REQUEST FOR PROPOSALS

A PROJECT TO PROVIDE A CUSTOMER SERVICE CENTER AND BACK OFFICE SYSTEM FOR RIVERLINK'S OHIO RIVER BRIDGES

VOLUME II ADDENDUM 2
CONTRACT

A PROJECT OF
THE INDIANA FINANCE AUTHORITY
ISSUED September 30, 2020

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204

Contract

TABLE OF CONTENTS

CONTRACT 7

SECTION 1. CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS 8

1.1 Certain Definitions 8
1.2 Order of Precedence 8
1.3 Interpretation of Contract Documents 9
1.4 Explanations; Omissions and Misdescriptions 10
1.5 Computation of Periods 10
1.6 Standard for Approvals 11
1.7 Federal Requirements 11

SECTION 2. TSP2'S SCOPE OF WORK AND RESPONSIBILITY; REPRESENTATIONS, WARRANTIES AND COVENANTS; BUSINESS RULES 12

2.1 Initial Work Requirements 12
2.2 Maintenance Work Requirements 15
2.3 General Obligations of TSP2 22
2.4 TSP2 Representations, Warranties and Covenants 23
2.5 Performance as Directed 25
2.6 Joint Board Representations, Warranties and Covenants 25
2.7 Term of Contract 26
2.8 Joint Board Procurement 26

SECTION 3. JOINT BOARD REVIEW PROCESS 29

3.1 Joint Board Review and Approval/Disapproval Process 29
3.2 Responsibility for Submittals 30
3.3 Disclaimer 30
3.4 Role of FHWA 31

SECTION 4. INITIAL WORK SCHEDULE, COMPLETION AND ACCEPTANCE 32

4.1 Time of Essence; Notice to Proceed 32
4.2 Late Progress Milestones 32
4.3 Delay Liquidated Damages for Failure to Achieve Guaranteed Dates 33
4.4 End of Operations and Maintenance Term Acceptance 34

SECTION 5. KEY PERFORMANCE INDICATORS 36

5.1. Performance Guarantees and Performance Liquidated Damages 36

SECTION 6. FLOW OF FUNDS REQUIREMENTS 40

6.1 Custody and Revenue Control Agreement; Trust Agreement 40
6.2 Deposit of Funds into Custodian Accounts 40
6.3 No Commingling of Funds 41
6.4 Authorized Personnel 41
6.5 Daily Transfer and Reconciliation 41
6.6 Responsibility for Chargebacks and Refunds 41

6.7 Revenue Control Manager 41

SECTION 7. CIVIL RIGHTS; SUBCONTRACTORS; KEY PERSONNEL 42

7.1 Civil Rights; Equal Employment Opportunity; DBE Participation 42
7.2 Subcontracts 42
7.3 Responsibility for Employees and Subcontractors 44

SECTION 8. PERFORMANCE AND PAYMENT BONDS; GUARANTY; FINANCIAL INFORMATION 45

8.1 Provision of Bonds 45
8.2 Guaranty 47
8.3 No Relief of Liability 47
8.4 Periodic Updated Financial Information 48

SECTION 9. INSURANCE 49

9.1 TSP2 Provided Insurance 49
9.1.1. Commercial General Liability Insurance 49
9.1.2. Workers' Compensation Insurance 50
9.1.3. Umbrella or Excess Liability Insurance 50
9.1.4. Cyber Liability Insurance 51
9.1.5. Crime Insurance 51
9.1.6. Professional Liability Insurance 51
9.2 General Insurance Requirements 52
9.3 Prosecution of Claims 55
9.4 Commencement of Work 55
9.5 The Joint Board's Right to Remedy Breach by TSP2 55
9.6 Disclaimer 56

SECTION 10. TITLE; MAINTENANCE DURING PERFORMANCE OF INITIAL WORK. 57

10.1 Title 57
10.2 Maintenance During Performance of Initial Work 57

SECTION 11. STANDARDS OF PERFORMANCE, CORRECTION OF WORK AND WARRANTIES 58

11.1 TSP2 Standards of Performance 58
11.2 Notice of Breach of Standards of Performance 58
11.3 Correction of Work Prior to Warranty Periods 59
11.4 Warranty Periods 59
11.5 Compliance with Standards of Performance During Warranty Period 59
11.6 No Limitation of Liability 60
11.7 Damages for Breach of Warranty 61

SECTION 12. PAYMENT FOR SERVICES 62

12.1 Contract Price 62
12.2 Initial Costs 62
12.3 Invoices for Initial Costs 62
12.4 Certification of Quality Assurance/Quality Control Compliance 64
12.5 Operations and Maintenance Price. 64
12.6 Payment 66
12.7 Interest 67

12.8 Final Payment 67
12.9 Payment to Subcontractors 69
12.10 Payment for Subsequent Claims 69
12.11 Payments Not Acceptance of Work 70
12.12 Direct Cost 70
12.13 Budget 70
12.14 Disputes 71
12.15 Payment Obligations Not Debt 72

SECTION 13. CHANGES IN THE WORK 73

13.1 General 73
13.2 Change Order 73
13.3 Effectiveness of Change Orders 74
13.4 Joint Board-Initiated Change Orders 74
13.5 TSP2 Initiated Change Orders 74
13.6 Change Orders for Excusable Delay and Change Orders Shortening Time 76
13.7 Change Orders to Initial Costs 77
13.8 Change Order Pricing 78
13.9 Impact to Key Performance Indicators 78

SECTION 14. SUSPENSION 80

14.1 Joint Board Suspension 80

SECTION 15. TERMINATION 81

15.1 Termination for Convenience 81
15.2 TSP2's Responsibilities After Receipt of Notice of Termination for Convenience of Initial Work 81
15.3 Responsibility for Materials After Notice of Termination for Convenience 83
15.4 TSP2's Responsibilities Upon Expiration or After Receipt of Notice of Termination of Operations and Maintenance Work 83
15.5 Settlement Proposal 86
15.6 Amount of Negotiated Termination Settlement 86
15.7 No Agreement as to Amount of Termination Settlement for Initial Work and Operations and Maintenance Work 87
15.8 Termination of Operations and Maintenance Work 88
15.9 Reduction in Amount of Claim 88
15.10 Payment 89
15.11 Subcontractors 89
15.12 No Consequential Damages 89
15.13 No Waiver 89
15.14 Dispute Resolution 90

SECTION 16. DEFAULT 91

16.1 Default of TSP2 91
16.2 Remedies 94
16.3 Failure to Comply Caused by Delay Event 97
16.4 Right to Stop Work for Failure by IFA and/or KYTC to Make Undisputed Payment 98
16.5 Anticipatory Breach 98

SECTION 17. LIMITATION OF TSP2'S LIABILITY 100

17.1 Limitation of TSP2's Liability 100

17.2 Potential Increase in Limitation of TSP2's Liability 101

SECTION 18. INDEMNIFICATION 102

18.1 Indemnifications by TSP2 102
18.2 Defense and Indemnification Procedures 104
18.3 Indemnification by the Joint Board 106
18.4 No Effect on Other Rights 106
18.5 CERCLA Agreement 106
18.6 Intent of Indemnity for Breach of Agreement 106
18.7 No Relief from Responsibility 107
18.8 Right to Rely 107

SECTION 19. PARTNERING AND DISPUTE RESOLUTION 108

19.1 General Dispute Resolution Provisions 108
19.2 Partnering 108
19.3 Disputes Governed by this Section; Disputes; Priorities 109
19.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes 109
19.5 Burden of Proof 110
19.6 Informal Resolution as Condition Precedent 110
19.7 Informal Resolution Procedures 110
19.8 Formal Resolution Procedures 112
19.9 Confidentiality of Settlement Negotiations and Other Documents Used in Dispute Resolution Process 115
19.10 Administrative Hearings; Venue and Jurisdiction 115
19.11 Continuation of Disputed Work and Payments 115
19.12 Records Related to Dispute 116
19.13 Other Proceedings 116

SECTION 20. DOCUMENTS AND RECORDS 117

20.1 Reporting Requirements 117
20.2 Maintenance of, Access to and Audit of Books and Records 118
20.3 Retention of Records and Internal Accounting Contracts 120
20.4 Public Records Act 121
20.5 Ownership and Use of Documents 122
20.6 Intellectual Property Rights; Licensing 123

SECTION 21. MISCELLANEOUS PROVISIONS 126

21.1 Taxes 126
21.2 Amendments 126
21.3 Waiver 126
21.4 Independent Contractor 127
21.5 Successors and Assigns 128
21.6 Designation of Representatives; Cooperation with Representatives 128
21.7 Survival 128
21.8 Limitation on Third Party Beneficiaries 129
21.9 Tort Liability; Personal Liability of the Joint Board Employees 129
21.10 Governing Law 129
21.11 Notices and Communications 130
21.12 Further Assurances 131
21.13 Severability 131
21.14 Headings 132
21.15 Entire Agreement 132

21.16 Counterparts 132
21.17 Cooperative Purchasing 132

SECTION 22. SIGNATURE WARRANTY 133

EXHIBITS 135

EXHIBIT 1. ABBREVIATIONS AND DEFINITIONS 136

EXHIBIT 2. KEY PERFORMANCE INDICATORS AND LIQUIDATED DAMATES 164

EXHIBIT 3. KEY PERSONNEL 174

EXHIBIT 4. DESIGNATION OF AUTHORIZED REPRESENTATIVES 175

EXHIBIT 5. BONDS 177

EXHIBIT 5-A. FORM OF PERFORMANCE BOND 178
EXHIBIT 5-B. FORM OF PAYMENT BOND 182
EXHIBIT 5-C. FORM OF WARRANTY BOND 185
EXHIBIT 5-D-1. FORM OF MAINTENANCE PERFORMANCE BOND 189
EXHIBIT 5-D-2. FORM OF MAINTENANCE PAYMENT BOND 193

EXHIBIT 6. MONTHLY INVOICING 196

EXHIBIT 6-A. FORM OF INVOICE CERTIFICATION 197
EXHIBIT 6-B. PASS-THROUGH COST ITEMS* 198
EXHIBIT 6-C. PAYMENT TERMS 201

EXHIBIT 7. TSP2 PROPOSAL COMMITMENTS AND APPROVED DEVIATIONS 209

EXHIBIT 7. ATTACHMENT 1 FORM G: PRICE FORMS 210
EXHIBIT 7. ATTACHMENT 2 FORM K: TECHNICAL REQUIREMENTS CONFORMANCE MATRIX 211
EXHIBIT 7. ATTACHMENT 3 FORM P: EXCEPTIONS 212
EXHIBIT 7. ATTACHMENT 4 FORM Q: VALUE ADD 213
EXHIBIT 7. ATTACHMENT 5 DETAILED PROJECT SCHEDULE 214

EXHIBIT 8. SOFTWARE 215

EXHIBIT 8-A. FORM OF SOFTWARE SOURCE CODE ESCROW AGREEMENT 216
EXHIBIT 8-A ATTACHMENT A – FORM OF SOFTWARE SOURCE CODE ESCROW AGREEMENT 229
EXHIBIT 8-A ATTACHMENT B – FORM OF SOFTWARE SOURCE CODE ESCROW AGREEMENT 232
EXHIBIT 8-B. PRE-EXISTING COTS AND TSP2-DEVELOPED SOFTWARE LIST 234
EXHIBIT 8-C. CUSTOM SOFTWARE LIST 235

EXHIBIT 9 236

EXHIBIT 9-A. DRAFT CUSTODY AND REVENUE CONTROL AGREEMENT 236
EXHIBIT 9-B. DRAFT TRUST AGREEMENT 285

EXHIBIT 10. FORM OF GUARANTY 307

EXHIBIT 11. NTP 321

EXHIBIT 12. DRAFT FLOW OF FUNDS..... 324

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CONTRACT

This 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 _____ ("TSP2"), executed as of _____, 20__ ("Execution Date"), and effective on the date of issuance of the Notice to Proceed ("Effective Date"), with reference to the definitions contained in Exhibit 1 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 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 Joint Board has authorized and delegated to IFA the primary responsibility for administration and oversight of procurement of this Contract requiring TSP2 to complete the Project, which Project includes providing a new BOS, a local CSC, and two WUCs for the Ohio River Bridges Project. The Project will support the Toll Collection System for the Ohio River Bridges Project, which is currently provided by Kapsch TrafficCom IVHS Inc. (the "Toll Systems Provider 1" or "TSP1"), pursuant to a certain toll services agreement between the IFA and TSP1 executed on May 12, 2015.

C. Pursuant to Indiana Code §5-1.2, et seq., as amended, Indiana Code § 8-15.5 et seq., as amended and other applicable provisions of law in effect on _____, 2020, IFA issued the RFP on behalf of the Joint Board, and on _____, 20__, IFA received proposals. The Evaluation Committee determined that TSP2 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. TSP2's Proposal consisted of a Technical Proposal and a Price Proposal. The Technical Proposal is referred to herein as the "Proposal."

D. The Parties intend for this Contract to be a comprehensive agreement obligating TSP2 to perform all Work to complete the Project, as more particularly described in the Technical Requirements Conformance Matrix, including completing the Installation Work by the Completion Deadlines, providing the maintenance support services, and performing all Operations and Maintenance Work, all for the individual Contract Price components, and collectively for the Contract Price, specified in the Price Forms set forth in Exhibit 7, 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 TSP2's ability to make claims for increases to the Contract Price and the individual Contract Price

components, or extensions of the Completion Deadlines. TSP2 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 Forms set forth in Exhibit 7.

E. If TSP2 fails to complete the Initial Work by the Revenue Service Date 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 TSP2 shall pay the Joint Board substantial Liquidated Damages if completion of the Initial Work is delayed beyond the Revenue Service Date.

F. The Project's accuracy and reliability is of paramount importance to the Joint Board, the States' Parties and the overall operation of the Ohio River Bridges Project. The Joint Board and the States' Parties will suffer substantial losses and damages if the Project does not meet the Key Performance Indicators set forth in Exhibit 2. The Contract Documents provide that TSP2 shall pay the Joint Board substantial Performance Liquidated Damages and Performance Stipulated Damages if the Project does not meet certain of the Key Performance Indicators.

G. The Public Finance Director of IFA has been authorized to enter into this Contract in accordance with IC 5-1.2-4 and IC 8-15.5.

NOW, THEREFORE, in consideration of the sums to be paid to TSP2 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 1 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 TSP2'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 Initial Costs and the Operations and Maintenance Work:

1. Amendments and Change Orders;
2. Contract (including all exhibits other than Exhibit 7);
3. Price Forms set forth in Form G of Exhibit 7;
4. Technical Requirements Conformance Matrix set forth in Form K of Exhibit 7 (excluding Approach's provided in Form K 1-7);
5. ~~TSP2's Exceptions set forth in Form P of Exhibit 7;~~
6. ~~6.~~5. TSP2's Value add set forth in Form Q of Exhibit 7;
7. ~~7.~~6. Other exhibits that are Contract Documents; and
8. ~~8.~~7. Proposal (including all modifications thereto set forth in Exhibit 7).

(b) Portions of Volume III (Reference Documents ONLY, non-binding information) 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.

(c) 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 TSP2'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 Persons holding a title or position in a Governmental Entity, such 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. TSP2 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. TSP2 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 Explanations; Omissions and Misdescriptions

TSP2 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, TSP2 shall request in writing such further written explanations from the Joint Board as may be necessary and shall comply with the explanation provided. TSP2 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.

1.5 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.

1.6 Standard for Approvals

In all cases where approvals or consents are required to be provided by the Joint Board, the Joint Board Representatives or TSP2 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.

1.7 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. 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. TSP2'S SCOPE OF WORK AND RESPONSIBILITY; REPRESENTATIONS, WARRANTIES AND COVENANTS; BUSINESS RULES

2.1 Initial Work Requirements

2.1.1. General Scope of Initial Work

TSP2 shall perform and provide all the Initial Work upon issuance of the NTP, on a turnkey basis as set forth in the Contract Documents. The Initial Work includes all Work required to provide, configure, install, integrate, and assemble the Project, and to test and verify that the Project meets all requirements of and is capable of performing in conformance with the Technical Requirements Conformance Matrix, and otherwise complies with the requirements of the Contract Documents. Unless otherwise provided in the Contract Documents, TSP2 shall provide and pay for all labor, management, supervision, materials, equipment, software, licenses, utilities, transportation and other facilities and services and efforts necessary for proper completion of the Initial Work, as well as the TSP2 Insurance and the Payment and Performance Bond required hereunder. Subject to the terms of Section 13, the costs of all Initial Work, including such permits and Regulatory Approvals as may be required to perform the Initial Work are included in the Contract Price for the Initial Work, as specified in the Price Forms set forth in Exhibit 7.

2.1.2. Deliverables. Upon receipt of the NTP, TSP2 shall commence preparation of the Deliverables listed the Technical Requirements Conformance Matrix set forth in Form K of Exhibit 7, in accordance with the time frames listed in such Form K or such shorter time frames as may otherwise be specified in the Detailed Project Schedule set forth in Exhibit 7. The Deliverables shall be based on and demonstrate compliance with the parameters set forth in the Technical Requirements Conformance Matrix, and shall contain sufficient detail to permit inspection and approval of the Deliverables by the Joint Board, and shall comply with all applicable Laws, Regulatory Approvals and applicable provisions of the Contract Documents.

2.1.3 Initial Work

2.1.3.1. Compliance. The Initial Work shall comply with the following Initial Work requirements:

(a) Technical Requirements Conformance Matrix;

(b) Deliverables;

(c) All applicable Laws;

(d) All Regulatory Approvals;

(e) All applicable provisions of the Contract Documents.

2.1.3.2. Contractor Licenses. To the extent required under applicable Laws, TSP2 shall perform Initial Work on the Project with contractors licensed in the State or the Commonwealth, as appropriate.

2.1.3.3. Procurement. TSP2 shall procure and make payment for all equipment, materials and supplies to be furnished for the Initial Work, and TSP2 shall perform such inspection, receipt, warehousing, expediting, quality surveillance, and other services as are necessary in connection with such procurement.

2.1.3.4. Utilities. TSP2 shall arrange and bear the cost of all utilities including, without limitation, electricity, telephone, sanitation and water and other supplies, and any consumables and services required by TSP2 and its Subcontractors for the performance of the Work, provided, however, that the Joint Board shall reimburse TSP2 for the actual cost of the utilities listed on Exhibit 6 as Pass-Through Cost Item expenses. The provisions of this Section 2.1.3.~~5~~4 shall apply during both the Initial Work and the Operations and Maintenance Term.

2.1.3.5. Integration of Work by Others. To the extent the Initial Work depends for proper execution or results or operations by TSP1, TSP2 shall provide TSP1 requested information in connection therewith, shall participate with and assist the Joint Board Representatives in testing and acceptance of elements of the Project that are related to the Work, and shall, prior to proceeding with that portion of the Initial Work, inspect and promptly report to the Joint Board Representatives any discrepancies or defects in operation of which TSP2 has knowledge that would render it unsuitable for proper execution of Work by TSP2. TSP2 shall be responsible for validating that all of its Work integrates with any work performed by others to produce the Project that is consistent with the Technical Requirements Conformance Matrix; provided, however, that so long as the TSP2 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 Representatives with respect to the portions of the Work done by TSP1, TSP2 shall be deemed to have met this requirement.

2.1.3.6. Prevailing Wage.

(a) TSP2 shall pay or cause to be paid to all workers employed by it or its Subcontractors to perform the Initial 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 KRS § 337.505 *et seq.*, to the extent provided in ~~F~~federal ~~R~~requirements, the Davis-Bacon Act and statutory common wage law(s) applicable to the Project. For purposes of clarity and, 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 TSP2 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 TSP2's obligations under this Contract. TSP2 shall

comply and cause its Subcontractors performing Initial Work that is construction of a public work under applicable law to comply with all Laws pertaining to prevailing wages. The provisions of fFederal rRequirements shall apply to the Project and to all covered classifications of employees regardless of the contractual relationship between TSP2 or Subcontractors.

2.1.3.7. Prompt Payment to Contractors.

The TSP2 shall pay each Subcontractor for Work satisfactorily performed within the number of days as specified in the applicable subcontract 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.

2.1.3.8. Suspension and Debarment.

(a) TSP2 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 2.1.3.8, 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 TSP2.

(b) TSP2 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 TSP2, from each affiliate of TSP2 (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 fFederal rRequirements form.

2.1.3.9. Safety and Security.

(a) TSP2 shall be responsible for safety and security of its own personnel, Work, equipment and materials in accordance with the Safety and Security Plan set forth in Form K of Exhibit 7, and for the safety and security of any other persons visiting or working in the CSC or a WUC. TSP2 shall be responsible for initiating, maintaining and providing supervision of safety and security precautions and programs in accordance with the Safety and Security Plan set forth in Form K of Exhibit 7 and in accordance with applicable Laws. Whenever TSP2’s operations create a condition hazardous to the public, TSP2 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.

(b) If an emergency affecting the safety of persons or property arises, TSP2 shall act to prevent threatened damage, injury or loss. Notwithstanding the foregoing, TSP2 shall comply with any directions given by the Joint Board Representatives 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 TSP2's scope of services under this Contract, and TSP2 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 Party or entitle TSP2 to any other remedy (except as expressly provided in Section 13), it being acknowledged by TSP2 that the Joint Board has a paramount public interest in providing and maintaining public safety.

2.2 Maintenance Work Requirements

2.2.1. Maintenance of Project

During the Operations and Maintenance Term, TSP2 shall maintain the Project in accordance with Form K, performing all preventive maintenance, routine maintenance and making all adjustments, repairs, overhauls and replacements necessary to keep the Project in good working order and in operation at all times and to satisfy the Key Performance Indicators. TSP2 shall perform such maintenance and repair in accordance with the provisions of the approved Plans in Form K, and other requirements of the Contract Documents. TSP2 shall maintain, rebuild, repair, restore or replace all work, including Deliverables, 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 TSP2'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 Operations and Maintenance Price as specified in the Price Forms set forth in Exhibit 7.

2.2.2. Corrective Action

(a) If the Key Performance Indicators are not met in accordance with Exhibit 2, 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, TSP2 shall promptly notify the Joint Board in writing and shall take immediate corrective action to mitigate the cause at TSP2's sole cost and expense. If the immediate corrective action is unsuccessful, TSP2 shall undertake a study, at its expense, to determine the causes and propose a plan to correct the problem at TSP2'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 CSC or a WUC, or significant potential revenue loss (as determined by the Joint Board, in its respective 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 Project, the Work or the services under

this Contract, shall, subject to Section 13, be borne by TSP2; 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 TSP2 pursuant to this Contract. The Joint Board Representatives shall notify the TSP2 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.

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

The Joint Board shall have two (2) separate Operations and Maintenance Option(s) to extend the Operations and Maintenance Term for an additional three (3) years per Operations and Maintenance Option (six (6) year total, if the Joint Board exercises its second Operations and Maintenance Option), for the Operations and Maintenance Option Price. The Operations and Maintenance Price shall be a price negotiated in good faith by the Joint Board and TSP2, following the Joint Board exercising an Operations and Maintenance Option. The Joint Board shall exercise an Operations and Maintenance Option, if at all, by delivery of written notice to the TSP2 of the Joint Board's election to exercise its Operations and Maintenance Option not fewer than three (3) years prior to the scheduled expiration date of the Operations and Maintenance Term. If the Joint Board exercises the Operations and Maintenance Option, the End of Contract Transition Plan shall apply to the end of the Operations and Maintenance Option Period. In addition to the Operations and Maintenance Option, the Joint Board shall have the option ("Software Maintenance Option"), in its sole discretion, to require the TSP2 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 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 TSP2'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 Operations and Maintenance Term, and shall include the same services as are required of TSP2 to service and maintain the Software during the Operations and Maintenance Term. During the Software Maintenance Option Period the TSP2 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 TSP2 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 TSP2 shall perform the services described herein). If the Joint Board exercises the Software Maintenance Option, the provisions of this Section 2.2.3 shall survive termination of the Contract.

2.2.4. Operations and Maintenance Work

TSP2 shall operate the Project during the Operations and Maintenance Term and provide all services and efforts necessary to perform the Operations and Maintenance Work in accordance with the requirements of the Contract Documents and all approved Plans 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 Order, 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 6-B, all materials, services and efforts necessary to perform the Operations and Maintenance Work are included in the Total Operations and Maintenance Price (Years 1 through 7) set forth in the Price Forms in Exhibit 7.

2.2.5. Operations and Maintenance Work During Balance of Term

From and after the Revenue Service Date, TSP2 shall operate and manage the Project in accordance with the provisions of the Contract Documents, and TSP2 shall provide and supply all labor, supervisory personnel, materials, equipment, Software, furnishings, supplies and other resources required for such Work.

2.2.6. Cooperation With Other Contractors

TSP2 acknowledges that prior to the Revenue Service Date and thereafter, other contractors, including TSP1 and its respective Subcontractors, may be working on the Ohio River Bridges Project or within the Project, including the existing BOS during the performance of Work by TSP2 under this Contract. TSP2 shall cooperate with the Joint Board Representatives 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 TSP2 hereunder and TSP1.

2.2.7. Security and Safety

2.2.7.1. Safety and Security Procedures.

TSP2 shall implement the provisions of the Safety and Security Plan set forth in Form K of Exhibit 7 and any other Plans concerning safety and security at all times and shall ensure that TSP2'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, TSP2 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 TSP2'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.

2.2.7.2. Hazardous Conditions.

Whenever TSP2's operations at the Project Site create a condition hazardous to the public, TSP2 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.

2.2.7.3. Emergencies.

If an emergency threatening or resulting in disruption of TSP2's operations arises, TSP2 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 or provided to or known to TSP2 for dealing with emergencies the CSC or a WUC. In addition, TSP2 shall comply with any directions given by the Joint Board 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, TSP2 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.

2.2.8. Toll Operations

2.2.8.1 General.

During the Operations and Maintenance Term, TSP2 shall be responsible for all operations related to toll collection, violation processing, and revenue handling and accounting in accordance with Form K, and shall furnish all staffing, supervision, support services, data services and connections, equipment and materials necessary to perform such Work. Toll collection shall begin on the Revenue Service Date.

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

(a) The Joint Board shall have the sole and unrestricted right to establish and revise toll rates as often as it deems necessary or advisable 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 Representatives and any changes to the Toll Rate Schedule shall be evidenced by notice in writing issued by the Joint Board Representatives to TSP2.

(b) TSP2 shall collect only those tolls which are authorized under the Toll Rate Schedule and shall permit only such non-paid use of the Ohio River Bridges Project as may be specifically designated in the Toll Rate Schedule for exempt vehicles, if any.

(c) The Joint Board Representatives shall provide the initial Toll Rate Schedule at least ninety (90) days prior to the scheduled Revenue Service Date, and any revisions thereto shall be provided to TSP2 no less than thirty (30) days prior to the effective date thereof.

(d) To the extent not governed by the Toll Rate Schedule, the Joint Board 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 Representatives shall notify TSP2 in writing of established fees and charges and changes thereto, and TSP2 shall in turn notify all effected customers by approved methodologies and correspondence in a format approved by the Joint Board. TSP2 shall collect only those types and amounts of account customer fees and charges that are authorized by the Joint Board.

(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 Ohio River Bridges Project in accordance with Form K and the Toll Rate Schedule, 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 TSP2 no less than thirty (30) days prior to the effective date thereof, except for such changes which are necessitated by Law, emergency or safety. TSP2 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 Representatives shall consult with the TSP2 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 Conformance Matrix, the Joint Board Representatives shall submit a request for Change Proposal pursuant to Section 13.

2.2.8.3 Deposit and Transmittal.

TSP2 shall be entrusted with the responsibility for handling funds of others, documenting financial transactions and maintaining the integrity of financial records in accordance with [Section 65 and Form K to Exhibit 7], and for maintaining certain Project accounts and transferring funds as provided in Section 65. TSP2 shall have a fiduciary duty to the Joint Board, the States' Parties and users of the Ohio River Bridges Project and shall institute all necessary and proper mechanisms for custody and administration over funds and revenues. Gross Revenues are public funds. TSP2 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 65, the Flow of Funds Diagram set forth in Exhibit 12, the Custody and Revenue Control Contract and the Trust Agreement to be entered into among the Custodian, the Revenue Control Manager, KPTIA and IFA and TSP2, substantially in the form of Exhibit 9.

2.2.8.4 Motorist Privacy.

(a) TSP2 acknowledges and agrees that privacy of the customers is of paramount importance to the Joint Board and the traveling public. TSP2 shall provide systems and procedures designed to maintain the customer account and travel records of users of the Ohio River Bridges Project as confidential information and in compliance with applicable Laws on notice of privacy practices.

(b) All customer information and data to which TSP2 may have access or which TSP2 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. TSP2 shall at all times maintain the strict confidentiality of such information. TSP2 shall have no right to sell, transfer, disclose or otherwise use such information for any purpose other than in performance of its duties hereunder. TSP2 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 Ohio River Bridges Project 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. TSP2 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. TSP2 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 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 tolls, 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. TSP2 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. TSP2 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, TSP2 shall, at Joint Board's option: (i) certify to the Joint Board that TSP2 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 TSP2 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 TSP2's books and records concerning Personally Identifiable Information.

2.2.9 Procurement and Inventories

2.2.9.1. Procurement Services.

Subject to the Joint Board's right to conduct its own procurement pursuant to Section 2.8~~6~~ with respect to Pass-Through Cost Items, TSP2 shall procure and obtain all supplies, consumables, furnishings, equipment and materials necessary for the operation and maintenance of the Project. All such equipment and materials 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. TSP2 shall obtain and maintain an inventory of supplies, Spare Parts, and materials at the Project Site in sufficient quantities to ensure the continuous operation of the System.

2.2.9.2 Passage and Warranty of Title.

Title to all supplies, consumables, furnishings, equipment and other materials purchased or

provided by TSP2 pursuant to Section 2.2.~~1~~9.1 shall pass to and vest in the Joint Board without further action as provided in Section 10.1. TSP2 warrants good title to all such items purchased or provided by TSP2 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 TSP2, 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 TSP2

TSP2, 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 Project 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, 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 Completion Deadlines, and (b) otherwise to do everything required by and in accordance with the Contract Documents.

2.3.2. 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.

2.3.3. 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 federal requirements and, upon the Joint Board's request, furnish satisfactory proof of such compliance.

2.3.4. Cooperate with the Joint Board, the States' Parties, TSP1, 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 Project and other matters relating to the Work.

2.3.5. 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.

2.3.6. Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by resequencing, reallocating, or redeploying TSP2's forces to other work, as appropriate.

2.3.7. Enter into leases for each Walk-up Center (if applicable), and if TSP2 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 Representatives, 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 TSP2 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 TSP2 Representations, Warranties and Covenants

TSP2 represents, warrants and covenants that:

2.4.1. TSP2 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. TSP2 has evaluated the procedures specified herein with respect to determining the Contract Price, Completion Deadlines, Key Performance Indicators, Delay Liquidated Damages, Performance Liquidated Damages and Performance Stipulated Damages, and has reasonable grounds for believing, and does believe, that completion of the Initial Work for the Initial Costs, and completion of the Operations and Maintenance Work for the Total Operations and Maintenance Price 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. TSP2 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 Representatives and (ii) taken appropriate steps to verify any such Project information provided by the Joint Board Representatives.

2.4.4. TSP2 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.

2.4.5. TSP2 shall, at all times, schedule and direct its Work to provide an orderly progression of the Work to achieve, as applicable, each applicable Completion Deadlines and in accordance with the applicable approved Detailed Project Schedule as specified in Exhibit 7, 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 TSP2's sole cost, except as otherwise specifically provided in Section 13.

2.4.6. 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, TSP2 and its Subcontractors are and will be the sole author of all works employed by TSP2 in preparing any and all Software, (b) TSP2 has and will have sufficient right to assign or grant the rights and/or licenses granted in the Software pursuant to this Contract (and TSP2 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 TSP2-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 TSP2's knowledge, been threatened against TSP2 (or, insofar as TSP2 is aware, any entity from which TSP2 has obtained such rights). The representations and warranties set forth in this Section 2.4.6 shall survive the Operations and Maintenance Term and shall survive the expiration or termination of this Contract.

2.4.7. TSP2 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. TSP2 is duly qualified to do business, and is in good standing in the States of Indiana and Kentucky, and the state where the CSC and/or a the WUC(s) are 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.

2.4.8. The execution, delivery and performance of this Contract have been duly

authorized by all necessary action of TSP2, and this Contract has been duly executed and delivered by TSP2.

2.4.9. 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 TSP2'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 TSP2 is a party or by which its properties and assets may be bound or affected. TSP2 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.

2.4.10. This Contract constitutes the legal, valid and binding obligation of TSP2, enforceable against TSP2 in accordance with its terms.

2.4.11. TSP2 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, TSP2 shall perform as and if directed by the Joint Board Representatives 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 Representations, Warranties and Covenants

The Joint Board represents, warrants and covenants that:

2.6.1. 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.

2.6.2. 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.

2.6.3. 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 TSP2 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.

2.6.4. 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.

2.6.5. 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.

2.6.6. 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.

2.7 Term of Contract

Subject to earlier termination in accordance with the provisions hereof, the Term of this Contract 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 TSP2 under this Contract shall survive the expiration or termination and this Contract shall apply until all of such obligations and liabilities have been performed and discharged. The Term includes the Operations and Maintenance Term, and any Software Maintenance Option Period.

2.8 Joint Board Procurement

Notwithstanding the provisions of Section 2.3.7, the Joint Board itself may from time to time during the Term of this Contract elect by written notice to TSP2 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 TSP2 hereunder as a

Pass-Through Cost Item, including all items listed in Exhibit 6-B 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 TSP2'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 TSP2 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. TSP2 shall prepare and deliver to the Joint Board, within 20 days after receipt of the Joint Board's request, the following:

2.8.1. Minimum specifications and criteria for the subject equipment, material, Spare Part or other item that TSP2 considers necessary in order for TSP2 to continue to meet its Performance Requirements. TSP2 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 TSP2 specifies a sole source, or provides specifications and criteria that in practical effect will prevent a competitive procurement, TSP2 shall provide a reasonably detailed, written justification for such specifications and criteria.

2.8.2. Information on whether TSP2 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 TSP2 for the Project in order for TSP2 to stand by its Performance Requirements, and if testing will be required, TSP2's recommended tests and test procedures. If testing is required, TSP2 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, TSP2's written conclusion on whether the subject product qualifies and any conditions, modifications or other qualifications that must be met in order for TSP2 to meet its Performance Requirements if the Joint Board procures such product.

2.8.3. If TSP2 reasonably determines that it will have to modify the Project Software or other Project 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 Project and operate the Project with such product, TSP2 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 2considers applicable. If TSP2 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

TSP2 will require a Change Order if the subject product is procured, then TSP2 shall not be entitled to any Change Order with respect to the incorporation of such product into the Project.

2.8.4. The name and contact information for the manufacturer, vendor or supplier TSP2 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 TSP2 previously purchased such equipment, material, Spare Part or other item from such manufacturer, vendor or supplier for the Project.

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. TSP2 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 TSP2 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 TSP2 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, TSP2, upon receipt thereof, shall reflect the comments, proposed changes and/or other response in a proposed final draft of the submission, and shall deliver to the Joint Board such proposed final draft on or before the earlier to occur of the date set forth in the approved Detailed Project Schedule, or 30 days following TSP2'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 TSP2 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, TSP2 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, TSP2, 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 TSP2'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. TSP2 Responsibility

TSP2 agrees that it has full responsibility for the configuration of the Project and that TSP2 will furnish the configuration regardless of the fact that certain Volume III, Reference Information Documents may be provided to TSP2 by the Joint Board as a preliminary basis for TSP2's configuration. The foregoing is not intended to limit Section 13.6.2.6 or Section 13.7.1.11 or make TSP2 responsible for the work of TSP1.

3.3 Disclaimer

3.3.1. TSP2 understands and agrees that the Joint Board shall not be responsible or liable in any respect for any Losses whatsoever suffered by any TSP2-Related Entity by reason of any use of any information contained in the Reference Information Documents, or any action or forbearance in reliance thereon, except to the extent that the Joint Board has specifically agreed in Section 13 that TSP2 shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter. TSP2 further acknowledges and agrees that (a) if and to the extent TSP2 or anyone on TSP2's behalf uses any of said information in any way, such use is made on the basis that TSP2, not the Joint Board, has approved and is responsible for said information, and (b) TSP2 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 TSP2's own risk and at its own discretion.

3.3.2. TSP2 expressly acknowledges and agrees that the Joint Board's rights as specified under this Contract (i) to review, comment on, approve, disapprove, monitor, inspect, test and/or accept Deliverables, Change Orders, schedules, equipment, Software, installation, manuals, books, records, reports or statements or (ii) to communicate with the

TSP2: (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 TSP2, 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 TSP2 in determining whether TSP2 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 TSP2 as a defense, legal or equitable, to TSP2's obligation to fulfill such standards and requirements.

3.3.3. To the maximum extent permitted by law, TSP2 agrees that the Joint Board does not have a duty or obligation to cause TSP2'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

TSP2 acknowledges and agrees that FHWA may 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. INITIAL 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 TSP2 to proceed with Work hereunder shall be provided through issuance of the NTP.

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

(a) TSP2 shall have delivered to the Joint Board the Performance Bond required pursuant to Section 8.1.1;

(b) TSP2 shall have delivered to the Joint Board the Payment Bond required pursuant to Section 8.1.2;

(c) TSP2 shall have delivered to the Joint Board ~~the~~any Guaranty of TSP2's obligations pursuant to the Contract Documents, substantially in the form of Exhibit 10;

(d) TSP2 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 Representatives 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)~~(f) TSP2 shall have provided to the Joint Board any other documents, things or assurances reasonably required by the Contract Documents.

4.2 Late Progress Milestones

If, at any time, TSP2's actual progress in performing the Work as measured against the Detailed Project Schedule or any of the Progress Milestone Dates is inadequate to meet the requirements of this Contract, the Joint Board Representatives may so notify TSP2. Within thirty (30) days thereafter, TSP2 shall either (i) demonstrate to the Joint Board's reasonable satisfaction that such interim delay in progress will have no adverse effect on TSP2's ability to perform and complete the Work in accordance with the Completion Deadlines, as the same may be adjusted pursuant to this Contract, even though other Progress Milestone Dates may be missed, or (ii) submit for the Joint Board's review and approval a Recovery Plan for restoring within a reasonable period of time compliance with forthcoming Progress Milestone Dates Completion Deadline(s). If a Recovery Plan is required and submitted, TSP2 shall take such steps as may be necessary to improve

TSP2's progress in accordance with the approved Recovery Plan. If within a reasonable period thereafter TSP2 does not improve performance in accordance with the approved Recovery Plan, the Joint Board Representatives may require an increase in TSP2's resources. Such requirements shall be implemented by TSP2 without additional cost to the Joint Board, provided they are reasonable measures to mitigate delays for which TSP2 is not entitled to an extension of time pursuant to this Contract. Failure of TSP2 to comply with the provisions of this Section 4.2 may be grounds for determination by the Joint Board that TSP2 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 TSP2 Event of Default as set forth in Section 16.2.

4.3 Delay Liquidated Damages for Failure to Achieve Guaranteed Dates

4.3.1. Delay Liquidated Damages

TSP2 and the Joint Board acknowledge that in the event that TSP2 fails to commence Revenue Service by the Revenue Service Date, 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 management, legal, accounting, overhead and other administrative costs) with respect to failure to commence Revenue Service by the Revenue Service Date, and loss of toll revenues (if applicable), together with additional costs to the Joint Board of administering this Contract and additional costs with respect to a failure to commence Revenue Service by the Revenue Service Date. These damages will also include such additional cost to keep TSP1 operating the Project until such time that TSP2 can assume responsibilities. TSP2 and the Joint Board agree that as of the Execution Date, the amounts of Delay Liquidated Damages set forth in Exhibit 2 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 a failure to commence Revenue Service by the Revenue Service Date and do not constitute a penalty. TSP2 shall pay any such Delay Liquidated Damages owing under this Contract on a monthly basis within five (5) 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 commencing Revenue Service by the Revenue Service Date 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 Detailed Project Schedule demonstrates that TSP2 is capable of commencing Revenue Service within ninety (90) Days after the Revenue Service Date, and (b) TSP2 diligently performs the Work in accordance with said schedule.

4.3.2. Cumulative

Except as provided in Section ~~4.6~~5.1, the Delay Liquidated Damages payable hereunder are the Joint Board's sole monetary remedy for TSP2's failure to commence Revenue Service by the Revenue Service Date, 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 ninety (90) days of TSP2's failure to commence Revenue Service by the Revenue Service Date. After ninety (90) days, the Joint Board shall have all other remedies available under this Contract, including the right to terminate all or a portion of this Contract for a TSP2 Event of Default as set forth in Section 16. The Delay Liquidated Damages under this Section 4.3~~4~~.2 are cumulative and may be aggregated if multiple deadlines are not achieved.

4.4 End of Operations and Maintenance Term Acceptance

4.4.1. Requirements

In connection with the expiration or earlier termination of the Operations and Maintenance Term, TSP2 shall perform each of the required elements of the approved End of Contract Transition Plan as described in Form K. TSP2 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. TSP2 shall provide written notice to the Joint Board when all of the following have occurred, which shall be not fewer than ninety (90) days prior to expiration or earlier termination of the Contract Term: the

(a) TSP2 has provided and the Joint Board has accepted updated Deliverables reflecting any and all changes and modifications that may have occurred during the term of the Contract;

(b) TSP2 has supplied and the Joint Board Representatives have 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 TSP2;

(c) TSP2 has transferred to the Joint Board or its designee all rights in Software required by Sections 20.5 and 20.6;

(d) To the extent required pursuant to Section 20.6.3, TSP2 has deposited all Software Source Code necessary for continued operation and maintenance of the Project into the Source Code Escrow and the Code Escrow Agent has verified such deposit is accurate and complete; and

(e) TSP2 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.

(f) TSP2 has coordinated with, and provided all necessary documents to, the

succeeding vendor to minimize any disruption in services during a transition.

4.4.2. Certificate of End of Operations and Maintenance Term Acceptance

The Joint Board Representatives 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 ~~4.9.1~~4.4.1 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 Form K 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.

~~4.5~~

~~4.6~~

SECTION 5. KEY PERFORMANCE INDICATORS

5.1. Performance Guarantees and Performance Liquidated Damages

5.1.1. Key Performance Guarantees

TSP2 hereby guarantees that the Project shall comply with each of the Key Performance Indicators set forth in Exhibit 2, as demonstrated with the Operational and Acceptance Test conducted by TSP2.

5.1.2. Key Performance Reporting

As a part of the Operational and Acceptance Test conducted by TSP2, TSP2 shall demonstrate the Project will allow for the review of each Key Performance Indicator in the Monthly Operations and Maintenance Report. Such reports will be reviewed as a part of the implementation of the Project and shall be agreed upon by the Joint Board Representatives.

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

5.1.3. Key Performance Liquidated Damages

(a) TSP2 and the Joint Board acknowledge that in the event that the Project fails to comply with Key Performance Indicators as demonstrated by the Monthly Operations and Maintenance Report, the Joint Board and/or Joint Board Representatives shall incur damages that are incapable of accurate measurement. Such damages include, without limitation, loss of toll revenues and additional operating costs for the Project with respect to certain of the Key Performance Indicators. These damages are incapable of accurate measurement because of, among other things, the unique nature of the Project. TSP2 and the Joint Board agree that, as of the Execution Date, the amounts of Performance Liquidated Damages set forth in Exhibit 2 represent a good faith estimate as to a portion only of the potential actual damages that the Joint Board would incur as a result of the failure of the Project to comply with the Key Performance Indicators for which Performance Liquidated Damages are established in Exhibit 2 (each a "Guaranteed Key Performance Indicator"), and do not constitute a penalty. TSP2 shall pay any Performance Liquidated Damages owing under this Contract in accordance with the provisions of Section ~~4.6.6~~5.1.4 and Exhibit 2.

(b) Notwithstanding clause (a), TSP2 shall not be responsible for the payment of Performance Liquidated Damages if (i) TSP2 has fully complied with its obligations regarding coordination with Other Joint Board Contractors; (ii) notwithstanding such

coordination, TSP2 is required to shut down the Project or otherwise delay its performance of a Guaranteed Key Performance Indicator in order to accommodate maintenance; (iii) the need for such maintenance does not arise out of or relate, in whole or in part, to any action, omission, fault, breach, negligence, willful misconduct or recklessness by any TSP2-Related Entity; and (iv) such shut down or delay is the direct and sole cause of the failure of the Project in a manner that directly and solely causes TSP2 to fail to meet such Guaranteed Key Performance Indicator.

(c) TSP2 shall bear the burden of proof that the conditions in clauses (b)(i) through (iii) herein are satisfied. TSP2 further acknowledges and agrees that Performance Liquidated Damages may be owing even though no TSP2 Event of Default has occurred.

(d) Except as provided in, pursuant to or as a result of this Section ~~4.6~~5.1, Section ~~4.8~~4.3, Section 16.1.1(n) or in connection with a Persistent Breach, the Performance Liquidated Damages payable hereunder are the Joint Board's sole monetary remedy for TSP2's failure to comply with certain Key Performance Indicators set forth in this Contract. The Performance Liquidated Damages under this Section ~~4.6~~5.1 are cumulative and may be aggregated if multiple or cumulative failures occur.

5.1.4. Failure to Meet Key Performance Indicators

(a) In the event any of the ongoing operating performance do not yield results which meet or are better than a Guaranteed Key Performance Indicator, TSP2 shall become obligated hereunder to pay Performance Liquidated Damages in the amounts set forth in Exhibit 2 for any shortfall in performance below the Key Performance Indicators based upon such test results.

(b) TSP2's obligation to pay Performance Liquidated Damages for failure to meet Guaranteed Key Performance Indicators shall be deferred for a period of time following the Go-Live date ~~in which~~ to allow the system and operations to stabilize. This period of allowable time is anticipated to be sixty (60) days. Thereafter, if TSP2 becomes obligated to pay Performance Liquidated Damages, such Performance Liquidated Damages shall be due and payable directly to the Joint Board or to such other person as directed by the Joint Board Representatives in writing, without notice or demand, on the tenth day of the following month and if not paid when due shall thereafter accrue interest as provided 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 TSP2.

5.1.5. Key Performance Stipulated Damages

5.1.5.1 Key Performance Stipulated Damages Generally.

(a) TSP2 understands and agrees that if the Key Performance Indicators specified herein are not met at any time after the Revenue Service Date, the Joint Board will suffer substantial Losses. TSP2 agrees that it shall be liable for all such Losses to the extent set forth in this Section ~~4.6.7.1~~5.1.5.1 and elsewhere in this Contract. TSP2 and the

Joint Board have agreed to stipulate to a process to determine the amount of damages payable for such failure. TSP2 acknowledges and agrees that such Performance Stipulated Damages are intended to compensate the Joint Board solely for its damages caused by the failure to meet the Guaranteed Key Performance Indicators specified in Section ~~4.6.7.2~~5.1.5.2, beyond any compensation to the Joint Board as a result of any Key Performance Liquidated Damages assessed against TSP2 as a result of such failure to meet such Guaranteed Key Performance Indicator, and shall not excuse TSP2 from liability to correct any defects in the Project or from any other breach of requirements of the Contract Documents. The Joint Board agrees to accept Performance Stipulated Damages as its sole compensation for damages caused by such failure, provided that the Joint Board shall (i) not assess or accept Performance Stipulated Damages to the extent such failure are wholly compensated by any Key Performance Liquidated Damages assessed against TSP2 and (ii) not be precluded from exercising its other rights and remedies respecting such failure, including requiring TSP2 to make adjustments to the Project that will cause it to meet the Key Performance Indicators after the Joint Board's written notice to TSP2 of the failure.

(b) Notwithstanding clause (a), TSP2 shall not be responsible for the payment of Performance Stipulated Damages if (i) TSP2 has wholly compensated the Joint Board for such failure to meet a Key Performance Indicator by payment of any Key Performance Liquidated Damages (i) TSP2 has fully complied with its obligations regarding coordination with Other Joint Board Contractors; (iii) notwithstanding such coordination TSP2 is required to shut down the Project or otherwise delay its performance of a Guaranteed Key Performance Indicator in order to accommodate maintenance or other activities; (iv~~ii~~) 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 TSP2-Related Entity; and (~~i~~v) such shut down or delay is the direct and sole and cause of the failure of the Project in a manner that directly and solely causes TSP2 to fail to meet such Guaranteed Key Performance Indicator.

(c) TSP2's obligation to pay Performance Stipulated Damages for failure to meet Guaranteed Key Performance Indicators shall apply from and after the Revenue Service Date. If TSP2 becomes obligated to pay Performance Stipulated Damages, such Performance Stipulated Damages shall be due and payable directly to the Joint Board or to such other person as directed by the Joint Board Representatives in writing, without notice or demand, on the tenth day of the following month and if not paid when due shall thereafter accrue interest as provided 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 TSP2.

(d) TSP2 shall bear the burden of proof that the conditions in clauses (b)(i) through (iv) herein are satisfied. TSP2 further acknowledges and agrees that Performance Stipulated Damages may be owing even though no TSP2 Event Default has occurred.

5.1.5.2. Amount of Key Performance Stipulated Damages.

(a) TSP2 acknowledges and agrees that because of the unique nature of the

Project, and the fact that performance of the Project in conformance with the Guaranteed Key Performance Indicators is essential to the Joint Board's ability to collect toll revenue to enable each of the states to continue to finance, construct, operate and maintain and improve their respective highway systems, it is not possible to ascertain and determine the actual Losses, including lost toll revenues, which would accrue to the Joint Board and the public from such failures. Therefore, commencing upon the Revenue Service Date, TSP2 shall pay to the Joint Board an amount determined as follows (the "Performance Stipulated Damages") as deemed compensation to the Joint Board for lost toll revenues from failure to meet the Guaranteed Key Performance Indicators.

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

(c) In no event shall the foregoing calculation ever be a negative number or result in TSP2 being entitled to additional payment from the Joint Board. TSP2 understands and agrees that any Performance Stipulated Damages payable in accordance with this Section ~~4.6.7.2~~5.1.5.2 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. TSP2 further acknowledges and agrees that Performance Stipulated Damages may be owing even though no TSP2 Event of Default has occurred.

(d) Except as provided in, pursuant to or as a result of this Section ~~4.6~~5.1.5.2, Section ~~4.8~~4.3, 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 TSP2's failure to comply with the Guaranteed Key Performance Indicators. The Performance Stipulated Damages under this Section ~~4.2~~5.1 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.

5.1.6 Cap on Total Performance Liquidated Damages and Performance Stipulated Damages

Subject to the provisions of Section 17.1, TSP2 shall have no monetary liability under this Contract for damages arising out of an individual failure of the Project to meet the Guaranteed Key Performance Indicators addressed in Exhibit 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.

SECTION 6. FLOW OF FUNDS REQUIREMENTS

6.1 Custody and Revenue Control Agreement; Trust Agreement

TSP2 acknowledges and agrees that the Joint Board has selected a Custodian to hold Gross Revenues collected by TSP2, and a Revenue Control Manager to maintain an accounting of Financial Transactions, and review and report on the status of accounts. The Joint Board has entered into a Custody and Revenue Control Agreement and intends to update it. A proposed draft agreement is attached hereto as Exhibit 9-A. TSP2 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. TSP2 has taken into account and expects to perform the obligations to be allocated to and assumed by TSP2 pursuant to the Custody and Revenue Control Agreement. TSP2 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 9-A to the TSP2 and request for TSP2's signature.

TSP2 acknowledges and agrees that the Joint Board will require TSP2 and its Provider Entity (as defined in the Trust Agreement) to enter into a Trust Agreement. The terms of the Trust Agreement shall make clear that the Provider Accounts (as defined in the Trust Agreement) and all funds held on deposit therein, including interest earnings thereon, by the Provider Entity, as the agent as TSP2 under its applicable subcontract, are required to be held in trust for the Beneficiaries described in the Trust Agreement, pursuant to the Contract, including but not limited to Section 2.2.8 of the Contract, and that the Beneficiaries own and hold all the equitable interests in the Provider Accounts and all funds held on deposit therein. A proposed draft of which is attached hereto as Exhibit 9-B. TSP2 acknowledges that it has had an opportunity to review the Trust Agreement and understands the terms thereof and has taken them into account in establishing the Contract Price and entering into this Agreement. TSP2 has taken into account and expects to perform and cause its Provider Entity to perform the obligations to be allocated to and assumed by TSP2 and the Provider Entity pursuant to the Trust Agreement. TSP2 agrees that it, along with its Provider Entity, shall execute and deliver to the Joint Board the final Trust Agreement within seven (7) business days of the Joint Board's presentation of the execution version of the Trust Agreement substantially in the form of Exhibit 9-B to the TSP2 and request for TSP2's signature.

6.2 Deposit of Funds into Custodian Accounts

TSP2 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.

6.3 No Commingling of Funds

All Gross Revenues received by TSP2 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 TSP2 into such accounts within the time frame designated in such Custody and Revenue Control Agreement. TSP2 shall not commingle Gross Revenues from the different sources.

6.4 Authorized Personnel

Only TSP2 personnel specified in the Custodian and Revenue Control Agreement shall have access to and control over the Gross Revenues and accounts.

6.5 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, TSP2 shall carry out the responsibilities assigned to it to make daily transfers of funds and reconciliation as specified in Form K.

6.6 Responsibility for Chargebacks and Refunds

TSP2 shall be responsible for the cost of chargebacks and refunds resulting from TSP2's error and shall make payment of refunds owing to the Joint Board within fifteen (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 TSP2 hereunder.

6.7 Revenue Control Manager

TSP2 shall fully cooperate with and assist the Revenue Control Manager in carrying out its obligations, such as reporting, daily reconciliation, resolution of discrepancies, and other such financial matters.

SECTION 7. CIVIL RIGHTS; SUBCONTRACTORS; KEY PERSONNEL

7.1 Civil Rights; Equal Employment Opportunity; DBE Participation

7.1.1. TSP2 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. TSP2 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 TSP2 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. TSP2 shall include Section 7.1.1 in every Subcontract (including purchase orders and in every subcontract of any TSP2-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. TSP2 confirms for itself and all Subcontractors that TSP2 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 TSP2 and each Subcontractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. TSP2 shall comply with all applicable equal employment opportunity and nondiscrimination provisions, and shall require its Subcontractors to comply with such provisions.

7.1.4. TSP2 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, TSP2 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. No provisions in the Subcontract shall prohibit the Joint Board or the States' Parties from communicating directly with such Subcontractor (nor shall TSP2 act to limit such communication); provided, however, TSP2 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. TSP2 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 TSP2 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 TSP2 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 (10) days after execution of a Subcontract, TSP2 shall deliver true, correct and complete copies thereof to the Joint Board. The TSP2 shall provide true and correct updates to all Subcontracts if they change.

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 TSP2, and provide progress reports to TSP2 appropriate for the type of work it is performing sufficient to enable TSP2 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 TSP2's rights with liability only for those remaining obligations of TSP2 accruing after the date of assumption by the Joint Board. No such assignment shall release or relieve TSP2 from its obligations or liabilities under the assigned Subcontract.

7.2.4. To the extent commercially feasible, TSP2 shall include the following patent and copyright infringement and trade secret misappropriation provisions in its purchase orders and licensing agreements with TSP2's Project equipment and Project Software Suppliers. Inclusion of such provisions in TSP2 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 Project 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 TSP2 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 TSP2 and the Joint Board from, and pay, all damages

and costs awarded therein against TSP2 and the Joint Board, and their respective officers, employees, agents, or assigns.

(c) The Supplier shall report to TSP2 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 TSP2 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 TSP2 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.

7.3 Responsibility for Employees and Subcontractors

TSP2 shall supervise and be responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any TSP2-Related Entity, as though TSP2 directly employed all such Persons. Notwithstanding the foregoing, the Joint Board shall have the right, at any time to require TSP2 to immediately remove from the Project any TSP2 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 Key Performance Indicators of the Work.

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

8.1 Provision of Bonds

TSP2 shall provide payment, performance and warranty bonds to the Joint Board securing TSP2'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, TSP2 shall provide, and continuously maintain in place for the benefit of the Joint Board, a Performance Bond in the form of Exhibit 5-A for the Initial Work. The Performance Bond shall be in the amount of the Initial Costs 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 TSP2 hereunder, or (b) upon satisfaction of the conditions in Section 8.1.3.

8.1.2. As a condition to issuance of the NTP, TSP2 shall provide, and continuously maintain in place for the benefit of the Joint Board, a Payment Bond in the form of Exhibit 5-B for the Initial Work. Such bond shall be in an amount of 100% of the Initial Costs. 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, TSP2 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 in an amount equal to 20~~1~~~~0~~% of the Initial Costs and substantially in the form attached hereto as Exhibit 5-C (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 evidence satisfactory to the Joint Board that all Persons eligible to file a claim against the bond have been fully paid and 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, TSP2 shall furnish the Joint Board with (a) a Maintenance Performance Bond in the form of Exhibit 5-D-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 5-D-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 Operations and Maintenance Term, the Maintenance Performance Bond shall be in an amount equal to 100% of the Total Operations and Maintenance Price for one year for the then current year of the Operations and Maintenance Term. Commencing from and after System Acceptance and continuing during the Operations and Maintenance Term, the Maintenance Payment Bond shall be in an amount equal to 100% of the Total Operations and Maintenance Price for one year for the then current year of the Operations and Maintenance Term. If the Joint Board exercises the Software Maintenance Option(s), then subject to the satisfaction of the conditions stated below for release of the Maintenance Performance Bond and the Maintenance Payment Bond, during any 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 TSP2 for performing the Software maintenance work for the then current year of any Software Maintenance Option Period. TSP2's obligation to maintain and provide a current Maintenance Performance Bond and Maintenance Payment Bond shall continue throughout the Operations and Maintenance Term, and if the Joint Board exercises the Software Maintenance Option, the TSP2'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 TSP2 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 any Software Maintenance Option, the Maintenance Performance Bond(s) shall be released after the satisfaction of all conditions to Final Payment of the Total Operations and Maintenance Price pursuant to Section 12.5 at the end of the Operations and Maintenance Term. If the Joint Board has not exercised any Software Maintenance Option, then upon expiration of the 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 any Software Maintenance Option, then the Maintenance Performance Bond(s) shall be released after satisfactory completion of all Software maintenance work TSP2 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, TSP2 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 TSP2's obligations under the Contract Documents. Such guaranty, in the form attached hereto as Exhibit 10 to this Contract, assures performance of TSP2's obligations hereunder and shall be maintained in full force and effect throughout the duration of this Contract. TSP2 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 TSP2 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 10, together with appropriate evidence of authorization, execution, delivery and validity thereof.

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 TSP2 shall not relieve TSP2 of any of its

obligations hereunder.

8.4 Periodic Updated Financial Information

Each year during the term of this Contract, within sixty (60) days following the completion of TSP2's and the Guarantor's annual audited financials, TSP2 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 TSP2, 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, TSP2 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 TSP2 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 TSP2 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 TSP2 with respect to covered claims, but shall not be interpreted to relieve TSP2 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 TSP2 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 TSP2 Provided Insurance

As a condition to issuance of the NTP, TSP2 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. TSP2 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) TSP2 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 TSP2'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, TSP2 shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain, a policy or policies of insurance providing workers' compensation statutory benefits and employer's liability in conformance with the laws of the State and the Commonwealth. 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. Umbrella or Excess Liability Insurance

(a) TSP2 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.

9.1.4. Cyber Liability Insurance

TSP2 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 twelve (12) hours. The Indemnified Parties shall also be insureds.

9.1.5. Crime Insurance

TSP2 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 TSP2 or its Subcontractors in the performance of the Operations and Maintenance Work hereunder.

9.1.6. Professional Liability Insurance

(a) During all phases of the Project, TSP2 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 TSP2 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) TSP2 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 TSP2-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.

9.2 General Insurance Requirements

9.2.1. Premiums, Deductibles and Self-Insured Retentions

TSP2 shall timely pay the premiums for all insurance required under this Section 9. TSP2 agrees that, for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which TSP2 is responsible hereunder, TSP2 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 TSP2's execution hereof, TSP2 will deliver to the Joint Board (1) a certificate of insurance with respect to each policy required to be provided by TSP2 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 TSP2 has not complied with the requirements of this Section 9, TSP2 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. TSP2 acknowledges and agrees that any actual or alleged failure on the part of the Joint Board to inform TSP2 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. TSP2 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 TSP2 is unable to deliver such evidence of insurance by the specified date through no fault of the TSP2 and despite making its best efforts and provided that such certificate is delivered prior to the expiration date of the relevant policy, TSP2 will not be deemed to be in default of this Section for the purposes of Section 16. However, in the event that TSP2 is unable to deliver such evidence of insurance as provided for in this Section 9.2.2.2, TSP2 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 TSP2'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 three (3) days after the renewal policies have expired.

9.2.3. Subcontractor Insurance Requirements

TSP2 shall cause each Subcontractor to provide insurance that complies with requirements for TSP2-provided insurance set forth in this Section 9 in circumstances where the Subcontractor is not covered by TSP2-provided insurance and provided that TSP2 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. TSP2 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. TSP2 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, TSP2 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 TSP2 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 TSP2 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 thirty (30) days' prior written notice (ten (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, TSP2 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, TSP2 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 TSP2 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, TSP2 shall not be entitled to additional compensation or time extension under this Contract to the extent compensated by any insurance specified herein. TSP2 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 TSP2 in writing of any changes in the requirements applicable to insurance required to be provided by TSP2. 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 TSP2 hereunder.

9.2.8. Support of Indemnifications

The insurance coverage provided hereunder by TSP2 is not intended to limit TSP2's indemnification obligations under Section 18.

9.2.9. Commercial Unavailability of Required Coverages

If, through no fault of TSP2, 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 TSP2 to find commercially reasonable alternatives to the required coverages that are acceptable to the Joint Board. TSP2 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 TSP2 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, TSP2 shall be responsible for reporting and processing all potential claims under the insurance required to be provided under this Section 9. TSP2 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 TSP2 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 TSP2, and to cooperate with TSP2 as necessary for TSP2 to fulfill its duties hereunder.

9.4 Commencement of Work

TSP2 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. TSP2 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 TSP2. No delay in securing such insurance, certificates of insurance or approvals shall extend any time period or provide TSP2 any other relief or entitlement for a Change Order.

9.5 The Joint Board's Right to Remedy Breach by TSP2

If TSP2 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 TSP2'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

TSP2 or reimbursed by TSP2 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 TSP2 or any Subcontractor to satisfy the obligations of this Section 9.

9.6 Disclaimer

TSP2 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 TSP2 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 INITIAL WORK

10.1 Title

Subject to the provisions of Section 20 with respect to intellectual property rights, TSP2 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 TSP2 of invoiced amounts pertaining thereto.

10.2 Maintenance During Performance of Initial Work

During performance of the Initial Work, TSP2 shall maintain, repair, restore or replace all Initial Work, including materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during installation of the Project that is injured or damaged prior to the commencement of the 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. TSP2 acknowledges and agrees that the full compensation for such maintenance work prior to commencement of the Operations and Maintenance Term is included in the Initial Costs.

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

11.1 TSP2 Standards of Performance

TSP2 shall perform and provide all Work required under the Contract Documents in accordance with the TSP2 Standards of Performance set forth in Sections 11.1.1 through 11.1.4 and the Technical Requirements Conformance Matrix, subject to the exclusions set forth in Section 11.1.5:

11.1.1. Materials and Installation. Any and all materials, equipment, supplies and furnishings incorporated in the Work or provided by TSP2 hereunder shall be new, shall comply with the requirements of the Contract Documents, including the Technical Requirements Conformance Matrix, and shall be of good quality, free of defects and suitable for their intended purpose, and TSP2 shall perform the Initial Work in a workmanlike manner, without defects in construction or workmanship and shall comply with all requirements of the Contract Documents with respect thereto.

11.1.2. Software. All 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 Software shall be compatible with the Project equipment. **THE SOFTWARE WARRANTIES SET FORTH IN THIS SECTION 11.1.2 ARE EXCLUSIVE AND ARE IN LIEU OF ANY IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

11.1.3. No Deviations. The Project, the installation thereof and all other Work shall be free of Deviations that do not constitute Joint Board approved Deviations, or those submitted as Exceptions in the Proposal.

11.1.4. Exclusions From and Limitations of Standards of Performance. The TSP2 Standards of Performance exclude damage or defect caused by abuse or accidents (unless such accident was due in part to TSP2's failure to comply with the TSP2 Standards of Performance), adaptations or modifications (including, without limitation, adaptations or modifications of Software) not executed by TSP2 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 TSP2 promptly after the Joint Board obtains Actual Knowledge that any Work does not comply with the

TSP2 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 TSP2 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 TSP2 has Actual Knowledge that any Work does not comply with the TSP2 Standards of Performance or has received a Breach of Standards of Performance Notice from the Joint Board, TSP2 shall promptly re-perform, correct, repair or replace such Work and promptly repair any damages to the extent caused by such Work failing to comply with the TSP2 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 Revenue Service Date and shall extend for the full Contract Term. If this Contract is terminated for any reason, then any and all third-party warranties able to be re-assigned shall be assigned to the Joint Board.

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 Contract Term.

11.4.3. Maintenance Warranty Work. The Warranties shall also apply to all Work re-done, repaired, corrected or replaced by TSP2 in the performance of its obligation to maintain the Project during the Operations and Maintenance Term. The Warranties as to each such re-done, repaired, corrected or replaced element of the Work during the Operations and Maintenance Term shall remain in effect for the Contract Term.

11.4.4. Suppliers' and Manufacturers' Warranties. For equipment, materials or Software with third-party warranties longer than the Contract Term (and without intending to limit TSP2's warranty under this Contract with respect thereto), TSP2 shall assign such Supplier warranties to the Joint Board upon the expiration of the Contract.

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 TSP2 during the applicable General Warranty Period, TSP2, at its cost, shall promptly correct or re-perform any Work that does not comply with the TSP2 Standards of Performance, including the repair, replacement or modification of

any item of material, equipment or Software so that it conforms to the TSP2 Standards of Performance, and shall promptly repair any damage to the property of third parties to the extent caused by TSP2's failure to comply with the TSP2 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 TSP2 hereunder, TSP2 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 TSP2. TSP2, 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 TSP2 Standards of Performance. TSP2 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 Project operations, it being acknowledged by TSP2 that Work which fails to conform to the TSP2 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. TSP2 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 Project 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 TSP2 Standards of Performance.

11.5.2. Failure to Re-perform, Correct or Repair. If TSP2 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 (5) Business Days following receipt of such notice, or if TSP2 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 TSP2, may itself accomplish the repair, correction, re-performance or replacement in accordance with the terms of this Contract, and TSP2 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 TSP2 of any of its responsibilities under this Contract, including responsibility for compliance with the TSP2 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 TSP2's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for breach, negligence, willful

misconduct or fraud; provided, however, that upon expiration of the Warranties, TSP2 shall have no further liability.

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, TSP2 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 TSP2's liability for revenue loss resulting from the failure of the System to perform in accordance with the Key Performance Indicators shall be as set forth in Exhibit 2 and in Section ~~4~~5.

SECTION 12. PAYMENT FOR SERVICES

12.1 Contract Price

The total compensation that the Joint Board shall pay to TSP2 for the Work to complete the Project is a fixed and variable price as specified in the Price Forms in Exhibit 7 Form G, plus reimbursement of certain actual direct costs for Pass-Through Cost Items specified in Exhibit 6. All Pass-Through Cost items shall be administered by TSP2 without markup.

The Contract Price is comprised of the following elements, as more specifically described in Exhibit 7 Form G:

(a) Initial Costs;

(b) BOS administration, maintenance, and support service costs (Years 1 through 7)

(c) Variable pricing costs (Automated Vehicle Identification transactions, posted VTolls, etc.)

(d) Fixed operations costs; and

(e) End of contract transition costs.

Except as otherwise expressly provided in Section 12.5.2 and 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 Initial Costs

The Initial Costs, specified in Exhibit 7 Form G, is the complete compensation payable to TSP2 for the performance of all Initial Work provided by TSP2. The elements of the Initial Costs are further specified in Form G.

12.3 Invoices for Initial Costs

12.3.1. Payment Milestones Schedule. The Initial Costs shall be paid to TSP2 in accordance with the Payment Milestones set forth in Exhibit 7, for the compensation specified in the Price Forms on Form G in Table 1A, which is intended to compensate TSP2 according to its actual progress in completion of the Initial Work, as measured by Payment Milestones completed in accordance with the Payment Milestone descriptions provided in Exhibit 7. The Payment Milestones shall be used as the basis for the preparation of monthly invoices as set forth in Section 12.3.2, and TSP2 shall be entitled to include in its invoice for any month the compensation specified in the Price Forms for Payment Milestones actually completed during the immediately preceding month, subject to the provisions of Section 12.8.1 below.

~~The portion of the Initial Costs allocable to bond and insurance premiums (for the insurance policies required to be in place following the NTP) shall be payable to reimburse TSP2 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 TSP2's financial condition, TSP2's risk rating or experience or the acts, omissions, negligence or misconduct of TSP2 or any member of any TSP2-Related Entity.~~

12.3.2. Monthly Invoices. TSP2 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, TSP2 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 Initial Costs allocable to the Work actually performed by TSP2 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 Initial Costs, if any, in accordance with this Contract. TSP2 shall not invoice for any amounts that are in dispute solely between TSP2 and a Subcontractor or Supplier which TSP2 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 TSP2 in the form set forth in Exhibit 6-A;

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 TSP2 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 TSP2 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 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, TSP2 shall submit a certificate, signed and sealed by the TSP2's Project director and TSP2's Project manager, certifying to the Joint Board that:

12.4.1. All Work which is the subject of the invoice has been checked and inspected in accordance with the QAMTP; 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 Deliverables, 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 Conformance Matrix, subject to any exceptions identified in the certification.

12.5 Operations and Maintenance Price.

The fixed portions of the Operations and Maintenance Price (Years 1 through 7) are specified in Form G on Table 4 and 4A. The variable portion of the Operations and Maintenance Price is based on the unit costs specified on Form G in Table 3. The amount of the Operations and Maintenance Price to be paid in each of Years 1 through 7 of the Operations and Maintenance Term is the Total Operations and Maintenance Price. Except as provided in Section 12.5.1 herein, the Total Operations and Maintenance Price is the compensation payable to TSP2 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 TSP2 furnished equipment and materials, all insurance to be obtained by TSP2 pursuant to Section 9, all warranties

provided by TSP2 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 TSP2's profit, overhead and mark-up. All amounts payable to TSP2 shall be less the monthly deductions for any Performance Liquidated Damages and Key Performance Stipulated Damages owed by TSP2 under Section ~~4~~ 5 of this Contract. The individual Contract Price elements of the Total Operations and Maintenance Price (Years 1 through 7) are further specified in Form G on Table 2.1 and 4.1. The Total 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 Revenue Service 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.

12.5.1. Operations and Maintenance Pass-Through Cost Items. TSP2 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 6-B. The procedure for establishing a budget for these expenses shall be as provided in Section 12.13.

12.5.2. TSP2 Requests to for Adjustments to Operations and Maintenance Price. Beginning with the third (3rd) anniversary of the Effective Date of this Contract and every two (2) year interval thereafter, TSP2 may, no later than sixty (60) days prior to such anniversary date, submit a written request to the Joint Board for an increase in the Operations and Maintenance Price. Such request shall be made upon demonstrable and unforeseen cost increases of at least ten (10%) to TSP2 in connection with the Work applicable to the Operations and Maintenance Price, as specified in Form G. Requests made upon incorrect assumptions made by TSP2 in its Proposal as it relates to the Operations and Maintenance Price will not be considered by the Joint Board. Specifically, such request should include:

(a) A reasonably detailed description of the underlying and unforeseen events or circumstances that are attributable to the cost increases to TSP2;

(b) The requested adjustment to the Operations and Maintenance Price;

(c) If appropriate, TSP2's proposed plan for mitigating the future impacts of such events or circumstances to avoid future request for an increase to the Operations and Maintenance Price; and

(d) Other information, as appropriate.

The Joint Board shall have twenty (20) days after receipt of TSP2's request to adjust the Operations and Maintenance Price to either accept or reject it as submitted or to commence negotiation of an acceptable alternative. If the Joint Board fails to respond within twenty (20) days, TSP2 may notify the Joint Board in writing that it has not received a response, and if Joint Board fails to respond within ten (10) days after such additional notice, Joint Board's

failure to respond shall be deemed to be a denial of TSP2's request for an adjustment to the Operations and Maintenance Price. Joint Board shall have no obligation to approve the requested change and its decision shall be final, binding and not subject to dispute resolution.

12.6 Payment

12.6.1. Entitlement. KPTIA and IFA each shall pay TSP2 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 TSP2 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 TSP2 at such depository as TSP2 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 Conformance Matrix or any other requirements of the Contract Documents and that is not corrected or that the Joint Board corrects; (b) failure of TSP2 to make payments of undisputed amounts to a Subcontractor when such payments are due under the Subcontract, which failure is not cured by TSP2; (c) Performance Liquidated Damages, Performance Stipulated Damages and/or Delay Liquidated Damages owing under this Contract and which are not paid by TSP2 in accordance with Sections ~~4.6.6~~5.1.4, 5.1.5~~4.6.7~~ and 4.3~~4.6.12~~; (d) any amounts overpaid in prior payments; (e) any other amounts owed by TSP2 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 TSP2's obligations under this Contract, (ii) amounts owed by reason of TSP2'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 TSP2 or against the Joint Board as a result of the actions or failure to act by the Joint Board relating to the Project unless TSP2 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 TSP2 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 TSP2 Event of Default. When the reasons for deducting, offsetting or withholding payment are removed, KPTIA and IFA each shall promptly pay TSP2 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 TSP2 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 TSP2 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 forty-five (45) days of receipt of an approved invoice from TSP2.

12.7 Interest

Any amount required to be paid by TSP2 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 Initial Costs**.
Final payment for the Work following System Acceptance shall not become due to TSP2 hereunder until TSP2 submits to the Joint Board:

12.8.1.1. TSP2's final payment invoice and certification in form approved by the Joint Board Representatives;

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 TSP2 in favor of the Joint Board of Liens, Claims (except those previously made in writing and identified as unsettled or Claims which TSP2 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 and TSP2, 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";

12.8.2 Final Payment of Total Operations and Maintenance Price

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

12.8.2.1. On or about the date that the Operations and Maintenance Term terminates, TSP2 shall prepare and submit a proposed final invoice for the Total Operations and Maintenance Price to the Joint Board for the final payment of the Total Operations and Maintenance Price, showing the proposed total amount due TSP2, including any amounts owing from Change Orders. In addition to meeting all other requirements for Total Operations and Maintenance Price Invoices, the Final Operations and Maintenance Price Invoice shall list all outstanding Change Order proposals submitted by TSP2 pursuant to Section 13.5, stating the amount at issue associated with each such notice. A Final 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 TSP2 or against the Joint Board, (b) consent of any Guarantors and surety to such Final Payment, (c) a list of any Project 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 TSP2. Prior applications and payments shall be subject to correction in the Final Operations and Maintenance Price Invoice. Change Order proposals filed concurrently with a Final Operations and Maintenance Price Invoice must otherwise be timely and meet all requirements under Section 13.5 and the Technical Requirements Conformance Matrix.

12.8.2.2. If a final invoice for the Total 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 Operations and Maintenance Price shall also be subject to TSP2's certification in the release required by Section 12.8.1 that TSP2 has satisfied all the conditions to the end of the Operations and Maintenance Term set forth in Section ~~4.13.1~~4.4.1 and Form K. The Joint Board will review TSP2's proposed final invoice for the Total Operations and Maintenance Price, and changes or corrections will be forwarded to TSP2 for correction within twenty (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 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 thirty (30) Days after its approval of such amounts on the final invoice for the Total Operations and Maintenance Price, but not earlier than the end of the Operations and Maintenance

Term.

12.8.2.4. Waiver of Claims. TSP2's acceptance of final payment shall constitute a waiver of affirmative Claims by TSP2, known or unknown, suspected or unsuspected, except those previously made in writing and identified as unsettled at the time of final payment for the Initial Work and Claims which TSP2 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 thirty (30) Days after receipt of payment from both KPTIA and IFA, TSP2 shall promptly pay each Subcontractor, out of the amount paid to TSP2 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 TSP2'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. TSP2 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 TSP2'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 TSP2 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 TSP2 with respect to TSP2'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 TSP2.

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 TSP2 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 sixty (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 Forms in Exhibit 7, TSP2 shall be entitled to payment on a monthly basis for certain of its direct costs incurred in connection with the Project.

12.12.1. 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 TSP2 outside the Contract Price for its actual, reasonable direct Costs incurred for the Pass-Through Cost Items listed in Exhibit 6, 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 TSP2 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 Budget

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 2023 based upon Form G and Exhibit 6-B.

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, 2023, TSP2 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 TSP2's good faith estimate of any additional Pass-Through Cost Items expected to be incurred by TSP2 pursuant to Section 12.12.1 based on TSP2's current knowledge. The proposed annual budgets shall be prepared in a format approved by the Joint Board. 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 TSP2 to a Change Order, and instead the provisions of Section 12.13.3 shall apply. The Joint Board and TSP2 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 TSP2's proposed budget for a new Fiscal Year as set forth in Section 12.13.2, or if TSP2 fails to provide such a budget on a timely basis in accordance with the provisions thereof, then:

(a) TSP2 shall nonetheless perform the Work based on the corresponding Fiscal Year in the then-existing Budget; and

(b) 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 TSP2 shall be compensated for such Work to the extent implemented pursuant to Section 12.13.3(a); 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~~12.14 Disputes

Failure by KPTIA or IFA to pay any amount in dispute shall not alleviate, diminish or modify in any respect TSP2's obligation to perform under the Contract Documents, including TSP2's obligation to achieve System Acceptance of all Initial Work in accordance with the Contract Documents and to operate and maintain the Project, and TSP2 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. TSP2 shall proceed as directed by the Joint Board pending resolution of the dispute. Upon resolution of any such dispute, each of TSP2, and the Joint Board (through KPTIA and IFA) shall promptly pay to other any amount owing.

~~12.14~~12.15 Payment Obligations Not Debt

IFA receives payments from INDOT in order to make payments for Payment Milestones owed by IFA under this Contract. 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. TSP2 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 TSP2 with written notice of such event within fifteen (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:

(a) Technical Requirements Conformance Matrix;

(b) Any Completion Deadline;

(c) Contract Price components;

(d) Changes in Project equipment, Project Software or operations and maintenance incident to such changes;

(e) Applicable Joint Board Standards;

(f) Conversion of any Pass-Through Cost items to a component of the Total Operations and Maintenance Price, and adjustment of any annual Pass-Through Cost Budget by reason thereof;

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

(h) Business Rules;

(i) Any other change in the Work or terms and conditions of the Technical Requirements Conformance Matrix 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

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

13.2 Change Order

13.2.1. The Joint Board may issue a Change Order, including a reductive Change Order, 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 Conformance Matrix), to change Joint Board Standards, to change Deliverables, 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 Order shall be effective upon issuance by the Joint Board.

13.2.2. All Change Orders shall provide a written detailed description of the changes, and the proposed basis for compensation or reduction in compensation, if applicable. TSP2 shall proceed immediately with the 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, the Joint Board shall deliver to TSP2 a written notice of the proposed change.

13.4.2. TSP2 Evaluation of Joint Board Proposed Change Order. Within thirty (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, TSP2 shall deliver to the Joint Board a written evaluation of the proposed change, together with TSP2'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 Initial Work, TSP2's written evaluation shall include (i) a statement of required Deliverables 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 Revenue Service Date, 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 Initial Costs or Key Performance Indicators by reason of such change, including but not limited to, the Cost of preparing such information. ~~If the change is not implemented, TSP2 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 7) 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 thirty (30) days after receipt of TSP2'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 TSP2's evaluation, and any proposed adjustments to Progress Milestone Dates, the Revenue Service Date or the Key Performance Indicators, TSP2 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 TSP2.

13.5 TSP2 Initiated Change Orders

13.5.1. TSP2 shall give the Joint Board a written proposal for a Change Order within thirty (30) days after TSP2 knew or should have known of an event, act or inaction for which TSP2 may be entitled to a Change Order. TSP2 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 thirty (30)-day period in accordance with this Section 13.5.1, and except for Joint Board initiated Change Orders pursuant to Section 13.4, TSP2 shall not be entitled to any Change Order adjusting the Key Performance Indicators.

13.5.2. TSP2'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 Key Performance Indicators affected;

(b) The estimated schedule for the proposed Work;

(c) The requested adjustment to the applicable Pass-Through Costs Budget or Contract Price Component and/or to Key Performance Indicators (if applicable). If no adjustment is requested, the standalone cost for the Change Order shall be provided;

(d) If appropriate, an analysis of the impact of the event, act or inaction on Key Performance Indicators, stating in reasonable detail how and why the event, act or inaction directly causes TSP2 to be unable to satisfy the existing Key Performance Indicators;

(e) A detailed description of the scope of the Change Order;

(f) A detailed description of the testing process of the Change Order;

(g) If applicable, TSP2'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 Key Performance Indicators, TSP2 will be required to demonstrate the effect on the Key Performance Indicators using testing processes satisfactory to the Joint Board in its sole discretion. The Joint Board shall have twenty (20) days after receipt of TSP2'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 twenty (20) days or such other mutually agreed period, TSP2 may notify the Joint Board in writing that it has not received a response, and if Joint Board fails to respond within ten (10) days after such additional notice, Joint Board's failure to respond shall be deemed to be a denial of TSP2'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 TSP2 proposes a Change Order as to a matter

other than one entitling TSP2 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 TSP2 is entitled to a Change Order under the terms of this Section 13.6, upon compliance with the Change Order notification process, TSP2 shall be entitled to a Change Order adjusting the Progress Milestone Dates or Revenue Service Date, as applicable, based on critical path analysis for delays to items of Work on the critical path in the Detailed Project Schedule to the extent of the actual delay caused by Excusable Delays. Upon the occurrence of an Excusable Delay, TSP2 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 TSP2's reasonable control and not due to an act, omission, negligence, recklessness or willful misconduct of TSP2 or any Subcontractor or breach of Law or the Contract Documents by TSP2, its employees, agents, officers or Subcontractors or any other persons performing any of the Work for whom TSP2 may be contractually or legally responsible; (ii) they materially and adversely delay TSP2'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 TSP2:

13.6.2.1. Force Majeure Events;

13.6.2.2. 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;

13.6.2.3. 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 TSP2-Related Entity under the Contract Documents;

13.6.2.4. Delays resulting from the Joint Board's Change Order, excluding Joint Board Change Orders resulting from or issued to correct acts, omissions, fault, failure to perform or breach of obligations by any TSP2-Related Entity under the Contract Documents, and excluding Joint Board Change Orders for matters that are Configurable;

13.6.2.5. Delays resulting from suspension or delay of Work ordered by the Joint Board or FHWA, except where due to acts, omissions, fault, failure to perform or breach of

obligations by any TSP2-Related Entity under the Contract Documents;

13.6.2.6. Delays resulting from a permissible suspension of Work by TSP2 pursuant to Section 16.4.

13.7 Change Orders to Initial Costs

13.7.1.1. Changes to the Technical Requirements Conformance Matrix 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 Conformance Matrix, including material revisions to the design or operation of the Project that are not based on the Technical Requirements Conformance Matrix 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 Conformance Matrix;

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 Detailed Project Schedule, except if arising out of acts, omissions, fault, failure to perform or breach of obligations by any TSP2-Related Entity under the Contract Documents;

13.7.1.4. Joint Board Change Order (including changes to Joint Board Standards), except Joint Board Change Order resulting from or issued to correct acts, omissions, fault, failure to perform or breach of obligations by any TSP2-Related Entity under the Contract Documents, and except Joint Board Change Order 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 TSP2-Related Entity under the Contract Documents;

13.7.1.6. Joint Board-Caused Delays;

13.7.1.7. Increases in sales, excise or use taxes on equipment, supplies and

materials purchased by TSP2 and occurring during the Initial Work; and

13.7.1.8. Delays for which TSP2 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 Initial Costs. In the event of a deductive Change Order, the amount of decrease in the Initial Costs to be allowed for any deletion or change which results in a net decrease in the scope of the Initial Work will be the estimated reduction in the cost of the Initial Work occasioned by such change including reduction, if any, in overhead but without reduction in TSP2's profit. When both additions and reductions are involved in any one Change Order, the adjustment in the Initial Costs shall be determined on the basis of net increase or decrease. Increases or decreases in the Initial Costs resulting from Change Orders changing the scope of Initial Work or requiring additional work that is outside the scope of Initial 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 Initial Costs 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 Initial Costs is determinable by unit prices stated in the Price Forms set forth in Exhibit 7 or new unit prices mutually agreeable to the Parties can be established, then an adjustment to the Initial Costs 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 Order to TSP2 to perform the changed work during negotiation to reach agreement on the increase or decrease in the Initial Costs resulting from a Change Order, TSP2 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 Order. Costs for expenditures and savings shall be calculated in accordance with the provisions of this Section 13.8.1.3. In such case, TSP2 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.

13.9 Impact to Key Performance Indicators

13.9.1. If as a result of an event, act or inaction entitling TSP2 to a Change Order, it is determined that it is not possible to maintain the Key Performance Indicators because of

the effect of the subject event, act or inaction on Key Performance Indicators, then the Joint Board and TSP2 will negotiate as part of the Change Order an appropriate adjustment to the affected Key Performance Indicators. The adjustment shall be limited to the minimum extent necessary under the circumstances.

13.9.2. If it is possible to avoid an adjustment to Key Performance Indicators through a Change Order adjusting price but the Joint Board prefers not to incur the price adjustment, then TSP2 shall cooperate with and assist the Joint Board with analyzing trade-offs between price and Key Performance 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 TSP2 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 shall be available for any such Joint Board Change Order, subject to TSP2'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 f~~F~~ederal 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 TSP2 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 TSP2 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.

TSP2 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 TSP2 hereunder.

15.2 TSP2's Responsibilities After Receipt of Notice of Termination for Convenience of Initial 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, TSP2 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 TSP2 has commenced Initial Work at the Project Site (or a WUC), TSP2 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 TSP2 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 thirty (30) days from the effective date of termination, unless extended in writing by the Joint Board upon written request of TSP2 within this thirty (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 TSP2's and any TSP2-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 Deliverables, 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 TSP2 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, TSP2 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. TSP2 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) TSP2's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when the Joint Board's Authorized Representatives certify that those materials have been stored in the manner and at the locations directed by the Joint Board.

(b) TSP2'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 Representatives determine that TSP2 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 Representatives will recommend that the Joint Board formally accept such Work, and immediately upon and after such acceptance by the Joint Board, TSP2 will not be required to provide for continuing safety, security and maintenance at the applicable Project Site.

15.4 TSP2'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), TSP2 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 TSP2 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), TSP2 shall, except as otherwise provided in Sections 15.4.2 and 15.4.5, remove its personnel from the Project and shall leave such facilities in good repair in at least the condition TSP2 is required to maintain at that time under the Contract Documents, with an equivalent supply of 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 Project, and Project 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 TSP2 Employees. Upon expiration or earlier termination of this Contract for any reason during the Operations and Maintenance Term, TSP2 shall allow the Joint Board to recruit and retain as its employees (or as employees of any successor operator of the Project under contract with the Joint Board) TSP2's non-management operating staff working exclusively on the Project. No later than ninety (90) days prior to the expiration of this Contract and promptly upon notice of any earlier termination during the Operations and Maintenance Term, TSP2 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 TSP2 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 TSP2 or on such other terms and conditions as the Joint Board may then be bound to under any applicable labor agreement. Within twenty (20) days of TSP2's submission to the Joint Board of such information, the Joint Board shall notify TSP2 in writing of each such employee whom the Joint Board or any such successor wishes to recruit. Nothing contained herein is intended to require that TSP2 violate any Law regarding employment or privacy.

15.4.3. Materials, Supplies and Third Party Software. No fewer than ninety (90) days prior to the expiration or earlier termination of this Contract, TSP2 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 ninety (90) days prior to the expiration or earlier termination of this Contract, TSP2 shall transfer title (or, with respect to any third party licensed Software, assign to the Joint Board all of TSP2's and any TSP2-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 Operations and Maintenance Term, subject to the provisions of Sections 20.5 and 20.6, all Deliverables, 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. TSP2 also shall deliver or make available to the Joint Board all work product and all intellectual property rights TSP2 is required to deliver or make available pursuant to this Contract, and all records and archives of Project Data.

15.4.5. Training of New Operating Personnel. At the request or direction of the Joint Board, TSP2 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 TSP2 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 Order. TSP2 shall implement the approved End of Contract Transition Plan, or if TSP2 has not already submitted such plan and obtained the Joint Board's approval, TSP2 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 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 Project, and in the performance of any other Work. TSP2 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 one hundred and twenty (120) days following the expiration or earlier termination date. Except in the event of termination pursuant to Section 16.2.1 for a TSP2 Event of Default, as compensation for the performance of such transition and training services, TSP2 shall be entitled to reimbursement outside the Contract Price for TSP2'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. Project Agreements

15.4.6.1. With respect to a termination upon expiration of this Contract or earlier termination for convenience or for a TSP2 Event of Default, TSP2 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 BOS provider of the Project review during

normal business hours all Subcontracts, contracts with suppliers, the WUC Leases and any other leases (excluding any leases not used exclusively for the Project), licenses and other Project related agreements and amendments thereto which are then in effect (collectively, "Project 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 Project 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 Project 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 Project 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 TSP2 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, TSP2 shall submit a final termination settlement proposal to the Joint Board in the form and with the certification prescribed by the Joint Board. TSP2 shall submit the proposal promptly, but no later than ninety (90) Days from the effective date of termination unless TSP2 has requested a time extension in writing within such ninety (90)-Day period and the Joint Board has agreed in writing to allow such an extension. TSP2's termination settlement proposal shall then be reviewed by the Joint Board and acted upon, returned with comments, or rejected. If TSP2 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 TSP2 because of the termination and shall pay TSP2 the amount so determined, and TSP2 shall be bound by the Joint Board's determination.

15.6 Amount of Negotiated Termination Settlement

TSP2 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 TSP2 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 Initial 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 Initial Costs and the Total 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 TSP2 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 TSP2 in the event that TSP2 and the Joint Board fail to agree upon the whole amount to be paid to TSP2 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 TSP2 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 TSP2 from its obligations with respect thereto, including Warranties, or affect the rights of the Joint Board or TSP2 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 Initial Work and Operations and Maintenance Work

If TSP2 and the Joint Board fail to agree upon either all or some portion of the amount to be paid TSP2 by reason of the termination of Initial 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 TSP2 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 Initial 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 TSP2 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) TSP2'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 Initial Work and Operations and Maintenance Work under this Contract, including the reasonable cost to TSP2 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 TSP2's administrative costs in determining the amount payable due to termination of this Contract.

15.7.2. TSP2 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 Initial 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 TSP2, 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 TSP2 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, TSP2 shall be paid the agreed amount, and the Initial Costs and the Total 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, TSP2 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) TSP2'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 TSP2 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 sixty (60) days after the Termination Date), TSP2 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. TSP2 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 TSP2 under this Section 15 shall be reduced by (a) the amount of any claim which the Joint Board may have against any TSP2-Related Entity in connection with this Contract, (b) all unliquidated advance or other payments made to or on behalf of TSP2 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 TSP2 to the Joint Board.

15.10 Payment

Except for amounts in dispute, the IFA and KPTIA shall pay TSP2 their respective shares of its invoices for Costs and other amounts permitted in this Section 15 within thirty (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 TSP2 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 TSP2 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 TSP2 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 TSP2 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 TSP2 determined in accordance with this Section 15 constitutes TSP2'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.

SECTION 16. DEFAULT

16.1 Default of TSP2

16.1.1. Events and Conditions Constituting Default

TSP2 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**. TSP2:

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

(ii) otherwise fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents and/or the Detailed Project Schedule and fails to commence correction of such failure or neglect within thirty (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 thirty (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 thirty (30)-day period, TSP2 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 Ohio River Bridges Project; (2) increase operating Costs; (3) inhibit the ability of the Joint Board to audit Toll Collection System transactions according to Joint Board auditing standards; (4) increase risk of the Joint Boards liability to third parties (regardless of whether such risk is covered by TSP2's indemnities); or (5) increase risk of inaccurate billing (whether undercharging or overcharging) of toll payers.

(b) TSP2 fails to maintain the insurance, bonds and letters of credit required hereunder; or

(c) TSP2 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) TSP2 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) TSP2 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 TSP2 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 TSP2 or any Guarantor in the Contract Documents or any certificate, schedule, instrument or other document delivered by TSP2 pursuant to the Contract Documents was false or materially misleading when made; or

(i) TSP2 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 TSP2's partners, members or joint ventures, any material Subcontractors, or any surety, Guarantor or letter of credit Bank; or

(j) An involuntary case is commenced against TSP2 seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to TSP2 or TSP2'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 TSP2 or any substantial part of TSP2'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 TSP2 in good faith or shall remain undismissed and unstayed for a period of sixty (60) Days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any of TSP2's partners, members or joint ventures, any material Subcontractors, or any surety, Guarantor or letter of credit bank; or

(k) TSP2 is a party to fraud; or

(l) A Persistent Breach occurs; or

(m) TSP2 causes or allows a closing or shutdown of all or a portion of the Project 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 the Project which results or may reasonably be expected to result in a material loss of Gross Revenues to the Joint

Board, and TSP2 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 TSP2 constitutes a breach under this Section 16.1.1(m) and any other Section, this Section 16.1.1(m) shall control; or

(n) Reaching or Exceeding Liability Limits. TSP2 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 TSP2'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) TSP2 and surety shall be entitled to fifteen (15) Days written notice and opportunity to cure any breach before a TSP2 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 TSP2. If a breach is capable of cure but, by its nature, cannot be cured within fifteen (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 TSP2 commences such cure within such fifteen (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 TSP2'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 TSP2 and shall not entitle TSP2 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 "TSP2 Event of Default" has occurred and notify TSP2 to discontinue the Work under this Contract. The declaration of a TSP2 Event of Default shall be in writing and given to TSP2 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 TSP2 Event of Default shall occur, the Joint Board shall have the following rights without further notice and without waiving or releasing TSP2 from any obligations and TSP2 shall have the following obligations (as applicable):

(a) TSP2 shall deliver to the Joint Board documents and facilities related to the Project that the Joint Board deems necessary for completion of the Work;

(b) TSP2 shall confirm the assignment to the Joint Board of the Subcontracts requested by the Joint Board and TSP2 shall terminate, at its sole cost, all other Subcontracts;

(c) The Joint Board may, in its sole discretion, deduct and offset any such amounts payable by TSP2 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 TSP2 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 TSP2;

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

(e) The Joint Board may appropriate any or all materials, supplies, Hardware, Software and equipment involved 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.

16.2.2. In addition to other damages that may be applicable under the Contract Documents, if a TSP2 Event of Default shall have occurred during performance of the Initial Work, TSP2, 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 Initial Work or having the Initial 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 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 TSP2 until the later of (i) the System Acceptance Date, or (ii) the date on which the Joint Board otherwise accepts the Project as complete or determines that it will not proceed with completion, at which time the Joint Board will determine whether and to what extent TSP2 is entitled to further payments. Promptly following such System Acceptance Date or the date on which the Joint Board otherwise accepts the Project as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and the Joint Board shall notify TSP2, its surety and each Guarantor in writing of the amount, if any, that TSP2, its surety and each Guarantor shall pay the Joint Board or the Joint Board shall pay TSP2 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 Initial 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 Initial Costs, will be deducted from any moneys due or which may become due TSP2 or its surety. If such expense exceeds the sum which would have been payable under this Contract, then TSP2 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 Initial Costs. 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 Initial Costs.

16.2.3. TSP2 acknowledges that if a default under Section 16.1.1(i) or (j) occurs, such event could impair or frustrate TSP2's performance of the Work. Accordingly, TSP2 agrees that upon the occurrence of any such event, the Joint Board shall be entitled to request of TSP2, 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 TSP2 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 TSP2.

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 TSP2'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 TSP2 regardless of whether the breach or failure that gives rise to the damages ripens into a TSP2 Event of Default.

16.2.8. TSP2 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 TSP2 hereunder or by the Joint Board's declaration of a TSP2 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 Initial Costs 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 TSP2 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 Project and Toll Facilities and of all materials, equipment, tools and supplies located there which are owned or provided by TSP2 (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 Project 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 Project 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 "TSP2 Event of Default" shall specifically exclude TSP2's failure to meet a Completion Deadline, if such failure is caused solely and directly by an event or events beyond TSP2'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 TSP2-Related Entity, and which delay could not have been avoided by due diligence and use of reasonable efforts by TSP2. 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 TSP2 fails to meet the Detailed 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 TSP2 to perform, except as follows: (i) if TSP2 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 TSP2 from its obligation to pay damages, including Liquidated Damages, for failure to achieve Go-Live~~Operations Readiness~~ by the applicable Completion Deadline; provided, however, that to the extent that TSP2 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 TSP2 Event of Default and terminate this Contract and exercise any and all remedies available under the Contract Documents. TSP2 shall promptly notify the Joint Board in writing of any occurrence of a Delay Event and of the steps that TSP2 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

TSP2 shall have the right to suspend its Work if the Joint Board fails to pay undisputed amounts due to TSP2 hereunder within thirty (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 TSP2 written notice of such delinquency. Any such work stoppage shall be considered a suspension for convenience under Section 14. TSP2 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 TSP2 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 one hundred and eighty (180) Days after the Joint Board's receipt of written notice of nonpayment from TSP2.

16.5 Anticipatory Breach

16.5.1. TSP2 recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous breaches or failures to perform by TSP2, 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. TSP2 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 TSP2. 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. TSP2 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 TSP2 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 TSP2 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 TSP2 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) 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 sixty (60) Days; and

(d) Notwithstanding any limitation on the maximum amount of the performance bonds set forth under Section 8.1 and Section 8.2 or otherwise, TSP2 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 TSP2 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 TSP2 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 TSP2 from any obligations to pay Delay Liquidated Damages, Performance Liquidated Damages, Performance Stipulated Damages or other compensation under this Contract.

SECTION 17. LIMITATION OF TSP2'S LIABILITY

17.1 Limitation of TSP2's Liability

17.1.1. Limitation of Liability Until System Acceptance

To the extent permitted by applicable Law, TSP2's liability under this Contract 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 Initial Costs]***; plus (b) any amounts paid or payable by TSP2 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 TSP2-Related Entity with respect to or in connection with the Work, this Contract or Project; and plus (d) TSP2'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 TSP2 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 ~~4.6.8~~5.1.3~~5~~.1.6 ~~and 4.8.4~~5.1.5 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.

To the extent permitted by applicable Law, TSP2's liability under this Contract 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 $TBD[1] ~~$TBD~~ plus (b) any amounts paid or payable by TSP2 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 TSP2-Related Entity with respect to or in connection with the Work, this Contract or the Project; and plus (d) TSP2'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 TSP2 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 Section~~s 4.6.8~~5.1.3 ~~and 4.8.4~~5.1.5 5.1.6 above.

[1] Amount to be negotiated between TPS2 and the Joint Board, but interested Proposers should note that the Joint Board expects this to be a fixed amount that is equal to approximately two (2) years of the Operations and Maintenance Price

17.2 Potential Increase in Limitation of TSP2's Liability

In the event that the limitation of TSP2'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 TSP2's liability for damages is an amount equal to or exceeding the Initial Costs, and after System Acceptance TSP2's liability for damages is an amount equal to or exceeding $TBD and, accordingly, a default under Section 16.1.1(n) has occurred, TSP2 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. TSP2'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 TSP2 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 TSP2

18.1.1. Subject to Section 17, and Section 18.1.3, TSP2 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 TSP2-Related Entity; and/or

(b) The failure or alleged failure by any TSP2-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 TSP2'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 TSP2; (ii) compliance with written specifications prescribed by the Joint Board with respect to which (1) TSP2 has complied in full; (2) the reason for the infringement solely arises out of the Joint Board's specifications, and (3) TSP2 has notified the Joint Board in writing in advance of potential infringement and the Joint Board has directed TSP2 to proceed and disregard the potential infringement, or (iii) modifications to the deliverables not made by a TSP2-Related Entity; and/or

(d) The actual or alleged negligent act, error or omission, gross negligence or willful misconduct of any TSP2-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 TSP2-Related Entity with respect to any payment for the Work made to or earned by any TSP2-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 TSP2 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 TSP2-Related Entity, or (ii) attributable to the negligent acts or omissions, gross negligence, willful misconduct, or breach of contract or Law by any TSP2-Related Entity; and/or

(h) The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any TSP2-Related Entity with work for the Ohio River Bridges Project being performed by other contractors, or failure of any TSP2- Related Entity to cooperate reasonably with such other contractors in accordance therewith.

18.1.2. Subject to Sections 17 and 18.1.3, TSP2 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 Volume III, 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 Volume III, Reference Information Documents and this Contract expressly provides that TSP2 may rely on such Owner Design Documents or Volume III, Reference Information Documents).

18.1.3. Subject to the releases and disclaimers herein, TSP2'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 TSP2-Related Entity).

18.1.4. In claims by an employee of TSP2, 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 TSP2 or a Subcontractor.

18.1.5. TSP2 hereby acknowledges and agrees that it is TSP2's obligation to cause the Project to be designed, installed and operated so as to meet the intent of the Contract Documents and to satisfy the Key Performance Indicators, and that the Indemnified Parties are fully entitled to rely on TSP2's performance of such obligation. TSP2 further agrees that any certificate, review and/or approval by the Joint Board and/or others hereunder shall not relieve TSP2 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 TSP2 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 TSP2 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 TSP2 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 TSP2, 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 TSP2:

(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 Contract.

18.2.4. If TSP2 accepts the tender of defense under Section 18.2.3(a) and (b), TSP2 shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and TSP2 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) TSP2 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 TSP2 has reached any liability limit or may reach a liability limit under this Contract with respect to an item tendered pursuant to this indemnity, TSP2 shall not be entitled to select legal counsel for the Indemnified Party.

18.2.5. If TSP2 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 TSP2 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 TSP2 which prevents or potentially prevents TSP2 from presenting a full and effective defense;

(b) TSP2 is otherwise not providing an effective defense in connection with the claim; or

(c) TSP2 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, TSP2 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 TSP2' 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 TSP2 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 Contract, and the Indemnified Party shall have the right to settle or compromise the claim with TSP2's prior written consent without prejudice to the Indemnified Party's rights to be Indemnified by TSP2; 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 Contract, have the right to settle or compromise the claim without TSP2's prior written consent and without prejudice to its rights to be

Indemnified by TSP2.

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 TSP2 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 TSP2-Related Entity. Accordingly, the Joint Board shall, to the extent permitted by applicable law, indemnify, defend and hold TSP2 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 TSP2 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 TSP2 of its responsibility for the selection and the competent performance of all TSP2-Related Entities;

(b) relieve TSP2 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) TSP2 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 TSP2 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. It is expected that the Joint Board Representatives will have access to communicate with both the prime and any subs as it deems necessary

19.2.5. Each of the Joint Board and the TSP2 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 TSP2 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 TSP2 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 TSP2, 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 TSP2 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 TSP2 that is actionable by TSP2 against the Joint Board and arises from Work, materials or other services provided or to be provided under the Contract Documents. If TSP2 determines to pursue a dispute against the Joint Board that includes a Subcontractor Dispute, the following additional conditions shall apply:

(b) TSP2 shall identify clearly in all submissions pursuant to this Section 19, that portion of the dispute that involves a Subcontractor Dispute.

(c) Failure of TSP2 to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related dispute by TSP2, as provided hereunder, shall

constitute a release and discharge of the Joint Board by TSP2 on account of, and with respect to, such Subcontractor Dispute.

(d) TSP2 shall require in all Subcontracts that all Subcontractors of any tier (a) agree to submit Subcontractor Disputes to TSP2 in a proper form and in sufficient time to allow processing by TSP2 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 TSP2; (d) agree that any Subcontractor Dispute brought against a bonding company, that also is actionable against the Joint Board through TSP2, 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 TSP2.

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 Detailed 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 Detailed 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 TSP2 and the Public Finance

Director of the IFA or the Public Finance Director's designee and the Joint Board's Authorized Representatives, shall meet and confer, in good faith, to seek to resolve the dispute raised in the claiming Party's notice of the dispute. If they succeed in resolving the dispute, TSP2 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 TSP2 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 TSP2 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, TSP2 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. TSP2 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 TSP2'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, TSP2 shall keep complete records that provide a clear distinction between the incurred direct and indirect costs of disputed Work and that of undisputed Work. TSP2 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 TSP2 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, TSP2 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, TSP2 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 certain toll services agreement between IFA and TSP1 executed on May 12, 2015, the Revenue Control Manager Agreement, the Custodian Contractor the Custody and Revenue Control Contract, and TSP2 shall permit the Joint Board to join TSP1, the TSP2, 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 TSP2 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

20.1 Reporting Requirements

20.1.1. TSP2 shall deliver to the Joint Board financial and narrative reports, statements, certifications, and information as and when required under this Contract and the Technical Requirements Conformance Matrix.

20.1.2. TSP2 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. TSP2 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 TSP2 and the Guarantor to their shareholders generally and of all reports filed by TSP2 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 TSP2's and the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as the case may be.

20.1.4. TSP2 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, TSP2 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. TSP2 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. TSP2 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 TSP2 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. TSP2 shall maintain at a Project administration office in the CSC a complete set of all books and records prepared or employed by TSP2 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 Project and Toll Facilities and performance of Work pursuant to this Contract. Without limiting the provisions of Section 20.2, TSP2 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 TSP2 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 TSP2 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 the Joint Boards Representatives 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 Operations and Maintenance Term, or (ii) the termination of this Contract. Thereafter, the Joint Board shall provide 10 Days' notice to TSP2 and any Subcontractors or their respective agents before commencing an audit. TSP2, Subcontractors or their agents shall provide adequate facilities, acceptable to the Joint Board, for the audit during normal business hours. TSP2, Subcontractors or their agents shall cooperate with the auditors. Failure of TSP2, 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 TSP2, 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, all Price Proposal documents;

ii. With respect to Change Orders that are priced by unit price, all information utilized by TSP2 to develop and determine the unit price, if not already part of the Price Forms, and all information which the Joint Board determines necessary or useful to evaluate the accuracy of TSP2'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 TSP2 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 TSP2'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 TSP2 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 Forms 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, TSP2 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 TSP2.

20.2.7. TSP2 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 TSP2 with the provisions of this Section 20.2 is a contractual condition precedent to TSP2's right to pursue a formal dispute under Section 19.

20.2.9. TSP2 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) TSP2 shall maintain all records and documents relating to the Work, including copies of all original documents delivered to the Joint Board, and the Project, until six (6) years after the later of (i) the expiration of the Operations and Maintenance Term, or (ii) the termination of this Contract. TSP2 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 Project shall also be retained for any longer period of time necessary to comply with Form K and any other provision of the Contract Documents. Records to be retained include all books, electronic information and files and other evidence bearing on TSP2's costs under the Contract Documents. TSP2 shall make these records and documents available for audit and inspection to the Joint Board, at TSP2's offices in the Louisville area, 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) TSP2 shall maintain a system of internal accounting controls appropriate for its Work hereunder and as required pursuant to the Technical Requirements Conformance Matrix. As part of the representation and warranty provided by TSP2 pursuant to this Section, TSP2 shall provide the Joint Board a report of TSP2's independent accounting firm with respect to TSP2's internal accounting controls and other then-current appropriate statements on accounting and auditing standards.

20.4 Public Records Act

20.4.1. TSP2 acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the Joint Board's possession, including materials submitted by TSP2 to the Joint Board, are subject to the provisions of the Public Records Act. If TSP2 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, TSP2 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. TSP2 is advised to contact legal counsel concerning such Law and its application to TSP2.

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 TSP2 of the request and give TSP2 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 TSP2 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 TSP2 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 TSP2 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. TSP2 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 TSP2, 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 TSP2, 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. TSP2 agrees that, except as otherwise provided in Section 20.6 hereof, any contribution by TSP2 or its employees to the creation of such works, including all copyright interest therein, shall be considered works made for hire by TSP2 for the Joint Board and that such works shall, upon their creation, be owned exclusively by TSP2. To the extent that any such works may not be considered works made for hire for the Joint Board under applicable law, TSP2 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 TSP2, 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 TSP2, alone or in combination with the States' Parties and/or their employees, the Joint Boards Representatives and/or their employees, under this Contract ("Custom Software"), and the Joint Board hereby grants TSP2 a worldwide, nonexclusive, royalty-free license to the Custom Software and the other Developed Intellectual Property. Exhibit 8-C~~BB~~ lists the Custom Software that TSP2 expects to develop for the Project. The TSP2 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 TSP2 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 TSP2'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 TSP2's delivery of specific documents, not less frequently than monthly, TSP2 shall provide the Joint Board with a detailed written list of all design-related, construction-related and installation-related Deliverables prepared or received by TSP2, and TSP2 shall furnish the Joint Board with copies of any such Deliverables immediately upon the Joint Board's written request. TSP2 shall maintain all other documents described in this Section 20.5~~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) TSP2 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. TSP2 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. TSP2 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 Initial 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 Operations and Maintenance Term as such enhancements and modifications are developed, completed or implemented.

20.6 Intellectual Property Rights; Licensing

20.6.1. Pre-existing Works by TSP2

Exhibit 8 sets forth a list of the "Pre-Existing" Software, including COTS and TSP2'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, TSP2 may include in the Software TSP2's Pre-Existing Software. To the extent that TSP2's Pre-Existing Software is included in the Software, TSP2 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 Project in which such Software, System design

and technology and any other System idea, concept and deliverables are used under or pursuant to 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 TSP2 shall be solely responsible for all costs associated with such items and in no event shall TSP2 change the terms of such agreements without the Joint Board's written approval.

20.6.3. Source Code Escrow

(a) The Joint Board and TSP2 acknowledge that TSP2 and/or TSP2'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, TSP2 shall place all the Software Source Code for Pre-Existing Software owned by TSP2, licensed to or by TSP2 or with respect to which TSP2 has a right to use in connection with the 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 TSP2'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~~on a quarterly basis or such other frequency as mutually agreed-upon between TSP2 and the Joint Board. In each of its monthly invoices the for payment of the Initial Costs and Total Operations and Maintenance Price, TSP2 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 8. TSP2 shall cause all Pre-Existing 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 TSP2'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 TSP2. 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.

SECTION 21. MISCELLANEOUS PROVISIONS

21.1 Taxes

TSP2 shall pay, prior to delinquency, all applicable taxes, including its own income taxes and all sales and use taxes, in each case for which TSP2 is responsible in carrying out the Work and its other obligations hereunder. TSP2 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 TSP2 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 TSP2 under this Contract or the fact that the Project 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 TSP2 or any other TSP2- 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 TSP2 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 TSP2 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. TSP2 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 TSP2; 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 TSP2 be construed as creating any relationship whatsoever between the Joint Board and TSP2's employees or agents. Neither TSP2 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, TSP2 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 TSP2 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 TSP2 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. TSP2 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 TSP2 may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in TSP2 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 TSP2 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 4 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 TSP2.

21.6.2. TSP2 shall cooperate with the Joint Board and all representatives of the Joint Board designated as described above.

21.7 Survival

TSP2'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 Operations and Maintenance Term (including the 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 Joint Board 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 TSP2. Notwithstanding the foregoing, the Joint Board 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 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 and in no event later than 7 days after the party receives notice. This notice requirement shall apply to correspondence and court notices received by the TSP2 mail room.

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 TSP2 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 TSP2-Related Entity. TSP2 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, 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 TSP2 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. TSP2 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 TSP2 shall be sent to TSP2's Project manager or as otherwise directed by TSP2's Project manager. The address for such communications shall be:

[Name of Project 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 Representatives. 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 correspondence shall also 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
Chairperson
200 Mero Street
Frankfort, Kentucky 40622
Telephone: (502) 782-4980
Facsimile: (502) 564-9540
E-mail: TBD

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 TSP2's Authorized Representative or TSP2's Key Personnel and technical representatives designated by the Joint Board. TSP2'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. TSP2 shall copy the Joint Board on all written correspondence pertaining to the Project between TSP2 and any Person other than TSP2's Subcontractors, consultants and attorneys. Notwithstanding the foregoing, TSP2 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.

21.12 Further Assurances

TSP2 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 TSP2 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 TSP2, in each case in their sole discretion, the Parties hereto may enter into a separate cooperative purchasing agreement based on this Contract 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 TSP2 related thereto and nothing contained herein shall create for TSP2 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_____, 20__.

TOLL SERVICES PROVIDER 2

By:_____

Name:_____

Title:_____

INDIANA FINANCE AUTHORITY, on behalf of
the Louisville-Southern Indiana Ohio River Bridges Joint Board

By:_____

Name:

Title: Public Finance Director

EXHIBITS

Exhibit 1	Abbreviations and Definitions
Exhibit 2	BOS and CSC Key Performance Indicators and Liquidated Damages
Exhibit 3	Key Personnel
Exhibit 4	Designation of Authorized Representatives
Exhibit 5	Bonds
	5-A Form of Performance Bond
	5-B Form of Payment Bond
	5-C Form of Warranty Bond
	5-D-1 Form of Maintenance Performance Bond
	5-D-2 Form of Maintenance Payment Bond
Exhibit 6	Monthly Invoicing
	6-A Form of Invoice Certification
	6-B Pass-Through Cost Items
	6-C Payment Terms
Exhibit 7	TSP2 Proposal Commitments and Approved Deviations
	Attachment 1 Form G Price Forms
	Attachment 2 Form K Technical Requirements Conformance Matrix
	Attachment 3 Form P Exceptions
	Attachment 4 Form Q Value Add
	Attachment 5 Detailed Project Schedule
Exhibit 8	Software
	8-A Form of Source Code Escrow
	8-B Pre-existing COTS and TSP2-Developed Software List
	8-C Custom Software List
Exhibit 9	Custody and Revenue Control Agreement
Exhibit 10	Form of Guaranty
Exhibit 11	NTP
Exhibit 12	Draft Flow of Funds

EXHIBIT 1. ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in this Contract, they shall have the meanings set forth below:

Abbreviations

Abbreviation	Term
ACD	Automatic Call Distributor (see below for definition)
ACH	Automated Clearing House
AES	Advanced Encryption Standard
AET	All-Electronic Tolling (see below for definition)
AOC	Attestation of Compliance
AVI	Automatic Vehicle Identification (see below for definition)
BCP	Business Continuity Plan (see below for definition)
BMV	Bureau of Motor Vehicles (see below for definition)
BOS	Back Office System (see below for definition)
BSDA	Bi-State Development Agreement
CCC	Customer Contact Center (see below for definition)
CFR	Code of Federal Regulations (see below for definition)
CHD	Card Holder Data (see below for definition)
COA	Chart of Accounts (see below for definition)
COTS	Commercial Off-the-Shelf (see below for definition)
CRCA	Custody and Revenue Control Agreement
CRM	Customer Relationship Management (see below for definition)
CSC	Customer Service Center (see below for definition)
CSR	Customer Service Representative (see below for definition)
DBE	Disadvantaged Business Enterprise (see below for definition)
DMV	Department of Motor Vehicles (see below for definition)
DOA	Department of Administration (see below for definition)

Abbreviation	Term
DOR	Department of Revenue (see below for definition)
DRP	Disaster Recovery Plan (see below for definition)
DTN	Downtown Crossing Northbound (see below for definition)
DTS	Downtown Crossing Southbound (see below for definition)
DT0	Downtown Crossing Northbound Exit 0 (see below for definition)
ECN	East End Crossing Northbound (see below for definition)
ECS	East End Crossing Southbound (see below for definition)
EDCMS	Electronic Document and Content Management System (see below for definition)
EFT	Electronic Funds Transfer
ETC	Electronic Toll Collection (see below for definition)
E-ZPass IAG	E-ZPass Interagency Group (see below for definition)
FAT	Functionality Assurance Test (see below for definition)
FSD	Functional Specifications Document (see below for definition)
FY	Fiscal Year (see below for definition)
GAAP	Generally Accepted Accounting Principles
GAAS	Generally Accepted Auditing Standards
GL	General Ledger
GUI	Graphical User Interface
IBT	Image-Based Transaction (see below for definition)
ICD	Interface Control Document (see below for definition)
IDOA	Indiana Department of Administration (see below for definition)
IDOR	Indiana Department of Revenue (see below for definition)
IFA	Indiana Finance Authority (see below for definition)
IMB	Intelligent Mail Barcode (see below for definition)
INDOT	Indiana Department of Transportation (see below for definition)
IOP	Interoperable or Interoperability

Abbreviation	Term
IP	Internet Protocol
IR	Image Review
ITP	Instructions to Proposers
IVR	Interactive Voice Response (see below for definition)
JBR	Joint Board Representatives
KMS	Knowledge Management System
KPI	Key Performance Indicator (see below for definition)
KPTIA	Kentucky Public Transportation Infrastructure Authority (see below for definition)
KRS	Kentucky Revised Statute
KYTC	Kentucky Transportation Cabinet (see below for definition)
LOS	Level of Service
LVL	License Plate Validation List (see below for definition)
MBS	Monthly Billing Statement (see below for definition)
MFA	Multi-Factor Authentication (see below for definition)
MSP	Merchant Service Provider (see below for definition)
MVL	Motor Vehicle Licensing (see below for definition)
NCOA	National Change of Address (see below for definition)
NSF	Non-Sufficient Funds (see below for definition)
NTP	Notice to Proceed (see below for definition)
OCR	Optical Character Recognition (see below for definition)
OVIS	Online Vehicle Information System (see below for definition)
PCD	Performance Contract Document (see below for definition)
PCI	Payment Card Industry
PCI-DSS	Payment Card Industry Data Security Standard (see below for definition)
PEC	Proposal Evaluation Committee (see below for definition)
PPEC	Price Proposal Evaluation Committee (see below for definition)

Abbreviation	Term
PII	Personally Identifiable Information (see below for definition)
PMP	Project Management Plan (see below for definition)
POC	Proof of Concept (see below for definition)
POS	Point of Sale
QA	Quality Assurance
QAMTP	Quality Assurance and Master Test Plan (see below for definition)
QC	Quality Control
QSA	Qualified Security Advisor
RCM	Revenue Control Manager (see below for definition)
RDD	Reports Design Document (see below for definition)
RFP	Request for Proposals (see below for definition)
ROC	Report on Compliance
ROI	Region of Interest (see below for definition)
RPO	Recovery Point Objective (see below for definition)
RTCS	Roadside Toll Collection System (see below for definition)
RTM	Requirements Traceability Matrix (see below for definition)
RTO	Recovery Time Objective (see below for definition)
SDD	Software Design Document (see below for definition)
SDP	Software Development Plan (see below for definition)
SIT	System Integration Test (see below for definition)
SL	Sub ledger
SMS	Short Message Service
SOP	Standard Operating Procedure (see below for definition)
SOS	Secretary of State (see below for definition)
TBT	Transponder-Based Transaction (see below for definition)
TLS	Transport Layer Security
TSA	Toll Services Advisor

Abbreviation	Term
TPEC	Technical Proposal Evaluation Committee (see below for definition)
TSP1	Toll Service Provider 1 (see below for definition)
TSP2	Toll Service Provider 2 (see below for definition)
TVL	Transponder Validation List (see below for definition)
UAT	User Acceptance Test (see below for definition)
USPS	United States Postal Service
VIN	Vehicle Identification Number
VRI	Vehicle Registration Information (see below for definition)
WUC	Walk Up Center (see below for definition)

Definitions

Term (Abbreviation)	Definition
Abandoned Call Rate	The percentage of inbound customer phone calls made to the call center that is abandoned by the customer before speaking to a CSR.
Account	See Customer Account.
Account Attribute (Attribute)	A Customer Account differentiator used by CSRs and BOS functionality for various purposes including managing the Customer Account, applying Business Rules, and reporting. See Form K Section 1.3.
Account Flag (Flag)	An indicator on a Customer Account that signals a particular condition or status or that an event has occurred. The Flag is said to be set when it is turned on. Flags are used by CSRs and BOS functionality for various purposes including managing the Customer Account, applying Business Rules, and reporting. See Form K Section 1.4.
Account Replenishment (Replenishment)	The act of adding funds to a Customer Account balance generally to increase the Account's usable prepaid balance.
Actual Knowledge	Strictly limited to facts and information actually known to and present in the mind of TSP2's or the Joint Board Authorized Representative, as the case may be, after due consultation with other personnel of such party directly involved with the Work, the Project, as applicable.
Addenda/ Addendum	Supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.
Adjustment	The act of making and recording an alteration or modification within the system, specifically to a Financial Transactions.
Administrative Hearing (Hearing)	A formal adjudicatory proceeding conducted by an agency as required or permitted by statute or regulation to adjudicate the legal rights, duties, privileges, or immunities of a named person for the purpose of resolving a customer dispute. See also KRS Chapter 13B.
Affiliate	Includes parent companies, subsidiary companies, Persons under common ownership, joint venture members and partners, and other financially liable parties for a Person.
Alert	An electronic message automatically sent by the BOS to notify a user of an issue that may require their attention.
All-Electronic Tolling (AET)	A modern tolling method using state-of-the-art technology that allows for tolls to be collected without vehicles having to stop at a toll booth.
Approval Process	The process set forth in Section 3 of the Contract for Joint Board Representatives' review and approval of TSP2's submittals of Deliverables.
Attribute	See Account Attribute.

Term (Abbreviation)	Definition
Authorized Representative	Any individual designated by a party that can make decisions and obligate the party on matters relating to the Contract Documents pursuant to Exhibit 4 to this Contract.
Authorized User	A user authorized by the Joint Board Representatives to access and utilize the BOS. The user's BOS access and utilization is determined by proper login credentials and assigned role(s). These users include TSP2 personnel, Joint Board Representatives and their designees, and customers.
Authorization Documents	See ITP Exhibit E.
Automatic Call Distributor (ACD)	The telephony device that answers and distributes incoming calls to a specific group of terminals or agents within an organization.
Automatic Replenishment (Auto-Replenishment)	Automated BOS functionality that causes Account Replenishment to be initiated on a Customer Account based on Business Rules and customer provided payment method(s).
Automatic Vehicle Identification (AVI)	A specific AET method that uses radio frequency identification technology that identifies customers in vehicles using transponders as they pass fixed antennas and readers to automatically charge a toll to the customer.
Away Agency	For the purpose of this Project, an Interoperable toll agency that is not RiverLink.
Back Office System (BOS or System)	The complete suite of hardware and software provided and operated by TSP2 as described in and required under the Contract to manage customer accounts, image review, and perform other toll related operations for the purposes of servicing customers and collecting toll revenue.
BOS Administration, Maintenance, and Support Service Costs	The costs associated with administering, providing maintenance and supporting services, as identified in Form G.
Best and Final Offer (BAFO)	Reassessment of the submitted price proposal to rework or refine proposal based on latest information gained.
Breach of Standards of Performance Notice	A written notice given by the Joint Board to the TSP2 pursuant to Section 11.2 of the Contract.
Bureau of Motor Vehicles (BMV)	Indiana agency that registers vehicle titles and provides vehicle ownership information for owner identification.
Business Continuity Plan (BCP)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.8.

Term (Abbreviation)	Definition
Business Days	Any day other than a Saturday, Sunday or federal legal holiday or day on which banks or trust companies are authorized to be closed for business in Indiana and Kentucky.
Business Rules	The set of rules that govern how TSP2 and the BOS shall function and operate, especially in respond to the various operating situations that occur during the toll collection process based on business cases and policy decisions.
Calendar Day	Every day, including weekends and specified holidays, beginning at 12:00:00 a.m. and ending at 11:59:59 p.m. Eastern Time.
Card Holder Data (CHD)	Any personally identifiable information associated with a person who has a credit or debit card, including the card's primary account number along with any of the following data types: cardholder name, expiration date or security code.
Case Management System	The system integrated with the BOS that is used to log, manage and report on Cases. See Form K Section 12.
Case	A logged work item requiring action (which could include a dispute, request, issue, etc.) that is managed within the Case Management System from initial recording through resolution.
Change Order	A written order issued by the Joint Board to TSP2 delineating changes in the requirements of the Contract Documents in accordance with Section 13 of the Contract and establishing, if appropriate, an adjustment to the Contract Price or a Completion Deadline
Chart of Accounts (COA)	A listing of all of the Financial Accounts associated with the GL and SL used for the recording, categorizing and reporting of Financial Transactions for the purpose of operating a business.
Collection Agency (Collections)	Third-party business engaged in the collection of outstanding debts.
Collection Placement	The traffic transaction, or set of transactions, assigned to the external collection agency.
Comment	A note recorded in the BOS on a Customer Account manually by a CSR or automatically by the BOS for the purpose of providing important historical information.
Completion Deadline	Refers to the deadline(s) for TSP2 to complete a portion of the Work as dictated in Form K.
Configurable	BOS functionality designed and provided such that changes to the related thresholds, values, methods, parameters and/or settings, and will not require additional software development and software testing effort to modify.
Contract	The agreement made between the IFA, on behalf of the Joint Board, and TSP2, for the purpose of TSP2 providing the required systems and services.

Term (Abbreviation)	Definition
Contract Documents	The Contract, including all exhibits, and the other documents listed in Section 1.2 of the Contract, including all amendments to the foregoing, and all Change Orders and Change Directives issued.
Contract Price	• Initial Costs • BOS administration, maintenance, and support service costs • Variable pricing costs (Automated Vehicle Identification transactions, posted VTolls, etc.) • Fixed operations costs • End of contract transition costs
Credit Card	Card issued by a financial company giving the holder an option to borrow funds (for credit cards) or use available funds (for debit cards or prepaid cards), usually at a Point of Sale device. For the purpose of this project, these include any of the following Credit Cards: American Express, Discover, MasterCard, Visa and debit cards and prepaid cards bearing one of these logos.
Customer Account (Account)	An account for a customer created in the BOS by an Authorized User or by the BOS which includes customer information such as an associated license plate, transponder and/or vehicle information, as well as, in most cases, associated contact and/or billing information and which is used to post transactions associated with the customer for the purposes of toll collection.
Custody and Revenue Control Agreement	The Agreement among the IFA, KPTIA, the Custodian, the Revenue Control Manager and TSP2, pursuant to which the Custodian will continue to maintain the Custodian Accounts.
Customer Contact Center (CCC)	The primary operations facility which handles customer contacts. Facility may be part of the CSC and typically includes, for example, a call center where customer phone calls are handled, a Walk Up Center where walk-in customers are received and serviced in-person, and a mail processing center where incoming customer mail is processed.
Customer Relationship Management (CRM)	An approach to managing an entity's interaction with its current and potential customers, typically related to or referring to the system used for such management.
Customer Service Center (CSC)	The central operations facility that houses equipment, software, systems and personnel required to establish, manage, and maintain customer accounts; provide customer service; and process information including transactions and license plate images.
Customer Service Representative (CSR)	An individual performing customer interface duties, typically providing customer assistance in person, over the phone, or electronically, such as Account creation, Account management, payment processing, and dispute resolution.

Term (Abbreviation)	Definition
Dashboard	A type of graphical user interface based reporting tool which typically provides real-time, at-a-glance views of key performance indicators relevant to particular objective(s) or business process(es).
Data Cleansing and Migration Test	Required testing to be performed by TSP2 with results reported to the Joint Board Representatives' for review and approval. See Form K Section 21.6.6.
Data Dictionary	The document or set of documents with information describing the contents, format, and structure of a database and the relationship between its elements.
Delay Liquidated Damages	The amount(s) that TPS2 is required to pay the Joint Board for delay in commencing Revenue Service by the Revenue Service Date, pursuant to Section 4.~~4~~ 3 of the Contract and set forth in Exhibit 2 of the Contract.
Deliverable	All approved documentation submitted for the design, planning and management of the Project. See Form K Section 21.
Detailed Project Schedule	The final update of the preliminary Project Schedule submitted with the Proposal which lists the project's milestones, activities and deliverables with respective start dates, end/finish dates. dependencies and, where applicable, resources. See Exhibit 7 Attachment 5 of the Contract.
Deviations	Any change, deviation, modification or alteration from the requirements of the Contract Documents and any applicable Laws.
Disaster Recovery	Response strategy to a natural or manmade disaster, as defined in the Proposer's approved Disaster Recovery Plan.
Disaster Recovery Plan (DRP)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval, which details the procedures to sustain operations and revenue collection of the system in case of a failure of a device or component of the BOS and/or CSC. See Form K Section 21.3.8.
Discount Plan	Automated BOS functionality associated with Customer Accounts that provides qualifying customers with financial benefits typically in the form of discounted tolls based on Business Rules.
Department of Motor Vehicles (DMV)	An agency that is a source of and provides vehicle registration information (e.g., vehicle owner name, address, etc.) related to License Plate Data to support toll collection.
Downtown Crossing Northbound (DTN)	An ORB Toll Location associated with the I-65 northbound traffic using the Lincoln Bridge over the Ohio River between Louisville, KY and Jeffersonville, IN.
Downtown Crossing Southbound (DTS)	An ORB Toll Location associated with the I-65 southbound traffic using the Kennedy Bridge over the Ohio River between Louisville, KY and Jeffersonville, IN.
Downtown Crossing Northbound Exit 0 (DTO)	An ORB Toll Location associated with the I-65 northbound traffic using Exit 0 after crossing the Lincoln Bridge over the Ohio River between Louisville, KY and Jeffersonville, IN.

Term (Abbreviation)	Definition
East End Crossing Northbound (ECN)	An ORB Toll Location associated with the SR265/KY841 northbound traffic using the Lewis and Clark Bridge over the Ohio River between Louisville, KY and Jeffersonville, IN.
East End Crossing Southbound (ECS)	An ORB Toll Location associated with the SR265/KY841 southbound traffic using the Lewis and Clark Bridge over the Ohio River between Louisville, KY and Jeffersonville, IN.
Electronic Document and Content Management System (EDCMS)	A computer-based system used to store, track and manage documents and their development in order to reduce the need for paper and to provide users with easy access to Project documentation.
Electronic Toll Collection (ETC)	Method developed to charge toll to a toll facility user without requiring any action or stopping by the driver/user (typically uses AVI and/or image capture/review technologies and processes to identify the person responsible for the toll).
Eligible Surety	A bonding surety licensed in the State, listed on the U.S. Department of the Treasury's "Listing and Approved Sureties" (found at www.fms.treas.gov/c570/c570.html), rated "A" or higher by at least two nationally recognized rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's) or rated at least A-, X or higher according to A.M. Best's Financial Strength Rating and Financial Size.
End of Contract Transition Plan	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.14.
End of Contract Transition Costs	The costs detailed in Form G, which will allow for the seamless transfer of BOS and CSC operations for the Project to another Joint Board contractor at the end of the Contract without disruption in BOS or CSC operations.
Error	An error, omission, inconsistency, inaccuracy, deficiency or other defect.
Equity Member	(a) each entity with a direct equity interest in the Proposer (whether as a member, partner, joint venture member, or otherwise), and (b) each entity proposed to have a direct equity interest in TSP2.
Event Transaction	Any data produced by the System or an operator that describes the status of the hardware, software and any processes within the System~~TCS~~. An Event Transaction provides data that can be used to determine the operational status of the system, including any errors, outages or faults.
Exception	Any portion of the Contract, terms, conditions, KPI's, or Form K that cannot be met.
Excessive VTolls	A condition that exists on a Customer Account when a (configurable) threshold is exceeded regarding the number of IBTs that are posted to the Account when TBTs were expected instead.

Term (Abbreviation)	Definition
Execution Documents	Contract and other documents to be executed in connection
Exempt List	A list of license plates managed by TSP2 and utilized by the BOS that qualify for exempt status and are treated accordingly based on the Business Rules.
Expected Revenue	The forecasted amount of revenue to be collected from Traffic Transactions assuming 100% will be paid.
Equity Member	(a) each entity with a direct equity interest in the Proposer (whether as a member, partner, joint venture member, or otherwise), and (b) each entity proposed to have a direct equity interest in TSP2.
E-ZPass Interagency Group	The trademarked brand name of the ETC AVI systems and technology used by most tolled roads, bridges, and tunnels in the midwestern and eastern United States primarily for the purpose of toll collection.
Financial Account	A GL or SL account that is used to aggregate financial transactions and record them in a General Ledger system
Final Total Proposal Score	The Price Score (maximum 400 points) and the Technical Score (maximum 1,600 points).
Financially Responsible Parties	The party which will guarantee all the obligations of such Equity Member with respect to the Project.
Financial Transaction	A transactional data record created in the System (automatically by the System or manually by an Authorized User) that has a financial impact (e.g. posting of priced Traffic Transactions, payments, adjustments, reversals, code-offs, etc.).
Fixed Operations Costs	The costs associated with initiating BOS and CSC services, as provided in Form G.
Fiscal Year (FY)	The annual reporting timeframe of July 1st through June 30th (or potentially any other consecutive 12-month period as directed by the Joint Board Representatives). Note that unless otherwise directed by the Joint Board Representatives, FY2020 means 7/1/19 through 6/30/20.
Flag	See Account Flag.
Fleet	An Account Attribute associated with Customer Accounts that contain a large quantity of vehicles.
Force Majeure	Failure of or delay in the performance of this agreement for the period that such failure or delay is 1) beyond the reasonable control of a party, 2) materially affects the performance of any of its obligations under this agreement, and 3) could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects.
Full-Service Retail Partner	A Retail Partner associated with the Project that is required to provide the specified full level of customer service. See Form K Section 25.1.

Term (Abbreviation)	Definition
Functional Specifications Document (FSD)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.5.1.
Functionality Assurance Test (FAT)	Required testing to be performed by TSP2 with results reported to the Joint Board Representatives' for review and approval. See Form K Section 21.6.5.
Future Updated Business Rules	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. After the Joint Board Representatives' approval, this document will become the governing Business Rules going forward replacing the existing Business Rules. See Form K Section 21.4.1.
General Information Proposals	Part 1 of the Proposal documents, as outlined in Exhibit B of the ITP.
Go-Live	The Project's official start of live operations as approved by the Joint Board Representatives. See Form K Section 21.6.10.
Good Industry Practice	Standards, practices, methods and procedures conforming to the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
Governmental Entity	Any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.
Guarantor(s)	Any Person(s) providing a guaranty with respect to TSP2's obligations under this Contract.
Home Agency	For the purpose of this Project, the Interoperable Agency which hosts and maintains the information related to Transponder(s) and/or license plate(s) used to post and pay for Interoperable transactions.
Image of Record	The transactions image used to identify the VRI
Image Review	The system(s) and/or process(es) related to reviewing captured images of license plates, using OCR and/or manually, associated with vehicles that used a toll facility in order to determine License Plate Data for the purpose of toll collection.
Image Reviewer	Staff member trained to perform Image Review.
Image-Based Transaction (IBT)	A Traffic Transaction (and potentially related Financial Transaction) for which the toll collection is ultimately based on an associated image, or set of images, of a vehicle's license plate (as opposed to a Transponder-Based Transaction).

Term (Abbreviation)	Definition
Indemnified Party	The Commonwealth of Kentucky, KPTIA, KYTC, the Louisville/Jefferson County Metro Government, the State of Indiana, Clark County, Indiana, INDOT, Indiana Finance Authority, the Joint Board, the Tolling Body, and their respective officers, directors, board members, employees, consultants, representatives, agents and successors and assigns.
Indiana Department of Administration (IDOA)	The state agency of Indiana that centrally manages the assignment, operation, and reporting of all state vehicles owned, leased, or rented by all Indiana state agencies.
Indiana Department of Revenue (IDOR)	The state agency of Indiana that administers the international registration plan and base plate renewals program for qualifying carrier and vehicles (carriers based in Indiana with 25 or more vehicles that are registered at 16,000lbs or more).
Indiana Department of Transportation (INDOT)	The state agency of Indiana responsible for planning, building, and operating Indiana's transportation system, including the development and implementation of a strategic plan to meet the needs of Indiana and its stakeholders, and to enhance economic development.
Indiana Finance Authority (IFA)	A body politic and corporate created by Indiana pursuant to IC 4-4-11-4, which provides that the exercise of its powers constitutes an essential governmental, public, and corporate function.
Indiana Parties	INDOT and IFA.
Initial Total Proposal Score	Preliminary total combined score (technical score plus pricing score) used to select Proposers to be invited to the Proof of Concept.
Initial Work	Work needed in order to facilitate go-live on the Project.
Installation Plan	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.7.
Intelligent Mail Barcode (IMB)	A barcode utilized by the US Postal Service to sort and track letters that allows mailers to use a single barcode to participate in multiple Postal Service programs simultaneously which expands the mailers' ability to track individual mail pieces and provides greater mail stream visibility.
Interactive Voice Response (IVR)	An automated telephony system that interacts with callers, gathers information and allows callers to perform various self-service actions.
Interface	The shared boundary across which two or more separate systems exchange information.
Interface Control Document (ICD)	The document that defines the file formats and related rules and requirements for transmitting, receiving, and processing Interface data between two or more systems.
Interlocal Agreement (Interlocal)	The agreement between INDOT, IFA, KYTC, and KPTIA entered pursuant to IC 36-1-7 et seq. and KRS 65.210 to 65.300 to facilitate the accomplishment of the Project by sharing the individual agencies' powers with the Joint Board, the Tolling Body, and each other as necessary to comply with the terms of the Development Agreement, and for the benefit of the citizens of Indiana and Kentucky.

Term (Abbreviation)	Definition
Internet Protocol (IP) Address	A unique numerical label assigned to each device connected to a computer network.
Interoperable (IOP)	Relationship established between two or more tolling agencies or entities based on their systems being capable of capturing, transmitting, receiving, processing and paying for toll transactions resulting when a customer with an account at one agency/entity uses the toll facility of another agency/entity.
Joint Board	The Kentucky-Indiana Joint Board was created to facilitate the financing, construction, operation and maintenance of the Louisville-Southern Indiana Ohio River Bridges Project. The board members consist of the Public Finance Director of the State of Indiana, the Chairperson of KPTIA, the Secretary of KYTC, and the Commissioner of INDOT
Joint Board Authorized Representative	Persons designated as the Joint Board Authorized Representative(s) in Contract Exhibit 4.
Joint Board Representative(s) (JBR)	Person(s) designated by INDOT, KYTC and/or the Joint Board to represent the Joint Board and make certain Project related decisions.
Kentucky Parties	KPTIA and KYTC.
Kentucky Public Transportation Infrastructure Authority (KPTIA)	The independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky with the authority to participate in the construction, operation, financing, and oversight of significant transportation projects connecting Kentucky and Indiana, and to review, approve, and monitor all such projects, and to assist with the operation, financing, and management thereof in accordance with KRS Chapter 175B.
Kentucky Transportation Cabinet (KYTC)	The department and agency of the Commonwealth of Kentucky responsible for, and with authority to direct and control the establishment, construction, and maintenance of Kentucky's primary road system.
Key Performance Indicator (KPI)	Measure or metric used to define and evaluate how successful one or more elements of the System and/or operational areas of the Project are performing.
Key Personnel	Those TSP2 personnel positions specified in Form K Section 21.3.1.5.
Law or Laws	Any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to any portion of the Project and/or the Work, whether now or hereafter in effect.
Legal Hold	The process of pausing or preserving a Customer Account due to pending litigation.

Term (Abbreviation)	Definition
License Plate Data	Information related to a specific license plate which can be derived from a legible image of the license plate, including the license plate's issuing jurisdiction (e.g., state), alphanumeric characters, and plate type used for the purpose of vehicle owner identification and/or toll collection.
License Plate Validation List (LVL)	A comprehensive list of registered license plates along with related information exchanged between one or more Interoperable agencies based on Business Rules used for the purpose of toll collection.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement.
Limited-Service Retail Partner	A Retail Partner associated with the Project that is required to provide the specified limited level of customer service. See Form K Section 25.3.
Load Test	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.6.8.
Losses	Any loss, damage (including personal injury, property damage and natural resource damages), injury, liability, cost, expense (including attorneys' fees and expenses (including those incurred in connection with the enforcement of any provision of this Contract)), fee, charge, demand, investigation, proceeding, action, suit, claim, judgment, penalty, fine or Third Party Claims.
Low Balance Level	A Configurable balance amount level from a Customer Account at which the Auto-Replenishment process is triggered in order to add funds to the Account.
Maintenance Plan	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.11.
Major Non-Equity Members	The following team members, if such team members do not hold an equity interest in Proposer: (i) the lead engineering firm (if a consortium, partnership or any other form of a joint venture, all such members); (ii) the lead contractor (if a consortium, partnership or any other form of a joint venture, all such members); and (iii) the lead firm responsible for operations (if a consortium, partnership or any other form of a joint venture, all such members).
Major Participants	Each Equity Member and (a) the Toll Service Provider 2; (b) the Major Subcontractor; and (c) a proposed contractor with a contract valued at greater than or equal to $25 million (excluding contracts with Subcontractors).

Term (Abbreviation)	Definition
Major Subcontract	(a) a Subcontract with the entity(ies) primarily responsible for the (i) BOS; (ii) CSC; and (iii) customer service Walk Up Centers; and (b) a Subcontract to perform any part of the Work or to provide any materials, equipment or supplies for the Project on behalf of TSP2 valued in excess of 15 percent (15%) of the Contract Price for Work prior to Acceptance, and (b) a Subcontract for Work that includes any systems programming, equipment installation, or provision of operations personnel.
Major Subcontractor	Any Subcontractor that is a party to a Major Subcontract.
Master Staffing Plan	Deliverable document to be developed and submitted by Proposers. See Form K Section 21.3.10.
Median Contract Proposal	The value lying at the midpoint of the Contract Price frequency distribution of all submitted Proposals.
Merchant Service Provider (MSP)	A third-party business that can provide customer payment processing services and tools for the Project such as Credit Card payment gateways, Point-Of-Sale (POS) systems, and card-reading hardware.
Monthly Billing Statement (MBS)	An electronic or paper document associated with a Customer Account that is generated monthly by the System for the purpose of providing account activity information and billing (if payment is owed) or providing account balance (if account has zero or positive balance).
Motor Vehicle Licensing (MVL)	Kentucky agency that registers vehicle titles and provides vehicle ownership information for owner identification.
MToll	An industry term referring to an Image-Based Transaction that a CSR determines is actually associated with a valid Transponder and manually adjusts/reposts accordingly based on the Business Rules.
Multi-Factor Authentication (MFA)	User access authentication method in which user is granted system access only after successfully presenting two or more pieces of evidence to an authentication mechanism.
National Change of Address (NCOA)	A service provided by the USPS that can be used for the purpose of obtaining updated and accurate mailing addresses.
National Interoperable	Interoperability from a national perspective covering toll roads and facilities across the country.
Nixie	A mailed letter that has been identified as being undeliverable and is returned to the sender by the postal service typically due to a faulty or illegible address.
Non-Sufficient Funds (NSF)	A condition that exists when a customer's check payment becomes rejected by the customer's bank because the customer's checking account did not have enough funds to cover the check. This condition typically results in a fee being charged to the customer by the payee for the payment rejection.
Notice to Proceed (NTP)	The written notice issued by the Joint Board to TSP2 authorizing TSP2 to proceed with Work.

Term (Abbreviation)	Definition
Notification Channel	The method by which Notifications can be delivered to customers (e.g., mail, email, SMS, etc.).
Notification	Written communication by the BOS to a customer or potential customer using any Notification Channel.
Ohio River Bridges Project	The Louisville Southern Indiana Ohio River Bridges Project to improve cross-river mobility in the Louisville-Southern Indiana Region through the construction or reconstruction of three bridges across the Ohio River, financed in part through joint toll operations by the Joint Board.
Online Vehicle Information System (OVIS)	A Kentucky system and online service that allows authorized users to obtain registered vehicle title information for the purpose of owner identification.
Open-Book Basis	A process by which the Joint Board is provided full and complete access to and/or details of, all original invoices, vouchers and books of account (including information regarding overhead, profit and mark-up) necessary to demonstrate the TSP2's actual cost of performing the Work.
Operations and Maintenance Reports	The periodic maintenance related reports that are required to be submitted pursuant to Contract Section 5.1.
Operations and Maintenance Term	The period during which TSP2 is obligated to perform the Maintenance Work, commencing on the Go-Live date and continuing until the date that is seven (7) years from the first anniversary of the Go-Live date, plus any extension of such period due to the Joint Board's exercise of the Operation and Maintenance Option.
Operations and Maintenance Work	The Back Office System (BOS) Hosting Work, the Back Office System (BOS) IT Operations and Maintenance Work, and the Customer Service Center (CSC) Operations and Maintenance Work TSP2 is required to perform during the Operations and Maintenance Term, except for the Warranty Work.
Operational and Acceptance Test	Test that TSP2 is required to successfully conduct after the Go-Live date pursuant to Form K Section 21.6.11.
Optical Character Recognition (OCR)	Software that attempts to automatically determine License Plate Data without human review using a captured image or set of images of a license plate. Provides license plate numbers and jurisdiction as a result.
Owner	The Joint Board, IFA and other States' Parties.
Partial-Service Retail Partner	A Retail Partner associated with the Project that is required to provide the specified partial level of customer service. See Form K Section 25.2.
Party	TSP2 or the Joint Board, as the context may require, and "Parties" shall mean TSP2 and the Joint Board, collectively.
Past Due	A condition that exists when an amount owed by a customer has not been paid by the associated due date indicated.

Term (Abbreviation)	Definition
Pay-by-Plate	A service offered by RiverLink that allows a customer to pay an owed toll amount prior to a related invoice being generated.
Payment Bond	Defined in Contract Section 8.
Payment Card Industry Data Security Standard (PCI-DSS)	Guidelines intended to help organizations that process credit card payments mitigate fraud, hacking, and various other related security vulnerabilities and threats.
Payment Location	The location or means used to receive a customer payment, such as a Walk Up Center, a Retail Partner, over the phone with a CSR, over the phone via the IVR, via the mail, via a website, etc. See Form K Section 6.
Payment Method	The instrument used to make a customer payment, such as a Credit Card, cash, a check, ACH, etc. See Form K Section 6.
Payment Milestones	Each set of completed Work for which TSP2 may submit an invoice to the Joint Board, as specified in the "Payment Milestone Descriptions" included in the Price Forms, Form G.
Payment Plan	An established method based on the Business Rules that allows a customer to make a series of smaller payments to satisfy a larger amount owed. See Form K Section 10.
Penetration Testing	Authorized simulated cyberattack on a computer system performed to evaluate the security of the system.
Performance Bond	Defined in Contract Section 8.
Performance Contract Document (PCD)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.5.5.
Performance Guaranties	TSP2's commitment to meet the Key Performance Indicators specified in Section ~~4.2~~5.1.
Performance Liquidated Damages	Defined in Contract Section ~~4.2.3~~5.1.3.
Performance Stipulated Damages	Defined in Contract Section 5.1.5~~4.2.4.2~~.

Term (Abbreviation)	Definition
Persistent Breach	(i) if the Project fails to meet or exceed any one or more of the Key Performance Indicators with respect to any Mission Critical System each day for more than 5 consecutive days, with compliance measured on a daily basis, or each day for more than 10 (consecutive or non-consecutive) days in any calendar quarter (3 month period), with compliance measured on a daily basis, or (ii) if the Project fails to meet or exceed any one or more of the Key Performance Indicators defined in Exhibit 2 with respect to any other matter, function or system that is not a Mission Critical System each day for more than 10 consecutive days, with compliance measured on a daily basis, or each day for more than 15 (consecutive or nonconsecutive) days in any calendar quarter (3 month period), with compliance measured on a daily basis.
Person	Any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or governmental entity.
Personally Identifiable Information (PII)	Information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context.
Plans or plans	All Joint Board-approved plans required to be developed by TSP2 pursuant to the Contract.
Posting Date	The date the System posts a transaction to a Customer Account. When used in the context of Financial Transactions that resulted from Traffic Transactions, it is important to note that the Posting Date is independent from the Transaction Date.
Post-Selection Deliverables	The documents submitted from the Preferred Proposer, as outlined in the ITP Section 4.3.1.
Pre-Existing Software	Defined in Contract Section 20.6.1.
Preferred Proposer	The apparent best value Proposer, as evidenced by being the highest scoring Proposer based on the best value determination pursuant to ITP Section 3.1.
Price Proposal	The completed price sheets submitted with its Proposal contained in Form G and submitted under Part 3 of the ITP.
Price Proposal Evaluation Committee (PPEC)	Joint Board Representatives who evaluate the Price Proposals.
Print/Mail Service Provider	A third-party business that, in whole or in part, handles the printing and mailing of Notifications.
Problem Plate(s)	A list of license plates managed by TSP2 and utilized by the BOS that are deemed to be problematic for the efforts of toll collection and are treated accordingly based on the Business Rules.

Term (Abbreviation)	Definition
Project	The work to be done to satisfy the Back Office System and Customer Contact Center business rules and requirements set forth by the Joint Board
Project Management Plan (PMP)	Deliverable document to be developed and submitted by Proposer's for the Joint Board Representatives' review. See Form K Section 21.3.1.
Project Schedule	A listing of the project's milestones, activities and deliverables with respective start dates, end/finish dates. dependencies and, where applicable, resources. A preliminary Project Schedule will be submitted with the Proposal and the updated version of this is known as the Detailed Project Schedule which will become Exhibit 7 Attachment 5 of the Contract.
Proof of Concept (POC)	The demonstration of various BOS functions by one or more Proposers during procurement. See ITP Exhibit A.
Proposal	The proposal submitted by a Proposer to the Joint Board in response to the RFP.
Proposal Evaluation Committee (PEC)	Joint Board Representatives who evaluate Proposals.
Proposal Letter	A formal document acknowledging Proposers understand of what is included with the Proposer, what is being asked, and the process laid out.
Proposer	The entity submitting a Proposal for the Project in response to this RFP.
Public Records Act	Collectively Indiana Code 5-14-3 and the Kentucky Open Records Act, as they may be amended from time to time.
Quality Assurance and Master Test Plan (QAMTP)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.6.
Reconciliation	The process of comparing two or more sets of data records, typically from different systems, to check that that the individual data sets are complete and in agreement.
Recovery Plan	The schedule TSP2 is required to provide under Section 4.2 of the Contract.
Recovery Point Objective (RPO)	Maximum acceptable amount of data loss, for all critical BOS services, after an unplanned data-loss incident, expressed as an amount of time which shall be zero. See Form K Section 21.3.8.
Recovery Time Objective (RTO)	Maximum acceptable amount of time for restoring critical BOS services and regaining access to data, after an unplanned disruption, which shall not exceed twenty-four (24) hours. See Form K Section 21.3.8.

Term (Abbreviation)	Definition
Reference Information Documents	The documents and information included in Volume III of the RFP. Except as expressly provided in the Contract Documents, the Reference Information Documents are not considered Contract Documents and were provided to TSP2 for informational purposes only and without representation or warranty by the Joint Board.
Region of Interest (ROI)	The area of an image of a vehicle that concentrates on the license plate.
Regional Interoperability	Interoperability confined to localized regions of the country (E-ZPass, Central US Interoperability, etc.)
Regulatory Approvals	All local, regional, Commonwealth, State and federal agreements, studies, findings, permits, approvals, certifications, licenses and other governmental actions required to be obtained, taken or completed under applicable Laws prior to undertaking any particular activity contemplated by the Contract Documents.
Replenishment	See Account Replenishment.
Reports Design Document (RDD)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.5.3.
Request for Proposals (RFP)	The set of documents identifying the Project and its Work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer. The RFP includes the ITP, Contract Documents, and Reference Documents.
Requirements	See Technical Requirements.
Requirements Traceability Matrix (RTM)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.4.2.
Retail Partner	A third-party business associated with the Project that is required to provide one of the specified levels of customer service typically at a facility not operated by TSP2 and with staff not directly employed by TSP2. See Form K Section 25.
Revenue Control Management Agreement	The agreement entered into by, or to be entered into by, the Joint Board and the Revenue Control Manager.
Revenue Control Manager (RCM)	The entity that performs accounting functions for the Project pursuant to the Custody and Revenue Control Agreement.
Revenue Day	The day the revenue related to a Financial Transaction is associated with as approved by the Joint Board Representatives.
Revenue Service	The collection of tolls for use of the Ohio River Bridges Project
Revenue Service Date	With respect to the Contract, the date on which Revenue Service commences.

Term (Abbreviation)	Definition
Reversal	A Financial Transaction applied to a Customer Account as a result of reversing a prior payment, refund or credit. Typical reasons for reversing include a chargeback, an NSF check, or a payment, refund or credit was posted to incorrect Account.
RiverLink	The trademarked brand name of the ETC systems and technology used by the Louisville-Southern Indiana Ohio River Bridges primarily for the purpose of toll collection.
Roadside Toll Collection System (RTCS)	The system, including Hardware and Software, that detects, classifies and creates Traffic Transactions for vehicles traveling on a toll facility, including any one of the Bridges. The RTCS interfaces with and sends to the BOS the Traffic Transactions for processing for the purpose of toll collection.
Safety and Security Plan	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.13.
Secretary of State (SOS)	The state agency that administers dealer issued license plates and temporary license plates in the state of Indiana.
Seed List	A list of recipients and accounts used for sending Notifications to "test" Notifications after they are configured
Self-Service Website (Website)	The website provided by TSP2 that allows a customer to create and manage their Customer Account.
Skip Trace(ing)	An industry term for the process by which alternative contact information, especially a mailing address, is attempted to be obtained from third-party provider(s) for a customer for the purpose of toll collection.
Software Design Document (SDD)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.5.2.
Software Development Plan (SDP)	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.3.
Software Maintenance Option	See Contract Section 2.2.5.
Software Maintenance Option Period	See Contract Section 2.2.5.
Software Source Code	See Contract Section 20.6.3(b).
Source Code Escrow	The escrow established with the Code Escrow Agent to hold TSP2's deposit of the Software Source Code.
Stakeholders	See ITP Section 5.1.3.1.

Term (Abbreviation)	Definition
Standard Operating Procedure(s) (SOP(s))	Depending on the context, (a) detailed step-by-step instructions and activities approved by the Joint Board for TSP2 to complete the Work task(s) in accordance with the Business Rules, Requirements, regulations, provincial laws, or (b) the deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval that documents all of TSP2's SOPs (see Form K Section 21.3.12).
State	The State of Indiana.
State Auditor	Collectively or individually, the Auditor of the State of Indiana, elected under Article 6, Section 1 of the Indiana Constitution, whose powers and duties are described by Indiana law, and/or the Kentucky State Auditor of Public Accounts, and any outside auditors employed by the State and/or the Commonwealth, and/or a State Party.
States' Parties or State Party	Collectively or individually, INDOT, KYTC, IFA, and KPTIA**.**
Steady State Operations	The period of time from and after the end of start-up operations.
Stipend	The fixed payment for the unsuccessful Proof of Concept for this procurement totaling $200,000.
Stipend Agreement	The Proof of Concept agreements between IFA, KYTC and Proposer, provided as Form O of the ITP.
Subcontract (or subcontract)	Any agreement by TSP2 with any other Person, Subcontractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.
Subcontractor (or subcontractor)	Any Person with whom TSP2 has entered into any Subcontract to perform any part of the Work or provide any materials or~~,~~ equipment~~ or supplies~~ for the Project on behalf of TSP2 and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.
Subcontractor Dispute	See Contract Section 19.4.
Subscription Period	Defined period of time with a definitive end date.
Supplier (or supplier)	Any Person not performing work at or on the Project Site which supplies machinery, equipment, materials, Hardware, Software, systems or any other appurtenance to any portion of the Project to TSP2 or to any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from a Project Site shall not be deemed to be performing Work at the Project Site.

Term (Abbreviation)	Definition
Surety	The individual or entity committing to provide any of the bonds identified in the RFP, which individual or entity must be an Eligible Surety.
System	See Back Office System.
System Acceptance	The Joint Board Representative's acceptance of the Project upon review and written approval of a successful Operational and Acceptance Test and satisfaction of all other conditions in the Contract.
System Integration Test (SIT)	Required testing to be performed by TSP2 with results reported to the Joint Board Representatives' for review and approval. See Form K Section 21.6.7.
System Monitoring	An automated, fully integrated system that monitors the status of operational equipment in real-time, records equipment and process failures, notifies maintenance personnel, generates and tracks work orders, maintains preventative maintenance schedules, generates repair history, provides alerts for hot listed vehicles, maintains parts inventory and asset management, and allows communication between TSP2 and the Joint Board Representatives. See Form K Section 23.1.2.
Technical Proposal	The completed price forms submitted with its Proposal contained in Form K Technical Requirements Conformance Matrix and other documents submitted under Part 2 of the ITP.
Technical Proposal Evaluation Committee (TPEC)	Joint Board Representatives who evaluate the Technical Proposals.
Technical Requirements Conformance Matrix (Requirements)	The requirements contained in Form K which describe standards, criteria, requirements, conditions, procedures, specifications, deliverables and other provisions for the implementation of the Project.
Test Cases	An approved set of conditions and/or variables that are used as the basis for determining that a test satisfies requirements proving a system or system component functions correctly and that are used as the basis for the development of test procedures.
Third Party Claims	Any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.
Third-Party Service Provider	An entity which has a business relationship with TSP2 and/or the Joint Board to perform Work and provide services for the Project, such as a Collection Agency or a Print/Mail Service Provider.
Toll Rate Schedule	The toll amounts applied to Traffic Transactions as adopted from time to time by the Tolling Body for the Bridges.

Term (Abbreviation)	Definition
Toll Services Provider 1 (TSP1)	The current Toll Services Provider (i.e., Kapsch TrafficComm IVHS, Inc.).
Toll Services Provider 2 (TSP2)	The Toll Services Provider procured under this Contract.
Toll Services Advisor (TSA)	Contractors who advise the Joint Board Authorized Representatives.
Tolling Body	The body established in the Development Agreement and the Interlocal Agreement, being comprised of the members of the Joint Board plus one additional representative of IFA and one additional representative of KPTIA or any of the members' respective successors.
Total Initial Price	The complete fixed price compensation payable to TSP2 for the Initial Work.
Total Proposal Score	The combined score of the Technical and Price Proposals as determined pursuant to Section 5.2 of the ITP.
Total Operations and Maintenance Price	The complete, price compensation to be paid by the Joint Board to TSP2 for performance of the Maintenance and Operations Work, including the fixed costs on Form G in Table 2 and Table 4 and the variable costs based on the unit prices on Form G in Table 3 (excluding actual direct Pass-through Cost Items) (years 1 through 7).
Traffic Transaction	The transaction created by the Roadside System that provides date, time, location, vehicle classification, transponder identification for ETC transactions, license plate number and jurisdiction and any other information required by the Technical Requirements to provide a record of a vehicle crossing on a Bridge, including a transponder (ETC) transaction, an image transaction and an interoperable transaction that is used for payments due to or from an E-ZPass interoperable agency.
Training Plan	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.9.
Transaction	A transactional data record in the System (i.e., a Traffic Transaction, Financial Transaction or Event Transaction).
Transaction Date	For a Traffic Transaction and the resulting or related Financial Transaction(s), the date when the vehicle traveled through the Toll Location resulting in the creation of a related Transponder-Based Transaction or Image-Based Transaction. For other Financial Transactions or Event Transactions, the date the transaction was created/posted in the BOS.
Transition Plan	Deliverable document to be developed and submitted by TSP2 for the Joint Board Representatives' approval. See Form K Section 21.3.5.
Transponder	A radio frequency device mounted in or on a vehicle that provides a unique identifier for the purpose of toll collection.
Transponder Fulfillment	Considered the time between a Case opening for the transponder to be filled and the time the Case is closed or resolved. Does not include time waiting for mailing to occur.

Term (Abbreviation)	Definition
Transponder-Based Transaction (TBT)	A Traffic Transaction (and potentially related Financial Transaction(s)) for which the toll collection is ultimately based on an associated Transponder (as opposed to an Image-Based Transaction).
Transponder Validation List (TVL)	A comprehensive list of registered Transponders along with related information exchanged between one or more Interoperable agencies based on Business Rules used for the purpose of toll collection. Some toll agencies also send TVLs from their BOS to their RTCS in order for the RTCS to determine if a read Transponder is valid or not.
TSP2 Event of Default	See Contract Section 16.
TSP2 Standards of Performance	See Contract Section 11.1.
TSP2-Related Entities	(i) TSP2, (ii) partners, joint venture members, and/or members in or with TSP2, (iii) Subcontractors (including suppliers), (iv) any other Persons performing any of the Work, (v) any other Persons for whom TSP2 may be legally or contractually responsible, and (vi) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.
User Acceptance Test (UAT)	Required testing to be performed by TSP2 with results reported to the Joint Board Representatives' for review and approval. See Form K Section 21.6.9.
User Account	The collection of System data related to an Authorized User, including username and password, that allows the Authorized User to authenticate themselves in order to gain access the System.
Value Add	Enhancements to the requirements set forth in Form K. Does not replace or act as a substitute but should be considered in addition to.
Vehicle Class	The approved scheme used to categorize each vehicle, based typically on the vehicle's quantity of axles and the vehicle's size, which is used as the framework for the Toll Rate Schedule.
Vehicle Registration Information (VRI)	Information that a VRI Source is able to provide based on License Plate Data of any vehicle registered with the VRI Source that includes, at a minimum, the registered owner's name and address. Some VRI Sources are also able to provide information that includes the vehicle's VIN and registration renewal date.
VRI Source	Any DMV or other state or 3rd party source that maintains and/or provides data regarding the registered owner's name and address, license plate information, VIN information, registration renewal date, etc. of registered vehicles.
VToll	An industry term referring to an Image-Based Transaction that the BOS determines is actually associated with a valid Transponder and processes accordingly based on the Business Rules.

Term (Abbreviation)	Definition
Video Transactions	An Image-Based Transaction that the BOS could not post to an active account with a valid Transponder requiring mailing a statement to the vehicle's registered owner.
Waive	The act of deeming a toll or fee amount as no longer due based on the Business Rules.
Walk Up Center (WUC)	The facility where a customer can open accounts, purchase and reload a transponder, make payments and may file or discuss a dispute. Staff are employed by TSP2.
Warranty	See Contract Section 11.
Warranty Bond	See Contract Section 8.
Work	All of the work required to be furnished and provided by TSP2 under the Contract Documents, including all administrative, design, support services, procurement, professional, manufacturing, supply, installation, integration, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by TSP2 as required by the Contract Documents, including all efforts necessary or appropriate to maintain the Project in accordance with the standards set forth in the Contract Documents, except for those efforts which such Contract Documents expressly specify will be performed by Persons other than the TSP-Related Entities.
Workforce	Those individuals working for the Proposer.
Workforce Management	An institutional process that maximizes performance levels and competency for an organization.
Write-Off	(1) A Customer Account balance due deemed uncollectible or unworthy of pursuit based on the Business Rules, or (2) the act of deeming of such.

EXHIBIT 2. KEY PERFORMANCE INDICATORS AND LIQUIDATED DAMATES

The following tables detail the Key Performance Indicators to be met by the Project and the Liquidated Damages to be assessed with the failure to meet these Key Performance Indicators. Specific adherence and obligation to the Key Performance Indicators, including both damages and incentives, will be deferred for a period of time following the Go-Live date in which to allow the system and operations to stabilize. This period of allowable time is anticipated to be sixty (60) days.

Back Office System Key Performance Indicators

Functional Area	Item #	Key Performance Indicator (KPI)	Compliance Threshold	Non-Compliance for Every Additional or Partial Hour Above Compliance Threshold	Measurement Frequency
system availability	1	self-service website unavailability *	2 hours cumulative	2.0	Monthly
	2	internal BOS/CSC application unavailability *	2 hours cumulative	2.0	Monthly
	3	TVLs/LVLs (including IAG specific files) sent to Roadside System Provider per requirements, if applicable	specified days and times	2.0	Monthly
image processing	4	OCR quality, if applicable **Note –** auto-pass percentage to be agreed upon in workshop prior to Revenue Service Date	ninety nine-point nine five percent (99.95%) accuracy through auto-pass**	2.0	Monthly
transaction processing	5	all Traffic Transactions shall start their processing lifecycle once accepted by BOS	within 12 hours of receipt	1.0	Monthly
printing/mailing	6.1	all MBS bills generated and sent to the print/mail service provider	within 1 business day anniversary date (see Form K requirement)	2.0	Monthly
	6.2	all mailed Notifications generated and sent to the print/mail service provider	within 3 business day anniversary date (see Form K requirement)	1.0	Monthly

Functional Area	Item #	Key Performance Indicator (KPI)	Compliance Threshold	Non-Compliance for Every Additional or Partial Hour Above Compliance Threshold	Measurement Frequency
	6.3	all MBS and Notifications sent shall be uploaded to the BOS from print/mail service provider	within 3 business days of mailed date	1.0	Monthly
payment processing	7	payment processing via interface to ACH and merchant service provider unavailability *	2 hours cumulative	5.0	Monthly
	8	Auto-Replenishment processing interface unavailability *	2 hours cumulative	5.0	Monthly
system repair	9	time for resolving high priority Cases	2 hours per event	5.0	Monthly
	10	time for resolving medium priority Cases	1 calendar day per event	4.0	Monthly
	11	time for resolving low priority Cases	7 calendar day per event	2.0	Monthly
loss of data	12	~~non-~~revenue data lost~~, unavailable,~~ or damaged on as a result of a system or process failure	any occurrence	6.0	Monthly

***Note – Unavailability excludes approved downtime or maintenance windows**

****Note – To be further discussed and refined in Joint Board Representatives and TSP2 workshops**

Note – Compliance points will not be added together for singular events that cause multiple failures. Most penal compliance points threshold will be used in these cases.

II. Back Office System Liquidated Damages

non-performance level	total non-compliance points during or for a calendar month	reduction in monthly invoice
Level 1	0 - 5	0%
Level 2	6 - 10	5%
Level 3	11 - 20	10%
Level 4	21 - 30	15%
Level 5	31 or above	25%

III. Customer Service Center Key Performance Indicators and Liquidated Damages

Category	Item #	Operational Activity	Source	Minimum Performance	LD Amount	Incentive Amount	Measurement Frequency
customer service	1	CSC/WUC with staff onsite will be open during the required hours of operations	periodic oversight of CSC Operations by JBR	one hundred percent (100%) of the business hours	$5,000 for every hour or portion thereof	n/a	per event
	2	telephone wait time after electing to speak to a CSR	report from telephony system	eighty percent (80%) within sixty (60) seconds	$500 for every percent or portion thereof below 80%	$250 for every percent or portion thereof above 85%	semi-monthly (1st-14th and 15th-end of month)
	3	Increase transponders/new accounts	from case management report	increase transponder penetration on the road (through new accounts and new transponders)	n/a	to be negotiated with selected vendor	monthly
	4	maximum hold time after electing to speak to a CSR	report from telephony system	ten (10) minutes	$100 for every call where the wait time is ten (10) minutes or more	$500 for no calls exceeding (10) minute wait time in a month	per event

Category	Item #	Operational Activity	Source	Minimum Performance	LD Amount	Incentive Amount	Measurement Frequency
	5	abandoned calls	report from telephony system	not more than four percent (4%) abandoned after 45 seconds (calls not considered abandoned if less than (45) seconds after entering the queue)	$300 for every percent or portion thereof above four percent (4%)	n/a	per day
	6	maximum wait time for walk in customers **Note –** wait time considered time between customer registering for number and when number called	report from walk-up ticket system	ten (10) minutes	$100 for every customer that waits more than ten (10) minutes	$500 on a monthly basis when no customer wait exceeds ten (10) minutes	per event
	7	Transponder Fulfillment	from case management report	ninety-nine point nine-nine percent (99.99%) in two (2) business days	$100 for each additional case (above allowable limit) not resolved or completed within the required time period	n/a	per event, per day
customer service monitoring	8	CSC staff monitoring; Call Center Staff must be monitored. (this monitoring can be in real time and/or recorded)	report from TSP2 also verified by JBR	one percent (1%) of total customer interaction monitored each month with every CSR having a minimum of two (2) customer interaction monitored per month	$2,500 for the month	n/a	monthly

Category	Item #	Operational Activity	Source	Minimum Performance	LD Amount	Incentive Amount	Measurement Frequency
	9	CSC customer surveys (survey scores for the month will be calculated for any survey received)	report from customer satisfaction survey tool	the average score should be 85% satisfaction or greater for the month	$750 for the month	n/a	monthly
written correspondence	10	All requests (email, on-line, written) such as (questions, disputes, inquiries, etc.) responded to	from case management report	Ninety-nine point nine-nine percent (99.99%) in three (3) business days (unless escalation to the States is required)	$100 for each additional case (above allowable limit) not resolved or completed within the required time period	n/a	per event, per day
	11	Cases initiated by JBR are reviewed, action taken (completed, reassigned)	from case management report	one hundred percent (100%) within three (3) business days of receipt	$100 for each item not resolved or completed within the required time period	n/a	per event, per day
	12	respond to requests for data in support of subpoenas	from case management report	meet subpoena requests	$1,000 per request and an additional $100 per business day late	n/a	per request, per day
image review	13	image review completion	report from BOS/image review system	Ninety-nine point nine-nine percent (99.99%) reviewed within three (3) business days of date	$1,000 for missing Minimum Performance	n/a	daily

Category	Item #	Operational Activity	Source	Minimum Performance	LD Amount	Incentive Amount	Measurement Frequency
				being accepted from the RSS			
	14	image review rejection accuracy. If the image meets the rejection criteria	oversight by JBR of statistically relevant sample of transactions rejected	Image-Based Transactions are rejected correctly for ninety-nine point seven five percent (99.75%) of transactions reviewed	$100 for every tenth percent (.1%) below the Minimum Performance	$100 for exceeding Minimum Performance	monthly
	15	manual image review accuracy. The license plate characters, plate type and issuing jurisdiction must be correctly identified	oversight by JBR of statistical relevant sample of manually reviewed non-rejected transactions	License Plate Data entered correctly ninety-nine point nine five percent (99.95%) of transactions manually reviewed	$100 for every tenth percent (.1%) below the Minimum Performance	$100 for exceeding Minimum Performance	monthly
financial	16	all funds shall be deposited in the bank	oversight by JBR	within one (1) Business Day from receipt of funds	$100 for each payment not posted or deposited within the required time	n/a	daily
	17	issue refunds	report from proposed case management system	within ten (10) business days upon request or within (30) business days from dispute resolution	$100 for each refund not issued within the required time period	n/a	daily
	18	identification of unallocated funds	oversight and verification by JBR	within ten (10) business days of original collection date	$100 for each unallocated fund not identified within	n/a	daily

Category	Item #	Operational Activity	Source	Minimum Performance	LD Amount	Incentive Amount	Measurement Frequency
					the required time period		
	19	delivery of accurate SOC-1 Type 2 and all related financial statements (the States' fiscal year runs from July 1 - June 30)	based on documented delivery date	no later than August 31st of the current year	$10,000 for not delivering all the required information by the specified date and $500 for each additional business day late	n/a	per item
	20	wire transfers to each of the States specific bank accounts must transfer money in accordance with the CRCA	oversight by JBR	One hundred percent (100%) by 10:30am each business day	$100 for each transfer not completed within the required time period	n/a	per item
reporting	21	report accuracy	oversight and verification by JBR	One hundred percent (100%) for all financial and operational reports accurate and complete in all material aspects as per the approved Report Design manual	$100 per incorrect report and an additional $100 per business day until a schedule to fix the report is submitted and approved	n/a	per report, per day

Category	Item #	Operational Activity	Source	Minimum Performance	LD Amount	Incentive Amount	Measurement Frequency
	22	PCI compliance certification	official PCI certification date	PCI compliance certification must be completed from the original certification date per the level required by PCI Standard	$10,000 for not completing on anniversary date and submitting certification to states within five (5) days of TSP receipt of certification	n/a	annually

Note – Liquidated damages will not be added together for singular events that cause multiple failures. Most penal damage will be used in these cases.

IV. Delay Liquidated Damages Cap

Frequency	Amount
Daily	$12,170

EXHIBIT 3. KEY PERSONNEL

[NAMES OF APPROVED KEY PERSONNEL TO BE INSERTED PRIOR TO EXECUTION]

Key personnel position:	Individual's Name:
Project director	[_____]
Project manager (dedicated)	[_____]
Deputy Project manager (dedicated)	[_____]
Customer Service Center manager (dedicated)	[_____]
Workforce manager (dedicated)	[_____]
Training manager (dedicated)	[_____]
Finance and operational reporting manager (dedicated)	[_____]
Back Office and development manager	[_____]
Data migration manager	[_____]
Maintenance manager	[_____]
Technical/solution architect	[_____]
Quality assurance/testing manager	[_____]

EXHIBIT 4. DESIGNATION OF AUTHORIZED REPRESENTATIVES

Joint Board Authorized Representatives:

_____
[Name]

_____
[Name]

TSP2 Authorized Representatives

Project director:

_____
[Name]
TSP2 Representative for all issues

Project manager:

_____
[Name]
TSP2 Representative for All Work

Back Office and development manager:

_____
[Name]

TSP2 Representative for Back Office and development issues

Relevant system support staff (e.g., Help Desk personnel):

_____

[Name]

TSP2 Representative for system support issues

[*List any other TSP2 Authorized Representatives*]

EXHIBIT 5. BONDS

5-A Form of Performance Bond
5-B Form of Payment Bond
5-C Form of Warranty Bond
5-D-1 Form of Maintenance Performance Bond
5-D-2 Form of Maintenance Payment Bond

EXHIBIT 5-A. FORM OF PERFORMANCE BOND

Bond No. _____

For

A PROJECT TO PROVIDE A CUSTOMER SERVICE CENTER AND BACK OFFICE SYSTEM FOR RIVERLINK'S OHIO RIVER BRIDGES

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Indiana Finance Authority, a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions of the State of Indiana ("IFA"), as the entity designated by resolution of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board") to award a contract, has awarded to _____ ("Principal") a Contract to provide, manage, and maintain a toll collection system and provide back office toll collection and customer service (the "Project") for the Louisville-Southern Indiana Ohio River Bridges;

AND WHEREAS, Principal and the IFA, on behalf of the Joint Board, have entered into a Toll Services Agreement ("Contract") bearing the date of _____ to complete the Project in accordance with the terms of the Contract;

AND WHEREAS, it is one of the conditions of the Contract and the Agreement that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties") are firmly bound and held unto the Joint Board, in the penal sum of _____ Dollars ($_____) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Joint Board, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. If the Principal shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, obligations and work under the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, if the Principal shall indemnify and save harmless the Principal, its directors, officers and agents, as therein stipulated, and if the Principal shall reimburse upon demand of the Joint Board any sums paid the Principal which exceed the final payment determined to be due upon completion of the Project, then these presents shall become null and void; otherwise they shall remain in full force and effect.

3. The obligations covered by this Bond specifically include liability for liquidated damages, stipulated damages and warranties as specified in the Contract, but not to exceed the bonded sum.

4. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

5. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

6. Whenever the Principal shall be, and is declared by the Joint Board to be, in default under the Contract, provided that the Joint Board is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default, or

(b) complete the work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or

(c) select a contractor or contractors to complete all work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, using a contractor or contractors approved by IFA as required by the Contract (provided, however, that the Surety may not select the Principal or any affiliate of

the Principal to complete the work for and on behalf of the Surety without Principal's express written consent), arrange for a contract meeting the requirements of the Contract between such contractor or contractors and the Joint Board, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the bonded sum.

7. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Principal and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Principal or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Principal designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ on this _____ day of _____, A.D., 20___.

Principal (full legal name):

_____

Address:_____

_____

By:_____

Contact Name:_____

Phone:_____

Surety (full legal name):

_____

Address:_____

_____

By:_____

Contact:_____

Phone:_____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 5-B. FORM OF PAYMENT BOND

Bond No. _____

For

A PROJECT TO PROVIDE A CUSTOMER SERVICE CENTER AND BACK OFFICE SYSTEM FOR RIVERLINK'S OHIO RIVER BRIDGES

KNOW ALL WHO SHALL SEE THESE PRESENTS:
THAT WHEREAS, The Indiana Finance Authority, a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions of the State of Indiana ("IFA") as the entity designated by resolution of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board") to award a contract, has awarded to _____ ("Principal") a Contract to provide, manage, and maintain a toll collection system and provide back office toll collection and customer service (the "Project") for the Louisville-Southern Indiana Ohio River Bridges;

AND WHEREAS, Principal and the IFA, on behalf of the Joint Board, have entered into a Toll Services Agreement ("Contract") bearing the date of _____ to complete in accordance with the terms of the Contract;

AND WHEREAS, it is one of the conditions of the Contract and the Agreement that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties") are firmly bound and held unto the Joint Board, in the penal sum of _____ Dollars ($_____) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Joint Board, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. If the Principal shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under the Contract, whether said labor be performed and said materials and supplies be furnished under the original Contract, any subcontract, or any and all duly authorized modifications thereto, then these presents shall become null and void; otherwise they shall remain in full force and effect.

3. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or

in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

4. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Principal and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Principal or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Principal designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be_____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ on this _____ day of _____, A.D., 20___.

Principal (full legal name):

_____

Address:_____

_____

By:_____

Contact Name:_____

Phone:_____

Surety (full legal name):

_____

Address:_____

_____

By:_____

Contact:_____

Phone:_____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 5-C. FORM OF WARRANTY BOND

Bond No. _____

For

A PROJECT TO PROVIDE A CUSTOMER SERVICE CENTER AND BACK OFFICE SYSTEM FOR RIVERLINK'S OHIO RIVER BRIDGES

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Indiana Finance Authority, a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions of the State of Indiana ("IFA"), as the entity designated by resolution of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board") to award a contract, has awarded to _____ ("Principal") a Contract to provide, manage, and maintain a toll collection system and provide back office toll collection and customer service (the "Project") for the Louisville-Southern Indiana Ohio River Bridges;

AND WHEREAS, Principal and the IFA, on behalf of the Joint Board, have entered into a Contract bearing the date of _____ (the "Contract") to complete the Project in accordance with the terms of the Contract;

AND WHEREAS, as a condition to System Acceptance (as defined in the Contract), Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents after System Acceptance, including payment of claims, subcontractors, suppliers, materialmen and mechanics, as a condition to release of the Performance Bond and Payment Bond by Obligee;

NOW THEREFORE, We the undersigned Principal and (the "Surety" or "Co-Sureties") are firmly bound and held unto the Joint Board, in the penal sum of _____ Dollars **($_____)** ***[insert 20% of Performance Bond amount]*** good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Joint Board, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. If the Principal shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, obligations and work under

the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, including without limitation the fulfillment of all Warranties, and payment of claims, subcontractors, materialmen and mechanics, and if the Principal shall indemnify and save harmless the Joint Board, its directors, officers and agents, as therein stipulated, and if the Principal shall reimburse upon demand of the Joint Board any sums paid the Principal which exceed the final payment determined to be due upon completion of the Project, then these presents shall become null and void; otherwise they shall remain in full force and effect.

3. The obligations covered by this Bond specifically include liability for liquidated damages and warranties as specified in the Contract, but not to exceed the bonded sum.

4. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

5. This Bond shall inure to the benefit of all subcontractors, suppliers, materialmen and mechanics with respect to the work, other than entities having an equity interest in Principal, so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

6. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

7. The guarantees contained herein shall survive System Acceptance.

8. Whenever Principal shall fail to pay the lawful claims of any of the Persons identified in Item 5 above, with respect to the Work, then Surety shall pay for the same in an amount not to exceed the bonded sums.

9. Whenever the Principal shall be, and is declared by the Joint Board to be, in default under the Contract, provided that the Joint Board is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default, or

(b) complete the work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or

(c) select a contractor or contractors to complete all work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, using a contractor or contractors approved by IFA as required by the Agreement (provided, however, that the Surety may not select the Principal or any affiliate of the Principal to complete the work for and on behalf of the Surety without Principal's express written consent), arrange for a contract meeting the requirements of the Contract between such contractor or contractors and the Joint Board, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the bonded sum.

10. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Principal and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Principal or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Principal designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ on this _____ day of _____, A.D., 20___.

Principal (full legal name):

_____

Address:_____

_____

By:_____

Contact Name:_____

Phone:_____

Surety (full legal name):

_____

Address:_____

_____

By:_____

Contact:_____

Phone:_____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 5-D-1. FORM OF MAINTENANCE PERFORMANCE BOND

Bond No. _____

For

A PROJECT TO PROVIDE A CUSTOMER SERVICE CENTER AND BACK OFFICE SYSTEM FOR RIVERLINK'S OHIO RIVER BRIDGES

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Indiana Finance Authority, a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions of the State of Indiana ("IFA"), as the entity designated by resolution of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board") to award a contract, has awarded to _____ ("Principal") a Contract to provide, manage, and maintain a toll collection system and provide back office toll collection and customer service (the "Project") for the Louisville-Southern Indiana Ohio River Bridges;

AND WHEREAS, Principal and the IFA, on behalf of the Joint Board, have entered into a Toll Services Agreement ("Contract") bearing the date of _____ to complete the Project in accordance with the terms of the Contract;

AND WHEREAS, as a condition of System Acceptance pursuant to the Contract, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract) during the Maintenance Term;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties") are firmly bound and held unto the Joint Board, in the penal sum of _____ Dollars ($_____) ***[Insert 100% of the then applicable 1 year Maintenance Price]*** good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Joint Board, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. If the Principal shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, obligations and work under

the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, if the Principal shall indemnify and save harmless the Joint Board, its directors, officers and agents, as therein stipulated, and if the Principal shall reimburse upon demand of the Joint Board any sums paid the Principal which exceed the final payment determined to be due upon completion of the Project, then these presents shall become null and void; otherwise they shall remain in full force and effect.

3. The obligations covered by this Bond specifically include liability for liquidated damages, stipulated damages and warranties as specified in the Contract, but not to exceed the bonded sum.

4. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

5. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

6. The guarantees contained herein shall survive the expiration or termination of the Maintenance Term with respect to those obligations of Principal which survive such final completion.

7. Whenever the Principal shall be, and is declared by the Joint Board to be, in default under the Contract, provided that the Joint Board is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default, or

(b) complete the work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or

(c) select a contractor or contractors to complete all work covered by this Bond in accordance with the terms and conditions of the Contract then in effect,

using a contractor or contractors approved by IFA as required by the Agreement (provided, however, that the Surety may not select the Principal or any affiliate of the Principal to complete the work for and on behalf of the Surety without Principal's express written consent), arrange for a contract meeting the requirements of the Contract between such contractor or contractors and the Joint Board, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the bonded sum.

8. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Principal and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Principal or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Principal designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____."

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ on this _____ day of _____, A.D., 20___.

Principal (full legal name):

_____

Address:_____

_____

By:_____

Contact Name:_____

Phone:_____

Surety (full legal name):

_____

Address:_____

_____

By:_____

Contact:_____

Phone:_____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 5-D-2. FORM OF MAINTENANCE PAYMENT BOND

Bond No. _____

For

A PROJECT TO PROVIDE A CUSTOMER SERVICE CENTER AND BACK OFFICE SYSTEM FOR RIVERLINK'S OHIO RIVER BRIDGES

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Indiana Finance Authority, a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions of the State of Indiana ("IFA") as the entity designated by resolution of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board") to award a contract, has awarded to _____ ("Principal") a Contract to provide, manage, and maintain a toll collection system and provide back office toll collection and customer service (the "Project") for the Louisville-Southern Indiana Ohio River Bridges;

AND WHEREAS, Principal and the IFA, on behalf of the Joint Board, have entered into a Toll Services Agreement ("Contract") bearing the date of _____ to complete the Project in accordance with the terms of the Contract;

AND WHEREAS, as a condition of System Acceptance pursuant to the Contract, Principal is required to furnish a bond guaranteeing payment of claims, subcontractors, suppliers, materialmen and mechanics;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties") are firmly bound and held unto the Joint Board, in the penal sum of _____ Dollars ($_____) ***[Insert 100% of the 1 year Maintenance Price]*** good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Joint Board, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. If the Principal shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under the Contract, whether said labor be performed and said materials and supplies be furnished under the original Contract, any subcontract, or any and all duly authorized modifications thereto, then these presents shall become null and void; otherwise they shall remain in full force and effect.

3. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

4. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Principal and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Principal or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Principal designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____on this _____ day of _____, A.D., 20___.

Principal (full legal name):

_____

Address:_____

_____

By:_____

Contact Name:_____

Phone:_____

Surety (full legal name):

_____

Address:_____

_____

By:_____

Contact:_____

Phone:_____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 6. MONTHLY INVOICING

6-A Form of Invoice Certification
6-B Pass-Through Cost Items
6-C Payment Terms

EXHIBIT 6-A. FORM OF INVOICE CERTIFICATION

I, *[Project director] OR [Project manager]*, certify that:

- Except as specifically noted in the certification, all Work, including that of Related Entities, which is the subject of the invoice, has been checked and/or inspected for compliance with the Quality Assurance and Master Test Plan;
- Except as specifically noted in the certification, all Work which is the subject of the invoice conforms to the requirements of the Contract Documents and applicable law;
- The Quality Assurance and Master Test Plan is being followed and is functioning properly;
- All information reported in the monthly progress report is true, accurate, and complete in all material respects;
- All variable pricing costs for which payment is claimed represent the data and reports that was been reviewed and accepted by the Joint Board Representatives;
- All Pass-Through Cost items for which payment is claimed represent actual expenditures incurred during the period invoiced;
- All hours charged for personnel efforts for extended work represent actual personnel extended work efforts provided during the period invoiced at the contractually specified labor rates as provided in Form G;
- All Subcontractors, suppliers and others who provided labor, equipment or supplies have been fully paid, including any accrued fees;
- TSP2 understands if TSP2, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality of Work performed or to be performed, or any false statement or representation as to a material fact in any statement, certificate, or report, TSP2 and such employee or agent may be subject to prosecution under the provisions of 18 U.S.C. Sections 1001 and 1020.

Date:_____

[Project director or manager]

By:_____

Name:_____

Title:_____

EXHIBIT 6-B. PASS-THROUGH COST ITEMS*

Pass-Through Cost Item*	Reimbursement Commencement Trigger
Credit card fees, up to 3 percent (costs will be reimbursed monthly up to a maximum value of 3 percent of the monthly credit card transaction value)	When TSP2 starts paying for any credit card fees related to customer credit card payments made using TSP2's provided BOS for this Project
Bank fees and armored courier services	When TSP2 starts paying for any bank fees and armored courier services related to bank services or bank accounts established for this Project
Out of state lookup costs, up to $1.25 per successful lookup (see Form G for reimbursement cap)	When TSP2 starts paying for Out-of-State lookup costs for this Project related to RiverLink toll collection
Mailed Notifications~~Correspondence~~ other than Monthly Billing Statements requesting payment (see Form G for reimbursement cap)	When TSP2 starts paying for costs for this Project related to mailing Notifications related to RiverLink toll collection other than Monthly Billing Statements which are requesting payment
Postage	When TSP2 starts paying for postage for mailings for this Project related to RiverLink toll collection
Transponder retail packages (see Form G for reimbursement cap)	When TSP2 starts paying for Transponder retail packages for this Project obtained from the Transponder retail package supplier to be distributed by Retail Partners
The following Transponder kit materials: • Instructions • User Agreements • Read prevention bags • Velcro • Fulfillment envelopes	When TSP2 starts paying for any of these listed Transponder kit materials for this Project

Pass-Through Cost Item*	Reimbursement Commencement Trigger
The following CSC utilities ~~(assuming facility is not a shared facility with another project)~~: • Electric • Gas • Water • Trash disposal • Internet • Telephone (including the toll-free "800" service)	When TSP2 starts paying for any of these listed Pass-Through Cost Items for this Project related to the CSC facility, but not for any costs incurred prior to the achievement of Go-Live Readiness related to these
CSC office supplies	
CSC Office security (alarm and service)	
WUC lease	• When TSP2 starts paying for any of these listed Pass-Through Cost Items for this Project related to any newly established WUC, but not for any costs incurred prior to the achievement of Go-Live Readiness related to these • If TSP2 assumes the lease on any existing WUC, when TSP2 starts paying for any of these listed Pass-Through Cost Items for this Project related to the existing WUC
WUC maintenance ~~(assuming facility is not a shared facility with another project)~~	
The following WUC utilities: • Electric • Gas • Water • Trash disposal • Internet • Telephone (excluding any toll-free "800" service)	
WUC janitorial services	
Printer lease for WUC(s)	
WUC office supplies	
WUC Office security (alarm and service)	

* Pass-Through Cost Items are payable to TSP2 on a reimbursement basis.
* An annual Pass-Through Cost budget must be submitted to the Joint Board Representatives no later than ~~sixty~~120 days prior to their ~~f~~Fiscal ~~y~~Year.

* Additional Pass-Through Costs can be submitted for review and approval to the Joint Board Representatives as needed.
* If any WUC facility or the CSC facility is or becomes a facility shared with any other project, the related Pass-Through Cost Items will not be reimbursed.

EXHIBIT 6-C. PAYMENT TERMS

Purpose

The following describes the payment terms related to the Price Sheets (Form G). These descriptions are intended to be general in nature and are not intended to define compliance with the Technical Requirements and the other requirements of the Contract Documents. Nothing contained herein shall limit, waive or release TSP2 from full compliance with the Technical Requirements and other requirements of the Contract Documents or its obligation to provide fully functional systems and services in accordance with the Contract Documents, including the Technical Requirements. TSP2 shall invoice no more often than on a monthly basis for the payment of costs listed below. Intermediate and cumulative summary Payment Milestones shall not be invoiced separately but are shown to illustrate the cumulative price of the individual Payment Milestones comprising major categories of the Work.

I. Payment terms related to initial costs

TSP2 shall invoice the costs related to each of these initial up-front, one-time implementation milestones as completion of each is achieved as described and listed below.

1.1 Mobilization

This milestone is considered achieved and, as such, can be invoiced for payment once the NTP has been fully executed.

This milestone payment is paid as a one-time lump sum amount.

1.2 Planning - Part 1 (approved Detailed Project Schedule, PMP, SDP and QAMTP)

This milestone is considered achieved and, as such, can be invoiced for payment once the following have been approved, in writing, by the Joint Board Representatives:

- baseline Detailed Project Schedule (see IMI-041 through IMI-044 for description),
- the PMP (see IMI-029 through IMI-031 for description),
- the SDP (see IMI-048 for description),
- and the QAMTP (see IMI-061 and IMI-062 for description).

This milestone payment is paid as a one-time lump sum amount.

1.3 Analysis (approved Future Updated Business Rules and RTM)

This milestone is considered achieved and, as such, can be invoiced for payment once the Future Updated Business Rules (see IMI-088 for description) and the RTM (see IMI-090 for description) have been approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

1.4 Design - Part 1 (approved FSD)

This milestone is considered achieved and, as such, can be invoiced for payment once the FSD (see IMI-100 and IMI-101 for description) has been approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

1.5 Planning - Part 2 (approved Start of Contract Transition Plan, and Data Cleansing and Migration Plan)

This milestone is considered achieved and, as such, can be invoiced for payment once the Start of Contract Transition Plan (see IMI-054 through IMI-060 for description) and the Data Cleansing and Migration Plan (see have been approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

1.6 Design - Part 2 (approved SDD, RDD, Notifications Manual, and PCD)

This milestone is considered achieved and, as such, can be invoiced for payment once the following have been approved, in writing, by the Joint Board Representatives:

- SDD (see IMI-102 through IMI-106 for description),
- the RDD (see IMI-107 for description),
- the Notifications Manual (see IMI-108 for description),
- and the PCD (see IMI-109 for description).

This milestone payment is paid as a one-time lump sum amount.

1.7 Approved Functionality Assurance Test Report

This milestone is considered achieved and, as such, can be invoiced for payment once the Functionality Assurance Test Report (see IMI-133 through IMI-136, IMI-128 and IMI-129 for description) has been approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

1.8 Planning & Design - Part 3 approved Plans: Installation, DRP, BCP, Training, Master Staffing, Maintenance, and Facilities Buildout Design)

This milestone is considered achieved and, as such, can be invoiced for payment once the following have been approved, in writing, by the Joint Board Representatives:

- Installation Plan (see IMI-063 through IMI-065 for description),
- the DRP (see IMI-066 through IMI-069 for description),
- the BCP (see IMI-070 and IMI-071 for description),
- the Training Plan (see IMI-072 through IMI-074 for description),
- the Master Staffing Plan (see IMI-075 through IMI-081 for description),
- the Maintenance Plan (see IMI-082 for description), and
- the Facilities Buildout Design Plan (see IMI-110 for description).

This milestone payment is paid as a one-time lump sum amount.

1.9 Buildout of Customer Contact Center and Walk Up Centers

This milestone is considered achieved and, as such, can be invoiced for payment once the buildout of the Customer Contact Center(s) and the buildout of the Walk Up Centers have been approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

1.10 Planning - Part 4 (approved SOPs, Safety and Security Plan, and End of Contract Transition Plan)

This milestone is considered achieved and, as such, can be invoiced for payment once the following have been approved, in writing, by the Joint Board Representatives:

- SOPs (see IMI-083 for description),
- the Safety and Security Plan (see IMI-084 for description), and
- the End of Contract Transition Plan (see IMI-085 for description).

This milestone payment is paid as a one-time lump sum amount.

1.11 Approved System Integration Test Report & Data Cleansing and Migration Test Report

This milestone is considered achieved and, as such, can be invoiced for payment once the System Integration Test Report (see IMI-142, IMI-143, IMI-128 and IMI-129 for description) and the Data Cleansing and Migration Test Report (see IMI-137 through IMI-140, IMI-128 and IMI-129 for description) have been approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

1.12 Data Cleansing and Migration

This milestone is considered achieved and, as such, can be invoiced for payment once the data cleansing and migration have been fully completed and are approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

1.13 Go-Live Readiness (approved Load Test, UAT, and DR Test reports)

This milestone is considered achieved and, as such, can be invoiced for payment once the following has been completed:

- the Load Test report (see IMI-144 through IMI-147, IMI-128 and IMI-129 for description), the UAT report (see IMI-148 through IMI-1150, IMI-128 and IMI-129 for description) and the initial DR Test report (see IMI-068, IMI-128 and IMI-129 for description) have been approved, in writing, by the Joint Board Representatives, and
- all work and resources (including, but not limited to, all personnel, benefits, management, oversight, acquisition, expansion, equipment, purchases, procurement, commodities, real estate, furniture, hardware, software, licenses, training and training equipment, permits, communications, network(s), establishment of ongoing services required for operations, and office incidentals) to bring the systems and services to a state of readiness for Go-Live in accordance with the Contract Documents, including and the Technical Requirements, have been provided and approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

1.14 System Acceptance (approved Operational and Acceptance Test Report)

This milestone is considered achieved and, as such, can be invoiced for payment once the following has been completed:

- the Operational and Acceptance Test Report (see IMI-155, IMI-156, IMI-128 and IMI-129 for description) has been approved, in writing, by the Joint Board Representatives, and
- all outstanding work and resources (including, but not limited to, those related to management/supervision, network management, system administration, system monitoring, upgrades, materials, equipment (including for refresh), PCI compliance, Escrow and Performance Bond, travel, equipment and software licensing and support renewals, and others as indicated and included by TSP2 in Form G) to bring the systems and services to a state of System Acceptance in accordance with the Contract Documents, including and the Technical Requirements, have been provided and approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount.

II. Payment terms related to on-going operational costs

2. BOS administration, maintenance and support services costs

2.1 Years 1 through 7 of Operations (monthly cost fixed by year of operations)
This item shall include all continued monthly work and resources (including, but not limited to, those related to management/supervision, network management, system administration, system monitoring, upgrades, materials, equipment (including for refresh), PCI compliance, Escrow and Performance Bond, travel, equipment and software licensing and support renewals, and others as indicated and included by TSP2 in Form G) for each month of each subsequent year of BOS administration, maintenance, and support services and excludes the following:

- Pass-Through Costs (see Exhibit 6-B)
- Variable Operations Costs (see below and related Table 3 from Form G)
- Fixed Operations Costs (see below and related Table 4 from Form G)

This payment is paid on a monthly basis based on the fixed amount per month related to both labor and non-labor categories for each subsequent year of operations.
The monthly amount shall be invoiced for payment once the related monthly operations report has been approved, in writing, by the Joint Board Representatives.

3. Variable operations for Years 1 through 7 of Operations (unit costs by level of monthly quantities fixed by year of operations, including back-up detail)

This item shall include all monthly work and resources (including, but not limited to, those related to Transactions, Correspondences and payments) for each month of each year of operations and excludes the following:

- Pass-Through Costs (see Exhibit 6-B)
- BOS administration, maintenance and support services costs (see above and related Table 2 from Form G)
- Fixed Operations Costs (see below and related Table 4 from Form G)

This payment is paid on a monthly basis based on the unit cost (fixed by year of operations) related to the level the total monthly quantities (level 1, 2 or 3) of each the following:

- IOP Transactions from Away Agencies and Transponder-Based ORB Transactions
- Posted ORB VTolls
- Posted Image-Based ORB Transactions
- Image-Based ORB Transactions that cannot post to an Account
- Monthly Billing Statements that are paid in full (prior to Collections)

The monthly amount shall be invoiced for payment once the related monthly

operations report has been approved, in writing, by the Joint Board Representatives.

4. Fixed operations costs for Years 1 through 7 of Operations (fixed monthly costs fixed by year of operations)

This item shall include hardware and software related to the Call Center and Walk-Up Centers for each month of each year of operations and excludes the following:

- Pass-Through Costs (see Exhibit 6-B)
- BOS administration, maintenance and support services costs (see above and related Table 2 from Form G)
- Variable Operations Costs (see above and related Table 3 from Form G)

This payment is paid on a monthly basis based on the monthly cost (fixed by year) related to each the following:

- Customer Contact Center
- Kentucky Walk-Up Center
- Indiana Walk-Up Center

The monthly amount shall be invoiced for payment once the related monthly operations report has been approved, in writing, by the Joint Board Representatives.

III. Payment terms related to other costs

5. End of Contract transition costs

This milestone is considered achieved and, as such, can be invoiced for payment once the following has been completed:

- the updated End of Contract Transition Plan (see IMI-086 for description) has been approved, in writing, by the Joint Board Representatives; and
- in accordance with the Contract Documents, including and the Technical Requirements and the approved End of Contract Transition Plan, the end of contract transition has been fully completed and approved, in writing, by the Joint Board Representatives.

This milestone payment is paid as a one-time lump sum amount related to both labor and non-labor categories.

6. Various Pass-Through Costs Items

6.1 Unit Cost per Other Mailed ~~Correspondence~~Notification

TSP2 will be reimbursed for the actual incurred cost (without markup or overhead) of each mailed ~~Correspondence~~Notification (other than MBSs requesting payment) up to the indicated unit cost per other mailed ~~correspondence~~Notification.

This payment is paid on a monthly basis based on the unit cost (fixed by year of operations) related to the total monthly quantity of other mailed ~~correspondence~~Notifications (i.e., other than MBSs requesting payment) as reported by the BOS and documented by TSP2 (back-up detail to be provided with submission).

The monthly amount shall be invoiced for reimbursement payment upon approval by the Joint Board Representatives.

6.2 Unit Cost per Transponder Retail Package

TSP2 will be reimbursed for the actual incurred cost (without markup or overhead) of each procured (i.e., ordered and received) Transponder retail package up to the indicated unit cost per Transponder retail package.

This payment is paid on a monthly basis based on the unit cost (fixed by year of operations) related to the total monthly quantity of procured Transponder retail packages as documented by TSP2 (back-up detail to be provided with submission).

The monthly amount shall be invoiced for reimbursement payment upon approval by the Joint Board Representatives.

6.3 Unit Cost per Successful Out-of-State VRI Lookup

TSP2 will be reimbursed for the actual incurred cost (without markup or overhead) of each successful out of state VRI lookup (i.e., requested VRI data associated with License Plate Data is received) up to a maximum amount of $1.25 per successful lookup.

This payment is paid on a monthly basis based on the unit cost (fixed by year of operations) related to the total monthly quantity of successful out-of-state VRI lookups as reported by the BOS and documented by TSP2 (back-up detail to be provided with submission).

The monthly amount shall be invoiced for reimbursement payment upon approval by the Joint Board Representatives.

6.4 Credit Card Fee Costs

TSP2 will be reimbursed for the actual incurred cost (without markup or overhead) of credit card merchant processing fees up to a maximum value of 3 percent (per credit card type) of the monthly credit card transaction value.

The reimbursement payments for these are paid on a monthly basis based on the actual costs for these incurred and documented by TSP2 (back-up detail to be provided with submission).

The monthly amount shall be invoiced for reimbursement payment upon approval by the Joint Board Representatives.

7. Additional Labor Costs

These amounts will be used to develop Change Order labor costs as needed and will be paid per each Change Order's payment terms based on the respective unit labor cost (full loaded rate) related to the total quantity hours by position specified and agreed to in the Change Order.

8~~9~~. Other Pass-Through Costs

Except as the various Pass-Through Costs Items indicated in Section 6 above, TSP2 will be reimbursed for the actual incurred costs (without markup or overhead) for the Pass-Through Costs listed in Exhibit 6-B and as specified.

The reimbursement payments for the Pass-Through Costs are paid on a monthly basis based on the actual costs for these incurred and documented by TSP2 (back-up detail to be provided with submission).

The monthly amount shall be invoiced for reimbursement payment upon approval by the Joint Board Representatives.

EXHIBIT 7. TSP2 PROPOSAL COMMITMENTS AND APPROVED DEVIATIONS

EXHIBIT 7 – ATTACHMENT 1 FORM G: PRICE FORMS
EXHIBIT 7 – ATTACHMENT 2 FORM K: TECHNICAL REQUIREMENTS CONFORMANCE MATRIX
EXHIBIT 7 – ATTACHMENT 3 FORM P: EXCEPTIONS
EXHIBIT 7 – ATTACHMENT 4 FORM Q: VALUE ADD
EXHIBIT 7 – ATTACHMENT 5 PROJECT SCHEDULE

EXHIBIT 7. ATTACHMENT 1 FORM G: PRICE FORMS

[To be inserted]

EXHIBIT 7. ATTACHMENT 2 FORM K: TECHNICAL REQUIREMENTS CONFORMANCE MATRIX

[To be inserted]

EXHIBIT 7. ATTACHMENT 3 FORM P: EXCEPTIONS

[To be inserted]

EXHIBIT 7. ATTACHMENT 4 FORM Q: VALUE ADD

[To be inserted]

EXHIBIT 7. ATTACHMENT 5 DETAILED PROJECT SCHEDULE

[To be inserted]

EXHIBIT 8. SOFTWARE

8-A FORM OF SOFTWARE SOURCE CODE ESCROW AGREEMENT
- **Attachment A**
- **Attachment B**

8-B PRE-EXISTING COTS AND TSP2-DEVELOPED SOFTWARE LIST

8-C CUSTOM SOFTWARE LIST

EXHIBIT 8-A. FORM OF SOFTWARE SOURCE CODE ESCROW AGREEMENT

Account Number _____

This Source Code Escrow Agreement ("Agreement") is effective _____, 201__ among _____("Escrow Agent"), _____ ("Depositor"), and the Indiana Finance Authority, a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions, as the entity designated to procure this Agreement by resolution of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board") ("Beneficiary"), who collectively may be referred to in this Agreement as the parties ("Parties").

A. Depositor and Beneficiary have entered or will enter into a Toll Services Agreement (referred to in this Agreement as the "Contract"). Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

B. Pursuant to the Contract, Depositor has granted Beneficiary licenses to use certain software and supporting materials, and Depositor will from time to time modify, add to, refine, substitute, revise, enhance, update, revise, upgrade and/or correct such software and supporting materials and will submit these updated software development documents on an ongoing basis as the same occur, but at a minimum with each payment request relating to the Initial Work, with monthly invoices for payment of the Operations and Maintenance Price, and with monthly invoices for compensation for Software maintenance services during the Software Maintenance Option Period, if any.

C. Depositor has agreed in the Contract to deposit into escrow with Escrow Agent the Software Source Code and related documentation of Software required to be delivered as part of the Work under the Contract and during the Software Maintenance Option Period, if any, including Source Code in ASCII format, on industry standard media and source code listings in human readable form of the Software as well as paper and electronic copies of the functional specifications and design specifications, code and documentation for tests used by Depositor to verify Software behavior, and user and technical documentation (all of which, together with modifications, additions, enhancements, updates, revisions, upgrades and corrections thereto and thereof, and all other supplementary deposits under Section 1.1 below, being collectively referred to in this Agreement as the "Source Code").

D. Depositor and/or its Software suppliers desire to avoid disclosure and release of the Source Code except under certain limited circumstances.

E. The availability of the Source Code to Beneficiary is critical in the conduct of its business and, therefore, Beneficiary needs access to the Source Code under certain limited circumstances.

F. Depositor and Beneficiary desire to establish an escrow with Escrow Agent to provide for the retention, administration and controlled access of the Source Code.

G. Escrow Agent has consented to act as Escrow Agent and to receive and hold the current version and any future versions of the Source Code.

H. The parties desire this Agreement to be supplementary to the Contract pursuant to 11 United States Bankruptcy Code, Section 365(n)(1)(B).

NOW, THEREFORE, Depositor and Beneficiary hereby engage Escrow Agent to serve as Escrow Agent for the Source Code, Escrow Agent hereby accepts such engagement, and the Parties hereby agree to the establishment and administration of an escrow for the Source Code, on the following terms and conditions.

SOURCE CODE ESCROW AGREEMENT

ARTICLE 1 – DEPOSITS

1.1 Obligation to Make Deposits.

a. ~~Immediately~~ ~~U~~upon ~~execution of this Agreement~~System Acceptance, Depositor shall deposit Pre-Existing Software Source Code to be used in connection with the Project with Escrow Agent.

b. Based on invoices for Payment Milestones, Depositor shall deposit the then current version of the Pre-Existing Software Source Code reflecting modifications and enhancements to such Pre-Existing Software Source Code under development by Depositor with the Escrow Agent. Depositor shall be required to submit an updated Source Code document reflecting the then current version of the Pre-Existing Software Source Code with each invoice.

c. Not later than the date a Certificate of System Acceptance is issued by the Beneficiary, Depositor shall deposit with Escrow Agent the then current approved and accepted version of the Source Code that has been developed for the Project.

d. If during any calendar month after the date a notice of System Acceptance is issued by the Beneficiary Depositor completes and installs in or for the Project any modification, addition, enhancement, update, revision, upgrade or correction of or to any of the escrowed Source Code, it shall deposit with Escrow Agent, within 30 days after the end of such calendar month, each such modification,

addition, enhancement, update, revision, upgrade and correction, and a modified Attachment A identifying the same. Similarly, if Depositor identifies any additional Source Code to be deposited pursuant to Section 20.6 of the Contract, it shall deposit with Escrow Agent such additional Source Code and a modified Attachment A identifying the same within 30 days following the end of the calendar quarter in which such identification is made. All references in this Agreement to Source Code shall include the initially deposited materials and any materials subsequently deposited pursuant to this Section 1.1(d).

e. Each deposit under subsection d. above shall be added to the existing deposit. Each deposit under subsections b. or c. above shall be listed on a modified Attachment and Depositor shall sign each modified Attachment A. Attachment A and each modified Attachment A shall be held and maintained separately within the escrow account. Escrow Agent shall create an independent record which documents the activity for Attachment A and each modified Attachment A. The processing of all deposits under this Section 1.1 shall be in accordance with Sections 1.2 through 1.6 below.

f. Notwithstanding any other provision of this Agreement, Depositor shall have no obligation to deposit with the Escrow Agent any Source Code for Off-the-Shelf Software.

1.2 Identification of Tangible Media. Prior to each delivery of the Source Code to Escrow Agent, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Source Code are written or stored. Additionally, with each delivery Depositor shall complete Attachment A to this Agreement or a modified Attachment A by listing each such tangible media by the item label description, the type of media and the quantity, and the identity of the owner of the Source Code (whether Depositor or a Software Supplier). Depositor shall sign each Attachment A or modified Attachment A and deliver it to Escrow Agent with the Source Code. Such signature shall constitute Depositor's representation and warranty that Attachment A is true, accurate and complete. Unless and until Depositor makes the initial deposit with Escrow Agent, Escrow Agent shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

1.3 Deposit Inspection. Within three business days after Escrow Agent receives Source Code and Attachment A or a modified Attachment A, Escrow Agent shall conduct a deposit inspection by visually matching the labeling of the tangible media containing the Source Code to the item descriptions and quantity listed on Attachment A or modified Attachment A. In addition to the deposit inspection, Beneficiary may elect to cause a verification of the Source Code at any time in accordance with Section 1.6 below.

1.4 Acceptance of Deposit. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling of the tangible media matches the item

descriptions and quantity on Attachment A or the modified Attachment A, Escrow Agent shall date and sign Attachment A or the modified Attachment A and mail a copy thereof to Depositor and Beneficiary. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling does not match the item descriptions or quantity on Attachment A or the modified Attachment A, Escrow Agent shall (a) note the discrepancies in writing on Attachment A or the modified Attachment A; (b) date and sign Attachment A or the modified Attachment A with the exceptions noted; and (c) mail a copy of Attachment A or the modified Attachment A to Depositor and Beneficiary. Escrow Agent's acceptance of the deposit occurs upon the signing of Attachment A or the modified Attachment A by Escrow Agent. Delivery of the signed Attachment A or the modified Attachment A to Beneficiary is Beneficiary's notice that the Source Code have been received and accepted by Escrow Agent.

1.5 Depositor's Representations. Depositor represents and warrants to Beneficiary as follows:

a. Depositor lawfully possesses all of the Source Code deposited with Escrow Agent;

b. With respect to all of the Source Code, Depositor has the right and authority to grant to Escrow Agent and Beneficiary the rights as provided in this Agreement;

c. The Source Code are not subject to any lien or other encumbrance;

d. The Source Code consist of the proprietary technology and other materials identified either in the Contract or Attachment A, as the case may be; and

e. The Source Code are readable and useable in their current form or, if any portion of the Source Code is encrypted, the decryption tools and decryption keys have also been deposited.

1.6 Verification. Beneficiary shall have the right, at Beneficiary's expense, to cause a verification of any Source Code. Beneficiary shall notify Depositor and Escrow Agent of Beneficiary’s request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Source Code. If a verification is elected after the Source Code have been delivered to Escrow Agent, then only Escrow Agent, or at Escrow Agent's or Beneficiary’s election an independent person or company selected and supervised by Escrow Agent or Beneficiary, may perform the verification. If Beneficiary elects to have an independent person or company perform the verifications, its election and selection shall prevail over any such election by Escrow Agent. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the Source Code and whether the Source Code are all the

Source Code. If Escrow Agent or a person or company it selects performs the verification, Escrow Agent shall deliver to Beneficiary a written report thereon not later than 30 days after Beneficiary delivers its written request therefor. Any verification shall take place either at Escrow Agent's location or an agreed upon location during Escrow Agent's regular business hours. If Beneficiary elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the Contract.

1.7 Removal of Source Code. The Source Code may be removed and/or exchanged only on written instructions signed by both the Depositor and Beneficiary, or as otherwise provided in this Agreement.

1.8 Inspection. Beneficiary and Depositor shall be entitled, during normal business hours, to inspect, under the supervision of an officer of Escrow Agent and at Escrow Agent's facilities, the physical and technical status and condition of the Software. The party undertaking the inspection shall provide written notice (delivered by mail or facsimile with acknowledged transmission) of the pending inspection to the other party, seven calendar days prior to the scheduled date of the inspection. The party receiving the notice shall have the right to be present at the inspection, but such presence is not a condition precedent to the inspecting party's right to proceed with inspection.

ARTICLE 2 - CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. Escrow Agent shall maintain the Source Code in a secure, environmentally safe, fireproofed vault or locked facility which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall have the obligation to reasonably protect the confidentiality of the Source Code. Except as provided in this Agreement, Escrow Agent shall not disclose, transfer, make available or use the Source Code. Escrow Agent shall not disclose the content of this Agreement to any third party. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Source Code, Escrow Agent shall immediately notify the other Parties unless prohibited by law. It shall be the responsibility of Depositor and/or Beneficiary to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal. (See Section 7.5 below for notices of requested orders.)

2.2 Status Reports. Escrow Agent shall issue to Depositor and Beneficiary a report profiling the account history at least semi-annually. Escrow Agent may provide copies of the account history pertaining to this Agreement upon the request of any other Party.

2.3 Audit Rights. During the term of this Agreement, Depositor and Beneficiary shall each have the right to inspect the written records of Escrow Agent pertaining to this Agreement. Any inspection shall be held during normal business hours and following

reasonable prior notice.

ARTICLE 3 -- TITLE TO MEDIA

3.1 Title to Media. Title to the media, materials and documents upon which the Source Code is written or stored is vested in Beneficiary pursuant to Section 14 of the Contract, but is subject to the provisions of this Agreement on access to and release of such media, materials and documents.

3.2 Disclaimer. Depositor and Escrow Agent hereby disclaim and relinquish any title to or ownership of the media, materials and documents upon which the Source Code is written or stored. In addition, Escrow Agent hereby disclaims and relinquishes any title to or ownership of Source Code deposited with Escrow Agent under this Agreement.

ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean any of the following:

a. Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 7 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against Depositor, or by or against any Software Supplier as to deposited Source Code it owns (other than bankruptcy proceedings instituted by Depositor or any such Software Supplier against third parties), and, if instituted against Depositor or any such Software Supplier, are allowed against Depositor or any such Software Supplier or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution;

b. A custodian, trustee or receiver is appointed for Depositor or any such Software Supplier or any substantial part of its assets;

c. Depositor or any such Software Supplier makes or attempts to make an assignment for the benefit of creditors;

d. Depositor or any such Software Supplier generally fails to pay its debts when they are due or admits of its inability to pay its debts;

e. Depositor or any such Software Supplier fails to provide necessary and commercially feasible updates and maintenance releases, or otherwise is in material breach of its software development and support obligations under the Contract;

f. The Contract is terminated in whole pursuant to its terms because of an "Event of Default";

g. Depositor or any such Software Supplier ceases to do business in the ordinary course or is unwilling or unable to perform its obligations under the Contract Documents; or

h. Depositor does not continue to provide updates and maintenance releases, or otherwise breaches its software maintenance and support obligations under the Software Maintenance Option during the Software Maintenance Option Period.

4.2 Filing For Release. If Beneficiary believes in good faith that a Release Condition has occurred, Beneficiary may provide to Escrow Agent written notice of the occurrence of the Release Condition and a request for the release of the Source Code. If the Release Condition pertains only to a Software Supplier, Beneficiary's notice shall so indicate. Immediately upon receipt of such notice, Escrow Agent shall provide a copy of the notice to Depositor by commercial express mail.

4.3 Contrary Instructions. From the date Escrow Agent mails the notice requesting release of the Source Code, Depositor shall have ten days to deliver to Escrow Agent contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean and be limited to the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Depositor that (a) the person signing for Depositor is an authorized officer or authorized delegate of Depositor and (b) a Release Condition has not occurred or has been cured. Immediately upon receipt of Contrary Instructions within such ten-day period, Escrow Agent shall send a copy to Beneficiary by commercial express mail. Additionally, Escrow Agent shall notify both Depositor and Beneficiary that there is a dispute to be resolved pursuant to Section 7.3 of this Agreement. Subject to Section 5.2 of this Agreement, Escrow Agent shall continue to store the Source Code without release pending (i) joint instructions from Depositor and Beneficiary; (ii) dispute resolution pursuant to Section 7.3; or (iii) order of a court. Contrary Instructions received after such ten-day period shall be automatically null and void, shall have no force or effect, and shall be disregarded by Escrow Agent.

4.4 Release of Deposit.

a. If Escrow Agent does not receive Contrary Instructions from the Depositor within such ten-day period, Escrow Agent is authorized to, and shall, immediately release the Source Code to the Beneficiary. If the Release Condition pertains only to a Software Supplier, then Escrow Agent shall only release the Source Code that (a) is identified on Attachment A as owned by such Software Supplier or (b) lacks identification of ownership on Attachment A. Any copying expense will be chargeable to Depositor. This Agreement shall terminate upon the release of all the Source Code held by Escrow Agent.

b. Escrow Agent shall promptly release all or any part of the Source Code at any time and from time to time upon receipt of written instructions signed by both Depositor and Beneficiary.

c. Escrow Agent shall also release the Source Code to Beneficiary at any time as directed or ordered by an arbitration award, by a final judgment of a court of competent jurisdiction, or by other final dispute resolution pursuant to Section 7.3. If Beneficiary provides to Escrow Agent a written opinion of counsel for Beneficiary to the effect that such award, judgment or resolution is final and not appealable, Escrow Agent shall proceed with release in accordance with the award, judgment or resolution and may rely on such legal opinion.

4.5 Right to Use Following Release. Upon release of the Source Code in accordance with this Article 4, Beneficiary shall have the right and license to use the released Source Code as provided in the Contract. Beneficiary shall be obligated to maintain the confidentiality of the released Source Code as provided in the Contract.

ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The term of this Agreement shall continue in effect unless and until this Agreement is terminated in accordance with the terms of this Article 5. This Agreement shall be terminated in the event (a) Depositor and Beneficiary jointly instruct Escrow Agent in writing that the Agreement is terminated; or (b) Escrow Agent instructs Depositor and Beneficiary in writing that the Agreement is terminated for nonpayment in accordance with Section 5.2 or by resignation in accordance with Section 5.3. If the Source Code are subject to another escrow agreement with Escrow Agent, Escrow Agent reserves the right, after the initial one-year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event fees owed to Escrow Agent are not paid when due, Escrow Agent shall provide written notice of delinquency to all Parties. Any Party shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within one month of the date of such notice, then Escrow Agent shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all Parties. Escrow Agent shall have no obligation to take any action under this Agreement so long as any undisputed payment due to Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the Source Code and transfer or dispose of the Source Code following termination as provided in this Article 5.

5.3 Termination by Resignation. Escrow Agent reserves the right to terminate this Agreement, for any reason, by providing Depositor and Beneficiary with 90-days' written

notice of its intent to terminate this Agreement. Within the 90-day period, the Depositor and Beneficiary shall use diligent efforts to enter into a substantially similar agreement with another entity willing and able to perform the functions of Escrow Agent hereunder and thereupon shall provide Escrow Agent with joint written instructions authorizing Escrow Agent to forward the Source Code to another escrow company and/or agent or other designated recipient. Escrow Agent shall transfer and dispose of the Source Code in accordance with any such joint written instruction. If Escrow Agent does not receive said joint written instructions within 90 days of the date of Escrow Agent's written termination notice, then Escrow Agent shall have no obligation to take any action under this Agreement, except action to hold and safeguard the Source Code and transfer or dispose of Source Code following termination as provided in this Article 5.

5.4 Disposition of Source Code Upon Termination. Upon termination of this Agreement, Escrow Agent shall destroy, return, or otherwise deliver the Source Code in accordance with Depositor's and Beneficiary's joint written instructions. If there are no such joint written instructions, Escrow Agent may, at its sole discretion, commence legal action interpleading Depositor and Beneficiary, deposit the Source Code with the court in such action and otherwise handle and dispose of the Source Code in accordance with court order. In no event shall Escrow Agent have the right to destroy the Source Code or return them to Depositor absent joint written instructions to such effect or final order of a court of competent jurisdiction.

5.5 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

a. Depositor's representations and warranties (Section 1.5);

b. The obligations of safekeeping and confidentiality with respect to the Source Code set forth in Section 2.1;

c. The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the Source Code has occurred prior to termination;

d. The obligation to pay Escrow Agent any fees and expenses due;

e. The obligations of Escrow Agent under Section 5.4;

f. The provisions of Article 7; and

g. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

ARTICLE 6 -- ESCROW AGENT'S FEES

6.1 Fee Payment and Schedule. Escrow Agent is entitled to be paid its standard fees and expenses applicable to the services provided, which shall be the responsibility of Beneficiary. Escrow Agent shall notify Beneficiary at least 60 days prior to any increase in fees. For any service not listed on Escrow Agent's standard fee schedule, Escrow Agent shall provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. Fees are due 30 days after receipt of an invoice from Escrow Agent detailing the services performed and setting forth fees therefor consistent with the then applicable fee schedule. Escrow Agent may deliver invoices not more frequently than monthly. Except for action to hold and safeguard the Source Code and transfer or dispose of the Source Code following termination as provided in this Article 5, Escrow Agent shall not be required to perform any service whenever any undisputed outstanding balance owed to Escrow Agent is not paid when due.

ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Except with respect to a Contrary Instruction that lacks the representation set forth in Section 4.3(a), Escrow Agent may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Escrow Agent.

7.2 Indemnification. Depositor and Beneficiary each agree to indemnify, defend and hold harmless Escrow Agent from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities (“Liabilities”) incurred by Escrow Agent relating in any way to this escrow arrangement except to the extent such Liabilities were caused by the negligence or willful misconduct of Escrow Agent or its breach of this Agreement.

7.3 Dispute Resolution. Any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Agreement, its application or interpretation, a breach thereof, or a Contrary Instruction issued hereunder, which cannot be settled amicably by the Parties, shall be subject to resolution in accordance with the dispute resolution provisions of the Contract. Escrow Agent agrees to be bound by any such final resolution. Notwithstanding the foregoing, any suit in interpleader brought by Escrow Agent under Section 5.4 shall not be by arbitration and may be brought by Escrow Agent in any court having jurisdiction.

7.4 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of Indiana, without regard to its conflict of law provisions.

7.5 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct Escrow Agent to take, or refrain from taking, any action, that Party shall:

a. Give Escrow Agent at least two business days' prior notice of the hearing; and

b. Ensure that Escrow Agent not be required to deliver the original (as opposed to a copy) of the Source Code if Escrow Agent may need to retain the original in its possession to fulfill any of its other duties under this Agreement.

ARTICLE 8 -- GENERAL PROVISIONS

8.1 Escrow Agent Representation. Escrow Agent hereby represents and warrants to Beneficiary and Depositor that (a) to the best knowledge of Escrow Agent neither it nor any of its personnel has been the subject of any investigation or been convicted or indicted for commission of any crime involving misconduct, corruption, bribery or fraud in connection with any public contract in the Commonwealth of Kentucky, the State of Indiana, or any other jurisdiction, except as has been specifically disclosed in writing to Beneficiary and Depositor, and (b) should any such conviction or indictment be obtained or any such investigation commenced prior to the expiration of the term hereof, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, Escrow Agent will immediately disclose it in writing to Beneficiary and Depositor.

8.2 Entire Agreement. This Agreement, which includes Exhibits described herein, embodies the entire understanding among the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. Escrow Agent is not a party to the Contract between Depositor and Beneficiary and has no knowledge of any of the terms or provisions of the Contract except for Article 19 of the Contract regarding Dispute Resolution which Escrow Agent acknowledges having received. Escrow Agent's only obligations to Depositor or Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the Parties, except that Attachment A need not be signed by Beneficiary and Attachment B need not be signed.

8.3 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in the attached Attachment B. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Unless otherwise provided in this

Agreement, all documents and communications may be delivered by First Class mail.

8.4 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. However, Escrow Agent shall have no right to assign this Agreement or delegate its duties hereunder without the prior written consent of Depositor and Beneficiary; and Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Escrow Agent receives unambiguous and authoritative written evidence of the change of Parties.

8.6 Regulations. Depositor and Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Source Code may be delivered in accordance with the provisions of this Agreement.

8.7 Liability. No member, officer, or employee of Beneficiary, Depositor or Escrow Agent shall be liable personally hereunder or by reason hereof.

8.8 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties on different counterparts, each of which, when executed, shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement.

[signatures on next page]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Source Code Escrow Agreement as of the date first written above.

Depositor

By:_____

Name:_____

Title:_____

Date:_____

Beneficiary:

INDIANA FINANCE AUTHORITY, on behalf of the Louisville-Southern Indiana Ohio River Bridges Joint Board

By: _____

Name:_____

Title:_____

Date:_____

Escrow Agent

By:_____

Name:_____

Title:_____

Date:_____

EXHIBIT 8-A ATTACHMENT A – FORM OF SOFTWARE SOURCE CODE ESCROW AGREEMENT

DESCRIPTION OF ESCROWED MATERIAL

Depositor Company Name _____

Account Number _____

Product Name_____ Version _____

(Product Name will appear as the Exhibit A Name on Account History report)

Owner of Product _____

_____

(Name, address, tel. no., e-mail address)

SOURCE CODE DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
_____	Disk 3.5" or _____	
_____	DAT tape_____mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or ____tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

PRODUCT DESCRIPTION:

Environment _____

SOURCE CODE INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name_____Version _____

Hardware required _____

Software required _____

_____

Other required information

_____

I certify for **Depositor** that the above described **Escrow Agent** has inspected and accepted Source Code have been transmitted to_____: _____ the above materials (*any exceptions are noted above*):

Signature _____

Print Name_____

Date _____

Signature _____

Print Name _____

Date Accepted _____

Exhibit A# _____

Send materials to: Escrow Agent, _____,

_____(___)____-_____

(Name, address, tel. no., e-mail address)

EXHIBIT 8-A ATTACHMENT B – FORM OF SOFTWARE SOURCE CODE ESCROW AGREEMENT

DESIGNATED CONTACT

Account Number _____

Notices, deposit material returns and communications to Depositor should be

Company Name:_____

_____

Designated Contact:_____

Telephone: (___)_____

Facsimile: (___)_____

Verification Contact:_____

Invoice to Depositor pursuant to Section 4.4(a) should be addressed to:

Address:_____

_____

Contact:_____

E-mail:_____

Notices and communications to Beneficiary should be addressed to:

Indiana Finance Authority

One North Capitol Avenue, Suite 900

Indianapolis, Indiana 46204

Designated Contact: General Counsel

Telephone: (317) 233-4332

Facsimile: (317) 232-6786

E-mail: IFA@IFA.in.gov

Requests from Depositor or Beneficiary to change the designated contact should be given in writing by the designated contact or an authorized employee of Depositor or Beneficiary.

Contracts, Source Code, notices, invoice inquiries and fee remittances to Escrow Agent should be addressed to:

_____
_____
_____

_____ Date:_____
_____

Telephone: (___)_____
Facsimile: (___)_____
E-mail:_____
_____

EXHIBIT 8-B. PRE-EXISTING COTS AND TSP2-DEVELOPED SOFTWARE LIST

Proposer: _____

Sheet__ of __ sheets

Using the template below, Proposers should include their lists of Pre-Existing COTS and Developed software with the submission of their Proposal.

No.	Category Pre-Existing COT or Developed Software	Description

EXHIBIT 8-C. CUSTOM SOFTWARE LIST

Proposer: _____

Sheet__ of __ sheets

Using the template below, Proposers should include their lists of their Custom software with the submission of their Proposal.

No.	Category	Description

EXHIBIT 9

EXHIBIT 9-A. DRAFT CUSTODY AND REVENUE CONTROL AGREEMENT

CUSTODY AND REVENUE CONTROL AGREEMENT

among

U.S. Bank National Association, as Custodian,

KPMG LLP, as Revenue Control Manager,

_____, as Toll Service Provider 2, and the

INDIANA FINANCE AUTHORITY

and

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

with respect to

LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT

Dated as of_____ , 20xx

CUSTODY AND REVENUE CONTROL AGREEMENT

This CUSTODY AND REVENUE CONTROL AGREEMENT (this "Agreement"), dated as of [, 20xx**],** is by and among U.S. Bank National Association organized and existing within the laws of the United States of America (the "Custodian"), KPMG LLP, a limited liability partnership, organized and existing wider the laws of the State of Delaware, as Revenue Control Manager, TSP2, a corporation organized and existing wider the laws of the State of _____, as Toll Service Provider 2, Kentucky Public Transportation Infrastructure Authority ("KPTIA"), an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky constituting a governmental agency and instrumentality of the Commonwealth, and the Indiana Finance Authority ("IFA"), a body corporate and politic exercising essential public functions created and existing under and by virtue of the laws of the State of Indiana.

RECITALS

WHEREAS, IFA, KPTIA (as hereinafter defined), Indiana Department of Transportation ("INDOT") and Kentucky Transportation Cabinet ("KYTC") have entered into that certain Interlocal Cooperation Agreement effective December 17, 2012 (the "lnterlocal Agreement") providing for the creation of the Joint Board and requiring, among other matters, entry into this Agreement providing for the deposit of Toll Revenues (as hereinafter defined) with the Custodian; and

WHEREAS, the parties to the Interlocal Agreement, together with the Louisville-Southern Indiana Bridges Authority, have entered into a Bi-State Development Agreement effective as of December 17, 2012 as subsequently supplemented and amended (the "Development Agreement") with respect to the Project; and

WHEREAS, the IFA on behalf of the Joint Board has entered into a Toll Services Agreement, pursuant to which the Toll Service Provider 2 will be appointed as toll service provider 2 for the Project; and

WHEREAS, KYTC, on behalf of the Joint Board, has procured revenue control manager services pursuant to Resolutions JB-2013-2 and JB-2013-5 and the Revenue Manager Procurement with respect to the Project; and

WHEREAS, the IFA on behalf of the Joint Board has entered into the Custodial Procurement (as hereinafter defined) pursuant to which the Custodian has been retained with respect to the Project; and

WHEREAS, the IFA has undertaken a procurement for a portion of the project involving a Public Private Agreement dated December 27, 2012 calling for periodic payments to the Developer, which payments will be made by moneys to be received by IFA from the Indiana Department of Transportation, pursuant to a Master Use Agreement and a Milestone Payment, each dated as of December 27, 2012; and

WHEREAS, IFA has entered into the IFA Project Trust Agreement (as hereinafter defined) with the IFA Project Trustee (as hereinafter defined), which provides for the collection of the

Indiana Revenue Share of Toll Revenues (as those terms are hereinafter defined) and payments from the Indiana Department of Transportation as described in the prior paragraph; to be used by IFA to make the payments to the Developer which are required under the aforementioned Public Private Agreement; and

WHEREAS, KPTIA has issued certain Revenue Bonds to fund its obligations under a design-build procurement for a portion of the costs of the Project, pursuant to the Kentucky Bond Indenture with the Kentucky Bond Trustee (as all those terms are hereinafter defined); which Revenue Bonds are secured by the Kentucky Revenue Share of Toll Revenues (as those terms are hereinafter defined); and

WHEREAS, this Agreement is intended to provide for the collection and management of Toll Revenues for the Project, and for the transfer of the Indiana Revenue Share and the Kentucky Revenue Share of Toll Revenues to the JFA Project Trustee and the Kentucky Bond Trustee, respectively, in order to allow IFA and KPTIA to meet their respective obligations as described above and under the Financing Documents (as hereinafter defined); and

WHEREAS, the Joint Board has, by resolution duly adopted, authorized the IFA to act on its behalf to execute and deliver the Custodial Procurement; and

WHEREAS, this Agreement is being executed by the parties hereto in order to provide for (i) the establishment and administration of various segregated accounts known as the Cash Management Accounts described in Section 2.02 and the Master Custodial Accounts described in Section 2.03; (ii) the deposit into the specified Cash Management Accounts and Master Custodia1 Accounts in respect to the use or prospective use of the Project as described herein, and (iii) the possession, administration and distribution of funds that are from time to time deposited into the Cash Management Accounts and the Master Custodial Accounts, in each case as provided herein.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, SUFFICIENCY OF WWCH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I.

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 or elsewhere herein shall have the meanings defined herein, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein. Terms which are not defined in this Section 1.01 or elsewhere herein shall have the meanings given them in the Interlocal Agreement or the Development Agreement; provided, however, that such definitional references are included only for the convenience of the Revenue Control Manager, the Toll Service Provider 2, KPTIA and IFA and the Custodian has no duties arising under the Interlocal Agreement or the Development Agreement.

"Agreement" means this Custody and Revenue Control Agreement, as supplemented and amended from time to time.

"Authorized Representative" means the individual or individuals at the lime designated to net on behalf of an entity by n written Certificate signed by an officer of each entity, duly authorized to sign such Certificate, furnished to the parties hereto, containing the specimen signature of each such individual. In the case of an Authorized Representative acting on behalf of each entity, the individual or individuals authorized by its governing body to do so may designate in a written Certificate other officers of the entities that may act as Authorized Representatives.

"Bi-State Contribution Account" has the meaning set forth in Section 2.0l(c).

“Business Day" means any day other than a Saturday, Sunday or federal legal holiday or day on which banks or trust companies are authorized to be closed for business in Indiana.

"Cash Holding Account" has the meaning set forth in Section 2.0l(a).

"Cash Management Accounts means accounts described in Section 2.01 hereof

"Certificate" means an instrument in writing signed by an Authorized Representative of IFA, KPTIA, the Toll Service Provider 2, the Revenue Control Manager or any Trustee, as applicable, including a Daily Reconciliation Certificate and a Semi-Monthly Confirmation Certificate, inter alia.

"Custodial Procurement" means the procurement for custodial services, as described herein, undertaken by IFA on behalf of the Joint Board, including a separate Custodial Services Agreement between IFA and the Custodian.

"Custodian" means U.S. Bank National Association, duly organized and existing under and by virtue of the laws of the United States, or its successor or any other bank or trust company that may at any time be substituted in its place as provided in Section 5.01.

"Custodial Funds” means funds deposited in Cash Management Account or a Master Custodial Account, together with all earnings thereon.

"Customer" or "User" means a registered owner of a vehicle using the Project.

"Customer Account" means an account recorded on a ledger to be maintained by the Toll Service

Provider 2 reflecting Data Transactions and Financial Transactions as applicable to a specific Customer.

"Customer Deposits" means funds received by the Toll Service Provider 2 from persons acquiring Transponders (or otherwise opening Prepaid Customer Accounts) for the Project, in consideration for opening of a Prepaid Customer Account for future use with respect to the Project, which funds are to be held in the Customer Deposits Account until (i) they become Transponder Holder Revenues by virtue of use of the Project, (ii) they are transferred to the Tolls due to Interoperable Agencies Account, or (iii) otherwise returned to the applicable customer.

"Customer Deposits Account" has the meaning set forth in Section 4.0l(i).

"Daily Reconciliation Certificate" means a Certificate of the Toll Service Provider 2 substantially in the form of Exhibit B, upon which the Custodian may conclusively rely and act upon without inquiry, investigation or notice to any other party, delivered to the Custodian pursuant to Section 4.0l(e).

"Data Transaction" means a transaction, other than a Financial Transaction, reflected on the ledger of the Toll Service Provider 2 and showing Customer uses of the Project and other activity on a Customer Account.

"Development Agreement" has the meaning specified in the Recitals hereto.

"Eligible Investments" means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

(i) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America;

(ii) Federal Housing Administration debentures;

(iii) Federal Home Loan Mortgage Corporation participation certificates and senior debt obligations (excluded are stripped mortgage securities that arc purchased at prices exceeding their principal amounts);

(iv) Farm Credit Bank consolidated system-wide banks and notes;

(v) Federal Home Loan Banks consolidated debt obligations;

(vi) Federal National Mortgage Association senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities that are purchased at prices exceeding their principal amounts);

(vii) unsecured certificates of deposit, time and demand deposits and bankers' acceptances of any bank the short-term obligations of which are rated "A-1" or better by S&P having an original maturity of not more than 360 days;

(viii) commercial paper (having original maturities of not more than

270 days) rated "A-1" by S&P and uPrime-1" by Moody's;

(ix) evidence of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated;

(x) deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation, in banks which have capital and surplus of at least *$5* million; and

(xi) money market funds rated "Aam" or "Aam-G" by S&P, which funds may be funds of the Custodian or its affiliates.

"Fee Revenue Account" means the Master Custodial Account by that name established pursuant to Section 2.02(c) hereof.

"Fees" means fines, penalties, administrative fees, charges or other costs charged to a User in connection with a Toll or Toll collections and violation other than Tolls.

"Financial Transaction" means a transaction reflected on the ledger of the Toll Service Provider 2 reflecting a Toll or Fee due from a Customer and payment of a Toll or Fee by a Customer.

"Financing Documents" means the IFA Project Trust Agreement and the Kentucky Bond Indenture.

"Gross Customer Deposits" means the amount of a gross Customer Deposit prior to the deducting of fees charged by a financial institution for credit or debit card transaction or account withdrawal.

"IFA" means the Indiana Finance Authority.

"IFA Project Trust Agreement" means the agreement by that name dated as of December 27, 2012 between the IFA and the IFA Project Trustee.

"IFA Project Trustee" means U.S. Bank National Association, as trustee under the IFA Project Trust Agreement, its successors and assigns.

"Indiana Revenue Share" has the meaning set forth in the Development Agreement.

"Indiana Revenue Share Account" has the meaning set forth in Section 2.02(f).

"Interlocal Agreement" has the meaning sel forth in the Recitals hereto.

"Interoperable Customer Revenues Account" has the meaning set forth in Section 2.02(b).

"Joint Board" means the entity by that name established under the Interlocal Agreement and the Development Agreement.

"KPTIA" means the Kentucky Public Transportation Infrastructure Authority.

"Kentucky Bond Indenture" means the KPTIA 2013 General Trust Indenture between KPTlA and the Kentucky Bond Trustee dated as of December 1 1 2013 pursuant to which the Revenue Bonds and the Kentucky TIFIA Loan were issued.

"Kentucky Bond Trustee" means The Bank of New York Mellon Trust Company, N.A., its successor and assigns.

"Kentucky Revenue Share" has the meaning set forth in the Development Agreement. "Kentucky Revenue

Share Account" has the meaning set forth in Section 2.02(g). "Master Custodial Account" has the

meaning set forth in Section 2.02.

"Other Revenues" means all Toll Revenues, including Tolls and Fees, other than Prepaid Tolls and Third-Party Transponder Revenues.

"Other Revenues Account" has the meaning set forth in Section 2.01(b}.

"Person" means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or governmental instrumentality or entity.

"Post-Pay Toll Revenues Account" has the meaning set forth in Section 2.02(d).

"Prepaid Customer Accounts" means Customer Accounts on a ledger maintained by the Toll Service Provider 2 reflecting prepaid Customer Deposits showing balances of each customer available to apply to the payment of a Toll upon use of the Project.

"Prepaid Tolls" means Customer Deposits which have become Toll Revenues by virtue of a use or uses of the Project

"Prepaid Tolls Account" has the meaning set forth in Section 2.02(a).

"Project" means the Louisville-Southern Indiana Ohio River Bridges Project.

"Rating Agency" means any of Standard & Poor's Ratings Services, a division of The McGraw-Hil1 Companies, Inc., Moody's Investors Service, Inc., or Fitch Investors Service, Inc. or any other entity providing similar services and having comparable market recognition, or any of their respective successors.

"Revenue Bonds" means bonds or notes issued by KPTIA under the Kentucky Bond Indenture, including bonds evidencing any TIFIA loans.

"Revenue Control Manager" means KPMG LLP, its successors and assigns, who shall perform the functions and fulfill the duties therefor set forth in this Agreement and in the Revenue Control Manager Services Contract.

"Revenue Manager Procurement" means the ton oversight advisor procurement, undertaken by KYTC on behalf of the Joint Board, and any successor procurement.

"Revenue Control Manager Services Contract" means the toll oversight advisor contract, between KYTC on behalf of the Joint Board, and the Revenue Control Manager entered into as of February 19, 2015"Semi-Monthly Confirmation Certificate" means a reconciliations analysis in the form of twice-monthly internal reports to the Joint Board on the flow of funds managed by the Toll Service Provider 2 on all Cash Management Accounts and Master Custodial Accounts performed by the Revenue Control

Manager, substantially in the form of Exhibit A, upon which the Custodian may conclusively rely and act upon without inquiry, investigation or notice to any other party, delivered to the Custodian twice each month pursuant to Section 5.0l(c). The "Semi-Monthly Confirmation Certificate" shall not be construed as an audit or attestation and is not intended to be the reconciliation of record. The "Semi-Monthly Confirmation Certificate" is the intended output of the Revenue Control Manager role and responsibility defined in the contract with the Commonwealth of Kentucky PON2 605 1500001387 I as follows, "the revenue control manager shall help monitor that the correct amounts are transferred from the toll collection system to the custodian procured by the Joint Board and from the custodian to the states' trustees." The "Semi- Monthly Confirmation Certificate" shall not be construed as making policy or management decisions on behalf of IFA, KPTIA**,** INDOT or KYTC management.

"Third-Party Transponder Issuer" means any Person, other than the Toll Service Provider 2 or Joint Board (or any member entity acting on behalf of the Joint Board), that has issued a Transponder to a User and that participates with the Joint Board (or any member entity acting on behalf of the Joint Board) in interoperability protocols, agreements and arrangements, including clearinghouse arrangements.

"Third-Party Transponder Revenues" means amounts received by the Toll Service Provider 2 or Custodian for deposit into the Interoperable Customer Revenues Account from a Third-Party Transponder Issuer in consideration for the use of the Project by Users that have been issued a valid transponder by the Third-Party Transponder Issuer and which transponder has a valid status at the time that the Project was used.

"Toll Service Provider 2" means the Toll System Provider under the Toll Services Agreement, its successors and assigns, and subsequent entities performing those functions under successor Toll Services Agreements.

"Toll Revenues Account' has the meaning set forth in Section 2.02(e).

"Toll Revenues" means the gross amount of all Tolls and Fees, collected through a collection and enforcement process with respect to the Project and shall also mean Toll Revenues as defined in the Development Agreement.

"Toll Services Agreement" means a toll operations agreement by that name entered into from time to time between or on behalf of the Joint Board and a Toll Operator, and initially shall mean the Toll Services Agreement dated as of _____.

"Tolls" means the charges assessed a User in connection with a crossing of one of the bridges comprising the Project.

"Tolls Due to Interoperable Agencies Account" has the meaning set forth in Section 2.02(h).

""Transponder" means a device issued by the Toll Service Provider 2, the Joint Board (or any member entity acting on behalf of the Joint Board) placed in or on a User's vehicle in order to link it to the User's account with the applicable Transponder Issuer.

"Transponder Holder" means a User (i) who holds a valid Transponder issued by the Toll Service Provider 2, the Joint Board (or any member entity acting on behalf of the Joint Board) or (ii) who has established another prepaid license plate or video tolling account for the Project.

"Transponder Issuer" means the Toll Service Provider 2, on behalf of the Joint Board, or the Joint Board or any member entity acting on behalf of the Joint Board, or any applicable Third-Party Transponder Issuer, as the case may be.

"Trustee" or "Trustees" means either or both, as the case may be, of the IFA Project Trustee or the Kentucky Bond Trustee.

ARTICLE II.

CASH MANAGEMENT ACCOUNTS AND MASTER CUSTODIAL ACCOUNTS

Section 2.01. Cash Management Accounts. The following cash management accounts (each a "Cash Management Account") shall be established and maintained by the Custodian and held for the benefit of IFA and KPTIA pending transfers or refunds as described in this Agreement. All such Cash Management Accounts shall be held by the Custodian as customer owned assets and shall be segregated from the Custodian's individually owned assets.

(a) Cash Holding Account. There is hereby established n Cash Management Account designated the "Cash Holding Account." The Custodian shall deposit nil wire deposits received by the Custodian from the Toll Service Provider 2 into the Cash Holding Account.

(b) Other Revenues Account. There is hereby established a Cash Management Account designated the "Other Revenues Account." The Custodian shall transfer moneys received by the Custodian in the Cash Holding Account (directly or through the Toll Service Provider 2) representing payments of Fees and Tolls, other than Prepaid Tolls and Third Party Transponder Revenues, into such account daily pursuant to the Toll Service Provider 2's Daily Reconciliation Certificate which shall later be confirmed by the Revenue Control Manager in the form of a Semi-Monthly Confirmation Certificate.

(c) Bi-State Contribution Account. There is hereby established a Cash Management Account to be held by the Custodian designated the "Bi-State Contribution Account" into which shall be deposited any contributions made by States' Parties pursuant to Section 2.03(d) into the Cash Holding Account daily pursuant to the Toll Service Provider 2's Daily Reconciliation Certificate which shall later be confirmed by the Revenue Control Manager in the form of a Semi-Monthly Confirmation Certificate.

Section 2.02. Establishment and Maintenance of Master Custodial Accounts. The following custodial accounts (each, a "Master Custodial Account") shall be established and maintained by the Custodian and all funds received by the Custodian in connection with the Project shall be allocated and deposited into the respective Master Custodial Accounts as set forth herein. All such Master Custodial Accounts shall be held by the Custodian as customer owned assets and shall be segregated from the Custodian's individually owned assets.

(a) Prepaid Tolls Account. There is hereby established a Master Custodial Account designated the "Prepaid Tolls Account." Pursuant to subsection 2.03(a) below, the Custodian shall transfer all available Prepaid Tolls from the Customer Deposits Account to all the Prepaid Tolls Account, daily pursuant to the Toll Service Provider 2's Daily Reconciliation Certificate which shall later be confirmed by the Revenue Control Manager in the form of a Semi-Monthly Confirmation Certificate.

(b) Interoperable Customer Revenues Account. There is hereby established a Master Custodial Account designated the "Interoperable Customer Revenues Account." Pursuant to Section 2.03(b) below, the Custodian shall deposit (or caused to be deposited), all Third Party Transponder

Revenues received by the Custodian (directly or through the Toll Service Provider 2) into the Interoperable Customer Revenues Account, daily pursuant to the Toll Service Provider 2's Daily Reconciliation Certificate which shall later be confirmed by the Revenue Control Manager in the form of a Semi-Monthly Confirmation Certificate.

(c) Fee Revenues Account. There is hereby established a Master Custodial Account designated the "Fee Revenues Account." Pursuant to Section 2.03(c) below, the Custodian shall transfer moneys in the Other Revenues Account representing collections of Fees for deposit to the Fee Revenues Account, daily pursuant to the Toll Service Provider 2's Daily Reconciliation Certificate which shall later be confirmed by the Revenue Control Manager in the form of a Semi-Monthly Confirmation Certificate.

(d) Post-Pay Toll Revenues Account. There is hereby established a Master Custodial Account designated the "Post-Pay Toll Revenues Account." Pursuant to Section 2.03(c) below, the Custodian shall transfer moneys in the Other Revenues Account representing collections of Tolls, other than Prepaid Tolls and 1bird Party Transponder Revenues for deposit to the Post-Pay Toll Revenues Account, daily pursuant to the Toll Service Provider 2's Daily Reconciliation Certificate which shall later be confirmed by the Revenue Control Manager in the form of a Semi-Monthly Confirmation Certificate.

(e) Toll Revenues Account. There is hereby established a Master Custodial Account designated the "Toll Revenues Account." The Custodian shall, semi-monthly upon instruction from the Revenue Control Manager in the form of a Semi-Monthly Confirmation Certificate, debit (i) the Prepaid Tolls Account, (ii) the Interoperable Customer Revenues Account and (iii) the Fee Revenues Account and the Post-Pay Revenues Account in order to effect deposits into the Toll Revenues Account of Toll Revenues received from Users of the Project.

(f) Indiana Revenue Share Account. There is hereby established a Master Custodial Account designated the "Indiana Revenue Share Account." The Custodian shall transfer 50% of the money in the Toll Revenues Account into the Indiana Revenue Share Account on the 15th day and the last day of each calendar month, or if any such day is not a Business Day, the immediately preceding Business Day. If this would result in an unequal split between the states, the Custodian shall cause one cent to remain in the Toll Revenue Account.

(g) Kentucky Revenue Share Account. There is hereby established a Master Custodial Account designated the "Kentucky Revenue Share Account" The Custodian shall transfer 50% of the money in the Toll Revenue Account into the Kentucky Revenue Share Account on the 15th day and the last day of each calendar month, or if any such day is not a Business Day, the immediately preceding Business Day. If this would result in an unequal split between the states, the Custodian shall cause one cent to remain in the Toll Revenue Account.

(h) Tolls Due to Interoperable Agencies Account. There is hereby established a Master Custodial Account designated the "Interoperable Customer Revenues Account". The Custodian sha1l (upon instruction from the Toll Service Provider 2 in the form of a Daily Reconciliation Certificate), transfer moneys from the Cash Holding Account to the Interoperable Customer Revenues Account for use as provided in Section 2.04(a).

Section 2.03. Withdrawals and Transfers of Funds from Cash Management Accounts.

(a) On each Business Day, moneys in the Cash Holding Account which have become Prepaid Tolls, as certified by the Toll Service Provider 2 in its Daily Reconciliation Certificate, shall be transferred by the Custodian semi-monthly pursuant to the Daily Reconciliation Certificate, to the Prepaid Tolls Account1 confirmed by the Revenue Control Manager with a Semi-Monthly Confirmation Certificate.

(b) On each Business Day. moneys in the Cash Holding Account which are due and payable to a Third Party Transponder Issuer, as certified by the Toll Service Provider 2 in its Daily Reconciliation Certificate delivered to the Custodian and the Revenue Control Manager, shall be transferred by the Custodian semi-monthly pursuant to the Daily Reconciliation Certificate, to the Tolls due to Interoperable Agencies Account, confirmed by the Revenue Control Manager with a Semi-Monthly Confirmation Certificate.

(c) On each Business Day, moneys in the Other Revenues Account shall be transferred by the Custodian for deposit in (i) the Fee Revenues Account and (ii) the Post- Pay Revenues Account, semi-monthly pursuant to the Daily Reconciliation Certificate delivered by the Toll Service Provider 2 to the Custodian and the Revenue Control Manager, as confirmed by the Revenue Control Manager with a Semi-Monthly Confirmation Certificate.

(d) In the event the Toll Service Provider 2 anticipates that moneys in any Prepaid Customer Account will become within the next sixty days insufficient to make the transfers required under Section 2.02(h), it shall notify the States' Parties and the Custodian that deposits will be required and the respective amounts thereof (calculated on a pro rata basis between the States), for the Bi-Monthly Contribution Account. Each of the States' Parties shall (i) notify the Custodian of the date and amount its deposit and (ii) deposit its respective amount, by wire transfer of immediately available funds, with the Custodian for deposit into the Bi-State Contribution Account.

Section 2.04. Withdrawals and Transfers of Funds from Certain Master Custodial Accounts.

(a) Moneys shall be transferred from the Prepaid Tolls Account, the Interoperable Customer Revenues Account, the Fee Revenues Account and the Post-Pay Toll Revenues Account to the Toll Revenues Account as provided in Section 2.02(a)-(d) and (h), as the case may be.

(b) Moneys shall be transferred from the Toll Revenues Account to the Indiana Revenue Share Account as provided in Section 2.02(!) and to the Kentucky Revenue Share Account as provided in Section 2.02(g).

(c) On the first Business Day of each month, the Custodian shall transfer all funds on deposit in the Indiana Revenue Share Account to the IFA Project Trustee.

(d) On the first Business Day of each month, the Custodian shall transfer all funds on deposit in the Kentucky Revenue Share Account to the Kentucky Bond Trustee.

Section 2.05. Benefit of Master Custodial Accounts and Cash Management Accounts. The Custodian covenants and agrees that all funds, when and as received by the Custodian and designated or otherwise directed for deposit into the Master Custodial Accounts and Cash Management Accounts will be received and held by the Custodian for the benefit of the IFA and, KPTIA and, to the extent provided herein, the Trustees hereunder, and will be deposited by the Custodian in the designated Accounts as provided herein. All funds delivered to the Custodian for deposit into such Accounts shall be disbursed, allocated and applied by the Custodian as provided herein, and accounted for separately and apart from all other money, funds, accounts or other resources of the Custodian. The Custodian does not have any interest in the Master Custodial Accounts and Cash Management Accounts but is serving as custodian of the same for KPTIA and IFA and to the extent provided herein, the Trustees. For the benefit of each Trustee, IFA and KPTIA acknowledge and agree that the custodial arrangements evidenced by this Agreement are for the purposes of facilitating the collection and disbursement of Toll Revenues that accrue from the operation of the Project for the purpose of paying all or a portion of the financing obligations incurred by IFA and KPTIA with respect to the Project under the Financing Documents.

Section 2.06. Security Interests and Payments.

(a) Security Interest of Secured Parties. The Custodian acknowledges that the Trustees are secured parties for Toll Revenues collected pursuant to this Agreement.

(b) No Other Security Interests. Except with respect to their rights hereunder, IFA and KPTIA confirm that they have not and will not grant any security interest in their rights under this Agreement to any Person other than the Trustees. The Custodian hereby confirms that if it at any time receives a written notice from any Person regarding any claim to the funds held by the Custodian under this Agreement, the Custodian will promptly notify IFA, KPTIA and the Trustees of such claim.

Section 2.07. Bi-State Contribution Account. In the event that funds on deposit in the Customer Deposits Account allocable to another account are not sufficient to make a transfer required under Section 2.03(e) hereof, the Toll Service Provider 2 shall direct the Custodian in writing to apply moneys on deposit in the Bi-State Contribution Account to satisfy such deficiency

ARTICLE III.

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.01. Accounting Records and Statements of Custodian. The Custodian will keep proper accounting records in which complete and correct entries shall be made of all transactions made by it relating to the receipt, deposit and disbursement of funds into the Master Custodial Accounts and Cash Management Accounts, and any other funds received by Custodian hereunder and such accounting records shall be available for inspection by IFA and KPTIA on any Business Day upon reasonable written notice at reasonable hours and under reasonable conditions prescribed by the Custodian. On each Business Day, the Custodian will furnish to IFA and KPTIA a statement covering nil receipts of the Custodian for deposit into the Master Custodial Accounts and Cash Management Accounts and all transfers from and into the Master Custodial Accounts and Cash Management Accounts and disbursements from the Master Custodial Accounts and Cash Management Accounts for the preceding Business Day. Such statements wil1 identify all individual payments received by the Custodian for deposit to the Master Custodial Accounts and Cash Management Accounts, including the amount and source of payment. The Custodian will keep a copy of all records and statements required under this Agreement for a period of seven (7) years or such other period based on the Custodian's record retention policies as reasonably approved by IFA or KPTIA. IFA and KPTIA may inform Custodian in writing of any error, omission or inaccuracy in any such account statement Failure to inform Custodian in writing of any error, omission or inaccuracy in any such account statement within 15 months after receipt shall conclusively be deemed confirmation and approval by IFA and KPTIA of such account statement in its entirety, which shall thereafter not provide any basis for a claim against or liability of Custodian.

Section 3.02. Confidentiality.

The Custodian shall comply with all requirements of the State of Indiana, Commonwealth of Kentucky and federal laws relating to maintaining the confidentiality of all customer account information.

Section 3.03. Indiana Commercial Code:

(a) Custodian as Securities Intermediary. The Custodian is acting as securities intermediary (as defined in JC 26-1-8.1-501 in connection with the Master Custodial Accounts and Cash Management Accounts.

(b) Securities Account. Each Master Custodial Account and Cash Management Account has been, or will be when required, established in the manner contemplated by this Agreement and will be deemed a "securities account" as defined in IC 26-1-8.1-501.

(c) Financial Asset. Each item of property (whether investment property, financial asset, security, instrument, cash or other property) credited to any Master Custodial Account and Cash Management Account shall be treated as a "financial asset" within the meaning of IC 26-1-8.1-102, and all such financial assets (except cash) credited to any Master Custodial Account and Cash Management Account will be registered in the name of the Custodian, endorsed to the Custodian or in blank or credited to another securities account

maintained in the name of the Custodian and in no case will any financial asset credited to any Master Custodial Account and Cash Management Account be registered in the name of the Toll Service Provider 2 or any other Person, payable to the order of the Toll Service Provider 2 or any other Person, or specially endorsed to the Toll Service Provider 2 or any other Person.

(d) Jurisdiction of Custodian as Securities Intermediary. For purposes of IC 26-1-8.1-1-101 through IC 26-1-8.1-116, the jurisdiction of the Custodian, in its capacity as securities intermediary in respect of the Master Custodial Accounts and Cash Management Accounts, is the State of Indiana.

(e) Entitlement Holders. The sole entitlement holders for each Master Custodial Account and Cash Management Account shall be the Trustees, provided that IFA and KPTIA warrant that they shall comply with all provisions herein included for the benefit of the Trustees as herein described.

(t) Entitlement Orders. The Custodian shall promptly make the deposits, withdrawals, and payments into or from the Master Custodial Accounts and Cash Management Accounts as expressly set forth in this Agreement For purposes of this Agreement, the Custodian shall treat each Daily Reconciliation Certificate signed by the Toll Service Provider 2 and each Semi-Monthly Confirmation Certificate signed by the Revenue Control Manager as an entitlement order (within the meaning of IC 26-1-8.1-102) relative to the Master Custodial Accounts and Cash Management Accounts. The Custodian shall be entitled to conclusively rely on such entitlement orders without inquiry, investigation or notice to any other party hereto.

ARTICLE IV.

TOLL SERVICE PROVIDER 2 DUTIES

Section 4.01. Duties. In addition to duties set forth in the Toll Services Agreement, the Toll Service Provider 2 shall:

(a) maintain a ledger or ledgers (including sub-ledgers) showing all Financial Transactions and Data Transactions with respect to the Project, including:

(i) record of Customer Deposits

(ii) record of electronic Toll collections,

(iii) record of Tolls due from other tolling agencies for LSIORB customers use of their facilities,

(iv) record of open post-pay Customer Accounts, and

(v) record of Customer refunds.

(b) maintain a ledger or ledgers (including sub-ledgers) regarding activity with respect to all Customer Accounts.

(c) maintain ledger or ledgers (including sub-ledgers) in Prepaid Customer Accounts showing available balances for application to Tolls due.

(d) perform daily reconciliation of Financial Transactions and Data Transactions with respect to Customer Accounts.

(e) deliver to the Custodian immediately available funds and Daily Reconciliation Certificates with respect to deposits and transfers to and from Cash Management Accounts and Master Custodial Accounts in accordance with the reconciliations described in paragraph (d) above, and as required under Section 2.02(a)- (d), (h) and 2.03(d).

(f) deliver such other Certificates as required to provide the directions specified in Article II hereof.

(g) cooperate with the Revenue Control Manager in the performance of the latter's duties.

(h) perform daily roll forward of ledger balances from all Master Custodial Accounts and Cash Management Accounts.

(i) hold the Customer Deposits in a Customer Deposit Account. The Toll Service Provider 2 shall transfer Customer Deposits into Customer Deposits Account daily. Neither the Toll Service Provider 2, the Revenue Control Manager, the Trustees, IFA, nor KPTIA shall have any claim on moneys on deposit in the Customer Deposits Account prior to the time if and when such moneys become Prepaid Revenues.

(j) maintain a ledger account showing Prepaid Customer Accounts for each Customer upon receipt of the initial Customer Deposit. Each Customer Deposit shall be credited on such ledger account with a balance equal to the Gross Customer Deposit, and the Customer shall be entitled to apply the Gross Customer Deposit against future Tolls due and payable.

Section 4.02. Compensation for and Reimbursements to Toll Service Provider 2. Compensation for and reimbursement to the Toll Service Provider 2 shall be as provided under the Toll Services Agreement, in accordance with and in the manner set forth therein.

ARTICLE V.

REVENUE CONTROL MANAGER DUTIES

Section 5.01. Duties. The Revenue Control Manager shall:

(a) confirm that fiscal records of the Joint Board are available for inspection, review, copying, or audit by representatives of the State of Indiana and/or the Commonwealth of Kentucky, or by other personnel authorized by the Joint Board;

(b) prepare twice-monthly internal reports to the Joint Board on the flow of funds managed by the Toll Service Provider 2 on all Cash Management Accounts and Master Custodial Accounts;

(c) provide Semi-Monthly Confirmation Certificates as required in Section 2.03 hereof; maintain an accounting of Toll transactions, as well as Tolls payable and Tolls receivable tracking activity and balances; and

(d) provide monthly reporting of Toll Revenues, Toll receivable and Tolls payable.

Section 5.02. Compensation for and Reimbursements to Revenue Control Manager. Compensation for and reimbursement to the Revenue Control Manager shall be as provided under the Revenue Manager Procurement, in accordance with and in the manner set forth therein.

Section 5.03. Period of Performance. The Revenue Control Manager shall provide services specified in this Agreement only for the term of the Revenue Control Manager Services Contract.

ARTICLE VI.

THE CUSTODIAN

Section 6.01. Duties.

(a) The Custodian accepts the duties, covenants and obligations of the Custodian expressly provided in this Agreement upon the terms and conditions set fo1th in this Agreement, and no duty, covenant or obligation shall be implied herein or therein against the Custodian. Custodian has no fiduciary or discretionary duties of any kind. Custodian's permissive rights shall not be construed as duties. Custodian shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement, including without limitation any other agreement between any or a11 of the parties hereto or any other persons even though reference thereto may be made herein and whether or not a copy of such agreement has been provided to the Custodian. Custodian shall not be liable for any action taken by it in accordance with instructions, notices or certificate as contemplated in the Agreement except due to its negligence or willful misconduct. Custodian shall have no duty to make calculations or to confirm or verify any calculation. Custodian may rely upon any notice or other instrument as to its due execution and validity, and as to the accuracy of information contained therein, which Custodian believes to be genuine and to have been signed by the person purporting to sign the same. Custodian shall not be liable for incidental, indirect, special, consequential or punitive damages or penalties of any kind, nor for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God. Custodian may consult legal counsel selected by it in the event of dispute or question as to the construction of any of the provisions hereof or of its duties hereunder, and it shall incur no liability in acting in good faith accordance with the advice of such counsel. The Custodian is authorized to comply with any order, writ, judgment or decree entered by any court with respect to the Custodial Funds.

(b) Custodian is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Custodial Funds, without determination by Custodian of such court's jurisdiction in the matter. If any portion of the Custodial Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, Custodian is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it, without the need for appeal or other action; and if Custodian complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

(c) The Custodian shall:

(i) open and maintain all accounts described in this Agreement; and

(ii) provide the Revenue Control Manager and the Toll Service Provider on-line access to appropriate records of such accounts through the designated accounting system.

Section 6.02. Compensation and Reimbursement. Compensation for and reimbursements to the Custodian shall be as provided under the Custodial Procurement, in accordance with and in the manner set forth therein.

Section 6.03. Subordination of Custodian Lien and Rights of Custodian Set-off. As set forth below in this Section 6.03, the Custodian subordinates any security interest, lien or right to make deductions or setoffs that it may now have or hereafter acquire in or with respect to the Master Custodial Accounts and Cash Management Accounts, any financial asset credited thereto or any security entitlement in respect thereof. The Custodian may elect, but shall not be obligated, to credit the Master Custodial Accounts and Cash Management Accounts with funds representing income or principal payments due on, or sales proceeds due in respect of, assets in any of the Master Custodial Accounts and Cash Management Accounts, or to credit to any of the Master Custodial Accounts and Cash Management Accounts assets intended to be purchased with such funds, in each case before actually receiving the requisite funds from the payment source, or to otherwise advance funds for Master Custodial Account and Cash Management Account transactions. Notwithstanding anything else in this Agreement, any such crediting of funds or assets shall be provisional in nature, and the Custodian shall be authorized to reverse any such transactions or advances of funds in the event that it does not receive good funds with respect thereto. The Custodian may also set-off and deduct funds in any Master Custodial Account or Cash Management Account to pay the face amount of any checks, automated clearinghouse transactions or other deposits that have been credited to any of the Master Custodial Accounts and Cash Management Accounts but are subsequently returned unpaid or reversed. The Custodian is hereby granted a lien in the Master Custodial Accounts and the Cash Management Accounts but solely with respect to any such amounts as identified above in this Section 6.03, subordinate to any liens created by the KPTIA 2013 General Trust Indenture in favor of the holders of bonds issued thereunder; provided that, notwithstanding the preceding part of this sentence, nothing in this Agreement shall constitute a waiver or limitation of any of Custodian's rights as a securities intermediary under Uniform Commercial Code §9-206.

ARTICLE VII.

LIMITATIONS OF WAIVER AND LIABILITY

Section 7.01. Non-Waiver. A waiver of any default or breach of duty or contract by the Custodian, IFA, KPTIA, Revenue Control Manager or the Toll Service Provider 2 shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Custodian, IFA, Revenue Control Manager or the Toll Service Provider 2 to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Custodian, IFA, KPTIA, Revenue Control Manager or the Toll Service Provider 2 by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Custodian, IFA, KPTIA, Revenue Control Manager or the Toll Service Provider 2. If any action, proceeding or suit to enforce any right or to exercise any remedy is abandoned, then the Custodian, IFA, KPTIA, the Toll Service Provider 2, Revenue Control Manager and Trustees shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 7.02. No Liability by the Custodian. The Custodian will have no obligation or liability to any Person with respect to the performance by IFA, KPTIA, Revenue Control Manager or Toll Service Provider 2, as the case may be, required to be performed by IFA, Revenue Control Manager or Toll Service Provider 2, as the case may be, contained herein or in any other agreement to which it is a party.

Section 7.03. No Liability by the Revenue Control Manager. The Revenue Control Manager will have no obligation or liability to any Person with respect to the performance by IFA, KPTIA, Custodian or Toll Service Provider 2, as the case may be, required to be perfo1111ed by IFA, KPTIA, Custodian or Toll Service Provider 2, as the case may be, contained herein or in any other agreement to which it is a party.

The Revenue Control Manager shall not be liable to the IFA, KPTIA, Custodian or Toll Service Provider 2 for any actions, damages of any type, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services perfo1111ed under this Agreement for an aggregate amount in excess of two (2) times the fees paid or owing under this Agreement. This section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise.

ARTICLEVIII.

AMENDMENT OF OR SUPPLEMENT TO TWS AGREEMENT

Section 8.01. Amendment or Supplement. No amendment of or supplement to this Agreement shall be valid or effective unless in writing signed by IFA, KPTIA, the Toll Service Provider 2, the Revenue Control Manager and the Custodian with notice thereof given to the Trustees and, if such amendment or supplement would adversely affect the rights of any Trustee under this Agreement or any other agreement to which IFA, the Toll Service Provider 2, the Revenue Control Manager and KPTIA arc parties, the prior written consent of such Trustee, if applicable. The Custodian shall not be obligated to determine whether an amendment or supplement would materially adversely affect the rights of any Trustee. In executing any amendment or supplement to this Agreement without the written consent of any Trustee, the Custodian shall be entitled to receive, and shall be fully protected in relying upon, Certificates of IFA, the Toll Service Provider 2, the Revenue Control Manager and K.PTIA and opinion of counsel stating that the execution of such amendment or supplement is authorized and permitted by this Section 8.01; but such right to rely, and such Certificate, shall have not be determinative of whether the amendment or supplement is valid or effective without such written consent.

ARTICLE IX.

MISCELLANEOUS

Section 9.01. Benefits of Custody Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than !FA, the Toll Service Provider 2, the Revenue Control Manager and KPTIA, the Custodian and the Trustees, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Agreement contained by and on behalf of IFA, K.PTIA, the Toll Service Provider 2, the Revenue Control Manager and the Custodian hereunder shall be for the sole and exclusive benefit of IFA, KPTIA, the Toll Service Provider 2, the Revenue Control Manager, the Custodian and the Trustees.

Section 9.02. Successor Deemed Included in all References to Predecessor. Whenever any Person or any officer thereof is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in such Person or such officer, and all agreements, conditions, covenants and terms required hereby to be observed or performed by or on behalf of such Person or any officer thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 9.03. Content of Certificates.

(a) Every Certificate with respect to compliance with any agreement, condition, covenant or term contained herein shall include (i) a statement that the individuals signing and delivering such Certificate have the authority to do so and have read such agreement, condition, covenant or term and the definitions herein relating thereto; (ii) a statement that, in the opinion of the signers they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or term has been complied with; and (iii) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or term has been complied with.

Section 9.04. Notices. All Certificates, directions, notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing (provided that each such communication to the Custodian must be manually or electronically signed by the sender) and mailed via certified mail (return receipt requested), emailed, telecopied (with written confirmation of receipt) or delivered (via courier service) as follows:

If to IFA:

One North Capitol, Suite 900 Indianapolis, Indiana
46204
Attention: Public Finance Director of the State of Indiana

If to KPTIA:

The Kentucky Public Transportation Infrastructure Authority 200 Mero Street, 6th Floor
Frankfort, KY 40622

If to the Toll Service Provider 2:

TSP2

If to the Custodian:

U.S. Bank National Association 10 W Market Street,
Suite 1150
Indianapolis, IN 46204
Attn: Global Corporate Trust

If to the Revenue Control Manager:

KPMGLLP
303 Peachtree Street NE, Suite 2000
Atlanta, GA 30308-3210
Attn: David G. Roberts, Managing Director

If to the Kentucky Bond Trustee:

Bank of New York Mellon 614 West Main Street
Louisville, KY 40202

If to the IFA Project Trustee:

U.S. Bank National Association 10 W. Market Street,
Suite 1150 Indianapolis, IN 46204
Attn: Global Corporate Trust

Section 9.05. Investments.

(a) Except as otherwise jointly directed in writing by IFA and KPTIA, the Custodian is instructed to invest all amounts in each Cash Management Account in a U.S. Bank Money Market Deposit Account as further described in Exhibit C.

(b) Amounts on deposit in each Master Custodial Account pursuant to this Agreement shall be invested in Eligible Investments that will, as nearly as practicable, mature on or before the dates when such money is anticipated to be needed for disbursement hereunder. All Eligible Investments shall be made in accordance with written directions that IF A and KPTIA jointly give from time to time to the Custodian. The Custodian may act as principal or agent in the acquisition or disposition of any such investment The Custodian shall not be liable or responsible for any loss suffered in connection with any such investment made by it under the terms of and in accordance with such joint written direction. The parties hereto recognize and agree that (i) Custodian will not provide supervision, recommendations or advice relating to either the investment of Custodial Funds or the purchase, sale, retention or other disposition of any investment described herein and (ii) Custodian has no responsibility whatsoever to determine the market or other value of any investment and makes no representation or warranty; express or implied, as to the accuracy of any such valuations or that any values necessarily reflect the proceeds that may be received on the sale of an investment. If Custodian has not received a written investment instruction from Seller at any time that an investment decision must be made; Custodian is directed to invest the Custodial Funds, or such portion thereof as to which no written investment instruction has been received, in the investment indicated on Schedule B hereto to charge its normal cash management fees, which may be deducted from income earned on investments. The Custodian may make any and all investments through its own bond or securities department or the bond or securities

department of any affiliate of the Custodian.

(c) The Custodian may sell or present for prepayment any obligations so purchased whenever it shall be necessary in order to provide moneys to meet any payment of the funds so invested, and the Custodian shall not be liable or responsible for any losses resulting from any such investment sold or presented for prepayment

(d) The Custodian may conclusively rely that any investment directed by IFA and KPTIA jointly is an Eligible Investment as required by this Agreement. The Custodian may act as depository, manager, advisor or sponsor with regard to any Eligible Investment.

(e) If either IFA or KPTIA receives brokerage confirmations of security transactions as they occur, it shall forward such confirmations to the Custodian. IFA and KPTIA acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant either the right to receive brokerage confirmations for certain security transactions as they occur, IFA and KPTIA specifically waive receipt of such confirmations to the extent permitted by law.

(f) In computing the amount in any Master Custodial Account, Eligible Investments shall be valued at market value, exclusive of accrued interest. The Custodian shall perform such valuation no more frequently than monthly.

(g) If at any time after investment therein an Eligible Investment ceases to meet the criteria set forth in the definition of Eligible Investments and such obligation. aggregated with other non-conforming investments, exceeds ten percent (10%) of invested funds, such Eligible Investment shall be sold or liquidated pursuant to IFA's and KPTIA's joint written instruction; provided Custodian shall not be responsible for determining whether such Eligible Investment has ceased to meet the criteria therefor and shall solely rely on instructions received by IFA and KPTIA jointly with respect such investments.

(h) Investment earnings and profit on amounts and investments held in the Master Custodial Accounts and Cash Management Accounts shall be deposited into the Toll Revenue Account on a monthly basis.

(i) To the extent relevant to any Account, IFA and KPTIA jointly shall be entitled to direct the Custodian with respect to the voting of any financial assets credited to such Accounts. In the absence of voting directions, the Custodian shall not be obligated to vote.

Section 9.06. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles/' "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith/' "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 9.07. Partial Invalidity. If any one or more of the agreements, conditions, covenants or terms contained herein required to be observed or performed by or on the part of IFA, KPTIA, a Secured Party, the Toll Service Provider 2, the Revenue Control Manager or the Custodian shall be contrary to law, then such agreement or agreements, such condition or conditions such covenant or covenants or such term or terms shall be null and void and shall be deemed separable from the remaining agreements,

conditions, covenants and terms hereof

Section 9.08. Indiana Law. As to IFA, this Agreement shall be construed and governed in accordance with the laws of the State of Indiana.

Section 9.09. Effective Date and Tenn. The Revenue Control Manager shall provide services specified in this Agreement only for the term of the Revenue Control Manager Services Contract. For all other parties to this Agreement, the Agreement shall become effective upon the date of its execution and delivery.

Section 9.10. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually signed counterpart of this Agreement.

Section 9.11. Third-Party Beneficiaries. To the extent this Agreement confers upon or gives or grants to any Trustee any right, remedy or claim under or by reason of this Agreement, each such person is hereby explicitly recognized as being an intended, direct third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted to it hereunder.

Section 9.12 Resignation or Removal of Custodian. Custodian may resign and be discharged from the performance of its duties hereunder at any time by giving thirty (30) days prior written notice to the other parties hereto specifying a date when such resignation shall take effect. Similarly, IFA and KPTIA may remove and discharge Custodian from the performance of its duties hereunder at any time by jointly giving thirty (30) days prior written notice to the Custodian specifying a date when such removal shall take effect. Upon any such notice of resignation or removal, IFA and KPTIA jointly shall appoint a successor Custodian hereunder prior to the effective date of such resignation or removal. If a successor Custodian has not accepted such appointment within such time, the Custodian shall have the right to petition a court of competent jurisdiction to appoint a successor Custodian. The Custodian shall transmit all records pertaining to the Custodial Funds and shall pay all Custodial Funds to the successor Custodian, after making copies of such records as the Custodian deems advisable. After the Custodian's resignation or removal, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Custodian under this Agreement. The Custodian shall not be required to transfer any Custodial Funds until it has received payment or reimbursement for all (i) compensation, expenses, fees, costs, or other charges incurred by the Custodian in providing services under this Agreement, including any special termination costs, and (ii) funds or securities advanced under this Agreement.

Section 9.13 Identifying Information. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Custodian requires documentation to verify its information and existence as a legal entity. The Custodian may ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties acknowledge that a portion of the identifying information set forth herein is being requested by the Custodian in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and each agrees to provide any additional information requested by the Custodian in connection with the Act or any other legislation or regulation to which Custodian is subject, in a timely manner.

Section 9.14 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating

to the holding, investment and disbursement of the Custodial Funds and sets forth in their entirety the obligations and duties of Custodian with respect to the Custodial Funds.

Section 9.15 Dealings. The Custodian and any stockholder, director, officer or emp1oyec of the Custodian may buy, sell, and deal in any of the securities of any party hereto and become pecuniarily interested in any transaction in which any party hereto may be interested, and contract and lend money to any party hereto and otherwise act as fully and freely as though it were not Custodian under this Agreement. Nothing herein shall preclude the Custodian from acting in any other capacity for any party hereto or for any other person or entity.

Section 9.16 Tax Matters. Custodian shall have no responsibility for the tax consequences of this Agreement and IFA and KPTIA shall consult with independent counsel concerning any and all tux matters. IFA and KPTIA shall provide Custodian IRS Form W-9 or Form W-8, as applicable, for each payee, together with any other documentation and information requested by Custodian in connection with Escrow Agent's reporting obligations under applicable Internal Revenue Service ("IRS") regulations. If such tax documentation is not so provided, Custodian shall withhold taxes as required by the IRS. KPTIA and IFA have determined that any interest or income on Escrow Funds shall be reported on an accrual basis and deemed to be split evenly between IFA and KPTIA. IFA and KPTIA shall prepare and file all required tax filings with the IRS and any other applicable taxing auth01ity; provided that the parties agree that IFA and KPTIA shall accurately provide the Custodian with all information requested by the Custodian in connection with the preparation of all applicable Form 1099 documents with respect to all distributions as well as in the performance of Escrow Agent's reporting obligations under any applicable law or regulation.

Exhibit A

Semi-Monthly Confirmation Certificate

KPMG to US Bank

	From Account	To Toll Revenue Account	Explanation
COA#		12118	
12113	Prepaid Toll Account	$	
12114	Interoperable Customer Account	$	
12116	Post Pay Toll Account	$	
12117	Fee Revenue Account	$	
12119	Other Revenue Account	$	
	Total	$	

I have the authority to deliver this Semi-Monthly Confirmation Certificate.

I have read this Custody and Revenue Control Manager Agreement and each condition, covenant and term thereto.

In my opinion, I have made or caused to be made such examination or investigation as is necessary to enable me to express an informed opinion as to whether or not the Custody and Revenue Control Manager Agreement and each condition, covenant or term therein bas been complied with.

It is my opinion that the Custody and Revenue Control Manager Agreement and each condition, covenant or term therein has been complied with.

KPMG

_____

Title: - - - - - - - - - - - - - - - -

Date: - - - - - - - - - - - - - - - -

Exhibit B

Daily Reconciliation Certificate Toll Service Provider 2 to US Bank

From Account				**To Account**
			COA#	
Cash Holding Account	0		12113	PrePaid Toll Account
Cash Holding Account	0		12114	Interoperable Customer Account
Cash Holding Account	0		12116	Post Pay Toll Account
Cash Holding Account	0		12117	Fee Revenue Account
Cash Holding	0		12119	Other Revenue Account
Total	0			

I have the authority to deliver this Daily Reconciliation Certificate.

I have read this Custody and Revenue Control Manager Agreement and each condition, covenant and term thereto.

In my opinion, I have made or caused to be made such examination or investigation as is necessary to enable me to express an informed opinion as to whether or not the Custody and Revenue Control Manager Agreement and each condition, covenant or term therein has been complied with.

It is my opinion that the Custody and Revenue Contra] Manager Agreement and each condition, covenant or term therein has been complied with.

Toll Service Provider 2

_____

Title: - - - - - - - - - - - - - - - -

Date: - - - - - - - - - - - - - - - -

Exhibit C

Investment Authorization and Backup Direction if **first selection is not available**

Primary Direction:

U.S. Bank
National Association
Money Market Account
Authorization Form

Description and Terms

The U.S. Bank Money Market account is a U.S. Bank National Association (U.S. Bank") interest- bearing money market deposit account designed to meet the needs of U.S. Bank's Corporate Trust

Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank's discretion and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank's trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

U.S. BANK, WHEN ACTING AS AN INDENTURE TRUSTEE OR IN A SIMILAR CAPACITY, IS NOT REQUIRED TO REGISTER AS A MUNICIPAL ADVISOR WITH THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF COMPLYING WITH THE DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT. INVESTMENT ADVICE, IF NEEDED, SHOULD BE OBTAINED FROM YOUR FINANCIAL ADVISOR.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted

investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.

Trust account number - includes existing and future sub-accounts unless otherwise directed

FIRST AMENDMENT TO
CUSTODY AND REVENUE CONTROL AGREEMENT

Among

U.S. Bank National Association, as Custodian, KPMG LLP, as Revenue Control Manager,
_____, as Toll Service Provider 2,
and the

INDIANA FINANCE AUTHORITY

and

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

with respect to

LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT

Dated as of _____

WHEREAS, U.S. Bank National Association, KPMG LLP, _____, Kentucky Public Transportation Infrastructure Authority, and the Indiana Finance Authority entered into the Custody and Revenue Control Agreement on or about [Date]; and

WHEREAS, the parties have been performing under the terms of said Custody and Revenue Control Agreement commencing with the tolling of the Ohio River Bridges; and

WHEREAS, the parties agree that it would be advantageous to amend the Custody and Revenue Control Agreement to direct the Custodian to transfer funds out of the Indiana Revenue Share Account and the Kentucky Revenue Share Account to the IFA Project Trustee and Kentucky Bond Trustee, respectively, on a semi-monthly, rather than a monthly, basis.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Section 2.04(c) of the Custody and Revenue Control Agreement is hereby amended, as follows:

   (c) On the first (1st) and on the sixteenth (16th) Business Day of each month, the Custodian shall transfer all funds on deposit in the Indiana Revenue Share Account to the IFA Project Trustee.

2. Section 2.04(d) of the Custody and Revenue Control Agreement is hereby amended, as follows:

   (d) On the first (1st) and on the sixteenth (16th) Business Day of each month, the Custodian shall transfer all funds on deposit in the Kentucky Revenue Share Account to the Kentucky Bond Trustee.

3. In all other respects the Custody and Revenue Control Agreement shall remain in its original form and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Custody and Revenue Control Agreement by their officers thereunto duly authorized as of the day and year first written above.

U.S. BANK NATIONAL ASSOCIATION, as Custodian and IFA Project Trustee

By:

Name:

Title:

KPMG LLP, as Revenue Control Manager

By:

Name:

Title:

_____, as Toll Service Provider 2

By:

Name: Title:

U. S. BANK NATIONAL ASSOCIATION, as Custodian

By:

Name:

Title:

KPMG LLP, as Revenue Control Manager

By:

Name:

Title:

_____ as Toll Service Provider 2

By:

Name:

Title:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Kentucky Bond Trustee

By:

Name:

Title:

U. S. BANK NATIONAL ASSOCIATION, as Custodian

By:

Name:

Title:

KPMG LLP, as Revenue Control Manager

By:

Name:

Title:

_____, as Toll Service Provider 2

By:

Name:

Title:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Kentucky Bond Trustee

By:_____

Name:

Title:

Acknowledged by:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Kentucky Bond Trustee

By:

Name:

Title:

INDIANA FINANCE AUTHORITY

By:

Name:

Title:

ATTEST:
By:

Name:

Title:

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

By:

Name:

Title:

AS TO FORM AND LEGALITY

_____

Wyatt Tanant and Combs

KPTIA General Counsel

INDIANA FINANCE AUTHORITY

By:

Micah Vincent, Chairman

ATTEST:

_____

Dan Huge, Public Finance Director of the State of Indiana

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY
By:

Name:

Title:

AS TO FORM AND LEGALITY

By:

Name:

Title:

SECOND AMENDMENT TO THE
CUSTODY AND REVENUE CONTROL AGREEMENT

among

U.S. Bank National Association, as Custodian,

KPMG LLP, as outgoing Revenue Control Manager,

Strothman and Company, as incoming Revenue Control Manager,

_____, as Toll Service Provider 2,

and the

INDIANA FINANCE AUTHORITY

and

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

with respect to

LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT

Dated as of _____

WHEREAS, the CUSTODY AND REVENUE CONTROL AGREEMENT (the "Agreement") with respect to the Louisville-Southern Indiana Ohio River Bridges Project (the "Project") entered into by U.S. Bank National Association organized and existing under the laws of the United States of America (the "Custodian"), KPMG LLP ("KPMG"), a limited liability partnership, organized and existing under the laws of the State of Delaware, as Revenue Control Manager, _____, a corporation organized and existing under the laws of the State of _____, as Toll Service Provider 2, Kentucky Public Transportation Infrastructure Authority ("KPTIA"), an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky constituting a governmental agency and instrumentality of the Commonwealth, and the Indiana Finance Authority ("IFA"), a body corporate and politic exercising essential public functions created and existing under and by virtue of the laws of the State of Indiana was executed in 2016.

WHEREAS, KPMG's contract as Revenue Control Manager for the Project expires in September of 2020; and

WHEREAS, Strothman and Company ("Strothman") was procured to perform the role of Revenue Control Manager beginning in July of 2020; and

WHEREAS, the parties to the Agreement and Strothman wish to amend the Agreement to make Strothman responsible for the role of the Revenue Control Manager and to remove those responsibilities from KPMG.

NOW THEREFORE, THE PARTIES TO THE AGREEMENT AND STROTHMAN HEREBY AGREE TO AMEND THE AGREEMENT AS FOLLOWS:

1) KPMG is hereby released of the obligation to perform the role of the Revenue Control Manager as described in the Agreement.

2) Strothman agrees to perform the role of the Revenue Control Manager as described in the Agreement and will replace KPMG as a party to the Agreement.

3) For purposes of the notice as described in Section 9.04 of the Agreement, notices to the Revenue Control Manager shall be to:

Strothman and Company
325 West Main Street, Suite 1600
Louisville, KY 40202

4) Except as expressly modified in this amendment all terms and provisions of the Agreement shall remain in full force and effect.

5) This Second Amendment to the Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement by their officers thereunto duly authorized as of the day and year first written above.

U. S. BANK NATIONAL ASSOCIATION, as Custodian

By:_____

Name:_____

Title: _____

Signature Page to the Second Amendment to the Custody and Revenue Control Agreement for the Ohio River Bridges Project

KPMG LLP, as outgoing Revenue Control Manager

By:_____

Name:_____

Title: _____

Signature Page to the Second Amendment to the Custody and Revenue Control Agreement for the Ohio River Bridges Project

STROTHMAN AND COMPANY, as incoming Revenue Control Manager

By:_____

Name:_____

Title: _____

Signature Page to the Second Amendment to the Custody and Revenue Control Agreement for the Ohio River Bridges Project

_____, as Toll Service Provider 2

By:_____

Name:_____

Title: _____

Signature Page to the Second Amendment to the Custody and Revenue Control Agreement for the Ohio River Bridges Project

INDIANA FINANCE AUTHORITY

By:_____
Cristopher R. Johnston, Chairman

ATTEST:

_____
Dan Huge, Public Finance Director of the
State of Indiana

Consented to and accepted by:

U.S. BANK NATIONAL ASSOCIATION, as
Indiana Project Trustee

By:_____

Name:_____

Title: _____

Signature Page to the Second Amendment to the Custody and Revenue Control Agreement for the Ohio River Bridges Project

KENTUCKY PUBLIC TRANSPORTATION
INFRASTRUCTURE AUTHORITY

By:_____

Name:_____

Title: _____

Consented to and accepted by:

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Kentucky Bond Trustee

By:_____ Name:__ Title: _____

Signature Page to the Second Amendment to the Custody and Revenue Control Agreement for the Ohio River Bridges Project

EXHIBIT 9-B. DRAFT TRUST AGREEMENT

TRUST AGREEMENT

AMONG

INDIANA FINANCE AUTHORITY,

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY,

_____,

AND

_____ SUBCONTRACTOR

Indiana Finance Authority
Louisville-Southern Indiana-Ohio River Bridges/Toll Services Agreement

TRUST AGREEMENT

This TRUST AGREEMENT, dated as of _____, 2019 (the "Trust Agreement"), is entered into among the INDIANA FINANCE AUTHORITY, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions of the State of Indiana ("IFA"), the KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY, an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky ("KPTIA"), _____ ("TSP2" and "Provider"), and _____ Subcontractor ("Sub" and "Provider Entity") (each of IFA, KPTIA, _____ and Sub, a "Party" or, collectively, the "Parties").

RECITALS

WHEREAS, the Louisville-Southern Indiana Ohio River Bridges Project (the "Ohio River Bridges Project" or the "Project") is a construction, reconstruction and rehabilitation project that is vital in addressing cross-river transportation needs in the greater Louisville-Southern Indiana region and is located within a metropolitan transportation area that connects the Commonwealth of Kentucky and the State of Indiana; and

WHEREAS, a Bi State Development Agreement effective as of December 17, 2012 (as supplemented and amended, the "Development Agreement") has been entered into by and among the State of Indiana, by and through the Indiana Department of Transportation ("INDOT"), the Commonwealth of Kentucky, by and through the Kentucky Transportation Cabinet (hereinafter "KYTC"), the IFA, KPTIA, and the Louisville Southern Indiana Bridges Authority; and

WHEREAS, in connection with the execution of the Development Agreement and the performance of their obligations thereunder and the accomplishment of the Ohio River Bridges Project as contemplated thereunder, KPTIA, KYTC, INDOT, and IFA have entered into an Interlocal Cooperation Agreement for the Design, Procurement, Construction, Financing, Tolling, Operation and Maintenance for the Louisville-Southern Indiana Ohio River Bridges Project effective as of December 17, 2012 (the "Interlocal Agreement") to delegate and share among the parties certain rights, powers, functions and duties as necessary, useful or appropriate to design, procure, finance, construct, toll, operate and maintain the Ohio River Bridges Project; and

WHEREAS, the Interlocal Agreement and the Development Agreement established a Joint Board (the "Joint Board"), comprised of representatives of the IFA, INDOT, KYTC and KPTIA, which is constituted as provided in the Interlocal Agreement and the Development Agreement; and

WHEREAS, the Development Agreement contemplated a Toll Services Provider ("TSP") to operate, manage, and maintain a toll collection system, including roadside, back office and toll system operations functions for the Ohio River Bridges Project (the "Toll Project"); and

WHEREAS, the Joint Board authorized the IFA, on behalf of the Joint Board, to initiate and undertake a procurement process to secure a TSP for the Project; and

WHEREAS, IFA has entered into the Toll Services Agreement (as supplemented and amended, the "Toll Agreement") dated [Date] with _____ (in this respect referred to as the "Provider" herein) to provide, operate, manage and maintain the Toll Project; and

WHEREAS, pursuant to Resolution JB-2014-1 and Resolution JB-2015-4 of the Joint Board, and Article VI of the Bylaws of the Joint Board (collectively, the "Authorizations"), IFA is authorized to administer the Toll Agreement on behalf of the Joint Board, in accordance with the terms of the Authorizations; and

WHEREAS, the Toll Agreement provides that the Gross Revenues (as hereinafter defined) of the Toll Project are trust property, that the Joint Board is the beneficiary of the trust property, that the Provider owes a fiduciary duty to the Joint Board and to the customers of the Project, and that all funds collected by the Provider are held in trust for the Joint Board; and

WHEREAS, pursuant to the Toll Agreement, IFA entered into a Custody and Revenue Control Agreement (the "CRCA") dated [_____,] with the Provider, KPTIA, U.S. Bank National Association, as Custodian (the "Custodian") and KPMG LLP, as Revenue Control Manager ("RCM"), to provide for the collection and management of Toll Revenues (as hereinafter defined) of the Toll Project; and

WHEREAS, the Provider has entered into a Subcontract Agreement dated [Date] ("Subcontract") with Subcontractor which provides that Subcontractor will design, develop, implement, test, operate and maintain a back office system and set up staffing, testing and operations for a customer service center and two walk-up center locations for the Toll Project which detailed duties are listed in Attachment B to the Subcontract ("SOW"); and

WHEREAS, Attachment D to the Subcontract describes certain responsibilities of Subcontractor which include toll and violation payment collection and processing; and

WHEREAS, the Toll Agreement requires the Provider to deposit certain funds collected by the Provider with the Custodian into accounts established pursuant to the CRCA; and

WHEREAS, the CRCA also provides that certain prepaid deposits by customers who anticipate paying a Toll (referred to herein as Customer Deposits as defined in the CRCA) may be deposited in accounts not held by the Custodian; and

WHEREAS, in accordance with Item 11 of the SOW, Customer Deposits are currently being held in accounts titled in the name of Subcontractor with bank account number _____ held by PNC Bank, N.A. ("PNC") (in which funds from Walk-Up Centers are deposited), bank account number _____ held by Wells Fargo Bank, N.A. ("Wells Fargo") (in which Post-Paid, Interoperability, and Fee funds are deposited, as well as funds from the foregoing referenced bank account with PNC), and bank account number _____ held by Wells Fargo (in which all Pre-Paid funds, referred to herein as Customer Deposits, are deposited) (collectively, the "Provider Accounts") (collectively, PNC and Wells Fargo are referred to herein as the "Provider Banks"); and

WHEREAS, pursuant to the Toll Agreement, Gross Revenues of the Toll Project include the Customer Deposits which are deposited into the Provider Accounts; and

WHEREAS, the parties desire to enter into this Trust Agreement to make it clear that the Provider Accounts and all funds held on deposit therein, including interest earnings thereon, by the Provider Entity, as the agent of Provider under the Subcontract, are required to be held in trust for the Beneficiaries described in 2.01(d), pursuant to the Toll Agreement, including but not limited to Section 2.2.14.3 of the Toll Agreement, and that the Beneficiaries own and hold all of the equitable interests in the Provider Accounts and all funds held on deposit therein; and

WHEREAS, the parties desire to enter into this Trust Agreement to further make clear that the Provider Entity, as the agent of Provider under the Subcontract, only has access to and control over the Provider Accounts in its capacity as a trustee with the obligations under the Subcontract to implement the Provider's duties as trustee of the funds held in the Provider Accounts under the Toll Agreement.

DEFINITIONS

Definitions.

"Business Day" shall mean any day other than (i) a Saturday or a Sunday or a legal holiday or a day on which banking institutions in Indiana or Kentucky are required or authorized by law or executive order to close or (ii) a day on which the New York Stock Exchange is closed.

"Cash Holding Account" has the meaning given thereto in the CRCA.

"Customer" has the meaning given thereto in the CRCA.

"Customer Deposits" has the meaning given in the CRCA which generally include certain prepayments deposited into a Provider Account in anticipation of paying a Toll.

"Daily Reconciliation Certificate" has the meaning given thereto in the CRCA.

"Event of Default" has the meaning set forth in Article IV hereof.

"Fees" has the meaning given thereto in the CRCA.

"Gross Revenues" has the meaning set forth in the Toll Agreement.

"Joint Board Resolutions" means collectively the Authorizations and any other authorization or governing document of the Joint Board which authorize various actions with respect to toll services and set forth the process for giving notice under the Toll Agreement.

"Subcontract Termination Date" means the date of expiration or termination of the Subcontract.

"Term" shall run for the period described in Section 2.09(a).

"Toll Revenues" has the meaning given thereto in the CRCA.

"Tolls" has the meaning given thereto in the CRCA.

"Trust Agreement" means this Trust Agreement as amended and supplemented from time to time.

Interpretive Principles. (a) Unless the context otherwise requires, the terms defined in Section 1.01 and in the recitals hereto shall for all purposes hereof and of any amendment hereof or supplement hereto and of any certificate, opinion, request or other document mentioned herein or therein have the meanings defined herein, the definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

(b) The phrase "IFA on behalf of the Joint Board" and all similar phrases herein shall refer to the IFA acting on behalf of the Joint Board or the Joint Board Authorized Representatives as defined in the Toll Agreement in accordance with the requirements and protocols set forth in the Joint Board Resolutions.

(c) The Parties agree that nothing in this Trust Agreement shall be construed to require Sub to take any action that Sub is not permitted by law to take, or that Sub lacks the authority or capacity to perform; however, Sub hereby represents and warrants to the other Parties that it is not a party to any agreement, nor does any agreement exist, that would in any way prohibit or conflict with the terms and conditions of this Trust Agreement.

(d) The Parties acknowledge that the Provider Accounts are daily operating accounts handling large volumes of daily transactions as well as various responsibilities, including refunds and reconciliations, and this Trust Agreement is not intended to change the daily operations that have been performed by the Provider Entity related to the Provider Accounts prior to entering into this Trust Agreement, pursuant to the Subcontract, and will continue to be performed thereunder.

(End of Article I)

ESTABLISHMENT OF TRUST; DEPOSITS INTO AND REFUNDS AND TRANSFERS FROM PROVIDER ACCOUNTS

Establishment of Trust.

There is hereby created, established, and recognized a trust with trust property that consists of the Provider Accounts and all funds held on deposit therein including interest earnings thereon at any time.

The settlor of the trust is IFA on behalf of the Joint Board.

The trustees of the Provider Accounts are the Provider and the Provider Entity. Any monies contained in the Provider Accounts are held in trust by the Provider and by Sub (and any successor), as the Provider Entity, as agents of the Provider acting in its trust capacity.

The beneficiaries of the trust are (collectively, the "Beneficiaries"):

the Customers prior to the time that the Customer Deposits contained in the Provider Accounts become Toll Revenues; and

IFA, INDOT, KYTC and KPTIA as to Toll Revenues, including the Customer Deposits in the Provider Accounts after they become Toll Revenues.

The purpose of the trust is to ensure that the funds in the Provider Accounts are applied as required by the Toll Agreement for the benefit of the Beneficiaries.

The Parties acknowledge and agree that the Provider and Provider Entity:

have not had and do not have any equitable interest in the Provider Accounts and any funds held on deposit therein;

shall not use or transfer any of the funds held on deposit in the Provider Accounts including any interest earnings thereon for their own use, purpose, operations, or otherwise obtain the benefit thereof;

shall not commingle any of their own funds with the funds held on deposit in the Provider Accounts; and

shall hold the funds on deposit in the Provider Accounts solely for the benefit of the Beneficiaries.

The Parties agree that the funds held on deposit in the Provider Accounts in trust are not the property of either the Provider or Provider Entity, or any of their successors in interest, and shall not, for the purposes of section 541 or any other provision of Title 11 of the United States Code (the "Bankruptcy Code") or any other federal or state receivership or insolvency-type proceeding, constitute property of the estates of either the Provider or Provider Entity, or any of

their successors in interest, and each of said entities, in their roles as trustee of the funds held on deposit in the Provider Accounts, expressly disclaim, waive and renounce any equitable interest in the funds held in the Provider Accounts and agree that neither they nor any trustee appointed in the bankruptcy, receivership or other insolvency-type proceeding will have any right title or interest in and to the funds held in the Provider Accounts, and that the Provider and Provider Entity, and any of their successors in interest, and their agents will not assert any right, title, or interest in and to the Provider Accounts and the funds held on deposit in the Provider Accounts, and will not oppose, and will cooperate in and take such actions as may be necessary to transfer the Provider Accounts out of their names, as trustees, and into the name(s) of one or more successors, as successor trustee(s), as the Joint Board or its designee may dictate as well as any efforts to transfer the funds out of the Provider Accounts and/or obtain any relief from the court with jurisdiction over their estates, to the extent the Joint Board or its designee deems it necessary.

In the event of bankruptcy or any other federal or state receivership or insolvency-type proceeding of the Provider or Provider Entity, the Provider and Provider Entity, as a debtor-in-possession, or the appointed trustee, shall turn over legal title and control of the Provider Accounts as soon as reasonably possible to the entity designated by or on behalf of the Joint Board, and agree to perform all reasonable actions required to effectuate such relinquishment and transfer and to cooperate in order to effect the same.

The Parties further agree and intend that because the Provider and Provider Entity do not have any equitable interest in the funds held in trust in the Provider Accounts, none of sections 362 or 365 of the Bankruptcy Code, or any similar state or federal laws, will have any application to this Trust Agreement, the Provider Accounts, the funds held in trust in the Provider Accounts, or the Provider or Provider Entity's obligations under this Trust Agreement.

Provider Account Requirements.

The Provider and Provider Entity agree that as of the effective date of this Trust Agreement, the Provider Accounts will be titled as held by the Provider Entity, in trust for the benefit of the Beneficiaries.

The Provider Entity shall have signature authority with respect to the Provider Accounts, but only to the extent necessary to carry out its obligations under this Trust Agreement, the Toll Agreement, the Subcontract, and the CRCA.

Financial Statement Reporting of Provider Accounts. The Provider and Provider Entity both acknowledge and agree that because the equitable interests in the Provider Accounts and all funds held on deposit therein are owned by the applicable Beneficiaries, the Provider and Provider Entity shall not identify the Provider Accounts or the funds held on deposit therein as assets or liabilities on their books and records without noting that such funds are held in trust for the Beneficiaries and that use of such funds is restricted and prohibited in accordance with the terms of this Trust Agreement.

Deposits into Provider Accounts.

All Customer Deposits received by the Provider or Provider Entity shall be deposited in the respective, segregated Provider Account. The Provider and Provider Entity covenant and agree that all moneys, when and as received by the Provider or Provider Entity, and which are required to be or designated or otherwise directed for deposit into any of the Provider Accounts, will be received and held by the Provider Entity in trust hereunder and will be deposited by the Provider Entity into the appropriate, segregated Provider Account.

All Customer Deposits shall remain segregated from other Gross Revenues, and to the extent required under and not inconsistent with the Toll Agreement or the CRCA, all Toll Revenues shall remain segregated while held in the applicable Provider Account.

All moneys delivered to the Provider or Provider Entity for deposit into any of the Provider Accounts shall be (i) deposited into the appropriate Provider Account as described herein, (ii) disbursed, allocated and applied by the Provider Entity solely for the uses and purposes set forth herein and as described in the CRCA, and (iii) accounted for separately and apart from all other moneys, funds, accounts or other resources of the Provider and Provider Entity.

The Provider Entity's right to apply the funds in the Provider Accounts is solely in its capacity as a trustee for the benefit of the Beneficiaries.

Customer Deposit Refunds. The Provider Entity shall process any Customer Deposit refunds specified in a Daily Reconciliation Certificate.

Transfers to Custodian. The Provider Entity shall deliver to the Custodian the amount of Customer Deposits that become Toll Revenues for deposit, along with any other Tolls or Fees on deposit in the Provider Accounts, into the Cash Holding Account in the manner specified in a Daily Reconciliation Certificate.

Termination of Signatory Authority of the Provider Entity. In the event that the Provider or Provider Entity files for or is involuntarily placed into bankruptcy, receivership or other insolvency-type proceeding, such Provider or Provider Entity's access to any Provider Account shall be transferred to one or more successors as the Joint Board or its designee may direct and shall thereby terminate.

Notice of Creditor Claims. If at any time a creditor of the Provider or Provider Entity or another party makes any assertion, formal or informal, that any of the funds held in the Provider Accounts may be subject to claims of creditors of the Provider or Provider Entity, the Provider and Provider Entity shall immediately provide written notice to the Joint Board, the RCM and the Custodian of such assertion, and shall defend and oppose any such assertions to the fullest extent possible in order to safeguard the funds held in trust in the Provider Accounts, specifically asserting in response that such funds are not the property of the Provider or Provider Entity and therefore not available to satisfy the claims of any creditors of the Provider or Provider Entity, and shall provide the Joint Board with timely notice and opportunity to participate in such defense and opposition.

Termination of Trust.

The Term of this Trust Agreement shall begin on the execution date and end on the Subcontract Termination Date, and shall not be revocable by the Provider or Provider Entity.

On the Business Day immediately preceding the Subcontract Termination Date, the Provider Entity shall cause all monies contained in the Provider Accounts to be transferred to the accounts designated by the Joint Board pursuant to the form attached hereto as Exhibit A.

Notice of Trust Agreement to RCM and the Custodian. IFA on behalf of the Joint Board agrees to provide written notice to the RCM and the Custodian of the execution of this Trust Agreement.

(End of Article II)

PROVIDER ENTITY COVENANTS

Accounting Records and Statements. The Provider and Provider Entity will keep proper accounting records in which complete and correct entries shall be made of all transactions made by them relating to the receipt, deposit and disbursement of funds into and from the Provider Accounts, and any other funds received by the Provider and Provider Entity hereunder and such accounting records shall be available for inspection by any member of the Joint Board or their agents duly authorized in writing on any Business Day upon reasonable notice at reasonable hours and under reasonable conditions prescribed by the Provider or Provider Entity.

Merger or Consolidation; Assignment. Any company into which the Provider or Provider Entity may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Provider or Provider Entity may sell or transfer all or substantially all of its assets shall be bound by the provisions of this Trust Agreement and shall execute an assumption of this Trust Agreement acceptable to all members of the Joint Board.

(End of Article III)

DEFAULTS AND LIMITATIONS OF LIABILITY

Events of Default by IFA. It shall be an Event of Default if IFA defaults in the performance of any of the agreements or covenants contained in this Trust Agreement required to be performed by it, and such default shall have continued for a period of 30 days after all members of the Joint Board shall have been given notice in writing of such default by the Provider or Provider Entity.

Events of Default by the Provider or Provider Entity. It shall be an Event of Default if:

the Provider Entity does not comply with Section 2.02(a) of this Trust Agreement at any time during the Term; or

the Provider or Provider Entity defaults in the performance of any of the other agreements or covenants contained in this Trust Agreement required to be performed by it, and such default shall have continued for a period of 30 days after the Provider or Provider Entity shall have been given notice in writing of such default by any member of the Joint Board.

the Provider or Provider Entity: (i) becomes insolvent, as that term is defined in the Bankruptcy Code, or under the insolvency laws of any state; (ii) has a receiver or custodian appointed for the Provider or Provider Entity or any of its property or assets; (iii) becomes a debtor under the Bankruptcy Code or becomes subject to any other federal or state receivership or insolvency-type proceeding; or (iv) makes or consents to an assignment for the benefit of creditors or a composition of creditors.

any execution, levy, attachment or other process of law shall occur upon the Provider or Provider Entity's property or assets.

Remedies. Upon an Event of Default, any party may file suit for specific performance, mandatory injunction, appointment of a receiver, for recognition that the funds held in the Provider Accounts are held in trust for the Beneficiaries and shall be handled solely in accordance with the terms of this Trust Agreement, or for the enforcement of any other legal or equitable right, including but not limited to any and all rights with respect to the funds held in trust, which exist notwithstanding an Event of Default hereunder. Upon any Event of Default by or of the Provider or Provider Entity, such Provider or Provider Entity hereby unconditionally and irrevocably agrees that the Beneficiaries are immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the enforcement of all of the rights and remedies under this Trust Agreement with respect to the funds held in the Provider Accounts, and at law and in equity under state law, and the Provider and Provider Entity hereby consent to the immediate lifting, without notice, demand, or any other action, of any such automatic stay under section 362 of the Bankruptcy Code or any other similar state or federal law, and agree that they will not, in any manner, contest or otherwise delay any motion filed by or on behalf of the Joint Board or Beneficiaries for relief from such automatic stay.

Non-Waiver. A waiver of any default or breach of duty or contract by the Provider, Provider Entity or IFA shall not affect any subsequent default or breach of duty or contract or

impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Provider, Provider Entity or IFA to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Provider, Provider Entity or IFA by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Provider, Provider Entity or IFA.

Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Provider, Provider Entity or IFA is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any law.

(End of Article IV)

AMENDMENTS OR SUPPLEMENTS TO TRUST AGREEMENT

Amendment. The IFA, if specifically authorized by the Joint Board, KPTIA, the Provider and the Provider Entity may agree at any time to enter into one or more trust agreements supplemental and amendatory to this Trust Agreement for any purpose deemed necessary or advisable in the sole discretion of the Joint Board, the Provider and Provider Entity; however, in no event shall the Trust Agreement be amended in such a way as to change the trust nature and equitable ownership of the funds held in the Provider Accounts by the Beneficiaries.

Effect of Supplement or Amendment. Upon the execution of any supplemental or amendatory trust agreement under this Article V, this Trust Agreement shall be modified in accordance therewith, and such supplemental or amendatory trust agreement shall form a part of this Trust Agreement for all purposes.

(End of Article V)

MISCELLANEOUS

Benefits of Trust Agreement. Nothing in this Trust Agreement expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the Beneficiaries, any right, remedy or claim under or by reason of this Trust Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Trust Agreement shall be for the sole and exclusive benefit of the Beneficiaries.

Successor Deemed Included in all References to Predecessor. Whenever the Joint Board, the Beneficiaries, the Provider or Provider Entity, or any officer thereof is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Joint Board, the Beneficiaries, the Provider or Provider Entity, or such officer, and all agreements, conditions, covenants and terms required hereby to be observed or performed by or on behalf of the Joint Board, the Beneficiaries, the Provider or such Provider Entity, or any officer thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing and mailed via registered mail (return receipt requested), telecopied (and promptly confirmed by mail or delivery) or delivered (via courier service), if to IFA at its address at One North Capitol, Suite 900, Indianapolis, Indiana, Attention: Public Finance Director of the State of Indiana, facsimile number (317) _____; and if to KPTIA at its address at 200 Mero Street, Frankfort, KY 40622, Attention: Innovative Finance Manager and if to the Provider at _____; and if to Sub at _____; and if to the RCM at _____; and if to the Custodian at _____, or as to each party, at such other address as shall be designated by such party in a written notice to the other parties.

Investments. Except as otherwise jointly directed in writing by IFA and KPTIA, amounts held in the Provider Accounts shall be invested in _____, as further described in Exhibit B. Investment earnings on amounts held in the Provider Accounts shall be retained therein and credited toward the balances required to be deposited therein, and shall be withdrawn and distributed to the custodian account(s) as directed in the bi-monthly reconciliation certificate provided by the RCM.

Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof unless expressly provided otherwise; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Partial Invalidity. If any one or more of the agreements, conditions, covenants or terms contained herein shall be contrary to law, then such agreement or agreements, such condition or conditions such covenant or covenants or such term or terms shall be null and void and shall be deemed separable from the remaining agreements, conditions, covenants and terms hereof.

Choice of Law. As to IFA, the Provider and Provider Entity, this Trust Agreement shall be construed and governed in accordance with the laws of Indiana. Nothing herein shall be construed as a waiver of the sovereign immunity of the Commonwealth of Kentucky.

Effective Date. This Trust Agreement shall become effective upon its execution and delivery.

Execution in Counterparts. This Trust Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

(End of Article VI)

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement by their officers thereunto duly authorized as of the day and year first written above.

INDIANA FINANCE AUTHORITY

By: _____

Micah G. Vincent, Chair

ATTEST:

_____

Dan Huge, Public Finance Director of the State of Indiana

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

By: _____

Greg Thomas, Chair

AS TO FORM AND LEGALITY:

_____

Laura Theilmann

Wyatt Tarrant and Combs, LLP

KPTIA General Counsel

Signature Page to the Trust Agreement for the

Indiana Finance Authority Louisville-Southern Indiana-Ohio River Bridges/Toll Services Agreement

_____

By: _____

Name: _____

Title: _____

Subcontractor

By: _____

Name: _____

Title: _____

Signature Page to the Trust Agreement for the

Indiana Finance Authority Louisville-Southern Indiana-Ohio River Bridges/Toll Services Agreement

EXHIBIT A

[PNC]

[Wells Fargo]

Re: Trust Agreement dated _____, 2019 ("Trust Agreement") among INDIANA FINANCE AUTHORITY, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions of the State of Indiana ("IFA"), the KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY, an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky ("KPTIA"), _____ ("TSP2"), and SUBCONTRACTOR ("Sub")

All terms used herein and not defined herein are defined in the Trust Agreement. The Joint Board has been notified of the Subcontract Termination Date. Pursuant to Section 2.09 of the Trust Agreement, on _____, ___, the Provider Entities shall transfer all funds in the Provider Accounts to the following account designated by the Joint Board:

[Bank

Account number]

Indiana Finance Authority

KPTIA

EXHIBIT B

EXHIBIT 10. FORM OF GUARANTY

[EXECUTED COPIES OF GUARANTEES TO REPLACE THIS FORM PRIOR TO EXECUTION OF THE CONTRACT]

GUARANTY

This Guaranty (the "Guaranty") is made by [_____] ("Guarantor"), a [_____] in favor of the Indiana Finance Authority, on behalf of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board").

WHEREAS, [_____], a [_____] **[*insert state of organization and legal entity*]**, as toll system provider ("Toll System Provider") and the Joint Board are parties to that certain Toll Services Agreement dated as of _____, 2021 (as amended from time to time, the "Contract"). Initially capitalized terms used herein without definition will have the meaning given such terms in the Contract;

WHEREAS, Guarantor is the direct or indirect parent of Toll System Provider, will receive substantial and direct benefits from the transactions contemplated by the Contract and has agreed to enter into this Guaranty to provide assurance for the full and prompt payment of Toll System Provider's obligations in connection with the Contract and to induce the Joint Board to enter into the Contract; and

WHEREAS, without this Guaranty, the Joint Board would not have entered into the Contract, in consideration of the Joint Board's execution of the Contract, Guarantor has agreed to execute this Guaranty, and the execution and delivery of this Guaranty is a condition to the Joint Board's further performance of its obligations under the terms of the Contract.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty. Subject to the limitation on Guarantor's liability set forth in Section 3 of this Guaranty, below, Guarantor hereby unconditionally and absolutely guarantees the full and prompt payment and performance when due of all the obligations of Toll System Provider arising out of, in connection with, under or related to the Contract, and each and every other document and agreement executed by Toll System Provider in connection with the consummation of the transactions contemplated by the Contract (or any Contract Document or other document and agreement executed by Toll System

Provider in connection with consummation of the transactions contemplated by the Contract) may be amended or modified from time to time, including the obligation to pay liquidated or other damages that may be owing under the Contract and including all costs of enforcement or collection of this Guaranty, including without limitation, all court costs and reasonable attorneys' fees (collectively, the "Guaranteed Obligations").

Guarantor expressly agrees that, to the extent Guarantor's obligations hereunder relate to obligations of the Toll System Provider which require performance other than the payment of money, the Joint Board may proceed against Guarantor to effect specific performance thereof (to the extent that such relief is available). Guarantor hereby covenants and agrees to assume or to procure the assumption of the Contract, and to perform or to procure the performance of all of the terms and conditions thereunder should the Contract be disaffirmed or rejected by a trustee or court in a bankruptcy proceeding involving the Toll System Provider, or, at the option of the Joint Board, Guarantor shall, in the event of the Toll System Provider's bankruptcy, make and enter into or have made and entered into, by one or more entities reasonably satisfactory to the Joint Board, new contract documents for the balance of the term of the Contract, which new contract documents shall be in form and substance identical to the replaced Contract.

2. Guaranty Absolute and Unconditional Obligation. This Guaranty is a guaranty of payment and performance and not of collection and is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred; whether or not recovery may be, or hereafter may become, barred by any statute of limitations or otherwise; provided, however, that this Guaranty shall not be enforceable against Guarantor to the extent (and only to the extent) it is determined or has been determined that the Guaranteed Obligations are not enforceable by a court of competent jurisdiction against Toll System Provider. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, the liability of Guarantor under this Guaranty shall be absolute and unconditional, and Guarantor's obligations hereunder will not be released, discharged or otherwise affected irrespective of:

(a) any lack of validity or enforceability of or defect or deficiency applicable to Toll System Provider in the Contract or any other documents executed in connection with the Contract; or

(b) any change in, modification, extension or waiver of any of the terms or obligations of the Contract; or

(c) any change in the time, manner, terms or place of payment of or in any other term of all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Contract or

any other Contract Document, agreement or instrument executed in connection therewith; or

(d) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by the Joint Board to exercise, in whole or in part, any right or remedy held by the Joint Board with respect to the Contract or any transaction under the Contract; or

(e) any change in the existence, structure or ownership of Guarantor or Toll System Provider, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Toll System Provider or its assets; or

(f) the existence of any claim or set-off which Toll System Provider has or Guarantor may have against the Joint Board, whether in connection with this Guaranty or any unrelated transaction, except and only to the extent any claim or set-off is actually allowed by a court of competent jurisdiction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit; or

(g) any release of Toll System Provider from any liability with respect to the Contract; or

(h) any release or subordination of any collateral then held by the Joint Board as security for the performance by Toll System Provider of the Guaranteed Obligations.

This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Contract, Guaranteed Obligations or any part thereof or any instrument or agreement or Contract Document evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations which might otherwise constitute a defense to the Guaranteed Obligations or this Guaranty, except and only to the extent such defenses are adjudicated or have been adjudicated by a court of competent jurisdiction.

The obligations of the Guarantor hereunder are several from Toll System Provider or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. It shall not be necessary for the Joint Board, in order to enforce payment or performance by Guarantor under this Guaranty, to show any proof of Toll System Provider's default, to exhaust its remedies against Toll System Provider, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations, or to exhaust any security or collateral and without the necessity of proceeding against Toll System

Provider.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by the Joint Board upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Toll System Provider or any other guarantor, or upon or as a result of the appointment of a receiver or conservator of, or trustee for Toll System Provider or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

3. Liability of Guarantor.

(a) The Joint Board may enforce this Guaranty upon the occurrence of a breach by Toll System Provider of any of the Guaranteed Obligations (following the expiration of any notice and cure period set forth in the Contract and applicable to such breach), notwithstanding the existence of any dispute between or among the Joint Board and Toll System Provider with respect to the existence of such a breach.

(b) Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

(c) The Joint Board, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Toll System Provider, if and as permitted by the Contract, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of the Joint Board in respect of this Guaranty or the Guaranteed Obligations

and direct the order or manner of sale thereof, or exercise any other right or remedy that the Joint Board may have against any such security, as the Joint Board in its discretion may determine, and (vi) exercise any other rights available to it under the Contract.

(d) This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) with respect to the Guaranteed Obligations or any agreement or instrument executed pursuant thereto; (iii) the Joint Board's knowledge of or consent to the change, reorganization or termination of the corporate structure or existence of Toll System Provider; (iv) any defenses, set-offs or counterclaims Toll System Provider may allege or assert against the Joint Board in respect of the Guaranteed Obligations, including but not limited to failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury, except and only to the extent any defenses, set-offs, or counterclaims are actually allowed by a court of competent jurisdiction; and (v) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

(e) Subject to the limitation on the amount of Guarantor's liability set forth in this paragraph, it is the intent of the parties that the monetary amount of Guarantor's liability for the Guaranteed Obligations shall be limited to the maximum amounts set forth in the Contract that are applicable to the Toll System Provider. Any final determination by a court of competent jurisdiction with respect to any of the Guaranteed Obligations shall establish the limits of this Guaranty with respect thereto. Nothing in this Section 3 shall affect the enforceability of the Guarantor's waiver of defenses, subrogation rights, and reimbursement rights set forth in Sections 4, 5, 6, 7, and 9.

4. Waiver. This is a guaranty of payment and performance and not of collection. To the fullest extent permitted by law, Guarantor hereby waives:

a. notice of acceptance of this Guaranty, of the creation, renewal, extension, modification, accrual or existence of any of the Guaranteed Obligations and of any action by the Joint Board in reliance hereon or in connection herewith;

b. notice of the entry into the Contract between Toll System Provider and the Joint Board and of any amendments, supplements or modifications thereto; or any waiver of consent under the Contract, including waivers of the payment and performance of the obligations thereunder;

c. notice of any increase, reduction or rearrangement of Toll System Provider's obligations under the Contract or any extension of time for the payment of any sums due and payable to the Joint Board under the Contract;

d. except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice with respect to the Guaranteed Obligations;

e. any right to require that the Joint Board exhaust any security held by the Joint Board at any time, and any requirement that suit be brought against, or any other action by the Joint Board be taken against, or any notice of default or other notice be given to, or any demand be made on Toll System Provider or any other person, or that the Joint Board exercise any right or remedy under the Contract or that any other action be taken or not taken before proceeding against Guarantor as a condition to Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against Guarantor;

f. any defense that may arise by reason of the incapacity, lack of authority, dissolution of, death or disability of, or revocation hereby by Guarantor or any other Person or the failure of the Joint Board to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person;

g. any requirements of diligence or promptness on the part of the Joint Board;

h. except as specifically provided elsewhere in this Guaranty, any defense arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Toll System Provider or any other Person from any cause other than indefeasible performance in full of the Guaranteed Obligations;

i. any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation;

j. any defense based upon any act or omission of the Joint Board which directly or indirectly results in or aids the discharge or release of Toll System Provider, Guarantor or any security given or held by the Joint Board in connection with the Guaranteed Obligations; an

k. any and all suretyship defenses under applicable law including, but not limited to, any defense under Indiana Code 34-22-1; and

l. any statute of limitations affecting Guarantor's liability hereunder or the enforcement thereof.

5. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly performed in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the Toll System Provider that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of the Joint Board against the Toll System Provider, or any other security or collateral that the Joint Board now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Toll System Provider or any shareholders, partners, members, or joint venturers of Toll System Provider to Guarantor is subordinated to all of the Guaranteed Obligations until such time as all Guaranteed Obligations shall have been indefeasibly paid in full. Whenever and for so long as the Toll System Provider shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Toll System Provider or any shareholders, partners, members, or joint venturers of Toll System Provider to Guarantor without the prior written consent of the Joint Board. Any payment by Toll System Provider or any shareholders, partners, members, or joint venturers of Toll System Provider to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for the Joint Board.

6. Waiver and Reservation of Defenses. Guarantor agrees that except as expressly set forth herein, it will remain bound upon this Guaranty notwithstanding any defenses which, pursuant to the laws of suretyship, would otherwise relieve a guarantor of its obligations under a Guaranty. Guarantor does reserve the right to assert defenses which Toll System Provider may have to any Guaranteed Obligation other than defenses arising from the bankruptcy or insolvency of Toll System Provider and other defenses expressly waived hereby. Defenses waived hereby include without limitation the defenses waived pursuant to Section 3, Section 4, Section 5, and Section 10 hereof,

and any defenses, set-offs or counterclaims Toll System Provider may allege or assert against the Joint Board in respect of the Guaranteed Obligations, including but not limited to failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury, except and only to the extent any defenses, set-offs, or counterclaims are actually allowed by a court of competent jurisdiction; and any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

7. Default; Cumulative Rights. The Joint Board may declare Guarantor in default under this Guaranty for any failure to fully perform and discharge its obligations and liabilities under this Guaranty. Guarantor and the Joint Board specifically agree that, in addition to any and all remedies at law or in equity that the Joint Board may have, the Joint Board shall be entitled to the remedy of specific performance of any of the provisions and obligations to be performed by Guarantor under this Guaranty and that the Joint Board shall be entitled to any other provisional remedies incidental to enforcing such specific performance, including, without limitation, the granting of appropriate injunctive relief. All rights, powers and remedies of the Joint Board hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to the Joint Board, whether at law, in equity or otherwise.

8. Notices. All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, 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):

If to the Joint Board:

All communications to the Joint Board shall be marked as regarding the Toll Services Agreement and shall be delivered as directed by the Joint Board's Project Management Consultant. 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

Jim Gray, Secretary

200 Mero Street

Frankfort, Kentucky 40622

Telephone:_____

Facsimile:_____

E-mail:_____

If to Guarantor:

[Guarantor Name]

[Guarantor Address:]

_____

Attn:_____

Fax:_____

With a copy to:

[_____]

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.).

Either Guarantor or the Joint Board may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 8 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

9. No Waiver; Remedies. Except as to applicable statutes of limitation, no failure on the part of the Joint Board to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10. Assignment: Successors and Assigns. This Guaranty shall be binding upon and inure to the benefit of the Guarantor and the Joint Board and their respective successors, permitted assigns, and legal representatives, but is not assignable by Guarantor without the prior written consent of the Joint Board, which consent may be granted or withheld in the Joint Board's sole discretion. Any assignment by Guarantor effected in accordance with this Section 10 will not relieve Guarantor of its obligations and liabilities under this Guaranty. The sale or other disposition of a majority in interest of the shares of Guarantor or the sale, transfer, or disposition (including by merger) of substantially all of the assets of Guarantor shall be deemed an assignment of this Guaranty subject to consent as required herein.

11. Amendments, Etc. No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and the Joint Board. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by the Joint Board. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

12. Captions and Construction. The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

13. <u>Representation and Warranties</u>. The Guarantor represents and warrants as follows:

a. it is a [*insert type of entity*] company duly organized, validly existing, and in good standing under the laws of the State of _____.

b. the execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.

c. this Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the Joint Board's rights and to general equity principles.

d. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

e. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract or referred to therein, and the financial status of Toll System Provider and its ability to pay the Guaranteed Obligations;

(f) it has reviewed and approved copies of the Contract and is fully informed of the remedies the Joint Board may pursue, with or without notice to Toll System Provider or any other Person, in the event of default of any of the [Contract] Obligations;

(g) it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Toll System Provider and will keep itself fully informed as to all aspects of the financial condition of Toll System Provider, the performance of the Guaranteed Obligations and all other circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations.

Guarantor hereby waives and relinquishes any duty on the part of the Joint Board to disclose any matter, fact or thing relating to the business, operations or conditions of Toll System Provider now known or hereafter known by the Joint Board;

(h) no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

(i) there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Person which challenges the validity or enforceability of this Guaranty.

14. <u>Limitation by Law</u>. All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

15. <u>Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.</u>

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Toll System Provider or by any defense which Toll System Provider 2 may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. The Joint Board is not obligated to file any claim relating to the Guaranteed Obligations if Toll System Provider becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of the Joint Board so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and the Joint Board that the Guaranteed

Obligations should be determined without regard to any rule of law or order which may relieve Toll System Provider 2 of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay the Joint Board, or allow the claim of the Joint Board in respect of, any such interest accruing after the date on which such proceeding is commenced.

16. **Governing Law.** This Guaranty shall be governed by and construed in accordance with the laws of the State of Indiana. Any suit must be brought in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana. Developer hereby specifically consents to this jurisdiction.

17. **Attorneys' Fees**. Guarantor agrees to pay to the Joint Board forthwith upon demand, reasonable attorneys' fees and all costs and other expenses (whether by lawsuit or otherwise, and including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by or on behalf of the Joint Board in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

18. **CONSENT TO JURISDICTION.** GUARANTOR AND THE JOINT BOARD AGREE THAT ANY ACTION OR PROCEEDING TO RESOLVE A DISPUTE BETWEEN GUARANTOR AND THE JOINT BOARD CONCERNING THE INTERPRETATION, APPLICATION OR ENFORCEMENT OF THE TERMS OF THIS GUARANTY MAY ONLY BE BROUGHT IN THE MARION COUNTY, INDIANA CIRCUIT/SUPERIOR COURT LOCATED IN MARION COUNTY, INDIANA OR U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA. EACH OF GUARANTOR AND THE JOINT BOARD ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. IF NOT A RESIDENT OF THE STATE OF INDIANA, GUARANTOR MUST APPOINT AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THE STATE OF INDIANA.

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IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of this _____ day of _____, 2020.

[NAME OF GUARANTOR]

By:_____

Name:_____

Title:_____

EXHIBIT 11. NTP

_____, 20__

Via Fax and Email

_____
_____
_____
Attention: _____
Phone: (___) ___-____
Facsimile: (___) ___-____
email address: _____@_____

SUBJECT: Riverlink CSC & BOS Contract - Notice to Proceed ("NTP")

Dear _____:

Reference is made to that certain Contract, dated as of _____, 20_ (the "Contract"), by and between 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 the Contract by resolution of the Louisville-Southern Indiana Ohio River Bridges Joint Board ("Joint Board") and _____, a _____ ("TSP2").

Pursuant to Section 4.1 of the Contract, IFA hereby issues this "Notice to Proceed" to _____. This letter shall serve as the "NTP," as such term is defined in the Contract, and NTP shall be deemed to be issued and delivered by IFA to _____ as of the date of this letter.

Please acknowledge your receipt and acceptance of the foregoing by countersigning this letter and returning an original to the undersigned.

Sincerely,

INDIANA FINANCE AUTHORITY, on behalf of
the Louisville-Southern Indiana Ohio River Bridges
Joint Board

By: _____

Name: _____

Title: Public Finance Director of the State of Indiana

The undersigned has reviewed the foregoing Notice to Proceed on behalf of _____ and hereby acknowledges and agrees to the matters stated therein on behalf of _____.

_____

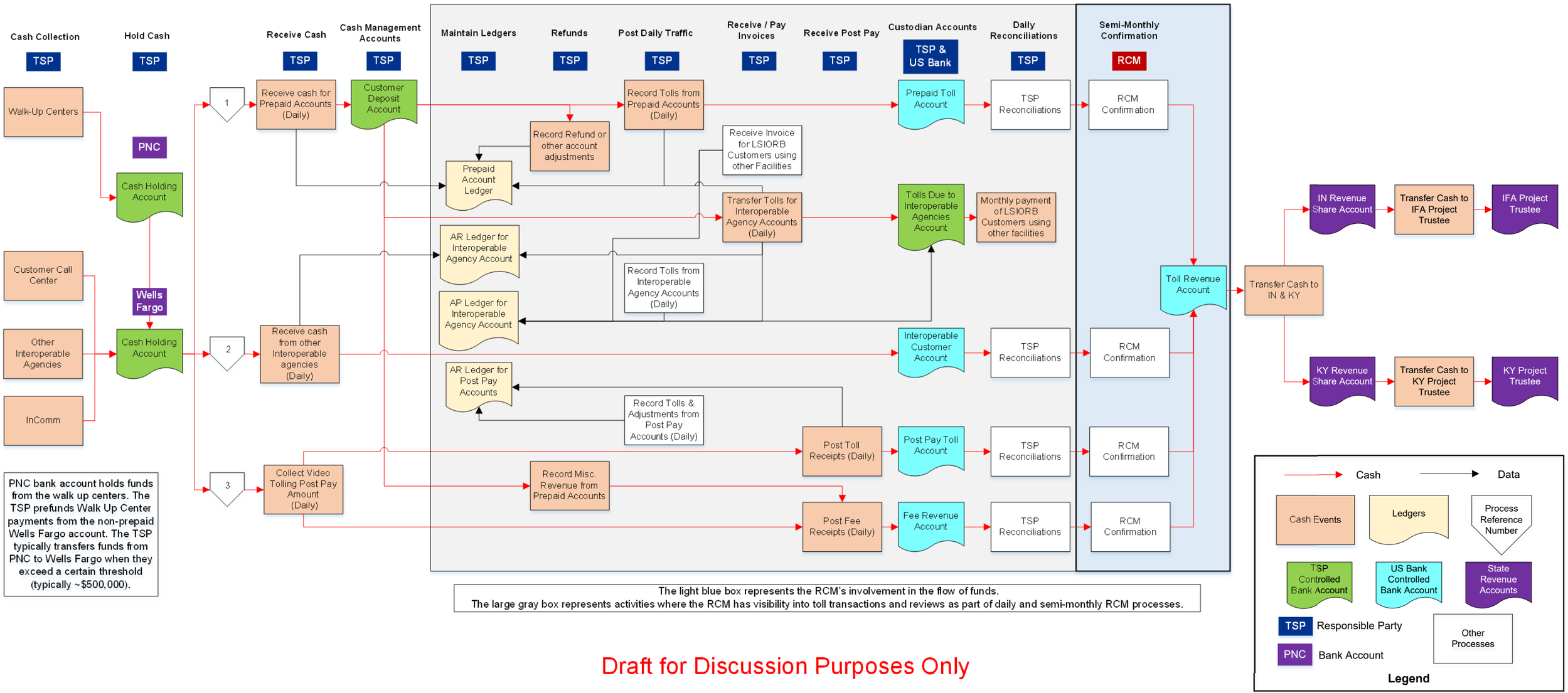
By: _____

Name: _____

Title: _____

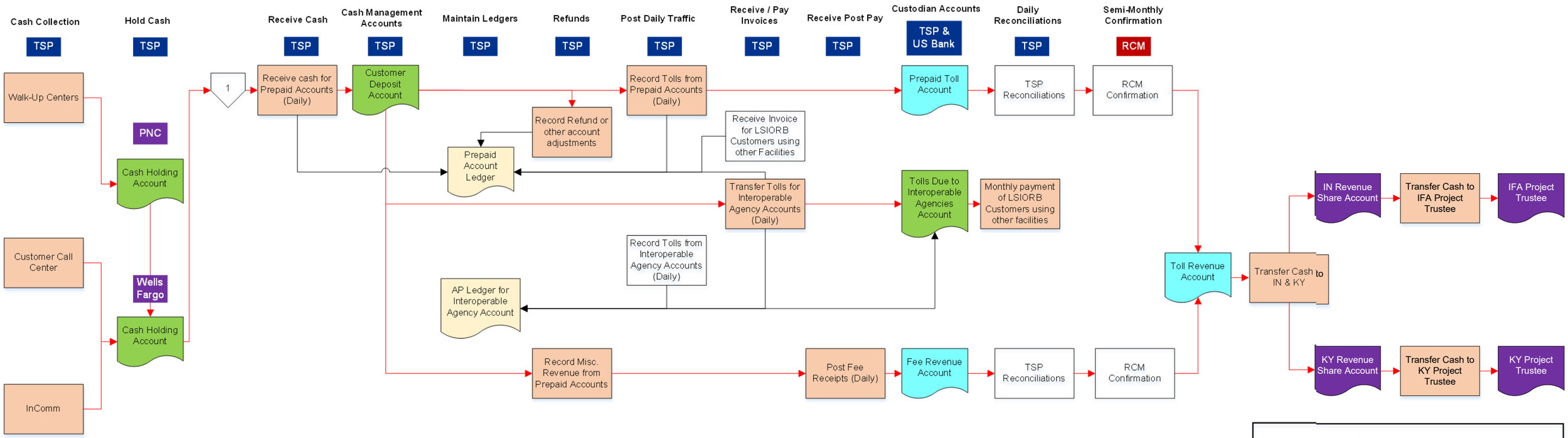
EXHIBIT 12. DRAFT FLOW OF FUNDS

Flow of Funds Overview



Draft for Discussion Purposes Only

Flow of Funds – Prepaid Accounts



PNC bank account holds funds from the walk up centers. The TSP prefunds Walk Up Center payments from the non-prepaid Wells Fargo account. The TSP typically transfers funds from PNC to Wells Fargo when they exceed a certain threshold (typically ~$500,000).

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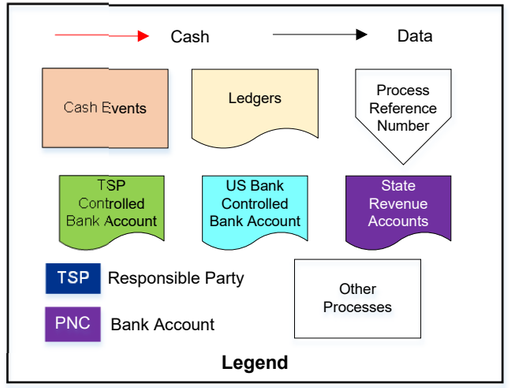
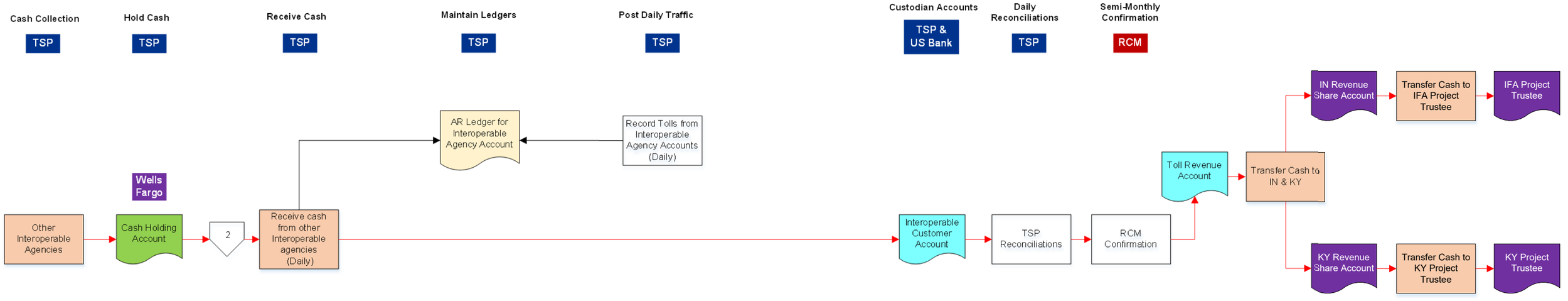


Flow of Funds – Interoperable Accounts



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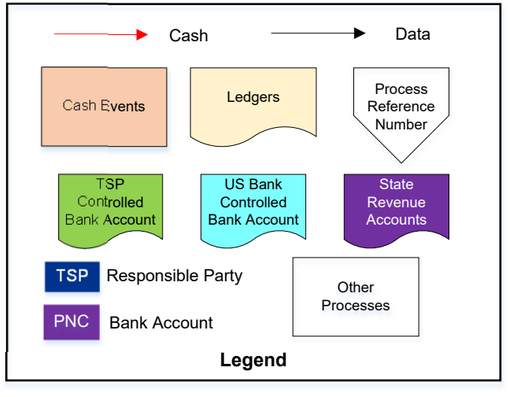
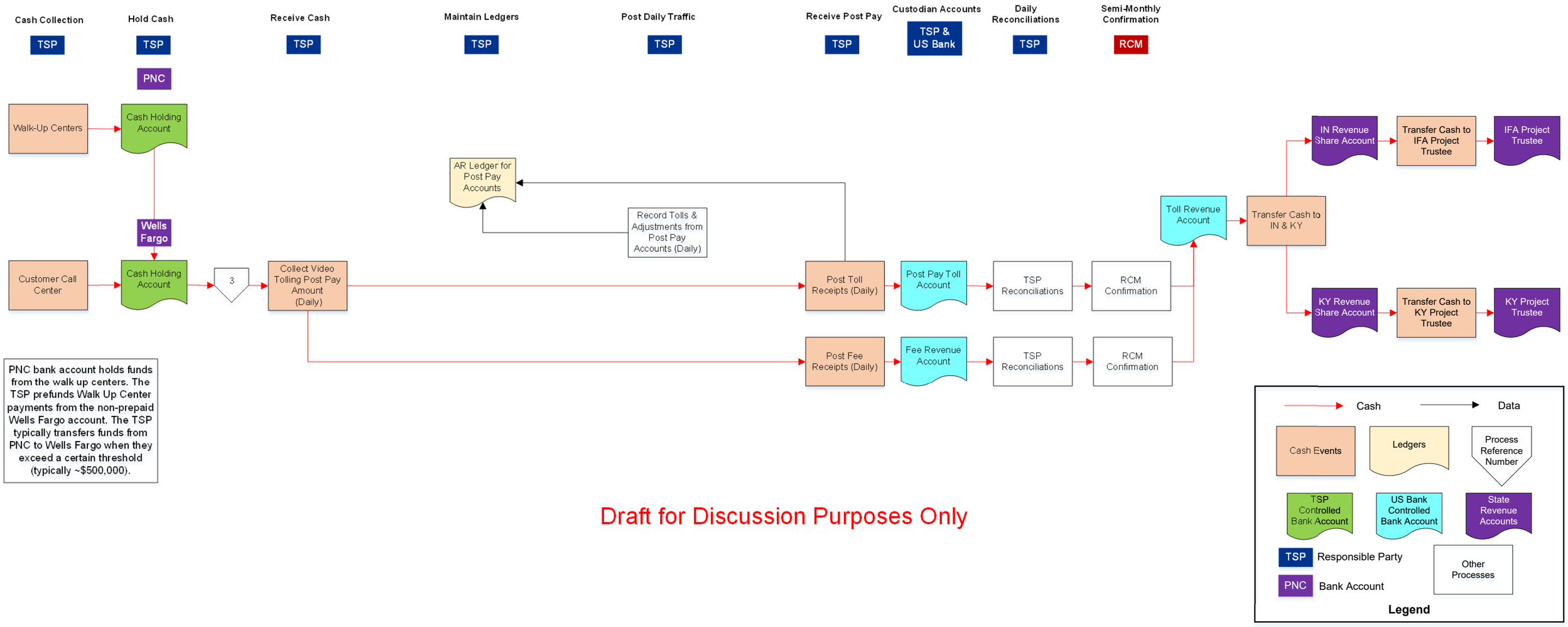


Flow of Funds – Post Pay Accounts



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