A PROJECT OF
THE LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES JOINT BOARD TO PROVIDE, OPERATE, MANAGE, AND MAINTAIN A TOLL COLLECTION SYSTEM AND PROVIDE BACK OFFICE TOLL COLLECTION AND CUSTOMER SERVICE FOR LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES

TOLL SERVICES AGREEMENT

Indiana Finance Authority

One North Capital Avenue, Suite 900
Indianapolis, Indiana 46204

Tolls Services Agreement

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TOLL SERVICES AGREEMENT

This Toll Services Agreement ("Contract") is entered into by and between the Indiana Finance Authority ("IFA"), a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions, as the entity designated to procure this Contract by resolution of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board"), and _____, a _____ organized under the laws of _____ ("TSP"), executed as of _____, 2015 ("Execution Date"), and effective on the date of issuance of the Notice to Proceed ("Effective Date"), with reference to the definitions contained in Exhibit A hereto and the following recitals:

A. The State (acting through the Indiana Parties) and the Commonwealth (acting through the Kentucky Parties) have joined together to improve cross-river mobility in the Louisville-Southern Indiana region through implementation of the Ohio River Bridges Project. The States' Parties are parties to the Bi-State Development Agreement and the Interlocal, which agreements established the Joint Board to act on their behalf to implement joint toll operations for the Ohio River Bridges Project by acting through one or more of the States' Parties.

B. The Ohio River Bridges Project is comprised of three Bridges: (a) the new Downtown Bridge; (b) the East End Bridge; and (c) the existing Kennedy Bridge. The New Downtown Bridge and the Kennedy Bridge reconstruction are being designed and constructed pursuant to the DB Contract between KYTC and the DB Contractor. The East End Bridge is being developed, designed and constructed pursuant to the PPA for the design, construction, finance, operation and maintenance of the East End Crossing between IFA and the Developer. The East End Crossing is a new greenfield bridge design, construction, operation and maintenance project. The Downtown Crossing consists of the new greenfield design construction, operation and maintenance of the New Downtown Bridge, the redecking of the existing structure of the Kennedy Bridge, reconfiguring the Kennedy Bridge's traffic lanes to carrying only southbound traffic, and operation and maintenance of the Downtown Bridges in the Downtown Bridges Final Traffic Configuration.

C. The Joint Board has authorized and delegated to IFA the primary responsibility for administration and oversight of procurement of this Contract requiring TSP to complete the Project, which Project includes providing the TCS (including all necessary roadside lane equipment except for the Joint Board-Provided ETC Equipment), the BOS, the CSC, two WUCs, and the VES for the Ohio River Bridges Project. The Project includes configuring, installing, integrating, testing and using certain roadside lane equipment and transponders that will be supplied by the ETC Contractor pursuant to a separate agreement between the ETC Contractor and the Joint Board. The Project requires the TSP to operate and maintain all of the roadside lane equipment, including that supplied by the ETC Contractor, as well as all other

equipment, systems, and centers necessary to comply with the Contract requirements, as detailed in the Technical Requirements.

D. A matrix summarizing the general allocation of responsibilities for the Ohio River Bridges Project and the Project among the Joint Board, the Developer, the DB Contractor, the ETC Contractor and the TSP is set forth in Exhibit B hereto.

E. Pursuant to Indiana Code §8-15.5 et seq., as amended and other applicable provisions of law in effect on _____, 2015, IFA issued the RFP on behalf of the Joint Board, and on January __, 2015, IFA received ___ proposals. The Evaluation Committee determined that TSP was the proposer that best met the selection criteria contained in the RFP, and that its proposal ("Proposal") was the one that provided the best value to the Joint Board. TSP's Proposal consisted of a Technical Proposal and a Price Proposal. The Technical Proposal is referred to herein as the "Proposal."

F. The parties intend for this Contract to be a comprehensive agreement obligating TSP to perform all Work to complete the Project, as more particularly described in the Technical Requirements, including completing the TCS Installation Work by the Completion Deadlines, providing the maintenance support services, and performing all Operations and Maintenance Work, all for the individual TCS Contract Price Components, and collectively for the Contract Price, specified in the Price Sheets set forth in Exhibit C, subject only to certain specified limited exceptions. In order to allow the Joint Board to budget for and finance the Project, and to reduce the risk of cost overruns, this Contract includes restrictions affecting TSP's ability to make claims for increases to the Contract Price and the individual TCS Price Components, or extensions of the Completion Deadlines. TSP has agreed in this Contract to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the prices specified in the Price Sheets.

G. The PPA provides that the Developer at all times shall coordinate and cooperate, and require its contractors to coordinate and cooperate, with TSP in connection with its activities relating to the installation and testing of the TCS, and the Developer shall make the Project Site available to TSP for installation and testing of the TCS not later than 120 days prior to the anticipated date of "substantial completion" of the Developer's construction of the East End Bridge, as defined in the PPA. The PPA provides that the IFA shall commence making availability payments to the Developer upon such substantial completion date. Based upon the current construction schedule, the East End Bridge is expected to open to traffic not later than October 31, 2016.

H. The DB Contract provides that the DB Contractor shall coordinate and cooperate with the TSP throughout the course of construction. It is currently anticipated that the New Downtown Bridge will be open to traffic by April of 2016. The construction of the Downtown Bridges must be "substantially complete" as defined in the DB Contract by no later than December 9, 2016.

I. Tolling will commence on the earlier to occur of the opening of the East End Bridge to traffic, or on substantial completion of the Downtown Bridges.

J. If TSP fails to complete the TCS Installation Work in accordance with the TCS Completion Deadlines established in the Contract Documents, then the States' Parties and the members of the public represented by the States' Parties will suffer substantial losses and damages. The Contract Documents provide that TSP shall pay the Joint Board substantial Liquidated Damages if completion of the TCS Installation Work is delayed beyond the TCS Completion Deadlines.

K. The TCS's accuracy and reliability is of paramount importance to the States' Parties ability to finance and build bridges and highways in order to meet their respective and mutual infrastructure needs. The Joint Board and the States' Parties will suffer substantial losses and damages if the TCS does not meet the Performance Requirements. The Contract Documents provide that TSP shall pay the Joint Board substantial Performance Liquidated Damages and Performance Stipulated Damages if the TCS does not meet certain of the Performance Requirements.

L. The Public Finance Director of IFA has been authorized to enter into this Contract pursuant to the Governor of Indiana's designation of the TSP in accordance with IC 8-15.5-4-11(c) and approval of the Contract in accordance with IC 8-15.5-5-1(b).

NOW, THEREFORE, in consideration of the sums to be paid to TSP by the Joint Board, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

SECTION 1. CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Certain Definitions

Exhibit A hereto contains the meaning of various terms used in the Contract Documents. Depending upon the context, in this Contract references to the Joint Board mean the Joint Board, IFA as the procuring agency, and/or INDOT and/or KYTC as the States' Parties with responsibility for oversight and administration of TSP's work in connection with the Project.

1.2 Order of Precedence

The term "Contract Documents" shall mean the documents listed in this Section 1.2. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to provide for a complete agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below.

(a) For TCS Installation Work not involving civil construction work and/or installation that is considered a public work:

1. Amendments and Change Orders;

2. Contract (including all exhibits other than Exhibits B and D);

3. Technical Requirements (excluding all diagrams in the Technical Requirements);

4. Attachments to the Technical Requirements;

5. Diagrams in the Technical Requirements;

6. TSP's Commitments and Clarifications set forth in Exhibit D;

7. Proposal (including all modifications thereto set forth in Exhibit D).

(b) For civil construction and installation elements of the TCS Installation Work, "Joint Board Standards" shall be listed as item "7" above, and the Proposal shall be renumbered as Item 8. The approved Roadside and Network Installation Plan, and design and construction elements of the WUC Buildout Plan, shall also be considered Contract Documents and shall be added following the Proposal in the order of precedence, provided that (i) specifications contained therein shall have precedence over plans, and (ii) any deviation in such plans shall have priority over conflicting requirements of the Contract Documents if and only to the extent the conflicts are specifically identified in the approval of such plans.

(c) For Operations and Maintenance Work:

1. Amendments and Change Orders;

2. Contract (including all exhibits other than Exhibits B and D);

3. Performance Requirements in TR Section PR;

4. Technical Requirements (including the Joint Board-approved Business Rules which, upon approval by the Joint Board shall be incorporated into and become a part of the Technical Requirements) other than the Performance Requirements in TR Section PR and diagrams in the Technical Requirements;

5. Attachments to the Technical Requirements;

6. The approved plans listed in TR Section TP as the same are applicable to the Operations and Maintenance Work, each of which shall be approved by the Joint Board pursuant to the TR Requirements and incorporated by reference into Exhibit D to this Contract;

7. Other exhibits that are Contract Documents;

8. TSP's Commitments and Clarifications set forth in Exhibit D; and

9. Proposal (including all modifications thereto set forth in Exhibit D).

(d) Portions of the Reference Information Documents are referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. In such cases, the referenced portion of the relevant Reference Information Documents shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of priority as the Contract Document in which the reference occurs.

(e) In determining whether a conflict exists between the Proposal and other Contract Documents, to the extent that the Proposal can reasonably be interpreted as an offer to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms which the Joint Board considers to be more advantageous than the requirements of the other Contract Documents, the Proposal shall not be considered in conflict with the other Contract Documents, and TSP's obligations hereunder shall include compliance with all such statements, offers and terms.

1.3 Interpretation of Contract Documents

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending 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 Contract; 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 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 Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. TSP acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents and to bring to the attention of the Joint Board any conflicts or ambiguities contained therein. TSP further acknowledges and agrees that it has independently reviewed the Contract 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 Contract Documents. Accordingly, in case of an ambiguity in or dispute regarding the

interpretation of the Contract Documents, they shall not be interpreted or construed against the Person which prepared them, and, instead, other rules of interpretation and construction shall be used. The Joint Board's interim or final answers to the questions posed during the Proposal process for this Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except to the extent they may clarify provisions otherwise considered ambiguous. On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.4 Referenced Standards and Specifications

1.4.1. Except as otherwise specified in the Contract Documents or otherwise directed by the Joint Board, 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 Proposal Date.

1.4.2. In interpreting Referenced Standards, the following apply:

(a) References to the project owner shall mean, with (i) respect to any part of the TCS civil improvements, KYTC for Work within the Commonwealth, and INDOT for Work within the State, and for any other Work, the Commonwealth, the State and/or the States' Parties, as the context so requires.

(b) References to "plan(s)" shall mean all relevant parts of the approved plans that the TSP is required to deliver pursuant to TR Section TP.

1.5 Explanations; Omissions and Misdescriptions

TSP shall not take advantage of or benefit from any apparent Error in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed, described or explained in the Contract Documents, TSP shall request in writing such further written explanations from the Joint Board as may be necessary and shall comply with the explanation provided. TSP shall promptly notify the Joint Board in writing of all Errors which it may discover in the Contract Documents, and shall obtain specific instructions in writing from the Joint Board regarding any such Error before proceeding with the Work affected thereby.

1.6 Computation of Periods

References to "Days" or "days" contained in the Contract Documents shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified in the Contract 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. Notwithstanding the foregoing, requirements contained in the

Contract Documents relating to actions to be taken in the event of an emergency 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. The term "business days" shall mean Days on which the IFA is officially open for business.

1.7 Standard for Approvals

In all cases where approvals or consents are required to be provided by the Joint Board or TSP hereunder, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified the decision shall not be subject to dispute resolution hereunder.

1.8 Federal Requirements

The Work to be performed under this Contract will be financed in part with federal funds and therefore is subject to federal statutes, rules and regulations applicable to work financed with federal funds, including the federal requirements set forth in Exhibit F. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail and take precedence over and against any such conflicting provisions.

SECTION 2. TSP'S SCOPE OF WORK AND RESPONSIBILITY; REPRESENTATIONS, WARRANTIES AND COVENANTS; BUSINESS RULES

2.1 TCS Installation Work Requirements

2.1.1. General Scope of TCS Installation Work

2.1.1.1. TSP shall perform and provide all the TCS Installation Work upon issuance of the NTP, on a turnkey basis as set forth in the Contract Documents. The TCS Installation Work includes all Work required to provide, configure, construct, install, integrate, fabricate, and assemble the TCS, and to test and verify that the TCS meets all requirements of and is capable of performing in conformance with the Technical Requirements, and otherwise complies with the requirements of the Contract Documents. Unless otherwise provided in the Contract Documents, TSP shall provide and pay for all labor, management, supervision, materials, equipment, tools, software, licenses, utilities, transportation and other facilities and services and efforts necessary for proper completion of the TCS Installation Work, as well as the TSP Insurance and the Payment and Performance Bond required hereunder. Subject to the terms of Section 13, the costs of all TCS Installation Work, including such permits and Regulatory Approvals as may be required to perform the TCS Installation Work, other than Joint Board Provided Approvals and necessary FCC radio operating license(s) are included in the total Toll Collection System Capital Price for the TCS Installation Work that is set forth in Exhibit C.

2.1.1.2. TSP shall plan, schedule, and execute all aspects of the TCS Installation Work and shall coordinate its activities with all parties who are directly impacted by such Work, as generally depicted in the Responsibility Matrix in Exhibit B. TSP shall document and report all TCS Installation Work in accordance with the requirements set forth herein and in the relevant approved Project Plans listed in TR Section TP, including the Roadside and Network Installation Plan, Back Office Installation Plan, TOC System Plan, Safety Plan, Training Plan, Transition Plan, Project Management Report, Quality Management Plan, Configuration and Change Management Plan, and Testing and Commission Plan. TSP shall submit and obtain Joint Board approval of a monthly Project Management Report during the Installation and Delivery Phase. TSP shall timely make all submittals required by the Contract Documents in accordance with performance of the Installation Work, and all such submittals shall be accurate and complete.

2.1.1.3. The TCS Installation Work includes configuring the TCS ("Configuration Work," as provided in Section 2.1.2), and TSP shall install and construct the TCS as configured, in accordance with all professional principles and construction practices generally accepted as standards of the industry in the State and in the Commonwealth, in a good and workmanlike manner, free from defects, and in accordance with the terms and conditions set forth in the Contract Documents.

2.1.2. Configuration Work

2.1.2.1. General. TSP shall perform all Configuration Work in accordance with the Contract Documents. The Configuration Work shall include the preparation of System Documentation that is consistent with and develops in detail the intent of the TR.

2.1.2.2. System Documentation. Upon receipt of the Notice to Proceed, TSP shall commence preparation of the System Documentation listed in TR Section TP, in accordance with the time frames listed in such Section TP or such shorter time frames as may otherwise be specified in the approved Project Schedule. The System Documentation shall be based on and demonstrate compliance with the parameters set forth in the TR, shall contain sufficient detail so they can reasonably be approved by an engineer registered in the discipline to which such plans, drawings and specifications pertain, shall contain sufficient detail to permit inspection and approval of the Work by the Joint Board, and shall comply with the following Configuration Work Requirements):

(a) Applicable INDOT standards for work in Indiana OR applicable KYTC standards for work in Kentucky;

(b) All applicable Laws;

(c) All Regulatory Approvals; and

(d) All applicable provisions of the Contract Documents.

2.1.2.3. Licenses. TSP shall perform the Configuration Work for any civil construction elements of the TCS Installation Work under the responsible charge of Registered Professional Engineers in the State and/or the Commonwealth, as appropriate, and all such elements of the Configuration Work shall be stamped by Registered Professional Engineers licensed in the State and/or the Commonwealth, as appropriate.

2.1.2.4. Joint Board Review

(a) Review Process. Upon the Joint Board's request, TSP shall provide the Joint Board with the opportunity to perform "over-the-shoulder" reviews of the design and configuration in progress. The over-the-shoulder reviews may be conducted in the office of TSP or its Subcontractors located in Indiana or Kentucky and in the presence of TSP's relevant personnel, with the intent to minimize disruption of on-going Configuration Work. The reviews may be of progress prints, computer images, draft documents, working calculations, draft specifications or reports or other documents as determined by the Joint Board. The Joint Board shall reasonably coordinate with TSP in connection with such over-the-shoulder reviews in order to help TSP identify the appropriate personnel for such reviews.

TSP shall submit all required plans, System Documentation and test results for formal review, comment and approval or disapproval, as the case may be, by the Joint Board in accordance with the Approval Process set forth in Section 3. Each submission of the System Documentation shall include a statement that to the best of TSP's knowledge such System Documentation complies with Section 2.1.2.2.

(b) Standards for Review and Approval/Disapproval. The Joint Board's review of, comments on and approval, conditional approval or disapproval of System Documentation submitted by TSP shall be based only on (i) the Configuration Work requirements set forth in the Technical Requirements and approved Plans, (ii) statutory and regulatory non-discretionary standards relating to public health, safety and welfare, or (iii) Minor Revisions. Conditional approvals and disapprovals based on any of the foregoing standards shall not entitle TSP to any Claim or Change Order.

2.1.3. Installation Work

2.1.3.1. Compliance. The Installation Work shall comply with the following Installation Work Requirements:

(a) Technical Requirements;

(b) Approved Plans and other approved System Documentation;

(c) Applicable INDOT standards for civil construction work in Indiana and Applicable KYTC standards for civil construction work in Kentucky;

(d) INDOT approved deviations for civil construction work in Indiana or KYTC approved deviations for civil construction work in Kentucky;

(e) All applicable Laws;

(f) All Regulatory Approvals;

(g) All applicable provisions of the Contract Documents.

2.1.3.2. Contractor Licenses. To the extent required under applicable Laws, TSP shall perform TCS Installation Work at the Project Site with contractors licensed in the State or the Commonwealth, as appropriate.

2.1.3.3. TCS Installation Work at the Project Site.

(a) TSP shall confine its operations at the Project Site to the areas and structures permitted by the Contract Documents, applicable Law and Regulatory Approvals. To the extent TSP's Installation Work at the Project Site involves areas over which the DB Contractor or the Developer retains control pursuant to the DB Contract or the PPA, respectively, TSP shall comply with its own safety and security procedures

and with the requirements of DB Contractor's and Developer's respective safety and security manuals and shall request DB Contractor's and Developer's respective directions as to access to and occupancy of such areas, and shall coordinate and cooperate with DB Contractor and Developer, respectively, so as not to interfere with or adversely impact their performance of their work.

(b) TSP shall plan and conduct its operations hereunder at all times so as not to:

i. enter upon, disturb or use any property of any person except with the express permission of, and in compliance with all requirements of, the owner of such property;

ii. damage, close or obstruct any Utility installation, highway, road or other property unless and until all Regulatory Approvals therefor have been obtained; or

iii. disrupt or otherwise interfere with the operation of any telephone line, electric transmission line, improvement or structure unless otherwise specifically authorized by this Contract, applicable Law or any Regulatory Approval.

TSP shall not be entitled to any extension of time or adjustment of the Contract Price on account of TSP's failure to comply with the provisions of this Section 2.1.3.3. All costs in connection with any repairs or restoration necessary or required by reason of unauthorized obstruction, damage or use by TSP or any Subcontractor shall be borne by TSP.

2.1.3.4. Procurement. TSP shall procure and make payment for all equipment, materials and supplies to be furnished for the TCS Installation Work, and TSP shall perform such inspection, receipt, warehousing, expediting, quality surveillance, traffic and other services as are necessary in connection with such procurement. All shipment and transportation costs shall be paid by TSP, and TSP shall, if required, clear equipment through customs and take any other actions necessary to import equipment.

2.1.3.5. Spare Parts. Spare Parts shall be procured, inventoried and stored at the Project Site (or secure Warehouse Facility approved by the Joint Board) by TSP in accordance with TR Section TO and the approved Spare Parts Inventory Plan. The Spare Parts Inventory Plan shall identify quantities of Spare Parts expected to be needed for the TCS and maintenance vehicles during each quarter of the Term, and shall be continually updated, taking into consideration the Spare Parts inventory on-hand at the Warehouse Facility, and a plan for dealing with any Spare Parts that may become obsolete. The Spare Parts Inventory Plan shall assume that upon transition from the Downtown Bridges Temporary Traffic Configuration to the Downtown Bridges Final Traffic Configuration, all equipment that is removed from the additional Equipment Lanes used for the Downtown Bridges Temporary Traffic Configuration shall be placed

into the Spare Parts Inventory. The Total Toll Collection System Capital Price includes all Spare Parts required for the first year of the TCS Operations and Maintenance Term, and the provisions of this Section 2.1.3.5 shall apply to both the Installation Period and the TCS Operations and Maintenance Term. TSP's anticipated Spare Parts Requirements for each year of the Contract Term are set forth in Exhibit C, Sheet G-17. TSP shall ensure that it has on hand at all times an inventory of all Spare Parts anticipated to be required to operate and maintain the TCS in accordance with the Contract Documents for a three months rolling period. Spare Parts held in TSP's inventory shall be fully tested, and TSP shall maintain the Spare Parts in good operating condition at all times during the Contract Term. All Spare Parts in the inventory shall be new unless TSP obtains the Joint Board's prior written approval of an alternative or such Spare Parts were new when used in the Downtown Bridges Temporary Traffic Configuration and then removed and placed into the Spare Parts inventory as permitted by this Section 2.1.3.5. TSP shall take into account anticipated rates of Spare Parts Inventory depletion and the length of time required to procure the various Spare Parts when determining Spare Parts inventory quantities. TSP shall be solely responsible for ensuring that inventory levels are adequate. If during the Contract Term TSP requires the use of Spare Parts in a quantity exceeding, or of a nature not identified in, the Spare Parts Requirements, TSP shall provide such Spare Parts at its own cost and expense and shall not be entitled to reimbursement of the cost of any Major Spare Parts in excess of the quantities identified in the Spare Parts Requirements for any year of the Contract Term, or for any Major Spare Parts not identified in the Spare Parts Requirements. If at any time the Joint Board determines, in its sole discretion, that the rate of failure or time taken to acquire replacements of Spare Parts indicates that the level of inventory maintained with reference to the Spare Parts Inventory Plan is insufficient to ensure the continuous operation of the TCS in accordance with all requirements of the Contract Documents, the Joint Board shall have the right to direct TSP to increase the Spare Parts inventory level, at TSP's sole cost and expense. The cost of Components is included in the Total Toll Collection System Operations and Maintenance Price, and TSP shall not be entitled to reimbursement of costs attributable to Components supplied during the Term.

2.1.3.6. Utilities. TSP shall arrange and pay for all Utilities including, without limitation, electricity, telephone, sanitation and water, with respect to any of TSP's Work or operations off-site and shall arrange and pay for all telephone and other telecommunication services required or utilized by TSP at the Project Site. TSP shall bear the cost of all such Utilities and other supplies, consumables and services required by TSP and its Subcontractors for the performance of the Work, provided, however, that the Joint Board shall reimburse TSP for the actual cost of the Utilities listed on Exhibit H as Pass-Through Cost Item expenses. The provisions of this Section 2.1.3.6 shall apply during both the Installation Period and the TCS Operations and Maintenance Term.

2.1.3.7. Integration of Work by Others. To the extent the TCS Installation Work depends for proper execution or results upon construction or operations by DB

Contractor or Developer, TSP shall provide DB Contractor and Developer requested information in connection therewith, shall participate with and assist the Joint Board in inspection, testing and acceptance of elements of the Bridges that are related to the Work, and shall, prior to proceeding with that portion of the TCS Installation Work, inspect and promptly report to the Joint Board any discrepancies or defects in such construction or operation of which TSP has knowledge that would render it unsuitable for proper execution of Work by TSP. The Joint Board shall reasonably coordinate with TSP in connection with such inspections and shall reasonably attempt to have such inspections done reasonably efficiently. Notwithstanding the division of responsibilities as shown in Exhibit B, TSP shall be responsible for validating that all of its Work integrates with any work performed by others to produce a comprehensive TCS that is consistent with the Technical Requirements; provided, however, that so long as the TSP has undertaken the Work in compliance with the Contract Documents and has complied with its obligations to coordinate, review, advise, inspect, test and assist the Joint Board and the States' Parties with respect to the portions of the Bridges done by the DB Contractor and Developer that are related to the Work and the TCS, the TSP shall not have any liability with respect to the design, construction and performance of the portions of the Bridges undertaken by the DB Contractor and Developer.

2.1.3.8. Prevailing Wage.

(a) TSP shall pay or cause to be paid to all workers employed by it or its Subcontractors to perform the TCS Installation Work not less than the highest prescribed prevailing rates of wages, as provided in the statutes and regulations applicable to public construction projects and public work contracts, including IC 5-16-7, KRS § 337.505 *et seq.*, to the extent provided in Exhibit F (Federal Requirements), the Davis-Bacon Act and statutory common wage law(s) applicable to the Project. For purposes of clarity, (i) as between the prescriptions under the Davis-Bacon Act (if applicable) and the "Common Wage" prescribed pursuant to IC 5-16-7, the "prevailing rate of wages" shall be, in respect of each labor category, the higher value prescribed and (ii) notwithstanding any term of this Contract to the contrary, to the extent that FHWA and the U.S. Department of Labor approve project-specific wage rates for the Project, then TSP 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 TSP's obligations under this Contract. TSP shall comply and cause its Subcontractors performing Installation Work that is construction of a public work under applicable law to comply with all Laws pertaining to prevailing wages, including arranging for a "Common Wage" hearing pursuant to IC 5-16-7. The provisions of Attachment 2 to Exhibit F (Federal Requirements) shall apply to the Project and to all covered classifications of employees regardless of the contractual relationship between TSP or Subcontractors.

(b) TSP shall comply and cause its Subcontractors performing Installation Work that is construction of public works under applicable law to comply with all Laws, regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

(c) If it is found that a laborer or mechanic employed by TSP or a Subcontractor has been or is being paid a rate of wages less than the rate of wages required by this Contract to be paid, the Joint Board may declare a TSP Event of Default under Section 16.1.1(d).

2.1.3.9. Prompt Payment to Contractors.

The TSP shall pay each Subcontractor for Work satisfactorily performed within 30 days after receiving payment from the Joint Board for the Work satisfactorily performed by the Subcontractor.

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

2.1.3.10. Suspension and Debarment.

(a) TSP certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State or the Commonwealth. For purposes of this Section 2.1.3.10, the term "principal" for purposes of this Contract means an officer, director, owner, partner, Key Personnel, employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of TSP.

(b) TSP shall deliver to the Joint Board, not later than January 31 of each year of the Contract Term, signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from TSP, from each affiliate of TSP (as "affiliate" is defined in 29 CFR § 16.105 or successor regulation of similar import), and from each Subcontractor whose contract amount equals or exceeds $100,000. The annual certification shall be substantially in the form of clauses 1.a through 1.d of Attachment 6 to Exhibit F (Federal Requirements).

2.1.3.11. Cleaning Up. During performance on-site of the TCS Installation Work, TSP shall keep the Project Site and all structures on the Project Site occupied by TSP in a neat, clean and safe condition. Upon completion of any portion of its Work, TSP shall promptly remove from the Project Site and from such structures all its equipment, temporary structures, and surplus materials not required to be used at or near the same location during later stages of the Work. As a condition to Tolling Readiness and prior to payment therefor, TSP, at its expense, shall satisfactorily dispose of all its surplus materials and rubbish, remove all tools, machinery, construction equipment and materials belonging to TSP, and leave the Project Site and all structures thereon occupied by TSP in a neat, clean and safe condition. In the event TSP fails to commence to comply with any of the foregoing within five days after notice from the Joint Board, the Joint Board may accomplish the same at TSP's expense.

2.1.3.12. Security and Safety.

(a) Not later than 90 days following issuance of the NTP, TSP shall submit the Safety Plan required by TR item TP-009 to the Joint Board for its review, comment and approval. The Joint Board shall have the right to review and comment upon the safety and security manual and any changes thereto proposed by TSP prior to the implementation of such plan or any such changes.

(b) TSP shall be responsible for safety and security of its own personnel, Work, equipment and materials in accordance with the Safety Plan, and for the safety and security of any other persons involved in the testing activities outlined in TR Section TP, and for persons visiting or working in the CSC or a WUC. TSP shall be responsible for initiating, maintaining and providing supervision of safety and security precautions and programs in accordance with the Safety Plan and in accordance with applicable Laws. Whenever TSP's operations create a condition hazardous to the public, TSP shall cause to be furnished, erected and maintained such temporary railings, barricades, lights, signs, and other devices and take such other protective measures as are necessary to prevent accidents, damage or injury to the public.

(c) If an emergency affecting the safety of persons or property arises, TSP shall act to prevent threatened damage, injury or loss. Notwithstanding the foregoing, TSP shall comply with any directions given by the Joint Board to remove an immediate and present threat to the safety of life and property where such immediate and present threat relates to or arises out of the System or TSP's scope of services under this Agreement, and TSP shall permit the Joint Board to take action to remove an immediate and present threat to the safety of life and property or to remove any condition that the Joint Board believes poses an imminent danger to public health or safety; no such action shall expose the Joint Board to any liability to any TSP Party or entitle TSP to any other remedy (except as expressly provided in Section 13), it being acknowledged by TSP that the Joint Board has a paramount public interest in providing and maintaining public safety.

2.1.3.13. As Built System Documentation. Within 30 days following the completion of System Acceptance Testing or any earlier termination of this Contract for any reason (whichever is applicable), TSP shall deliver to the Joint Board a complete set of As-Built System Documentation for the TCS, which shall comply with the specifications set forth in the TR.

2.2 Maintenance Work Requirements

2.2.1. Maintenance of TCS

During the TCS Operations and Maintenance Term, TSP shall maintain and repair the TCS in accordance with the TR, performing all preventive maintenance, routine maintenance and making all adjustments, repairs, overhauls and replacements

necessary to keep the TCS in good working order and in operation at all times and to satisfy the Performance Requirements. TSP shall perform such maintenance and repair in accordance with the provisions of the approved Maintenance and Support Plan and in accordance with the approved Safety Plan, Quality Management Plan, Configuration and Change Management Plan, and Maintenance of Traffic Plan, and other requirements of the Contract Documents. TSP shall maintain, rebuild, repair, restore or replace all work, including System Documentation, Software, Hardware, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during operation of the Project that is damaged prior to the date TSP's maintenance responsibility ends, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage, at no additional cost to the Joint Board beyond payment of the Total Toll Collection System Operations and Maintenance Price (Years 1 through 7) as specified in the Price Sheets in Exhibit C, except to the extent that the Joint Board is responsible for such costs in accordance with the express terms of this Contract. TSP acknowledges and agrees that to the extent that System sensors are located within pavement or Bridge decking, the cost of repairs to the pavement or Bridge decking necessitated by TSP's sensor maintenance and repair activities are expressly included within TSP's maintenance and repair obligations under this Section 2.2.1 and the TR. The standard for such pavement repair shall be, as to repairs in Kentucky, the standard practices of KYTC, and as to repairs in Indiana, the standard practices of INDOT. TSP shall pay the cost of such pavement and Bridge decking repairs upon receipt of an invoice for such costs, and the Joint Board shall have the right to deduct the amount of any such unpaid invoices from compensation otherwise owing to the TSP pursuant to this Contract. For clarification, TSP shall not be responsible for the cost of pavement and Bridge deck repairs except as the same are necessitated as a result of the TSP's Work. TSP shall coordinate with the Joint Board and notify the Joint Board of planned inspections, maintenance and repairs of the Toll Collection System requiring any significant shutdowns of equipment, and TSP shall use diligent efforts to schedule any such shutdowns in such a manner as to minimize disruption of tolling operations. TSP shall notify the Joint Board at least 10 business days in advance of any scheduled closure of any toll lanes required to perform maintenance, and no such maintenance activity shall result in a complete closure of all toll lanes on a bridge or approach unless such closure is required in accordance with the TCS Maintenance of Traffic Plan to prevent the loss of toll revenues. In the event unscheduled maintenance or repair work is required in order to continue or restore the full operation of the TCS, TSP shall perform such work as necessary on a round-the-clock basis, regardless of weekends or holidays, provided, however, that roadside work will not be permitted on the days of the following regional events without written approval of the Joint Board, in its sole discretion: (i) Derby Festival Thunder Over Louisville (roadside Installation Work may recommence at 10:00 a.m. the following Day); and (ii) the day before (Oak's Day) and the day of the Kentucky Derby (the first Saturday in May; roadside Installation Work may recommence at 10:00 a.m. on the day following the Kentucky Derby).

2.2.2. Additional Operations and Maintenance Responsibilities

(a) TSP shall collect and analyze data, and perform diagnostic analysis of failures and trend analysis, as necessary to ensure that each of the Performance Requirements in TR Section PR are satisfied on a continual basis, and shall report on TCS activities in the Monthly Operations and Maintenance Report to be submitted to the Joint Board for review and approval pursuant to TR Section TP, including operating statistics, accuracy and availability, inventory, and such other information as requested by the Joint Board in such reports, and with such frequency as is specified in the TR. TSP shall keep detailed maintenance records and inventory data to permit the Joint Board to ascertain TSP's compliance with the Contract Documents' requirements and shall furnish copies of such documents upon request, in accordance with TR Section OM. TSP shall timely make all submittals required by the Contract Documents in accordance with performance of the Maintenance Work, and all such submittals shall be accurate and complete.

(b) TSP shall train new maintenance and supervisory personnel prior to transition to operations and maintenance of the Toll Collection System by the Joint Board or another operator. A plan for such training shall be included in the End of Contract Transition Plan that TSP is required to deliver pursuant to TR Section TP. TSP shall make no change in the design or configuration of the TCS as accepted by the Joint Board without the express written consent of the Joint Board, in its sole discretion.

2.2.3. Corrective Action

(a) If the minimum TCS performance levels defined in TR Section PR are not met in any calendar month, or performance records (including any Monthly Operations and Maintenance Report or any other performance audit report) indicate they either have not been or will not be met, TSP shall promptly notify the Joint Board in writing and shall take immediate corrective action to mitigate the cause at TSP's sole cost and expense (except TSP shall not bear the cost as expressly provided herein with respect to (i) Latent Defects in Joint-Board Provided ETC Equipment as described in Section 13.7.1.8 or (ii) Major Spare Parts). If the immediate corrective action is unsuccessful, TSP shall undertake a study, at its expense, to determine the causes and propose a plan to correct the problem at TSP's sole cost and expense.

(b) In addition to its rights in the preceding paragraph, in the event of an emergency requiring immediate curative action or a situation which poses a significant safety risk to the public at the roadside or a WUC, or significant potential revenue loss (as determined by the Joint Board, in its sole discretion), the Joint Board shall have the right, but not the obligation, to perform or have performed by third parties the necessary work or remedy, and the costs thereof that relate to the System, the WUC, the roadside, the Work or the services under this Agreement, shall, subject to Section 13, be borne by TSP; provided, however, that the Joint Board shall take reasonable efforts to incur reasonable costs in undertaking, or having a third party undertake, such work.

Alternatively, the Joint Board may deduct the amount of such costs and expenses from any sums owed by the Joint Board to TSP pursuant to this Contract. The Joint Board shall notify the TSP promptly of any determination by the Joint Board to make such deduction. The foregoing shall not limit or modify the Joint Board's rights to any Performance Liquidated Damages and Performance Stipulated Damages that may arise out of such failure, which are in addition to the obligations to undertake and pay for such corrective action.

2.2.4. Transfer of Operations and Maintenance to Joint Board at End of TCS Operations and Maintenance Term

2.2.4.1. Training of Personnel.

TSP shall train the Joint Board personnel or the personnel of a Joint Board-designated organization to maintain the Project, such training to be initiated at least 9 months prior to the end of the TCS Operations and Maintenance Term, in accordance with the approved End of Contract Transition Plan required pursuant to TR Section TP. TSP shall provide qualified instructors who will prepare the course material including the latest modifications, equipment changes, maintenance updates, and any revised maintenance procedures, and may enlist major Subcontractors or Suppliers to augment TSP's own trainers. Literature, training aids, and equipment used in training shall be turned over to the Joint Board at the termination of the TCS Operations and Maintenance Term. The training shall be designed with the objective that within 3 months of the start of the training, but no later than 90 Days prior to the end of the TCS Operations and Maintenance Term, there shall be sufficient quantity of personnel trained so that the Project (excluding Work performed exclusively at the BOS and CSC) can be completely run without TSP's personnel. It shall include classroom and hands-on experience.

2.2.4.2. Continued Stocking of Parts.

At the end of the TCS Operations and Maintenance Term, the Spare Parts Inventory shall be fully stocked and complete (including substitution with suitable alternatives for any such Spare Parts that are obsolete). In the event that such inventory is not fully stocked and complete, an amount equal to the cost of restocking and completing such inventory (other than the cost of Major Spare Parts that is to be passed through to the Joint Board), shall be deducted from any payments due TSP. The Joint Board shall notify the TSP promptly of any such deduction. To the extent that the cost of restocking and completing such inventory incurred by the Joint Board exceeds the payments due TSP, such differential shall be paid by the TSP to the Joint Board within 15 Days after the date of termination of the TCS Operations and Maintenance Term.

2.2.5. Coordination of Joint Board Maintenance Activity

The Joint Board shall coordinate with TSP and notify TSP of planned inspections, maintenance, and repairs within a Toll Zone requiring any significant management or diversion of traffic. The Joint Board shall notify TSP at least 30 days in advance of any scheduled repaving or other major scheduled maintenance or repair work, in such area, and at least 10 days in advance of any less extensive scheduled inspection, maintenance or repair work in such area.

2.2.6. Options to Extend TCS Operations and Maintenance Term and to Require Software Maintenance After Termination

The Joint Board shall have one TCS Operations and Maintenance Option to extend the TCS Operations and Maintenance Term for two years, for the TCS Operations and Maintenance Option Price specified in Exhibit C. The Joint Board shall exercise its TCS Operations and Maintenance Option, if at all, by delivery of written notice to the TSP of the Joint Board's election to exercise its TCS Operations and Maintenance Option not fewer than 90 days prior to the scheduled expiration date of the TCS Operations and Maintenance Term. If the Joint Board exercises the TCS Operations and Maintenance Option, the End of Contract Transition Plan shall apply to the end of the TCS Operations and Maintenance Option Period. In addition to the TCS Operations and Maintenance Option, the Joint Board shall have the option ("Software Maintenance Option"), in its sole discretion, to require the TSP to continue to service and maintain the Software, including providing updates and upgrades, from and after the termination of this Contract, whether at the end of the TCS Maintenance and Operations Term or as a result of an earlier termination, for so long as the Joint Board desires to continue to use the Software in connection with the Project (the "Software Maintenance Option Period"). The scope of the Toll System Provider's obligations to service and maintain the Software during the Software Maintenance Option Period, and the terms and conditions governing the performance of such obligations, shall be substantially the same as provided in the Contract Documents with respect to Software maintenance during the TCS Operations and Maintenance Term, and shall include the same services as are required of Toll System Provider to service and maintain the Software during the TCS Operations and Maintenance Term. During the Software Maintenance Option Period the TSP shall continue to provide the Maintenance Performance Bond(s) and Maintenance Payment Bond as required pursuant to Section 8.1.4, and the insurance specified in Section 9, other than the insurance required pursuant to Section 9.1.6. The Joint Board shall exercise the Software Maintenance Option, if at all, by delivery of written notice to the TSP of the Joint Board's election to exercise such option at any time up to the date of termination of the Contract. If the Joint Board exercises the Software Maintenance Option, the Parties shall in good faith attempt to agree upon the price for such services by reference to the itemized cost for elements of work required for Software maintenance set forth in the Price Sheets. If the Parties cannot agree upon such price, it shall be determined pursuant to the methodology for pricing Change Orders set forth in Section 13 of this Contract (but

during the pendency of such dispute, the TSP shall perform the services described herein). If the Joint Board exercises the Software Maintenance Option, the provisions of this Section 2.2.6 shall survive termination of the Contract.

2.2.7. Operations and Maintenance Work

TSP shall operate the TCS during the TCS Operations and Maintenance Term and provide all premises, materials, services and efforts necessary to perform the Operations and Maintenance Work in accordance with the requirements of the Contract Documents and all approved Plans specified in TR Section TP pertaining to the Operations and Maintenance Work, as the same may be revised from time to time pursuant to this Contract, the applicable approved Pass-Through Cost Items Budget, any Change Directive, the State and the Commonwealth's respective current traffic control plans, the requirements of warranties and guarantees provided by suppliers, Subcontractors and vendors, the requirements of insurance policies, applicable Laws and Regulatory Approvals. Except for items specified as Pass-Through Cost Items in Exhibit H, all materials, services and efforts necessary to perform the Operations and Maintenance Work are included in the Total Toll Collection System Operations and Maintenance Price (Years 1 through 7) set forth in the Price Sheets in Exhibit C.

2.2.8. Scope of Operations and Maintenance Work

The scope of the Operations and Maintenance Work is defined in TR Section OM TCS Operations and Maintenance. The Operations and Maintenance Work includes all day-to-day services required for the operation of the TCS and toll processing, collection, violations processing and back-office violations enforcement in accordance with the TR, and all relevant Plans approved by the Joint Board pursuant to TR Section TP, at standards generally accepted in the toll processing and service center industry and meeting or exceeding the Performance Requirements. TSP shall timely make all submittals required by the Contract Documents in accordance with performance of the Operations and Maintenance Work, and all such submittals shall be accurate and complete. The Operations and Maintenance Work also includes provision of all insurance, bonds, warranties, guaranties and other forms of protections required under this Contract. The scope of the Operations and Maintenance Work shall remain in effect for the balance of the TCS Operations and Maintenance Term, subject to such revision, amendment and updating as may be required by the Joint Board (except if incapable of being supported by the final system configuration as indicated in the Final System Documentation) or as may be proposed by TSP and approved in writing by the Joint Board. TSP from time to time may recommend modifications to the Operations and Maintenance Work or level of service. Any such recommendation shall be accompanied by justifications, cost modifications and clear cost-benefit analysis. If such further changes to the Operations and Maintenance Work cause or will cause an increase or decrease in the cost of performing the Operations and Maintenance Work, any adjustment to the TCS Total Toll Collection System Operations and Maintenance

Price and/or the Performance Requirements shall be subject to the provisions of Section 13.

2.2.9. CSC Pre-Toll Operations Work

The Joint Board shall give the TSP 15 days prior notice of the start of the Pre-Toll Operations Period, which start shall be not sooner than the Pre-Toll Operations Readiness Deadline. During the Pre-Toll Operations Period for CSC Pre-Toll Operations Work, TSP shall perform the CSC Pre-Toll Operations Work. TSP shall perform the CSC Pre-Toll Operations Work in accordance with the provisions of the Contract Documents and according to the approved Project Schedule.

2.2.10. TOC Pre-Toll Operations Work

The Joint Board shall give the TSP 15 days prior notice of the start of the Pre-Toll Operations Period, which start shall be not sooner than the Pre-Toll Operations Readiness Deadline. During the Pre-Toll Operations Period for TOC Operations Work, TSP shall perform the TOC Pre-Toll Operations Work. TSP shall provide and supply all labor, supervisory personnel, materials, equipment, Spare Parts, Software, furnishings, supplies and other resources required for performing the TOC Pre-Toll Operations Work according to the approved Project Schedule.

2.2.11. Operations and Maintenance Work During Balance of Term

2.2.11.1. General.

From and after the Revenue Service Date, TSP shall operate and manage the TCS in accordance with the provisions of the Contract Documents, and TSP shall provide and supply all labor, supervisory personnel, materials, equipment, Spare Parts, Software, furnishings, supplies and other resources required for such Work.

2.2.11.2. Notice of Revenue Service Date.

The Joint Board shall give TSP at least 30 days prior written notice of the expected Revenue Service Date and shall promptly notify TSP in writing thereafter of any changes in such expected date. The actual Revenue Service Date shall be established by the Joint Board and shall be evidenced by a Notice of Revenue Service Commencement issued by the Joint Board to TSP.

2.2.11.3. Project Schedule.

The Project Schedule to be developed by TSP and approved by the Joint Board in accordance with TR Section TP within 30 days after NTP, and when approved attached to this Contract as Exhibit J, shall include scheduled dates and times for deliverables, Progress Milestones, testing and commissioning of the TCS. TSP shall perform the Work according to the Project Schedule.

2.2.12. Cooperation With Other Contractors

2.2.12.1. Contractor Transition, Cooperation and Coordination Plan.

TSP acknowledges that prior to the Revenue Service Date and thereafter, other contractors, including the DB Contractor, the Developer and their respective Subcontractors, may be working at or otherwise present on the Project Site during the performance of Work by TSP under this Contract, and use of certain facilities may be interfered with as a result of such concurrent activities. TSP shall cooperate with the Joint Board and such other parties in the performance of concurrent activities, and be responsible for reviewing and coordinating its activities hereunder with the work schedules of other contractors and implementing the provisions of the plan and the concurrent operations of TSP hereunder, the DB Contractor under the DB Contract and the Developer under the Development Contract.

2.2.12.2. Project Site Activities.

Contractor shall confine its operations at the Project Site to the areas permitted by the Contract Documents, applicable Law and Regulatory Approvals.

2.2.12.3. Ongoing Operations and Maintenance.

TSP shall cooperate and coordinate with the Joint Board and its employees, the States' Parties and employees of the States' Parties, and other contractors with respect to the ongoing operation, maintenance, renewal and replacement of the Ohio River Bridges Project.

2.2.13. Security and Safety

2.2.13.1. Safety and Security Procedures.

TSP shall implement the provisions of the Safety Plan and any other Plans concerning safety and security at all times and shall ensure that TSP's employees and Subcontractors conduct operations at the Project Site in such a manner as to minimize the risk of bodily harm to persons or damage to property, and to protect against vandalism, theft, and other similar risks. Without limiting the foregoing, TSP shall maintain, or cause to be maintained, accurate accident and injury reports and shall inform all operating personnel of safety practices and the requirements of TSP's safety program, shall maintain, or cause to be maintained, a supply of suitable safety equipment (including fire extinguishers) and enforce the use of such equipment by operating personnel, shall promptly take all precautions which are reasonable to safeguard against such risks and shall make, or cause to be made, regular safety and security inspections of all TCS facilities.

2.2.13.2. Hazardous Conditions.

Whenever TSP's operations at the Project Site create a condition hazardous to the public, TSP shall cause to be furnished, erected and maintained such temporary railings, barricades, lights, signs, and other devices and take such other protective measures as are necessary to prevent accidents, damage or injury to the public, in accordance with applicable Joint Board Standards.

2.2.13.3. Emergencies.

If an emergency threatening or resulting in disruption of TSP's operations arises, TSP shall immediately notify the Joint Board, and act in accordance with the applicable State's or Commonwealth's (as relevant) emergency management plans and procedures as identified in the Reference Information Documents, or provided to or known to TSP for dealing with emergencies at the Bridges or Toll Facilities. In addition, TSP shall comply with any directions given by the Joint Board's Designated Representatives or the relevant police or patrol to remove an immediate and present threat to the safety of life and property and shall permit the State and/or the Commonwealth to take action to remove any condition which it believes poses an imminent danger to public health or safety. In the event of an emergency affecting the State and or the Commonwealth, TSP shall assist and coordinate with the State and/or

the Commonwealth as they comply with their duties, including but not limited to the Commonwealth's duties under KRS Chapter 39A as well as any federal declarations of emergency, in addition to any Indiana emergency plans and statutes. The point of contact in Kentucky for the TSP for emergency management is the KYTC Division of Incident Management. The point of contact in Indiana for emergency management is Managing Engineer for Corridor Operations, INDOT Department of Traffic Management (as of the Execution Date, such individual is Edward Cox). Subject to Section 13, no such action shall expose the Joint Board or any States' Party to any liability or entitle TSP to any other remedy, it being acknowledged by TSP that the States' Parties have a paramount public interest in providing and maintaining safe public use of and access to the Ohio River Bridges Project facilities.

2.2.14. Toll Operations

2.2.14.1. General.

During the Operations and Maintenance Term, TSP shall be responsible for all operations related to toll collection, violation processing, and revenue handling and accounting in accordance with the TR, and shall furnish all staffing, supervision, support services, data services and connections, equipment and materials necessary to perform such Work. Toll collection shall begin at the time designated in writing by the Joint Board on the Revenue Service Date.

2.2.14.2. Business Rules, Toll Rate Schedule; Fees and Charges.

(a) The Joint Board, in conjunction with the Tolling Body, shall have the sole and unrestricted right to establish and revise toll rates as often as it deems necessary or advisable in accordance with TR Section RS and to establish separate rates for various axle-based classifications of vehicles. All such rates and classifications shall be set forth in a Toll Rate Schedule issued by the Tolling Body and provided by the Joint Board and any changes to the Toll Rate Schedule shall be evidenced by notice in writing issued by the Joint Board to TSP.

(b) TSP shall collect only those tolls which are authorized under the Toll Rate Schedule and shall permit only such non-paid use of the Bridges as may be specifically designated in the Toll Rate Schedule for exempt vehicles, if any.

(c) The Joint Board shall provide the initial Toll Rate Schedule at least 90 days prior to the scheduled Revenue Service Date, and any revisions thereto shall be provided to TSP no less than 30 days prior to the effective date thereof.

(d) To the extent not governed by the Toll Rate Schedule, the Joint Board, through the Tolling Body, shall have the exclusive right to set and change from time to time the types and amounts of fees and charges to be imposed on customers. The Joint Board shall notify TSP in writing of established fees and charges and changes

thereto, and TSP shall in turn notify transponder and video account customers by approved methodologies and correspondence in a format approved by the Joint Board. TSP shall collect only those types and amounts of account customer fees and charges that are authorized by the Joint Board through the Tolling Body.

(e) The Joint Board shall have the sole and unrestricted right, as often as it deems necessary or advisable, to revise, amend, revoke, modify or supplement the Business Rules, and all Plans that relate to collection and enforcement of tolls charged for the Bridges in accordance with TR Section TP, and to change the toll collection policies and procedures described in such Business Rules and Plans. Any revisions to the Business Rules shall be provided to TSP no less than 30 days prior to the effective date thereof, except for such changes which are necessitated by Law, emergency or safety. TSP shall conform its services to any changes in such policies and procedures that are established in writing by the Joint Board on the effective date of any such change in policies and procedures. The Joint Board shall consult with the TSP regarding any changes the Joint Board desires to make to the approved Business Rules, and if the Joint Board desires any change to a practice or procedure other than those that are Configurable or that are required by the Technical Requirements, the Joint Board shall submit a Request for Change Proposal pursuant to Section 13.

2.2.14.3. Deposit and Transmittal.

TSP shall be entrusted with the responsibility for handling funds of others, documenting financial transactions and maintaining the integrity of financial records in accordance with TR Sections CS-Customer Service, and FR Financial Requirements, and for maintaining certain Project accounts and transferring funds as provided in Section 5. TSP shall have a fiduciary duty to the Joint Board, the States' Parties and users of the Bridges, and shall institute all necessary and proper mechanisms for custody and administration over funds and revenues. Project Gross Revenues are public funds. TSP shall collect all Gross Revenues resulting from the performance of Operations and Maintenance Work hereunder and shall hold such Gross Revenues in trust for the Joint Board until deposited into the accounts specified to receive the same in accordance with the provisions of Section 5, the Flow of Funds Diagram set forth in Attachment C-3 to the TR, and the Custody and Revenue Control Contract to be entered into among the Custodian, the Revenue Control Manager, KPTIA and IFA and TSP, substantially in the form of Exhibit O.

2.2.14.4. Violation Processing.

(a) Subject to the limitations of applicable Law, TSP shall perform all functions necessary to process and enforce toll violations recorded by the BOS in accordance with the applicable provisions of TR Sections CS and BO, the approved Business Rules, and the CSC Operations Plan. The Business Rules shall establish procedures pursuant to which the TSP shall administer and process all hearings and appeals and support collection of Violations through administrative hearings or traffic courts in the

State and the Commonwealth. The TSP shall consult with the Joint Board promptly upon receipt of any Violator's request for administrative review, and shall notify the Joint Board of egregious, chronic violators (as such concepts are articulated or defined through the Business Rules or Joint Board policy), and shall periodically provide a list of such violators to the State and the Commonwealth as provided in the TR. The Joint Board shall have sole discretion to direct that the TSP proceed with or settle any such matter.

(b) If TSP charges a toll, fine or penalty in excess of the applicable rate set forth in the then effective Business Rules, the amount by which the actual charge exceeds the established toll, fine or penalty shall constitute an overcharge. An overcharge shall be returned to the toll customer, where possible, and otherwise shall become the property of the Joint Board. The procedure for refunding overcharges shall be specified in the approved Business Rules consistent with TR Section FR. The Business Rules shall define circumstances in which the Joint Board shall authorize the reduction, compromise and settlement of amounts owed to the Joint Board by Violators. Any reduction, compromise and settlement of an amount owed to the Joint Board in circumstances other than those defined as preauthorized in the Business Rules shall be subject to the Joint Board's prior written approval. If TSP charges a Violator a toll, fine or penalty which is less than the applicable rate set forth in the then effective Business Rules, or is short of funds in its daily reconciliation, then, unless such reduction was attributable to circumstances defined to be preauthorized by the Joint Board, or TSP obtains the Joint Board's prior written consent to compromise a claim, the amount by which the actual charge or deposit is less than the authorized charge or deposit shall constitute a shortage, and an amount equal to the shortage shall be promptly deposited by TSP into the Custodian Account. If such deposit is not made, the Joint Board shall be authorized to deduct the amount of such shortage from its payment of sums otherwise owing to the TSP pursuant to this Contract. In the event of any discrepancy between the Joint Board's and TSP's records regarding the number and types of Violations, the Joint Board's records shall control, subject to dispute resolution pursuant to Section 19.

2.2.14.5. Motorist Privacy.

(a) TSP acknowledges and agrees that privacy of the customers is of paramount importance to the Joint Board and the traveling public. TSP shall provide systems and procedures designed to maintain the toll account and travel records of users of the Bridges as confidential information and in compliance with applicable Laws on notice of privacy practices.

(b) All customer information and data to which TSP may have access or which TSP may obtain in connection with performance of the Work hereunder, and other Project information generated in connection with this Contract, is and shall be the sole property of the Joint Board. TSP shall at all times maintain the strict confidentiality of such information. TSP shall have no right to sell, transfer, disclose or otherwise use

such information for any purpose other than in performance of its duties hereunder. TSP acknowledges that the Project Data and other material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that identifies an individual who is a patron of the Bridges and that is exempt from disclosure to the public or other unauthorized persons under KRS 61.870 to 61.884, Indiana Code 9-21-3.5-13, or other applicable Laws ("Personally Identifiable Information"). Personally Identifiable Information includes any information collected or received from or about any person who is assessed a toll, including things such as names, addresses, Social Security numbers, e-mail addresses, telephone numbers or other contact information, payment information, financial profiles, credit card information, driver's license numbers, law enforcement records, trip data and any other information that relates to any of these types of information. TSP shall comply with all applicable Laws and Business Rules pertaining to confidentiality, privacy, handling, retention, reporting and disclosure, and limiting or restricting collection, use or dissemination of Personally Identifiable Information. TSP agrees to hold Personally Identifiable Information in strictest confidence and not to make use of Personally Identifiable Information for any purpose other than the performance of this Contract, including toll violation processing and collection, to release it only to the Joint Board if requested, to authorized agents, employees or Subcontractors requiring such information for the purposes of carrying out this Contract, to authorized collection agencies as necessary to assist their collection of toll violations, or to the Indiana State Police or Kentucky State Police as necessary to assist its enforcement of toll violation traffic infractions, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the Joint Board's express prior written consent in its sole discretion or as provided by applicable Laws. TSP agrees to release such information or material only to agents, employees, or to Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by the Joint Board in its good faith discretion. TSP agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to Personally Identifiable Information and to implement destruction of records containing Personally Identifiable Information in accordance with the records retention provisions of the Contract Documents.

(c) Immediately upon expiration or termination of this Contract, TSP shall, at Joint Board's option: (i) certify to the Joint Board that TSP has destroyed all Personally Identifiable Information; or (ii) return all Personally Identifiable Information to the Joint Board; or (iii) take whatever other steps the Joint Board reasonably requires of TSP to protect Personally Identifiable Information.

(d) The Joint Board's rights to audit and inspect under Section 20 shall include the right to monitor, audit and investigate TSP's books and records concerning Personally Identifiable Information.

(e) TSP shall disclose in writing to each user of the Bridges for whom TSP holds Personally Identifiable Information TSP's policies regarding privacy of Personally

Identifiable Information, consistent with this Section. Such disclosure shall be posted on the Project Website through which patrons establish toll accounts in conspicuous fashion. TSP shall comply with the provisions of any applicable Law, including provisions on the content of disclosures and when disclosure must be given, in lieu of the disclosure requirements of this Section. The content of the form of disclosure, and any changes thereto that TSP may make from time to time, shall be subject to the Joint Board's prior written approval.

2.2.14.6. ETC Customer Statements.

TSP shall maintain individual account balances and other information for, and provide individual account statements to, ETC customers as required in TR Sections CS and BO and the approved Business Rules. TSP shall define the proposed forms of all notices and outgoing correspondence required to be prepared by TSP. The final format of all required form letters and standard correspondence shall be subject to the Joint Board's written approval in advance of use.

2.2.14.7. Coordination with Other Interoperable Projects.

TSP will process all E-ZPass Interoperable Transactions in accordance with the Joint Board's protocols, the approved Business Rules with respect to Interoperable Transactions, and TR Sections SA and BO.

2.2.15. Customer Service Centers

TSP shall establish, furnish, operate and maintain the Customer Service Center identified in the Proposal and two WUCs, in accordance with TR Section CS Customer Service. Each such facility shall be established, staffed and in operation by the Pre Toll Operations Readiness Deadline. Where TSP leases any such facility, it shall do so in its own name, at its cost, but shall provide that each such WUC lease shall be fully assignable to the Joint Board as set forth in Section 2.3.10 at no cost to the Joint Board and with liability and obligations thereunder accruing to the Joint Board only after the assignment of such lease to, and the assumption thereof by, the Joint Board. The TSP shall provide the Joint Board with designated work space in the CSC for the Joint Board's use on an as-needed basis in accordance with TR Section CS. The Joint Board reserves the right to approve or disapprove the leased facility and the terms of the lease prior to the TSP entering into the lease.

2.2.16. Procurement and Inventories

2.2.16.1. Procurement Services.

Subject to the Joint Board's right to conduct its own procurement pursuant to Section 2.6 with respect to Pass-Through Cost Items, TSP shall procure and obtain all supplies, tools, Spare Parts, vehicles, consumables, furnishings, and replacement

equipment and materials (other than the Joint Board-Provided ETC Equipment, consisting of readers, antennae and other equipment supplied by the ETC Contractor as specified in Exhibit L) necessary for the operation and maintenance of the TCS. All such equipment, materials and Spare Parts purchased or requisitioned shall be of a quality consistent with Good Industry Practices or as otherwise specified in the TR and the applicable Plan, and shall be warranted by the Supplier in accordance with the TR, and if not specified, consistent with Good Industry Practices, and shall not disclaim the implied warranties of merchantability or fitness for a particular purpose. TSP shall obtain and maintain an inventory of supplies, materials, and Spare Parts at the Project Site in sufficient quantities to ensure the continuous operation of the System.

2.2.16.2. Inspection and Handling.

Supplies, materials, tools, Spare Parts and equipment procured by TSP or otherwise obtained for use in the performance of Work shall be new, and shall be inspected or tested by TSP in accordance with normal applicable industry practices, and any evident defects or deviations shall be noted and handled appropriately. TSP shall promptly return, or cause to be returned, rejected items to the Supplier for credit or replacement. TSP shall ensure the maintenance of safe, secure and segregated storage areas at the Project Site for all supplies, materials, tools, equipment and Spare Parts, and at the approved Warehouse Facility provided pursuant to TP Section TO. TSP shall maintain a system of records to identify each item, its cost, quantity and storage location accessible through the items provided pursuant to TP Section TO; and issuance of items from inventory shall be made under specific work orders pursuant to a work order system to be approved by the Joint Board. TSP shall notify the Joint Board when the TSP receives shipments of Spare Parts so that the Joint Board may, in its discretion, verify and approve that the Spare Parts have been received and properly entered into the MOMS. Within 14 days of request by the Joint Board, TSP shall cause to be performed a complete physical inventory of such items at the Project Site, and shall provide a report thereof to the Joint Board, together with a reconciliation to the preceding such report.

2.2.16.3. Passage and Warranty of Title.

Title to all supplies, tools, Spare Parts, vehicles, consumables, furnishings, equipment and other materials purchased or provided by TSP pursuant to Section 2.2.16.1 shall pass to and vest in the Joint Board without further action of the Parties as provided in Section 10.1. TSP warrants good title to all such items purchased or provided by TSP hereunder and warrants that title when it passes to and vests in the Joint Board as provided herein shall be free and clear of any liens, charges, security interests, encumbrances and rights of other persons arising as a result of any actions or failure to act of TSP, its Subcontractors or their respective employees, agents or representatives. Notwithstanding the foregoing, this Section shall not apply to title relating to Software, which shall be governed by Section 20.5 and Section 20.6.

2.3 General Obligations of TSP

TSP, in addition to performing all other requirements of the Contract Documents, shall:

2.3.1. Furnish all design, configuration 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 Contract Documents expressly specify will be undertaken by the Joint Board or other Persons): (a) to construct, configure, fabricate, assemble, install and integrate the TCS and maintain it during installation and construction in accordance with the requirements of the Contract Documents, the Project Schedule, all Laws, all Governmental Approvals, the approved Plans required pursuant to TR Section TP, and all other applicable safety, environmental and other requirements, taking into account the applicable constraints affecting the Project, so as to meet each of the TCS Completion Deadlines, and (b) otherwise to do everything required by and in accordance with the Contract Documents.

2.3.2. At all times, provide a Program Manager, approved by the Joint Board 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 TSP, and (c) will be available to execute instructions and directions received from the Joint Board or its Authorized Representatives.

2.3.3. 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 applicable to the Work.

2.3.4. Provide such assistance as is reasonably requested by the Joint Board in dealing with any Governmental Entities and in prosecuting and defending lawsuits, administrative hearings and other official proceedings, 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 TSP to provide legal services for the benefit of the Joint Board, except as required to perform the collection agency services described in TR Sections CS and BO.

2.3.5. Comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Laws, including Environmental Laws, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), including any amendments, and the federal requirements set forth in Exhibit F and, upon the Joint Board's request, furnish satisfactory proof of such compliance.

2.3.6. Cooperate with the Joint Board, the States' Parties, the DB Contractor, the Developer, the Joint Board's consultants, and Governmental Entities with jurisdiction over the Project in performing oversight and conducting inspections during the

construction, installation, testing, integration and verification of the TCS and other matters relating to the Work.

2.3.7. Pay, prior to delinquency, all applicable federal, State and local sales, excise, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental Entities, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

2.3.8. Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by resequencing, reallocating, or redeploying TSP's forces to other work, as appropriate.

2.3.9. At all times permit Joint Board's designated personnel to have free and unrestricted access to the Toll Facilities and to all portions of the TCS for monitoring, inspection, testing, observation, traffic management and other purposes, and TSP shall cooperate with the Joint Board with respect thereto. The Joint Board shall also have access at all reasonable times to all records, accounts, logs, reports and other documents and materials maintained by TSP in connection with the Work. The Joint Board shall perform its inspections and reviews at the Toll Facilities in compliance with TSP's safety and security procedures, and in a manner intended to minimize interference with TSP's activities.

2.3.10. Enter into leases for the Warehouse Facility and each Walk-up Center, and if TSP elects to create an independent CSC exclusively for the Project, the CSC, in its own name, subject to the prior written approval of the Joint Board, and shall maintain such leases in good standing on a continuous basis during the Term. Any amendment, modification or termination of the initial leases shall be subject to the Joint Board's prior written approval, in its sole discretion. Each such lease shall include the following requirements: (i) the Joint Board or any States' Party shall be a permitted assignee; (ii) the Landlord shall notify the permitted assignee in case of any default by TSP and the permitted assignee shall have the right but not the obligation to cure such default; (iii) the lease shall not be terminated or amended or modified to shorten the term, change any monetary terms, obligations or liabilities of the permitted assignee, without the permitted assignee's consent; (iv) the permitted assignee shall be named as a third-party beneficiary; and (v) the permitted assignee shall have the right to assume the lease (or step-in) in its own name or in name of a nominee, designee, affiliate or non-affiliate and shall only be responsible for such obligations and liabilities accruing from and after the date of the assumption.

2.4 TSP Representations, Warranties and Covenants

TSP represents, warrants and covenants that:

2.4.1. TSP and its Subcontractor(s) have, and throughout the term of this Contract shall maintain, all required professional ability, skills and capacity to perform the Work,

and shall perform it in accordance with the requirements contained in the Contract Documents.

2.4.2. TSP has evaluated the procedures specified herein with respect to determining the Contract Price, Completion Deadlines, Performance Requirements, Delay Liquidated Damages, Performance Liquidated Damages and Performance Stipulated Damages, and has reasonable grounds for believing, and does believe, that completion of the TCS Installation Work for the Total Toll Collection System Capital Price, and completion of the Operations and Maintenance Work for the Total Toll Collection System Operations and Maintenance Price and within their respective Completion Deadline(s) will be feasible and practicable, and the Delay Liquidated Damages, Performance Liquidated Damages and Performance Stipulated Damages provided for in the Contract Documents with respect to the Operations and Maintenance Work are reasonable.

2.4.3. TSP has, in accordance with prudent and generally accepted practices and prior to establishing the Contract Price, (i) reviewed any Project-related information provided by the Joint Board, (ii) taken appropriate steps to verify any such Project information provided by the Joint Board, and (iii) familiarized itself with the Project Site and surrounding locations, including undertaking a Reasonable Investigation to the extent TSP deems necessary or advisable for performing its obligations under the Contract Documents. Before commencing any TCS Installation Work, TSP shall verify all governing dimensions of the relevant Project Site and shall examine all adjoining work which may have an impact on such Work. TSP shall ensure that the System Documentation and As-Built System Documentation accurately depict all governing and adjoining dimensions.

2.4.4. TSP acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions of any relevant Governmental Approvals prior to entering into this Contract. Except as specifically permitted under Section 13, TSP shall be responsible for complying with the foregoing at its sole cost and without any increase in any Contract Price Component or extension of any Completion Deadline on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. TSP has no reason to believe that any Governmental Approval required to be obtained by TSP will not be granted in due course and, thereafter, remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

2.4.5. TSP has knowledge of the legal requirements, industry standards and business practices in the State and the Commonwealth that must or should be followed in performing the Work required to be performed hereunder and in the approved Business Rules, and shall perform the Work in conformity with such requirements and practices.

2.4.6. TSP shall, at all times, schedule and direct its Work to provide an orderly progression of the Work to achieve, as applicable, each Progress Milestone, Pre-Toll Operations Readiness, Tolling Readiness and System Acceptance by the applicable Completion Deadlines and in accordance with the applicable approved Project Schedule, including furnishing such employees, materials, facilities and equipment and working such hours, extra shifts, overtime operations, Sundays and holidays as are permitted by the Contract Documents and which may be necessary to achieve such goal, all at TSP's sole cost, except as otherwise specifically provided in Section 13.

2.4.7. With respect to Software, (a) except as provided in Sections 20.5 and 20.6 hereof with respect to certain identified and Pre-Existing Software and Commercial Off-the-Shelf Software licensed to the Joint Board, TSP and its Subcontractors are and will be the sole author of all works employed by TSP in preparing any and all Software, (b) TSP has and will have sufficient right to assign or grant the rights and/or licenses granted in the Software pursuant to this Contract (and TSP acknowledges that all Software that is used or developed in whole or in part for toll collection shall be covered by the ownership and licensing requirements of Sections 20.5 and 20.6), (c) all Software, except any Pre-Existing Software and Commercial Off-the-Shelf Software, has not been and will not be used or published by or through any TSP-Related Entity under circumstances which have caused or will cause a loss of copyright, patent rights, trademark or other intellectual property right therein, and (d) all Software, including all Pre-Existing Software, does not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy or similar rights of any third party, nor is any claim (whether or not embodied in an action, past or present) of such infringement pending, been asserted or, to the best of TSP's knowledge, been threatened against TSP (or, insofar as TSP is aware, any entity from which TSP has obtained such rights). The representations and warranties set forth in this Section 2.4.7 shall survive the TCS Operations and Maintenance Term and shall survive the expiration or termination of this Contract.

2.4.8. TSP is a _____ duly formed and validly existing under the laws of the State of _____, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. TSP is duly qualified to do business, and is in good standing in the States of Indiana and Kentucky, and the state where the CSC is located, and will remain in good standing throughout the term of this Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

2.4.9. The execution, delivery and performance of this Contract have been duly authorized by all necessary action of TSP, and this Contract has been duly executed and delivered by TSP.

2.4.10. All required approvals have been obtained with respect to the execution, delivery and performance of this Contract; performance of this Contract will not result in a breach of or a default under TSP's _____ ***[insert formation documents, e.g.,***

partnership agreement, bylaws, etc.] or any indenture or loan or credit agreement or other material agreement, instrument, judgment or decree to which TSP is a party or by which its properties and assets may be bound or affected. TSP has full right, power and authority to use the CSC to perform the Work, and has the approval of any third party that is required in connection therewith.

2.4.11. This Contract constitutes the legal, valid and binding obligation of TSP, enforceable against TSP in accordance with its terms.

2.4.12. TSP acknowledges that tax-exempt bonds have been issued to finance a portion of the costs of the Project and that KPTIA has covenanted not to take or cause to be taken, or to omit to take or to cause not to be taken, any action the performance or omission of which would cause the interest on such bonds to be includable in gross income for federal income tax purposes.

2.5 Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, TSP shall perform as and if directed by the Joint Board in a diligent manner and without delay, shall abide by the Joint Board's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Section 19.

2.6 Joint Board Procurement

Notwithstanding the provisions of Section 2.3.10, the Joint Board itself may from time to time during the Term of this Contract elect by written notice to TSP to conduct and administer the procurement of and payment for all or any portion of any equipment, materials, Spare Parts, outside services or other items necessary for the operation or maintenance of the Toll Facilities which would otherwise be procured or provided by TSP hereunder as a Pass-Through Cost Item, including all items listed in Exhibit H to this Contract. Any such items procured directly by the Joint Board or its designee in its own or a designee's name shall not be included within TSP's Pass-Through Cost Items hereunder and the parties shall promptly reduce the applicable annual Budget by the amounts that were budgeted for the items so procured by the Joint Board; provided, however, that the foregoing shall not limit the provisions of Section 13, to the extent that it may apply. In the event the Joint Board desires to conduct such a procurement, the Joint Board may, but is not obligated to, deliver to TSP a written request for information, which request shall set forth the equipment, material, Spare Part or other item the Joint Board is considering procuring, identification of potential manufacturers, vendors and suppliers thereof which may compete for the procurement and a description of their respective products, to the extent known to the Joint Board. TSP shall prepare and deliver to the Joint Board, within 20 days after receipt of the Joint Board's request, the following:

2.6.1. Minimum specifications and criteria for the subject equipment, material, Spare Part or other item that TSP considers necessary in order for TSP to continue to meet its Performance Requirements. TSP shall use best efforts to develop specifications and criteria that will promote competition in the procurement and not limit the procurement to any particular manufacturer, vendor or supplier. If TSP specifies a sole source, or provides specifications and criteria that in practical effect will prevent a competitive procurement, TSP shall provide a reasonably detailed, written justification for such specifications and criteria.

2.6.2. Information on whether TSP will require any testing of a potential manufacturer's, vendor's or supplier's equipment, material, Spare Part or other item, other than that previously used by TSP for the TCS, in order for TSP to stand by its Performance Requirements, and if testing will be required, TSP's recommended tests and test procedures. If testing is required, TSP shall cooperate with the Joint Board and

its potential manufacturers, vendors and suppliers in conducting the necessary tests and qualifying the manufacturer's, vendors' or supplier's product for the procurement. Such cooperation shall include promptly scheduling and conducting the required tests, and promptly issuing test reports, TSP's written conclusion on whether the subject product qualifies and any conditions, modifications or other qualifications that must be met in order for TSP to meet its Performance Requirements if the Joint Board procures such product.

2.6.3. If TSP reasonably determines that it will have to modify the TCS Software or other TCS equipment, change the Technical Requirements, change the accuracy test procedures or Performance Requirements or incur material additional Costs in order to incorporate a potential manufacturer's, vendor's or supplier's equipment, material, Spare Part or other item into the TCS and operate the TCS with such product, TSP shall treat the Joint Board's proposed procurement of such product as a notice of proposed change under Section 13 and shall deliver to the Joint Board a written evaluation of the proposed change in accordance with Section 13, which evaluation shall include all changes TSP considers applicable. If TSP for any reason does not deliver to the Joint Board within the 20-day period either the written evaluation or, if it is not reasonably possible to complete the evaluation within the 20-day period, a written notice to the Joint Board that TSP will require a Change Order if the subject product is procured, then TSP shall not be entitled to any Change Order with respect to the incorporation of such product into the TCS.

2.6.4. The name and contact information for the manufacturer, vendor or supplier TSP has used in the past for the subject equipment, material, Spare Part or other item; model and other identifying information for the subject equipment, material, Spare Part or other item; and copies of purchase orders or other transaction documents showing quantities and pricing under which TSP previously purchased such equipment, material, Spare Part or other item from such manufacturer, vendor or supplier for the TCS.

2.7 Joint Board Representations, Warranties and Covenants

The Joint Board represents, warrants and covenants that:

2.7.1. As of the Execution Date, the Joint Board has full power, right and authority to execute, deliver and perform the Contract Documents to which the Joint Board is (or will be) a party and to perform each and all of the obligations of the Joint Board provided for herein and therein.

2.7.2. Each person executing the Contract Documents on behalf of the Joint Board has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of the Joint Board; and the Contract Documents to which the Joint Board is (or will be) a party have been (or will be) duly executed and delivered by the Joint Board.

2.7.3. As of the Execution Date, there is no action, suit, proceeding, investigation or litigation pending and served on the Joint Board which challenges the Joint Board's authority to execute, deliver or perform, or the validity or enforceability of, the Contract Documents to which the Joint Board is a party; and Joint Board has disclosed to TSP prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Joint Board is aware.

2.7.4. Neither the execution and delivery by the Joint Board of the Contract Documents to which it is a party, nor the consummation of the transactions contemplated thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under any agreement, judgment or decree to which the Joint Board is a party or is bound.

2.7.5. The execution and delivery by the Joint Board of the Contract Documents to which it is a party, and the performance by the Joint Board of its obligations thereunder, will not conflict with any Laws applicable to the Joint Board that are valid and in effect on the date of execution and delivery. The Joint Board is not in breach of any applicable Law that would have a material adverse effect on the performance of any of its obligations under the Contract Documents to which it is a party.

2.7.6. No consent of any party and no Governmental Approval is required to be made in connection with the execution, delivery and performance of this Contract, which has not already been obtained.

2.8 Term of Agreement

Subject to earlier termination in accordance with the provisions hereof, the Term of this Agreement shall commence on the Effective Date and end on the expiration or earlier termination hereof; provided, however, that the parties acknowledge that certain obligations and liabilities of TSP under this Contract shall survive the expiration or termination and this Agreement shall apply until all of such obligations and liabilities have been performed and discharged. The Term includes the TCS Operations and Maintenance Term, and any Software Maintenance Option Period.

SECTION 3. JOINT BOARD REVIEW PROCESS

3.1 Joint Board Review and Approval/Disapproval Process

3.1.1. All documents required by the Contract Documents to be submitted to Joint Board for review, comment, approval and disapproval shall be subject to the applicable processes and provisions set forth in this Section 3.1 (collectively, the "Approval Process").

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

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

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

3.1.5. The Joint Board shall have a period of up to 10 days to issue further comments, proposed changes, approval, conditional approval and/or disapproval of the proposed final submission, provided that if the Joint Board's comments, proposed changes, conditional approval and/or disapproval includes any item that (i) reasonably could have been but was not raised or included in the Joint Board's initial response, (ii) does not concern determining whether TSP adequately addressed comments included in the Joint Board's initial response and (iii) is not based on a failure of the proposed final draft to satisfy a standard or requirement expressly set forth in the Contract Documents, then such action by the Joint Board shall be deemed to constitute a Joint Board-Caused Delay. In addition, in the event of a Joint Board-Caused Delay, upon compliance with the Change Order notification process and if the Change Order requirements set forth in Section 13 are met, TSP shall be entitled to a Change Order adjusting the Contract Price for the Costs, if any, which could have been reasonably avoided had the Joint Board requested such changes in a timely manner as set forth in Section 3.1.3.

3.1.6. If the Joint Board issues comments, proposed changes, conditional approval and/or disapproval within such 10-day period, TSP, upon receipt thereof, shall make

further changes or revisions and submit the document to the Joint Board, and the foregoing process shall continue in like fashion until either the Joint Board issues written approval or the Parties submit any dispute to dispute resolution pursuant to Section 19.

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

3.1.8. The time periods for submissions, reviews, comments, approvals, conditional approvals and disapprovals set forth in this Section 3.1 shall be extended by the period of any delay due to a Force Majeure Event.

3.2 Responsibility for Submittals

3.2.1. TSP Responsibility

TSP agrees that it has full responsibility for the configuration of the TCS and that TSP will furnish the configuration regardless of the fact that certain Owner Design Documents may be provided to TSP by the Joint Board as a preliminary basis for TSP's configuration. The foregoing is not intended to limit Section 13.6.2.6 or Section 13.7.1.11 or make TSP responsible for the work of Developer or the DB Contractor.

3.3 Disclaimer

3.3.1. TSP understands and agrees that the Joint Board shall not be responsible or liable in any respect for any Losses whatsoever suffered by any TSP-Related Entity by reason of any use of any information contained in any Owner Design Documents or Reference Information Documents, or any action or forbearance in reliance thereon, except to the extent that the Joint Board has specifically agreed in Section 13 that TSP shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter. TSP further acknowledges and agrees that (a) if and to the extent TSP or anyone on TSP's behalf uses any of said information in any way, such use is made on the basis that TSP, not the Joint Board, has approved and is responsible for said information, and (b) TSP 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 TSP's own risk and at its own discretion.

3.3.2. TSP expressly acknowledges and agrees that the Joint Board's rights as specified under this Contract (i) to review, comment on, approve, disapprove, monitor, inspect, test and/or accept System Documentation, Change Orders, schedules, equipment, Software, installation, manuals, books, records, reports or statements or (ii) to communicate with the TSP: (A) exist solely for the benefit and protection of the Joint

Board, (B) do not create or impose upon the Joint Board any standard or duty of care toward TSP, all of which are hereby disclaimed, (C) may not be relied upon, nor may the Joint Board's exercise or failure to exercise any such rights be relied upon, by TSP in determining whether TSP has satisfied the standards and requirements set forth in the Contract Documents, and (D) may not be asserted, nor may the Joint Board's exercise or failure to exercise any such rights be asserted, against the Joint Board by TSP as a defense, legal or equitable, to TSP's obligation to fulfill such standards and requirements.

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

3.4 Role of FHWA

TSP acknowledges and agrees that FHWA will have approval rights with respect to the Project (including rights to approve the System Documentation and Change Orders), as well as the right to provide oversight and technical services with respect to the Project.

SECTION 4. TCS INSTALLATION WORK SCHEDULE, COMPLETION AND ACCEPTANCE

4.1 Time of Essence; Notice to Proceed

4.1.1. Time is of the essence of this Contract.

4.1.2. Authorization allowing TSP to proceed with Work hereunder shall be provided through issuance of the NTP.

4.1.3. The Joint Board shall not issue the NTP unless and until the following requirements for the Project have been satisfied:

(a) TSP shall have delivered to the Joint Board the Performance Bond required pursuant to Section 8.1.1;

(b) TSP shall have delivered to the Joint Board the Payment Bond required pursuant to Section 8.1.2;

(c) TSP shall have delivered to the Joint Board the Guaranty of TSP's obligations pursuant to the Contract Documents, substantially in the form of Exhibit Z;

(d) TSP shall have provided to the Joint Board the insurance policies, certificates of insurance, riders to its existing insurance policies or other evidence reasonably required by the Joint Board to confirm the existence of all the insurance coverages required pursuant to Section 9;

(e) The Joint Board shall have approved any changes to the Key Personnel pursuant to Section 7.3.1;

(f) The Source Code Escrow shall be in place pursuant to Section 20.6.3 and shall be in full force and effect;

(g) TSP shall have provided to the Joint Board any other documents, things or assurances reasonably required by the Contract Documents.

4.2 Project Schedule

4.2.1. Work shall be undertaken and completed in accordance with the Project Schedule. TSP shall prepare the Project Schedule and submit it to the Joint Board for review and approval within 30 days after NTP. The Project Schedule shall be used by the parties for planning and monitoring the progress of the TCS Work. TSP shall incorporate the Progress Milestones and TCS Completion Deadlines into its proposed Project Schedule of all activities necessary to complete the TCS Work by such TCS Completion Deadlines. If TSP fails to provide an acceptable Project Schedule within 30

days after issuance of the NTP, TSP shall have no right to receive payments until such time as TSP has prepared and the Joint Board has approved such Project Schedule.

4.2.2. All Float contained in the Project Schedule, as initially approved or generated thereafter, shall be considered a Project resource available to either party or both Parties as needed to achieve Progress Milestones, Progress Milestone 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 Project Schedule shall be examined by the Joint Board in determining whether to approve the Project Schedule. Once identified, TSP shall monitor, account for and maintain Float in accordance with the Critical Path Method.

4.2.3. The Project Schedule shall assume TSP will not be permitted to perform roadside Installation Work on the days of the following regional special events: (i) Derby Festival Thunder Over Louisville (roadside Installation Work may recommence at 10:00 a.m. the following Day); and (ii) the day before (Oak's Day) and the day of the Kentucky Derby (the first Saturday in May; roadside Installation Work may recommence at 10:00 a.m. on the day following the Kentucky Derby).

4.2.4. The Initial Project Schedule shall assume TSP will implement the Downtown Bridges Temporary Traffic Configuration, which includes configuring seven (7) Equipment Lanes to operate for bi-directional traffic. The Joint Board reserves the right to notify the TSP at any time with its determination not to implement the Downtown Bridges Temporary Traffic Configuration. If the Joint Board delivers such written notice to TSP, TSP shall immediately take steps to eliminate and mitigate any costs associated with eliminating the seven (7) bi-directional Equipment Lanes from the Project, and the Joint Board shall be entitled to a deductive change order reducing the Contract Price by the full amount of the unit cost for seven (7) Equipment Lanes specified in the Price Sheets, Form G-2, Item Nos. RS-002 and RS-004, plus the full amount of the unit cost for seven (7) Equipment Lanes as specified in the calculation of the Annual Roadside Operations and Maintenance Price Per Year, Years 1-7, in Form G-10, item number OMR-001. Notwithstanding the foregoing, if the TSP proves, to IFA's satisfaction, in its good faith discretion, that TSP's actual capital cost savings resulting from elimination of the Downtown Bridges Temporary Traffic Configuration from the Project are less than the full amount of the unit cost for seven (7) Equipment Lanes specified in the Price Sheets, Form G-2, Item Nos. RS-002 and RS-004, then the deductive change order shall be in the amount of such full amount less the amount of capital cost savings that were not avoidable notwithstanding TSP's efforts to mitigate such costs (provided, further, that TSP shall not be entitled to deduct from such full amount any capital costs that were not saved as a result of the act, omission, fault, breach, negligence, gross negligence, recklessness or willful misconduct of any TSP-Related Entity).

4.3 Extensions of Time

The Pre-Toll Operations Readiness Deadline, the Mobilization Readiness Deadline, the East-End Bridge Tolling Readiness Deadline, the Downtown Bridges Temporary Traffic Configuration Tolling Readiness Deadline and the Downtown Bridges Final Traffic Configuration Tolling Readiness Deadline, and the other Progress Milestone Dates shall not be modified except by Change Order.

4.4 Progress Reports

TSP acknowledges that achieving Pre-Toll Operations Readiness, Mobilization Readiness, East-End Bridge Tolling Readiness, Downtown Bridges Temporary Traffic Configuration Tolling Readiness, and Downtown Bridges Final Traffic Configuration Tolling Readiness by the relevant TCS Completion Deadlines are of the essence of this Contract. In addition to providing the updated Schedule, monthly Project Management Reports and other reports specified herein or in the Technical Requirements, TSP shall provide any further information to the Joint Board as the Joint Board may reasonably require to verify actual progress and to predict future progress. If TSP has reason to believe that the Work will not be performed consistent with the Progress Milestone Dates, TSP shall promptly so notify the Joint Board, specifying in its notice any corrective action planned by TSP.

4.5 Progress Meetings

Following the Joint Board's issuance of the Notice to Proceed and until System Acceptance, TSP's Program Manager and Project Manager - Installation and the Joint Board's Authorized Representative shall hold a progress meeting once every month, or more frequently as may be requested by the Joint Board. The primary purpose of the progress meetings shall be to review the Project Schedule, the Progress Milestone Dates, and the Project Management Reports submitted by TSP and to examine and assess the actual progress of the Work, including the status of pending Change Orders and any other design or installation related issues which the parties may wish to discuss. Progress meetings shall be held at a location in the Louisville area designated by the Joint Board. TSP shall cause its Subcontractors to be present at any progress meeting as reasonably requested by the Joint Board. The Joint Board shall also have the right to meet with TSP's Program Manager and Project Manager - Installation from time to time on an informal basis to review progress and discuss other matters in connection with the Work.

4.6 Pre-Toll Operations Readiness

4.6.1. Definition of Pre-Toll Operations Readiness

TSP acknowledges that it is of paramount importance that the TSP achieves Pre-Toll Operations Readiness by the Pre-Toll Operations Readiness Deadline. Pre-Toll Operations Readiness shall be achieved when TSP has completed all of the Work included within Payment Milestone CS-001 as set forth in Exhibit CC, the TSP has

completed and the Joint Board has approved the BOS Production Readiness Test as described in TR Section TP, and the TSP has completed and the Joint Board has provided written approval of the CSC, TOC, BOS and all necessary functions to open and service accounts and customers prior to commencement of Revenue Service.

4.6.2. Pre-Toll Operations Readiness Deadline

The Pre-Toll Operations Readiness Deadline shall be 365 days from the Joint Board's issuance of the NTP.

4.6.3. Process for Determining Pre-Toll Operations Readiness

(a) TSP shall include the Pre-Toll Operations Readiness Deadline on the Project Schedule, and shall update the Project Schedule periodically to indicate the date that TSP anticipates it will achieve Pre-Toll Operations Readiness. TSP shall provide the Joint Board with not less than 30 days' prior written notification of the date TSP determines it will achieve the stage of Work necessary for Pre-Toll Operations Readiness. During such 30-day period, TSP and the Joint Board shall meet and confer and exchange information on a regular cooperative basis with the goal being the Joint Board's orderly, timely inspection and review of the Work. TSP shall provide the Joint Board a second written notification when TSP determines it has achieved the stage of Work necessary for Pre-Toll Operations Readiness.

(b) Within 10 days after the Joint Board's receipt of the second notification, but not fewer than 40 days after the first notification, or such sooner date as the Joint Board determines that the TSP has achieved Pre-Toll Operations Readiness, the Joint Board shall either (i) issue a Notice of Pre-Toll Operations Readiness or (ii) notify TSP in writing setting forth why the Work has not reached the point where such a notice can be issued. If TSP and the Joint Board cannot agree as to the Pre-Toll Operations Readiness Date, such issue shall be submitted for dispute resolution in accordance with Section 19. TSP shall not commence CSC Pre-Toll Operations or TOC Pre-Toll Operations until it has received the Notice of Pre-Toll Operations Readiness from the Joint Board and a written notice specifying the date on which the Joint Board requires the TSP to commence such Pre-Toll Operations Work. Such date(s) may differ.

4.7 Mobilization Readiness

4.7.1. Definition of Mobilization Readiness

TSP acknowledges that the Tolling Readiness Deadlines established in Section 4.9.2 depend upon the DB Contractor's progress on completing construction of the Downtown Crossing, and the Developer's progress on completing construction of the East-End Crossing. To account for this variability, TSP shall achieve "Mobilization Readiness" by the Mobilization Readiness Deadline. It shall be TSP's sole responsibility to coordinate its design efforts with the DB Contractor, the Developer and other Joint

Board contractors so that the TSP meets the Mobilization Readiness Deadlines. The Work shall be deemed to have achieved the point of "Mobilization Readiness" when TSP has: (i) purchased all equipment and other TCS components that it is required to purchase to achieve Tolling Readiness for the entire TCS, (ii) TSP has submitted and the Joint Board has approved the Roadside and Network System Plan, Back Office System Plan, TOC System Plan, Roadside and Network Installation Plan, Back office Installation Plan, Training Plan, Project Management Plan, Safety Plan, System Configuration and Management Plan, Maintenance and Support Plan, Transition Plan, third party manuals and documentation, Business Rules and operational requirements, Quality Management Plan (QMP), Configuration and Change Management Plan, and Master Testing and Commissioning Plan, (iii) TSP has successfully completed and submitted to the Joint Board results demonstrating successful completion of the Baseline Test, the Pre-Production Controlled Test; and the BOS Production Readiness Test (iv) all such equipment and other TCS components are in secure storage at a Warehouse Facility in compliance with TR Section TO or at the appropriate CSC or WUC, (v) Software Source Code and other documentation has been provided to TSP as required by Section 20, and (vi) TSP has secured the services of all personnel necessary to achieve Tolling Readiness by the Tolling Readiness Deadlines.

4.7.2. Mobilization Readiness Deadline

The Mobilization Readiness Deadline shall be the date that is 30 days from the date upon which the Joint Board provides the TSP with notice of the Mobilization Readiness Deadline, or such later deadline for Mobilization Readiness specified in such Notification.

4.7.3. Process for Determining Mobilization Readiness

(a) TSP shall include the anticipated Mobilization Readiness Deadline on its Project Schedule, and shall update the Project Schedule periodically to indicate the date that TSP anticipates it will achieve Mobilization Readiness. TSP shall provide the Joint Board with not less than 30 days' prior written notification of the date TSP determines it will achieve the stage of Work necessary for Mobilization Readiness. During such 30-day period, TSP, the Joint Board and DB Contractor or Developer, as appropriate, shall meet and confer and exchange information on a regular cooperative basis with the goal being the Joint Board's orderly, timely inspection and review of the Work. TSP shall provide the Joint Board a second written notification when TSP determines it has achieved the stage of Work necessary for Mobilization Readiness.

(b) Within 10 days after expiration of such 30-day period and the Joint Board's receipt of the second notification, but not fewer than 40 days after the first notification, or such sooner date as the Joint Board determines that the TSP has achieved Mobilization Readiness, the Joint Board shall either (i) issue a Notice of Mobilization Readiness or (ii) notify TSP in writing setting forth why the Work has not reached the point where such a notice can be issued. If TSP and the Joint Board

cannot agree as to the Mobilization Readiness Date, such issue shall be submitted for dispute resolution in accordance with Section 19.

4.8 Testing Prior to Tolling Readiness

4.8.1. TSP shall conduct the Baseline Test as required by TR Section TP and obtain the Joint Board's written approval of the test results on or before the Progress Milestone Date for such testing indicated in the Project Schedule. The Project Schedule shall indicate a Progress Milestone for completion of the Baseline Test that is not more than 180 days after NTP. TSP shall promptly notify the Joint Board of any deficiencies in the work supplied by the ETC Contractor that is demonstrated by such test, and shall coordinate with the Joint Board and the ETC Contractor to rectify any such discrepancies. TSP may be entitled to an extension of Progress Milestone Dates or Completion Deadlines, but no additional compensation due to delays in the TSP's ability to progress the work caused solely by the deficiencies in the ETC Contractor's work, provided all other conditions to a Change Order specified in Section 13 are satisfied.

4.8.2. TSP shall conduct the Pre-Production Controlled Test required pursuant to TR Section TP and obtain the Joint Board's written approval of the test results on or before the Progress Milestone Date for such test indicated in the Project Schedule. The Project Schedule shall indicate a Progress Milestone for completion of the Pre-Production Controlled Test that is not more than 240 days after NTP. The Joint Board shall ensure that the ETC Contractor is available to assist in such test procedures. Upon satisfactory completion of the Pre-Production Controlled Test the TSP shall certify in writing to the Joint Board that the Work has satisfactorily completed such tests. Such certificates shall include TSP's acknowledgment that the Joint Board-Provided ETC Equipment is accepted for use in the TCS, and subject to ETC Contractor's warranty obligations, which the Joint Board shall authorize the TSP to enforce, TSP assumes full responsibility for the continued operation and maintenance of such equipment in accordance with the Technical Requirements upon certification of satisfactory completion of the Pre-Production Controlled Test.

4.8.3. Prior to Pre-Toll Operations Readiness, TSP shall conduct and perform or cause to be performed, at its expense, the BOS Production Readiness Test in accordance with the provisions of TR Section TP and obtain the Joint Board's written approval of the test results. The Project Schedule shall indicate a Progress Milestone for completion of the BOS Production Readiness Test that is not more than 365 days after NTP. The BOS Readiness Test shall verify that each portion of the BOS needed to open accounts and perform all functions required for Pre-Toll Operations is fully operational and that the TCS is able to perform at a level equal to at least the performance standards specified in the Performance Requirements Section of the Technical Requirements. All operating personnel required for the BOS Production Readiness Tests shall be supplied by TSP and all testing inputs, services and facilities required to conduct such tests shall be the responsibility of TSP. The Joint Board shall

be provided advance written notice of the BOS Production Readiness Tests and shall be entitled to witness and monitor such tests.

4.8.4. The test results of the BOS Production Readiness Test shall be compiled in a test report submitted by TSP to the Joint Board. If TSP fails to successfully complete any portion of the BOS Production Readiness Test, TSP shall be obligated, at its expense, to make such repairs or corrections to the TCS as may be necessary and to re-perform the BOS Production Readiness Tests until such time as TSP has successfully completed the BOS Production Readiness Tests and met the Performance Requirements as evidenced in a test report submitted by TSP to the Joint Board. The proposed test report shall be subject to the Joint Board's written approval in accordance with the Approval Process.

4.8.5 Prior to Tolling Readiness for each of the Bridges, TSP shall conduct and perform or cause to be performed, at its expense, functionality testing and performance tests of the TCS at each of the LSIORB Project Toll Zones in accordance with the provisions of TR Section TP (collectively, the "System Production Readiness Test") and obtain the Joint Board's written approval of the test results. The TSP shall complete the System Production Readiness Test for each traffic configuration no later than 90 days from each respective Bridge's Mobilization Readiness Deadline. The System Production Readiness Test shall verify that each portion of the TCS is fully operational and that the TCS is able to perform at a level equal to at least the performance standards specified in the Performance Requirements Section of the Technical Requirements. All operating personnel required for the System Production Readiness Test shall be supplied by TSP and all testing inputs, services and facilities required to conduct such tests shall be the responsibility of TSP. The Joint Board shall be provided advance written notice of all System Production Readiness Tests and shall be entitled to witness and monitor such tests.

4.8.6 The test results of each System Production Readiness Test shall be compiled in a test report submitted by TSP to the Joint Board. If TSP fails to successfully complete any portion of the System Production Readiness Test, TSP shall be obligated, at its expense, to make such repairs or corrections to the TCS as may be necessary and to re-perform the System Production Readiness Tests until such time as TSP has successfully completed all the System Production Readiness Tests and met the Performance Requirements as evidenced in a test report submitted by TSP to the Joint Board. The proposed test report shall be subject to the Joint Board's written approval in accordance with the Approval Process.

4.9 Tolling Readiness

4.9.1. Definition of Tolling Readiness. The TCS shall be deemed to have achieved "Tolling Readiness" with respect to the East-End Bridge or the Downtown Bridges (in temporary or permanent configuration, as applicable) when all portions are in a condition to safely commence Revenue Service and safely accept and continue normal,

uninterrupted flow of traffic, the TSP has completed and passed the System Production Readiness Tests and obtained the Joint Board's written approval of the test results, and all of the requirements specified in TR Section TP are satisfied, and when TSP has completed the following in all material respects:

4.9.1.1. TCS Installation Work in accordance with the Work requirements, System Documentation, and the TRs, with the exception of Punch List items;

4.9.1.2. The delivery to the Joint Board of all original equipment and manufacturer's warranty certificates covering all equipment and materials furnished in connection with the Installation Work;

4.9.1.3. The delivery to the Joint Board of a final version of all document deliverables required by the TR except for any documents specifically required to be delivered only after the Revenue Service Date and lapse, without disapproval, of the period for Joint Board approval thereof in accordance with the Approval Process;

4.9.1.4. Delivery to the Joint Board of all Software and all Software Source Code documentation and receivables, except for with respect to the COTS Software;

4.9.1.5. Successful completion of Baseline Test, Pre-Production Controlled Test, the BOS Production Readiness Test, and System Production Readiness Test;

4.9.1.6. Delivery to the Joint Board of proposed test report(s) and lapse, without disapproval, of the period for Joint Board approval of such test reports in accordance with the Approval Process;

4.9.1.7. Removal of all installation materials, temporary facilities, and TSP-generated waste material, rubbish and debris from the Project Site; and

4.9.1.8. Completion of all other Work and delivery of all equipment, materials, and other items required hereunder for TSP to commence electronic tolling of the Bridges and deliver a complete, functional TCS, including but not limited to all back-office functions.

4.9.2. Tolling Readiness Deadlines

(a) East End Bridge Tolling Readiness Deadline: 120 days from the East End Bridge Tolling Infrastructure Turnover Date, as specified in a written notice from the Joint Board to TSP delivered at least 30 days prior to the Tolling Infrastructure Turnover Date specified in such written notice as provided in Section 4.9.2(d).

(b) Downtown Bridges Temporary Traffic Configuration Tolling Readiness Deadline shall mean the East End Bridge Tolling Readiness Deadline, provided that if the New Downtown Bridge is not ready to open to traffic by the East End Bridge Tolling Readiness Deadline for a reason other than TSP's failure to complete its Installation

Work with respect to the New Downtown Bridge, then the Downtown Bridges Temporary Traffic Configuration Tolling Readiness Deadline initially shall apply only to the Kennedy Bridge, and all other aspects of the Downtown Bridges Temporary Traffic Configuration shall achieve Tolling Readiness in the Downtown Bridges Temporary Traffic Configuration by the date that the DB Contractor has completed all of its work required to open the New Downtown Bridge to traffic, other than any work that it cannot complete due to delay by TSP in achieving Tolling Readiness.

(c) Downtown Bridges Final Traffic Configuration Tolling Readiness Deadline: 120 days from the date the Joint Board notifies TSP that the DB Contractor is 120 days away from achieving "substantial completion" of the Downtown Crossing (including both the Kennedy Crossing and the New Downtown Crossing) as required in Section 8.1.2 of the DB Contract.

(d) The TSP shall be notified of the anticipated East End Bridge Tolling Infrastructure Turnover Date, and the anticipated Downtown Bridges Temporary Traffic Configuration Infrastructure Turnover Date(s) for the Downtown Crossing, at least 30 days prior to each such date.

(e) Regardless of whether or not the East End Bridge Tolling Infrastructure Turnover Date, and/or the Downtown Bridges Temporary Traffic Configuration Infrastructure Turnover Date have occurred, TSP shall be responsible for working closely with the DB Contractor and the Developer during the design and installation phases of the Project to ensure that tolling gantries, cabinet/concrete slabs, all conduit, commercial power runs and all other equipment and infrastructure related to the TCS which is the responsibility of the DB Contractor or the Developer, as applicable, are in proper locations, and terminations are made in accordance with TSP's requirements. TSP acknowledges and agrees that the references to the East End Bridge Tolling Infrastructure Turnover and/or the Downtown Bridges Temporary Traffic Configuration Infrastructure Turnover Date, are for purposes of defining the Tolling Readiness Deadlines, and shall not be construed as a limitation or restriction on TSP's performance of Work prior to such dates. In all cases, TSP shall exercise best efforts to coordinate with the DB Contractor or the Developer, as the case may be, to achieve Tolling Readiness by the date each Bridge is otherwise ready to open to traffic, even if such date occurs prior to the relevant Tolling Readiness Deadline.

4.9.3. Process for Determining Tolling Readiness

(a) TSP shall provide the Joint Board with not less than 30 days' prior written notification of the date TSP determines it will achieve the stage of completion necessary for Tolling Readiness for a Bridge. During such 30-day period, TSP and the Joint Board shall meet and confer and exchange information on a regular cooperative basis with the goal being the Joint Board's orderly, timely inspection and review of the TCS and all other Work Product and items pertaining to Tolling Readiness. TSP shall provide the

Joint Board a second written notification when TSP determines it has achieved the stage of completion necessary for Tolling Readiness.

(b) Within 10 days after expiration of such 30-day period, but not fewer than 40 days after the first notification, or such sooner date as the Joint Board determines that the TSP has achieved Tolling Readiness, the Joint Board shall either (i) issue a Notice of Tolling Readiness, or (ii) notify TSP in writing setting forth why the TCS has not reached the point where a Notice of Tolling Readiness can be issued. If TSP and the Joint Board cannot agree as to the appropriate Tolling Readiness Date, such issue shall be submitted for dispute resolution in accordance with Article 19.

4.9.4. Punch List

Within 14 days after execution and delivery of the Notice of Tolling Readiness, or such longer period as the Joint Board may reasonably require, the Joint Board shall prepare and deliver to TSP a Punch List. TSP and the Joint Board each 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. TSP shall immediately commence work on the Punch List items and prosecute such work to completion to the Joint Board's reasonable satisfaction, consistent with the Contract Documents, within 30 days after issuance of the Punch List or such longer period as is necessitated in case of materials or equipment with long delivery lead-times.

4.10 Performance Guarantees, Operations Tests, Performance Liquidated Damages and Acceptance

4.10.1. Performance Guarantees

TSP hereby guarantees that the TCS shall comply with each of the Performance Requirements set forth in TR Section PR, as demonstrated by the System Acceptance Test required to achieve System Acceptance to be conducted by TSP following the commencement of full Revenue Service on the Bridges, as specified in TR Section TP.

4.10.2. Operations Tests

When TSP has achieved Tolling Readiness pursuant to Section 4.9 and the Joint Board has authorized Revenue Service to commence on any Bridge, the Operations Tests required pursuant to TR Section TP-023 for the relevant part of the TCS shall be conducted by TSP, at its cost, in accordance with the provisions of the Operations Test plan to determine that the TCS complies with each of the Performance Requirements, the Business Rules, and other TR Requirements. The Operations Tests shall be conducted over a minimum 120-day period after the Revenue Service Date for (i) the BOS, the CSC, and related interfaces, (ii) the Downtown Bridges Temporary Traffic Configuration, (iii) the East End Bridge, and (iv) the Downtown Bridges Final Traffic Configuration, under normal tolling and other operating conditions to verify actual

performance during revenue operations in accordance with the Operations Tests requirements. All equipment, simulators, supplies, services and special facilities required to conduct such tests shall be the responsibility of TSP. The Joint Board shall be provided not less than 14 days' advance written notice of all Operations Tests and shall be entitled to witness and monitor such tests in accordance with the provisions of the Contract Documents. No Operations Tests shall be scheduled or conducted without the Joint Board's prior written approval of the proposed schedule. The last of the required Operations Test shall be completed, with results conclusively indicating that the tests have been passed to the Joint Board's satisfaction, not later than 120 days after the last Revenue Service Date.

4.10.3. System Acceptance Test

4.10.3.1. TSP shall perform the System Acceptance Test 120 days after completion of the last Operations Test in accordance with the TR Section TP.

4.10.3.2. The test results of the System Acceptance Test shall be compiled in a proposed test report submitted to the Joint Board. The proposed test report shall be subject to the Joint Board's approval in accordance with the Approval Process.

4.10.4. Monthly Operations and Maintenance Reports and Ongoing Tests

TSP shall provide Monthly Operations and Maintenance Reports in a format approved by the Joint Board quantifying TSP's performance with respect to each of the measures indicated in the Performance Requirements specified in TR Section PR. TSP shall conduct performance tests of the TCS as specified in the MTP and in TR Section PR.

4.10.5. Performance Liquidated Damages

(a) TSP and the Joint Board acknowledge that in the event that the TCS fails to comply with certain Performance Requirements as demonstrated by the Operations Tests and monthly operating results reported in the Monthly Operations and Maintenance Reports, the Joint Board shall incur damages that are incapable of accurate measurement. Such damages include, without limitation, loss of toll revenues and additional operating costs for the TCS with respect to certain of the Performance Requirements. These damages are incapable of accurate measurement because of, among other things, the unique nature of the Ohio River Bridges Project. The Parties agree that, as of the Execution Date, the amounts of Performance Liquidated Damages set forth in Exhibit N represent a good faith estimate as to a portion only of the potential actual damages that the Joint Board would incur as a result of the failure of the TCS to comply with the Performance Requirements for which Performance Liquidated Damages are established in Exhibit N (each a "Guaranteed Performance Requirement"), and do not constitute a penalty. TSP shall pay any Performance

Liquidated Damages owing under this Contract in accordance with the provisions of Section 4.10.6 and Exhibit N.

(b) Notwithstanding clause (a), TSP shall not be responsible for the payment of Performance Liquidated Damages if (i) TSP has fully complied with its obligations regarding coordination with the ETC Contractor; (ii) TSP has fully complied with the inspection, review, testing, oversight and commissioning obligations of the TSP regarding the Joint Board-Provided ETC Equipment; and (iii) notwithstanding clauses (i)-(ii) herein, the sole and direct cause of the failure of the TCS to comply with the Performance Requirements is a Latent Defect in the Joint Board-Provided ETC Equipment,

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

(d) Notwithstanding clause(a), TSP shall not be responsible for the payment of Performance Liquidated Damages relating to the failure to have sufficient Transponders in inventory to fulfill customer orders pursuant to Technical Requirements Section PR-031 if the ETC Contractor has not supplied transponders to TSP in accordance with the terms of the ETC Contract and such failure by the ETC Contractor does not arise out of or relate, in whole or in part, to any action, omission, fault, breach, negligence, willful misconduct or recklessness by any TSP-Related Entity.

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

(f) Except as provided in, pursuant to or as a result of this Section 4.10, Section 4.12, Section 16.1.1(n) or in connection with Persistent Breach, the Performance Liquidated Damages payable hereunder are the Joint Board's sole monetary remedy for TSP's failure to comply with certain Performance Requirements set forth in this Agreement. The Performance Liquidated Damages under this Section 4.10 are cumulative and may be aggregated if multiple or cumulative failures occur.

4.10.6. Failure to Meet Performance Requirements

(a) In the event any of the Operations Tests, the Systems Acceptance Test or the Monthly Operations and Maintenance Reports of ongoing operating performance do not yield results which meet or are better than a Guaranteed Performance Requirement, TSP shall become obligated hereunder to pay Performance Liquidated Damages in the amounts set forth in Exhibit N for any shortfall in performance below the Performance Requirements based upon such test results.

(b) TSP's obligation to pay Performance Liquidated Damages for failure to meet Guaranteed Performance Requirements shall apply from and after the first Revenue Service Date. If TSP becomes obligated to pay Performance Liquidated Damages, such Performance Liquidated Damages shall be due and payable directly to the Joint Board or to such other person as directed by the Joint Board in writing, without notice or demand, on the tenth day of the following month and if not paid when due shall thereafter accrue interest as provided in Section 12.7. The Joint Board may, in its sole discretion, offset such Performance Liquidated Damages against amounts otherwise payable by the Joint Board to the TSP.

4.10.7. Performance Stipulated Damages

4.10.7.1. Performance Stipulated Damages Generally.

(a) TSP understands and agrees that if the Performance Requirements specified herein are not met at any time after the Revenue Service Date for each Bridge, as demonstrated by the Operations Tests and the results reported in the Monthly Operations and Maintenance Reports, the Joint Board will suffer substantial Losses. TSP agrees that it shall be liable for all such Losses to the extent set forth in this Section 4.10.7.1 and elsewhere in this Contract. TSP and the Joint Board have agreed to stipulate to a process to determine the amount of damages payable for such failure. TSP acknowledges and agrees that such Performance Stipulated Damages are intended to compensate the Joint Board solely for its damages caused by the failure to meet the Guaranteed Performance Requirements specified in Section 4.10.7.2, and shall not excuse TSP from liability to correct any defects in the TCS or from any other breach of requirements of the Contract Documents. The Joint Board agrees to accept Performance Stipulated Damages as its sole compensation for damages caused by such failure, provided that the Joint Board shall not be precluded from exercising its other rights and remedies respecting such failure, including requiring TSP to make adjustments to the TCS that will cause it to meet the Performance Requirements after the Joint Board's written notice to TSP of the failure.

(b) Notwithstanding clause (a), TSP shall not be responsible for the payment of Performance Stipulated Damages if (i) TSP has fully complied with its obligations regarding coordination with the ETC Contractor; (ii) TSP has fully complied with the inspection, review, testing, oversight and commissioning obligations of the TSP regarding the Joint Board-Provided ETC Equipment; and (iii) notwithstanding clauses (i)-(ii) herein, the sole and direct cause of the failure of the TCS to comply with the

Performance Requirements is a Latent Defect in the Joint Board-Provided ETC Equipment.

(c) Notwithstanding clause (a), TSP shall not be responsible for the payment of Performance Stipulated Damages if (i) TSP has fully complied with its obligations regarding coordination with Other Joint Board Contractors; (ii) notwithstanding such coordination TSP is required to shut down the System or otherwise delay its performance of a Guaranteed Performance Requirement in order to accommodate maintenance or other activities on a Bridge by an Other Joint Board Contractor through no fault of TSP; (iii) the need for such maintenance does not arise out of or relate, in whole or in part, to any action, omission, fault, breach, negligence, willful misconduct or recklessness by any TSP-Related Entity; and (iv) such shut down or delay is the direct and sole and cause of the failure of the TCS in a manner that directly and solely causes TSP to fail to meet such Guaranteed Performance Requirement.

(d) TSP's obligation to pay Performance Stipulated Damages for failure to meet Guaranteed Performance Requirements shall apply from and after the first Revenue Service Date. If TSP becomes obligated to pay Performance Stipulated Damages, such Performance Stipulated Damages shall be due and payable directly to the Joint Board or to such other person as directed by the Joint Board in writing, without notice or demand, on the tenth day of the following month and if not paid when due shall thereafter accrue interest as provided in Section 12.7. The Joint Board may, in its sole discretion, offset such Performance Stipulated Damages against amounts otherwise payable by the Joint Board to the TSP.

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

4.10.7.2. Amount of Performance Stipulated Damages.

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

(b) With respect to any failure to meet the Performance Requirements set forth in TR Items PR-002, PR-003, PR-005, PR-006, PR-007, PR-008 and PR-014, the parties hereby agree that the Performance Stipulated Damages payable for lost toll revenues shall be calculated based upon a comparison of the number of transactions identified by the TCS during the period of failure to meet the Guaranteed Performance Requirements and the number of transactions identified by the TCS during a comparable prior period determined by the Joint Board; provided, however, that if the Project does not have at least six months of operating history from which to compare, Performance Stipulated Damages shall be determined by reference to the traffic and revenue study estimates for the period of time in question and may also consider available live traffic data from the Digital Video Audit System and other subsystems for such period. For example, if, during the period in which the System fails to meet the Guaranteed Performance Requirements, the TCS identifies 100 transactions, and during a comparable prior period the TCS identifies 1000 transactions, the Stipulated Damages for the failure to meet the Guaranteed Performance Requirements for the period in question would be the value of the difference in the number of transactions, i.e., an amount equal to 900 multiplied by the toll rate(s) applicable to such transactions.

(c) In no event shall the foregoing calculation ever be a negative number or result in TSP being entitled to additional payment from the Joint Board. TSP understands and agrees that any Performance Stipulated Damages payable in accordance with this Section 4.10.7.2 are in the nature of stipulated damages and not a penalty and that the methodology for determining such sums was established based on the parties' agreement that the amounts so determined will constitute a reasonable approximation of the actual damages from lost toll revenues that the Joint Board will accrue as a result of the circumstances giving rise to such Performance Stipulated Damages. TSP further acknowledges and agrees that Performance Stipulated Damages may be owing even though no TSP Event of Default has occurred.

(d) Except as provided in, pursuant to or as a result of this Section 4.10, Section 4.12, Section 16.1.1(n) or in connection with Persistent Breach, the Performance Stipulated Damages payable hereunder are the Joint Board's sole monetary remedy for TSP's failure to comply with the Guaranteed Performance Requirements. The Performance Stipulated Damages under this Section 4.10 are cumulative and may be aggregated if multiple or cumulative failures occur, but in no event shall the Joint Board be entitled to payments in excess of lost revenue stipulated hereby.

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

Subject to the provisions of Section 17.1, TSP shall have no monetary liability under this Contract for damages arising out of an individual failure of the TCS to meet the Guaranteed Performance Requirements addressed in Exhibit N or in Section 4.10.7.2, except (i) if such failure also results in or triggers a separate or additional

default or breach of this Contract; (ii) for the Performance Liquidated Damages and the Performance Stipulated Damages, accruing in total up to such capped amount plus any interest due pursuant to Section 12.7, and (iii) for all reasonable sums the Joint Board incurs to enforce its rights to such damages.

4.10.9. System Acceptance

The TCS Installation Work shall be deemed to have achieved the point of "System Acceptance" by the Joint Board when the following requirements have been met:

(a) The Tolling Readiness Date(s) shall have occurred;

(b) All Punch List items shall have been completed by TSP in accordance with Section 4.9.4, except for non-material Punch List items the aggregate value of which (as determined by mutual agreement of the Parties) is less than $50,000;

(c) All Delay Liquidated Damages payable pursuant to Section 4.12 shall have been paid by TSP;

(d) The Operations Tests shall have been satisfactorily conducted and completed by TSP pursuant to this Section 4.10.2 and a final test report of the results thereof shall have been received and approved by the Joint Board;

(e) The System Acceptance Test shall have been satisfactorily conducted and completed by TSP pursuant to Section 4.10.3 and a final test report of the results thereof shall have been received and approved by the Joint Board;

(f) All Performance Liquidated Damages payable pursuant to Section 4.10.5 shall have been paid by TSP;

(g) All Performance Stipulated Damages payable pursuant to Section 4.10.7 shall have been paid by the TSP;

(h) TSP shall have delivered to the Joint Board a complete set of As-Built System Documentation for the TCS as set forth in the TR;

(i) A Source Code Escrow shall have been established for any Software Source Code that is required to be deposited into a Source Code Escrow pursuant to Section 20.6.3 and the Source Code Escrow Holder shall have confirmed in writing to the Joint Board that all Software Source Code that is required to be in such escrow has in fact been delivered to the Source Code Escrow by TSP;

(j) The Joint Board shall have approved the End of Contract Transition Plan submitted by TSP;

(k) No unremedied failure of any equipment or Work provided by TSP to comply with the System Documentation or any Contract Document or required submittal shall exist and be continuing; and

(l) All other conditions to System Acceptance set forth in the TRs shall have been satisfied.

TSP shall provide the Joint Board written notification when TSP determines that it has achieved System Acceptance of the TCS Installation Work pursuant to the foregoing. Within five Business Days following the Joint Board's receipt of such notice, the Joint Board shall either (a) issue a notice of System Acceptance, or (b) notify TSP in writing setting forth why TSP's Work has not reached the point where such a notice can be issued. If TSP and the Joint Board cannot agree as to the appropriate System Acceptance Date, such issue shall be submitted for dispute resolution in accordance with Section 19.

4.11 Late Progress Milestones

If, at any time, TSP's actual progress in performing the Work as measured against the Project Schedule or any of the Progress Milestone Dates is inadequate to meet the requirements of this Contract, the Joint Board may so notify TSP. Within 30 days thereafter, TSP shall either (i) demonstrate to the Joint Board's reasonable satisfaction that such interim delay in progress will have no adverse effect on TSP's ability to perform and complete the Work in accordance with the Mobilization Readiness Deadline(s) and Tolling Readiness Deadline(s), as the same may be adjusted pursuant to this Contract, even though other Progress Milestone Dates may be missed, or (ii) submit for the Joint Board's review and approval a Recovery Plan for restoring within a reasonable period of time compliance with forthcoming Progress Milestone Dates and/or Tolling Readiness Deadline(s). If a Recovery Plan is required and submitted, TSP shall take such steps as may be necessary to improve TSP's progress in accordance with the approved Recovery Plan. If within a reasonable period thereafter TSP does not improve performance in accordance with the approved Recovery Plan, the Joint Board may require an increase in TSP's resources. Such requirements shall be implemented by TSP without additional cost to the Joint Board, provided they are reasonable measures to mitigate delays for which TSP is not entitled to an extension of time pursuant to this Contract. Failure of TSP to comply with the provisions of this Section 4.11 may be grounds for determination by the Joint Board that TSP is not prosecuting the Work with such diligence as will assure completion in accordance with the requirements of this Contract, whereupon the Joint Board shall be entitled to exercise its remedies for a TSP Event of Default as set forth in Section 16.2.

4.12 Delay Liquidated Damages for Failure to Achieve Guaranteed Dates

4.12.1. Delay Liquidated Damages

TSP and the Joint Board acknowledge that in the event that TSP fails to achieve the Pre-Toll Operations Readiness, Mobilization Readiness, East-End Bridge Tolling Readiness, Downtown Bridges Temporary Traffic Configuration Tolling Readiness, or Downtown Bridges Final Traffic Configuration Tolling Readiness by the relevant Completion Deadlines, the Joint Board shall incur damages that are incapable of accurate measurement. Such damages include additional costs to the Joint Board of administering this Contract (including engineering, management, legal, accounting, overhead and other administrative costs) with respect to failure to achieve Mobilization Readiness by the Mobilization Readiness Deadline, and loss of toll revenues, together with additional costs to the Joint Board of administering this Contract and additional costs with respect to a failure to achieve Pre-Toll Operations Readiness, and Tolling Readiness by the relevant TCS Completion Deadlines. These damages are incapable of exact measurement because of, among other things, the unique nature of the Ohio River Bridges Project. The Parties agree that as of the Execution Date, the amounts of Delay Liquidated Damages set forth in Sections 4.12.2 through and including 4.12.4 represent a good faith estimate as to a portion only of the potential actual damages that the Joint Board would incur as a result of late Pre-Toll Operations Readiness, Mobilization Readiness or Tolling Readiness and do not constitute a penalty. TSP shall pay any such Delay Liquidated Damages owing under this Contract on a monthly basis within five days following receipt of the Joint Board's written demand therefor, and such Delay Liquidated Damages shall be subject to offset by the Joint Board. All Delay Liquidated Damages payable hereunder shall be paid directly to the Joint Board. The fact that the Joint Board has agreed to accept Delay Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline shall not preclude the Joint Board from exercising its other rights and remedies respecting the delay set forth in Section 16.2 and, if applicable, Section 16.3 or elsewhere in this Contract, other than the right to collect other damages due solely to the delay, except that the Joint Board agrees not to exercise such other rights and remedies respecting the delay so long as (a) the Project Schedule demonstrates that TSP is capable of meeting such Completion Deadline within 90 Days after the Completion Deadline, and (b) TSP diligently performs the Work in accordance with said schedule. Notwithstanding the foregoing, TSP shall not be responsible for the payment of Delay Liquidated Damages if (i) TSP has fully complied with its obligations regarding coordination with the ETC Contractor; (ii) TSP has fully complied with the inspection, review, testing, oversight and commissioning obligations of the TSP regarding the Joint Board-Provided ETC Equipment; and (iii) notwithstanding clauses (i)-(ii) herein, the sole and direct cause of the failure of the TCS to meet the applicable milestones set forth in this Section 4.12 is a Latent Defect in the Joint Board-Provided ETC Equipment. TSP shall bear the burden of proof that the conditions in clauses (i) through (iii) herein are satisfied.

4.12.2. Pre-Toll Operations Readiness Deadline

The Joint Board shall assess and TSP shall pay $2,500 per day Delay Liquidated Damages with respect to each day from and after the Pre-Toll Operations Readiness Deadline to and including the date that TSP achieves Pre-Toll Operations Readiness, but not to exceed 90 days, for TSP's failure to achieve TOC Pre-Toll Operations Readiness by the Pre-Toll Operations Readiness Deadline.

4.12.3. Mobilization Readiness Deadline

The Joint Board shall assess and TSP shall pay $2,500 per day Delay Liquidated Damages with respect to each day from and after the Mobilization Readiness Deadline to and including the actual date of Mobilization Readiness, but not to exceed 90 days, for TSP's failure to achieve Mobilization Readiness by the Mobilization Readiness Deadline.

4.12.4. Tolling Readiness Deadline

The Joint Board shall assess and TSP shall pay the following amounts per day Delay Liquidated Damages with respect to each day from and after the Tolling Readiness Deadline, if such deadline is not achieved, to and including the actual date of Tolling Readiness, but not to exceed 180 days, for TSP's failure to achieve Tolling Readiness by the Tolling Readiness Date. Such amounts shall apply to each bridge affected and may be aggregated if multiple deadlines are not achieved. If the TSP has not achieved Tolling Readiness within 90 days after the Tolling Readiness Deadline, then in addition to continuing to assess Delay Liquidated Damages for up to an additional 90 days, the Joint Board shall be entitled to exercise all other nonmonetary remedies available at law or in equity with respect to such late performance as specified in Section 4.12.5. The per day Delay Liquidated Damages are:

East-End Bridge:	$15,000
Downtown Bridges Temporary Traffic Configuration:	$15,000
Downtown Bridges Final Traffic Configuration:	$15,000

4.12.5. Sole Remedy; Cumulative

Except as provided in Section 4.10, the Delay Liquidated Damages payable hereunder are the Joint Board's sole monetary remedy for TSP's failure to achieve Completion Deadlines, and the Joint Board hereby waives all other remedies available at law or in equity with respect to losses resulting from such late performance during the first 90 days of TSP's failure to achieve a Completion Deadline. After 90 days, the Joint Board shall have all other remedies available under this Contract, including the right to

terminate TSP for a TSP Event of Default as set forth in Section 16. The Delay Liquidated Damages under this Section 4.12 are cumulative and may be aggregated if multiple deadlines are not achieved.

4.13 End of Operations and Maintenance Term Acceptance

4.13.1. Requirements

In connection with the expiration or earlier termination of the TCS Operations and Maintenance Term, TSP shall perform each of the required elements of the approved End of Contract Transition Plan. TSP shall provide written notice to the Joint Board when it has complied with all elements of the approved End of Contract Transition Plan, including a list of all transferrable items to be assigned to the Joint Board at the end of the Contract, which list, at a minimum, shall identify and include all essential items required to operate and maintain the roadside system, maintenance online management system, and configuration system, sufficient to allow all transaction information to be posted and processed by a back office system provided by others. TSP shall provide written notice to the Joint Board when all of the following have occurred, which shall be not fewer than 90 days prior to expiration or earlier termination of the Contract Term:

(a) TSP has provided and the Joint Board has accepted updated As-Built System Documentation reflecting any and all changes and modifications that may have occurred during the term of the Contract;

(b) TSP has provided and the Joint Board has approved and accepted all Spare Parts and tools required to properly maintain the System, whether or not the same are indicated in the Spare Parts Inventory;

(c) TSP has supplied and the Joint Board has approved and accepted all necessary manuals to operate and maintain the System, revised as necessary to reflect any and all changes and modifications that may have been made to the System since the manuals were originally provided by the Toll System Provider;

(d) TSP has supplied and Joint Board has approved and accepted completed maintenance records from the Maintenance Online Management System and Monthly Operations and Maintenance Reports;

(e) TSP has trained Joint Board's designated maintenance staff to the Joint Board's satisfaction;

(f) TSP has transferred to the Joint Board or its designee all rights in Software required by Sections 20.5 and 20.6;

(g) To the extent required pursuant to Section 20.6.3, TSP has deposited all Software Source Code necessary for continued operation and maintenance of the TCS

into the Source Code Escrow and the Code Escrow Agent has verified such deposit is accurate and complete; and

(h) TSP furnished a complete and current set of all transferrable system configuration data and Software, customer account management data, financial data, and traffic data 1 year prior to the end of the Contract Term and has provided updates of such data every quarter until the end of the Contract Term.

4.13.2. Certificate of End of Operations and Maintenance Term Acceptance

The Joint Board will issue a Certificate of End of Operations and Maintenance Term Acceptance as soon as reasonably practicable after: (a) the Joint Board finds that all conditions set forth in Section 4.13.1 have been satisfied; (b) the Joint Board finds that all Errors identified as prerequisites to End of Operations and Maintenance Term Acceptance have been corrected; (c) all inspection and testing as described in TR Section TP shall have been completed; and (d) any other conditions precedent to End of Operations and Maintenance Term expressly set forth in this Contract have occurred.

SECTION 5. FLOW OF FUNDS REQUIREMENTS

5.1 Custody and Revenue Control Agreement

TSP acknowledges and agrees that the Joint Board has selected, or shall undertake to procure, a Custodian to hold Gross Revenues collected by TSP, and a Revenue Control Manager to maintain an accounting of Financial Transactions, and review and report on the status of accounts. The Joint Board anticipates entering into a Custody and Revenue Control Agreement, substantially in the form of the draft agreement attached hereto as Exhibit O. TSP acknowledges that it has had an opportunity to review the Custody and Revenue Control Agreement and understands the terms thereof and has taken them into account in establishing the Contract Price and entering into this Agreement. TSP has taken into account and expects to perform the obligations to be allocated to and assumed by TSP pursuant to the Custody and Revenue Control Agreement. TSP agrees that it shall execute and deliver to the Joint Board the final Custody and Revenue Control Agreement within seven (7) business days of the Joint Board's presentation of the execution version of the Custody and Revenue Control Agreement substantially in the form of Exhibit O to the TSP and request for TSP's signature.

5.2 Deposit of Funds into Custodian Accounts

TSP shall, at all times, deposit all Gross Revenues that it collects in performing the Operations and Maintenance Work into the distinct accounts established and maintained by the Custodian, in accordance with the time frames provided in the Custody and Revenue Control Agreement.

5.3 No Commingling of Funds

All Gross Revenues received by TSP shall be identified for deposit into one of the funds established by the Custodian pursuant to the Custody and Revenue Control Agreement and shall be deposited by TSP into such accounts within the time frame designated in such Custody and Revenue Control Agreement. TSP shall not commingle Gross Revenues from the different sources.

5.4 Authorized Personnel

Only TSP personnel specified in the Custodian and Revenue Control Agreement shall have access to and control over the Gross Revenues and accounts.

5.5 Daily Transfer and Reconciliation

Subject to the roles and responsibilities for funds management and control allocated to the Custodian and the Revenue Control Manager pursuant to the Custody and Revenue Control Agreement, TSP shall carry out the responsibilities assigned to it to make daily transfers of funds and reconciliation as specified in TR Section FR.

5.6 Responsibility for Chargebacks and Refunds

TSP shall be responsible for the cost of chargebacks and refunds resulting from TSP error and shall make payment of refunds owing to the Joint Board to the Joint Board within 15 days of demand therefor. Alternatively, at the Joint Board's sole discretion, the Joint Board may offset such refund amounts against any amounts payable to TSP hereunder.

5.7 Revenue Control Manager

TSP shall fully cooperate with and assist the Revenue Control Manager in carrying out its obligations.

SECTION 6. ACCESS TO PROJECT SITE; UTILITIES; ENVIRONMENTAL COMPLIANCE

6.1 Access to Project Site

6.1.1. Except for the CSC and leases to the WUC that the TSP is required to provide, and subject to TSP's coordination responsibilities with the DB Contractor and Developer, the Joint Board shall be responsible for providing TSP with such access to the Project Site as is necessary to perform the Work in accordance with the approved Project Schedule. To the extent that TSP has not been provided with access to the Project Site prior to the date(s) set forth on the Project Schedule, TSP shall perform such Work as is feasible without such access with the goal of minimizing delay to Project completion.

6.1.2. All costs and expenses for the acquisition of any temporary right or interest in real property that TSP determines necessary or desirable for its convenience in performance of the Work, such as for work space, contractor laydown areas, materials or storage areas, or for any permanent interest in real property that TSP may wish to acquire for its convenience which lies outside the ROW, shall be TSP's sole responsibility, to be undertaken at TSP's sole cost and expense. The Joint Board shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such rights or interests, and shall not use its powers of eminent domain in connection therewith, nor shall any States' Party be required to use its powers of eminent domain in connection therewith. TSP will comply with all applicable Laws in acquiring and maintaining or disposing of any such property rights or interests. TSP shall cause the documentation of any such property interest to contain the grantor's express acknowledgment that the Joint Board shall have no liability with respect thereto. Notwithstanding the foregoing, TSP shall be entitled to charge the Joint Board for the Cost of rent and other Pass-Through Cost Items with respect to the WUC, as provided in Section 12.

6.2 Utilities

The Joint Board will ensure that all necessary Utilities (other than the service to be provided by the Communications Network Provider) enter the ROW of each Toll Zone, provided that the Joint Board may, in its sole discretion, require TSP to perform such activities by a Change Order. TSP shall be responsible for verifying the location of all Utilities shown on any Utility Strip Map provided by the Joint Board (including undertaking field inspections and Project Site studies, researching Utility owner records and confirming TSP's findings with the Joint Board and the Utility owners), and for obtaining all Utility installations, hook-ups and service extensions that are required to operate the System, and for coordination with Utility owners, at TSP's cost. TSP shall use its best efforts to minimize costs for which TSP is entitled to compensation, including avoidance of an unidentified Utility where feasible rather than its removal

and/or reinstallation in a new location, and to minimize any delay for which TSP is entitled to an extension in a Completion Deadline pursuant to this Section 6.2.

6.3 Hazardous Materials Management

6.3.1. Procedures and Compensation for Hazardous Materials Management

6.3.1.1. If during the course of the Work, TSP encounters Hazardous Materials, TSP shall (a) promptly notify the Joint Board in writing and advise the Joint Board of any obligation to notify State, Commonwealth or federal agencies under applicable Law; and (b) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials. Where excavation or dewatering of Hazardous Materials is unavoidable, TSP shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by the Joint Board. Such approach shall be subject to the prior written approval of the Joint Board.

6.3.1.2. Except where required by applicable Law to take an immediate action, TSP shall afford the Joint Board the opportunity to inspect Project Sites containing Hazardous Materials before any action is taken which would inhibit the Joint Board's ability to ascertain the nature and extent of the contamination.

6.3.1.3. Subject to the limitations and exceptions set forth in this Section 6.3 and Section 13, TSP shall be entitled to a Change Order as set forth in Section 13 providing for additional compensation and/or a time extension with respect to costs and delays directly attributable to the discovery of Hazardous Materials within the ROW.

6.3.2. Hazardous Material Generator

As between TSP and the Joint Board, the Joint Board shall be considered the generator of Hazardous Materials on any ROW as of the Effective Date; provided, however, that the foregoing shall not preclude or limit any rights or remedies that the Joint Board may have against third parties and/or prior owners, lessees, licensees and occupants of the ROW. As between TSP and the Joint Board, TSP shall be considered the generator of any Hazardous Materials on the ROW which result from (a) Release(s) of Hazardous Material attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any TSP-Related Entity; and (b) Release(s) of Hazardous Materials arranged to be brought onto the ROW or elsewhere by any TSP-Related Entity regardless of the cause of the Release of Hazardous Materials.

6.3.3. Hazardous Material Releases Caused by TSP

Hazardous Materials Management costs, including assessment, containment, and remediation expenses, on, arising from or related to and/or which result from (a) Release(s) of Hazardous Material attributable to the actions or omissions of any

TSP-Related Entity; or (b) Release(s) of Hazardous Materials arranged to be brought onto the ROW or elsewhere by any TSP-Related Entity shall not be compensable to TSP, regardless of the cause of the Release of Hazardous Materials.

6.3.4. Hazardous Materials Brought to Project Site by TSP

TSP shall be solely responsible for: (a) compliance with all Laws applicable to Hazardous Materials brought onto the Project Site by any TSP-Related Entity; (b) use, containment, storage, management, transport and disposal of Hazardous Materials in accordance with the Contract Documents and all applicable Laws and Environmental Approvals; and (c) payment of all Losses associated with, arising out of or related to TSP's use of such Hazardous Materials.

6.3.5. Environmental Approvals Relating to Hazardous Materials Management

TSP shall be solely responsible for obtaining all Governmental Approvals relating to Hazardous Materials Management including federal, Commonwealth and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials required for performance of the TCS Installation Work. TSP shall be solely responsible for compliance with such Governmental Approvals and applicable Laws, including those governing the preparation of waste profiles, waste manifests and bills of lading.

6.4 Environmental Compliance

6.4.1. TSP shall be responsible for compliance with all conditions and requirements of the Environmental Approvals, including the Joint Board-Provided Approvals and similar Governmental Approvals, specifically applicable to the Project. The Contract Price includes compensation for TSP's performance of all environmental requirements and conditions relating to the Project, including mitigation measures.

SECTION 7. CIVIL RIGHTS; SUBCONTRACTORS; KEY PERSONNEL

7.1 Civil Rights; Equal Employment Opportunity; DBE Participation

7.1.1. TSP shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Work under the Contract Documents. TSP shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 21 and 23 CFR Part 200 in the award and administration of FHWA-assisted agreements. Failure by TSP to carry out these requirements is a material breach of this Contract, which may result in the termination of the Contract Documents or such other remedy as the Joint Board deems appropriate.

7.1.2. TSP shall include Section 7.1.1 in every Subcontract (including purchase orders and in every subcontract of any TSP-Related Entity for Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.1.3. TSP confirms for itself and all Subcontractors that TSP and each Subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that TSP and each Subcontractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. TSP shall comply with all applicable equal employment opportunity and nondiscrimination provisions set forth in Exhibit F, and shall require its Subcontractors to comply with such provisions.

7.1.4. TSP shall exercise good faith efforts to encourage DBE participation in the performance of the work.

7.2 Subcontracts

7.2.1. Subject to the nondiscrimination and equal opportunity provisions, TSP may perform the Work with its own personnel, pursuant to Subcontracts with its Affiliates and pursuant to Subcontracts with unaffiliated companies, entities or individuals.

7.2.2. Each Subcontract shall incorporate relevant terms of the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor. TSP shall be solely responsible for the engagement and management of its Subcontractors in the performance of Work, for all Work performed by its Subcontractors and for all acts and omissions of its Subcontractors. TSP shall properly supervise and coordinate the Work performed by its Subcontractors so as to insure that all such Work and all equipment and materials furnished by its Subcontractors conform to the provisions of the Contract Documents.

7.2.3. Each Subcontract shall expressly preserve and protect the rights of the Joint Board under the Contract Documents with respect to the Work to be performed by the

Subcontractor so that the subcontracting thereof will not prejudice such rights. Each Subcontract and agreement with Suppliers shall include provisions granting to the Joint Board the right to succeed to the interest of TSP under, or otherwise accept an assignment of such Subcontract or agreement without cost upon any termination of this Contract (including a termination due to a Joint Board or TSP Event of Default); provided that any such assignment shall be subject to the prior rights, if any, of the surety obligated under the Payment and Performance Bond.

Within ten days after execution of a Subcontract, TSP shall deliver true, correct and complete copies thereof to the Joint Board.

Each Subcontract shall include express requirements that: (i) Subcontractor will maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) permit audit thereof by TSP, and provide progress reports to TSP appropriate for the type of work it is performing sufficient to enable TSP to provide the reports it is required to furnish the Joint Board under this Contract; and (iii) allow the assignment thereof to the Joint Board and for the Joint Board to assume the benefit of TSP's rights with liability only for those remaining obligations of TSP accruing after the date of assumption by the Joint Board. No such assignment shall release or relieve TSP from its obligations or liabilities under the assigned Subcontract.

7.2.4. To the extent commercially feasible, TSP shall include the following patent and copyright infringement and trade secret misappropriation provisions in its purchase orders and licensing agreements with TSP's TCS equipment and TCS Software Suppliers. Inclusion of such provisions in TSP purchase orders and licensing agreements with Suppliers shall be subject to verification by the Joint Board.

(a) Suppliers shall represent and warrant that the materials, equipment and devices to be used on or incorporated in the TCS shall be free of any rightful claim of any third party for infringement of any United States patent or copyright or misappropriation of any trade secret.

(b) If notified promptly in writing and given authority, information and assistance, the Supplier shall defend, or may settle, at its expense, any further proceeding against TSP and/or the Joint Board, their respective officers, employees and agents, insofar as it is based on any claimed patent or copyright infringement or misappropriation of any trade secret which would result in a breach of this warranty and the Supplier shall indemnify, protect, defend and hold harmless TSP and the Joint Board from, and pay, all damages and costs awarded therein against TSP and the Joint Board, and their respective officers, employees, agents, or assigns.

(c) The Supplier shall report to TSP and the Joint Board promptly and in reasonable written detail, each notice or claim of patent or copyright infringement or

misappropriation of any trade secret based on the performance of this Contract of which the Supplier has knowledge.

(d) In the event of any claim or dispute against TSP and/or the Joint Board on account of any alleged patent or copyright infringement or misappropriation of any trade secret arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Supplier shall furnish to TSP and the Joint Board all evidence and information in the possession of the Supplier pertaining to such suit or claim.

(e) The Supplier shall furnish such evidence or information at its expense.

7.2.5. TSP shall provide the collection services required pursuant to TR Section CA by subcontracting for such services with a collection agency to be identified by TSP and approved by the Joint Board at least 30 days prior to the first Revenue Service Date. The term of the Subcontract between TSP and the approved collection agency for performance of such services shall be for no more than three (3) years, commencing on the first Revenue Service Date. Such Subcontract shall provide that it may be extended at the option of the TSP for a maximum of five (5) additional one year option periods, and that failure of the TSP to exercise an option to extend the collection agency Subcontract for any year shall terminate all remaining options, and shall include the termination provisions required pursuant to Section 15.11.1 and Section 15.11.2.

7.3 Key Personnel; Qualifications of Employees

7.3.1. TSP shall appoint a Program Manager, a Project Manager-Installation, and a Project Manager-Operations and Maintenance. These positions shall be considered Key Personnel. TSP shall not change, or permit any change in, any Key Personnel without the prior written consent of the Joint Board, in its sole discretion.

7.3.2. All individuals performing Work shall have the skill and experience and any licenses required to perform the Work assigned to them. If the Joint Board determines, in its sole discretion, that any Person employed by TSP or any Subcontractor is not performing the Work in a proper, desirable and skillful manner or is detrimental to the progress of the Work, then, at the written request of the Joint Board, TSP shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of the Joint Board. If such Person is not removed or if TSP fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then the Joint Board may suspend the affected portion of the Work by delivery of written notice of such suspension to TSP. Such suspension shall in no way relieve TSP of any obligation contained in the Contract Documents or entitle TSP to a Claim or Change Order. Once compliance is achieved, the Joint Board will notify TSP and TSP shall promptly resume the Work. During the period of any such suspension, TSP shall not be entitled to the payment of any portion of the applicable Price or any other payment hereunder.

7.3.3. A TSP Authorized Representative shall be available at all times while Work is actually in progress. TSP shall provide phone and pager numbers for all Key Personnel. The Joint Board requires the ability to contact the Key Personnel 24 hours per Day, seven days per week.

7.3.4. TSP acknowledges and agrees that the award of this Contract by the Joint Board to TSP was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and TSP's commitment that such individuals would be available to undertake and perform the Work. TSP 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 the Joint Board 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 addition to the foregoing, the Joint Board reserves the right to require a 100% time commitment per position from any Key Personnel if the Joint Board, in its sole discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.

7.4 Responsibility for Employees and Subcontractors

TSP shall supervise and be responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any TSP-Related Entity, as though TSP directly employed all such Persons. Notwithstanding the foregoing, the Joint Board shall have the right, at any time to require TSP to immediately remove from the Project any TSP employee that the Joint Board determines poses a potential health, safety or security threat to the Joint Board's customers, employees, agents or assets or who the Joint Board determines does not meet the minimum performance requirements of the Work.

SECTION 8. PERFORMANCE AND PAYMENT BONDS; GUARANTY; FINANCIAL INFORMATION

8.1 Provision of Bonds

TSP shall provide payment, performance and warranty bonds to the Joint Board securing TSP's obligations hereunder, each in an amount set forth herein, and shall maintain such bonds in full force and effect as described below.

8.1.1. As a condition to issuance of the NTP, TSP shall provide, and continuously maintain in place for the benefit of the Joint Board, a Performance Bond in the form of Exhibit P for the TCS Installation Work. The Performance Bond shall be in the amount of the Total Toll Collection System Capital Price specified in the Price Proposal. Subject to Section 8.1.3, the Joint Board will release the Performance Bond if a separate Warranty Bond is provided, or if a rider is provided pursuant to Section 8.1.3, reduce the amount of the Performance Bond, as applicable, (a) upon expiration of the General Warranty Period specified in Section 11.4.1(ii), provided that no outstanding claims are then pending or threatened against TSP hereunder, or (b) upon satisfaction of the conditions in Section 8.1.3.

8.1.2. As a condition to issuance of the NTP, TSP shall provide, and continuously maintain in place for the benefit of the Joint Board, a Payment Bond in the form of Exhibit Q for the TCS Installation Work. Such bond shall be in an amount of 100% of the Total Toll Collection System Capital Price. Subject to Section 8.1.3, the Joint Board will release the Payment Bond (a) upon receipt of (i) evidence satisfactory to the Joint Board that all Persons eligible to file a claim against the bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, (b) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed, or (c) upon satisfaction of the conditions in Section 8.1.3.

8.1.3. As of System Acceptance, subject to the requirements herein, TSP will obtain a reduction in the amount of the Performance Bond by providing a warranty bond, or such other security as is approved by the Joint Board, in its good faith discretion, which shall guarantee performance of the Work required to be performed during the General Warranty Period and which shall also constitute a payment bond guaranteeing payment to Persons performing such Work. The Warranty Bond shall be (i) in an amount equal to 10% of the Total Toll Collection System Capital Price and (ii) substantially in the form attached hereto as Exhibit R (with such modifications as the Joint Board approves in writing, in its sole discretion). The Joint Board will release the Warranty Bond (a) upon receipt of (x) evidence satisfactory to the Joint Board that all Persons eligible to file a claim against the bond have been fully paid, and (y) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, or (b) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed.

8.1.4. As a condition to System Acceptance, TSP shall furnish the Joint Board with (a) a Maintenance Performance Bond in the form of Exhibit S-1 (with such modifications as the Joint Board approves in writing, in its sole discretion), and (b) a Maintenance Payment Bond in the form of Exhibit S-2 (with such modifications as the Joint Board approves in writing, in its sole discretion). Commencing from and after System Acceptance and continuing during the TCS Operations and Maintenance Term, the Maintenance Performance Bond shall be in an amount equal to 100% of the Total Toll Collection System Operations and Maintenance Price for one year for the then current year of the TCS Operations and Maintenance Term. Commencing from and after System Acceptance and continuing during the TCS Operations and Maintenance Term, the Maintenance Payment Bond shall be in an amount equal to 100% of the Total System Maintenance Price for one year for the then current year of the TCS Operations and Maintenance Term. If the Joint Board exercises the Software Maintenance Option, then subject to the satisfaction of the conditions stated below for release of the Maintenance Performance Bond and the Maintenance Payment Bond, during the Software Maintenance Option Period, each of the Maintenance Performance Bond and the Maintenance Payment Bond may be reduced to an amount equal to the greater of (a) 25% of the then current amount of each such bond, or (b) 100% of the total annual compensation to be paid by the Joint Board to the TSP for performing the Software maintenance work for the then current year of the Software Maintenance Option Period. TSP's obligation to maintain and provide a current Maintenance Performance Bond and Maintenance Payment Bond shall continue throughout the TCS Operations and Maintenance Term, and if the Joint Board exercises the Software Maintenance Option, the TSP's obligation to maintain and provide the Maintenance Performance Bond and the Maintenance Payment Bond shall continue throughout the Software Maintenance Option Period, subject to reduction in amount as stated above. Notwithstanding the foregoing sentence, the Joint Board will accept a Maintenance Performance Bond and a Maintenance Payment Bond with a stated term of at least one year with a statement set forth in the applicable bond that it shall be renewable annually in accordance with the surety's customary renewal practices. Provided that TSP has paid the Joint Board any applicable Performance Liquidated Damages and Performance Stipulated Damages, compensation for Losses and any other amounts that are payable to the Joint Board under the Contract Documents, then if the Joint Board has not exercised the Software Maintenance Option, the Maintenance Performance Bond(s) shall be released after the satisfaction of all conditions to Final Payment of the Toll Collection System Operations and Maintenance Price pursuant to Section 12.5 at the end of the TCS Operations and Maintenance Term. If the Joint Board has not exercised the Software Maintenance Option, then upon expiration of the TCS Operations and Maintenance Term, the Joint Board will release the Maintenance Payment Bond (i) upon receipt of (A) evidence satisfactory to the Joint Board that all Persons eligible to file a claim against the bond have been fully paid, and (B) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, or (ii) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed. If the Joint Board exercises the Software Maintenance Option,

then the Maintenance Performance Bond(s) shall be released after satisfactory completion of all Software maintenance work TSP is obligated to perform prior to the end of the Software Maintenance Option Period, and the Maintenance Payment Bond will be released (i) upon receipt of (A) evidence satisfactory to the Joint Board that all persons eligible to file a claim against the bond have been fully paid, and (B) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notices of a claim against the bond, or (ii) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed.

8.1.5. Each bond required hereunder shall be issued by an Eligible Surety authorized to do business in the State of Indiana and listed on United States Department of the Treasury's Listing of Approved Sureties and otherwise approved by the Joint Board in its sole discretion. If any bond previously provided becomes ineffective, or if the surety that provided the bond no longer meets the requirements hereof, TSP shall provide a replacement bond in the same form issued by a surety meeting the foregoing requirements, or other assurance satisfactory to the Joint Board in its sole discretion. If a Contract Price Component is increased in connection with a Change Order, the Joint Board may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond or alternative security.

8.1.6. Subject to Section 18.7, no draw under any Performance Bond, Payment Bond, Maintenance Performance Bond or Maintenance Payment Bond shall preclude, inhibit, alter or modify the Joint Board's rights to exercise any and all other rights and remedies available under the Contract Documents, at law or in equity; provided, however, that any recovery under any bond shall reduce the obligations of Guarantor under any Guaranty.

8.2 Guaranty

[_____] is the Guarantor of TSP's obligations under the Contract Documents. Such guaranty, in the form attached hereto as Exhibit Z to this Contract, assures performance of TSP's obligations hereunder and shall be maintained in full force and effect throughout the duration of this Contract. TSP shall periodically report to the Joint Board regarding the financial capacity of the Guarantor as required in Section 8.4. If, at any point in the course of this Contract, the Guarantor's financial capacity is materially negatively affected, as determined by the Joint Board in its good faith discretion, the Joint Board may require, and the TSP shall provide, one or more additional guarantees so that the combined financial capacity of the Guarantor and the additional guarantors provides equivalent security to the Joint Board as the guaranty provided as of the Effective Date of this Contract. Each such guaranty shall be substantially in the form provided in Exhibit Z, together with appropriate evidence of authorization, execution, delivery and validity thereof. ***[SECTION WILL BE DELETED IF GUARANTY IS NOT REQUIRED.]***

8.3 No Relief of Liability

Notwithstanding any other provision set forth in the Contract Documents, performance by a surety or Guarantor of any of the obligations of TSP shall not relieve TSP of any of its obligations hereunder.

8.4 Periodic Updated Financial Information

Each year during the term of this Contract, within 60 days following the completion of TSP's and the Guarantor's annual audited financials, TSP shall deliver to the Joint Board:

(a) The audited financial statements for the prior year, audited by a certified public accountant in accordance with generally accepted accounting principles (GAAP) for TSP, its equity members and each Guarantor. If an entity does not have individual financial statements, but, rather, financial statements are prepared on a consolidated basis for that entity and other entities, the consolidated financial statements shall be acceptable. Financial statements must be provided in U.S. dollars. If financial statements submitted are prepared in accordance with other than U. S. GAAP, TSP shall include a letter from the entity's chief financial officer, treasurer, or certified public accountant discussing the areas of the financial statements that would be materially affected by a conversion to U.S. GAAP and providing an estimate of changes required to recalculate in accordance with U.S. GAAP. If audited financials are not available TSP shall include unaudited financials for such member, certified as true, correct and accurate by the chief financial officer or treasurer of the entity. Provision of financial statements and information for a parent company or other affiliate will not be sufficient to satisfy the requirement to provide financial statements.

(b) Any financial ratings obtained.

(c) The most recent Securities and Exchange Commission 10 K and 10 Q reports and any 8-Ks filed since submission of the prior year's financial information (if TSP is publicly held or otherwise required to make such filings).

SECTION 9. INSURANCE

The insurance provided hereunder shall be available for the benefit of the Joint Board and TSP with respect to covered claims, but shall not be interpreted to relieve TSP of any obligations hereunder. All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by the Joint Board and authorized or approved to do business in the State. All limits of liability set forth below are in U.S. dollars. All insurance coverage and limits provided by TSP and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Contract limits the application of such insurance coverage.

9.1 TSP Provided Insurance

As a condition to issuance of the NTP, TSP shall provide, at its own expense, insurance acceptable to the Joint Board as described herein and shall maintain such insurance in full force and effect throughout the duration of this Contract as specified herein. TSP may satisfy these requirements for specific coverages and limits through various methods including the use of combined forms, e.g., professional liability and cyber liability, to meet coverage requirements and combinations of primary and excess policies for achieving required limits. Use of such options is permissible provided that the resulting insurance policies meet all the requirements specified in this Section 9 and approved in advance by the Joint Board.

9.1.1. Commercial General Liability Insurance

(a) TSP shall obtain and maintain a policy or policies of commercial general liability insurance for bodily injury, property damage, personal injury and advertising injury.

(b) Coverage shall be written on an occurrence form that shall provide coverage at least as broad as and no more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 10 01.

(c) There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract.

(d) Such insurance shall include, by its terms or appropriate endorsements, coverage for bodily injury, broad form property damage, personal injury, blanket contractual, independent contractors, premises operations, and products and completed operations. 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. 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 either through continuous maintenance of completed operations

coverage in TSP's corporate insurance program, including an endorsement providing completed operations coverage for additional insureds, or by purchase of extended completed operations coverage.

9.1.2. Workers' Compensation Insurance

During all phases of the Project, TSP 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 States of Kentucky and Indiana. Employer's liability limits shall be no less than $1 million each accident, each employee, and shall be scheduled under the excess or umbrella liability policies. The workers' compensation policies shall provide the following:

1. A waiver of subrogation in favor of the Indemnified parties;

2. A provision extending coverage to all states operations;

3. A voluntary compensation endorsement;

4. An alternate employer endorsement;

5. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act by adding a Longshore and Harbor Workers' Compensation Act coverage endorsement (WC 00 01 06) on an "if any" basis or as otherwise appropriate; and

6. Coverage for liability under Title 46 of the United States Code § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate.

9.1.3. Business Automobile Liability Insurance

(a) TSP shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain a business auto liability policy or policies. Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance, or use of all vehicles connected with performance of the Work, including loading and unloading. TSP auto liability policies shall cover "any auto" (symbol 1). Policies shall include as an insured anyone liable for the conduct of an insured as defined in the policy, or shall add as insureds, the Indemnified Parties. For any contractor of any tier, including TSP, 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 provided and the automobile liability insurance policies shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) with a sublimit of no less than $1,000,000.

(b) TSP's automobile liability coverage shall have a combined single limit per policy period of not less than $10,000,000 and may be scheduled under the excess or umbrella liability policies to achieve the desired limit. Excess or umbrella policies shall cover "any auto" (symbol 1) or shall be specifically endorsed to include liability coverage on an excess basis for vehicles owned or operated by TSP's Subcontractors. The required limits can be satisfied by a combination of a primary policy and an excess or umbrella policy.

9.1.4. Umbrella or Excess Liability Insurance

(a) TSP shall obtain and maintain an umbrella or excess liability insurance policy to provide a total liability limit of not less than $10,000,000, that will provide bodily injury, personal injury and property damage liability coverage on an occurrence basis at least as broad as the primary coverages set forth above including commercial general liability and employer's liability in excess of the amounts set forth above.

(b) Such policy or policies shall include the following terms and conditions:

1. Policies shall contain a 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;

2. Policies shall provide coverage at least as broad as found in the underlying primary policies; and

3. There shall be no additional limiting endorsements that are not in the primary policy or that have not been reviewed and approved by the Indemnified Parties or their representatives.

9.1.5. Cyber Liability Insurance

TSP shall obtain and maintain and shall require all Subcontractors of all tiers with access to sensitive information to obtain and maintain "Cyber Liability" insurance, including privacy liability coverage and business income coverage, with limits of not less than $10,000,000 per incident and in the aggregate. If written on a "claims made" basis, the policy shall include prior acts at least as far in the past as the effective date of this agreement. Coverage shall apply to both electronic and physical breaches and to employee data as well as customer data. Information in the care, custody, or control of vendors shall be covered, including coverage for "cloud" systems or for data transferred by a third party. Coverage shall apply to accidental losses as well as breaches perpetrated by outsiders or employees. Regulatory fines and penalties shall be covered. The policy shall contain no requirement that all data be encrypted. Any business interruption coverage waiting period shall be no greater than 12 hours. The indemnified parties shall also be insureds.

9.1.6. Crime Insurance

TSP shall obtain and maintain and shall require all Subcontractors of all tiers with access to sensitive information to obtain and maintain Crime (Blanket Fidelity) with limits of not less than $5,000,000 covering employee dishonesty, forgery and alteration, and "all risks" of loss or destruction of moneys and securities held by TSP or its Subcontractors in the performance of the Operations and Maintenance Work hereunder.

9.1.7. Professional Liability Insurance

(a) During all phases of the Project, TSP shall obtain and maintain or cause others, as appropriate, to obtain and maintain liability insurance for covering loss arising out of Errors or omissions in the performance of services in connection with this Contract, with limits not less than $5,000,000 per claim and in the aggregate.

(b) No self-insured retention for TSP shall exceed $250,000 without prior written approval from the Joint Board, in its good faith discretion. Coverage shall apply specifically to professional activities performed under the Contract Documents. The policy(ies) shall have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which the RFP was issued.

(c) TSP agrees to maintain this required coverage for a period of no less than three years after System Acceptance or to purchase an extended reporting period for no less than three years after System Acceptance. The coverage shall include all TSP-Related Entities that are performing design services with respect to the Project.

(d) The Joint Board, the States' Parties and the other Indemnified Parties shall be added as additional insureds for professional liability or errors and omissions insurance, but only for Losses (i) first made or incurred on or after the effective date of this Agreement and (ii) for vicarious or imputed liability of the additional insureds that results from wrongful acts committed solely by the named insured.

9.1.8 Other Insurance

If TSP shall intend to perform or contract for performance of any of the following activities, TSP must first: inform the Joint Board or its representative of the intent to conduct such activities; obtain approval for such activities; and provide evidence of insurance for such activities in accordance with the requirements of the Joint Board. No such activities shall commence prior to TSP obtaining Joint Board approval and providing the required evidence of insurance:

1. Use of watercraft 26 feet or longer;

2. Use of Aircraft;

3. Excavation;

4. Work within 50 feet of a railroad.

9.2 General Insurance Requirements

9.2.1. Premiums, Deductibles and Self-Insured Retentions

TSP shall timely pay the premiums for all insurance required under this Section 9. TSP agrees that, for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which TSP is responsible hereunder, TSP shall be solely responsible for all deductibles, self-insured retentions and loss in excess of the coverage provided.

9.2.2. Verification of Coverage

9.2.2.1. Evidence of Insurance. Concurrently with TSP's execution hereof, TSP will deliver to the Joint Board (1) a certificate of insurance with respect to each policy required to be provided by TSP under this Section 9 and (2) copies of all endorsements to the policies that set forth the required additional insureds and other amendments to the policy forms. The Joint Board shall have no duty to pay or perform under this Contract until such certificate(s) and endorsements, in compliance with all requirements of this Section 9, have been provided. Upon the Joint Board's request in conjunction with a dispute, claim, item for which the insurance required hereunder is contemplated to cover and/or the Joint Board's reasonable belief that TSP has not complied with the requirements of this Section 9, TSP shall provide to the Joint Board certified, true and exact copies of each of the insurance policies (including renewal policies) required under this Section 9. TSP acknowledges and agrees that any actual or alleged failure on the part of the Joint Board to inform TSP of non-compliance with any requirement imposes no additional obligations on the Joint Board nor does it waive any rights hereunder.

9.2.2.2. Renewal Policies. TSP shall promptly deliver to the Joint Board a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such evidence of insurance shall be delivered not less than 5 days prior to the expiration date of any policy. If requested by the Joint Board from time to time, certified duplicate copies of the renewal policy shall also be provided. To the extent TSP is unable to deliver such evidence of insurance by the specified date through no fault of the TSP and despite making its best efforts and provided that such certificate is delivered prior to the expiration date of the relevant policy, TSP will not be deemed to be in default of this Section for the purposes of Section 16. However, in the event that TSP is unable to deliver such evidence of insurance as provided for in this Section 9.2.2.2, TSP shall provide some other form of evidence of coverage prior to expiration of the current policy. Such evidence may

include a binder of insurance or other form of written confirmation signed by TSP's insurance broker or insurer representative indicating that such coverage has been bound. The required evidence of insurance shall be provided as soon as it is available but in no case later than 3 days after the renewal policies have expired.

9.2.3. Subcontractor Insurance Requirements

TSP shall cause each Subcontractor to provide insurance that complies with requirements for TSP-provided insurance set forth in this Section 9 in circumstances where the Subcontractor is not covered by TSP-provided insurance and provided that TSP shall have 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. TSP shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractor's general liability and motor vehicle liability insurance policies. TSP shall require each such Subcontractor to waive its rights of recovery against the indemnified parties and to require that its workers' compensation insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by the Joint Board, TSP shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. The Joint Board shall have the right to contact the Subcontractors directly in order to verify the above coverage.

9.2.4. Endorsements and Waivers

All insurance policies required to be provided by TSP hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only the following clause (c) shall be applicable:

(a) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that TSP has left the Project Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured or additional insured shall be in excess of such insurance and shall not contribute with it.

(b) 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 aggregate limits of the insurer's liability.

(c) Each policy shall be endorsed to state that coverage shall not be suspended, voided or canceled except after 30 days' prior written notice (10 days for cancellation for non-payment of premium), has been given to the Joint Board (or any other method of giving notice permitted under Section 21.11). Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

Without limiting the foregoing, TSP shall provide written notice to the Joint Board forthwith upon becoming aware of any such change or pending change in coverage or of any modification or reduction in coverage or limits.

(d) All endorsements adding additional insureds to required policies shall be on ISO form CG-20-10-01 or an equivalent form(s) providing additional insureds with coverage for "completed operations." If equivalent form(s) are used, TSP shall ensure that such form(s) provides coverage equivalent to the 1985 Form with respect to liability arising from performance of the Work irrespective of where it is performed and that completed operations coverage for additional insureds is afforded. Such completed operations coverage for additional insureds may be provided on a separate endorsement such as ISO form CG 20 37.

9.2.5. Waivers of Subrogation

The Joint Board and TSP waive all rights against each other, against each of their agents and employees and against Subcontractors and their respective members, directors, officers, employees, agents and consultants for any 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 and provided further that, TSP shall not be entitled to additional compensation or time extension under this Contract to the extent compensated by any insurance specified herein. TSP shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and consultants).

9.2.6. Changes in Requirements

The Joint Board shall notify TSP in writing of any changes in the requirements applicable to insurance required to be provided by TSP. Pursuant to a Change Order, the Joint Board shall pay any additional cost from such change and any reduction in cost shall reduce the applicable Price.

9.2.7. No Recourse

There shall be no recourse against the Joint Board for payment of premiums or other amounts with respect to the insurance required to be provided by TSP hereunder.

9.2.8. Support of Indemnifications

The insurance coverage provided hereunder by TSP is not intended to limit TSP's indemnification obligations under Section 18.

9.2.9. Commercial Unavailability of Required Coverages

If, through no fault of TSP, 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 with commercially unreasonable premiums, the Joint Board will work with TSP to find commercially reasonable alternatives to the required coverages that are acceptable to the Joint Board. TSP shall not be entitled to any increase in any Contract Price Component for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. The Joint Board shall be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined based on evidence of insurance premiums as of the Proposal Date). The Joint Board's right to a reduction in the Contract Price as set forth in the preceding sentence shall be without regard to the insurance costs expended by the TSP for the less than equivalent coverage or on other insurance required under this Section 9.

9.3 Prosecution of Claims

Unless otherwise directed by the Joint Board in writing, TSP shall be responsible for reporting and processing all potential claims under the insurance required to be provided under this Section 9. TSP agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of the Joint Board, whether for defense or indemnity or both. The Joint Board agrees to promptly notify TSP of the Joint Board's incidents, potential claims, and matters which may give rise to an insurance claim by the Joint Board, to tender its defense or the claim to TSP, and to cooperate with TSP as necessary for TSP to fulfill its duties hereunder.

9.4 Commencement of Work

TSP shall not commence Work under this Contract until it has obtained the insurance required under this Section 9, has furnished original certificates of insurance and endorsements as required evidencing the coverage as required under Section 9.2.2 and such insurance has been approved in writing by the Joint Board. TSP shall not allow any Subcontractor (or shall such Subcontractor be entitled) to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by TSP. No delay in securing such insurance, certificates of insurance or approvals shall extend any time period or TCS Completion Deadline or provide TSP any other relief or entitlement for a Change Order.

9.5 The Joint Board's Right to Remedy Breach by TSP

If TSP or any Subcontractor fails to provide insurance as required herein, the Joint Board shall have the right, but not the obligation, to purchase such insurance or to suspend TSP's right to proceed until proper evidence of insurance is provided. Any amounts paid by the Joint Board shall, at the Joint Board's sole option, be deducted from amounts payable to TSP or reimbursed by TSP upon demand, with interest

thereon from the date of payment by the Joint Board to the reimbursement date, at the maximum rate allowable under applicable Law. Nothing herein shall preclude the Joint Board from exercising its rights and remedies under Section 16 as a result of the failure of TSP or any Subcontractor to satisfy the obligations of this Section 9.

9.6 Disclaimer

TSP and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. The Joint Board makes no representation or warranty that the coverage, limits of liability or other terms specified for the insurance policies to be carried pursuant to this Section 9 are adequate to protect TSP against its undertakings under the Contract Documents or its liability to any third party or preclude the Joint Board from taking any actions as are available to it under the Contract or otherwise at law.

SECTION 10. TITLE; MAINTENANCE DURING PERFORMANCE OF TCS INSTALLATION WORK

10.1 Title

Subject to the provisions of Section 20 with respect to intellectual property rights, TSP 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 the Joint Board 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 a Project Site shall pass to the Joint Board, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by the Joint Board to TSP of invoiced amounts pertaining thereto.

10.2 Maintenance During Performance of TCS Installation Work

During performance of the TCS Installation Work, TSP shall maintain, rebuild, repair, restore or replace all TCS Installation Work, including materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during installation of the TCS that is injured or damaged prior to the commencement of the TCS Operations and Maintenance Term, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to the Joint Board, except to the extent that the Joint Board is responsible for such costs in accordance with the express terms of this Contract. TSP acknowledges and agrees that the full compensation for such

maintenance work prior to commencement of the TCS Operations and Maintenance Term is included in the Total Toll Collection System Capital Price.

SECTION 11. STANDARDS OF PERFORMANCE, CORRECTION OF WORK AND WARRANTIES

11.1 TSP Standards of Performance

TSP shall perform and provide all Work required under the Contract Documents in accordance with the TSP Standards of Performance set forth in Sections 11.1.1 through 11.1.4 and the Technical Requirements, subject to the exclusions set forth in Section 11.1.5:

11.1.1. Configuration. TSP shall perform the Configuration Work in accordance with generally accepted professional standards and the standard of care imposed under the Laws of the State and the Commonwealth applicable to engineers and designers performing work of similar complexity, quality and scope and in accordance with all the requirements of the Contract Documents.

11.1.2. Materials and Installation. Any and all materials, equipment, supplies and furnishings incorporated in the Work or provided by TSP hereunder shall be new, shall comply with the requirements of the Contract Documents, including the Technical Requirements, and shall be of good quality, free of defects and suitable for their intended purpose, and TSP shall perform the TCS Installation Work in a workmanlike manner, without defects in construction or workmanship and shall comply with all requirements of the Contract Documents with respect thereto.

11.1.3. TCS Software. All TCS Software furnished as part of the Work shall be suitable for its intended purpose and free from programming errors affecting performance and from defects in workmanship and materials and shall operate in conformity with the performance capabilities, specifications, functions and other applicable descriptions and standards set forth in the Contract Documents, and such Software shall conform to the standards generally observed in the industry for similar Software. All TCS Software shall be compatible with the TCS equipment. **THE SOFTWARE WARRANTIES SET FORTH IN THIS SECTION 11.1.3 ARE EXCLUSIVE AND ARE IN LIEU OF ANY IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

11.1.4. No Deviations. The TCS, the installation thereof and all other Work shall be free of Deviations that do not constitute Joint Board approved Deviations.

11.1.5. Exclusions From and Limitations of Standards of Performance. The TSP Standards of Performance exclude damage or defect caused by abuse or accidents (unless such accident was due in part to TSP's failure to comply with the TSP Standards of Performance), adaptations or modifications (including, without limitation, adaptations or modifications of TCS Software) not executed by TSP or its agents,

employees, Suppliers and/or Subcontractors, and normal wear and tear under normal usage.

11.2 Notice of Breach of Standards of Performance

The Joint Board shall give a Breach of Standards of Performance Notice to TSP promptly after the Joint Board obtains Actual Knowledge that any Work does not comply with the TSP Standards of Performance. If the Joint Board fails to provide written notice promptly after obtaining Actual Knowledge thereof, such failure shall not constitute a waiver of the Joint Board's rights under this Section 11, but TSP shall not be responsible for the increase in Cost, if any, resulting from the Joint Board's failure to provide timely written notice.

11.3 Correction of Work Prior to Warranty Periods

Prior to the commencement of the warranty periods set forth in Section 11.4, if TSP has Actual Knowledge that any Work does not comply with the TSP Standards of Performance or has received a Breach of Standards of Performance Notice from the Joint Board, TSP shall promptly re-perform, correct, repair or replace such Work and promptly repair any damages to the Toll Facilities, Bridges or property of third parties to the extent caused by such Work failing to comply with the TSP Standards of Performance.

11.4 Warranty Periods

11.4.1. General Warranty Period. Except as otherwise provided in Section 11.4.2 below, the General Warranty Period for all aspects of the Work shall commence on the applicable Revenue Service Date for each Bridge, and on the first Revenue Service Date for the BOS, and shall extend for the period specified in this Section 11.4.1; provided that if this Contract is terminated for any reason prior to the applicable Tolling Readiness Date, then the general warranty shall apply only to Work completed or provided on or prior to such termination and the warranty period shall commence upon the termination date and extend for the specified period. The applicable warranty periods from commencement thereof are: (i) for roadside Software and Hardware, the General Warranty Period shall be one year; and (ii) for the BOS and CSC, all associated interfaces Software and Hardware and any of the Work supplied by TSP, the General Warranty Period shall be three years.

11.4.2. Warranty Period for Repairs. The warranty period for correction, repair or replacement performed under this Section 11.4.2 shall extend for the remainder of the applicable General Warranty Period unless upon completion of the repair or replacement there is less than one year remaining in the General Warranty Period, in which case the warranty period for the correction, repair or replacement shall be the remaining period in the applicable General Warranty Period plus one additional year.

11.4.3. Maintenance Warranty Work. The Warranties shall also apply to all Work re-done, repaired, corrected or replaced by TSP in the performance of its obligation to maintain the Project during the TCS Operations and Maintenance Term. The Warranties as to each such re-done, repaired, corrected or replaced element of the Work during the TCS Operations and Maintenance Term shall remain in effect until one year after acceptance by the Joint Board of such element of the Work, notwithstanding expiration of the TCS Operations and Maintenance Term.

11.4.4. Suppliers' and Manufacturers' Warranties. For equipment, materials or Software with Supplier warranties longer than the applicable warranty period hereunder (and without intending to limit TSP's warranty under this Contract with respect thereto), TSP shall assign such Supplier warranties to the Joint Board upon the expiration of the applicable warranty period hereunder.

11.5 Compliance with Standards of Performance During Warranty Period

11.5.1. Re-performance, Correction and Repair. If a Breach of Standards of Performance Notice is served on TSP during the applicable General Warranty Period, TSP, at its cost, shall promptly correct or re-perform any Work that does not comply with the TSP Standards of Performance, including the repair, replacement or modification of any item of material, equipment or Software so that it conforms to the TSP Standards of Performance, and shall promptly repair any damage to the Toll Facilities, Bridges or property of third parties to the extent caused by TSP's failure to comply with the TSP Standards of Performance in order to return the same to its condition existing immediately prior to the damage. In the case of remedial Work to be performed by TSP hereunder, TSP shall provide all labor, supervision, equipment, tools and materials necessary to perform the remedial Work and shall bear all the expenses in connection therewith. The cost of all Work incidental to such remedy, including the removal, disassembly, replacement or reinstallation of conforming Work, materials or equipment, and the cost of transporting repaired items to and from the Project, shall be borne solely by TSP. TSP, also at its own cost, shall perform such tests (of the kinds included in the Work) as the Joint Board reasonably may require on any corrected or re-performed Work or on any reinstalled, replaced or modified item of material, equipment or Software to verify that it conforms to the TSP Standards of Performance. TSP shall perform all such remedial Work in a timely manner, and so as to minimize the revenue loss to the Joint Board and to avoid disruption of normal TCS operations, it being acknowledged by TSP that Work which fails to conform to the TSP Standards of Performance may have severe economic consequences to the Joint Board if such Work is not immediately remedied or repaired in accordance with the requirements hereof. TSP will use its best efforts to perform all such warranty work with respect to defective or non-conforming Work which materially and adversely affect operation of the TCS as expeditiously as possible. The corrected or re-performed Work and any repaired, replaced or modified item of material, equipment or Software shall meet all requirements of the TSP Standards of Performance.

11.5.2. Failure to Re-perform, Correct or Repair. If TSP receives a Breach of Standards of Performance Notice during the applicable warranty period and states or by its action (or failure to act) indicates that it is unable or unwilling to proceed with corrective action within five Business Days following receipt of such notice, or if TSP fails to continue and complete such corrective work in accordance with the requirements of Section 11.5.1, then the Joint Board, upon additional written notice to TSP, may itself accomplish the repair, correction, re-performance or replacement in accordance with the terms of this Contract, and TSP shall be responsible for, and shall reimburse to the Joint Board, all costs incurred by the Joint Board in connection therewith. The Joint Board's right to perform such corrective work shall be in addition to any and all other rights and remedies provided in this Contract or by applicable Law, and the performance thereof by the Joint Board shall not relieve TSP of any of its responsibilities under this Contract, including responsibility for compliance with the TSP Standards of Performance.

11.6 No Limitation of Liability

Subject to Section 17, the foregoing Warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit TSP's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud; provided, however, that upon expiration of the Warranties, TSP shall have no further liability hereunder for patent construction defects.

11.7 Damages for Breach of Warranty

Subject to Section 17 and in addition to the Joint Board's other rights and remedies hereunder, at law or in equity, TSP shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work, including the cost of performance of such obligations by others; provided, however, that TSP's liability for revenue loss resulting from the failure of the System to perform in accordance with the Performance Requirements shall be as set forth in Exhibit N and in Section 4.

SECTION 12. PAYMENT FOR SERVICES

12.1 Fixed Price

The total compensation that the Joint Board shall pay to TSP for the Work to complete the Project is a fixed price as specified in the Price Sheets in Exhibit C, plus reimbursement of certain actual direct costs for Pass-Through Cost Items specified in Exhibit H.

The Contract Price is comprised of the following: (a) Total Toll Collection System Capital Price; and (b) Total Toll Collection System Operations and Maintenance Price (years 1 through 7). Each of the foregoing categories is further broken down by the Specific Contract Price Component Line Items listed in Exhibit C. Except as otherwise expressly provided in Section 13, the Contract Price shall not be modified other than by Change Order and shall be invoiced and paid as set forth in Sections 12.3, 12.5, 12.6, 12.7 and 12.8.

12.2 Total Toll Collection System Capital Price

The Total Toll Collection System Capital Price, specified on Form G-1, Item Number CP-009 in Exhibit C, is the complete compensation payable to TSP for the performance of all TCS Installation Work hereunder and, except as otherwise expressly provided herein, includes all shipping, transportation and delivery costs with respect to TSP furnished equipment and materials, all Regulatory Approvals to be obtained by TSP pursuant to this Contract, all insurance to be obtained by TSP pursuant to Section 9, all warranties provided by TSP pursuant to Section 11, all federal, state and local taxes on equipment, materials and labor (subject to the limitations set forth therein), including any increases or changes in any such taxes during the term of this Contract, any duties, fees and royalties imposed or payable with respect to any such equipment (including Software), materials and labor, and all of TSP's profit, overhead and markup. The individual Contract Price elements of the Total Toll Collection System Capital Price are further specified in Price Sheets RS-Roadside, BO-Back Office, TC-TOC and System Monitoring, CS-Customer Service Center, PM-Project Management, T-Testing, and DM-Data Mart, and BI-Bonds and Insurance.

12.3 Invoices for Total Toll Collection System Capital Price

12.3.1. Payment Milestones Schedule. The Total Toll Collection System Capital Price shall be paid to TSP in accordance with the Payment Milestones set forth in Exhibit CC, for the compensation specified in the Price Sheets in Exhibit C, sheets G-2 through G-9, which is intended to compensate TSP according to its actual progress in completion of the TCS Installation Work, as measured by Payment Milestones completed in accordance with the Payment Milestone descriptions provided in Exhibit CC. The Payment Milestones shall be used as the basis for the preparation of monthly invoices as set forth in Section 12.3.2, and TSP shall be entitled to include in its

invoice for any month the compensation specified in the Price Sheets for Payment Milestones actually completed during the immediately preceding month, subject to the provisions of Section 12.8.1 below.

The amount of Payment Milestone T-004 (successful completion of the System Production Readiness Tests - TR Section TP 023) shall be not less than 20% of the Total Toll Collection System Capital Price (including the price attributable to the System Production Readiness Tests). The amount of Payment Milestone T-005 (successful completion of the Operations Test - TR Section TP 024) shall be not less than 5% of the Total Toll Collection System Capital Price (including the price attributable to the Operations Test). The amount of Payment Milestone T-006 (successful completion of the Systems Acceptance Test and satisfaction of all other conditions to Final Payment of the Total Toll Collection System Capital Price) shall be not less than 5% of the Total Toll Collection System Capital Price (including the price attributable to the System Acceptance Test).

The portion of the Total Toll Collection System Capital Price allocable to bond and insurance premiums (for the insurance policies required to be in place following the NTP) shall be payable to reimburse TSP for bond and insurance premiums actually paid, without markup, profit or overhead, not to exceed the line item for such premiums set forth in the Price Proposal. The Joint Board shall not be responsible for the payment of any increases or adjustments in bond or insurance premiums resulting from adverse changes in TSP's financial condition, TSP's risk rating or experience or the acts, omissions, negligence or misconduct of TSP or any member of any TSP-Related Entity.

The amount payable for As-Built System Documentation acceptable to the Joint Board shall equal not less than 1% of the Total Toll Collection System Capital Price. TSP shall not be entitled to payment for the last 1% of the Total Toll Collection System Capital Price until As-Built System Documentation that is acceptable to the Joint Board has been delivered to the Joint Board.

12.3.2. Monthly Invoices. TSP shall prepare a proposed standard form for invoices and obtain the Joint Board's approval of such form prior to submitting its first invoice for payment. On or before the tenth day of each month during the performance of the Work, TSP shall submit to the Joint Board an invoice in the form approved by the Joint Board for the period ending on the last day of the month preceding such month, setting out the portion of the Toll Collection System Capital Price allocable to the TCS Installation Work actually performed by TSP and Payment Milestones actually completed as of the end of such month, and reconciling such invoice with prior invoices, payments and Change Orders. Payments shall only be paid for Payment Milestones actually completed and not for any other work in progress. Invoices can include payments to be made outside the Toll Collection System Capital Price, if any, in accordance with this Contract. TSP shall not invoice for any amounts that are in dispute solely between TSP and a Subcontractor or Supplier which TSP will not pay to such

Subcontractor or Supplier at the time the invoice is submitted, until such time as the dispute is resolved. Such invoice shall specify that fifty percent (50%) of the invoiced amount is due and payable by KPTIA, and fifty percent (50%) of the amount invoiced is due and payable by IFA, and shall indicate the actual amount owing by each such States' Party. Invoices shall also include the following:

12.3.2.1. Certification by the TSP in the form set forth in Exhibit Y;

12.3.2.2. For each Subcontractor or Supplier receiving or expected to receive Subcontracts, purchase agreements or purchase orders in a cumulative amount of $15,000 or more, written evidence that such Subcontracts, purchase agreements and purchase orders with Subcontractors and Suppliers that provided services, materials or equipment included in the subject draw request contain the following provision: "The Supplier/Subcontractor agrees that receipt of payments or progress payments hereunder constitutes full and unconditional release and waiver, in favor of TSP and the Joint Board and the State's Parties, from all liens, Claims, security interests or encumbrances, known or unknown, suspected or unsuspected, arising out of the materials, equipment, services and other work provided hereunder for which the payment or progress payment is made, except for any potential liens, and amounts in dispute;

12.3.2.3. Such other supporting documentation as may be mutually agreed upon by the Parties;

12.3.2.4. A summary of material acceptance documentation to verify the material incorporated in the monthly progress estimate and stored materials;

12.3.2.5. To the extent that an invoice includes Pass-Through Costs for any facility or service used or to be used for or in connection with both WUC and CSC functions, the invoice shall clearly indicate the amount of such cost allocated to the WUC alone, the methodology used by TSP for such allocation, and back-up documentation justifying such cost allocation. Only the amount of any such Pass-Through Costs allocable to the WUC will be reimbursed, and any portion allocable to the CSC is included in the fixed Contract Price;

12.3.2.6. A statement clearly indicating that fifty percent (50%) of the amount of the invoice is due and payable by KPTIA, and fifty percent (50%) of the amount of the invoice is due and payable by IFA, and acknowledgement that the obligations of each of KPTIA and IFA are severable as to the fifty percent (50%) of the amount allocable to each of KPTIA and IFA, and that neither such State's Party is responsible for payment of the amount of the invoice allocable to the other State's Party.

12.4 Certification of Quality Assurance/Quality Control Compliance

With each invoice, TSP shall submit a certificate, signed and sealed by the TSP's Program Manager, and TSP's Project Manager-Installation (with respect to invoices for Installation Work) or TSP's Project Manager-Operations and Maintenance (with respect to Operations & Maintenance Work), certifying to the Joint Board that:

12.4.1. All Installation Work which is the subject of the invoice has been checked and inspected in accordance with the Quality Management Plan; and

12.4.2. Except as specifically noted in the certification, all Work which is the subject of the invoice fully conforms to the requirements of the System Documentation, applicable Joint Board Standards, other standards and codes required to be complied with under the Contract Documents and all other requirements of the Technical Requirements, subject to any exceptions identified in the certification.

12.5 Operations and Maintenance Price

The Total Toll Collection System Operations and Maintenance Price (years 1 through 7) is $_____, as specified on the Form G-1, Item Number CP-016 in Exhibit C. The amount of the Total Toll Collection System Operations and Maintenance Price to be paid in each of years 1 through 7 of the Operations and Maintenance Term is the Total Annual System Operations and Maintenance Price. Except as provided in Section 12.5.1 herein, the Total Toll Collections System Operations and Maintenance Price is the complete compensation payable to TSP for the performance of all Operations and Maintenance Work hereunder and, (except as otherwise expressly provided herein with respect to Pass-Through Cost Items), includes all costs with respect to TSP furnished equipment and materials, all insurance to be obtained by TSP pursuant to Section 9, all warranties provided by TSP pursuant to Section 11 with respect to any Operations and Maintenance Work, all federal, state and local taxes on equipment, materials and labor (subject to the limitations set forth therein), including any increases or changes in any such taxes during the term of this Contract, and any duties, fees and royalties imposed or payable with respect to any equipment (including Software), materials and labor, and all of TSP's profit, overhead and mark-up. The individual Contract Price elements of the Total Toll Collection System Operations and Maintenance Price (years 1 through 7) are further specified in Price Sheets Form G-10-Roadside and CMS, Form G-11-Network, Form G-12-BOS-Hosting, Form G-13--BOS IT, Form G-14-TOC and Form G-15-CSC. The fixed component of the Total Toll Collection System Operations and Maintenance Price (years 1 through 7) that is allocable to each year is payable monthly, in arrears, in equivalent installments, beginning with the month following the month in which the Tolling Readiness occurs. Payments shall commence upon commencement of the Operations and Maintenance Term and be subject to the invoice requirements and procedures as specified in Section 12.3. The portion of the fixed component of the Annual System Operations and Maintenance Price for Roadside Operations and Maintenance (Price Sheet G-10, item number OMR-004) shall be subject to adjustment on a per Equipment Lane basis depending upon how many Equipment Lanes are in place and being maintained by the TSP in any invoice period. For any month in which

fewer than 34 Equipment Lanes are being maintained by TSP, the monthly payment of the Total Toll Collection Systems Operations and Maintenance Price shall be reduced by the difference between 34 and the number of Equipment Lanes actually being maintained, times the per Equipment Lane unit price indicated in Price Sheet G-10, item number OMR-001.

12.5.1. Collection Status Violation Fee. In addition to the Total Toll Collection System Operations and Maintenance Price (years 1 through 7), TSP shall be paid a Collection Status Violation Fee in an amount equal to ten percent (10%) of the amount of revenues collected by TSP with respect to Collection Status Violations during the relevant Collection Status Violation Period. TSP's monthly invoice for compensation during the Operations and Maintenance Term shall include a statement of Collections Status Violation Revenues collected during the immediately preceding month and the corresponding Collection Status Violation Fee earned by TSP with respect to such month, with detailed documentation supporting such calculation. Such documentation shall include evidence that TSP took all actions required by the Contract Documents, including the Technical Requirements and the Business Rules, and followed all Business Rules, in attempting to collect the tolls, fees and fines owed with respect to the relevant Traffic Transactions prior to the Traffic Transaction becoming a Collection Status Violation. Approved invoices for the Collection Status Violation Fee shall be paid by the Joint Board monthly in arrears. TSP shall not be entitled to payment of a Collection Status Violations Fee with respect to receipt of any Collection Status Violation Revenues that are paid by the alleged violator "under protest" until such protest is finally resolved with such payment to be retained by the Joint Board.

12.5.2. Operations and Maintenance Pass-Through Cost Items. TSP shall also be entitled to reimbursement of certain direct costs for Operations and Maintenance Work, as specified in the list of Pass-Through Cost Items in Exhibit H, and the list of Reimbursable Direct Major Spare Parts in Exhibit V. The procedure for establishing a budget for these expenses shall be as provided in Section 12.13.

12.6 Payment

12.6.1. Entitlement. KPTIA and IFA each shall pay TSP for their respective shares for all undisputed amounts set forth in an invoice that complies with Section 12.3 and that includes with it the certification required under Section 12.3.

12.6.2. Method of Payment. Payments made to TSP hereunder shall be made by each of KPTIA and IFA by separate wire transfers (or other method of electronic transfer) of immediately available funds to the account of TSP at such depository as TSP designates by notice to the Joint Board.

12.6.3. Withholding of Payment. Notwithstanding any provision in this Contract to the contrary, the KPTIA and IFA each may withhold, deduct or offset payment of a portion of an invoice equivalent to an amount reasonably necessary to pay to the Joint

Board, reimburse the Joint Board or protect the Joint Board from loss or expense due to (a) Work that does not comply with the Technical Requirements or any other requirements of the Contract Documents and that is not corrected or that the Joint Board corrects; (b) failure of TSP to make payments of undisputed amounts to a Subcontractor when such payments are due under the Subcontract, which failure is not cured by TSP; (c) Performance Liquidated Damages, Performance Stipulated Damages and/or Delay Liquidated Damages owing under this Contract and which are not paid by TSP in accordance with Sections 4.10.6, 4.10.7 and 4.10.12; (d) any amounts overpaid in prior payments; (e) any other amounts owed by TSP to the Joint Board under the terms of this Contract, including but not limited to (i) amounts owed to reimburse the Joint Board for the cost of performing TSP's obligations under this Contract, (ii) amounts owed by reason of TSP's defense and indemnity obligations under this Contract and (iii) interest owed to the Joint Board under this Contract; (f) such amount as the Joint Board deems advisable to cover liens, encumbrances and stop notices of Subcontractors, Suppliers, laborers and utility owners against TSP or against the Joint Board as a result of the actions or failure to act by the Joint Board relating to the Project unless TSP provides either (i) reasonable assurance that it is contesting the item in good faith and an unconditional written commitment to the Joint Board from the surety under the Payment or Performance Bond that the item is covered thereby and will be promptly paid if TSP does not prevail in such contest (or other security adequate to the Joint Board in its sole discretion) or (ii) proof that payment has been made; or (g) the existence of a TSP Event of Default. When the reasons for deducting, offsetting or withholding payment are removed, KPTIA and IFA each shall promptly pay TSP for amounts previously withheld, deducted or offset, to the extent such amounts are not otherwise applied by the Joint Board in accordance with the foregoing. Prior to any withholding, deducting or offsetting pursuant to this Section 12.6.3 (except clauses (b), (c) and (d)), the Joint Board shall meet with TSP to discuss potential withholding and attempt in good faith to resolve such issue without the need for withholding. The KPTIA's or IFA's failure to withhold, deduct or offset any of the foregoing amounts from a payment to TSP shall not constitute a waiver of the Joint Board's right to recover such amounts or to withhold, deduct or offset such amounts from future payments.

12.6.4. Timing. The Joint Board shall make payment, or cause payment to be made, within 45 days of receipt of an approved invoice from TSP.

12.7 Interest

Any amount required to be paid by TSP under any provision of the Contract Documents that is unpaid by the due date therefor shall accrue interest from the due date until such amount is paid at the lesser of (i) an annual rate equal to the federal funds rate as set by the Federal Open Market Committee and in effect as of the due date, or (ii) the maximum rate permitted by applicable Law.

12.8 Final Payment

12.8.1. Conditions Precedent to Final Payment of Total Toll Collection System Capital Price. Final payment for the Work following System Acceptance shall not become due to TSP hereunder until TSP submits to the Joint Board:

12.8.1.1. TSP's final payment invoice and certification in form approved by the Joint Board;

12.8.1.2. An affidavit that all payrolls, bills for materials, equipment, services and other indebtedness connected with the Work have been paid or otherwise satisfied;

12.8.1.3. Releases and waivers from TSP in favor of the Joint Board of Liens, Claims (except those previously made in writing and identified as unsettled or Claims which TSP may be entitled to assert against the Joint Board with respect to indemnities under this Contract or with respect to the Joint Board's breach of its obligations under this Contract to be performed after final payment), security interests and encumbrances arising out of the Contract Documents or Work, whether known or unknown, suspected or unsuspected;

12.8.1.4. For each Subcontractor or Supplier receiving Subcontracts, purchase agreements or purchase orders in a cumulative amount of $15,000 or more, written evidence that such Subcontracts, purchase agreements and purchase orders contain the following provision: "The Supplier/Subcontractor agrees that receipt of final payment hereunder constitutes full and unconditional release and waiver, in favor of the Joint Board, the States' Parties and TSP, from all liens, Claims, security interests or encumbrances, known or unknown, suspected or unsuspected, arising out of this Purchase Contract/Purchase Order/Subcontract or the materials, equipment, services and other work provided hereunder";

12.8.1.5. Materials acceptance certification documents, on Joint Board forms or other forms the Joint Board approves;

12.8.1.6. A set of As-Built System Documentation;

12.8.1.7. All operation and maintenance manuals and other manuals and procedures to be provided by TSP under the Contract Documents;

12.8.1.8. A consent of the surety under the Payment and Performance Bond to final payment;

12.8.1.9. Bills of sale or other instruments of title transfer or assignment with respect to Work Product, as requested by the Joint Board, free and clear of liens, claims and encumbrances;

12.8.1.10. Affidavits of prevailing wages paid signed and submitted by TSP and each Subcontractor required to submit such an affidavit under Indiana Code 5-6-17

and 40 USC 3141 in the form required under law and under the Joint Board Standards; and

12.8.1.11. Assignment to the Joint Board of all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services, equipment, Hardware, Software or materials pursuant to the Contract Documents or any Subcontract.

12.8.2. Final Payment of Total Toll Collection System Operations and Maintenance Price

Final payment of the Total Toll Collection System Operations and Maintenance Price will be made as follows:

12.8.2.1. On or about the date that the TCS Operations and Maintenance Term terminates, TSP shall prepare and submit a proposed final invoice for the Total Toll Collection System Operations and Maintenance Price to the Joint Board for the final payment of the Total Toll Collection System Operations and Maintenance Price, showing the proposed total amount due TSP, including any amounts owing from Change Orders. In addition to meeting all other requirements for Toll Collection System Operations and Maintenance Price Invoices, the Final Toll Collection System Operations and Maintenance Price Invoice shall list all outstanding Change Order proposals submitted by TSP pursuant to Section 13.5, stating the amount at issue associated with each such notice. A Final Toll Collection System Operations and Maintenance Price Invoice shall be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors and laborers against TSP or against the Joint Board, (b) consent of any Guarantors and surety to such Final Payment, (c) a list of any TCS equipment that has unexpired warranties, accompanied by the service records with respect to such equipment; (d) such other documentation as the Joint Board may reasonably require; and (e) the release described in Section 12.8.1.3, executed by TSP. Prior applications and payments shall be subject to correction in the Final Toll Collection System Operations and Maintenance Price Invoice. Change Order proposals filed concurrently with a Final Toll Collection System Operations and Maintenance Price Invoice must otherwise be timely and meet all requirements under Section 13.5 and the Technical Requirements.

12.8.2.2. If a final invoice for the Total Toll Collection System Operations and Maintenance Price lists any existing or threatened claims or if any are thereafter filed, KPTIA and IFA will withhold from payment the amount they deem advisable to cover any amounts owing.

12.8.2.3. The final payment of the Total Toll Collection System Operations and Maintenance Price shall also be subject to TSP's certification in the release required by Section 12.8.1 that TSP has satisfied all the conditions to the end of the TCS Operations and Maintenance Term set forth in Section 4.13.1 and TR Section OM.

The Joint Board will review TSP's proposed final invoice for the Total Toll Collection System Operations and Maintenance Price, and changes or corrections will be forwarded to TSP for correction within 20 business days. KPTIA and IFA each shall pay their respective 50% shares of any undisputed amounts, as applicable, less any Losses that have accrued as of the date of final payment of the Total Toll Collection System Operations and Maintenance Price, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted in Section 12.8.2.2, within 30 Days after its approval of such amounts on the final invoice for the Total Toll Collection System Operations and Maintenance Price, but not earlier than the end of the TCS Operations and Maintenance Term.

12.8.2.4. Waiver of Claims. TSP's acceptance of final payment shall constitute a waiver of affirmative Claims by TSP, known or unknown, suspected or unsuspected, except those previously made in writing and identified as unsettled at the time of final payment for the TCS Installation Work and Claims which TSP may be entitled to assert against the Joint Board with respect to indemnities under this Contract or with respect to the Joint Board's breach of obligations under this Contract to be performed after final payment.

12.9 Payment to Subcontractors

12.9.1. No later than 30 Days after receipt of payment from both KPTIA and IFA, TSP shall promptly pay each Subcontractor, out of the amount paid to TSP on account of such Subcontractor's portion of the Work, the amount to which such Subcontractor is entitled, less any offsets and deductions provided for in the Subcontract or by law. Each Subcontract shall require the Subcontractor to make payments to sub-Subcontractors and Suppliers in a similar manner.

12.9.2. For the purpose of this Section 12.9, satisfactory completion shall have been accomplished when:

(a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the subcontracted Work, including the submission of all submittals required by the Subcontract and Contract Documents; and

(b) the Work performed by the Subcontractor has been inspected and approved in accordance with the Contract Documents.

12.9.3. The inspection and approval of a Subcontractor's work does not eliminate or impair the TSP's responsibility for the Work. Any delay or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by the Joint Board. TSP shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. The Joint Board shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be

required by law. Interest on late payments to Subcontractors shall be TSP's responsibility, and shall not be a part of the applicable Price.

12.10 Payment for Subsequent Claims

If, after Final Payment is made, it is determined through the dispute resolution process set forth in Section 19 that either Party is entitled to payment from the other with respect to Claims (i) that were identified in the release and waivers of Claims required in Section 12.8.1.3 as being unsettled, (ii) which TSP may be entitled to assert against the Joint Board with respect to indemnities under this Contract or with respect to the Joint Board's breach of obligations under this Contract which may occur after Final Payment, or (iii) which the Joint Board may be entitled to assert against TSP with respect to TSP's continuing obligations under the Contract Documents, such Party shall pay the amounts determined to be owing to the other Party within ten Business Days after determination thereof. For purposes of clarification, subject to Section 12.3.2.6, KPTIA and IFA each shall pay fifty percent (50%) of any amounts to be paid by the Joint Board pursuant to this Section 12.10, and shall each be paid fifty percent (50%) of all amounts paid by TSP.

12.11 Payments Not Acceptance of Work

No payment made hereunder shall be deemed an acknowledgement that the Joint Board has inspected or accepted the Work or checked the compliance, quality or quantity of the Work or that the Joint Board knows or has ascertained how or for what purpose TSP has used sums previously paid and shall not be deemed as approval or acceptance of any Work or constitute a waiver of any claim or right that the Joint Board may then or thereafter have, including among others, warranty and indemnity rights. All payments made by the Joint Board shall be subject to correction or adjustment in subsequent progress reviews and payments; provided; however, that the Joint Board may only seek a correction or adjustment within 60 days after obtaining Actual Knowledge of the basis for such correction or adjustment.

12.12 Direct Cost

In addition to the prices established pursuant to the Price Sheets in Exhibit C, TSP shall be entitled to payment on a monthly basis for certain of its direct costs incurred in connection with the Project.

12.12.1. Walk-Up Center Build-Outs. Prior to the date of this Contract, the Parties agreed to the initial budget for costs to be incurred by TSP for initial tenant improvements to the WUC premises, including furniture, office furnishings and accessories, telephones and similar items. The WUC build-out budget is set forth in Exhibit U. TSP shall invoice the Joint Board for its actual costs incurred for such budgeted items on a monthly basis. The invoice shall itemize such costs in detail and provide supporting documentation and additional data as the Joint Board may request.

If TSP anticipates a budget overrun of 5% or more for which TSP is entitled to and intends to seek additional compensation from the Joint Board, TSP shall so notify the Joint Board in writing and prepare a proposed Change Order incorporating such variation from the approved WUC build-out budget. TSP shall not incur any cost that will exceed the approved budgeted amount by more than 5% without the Joint Board's approval, in its sole discretion.

12.12.2. Major Spare Parts Costs. TSP shall be entitled to payment on a monthly basis for its Major Spare Parts Costs incurred following the expiration of the General Warranty Period applicable to such Major Spare Parts in accordance with the Spare Parts Inventory Plan and the then applicable annual Budget. Major Spare Parts Costs incurred prior to the expiration of the General Warranty Period are included in the Total Toll Collection System Capital Price and TSP shall not be entitled to any additional compensation therefor. "Major Spare Parts Costs" means (except as otherwise provided below) (a) those actual, reasonable direct Costs incurred by TSP (without markup or overhead by TSP or any Affiliate of TSP) for capital equipment and materials furnished by TSP in the course of performing the Work to replace items set forth in the list of reimbursable Major Spare Parts included in Exhibit V, reduced by any applicable discounts, rebates and refunds and excluding the Cost of performing or causing to be performed any warranty repair, correction or replacement with respect to such equipment and materials, plus (b) any applicable sales or use taxes with respect to such items. Notwithstanding the foregoing, the Major Spare Parts Costs of equipment and materials set forth in the List of Reimbursable Major Spare Parts Costs which are manufactured directly by TSP or an Affiliate of TSP and either not acquired from third party vendors or acquired from a third party vendor that is an Affiliate of TSP shall be deemed to be TSP's best pricing made available to its most preferred customers for similar order quantities for such equipment and materials (without further markup or overhead by TSP or any Affiliate of TSP), except with respect to lane controllers manufactured by TSP for which the Major Spare Parts Cost shall be deemed to be TSP's best pricing made available to its most preferred customers (including large quantity orders).

12.12.3. Additional Pass-Through Cost Items. In addition to the Contract Price, the Joint Board shall, subject to the provisions of Section 12.13, 12.3 and 12.6, reimburse TSP outside the Contract Price for its actual, reasonable direct Costs incurred for the Pass-Through Cost Items listed in Exhibit H, up to the not-to-exceed amounts specified in the annual Budget established pursuant to Section 12.13. All such amounts reimbursable by the Joint Board outside the Contract Price shall be invoiced by TSP pursuant to Sections 12.3 and 12.6 and paid by the Joint Board on a monthly basis in accordance with Section 12.6.

12.13 Budgets

12.13.1. Initial Operating Budget. On or prior to the date of this Contract, the Parties agreed to an Initial Operating Budget for the period from the Notice to Proceed

through the end of Fiscal Year 2016 set forth in Exhibit W. The List of Reimbursable Major Spare Parts Costs is included in and part of the Initial Operating Budget. TSP agrees and acknowledges that, in no event, shall the list of Major Spare Parts Costs include equipment, materials or supplies required as part of the TCS Installation Work.

12.13.2. Annual Budgets. At least 120 days prior to the end of each Fiscal Year beginning with the Fiscal Year ending June 30, 2016, TSP shall prepare and submit to the Joint Board, for Joint Board approval, in hard copy and mutually agreed upon electronic form, proposed annual budgets for the remaining full and partial Fiscal Years during the Term (prepared in monthly detail with a breakdown approved by the Joint Board and in current dollars for each year of expenditure with respect to all Fiscal Years). Such proposed annual budget shall be TSP's good faith estimate of (i) all reimbursable Major Spare Parts Costs expected to be incurred by TSP in performing the Operations and Maintenance Work for the same period in accordance with the Spare Parts Inventory Plan, itemized according to the list of reimbursable Major Spare Parts; plus (ii) any additional Pass-Through Cost Items expected to be incurred by TSP pursuant to Section 12.12.3 based on TSP's current knowledge. The proposed annual budgets shall be prepared in a format approved by the Joint Board. The list of reimbursable Major Spare parts shall be included in the annual Budget submission. The Joint Board shall promptly review it and may request in writing changes, additions, deletions and modifications. The Joint Board's lack of prompt action shall not entitle TSP to a Change Order, and instead the provisions of Section 12.13.3 shall apply. The Joint Board and TSP will then meet to agree upon the final Budget (for each Fiscal Year) which shall be adopted in writing by both Parties. An approved final Budget shall remain in effect throughout the applicable Fiscal Year, (i) subject to adjustment or revision as set forth in Section 13, and (ii) in the case of the Budgets adopted for subsequent Fiscal Years, subject to being superseded by later Budgets adopted for such Fiscal Years in accordance with this Section 12.13.2.

12.13.3. No Approved Budget. If the Joint Board has not approved TSP's proposed budget for a new Fiscal Year as set forth in Section 12.13.2, or if TSP fails to provide such a budget on a timely basis in accordance with the provisions thereof, then:

12.13.3.1. TSP shall nonetheless perform the Work based on the corresponding Fiscal Year in the then-existing Budget, except that TSP shall only incur significant Major Spare Parts Costs with respect to the TCS (a) to the extent contracted for with third parties in a prior Fiscal Year, (b) if such improvements or replacements are mutually agreed upon by the Parties or directed by the Joint Board at such time; and

12.13.3.2. Pending such review and approval by the Joint Board, and subject to mutually agreed upon adjustments, the Budget for the immediately preceding Fiscal Year shall serve as the Budget for the current Fiscal Year and TSP shall be compensated for such Work to the extent implemented pursuant to Section 12.13.3.1; provided, however, that when a new Budget is approved after commencement of the

Fiscal Year, it shall immediately become effective, and shall include any adjustments necessary to make it retroactive to the first day of the Fiscal Year.

12.13.4. Limitation on Direct Major Spare Parts Costs. The applicable Budget for each Fiscal Year shall constitute the control document pursuant to which TSP shall incur Pass-Through Cost Item expenses in performance of the Work and direct Major Spare Parts Costs in accordance with the Spare Parts Requirements and the Spare Parts Inventory Plan. If, at any time during such period, TSP anticipates a budget overrun for such period in the aggregate of five percent (5%) or greater in the direct Major Spare Parts costs or Pass-Through Cost Items set out in the then current Budget, TSP shall so notify the Joint Board in writing and shall prepare a proposed Change Order incorporating such variation from the Budget. No expense shall be incurred by TSP which will cause the Major Spare Parts Costs in the Budget to be exceeded by more than five percent (5%) for which TSP is entitled to and intends to seek additional compensation from the Joint Board unless: (i) the Joint Board has approved in its sole discretion such increased Major Spare Parts Costs in writing by Change Order or Change Directive amending the applicable Budget, and/or (ii) such Major Spare Parts Costs are incurred in connection with implementing emergency procedures, provided the emergency is not caused by an act or omission of TSP or any of its Affiliates, Subcontractors and Suppliers, or by their respective shareholders, directors, officers, employees, agents and representatives, and provided that TSP shall furnish the Joint Board with notice of any emergency as promptly as practicable, but in no event later than 24 hours after the emergency has occurred. Notwithstanding the foregoing, TSP shall provide at its sole expense all Spare Parts not identified in the Spare Parts Requirements and the Spare Parts Inventory Plan to the extent necessary to continue to operate and maintain the TCS in accordance with the requirements of the Contract Documents.

12.14 Cost Principles

If applicable, in order to be reimbursed with federal funds, TSP shall comply with the cost principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

12.15 Disputes

Failure by KPTIA or IFA to pay any amount in dispute shall not alleviate, diminish or modify in any respect TSP's obligation to perform under the Contract Documents, including TSP's obligation to achieve System Acceptance of all TCS Installation Work in accordance with the Contract Documents and to operate and maintain the TCS, and TSP shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Any dispute regarding such payment shall be resolved pursuant to Section 19. TSP shall proceed as directed by the Joint Board pending resolution of the dispute. Upon resolution of any such dispute, each of TSP,

and the Joint Board (through KPTIA and IFA) shall promptly pay to other any amount owing.

12.16 Payment Obligations Not Debt

IFA receives payments from INDOT in order to make payments for Payment Milestones owed by IFA under this Agreement. Payments for Payment Milestones are limited obligations of IFA, payable solely from the amounts provided by INDOT for such purpose. The obligation of IFA to make payments does not constitute an indebtedness of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The obligation of IFA to make payment for Payment Milestones 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. IFA has no taxing power. Toll System Provider has no right to have taxes levied or to compel appropriations by the General Assembly of the State for any payment of the Payment Milestones. In the event that the Indiana General Assembly does not appropriate funding in an amount sufficient for IFA to make the portion of the Payment Milestones owed by IFA under this Contract, the Joint Board, agrees to provide TSP with written notice of such event within 15 business Days of its actual knowledge of such event.

SECTION 13. CHANGES IN THE WORK

13.1 General

The following may be adjusted by Change Orders or Change Directives:

(a) Technical Requirements;

(b) Any Completion Deadline;

(c) Contract Price Components;

(d) Reconfiguration or addition of ETC lanes, ETC ramps, or other entry points for the Project or Toll Zones;

(e) Changes in Toll Facilities, TCS equipment, TCS Software or operations and maintenance incident to such changes;

(f) Plans;

(g) Annual Budget;

(h) Applicable Joint Board Standards;

(i) Conversion of any Pass-Through Cost Items to a component of the Total Toll Collection System Operations and Maintenance Price, and adjustment of any annual Budget by reason thereof;

(j) Quality Management Plan;

(k) Policy limits or deductibles of the insurance policies;

(l) Business Rules;

(m) Any other change in the Work or terms and conditions of the Technical Requirements directed by the Joint Board except for any change (1) that is not in compliance with Law, (2) would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval, or (3) is not technically feasible; and

(n) Other items as may be mutually agreed to between the Parties.

13.2 Change Directives

13.2.1. The Joint Board may issue a Change Directive, including a reductive Change Directive, to change any of the Work or any other matter or item described in Section 13.1 (except the Performance Guarantees specified in the Technical

Requirements), to change Joint Board Standards, to change System Documentation, or when the Parties are unable to agree as to the adjustment to any portion of the Contract Price or applicable Budget required by such change. Change Directives shall be effective upon issuance by the Joint Board.

13.2.2. All Change Directives shall provide a written detailed description of the changes, and the proposed basis for compensation or reduction in compensation, if applicable. TSP shall proceed immediately with the Change Directive, and the Parties shall negotiate a Change Order. If the Parties are unable to reach agreement upon the Change Order, such dispute shall be resolved in accordance with Section 19.

13.3 Effectiveness of Change Orders

Change Orders shall only be effective upon execution in writing by both Parties. The foregoing shall not preclude the Joint Board from granting written waivers, in general or in specific instances in the Joint Board's sole discretion, of provisions of the Business Rules, Joint Board Standards and/or other Contract Documents.

13.4 Joint Board-Initiated Change Orders

13.4.1. Evaluation of Joint Board Change Order Notice. If the Joint Board wishes to make a change per Section 13.1 or to evaluate whether to make any such change, other than due to a Change Directive, the Joint Board shall deliver to TSP a written notice of the proposed change.

13.4.2. TSP Evaluation of Joint Board Proposed Change Order. Within 30 days after receipt of such notice, or longer or shorter period as the Parties may mutually agree depending upon the complexity of the proposed change, TSP shall deliver to the Joint Board a written evaluation of the proposed change, together with TSP's analysis supporting estimated adjustments to any applicable budget or component of the Contract Price required as a result of such proposed change. If the proposed change involves a change to the TCS Installation Work, TSP's written evaluation shall include (i) a statement of required System Documentation for the requested change, (ii) a schedule for completing such change including estimated adjustments to (either extending or shortening time, as the case may be), the Progress Milestone Dates, Mobilization Readiness Deadline and/or Tolling Readiness Deadlines, as applicable, by reason for such change, and (iii) a statement and detailed breakdown of the estimated adjustment to (increasing or decreasing, as the case may be) the Total Toll Collection System Capital Price or Performance Requirements by reason of such change, including but not limited to, the Cost of preparing such information. If the change is not implemented, TSP shall be entitled to reimbursement for such Costs outside the Contract Price. No such increase in the Contract Price due to the Extended Services of personnel (as listed in the Hourly Rates Price Sheet for Extended Services on Exhibit C) shall include any overhead Costs or any markup, it being recognized and acknowledged that overhead Costs for the labor are already fixed and included in the Contract Price.

13.4.3. Joint Board Determination. Within 30 days after receipt of TSP's evaluation, the Joint Board shall provide written notice of the Joint Board's intent to proceed or not to proceed with the change. If the Joint Board elects to proceed with the change and accepts TSP's evaluation, and any proposed adjustments to Progress Milestone Dates, the Mobilization Readiness Deadline, the Tolling Readiness Deadline, the Contract Price or the Performance Requirements, TSP shall prepare a Change Order for execution. If the Joint Board elects to proceed with the Change Order but does not accept the evaluation in total, the Joint Board shall negotiate a mutually acceptable Change Order with TSP or issue a Change Directive.

13.5 TSP Initiated Change Orders

13.5.1. TSP shall give the Joint Board a written proposal for a Change Order within 30 days after TSP knew or should have known of an event, act or inaction for which TSP may be entitled to a Change Order. TSP shall not be entitled to a Change Order for any event, act or inaction under Sections 13.6, 13.7 and 13.9 if it fails to provide a written proposal for a Change Order on account thereof within such 30-day period in accordance with this Section 13.5.1, and except for Joint Board initiated Change Orders pursuant to Section 13.4, TSP shall not be entitled to any Change Order adjusting the Performance Requirements.

13.5.2. TSP's written proposal for a Change Order shall provide the following information:

(a) A reasonably detailed description of the underlying event, act or inaction, the Work and/or Performance Requirements affected;

(b) The contractual basis for entitlement to the Change Order;

(c) The estimated delay to work on the Critical Path (if applicable);

(d) The requested adjustment to the applicable Budget or Contract Price Component and/or to Performance Requirements;

(e) A reasonably detailed breakdown of the expected actual Cost impact of the event, act or inaction;

(f) If appropriate, an analysis of the impact of the event, act or inaction on Performance Requirements, stating in reasonable detail how and why the event, act or inaction directly causes TSP to be unable to satisfy the existing Performance Requirements;

(g) If applicable, TSP's proposed plan for mitigating the impacts of such event, act or inaction and a reasonably detailed breakdown of the expected actual Costs of such mitigation; and

(h) Other information, as appropriate.

13.5.3. If the proposal for Change Order includes a claim to an adjustment of Performance Requirements, TSP will be required to demonstrate the effect on the Performance Requirements using testing processes satisfactory to the Joint Board in its sole discretion. The Joint Board shall have 20 days after receipt of TSP's completed proposal for a Change Order pursuant to Section 13.5.2 or such longer or shorter period as the Parties may mutually agree, in their sole discretion, to either accept or reject it as submitted or to commence negotiation of an acceptable alternative. If the Joint Board fails to respond within 20 days or such other mutually agreed period, TSP may notify the Joint Board in writing that it has not received a response, and if Joint Board fails to respond within 10 days after such additional notice, Joint Board's failure to respond shall be deemed to be a denial of TSP's entitlement to a Change Order. If the Parties are unable to resolve matters associated with a proposal under Section 13.5.2, the dispute shall be resolved in accordance with Section 19. If TSP proposes a Change Order as to a matter other than one entitling TSP to a Change Order under Section 13.5.1, then the Joint Board shall have no obligation to approve the requested change and its decision shall be final, binding and not subject to dispute resolution.

13.6 Change Orders for Excusable Delay and Change Orders Shortening Time

13.6.1. Entitlement. For events upon which TSP is entitled to a Change Order under the terms of this Section 13.6, upon compliance with the Change Order Notification Process, TSP shall be entitled to a Change Order adjusting the Progress Milestone Dates, Mobilization Readiness Deadline or Tolling Readiness Deadlines, as applicable, based on Critical Path Method analysis for delays to items of Work on the Critical Path in the Project Schedule to the extent of the actual delay caused by Excusable Delays. Upon the occurrence of an Excusable Delay, TSP shall use reasonable efforts to mitigate the cost and schedule impacts of such Excusable Delay.

13.6.2. Excusable Delays. The following events, acts or inactions shall constitute an "Excusable Delay" to the extent that: (i) they are beyond TSP's reasonable control and not due to an act, omission, negligence, recklessness or willful misconduct of TSP or any Subcontractor or breach of Law or the Contract Documents by TSP, its employees, agents, officers or Subcontractors or any other persons performing any of the Work for whom TSP may be contractually or legally responsible; (ii) they materially and adversely delay TSP's performance of the Work; and (iii) they (or the effects thereof) could not have been avoided or prevented by due diligence and use of reasonable efforts by TSP:

13.6.2.1. Changes to the Technical Requirements necessary to conform to the Joint Board-approved changes in the design of the Toll Facilities, or work requested or directed by the Joint Board that is outside the scope of the Technical Requirements;

13.6.2.2. If the Joint Board or other public authorities having jurisdiction require additional testing of the TCS Installation Work beyond that which is required by the Contract Documents, including the Baseline Test, Pre-Production Test, BOS Production Readiness Test, System Production Readiness Test, Operations Tests and System Acceptance Test, the Quality Management Plan and applicable Law, such testing causes delay of Work on the Critical Path, and no Deviation, noncompliance or nonconformance is detected as a result of such tests;

13.6.2.3. Force Majeure Events;

13.6.2.4. Changes in Law (with the understanding that legislation enacted as of the Execution Date but which becomes effective after the Execution Date is not included) that modify or impact the Work or the Schedule;

13.6.2.5. Court orders which enjoin, restrain or stay performance of the Work or which directly impose or require changes in the Work or the Schedule except if arising out of acts, omissions, fault, failure to perform or breach of obligations by any TSP-Related Entity under the Contract Documents;

13.6.2.6. Delays resulting from the acts or omissions of Other Joint Board Contractors, including delay by the DB Contractor in achieving the Downtown Bridges Temporary Traffic Configuration Infrastructure Turnover Date for the Kennedy Bridge or the New Downtown Bridge, and by the Developer in achieving the East End Crossing Tolling Infrastructure Turnover Date, which are not caused by acts, omissions, fault, failure to perform or breach of obligations by any TSP-Related Entity under the Contract Documents;

13.6.2.7. Delays resulting from the Joint Board's Change Directives, excluding Joint Board Change Directives resulting from or issued to correct acts, omissions, fault, failure to perform or breach of obligations by any TSP-Related Entity under the Contract Documents, and excluding Joint Board Change Directives for matters that are Configurable;

13.6.2.8. Delays resulting from suspension or delay of Work ordered by the Joint Board, except where due to acts, omissions, fault, failure to perform or breach of obligations by any TSP-Related Entity under the Contract Documents;

13.6.2.9. Delays resulting from subsurface conditions existing at the Project Site which differ materially from any conditions set forth in the information made available to TSP by the Joint Board prior to the Execution Date and which could not have reasonably been anticipated by TSP as of the Execution Date in the exercise of prudent construction and engineering practices as a result of the review and due diligence conducted by TSP;

13.6.2.10. Delays resulting from a Latent Defect in the Joint Board-Provided ETC Equipment that occurs within the first year after the Revenue Service Date for the last Bridge to begin Revenue Service; and

13.6.2.11. Delays resulting from a permissible suspension of Work by TSP pursuant to Section 16.4.

13.7 Change Orders to Toll Collection System Capital Price

13.7.1. For events upon which TSP is entitled to a Change Order under the terms of this Section 13.7, upon compliance with the Change Order Notification Process and to the extent (i) that the following events, acts or inactions are beyond TSP's reasonable control and not due to an act, omission, negligence, recklessness, willful misconduct breach of Law or the Contract Documents by any TSP-Related Entity, and (ii) they (or the effects thereof) could not have been avoided or prevented by due diligence and use of reasonable efforts by TSP, TSP shall be entitled to a Change Order adjusting the Total Toll Collection System Capital Price as provided in Section 13.8.1 for the following:

13.7.1.1. Changes to the Technical Requirements requested by the Joint Board or work requested or directed by the Joint Board that is outside the scope of work in the Technical Requirements, including material revisions to the design or operation of the TCS that are not based on the Technical Requirements or statutory and regulatory non-discretionary standards relating to public health, safety and welfare (and for purposes hereof a material revision may include operating system changes, database structure modifications, data structure changes, data flow modifications, new data to be collected, new screens or reports displaying this new data, revised Business Rules for items that are not Configurable to support new data, and changes impacting hardware, but excludes Minor Revisions);

13.7.1.2. Changes in Law for items other than those related to taxes (with the understanding that legislation enacted as of the Proposal Due Date but which becomes effective after the Execution Date is not included) that modify or impact the Technical Requirements;

13.7.1.3. Court orders which enjoin, restrain or stay performance of the Work or which directly impose or require changes in the Work or the Project Schedule, except if arising out of acts, omissions, fault, failure to perform or breach of obligations by any TSP-Related Entity under the Contract Documents;

13.7.1.4. Joint Board Change Directives (including changes to Joint Board Standards), except Joint Board Change Directives resulting from or issued to correct acts, omissions, fault, failure to perform or breach of obligations by any TSP-Related Entity under the Contract Documents, and except Joint Board Change Directives for matters that are Configurable;

13.7.1.5. Suspension of Work ordered by the Joint Board, except where due to acts, omissions, fault, failure to perform or breach of obligations by any TSP-Related Entity under the Contract Documents;

13.7.1.6. Joint Board-Caused Delays;

13.7.1.7. Subsurface conditions existing at the Project Site which differ materially from any conditions set forth in the information made available to TSP by the Joint Board prior to the Execution Date which could not have reasonably been anticipated by TSP as of the Execution Date in the exercise of prudent construction and engineering practices as a result of the review and due diligence conducted by TSP;

13.7.1.8. A Latent Defect in the Joint Board-Provided ETC Equipment that materially and adversely effects the ability of the TCS to achieve the Performance Requirements and occurs within the first year after the Revenue Service Date for the last Bridge to begin Revenue Service;

13.7.1.9. If the Joint Board or other public authorities having jurisdiction require additional testing of the TCS Installation Work beyond that which is required by the Contract Documents, including the Baseline Test, Pre-Production Test, BOS Production Readiness Test, System Production Readiness Test, Operations Tests and System Acceptance Test, the Quality Management Plan and applicable Law, such testing increases TSP's Costs, and no Deviation, noncompliance or nonconformance is detected as a result of such tests**;**

13.7.1.10. Increases in sales, excise or use taxes on equipment, supplies and materials purchased by TSP and occurring during the Installation Work; and

13.7.1.11. Delays for which TSP is entitled to an extension of the time to perform pursuant to Section 13.6.2.6.

13.8 Change Order Pricing

13.8.1. Pricing for Changes in Scope of TCS Installation Work. In the event of a deductive Change Order, the amount of decrease in the Total Toll Collection System Capital Price to be allowed for any deletion or change which results in a net decrease in the scope of the TCS Installation Work will be the estimated reduction in the Cost of the TCS Installation Work occasioned by such change including reduction, if any, in overhead but without reduction in TSP's profit. When both additions and reductions are involved in any one Change Order, the adjustment in the Total Toll Collection System Capital Price shall be determined on the basis of net increase or decrease. Increases or decreases in the Total Toll Collection System Capital Price resulting from Change Orders changing the scope of TCS Installation Work or requiring additional work that is outside the scope of TCS Installation Work shall be determined in the order of precedence set forth below:

13.8.1.1. For all Change Orders, the Parties shall first attempt to negotiate a mutually acceptable lump sum increase or decrease to the Total Toll Collection System Capital Price properly itemized and supported by sufficient substantiating data to permit evaluation;

13.8.1.2. If there is no agreement to a lump sum, but the Parties mutually agree that the increase or decrease to the Total Toll Collection System Capital Price is determinable by unit prices stated in the Price Sheets or new unit prices mutually agreeable to the Parties can be established, then an adjustment to the Total Toll Collection System Capital Price shall be negotiated using the unit prices agreed upon; and

13.8.1.3. If the Parties cannot reach agreement using the above methods and the Joint Board issues a Change Directive to TSP to perform the changed work during negotiation to reach agreement on the increase or decrease in the Total Toll Collection System Capital Price resulting from a Change Order, TSP shall promptly proceed with the changed Work, and the payment or reduction, as applicable, shall be determined on the basis of the reasonable additional Cost or savings for the Work attributed to the Change Directive. Costs for expenditures and savings shall be calculated in accordance with the provisions of this Section 13.8.1.3. In such case, TSP shall keep and present, in such form as the Joint Board may reasonably require, an itemized accounting together with appropriate supporting data, which shall be subject to review on an Open-Book Basis and audit by the Joint Board. Such Work shall be invoiced and paid for based upon an aggregate of the following: (i) actual, reasonable Costs incurred by TSP resulting from such Change Order work (including but not limited to Subcontract expense, material expense, design, travel, relocation, and equipment rental expense), and (ii) profit and overhead at the rates set forth below:

(a) For Labor: The Joint Board shall reimburse TSP for labor and for supervision by foremen dedicated solely to the particular item of Work (but not for supervision by general superintendents or general foremen). The labor payment shall be calculated on the basis of the following four factors:

1. Weighted Wage Rate. The Weighted Wage Rate Combines:

A. The current basic wage and fringe benefits that TSP is required and has agreed to pay, which for any workers employed to perform construction work shall be the “prevailing rate of wages” as specified in Section 2.1.3.8;

B. Federal Insurance Compensation (FICA);

C. Federal Unemployment Tax Act contributions (FUTA); and

D. State Unemployment Compensation Act contributions (SUCA).

Weighted Wage Rate shall be computed for each classification of labor used. This rate shall reflect TSP's actual, reasonable Cost. It shall neither exceed what is normally paid to comparable labor nor fall below the minimum required by prevailing wage requirements. If labor works overtime, the Weighted Wage Rate shall be determined on the same basis.

2. Industrial Insurance and Medical Aid Premiums. The Joint Board shall reimburse TSP-paid premiums for state industrial insurance, and medical insurance premiums which become an obligation of TSP and are chargeable to such Work. The Joint Board shall not pay TSP for medical insurance premiums that are paid by the employees.

3. Construction Labor Overhead and Profit. The Joint Board shall pay TSP 15% of the amounts set forth in paragraphs 1 and 2 above for profit and overhead on construction labor (i.e., labor and/or construction activities that are subject to prevailing wage).

4. .Non-Construction-related Work. For non-construction-related Work, if the Work is to be performed by a job class specified in the rates for Extended Services set forth in Price Sheet G-16, the Joint Board shall pay the rate specified in Price Sheet G-16. For non-construction-related Work not covered by Price Sheet G-16, the Joint Board shall pay TSP for (1) actual wages (i.e., the base wage rate paid to the employee exclusive of any fringe benefits, plus (2) a labor surcharge in the amount of 100%, which shall constitute full compensation for all profit, overhead, and all state and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as for profit and overhead.

(b) For Equipment and Materials: The Joint Board shall reimburse the actual, reasonable invoice Cost for equipment supplied by TSP and installed or purchased for spares or inventory and for materials supplied by TSP and needed for the TCS Installation Work. This Cost includes actual, reasonable freight and express charges and taxes, provided that these Costs have not been paid in some other manner under this Contract. A deduction will be made for any offered or available discounts or rebates if the Joint Board has provided TSP with, or there is otherwise reasonably available to TSP, the means to comply with the provisions allowing the discount.

To support charges for such equipment and materials, TSP shall provide the Joint Board with valid copies of Supplier invoices, including freight and express bills. If invoices are not available for such equipment and materials from TSP's stocks, TSP shall certify actual, reasonable Costs by affidavit. For direct purchased equipment and materials (excluding Major Spare Parts), a 7.5% markup shall be applied against the substantiated cost.

If claims for such equipment and materials Costs are too high, inappropriate, or unsupported by satisfactory evidence, the Joint Board may demand further documentation or support for such charges.

(c) For Tools and Construction Equipment: The rates as set forth in the Rental Rate Blue Book shall be the maximum rates allowed for tools and construction equipment. These rates shall be full compensation for all costs incidental to furnishing and operating the tools and equipment, except labor.

(d) Subcontractors Insurance and Bonding: Subcontractors shall be allowed their actual, reasonable Costs for insurance, business and occupation tax, and bonding.

(e) Subcontractors Mark-Up. TSP shall be entitled to a mark-up of 5% of Subcontractor charges and invoices to reflect TSP's costs related to administering and managing the subcontract.

(f) Insurance, Business and Occupation Tax, and Bonding: TCS shall be allowed its actual, reasonable Costs for insurance, business and occupation tax, and bonding.

13.8.2. Pricing for Delays. The fixed price shall be equitably adjusted for the actual, reasonable direct Cost impact of delays associated with Change Orders under Sections 13.6.2.1, 13.6.2.3, 13.6.2.4, 13.6.2.5, and 13.2.6.7, but not any other Change Order.

13.9 Change Orders to Adjust Budget and Contract Price for Maintenance and Operations

13.9.1. Entitlement. Except for instances where the change is arising out of the act, omission, negligence, recklessness or willful misconduct of TSP or any Subcontractor or breach of Law or the Contract Documents of TSP or its Subcontractors, agents or employees; TSP may be entitled to a Change Order adjusting the applicable Budget and/or affected Specific Contract Price Component Line Items of the Toll Collection System Operations and Maintenance Price for actual, reasonable, increased Costs to the extent they cannot be reasonably avoided and are directly attributable to any of the following:

13.9.1.1. A change the Joint Board directs through a Change Directive issued under Section 13.2, but only where the change is not to conform TSP's performance to applicable requirements of the Contract Documents or to correct an inconsistency in one Contract Document with another Contract Document of higher precedence and the change is not Configurable;

13.9.1.2. Emergencies, including those directly attributable to materially more burdensome changes, updates and revisions to provisions for dealing with emergencies

in the Joint Board's incident management plan, disaster recovery plan or traffic resumption plan and not known to TSP as of the Execution Date;

13.9.1.3. Changes in Law (with the understanding that changes in law regarding income and business taxes and legislation enacted as of the Proposal Due Date but which become effective after the Execution Date are not included) that modify or impact the TR, Business Rules (except for those items that are Configurable), or the approved Plans;

13.9.1.4. Court orders which enjoin, restrain or stay performance of the Operations and Maintenance Work or which directly impose or require changes in the Work, except if arising out of the acts, omissions, fault, failure to perform or breach of obligations by any TSP-Related Entity under the Contract Documents;

13.9.1.5. Actual Measured Average Daily Traffic Transactions measured at any time during Steady State Operations are more than 125,000 per day (and the Joint Board shall be entitled to initiate and obtain a change order if the Actual Measured Average Daily Traffic Transactions measured at any time during Steady State Operations are less than 75,000 per day);

13.9.1.6. A Latent Defect in the Joint Board-Provided ETC Equipment that materially and adversely effects the ability of the TCS to achieve the Performance Requirements and occurs within the first year after the Revenue Service Date for the last Bridge to begin Revenue Service; and

13.9.1.7. Increases in sales, excise or use taxes on equipment, supplies and materials purchased by TSP and occurring during the Operations and Maintenance Term.

13.9.2. Change Order Pricing. Modifications to the Contract Price under this Section 13.9 shall be determined in the order of precedence set forth below:

13.9.2.1. Lump sum increase or decrease to the Contract Price, properly itemized and supported by sufficient substantiating data to permit evaluation;

13.9.2.2. If there is no agreement to a lump sum, but the Parties mutually agree that the increase or decrease is determinable by unit prices or new unit prices mutually agreeable to the Parties can be established, then an adjustment shall be negotiated using the unit prices agreed upon; or

13.9.2.3. If the Parties cannot reach agreement using the above methods and the Joint Board issues a Change Directive to TSP to perform the changed Work, TSP shall promptly proceed with the changed Work, and the payment or reduction shall be determined on the basis of the actual, reasonable additional direct Costs or savings for the Work attributed to the Change Order, calculated in accordance with the method specified in Section 13.8.1.3 to the extent applicable to the Operations and Maintenance

Work. In such case, TSP shall keep and present, in such form as the Joint Board may reasonably require, an itemized accounting together with appropriate supporting data, which shall be subject to audit by the Joint Board.

13.9.2.4. All Change Order pricing shall be undertaken on an Open-Book Basis.

13.10 Impact to Performance Requirements

13.10.1. If as a result of an event, act or inaction entitling TSP to a Change Order, it is determined that it is not possible to maintain the Performance Requirements because of the effect of the subject event, act or inaction on Performance Requirements, then the Joint Board and TSP will negotiate as part of the Change Order an appropriate adjustment to the affected Performance Requirements. The adjustment shall be limited to the minimum extent necessary under the circumstances.

13.10.2. If it is possible to avoid an adjustment to Performance Requirements through a Change Order adjusting price but the Joint Board prefers not to incur the price adjustment, then TSP shall cooperate with and assist the Joint Board with analyzing trade-offs between price and Performance Requirement adjustments to give the Joint Board a range of choices on how to proceed with the Change Order.

SECTION 14. SUSPENSION

14.1 Joint Board Suspension

The Joint Board may, in its own discretion, at any time and from time to time and for any reason, by written notice, order TSP to suspend all or any part of the Work required under the Contract Documents for the period of time that the Joint Board deems appropriate. Adjustments of the Contract Price and Completion Deadlines shall be available for any such Joint Board Change Directive, subject to TSP's compliance with the terms and conditions set forth in Section 13.

SECTION 15. TERMINATION

15.1 Termination for Convenience

15.1.1. This Contract is contingent upon the continued availability of appropriated funding. If the funding for the Project becomes unavailable for any reason, including the Indiana or Kentucky General Assembly's failure to appropriate the funding, by operation of law or as a result of a reduction in Federal funding, this Contract may be terminated, the Project may be cancelled, the timeline may be extended or the scope of the Project may be amended by the Joint Board, either in whole or in part. Project cancellation, extension, or amendment because of an interruption in the appropriated funding shall not be a default or breach of this Contract by the Joint Board nor may such cancellation, extension, or amendment give rise to any claim against the Joint Board except for payment as provided in this Section 15.

15.1.2. The Joint Board may, at any time, terminate this Contract and the performance of the Work by TSP in whole or in part, if the Joint Board determines, in its sole discretion, that a termination is in the Joint Board's best interest. The Joint Board shall terminate by delivering to TSP a written 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 Contract shall not relieve any surety of its obligation for any claims arising out of the Work performed.

TSP acknowledges and agrees that the Joint Board has no obligation to issue a NTP hereunder, and further agrees that unless and until the NTP is issued, the Joint Board shall have no liability to TSP hereunder.

15.2 TSP's Responsibilities After Receipt of Notice of Termination for Convenience of TCS Installation Work

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience prior to System Acceptance, and except as otherwise directed by the Joint Board, TSP shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 15:

15.2.1. Stop Work as specified in the notice. If TSP has commenced TCS Installation Work at the Project Site (or a WUC), TSP shall immediately and safely demobilize and secure its work and staging areas in a manner satisfactory to the Joint Board.

15.2.2. Notify all affected Subcontractors that this Contract 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 the Joint Board.

15.2.3. Enter into no further Subcontracts (including orders for materials, services or facilities), except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.

15.2.4. Unless instructed otherwise by the Joint Board, terminate all Subcontracts to the extent they relate to the Work terminated.

15.2.5. Assign to the Joint Board in the manner, at the times, and to the extent directed by the Joint Board, all of the right, title, and interest of TSP under the Subcontracts so terminated, in which case the Joint Board will have the right, in its sole discretion, to accept performance, settle or pay any termination settlement proposal arising out of the termination of such Subcontract.

15.2.6. Subject to the prior written approval of the Joint Board, settle all outstanding liabilities and all termination settlement proposals arising from termination of Subcontracts that are required to be terminated hereunder.

15.2.7. No later than 30 days from the effective date of termination, unless extended in writing by the Joint Board upon written request of TSP within this 30-Day period, provide the Joint Board with an inventory list of all materials, supplies, equipment, Hardware and Software 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 the Joint Board, and such other information as the Joint Board may request; and transfer title (or, with respect to any third party licensed Software, assign to the Joint Board all of TSP's and any TSP-Related Entity's license to such Software, or obtain a direct license in the name of the Joint Board for such Software on the same terms) and deliver to the Joint Board through bills of sale or other documents of title, assignment or license, as applicable, as directed by the Joint Board, (a) the Work in process, completed Work, supplies, equipment, any Hardware, Software and other material produced or acquired for the Work terminated that has not already been provided to the Joint Board, and (b) the System Documentation, Plans, 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 the Joint Board if the Work had been completed.

15.2.8. Complete performance in accordance with the Contract Documents of all Work not terminated.

15.2.9. Take all action that may be necessary, or that the Joint Board may direct, for the safety, protection and preservation of (a) the public, including public and private vehicular movement, (b) the Work, and (c) equipment, machinery, materials, Hardware, Software and property related to the Project that is in the possession of TSP and in which the Joint Board has or may acquire an interest.

15.2.10. If requested by the Joint Board, withdraw from the portions of the Project Site designated by the Joint Board and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, TSP and any Subcontractor in the performance of the Work as the Joint Board may direct.

15.2.11. Take other actions directed by the Joint Board.

15.3 Responsibility for Materials After Notice of Termination for Convenience

15.3.1. TSP shall continue to be responsible for damage to materials after issuance of the Notice of Termination for Convenience or a Notice of Partial Termination for Convenience, except as follows:

(a) TSP's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when the Joint Board's Authorized Representative certifies that those materials have been stored in the manner and at the locations directed by the Joint Board.

(b) TSP's responsibility for damage to materials purchased by the Joint Board subsequent to the issuance of the notice that this Contract is to be terminated shall terminate when title and delivery of those materials has been taken by the Joint Board or its designee.

15.3.2. When the Joint Board's Authorized Representative determines that TSP has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the applicable portion of the Project for termination, the Joint Board's Authorized Representative will recommend that the Joint Board formally accept such Work, and immediately upon and after such acceptance by the Joint Board, TSP will not be required to provide for continuing safety, security and maintenance at the applicable Project Site.

15.4 TSP's Responsibilities Upon Expiration or After Receipt of Notice of Termination of Operations and Maintenance Work

15.4.1. **Safe Demobilization**. Upon expiration or earlier termination of this Contract for any reason during the Operations and Maintenance Term (including a Joint Board Event of Default), TSP shall confer and cooperate with Joint Board to determine the activities required in order to terminate in a safe and orderly manner and to allow the transition without interruption of Operations and Maintenance Work performed by TSP hereunder to a subsequent operator. On the expiration or other termination date (as such date may be extended by mutual written agreement of the Parties), TSP shall, except as otherwise provided in Sections 15.4.2 and 15.4.5, remove its personnel from the Toll Facilities (other than the CSC unless it is used primarily for the Project) and shall leave such facilities in good repair in at least the condition TSP is required to

maintain at that time under the Contract Documents, with an equivalent supply of Spare Parts, supplies, consumables, tools and other operating items as were present on the Revenue Service Date, or such modified supply thereof as has been agreed to by the Parties. All such items shall remain the property of the Joint Board without additional charge, and upon the expiration or earlier termination date possession and control of the Toll Facilities (other than the CSC unless it is used primarily for the Project, but including any materials, equipment, tools and supplies located there and used exclusively for the Project), and TCS shall be transferred to the Joint Board, unless otherwise directed by the Joint Board. Assignment of the leases to the WUC premises shall be made only upon the Joint Board's request.

15.4.2. Recruitment of TSP Employees. Upon expiration or earlier termination of this Contract for any reason during the TCS Operations and Maintenance Term, TSP shall allow the Joint Board to recruit and retain as its employees (or as employees of any successor operator of the TCS under contract with the Joint Board) TSP's non-management operating staff working exclusively on the Project. No later than 90 days prior to the expiration of this Contract and promptly upon notice of any earlier termination during the TCS Operations and Maintenance Term, TSP shall submit to the Joint Board detailed information relating to each such operating employee and his or her compensation, role or function and working hours in performing Work hereunder. Such information shall be in sufficient detail that the Joint Board or any successor provider of services comparable to those of TSP under this Contract may contact such employee and seek to engage such employee on substantially the same terms and conditions as such employee is presently engaged by TSP or on such other terms and conditions as the Joint Board may then be bound to under any applicable labor agreement. Within 20 days of TSP's submission to the Joint Board of such information, the Joint Board shall notify TSP in writing of each such employee whom the Joint Board or any such successor wishes to recruit. This provision shall not apply to TSP's employees at an existing CSC that are not assigned exclusively to the Project. Nothing contained herein is intended to require that TSP violate any Law regarding employment or privacy.

15.4.3. Materials, Supplies and Third Party Software. No fewer than 90 days prior to the expiration or earlier termination of this Contract, TSP shall provide the Joint Board with an inventory list of all materials, supplies, equipment, Hardware and Software produced, purchased or ordered from Suppliers for use in the Operations and Maintenance Work and not yet used in the Operations and Maintenance 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 the Joint Board, and such other information as the Joint Board may request. No fewer than 90 days prior to the expiration or earlier termination of this Contract, TSP shall transfer title (or, with respect to any third party licensed Software, assign to the Joint Board all of TSP's and any TSP-Related Entity's license to such Software, or obtain a direct license in the name of the Joint Board for

such Software on the same terms) and deliver to the Joint Board through bills of sale or other documents of title, assignment or license, as applicable, as directed by the Joint Board, the Work in process, completed Work, supplies, equipment, any Hardware, Software (other than Pre-Existing Software) and other material produced or acquired for the Work terminated that has not already been provided to the Joint Board.

15.4.4. Work Product and Intellectual Property. On or before the expiration or earlier termination date of the TCS Operations and Maintenance Term, subject to the provisions of Sections 20.5 and 20.6, all System Documentation, Plans, manuals, procedures, programs, operating and financial records and accounts and other such materials used or developed in the performance of the Work shall be delivered to the Joint Board and shall remain or become the property of the Joint Board. TSP also shall deliver or make available to the Joint Board all work product and all intellectual property rights TSP is required to deliver or make available pursuant to this Contract, and all records and archives of TCS Data.

15.4.5. Training of New Operating Personnel. At the request or direction of the Joint Board, TSP shall assist and cooperate with the Joint Board in the transitioning to replacement operating personnel of the Joint Board or any successor provider of services comparable to those of TSP under this Contract, and shall assist in training and phasing in the services of such replacement operator or personnel. The Joint Board shall have the right to make such a request or give such a direction through a Change Directive or a Change Order. TSP shall implement the approved End of Contract Transition Plan, or if TSP has not already submitted such plan and obtained the Joint Board's approval, TSP shall diligently cooperate with the Joint Board upon request in developing the End of Contract Transition Plan, and such plan shall be incorporated into any Change Order concerning transition services. In the event of disagreement over the End of Contract Transition Plan, the Joint Board shall have the right to unilaterally adopt and direct performance of an End of Contract Transition Plan as part of the Change Directive or Change Order. Such End of Contract Transition Plan may include a scope of work and a schedule for training personnel in the architecture, management, operation and maintenance of the TCS, and in the performance of any other Work. TSP shall be available and provide personnel to perform such transition and training services in accordance with the End of Contract Transition Plan for the period set forth in the plan, in any event not to extend beyond 120 days following the expiration or earlier termination date. Except in the event of termination pursuant to Section 16.2.1 for a TSP Event of Default, as compensation for the performance of such transition and training services, TSP shall be entitled to reimbursement outside the Contract Price for TSP's actual, reasonable and direct out-of-pocket Costs, determined on an Open Book Basis, incurred in such performance plus overhead Costs, unless the Parties agree on a different method for reimbursement.

15.4.6. TCS Agreements

15.4.6.1. With respect to a termination upon expiration of this Contract or earlier termination for convenience or for a TSP Event of Default, TSP shall immediately upon such termination (i) assemble at its offices in the State and make available for the Joint Board's and/or the Joint Board's successor toll system provider's review during normal business hours all Subcontracts, contracts with suppliers, the Warehouse Facility Lease, the WUC Leases and any other Toll Facilities leases (excluding any lease of a CSC not used exclusively for the Project), licenses and other TCS related agreements and amendments thereto which are then in effect (collectively, "TCS Agreements"); (ii) deliver to the Joint Board and such successor, if any, true and complete originals thereof; (iii) execute and deliver to the Joint Board or such successor, as applicable, a written assignment and assumption agreement with respect to any such TCS Agreement(s) which the Joint Board or such successor elects to assume; and (iv) terminate, or cause to be terminated, effective on the same date as the effective date of such termination, any such TCS Agreement(s) which neither the Joint Board nor such successor elects, in its sole discretion, to assume.

15.4.6.2. The Joint Board's or such successor's, as applicable, assumption of any TCS Agreements pursuant to Section 15.4.6.1 shall pertain only to obligations arising from and after the effective date of the termination of this Contract, and TSP shall remain liable for all obligations arising thereunder prior to such effective date of termination.

15.5 Settlement Proposal

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, TSP shall submit a final termination settlement proposal to the Joint Board in the form and with the certification prescribed by the Joint Board. TSP shall submit the proposal promptly, but no later than 90 Days from the effective date of termination unless TSP has requested a time extension in writing within such 90-Day period and the Joint Board has agreed in writing to allow such an extension. TSP's termination settlement proposal shall then be reviewed by the Joint Board and acted upon, returned with comments, or rejected. If TSP fails to submit the proposal within the time allowed, the Joint Board may determine, on the basis of information available, the amount, if any, due TSP because of the termination and shall pay TSP the amount so determined, and TSP shall be bound by the Joint Board's determination.

15.6 Amount of Negotiated Termination Settlement

TSP and the Joint Board may agree, as provided in Section 15.5, upon the whole or any part of the amount or amounts to be paid to TSP 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 TCS Installation Work which has been completed as of the termination date and subsequently inspected

and accepted by the Joint Board. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the Total Toll Collection System Capital Price and the Total Toll Collection System Operations and Maintenance Price for the Project, as reduced by the amount of payments otherwise made and the applicable price of Work not terminated. Upon determination of the settlement amount, this Contract will be amended accordingly, and TSP will be paid the agreed amount as described in this Section 15.6, subject to any offset and deduction rights of the Joint Board as set forth in the Contract Documents. Fifty percent (50%) of said amount will be paid by IFA, and fifty percent (50%) will be paid by KPTIA. Each such States' Party's share shall be severable, and neither shall be responsible to make payment of the other States' Party's allocable share. Nothing in Section 15.7 prescribing the amount to be paid to TSP in the event that TSP and the Joint Board fail to agree upon the whole amount to be paid to TSP by reason of the termination of Work pursuant to this Section 15.6 shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to TSP pursuant to this Section 15.6. The Joint Board's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve TSP from its obligations with respect thereto, including Warranties, or affect the rights of the Joint Board or TSP under any Performance Bond(s), Payment Bond(s), Maintenance Bond(s), other bonds and/or security as to such completed or non-terminated Work.

15.7 No Agreement as to Amount of Termination Settlement for TCS Installation Work and Operations and Maintenance Work

If TSP and the Joint Board fail to agree upon either all or some portion of the amount to be paid TSP by reason of the termination of TCS Installation Work or Operations and Maintenance Work for convenience pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by the Joint Board in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Sections 15.7 and 15.8:

15.7.1. The Joint Board will pay TSP 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) All TCS Installation Work and Operations and Maintenance Work performed by the termination date in accordance with the terms and requirements of the Contract Documents but not previously paid for (such payment, including, without limitation payment for any Software licensed by TSP at the Joint Board's request, to be determined in accordance with the Payment Milestones, but not to include any amounts for anticipated profits with respect to Work not yet performed or lost opportunity);

(b) TSP's documented reasonable direct Costs of demobilization including close-out Costs and amounts payable to Subcontractors and suppliers for early termination;

(c) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2.9 and any other reasonable out-of-pocket cost (including overhead) incidental to termination of TCS Installation Work and Operations and Maintenance Work under this Contract, including the reasonable cost to TSP of handling material returned to the vendor, delivered to the Joint Board or otherwise disposed of as directed by the Joint Board, and including a reasonable allowance for TSP's administrative costs in determining the amount payable due to termination of this Contract.

15.7.2. TSP acknowledges and agrees that, in the event of termination under this provision, it shall not be entitled to any compensation in excess of the value of the TCS Installation Work and Operations and Maintenance Work performed (determined as provided in Section 15.7.1) 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 a total or partial termination of this Contract. 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 the Joint Board by TSP, such refund shall be paid directly to the Joint Board or otherwise credited to the Joint Board. Except to the extent that the Joint Board will have expressly assumed the risk of loss, there will be excluded from the amounts payable to TSP under Section 15.7.1, the fair value, as determined by the Joint Board, of equipment, supplies, Hardware, Software, machinery, materials and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Joint Board. Upon determination of the amount of the termination payment, this Contract shall be amended to reflect the agreed termination payment, TSP shall be paid the agreed amount, and the Total Toll Collection System Capital Price and the Total Toll Collection System Operations and Maintenance Price shall be reduced to reflect the reduced scope of Work.

15.8 Termination of Operations and Maintenance Work

15.8.1. With respect to a termination for convenience of the Operations and Maintenance Work, TSP shall be entitled to payment for: (i) all Operations and Maintenance Work performed prior to the termination date in accordance with the terms and requirements of the Contract Documents, to the extent not previously paid by the Joint Board in accordance with the provisions hereof, and (ii) TSP's documented reasonable, direct Costs of demobilization and termination including close-out Costs and amounts payable to Subcontractors and Suppliers for early termination, provided that neither TSP nor any Subcontractor or Supplier shall be entitled to any amounts for anticipated profits with respect to services not yet performed or lost opportunity.

15.8.2. When all Costs associated with the termination can be identified with certainty (but in no event later than 60 days after the Termination Date), TSP shall provide the Joint Board with invoices for final payment for all termination Costs permitted under Section 15.8.1 that have not been included in previous invoices. TSP shall provide the Joint Board with access to its books, records, accounts and invoices,

in accordance with Section 21.4, for inspection and audit of such Costs as set forth therein.

15.9 Reduction in Amount of Claim

The amount otherwise due TSP under this Section 15 shall be reduced by (a) the amount of any claim which the Joint Board may have against any TSP-Related Entity in connection with this Contract, (b) all unliquidated advance or other payments made to or on behalf of TSP applicable to the terminated portion of the Work or Contract, (c) amounts that the Joint Board deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, (d) amounts payable to the Joint Board as Delay Liquidated Damages, Performance Liquidated Damages or Performance Stipulated Damages, (e) amounts that the Joint Board deems advisable, in its sole discretion to retain to cover any existing or anticipated Losses incurred by the Joint Board, (f) the cost of repairing any Nonconforming Work or the amount of the credit to which the Joint Board is entitled, and (g) any amounts due or payable by TSP to the Joint Board.

15.10 Payment

Except for amounts in dispute, the IFA and KPTIA shall pay TSP their respective shares of its invoices for Costs and other amounts permitted in this Section 15 within 30 days after receipt of such invoices. The Joint Board may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, advise IFA and KPTIA to make partial payments on account against costs incurred by TSP in connection with the terminated portion of this Contract, whenever in the opinion of the Joint Board, the aggregate of such payments shall be within the amount to which TSP 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 TSP to the Joint Board upon demand together with interest at the rate of the lesser of (a) 12% per annum or (b) the maximum rate allowable under applicable Law.

15.11 Subcontractors

15.11.1. Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such terminations 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 this Section 15.

15.11.2. Each Major Subcontract shall provide that, in the event of a termination for convenience by the Joint Board, 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.

15.12 No Consequential Damages

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

15.13 No Waiver

Anything contained in this Contract to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages which the Joint Board may have and the Joint Board may pursue any cause of action which it may have at Law, in equity or under the Contract Documents.

15.14 Dispute Resolution

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.

15.15 Allowability of Costs

All costs claimed by TSP under this Section 15 shall be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

SECTION 16. DEFAULT

16.1 Default of TSP

16.1.1. Events and Conditions Constituting Default

TSP shall be in default under this Contract upon the occurrence of any one or more of the following events or conditions:

(a) **Failure to Carry Out Work**. TSP:

(i) fails to prosecute the Work in a timely fashion and fails to commence or resume diligent prosecution of the Work within 15 days after receipt of written notice of such breach;

(ii) has not achieved (A) Mobilization Readiness within 30 days following the Mobilization Readiness Deadline, or (B) Tolling Readiness within 90 days following the Tolling Readiness Deadline; or

(iii) otherwise fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents and/or the Project Schedule and fails to commence correction of such failure or neglect within 30 days after receipt of written notice of such breach or thereafter fails to complete such correction within such period as may be necessary with the exercise of diligent efforts to complete correction, up to a maximum of 30 days; provided, however, that if the failure or neglect to carry out the Work under this clause (iii) is not material and despite the exercise of diligent efforts to correct is not completely corrected within such 30-day period, TSP may have such longer period to cure up to 90 days as may be reasonable under the circumstances at such time, provided such longer time to cure will not result in material adverse consequences to the Joint Board, the Toll Facilities or the completion and operation thereof. For this purpose, a failure or neglect to carry out the Work, and an adverse consequence to the Joint Board, the Toll Facilities or the completion and operation thereof, shall not be material only if it does not and will not by reason of longer time to correct do any of the following: (1) decrease or delay revenue from the Bridges; (2) increase operating Costs; (3) inhibit the ability of the Joint Board to audit TCS transactions according to Joint Board auditing standards; (4) increase risk of Joint Board or States' Parties liability to third parties (regardless of whether such risk is covered by TSP's indemnities); or (5) increase risk of inaccurate billing (whether undercharging or overcharging) of toll payers.

(b) TSP fails to maintain the insurance, bonds and letters of credit required hereunder; or

(c) TSP attempts or purports to assign or transfer the Contract Documents or any right or interest herein, except as expressly permitted under Section 21.5.2; or

(d) TSP fails, 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 Law or failed reasonably to comply with the instructions of the Joint Board consistent with the Contract Documents, or fails to make payment to the Joint Board when due of any amounts owing to the Joint Board under this Contract; or

(e) TSP breaches any other agreement, covenant, representation or warranty contained in the Contract Documents that is not otherwise specifically listed in this Section 16.1.1; or

(f) Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is no longer in full force and effect; or

(g) Any final judgment is issued holding TSP or any Guarantor liable for an amount in excess of $100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act; or

(h) Any representation or warranty made by TSP or any Guarantor in the Contract Documents or any certificate, schedule, instrument or other document delivered by TSP pursuant to the Contract Documents was false or materially misleading when made; or

(i) TSP 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 of TSP's partners, members or joint venturers, any material Subcontractors, or any surety, Guarantor or letter of credit Bank; or

(j) An involuntary case is commenced against TSP seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to TSP or TSP's debts under any bankruptcy, insolvency or other similar Laws now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of TSP or any substantial part of TSP'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 TSP 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 of TSP's partners, members or joint venturers, any material Subcontractors, or any surety, Guarantor or letter of credit bank; or

(k) TSP is a party to fraud; or

(l) A Persistent Breach occurs; or

(m) TSP causes or allows a closing or shutdown of all or a portion of a Bridge, the Toll Facilities or TCS in a way not authorized by this Contract, or the Business Rules, or causes or allows to exist any other condition on or with respect to a Bridge, Toll Facilities or TCS which results or may reasonably be expected to result in a material loss of Gross Revenues to the Joint Board, and TSP fails to commence diligent, sustained efforts to remedy such condition with four hours, or fails to complete the remedy of such condition within 48 hours, after receipt of written notice of such breach; provided that such cure period shall not preclude or delay the Joint Board's immediate exercise, without notice or demand, of its rights to cure this condition; and provided further that where an act or omission of TSP constitutes a breach under this Section 16.3(m) and any other Section, this Section 16.3(m) shall control; or

(n) Reaching or Exceeding Liability Limits. TSP incurs liability to the Joint Board for damages, including Liquidated Damages. in an amount equal to or greater than (but for such limitation) ninety-five percent (95%) of the limitation on TSP's liability set forth in Section 17.1.1(a) or Section 17.1.2(a), as applicable, of this Contract.

16.1.2. Notice and Opportunity to Cure

(a) TSP and surety shall be entitled to 15 Days written notice and opportunity to cure any breach before a TSP Event of Default is declared under clauses (b) through (f) and clause (j) of Section 16.1.1. No such notice or opportunity to cure is required for any breach under clause (a) or for any breach which by its nature cannot be cured (which shall include the items described in clauses (g), (h), (i), and (k) through (n)) of Section 16.1.1. With respect to any breach under clause (n), Section 17.2 shall apply. Failure to provide notice to surety shall not preclude the Joint Board from exercising its remedies against TSP. If a breach is capable of cure but, by its nature, cannot be cured within 15 Days, as determined by the Joint Board, such additional period of time shall be allowed as may be reasonably necessary to cure the breach so long as TSP 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 unless the Joint Board, in its sole discretion, agrees in writing to extend such time.

(b) With respect to a breach declared under clause (l), the Joint Board may declare an anticipatory breach under Section 16.5, in which case the provisions of Section 16.5 shall apply.

(c) Notwithstanding the foregoing, the Joint Board may, without notice and without awaiting lapse of the period to cure any default, in the event of existence of a condition on or affecting the Project which the Joint Board believes poses an immediate and imminent danger to public health or safety, rectify the dangerous condition at TSP's cost, and so long as the Joint Board undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose the Joint Board to any liability to TSP and shall not entitle TSP to any other remedy, it being acknowledged that the Joint Board has a paramount public interest in providing and maintaining safe public use of and access to the Project. The Joint Board'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 breach 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, the Joint Board may declare that a "TSP Event of Default" has occurred and notify TSP to discontinue the Work under this Contract. The declaration of a TSP Event of Default shall be in writing and given to TSP and surety. In addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract Documents (but in each case subject to the limitation of liability set forth in Section 17.1), the Performance Bond(s), the Maintenance Bond(s) and any letters of credit, if a TSP Event of Default shall occur, the Joint Board shall have the following rights without further notice and without waiving or releasing TSP from any obligations and TSP shall have the following obligations (as applicable):

(a) the Joint Board may terminate this Contract or a portion thereof, including TSP's rights of entry upon, possession, control, operation and maintenance of the Project, in which case, the provisions of Sections 15.2, 15.3 and 15.4 shall apply with equal force and effect as if the termination was for convenience or expiration of the Contract;

(b) If, and as directed by the Joint Board, TSP shall withdraw from all Project Sites or Toll Facilities (other than the CSC) specified by the Joint Board and shall remove, at the Joint Board's direction, materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any TSP-Related Entity in the performance of the Work;

(c) TSP shall deliver to the Joint Board documents and facilities related to the Project that the Joint Board deems necessary for completion of the Work;

(d) TSP shall confirm the assignment to the Joint Board of the Subcontracts requested by the Joint Board and TSP shall terminate, at its sole cost, all other Subcontracts;

(e) The Joint Board may, in its sole discretion, deduct and offset any such amounts payable by TSP to the Joint Board, including reimbursements owing, Delay Liquidated Damages, Performance Liquidated Damages, Performance Stipulated Damages, an amount the Joint Board deems advisable to cover any existing or threatened claims, liens and stop notices of Subcontractors, laborers, or Utility owners against TSP or against the Joint Board, the amount of any Losses that have accrued, the cost to complete or remediate uncompleted Work or Nonconforming Work or other damages or amounts that the Joint Board has determined are or may be payable to the Joint Board under the Contract Documents against amounts otherwise payable by the Joint Board to the TSP;

(f) The Joint Board may draw or realize upon any bonds, funds, collateral or security then held by the Joint Board;

(g) The Joint Board may appropriate any or all materials, supplies, Hardware, Software and equipment at the Project Site (including the CSC, but only to the extent that the Hardware, Software and equipment at the CSC is used exclusively in connection with the Project) as may be suitable and acceptable and may direct the surety to complete this Contract or may enter into an agreement for the completion of this Contract 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 requirements of the Contract Documents, including completion of the Work by the Joint Board; and/or

(h) If the Joint Board exercises any right to perform any obligations of TSP, in the exercise of such right the Joint Board 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 the Joint Board deems necessary and reasonable to employ and pay such professionals and contractors and obtain materials, equipment, Hardware and Software 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. In addition to other damages that may be applicable under the Contract Documents, if a TSP Event of Default shall have occurred during performance of the TCS Installation Work, TSP, surety and each Guarantor shall be jointly and severally liable to the Joint Board for all costs reasonably incurred by the Joint Board or any party acting on the Joint Board's behalf in completing the TCS Installation Work or having the TCS Installation Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased Operations and Maintenance and financing costs). The preceding sentence shall expressly include all Operations and Maintenance Work and Work to be performed during the TCS Operations and Maintenance Term. Upon occurrence of an Event of

Default and so long as it continues, the Joint Board shall be entitled to withhold all or any portion of further payments to TSP until the later of (i) the System Acceptance Date, or (ii) the date on which the Joint Board otherwise accepts the TCS as complete or determines that it will not proceed with completion, at which time the Joint Board will determine whether and to what extent TSP is entitled to further payments. Promptly following such System Acceptance Date or the date on which the Joint Board otherwise accepts the TCS as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and the Joint Board shall notify TSP, its surety and each Guarantor in writing of the amount, if any, that TSP, its surety and each Guarantor shall pay the Joint Board or the Joint Board shall pay TSP or its surety with respect thereto. All costs and charges incurred by the Joint Board, including attorneys', consultants', accountants' and expert witness fees and costs, together with the cost of completing the TCS Installation Work under the Contract Documents and any other deduction that the Joint Board would be entitled to make with respect to a Final Payment of the Total Toll Collection System Capital Price, will be deducted from any moneys due or which may become due TSP or its surety. If such expense exceeds the sum which would have been payable under this Contract, then TSP and its surety(ies) and each Guarantor shall be liable and shall pay to the Joint Board the amount of such excess. If the surety or Guarantor fails to pay such amount immediately upon the Joint Board's demand, then the Joint Board shall be entitled to collect interest from the surety or Guarantor on the amounts the Joint Board is required to pay in excess of the remaining balance of the Total Toll Collection System Capital Price. The interest rate which the surety and each Guarantor shall pay shall be the lesser of (a) 12% per annum or (b) the maximum rate allowable under applicable Law. The interest rate shall accrue on all amounts the Joint Board has had to pay excess of the remaining balance of the Total Toll Collection System Capital Price.

16.2.3. TSP acknowledges that if a default under Section 16.1.1(i) or (j) occurs, such event could impair or frustrate TSP's performance of the Work. Accordingly, TSP agrees that upon the occurrence of any such event, the Joint Board shall be entitled to request of TSP, 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 of delivery of the request shall entitle the Joint Board to terminate this Contract and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Joint Board shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from the Joint Board'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 this Contract and the Performance Bond(s), the Warranty Bonds, the Maintenance Bonds and any letter of credit.

16.2.4. In lieu of the provisions of this Section 16.2 for terminating this Contract and completing the Work, the Joint Board may, in its sole discretion, pay TSP for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Contract. No claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by TSP.

16.2.5. If this Contract 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 the Joint Board of any one or more rights or remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by the Joint Board of any or all other such rights or remedies, each of which shall be cumulative.

16.2.7. If the Joint Board suffers damages as a result of TSP's breach or failure to perform an obligation under the Contract Documents, then, subject to the limitation on liability contained in Section 17, the Joint Board shall be entitled to recovery of such damages from TSP regardless of whether the breach or failure that gives rise to the damages ripens into a TSP Event of Default.

16.2.8. TSP and Surety shall not be relieved of liability for continuing Delay Liquidated Damages, Performance Liquidated Damages or Performance Stipulated Damages on account of a default by TSP hereunder or by the Joint Board's declaration of a TSP Event of Default, or by actions taken by the Joint Board under this Section 16.2.

16.2.9. The Joint Board's remedies with respect to Nonconforming Work shall include the right to accept such Work and reduce the Total Toll Collection System Capital Price in lieu of the remedies specified in this Section 16.

16.2.10. If the Joint Board exercises any right to perform any obligations of TSP with respect to Work, in the exercise of such rights the Joint Board may, among other things:

(a) Perform or attempt to perform, or cause to be performed, such work;

(b) Employ security guards and other safeguards to protect the work;

(c) Spend such sums as Joint Board deems necessary and reasonable to employ and pay such engineers, consultants, suppliers, contractors and customer service representatives, including one or more replacement contractor(s), as may be required for the purpose of completing the work;

(d) Take possession of the TCS and Toll Facilities and of all materials, equipment, tools and supplies located there which are owned or provided by TSP

(excluding the CSC, but including any materials, equipment, tools and supplies located there and used exclusively for the Project);

(e) Draw on and use proceeds from the Performance Bond to pay such sums;

(f) Execute all applications, certificates and other documents as may be required to perform the work;

(g) Make decisions respecting, assume control over and continue the operation of the TCS and Toll Facilities as the Joint Board determines appropriate;

(h) Modify or terminate any contractual arrangements, including any Subcontracts;

(i) Take any and all other actions which the Joint Board may in its sole discretion consider necessary to perform the work; and/or

(j) Prosecute and defend any action or proceeding incident to operating or maintaining the TCS or Toll Facilities.

16.3 Failure to Comply Caused by Delay Event

Notwithstanding anything to the contrary contained herein, the Parties agree that the term "TSP Event of Default" shall specifically exclude TSP's failure to meet a Completion Deadline, if such failure is caused solely and directly by an event or events beyond TSP's control, which event was not due, in whole or in part, to the breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of any TSP-Related Entity, and which delay could not have been avoided by due diligence and use of reasonable efforts by TSP. The foregoing circumstance is referred to herein as a "Delay Event," with the understanding that the term "Delay Event" does not apply in cases where the delay to the Critical Path is resolved by extension of the applicable Completion Deadline(s) under Section 13. Delay Events shall only apply to the particular element of the Work with respect to which it has occurred and shall not apply to any other aspect of the Work. If TSP fails to meet the Project Schedule as a result of a Delay Event, the Joint Board shall not be entitled to terminate this Contract or exercise any of the remedies described in Section 16.2 for such failure of TSP to perform, except as follows: (i) if TSP fails to perform or delays the performance of any Work as the result of a Delay Event, then the Joint Board shall have the right, but not the obligation, to cause third parties to perform such Work, and, in such event, the cost of such Work shall be deducted from the Contract Price; and (ii) occurrence of a Delay Event shall not excuse TSP from its obligation to pay damages, including Liquidated Damages, for failure to achieve Mobilization Readiness or Tolling Readiness by the applicable Completion Deadline; provided, however, that to the extent that TSP is excused from payment of Liquidated Damages by reason of Section 17 or otherwise, the Joint Board shall be entitled to treat the Delay Event as a

TSP Event of Default and terminate this Contract and exercise any and all remedies available under the Contract Documents. TSP shall promptly notify the Joint Board in writing of any occurrence of a Delay Event and of the steps that TSP intends to implement to mitigate the delays arising therefrom.

16.4 Right to Stop Work for Failure by IFA and/or KYTC to Make Undisputed Payment

TSP shall have the right to suspend its Work if the Joint Board fails to pay undisputed amounts due to TSP hereunder within 30 business days from the due date for such payment and the Joint Board fails to make such payment within 10 business days after the Joint Board receives from TSP written notice of such delinquency. Any such work stoppage shall be considered a suspension for convenience under Section 14. TSP shall not have the right to terminate this Contract for default as the result of any failure by the Joint Board to make an undisputed payment due hereunder, but TSP shall have the right to declare a Termination for Convenience under Section 15 by delivering to the Joint Board a written Notice of Termination for Convenience specifying its effective date, if such nonpayment of an undisputed amount continues for more than 180 Days after the Joint Board's receipt of written notice of nonpayment from TSP.

16.5 Anticipatory Breach

16.5.1. TSP recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous breaches or failures to perform by TSP, even if individual instances are not material or are eventually cured, will undermine the confidence and trust essential to the success of this Contract and will have a material, cumulative adverse impact on the value of this Contract to the Joint Board. TSP acknowledges and agrees that the measures for determining the existence of such a pattern or practice described in the definition of Persistent Breach are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

16.5.2. Accordingly, in the event the Joint Board issues a notice under Section 16.1.2 with respect to a breach under Section 16.1.1(l) for a Persistent Breach, the Joint Board shall have the right to declare an anticipatory breach of this Contract by TSP. So long as the circumstances under the definition of Persistent Breach have occurred, any such declaration of anticipatory breach shall be valid, conclusive and binding, and such breach shall be deemed material even if such items comprising the Persistent Breach shall have been cured.

16.5.3. TSP shall have a reasonable period of time, in no event to exceed the time period for each requirement stated below (measured from the date the Joint Board issues notice of anticipatory breach), to fully and completely deliver all of the following assurances of performance, which TSP agrees and acknowledges are (i) the minimum necessary to tender adequate assurance of performance and (ii) reasonable, fair and

appropriate to bring to a halt the pattern and practice of continuing, repeated and numerous breaches and failure to perform:

(a) Full and complete cure of all outstanding TSP defaults, to be completed within 60 Days (provided, however, that the foregoing shall not modify or limit the Joint Board's rights to declare a TSP Event of Default or exercise rights and remedies with respect thereto or to other breaches under Section 16.1.1 that have no or a shorter cure period than 60 Days);

(b) Any new Key Personnel replacement, to the extent required by the Joint Board, each replacement to be acceptable to the Joint Board in its sole discretion, to be completed within 60 Days;

(c) A revised and restated Quality Management Plan, meeting best industry standards and practices, in form and content acceptable to the Joint Board in its good faith discretion, to be completed and delivered within 60 Days. As part of the revised plans, the Joint Board may, in its sole discretion, increase the level of the Joint Board involvement and oversight, at the sole cost and expense of TSP and such involvement shall not be cause for any relief or rights on the part of TSP under the Contract Documents or otherwise;

(d) Replacement of each Subcontractor that the Joint Board reasonably determines is or was a material source of any continuing, repetitive or chronic breach or failure to perform (including any Subcontractor with responsibility for quality assurance or quality control), with a substitute Subcontractor acceptable to the Joint Board, in its good faith discretion, within 60 Days; and

(e) Notwithstanding any limitation on the maximum amount of the performance bonds set forth under Section 8.1 and Section 8.2 or otherwise, TSP shall increase the bonded sums by 100%, to be completed within 15 Days or, alternatively, provide a letter of credit or cash collateral in such amount or otherwise provide additional security acceptable to the Joint Board, in its sole discretion; provided, however, that the foregoing is not intended to increase the amounts of any applicable limitation of liability set forth in Section 17.1.

16.5.4. If for any reason TSP fails to complete any element of the assurances of performance described in this Section 16.5 within the applicable time period, the same shall constitute an uncured material TSP Event of Default. Thereupon, the Joint Board, without further notice and cure period, shall be able to exercise all rights and remedies under Section 16.2 and otherwise under this Contract, at law or in equity.

16.5.5. Nothing contained in this Section 16.5 shall modify, alter, discharge or release TSP from any obligations to pay Delay Liquidated Damages, Performance Liquidated Damages, Performance Stipulated Damages or other compensation under this Contract.

SECTION 17. LIMITATION OF TSP'S LIABILITY

17.1 Limitation of TSP's Liability

17.1.1. Limitation of Liability Until System Acceptance

To the extent permitted by applicable Law, TSP's liability under this Agreement for damages (including actual, indirect, special, consequential, multiple or punitive damages)for the period prior to System Acceptance (whether arising in contract, negligence or other tort, or any other theory of law) shall not exceed the sum of (a) an amount equal to $_____ ***[insert Total Toll Collection System Capital Price]***; plus (b) any amounts paid or payable by TSP which are covered by insurance proceeds; plus (c) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, gross negligence or willful misconduct on the part of any TSP-Related Entity with respect to or in connection with the Work, the TCS, this Agreement or Project; and plus (d) TSP's indemnification obligations under Section 18 regarding third party suits, actions, proceedings, judgments and claims. In addition, Delay Liquidated Damages, Performance Liquidated Damages and Performance Stipulated Damages assessed against and paid by TSP for events occurring prior to System Acceptance will be credited towards the amount set forth in clause (a) above, and such liquidated and stipulated damages are also subject to certain limits as set forth in Sections 4.10.8 and 4.12.4 above. For purposes of clarification, an event, occurrence or action that occurred prior to System Acceptance, but which may become known or actionable after System Acceptance is intended to fall under this Section 17.1.1.

17.1.2. Limitation of Liability After System Acceptance

To the extent permitted by applicable Law, TSP's liability under this Agreement for damages (including actual, indirect, special, consequential, multiple or punitive damages) for the period from and after System Acceptance (whether arising in contract, negligence or other tort, or any other theory of law) shall not exceed the sum of (a) an amount equal to $8,000,000; plus (b) any amounts paid or payable by TSP which are covered by insurance proceeds; plus (c) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, gross negligence or willful misconduct on the part of any TSP-Related Entity with respect to or in connection with the Work, the TCS, this Agreement or the Project; and plus (d) TSP's indemnification obligations under Section 18 regarding third party suits, actions, proceedings, judgments and claims. In addition, Performance Liquidated Damages and Performance Stipulated Damages assessed against and paid by TSP for events occurring after System Acceptance will be credited towards the amount set forth in clause (a) above, and such liquidated and stipulated damages are also subject to certain limits as set forth in Sections 4.10.8 and 4.12.4 above.

17.2 Potential Increase in Limitation of TSP's Liability

In the event that the limitation of TSP's liability described in Section 17.1.1(a) or Section 17.1.2(a) above, as applicable, is reached (i.e., prior to System Acceptance TSP's liability for damages is an amount equal to or exceeding the Total Toll Collection System Capital Price, and after System Acceptance TSP's liability for damages is an amount equal to or exceeding $8,000,000))and, accordingly, a default under Section 16.1.1(n) has occurred, TSP may cure such default if it agrees in writing to increase the amount set forth in Section 17.1.1(a) or Section 17.1.2(a), as applicable, by an amount no less than twenty-five percent (25%) of the amount set forth in Section 17.1.1(a) or Section 17.1.2(a), as applicable. TSP's cure, if any, must be implemented within five (5) business days after it receives notice of such default from the Joint Board. If the TSP fails to respond during such five (5) business day period or elects not to increase the amount set forth in Section 17.1.1(a) or Section 17.1.2(a), as applicable,, the Joint Board shall have all rights and remedies set forth in the Contract Documents, including Section 16.2 hereof. This Section 17.2 shall apply during any time in which there is a default under Section 16.1.1(n).

SECTION 18. INDEMNIFICATION

18.1 Indemnifications by TSP

18.1.1. Subject to Section 17, and Section 18.1.3, TSP shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, costs, penalties, fines, damages, losses, liabilities and response costs, including any injury to or death of persons or damage to or loss of property, and including penalties, fines, attorneys', accountants' and expert witness fees and costs incurred in connection with the enforcement of this indemnity, arising out of, relating to or resulting from:

(a) The breach or alleged breach of this Contract by any TSP-Related Entity; and/or

(b) The failure or alleged failure by any TSP-Related Entity to comply with the Governmental Approvals or any applicable Laws (including Environmental Laws); and/or

(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 and/or the System, or arising out of any use in connection with the Project and/or the system of methods, processes, software, designs, information, or other items furnished or communicated to the Joint Board or another indemnified party pursuant to this agreement provided that if infringement can be avoided by modification to the allegedly infringing article, the Joint Board agrees to allow such modification, at TSP's sole cost and expense, unless the form, fit or function of the allegedly infringing article or the system is, in the Joint Board's sole determination, adversely affected; and further provided that this indemnity shall not apply to any infringement to the extent resulting from (i) the Joint Board's failure to comply with specific written instruction regarding use provided to the Joint Board by TSP; (ii) compliance with written specifications prescribed by the Joint Board with respect to which (1) TSP has complied in full; (2) the reason for the infringement solely arises out of the Joint Board's specifications, and (3) TSP has notified the Joint Board in writing in advance of potential infringement and the Joint Board has directed TSP to proceed and disregard the potential infringement, or (iii) modifications to the deliverables not made by a TSP-Related Entity; and/or

(d) The actual or alleged negligent act, error or omission, gross negligence or willful misconduct of any TSP-Related Entity in or associated with performance of the Work; and/or

(e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any

TSP-Related Entity with respect to any payment for the Work made to or earned by any TSP-Related Entity; and/or

(f) Any and all stop notices and/or liens filed in connection with the Work, including all reasonable expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or lien, provided that the Joint Board is not in default in payments owing to TSP with respect to such Work, and/or

(g) Any spill or release or threatened spill or release of a Hazardous Material (i) which was brought onto any Project Site by any TSP-Related Entity, or (ii) attributable to the negligent acts or omissions, gross negligence, willful misconduct, or breach of contract or Law by any TSP-Related Entity; and/or

(h) The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any TSP-Related Entity with work for the Ohio River Bridges Project being performed by other contractors, or failure of any TSP-Related Entity to cooperate reasonably with such other contractors in accordance therewith.

18.1.2. Subject to Sections 17 and 18.1.3, TSP shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, costs, penalties, fines, damages, losses, liabilities and response costs, including any injury to or death of persons or damage to or loss of property, and including penalties, fines, attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from Errors, omissions, inconsistencies or other defects in the Project and/or System design, installation, integration or construction, regardless of whether such Errors, omissions, inconsistencies or defects were also included in any Owner Design Documents or Reference Information Documents; provided, however, that the foregoing indemnity shall not apply to the extent that the Errors, omissions, inconsistencies or other defects were specifically included in the Owner Design Documents or Reference Information Documents and this Agreement expressly provides that TSP may rely on such Owner Design Documents or Reference Information Documents).

18.1.3. Subject to the releases and disclaimers herein, TSP's indemnity obligation shall not extend to any Loss, damage or cost to the extent that such Loss, damage or cost was caused by:

(a) the negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party;

(b) the Joint Board's material breach of any of its obligations under the Contract Documents; or

(c) any class action certification, class action cause of action or class action settlement due to the Joint Board's toll enforcement activities against toll violations (including attorneys' fees, fines and penalties) on the Ohio River Bridges Project (except this clause (c) shall not apply to the extent that such certifications, actions or settlements arise out of, relate to or result from the negligent acts or omissions, gross negligence, willful misconduct, or breach of contract or Law by any TSP-Related Entity).

18.1.4. In claims by an employee of TSP, 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 any limitations under workers' compensation, disability benefit or other employee benefits laws, including limitations on the amount or type of damages, compensation or benefits payable by or for TSP or a Subcontractor.

18.1.5. TSP hereby acknowledges and agrees that it is TSP's obligation to cause the TCS to be designed, installed and operated so as to meet the intent of the Contract Documents and to satisfy the Performance Requirements, and that the Indemnified Parties are fully entitled to rely on TSP's performance of such obligation. TSP further agrees that any certificate, review and/or approval by the Joint Board and/or others hereunder shall not relieve TSP of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations under this Section 18.

18.2 Defense and Indemnification Procedures

18.2.1. If the Joint Board 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 the Joint Board gives notice thereof to TSP pursuant to Section 21.9.2 or Section 21.11, as applicable, then the Joint Board shall have the right to conduct its own defense unless either an insurer accepts defense of the claim within the time required by Law or TSP 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, the Joint Board and TSP shall cooperate in the defense as required by the insurance policy. 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 TSP, then within thirty (30) days after receipt of the tender, it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a notice stating that TSP:

(a) 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;

(b) Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

(c) Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

18.2.4. If TSP accepts the tender of defense under Section 18.2.3(a) and (b), TSP shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and TSP shall otherwise control the defense of such claim including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

(a) TSP shall fully and regularly inform the Indemnified Party in writing of the progress of the defense and of any settlement discussions; and

(b) The Indemnified Party shall fully cooperate in said defense.

Notwithstanding the foregoing, if TSP has reached any liability limit or may reach a liability limit under this Agreement with respect to an item tendered pursuant to this indemnity, TSP shall not be entitled to select legal counsel for the Indemnified Party.

18.2.5. If TSP responds to the tender of defense as specified in Section 18.2.3(c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

18.2.6. Notwithstanding Sections 18.2.3(a) and 18.2.3(b), the Indemnified Party may revocably assume its own defense at any time by delivering to TSP 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:

(a) A conflict exists between it and TSP which prevents or potentially prevents TSP from presenting a full and effective defense;

(b) TSP is otherwise not providing an effective defense in connection with the claim; or

(c) TSP lacks the financial capacity to satisfy potential liability or to provide an effective defense.

18.2.7. If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, TSP shall reimburse on a current basis all reasonable costs and expenses the indemnified party incurs in

investigating and defending. If the Indemnified Party is entitled to and elects to conduct its own defense, then:

(a) In the case of a defense that otherwise would be conducted under Section 18.2.6(a), the Indemnified Party shall have the right to settle or compromise the claim with each of TSP' relevant insurer(s)' prior written consent, which in each case shall not be unreasonably withheld or delayed;

(b) In the case of a defense that otherwise would be conducted under Section 18.2.6(b), the Indemnified Party and TSP shall consult 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 Agreement, and the Indemnified Party shall have the right to settle or compromise the claim with TSP's prior written consent without prejudice to the Indemnified Party's rights to be indemnified by TSP; and

(c) In the case of a defense conducted under Section 18.2.6(c), the Indemnified Party shall, subject to the rights of any insurer providing coverage for the claim under a policy required under this Agreement, have the right to settle or compromise the claim without TSP's prior written consent and without prejudice to its rights to be indemnified by TSP.

18.2.8. A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 18.2.6 shall be resolved according to the Dispute Resolution procedures, but the foregoing shall not preclude an Indemnified Party from preserving its rights or defending the claim pending such resolution.

18.3 Indemnification by the Joint Board

It is recognized that the Joint Board may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Materials which may currently be present on the Project Site. It is further recognized that certain state and federal statutes provide that individuals and firms may be held liable for damages and claims related to Hazardous Materials under such doctrines as joint and several liability and/or strict liability. It is not the intention of the parties that TSP be exposed to any such liability arising out of (a) proper Hazardous Materials Management activities in connection with pre-existing Project Site contamination, whether known or unknown (except as otherwise provided in Section 18.1.1(g)), and/or (b) the activities of any Persons other than any TSP-Related Entity. Accordingly, the Joint Board shall, to the extent permitted by applicable law, indemnify, defend and hold TSP harmless from, any and all Third Party Claims, damages, losses, liabilities and costs, including penalties, fines, attorneys', accountants' and expert witness fees and costs, arising out of, or in connection with, bodily injury (including death) to persons, damage to property, or environmental removal or response costs arising out of the

items expressly described in clauses (a) and (b) above, but specifically excluding those conditions for which TSP has agreed to be responsible as described in Section 18.1.1(g).

18.4 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.

18.5 CERCLA Agreement

The indemnities set forth in Sections 18.1.1(g) and 18.23 are intended to operate as agreements pursuant to Section 9607(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to insure, protect, hold harmless and indemnify the Indemnified Parties.

18.6 Intent of Indemnity for Breach of Agreement

The requirement to provide an indemnity for breach of contract set forth in Section 18.1.1(a) and (g) is intended to provide protection to the Joint Board with respect to Third Party Claims associated with such breach. It is not intended to provide the Joint Board with an alternative cause of action for damages incurred directly by the Joint Board with respect to such breach.

18.7 No Relief from Responsibility

No rights of the Joint Board described in Section 18.1.1 above, no exercise or failure to exercise such rights, and no certificates or statements by the Joint Board regarding completion or acceptance, shall:

(a) relieve TSP of its responsibility for the selection and the competent performance of all TSP-Related Entities;

(b) relieve TSP of any of its obligations or liabilities under the Contract Documents;

(c) be deemed or construed to waive any of the Joint Board's rights and remedies under the Contract Documents, applicable law or in equity; or

(d) be deemed or construed as any kind of representation or warranty, express or implied, by the Joint Board.

18.8 Right to Rely

Notwithstanding the provisions of Section 18.7, (a) TSP shall be entitled to rely on specific written directions the Joint Board gives under this Contract, (b) the Joint Board is not relieved from any liability arising out of a material misrepresentation under any written statement the Joint Board knowingly and intentionally delivers, and (c) the Joint Board is not relieved from its obligations under the Contract Documents.

SECTION 19. PARTNERING AND DISPUTE RESOLUTION

19.1 General Dispute Resolution Provisions

Partnering will be encouraged in preference to formal dispute resolution mechanisms. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to resolve any issues that may arise during performance of the Work.

19.2 Partnering

19.2.1. The provisions of this Section 19.2 are not part of the informal resolution procedures or the dispute resolution procedures contemplated under this Contract. Compliance with the provisions of this Section 19.2 or the terms of any partnering charter is not required as a condition precedent to any Party's right to initiate a claim or seek resolution of any dispute under the relevant procedures specified in Section 19.

19.2.2. The Joint Board and TSP have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Contract through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

19.2.3. 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 Contract 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.

19.2.4. 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.

19.2.5. Each of the Joint Board and the TSP may notify the other Party of issues with respect to which such Party desires to engage in a partnering meeting at any time.

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

19.3 Disputes Governed by this Section; Disputes; Priorities

If partnering fails to resolve an issue and either Party elects to pursue a formal dispute with the Joint Board, the dispute shall be resolved pursuant to the dispute

resolution procedures established in this Section 19. Disputes governed by this Section include any Claim or dispute arising out of, relating to, or in connection with this Contract that is not resolved by partnering per Section 19.2, including the question as to whether such dispute is subject to nonbinding arbitration, shall be resolved pursuant to this Section 19.3.

(a) Resolutions of Claims and disputes pursuant to this Section 19.3 shall be final, binding, conclusive and enforceable as set forth in this Section 19.3.

(b) FAILURE OF TSP 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 CONTRACT DOCUMENTS AND SHALL OPERATE AS A BAR TO THE DISPUTE OR CLAIM. THIS SECTION 19.3 SHALL NOT BAR A CLAIM OR DISPUTE IF THE FAILURE TO MEET APPLICABLE DEADLINES IS DUE TO CONDUCT ON BEHALF OF THE JOINT BOARD OR ITS REPRESENTATIVES.

(c) The Parties adopt these expedited methods for resolving disputes between or among the Joint Board and TSP, and Subcontractors, all of whom are proper parties to these dispute resolution procedures.

Section 19 shall not apply to (i) claims that are not actionable against the Joint Board by TSP on its own behalf or on behalf of any of its Subcontractors in accordance with Section 19.4, (ii) claims arising solely in tort; (iii) claims for indemnity under Section 18; (iv) claims for injunctive relief; (v) claims against insurance companies, including any Subcontractor dispute that is covered by insurance; (vi) any dispute based on remedies expressly created by statute; or (vii) any dispute that is actionable only against a bonding company.

19.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes

(a) For purposes of this Section 19, a “Subcontractor Dispute” shall include any dispute by a Subcontractor, including any pass-through claims by a lower tier Subcontractor, against TSP that is actionable by TSP against the Joint Board and arises from Work, materials or other services provided or to be provided under the Contract Documents. If TSP determines to pursue a dispute against the Joint Board that includes a Subcontractor Dispute, the following additional conditions shall apply:

(b) TSP shall identify clearly in all submissions pursuant to this Section 19, that portion of the dispute that involves a Subcontractor Dispute.

(c) Failure of TSP to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related dispute by TSP, as provided

hereunder, shall constitute a release and discharge of the Joint Board by TSP on account of, and with respect to, such Subcontractor Dispute.

(d) TSP shall require in all Subcontracts that all Subcontractors of any tier (a) agree to submit Subcontractor Disputes to TSP in a proper form and in sufficient time to allow processing by TSP in accordance with this Section 19; (b) agree to be bound by the terms of this Section 19 to the extent applicable to Subcontractor Disputes; (c) agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Section 19 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by law, including institution of a lawsuit against TSP; (d) agree that any Subcontractor Dispute brought against a bonding company, that also is actionable against the Joint Board through TSP, shall be stayed until completion of all steps required under this subsection; and (e) agree that the existence of a dispute resolution process for disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against the Joint Board. The Subcontractors shall, at all times, have rights and remedies only against TSP.

19.5 Burden of Proof

The Party bringing a Claim or dispute shall bear the burden of proving the same.

19.6 Informal Resolution as Condition Precedent

As a condition precedent to the right to have any dispute resolved pursuant to the dispute resolution procedures or by the Clark County, Indiana Circuit/Superior Court located in Clark County, Indiana, the claiming Party must first attempt to resolve the dispute directly with the responding Party through the informal resolution procedures described in Section 19.7. Time limitations set forth for those Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the informal resolution procedures agreed upon by the Parties shall pertain to the particular dispute only and shall not affect the time limitations for informal resolution procedures applicable to any other or subsequent Disputes.

19.7 Informal Resolution Procedures

19.7.1. 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(s). 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 Contract Documents;

iv. If applicable, the estimated dollar amount of the dispute, and how that estimate was determined (including any cost 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 and the Project Schedule);

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 the dispute is served in good faith;

ii. Except as to specific matters stated in the notice as being unknown or subject to discovery, all supporting information is reasonably believed by the claiming Party to be accurate and complete;

iii. The dispute accurately reflects the amount of money or other right, remedy or relief to which the claiming Party reasonably believes it is entitled; and

iv. The Authorized Representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party.

(c) The Parties shall attempt in good faith to resolve such dispute within fifteen (15) days of delivery of the notice of the dispute to the responding Party. If the responding Party agrees with the claiming Party's position and desired resolution of the dispute, it shall so state in a written response. The notice of the dispute and such response shall suffice to evidence the Parties' resolution of the subject dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' Authorized Representatives shall state the resolution of the dispute in writing.

19.7.2. Public Finance Director Meetings

If the dispute is not resolved pursuant to Section 19.7.1(c), then commencing within fifteen (15) Business Days after the notice of the dispute is served and concluding ten (10) Business Days thereafter, the Chief Executive Officer of TSP and the Public Finance Director of the IFA or the Public Finance Director's designee and the Joint Board's Authorized Representative, shall meet and confer, in good faith, to seek to resolve the dispute raised in the claiming Party's notice of the dispute. If they succeed in resolving the dispute, TSP and the Joint Board shall memorialize the resolution in writing.

19.7.3. Failure to Resolve Dispute with Informal Resolution Procedures

(a) If a dispute is not timely resolved under the informal resolution procedures in Sections 19.7.1 and 19.7.2, then the Parties may mutually agree to initiate mediation.

(b) If a dispute is not timely resolved under the informal resolution procedures or by mediation, or the Parties do not mutually agree to initiate mediation or other alternative dispute resolution process, either Party may:

i. As a condition precedent to the right to have any dispute within the jurisdiction of the Arbitrator pursuant to Section 19.8.1 resolved by the Clark County, Indiana Circuit/Superior Court located in Clark County, Indiana, refer the dispute to the Arbitrator for an Arbitrator Decision; or

ii. With respect to all other disputes, as well as disputes submitted to but not finally resolved through the Arbitrator, pursue any other relief that may be available in the Clark County, Indiana Circuit/Superior Court located in Clark County, Indiana, pursuant to Section 19.8.2.

19.8 Formal Resolution Procedures

19.8.1. Non-Binding Arbitration

(a) It is the intent of the Parties to resolve the dispute between them whenever possible by mutual and voluntary settlement rather than through any binding dispute resolution process. In support of this, the Parties acknowledge that, except as otherwise provided herein, if the dispute cannot be settled through the informal resolution procedures set forth in Section 19.7, the Parties agree first to submit their dispute to non-binding arbitration as a condition precedent to filing litigation under Section 19.8.2. The Parties recognize that non-binding arbitration is a process to assist them in resolving their disputes by making their own free and informed choices and that the neutral arbitrator will have no authority to impose a binding award on any Party but only to issue an advisory decision. The non-binding award cannot be entered as a

judgment in any court, except on mutual consent of the Parties, nor can it be cited as evidence or precedent with any preclusive effect in any court or other proceeding.

(b) A Party shall initiate the non-binding arbitration process by serving a written demand for arbitration on the other Party's designated agent. Unless otherwise indicated by notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The arbitration demand shall contain a concise statement of the following:

i. The date of the act, inaction or omission giving rise to the dispute;

ii. An explanation of the dispute, including a description of its nature, circumstances and cause;

iii. A reference to any pertinent provision(s) from the Contract Documents; and

iv. If applicable, the estimated dollar amount of the dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected).

(c) The receiving Party shall respond to the demand for arbitration within twenty-one (21) days of receipt thereof.

(d) The Parties shall attempt in good faith to select an arbitrator to which they mutually agree within ten (10) days of the demand for non-binding arbitration. If the Parties are unable to agree on an arbitrator, the Parties agree to select from the most current list of arbitrators as maintained by the Indiana Supreme Court Division of State Court Administration. If the Parties cannot agree, the arbitrator shall be selected through a striking process by which the initiating Party shall strike first. The Parties shall proceed with the striking process until only one arbitrator remains on the list. If the remaining arbitrator does not serve, then the arbitrator's whose name was stricken immediately before shall be selected. This procedure shall be repeated, if necessary, until an arbitrator who agrees to serve is selected. Unless mutually agreed otherwise, the Parties shall complete the process of selecting an arbitrator within twenty (20) days of the Notice initiating non-binding arbitration.

(e) The cost of the arbitration shall be equally divided between the Parties, regardless of outcome.

(f) Unless otherwise agreed, the arbitration hearing shall take place in Jeffersonville, Indiana, at a location to be mutually agreed upon or determined by the arbitrator. The hearing shall be scheduled for a date no later than ninety (90) days after the demand for arbitration is sent.

(g) The rules of discovery shall apply. Notwithstanding the preceding sentence, each Party shall disclose to the other Party witnesses and exhibits intended for use in the proceedings. The claiming Party shall make all of its disclosures no later than forty-five (45) days after the date of the filing of the demand for arbitration under Section 19.8.1(b). The responding Party shall make all of its disclosures no later than thirty (30) days after such date. Unless agreed otherwise, each Party shall be entitled to take no more than two depositions.

(h) No later than thirty (30) days before the hearing, each Party shall provide the arbitrator and the opposing Party with a listing of witnesses and documentary evidence to be considered. The listing of witnesses shall designate those to be called in person, by deposition and/or by written report.

(i) Unless otherwise agreed, all documents the Parties desire to be considered in the arbitration process shall be filed with the Arbitrator and exchanged between the Parties no later than fifteen (15) days prior to the arbitration hearing. In addition, no later than five (5) days prior to hearing, each Party may file with the arbitrator a pre-arbitration brief setting forth the factual and legal positions as to the issues being arbitrated.

(j) Unless agreed otherwise, the arbitration hearing shall be limited to three (3) days, and the arbitrator shall issue its written determination within twenty (20) days of the close of the hearing and shall serve a copy of this determination on the Parties who participated in the arbitration.

(k) If the non-binding arbitration is not completed and the Parties do not reach a mutually agreeable settlement within one hundred twenty (120) days after initiation of the non-binding arbitration, either Party may continue to pursue the dispute by filing a complaint in the Clark County, Indiana Circuit/Superior Court located in Clark County, Indiana, or the Parties may mutually agree to extend the time for non-binding arbitration.

(l) If neither Party rejects the arbitrator's non-binding determination within thirty (30) days of its being issued by the arbitrator, such decision shall become final and binding as between the Parties, and shall be enforceable in any court of competent jurisdiction.

(m) If one Party rejects the arbitrator's determination, then it shall send a notice of its objection/rejection to the other Party within thirty (30) days of such decision and either Party may proceed with state court litigation as provided in Section 19.8.2.

(n) The non-binding arbitration proceedings shall be considered as settlement negotiations and shall be governed by Section 19.9.1.

(o) If the amount at issue in the dispute is greater than $5,000,000, then at the Joint Board's sole discretion the Dispute may proceed directly from the informal resolution procedures in Section 19.7.3 to state court litigation per Section 19.8.2. The Joint Board shall advise TSP of its decision to forgo the non-binding arbitration procedures by notice submitted no later than the date by which the response to an arbitration demand is due. For clarification, if there is no arbitration hearing and decision under the paragraph, then the attorneys' fees provisions in Section 19.8.2(b) shall not apply.

19.8.2. State Court Litigation

(a) If a Party rejects the arbitrator's determination in accordance with Section 19.8.1(m), or the Joint Board determines to forego non-binding arbitration in accordance with Section 19.8.1(o), then either Party may thereafter file a lawsuit in the Clark County, Indiana Circuit/Superior Court located in Clark County, Indiana.

(b) If the Party that rejected to the arbitrator's decision does not obtain a more favorable result at the trial court level in the state court litigation, that Party shall be responsible to pay for the litigation costs, including the attorneys' fees, incurred by the other Party in the state court litigation.

19.9 Confidentiality of Settlement Negotiations and Other Documents Used in Dispute Resolution Process

19.9.1. All discussions, negotiations, informal resolution procedures described in Section 19.7 and non-binding arbitration proceedings described in Section 19.8 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.

19.9.2. The Parties may also request a protective order in any arbitration, alternative dispute resolution or judicial proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the arbitrator or court shall be governed by the standards in the Indiana Rules of Evidence and Indiana Rules of Trial Procedure and/or Indiana's Administrative Rules, as applicable.

19.10 Administrative Hearings; Venue and Jurisdiction

19.10.1. The Joint Board acknowledges that TSP Claims are not subject to the jurisdiction of any Indiana administrative agency, and the Joint Board agrees that no defense based on failure to exhaust administrative remedies not otherwise set forth in this Contract may be raised in any court proceeding arising out of or relating to the Project.

19.10.2. The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at Law or in equity, that is permitted to be brought by a Party in court arising out of the Contract Documents shall be the Clark County, Indiana Circuit/Superior Court located in Clark County, Indiana.

19.11 Continuation of Disputed Work and Payments

19.11.1. At all times during dispute resolution procedures, TSP and all Subcontractors 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 Contract, except to the extent enjoined by order of a court or otherwise approved by the Joint Board in its sole discretion. TSP 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 TSP's position in connection with the dispute ultimately prevails.

19.11.2. During the course of any dispute resolution procedures, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

19.11.3. Throughout the course of any disputed Work, TSP shall keep complete records that provide a clear distinction between the incurred direct and indirect costs of disputed Work and that of undisputed Work. TSP shall provide the Joint Board access to all Project-related books and records on an Open Book Basis as the Joint Board desires to evaluate the dispute. The arbitrator shall have similar access to all such records. These records shall be retained for a period of not less than one (1) 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 Contract Documents).

19.11.4. During the course of any dispute resolution procedures, the Joint Board shall continue to pay to TSP when due all undisputed amounts owing under this Contract.

19.12 Records Related to Dispute

Throughout the course of any Work that is the subject of any dispute, TSP shall keep separate and complete records as required by Section 13 and Section 20. These records shall be retained for a period of not less than five years from the date of resolution of the Dispute.

19.13 Other Proceedings

Notwithstanding the provisions of this Section 19, TSP shall allow itself to be joined or cross-complained by the Joint Board with respect to any Claim into any administrative proceeding or other arbitration, mediation, litigation or other claim resolution proceeding conducted pursuant to the ETC Contract, the DB Contract, the

Development Agreement, the Revenue Control Manager Agreement, the Custodian Contract, the PPA or the Custody and Revenue Control Contract, and TSP shall permit the Joint Board to join the ETC Contractor, the DB Contractor, the TSP, the Revenue Control Manager and/or the Custodian into any proceedings conducted under this Section 19. In any such case, all related Claims, if any, between TSP and the Joint Board under the Contract Documents shall be resolved through such proceeding, and not through the procedures set forth elsewhere in this Section 19.

SECTION 20. DOCUMENTS AND RECORDS, INSPECTION AND TESTING

20.1 Reporting Requirements

20.1.1. TSP shall deliver to the Joint Board financial and narrative reports, statements, certifications, budgets and information as and when required under this Contract and the Technical Requirements, including the Monthly Project Management Reports and the Monthly Operations and Maintenance Reports.

20.1.2. TSP shall furnish, or cause to be furnished, to the Joint Board such information and statements as the Joint Board may reasonably request from time to time for any purpose related to the Project, this Contract or the other Contract Documents.

20.1.3. TSP shall furnish the periodic updated financial information required pursuant to Section 8.4, and upon request of the Joint Board for particular fiscal quarters, copies of all other financial statements and information reported by TSP and the Guarantor to their shareholders generally and of all reports filed by TSP and the Guarantor with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to the Joint Board as soon as practicable after furnishing such information to TSP's and the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as the case may be.

20.1.4. TSP shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by the Joint Board in connection with any Project financing. Without limiting the generality of the foregoing, TSP shall provide such information deemed necessary or desirable by the Joint Board for inclusion in the Joint Board's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2 12 regarding certain periodic information and notice of material events. TSP shall provide customary representations and warranties to the Joint Board and the capital markets as to the correctness, completeness and accuracy of any information furnished.

20.1.5. TSP shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by the Joint Board to assist or facilitate the submission by the Joint Board of any documentation, reports or analysis required by the State, the Commonwealth, FHWA and/or any other Governmental Entity with jurisdiction over the Project.

20.1.6. All information delivered by TSP under Sections 20.1.4 and 20.1.5 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

20.2 Maintenance of, Access to and Audit of Books and Records

20.2.1. The State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Contract or indirectly through a Subcontract. Acceptance of funds directly under this Contract or indirectly through a Subcontract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit, including, without limitation, any information which the Joint Board is entitled to audit under this Section 20.2.

20.2.2. TSP shall maintain at a Project administration office in Jeffersonville, Indiana, a complete set of all books and records prepared or employed by TSP in its management, scheduling, cost accounting and other activities related to the Work and the Project with sufficient detail and accuracy so as to provide a complete account of the operations and maintenance of the TCS and Toll Facilities and performance of Work pursuant to this Contract. Without limiting the provisions of Section 20.2, TSP shall make all such books and records available for inspection by the Joint Board and its Authorized Representatives, designees and legal counsel at all times during normal business hours, or at other reasonable times during the Term, in each case, without charge, and shall grant to the Joint Board and the State Auditor such audit rights and shall allow the Joint Board and the State Auditor such access to and shall furnish copies at no cost to the Joint Board or the State Auditor of such books and records as the Joint Board or the State Auditor may request in connection with the issuance of the NTP or with respect to any Change Orders, the resolution of disputes, and such other matters as the Joint Board or the State Auditor deems necessary. The Joint Board may conduct any such inspection upon forty-eight (48) hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. To avoid confusion, this paragraph shall remain in full force and effect regardless of whether either Party or both of the Parties have invoked the dispute resolution procedures herein.

20.2.3. 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 TSP has been overpaid under a previous invoice, the excess payment will be credited against current invoices or payments.

20.2.4. For cost and pricing data submitted in connection with Work other than that which is covered by any Change Orders, auditors and their representatives shall have the right to examine all books, records, documents and other data of TSP related to the negotiation of or performance of such Work for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted; provided, however, that the foregoing shall not apply to pricing based on adequate price competition,

established catalog or market prices of commercial items sold in substantial quantities to the public or prices set by law or regulation, in each case, as determined by the Joint Board. Such right of examination shall extend to all documents deemed necessary by the Joint Board and its representatives to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

20.2.5. All claims filed against the Joint Board shall be subject to audit at any time following the filing of the claim. The audit may be performed by employees of the Joint Board or the States' Parties or by an auditor under contract with the Joint Board or the States' Parties. No notice is required before commencing any audit before 60 Days after the later of (i) the expiration of the TCS Operations and Maintenance Term, or (ii) the termination of this Contract. Thereafter, the Joint Board shall provide 10 Days' notice to TSP and any Subcontractors or their respective agents before commencing an audit. TSP, Subcontractors or their agents shall provide adequate facilities, acceptable to the Joint Board, for the audit during normal business hours. TSP, Subcontractors or their agents shall cooperate with the auditors. Failure of TSP, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of TSP, Subcontractors or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder.

20.2.6. At a minimum, the auditors shall have available to them the following books, records, documents, data and other evidence:

i. With respect to proposed Change Orders and Change Directives, all Price Proposal documents;

ii. With respect to Change Orders that are priced by unit price, all information utilized by TSP to develop and determine the unit price, if not already part of the Price Sheets, and all information which the Joint Board determines necessary or useful to evaluate the accuracy of TSP's designation of quantities;

iii. With respect to Change Orders that are priced at Cost plus fee and with respect to any other Work which is performed by TSP at Cost outside of the fixed price, all information which the Joint Board determines necessary or useful to evaluate the accuracy, completeness and currency of the Cost or pricing data submitted, the accuracy of TSP's designation of time and material quantities and the eligibility of such quantities as Costs;

iv. All other information which the Joint Board deems necessary or useful to evaluate compliance with the terms and conditions of this Contract and the other Contract Documents, or to determine that payments have not exceeded the fixed price or other applicable fixed price or lump sum amount. Where the payment method for any Work is by the fixed price or other applicable lump sum amount, no examination or audit

rights shall extend to actual costs or expenditures incurred by TSP after the Parties have agreed upon such price or amount;

v. All documents that relate to each and every claim together with all documents that support the amount of damages as to each claim; and

vi. Work sheets used to prepare the claim establishing the cost components for items of the claim 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.

Until the expiration or earlier termination of this Contract, TSP shall provide documents, reports and information in addition to that specifically required in this Contract that may be reasonably requested by the Joint Board from time to time, provided such additional information involves no material additional cost to TSP.

20.2.7. TSP shall ensure that each Subcontract shall provide for the same audit rights by the Joint Board and the State Auditor in connection with such Subcontract as they have under this Section 20.2.

20.2.8. Full compliance by TSP with the provisions of this Section 20.2 is a contractual condition precedent to TSP's right to pursue a formal dispute under Section 19.

20.2.9. TSP represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 20.2.

20.3 Retention of Records and Internal Accounting Contracts

(a) TSP shall maintain all records and documents relating to the Work, including copies of all original documents delivered to the Joint Board, and the Project in Jeffersonville, Indiana until six years after the later of (i) the expiration of the TCS Operations and Maintenance Term, or (ii) the termination of this Contract. TSP shall notify the Joint Board where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved, and retention of all data collected by the TCS shall also be retained for any longer period of time necessary to comply with TR Section BO-079 and any other provision of the Contract Documents. Records to be retained include all books, electronic information and files and other evidence bearing on TSP’s costs under the Contract Documents. TSP shall make these records and documents available for audit and inspection to the Joint Board, at TSP’s offices in Jeffersonville, Indiana, at all reasonable times, without charge, and shall furnish copies of such records and allow such Persons to make copies of such documents. If

approved by the Joint Board, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

(b) TSP shall maintain a system of internal accounting controls appropriate for its Work hereunder and as required pursuant to the Technical Requirements. As part of the representation and warranty provided by TSP pursuant to this Section, TSP shall provide the Joint Board a report of TSP's independent accounting firm with respect to TSP's internal accounting controls and other then-current appropriate statements on accounting and auditing standards.

20.4 Public Records Act

20.4.1. TSP acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the Joint Board's possession, including materials submitted by TSP to the Joint Board, are subject to the provisions of the Public Records Act. If TSP believes information or materials submitted to the Joint Board constitute trade secrets or otherwise are exempt from disclosure under the Public Records Act pursuant to IC 5-14-3-4 and/or KRS 61.870 – 61.884, TSP shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary information, trade secret or other basis for exemption shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that exempts the material from disclosure under the Public Records Act. Nothing contained in this Section 20.4 shall modify or amend requirements and obligations imposed on the Joint Board by the Public Records Act or other applicable Law, and the provisions of the Public Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. TSP is advised to contact legal counsel concerning such Law and its application to TSP.

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

20.4.3. In the event of any proceeding or litigation concerning the disclosure of any material submitted by TSP to the Joint Board, the Joint Board's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and TSP shall be fully responsible for

otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the Joint Board reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. TSP shall pay and reimburse the Joint Board within thirty (30) days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, the Joint Board incurs in connection with any litigation, proceeding or request for disclosure.

20.5 Ownership and Use of Documents

(a) As between the Joint Board and TSP, except as set forth in Section 20.6, all services and products provided under this Contract, including all copyright interests and any other intellectual property, in and to the Software (including both object code and Software Source Code) and any other systems, data, sketches, charts, calculations, plans, specifications, deliverables, electronic files, correspondence and other documents created or collected under the terms of the Contract Documents and produced or provided by TSP, alone or in combination with the Joint Board and/or its employees, under this Contract ("Developed Intellectual Property") shall be the property of the Joint Board. TSP agrees that, except as otherwise provided in Section 20.6 hereof, any contribution by TSP or its employees to the creation of such works, including all copyright interest therein, shall be considered works made for hire by TSP for the Joint Board and that such works shall, upon their creation, be owned exclusively by TSP. To the extent that any such works may not be considered works made for hire for the Joint Board under applicable law, TSP agrees to assign and, upon their creation, automatically assigns to the Joint Board the ownership of such works, including copyright interests and any other intellectual property therein, without the necessity of any further consideration. Upon preparation or receipt thereof by the TSP, the Joint Board (or its designee) shall receive ownership of the property rights (except for copyrights in Pre-Existing Software) in any such Developed Intellectual Property. The Joint Board shall own the copyrights in any Software that is Developed Intellectual Property (including both object code and Software Source Code) produced or provided by TSP, alone or in combination with the States' Parties and/or their employees, under this Contract ("Custom Software"), and the Joint Board hereby grants TSP a worldwide, nonexclusive, royalty-free license to the Custom Software and the other Developed Intellectual Property. Exhibit BB lists the Custom Software that TSP expects to develop for the Project. The TSP grants the Joint Board any permissions or licenses pursuant to copyright or other intellectual property laws to effectuate transfer of ownership in such Custom Software. The Joint Board may use, reproduce and make derivative works from said System Documentation.

(b) The Joint Board and the States' Parties and their respective agencies may also use, reproduce and make derivative works from the Developed Intellectual Property (including licensed Software) in connection with the Joint Board's and/or its member States' and their respective agencies design of future projects. The TSP grants the Joint Board and its member States and their respective agencies any permissions or

licenses pursuant to copyright or other intellectual property laws to effectuate this grant of permission. The Joint Board similarly may distribute or make the Developed Intellectual Property (including licensed Software) available to third parties who will or may provide services to the Joint Board, the States' Parties and their respective agents on future projects. The Joint Board's and the States' Parties' and their respective agents' use of the Developed Intellectual Property either by themselves or by distribution to third parties without TSP's involvement or on other projects is at the Joint Board's, the States' Parties' and their respective agents' sole risk.

(c) Subject to any requirements in the Contract Documents for TSP's delivery of specific documents, not less frequently than monthly, TSP shall provide the Joint Board with a detailed written list of all design-related, construction-related and installation-related System Documentation prepared or received by TSP, and TSP shall furnish the Joint Board with copies of any such System Documentation immediately upon the Joint Board's written request. TSP shall maintain all other documents described in this Section 20.3 and shall deliver copies to the Joint Board as required by the Contract Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to the Joint Board as a condition to System Acceptance.

(d) TSP shall deliver the Software and the Custom Software Source Code to the Joint Board on an ongoing basis with each request for payment for a Payment Milestone. TSP shall deliver to the Joint Board Software and Custom Software Source Code and updates developed as part of the Operations and Maintenance Work, (x) when required in connection with an Operations and Maintenance Payment request, or (y) at such time as the Software and updates are implemented. TSP shall cause the Software Supplier to keep the Software Source Code up-to date by delivering to the Joint Board at each Payment Milestone during the Installation Period all enhancements and modifications developed, completed or implemented since the immediately preceding Payment Milestone, and by delivering to the Joint Board all enhancements and modifications developed, completed or implemented during the TCS Operations and Maintenance Term as such enhancements and modifications are developed, completed or implemented.

20.6 Intellectual Property Rights; Licensing

20.6.1. Preexisting Works by TSP

Exhibit AA sets forth a list of the "Pre-Existing" Software, including COTS and TSP's own Software that it owns or has developed as of the date of this Contract and that it intends to use in connection with the Project. Notwithstanding anything to the contrary in Section 20.5 above, TSP may include in the Software TSP's Pre-Existing Software. To the extent that TSP's Pre-Existing Software is included in the Software, TSP grants the Joint Board and each States' Party and their agencies (as an exception to the transfer and assignment provided in Section 20.5), an irrevocable, permanent, nonexclusive, world-wide royalty-free right and license to use, execute, reproduce,

display, perform, and distribute internally copies of, and prepare derivative works based upon, the Pre-Existing Software, the System design and technology and/or any other System idea, concept or deliverable, and the right to authorize third parties to do any of the foregoing, subject to the execution of a commercially reasonable Non-Disclosure Agreement by such third party and further subject to the terms of this Contract. The foregoing licenses and rights shall be used solely as needed to operate, maintain and support the TCS and the Project and at any toll bridge or road or similar or related facilities in which such Software, System design and technology and any other System idea, concept and deliverables are used under or pursuant to this Contract (whether by the Joint Board, a States' Party, or an Other Joint Board Contractor), including at the Bridges and roads and in the toll traffic lanes that utilize such System and at the Project Sites specified in this Contract. The foregoing rights and licenses shall survive the expiration or termination of this Contract.

20.6.2. Commercial Off-the-Shelf Software

The Joint Board's interest in and obligations with respect to any COTS Software incorporated into the Project or System shall be determined in accordance with the standard license terms applicable to such Software; provided, however, that TSP shall be solely responsible for all costs associated with such items and in no event shall TSP change the terms of such agreements without the Joint Board's written approval.

20.6.3. Source Code Escrow

(a) The Joint Board and TSP acknowledge that TSP and/or TSP's Software suppliers may not wish to disclose directly to the Joint Board the Software Source Code for the Pre-Existing Software (not for Software owned by the Joint Board pursuant to Section 20.5), but that the Joint Board must be assured access to such Software Source Code in certain circumstances to permit it to realize the benefits contemplated by this Contract. Therefore, as a condition to payment of invoices for Payment Milestones and System Acceptance, and as a condition to payment of monthly installments of the Operations and Maintenance Price, TSP shall place all the Software Source Code for Pre-Existing Software owned by TSP, licensed to or by TSP or with respect to which TSP has a right to use in connection with the TCS or this Project in an escrow (the "Source Code Escrow") with an escrow company designated by the Joint Board ("Code Escrow Agent") engaged in the business of receiving and maintaining escrows of Software Source Code, related documentation, and other technology. With regard to updates and upgrades to the Pre-Existing Software developed as part of the Operations and Maintenance Work and as part of the TSP's work during the Software Maintenance Option Period, such disclosure and delivery to the Source Code Escrow shall occur at such time as the Software and updates are implemented. In each of its monthly invoices the for payment of the Total Toll Collection System Capital Price and Total Toll Collection System Operations and Maintenance Price, TSP shall identify any Pre-Existing Software updates and upgrades completed during the invoiced period, and shall include the Code Escrow Agent's confirmation that such Software and updates

have been verified and deposited in the Source Code Escrow. The terms of the Source Code Escrow shall be as set forth in Exhibit G. TSP shall cause all Software suppliers to keep the Software Source Code up-to-date by depositing all enhancements and modifications into the Source Code Escrow during the term of its existence as such enhancements and modifications are developed, completed or implemented.

(b) For purposes hereof, the "Software Source Code" means the 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, and architectural standards, describing the data flows, data structures, and control logic of the Software, including but not limited to the TSP's version of compilers used in connection with 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, and such other documentation and executables required to independently maintain the Software, and necessary information to build and replicate any specialized hardware, but excludes source code for Commercial Off-the-Shelf Software unless such source code is available to the TSP. The term "Software Source Code" as it pertains to the documentation required to be delivered to the Joint Board means and includes everything necessary to allow a technical verification on the Software and other related assets to verify the Software Source Code files, executable files, database schema, tables, configuration files, batch files, documentation and directions are identical to that licensed to the Joint Board.

20.7 Inspection and Testing

20.7.1. If the Contract Documents or any Law requires any portion of the Work to be inspected, tested or approved, TSP shall give the Joint Board timely notice of its readiness so the Joint Board may observe such inspection, testing or approval. TSP shall bear all of its costs of such inspections, tests or approvals unless otherwise provided.

20.7.2. If the Joint Board determines that any Work requires special inspection, testing or approval which Section 20.7.1 does not include, it will instruct TSP to order such special inspection, testing or approval and TSP shall give notice as in Section 20.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, TSP shall bear all costs thereof, including compensation for the Joint Board's additional services made necessary by such failure. If the Work complies, the Joint Board shall bear such costs and an appropriate Change Order shall be issued.

20.7.3. TSP shall permit all reasonable inspection and testing the Joint Board may desire to conduct. Such inspection and testing shall not relieve TSP of any of its obligations under this Contract.

SECTION 21. MISCELLANEOUS PROVISIONS

21.1 Taxes

TSP shall pay, prior to delinquency, all applicable taxes, including its own income taxes and, pursuant to IC 8-15.5-8-3 and applicable Kentucky law, all sales and use taxes, in each case for which TSP is responsible in carrying out the Work and its other obligations hereunder. TSP 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 Laws respecting taxes or incorrect assumptions regarding applicability of taxes. The Joint Board is exempt from state, federal, and local taxes and TSP shall not be responsible for any taxes levied against the Joint Board directly as a result of the Joint Board's purchase of goods and services from TSP under this Contract or the fact that the TCS will result in the payment of toll revenues by users of the Ohio River Bridges Project. The Joint Board will not be responsible for any taxes levied on TSP or any other TSP-Related Entities as a result of this Contract, including any sales, use, services, excise, transactionally-based gross receipts, privilege or other like taxes, plus any interest and/or penalty thereon, based on any goods or services purchased, acquired, used or consumed by TSP in performing the Work under this Contract.

21.2 Amendments

The Contract 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 Contract.

21.3 Waiver

21.3.1. No waiver of any term, covenant or condition of this Contract or the other Contract Documents shall be valid unless in writing and signed by the obligee Party. No right conferred on either Party under this Contract or the other Contract Documents shall be deemed waived, and no breach of this Contract or other Contract Documents excused, unless such waiver is in writing and signed by the Party claimed to have waived such right. The exercise by a Party of any right or remedy provided under this Contract or the other Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Contract or the other Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Contract or the other Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

21.3.2. Except as provided otherwise in the Contract Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to

waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Contract or the other Contract Documents.

21.3.3. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract 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.

21.3.4. Neither the Joint Board's review, approval or acceptance of, nor payment for, the services required under this Contract or the other Contract Documents shall be construed to operate as a waiver of any rights under this Contract or any of the other Contract Documents or for any cause of action arising out of the performance of this Contract or the other Contract Documents, and TSP shall be and remain liable to the Joint Board in accordance with applicable Law for all damages to the Joint Board as set forth in the Contract Documents.

21.4 Independent Contractor

21.4.1. TSP is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the Joint Board other than that of independent contractor.

21.4.2. Both Parties, in the performance of the Contract Documents, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between the Joint Board and TSP; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists.

21.4.3. In no event shall the relationship between the Joint Board and TSP be construed as creating any relationship whatsoever between the Joint Board and TSP's employees or agents. Neither TSP nor any of its employees or agents is or shall be deemed to be an employee or agent of the Joint Board. Except as otherwise specified in the Contract Documents, TSP 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 TSP or any Subcontractor hires to perform or assist in performing the Work.

21.5 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of the Joint Board and TSP and their permitted successors, assigns and legal representatives.

21.5.1. The Joint Board may assign all or part of its right, title and interest in and to any Contract Documents, including rights with respect to the Payment and Performance Bonds, to any other Person.

21.5.2. TSP may not, without the prior written consent of the Joint Board in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents. No partner, joint venturer, member or shareholder of TSP may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in TSP without the prior written consent of the Joint Board, in the Joint Board's sole discretion.

21.6 Designation of Representatives; Cooperation with Representatives

21.6.1. The Joint Board and TSP shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents ("Authorized Representative"). Exhibit X 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 21.11. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction and installation of the Project and negotiate on behalf of each of the parties but who do not have authority to bind the Joint Board or TSP.

21.6.2. TSP shall cooperate with the Joint Board and all representatives of the Joint Board designated as described above.

21.7 Survival

TSP's representations and warranties, the dispute resolution provisions contained in Section 19, the warranties contained in Section 11, the indemnifications and releases contained in Section 18, the Software Maintenance Option contained in Section 2, and all other provisions which by their inherent character or express terms should survive termination of this Contract and/or System Acceptance, shall survive the termination of this Contract, the expiration of the TCS Operations and Maintenance Term (including the TCS Operations and Maintenance Option Period), and the expiration of any Software Maintenance Option Period.

21.8 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third party beneficiary hereunder other than the States' Parties 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 21.8, the duties, obligations and responsibilities of the parties to the Contract Documents with respect to third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Joint Board and a Subcontractor or any Person other than TSP. Notwithstanding the foregoing, the States' Parties shall be deemed to be third party beneficiaries of this Contract.

21.9 Tort Liability; Personal Liability of the Joint Board Employees

21.9.1. The Joint Board's Authorized Representatives are acting solely as agents and representatives of the Joint Board and their respective States' Parties when carrying out the provisions of or exercising the power or authority granted to them under this Contract. They shall not be liable either personally or as employees of the Joint Board for actions in their ordinary course of employment.

21.9.2. The Parties agree to provide to each other's Authorized Representative(s) notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Contract, and shall otherwise provide notice in such form and within such period as is required by Law.

In no event shall the Joint Board or the States' Parties be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within the Project Site during the period TSP has operation and control of the Project Site, nor shall the Joint Board or the States' Parties be liable for any injury, damage or death caused by the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any TSP-Related Entity. TSP expressly acknowledges and agrees that the Joint Board's rights in this Contract to take any action with respect to the Project, including the right to review, comment on, disapprove and/or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and the like, are discretionary in nature and exist solely for the benefit and protection of the Joint Board and do not create or impose upon the Joint Board or the States' Parties any standard or duty of care toward TSP or any other Person, all of which are hereby expressly disclaimed.

21.10 Governing Law

The Contract Documents shall be governed by and construed in accordance with the laws of the State of Indiana. Any suit must be brought in the Clark County, Indiana Circuit/Superior Court located in Clark County, Indiana. TSP hereby specifically consents to this jurisdiction.

21.11 Notices and Communications

21.11.1. Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with TSP shall be sent to TSP's Program Manager or as otherwise directed by TSP's Program Manager. The address for such communications shall be:

[Name of Program Manager]
[Address]
Telephone: (___) ___-____
Facsimile: (___) ___-____
E-mail:

All communications to the Joint Board shall be marked as regarding this Contract and shall be delivered as directed by the Joint Board's Authorized Representative. The address for such communications shall be:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Public Finance Director
Telephone: (317) 233-4332
Facsimile: (317) 232-6786
E-mail: IFA@IFA.in.gov

In addition, copies of all notices regarding disputes, termination and default notices shall be delivered to the following persons:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: General Counsel
Telephone: (317) 233-4332
Facsimile: (317) 232-6786
E-mail: IFA@IFA.in.gov

Kentucky Public Transportation Infrastructure Authority
Michael W. Hancock, Chairman
200 Mero Street
Frankfort, Kentucky 40622
Telephone: (502) 782-4980
Facsimile: (502) 564-9540
E-mail: Michael.hancock@ky.gov

21.11.2. 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, Notices sent by facsimile after 4:00 p.m. ET and all other Notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by TSP's Authorized Representative or TSP's Key Personnel and technical representatives designated by the Joint Board. TSP's representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 21.6.1, each party's representative shall be authorized to act on behalf of such party in matters concerning the Work.

21.11.3. TSP shall copy the Joint Board on all written correspondence pertaining to the Project between TSP and any Person other than TSP's Subcontractors, consultants and attorneys. Notwithstanding the foregoing, TSP shall not be required to copy the Joint Board on standard written correspondence with Customers issued pursuant to the Business Rules and approved Plans, except as may be specifically requested by the Joint Board or the States' Parties.

21.12 Further Assurances

TSP shall promptly execute and deliver to the Joint Board all such instruments and other documents and assurances as are reasonably requested by the Joint Board to further evidence the obligations of TSP hereunder, including assurances regarding the validity of (a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

21.13 Severability

If any clause, provision, section or part of this Contract is ruled invalid under Section 19 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 this Contract, which shall be construed and enforced as if this Contract did not contain such invalid or unenforceable clause, provision, section or part.

21.14 Headings

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

21.15 Entire Agreement

The Contract 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 their subject matter.

21.16 Counterparts

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

21.17 Cooperative Purchasing

To the extent permissible under applicable Laws and with the mutual consent of the Joint Board, each of the States' Parties and TSP, in each case in their sole discretion, the parties hereto may enter into a separate cooperative purchasing agreement based on this Agreement to include additional equipment and/or services for projects and facilities outside the scope of the Project. Notwithstanding the foregoing, the Joint Board and the States' Parties shall have no obligations to enter into any new agreement or enter into any discussions or negotiations with TSP related thereto and nothing contained herein shall create for TSP any right of first offer, right of first negotiations, right of first refusal or any other right relating to additional equipment, services, project or facility.

SECTION 22. SIGNATURE WARRANTY

22.1 Signature Warranty

Each signatory to this Contract warrants that the signatory has necessary authority to execute this Contract on behalf of the entity represented.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Contract has been executed as of _____, 2015.

TOLL SYSTEM PROVIDER

By: _____

Name:_____

Title:_____

INDIANA FINANCE AUTHORITY, on behalf of the Louisville-Southern Indiana Ohio River Bridges Joint Board

By: _____

Name: Kendra York

Title: Public Finance Director