including this Section 17, to the extent permitted by Governmental Rules:

- (a) neither Party shall be liable to the other for punitive damages; and
- (b) neither Party shall be liable to the other Party for any indirect, incidental or consequential damages, whether arising out of breach of this PPA, tort (including negligence) or any other theory of liability, and each Party hereby releases the other Party from any such liability.

17.7.2 The foregoing limitations on Design-Build Contractor's liability for punitive damages under Section 17.7.1(a) and for indirect, incidental or consequential damages under Section 17.7.1(b) shall not apply to or limit any right of recovery INDOT may have respecting the following:

- (a) Losses (including defense costs) to the extent (i) the Losses are covered by the proceeds of insurance required to be carried hereunder or for which Design-Build Contractor was required to provide insurance coverage is not in force, (ii) the Losses are covered by the proceeds of insurance actually carried by or insuring Design-Build Contractor under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to the PPA Documents, or (iii) Design-Build Contractor is deemed to have self-insured the Losses pursuant to the PPA Documents;
- (b) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence on the part of any DB-Related Entity;
- (c) Design-Build Contractor's indemnities set forth in Section 18.1 or elsewhere in the PPA Documents (but only to the extent any such indemnities relate to Third-Party Claims);
- (d) Design-Build Contractor's obligation to pay (i) Liquidated Damages in accordance with Section 17 or other payments relating thereto and (ii) Movement Charges;
- (e) Losses arising out of any Release of Hazardous Materials by any DB-Related Entity (i) which was brought onto the Site by a DB-Related Entity, or (ii) which was negligently removed or handled by a DB-Related Entity; and

- (f) Losses arising out of or relating to any violation of, or negligent observation of, Design-Build Contractor's obligations relating to encounters with actual or suspected archaeological, paleontological, biological or cultural resources or artifacts under Section 5.3.1.

17.8 Limitation of Liability

To the extent permitted by Governmental Rules, Design-Build Contractor's liability under the PPA Documents to INDOT for Losses under the PPA Documents shall not exceed the sum of:

- (a) All those costs reasonably incurred by INDOT or any party acting on INDOT's behalf to complete or correct the Work, or to have the Work completed or corrected by another Person; plus
- (b) An amount equal to \$100,000,000 (which amount specifically includes all Liquidated Damages paid except for those assessed pursuant to Section 7.3.6); plus
- (c) All Claims and amounts paid under the Payment Bond; plus
- (d) Any amounts paid or payable pursuant to Design-Build Contractor's indemnities under Section 18; plus
- (e) Any amounts paid or payable by Design-Build Contractor that are covered by insurance proceeds required to be carried under the PPA Documents, including any self-insured retentions, or for which Design-Build Contractor was required to provide insurance if coverage is not in force; plus
- (f) All Losses incurred by any Indemnified Party in connection with, relating to or arising out of any illegal activities, fraud, recklessness, criminal conduct, gross negligence, bad faith or intentional misconduct on the part of any DB-Related Entity; plus
- (g) Losses arising out of any Design-Build Contractor Release of Hazardous Materials; plus
- (h) Key Personnel Liquidated Damages payable under Section 7.3.6; plus
- (i) Movement Charges.

SECTION 18. INDEMNIFICATION

18.1 Indemnifications by Design-Build Contractor

18.1.1 Subject to Section 18.1.2, Design-Build Contractor shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Third-Party Claims and other Losses (including those incurred in connection with the enforcement of this indemnity) arising out of, relating to or resulting from the following (each an “Indemnified Claim”):

- (a) The breach or alleged breach of any of the PPA Documents by any DB-Related Entity;
- (b) The failure or alleged failure by any DB-Related Entity to comply with any Other Approval, the Governmental Approvals, any applicable Environmental Laws or other Governmental Rules (including Environmental Laws) or any other responsibility prescribed in Section 6.10 and Section 6.11;
- (c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to INDOT or another Indemnified Party pursuant to the PPA Documents; provided, that this indemnity shall not apply to any infringement resulting from INDOT’s failure to comply with specific written instructions regarding use provided to INDOT by Design-Build Contractor;
- (d) The actual or alleged Design-Build Contractor Fault in or associated with performance of the Work;
- (e) Any and all Claims by any Governmental Entity or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any DB-Related Entity or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by any DB-Related Entity;
- (f) Any and all stop notices, Liens and Claims filed in connection with the Work, including all expenses and attorneys’, accountants’ and expert witness fees and costs incurred in discharging any stop notice, Lien or Claim, and any other liability to Subcontractors, laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, provided that INDOT is not in default in payments owing (if any) to Design-Build Contractor with respect to such Work and such INDOT payment default is the direct reason for the stop notice, Lien or Claim;
- (g) Any Release of Hazardous Materials or threatened Release of Hazardous Materials (i) which was brought onto the Site by any DB-Related Entity, or (ii) attributable to any Design-Build Contractor Fault, regardless of the source, origin, or method of deposit of such Hazardous Materials;
- (h) To the extent of any Design-Build Contractor Fault, the Claim or assertion by any other Person (excluding Persons in privity of contract with INDOT) that any DB-Related Entity (i) interfered with or hindered the progress or completion of work

being performed by such other contractor, so as to cause inconvenience, disruption, delay, or loss, except where the DB-Related Entity was not in any manner engaged in performance of the Work, or (ii) failure of any DB-Related Entity to cooperate reasonably with other contractors in accordance therewith;

- (i) Any dispute between Design-Build Contractor and a Utility Owner, or any DB-Related Entity's performance of, or failure to perform, the obligations under any Utility Agreement or Other Approval with respect to such Utility Owner;
- (j) Any dispute between Design-Build Contractor and the Railroad, or any DB-Related Entity's performance of, or failure to perform, the obligations under the Railroad Agreement (or modification or separate agreement with the Railroad entered into by Design-Build Contractor and/or INDOT related to the Project) or Other Approval with respect to the Railroad;
- (k) Any DB-Related Entity's breach of or failure to perform an obligation that INDOT owes to a third Person, including Governmental Entities, Railroads, and Utility Owners, under law or under any agreement between INDOT and a third Person, where (i) INDOT has delegated performance of the obligation to Design-Build Contractor under the PPA Documents or (ii) the acts or omissions of any DB-Related Entity which render INDOT unable to perform or abide by an obligation that INDOT owes to a third Person, including Governmental Entities and Utility Owners, under any agreement between INDOT and a third Person, where the agreement was expressly disclosed to Design-Build Contractor;
- (l) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any DB-Related Entity to comply with Good Industry Practices, requirements of the PPA Documents, Project Management Plan or Governmental Approvals, (ii) any Design-Build Contractor Fault, or (iii) the actual physical entry onto or encroachment upon another's property by any DB-Related Entity;
- (m) The failure of Design-Build Contractor to fully comply with any insurance requirements described in Section 9;
- (n) Any failure to protect and/or maintain valuable papers and records that the PPA Documents require Design-Build Contractor to maintain;
- (o) Any act, Claim or amount arising or recovered under workers' compensations law;
- (p) Any errors, inconsistencies or other defects in the design or construction of the Project and/or of Utility Adjustments included in the Work;
- (q) Any violation of any representation, warranty, or other covenant, obligation or agreement under the PPA Documents or Governmental Rules to be complied with by Design-Build Contractor hereunder or thereunder;
- (r) Any failure to pay any Liquidated Damages or Movement Charges under the PPA Documents;
- (s) Errors in the Design Documents provided by Design-Build Contractor (including those pertaining to Utility Adjustments), regardless of whether such Errors were

also included in the Basic Configuration or other Reference Information Documents. Design-Build Contractor agrees that, because the concepts in the Basic Configuration and other Reference Information Documents are subject to review and modification by Design-Build Contractor, it is appropriate for Design-Build Contractor to assume liability for Errors in the completed Project even though they may be related to Errors in the Basic Configuration and other Reference Information Documents; provided, however, that the foregoing shall not modify Design-Build Contractor's rights under Section 13 with respect to a Necessary Basic Configuration Change; and/or

- (t) any act or omission of any DB-Related Entity or any Design-Build Contractor Fault in any way causing, contributing to, relating to or arising out of (i) any bodily injury (including death) to any person or (ii) any Losses to the tangible property of third parties.

18.1.2 Subject to the releases and disclaimers herein, Design-Build Contractor's indemnity obligation shall not extend to any third-party Losses to the extent directly caused by:

18.1.2.1 The gross negligence, recklessness, willful misconduct, bad faith, or fraud of the Indemnified Party;

18.1.2.2 INDOT's breach of any of its material obligations under the PPA Documents;

18.1.2.3 An Indemnified Party's violation of any Governmental Rules or Governmental Approvals; or

18.1.2.4 Any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the Technical Provisions, but only where prior to occurrence of the third-party Losses, Design-Build Contractor complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if Design-Build Contractor actually knew of the deficiency, unsuccessfully sought INDOT's waiver or approval of a Deviation from such specification.

18.1.3 In Claims by an employee of Design-Build Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Design-Build Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

18.1.4 Design-Build Contractor is advised that Utility Agreements and the Railroad Agreement may include certain agreements by INDOT to indemnify, defend, save and hold harmless the Utility Owners and Railroad, respectively, with respect to certain matters. Design-Build Contractor's obligations under this Section 18 shall automatically apply to require Design-Build Contractor, subject to Section 18.1.2, to release, indemnify, defend, save and hold harmless the Utility Owners, Railroad and their employees and agents, in addition to the Indemnified Parties, with respect to all such matters. If any Utility Agreement or the Railroad Agreement contains provisions requiring INDOT's contractor(s) to indemnify, defend, save and hold harmless the Utility Owner or Railroad, respectively, with respect to any matters, then, subject to Section 18.1.2, Design-Build Contractor agrees to and shall perform and comply with such

provisions of the Utility Agreements (for the benefit of the Utility Owners, their employees and agents) and Railroad Agreements (for the benefit of the Railroad, their employees and agents).

18.1.5 For purposes of this Section 18.1, "third party" means any Person other than an Indemnified Party and Design-Build Contractor, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a Claim that is (a) against an Indemnified Party, (b) within the scope of the indemnities and (c) not covered by the Indemnified Party's worker's compensation program.

18.1.6 INDOT, and the State shall have no obligation to indemnify, defend and hold harmless Design-Build Contractor or any other DB-Related Entity.

18.1.7 The requirement to provide an indemnity as specified in this Section 18.1 is intended to provide protection to INDOT with respect to Third-Party Claims associated with the event giving rise to the indemnification obligation, and is not intended to provide INDOT with an alternative cause of action against Design-Build Contractor for Losses incurred directly by INDOT with respect to the event giving rise to the indemnification obligation.

18.2 Defense and Indemnification Procedures

18.2.1 If INDOT receives notice of a Claim or otherwise has actual knowledge of a Claim that it believes is within the scope of the indemnities under Section 18.1, and if INDOT gives Notice thereof pursuant to Section 24.12, then INDOT shall have the right to conduct its own defense unless either an insurer accepts defense of the Claim within the time required by Governmental Rules or Design-Build Contractor accepts the tender of the Claim in accordance with Section 18.2.3.

18.2.2 If the insurer under any applicable insurance policy accepts the tender of defense, INDOT and Design-Build Contractor shall cooperate in the defense as required by the insurance policy and, for purposes of the PPA Documents and proceedings relating to such matter, the applicable Indemnified Party/ies shall be deemed to be (an) insured party/ies. If no insurer under potentially applicable insurance policies provides defense, then Section 18.2.3 shall apply.

18.2.3 If the defense is tendered to Design-Build Contractor, then within 30 days after receipt of the tender, Design-Build Contractor shall provide to the Indemnified Party Notice whether it has tendered the matter to an insurer, and, if not tendered to an insurer or if the insurer has rejected the tender, shall deliver a Notice stating that Design-Build Contractor:

18.2.3.1 Accepts the tender of defense and confirms that the Claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

18.2.3.2 Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

18.2.3.3 Rejects the tender of defense based on a determination that it is not required to indemnify against the Claim under the terms of this PPA.

18.2.4 If Design-Build Contractor has tendered the matter to an insurer, and the insurer has not rejected the tender, then, for purposes of the PPA Documents and proceedings relating to such matter, the applicable Indemnified Party/ies shall be deemed to be (an) insured party/ies.

18.2.5 If Design-Build Contractor accepts the tender of defense under Section 18.2.3.1 or Section 18.2.3.2, Design-Build Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Design-Build Contractor shall otherwise control the defense of such Claim, including settlement, and bear the attorneys', consultants' and expert witness fees and costs of defending and settling such Claim. During such defense:

18.2.5.1 Design-Build Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

18.2.5.2 The Indemnified Party shall reasonably cooperate in said defense, provide to Design-Build Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and, subject to Governmental Rules, maintain the confidentiality of all communications between it and Design-Build Contractor concerning such defense.

18.2.6 If Design-Build Contractor responds to the tender of defense as specified in Section 18.2.3.3, the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such Claim, including settlement.

18.2.7 Notwithstanding Section 18.2.3.1 and Section 18.2.3.2, the Indemnified Party may revocably assume its own defense at any time by delivering to Design-Build Contractor Notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives Notice of the Claim or at any time thereafter, reasonably determines that:

18.2.7.1 A conflict exists between it and Design-Build Contractor which prevents or potentially prevents Design-Build Contractor from presenting a full and effective defense;

18.2.7.2 Design-Build Contractor is otherwise not providing an effective defense in connection with the Claim; or

18.2.7.3 Design-Build Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

18.2.8 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a Claim for which it is entitled to indemnification, Design-Build Contractor shall reimburse on a current basis all costs and expenses the Indemnified Party incurs in investigating and defending such Claim. If the Indemnified Party is entitled to and elects to conduct its own defense, then:

18.2.8.1 In the case of a defense that otherwise would be conducted under Section 18.2.3.1, the Indemnified Party shall have the right to settle or compromise the Claim with each of Design-Build Contractor's and Design-Build Contractor's relevant insurer(s) prior written consent, which, in each case, shall not be unreasonably withheld or delayed;

18.2.8.2 In the case of a defense that otherwise would be conducted under Section 18.2.3.2, the Indemnified Party and Design-Build Contractor shall consult with each other on a regular basis to determine whether settlement is appropriate and, subject to the rights of any insurer providing coverage for the Claim under a policy required under this PPA, and the

Indemnified Party shall have the right to settle or compromise the Claim with Design-Build Contractor's prior written consent without prejudice to the Indemnified Party's rights to be indemnified by Design-Build Contractor; and

18.2.8.3 In the case of a defense conducted under Section 18.2.3.3, the Indemnified Party shall, subject to the rights of any insurer providing coverage for the Claim under a policy required under this PPA, have the right to settle or compromise the Claim without Design-Build Contractor's prior written consent and without prejudice to its rights to be indemnified by Design-Build Contractor.

18.2.8.4 Where Design-Build Contractor has the right under these procedures to settle a Claim, in no event shall Design-Build Contractor agree to a settlement that will increase the risk, liability or costs of INDOT or any other Indemnified Party or adversely affect the Project, the Work or the Completion Deadlines without the prior written consent of INDOT or such Indemnified Party, in its sole discretion.

18.2.9 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 18.2.7, shall be resolved according to the Dispute Resolution Procedures. Design-Build Contractor shall be entitled to contest an indemnification Claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

18.3 No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge, or reduce other rights or obligations which would otherwise exist in favor of an Indemnified Party hereunder.

18.4 CERCLA Agreement

The indemnities set forth in Section 18.1.1(g) are intended to operate as agreements pursuant to Section 107(e) of CERCLA to insure, protect, hold harmless and indemnify the Indemnified Parties.

SECTION 19. PARTNERING AND DISPUTE RESOLUTION

19.1 Partnering

19.1.1 The provisions of this Section 19.1 are not part of the Informal Resolution Procedures or the Dispute Resolution Procedures contemplated under this PPA. Compliance with the provisions of this Section 19.1 or the terms of any partnering charter is not required as a condition precedent to any Party's right to initiate a Claim or seek resolution of any Dispute under this Section 19.

19.1.2 INDOT and Design-Build Contractor have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this PPA through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

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

19.1.4 In continuance of their existing partnering process, within 90 days after the Effective Date, INDOT and Design-Build Contractor shall attend a team-building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the Project. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter shall call for the formation and meetings of a partnering panel, identify the Key Personnel of Design-Build Contractor and key representatives of INDOT who shall serve on the partnering panel, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, subject to Section 19.2.5, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter shall recognize and be consistent with the obligations of INDOT and Design-Build Contractor contained in this PPA with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes.

19.1.5 Under the non-binding procedures, rules and guidelines of the partnering charter, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters.

19.1.6 If Design-Build Contractor and INDOT succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

19.2 Dispute Resolution Procedures

19.2.1 Disputes Governed by These Procedures

- (a) Any Claim or Dispute arising out of, relating to, or in connection with this PPA that is not resolved by partnering per Section 19.1 shall be resolved pursuant to this Section 19.2.
- (b) Resolutions of Claims and Disputes pursuant to this Section 19.2 shall be final, binding, conclusive and enforceable as set forth in this Section 19.2.
- (c) FAILURE OF DESIGN-BUILD CONTRACTOR TO CONFORM TO THE DISPUTE RESOLUTION PROCEDURES IN ALL MATERIAL RESPECTS AS TO ANY DISPUTE OR CLAIM SUBJECT THERETO SHALL CONSTITUTE A FAILURE TO PURSUE DILIGENTLY AND EXHAUST THE ADMINISTRATIVE PROCEDURES IN THE PPA DOCUMENTS AND SHALL OPERATE AS A BAR TO THE DISPUTE OR CLAIM. THIS SECTION 19.2.1(c) SHALL NOT BAR A CLAIM OR DISPUTE IF THE FAILURE TO MEET APPLICABLE DEADLINES IS DUE TO CONDUCT ON BEHALF OF INDOT OR ITS REPRESENTATIVES.
- (d) The Parties adopt these expedited methods for resolving Disputes between or among INDOT, Design-Build Contractor, and units of local government that contain any part of the Project, all of whom are proper parties to these Dispute Resolution Procedures.

19.2.2 Burden of Proof

The Party bringing a Claim or Dispute shall bear the burden of proving the same.

19.2.3 Mandatory Informal Resolution Procedures

19.2.3.1 Notice of Dispute to Designated Agent

- (a) A Party desiring to pursue a Dispute against the other Party shall initiate the Informal Resolution Procedures by serving a Notice on the other Party's designated agent. Unless otherwise indicated by Notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The Notice shall contain a concise statement describing:
 - (i) The date of the act, inaction or omission giving rise to the Dispute;
 - (ii) An explanation of the Dispute, including a description of its nature, circumstances and cause;
 - (iii) A reference to any pertinent provision(s) from the PPA Documents;
 - (iv) If applicable, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);
 - (v) If applicable, an analysis of the Project Schedule and Completion Deadlines showing any changes or disruptions (including an impacted

- delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Completion Deadlines);
- (vi) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;
 - (vii) The claiming Party's desired resolution of the Dispute; and
 - (viii) Any other information the claiming Party considers relevant.
- (b) The Notice shall be signed by the Authorized Representative of the claiming Party, and shall contain a written certification by the claiming Party that:
- (i) The Notice of Dispute is served in good faith;
 - (ii) Except as to specific matters stated in the Notice as being unknown or subject to discovery, all supporting information is reasonably believed by the claiming Party to be accurate and complete;
 - (iii) The Dispute accurately reflects the amount of money or other right, remedy or relief to which the claiming Party reasonably believes it is entitled; and
 - (iv) The Authorized Representative is duly authorized to execute and deliver the Notice and such certification on behalf of the claiming Party.
- (c) Any Notice by Design-Build Contractor shall be delivered within 10 days after any decision, action, order or position of INDOT (including any rejection or modification of a proposed Change Order by INDOT) to which Design-Build Contractor objects. INDOT may initiate the Dispute Resolution Procedures at any time by delivering a Notice to Design-Build Contractor.
- (d) The Parties shall attempt in good faith to resolve such Dispute within 15 days after delivery of the Notice of Dispute to the responding Party. If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The Notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within seven days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing.

19.2.3.2 Authorized Representatives Meetings

If either or both "designated agent(s)" under Section 19.2.3.1(a) was/were not a Party's Authorized Representative, and if the Dispute is not resolved pursuant to Section 19.2.3.1(d), then commencing within 14 days after the Notice of Dispute is served and concluding 14 days thereafter, the Authorized Representatives of each Party, or his or her designee, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's Notice of Dispute. If they succeed in resolving the Dispute, Design-Build Contractor and INDOT shall memorialize the resolution in writing.

19.2.3.3 Time Limitations

Time limitations set forth for the Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to a particular Dispute only and shall not affect the time limitations for Informal Resolution Procedures applicable to other or subsequent Disputes.

19.2.4 Failure to Resolve Dispute with Informal Resolution Procedures

19.2.4.1 If a Dispute is not timely resolved under the mandatory Informal Resolution Procedures, then the Parties shall participate in a mediation in accordance with Indiana Rules for Alternative Dispute Resolution, Rule 8 (Optional Early Mediation).

19.2.4.2 If a Dispute is not timely resolved under the Informal Resolution Procedures or by mediation, either Party may file a lawsuit in the Indiana Commercial Court in Marion County, Indiana as provided in Section 19.2.5.4(b).

19.2.5 Confidentiality of Settlement Negotiations and Other Documents Used in the Dispute Resolution Process

19.2.5.1 All discussions, negotiations, Informal Resolution Procedures and mediation described in Sections 19.2.3 and 19.2.4.1 between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, procedures or proceedings shall be considered confidential and not subject to disclosure by either Party.

19.2.5.2 During any mediation or judicial proceeding regarding a Dispute, all information that has been deposited with the Escrowed Proposal Documents shall be available as evidence but treated as confidential and subject to a protective order issued by the court to protect the information from public disclosure.

19.2.5.3 The Parties may also request a protective order in any judicial proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the Court shall be governed by the standards in the Indiana Rules of Evidence and Indiana Rules of Trial Procedure and/or Indiana's Administrative Rules, as applicable.

19.2.5.4 Administrative Hearings; Venue and Jurisdiction

- (a) INDOT acknowledges that Design-Build Contractor Claims are not subject to the jurisdiction of any Indiana administrative agency, and INDOT agrees that no defense based on failure to exhaust administrative remedies not otherwise set forth in this PPA may be raised in any court proceeding arising out of or relating to the Project.
- (b) The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, that is permitted to be brought by a Party in court arising out of the PPA Documents shall be the Indiana Commercial Court in Marion County, Indiana. All rights to jury trial are hereby waived. The Commercial Court Rules established by the Indiana Supreme Court shall apply.

19.2.6 Continuation of Disputed Work and Payments

19.2.6.1 At all times during Dispute Resolution Procedures, Design-Build Contractor and all other DB-Related Entities shall continue with the performance of the Work and their obligations, including any Disputed Work or obligations, diligently and without delay, in accordance with this PPA, except to the extent enjoined by order of a court or otherwise approved by INDOT in its sole discretion. Design-Build Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the course of Dispute Resolution Procedures relating to the Disputed Work even if Design-Build Contractor's position in connection with the Dispute ultimately prevails.

19.2.6.2 During the course of any Dispute Resolution Procedure, the Parties shall continue to comply with all provisions of the PPA Documents, the Project Management Plan, the Governmental Approvals and applicable Governmental Rules.

19.2.6.3 Throughout the course of any Disputed Work, Design-Build Contractor shall keep complete records that provide a clear distinction between the incurred direct and indirect costs of Disputed Work and that of undisputed Work. Design-Build Contractor shall provide INDOT access to all Project-related Books and Records on an Open Book Basis as INDOT desires to evaluate the Dispute. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such Disputed Work (or for any longer period required under any other applicable provision of the PPA Documents).

19.2.6.4 During the course of any Dispute Resolution Procedure, INDOT shall continue to pay to Design-Build Contractor when due all undisputed amounts owing under this PPA.

SECTION 20. ACCEPTANCE

20.1 Substantial Completion

20.1.1 Requirements

20.1.1.1 INDOT will issue a written Certificate of Substantial Completion at such time as Substantial Completion occurs for the Project.

20.1.1.2 In determining whether Substantial Completion has occurred, INDOT shall require satisfaction of the following criteria:

- (a) All major safety features are installed and functional, such major safety features to include shoulders, guardrail, guardrail transitions, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, safety end treatments, terminal anchor sections, and crash attenuators;
- (b) Required illumination is installed and functional;
- (c) Required pavement markings, signs, ITS, and signals are installed and functional;
- (d) All temporary traffic controls or Movement Closures (or both) at any time have ceased (except for (i) any required for routine maintenance or (ii) temporary lane closures during hours of low traffic volume in accordance with and as permitted by Section 12 of the Technical Provisions solely in order to complete Punch List items and any other Work required to achieve Final Acceptance);
- (e) All lanes of traffic (including freeway lanes, ramps, interchanges, collector distributor, overpasses, underpasses, other crossings and roads) set forth in the Design Documents are in their final configuration and available for public use;
- (f) Design-Build Contractor has otherwise completed the Work, in accordance with the PPA Documents and Design Documents, including the construction of retaining walls, drainage facilities, bicycle and pedestrian facilities (subject to Section 20.1.1.3), and Aesthetic and Landscape Architectural Work (subject to Section 20.1.1.3), such that the Project is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, including bicycle and pedestrian access, subject only to Punch List items and other Work that do not affect the ability to safely open the Project for such normal use and operation by the traveling public;
- (g) Construction of the Project is sufficiently completed in accordance with the PPA Documents, as modified by any executed Change Orders, so that it can be used for its intended purpose. In order for the Project to be “used for its intended purpose”, all lanes shall be, or have the ability to be, opened to traffic without further need for them to be restricted for any purpose except for the placement or maintenance of permanent erosion and sediment control or the maintenance or removal of temporary erosion and sediment control. At a minimum, all of the following criteria must be met: all lanes of the roads and bridges shall be completed through their final roadway surface, including shoulders, with all the

sidewalks, curbs, drainage features, markings, permanent safety appurtenances, lighting, traffic signals, ITS, and signing as shown in the PPA Documents;

- (h) All conditions to acceptance by Railroads and Utility Owners have been satisfied or waived, and any waivers approved by INDOT, in its sole discretion; and
- (i) All other conditions to Substantial Completion in the PPA Documents shall have been satisfied.

20.1.1.3 The Parties shall disregard the status of the Plant Establishment Work, the widening and resurfacing of the Monon Trail and sound barriers included in the Released for Construction Documents in determining whether Substantial Completion has occurred, except to the extent that its later completion will affect public safety or be inconsistent with Section 20.1.1.2(d).

20.1.2 Notification of Substantial Completion; Inspections

20.1.2.1 Design-Build Contractor shall provide INDOT with not less than 120 days' prior Notice of the date Design-Build Contractor determines it will achieve Substantial Completion. During such 120-day period, Design-Build Contractor and INDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being INDOT's orderly, timely inspection and review of the Project and the Released for Construction Documents and Construction Documents, and INDOT's issuance of a Certificate of Substantial Completion.

20.1.2.2 During such 120-day period, INDOT shall conduct an inspection of the Project and its components, a review of the Released for Construction Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved.

20.1.2.3 Design-Build Contractor shall provide INDOT a second Notice when Design-Build Contractor determines it has achieved Substantial Completion.

20.1.2.4 INDOT will then conduct such inspections, surveys and/or testing described in the Project Standards or otherwise as it deems advisable. If such inspections, surveys and/or tests disclose that any of Work does not meet the requirements of the PPA Documents, INDOT will promptly advise Design-Build Contractor as to any Errors in the Work necessary to be corrected as a condition to achieving Substantial Completion and as to any Errors which may be corrected as Punch List items. Upon correction of the Errors identified as a prerequisite to Substantial Completion, Design-Build Contractor shall provide Notice to INDOT, and INDOT will conduct additional inspections, surveys and/or testing as it deems desirable. This procedure shall be repeated until INDOT finds that all prerequisites to Substantial Completion have been met.

20.1.2.5 Within seven days after expiration of the 120-day period and receipt of the second Notice by INDOT described in Section 20.1.2.3, INDOT shall either: (a) issue the Certificate of Substantial Completion or (b) notify Design-Build Contractor in writing setting forth, as applicable, why the Project has not reached Substantial Completion. If INDOT and Design-Build Contractor cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures.

20.2 Punch List

20.2.1 The Project Management Plan shall establish procedures and schedules for preparing a Punch List and completing Punch List work. Punch List(s) shall include an itemized list of Construction Work which remains to be completed, the existence, correction and completion of which will have no adverse effect on the normal and safe operation and use of the Project. Such procedures and schedules shall conform to this Section 20.2. The Project Management Plan shall provide for development of Punch Lists for each of Substantial Completion and Final Acceptance.

20.2.2 For Substantial Completion, the schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

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

20.2.4 Design-Build Contractor shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the PPA Documents, within the time period to be set forth in the Project Management Plan.

20.3 Early Open to Traffic

20.3.1 Certain sections of the Project may be opened to traffic when specified in the PPA Documents or when directed by INDOT. Such opening shall not constitute acceptance of the Work or any part thereof or a waiver of any provision of the PPA Documents.

20.3.2 The Project Schedule shall set forth Design-Build Contractor's plan for completing sections of the Project specified in the PPA Documents and for opening them to traffic.

20.3.3 INDOT may request that Design-Build Contractor expedite certain sections of the Project, and Design-Build Contractor shall accommodate such requests to the extent that it can do so in consideration of safety to the public and construction personnel and without significant disruption to the Project Schedule or a significant increase in Design-Build Contractor's costs.

20.3.4 If, with respect to certain sections where the PPA Documents do not provide for traffic to be carried through the Work, INDOT orders Design-Build Contractor to open sections of the Project that cannot be accommodated without significant disruption to the Project Schedule or without a significant increase in Design-Build Contractor's costs, then such direction shall be considered an INDOT-Directed Change; provided; however, that Design-Build Contractor has complied with the Notice and other obligations under Section 13.2; provided further, that with

respect to such sections, INDOT shall pay Design-Build Contractor (a) any additional cost incurred to complete other items of Work solely because of the changed working conditions, and (b) repair of damage directly attributable to traffic.

20.3.5 Design-Build Contractor shall thereafter perform the remainder of any Work so as to cause the least obstruction to traffic.

20.4 Final Acceptance

20.4.1 Conditions to Final Acceptance

Final Acceptance shall be deemed to have occurred when all of the following have occurred:

- (a) Substantial Completion;
- (b) All Punch List items have been completed to the satisfaction of INDOT;
- (c) Design-Build Contractor has provided INDOT with all Design Documents, final Working Drawings of the Work, right of way record maps, surveys, test data and other Submittals required under the PPA Documents in a manner acceptable to INDOT;
- (d) All special tools, equipment, furnishings and supplies purchased and/or used by Design-Build Contractor as provided in the PPA Documents have been delivered to INDOT and all replacement spare parts, if any, shall have been purchased and delivered to INDOT free and clear of Liens;
- (e) All of Design-Build Contractor's other obligations under the PPA Documents (other than obligations which by their nature are required to be performed after Final Acceptance, including, specifically, Work during the Plant Establishment Period) shall have been satisfied in full or waived in writing by INDOT;
- (f) Design-Build Contractor has completed the Plant Establishment Work;
- (g) Design-Build Contractor has completed all sound barriers;
- (h) Design-Build Contractor has completed the widening and resurfacing of the Monon Trail;
- (i) Design-Build Contractor has provided INDOT with an executed sworn Affidavit of Final Acceptance;
- (j) Record Drawings have been delivered and accepted by INDOT pursuant to Section 2.7 of the Technical Provisions;
- (k) The final schedule has been delivered and approved by INDOT pursuant to Section 1.3.2.3 of the Technical Provisions; and
- (l) All other conditions to Final Acceptance in the PPA Documents shall have been satisfied.

20.4.2 Affidavit of Final Acceptance

- (a) Promptly after Substantial Completion has occurred, Design-Build Contractor shall perform all Work, if any, that was deferred for purposes of Final Acceptance, and shall satisfy its other obligations under the PPA Documents (other than completion of the obligation for Work during the Plant Establishment Period), so as to achieve Final Acceptance. When all of the foregoing have occurred, Design-Build Contractor shall provide an executed sworn "Affidavit of Final Acceptance" to INDOT including the following statement:

To the best of Design-Build Contractor's knowledge and belief, except for Work during the Plant Establishment Period not yet performed and IDEM Notice of Termination not yet obtained, all Work has been completed in strict accordance with the PPA Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed work under the PPA Documents, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the PPA Documents or under any adjustment issued thereunder for said undisputed work; there are no outstanding Claims, claims, Liens or stop payment notices relating to the Project or the Work, including claims by Utility Owners, Railroads, Governmental Entities, and Local Agencies; there is no existing default of the obligations of INDOT under any Utility Agreement or the Railroad Agreement that are Design-Build Contractor's responsibility pursuant to the PPA Documents, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or an event of default under any Utility Agreement or the Railroad Agreement; and upon receipt of final payment, Design-Build Contractor and Subcontractors acknowledge that INDOT and any and all employees of INDOT and their authorized representatives will thereby be released, discharged and acquitted from any and all Claims or liability for additional sums on account of undisputed Work performed under the PPA Documents.

- (b) If Design-Build Contractor is unable to provide the affidavit in the above form as it relates to outstanding Claims, Liens or stop payment notices relating to the Project or the Work, the affidavit shall certify that all such outstanding matters are in an attached list which shall describe the outstanding matters in such detail as may be requested by INDOT. The affidavit shall include a representation of Design-Build Contractor that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same including an estimate of the maximum payable with respect to each such matter. INDOT may condition its acceptance of such affidavit in such form by requiring that Design-Build Contractor post security or take other actions which, in the sole discretion of INDOT, will adequately protect INDOT and the Project against such outstanding matters.

20.4.3 Inspection and Issuance of Certificate of Final Acceptance

Upon receipt of Notice from Design-Build Contractor that all conditions to Final Acceptance have been met, INDOT will make final inspection and INDOT will either issue a Certificate of Final Acceptance or notify Design-Build Contractor regarding any Work remaining to be performed. If INDOT fails to issue a Certificate of Final Acceptance, Design-Build Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Design-Build Contractor shall give INDOT a revised Affidavit of Final Acceptance with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure shall apply successively thereafter until INDOT has given Design-Build Contractor an executed Certificate of Final Acceptance.

20.4.4 No Relief from Liability

Final Acceptance will not prevent INDOT from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall it prevent INDOT from recovering from Design-Build Contractor, any Guarantor, the Surety(ies), or other provider of performance security or any combination of the foregoing, overpayment sustained for failure of Design-Build Contractor to fulfill the obligations under the PPA Documents. A waiver on the part of INDOT of any breach of Design-Build Contractor shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve Design-Build Contractor from any of its continuing or surviving obligations hereunder, including Warranty obligations.

20.5 Expiration of the Plant Establishment Period

Expiration of the Plant Establishment Period shall be deemed to have occurred when (a) Design-Build Contractor has fully completed, and otherwise satisfied the requirements for, the Plant Establishment Work and (b) INDOT concurs that the Plant Establishment Work is complete and issues the Certificate of Plant Establishment.

SECTION 21. DOCUMENTS AND RECORDS

21.1 Escrowed Proposal Documents

Prior to execution of this PPA, Design-Build Contractor has delivered to INDOT one copy of the Escrowed Proposal Documents. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to this PPA and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation, amendment or Change Order, as applicable, shall be added to a jointly keyed and locked fireproof cabinet to be held with the other EPDs. The EPDs will be held in such cabinet at INDOT headquarters in Indianapolis, Indiana or the INDOT Project field office or otherwise maintained subject to Section 21.1.1 until all of the following have occurred: (a) 180 days have elapsed from Final Acceptance or termination of the Work, as applicable; (b) all Disputes regarding the PPA Documents have been settled; and (c) Final Payment on this PPA has been made by INDOT and accepted by Design-Build Contractor.

21.1.1 Availability for Review

Upon at least two days' Notice, Design-Build Contractor and INDOT, and its successors and assigns, may jointly examine, through one or more designated representatives all or any part of the EPDs during regular business hours. The Party undertaking an examination need not have or state a specific reason to examine such material. INDOT shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. INDOT shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters; provided, however, that INDOT has executed and delivered to Design-Build Contractor a confidentiality statement specifying that, to the extent consistent with Governmental Rules, all proprietary information contained in such documents will be kept confidential, that copies of such documents will not be distributed to any third parties other than the attorneys and experts of INDOT and any court considering a Dispute or Claim, and that all copies of such documents (other than those delivered to Dispute resolvers) will be either destroyed or returned to the depository (or to Design-Build Contractor if the EPDs have been returned to it) upon final resolution of the negotiations or Disputes or Claims.

21.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of Design-Build Contractor and shall be considered to be in Design-Build Contractor's possession, subject to the right of INDOT to review and use the EPDs as provided in this Section 21. INDOT acknowledges that Design-Build Contractor may consider that the EPDs constitute trade secrets or proprietary information. This acknowledgment is based upon the representation of Design-Build Contractor that the information contained in the EPDs is not known outside Design-Build Contractor's business, is known only to a limited extent and by a limited number of employees of Design-Build Contractor, is safeguarded while in Design-Build Contractor's possession, and may be valuable to Design-Build Contractor's construction strategies, assumptions and intended means, methods, and techniques of construction. INDOT further acknowledges that, based upon the representation by Design-Build Contractor, Design-Build Contractor expended money in developing the information included in the EPDs and INDOT further acknowledges that, based upon the representation by Design-Build Contractor, it would be difficult for a competitor to replicate the information contained therein. INDOT acknowledges that the EPDs and the information contained therein are being made accessible to INDOT only because it is an express prerequisite to award of this PPA.

21.1.3 Representation

Design-Build Contractor represents and warrants that (i) the EPDs were or will be personally examined prior to delivery by an authorized officer of Design-Build Contractor and meet the requirements of Section 21.1.4; (ii) the EPDs constitute all of the information used in the preparation of its Price Proposal and pricing related to PPA amendments and Change Orders and agrees that no other Price Proposal, PPA amendment or Change Order preparation information will be considered in resolving Disputes or Claims; and (iii) the EPDs provided in connection with quotations, PPA amendments, and Change Orders will be personally examined prior to delivery by an authorized officer of Design-Build Contractor, and that they will meet the requirements of Section 21.1.4. Design-Build Contractor agrees that the EPDs are not part of the PPA Documents and that nothing in the EPDs shall change or modify the PPA Documents.

21.1.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how the components of the Price Proposal were determined and shall be in sufficient detail as is adequate to enable a complete understanding and interpretation of how Design-Build Contractor arrived at the Price Proposal. The EPDs provided in connection with quotations, PPA amendments, and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined. In this regard, crews, equipment, materials, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into Design-Build Contractor's usual cost categories such as direct labor, repair labor, equipment ownership, rental and operation, expendable materials, permanent materials, and Subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in Design-Build Contractor's usual format. Design-Build Contractor's allocation of plant and equipment, indirect costs, risk contingencies, markup, and other items to each direct cost item shall be clearly identified. The EPDs shall itemize the estimated costs of the Payment Bond, Performance Bond and the insurance premiums for each coverage required to be provided by Design-Build Contractor under Section 9. The EPDs shall include electronic media data files associated with all assumptions, detailed quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and Suppliers, quotes for insurance and bond premiums, memoranda, narratives, and all other information used by Design-Build Contractor to arrive at the Price Proposal or amendment or Change Order. The EPDs shall submitted in format as is used by Design-Build Contractor to develop its Proposal, Contract Price and, as applicable, Change Order.

21.1.5 Form of EPDs

Design-Build Contractor shall submit the initial EPDs in such format as is used by Design-Build Contractor in connection with its Proposal.

21.1.6 Review by INDOT; Supplementary Information

INDOT may, at any time, conduct a review of the EPDs to determine whether they are complete. In the event INDOT determines that any data is missing, Design-Build Contractor shall provide such data within five days after the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD information, and added to the EPDs. Design-Build Contractor shall have no right to add documents to the EPDs except upon INDOT's request. At INDOT's option, which may be exercised at any time, the EPDs associated with any Change Order or PPA amendment shall be reviewed, organized, and indexed, to be jointly undertaken with Design-Build Contractor. The review by INDOT shall assess the completeness and accuracy of the EPDs, and

INDOT and Design-Build Contractor shall jointly develop and countersign a detailed index and catalogue of the contents of the EPDs. If, following the review and organization, INDOT determines that the EPDs are incomplete, INDOT may require Design-Build Contractor to supply data to make the EPDs complete.

21.2 Subcontractor Pricing Documents

Design-Build Contractor shall require the principal design Subcontractor (including any joint venture) and each Major Subcontractor to submit to Design-Build Contractor a copy of all documentary information used in determining its Subcontract price (or the price for Subcontract Work included in any Change Order or PPA amendment), immediately prior to executing the Subcontract and each Change Order and Subcontract amendment, to be held in the same manner as the EPDs and which shall be accessible by Design-Build Contractor and its successors and assigns (including INDOT) and the Disputes Review Team, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor, for the benefit of Design-Build Contractor and INDOT, stating that its EPDs constitute all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of Design-Build Contractor and INDOT together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate, and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Design-Build Contractor and/or INDOT in connection with any Claim made by such Subcontractor.

21.3 Financial Reporting Requirements

21.3.1 Design-Build Contractor shall, for itself and any Guarantor, furnish, or cause to be furnished, to INDOT such information and statements as INDOT may reasonably request from time to time for any purpose related to the Project, the Work or the PPA Documents, including the information required to assist INDOT in the preparation of its financial plan in respect to INDOT's obligations to FHWA, and Design-Build Contractor's financial capacity to perform the Work. Design-Build Contractor shall furnish, or cause to be furnished, such information and statements within 14 days after INDOT's request.

21.3.2 Design-Build Contractor shall cooperate and provide, and shall cause [any Guarantor and]***[NTD: To be conformed in execution version based on whether a guarantor is used]*** the Subcontractors to cooperate and provide, such information as is necessary or requested by INDOT to assist or facilitate the submission by INDOT of any documentation, reports or analysis required by the FHWA and/or any other Governmental Entity with jurisdiction over the Project. Design-Build Contractor shall provide such information, or shall cause such information to be provided, on an annual basis until termination of this PPA, unless requested more frequently by INDOT as a result of reporting requirements, or otherwise on a reasonable basis or for cause (and see Section 7.2.6.2(q) for a non-exhaustive list of requests that shall be deemed reasonable).

21.3.3 All reports and information delivered by Design-Build Contractor under Section 21.3.1 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

21.4 Maintenance of, Access to and Audit of Records

21.4.1 Except for EPDs (which shall be maintained as set forth in Section 21.1), Design-Build Contractor shall maintain at its Project field office within one mile of the Project in Marion County a complete set of all Books and Records including copies of all original documents delivered to INDOT. Notwithstanding the foregoing, Design-Build Contractor may, for those Books and Records that are maintained and kept in its ordinary course of business at its home office, maintain such books, records and documents in a home office or satellite office located within 75 miles of the INDOT offices in Indianapolis, Indiana. Design-Build Contractor shall keep and maintain such Books and Records in accordance with applicable provisions of the PPA Documents and of the Project Management Plan, and in accordance with Good Industry Practice. Design-Build Contractor shall, upon 48 hours' prior Notice from INDOT (or unannounced and without prior notice where there is good faith suspicion of fraud or other criminal activity), grant to INDOT, its Authorized Representatives and legal counsel, and FHWA access to the Books and Records such that INDOT and its Authorized Representatives and legal counsel may review and conduct audits as and when INDOT deems necessary. Furthermore, Design-Build Contractor shall provide such Persons copies of such Books and Records (including all tax returns and supporting documentation filed with any Governmental Entity) upon the request of INDOT and at no cost to INDOT. These rights of audit and inspection by INDOT include the right to make such copies and extracts (at Design-Build Contractor's expense) and to take notes. Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Design-Build Contractor has been overcredited under a previous progress report or progress payment, that overcredit will, at INDOT's sole option, be credited against current progress reports or payments or reimbursed to INDOT by Design-Build Contractor upon demand therefor. For avoidance of doubt, this paragraph shall remain in full force and effect regardless of whether either Party or both Parties have invoked or commenced the Dispute Resolution Procedures herein.

21.4.2 For cost and pricing data submitted in connection with pricing Change Orders or PPA amendments, unless such pricing is based on adequate price competition (as determined by INDOT), established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by Governmental Rule, INDOT and its consultants, Authorized Representatives and legal counsel have the right to examine all Books and Records related to the negotiation of or performance of Work under such Change Orders and PPA amendments for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all Books and Records deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

21.4.3 All Claims or Disputes filed against INDOT shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees, legal counsel, or other representatives of INDOT or by an auditor under contract with INDOT. No Notice is required before commencing any audit before 60 days after the Final Acceptance Date. Thereafter, INDOT shall provide 20 days' Notice to Design-Build Contractor, any Subcontractors or their respective agents before commencing an audit. Design-Build Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to INDOT, for the audit during normal business hours. Design-Build Contractor, Subcontractors or their agents shall cooperate with the auditors and other representatives of INDOT. Failure of Design-Build Contractor, Subcontractors

or their agents to maintain and retain sufficient records to allow the auditors/representatives of INDOT to verify all or a portion of the Claim or Dispute or to permit the auditors/representatives of INDOT access to the Books and Records of Design-Build Contractor, Subcontractors or their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder.

21.4.4 Full compliance by Design-Build Contractor with the provisions of this Section 21.4 is a contractual condition precedent to Design-Build Contractor's right to seek relief under Section 19.

21.4.5 Any rights of FHWA, Inspectors General, and the U.S. Comptroller General to review and audit Design-Build Contractor, its Subcontractors, and their respective Books and Records are set forth in Exhibit 11.

21.4.6 Design-Build Contractor represents and warrants the completeness and accuracy of all information it or its agents provide in connection with the audits identified herein, and shall cause all Subcontractors to warrant the completeness and accuracy of all information such Subcontractors or their agents provide in connection with this Section 21.4.

21.4.7 Design-Build Contractor's internal quality and compliance auditing responsibilities shall be set forth in the Project Management Plan and shall be consistent with the requirements set forth in Sections 1.3.3.2 and 2 of the Technical Provisions.

21.5 Retention of Records

Design-Build Contractor shall maintain all Books and Records relating to the Work and the Project (including copies of all original documents delivered to INDOT) in Marion County, Indiana, until five years after the Final Acceptance Date or the termination of this PPA, whichever is applicable. Design-Build Contractor shall provide to INDOT Notice of where such Books and Records are kept. Notwithstanding the foregoing, all Books and Records which relate to Claims being processed or Disputes brought under the Dispute Resolution Procedures shall be retained and made available until such Disputes and Claims have been finally resolved. Books and Records to be retained include all books, electronic information, and files and other evidence bearing on Design-Build Contractor's costs under the PPA Documents. Design-Build Contractor shall make these Books and Records available for audit and inspection to INDOT, at Design-Build Contractor's offices in Marion County, Indiana, at all reasonable times, without charge, and shall allow INDOT to make copies of such Books and Records (at no expense to Design-Build Contractor). If approved by INDOT, photographs, microphotographs or other authentic reproductions may be maintained instead of original Books and Records.

21.6 Public Records Act

21.6.1 Design-Build Contractor acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in INDOT's possession, including materials submitted by Design-Build Contractor to INDOT, are subject to the provisions of the Public Records Act. If Design-Build Contractor believes information or materials submitted to INDOT constitute trade secrets or are otherwise exempt from disclosure under the Public Records Act pursuant to IC § 5-14-3, Design-Build Contractor shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific trade secret or other basis for exemption shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the Claim including the specific Governmental

Rules that exempts the material from disclosure under the Public Records Act. Nothing contained in this Section 21.6.2 shall modify or amend requirements and obligations imposed on INDOT by the Public Records Act or other applicable Governmental Rules, and the provisions of the Public Records Act or other Governmental Rules shall control in the event of a conflict between the procedures described above and the applicable Governmental Rules. Design-Build Contractor is advised to contact legal counsel concerning such Governmental Rules and its application to Design-Build Contractor.

21.6.2 If INDOT receives a request for public disclosure of materials marked "CONFIDENTIAL," INDOT will use reasonable efforts to notify Design-Build Contractor of the request and give Design-Build Contractor an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Records Act or other applicable Governmental Rules within the time period specified in the Notice issued by INDOT and allowed under the Public Records Act. Under no circumstances, however, will INDOT be responsible or liable to Design-Build Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Governmental Rules, or court order, or occurs through inadvertence, mistake or negligence on the part of INDOT or its officers, employees, contractors or consultants.

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

21.7 Ownership of Documents

Subject to Section 21.8, all data, sketches, charts, calculations, plans, specifications, electronic files, correspondence, reports, analyses, studies, and other documents and materials created or collected under the terms of the PPA Documents shall be considered "works made for hire" for which INDOT owns the copyright. Design Documents shall become INDOT's property upon preparation; Construction Documents shall become INDOT's property upon delivery to INDOT; and other documents prepared or obtained by Design-Build Contractor in connection with the performance of its obligations under the PPA Documents, including studies, manuals, Record Drawings, technical, and other reports and the like, shall become the property of INDOT upon Design-Build Contractor's preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be furnished to INDOT upon preparation or receipt thereof by Design-Build Contractor. Design-Build Contractor shall maintain all other documents described in this Section 21.7 in accordance with the requirements of Section 21.4 and shall deliver copies to INDOT as required by the PPA Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to INDOT as a condition to Final Acceptance.

21.8 Intellectual Property

21.8.1 All Proprietary Intellectual Property shall remain exclusively the property of Design-Build Contractor or its Affiliates or Subcontractors that supply the same, notwithstanding any delivery of copies thereof to INDOT.

21.8.2 INDOT has and is hereby granted a nonexclusive, transferable, irrevocable, royalty-free, fully paid up right and license to use, reproduce, modify, adapt, and disclose, and sublicense others to use, reproduce, modify, adapt, and disclose, the Proprietary Intellectual Property of Design-Build Contractor, including with respect to Source Code and Source Code Documentation, solely in connection with the Project and any interstate or state highway, tolled or not tolled, owned and operated by INDOT or a State or regional Governmental Entity; provided that INDOT shall have the right to exercise such license only at the following times:

- (a) From and after the expiration or earlier termination of this PPA for any reason whatsoever;
- (b) During any time that a receiver is appointed for Design-Build Contractor, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Design-Build Contractor is the debtor, in which case INDOT may exercise such license only in connection with the Project; and
- (c) During any time that Design-Build Contractor has been replaced.

21.8.3 Subject to the license and rights granted to INDOT pursuant to Section 21.8.2, INDOT shall not at any time sell any Proprietary Intellectual Property of Design-Build Contractor or use, reproduce, modify, adapt, and disclose, or allow any party to use, reproduce, modify, adapt, and disclose, any such Proprietary Intellectual Property for any other purpose.

21.8.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of INDOT generally or with respect to the Project.

21.8.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate an interstate or state highway or other road, tolled or not tolled, and to the lessees, operators, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of INDOT or any such State or regional Governmental Entity in connection with the Project or an interstate or another state highway or other road, tolled or non-tolled. All such sublicenses shall be subject to Section 21.8.6.

21.8.6 Subject to Section 21.6, INDOT shall:

- (a) Not disclose any Proprietary Intellectual Property of Design-Build Contractor to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of INDOT relating thereto;
- (b) Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Design-Build Contractor and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

21.8.7 Notwithstanding any contrary provision of this PPA, in no event shall INDOT or any of its directors, officers, employees, consultants or agents be liable to Design-Build Contractor, any Affiliate or any Subcontractor for any Losses, including loss of profit, arising out

of or relating to breach of the duty of confidentiality set forth in Section 21.8.6 if such breach is not the result of gross negligence or intentional misconduct. Design-Build Contractor hereby irrevocably waives all Claims to any such Losses.

21.8.8 Design-Build Contractor shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

21.8.9 With respect to any Proprietary Intellectual Property, owned by a Person other than Design-Build Contractor, including any Affiliate, and other than INDOT or a Governmental Entity acting as a Subcontractor, Design-Build Contractor shall obtain from such owner, concurrently with the execution of any contract, Subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for Design-Build Contractor and INDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt, and disclose such Proprietary Intellectual Property solely in connection with the Project and any state highway, tolled or not tolled, owned and operated by INDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 21.8.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as “shrink wrap software”) owned by such a Person where such a license cannot be extended to INDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing, and disclosure by INDOT set forth in Section 21.8.3 through Section 21.8.6 shall also apply to INDOT’s licenses in such Proprietary Intellectual Property.

SECTION 22. VALUE ENGINEERING

22.1 General

This Section 22 sets forth the requirements applicable to preparation, review, and approval of value engineering recommendations (“Value Engineering Change Proposals” or “VECPs”) for the purpose of enabling Design-Build Contractor and INDOT to take advantage of potential cost savings or provide potential improvements to the Work through changes in the requirements relating to the Work. Design-Build Contractor is encouraged to submit VECPs whenever it identifies potential savings or improvements for the Project. INDOT may also request Design-Build Contractor to develop and submit a specific VECP (“INDOT-Initiated VECP”). Design-Build Contractor shall have the right to refuse to consider such INDOT-Initiated VECP; provided, however, that nothing herein is intended to alter the right of INDOT to issue INDOT-Directed Changes in accordance with Section 13.

22.2 Value Engineering Recommendation

A VECP is a proposal developed and documented by Design-Build Contractor which:

- (a) Would modify or require a change in any of the commitments, requirements of or constraints set forth in the PPA Documents in order to be implemented; and
- (b) Reduces the Project cost without impairing essential functions or characteristics of the Project (including the meeting of requirements contained in all Governmental Approvals) including service life, economy of operation, ease of maintenance, desirability, and safety, and provided that it is not based solely upon a change in quantities, performance or reliability or a relaxation of the requirements contained in the PPA Documents.

22.3 Information to be Provided

22.3.1 At a minimum, the following information shall be submitted by Design-Build Contractor with each VECP:

- (a) A statement that the submission is a VECP, and a narrative description of the proposed change;
- (b) Description of the existing requirements of the PPA Documents which are involved in the proposed change;
- (c) Description of the proposed change;
- (d) Discussion of differences between existing requirements in the PPA Documents and the proposed change, together with advantages and disadvantages of each changed item;
- (e) Itemization of the requirements of the PPA Documents which must be changed if the VECP is approved (e.g., document sections, drawing numbers, and specifications);

- (f) A complete cost analysis including: (i) Design-Build Contractor's cost estimate for performing the subject Work in accordance with the PPA Documents compared to Design-Build Contractor's cost estimate for performing the subject Work in accordance with the proposed changes, (ii) an estimate of additional costs that will be incurred by INDOT, including estimated impact on future maintenance costs; and (iii) costs of development and implementation of the VECP by Design-Build Contractor. The cost of any additional Governmental Approvals, rights of way or easements and other costs or impacts to the Project, shall be included in the cost analysis;
- (g) Justification for changes in function or characteristics of each item, and the effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the PPA Documents, including environmental compliance and requirements contained in Governmental Approvals;
- (h) If available, a description of any previous use or tests of the VECP and the conditions and results; and
- (i) Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Project Schedule.

22.3.2 Any additional information requested by INDOT shall be provided in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

22.4 Review of VECPs

Design-Build Contractor shall submit VECPs directly to INDOT. Each VECP shall be prepared in a form acceptable to INDOT, and shall meet all applicable requirements of this Section 22. INDOT will determine whether a VECP qualifies for consideration and evaluation. VECPs that require excessive time or costs for review, evaluation or investigations, or that are not consistent with INDOT's design policies and basic design criteria may be rejected without evaluation. Design-Build Contractor shall have no Claim for any additional costs or delays resulting from the rejection of a VECP initiated by Design-Build Contractor, including VECP development costs, loss of anticipated profits or increased material or labor costs. INDOT will consider only proven features that have been employed under similar conditions or projects acceptable to INDOT. INDOT shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section 22. Design-Build Contractor may withdraw all or part of any VECP at any time prior to approval by INDOT. Subject to Section 22.6, in all other situations each Party shall bear its own costs in connection with preparation and review of VECPs.

22.5 Approval of VECPs

22.5.1 INDOT may approve, in its sole discretion, in whole or in part, by Change Order, any VECP submitted. Designs for approved VECPs shall be prepared by Design-Build Contractor for incorporation into the Design Documents. Until a Change Order is issued based on a VECP, Design-Build Contractor shall remain obligated to perform in accordance with the Released for Construction Documents and other PPA Documents. INDOT shall have sole discretion as to rejection or approval of any VECP.

22.5.2 The following provisions shall apply to any Dispute between INDOT and Design-Build Contractor regarding Design-Build Contractor's performance of Work that INDOT believes should have properly been submitted as a VECP. Design-Build Contractor agrees that, within 30 days following a request from INDOT for a VECP with regard to any such Work, Design-Build Contractor shall deliver a VECP to INDOT meeting all of the requirements of this Section 22, but may specify that the VECP is delivered under protest. In such case, either Party shall have the right to submit the question of Design-Build Contractor's entitlement to proceed without an approved VECP to Dispute resolution pursuant to Section 19. If a determination is ultimately made that Design-Build Contractor is not entitled to proceed without an approved VECP, INDOT shall be entitled to a credit against the Contract Price as provided in Section 22.6. If a determination is ultimately made that Design-Build Contractor is entitled to proceed without an approved VECP, the VECP shall be deemed withdrawn and have no effect. If Design-Build Contractor fails to deliver a complete VECP within the foregoing deadline, INDOT shall have the right to submit the issue to Dispute resolution pursuant to Section 19 at any time. In such event, if the Dispute proceeding under the Dispute Resolution Procedures ultimately results in a determination that Design-Build Contractor was not entitled to perform such Work without a prior approved VECP, INDOT shall be entitled to receive a credit against the Contract Price equal to 100% of Design-Build Contractor's cost savings, plus profit, rather than 50% of estimated net savings as provided in Section 22.6.

22.5.3 Unless Design-Build Contractor has received specific written permission from INDOT to proceed with VECP work pending approval of a VECP, Design-Build Contractor shall not have the right to proceed with such work until the VECP is approved. Furthermore, if Design-Build Contractor proceeds with any work that might have been the basis for a VECP price increase based on savings in INDOT's right of way costs, without first submitting a VECP, Design-Build Contractor shall be deemed to have performed such work as a volunteer and shall not have the right to later submit a VECP hereunder.

22.6 Contract Price Adjustment

If INDOT accepts a VECP submitted by Design-Build Contractor pursuant to this Section 22, the Contract Price shall be adjusted in accordance with the following:

22.6.1 The term "estimated net savings" as used herein shall mean (a) the difference between the cost of performing the Work according to the PPA Documents and the actual cost to perform it according to the proposed change, less (b) the reasonable costs of studying and preparing the VECP as proven by Design-Build Contractor and approved by INDOT in accordance with the Change Order procedures set forth herein, less (c) any additional costs incurred or to be incurred by INDOT resulting from the VECP, including the cost of review by INDOT of the VECP and implementation and maintenance costs associated therewith. Design-Build Contractor's profit shall not be considered part of the cost.

22.6.2 Except as specified in Section 22.6.4, Design-Build Contractor is not entitled to share in either collateral or future contract savings. The term "collateral savings" means additional revenues that may arise as a result of the VECP and those measurable net reductions in costs of INDOT resulting from the VECP, including operations and maintenance costs and cost of property furnished by INDOT. The term "future PPA savings" shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VECP submitted by Design-Build Contractor.

22.6.3 Subject to Sections 22.6.4 and 22.6.5, the Contract Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by INDOT resulting from the VECP plus (b) 50% of estimated net savings; provided, however, that Design-Build Contractor's profit shall not be reduced by application of the VECP.

22.6.4 In a case where Design-Build Contractor proposes that an adjustment be made to the planned acquisition of real property in order to result in an overall cost savings to the Project (such as a proposal that additional real property be purchased outside of the Planned ROW Limits in order to save on construction costs, or a proposal which would enable a reduction in the real property required to be obtained by INDOT hereunder by incurring additional construction costs), the VECP shall compare (a) the incremental reduction in costs (such as for not designing and building a wall), and (b) the costs involved in adjusting the real property limits or Environmental Approvals (which shall be based on Design-Build Contractor's additional costs, such as for providing real property acquisition support services (including profit) plus additional costs of INDOT, including costs of personnel as well as out-of-pocket costs such as the price of the additional real property), or (as appropriate) shall compare (i) the incremental reduction in costs (if any) for not acquiring the unnecessary real property, and (ii) the additional construction costs to be incurred. The estimated net savings shall be shared 50-50 between INDOT and Design-Build Contractor. Reimbursements for Utility Adjustment expenses owed to Utility Owners shall be addressed in calculating estimated net savings to be shared between INDOT and Design-Build Contractor. Design-Build Contractor shall include in its VECP an analysis of any impacts on Utility Owners for consideration by INDOT. If Design-Build Contractor wishes to propose such a VECP, Design-Build Contractor shall provide a separate notification to INDOT describing the proposed impact concurrently with delivery of the VECP to INDOT.

22.6.5 Design-Build Contractor's share of any VECP cost savings shall be payable at such time as payments would have been made for the Work which is the subject of the VECP had the VECP not been implemented.

22.6.6 A VECP shall not be required for any Deviations from Project Standards allowed by INDOT, except for changes based on concepts submitted by other proposers, or changes that also entail a modification of commitments contained in the Proposal or requirements of or constraints set forth in the PPA Documents.

22.7 Use of VECPs by INDOT

All approved or disapproved VECPs will become the property of INDOT, and shall contain no restrictions imposed by Design-Build Contractor on their use or disclosure, except as permitted in Section 22.8. Notwithstanding any restrictions pursuant to Section 22.8, INDOT retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the VECP on any other or subsequent projects without any obligation to Design-Build Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

22.8 Public Records Act Exclusion

If Design-Build Contractor proposes any VECP that incorporates Intellectual Property or other proprietary information developed prior to award of the PPA, or developed by Design-Build Contractor after award of this PPA (provided that Design-Build Contractor establishes to the satisfaction of INDOT that it was developed apart from, and in isolation from, this PPA), Design-

Build Contractor may identify such data and information included in the VECP as “Confidential,” in which event the provisions of Section 21.6 shall be applicable.

SECTION 23. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND ADJACENT PROPERTY OWNERS

23.1 Cooperation with Other INDOT Contractors

23.1.1 Design-Build Contractor acknowledges and agrees that:

- (a) Other INDOT Contractors might be working at, near or otherwise be present on or near the Site during performance of the Work;
- (b) The work of Other INDOT Contractors might interfere with Design-Build Contractor's use of certain facilities on or near the Site;
- (c) DB-Related Entities, including Design-Build Contractor, shall fully cooperate and be solely responsible for coordinating the Work with (i) all Other INDOT Contractors and (ii) Local Agencies, Utility Owners, Railroads, and their respective contractors and shall schedule and sequence the Work as reasonably necessary to accommodate the work and projects of all of the foregoing entities; and
- (d) INDOT reserves the right to contract for and perform other or additional work on or near the Site.

23.1.2 In addition to contracts with Other INDOT Contractors, if additional, separate contracts are awarded, or separate projects are performed by INDOT, Railroads, Local Agencies, or Utility Owners that affect the Work, Design-Build Contractor shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by, or on behalf of, such Persons.

23.2 Interference by Other INDOT Contractors

23.2.1 If Design-Build Contractor asserts that any Other INDOT Contractor, Governmental Entity (other than INDOT), any Utility Owner, Local Agencies, Railroads, or any of their respective contractors have caused damage to the Work, or have hindered or interfered with the progress or completion of the Work, then Design-Build Contractor's sole remedy shall be to seek recourse against such Person(s).

23.2.2 In no event shall Design-Build Contractor have any Claim or other right to compensation, time extension or other relief against INDOT for the actions or omissions of any Other INDOT Contractor or work performed by INDOT, any other Governmental Entity, any Utility Owner, Local Agency, or the Railroad, except as expressly provided otherwise in this PPA.

23.3 Coordination with Utility Owners and Adjacent Property Owners

Design-Build Contractor shall coordinate with Utility Owners and owners of property adjoining the Project, and with their respective contractors, as more particularly described in the PPA Documents.

SECTION 24. MISCELLANEOUS PROVISIONS

24.1 Amendments

The PPA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this PPA.

24.2 Waiver

24.2.1 No waiver of any term, covenant or condition of the PPA Documents shall be valid unless in writing and signed by the obligee Party.

24.2.2 The exercise by a Party of any right or remedy provided under the PPA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under the PPA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the PPA Documents. The consent by one Party to any act by the other Party requiring such consent shall not create a course of conduct or be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

24.2.3 Except as provided otherwise in the PPA Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to create a course of conduct or waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the PPA Documents.

24.2.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the PPA Documents at any time shall not in any way create a course of conduct or limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the PPA Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

24.2.5 Neither the review, approval or acceptance of, nor payment for, the services required under this PPA or the other PPA Documents by INDOT shall be construed to operate as a waiver of any rights under this PPA or any of the other PPA Documents or for any cause of action arising out of the performance of this PPA or the other PPA Documents, and Design-Build Contractor shall be and remain liable to INDOT in accordance with applicable Governmental Rules for all Losses suffered by INDOT as set forth in the PPA Documents.

24.3 Independent Contractor

Design-Build Contractor is an independent contractor, and nothing contained in the PPA Documents shall be construed as constituting any relationship with INDOT other than that of Project owner and independent contractor. In no event shall the relationship between INDOT and Design-Build Contractor be construed as creating any relationship whatsoever between INDOT or the State and any employees or applicants for employment of Design-Build Contractor or any

other DB-Related Entity. Neither Design-Build Contractor nor any of the employees (or applicants) of Design-Build Contractor or any other DB-Related Entity is or shall be deemed to be an employee of INDOT or the State. Except as otherwise specified in the PPA Documents, Design-Build Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that Design-Build Contractor or any Subcontractor hires to perform or assist in performing the Work.

24.4 Successors and Assigns

24.4.1 The PPA Documents shall be binding upon and inure to the benefit of INDOT and Design-Build Contractor and each of their permitted successors, assigns and legal representatives.

24.4.2 INDOT may assign all or part of its right, title, and interest in and to any PPA Documents and performance security, including rights with respect to the Payment Bonds and Performance Bonds, the Warranty Bond, *[and the Guaranty]****[NTD: To be conformed in execution version based on whether a guarantor is used]***, to any other Person.

24.4.3 Design-Build Contractor shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Design-Build Contractor's interest in and to the PPA Documents or any portion thereof without the prior written approval of INDOT, except to any entity in which the organizations signing this PPA for Design-Build Contractor, or the shareholder(s), general partner(s) or member(s) that exercise management control over such organizations, hold and exercise effective management control and hold the same percentage of equity interest in Design-Build Contractor that exists as of the Proposal Date. Design-Build Contractor shall not sublease or grant any other special occupancy or use of the Project to any other Person, without the prior written approval of INDOT. Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use in violation of this provision shall be null and void ab initio and INDOT, at its option, may declare any such attempted action to be a material Design-Build Contractor Default.

24.4.4 Design-Build Contractor shall not voluntarily or involuntarily cause, permit or suffer any Change of Control prior to Final Acceptance without the prior written approval of INDOT. If there occurs any voluntary or involuntary Change of Control without the prior written approval of INDOT, INDOT, at its option, may declare it to be a material Design-Build Contractor Default.

24.4.5 Where the prior written approval of INDOT is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control prior to Final Acceptance, INDOT may withhold or condition its approval in its sole discretion. Any such decision of INDOT to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures. If for any reason INDOT does not act within 30 days after receiving all required information, or any extension thereof by mutual agreement of the Parties, the proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control shall not be permitted.

24.4.6 Assignments and transfers of Design-Build Contractor's interest permitted under this Section 24.4 or otherwise approved in writing by INDOT shall be effective only upon receipt of Notice by INDOT of the assignment or transfer and a written recordable instrument

executed by the transferee (and any Guarantor and any Surety), in form and substance acceptable to INDOT, in which the transferee, without condition or reservation, assumes all of Design-Build Contractor's obligations, duties, and liabilities under this PPA and the other PPA Documents then in effect and agrees to perform and observe all provisions thereof applicable to Design-Build Contractor. Each transferee shall take Design-Build Contractor's interest subject to, and shall be bound by, the Project Management Plan, the Major Subcontracts, the Utility Agreements, the Railroad Agreements, all INDOT-Provided Approvals, the Governmental Approvals, the Other Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by INDOT in writing, in its sole discretion.

24.4.7 No assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant by Design-Build Contractor or any permitted successor and assign thereto shall release Design-Build Contractor, any Guarantor, any Surety or the assignor from any liabilities or obligations under the PPA Documents and each of such entities shall remain liable and obligated therefor.

24.4.8 Design-Build Contractor shall not change the legal form of its organization without the prior written approval of INDOT, which consent may be granted or withheld in the sole discretion of INDOT.

24.4.9 Any permitted assignment of Design-Build Contractor's interest shall not take effect until replacement Bonds and Guaranties are provided without lapse in coverage. This requirement may be met if the Surety/ies and Guarantor(s) amend existing Bonds and Guarantees to name Design-Build Contractor's assignee as the Principal (under the Bonds) and "Design-Build Contractor" (under the Guarantees).

24.5 Designation of Representatives; Cooperation with Representatives

24.5.1 INDOT and Design-Build Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the PPA Documents ("Authorized Representatives"). Exhibit 6 hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 24.12. The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the Parties but who do not have authority to bind INDOT or Design-Build Contractor.

24.5.2 Design-Build Contractor shall cooperate with INDOT and all representatives of INDOT designated as described above.

24.6 Compliance with Other Governmental Rules

24.6.1 Design-Build Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with INDOT or the State, as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Design-Build Contractor is not familiar with these ethical requirements, Design-Build Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics>. If Design-Build Contractor or its agents violate any applicable ethical standards, Design-Build

Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable Governmental Rules.

24.6.2 Design-Build Contractor and its agents shall abide by all requirements of IC § 8-15.5-13-7 in respect of the prohibition on political contributions by Design-Build Contractor. Neither Design-Build Contractor nor any individual who has an interest in Design-Build Contractor, may make any contribution to any candidate, or committee, during and up to and including three years following the Final Acceptance Date.

24.6.3 Developer shall comply with all applicable federal, state and local Governmental Rules, and all provisions required thereby to be included herein are hereby incorporated by reference.

24.7 Term

Except for such provisions that survive the expiration or termination of this PPA, including the indemnity obligations under Section 18 and INDOT's rights and remedies under applicable law and in equity, this PPA shall be effective as of the Effective Date and shall terminate at the conclusion of the Warranty Period or the Plant Establishment Period, whichever is later, or, if this PPA is terminated prior, upon such earlier termination.

24.8 Survival

Design-Build Contractor's representations and warranties, the Dispute Resolution Procedures, the indemnifications and releases contained in Section 18 and elsewhere in the PPA Documents, the express rights and obligations of the Parties following termination of this PPA under Section 15 and Section 16, the provisions regarding invoicing and payment under Section 12, the obligations regarding Application for Final Payment under Section 12.4, and all other provisions which by their express terms or their inherent character should survive termination of this PPA and/or Final Acceptance, shall survive the termination of this PPA and the Final Acceptance Date.

24.9 Limitation on Third Party Beneficiaries

24.9.1 It is not intended by any of the provisions of the PPA Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.9.1, the duties, obligations and responsibilities of the Parties to the PPA Documents with respect to third parties shall remain as imposed by Governmental Rules. The PPA Documents shall not be construed to create a contractual relationship of any kind between INDOT and a Subcontractor or any Person other than Design-Build Contractor.

24.9.2 The statute of limitations for any cause of action under this Section 24.9 shall not begin to run until the Substantial Completion Date, or such other date as may be provided by law, whichever is later.

24.10 Personal Liability of INDOT Employees and DB Contractor Employees

24.10.1 The Authorized Representatives of INDOT are acting solely as agents and representatives of INDOT when carrying out the provisions of or exercising the power or authority

granted to them under this PPA. They shall not be liable either personally or as employees of INDOT for actions in their ordinary course of employment.

24.10.2 No agent, consultant, officer or authorized employee of INDOT shall be personally responsible for any liability arising under this PPA.

24.10.3 No agent, officer or authorized employee of Design-Build Contractor shall be personally responsible for any liability arising under this PPA.

24.11 Governing Law; Venue; Forum

The PPA Documents shall be governed by and construed in accordance with the laws of the State, without regard to conflict of law principles or provisions. Any suit must be brought in the Indiana Commercial Court in Marion County, Indiana and the Dispute Resolution Procedures of Section 19.2 shall apply. Design-Build Contractor hereby specifically consents to this jurisdiction.

24.12 Notices and Communications

24.12.1 Notices under the PPA Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All Notices to Design-Build Contractor shall be sent to Design-Build Contractor's Authorized Representative or as otherwise directed by Design-Build Contractor's Authorized Representative. The address for such communications shall be:

[Insert name of Design-Build Contractor]

[Insert contact information]

Attention:

Phone:

Facsimile:

E-mail address:

All Notices to INDOT shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by INDOT's Authorized Representative:

Indiana Department of Transportation
One North Senate, Suite N601
Indianapolis, Indiana 46204
Attention: Major Project Delivery Director
Telephone: 317-233-8510
E-mail: kjasinski@indot.in.gov

In addition, copies (which shall not constitute notice) of all Notices to Proceed, Notices regarding Disputes, and suspension, termination and default Notices shall be delivered to the following persons:

Indiana Department of Transportation
One North Senate, Suite N758
Indianapolis, Indiana 46204
Attention: Deputy Commissioner of Districts
Telephone: 317-232-0694
E-mail: tunderhill@indot.in.gov

Indiana Department of Transportation
One North Senate, Suite N758
Indianapolis, Indiana 46204
Attention: Chief Counsel and Deputy Commissioner
Telephone: 317-223-3699
E-mail: hkennedy@indot.in.gov

24.12.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, all Notices received after 5:00 p.m. Eastern Time shall be deemed received on the first Business Day following delivery (that is, in order for an email to be deemed received on the same day, at least the first page of the written confirmation must have been received before 5:00 p.m. Eastern Time). Any technical or other communications pertaining to the Work shall be conducted by Design-Build Contractor's Project Manager and technical representatives designated by INDOT. Design-Build Contractor's representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 24.5.1, each Party's Authorized Representative shall be authorized to act on behalf of such Party in matters concerning the Work.

24.13 Taxes

Design-Build Contractor shall pay, prior to delinquency, all applicable taxes and pursuant to Section 107.02 of the Standard Specifications, all sales taxes in each case for which Design-Build Contractor is responsible in carrying out the Work and its other obligations hereunder. Design-Build Contractor accepts sole responsibility, and agrees that it shall have no right to a Change Order or to any other Claim, due to its misinterpretation of Governmental Rules respecting Taxes or incorrect assumptions regarding applicability of Taxes. INDOT is exempt from state, federal, and local Taxes; INDOT will not be responsible for any Taxes levied on Design-Build Contractor or any other DB-Related Entities as a result of this PPA.

24.14 Ownership of Project

Throughout the term of this PPA, INDOT shall own, in fee simple title or other property interest or right, the Project, Project ROW and all improvements constructed thereon.

24.15 Further Assurances

Design-Build Contractor shall promptly execute and deliver to INDOT all such instruments and other documents and assurances as are reasonably requested by INDOT to further evidence the obligations of Design-Build Contractor hereunder, including assurances regarding the validity of (a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

24.16 Integration of PPA Documents

INDOT and Design-Build Contractor agree and expressly intend that, subject to Section 24.17, this PPA and other PPA Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

24.17 Severability

If any clause, provision, section or part of the PPA Documents is ruled invalid under Section 19.2 or otherwise by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the PPA Documents, which shall be construed and enforced as if the PPA Documents did not contain such invalid or unenforceable clause, provision, section or part.

24.18 Usury Savings

The PPA Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by State law (the "maximum legal rate"), if any. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the PPA Documents shall, to the extent permitted by applicable Indiana Law, be amortized, prorated, allocated, and spread throughout the full period over which Interest accrues until payment in full so that the rate or amount of Interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds Interest payments in excess of such maximum rate, it shall promptly refund the excess to the other Party.

24.19 Headings

The captions of the sections of the PPA Documents are for convenience only and shall not be deemed part of the PPA Documents or considered in construing the PPA Documents.

24.20 Entire Agreement

The PPA Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to its subject matter. No modification of the terms and conditions of this PPA shall be binding on the Parties hereto unless such provision is contained in a written amendment expressing a clear intent to so modify this PPA and is executed by the Parties.

24.21 Authority to Bind Design-Build Contractor

The signatory for Design-Build Contractor represents that he/she has been duly authorized to execute this PPA on behalf of Design-Build Contractor and has obtained all necessary or applicable approvals to make this PPA fully binding upon Design-Build Contractor when his/her signature is affixed, and accepted by the Authority.

24.22 Counterparts

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

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

Non-Collusion and Acceptance

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

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

Design-Build Contractor

INDOT

[NTD: insert Design-Build Contractor name]

INDIANA DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

By: _____
Name:
Title:

ADDENDUM

[Joint Venture Members] agree that they shall be jointly and severally liable for the obligations of Design-Build Contractor under the PPA Documents. *[Joint Venture Members]* agree that INDOT and its successors and assignees shall be entitled to enforce any Claim or judgment against Design-Build Contractor arising out of the PPA Documents directly against Design-Build Contractor, ***[Joint Venture Members]*** in any order.***[NTD: To be conformed in execution version based on entity]***

Date: _____, 2020

[To be Signed by Each Joint Venture Member]

By: _____
Name: _____
Title: _____

EXHIBIT 1 ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in this PPA and the Technical Provisions, they have the meanings set forth below. References to Sections and Appendices mean Sections and Appendices of this PPA unless otherwise specified.

AADT	Annual Average Daily Traffic
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
ADL	Aerially Deposited Lead
AEIP	Aesthetics and Enhancement Implementation Plan
AM	Ante Meridiem (before noon)
AMM	Avoidance and Minimization Measures
AMRL	AASHTO Material Reference Laboratory
ANSI	American National Standards Institute
APE	Area of Potential Effects
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance-of-Way Association
AST	Aboveground Storage Tank
ASTM	American Society of Testing and Materials
AT&T	American Telephone & Telegraph
ATC	Alternative Technical Concept
ATIS	Advanced Traveler Information System
ATR	Automatic Traffic Recorder
AWS	American Welding Society
BMP	Best Management Practice
BMV	Indiana Bureau of Motor Vehicles
CADD	Computer-Aided Drafting and Design
CBR	Concrete Barrier Rail
CCI	Construction Cost Index
CCRL	Concrete Cement Reference Laboratory
CCTV	Closed Circuit Television
CD	Compact Disc or Collector/Distributor (as context may require)
CDS	Collector-Distributor System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CES	INDOT's Cost Estimating Software
CESSWI	Certified Erosion Sediment and Storm Water Inspector
CFR	Code of Federal Regulations

CFS	Cubic feet per second
CGL	Commercial General Liability
CIF	Construction in a flood way
CIP	Cast-in-Place
CIPP	Cured-in-Place Thermosetting Resin Pipe Liner
CISEC	Certified Inspector of Sediment and Erosion Control
CMP	Construction Monitoring Plan or Corrugated Metal Pipe (as context may require)
CO	Change Order
COA	Certificate of Appropriateness
CPESC	Certified Professional in Erosion and Sediment Control
CPI	Consumer Price Index
CPL	Contractor's Pollution Liability (insurance)
CPM	Critical Path Method
CPT	Cone Penetration Test
CPU	Central Processing Unit
CQM	Construction Quality Manager
CRCP	Continuously Reinforced Concrete Pavement
CRO	Cultural Resources Officer
CSC	Customer Service Center
CSL	Cross-Hole Sonic Log
CSS	Context Sensitive Solution
CSX	CSX Corporation
CWTS	Certified Worksite Traffic Supervisor
D&C	Design and Construction
DBE	Disadvantaged Business Enterprises
DCP	Dynamic Cone Penetrometer
DLC	Detector Lead-In Cable
DMS	Dynamic Message Sign
DPW	Indianapolis Department of Public Works
DTM	Digital Terrain Model
DVD	Digital Versatile Disc
EB	Eastbound
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
ECP	Erosion Control Plan
EDMS	Electronic Document Management System
EEO	Equal Employment Opportunity
ENR-CCI	Engineering News Record Construction Cost Index
EP	Exceedance Probability
EPD	Escrowed Proposal Documents

ERMS	INDOT's Electronic Records Management System
ERP	Emergency Response Plan
ESCP	Erosion and Sediment Control Plan
EWPO	Ecology and Waterway Permitting Office
FAA	Federal Aviation Administration
FAST	Freeway and Arterial System of Transportation
FC	Foot-candle(s)
FCC	Federal Communications Commission
FDC	Field Design Change
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
F/O	Fiber Optic
FONSI	Finding of No Significant Impact
FT	"F" Shape Truck Barrier
FTP	File Transfer Protocol
FWD	Falling Weight Deflectometer
GB	Gigabyte
GCI	Geosynthetic Certification Institute
GIS	Geographic Information System
GPS	Global Positioning System
HAR	Highway Advisory Radio
HEC	Hydraulic Engineering Center in Davis, California
HMA	Hot Mix Asphalt
HMMP	Hazardous Materials Management Plan
HPS	High Pressure Sodium
HSA	Hollow Stem Auger
HVAC	Heating Ventilation and Air Conditioning
I-65	Interstate 65
I-70	Interstate 70
IAC	Indiana Administrative Code
IAD	Interstate Access Document
IMPO	Indianapolis Metropolitan Planning Organization
IC	Indiana Code
IDEM	Indiana Department of Environmental Management
IDM	Indiana Design Manual
IDNR	Indiana Department of Natural Resources
IH	Interstate Highway
IHCP	Interstate Highway Congestion Policy
IHPC	Indianapolis Historic Preservation Commission
IMSA	International Municipal Signal Association

IMUTCD	Indiana Manual on Uniform Traffic (Control) Devices
in.	Inch
INDOT	Indiana Department of Transportation
IN SWMP	Indiana Stream and Wetland Mitigation Program
IP	Internet Protocol
IPL	Indianapolis Power and Light
IRI	International Roughness Index
ISPLS	Indiana Society of Professional Land Surveyors
ISO	International Organization for Standardization or Insurance Services Office (in context of insurance)
IT	Information Technology
ITM	Indiana Test Method
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
JPCP	Jointed Plain Concrete Pavement
LBP	Lead-Based Paint
LCCA	Life Cycle Cost Analysis
LED	Light Emitting Diode
LEG	London Engineering Group
LiDAR	Laser Image Detection and Ranging
LLF	Light Loss Factor
LMC	Latex Modified Concrete
LMC-VE	Latex Modified Concrete – Very Early Strength
LOS	Level of Service
LRFD	Load and Resistance Factor Design (an AASHTO specification)
LRFR	Load and Resistance Factor Rating
LWD	Light Weight Deflectometer
MB	Megabyte
MEPDG	Mechanistic-Empirical Pavement Design Guide
MHHW	Mean Higher High Water
Min.	Minimum
mm	Millimeter
MOA	Memorandum of Agreement
MOMS	Maintenance On-line Management Subsystem
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSAT	Mobile Source Air Toxics

MSE	Mechanically Stabilized Earth
N/A or NA	Not Applicable
NAVD88	North American Vertical Datum of 1988
NB	Northbound
NBI	National Bridge Inventory
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NDC	Notice of Design Change
NDE	Nondestructive Examination
NDT	Non-Destructive Testing
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NESC	National Electric Safety Code
NGVD	National Geodetic Vertical Datum of 1929
NHS	National Highway System
No.	Number
NOI	Notice of Intent submitted to IDEM
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resources Conservation Service
NTP	Notice to Proceed
OER	Office of Emergency Response
OFAC	Office of Foreign Assets Control of the United States Department of the Treasury
OH	Overhead
OHWM	Ordinary High Water Mark
OJT	On-the-Job Training
OSHA	Occupational Safety and Health Administration
PA	Section 106 Programmatic Agreement
PC	Point of Curvature
PCB	Polychlorinated Biphenyl
PCC	Portland Cement Concrete
PCCP	Portland Cement Concrete Pavement
PCI	Prestressed Concrete Institute
PCM	Preconstruction Manual
PCMS	Portable Changeable Message Signs
PDA	Pile Driving Analyzer
PDF	portable document format
PE	Preliminary Engineering
Ph.	Phone

PI	Point of Intersection
PIP	Public Involvement Plan
PM	Post Meridiem (after noon)
PMP	Project Management Plan
PPA	Public-Private Agreement
PROWAG	Public Rights-of-Way Accessibility Guidelines
PS&E	Plans, Specifications and Estimates
psf	Pounds per Square Foot
psi	Pounds per Square Inch
PT	Point of Tangency
PVC	Point of Vertical Curvature
PVI	Point of Vertical Intersection
PVT	Point of Vertical Tangency
QA	Quality Assurance
QC	Quality Control
QMP	Quality Management Plan
QP	Qualified Professional
RCB	Reinforced Concrete Box
RCP	Reinforced Concrete Pipe
RCRA	Resource Conservation and Recovery Act
REC	Recognized Environmental Condition
RFC	Released for Construction
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RID	Reference Information Document
ROW	Right of Way
RP	Reference Point
RPLS	Registered Professional Land Surveyor
RPM	Raised Pavement Marker
RSP	Recurring Special Provision
RSS	Reinforced Soil Slope
SAM	Site Assessment and Management
SB	Southbound
SF	Square Foot
SHPO	State Historic Preservation Officer
SPC	Seismic Performance Category
SPT	Standard Penetration Test
SR	State Route
STIP	Statewide Transportation Improvement Program

SUE	Subsurface Utility Engineering
SWPPP	Storm Water Pollution Prevention Plan
SWM	Storm Water Management
SWQM	Storm Water Quality Manager
TCS	Traffic Control Supervisor
TIM	Traffic Incident Management
TIMP	Traffic Incident Management Plan
TIP	Transportation Improvement Program
TMC	Traffic Management Center
TMP	Transportation Management Plan
TMS	Transportation Management System
TOC	Traffic Operations Center
TOP	Traffic Operations Plan
TP	Technical Provision
TS	Traffic Signal
TTCP	Temporary Traffic Control Plan
UHPC	Ultra-High Performance Concrete
US	United States Highway
USACE	United States Army Corps of Engineers
USB	Universal Serial Bus
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USP	Unique Special Provision
UST	Underground Storage Tank
VECP	Value Engineering Change Proposal
VPD	Vehicles Per Day
VPN	Virtual Private Network
WB	Westbound
WBS	Work Breakdown Structure
WEAP	Wave Equation Analysis Pile Driving
WHPA	Wellhead Protection Area
WIM	Weigh in Motion
WOTUSR	Waters of the United States Report

Acceleration Costs means those fully documented increased costs actually and reasonably incurred by Design-Build Contractor (that is, costs over and above what Design-Build Contractor would otherwise have incurred) which are directly and solely attributable to increasing the performance and production levels of the Work to complete necessary elements or segments of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for resequencing in connection with accelerated efforts.

Act means IC § 8-15.7.

Active Design Memoranda means those current design memoranda effective as of the Setting Date.

Activity has the meaning set forth in Attachment 1-1 of the Technical Provisions.

Actual Knowledge means facts and information actually known to Design-Build Contractor or Design-Build Contractor's Authorized Representative (in each case, as applicable), after due consultation with other personnel of such Person (including each DB-Related Entity), as applicable.

Additional Properties has the meaning set forth in Section 6.1.3.

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 Project) 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 6.3.

Aesthetics and Enhancement Implementation Plan means the plan described in Section 6.3.1 of the Technical Provisions.

Aesthetics and Landscape Architectural Work means the Work described in Section 6.1.1 of the Technical Provisions.

Affidavit of Final Acceptance means the affidavit described in Section 20.4.2(a).

Affiliate means:

- (a) any Person, at any tier, that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with (to include by way of joint venture or partnership), Design-Build Contractor or any of its members, partners or shareholders holding a 10% or greater interest in Design-Build Contractor; and

- (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by
 - (i) Design-Build Contractor,
 - (ii) any of Design-Build Contractor's members, partners or 10% or greater shareholders, or
 - (iii) any Affiliate of Design-Build Contractor under clause (a) 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 securities, by contract, family relationship or otherwise. Work performed by Affiliates shall be deemed performed by Design-Build Contractor.

Alternative Technical Concept means a Deviation approved by INDOT attached hereto as Attachment 2 to Exhibit 7.

Allowances mean, collectively, the Geotech Allowance, Temporary Patching Allowance and Patching Allowance, or either of the foregoing, as the context may require.

Application for Final Payment means Design-Build Contractor's written request for Final Payment of the Contract Price including reconciliation of all partial payments, Claims, changes or other proper adjustments, deductions and offsets pursuant to the PPA, as described in Section 12.4.1.

Area of Potential Effects means that area set forth in the NEPA Documents.

Authorized Representative has the meaning set forth in Section 24.5.1.

Basic Configuration has the meaning set forth in Section 8.2 of the Technical Provisions.

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreements 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 Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, level of service, efficiency, duration, 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 Agreements:

- (a) Any upgrading which is required for accommodation of the Project;
- (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 Governmental Rules;

- (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 Agreements. 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 Design-Build Contractor in the interest of overall economy for the Project.

Books and Records means any and all documents, books, records, papers or other information of, or in the possession of, any DB-Related Entity or Affiliate relating to the Project, Project ROW, Utility Adjustments or Work (including with respect to Change Orders, Claims and Disputes), including:

- (a) all Design Documents and Construction Documents (including drawings, specifications, Submittals, Subcontracts, invoices, schedules, meeting minutes, budgets, forecasts and change orders);
- (b) all budgets, certificates, claims, Claims, correspondence, daily time sheet and supervisor's daily reports, data (including test data), cost accounting data, documents, expert analyses, facts, files, information, investigations, materials, notices, payroll documents, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tax returns and information, tests, test results, vehicular traffic information, operational information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by any DB-Related Entity in connection with the Project;
- (c) union agreements;
- (d) insurance, welfare and benefits records;
- (e) payroll registers;
- (f) earnings records;
- (g) payroll tax forms;
- (h) material invoices and requisitions;
- (i) material cost distribution work sheet;
- (j) equipment records (list of company equipment, rates, etc.);

- (k) Subcontractors' (including Suppliers) invoices;
- (l) Subcontractors' and agents' payment certificates;
- (m) canceled checks;
- (n) job cost report;
- (o) job payroll ledger;
- (p) general ledger;
- (q) cash disbursements journal;
- (r) Project schedules (including any Project Schedule);
- (s) all documents that relate to each and every Claim and Dispute, together with all documents that support the amount of Losses that are the subject of each Claim or Dispute;
- (t) work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
- (u) email;
- (v) network servers, data storage devices, backup tapes/media;
- (w) letters and correspondence; and
- (x) with respect to all of the above, any information that is stored electronically or on computer-related media.

For purposes of the requirements of the PPA Documents to maintain Books and Records, the term "Books and Records" includes documents or information that are subject to the attorney-client privilege, but for purposes of requirements of the PPA Documents to provide access to Books and Records, the term specifically excludes documents or information that are subject to the attorney-client privilege and are identified in a privilege log as attorney-client privileged information.

Business Day means any day that is not a Saturday, Sunday, Holiday, or other day on which (a) INDOT is officially closed for business, or (b) banks located in Indiana are required or authorized by law or executed order to close.

Certificate of Final Acceptance means the formal written acknowledgment issued by INDOT to Design-Build Contractor that Design-Build Contractor has achieved Final Acceptance and all Work (excluding Warranty Work and Work during the Plant Establishment Period) has been fully completed in accordance with the PPA Documents.

Certificate of Plant Establishment means the formal written acknowledgement issued by INDOT to Design-Build Contractor that Design-Build Contractor has completed the Plant Establishment Period and all Plant Establishment Work has been fully completed in accordance with the PPA Documents.

Certificate of Substantial Completion means the formal written acknowledgement issued by INDOT to Design-Build Contractor that Design-Build Contractor has achieved Substantial Completion.

Certified Worksite Traffic Supervisor has the meaning set forth in Section 12.2.2 of the Technical Provisions.

Change Notice means a Notice delivered by INDOT to Design-Build Contractor pursuant to Section 13.2.2.1.

Change Order has the meaning set forth in Section 13.1.1.

Change in Adjustment Standards means any change in Adjustment Standards after the Setting Date that directly affects the design or construction of Utility Adjustments and is:

- (a) necessary to conform to Governmental Rules or Change in Law; or
- (b) adopted by the applicable Utility Owner after the Setting Date, excluding any such changes in Adjustment Standards known to Design-Build Contractor as of 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 INDOT-Directed Change to the Technical Provisions.

Change in Law means the enactment, adoption, modification, repeal or other change in any Governmental Rule that occurs after the Proposal Date (including any change in the judicial or administrative interpretation of any Governmental Rule, or adoption of any new Governmental Rule) which is materially inconsistent with Governmental Rules in effect on the Proposal Date, but excluding

- (a) Any change in or new Governmental Rule which was passed or adopted but not yet effective as of the Setting Date;
- (b) A change in a Project Standard or Utility Standard;
- (c) A change in the way a Governmental Rule is applied or interpreted as a result of:
 - (i) The failure of any DB-Related Entity to comply with a Governmental Rule or any Governmental Approval; or
 - (ii) Any act or omission of any DB-Related Entity or any Design-Build Contractor Fault;
- (d) A change in any Governmental Rule relating to taxes; or

- (e) A change in Governmental Rule which was not in force at issuance of the NTP but which (i) had been published as a draft bill or draft statutory instrument or otherwise specifically referred to prior to the issuance of the NTP; (ii) a party experienced and competent in the implementation of works or services similar to the Work would have reasonably foreseen or anticipated prior to the issuance of the NTP, including adoption of a national interoperability standard; or (iii) is substantially the same as a Governmental Rule in force prior to issuance of the NTP.

Change of Control means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation 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 Design-Build Contractor or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of Design-Build Contractor may constitute a Change of Control of Design-Build Contractor if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of Design-Build Contractor. 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 Design-Build Contractor or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Design-Build Contractor, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred 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 Design-Build Contractor so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of Design-Build Contractor;
- (c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Design-Build Contractor; or
- (d) The exercise of minority veto or voting rights (whether provided by Governmental Rules, by Design-Build Contractor's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Design-Build Contractor, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, INDOT has previously received copies of such agreements.

Change Request or **Design-Build Contractor Change Request** means a Notice delivered pursuant to Section 13.3.2 in the form of Exhibit 9.

Claim means any separate claim, proceeding, action, cause of action, demand, judgment, investigation or suit (including by way of contribution or indemnity) made by a Party:

- (a) In connection with the PPA Documents, the Project or the Site;
- (b) Under Governmental Rules or in equity; or
- (c) For specific performance, restitution, payment of money (including damages or other Losses), a time extension, or any other form of relief.

Submission of a Change Request is not a Claim.

Completion Deadline means the Substantial Completion Deadline, Extended Substantial Completion Deadline and/or Final Acceptance Deadline, as the context may require.

Completion Milestone means Substantial Completion and/or Final Acceptance.

Concept Drainage Report means the report described in Section 10.1 of the Technical Provisions.

Conduit means any conduit, casing, sleeve, hanger, attachment, or blockout for installation or protection of Utilities attached to or installed through structures, or installed under rail or roadway crossings, and any associated pull-ropes for Utility cables.

Construction Documents means all Released for Construction Documents, Working Drawings and samples necessary for construction of the Project in accordance with the PPA Documents.

Construction Manager has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The “Construction Manager” is one of the Key Personnel listed in Exhibit 3.

Construction Noise Abatement Plan means the plan described in Section 7.5.2 of the Technical Provisions.

Construction Quality Management Plan means the plan described in Section 1.3.3.2 of the Technical Provisions.

Construction Quality Manager has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The “Construction Quality Manager” is one of the Key Personnel listed in Exhibit 3.

Construction Superintendent has the meaning set forth in Section 1.3.1.2 of the Technical Provisions.

Construction Work means all Work to build or construct, reconstruct, rehabilitate, make, form, manufacture, furnish, install, integrate, supply, deliver or equip the Project and/or the Utility Adjustments.

Contaminated Groundwater means any extracted, pumped and/or ponded groundwater that contains Hazardous Materials.

Contract Price has the meaning set forth in Section 12.1.1.

Cost and Pricing Data means detailed back-up information regarding the basis for the cost estimates for development, design, construction, operations, and maintenance of the Project in the Proposal. Cost and Pricing Data shall include supporting data, technical memoranda,

calculations, formulas, unit and materials prices (if applicable) and such other cost, charge and fee information used by or on behalf of Design-Build Contractor in the creation and derivation of the Proposal, including copies of all offers and all data and information received from all Subcontractors (at all tiers) identified in the Proposal and any other potential Subcontractors that provided data and information used as the basis for the Price Proposal and the Contract Price.

Cost and Schedule Proposal means each submittal serving to identify price and schedule modifications associated with Change Orders issued pursuant to Section 13, meeting all applicable requirements set forth in Section 13.

Cost Liability means the obligation to bear the cost of a Utility Adjustment (as between INDOT and the Utility Owner), whether arising out of common or statutory law or contract, as determined by INDOT, in its sole discretion.

Critical Path means the critical path on the Project Schedule which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e., the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" means the sequence of activities on the Project Schedule that shows the minimum time needed for completion of the Project.

DBE Compliance Manager means the individual identified as such in the DBE Performance Plan that meets the requirements listed in Section 1.3.1.2 of the Technical Provisions.

DBE Goal means the goal for percentage of work to be performed by the certified DBE that is established by INDOT and specified in Section 7.1.2.

DBE Performance Plan means Design-Build Contractor's plan for meeting the DBE goal as referenced in Section 7.1.3.

DBE Performance Requirements has the meaning set forth in Section 7.1.1.

DB-Related Entity(ies) means Design-Build Contractor, any Subcontractor, any Affiliate or any of their respective employees, agents, representatives, shareholders, directors or officers, and/or any other Person for whom Design-Build Contractor may be legally or contractually responsible.

DCR Notice has the meaning set forth in Section 13.3.2.1.

Deputy Commissioner has the meaning given in the recitals (i.e., the Deputy Commissioner of Districts).

Design-Build Contractor has the meaning set forth in the preamble to this PPA.

Design-Build Contractor Default has the meaning set forth in Section 16.1.1.

Design-Build Contractor Fault means:

- (a) A breach by Design-Build Contractor of any of its obligations or any representation or warranty under the PPA Documents;

- (b) A failure by Design-Build Contractor to submit and/or obtain INDOT's approval of any Submittal listed in Section 4.1.2, Section 4.4.1, Section 4.5.1, or Section 4.5.2;
- (c) A breach or violation by any DB-Related Entity of any Governmental Rule or Governmental Approval; or
- (d) Negligence, gross negligence, fraud, bad faith, recklessness, criminal conduct, intentional or willful misconduct, or any other negligent or culpable act or omission by any DB-Related Entity.

Design-Build Contractor Release of Hazardous Materials means

- (a) Release of Hazardous Materials attributable to any act or omission of any DB-Related Entity or any Design-Build Contractor Fault, provided that the removal of Hazardous Materials by any DB-Related Entity in accordance with the requirements of the PPA Documents shall not be a "Design-Build Contractor Release of Hazardous Material";
- (b) Release of Hazardous Materials arranged to be brought onto the Site or elsewhere by any DB-Related Entity; regardless of cause; or
- (c) Use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any DB-Related Entity in violation of the requirements of the PPA Documents or any applicable Governmental Rule or Governmental Approval.

Design-Build Contractor's Utility Conflict Matrix has the meaning set forth in Section 6.4.1.

Design-Build Coordinator has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The "Design-Build Coordinator" is one of the Key Personnel listed in Exhibit 3.

Design Document means any drawing (including plan, elevation, section, detail and diagram), specification, report, calculation, record and submittal necessary for design of the Project in accordance with the PPA Documents, following approval thereof by INDOT and others as required by the PPA Documents.

Design Exception means formal written documentation for any exception to the controlling design criteria approved as described in Chapter 40-8.0 of the Indiana Design Manual that follows the process described in Section 3.6 of the Technical Provisions, or the "Design Exceptions" set forth in Sections 8.4 or 14.8 of the Technical Provisions.

Design Manager has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The "Design Manager" is one of the Key Personnel listed in Exhibit 3.

Design Quality Management Plan means the plan described in Section 1.3.3.2 of the Technical Provisions.

Design Quality Manager has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The "Design Quality Manager" is one of the Key Personnel listed in Exhibit 3.

Design Work means all Work of design, engineering, survey, geotechnical, architecture, landscape architecture, and aesthetics for the Project, Project ROW acquisition or Utility Adjustments.

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

Deviation means any change, deviation, modification or alteration from the technical requirements of the PPA Documents (excluding those of the PPA Documents listed in Section 1.3.1(a)(i) and Section 1.3.1(a)(ii)). For purposes of this definition, “Deviation” includes Design Exceptions.

Differing Site Condition means discovery of:

- (a) actual subsurface or latent physical conditions encountered at the Site within 24 inches of the center of each of the boring holes identified in the Geotechnical Data Report that differ materially from the conditions indicated at such boring holes in the Geotechnical Data Report (for avoidance of doubt, encountering conditions outside such 24 inch distance from the actual boring holes that differ from conditions indicated at such boring holes is not a Differing Site Condition); or
- (b) actual subsurface physical conditions within the Planned ROW Limits, including additional parcels required due to an INDOT-Directed Change and/or Necessary Basic Configuration Change but excluding (i) any Additional Properties and (ii) temporary interests within the Planned ROW Limits, in each case where such subsurface conditions are of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the work of the character provided for in this PPA;

provided, however, in all cases, that Design-Build Contractor had no actual or constructive knowledge of such conditions as of the Proposal Date and such conditions would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date. For purposes of this definition, and as relates to the pavement for the Project, “subsurface” means conditions at or below the Subgrade and excludes conditions in the Subbase.

The term “Differing Site Condition” specifically excludes Obstructions, Utilities, Hazardous Materials, field tiles, moving groundwater, any differences in groundwater depth, flow or location from the depths, flows and locations noted in the Reference Information Documents or otherwise.

The term “Differing Site Condition” specifically includes:

- (i) the discovery at, near or on the Site of any archaeological, paleontological, biological or cultural resource or artifact; provided, however, that the existence of such resource was not disclosed in the RFP Documents, was not otherwise known to Design-Build Contractor prior to the Proposal Date and would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date; and
- (ii) the discovery at, near or on the Site of any species listed as threatened or endangered under any federal or State endangered species Governmental Rule

or such species' designated critical habitat, except to the extent that INDOT-Provided Approvals provide for mitigation measures to be undertaken with respect thereto (regardless of whether the species is listed as threatened or endangered as of the Proposal Date), and also subject to the risk allocation provisions contained in Section 6.11 (relating to Design-Build Contractor's obligation to obtain environmental approvals under certain circumstances).

Directive Letter means a letter issued by INDOT pursuant to Section 13.1.2.

Disadvantaged Business Enterprise has the meaning set forth in 49 CFR § 26.5.

Dispute means a disagreement between the Parties as to the merits, amounts, or remedy arising out of an issue in controversy, including a disagreement regarding a Claim.

Dispute Resolution Procedures means the procedures for resolving Disputes set forth in Section 19.2.

EEO/Workforce Project Plan has the meaning set forth in Section 7.1.3.

Effective Date means the date of this PPA identified in the preamble of this PPA or such other date as shall be mutually agreed upon in writing by INDOT and Design-Build Contractor.

Eligible Surety means a Surety licensed in the State and listed on the U.S. Department of the Treasury's "Listing and Approved Sureties" (found at <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>, as such website or list may be updated from time to time), rated "A" or higher by at least two nationally-recognized rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's Ratings Services) or rated at least "A-/VII" or higher according to A.M. Best's Financial Strength Rating and Financial Size.

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, cultural, archaeological and paleontological resources or artifacts.

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 Project, including the NEPA Documents.

Environmental Compliance Manager has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The Environmental Compliance Manager is one of the Key Personnel listed in Exhibit 3.

Environmental Compliance and Mitigation Plan means the plan described in Section 7.4.1 of the Technical Provisions.

Environmental Determination means the final disposition of the environmental assessment under NEPA, as articulated in the NEPA Documents.

Environmental Law means (1) any Governmental Rule applicable to the Project or the Work, now or hereafter in effect, regulating, relating to, or imposing liability or standards of conduct

concerning the Environment or otherwise to generation, production, emissions, discharges, storage, use, handling, transportation, treatment, disposal, remediation, Release of Hazardous Materials or threatened Release of Hazardous Materials or other hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials in or into the Environment, including into the air, surface water, or groundwater, or onto land and (2) any requirement and/or standard that pertains to the protection of the Environment, or to the management of Hazardous Materials, or generation, production, emissions, discharges, storage, use, handling, transportation, treatment, disposal, remediation, Release of Hazardous Materials or threatened Release of Hazardous Materials or other hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials in or into the Environment, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, set forth in any Governmental Approval or other criteria or guidelines promulgated, pursuant to Governmental Rules applicable to the Project or Work, as each of the foregoing 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, distribution, use, re-use, treatment, storage, disposal, transport or handling of Hazardous Materials or other hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials;
- (b) The protection of public health, public welfare, public safety or the Environment (including protection of nonhuman forms of life, the land, surface water, groundwater, and air);
- (c) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (d) The Release of Hazardous Materials or other hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials;
- (e) Protection of wildlife, endangered, threatened, and sensitive species and / or designated critical habitat, wetlands, water courses and water bodies, parks and recreation lands, cultural, historical, archaeological, and paleontological resources or artifacts, and natural resources;
- (f) The operation and closure of underground or aboveground storage tanks;
- (g) Health and safety of employees and other persons with respect to Hazardous Materials or other hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials; and
- (h) Notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term “Environmental Law” shall also include the following (all as amended):

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

- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. §§ 9601 *et seq.*), as amended ("CERCLA");
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments (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, as amended by the Clean Air Act Amendments (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), as amended;
- (vii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (viii) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (ix) The Oil Pollution Act (33 U.S.C. §§ 2701 *et seq.*), as amended;
- (x) The Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xi) The Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xii) The Radon Gas and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiii) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), as amended;
- (xiv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xv) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvi) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xvii) The Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668 *et seq.*), as amended;
- (xviii) The Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq.*), as amended;
- (xix) The Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*), as amended;

- (xx) The Surface Mining Control and Reclamation Act (30 U.S.C. § 1201 *et seq.*), as amended;
- (xxi) Indiana Statutes, Title 46, Water, Air, Energy, and Environmental Conservation, as amended; and
- (xxii) Section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. § 303), as amended.

Environmental Management Plan means the plan described in Section 1.3.3.3 of the Technical Provisions.

Equity Member means (i) each Person holding an equity interest in Design-Build Contractor (whether as a member, partner, joint venture member, or otherwise but excluding passive limited partners that have no management or operational role in Design-Build Contractor), and (ii) each Person that will hold a 10% or greater indirect interest in Design-Build Contractor.

Error means an error, omission, inconsistency, inaccuracy, deficiency or other defect.

Escrowed Proposal Documents means the one or more sealed container(s) labeled: “[Proposer Name]: Price Proposal for the I-65/I-70 North Split Project – Escrowed Proposal Documents,” containing one set of the Cost and Pricing Data, delivered by Design-Build Contractor as a condition to the Effective Date.

Event of Default has the meaning set forth in Section 16.2.1.

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.

Extended Substantial Completion Deadline means the date which is utilized if the Substantial Completion Deadline, as may be extended under this PPA as a sole result of an INDOT-Caused Delay or a Force Majeure Event, falls during a Winter Suspension Period. The Extended Substantial Completion Deadline is determined by taking the Winter Delay Period and adding it to the last day of the Winter Suspension Period (March 31) to derive a new date by which Substantial Completion must occur.

Federal Requirements means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 11.

Field Design Change means any revision proposed by Design-Build Contractor deemed necessary to address any situation discovered after the Released for Construction Documents have been submitted to INDOT.

Final Acceptance means acceptance of the Project by INDOT as evidenced by issuance of a Certificate of Final Acceptance in accordance with Section 20.4.

Final Acceptance Date means the date on which Final Acceptance occurs.

Final Acceptance Deadline has the meaning set forth in Section 4.2.2.

Final Design and Construction means all Work following Stage 3 Review Submission, including any Work on the Released for Construction Documents and Construction Work.

Final Payment means payment by INDOT of the final installment of the Contract Price under this PPA, but excluding payment for Work during the Plant Establishment Period, the IDEM Notice of Termination, unused amounts of the Allowances and any other amounts that INDOT is authorized to withhold in accordance with the PPA Documents.

Final Schedule means the schedule described in Section 1.3.2.3 and Attachment 1-1 (USP: Critical Path Method Schedule) in the Technical Provisions.

Final Tracings Submission means all the Submittals for Final Tracings Submission described in Chapter 14-2.0 of the Indiana Design Manual, unless stated otherwise in the PPA Documents.

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 affect Design-Build Contractor's ability to achieve a Completion Milestone by its applicable Completion Deadline. "Float" generally means the difference between early completion times and late completion times for activities as shown on the Project Schedule, and shall include any float contained within an activity as well as any period containing an artificial activity (that is, one which is not encompassed within the meaning of the word "Work").

Force Majeure Event means any of the events listed in clauses (a) through (m) below, subject to the exclusions listed in clauses (i) through (vii) below, which materially and adversely directly affects Design-Build Contractor's obligations, provided such events are beyond the control of the DB-Related Entities and are not due to any Design-Build Contractor Fault, 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 any DB-Related Entity:

- (a) (i) Any floods (100-year or greater) within one mile of the Project; (ii) any tornado, hurricane, fire, lightning; and (iii) any Seismic Event; in each case, directly impacting the physical improvements of the Project or performance of Work at the Site;
- (b) Any epidemic in the Marion County, Indiana, area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) Any major new State or federal Environmental Approval necessitated by the discovery at, near or on the Planned ROW Limits of any archaeological, paleontological or cultural resources or artifacts provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Design-Build Contractor prior to the Effective Date and would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date;
- (e) Any major new State or federal Environmental Approval necessitated by the discovery at, near or on the Planned ROW Limits of any species listed as a threatened or endangered species (regardless of whether the species is listed as

threatened or endangered as of the Proposal Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Design-Build Contractor prior to the Proposal Date and would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date;

- (f) Issuance of a temporary restraining order or other form of injunction by a court of competent jurisdiction that prohibits prosecution of a material portion of the Work;
- (g) Suspension, termination, interruption, denial, failure to obtain or non-renewal of any INDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any DB-Related Entity to locate or design the Project or carry out the Work in accordance with INDOT-Provided Approvals or other Governmental Approval;
- (h) Failure of the Railroad to review and provide responses within 60 days or 30 days (as set forth for the applicable Submittals), as applicable, after receipt of Submittals or re-submittals in accordance with the Railroad Agreement and Section 16 of the Technical Provisions, provided that such Submittals or re-submittals meet the requirements of the PPA Documents;
- (i) The suspension of, termination of, denial or failure of the Railroad to execute a Railroad Agreement by the later of (i) Environmental Determination and (ii) September 1, 2020, except to the extent that such suspension of, termination of, denial or failure of the Railroad to execute such Railroad Agreement arises from any act or omission of any DB-Related Entity or any Design-Build Contractor Fault;
- (j) Failure of the Railroad to provide flagging services pursuant to the executed Railroad Agreement during the consecutive day period(s) set forth in the Railroad Agreement, provided that Design-Build Contractor has (i) provided written notice to the Railroad and INDOT at least 90 days in advance of the date that Design-Build Contractor proposes to commence flagging services for a consecutive day period; (ii) fully complied with all requirements, notification and procedures, whether addressed in such Railroad Agreement or the PPA Documents, regarding scheduling and use of the Railroad's flagging services; and (iii) not dismissed the flagger from the Site or otherwise terminated flagging services under such request for flagging;
- (k) National, state, or local strikes not specific to Design-Build Contractor or the Project which, in any case, cannot be resolved by Design-Build Contractor;
- (l) Failure or inability of INDOT to complete, or cause the completion of, the Type 1 Utility Adjustments prior to the applicable date set forth in Section 6.3.2.1; and
- (m) The time period to investigate Hazardous Materials and/or Differing Site Conditions pursuant to Section 5.3.1, if Design-Build Contractor demonstrates that a compensable Hazardous Materials or a Differing Site Condition exists.

The term "Force Majeure Event" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

- (i) any physical destruction or damage, or delays to the Project which occur by action of the elements, including drought, rain, flood, snow, or storm, except as specified in clause (a) above;
- (ii) except as provided in clause (c) above, malicious or other acts intended to cause Losses or other similar occurrence, including vandalism or theft;
- (iii) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clauses (e), (g) or (i) above;
- (iv) any increased costs or delays related to Utility Adjustments or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (m) above;
- (v) the presence at, near or on the Site, of any Hazardous Materials, including substances disclosed in the Reference Information Documents as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work; and
- (vi) Any matters not caused by INDOT or beyond the control of INDOT or any other matter not listed in clauses (a) through (m) above.

Geotech Allowance means the amount set forth in Exhibit 8, for use with respect to Work to remove or drill through Obstructions encountered during pile driving with respect to bridge structures, as more fully set forth in Section 12.1.3.3

Geotechnical Data Report means the following report included among the Reference Information Documents: Geotechnical Data Report prepared by Earth Exploration, Inc., dated August 27, 2019 and identified as RID 13.01 Geotechnical Data Report.

Geotechnical Design Report means the report by Design-Build Contractor described in in Section 13.2.3 of the Technical Provisions.

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 designer, engineer, constructor, supplier, or contractor that (a) is engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic areas as the Project and (b) seeks in good faith to comply with its contractual obligations, in conformance with (i) all professional engineering principles and construction practices generally accepted as standards of the industry in the State and (ii) Governmental Rules and Governmental Approvals.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, mitigation agreement, agreement or memoranda of agreement/understanding, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, required by or with any Governmental Entity in order to perform the Work or any Utility Adjustment Work being performed by a Utility Owner, but excluding (a) any such approvals relating to the work to be performed by other contractors as specifically described in the PPA Documents and (b) any such approvals required by or with a Governmental Entity in its capacity as a Utility Owner. Governmental Approvals include Environmental Approvals. Other Approvals are not Governmental Approvals.

Governmental Entity means any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than INDOT.

Governmental Rule means any statute, law, regulation, ordinance, rule, judgment, order, executive order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Work, the Project, the Site or any Utility Adjustment work being performed by a Utility Owner, whether now or hereafter in effect.

Guaranteed Obligations has the meaning set forth in the Guaranty.][NTD: *To be conformed in execution version based on whether a guarantor is used*]

Guarantor means each Person providing a Guaranty as described in Section 8.3.][NTD: *To be conformed in execution version based on whether a guarantor is used*]

Guaranty means each guaranty executed by a Guarantor guaranteeing some or all of the obligations of Design-Build Contractor under the PPA Documents.][NTD: *To be conformed in execution version based on whether a guarantor is used*]

Hazardous Materials means any element, chemical, compound, mixture, substance, product, waste or other material, whether solid, liquid or gaseous, which is or becomes defined, listed, classified, regulated, or addressed in any way under any Environmental Laws, or any other substances or conditions (including mold and other mycotoxins, fungi or fecal matter) which may create any unsafe or hazardous condition or pose any threat or harm to the environment or human health and safety. "Hazardous Materials" includes the following:

- (a) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any Environmental Law or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;
- (b) Hazardous waste, hazardous materials, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive 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 Law;

- (c) Any petroleum or crude oil and any fraction thereof, including any refined petroleum product or any additive thereto or fraction thereof, and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto, but excluding petroleum and petroleum products contained within regularly operated motor vehicles;
- (d) Any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;
- (e) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (f) Any flammable substances or explosives, including unexploded ordnance;
- (g) Any radioactive materials;
- (h) Any asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground);
- (i) Silica;
- (j) Any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (k) Any radon or radon gas;
- (l) Any methane gas or similar or regulated gaseous materials;
- (m) Any urea formaldehyde foam insulation;
- (n) Electrical equipment and components which contain any oil or dielectric fluid containing polychlorinated biphenyls;
- (o) Pesticides, herbicides or fungicides;
- (p) 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 any humans in the vicinity of the Project or to the environment; and

- (q) Soil, surface water or groundwater containing any of the Hazardous Materials as defined above.

Hazardous Materials Management means sampling, characterization, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, collection, containment, clean-up, remediation, transportation, management in place and/or off-Site disposal of Hazardous Materials or Recognized Environmental Conditions, whichever is the most technically appropriate and cost-effective approach authorized under Governmental Rules, using Good Industry Practice.

Hazardous Materials Management Plan means the plan described in Section 7.3.2 of the Technical Provisions.

Hold Point means any mandatory verification point that requires Design-Build Contractor to submit items identified in Section 2.2.2 of the Technical Provisions to INDOT for review, comment, observation and examination. Additional Hold Points may be added by INDOT pursuant to Section 2.2.2 of the Technical Provisions.

Holiday has the meaning set forth in Section 101.26 of the Standard Specifications, provided, however, that Sundays shall not, on their own, be considered Holidays.

IDEM Notice of Termination means the Notice that IDEM issues to close out their Rule 5 Permit when construction of the Project has been completed and specific conditions have been met.

Incident means a localized disruption to the free flow of traffic or safety of users in or adjacent to the Site.

Incident Management Liaison means the designated CWTS described in Section 12.3.4.1 of the Technical Provisions.

Incidental Utility Work means all of the following work necessary for construction of the Project, including any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, and obtaining and complying with Governmental Approvals:

- (a) Protection in Place of Utilities;
- (b) All work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.);
- (c) Traffic control for Utility Adjustment work;
- (d) Resurfacing and re-striping of streets; reconstruction of curbs, gutters and sidewalks; reinstallation of signage; and reinstallation or replacement of traffic signals;
- (e) Subsurface utility investigation, electronic detection, surveying and any other methods used to determine Utility locations and other material information concerning Utilities;

- (f) Adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;
- (g) Adjustment or Protection in Place of Service Lines; and
- (h) Temporary Adjustments.

Indemnified Claim has the meaning set forth in Section 18.1.1.

Indemnified Parties means INDOT, the State, and each of their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, agents, consultants and employees.

Indiana Design Manual means the Indiana Design Manual 2013, the version currently in effect as of the Setting Date.

INDOT has the meaning set forth in the preamble to this PPA.

INDOT-Caused Delay means an unavoidable delay, to the extent that it directly affects both the Critical Path and a Completion Deadline, arising from any of the following matters and no other:

- (a) INDOT-Directed Change;
- (b) failure by INDOT to obtain an INDOT-Provided Approval prior to the dates set forth in Table 7-1 of the Technical Provisions;
- (c) failure or inability of INDOT to provide responses to proposed schedules, plans, Design Documents, Construction Documents and other Submittals and matters for which affirmative response by INDOT is required, within the time periods indicated in the PPA Documents;
- (d) uncovering, removing and restoring Work, to the extent provided in Section 5.5.3;
- (e) physical damage to the Work directly caused by the gross negligence, recklessness or willful misconduct of INDOT; and
- (f) Necessary Basic Configuration Change;

provided; however, that such occurrence or event (or the effects of such occurrence or event) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB-Related Entity.

An INDOT-Caused Delay excludes:

- (i) any Utility Delay;
- (ii) the addition and implementation by INDOT of Hold Points in addition to those set forth in the lists set forth in Section 2.2.2 of the Technical Provisions; and
- (iii) any events that are due to or arise out of any Design-Build Contractor Fault.

INDOT-Directed Change means:

- (a) any change in the Work (including change in the Project Standards or other standard applicable to the Work) which INDOT has directed Design-Build Contractor to perform as described in Section 13; and
- (b) any order(s) to suspend for convenience pursuant to Section 14.1 exceeding more than 48 hours or an aggregate total of 144 hours of Work, otherwise scheduled by Design-Build Contractor pursuant to the most recent summary of planned Construction Work activities provided in accordance with Section 1.3.2 of the Technical Provisions.

INDOT-Initiated VECP has the meaning set forth in Section 22.1.

INDOT Limited Access ROW has the meaning set forth in Chapter 82 of the IDM.

INDOT-Provided Approval means any Governmental Approval for the Project obtained or to be obtained by INDOT as specifically listed and identified as such in Table 7-1 of the Technical Provisions (incorporated into the PPA at Exhibit 2). Refer also to Section 6.11.3.

INDOT's Project Manager means the individual designated by INDOT to manage the Project.

Informal Resolution Procedures are the mandatory dispute resolution procedures described in Section 19.2.3.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade secrets, trade secret rights, designs (registered and unregistered), design rights, 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 Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including software used for management of traffic on the Project), and Source Code and Source Code Documentation. Intellectual Property is distinguished from physical construction and equipment itself and from data, sketches, charts, calculations, drawings, plans, depictions, specifications, layouts, depictions, manuals, electronic files, artwork, correspondence, other Submittals and other documentation that disclose Intellectual Property.

Interest means the lesser of (a) 10% per annum or (b) the maximum rate allowable under applicable Governmental Rules (i.e., the maximum non-usurious interest rate permitted by State law).

Interstate Closure Request means a request to close an Interstate Route movement, excluding traffic control for temporary traffic stoppage in accordance with Section 801.16(c) of the Standard Specifications.

Invoice Certificate means the certificate to be provided with each invoice in the form included in Exhibit 5, as may be amended by the Parties (which amended Invoice Certificate shall be included at Exhibit 5 without further action of the Parties).

Key Personnel means an/those individual(s) appointed by Design-Build Contractor and approved by INDOT from time to time to fill the respective “Key Personnel” position(s) identified in Section 1.3.1.1 of the Technical Provisions. The specific individuals appointed by Design-Build Contractor and approved by INDOT initially to fill certain of the Key Personnel positions are identified in Exhibit 3. Key Personnel include those identified as such in the Proposal.

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, or Hazardous Materials that would have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date.

Landscape Architecture Firm means the firm appointed by Design-Build Contractor and approved by INDOT from time to time that meets the requirements identified in Section 6.3.1 of the Technical Provisions.

Level 1 FDC means any Field Design Change that is a minor change in the field that does not require additional engineering analysis and calculations. Markups are sufficient to complete the Work and the item(s) shall be updated in the Record Drawings.

Level 2 FDC means any Field Design Change that is more substantive than a Level 1 FDC, requiring Plan revisions, but does not require additional engineering analysis and calculations.

Level 3 FDC means any Field Design Change that is significant requiring revised Plan sheets and engineering analysis and calculations.

Level One Design Exception means any of the Design Exceptions set forth in Sections 8.4.1 or 14.8 of the Technical Provisions or any other Design Exception to the controlling design criteria described in Chapter 40-8.02(01) of the Indiana Design Manual.

Level Two Design Exception means any of the Design Exceptions set forth in Section 8.4.2 of the Technical Provisions or any other Design Exception to the controlling design criteria described in Chapter 40-8.02(02) of the Indiana Design Manual.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Liquidated Damages means liquidated damages determined under (i) Section 7.3.6 (Key Personnel Liquidated Damages), (ii) Section 17.1 (Late Completion), or (iii) Section 17.4 (Faulty Temporary Pavement, Lights and Traffic Signals-related, Violation of Hold Point, and ITS-related).

Local Agencies means the City of Indianapolis and any other Governmental Entity, other than INDOT, owning property within the Site or with jurisdiction over any such property, or that otherwise has property that interfaces with the Project.

Long-Stop Date means the date that is 270 days after the Substantial Completion Deadline, or Extended Substantial Completion Deadline, as the context may require.

Losses includes 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 PPA Documents)), fee, charge, deductible or increased premium, demand, investigation, proceeding, action, suit, claim, Claim, judgment, penalty, fine or Third-Party Claims, in each case whether actual, prospective, or contingent and whether or not currently ascertainable. "Injury" includes injury to or death of persons, damage or loss of property, harm or damage to natural resources, and loss of or damage to valuable papers and records.

Main or Trunkline Utility means an underground Utility, which is not a Service Line, and which relative to the particular system of which it is a part, (a) is a larger line serving as a main line to connecting tributary lines and (b) serves a larger area, all as determined by INDOT, in its sole discretion. In determining whether a facility should be considered a Main or Trunkline Utility, INDOT may refer to definitions in the relevant manual or code, if any, of the Utility Owner.

Maintenance of Traffic Manager has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The Maintenance of Traffic Manager is one of the Key Personnel listed in Exhibit 3.

Major Subcontract means a Subcontract with any of the following:

- (a) the lead construction firm (if not Design-Build Contractor);
- (b) the lead engineering/design firm(s) (if not Design-Build Contractor);
- (c) any Subcontractor that will perform work valued at 10% or more of the Construction Work;
- (d) any Subcontractor that will perform 30% or more of the Design Work;
- (e) any team member that is required for Design-Build Contractor to satisfy the INDOT Prequalification Work Type Certification requirements set forth in clauses (3)(a) through (3)(c) in Section 4.2 of the Technical Provisions; or
- (f) any Subcontractor for Construction Work or for special fabrication and installation of a portion of the Work with the value of such Subcontract or a combination of Subcontracts with such Subcontractor in excess of \$10 million.

Major Subcontractor means any Subcontractor that is a party to a Major Subcontract.

Misidentified Utility means a Main or Trunkline Utility, where the Utility Information specifically provided in Section 15 of the Technical Provisions (as relates to Main or Trunkline Utilities only) does not identify the subject Main or Trunkline Utility within the boundary lines of the Project ROW with Reasonable Accuracy.

Movement Charge means an amount payable to INDOT, as determined under Section 17.3 for a Prohibited Closure.

Movement Closure means any full or partial closure by, on behalf of, or at the request of Design-Build Contractor of any roadway lane within the Site that accommodates vehicular traffic for any

duration during the term of the Project. A “Movement Closure” can be determined as either a Permitted Closure or Prohibited Closure.

Necessary Basic Configuration Change means a change in the Basic Configuration that is necessary to meet the requirements of the PPA Documents as the result of an Error in the Basic Configuration (with the understanding that a change shall be deemed "necessary" only if the Error creates a problem in which Design-Build Contractor is unable to meet the requirements of the PPA Documents without a material change in the Basic Configuration).

NEPA Documents means the certain documents titled “Environmental Assessment” and included in the Reference Information Documents as “Draft Environmental Assessment,” dated December 22, 2019.

New Approval means either (a) a new Governmental Approval of the same type as any INDOT-Provided Approval or (b) a revision, modification, or amendment to any INDOT-Provided Approval.

New Utility means any Utility constructed or installed as a result of the Project for the purpose of providing service to the Project, either directly or indirectly.

Non-Indiana 811 Mapped Utility means a Utility owned or operated by a Utility Owner that is not a member of Indiana 811. “Non-Indiana 811 Mapped Utilities” are not “Misidentified Utilities.”

Nonconforming Work means any aspect of the Work that (a) does not comply with the requirements of the PPA Documents, the Governmental Approvals, applicable Governmental Rules, the Design Documents or the Construction Documents, or (b) is not consistent, or is incompatible with, its age, function, performance, and use when properly maintained in accordance with Good Industry Practice and the requirements of the PPA Documents, or both.

Notice means a written notice, request, demand, instruction, certificate, consent, explanation, agreement, approval, notification, correspondence, order or other communication given under the PPA Documents to a Party that complies with the prescriptions set forth in Section 24.12.

Notice of Design Change means any change or revision proposed by Design-Build Contractor’s design team deemed necessary to address situations discovered after the Released for Construction Documents have been submitted.

Notice of Partial Termination for Convenience means Notice issued by INDOT to Design-Build Contractor terminating part of the Work of Design-Build Contractor for convenience.

Notice of Termination for Convenience means Notice issued by INDOT to Design-Build Contractor terminating the Work of Design-Build Contractor for convenience.

Notice to Proceed means the written authorization issued by INDOT pursuant to Section 4.1.2 that permits Design-Build Contractor to proceed with the Work.

Noxious Weed Control Plan means the plan described in Section 6.4.3 of the Technical Provisions.

NTP + 180 Schedule means the schedule attached as Exhibit 15.

Obstructions means artificial elements that directly cause piling refusal or damage. “Obstructions” include former foundations, slabs, and walls that exist at the point of piling Work. For avoidance of doubt, “Obstructions” exclude natural features, such as boulders and hard soil conditions, and are not “Differing Site Conditions” under the PPA Documents.

Open Book Basis means providing INDOT all underlying assumptions, price quotes and data associated with pricing or compensation (whether of Design-Build Contractor or INDOT) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by INDOT to satisfy itself as to the reasonableness of the amount.

Other Approval means any permit, license, consent, authorization, approval or similar document issued to Design-Build Contractor by, or agreement entered into between Design-Build Contractor and any Governmental Entity, Utility Owner, Railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Project or Work, or having any property interested affected by the Project or Work that is not a Governmental Approval.

Other INDOT Contractor means any contractor or consultant, except any DB-Related Entity relating to the Project, that INDOT contracts to perform other or additional work on or near the Site, which for the avoidance of doubt excludes the Railroad.

Overnight Local Street Closure means any Movement Closure for any local street in Table 10-4-1 of Exhibit 10 that (a) commences and ends between 10:00 p.m. and 5:00 a.m. the following morning, (b) does not meet the temporary traffic stoppage requirements under Section 801.16(c) of the Standard Specifications, (c) is not deemed as an emergency or urgent as described in Appendix A of the IHCP, and (d) complies with the notification requirements set forth in Section 12.4.10 of the Technical Provisions. . No Overnight Local Street Closure will be counted towards the applicable consecutive day periods set forth in Table 10-4-1 of Exhibit 10.

Partial Termination for Convenience means a partial termination of this PPA pursuant to Section 15.

Party means Design-Build Contractor or INDOT, as the context may require, and “Parties” means Design-Build Contractor and INDOT, collectively.

Payment Bond means the Payment Bond described in Section 8.1.3.

Performance Bond means the Performance Bond described in Section 8.1.2.

Permanent Patching Allowance means the amount set forth in Exhibit 8, for use with respect to permanent bridge deck patching, as more fully set forth in Section 12.1.3.2(b).

Permitted Closure means a Movement Closure that (a) does not exceed any of the maximum Movement Closure durations in Exhibit 10, (b) is an Overnight Local Street Closure that does not commence before 10:00 p.m. or extend beyond 5:00 a.m., or (c) is otherwise permitted under Section 12.4.9.1 of the Technical Provisions, and where, in all cases of clauses (a) through (c), complies with the requirements of the PPA Documents, including Section 12.4 of the Technical Provisions and approvals, if any.

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

Plan means (only where capitalized) any plan, profile, typical cross-section, standard drawing, Working Drawing, supplemental drawing or exact reproduction thereof which show the location, character, dimensions, and details of the Work.

Planned ROW Limits has the meaning set forth in Section 1.2.2 of the Technical Provisions. The “Planned ROW Limits” are the boundaries of the real property made available by INDOT to Design-Build Contractor for permanent improvements included in the Project. The “Planned ROW Limits” exclude certain “do not disturb” zones depicted in Attachment 7-4 of the Technical Provisions.

Plant Establishment Work means those portions of the Work set out in Section 6.4 of the Technical Provisions.

Plant Establishment Period has the meaning set forth in Section 6.4 of the Technical Provisions.

Pothole means a roadway surface condition greater than 0.5 square feet in area and 1 inch in depth.

PPA means, depending on the context (as determined by INDOT), (a) that certain public-private agreement to which this Exhibit 1 is attached, executed by INDOT and Design-Build Contractor, including any and all amendments thereto, or (b) collectively, the PPA Documents which establish the respective rights and obligations of INDOT and Design-Build Contractor.

PPA Documents has the meaning set forth in Section 1.2.

Pre-Construction Survey means the survey described in Section 7.6.1.1 of the Technical Provisions.

Post-Construction Survey means the survey described in Section 7.6.1.3 of the Technical Provisions.

Preliminary Project Baseline Schedule means the “Preliminary Project Baseline Schedule” included in the Proposal.

Price Proposal means the total price for performance of the Work set forth in the Proposal documents.

Professional Services means all Work performed under this PPA other than Construction Work, including the following services and Work: (a) design and engineering; (b) surveying; (c) Utility Adjustment design; (d) environmental permitting and compliance services; and (e) public involvement.

Progress Meeting has the meaning set forth in Attachment 1-1 (USP: Progress Meetings) of the Technical Provisions.

Progress Report means the “progress report” discussed in Attachment 1-1 (USP: Progress Meetings) of the Technical Provisions.

Prohibited Closure means any Movement Closure that is not a Permitted Closure.

Project means the improvements to be designed and constructed by Design-Build Contractor and all other Work to be provided by Design-Build Contractor in accordance with the PPA Documents.

Project Administration Plan means the plan described in Section 1.3.3.1 of the Technical Provisions.

Project Baseline Schedule means the logic-based critical path schedule for all Work through Final Acceptance, as more particularly described in Section 1.3.2.1 and Attachment 1-1 (USP: Critical Path Method Schedule) of the Technical Provisions.

Project Kickoff has the meaning set forth in Section 3.5 of the Technical Provisions.

Project Manager means Design-Build Contractor’s Project Manager, except as context may otherwise require (e.g., reference to INDOT’s Project Manager), and has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The “Project Manager” is one of the Key Personnel listed in Exhibit 3.

Project Management Plan means the document, including approved changes and revisions, prepared by Design-Build Contractor and approved by INDOT describing quality assurance, quality control and other activities necessary to manage the development, design and construction of the Project, containing INDOT-approved component parts, plans and documentation, as described in Section 1.3.3 of the Technical Provisions.

Project Right of Way means the Planned ROW Limits plus the Additional Properties, excluding therefrom any portion of the Planned ROW Limits eliminated from the Project by a Change Order.

Project-Specific Locations means areas in which Design-Build Contractor proposes temporary Project-specific activities in connection with the Construction Work outside the Project ROW, 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 Schedule means one or more, as applicable, of the logic-based critical path schedules (the NTP + 180 Schedule, Project Baseline Schedule, the Project Status Schedule, and any 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 approved by INDOT, revised and updated from time to time in accordance with Section 1.3.2 of the Technical Provisions.

Project Scheduler has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The “Project Scheduler” is one of the Key Personnel listed in Exhibit 3.

Project Standards has the meaning set forth in Attachment 3-1 of the Technical Provisions.

Project Status Schedule has the meaning set forth in Section 1.3.2.2 and Attachment 1-1 (USP: Critical Path Method Schedule) of the Technical Provisions.

Proposal means the written offer of Design-Build Contractor submitted in response to the Request for Proposals, as it may have been supplemented or amended.

Proposal Commitments has the meaning set forth in Attachment 1 of Exhibit 7.

Proposal Date means March 10, 2020.

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

Protected Characteristics has the meaning set forth in Section 7.3.7.1.

Protection in Place or **Protect in Place** means any activity undertaken to avoid damaging a Utility which does not involve removing or Adjusting that Utility, including staking the location of a 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. For example, temporarily lifting power lines without cutting them would be considered Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a Temporary Adjustment. The term "Protection in Place" includes both temporary measures and permanent installations meeting the foregoing definition.

Public Information Coordinator has the meaning set forth in Section 1.3.1.2 of the Technical Provisions.

Public Involvement Plan means the plan described in Section 5.3.1.1 of the Technical Provisions and identified as RID 05.1.

Public Records Act means IC § 5-14-3 and relevant provisions of IC §§ 8-15.7-4-2, and 6, as amended from time to time.

Punch List means the list of Work that remains to be completed after achievement of Substantial Completion or as a condition of Final Acceptance, and shall be limited to minor incidental items of Work necessary to correct imperfections which by virtue of not being completed, will not, individually or collectively, have any adverse effect on the safety, use or operability of the Project. Work required to comply with all applicable Governmental Rules or Governmental Approvals is not "Punch List Work."

Quality Management Plan means the plan described in Section 1.3.3.2 of the Technical Provisions.

Railroad refers to CSX Transportation, Inc. and any other company organized to construct, maintain, and operate railroads that will be physically impacted by the Project.

Railroad Agreement means an agreement entered into among the Parties and the Railroad with respect to the Project. The draft Railroad Agreement with CSX Transportation, Inc. is provided in

Attachment 16-2 of the Technical Provisions. [NTD: Delete “draft” upon execution of the Parties and the Railroad.]

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 feet distant from the horizontal centerline location indicated therefor in the Utility Information (without regard to vertical location);
- (b) The Utility Information shows an active and existent Utility as not abandoned;
- (c) The Utility Information shows a non-existent or inactive Utility 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:

- (a) Visit and visual 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 INDOT-Provided Approvals available prior to the Setting Date;
- (d) Reasonable inquiry with Utility Owners, including request for and review of Utility information provided by Utility Owners;
- (e) Review and analysis of material Governmental Rules applicable to the Project or the Work as of the Setting Date;
- (f) Performance, review and analysis of corings, borings and other investigations within the Project ROW; and
- (g) Other review, analytical and investigative activities consistent with Good Industry Practice that are sufficient to familiarize Design-Build Contractor with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archaeological, paleontological and cultural resources or artifacts, and species listed as threatened or endangered under any federal or State endangered species Governmental Rule, affecting the Site or surrounding locations;

except that none of the foregoing activities includes original research of private records not contained or referenced in this PPA, Reference Information Documents or Technical Provisions.

Recognized Environmental Condition has the meaning set forth in ASTM 1527-13.

Record Drawings has the meaning set forth in Section 2.7 of the Technical Provisions.

Recovery Schedule means the schedule Design-Build Contractor is required to provide under Section 4.6.

Recurring Special Provisions has the meaning set forth in Section 101.44 of the Standard Specifications.

Reference Information Documents means the documents and information provided at <https://indotmajorprojects.sharepoint.com/sites/northsplit>, included in Volume III of the RFP, and as located at <https://www.in.gov/dot/div/contracts/NorthSplit/NorthSplit.htm>.

Reference Plans means the preliminary roadway plans contained in the SharePoint category “08 Roadway” and roadway category “Reference Design” and the preliminary bridge plans contained in the SharePoint category “14 Structures” and structures category “RID Bridge Plans” in the Reference Information Documents.

Registered Landscape Architect means a person who is duly licensed and registered by the State to engage in the practice of landscape architecture and, if applicable, is duly licensed and registered in the state where the landscape architecture work is being performed.

Registered Professional Engineer means a person who is duly licensed and registered by the State to engage in the practice of engineering and, if applicable, is duly licensed and registered in the state where the engineering work is being performed.

Registered Professional Land Surveyor means a person who is duly licensed and registered by the State to engage in the practice of boundary or property surveying or other similar professional practices in the state where such services are being performed.

Regulations means regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time.

Release of Hazardous Materials means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation or disturbance of an existing release or condition involving Hazardous Materials, including off-Site migration or deposition.

Released for Construction Documents means the final documents for construction signed and stamped by a Registered Professional Engineer or Registered Landscape Architect and certified by the Design Quality Manager and appropriate personnel, as described in Sections 2.3 and 3.1 of the Technical Provisions.

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.

Request for Proposals means the Request for Proposals regarding the Project issued by INDOT on October 11, 2019, including all addenda thereto, and all attachments thereto.

Responsible Proposer Questionnaire means the submission by or on behalf of Design-Build Contractor entitled “Responsible Proposer, Equity Member, Major Participant and Financially Responsible Party Questionnaire” in the Proposal.

RFP Documents means the documents issued as part of the RFP, including all addenda.

ROW Certification means written certification that (a) all residential occupants have been relocated to decent, safe and sanitary housing, commercial and non-profit businesses and improvements have been relocated out of the portion of the Project ROW or Project-Specific Location being certified, and (b) the Project ROW or Project-Specific Location being certified was acquired in accordance with FHWA directives.

Rule 5 Permit means a permit issued pursuant to 327 IAC 15-5.

Safety Manager has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The “Safety Manager” is one of the Key Personnel listed in Exhibit 3.

Safety Plan means the plan described in Section 1.3.3.4 of the Technical Provisions.

Safety Standards means those provisions of the Technical Provisions that indicates that INDOT, FHWA or AASHTO considers being 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.

Schedule of Values means the estimated cost/planned value for 100% of the Work, which documents the WBS and approved Project Baseline Schedule, as it may be updated from time to time, in accordance with Section 12.2.1.

Seismic Event means the trembling or shaking movement of the earth's surface that produces ground motions at the Site that, if prior to the Final Acceptance Date, directly impacts, and causes damage to, temporary or permanent works of the Project.

Service Line (also referred to as a service lateral or lateral) means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or Conduit that supplies an active feed from a Utility Owner’s facilities to activate or energize a Local Agency’s lighting and electrical systems, traffic signal systems, traffic control systems, copper or fiber communication systems or irrigation systems. The term also includes any Utility on public or private property that services structures located on such property.

Setting Date means February 10, 2020.

Site means the Project ROW together with those areas designated in writing by INDOT for performance of the Work and such additional areas as may, from time to time, be designated in writing by INDOT for Design-Build Contractor's use in performance of the Work. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, Indiana's Common Construction Wage Act requirements, and payment for use of equipment, the term "Site" shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project approved by INDOT under Section 12.3.2.2, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by Design-Build Contractor or Subcontractors covered by the worker's compensation policy included in the insurance described in Section 9, but excluding any permanent locations of Design-Build Contractor or such covered Subcontractors.

Source Code and Source Code Documentation means software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, revisions, additions, substitutions, replacements, updates, upgrades and corrections made to the foregoing items.

Special Provisions means the Unique Special Provisions and/or Recurring Special Provisions that revise the Standard Specifications.

Spill Prevention Plan means the plan described in Section 7.3.2 of the Technical Provisions.

Stage 1 Review Submission means the Submittal review stage described as Stage 1 in Chapter 14-2.0 of the Indiana Design Manual, unless stated otherwise in the PPA Documents.

Stage 3 Review Submission means the Submittal review stage described as Stage 3 in Chapter 14-2.0 of the Indiana Design Manual, unless stated otherwise in the PPA Documents.

Standard Specifications means INDOT's 2020 Standard Specifications effective as of the Setting Date.

Standard Drawings means the "Standard Drawings" effective as of the Setting Date, available at <https://www.in.gov/dot/div/contracts/standards/drawings/>.

Standard Landscaping and Aesthetic Treatment Work means the Work described in Section 6.1.2 of the Technical Provisions.

State means the State of Indiana.

Statement of Qualifications means the Statement of Qualifications submitted by Proposer in response to INDOT's Request for Qualifications issued on June 9, 2016.

Storm Water Quality Manager has the meaning set forth in Section 7.1 of the Technical Provisions.

Structural Design Lead Engineer has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The “Structural Design Lead Engineer” is one of the Key Personnel listed in Exhibit 3.

Subbase means all materials that are part of the pavement section or design that are not the Subgrade.

Subcontract means an agreement between Design-Build Contractor and one or more third parties providing for such third party to perform any part of the Work or provide any materials, equipment, labor or supplies for any part of the Work, or any such agreement between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at any tier.

Subcontractor means any Person with whom Design-Build Contractor has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.

Subgrade has the meaning given in the Standard Specifications.

Submittal means any package, document, work product, deliverable, or other written or electronic end product or item required under the PPA Documents to be delivered or submitted to INDOT. Refer to Section 3.4 of the Technical Provisions for further information defining, and restrictions relating to, a design “Submittal”.

Substantial Completion means the date, as determined by INDOT, when the Project has satisfied the conditions set forth in Section 20.1.1.2.

Substantial Completion Date means the date on which Substantial Completion occurs.

Substantial Completion Deadline has the meaning set forth in Section 4.2.1.

Supplier means any Subcontractor that supplies machinery, equipment, materials or systems to Design-Build Contractor or any Subcontractor in connection with the performance of the Work and that does not perform Work at the Site. 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. The term “Supplier” includes fabricators and material dealers.

Surety means each properly licensed surety company, insurance company or other Person approved by INDOT and authorized to do business in the State, which has issued the Payment Bond or the Performance Bond in accordance with the PPA Documents.

Technical Provisions means the PPA Documents identified as Technical Provisions.

Temporary Adjustment means (a) any interim Adjustment of a Utility (i.e., the installation, removal and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and (b) any removal and reinstallation of a Utility in the same location with or without an interim Adjustment.

Temporary Patching Allowance means the amount set forth in Exhibit 8, for use with respect to temporary pavement and bridge deck patching, as more fully set forth in Section 12.1.3.2(a).

Temporary Traffic Control Plan means the plan described in Section 12.3.3 of the Technical Provisions.

Termination for Convenience has the meaning set forth in Section 15.1.

Third-Party Claims means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or legal or administrative proceedings brought by a Person that is not a Party with respect to Losses (including attorneys', accountants' and expert witnesses' fees and expenses) sustained or incurred by such Person.

Time and Materials Change Order has the meaning set forth in Section 13.7.

Time and Materials Work means Work performed pursuant to a Time and Materials Change Order.

TMP Team has the meaning set forth in Section 12.3.2 of the Technical Provisions.

Traffic Incident Management Plan means Design-Build Contractor's plan for detection and response to Incidents, as part of the PMP, as described in Section 12.3.4.1 of the Technical Provisions.

Traffic Management Center means the Indiana Department of Transportation Traffic Management Center (in Indianapolis, Indiana), 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.

Transportation Management Plan means the plan described in Section 12.3.1 of the Technical Provisions.

Type 1 Utility Adjustment means each Utility Adjustment listed as "Type 1 Utility Adjustment" in Attachment 15-3 of the Technical Provisions to which INDOT is responsible for negotiating and entering into a Utility Agreement, developing Utility Work Plans, and completing (or causing the completion of) the Utility Adjustment Work prior to the date determined under Section 6.3.2.1.

Type 2 Utility Adjustment means each Utility Adjustment listed as "Type 2 Utility Adjustment" in Attachment 15-3 of the Technical Provisions to which INDOT is responsible for negotiating and entering into a Utility Agreement and developing Utility Work Plans, and Design-Build Contractor is responsible for completing or causing the completion of the Utility Adjustment Work, as more particularly set forth in the PPA Documents and the applicable Utility Agreement and Utility Work Plans.

Type 3 Utility Adjustment means any Utility Adjustment, other than a Type 1 Utility Adjustment, Type 2 Utility Adjustment, or Type 4 Utility Adjustment that is required for a reason other than as a direct result of an INDOT-Caused Delay, Force Majeure Event, Misidentified Utility or Unidentified Utility, to which Design-Build Contractor is responsible for negotiating the Utility Agreement for INDOT, developing Utility Work Plans, and completing or causing the completion

of the Utility Adjustment Work, as more particularly set forth in the PPA Documents and the applicable Utility Agreement and Utility Work Plans.

Type 4 Utility Adjustment means any Utility Adjustment that is required for an Unidentified Utility or Misidentified Utility, to which INDOT is responsible for negotiating and entering into a Utility Agreement and Design-Build Contractor is responsible for developing the Utility Work Plans and completing or causing the completion of the Utility Adjustment Work, as more particularly set forth in the PPA Documents and the applicable Utility Agreement and Utility Work Plans.

Unidentified Utility means a Main or Trunkline Utility, where the Utility Information specifically provided in Section 15 of the Technical Provisions (as relates to Main or Trunkline Utilities only) incorrectly indicates that the subject Main or Trunkline Utility does not exist anywhere within the boundary lines of the Project ROW.

Unique Special Provisions has the meaning set forth in Section 101.71 of the Standard Specifications.

Unknown Hazardous Materials means Hazardous Materials that meet all of the following criteria:

- (a) The Hazardous Materials are in, on or under (i) the Planned ROW Limits, or (ii) parcels added to the Planned ROW Limits by an INDOT-Directed Change or required due to a Force Majeure Event or Necessary Basic Configuration Change, in each case, as of the date INDOT makes available the affected parcel to Design-Build Contractor;
- (b) The Hazardous Materials are not Known or Suspected Hazardous Materials; and
- (c) The Hazardous Materials are not required to be removed and disposed of due to a Design-Build Contractor Release of Hazardous Materials.

For purposes of this definition, “makes available” means (i) the Effective Date for parcels acquired as of the Effective Date or (ii) as to parcels not yet acquired as of the Effective Date, the date Design-Build Contractor first receives access to the parcel in accordance with the PPA Documents.

Uniform Act means the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq.*, as amended, 49 CFR Part 24, and all associated regulations and policies.

Utility means a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system and any fire or police signal system as well as streetlights. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. 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 the relocation (temporary or permanent), abandonment and or dormancy, 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 Project (each a separate “type” of Utility Adjustment); provided, however, that the term “Utility Adjustment” shall not refer to any of the work associated with facilities owned by the Railroad. For any Utility crossing the Project ROW, the Work associated with the Utility Adjustment for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

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 Adjustment, including negotiating and entering into all applicable Utility Agreements, 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 Design-Build Contractor or by the Utility Owners. The term also includes any reimbursement of Utility Owners that is Design-Build Contractor’s responsibility pursuant to Section 6.3. Any Utility Adjustment Work furnished or performed by Design-Build Contractor is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Agreement means an agreement, as may be amended from time to time, between (a) INDOT and a Utility Owner, or (b) Design-Build Contractor (or a Major Subcontractor) and a Utility Owner, in either case, providing specific details for the Adjustment of one or more particular Utilities. A document is a Utility Agreement if it meets the foregoing definition, without regard to the title or form of the document.

Utility Coordination Manager has the meaning set forth in Section 1.3.1.1 of the Technical Provisions. The “Utility Coordination Manager” is one of the Key Personnel listed in Exhibit 3.

Utility Delay has the meaning set forth in Section 6.8.1.

Utility Easement means a permanent replacement easement and/or other interest in real property (excluding a franchise) located outside of the Planned ROW Limits that is necessary for an Adjustment.

Utility Enhancement has the meaning set forth in Section 6.6.

Utility Information means certain information as provided in the Reference Information Documents and, with respect to Main or Trunkline Utilities, in Section 15 of the Technical Provisions as well as subsequent information as collected by Design-Build Contractor in Design-Build Contractor’s Utility Conflict Matrix.

Utility Owner means any private entity or public body (including city, county, state, public corporation or public district) that owns and/or operates a Utility, including cooperative utilities.

Utility Owner Project means the design and construction by or at the direction of a Utility Owner of a New Utility other than as part of an Adjustment. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

Utility Plan means the final installation details and construction documents that are prepared for Utilities being Adjusted to accommodate the Project in compliance with INDOT's Utility Accommodation Policy.

Utility Work Plan means a signed agreement documenting the scope of Utility Adjustment Work to carry out one or more Utility Adjustments to accommodate the Project, as further described within 105 IAC 13 and the INDOT Utility Accommodation Policy.

Value Engineering Change Proposal has the meaning set forth in Section 22.

Vibration Monitoring and Control Plan is the plan described in Section 7.6 of the Technical Provisions.

Warranty means any of the express warranties of Design-Build Contractor set forth in Section 11.1.

Warranty Bond means the Warranty Bond described in Section 8.1.4.

Warranty Period has the meaning set forth in Section 11.1.2.

Warranty Work means the Work described in Section 11.1.3.

Winter Completion Requirements means all of the requirements for Substantial Completion set forth in this PPA, including those set forth in Section 20.1.1, other than permanent pavement markings.

Winter Delay Period means the number of permitted days of delay after November 30 and during the Winter Suspension Period that Design-Build Contractor is entitled to under this PPA as a sole result of an INDOT-Caused Delay or a Force Majeure Event.

Winter Suspension Period means December 1, 2022 through March 31, 2023 and each December 1 through March 31 thereafter, as applicable.

Witness Point means any point that requires Design-Build Contractor to submit items identified in Section 2.2.1 of the Technical Provisions to INDOT for review, comment, observation and examination. Additional Witness Points may be added by INDOT pursuant to Section 2.2.1 of the Technical Provisions.

Work means all of the administrative, design, engineering, real property acquisition support services, Utility Adjustment, other Utility relocation and support services, procurement, legal, professional, manufacturing, supply, installation, construction, environmental mitigation and management, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties, services and cost reimbursements to be furnished and provided by Design-Build Contractor as required by the PPA Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project and to fulfill the Warranties, except for those efforts which the PPA Documents expressly specify will be performed by INDOT

or other Persons. In certain cases, as determined by INDOT, the term is also used to mean the products of the Work.

Working Drawing means any supplementary bridge plan, stress sheet, shop drawing, erection plan, falsework plan, framework plan, cofferdam plan, bending diagram for reinforcement, or any other supplementary plan, detailed drawing, design drawing, NDC, FDC, or similar data that Design-Build Contractor is required to submit for review and comment, except as may be designated as a Hold Point.

Written Release means all INDOT comments have been addressed on a Submittal to INDOT's satisfaction, and INDOT releases the Submittal by means of a letter, e-mail delivered by or on behalf of INDOT's Project Manager, or through INDOT's documents sharing system.